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Senate Bill No. 409

(By Senators Carmichael, Blair, Boso, Gaunch, M. Hall, Walters and Williams)

[Introduced February 4, 2015; referred to the Committee on Labor; and then to the Committee on
the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-10f, relating to the "Fair and Open Competition in Governmental Construction Act"; prohibiting governmental units from awarding a grant, tax abatement or tax credit that is conditioned upon a provision that requires or prohibits a bidder, offeror, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to the project or a related construction project, or that contains a term that otherwise discriminates against a bidder, offeror, contractor or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to that project or a related construction project; and providing exceptions.

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 §5A-3-10f, to read as follows:

1 **ARTICLE 3. PURCHASING DIVISION.**

2 **§5A-3-10f. Certain labor requirements not to be imposed on contractor or subcontractor.**

3 (a) This section may be known and cited as "The Fair and Open Competition in
4 Governmental Construction Act".

5 (b) The purpose of this section is:

6 (1) To provide for fair and open competition in governmental construction contracts, grants,
7 tax abatements and tax credits;

8 (2) To prohibit requirements for certain terms in government contracts and contracts
9 supported through government grants and tax subsidies and abatements;

10 (3) To prohibit expenditure of public funds under certain conditions;

11 (4) To prohibit certain terms in procurement documents for certain expenditures involving
12 public facilities; and

13 (5) To provide powers and duties of certain public officers, employees and contractors.

14 (c) The Legislature intends this section to provide for a more economical, nondiscriminatory,
15 neutral and efficient procurement of construction-related goods and services by this state and
16 political subdivisions of this state as market participants. Providing fair and open competition best
17 effectuates this intent.

18 (d) Subject to subsection (f) of this section, a governmental unit awarding a contract after
19 July 1, 2015, for the construction, repair, remodeling or demolition of a facility and any construction
20 manager acting on its behalf may not include any of the following in bid specifications, project
21 agreements or other controlling documents:

1 (1) A term that requires or prohibits a bidder, offeror, contractor or subcontractor from
2 entering into or adhering to an agreement with one or more labor organizations in regard to that
3 project or a related construction project; and

4 (2) A term that otherwise discriminates against a bidder, offeror, contractor or subcontractor
5 for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing
6 to adhere to, an agreement with one or more labor organizations in regard to that project or a related
7 construction project.

8 (e) Subject to subsection (f) of this section, a governmental unit may not award a grant, tax
9 abatement or tax credit that is conditioned upon a requirement that the awardee include a term
10 described in subdivisions (1) and (2), subsection (d) of this section in a contract document for any
11 construction, improvement, maintenance or renovation to real property or fixtures that are the subject
12 of the grant, tax abatement, or tax credit.

13 (f) This section does not:

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

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

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

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

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

NOTE: The purpose of this bill is to create "The Fair and Open Competition in Governmental Construction Act." It prohibits governmental units from awarding a grant, tax abatement or tax credit that is conditioned upon a provision that requires or prohibits a bidder, offeror, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations

in regard to the project or a related construction project, or that contains a term that otherwise discriminates against a bidder, offeror, contractor or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to that project or a related construction project.

This section is new; therefore, strike-throughs and underscoring have been omitted.