

IN THE SENATE

SENATE BILL NO. 1386

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO RIGHT TO WORK; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER  
2 20, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2013, IDAHO  
3 CODE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT IN REGARD TO CONTRACTS  
4 FOR CERTAIN PUBLIC WORKS THE STATE OR ANY POLITICAL SUBDIVISION SHALL  
5 NOT REQUIRE CERTAIN PAYMENT TO CERTAIN EMPLOYEES, TO PROVIDE FOR  
6 EXCEPTIONS, TO PROVIDE THAT IN REGARD TO CONTRACTS FOR CERTAIN PUBLIC  
7 WORKS THE STATE OR ANY POLITICAL SUBDIVISION SHALL NOT REQUIRE THAT  
8 A CONTRACTOR, SUBCONTRACTOR, MATERIAL SUPPLIER OR CARRIER ENGAGED  
9 IN PUBLIC WORKS BECOME A PARTY TO CERTAIN AGREEMENTS, TO PROVIDE  
10 FOR STANDING AND TO PROVIDE FOR APPLICATION OF LAWS; AND PROVIDING  
11 SEVERABILITY.  
12

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

14 SECTION 1. LEGISLATIVE INTENT. The Legislature finds that construction  
15 contracts subject to union-only project labor agreements are always awarded  
16 exclusively to unionized contractors and that union-only project labor  
17 agreements eliminate merit shop contractors and their employees from  
18 winning and participating in construction projects. The Legislature  
19 also finds that by following outdated and inefficient union work rules,  
20 union-only project labor agreements increase the cost of construction  
21 projects. The Legislature finds that because ninety percent of Idaho's  
22 construction workforce are not union members and that less than ten percent  
23 of Idaho's construction workforce is unionized, there is a high likelihood  
24 that union workers from outside local areas would be given preference over  
25 qualified and available non-union workers on construction projects subject  
26 to union-only project labor agreements. Further, the Legislature finds  
27 that union-only project labor agreements run counter to the intent of this  
28 state's Right to Work Laws by requiring that the employer or contractor  
29 sign an agreement -- the Project Labor Agreement -- with a union in order to  
30 contract for the project. The practical result is that workers are required  
31 to join a union in order to gain access to the work project. Finally, the  
32 Legislature recognizes that a 2005 report from the Associated Builders and  
33 Contractors, Inc., finds poor performance and other numerous failures on  
34 union-only project labor agreements.

35 SECTION 2. That Chapter 20, Title 44, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and  
37 designated as Section 44-2013, Idaho Code, and to read as follows:

38 44-2013. PUBLIC WORKS -- WAGES. Notwithstanding any other provision  
39 found in chapter 10, title 44, Idaho Code, and chapter 57, title 67, Idaho  
40 Code, the following shall apply:

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

1 (2) For purposes of this section, the following terms have the  
2 following meanings:

3 (a) "Political subdivision" means the state of Idaho, or any  
4 county, city, school district, sewer district, fire district, or  
5 any other taxing subdivision or district of any public or quasi-public  
6 corporation of the state, or any agency thereof, or with any other  
7 public board, body, commission, department or agency, or officer or  
8 representative thereof.

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

11 (3) (a) Except as provided in subsection (2)(b) of this section  
12 or as required by federal or state law, the state or any political  
13 subdivision that contracts for the construction, alteration,  
14 equipping, furnishing, maintenance, repair or improvement of  
15 public works shall not require that a contractor, subcontractor,  
16 material supplier or carrier engaged in the construction, alteration,  
17 equipping, furnishing, maintenance, repair or improvement of public  
18 works pay its employees:

19 (i) A predetermined amount of wages or wage rate; or

20 (ii) A type, amount or rate of employee benefits.

21 (b) Subsection (2)(a) of this section shall not apply when federal law  
22 requires the payment of prevailing or minimum wages to persons working  
23 on projects funded in whole or in part by federal funds.

24 (4) The state or any political subdivision that contracts for the  
25 construction, alteration, equipping, furnishing, maintenance, repair  
26 or improvement of public works shall not require that a contractor,  
27 subcontractor, material supplier or carrier engaged in the construction,  
28 alteration, equipping, furnishing, maintenance, repair or improvement  
29 of public works execute or otherwise become a party to any project labor  
30 agreement, collective bargaining agreement, prehire agreement or any other  
31 agreement with employees, their representatives or any labor organization  
32 as a condition of bidding, negotiating, being awarded or performing work on a  
33 public works project.

34 (5) Any interested party, which shall include a bidder, offeror,  
35 contractor, subcontractor or taxpayer, shall have standing to challenge any  
36 bid award, specification, project agreement, controlling document, grant or  
37 cooperative agreement that violated the provisions of this section, and such  
38 interested party shall be awarded costs and attorney's fees in the event that  
39 such challenge prevails.

40 (6) The provisions of this section apply to any contract executed after  
41 July 1, 2010.

42 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared  
43 to be severable and if any provision of this act or the application of such  
44 provision to any person or circumstance is declared invalid for any reason,  
45 such declaration shall not affect the validity of the remaining portions of  
46 this act.