

Union Calendar No. 829

115TH CONGRESS
2^D SESSION

H. R. 1552

[Report No. 115–1068]

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2017

Mr. ROSS introduced the following bill; which was referred to the Committee on Oversight and Government Reform

DECEMBER 10, 2018

Additional sponsors: Mr. MASSIE, Mr. WALKER, Mr. JODY B. HICE of Georgia, Mr. ABRAHAM, Mr. HARPER, Mr. FRANKS of Arizona, Mr. BROOKS of Alabama, Mr. GROTHMAN, Mr. CALVERT, Mr. FARENTHOLD, Mr. CHABOT, Mr. CARTER of Texas, Mr. ROHRABACHER, Mr. ARRINGTON, Mr. HOLLINGSWORTH, Mr. ALLEN, Mr. GOSAR, Mr. KELLY of Mississippi, Mrs. MIMI WALTERS of California, Mr. ISSA, Mr. MESSER, Mr. COLE, Mr. FRANCIS ROONEY of Florida, Mrs. WAGNER, Mr. HUNTER, Mr. LONG, Mr. SMITH of Missouri, Mr. LUETKEMEYER, Mr. MOOLENAAR, Mr. SMUCKER, Mrs. HARTZLER, Mr. ROUZER, Mr. HUDSON, Mr. ROYCE of California, Mr. WILSON of South Carolina, Mr. PERRY, Mr. YODER, Mr. KNIGHT, Mr. MITCHELL, Mr. JORDAN, Mr. MCCLINTOCK, Mr. HENSARLING, Mr. BARR, Mr. BYRNE, Mr. ADERHOLT, Mrs. COMSTOCK, Mr. BISHOP of Michigan, Mr. MARSHALL, Mr. CULBERSON, Mr. LAMBORN, Mr. FLORES, Mr. POE of Texas, Mr. RUTHERFORD, Mr. WEBER of Texas, Mr. BUCSHON, Mr. LABRADOR, Mr. ROKITA, Mr. THOMPSON of Pennsylvania, Mr. RATCLIFFE, Mrs. LOVE, Mr. OLSON, Mr. SMITH of Texas, Mr. AMASH, Mr. ESTES of Kansas, Mr. WESTERMAN, Mrs. BLACKBURN, Mr. MARCHANT, Mr. HILL, Mr. SESSIONS, Mr. GAETZ, Mr. DESJARLAIS, Mr. GOODLATTE, Mr. WENSTRUP, Mr. BUDD, Mr. HOLDING, Mr. BIGGS, Mr. FASO, Mr. WOMACK, Mr. HARRIS, Mr. WALBERG, Mr. MULLIN, Mr. LAMALFA, Mr. ROE of Tennessee, Mr. SANFORD, Mr. BRAT, Mr. BABIN, Mrs. ROBY, Mr. JOHNSON of Louisiana, Mr. COLLINS of New York, Mrs. McMORRIS RODGERS, Ms.

McSALLY, Mr. HUIZENGA, Mr. CRAWFORD, Mrs. LESKO, Mr. LATTA,
Mr. DAVIDSON, Mr. WITTMAN, Mr. NORMAN, Mr. MEADOWS, Mr. KING
of Iowa, and Mr. CARTER of Georgia

DECEMBER 10, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair and Open Com-
5 petition Act” or “FOCA Act”.

6 **SEC. 2. PURPOSES.**

7 It is the purpose of this Act to—

8 (1) promote and ensure open competition on
9 Federal and federally funded or assisted construc-
10 tion projects;

11 (2) maintain Federal Government neutrality to-
12 wards the labor relations of Federal Government
13 contractors on Federal and federally funded or as-
14 sisted construction projects;

15 (3) reduce construction costs to the Federal
16 Government and to the taxpayers;

17 (4) expand job opportunities, especially for
18 small and disadvantaged businesses; and

19 (5) prevent discrimination against Federal Gov-
20 ernment contractors or their employees based upon
21 labor affiliation or the lack thereof, thereby pro-
22 moting the economical, nondiscriminatory, and effi-
23 cient administration and completion of Federal and
24 federally funded or assisted construction projects.

1 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-**
2 **ERAL GOVERNMENT NEUTRALITY.**

3 (a) PROHIBITION.—

4 (1) GENERAL RULE.—The head of each execu-
5 tive agency that awards any construction contract
6 after the date of the enactment of this Act, or that
7 obligates funds pursuant to such a contract, shall
8 ensure that the agency, and any construction man-
9 ager acting on behalf of the Federal Government
10 with respect to such contract, in its bid specifica-
11 tions, project agreements, or other controlling docu-
12 ments does not—

13 (A) require or prohibit a bidder, offeror,
14 contractor, or subcontractor from entering into,
15 or adhering to, agreements with 1 or more
16 labor organizations, with respect to that con-
17 struction project or another related construction
18 project; or

19 (B) otherwise discriminate against or give
20 preference to a bidder, offeror, contractor, or
21 subcontractor because such bidder, offeror, con-
22 tractor, or subcontractor—

23 (i) becomes a signatory, or otherwise
24 adheres to, an agreement with 1 or more
25 labor organizations with respect to that

1 construction project or another related
2 construction project; or

3 (ii) refuses to become a signatory, or
4 otherwise adhere to, an agreement with 1
5 or more labor organizations with respect to
6 that construction project or another related
7 construction project.

