

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 440, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO DISCRIMINATION IN PUBLIC EMPLOYMENT, PUBLIC EDUCATION, AND
2 PUBLIC CONTRACTS; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE AD-
3 DITION OF A NEW SECTION 67-5909A, IDAHO CODE, TO PROVIDE THAT THE STATE
4 SHALL NOT DISCRIMINATE IN CERTAIN INSTANCES, TO PROVIDE APPLICABILITY,
5 TO PROVIDE CERTAIN EXCEPTIONS, TO DEFINE A TERM, TO PROVIDE FOR REME-
6 DIES, TO PROVIDE THAT CERTAIN ACTIONS SHALL NOT BE PROHIBITED, AND TO
7 PROVIDE SEVERABILITY; AMENDING CHAPTER 28, TITLE 67, IDAHO CODE, BY THE
8 ADDITION OF A NEW SECTION 67-2802A, IDAHO CODE, TO PROHIBIT DISCRIMINA-
9 TION IN PROCUREMENT; AMENDING SECTION 67-2809, IDAHO CODE, TO PROHIBIT
10 DISCRIMINATION IN PROCUREMENT; AND AMENDING SECTION 67-9210, IDAHO
11 CODE, TO PROHIBIT DISCRIMINATION IN PROCUREMENT.
12

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

14 SECTION 1. That Chapter 59, 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 67-5909A, Idaho Code, and to read as follows:

17 67-5909A. ACTS PROHIBITED -- PUBLIC EMPLOYMENT -- PUBLIC EDUCA-
18 TION. (1) The state shall not discriminate against, or grant preferential
19 treatment to, any individual or group on the basis of race, sex, color, eth-
20 nicity, or national origin in the operation of public employment or public
21 education.

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

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

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

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

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

41 (7) Nothing in this section shall be interpreted as prohibiting action
42 that must be taken to establish or maintain eligibility for any federal

1 program where ineligibility would result in a loss of federal funds to the
2 state.

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

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

10 67-2802A. DISCRIMINATION IN PROCUREMENT PROHIBITED. Political subdi-
11 visions of the state of Idaho in their procurements governed by this chapter
12 shall not discriminate against, or grant preferential treatment to, any in-
13 dividual or group on the basis of race, sex, color, ethnicity, or national
14 origin unless permitted by an exception described in section 67-5909A, Idaho
15 Code.

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

18 67-2809. LEGISLATIVE INTENT -- PUBLIC WORKS -- AGREEMENTS -- SAVINGS
19 -- SEVERABILITY. (1) It is the intent of the legislature to provide for the
20 efficient and cost-effective procurement of goods and services by political
21 subdivisions as market participants.

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

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

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

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

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

36 (c) (i) Except as provided in subsection (2) (c) (ii) of this section
37 or as required by federal or state law, the state or any politi-
38 cal subdivision that contracts for the construction, alteration,
39 equipping, furnishing, maintenance, repair or improvement of
40 public works shall not require that a contractor, subcontractor,
41 material supplier or carrier engaged in the construction, alter-
42 ation, equipping, furnishing, maintenance, repair or improvement
43 of public works pay its employees:

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

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

46 (ii) Subsection (2) (c) (i) of this section shall not apply when
47 federal law requires the payment of prevailing or minimum wages to

1 persons working on projects funded in whole or in part by federal
2 funds.

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

9 (i) In its bid documents, specifications, project agreements or
10 other controlling documents for a public works construction con-
11 tract, require or prohibit bidders, offerors, contractors, sub-
12 contractors or material suppliers to enter into or adhere to pre-
13 hire agreements, project labor agreements, collective bargaining
14 agreements or any other agreement with one (1) or more labor orga-
15 nizations on the same or other related construction projects; ~~or~~

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

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

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

29 (e) Any interested party, which shall include a bidder, offeror, con-
30 tractor, subcontractor or taxpayer, shall have standing to challenge
31 any bid award, specification, project agreement, controlling document,
32 grant or cooperative agreement that violates the provisions of this
33 section, and such interested party shall be awarded costs and attor-
34 ney's fees in the event that such challenge prevails.

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

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

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

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

46 67-9210. AWARD OF CONTRACT. (1) The administrator shall award con-
47 tracts to, and place orders for property with, the lowest responsible
48 bidder. Qualifications for responsibility shall be prescribed by rule.

1 (2) Where both the bids and quality of property offered are the same,
2 preference shall be given to property of local and domestic production and
3 manufacture or from bidders having a significant Idaho economic presence as
4 defined in section 67-2349, Idaho Code. In connection with the award of any
5 contract for the placement of any order for state printing, binding, engrav-
6 ing or stationery work, the provisions of sections 60-101 and 60-103, Idaho
7 Code, shall apply to the extent that the same may be inconsistent with any re-
8 quirements contained in this section.

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