

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 409

(Senators Carmichael, Blair, Boso,
Gaunch, M. Hall, Walters and Williams, *original sponsors*)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-3, relating to establishing the Fair and Open Competition in Governmental Construction Act; providing legislative findings; defining terms; prohibiting project labor agreements from being part of the competitive bid process on governmental construction projects; prohibiting project labor agreements from being a condition for receiving a grant, tax abatement or tax credit for construction projects; providing exclusions; and establishing a process for an exemption.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-22-3, to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.

1 (a) This section may be known and cited as The Fair and Open Competition in Governmental

1 Construction Act.

2 (b) *Legislative findings.* -- The Legislature finds that to promote and ensure fair competition
3 on governmental, governmental funded or governmental assisted construction projects that open
4 competition in governmental construction contracts is necessary. The Legislature also finds that
5 when a governmental entity awards a grant, tax abatement or tax credit that it should be an open and
6 fair process. Therefore, to prevent discrimination against governmental bidders, offerors, contractors
7 or subcontractors based upon labor affiliation or the lack thereof, the Legislature declares that project
8 labor agreements should not be part of the competitive bid process or be a condition for a grant, tax
9 abatement or tax credit.

10 (c) *Definitions.* -- For purposes of this section:

11 (1) "Construction" means the act, trade or process of building, erecting, constructing, adding,
12 repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding or
13 demolishing of a building, structure, facility, road or highway, and includes the planning, designing
14 and financing of a specific construction project.

15 (2) "Governmental entity" means the state, a political subdivision or any agency or spending
16 unit thereof.

17 (3) "Project labor agreement" means any pre-hire collective bargaining agreement with one
18 or more labor organizations that establishes the terms and conditions of employment for a specific
19 construction project.

20 (d) *Prohibition - Competitive bid.* -- Commencing July 1, 2015, a governmental entity or a
21 construction manager acting on behalf of a governmental entity, seeking a construction bid
22 solicitation, awarding a construction contract or obligating funds to a construction contract, shall not

1 include the following in the bid specifications, bid requests, project agreements or any other
2 controlling documents for the construction project:

3 (1) A requirement or prohibition that a bidder, offeror, contractor or subcontractor must enter
4 into or adhere to a project labor agreement;

5 (2) A term, clause or statement that infers, either directly or indirectly, that a bidder, offeror,
6 contractor or subcontractor must enter into or adhere to a project labor agreement;

7 (3) A term, clause or statement that rewards or punishes a bidder, offeror, contractor or
8 subcontractor for becoming or remaining, or refusing to become or remain a signatory to, or for
9 adhering or refusing to adhere to, a project labor agreement; or

10 (4) Any other provision dealing with project labor agreements.

11 (e) *Prohibition - Grant, tax abatement or tax credit.* -- Commencing July 1, 2015, a
12 governmental entity may not award a grant, tax abatement or tax credit for construction that is
13 conditioned upon a requirement that the awardee include any prohibited provision set out in
14 subsection (d) of this section.

15 (f) *Exclusions.* -- This section does not:

16 (1) Prohibit a governmental entity from awarding a contract, grant, tax abatement or tax
17 credit to a private owner, bidder, contractor or subcontractor who enters into or who is party to an
18 agreement with a labor organization, if being or becoming a party or adhering to an agreement with
19 a labor organization is not a condition for award of the contract, grant, tax abatement or tax credit,
20 and if the governmental entity does not discriminate against a private owner, bidder, contractor or
21 subcontractor in the awarding of that contract, grant, tax abatement or tax credit based upon the
22 status as being or becoming, or the willingness or refusal to become, a party to an agreement with

1 a labor organization.

2 (2) Prohibit a private owner, bidder, contractor or subcontractor from voluntarily entering
3 into or complying with an agreement entered into with one or more labor organizations in regard to
4 a contract with a governmental entity or funded, in whole or in part, from a grant, tax abatement or
5 tax credit from the governmental entity.

6 (3) Prohibit employers or other parties from entering into agreements or engaging in any
7 other activity protected by the National Labor Relations Act, 29 U. S. C. §§151 to 169.

8 (4) Interfere with labor relations of parties that are left unregulated under the National Labor
9 Relations Act, 29 U. S. C. §§151 to 169.

10 (g) *Exemptions.* -- The head of a governmental entity may exempt a particular project,
11 contract, subcontract, grant, tax abatement or tax credit from the requirements of any or all of the
12 provisions of subsections (d) and (e) of this section if the governmental unit finds, after public notice
13 and a hearing, that special circumstances require an exemption to avert an imminent threat to public
14 health or safety. A finding of special circumstances under this subsection may not be based on the
15 possibility or presence of a labor dispute concerning the use of contractors or subcontractors who
16 are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor
17 organizations or concerning employees on the project who are not members of or affiliated with a
18 labor organization.