8 (2) APPLICATION OF PROHIBITION.—This sub-
9 section shall apply with respect to—

10 (A) contracts entered into on or after the
11 date of the enactment of this Act; and

12 (B) subcontracts awarded under such con-
13 tracts.

14 (3) RULE OF CONSTRUCTION.—Nothing in
15 paragraph (1) may be construed to prohibit a con-
16 tractor or subcontractor from voluntarily entering
17 into an agreement described in such paragraph.

18 (4) FEDERAL ACQUISITION REGULATION.—
19 With respect to Federal contracts to which this sub-
20 section applies, not later than 60 days after the date
21 of the enactment of this Act, the Federal Acquisition
22 Regulation shall be revised to implement the provi-
23 sions of this subsection.

24 (b) RECIPIENTS OF GRANTS AND OTHER ASSIST-
25 ANCE.—The head of each executive agency that awards

1 grants, provides financial assistance, or enters into cooper-
2 ative agreements for construction projects after the date
3 of the enactment of this Act shall ensure that—

4 (1) the bid specifications, project agreements,
5 or other controlling documents for such construction
6 projects of a recipient of a grant or financial assist-
7 ance, or by the parties to a cooperative agreement,
8 do not contain any of the requirements or prohibi-
9 tions described in subparagraph (A) or (B) of sub-
10 section (a)(1); or

11 (2) the bid specifications, project agreements,
12 or other controlling documents for such construction
13 projects of a construction manager acting on behalf
14 of a recipient or party described in paragraph (1) do
15 not contain any of the requirements or prohibitions
16 described in subparagraph (A) or (B) of subsection
17 (a)(1).

18 (c) FAILURE TO COMPLY.—If an executive agency,
19 a recipient of a grant or financial assistance from an execu-
20 tive agency, a party to a cooperative agreement with an
21 executive agency, or a construction manager acting on be-
22 half of such an agency, recipient, or party, fails to comply
23 with subsection (a) or (b), the head of the executive agency
24 awarding the contract, grant, or assistance, or entering
25 into the agreement involved, shall take such action, con-

1 sistent with law, as the head of such agency determines
2 to be appropriate.

3 (d) EXEMPTIONS.—

4 (1) IN GENERAL.—The head of an executive
5 agency may exempt a particular project, contract,
6 subcontract, grant, or cooperative agreement from
7 the requirements of 1 or more of the provisions of
8 subsections (a) and (b) if the head of such agency
9 determines that special circumstances exist that re-
10 quire an exemption in order to avert an imminent
11 threat to public health or safety or to serve the na-
12 tional security.

13 (2) SPECIAL CIRCUMSTANCES.—For purposes
14 of paragraph (1), a finding of “special cir-
15 cumstances” may not be based on the possibility or
16 existence of a labor dispute concerning contractors
17 or subcontractors that are nonsignatories to, or that
18 otherwise do not adhere to, agreements with 1 or
19 more labor organizations, or labor disputes con-
20 cerning employees on the project who are not mem-
21 bers of, or affiliated with, a labor organization.

22 (3) ADDITIONAL EXEMPTION FOR CERTAIN
23 PROJECTS.—The head of an executive agency, upon
24 application of an awarding authority, a recipient of
25 grants or financial assistance, a party to a coopera-

1 tive agreement, or a construction manager acting on
2 behalf of any of such entities, may exempt a par-
3 ticular project from the requirements of any or all
4 of the provisions of subsection (a) or (b), if the head
5 of such agency finds—

6 (A) that the awarding authority, recipient
7 of grants or financial assistance, party to a co-
8 operative agreement, or construction manager
9 acting on behalf of any of such entities had
10 issued or was a party to, as of the date of the
11 enactment of this Act, bid specifications, project
12 agreements, agreements with 1 or more labor
13 organizations, or other controlling documents
14 with respect to that particular project, which
15 contained any of the requirements or prohibi-
16 tions set forth in subsection (a)(1); and

17 (B) that 1 or more construction contracts
18 subject to such requirements or prohibitions
19 had been awarded as of the date of the enact-
20 ment of this Act.

21 (e) DEFINITIONS.—In this section:

22 (1) CONSTRUCTION CONTRACT.—The term
23 “construction contract” means any contract for the
24 construction, rehabilitation, alteration, conversion,

1 extension, or repair of buildings, highways, or other
2 improvements to real property.

3 (2) EXECUTIVE AGENCY.—The term “executive
4 agency” has the meaning given the term “Executive
5 agency” in section 105 of title 5, United States
6 Code, except that such term does not include the
7 Government Accountability Office.

8 (3) LABOR ORGANIZATION.—The term “labor
9 organization” has the meaning given such term in
10 section 701 of the Civil Rights Act of 1964 (42
11 U.S.C. 2000e).

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