

IN THE SENATE

SENATE BILL NO. 1373

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO LABOR; AMENDING SECTION 44-2007, IDAHO CODE, TO PROVIDE AN
2 EXCEPTION TO APPLICABILITY OF CERTAIN PENALTY PROVISIONS; AMENDING
3 SECTION 44-2008, IDAHO CODE, TO PROVIDE AN EXCEPTION TO APPLICABILITY
4 OF CERTAIN CIVIL REMEDIES AND TO MAKE A TECHNICAL CORRECTION; AND AMEND-
5 ING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
6 67-2809, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE FOR THE
7 "OPEN ACCESS TO WORK ACT," TO DEFINE TERMS, TO PROVIDE THAT THE STATE
8 AND POLITICAL SUBDIVISIONS THAT CONTRACT FOR CERTAIN PUBLIC WORKS SHALL
9 NOT REQUIRE CONTRACTORS, SUBCONTRACTORS, MATERIAL SUPPLIERS AND CAR-
10 RIERS ENGAGED IN SPECIFIED ACTIVITIES ASSOCIATED WITH PUBLIC WORKS TO
11 PAY THEIR EMPLOYEES A PREDETERMINED AMOUNT OF WAGES OR WAGE RATE OR A
12 TYPE, AMOUNT OR RATE OF EMPLOYEE BENEFITS, TO PROVIDE THAT SPECIFIED
13 PROVISIONS SHALL NOT APPLY UNDER CERTAIN CIRCUMSTANCES, TO PROHIBIT
14 CERTAIN PROVISIONS IN BID DOCUMENTS, SPECIFICATIONS, PROJECT AGREE-
15 MENTS AND OTHER CONTROLLING DOCUMENTS FOR PUBLIC WORKS CONSTRUCTION
16 CONTRACTS AND TO PROHIBIT CERTAIN CONDUCT, TO PROVIDE THAT SPECIFIED
17 PROVISIONS DO NOT PROHIBIT THE VOLUNTARY ENTRY INTO CERTAIN AGREEMENTS,
18 TO PROVIDE FOR STANDING BY INTERESTED PARTIES, TO PROVIDE FOR THE AWARD
19 OF ATTORNEY'S FEES AND COSTS, TO PROVIDE FOR APPLICABILITY OF SPECIFIED
20 PROVISIONS, TO PROVIDE THAT SPECIFIED PROVISIONS DO NOT PROHIBIT OR
21 INTERFERE WITH RIGHTS OF EMPLOYERS OR OTHER PARTIES TO ENTER INTO AGREE-
22 MENTS OR ENGAGE IN ACTIVITIES PROTECTED BY THE NATIONAL LABOR RELATIONS
23 ACT AND TO PROVIDE FOR SEVERABILITY.
24

25 Be It Enacted by the Legislature of the State of Idaho:

26 SECTION 1. That Section 44-2007, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 44-2007. PENALTIES. Any person who directly or indirectly violates
29 any provision of this chapter, excluding the provisions of sections 44-2012
30 and 44-2013, Idaho Code, shall be guilty of a misdemeanor, and upon convic-
31 tion thereof shall be subject to a fine not exceeding one thousand dollars
32 (\$1,000) or imprisonment for a period of not more than ninety (90) days, or
33 both such fine and imprisonment.

34 SECTION 2. That Section 44-2008, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 44-2008. CIVIL REMEDIES. Any employee injured as a result of any vio-
37 lation or threatened violation of the provisions of this chapter, excluding
38 the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be enti-
39 tled to injunctive relief against any and all violators or persons threat-
40 ening violations and may in addition thereto recover any and all damages,

1 including costs and reasonable attorney's fees, of any character resulting
 2 from such violation or threatened violation. Such remedies shall be inde-
 3 pendent of and in addition to the penalties and remedies prescribed in other
 4 provisions of this chapter.

