

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

SENATE BILL 426

5 By: Senators J. Woods, Hester, Irvin  
6 By: Representatives Cozart, Neal  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE FAIR AND OPEN COMPETITION IN  
10 GOVERNMENTAL CONSTRUCTION ACT; TO PROHIBIT PUBLIC  
11 AGENCIES FROM ENTERING INTO CERTAIN CONTRACTS; TO  
12 PROHIBIT CERTAIN TERMS IN CERTAIN DOCUMENTS; TO  
13 PROHIBIT PUBLIC AGENCIES FROM MAKING CERTAIN AWARDS;  
14 TO PROHIBIT CERTAIN PERSONS FROM PLACING CERTAIN  
15 TERMS IN CERTAIN DOCUMENTS; AND TO PROVIDE  
16 EXEMPTIONS; AND FOR OTHER PURPOSES.

## Subtitle

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20 TO CREATE THE FAIR AND OPEN COMPETITION  
21 IN GOVERNMENTAL CONSTRUCTION ACT; TO  
22 ENSURE FAIRNESS IN GOVERNMENTAL  
23 CONSTRUCTION CONTRACTS.  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 Subchapter 8 – Fair and Open Competition in Governmental  
29 Construction Act  
30

31 22-9-801. Title.

32 This act shall be known and may be cited as the "Fair and Open  
33 Competition in Governmental Construction Act".  
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35 22-9-802. Legislative intent.

36 The General Assembly intends that this act:



1           (1) Provide for the efficient procurement of goods and services  
2 by governmental units;

3           (2) Promote the economical, nondiscriminatory, and efficient  
4 administration and completion of state and state-funded or state-assisted  
5 construction projects;

6           (3) Provide for fair and open competition for construction  
7 contracts, grants, tax abatements, and tax credits awarded by governmental  
8 units;

9           (4) Prohibit requirements for certain terms in construction  
10 contracts awarded by governmental units or supported through grants and tax  
11 subsidies and abatements by governmental units;

12           (5) Prohibit expenditure of public funds under certain  
13 conditions;

14           (6) Prohibit certain terms in procurement documents for certain  
15 expenditures by governmental units involving public facilities; and

16           (7) Provide powers and duties for certain public officers,  
17 employees, and contractors.

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19       22-9-803. As used in this subchapter:

20           (1) "Public agency" means:

21                   (A) An agency of the State of Arkansas;

22                   (B) An agency of a county, city, town, school district, or  
23 other political subdivision of the state;

24                   (C) A public trust;

25                   (D) A public entity specifically created by a statute of  
26 this state; and

27                   (E) A department, agency, board, bureau, commission,  
28 committee, or authority of a public entity listed in subdivisions (1)(A)-(D)  
29 of this section; and

30           (2)(A) "Public improvement" means a beneficial or valuable  
31 change or addition, betterment, enhancement, or amelioration of or upon real  
32 property or upon an interest in real property belonging to a public agency  
33 intended to enhance its value, beauty, or utility or to adapt it to new or  
34 further purposes.

35                   (B) "Public improvement" does not include the direct  
36 purchase of materials, equipment, or supplies or personal property by a

1 public agency.

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3 22-9-804. Public agency construction contracts – Prohibited terms.

4 A public agency that awards a contract for the construction, repair,  
5 remodeling, or demolition of a public improvement, or obligating funds  
6 pursuant to such a contract, shall ensure that neither the awarding public  
7 agency nor a construction manager acting on behalf of the public agency  
8 includes in its bid specifications, project agreements, or other controlling  
9 documents any of the following:

10 (1) A term that requires, prohibits, encourages, or discourages  
11 bidders, contractors, or subcontractors from entering into or adhering to  
12 agreements with a collective bargaining organization relating to the  
13 construction project or a related construction project; or

14 (2) A term that discriminates against bidders, contractors, or  
15 subcontractors based on the status as a party or nonparty to, or the  
16 willingness or refusal to enter into, an agreement with a collective  
17 bargaining organization relating to the construction project or a related  
18 construction project.

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20 22-9-805. Grants, tax abatements, and tax credit – Prohibited terms.

21 A public agency shall not award a grant, tax abatement, or tax credit  
22 that is conditioned upon a requirement that the awardee include a term  
23 described in § 22-9-804 in a contract document for construction, improvement,  
24 maintenance, or renovation of real property or fixtures that are the subject  
25 of the grant, tax abatement, or tax credit.

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27 22-9-806. Construction document preparation – Prohibited terms.

28 (a) A public agency or a construction manager or other contracting  
29 entity acting on behalf of a public agency shall not place a term described  
30 in § 22-9-804 in bid specifications, project agreements, or other controlling  
31 documents relating to the construction, repair, remodeling, or demolition of  
32 a public improvement.

33 (b) A term included in a contract in violation of subsection (a) of  
34 this section is void.

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36 22-9-807. Exceptions – Special circumstances.

1       (a) The head of a public agency may exempt a particular project,  
2 contract, subcontract, grant, tax abatement, or tax credit from the  
3 requirements of § 22-9-804 if the public agency finds, after public notice  
4 and hearing, that special circumstances require an exemption to avert an  
5 imminent threat to public health or safety.

6       (b) A finding of special circumstances under this section shall not be  
7 based on the possibility or presence of a labor dispute concerning:

8             (1) The use of contractors or subcontractors who are  
9 nonsignatories to, or otherwise do not adhere to, agreements with one (1) or  
10 more collective bargaining organization; or

11            (2) Employees on the project who are not members of or  
12 affiliated with a collective bargaining organization.

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14       22-9-808. Applicability.

15       (a) This subchapter does not apply to public construction contracts  
16 executed before the effective date of this act.

17       (b) The act does not:

18             (1) Prohibit an employer or other party from entering into an  
19 agreement or engaging in another activity protected by the National Labor  
20 Relations Act, 29 U.S.C. §§ 151-169;

21             (2) Interfere with labor relations of parties that are left  
22 unregulated under the National Labor Relations Act, 29 U.S.C. §§ 151-169; or

23             (3) Prohibit a public agency from awarding a public contract,  
24 grant, tax abatement, or tax credit to a private owner, bidder, contractor,  
25 or subcontractor who enters into or who is a party to an agreement with a  
26 collective bargaining organization if:

27                (A) Being or becoming a party or adhering to an agreement  
28 with a collective bargaining organization is not a condition for the award of  
29 the public contract, grant, tax abatement, or tax credit; and

30                (B) The public agency does not discriminate against a  
31 private owner, bidder, contractor, or subcontractor in the awarding of the  
32 public contract, grant, tax abatement, or tax credit based on the status of  
33 the private owner, bidder, contractor, or subcontractor as being or becoming,  
34 or the willingness or refusal of the private owner, bidder, contractor, or  
35 subcontractor to become, a party to an agreement with a collective bargaining  
36 organization.