

AN ACT

ENTITLED, An Act to provide for fair and open competition in certain governmental contracts, to prohibit the inclusion of certain terms in governmental contracts and documents, and to establish a procedure to grant certain exemptions after notice and a public hearing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

This Act is intended to provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services by this state and political subdivisions of this state as market participants by providing for fair and open competition in government contracts.

Section 2. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Subject to the provisions of section 4 of this Act, no governmental unit awarding a contract after July 1, 2014, for the construction, repair, remodel, or demolition of a facility and no construction manager acting on behalf of the governmental unit may include any of the following in a bid specification, project agreement, or other controlling document:

- (1) A term 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 that project or a related construction project; or
- (2) A term that otherwise discriminates against a bidder, offeror, contractor, or subcontractor for becoming, 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.

Section 3. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as

follows:

Subject to the provisions of section 4 of this Act, no governmental unit may award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in section 2 of this Act in a contract or document for any construction, improvement, maintenance, or renovation to real property or fixture that is the subject of the grant, tax abatement, or tax credit.

Section 4. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act prohibits a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

Nothing in this Act prohibits a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental unit or funded in whole or in part from a grant, tax abatement, or tax credit from the governmental unit.

Section 5. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of sections 2 and

3 of this Act only if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

Section 6. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act prohibits an employer or other party from entering into an agreement or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. 151 to 169.

Nothing in this Act interferes with labor relations of parties that are not regulated by the National Labor Relations Act, 29 U.S.C. 151 to 169.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1212

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1212  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State