^{112TH CONGRESS} 1ST SESSION S. 119

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

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

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

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)	promot	e and	ensure	ope	n compe	etition	on
Federal	and fed	erally	funded	or	assisted	constr	uc-
tion proj	jects;						
(9)	maintai	. Fod	anal Cou	0101010	ont non	trolity	to

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-

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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

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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

(B) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(i) becomes a signatory, or otherwise
adheres to, an agreement with 1 or more
labor organization with respect to that construction project or another related construction project; or

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

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

6 (3) RULE OF CONSTRUCTION.—Nothing in
7 paragraph (1) shall be construed to prohibit a con8 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—

(1) the bid specifications, project agreements,
or other controlling documents for such construction
projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement,
do not contain any of the requirements or prohibitions described in subparagraph (A) or (B) of subsection (a)(1); or

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

not contain any of the requirements or prohibitions
 described in subparagraph (A) or (B) of subsection
 (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 into the agreement, involved shall take such action, con-11 12 sistent with law, as the head of the agency determines to be appropriate. 13

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-

cumstances" may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with 1 or more labor organization, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

8 (3)ADDITIONAL EXEMPTION FOR CERTAIN 9 **PROJECTS.**—The head of an executive agency, upon 10 application of an awarding authority, a recipient of 11 grants or financial assistance, a party to a coopera-12 tive agreement, or a construction manager acting on 13 behalf of any of such entities, may exempt a par-14 ticular project from the requirements of any or all 15 of the provisions of subsections (a) or (c) if the 16 agency head finds—

17 (A) that the awarding authority, recipient 18 of grants or financial assistance, party to a co-19 operative agreement, or construction manager 20 acting on behalf of any of such entities had 21 issued or was a party to, as of the date of the 22 enactment of this Act, bid specifications, project 23 agreements, agreements with one or more labor 24 organizations, or other controlling documents 25 with respect to that particular project, which

1	contained any of the requirements or prohibi-
2	tions set forth in subsection $(a)(1)$; and
3	(B) that one or more construction con-
4	tracts subject to such requirements or prohibi-
5	tions had been awarded as of the date of the
6	enactment of this Act.
7	(e) FEDERAL ACQUISITION REGULATORY COUN-
8	CIL.—With respect to Federal contracts to which this sec-
9	tion applies, not later than 60 days after the date of enact-
10	ment of this Act, the Federal Acquisition Regulatory
11	Council shall take appropriate action to amend the Fed-
12	eral Acquisition Regulation to implement the provisions of
13	this section.
13 14	this section. (f) DEFINITIONS.—In this section:
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(3) LABOR ORGANIZATION.—The term "labor
 organization" has the meaning given such term in
 section 701(d) of the Civil Rights Act of 1964 (42
 U.S.C. 2000e(d)).