5 SECTION 3. That Chapter 28, Title 67, Idaho Code, be, and the same is
 6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 7 ignated as Section 67-2809, Idaho Code, and to read as follows:

8 67-2809. LEGISLATIVE INTENT -- PUBLIC WORKS -- AGREEMENTS -- SAVINGS
 9 -- SEVERABILITY. (1) It is the intent of the legislature to provide for the
 10 efficient and cost-effective procurement of goods and services by political
 11 subdivisions as market participants.

12 (2) Notwithstanding any other provision found in chapter 10, title 44,
 13 Idaho Code, chapter 28, title 67, Idaho Code, and chapter 57, title 67, Idaho
 14 Code, the following shall apply:

15 (a) This act shall be known as the "Open Access to Work Act."

16 (b) For purposes of this section, the following terms have the follow-
 17 ing meanings:

18 (i) "Political subdivision" means the state of Idaho, or any
 19 county, city, school district, sewer district, fire district
 20 or any other taxing subdivision or district of any public or
 21 quasi-public corporation of the state, or any agency thereof,
 22 or with any other public board, body, commission, department or
 23 agency, or officer or representative thereof;

24 (ii) "Public works" shall have the same meaning as that provided
 25 for "public works construction" in section 54-1901, Idaho Code.

26 (c) (i) Except as provided in subsection (2) (c) (ii) of this section
 27 or as required by federal or state law, the state or any politi-
 28 cal subdivision that contracts for the construction, alteration,
 29 equipping, furnishing, maintenance, repair or improvement of
 30 public works shall not require that a contractor, subcontractor,
 31 material supplier or carrier engaged in the construction, alter-
 32 ation, equipping, furnishing, maintenance, repair or improvement
 33 of public works pay its employees:

34 1. A predetermined amount of wages or wage rate; or

35 2. A type, amount or rate of employee benefits.

36 (ii) Subsection (2) (c) (i) of this section shall not apply when
 37 federal law requires the payment of prevailing or minimum wages to
 38 persons working on projects funded in whole or in part by federal
 39 funds.

40 (d) The state or any political subdivision that contracts for the con-
 41 struction, alteration, equipping, furnishing, maintenance, repair or
 42 improvement of public works or obligates funds pursuant to such a con-
 43 tract shall ensure that neither the awarding governmental entity nor
 44 any construction manager acting on the governmental entity's behalf
 45 shall:

46 (i) In its bid documents, specifications, project agreements or
 47 other controlling documents for a public works construction con-
 48 tract, require or prohibit bidders, offerors, contractors, sub-
 49 contractors or material suppliers to enter into or adhere to pre-

1 hire agreements, project labor agreements, collective bargaining
2 agreements or any other agreement with one (1) or more labor orga-
3 nizations on the same or other related construction projects; or
4 (ii) Discriminate against, or treat differently, bidders, offer-
5 ors, contractors, subcontractors or material suppliers for becom-
6 ing or refusing to become or remain signatories or otherwise to ad-
7 here to agreements with one (1) or more labor organizations on the
8 same or other related construction projects.

9 Nothing in subsection (2) (d) of this section shall prohibit bidders,
10 offerors, contractors, subcontractors or material suppliers from vol-
11 untarily entering into agreements described in subparagraph (i) of this
12 paragraph.

13 (e) Any interested party, which shall include a bidder, offeror, con-
14 tractor, subcontractor or taxpayer, shall have standing to challenge
15 any bid award, specification, project agreement, controlling document,
16 grant or cooperative agreement that violates the provisions of this
17 section, and such interested party shall be awarded costs and attor-
18 ney's fees in the event that such challenge prevails.

19 (f) The provisions of this section apply to any contract executed after
20 the effective date of this act.

21 (3) This act does not prohibit or interfere with the rights of employ-
22 ers or other parties to enter into agreements or engage in any other activity
23 protected by the national labor relations act, 29 U.S.C. section 151, et seq.

24 (4) The provisions of this act are hereby declared to be severable and
25 if any provision of this act or the application of such provision to any
26 person or circumstance is declared invalid for any reason, such declaration
27 shall not affect the validity of the remaining portions of this act.