

107TH CONGRESS  
1ST SESSION

# S. 740

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 6, 2001

Mr. HUTCHINSON introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## 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.

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 “Government Neutrality  
5       in Contracting Act”.

6       **SEC. 2. PURPOSES.**

7       It is the purpose of this Act to—

1           (1) promote and ensure open competition on  
2       Federal and federally funded or assisted construc-  
3       tion projects;

4           (2) maintain Federal Government neutrality to-  
5       wards the labor relations of Federal Government  
6       contractors on Federal and federally funded or as-  
7       sisted construction projects;

8           (3) reduce construction costs to the Federal  
9       Government and to the taxpayers;

10          (4) expand job opportunities, especially for  
11       small and disadvantaged businesses; and

12          (5) prevent discrimination against Federal Gov-  
13       ernment contractors or their employees based upon  
14       labor affiliation or the lack thereof, thereby pro-  
15       moting the economical, nondiscriminatory, and effi-  
16       cient administration and completion of Federal and  
17       federally funded or assisted construction projects.

18 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-**  
19 **ERAL GOVERNMENT NEUTRALITY.**

20       (a) PROHIBITION.—

21           (1) GENERAL RULE.—The head of each execu-  
22       tive agency that awards any construction contract  
23       after the date of enactment of this Act, or that obli-  
24       gates funds pursuant to such a contract, shall en-  
25       sure that the agency, and any construction manager

1 acting on behalf of the Federal Government with re-  
2 spect to such contract, in its bid specifications,  
3 project agreements, or other controlling documents  
4 does not—

5 (A) require or prohibit a bidder, offeror,  
6 contractor, or subcontractor from entering into,  
7 or adhering to, agreements with 1 or more  
8 labor organization, with respect to that con-  
9 struction project or another related construction  
10 project; or

11 (B) otherwise discriminate against a bid-  
12 der, offeror, contractor, or subcontractor be-  
13 cause such bidder, offeror, contractor, or  
14 subcontractor—

15 (i) became a signatory, or otherwise  
16 adhered to, an agreement with 1 or more  
17 labor organization with respect to that con-  
18 struction project or another related con-  
19 struction project; or

20 (ii) refused to become a signatory, or  
21 otherwise adhere to, an agreement with 1  
22 or more labor organization with respect to  
23 that construction project or another related  
24 construction project.

1           (2) APPLICATION OF PROHIBITION.—The provi-  
 2           sions of this section shall not apply to contracts  
 3           awarded prior to the date of enactment of this Act,  
 4           and subcontracts awarded pursuant to such con-  
 5           tracts regardless of the date of such subcontracts.

6           (3) RULE OF CONSTRUCTION.—Nothing in  
 7           paragraph (1) shall be construed to prohibit a con-  
 8           tractor or subcontractor from voluntarily entering  
 9           into an agreement described in such paragraph.

10          (b) RECIPIENTS OF GRANTS AND OTHER ASSIST-  
 11          ANCE.—The head of each executive agency that awards  
 12          grants, provides financial assistance, or enters into cooper-  
 13          ative agreements for construction projects after the date  
 14          of enactment of this Act, shall ensure that—

15               (1) the bid specifications, project agreements,  
 16               or other controlling documents for such construction  
 17               projects of a recipient of a grant or financial assist-  
 18               ance, or by the parties to a cooperative agreement,  
 19               do not contain any of the requirements or prohibi-  
 20               tions described in subparagraph (A) or (B) of sub-  
 21               section (a)(1); or

22               (2) the bid specifications, project agreements,  
 23               or other controlling documents for such construction  
 24               projects of a construction manager acting on behalf  
 25               of a recipient or party described in paragraph (1),

1 do not contain any of the requirements or prohibi-  
2 tions described in subparagraph (A) or (B) of sub-  
3 section (a)(1)

4 (c) FAILURE TO COMPLY.—If an executive agency,  
5 a recipient of a grant or financial assistance from an exec-  
6 utive agency, a party to a cooperative agreement with an  
7 executive agency, or a construction manager acting on be-  
8 half of such an agency, recipient or party, fails to comply  
9 with subsection (a) or (b), the head of the executive agency  
10 awarding the contract, grant, or assistance, or entering  
11 into the agreement, involved shall take such action, con-  
12 sistent with law, as the head of the agency determines to  
13 be appropriate.

14 (d) EXEMPTIONS.—

15 (1) IN GENERAL.—The head of an executive  
16 agency may exempt a particular project, contract,  
17 subcontract, grant, or cooperative agreement from  
18 the requirements of 1 or more of the provisions of  
19 subsections (a) and (b) if the head of such agency  
20 determines that special circumstances exist that re-  
21 quire an exemption in order to avert an imminent  
22 threat to public health or safety or to serve the na-  
23 tional security.

24 (2) SPECIAL CIRCUMSTANCES.—For purposes  
25 of paragraph (1), a finding of “special cir-

1        cumstances” may not be based on the possibility or  
 2        existence of a labor dispute concerning contractors  
 3        or subcontractors that are nonsignatories to, or that  
 4        otherwise do not adhere to, agreements with 1 or  
 5        more labor organization, or labor disputes con-  
 6        cerning employees on the project who are not mem-  
 7        bers of, or affiliated with, a labor organization.

8        (e) FEDERAL ACQUISITION REGULATORY COUN-  
 9        CIL.—With respect to Federal contracts to which this sec-  
 10       tion applies, not later than 60 days after the date of enact-  
 11       ment of this Act, the Federal Acquisition Regulatory  
 12       Council shall take appropriate action to amend the Fed-  
 13       eral Acquisition Regulation to implement the provisions of  
 14       this section.

15       (f) DEFINITIONS.—In this section:

16            (1) CONSTRUCTION CONTRACT.—The term  
 17        “construction contract” means any contract for the  
 18        construction, rehabilitation, alteration, conversion,  
 19        extension, or repair of buildings, highways, or other  
 20        improvements to real property.

21            (2) EXECUTIVE AGENCY.—The term “executive  
 22        agency” has the meaning given such term in section  
 23        105 of title 5, United States Code, except that such  
 24        term shall not include the General Accounting Of-  
 25        fice.

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

