

AMENDMENT TO RULES COMMITTEE
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OFFERED BY MR. BUDD OF NORTH CAROLINA

Page 705, after line 3, insert the following:

1 **SEC. 1640. FAIR AND OPEN COMPETITION.**

2 (a) PURPOSES.—It is the purpose of this section to—

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

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

10 (3) reduce construction costs to the Federal
11 Government and to the taxpayers;

12 (4) expand job opportunities, especially for
13 small and disadvantaged businesses; and

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

1 (b) PRESERVATION OF OPEN COMPETITION AND
2 FEDERAL GOVERNMENT NEUTRALITY.—

3 (1) PROHIBITION.—

4 (A) GENERAL RULE.—The head of each
5 executive agency that awards or enters into any
6 construction contract or that obligates funds
7 pursuant to such a contract, shall ensure that
8 the agency, and any construction manager act-
9 ing on behalf of the Federal Government with
10 respect to such contract, in its bid specifica-
11 tions, project agreements, or other controlling
12 documents does not—

13 (i) require or prohibit a bidder, offer-
14 or, contractor, or subcontractor from en-
15 tering into, or adhering to, agreements
16 with 1 or more labor organizations, with
17 respect to that construction project or an-
18 other related construction project; or

19 (ii) discriminate against or give pref-
20 erence to a bidder, offeror, contractor, or
21 subcontractor because such bidder, offeror,
22 contractor, or subcontractor—

23 (I) becomes a signatory, or other-
24 wise adheres to, an agreement with 1
25 or more labor organizations with re-

1 spect to that construction project or
2 another related construction project;
3 or

4 (II) refuses to become a signa-
5 tory, or otherwise adhere to, an agree-
6 ment with 1 or more labor organiza-
7 tions with respect to that construction
8 project or another related construction
9 project.

10 (B) APPLICATION OF PROHIBITION.—This
11 paragraph shall apply with respect to—

12 (i) contracts awarded on or after the
13 date of the enactment of this Act; and

14 (ii) subcontracts awarded under such
15 contracts.

16 (C) RULE OF CONSTRUCTION.—Nothing in
17 subparagraph (A) may be construed to prohibit
18 a contractor or subcontractor from voluntarily
19 entering into an agreement described in such
20 subparagraph.

21 (D) FEDERAL ACQUISITION REGULA-
22 TION.—Not later than 60 days after the date of
23 the enactment of this Act, the Federal Acquisi-
24 tion Regulation shall be revised to implement
25 the provisions of this paragraph.

1 (2) RECIPIENTS OF GRANTS AND OTHER AS-
2 SISTANCE.—The head of each executive agency that
3 awards grants, provides financial assistance, or en-
4 ters into cooperative agreements for construction
5 projects after the date of the enactment of this Act
6 shall ensure that—

7 (A) the bid specifications, project agree-
8 ments, or other controlling documents for such
9 construction projects of a recipient of a grant
10 or financial assistance, or by the parties to a
11 cooperative agreement, do not contain any of
12 the requirements or prohibitions described in
13 clauses (i) or (ii) of paragraph (1)(A); or

14 (B) the bid specifications, project agree-
15 ments, or other controlling documents for such
16 construction projects of a construction manager
17 acting on behalf of a recipient or party de-
18 scribed in paragraph (1) do not contain any of
19 the requirements or prohibitions described in
20 clauses (i) or (ii) of paragraph (1)(A).

21 (3) FAILURE TO COMPLY.—If an executive
22 agency, a recipient of a grant or financial assistance
23 from an executive agency, a party to a cooperative
24 agreement with an executive agency, or a construc-
25 tion manager acting on behalf of such an agency, re-

1 cipient, or party, fails to comply with paragraphs (1)
2 or (2), the head of the executive agency awarding
3 the contract, grant, or assistance, or entering into
4 the agreement involved, shall take such action, con-
5 sistent with the law, as the head of such agency de-
6 termines to be appropriate.

7 (4) EXEMPTIONS.—

8 (A) IN GENERAL.—The head of an execu-
9 tive agency may exempt a particular project,
10 contract, subcontract, grant, or cooperative
11 agreement from the requirements of 1 or more
12 of the provisions of paragraphs (1) and (2) if
13 the head of such agency determines that special
14 circumstances exist that require an exemption
15 in order to avert an imminent threat to public
16 health or safety or to serve the national secu-
17 rity.

18 (B) SPECIAL CIRCUMSTANCES.—For pur-
19 poses of subparagraph (A), a finding of special
20 circumstances may not be based on the possi-
21 bility or existence of a labor dispute concerning
22 contractors or subcontractors that are nonsig-
23 natories to, or that otherwise do not adhere to,
24 agreements with 1 or more labor organizations,
25 or labor disputes concerning employees on the

1 project who are not members of, or affiliated
2 with, a labor organization.

3 (C) ADDITIONAL EXEMPTION FOR CERTAIN
4 PROJECTS.—The head of an executive agency,
5 upon application of an awarding authority, a re-
6 cipient of grants or financial assistance, a party
7 to a cooperative agreement, or a construction
8 manager acting on behalf of any of such enti-
9 ties, may exempt a particular project from the
10 requirements of any or all of the provisions of
11 paragraphs (1) or (2), if the head of such agen-
12 cy finds—

13 (i) that the awarding authority, recipi-
14 ent of grants or financial assistance, party
15 to a cooperative agreement, or construction
16 manager acting on behalf of any of such
17 entities had issued or was a party to, as of
18 the date of the enactment of this Act, bid
19 specifications, project agreements, agree-
20 ments with 1 or more labor organizations,
21 or other controlling documents with respect
22 to that particular project, which contained
23 any of the requirements or prohibitions set
24 forth in paragraph (1)(A); and

1 (ii) that 1 or more construction con-
2 tracts subject to such requirements or pro-
3 hibitions had been awarded as of the date
4 of the enactment of this Act.

5 (c) DEFINITIONS.—In this section:

6 (1) CONSTRUCTION CONTRACT.—The term
7 “construction contract” means any contract for the
8 construction, rehabilitation, alteration, conversion,
9 extension, or repair of buildings, highways, or other
10 improvements to real property.

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

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

