

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—111th Cong., 1st Sess.

S. 181

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. VITTER

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. ____ . GOVERNMENT NEUTRALITY IN CONTRACTING.**
- 3 (a) **PURPOSES.**—It is the purpose of this section 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 (b) PRESERVATION OF OPEN COMPETITION AND
19 FEDERAL GOVERNMENT NEUTRALITY.—

20 (1) PROHIBITION.—

21 (A) GENERAL RULE.—The head of each
22 executive agency that awards any construction
23 contract after the date of enactment of this Act,
24 or that obligates funds pursuant to such a con-
25 tract, shall ensure that the agency, and any

1 construction manager acting on behalf of the
2 Federal Government with respect to such con-
3 tract, in its bid specifications, project agree-
4 ments, or other controlling documents does
5 not—

6 (i) require or prohibit a bidder, offer-
7 or, contractor, or subcontractor from en-
8 tering into, or adhering to, agreements
9 with 1 or more labor organization, with re-
10 spect to that construction project or an-
11 other related construction project; or

12 (ii) otherwise discriminate against a
13 bidder, offeror, contractor, or subcon-
14 tractor because such bidder, offeror, con-
15 tractor, or subcontractor—

16 (I) became a signatory, or other-
17 wise adhered to, an agreement with 1
18 or more labor organization with re-
19 spect to that construction project or
20 another related construction project;
21 or

22 (II) refused to become a signa-
23 tory, or otherwise adhere to, an agree-
24 ment with 1 or more labor organiza-
25 tion with respect to that construction

1 project or another related construction
2 project.

3 (B) APPLICATION OF PROHIBITION.—The
4 provisions of this subsection shall not apply to
5 contracts awarded prior to the date of enact-
6 ment of this Act, and subcontracts awarded
7 pursuant to such contracts regardless of the
8 date of such subcontracts.

9 (C) RULE OF CONSTRUCTION.—Nothing in
10 subparagraph (A) shall be construed to prohibit
11 a contractor or subcontractor from voluntarily
12 entering into an agreement described in such
13 subparagraph.

14 (2) RECIPIENTS OF GRANTS AND OTHER AS-
15 SISTANCE.—The head of each executive agency that
16 awards grants, provides financial assistance, or en-
17 ters into cooperative agreements for construction
18 projects after the date of enactment of this Act,
19 shall ensure that—

20 (A) the bid specifications, project agree-
21 ments, or other controlling documents for such
22 construction projects of a recipient of a grant
23 or financial assistance, or by the parties to a
24 cooperative agreement, do not contain any of

1 the requirements or prohibitions described in
2 clause (i) or (ii) of paragraph (1)(A); or

3 (B) the bid specifications, project agree-
4 ments, or other controlling documents for such
5 construction projects of a construction manager
6 acting on behalf of a recipient or party de-
7 scribed in subparagraph (A) do not contain any
8 of the requirements or prohibitions described in
9 clause (i) or (ii) of paragraph (1)(A).

10 (3) FAILURE TO COMPLY.—If an executive
11 agency, a recipient of a grant or financial assistance
12 from an executive agency, a party to a cooperative
13 agreement with an executive agency, or a construc-
14 tion manager acting on behalf of such an agency, re-
15 cipient, or party, fails to comply with paragraph (1)
16 or (2), the head of the executive agency awarding
17 the contract, grant, or assistance, or entering into
18 the agreement, involved shall take such action, con-
19 sistent with law, as the head of the agency deter-
20 mines to be appropriate.

21 (4) EXEMPTIONS.—

22 (A) IN GENERAL.—The head of an execu-
23 tive agency may exempt a particular project,
24 contract, subcontract, grant, or cooperative
25 agreement from the requirements of 1 or more

1 of the provisions of paragraphs (1) and (2) if
2 the head of such agency determines that special
3 circumstances exist that require an exemption
4 in order to avert an imminent threat to public
5 health or safety or to serve the national secu-
6 rity.

7 (B) SPECIAL CIRCUMSTANCES.—For pur-
8 poses of subparagraph (A), a finding of “special
9 circumstances” may not be based on the possi-
10 bility or existence of a labor dispute concerning
11 contractors or subcontractors that are nonsig-
12 natories to, or that otherwise do not adhere to,
13 agreements with 1 or more labor organization,
14 or labor disputes concerning employees on the
15 project who are not members of, or affiliated
16 with, a labor organization.

17 (C) ADDITIONAL EXEMPTION FOR CERTAIN
18 PROJECTS.—The head of an executive agency,
19 upon application of an awarding authority, a re-
20 cipient of grants or financial assistance, a party
21 to a cooperative agreement, or a construction
22 manager acting on behalf of any of such enti-
23 ties, may exempt a particular project from the
24 requirements of any or all of the provisions of

1 paragraphs (1) or (2) if the agency head
2 finds—

3 (i) that the awarding authority, recipi-
4 ent of grants or financial assistance, party
5 to a cooperative agreement, or construction
6 manager acting on behalf of any of such
7 entities had issued or was a party to, as of
8 the date of the enactment of this Act, bid
9 specifications, project agreements, agree-
10 ments with one or more labor organiza-
11 tions, or other controlling documents with
12 respect to that particular project, which
13 contained any of the requirements or pro-
14 hibitions set forth in paragraph (1)(A);
15 and

16 (ii) that one or more construction con-
17 tracts subject to such requirements or pro-
18 hibitions had been awarded as of the date
19 of the enactment of this Act.

20 (5) FEDERAL ACQUISITION REGULATORY COUN-
21 CIL.—With respect to Federal contracts to which
22 this subsection applies, not later than 60 days after
23 the date of enactment of this Act, the Federal Ac-
24 quisition Regulatory Council shall take appropriate

1 action to amend the Federal Acquisition Regulation
2 to implement the provisions of this subsection.

3 (6) DEFINITIONS.—In this subsection:

4 (A) CONSTRUCTION CONTRACT.—The term
5 “construction contract” means any contract for
6 the construction, rehabilitation, alteration, con-
7 version, extension, or repair of buildings, high-
8 ways, or other improvements to real property.

9 (B) EXECUTIVE AGENCY.—The term “ex-
10 ecutive agency” has the meaning given such
11 term in section 105 of title 5, United States
12 Code, except that such term shall not include
13 the Government Accountability Office.

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