LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fifth Legislature                         Second Regular Session – 2020

IN THE HOUSE OF REPRESENTATIVES  

HOUSE BILL NO. 440, As Amended in the Senate  

BY STATE AFFAIRS COMMITTEE

AN ACT  
RELATING TO DISCRIMINATION IN PUBLIC EMPLOYMENT, PUBLIC EDUCATION, AND  
PUBLIC CONTRACTS; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5909A, IDAHO CODE, TO PROVIDE THAT THE STATE  
SHALL NOT DISCRIMINATE IN CERTAIN Instances, TO PROVIDE APPLICABILITY,  
TO PROVIDE CERTAIN EXCEPTIONS, TO DEFINE A TERM, TO PROVIDE FOR REMEDIES, TO PROVIDE THAT CERTAIN ACTIONS SHALL NOT BE PROHIBITED, AND TO  
PROVIDE SEVERABILITY; AMENDING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE  
ADDITION OF A NEW SECTION 67-2802A, IDAHO CODE, TO PROHIBIT DISCRIMINATION IN PROCUREMENT; AMENDING SECTION 67-2809, IDAHO CODE, TO PROHIBIT  
DISCRIMINATION IN PROCUREMENT; AND AMENDING SECTION 67-9210, IDAHO  
CODE, TO PROHIBIT DISCRIMINATION IN PROCUREMENT.

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

SECTION 1. That Chapter 59, Title 67, Idaho Code, be, and the same is  
hereby amended by the addition thereto of a NEW SECTION, to be known and desig-  
nated as Section 67-5909A, Idaho Code, and to read as follows:

67-5909A. ACTS PROHIBITED -- PUBLIC EMPLOYMENT -- PUBLIC EDUCA-  
TION. (1) The state shall not discriminate against, or grant preferential  
treatment to, any individual or group on the basis of race, sex, color, eth-  
nicity, or national origin in the operation of public employment or public  
education.

(2) The provisions of this section shall apply only to action taken af-  
fter the effective date of this section.

(3) Nothing in this section shall be interpreted as prohibiting bona  
fide qualifications based on sex that are reasonably necessary to the normal  
operation of public employment or public education.

(4) Nothing in this section shall be interpreted as invalidating any  
court order or consent decree that is in force as of the effective date of  
this section.

(5) For the purposes of this section, "state" shall include but not nec-  
essarily be limited to the state itself, any city, county, city and county,  
public university or community college, school district, special district,  
or any other political subdivision or governmental instrumentality of or  
within the state.

(6) The remedies available for violations of this section shall be the  
same, regardless of the injured party's race, sex, color, ethnicity, or na-  
tional origin, as are otherwise available for violations of this chapter;  
provided, however, that any remedies available for violations of this sec-  
tion regarding public contracts shall be determined as otherwise provided by  
state law.

(7) Nothing in this section shall be interpreted as prohibiting action  
that must be taken to establish or maintain eligibility for any federal
program where ineligibility would result in a loss of federal funds to the state.

(8) If any part or parts of this section are found to be in conflict with the United States Constitution, the section shall be implemented to the maximum extent that the United States Constitution permits. Any provision held invalid shall be severable from the remaining portions of this section.

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

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

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

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

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

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

(b) For purposes of this section, the following terms have the following meanings:

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

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

(c) (i) Except as provided in subsection (2)(c)(ii) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

1. A predetermined amount of wages or wage rate; or
2. A type, amount or rate of employee benefits.

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

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

(i) In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors or material suppliers to enter into or adhere to pre-hire agreements, project labor agreements, collective bargaining agreements or any other agreement with one (1) or more labor organizations on the same or other related construction projects; or

(ii) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects; or

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

Nothing in subsection (2)(d) of this section shall prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph (i) of this paragraph.

(e) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violates the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

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

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

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

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

67-9210. AWARD OF CONTRACT. (1) The administrator shall award contracts to, and place orders for property with, the lowest responsible bidder. Qualifications for responsibility shall be prescribed by rule.
(2) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in section 67-2349, Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

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