

Moved by Harris

Seconded by Vick

IN THE SENATE  
SENATE AMENDMENT TO H.B. NO. 440

AMENDMENT TO SECTION 1

1  
2 On page 1 of the printed bill, in line 11, following "EDUCATION" delete  
3 "--"; in line 12, delete "PUBLIC CONTRACTING"; in line 14, following "em-  
4 ployment" delete "," and insert: "or"; in line 15, delete ", or public con-  
5 tracting"; in line 20, delete ", public education, or public contracting"  
6 and insert: "or public education"; following line 31, insert:

7 "(7) Nothing in this section shall be interpreted as prohibiting ac-  
8 tion that must be taken to establish or maintain eligibility for any federal  
9 program where ineligibility would result in a loss of federal funds to the  
10 state.";

11 and in line 32, delete "7" and insert: "8".

AMENDMENT TO THE BILL

12  
13 On page 1, following line 35, insert:

14 "SECTION 2. That Chapter 28, Title 67, Idaho Code, be, and the same is  
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
16 ignated as Section 67-2802A, Idaho Code, and to read as follows:

17 67-2802A. DISCRIMINATION IN PROCUREMENT PROHIBITED. Political subdi-  
18 visions of the state of Idaho in their procurements governed by this chapter  
19 shall not discriminate against, or grant preferential treatment to, any in-  
20 dividual or group on the basis of race, sex, color, ethnicity, or national  
21 origin unless permitted by an exception described in section 67-5909A, Idaho  
22 Code.

23 SECTION 3. That Section 67-2809, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 67-2809. LEGISLATIVE INTENT -- PUBLIC WORKS -- AGREEMENTS -- SAVINGS  
26 -- SEVERABILITY. (1) It is the intent of the legislature to provide for the  
27 efficient and cost-effective procurement of goods and services by political  
28 subdivisions as market participants.

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

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

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

35 (i) "Political subdivision" means the state of Idaho, or any  
36 county, city, school district, sewer district, fire district

1 or any other taxing subdivision or district of any public or  
 2 quasi-public corporation of the state, or any agency thereof,  
 3 or with any other public board, body, commission, department or  
 4 agency, or officer or representative thereof;

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

7 (c) (i) Except as provided in subsection (2) (c) (ii) of this section  
 8 or as required by federal or state law, the state or any politi-  
 9 cal subdivision that contracts for the construction, alteration,  
 10 equipping, furnishing, maintenance, repair or improvement of  
 11 public works shall not require that a contractor, subcontractor,  
 12 material supplier or carrier engaged in the construction, alter-  
 13 ation, equipping, furnishing, maintenance, repair or improvement  
 14 of public works pay its employees:

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

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

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

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

27 (i) In its bid documents, specifications, project agreements or  
 28 other controlling documents for a public works construction con-  
 29 tract, require or prohibit bidders, offerors, contractors, sub-  
 30 contractors or material suppliers to enter into or adhere to pre-  
 31 hire agreements, project labor agreements, collective bargaining  
 32 agreements or any other agreement with one (1) or more labor orga-  
 33 nizations on the same or other related construction projects; ~~or~~

34 (ii) Discriminate against, or treat differently, bidders, offer-  
 35 ors, contractors, subcontractors or material suppliers for becom-  
 36 ing or refusing to become or remain signatories or otherwise to ad-  
 37 here to agreements with one (1) or more labor organizations on the  
 38 same or other related construction projects; or

39 (iii) Discriminate against, or grant preferential treatment to,  
 40 any individual or group on the basis of race, sex, color, ethnic-  
 41 ity, or national origin unless permitted by an exception described  
 42 in section 67-5909A, Idaho Code.

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

47 (e) Any interested party, which shall include a bidder, offeror, con-  
 48 tractor, subcontractor or taxpayer, shall have standing to challenge  
 49 any bid award, specification, project agreement, controlling document,  
 50 grant or cooperative agreement that violates the provisions of this

1 section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

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

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

7 (4) The provisions of this act are hereby declared to be severable and  
8 if any provision of this act or the application of such provision to any  
9 person or circumstance is declared invalid for any reason, such declaration  
10 shall not affect the validity of the remaining portions of this act.  
11

12 SECTION 4. That Section 67-9210, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 67-9210. AWARD OF CONTRACT. (1) The administrator shall award con-  
15 tracts to, and place orders for property with, the lowest responsible  
16 bidder. Qualifications for responsibility shall be prescribed by rule.

17 (2) Where both the bids and quality of property offered are the same,  
18 preference shall be given to property of local and domestic production and  
19 manufacture or from bidders having a significant Idaho economic presence as  
20 defined in section 67-2349, Idaho Code. In connection with the award of any  
21 contract for the placement of any order for state printing, binding, engraving  
22 or stationery work, the provisions of sections 60-101 and 60-103, Idaho  
23 Code, shall apply to the extent that the same may be inconsistent with any re-  
24 quirements contained in this section.

25 (3) In awarding contracts, the administrator shall not discriminate  
26 against, or grant preferential treatment to, any individual or group on the  
27 basis of race, sex, color, ethnicity, or national origin unless permitted by  
28 an exception described in section 67-5909A, Idaho Code."

29 CORRECTION TO TITLE

30 On page 1, in line 2, delete "THE COMMISSION ON HUMAN RIGHTS" and insert:  
31 "DISCRIMINATION IN PUBLIC EMPLOYMENT, PUBLIC EDUCATION, AND PUBLIC CON-  
32 TRACTS"; in line 6, following "REMEDIES," insert: "TO PROVIDE THAT CERTAIN  
33 ACTIONS SHALL NOT BE PROHIBITED,"; also in line 6, following "SEVERABILITY"  
34 insert: "; AMENDING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE ADDITION OF A  
35 NEW SECTION 67-2802A, IDAHO CODE, TO PROHIBIT DISCRIMINATION IN PROCURE-  
36 MENT; AMENDING SECTION 67-2809, IDAHO CODE, TO PROHIBIT DISCRIMINATION IN  
37 PROCUREMENT; AND AMENDING SECTION 67-9210, IDAHO CODE, TO PROHIBIT DISCRIM-  
38 INATION IN PROCUREMENT".