

IN THE SENATE

SENATE BILL NO. 1373

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO LABOR; AMENDING SECTION 44-2007, IDAHO CODE, TO PROVIDE AN EXCEPTION TO APPLICABILITY OF CERTAIN PENALTY PROVISIONS; AMENDING SECTION 44-2008, IDAHO CODE, TO PROVIDE AN EXCEPTION TO APPLICABILITY OF CERTAIN CIVIL REMEDIES AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2809, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE FOR THE "OPEN ACCESS TO WORK ACT," TO DEFINE TERMS, TO PROVIDE THAT THE STATE AND POLITICAL SUBDIVISIONS THAT CONTRACT FOR CERTAIN PUBLIC WORKS SHALL NOT REQUIRE CONTRACTORS, SUBCONTRACTORS, MATERIAL SUPPLIERS AND CARRIERS ENGAGED IN SPECIFIED ACTIVITIES ASSOCIATED WITH PUBLIC WORKS TO PAY THEIR EMPLOYEES A PREDETERMINED AMOUNT OF WAGES OR WAGE RATE OR A TYPE, AMOUNT OR RATE OF EMPLOYEE BENEFITS, TO PROVIDE THAT SPECIFIED PROVISIONS SHALL NOT APPLY UNDER CERTAIN CIRCUMSTANCES, TO PROHIBIT CERTAIN PROVISIONS IN BID DOCUMENTS, SPECIFICATIONS, PROJECT AGREEMENTS AND OTHER CONTROLLING DOCUMENTS FOR PUBLIC WORKS CONSTRUCTION CONTRACTS AND TO PROHIBIT CERTAIN CONDUCT, TO PROVIDE THAT SPECIFIED PROVISIONS DO NOT PROHIBIT THE VOLUNTARY ENTRY INTO CERTAIN AGREEMENTS, TO PROVIDE FOR STANDING BY INTERESTED PARTIES, TO PROVIDE FOR THE AWARD OF ATTORNEY'S FEES AND COSTS, TO PROVIDE FOR APPLICABILITY OF SPECIFIED PROVISIONS, TO PROVIDE THAT SPECIFIED PROVISIONS DO NOT PROHIBIT OR INTERFERE WITH RIGHTS OF EMPLOYERS OR OTHER PARTIES TO ENTER INTO AGREEMENTS OR ENGAGE IN ACTIVITIES PROTECTED BY THE NATIONAL LABOR RELATIONS ACT AND TO PROVIDE FOR SEVERABILITY.

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

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

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

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

44-2008. CIVIL REMEDIES. Any employee injured as a result of any violation or threatened violation of the provisions of this chapter, excluding the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be entitled to injunctive relief against any and all violators or persons threatening violations and may in addition thereto recover any and all damages,

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

SECTION 3. 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 67-2809, Idaho Code, and 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-

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.