

115TH CONGRESS
1ST SESSION

S. _____

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.

IN THE SENATE OF THE UNITED STATES

Mr. FLAKE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair and Open Com-

5 petition Act”.

6 **SEC. 2. PURPOSES.**

7 It is the purpose of this Act to—

1 (1) promote and ensure open competition on
2 Federal and federally funded or assisted construc-
3 tion projects;

4 (2) maintain Federal Government neutrality to-
5 wards the labor relations of Federal Government
6 contractors on Federal and federally funded or as-
7 sisted construction projects;

8 (3) reduce construction costs to the Federal
9 Government and to the taxpayers;

10 (4) expand job opportunities, especially for
11 small and disadvantaged businesses; and

12 (5) prevent discrimination against Federal Gov-
13 ernment contractors or their employees based upon
14 labor affiliation or the lack thereof, thereby pro-
15 moting the economical, nondiscriminatory, and effi-
16 cient administration and completion of Federal and
17 federally funded or assisted construction projects.

18 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-
19 ERAL GOVERNMENT NEUTRALITY.**

20 (a) PROHIBITION.—

21 (1) GENERAL RULE.—The head of each execu-
22 tive agency that awards any construction contract
23 after the date of enactment of this Act, or that obli-
24 gates funds pursuant to such a contract, shall en-
25 sure that the agency, and any construction manager

1 acting on behalf of the Federal Government with re-
2 spect to such contract, in its bid specifications,
3 project agreements, or other controlling documents
4 does not—

5 (A) require or prohibit a bidder, offeror,
6 contractor, or subcontractor from entering into,
7 or adhering to, agreements with one or more
8 labor organizations, with respect to that con-
9 struction project or another related construction
10 project; or

11 (B) otherwise discriminate against a bid-
12 der, offeror, contractor, or subcontractor be-
13 cause such bidder, offeror, contractor, or sub-
14 contractor—

15 (i) becomes a signatory to, or other-
16 wise adheres to, an agreement with one or
17 more labor organizations with respect to
18 that construction project or another related
19 construction project; or

20 (ii) refuses to become a signatory to,
21 or otherwise adhere to, an agreement with
22 one or more labor organizations with re-
23 spect to that construction project or an-
24 other related construction project.

1 (2) APPLICATION OF PROHIBITION.—The provi-
2 sions of this section shall not apply to contracts
3 awarded prior to the date of enactment of this Act,
4 and subcontracts awarded pursuant to such con-
5 tracts regardless of the date of such subcontracts.

6 (3) RULE OF CONSTRUCTION.—Nothing in
7 paragraph (1) shall be construed to prohibit a con-
8 tractor or subcontractor from voluntarily entering
9 into an agreement described in such paragraph.

10 (b) RECIPIENTS OF GRANTS AND OTHER ASSIST-
11 ANCE.—The head of each executive agency that awards
12 grants, provides financial assistance, or enters into cooper-
13 ative agreements for construction projects after the date
14 of enactment of this Act, shall ensure that—

15 (1) the bid specifications, project agreements,
16 or other controlling documents for such construction
17 projects of a recipient of a grant or financial assist-
18 ance, or by the parties to a cooperative agreement,
19 do not contain any of the requirements or prohibi-
20 tions described in subparagraphs (A) and (B) of
21 subsection (a)(1); or

22 (2) the bid specifications, project agreements,
23 or other controlling documents for such construction
24 projects of a construction manager acting on behalf
25 of a recipient or party described in paragraph (1) do

1 not contain any of the requirements or prohibitions
2 described in subparagraphs (A) and (B) of sub-
3 section (a)(1).

4 (c) FAILURE To COMPLY.—If an executive agency,
5 a recipient of a grant or financial assistance from an exec-
6 utive agency, a party to a cooperative agreement with an
7 executive agency, or a construction manager acting on be-
8 half of such agency, recipient, or party, fails to comply
9 with subsection (a) or (b), the head of the executive agency
10 awarding the contract, grant, or assistance, or entering
11 into the agreement involved, shall take such action, con-
12 sistent with law, as the head of the agency determines to
13 be appropriate.

14 (d) EXEMPTIONS.—

15 (1) IN GENERAL.—The head of an executive
16 agency may exempt a particular project, contract,
17 subcontract, grant, or cooperative agreement from
18 the requirements of one or more of the provisions of
19 subsections (a) and (b) if the head of such agency
20 determines that special circumstances exist that re-
21 quire an exemption in order to avert an imminent
22 threat to public health or safety or to serve the na-
23 tional security.

24 (2) SPECIAL CIRCUMSTANCES.—For purposes
25 of paragraph (1), a finding of “special cir-

1 cumstances” may not be based on the possibility or
2 existence of a labor dispute concerning contractors
3 or subcontractors that are nonsignatories to, or that
4 otherwise do not adhere to, agreements with one or
5 more labor organizations, or a labor dispute con-
6 cerning employees on the project who are not mem-
7 bers of, or affiliated with, a labor organization.

8 (3) ADDITIONAL EXEMPTION FOR CERTAIN
9 PROJECTS.—The head of an executive agency, upon
10 application of an awarding authority, a recipient of
11 grants or financial assistance, a party to a coopera-
12 tive agreement, or a construction manager acting on
13 behalf of any of such entities, may exempt a par-
14 ticular project from the requirements of any or all
15 of the provisions of subsection (a) or (b) if the agen-
16 cy head finds—

17 (A) that the awarding authority, recipient
18 of grants or financial assistance, party to a co-
19 operative agreement, or construction manager
20 acting on behalf of any of such entities had
21 issued or was a party to, as of the date of the
22 enactment of this Act, bid specifications, project
23 agreements, agreements with one or more labor
24 organizations, or other controlling documents
25 with respect to that particular project, which

1 contained any of the requirements or prohibi-
2 tions set forth in subsection (a)(1); and

3 (B) that one or more construction con-
4 tracts subject to such requirements or prohibi-
5 tions had been awarded as of the date of the
6 enactment of this Act.

7 (e) FEDERAL ACQUISITION REGULATORY COUN-
8 CIL.—With respect to Federal contracts to which this sec-
9 tion applies, not later than 60 days after the date of enact-
10 ment of this Act, the Federal Acquisition Regulatory
11 Council shall take appropriate action to amend the Fed-
12 eral Acquisition Regulation to implement the provisions of
13 this section.

14 (f) DEFINITIONS.—In this section:

15 (1) CONSTRUCTION CONTRACT.—The term
16 “construction contract” means any contract for the
17 construction, rehabilitation, alteration, conversion,
18 extension, or repair of buildings, highways, or other
19 improvements to real property.

20 (2) EXECUTIVE AGENCY.—The term “executive
21 agency” has the meaning given such term in section
22 133 of title 41, United States Code, except that such
23 term shall not include the Government Account-
24 ability Office.

1 (3) LABOR ORGANIZATION.—The term “labor
2 organization” has the meaning given such term in
3 section 701(d) of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e(d)).