

SB 409

FILED

2015 MAR 26 A 9:29

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**

THE WEST VIRGINIA  
SECRETARY OF STATE



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 409**

(SENATORS CARMICHAEL, BLAIR, BOSO, GAUNCH, M. HALL,  
WALTERS AND WILLIAMS, *ORIGINAL SPONSORS*)

[PASSED MARCH 12, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

FILED

2015 MAR 26 A 9:29

ENROLLED

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 409

(SENATORS CARMICHAEL, BLAIR, BOSO, GAUNCH, M. HALL,  
WALTERS AND WILLIAMS, *ORIGINAL SPONSORS*)

---

[Passed March 12, 2015; in effect ninety days from passage.]

---

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-3, relating to establishing the Fair and Open Competition in Governmental Construction Act; providing legislative findings; defining terms; prohibiting project labor agreements from being part of the competitive bid process on governmental construction projects; prohibiting project labor agreements from being a condition for receiving a grant, tax abatement or tax credit for construction projects; providing exclusions; and establishing a process for an exemption.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-22-3, to read as follows:

**ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

**§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.**

1           (a) This section may be known and cited as The Fair and  
2   Open Competition in Governmental Construction Act.

3           (b) *Legislative findings.* – The Legislature finds that to  
4   promote and ensure fair competition on governmental,  
5   governmental funded or governmental assisted construction  
6   projects that open competition in governmental construction  
7   contracts is necessary. The Legislature also finds that when  
8   a governmental entity awards a grant, tax abatement or tax  
9   credit that it should be an open and fair process. Therefore,  
10   to prevent discrimination against governmental bidders,  
11   offerors, contractors or subcontractors based upon labor  
12   affiliation or the lack thereof, the Legislature declares that  
13   project labor agreements should not be part of the  
14   competitive bid process or be a condition for a grant, tax  
15   abatement or tax credit.

16          (c) *Definitions.* – For purposes of this section:

17           (1) “Construction” means the act, trade or process of  
18   building, erecting, constructing, adding, repairing, remodeling,  
19   rehabilitating, reconstructing, altering, converting, improving,  
20   expanding or demolishing of a building, structure, facility, road  
21   or highway, and includes the planning, designing and financing  
22   of a specific construction project.

23           (2) “Governmental entity” means the state, a political  
24   subdivision or any agency or spending unit thereof.

25           (3) “Project labor agreement” means any pre-hire  
26   collective bargaining agreement with one or more labor

27 organizations that establishes the terms and conditions of  
28 employment for a specific construction project.

29 (d) *Prohibition - Competitive bid.* – Commencing July 1,  
30 2015, a governmental entity or a construction manager acting  
31 on behalf of a governmental entity, seeking a construction bid  
32 solicitation, awarding a construction contract or obligating  
33 funds to a construction contract, shall not include the  
34 following in the bid specifications, bid requests, project  
35 agreements or any other controlling documents for the  
36 construction project:

37 (1) A requirement or prohibition that a bidder, offeror,  
38 contractor or subcontractor must enter into or adhere to a  
39 project labor agreement;

40 (2) A term, clause or statement that infers, either directly  
41 or indirectly, that a bidder, offeror, contractor or  
42 subcontractor must enter into or adhere to a project labor  
43 agreement;

44 (3) A term, clause or statement that rewards or punishes  
45 a bidder, offeror, contractor or subcontractor for becoming or  
46 remaining, or refusing to become or remain a signatory to, or  
47 for adhering or refusing to adhere to, a project labor  
48 agreement; or

49 (4) Any other provision dealing with project labor  
50 agreements.

51 (e) *Prohibition - Grant, tax abatement or tax credit.* –  
52 Commencing July 1, 2015, a governmental entity may not  
53 award a grant, tax abatement or tax credit for construction  
54 that is conditioned upon a requirement that the awardee  
55 include any prohibited provision set out in subsection (d) of  
56 this section.

57 (f) *Exclusions.* – This section does not:

58 (1) Prohibit a governmental entity from awarding a  
59 contract, grant, tax abatement or tax credit to a private owner,  
60 bidder, contractor or subcontractor who enters into or who is  
61 party to an agreement with a labor organization, if being or  
62 becoming a party or adhering to an agreement with a labor  
63 organization is not a condition for award of the contract,  
64 grant, tax abatement or tax credit, and if the governmental  
65 entity does not discriminate against a private owner, bidder,  
66 contractor or subcontractor in the awarding of that contract,  
67 grant, tax abatement or tax credit based upon the status as  
68 being or becoming, or the willingness or refusal to become,  
69 a party to an agreement with a labor organization.

70 (2) Prohibit a private owner, bidder, contractor or  
71 subcontractor from voluntarily entering into or complying  
72 with an agreement entered into with one or more labor  
73 organizations in regard to a contract with a governmental  
74 entity or funded, in whole or in part, from a grant, tax  
75 abatement, or tax credit from the governmental entity.

76 (3) Prohibit employers or other parties from entering into  
77 agreements or engaging in any other activity protected by the  
78 National Labor Relations Act, 29 U. S. C. §§151 to 169.

79 (4) Interfere with labor relations of parties that are left  
80 unregulated under the National Labor Relations Act, 29 U. S.  
81 C §§151 to 169.

82 (g) *Exemptions.* – The head of a governmental entity may  
83 exempt a particular project, contract, subcontract, grant, tax  
84 abatement or tax credit from the requirements of any or all of  
85 the provisions of subsections (d) and (e) of this section if the  
86 governmental unit finds, after public notice and a hearing,  
87 that special circumstances require an exemption to avert an

88 imminent threat to public health or safety. A finding of  
89 special circumstances under this subsection may not be based  
90 on the possibility or presence of a labor dispute concerning  
91 the use of contractors or subcontractors who are  
92 nonsignatories to, or otherwise do not adhere to, agreements  
93 with one or more labor organizations or concerning  
94 employees on the project who are not members of or  
95 affiliated with a labor organization.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Mark R. Spayne*  
.....  
Chairman Senate Committee

*John B. McL*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark S. Barnes*  
.....  
Clerk of the Senate

*Stanton D. Harris*  
.....  
Clerk of the House of Delegates

*Phillip Phillips*  
.....  
President of the Senate

*Paul W. Miller*  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *26th* .....

Day of *March* ....., 2015.

*Carl Ray Tompkins*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 10:30 AM