

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1270

Introduced by

Representatives Kasper, Beadle, Belter, Carlson, Dosch, Headland, Keiser, Ruby, Thoreson

Senators Klein, Miller, Wardner

1 A BILL for an Act to provide for open and fair competition in governmental construction; and to
2 provide for application.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 As used in this Act:

7 1. "Facility" means a physical improvement to real property owned or leased, directly or
8 through a building authority, by a governmental unit, including a road, bridge, runway,
9 rails, or building or structure along with the building's or structure's grounds,
10 approaches, services, and appurtenances.

11 2. "Governmental unit" means the state or a political subdivision.

12 **SECTION 2.**

13 **Prohibited labor organization terms in construction contract clauses.**

14 A governmental unit awarding a contract for the construction, repair, remodeling, or
15 demolition of a facility and any construction manager acting on that governmental unit's behalf
16 may not include any of the following in the bid specifications, project agreements, or other
17 controlling documents:

18 1. A term that requires or prohibits a bidder, an offeror, a contractor, or a subcontractor
19 from entering or adhering to agreements with one or more labor organizations relating
20 to the construction project or a related construction project; or
21 2. A term that otherwise discriminates against a bidder, an offeror, a contractor, or a
22 subcontractor for becoming, remaining, or refusing to become or remain a signatory to
23 or for adhering to or refusing to adhere to an agreement with one or more labor
24 organizations in regard to that project or a related construction project.

1 **SECTION 3.**

2 **Prohibited labor organization terms in a grant, tax abatement, and tax credit.**

3 1. A governmental unit may not award a grant, tax abatement, or tax credit that is
4 conditioned upon a requirement that the awardee include a term prohibited under
5 section 2 of this Act in a contract document for any construction, improvement,
6 maintenance, or renovation of real property or fixtures that are the subject of the grant,
7 tax abatement, or tax credit.

8 2. This Act does not prohibit a governmental unit from awarding a contract, grant, tax
9 abatement, or tax credit to a private owner, bidder, contractor, or subcontractor that
10 enters, is a party to, or adheres to an agreement with a labor organization, if:

11 a. Being or becoming a party or adhering to an agreement with a labor organization
12 is not a condition for the award of the contract, grant, tax abatement, or tax credit;
13 and

14 b. The governmental unit does not discriminate against a private owner, bidder,
15 contractor, or subcontractor in the awarding of that contract, grant, tax
16 abatement, or tax credit based upon the status as being or becoming, or the
17 willingness or refusal to become, a party to an agreement with a labor
18 organization.

19 3. This Act does not prohibit a contractor or subcontractor from voluntarily entering or
20 complying with an agreement entered with one or more labor organizations in regard
21 to a contract with a governmental unit or a contract funded in whole or in part from a
22 grant, tax abatement, or tax credit from a governmental unit.

23 **SECTION 4.**

24 **Exemptions.**

25 The head of a governmental unit may exempt a particular project, contract, subcontract,
26 grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this
27 Act if after public notice and hearing the governmental unit finds special circumstances require
28 an exemption to avert an imminent threat to public health or safety. A finding of special
29 circumstances under this section may not be based on the possibility or presence of a labor
30 dispute concerning:

- 1 1. The use of contractors or subcontractors that are nonsignatories to or otherwise do not
- 2 adhere to agreements with one or more labor organizations; or
- 3 2. Employees on the project who are not members of or affiliated with a labor
- 4 organization.

5 **SECTION 5.**

6 **Limitations.**

7 This Act may not be construed to:

- 8 1. Prohibit an employer or other party from entering an agreement or engaging in any
- 9 other activity protected by the National Labor Relations Act [29 U.S.C. 151 et seq.]; or
- 10 2. Interfere with labor relations of a party which are left unregulated under the National
- 11 Labor Relations Act [29 U.S.C. 151 et seq.].

12 **SECTION 6. APPLICATION.** This Act applies to construction contracts executed on and
13 after the effective date of this Act.