

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.
17

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:
27

28 Subchapter 8 – Fair and Open Competition in Governmental
29 Construction Act
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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.

18
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.

2
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.

19
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. APPROVED: 03/23/2015