

Amendment No. 315

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| Senate Amendment to Senate Bill No. 464 | (BDR 28-1041) |
| Proposed by: Senate Committee on Government Affairs | |
| Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

| ASSEMBLY ACTION | | Initial and Date | SENATE ACTION | | Initial and Date |
|-----------------|--------------------------|-------------------------------|---------------|--------------------------|-------------------------------|
| Adopted | <input type="checkbox"/> | Lost <input type="checkbox"/> | Adopted | <input type="checkbox"/> | Lost <input type="checkbox"/> |
| Concurred In | <input type="checkbox"/> | Not <input type="checkbox"/> | Concurred In | <input type="checkbox"/> | Not <input type="checkbox"/> |
| Receded | <input type="checkbox"/> | Not <input type="checkbox"/> | Receded | <input type="checkbox"/> | Not <input type="checkbox"/> |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF/BJE



Date: 4/20/2017

S.B. No. 464—Revises provisions relating to agreements with labor organizations concerning employees who perform work on convention centers. (BDR 28-1041)



SENATE BILL NO. 464—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 27, 2017

Referred to Committee on Government Affairs

SUMMARY—~~[Revises provisions relating]~~ Authorizes the Las Vegas Convention and Visitors Authority to require bidders, contractors or subcontractors to enter into agreements with labor organizations concerning employees who perform work on ~~[convention centers]~~ the renovation or expansion of the Las Vegas Convention Center. (BDR ~~[28-1041]~~ S-1041)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to public works; ~~[revising provisions relating]~~ authorizing the Las Vegas Convention and Visitors Authority to require bidders, contractors or subcontractors to enter into agreements with labor organizations concerning the employees who perform work on ~~[a public work that is part of a convention hall]~~ the renovation or expansion of the Las Vegas Convention Center; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Senate bill No. 1 (S.B. 1) of the 30th Special Session of the Legislature established a method to finance the renovation or expansion of the Las Vegas Convention Center. (Sections 53-61.7 of chapter 2, Statutes of Nevada 2016, 30th Special Session, pp. 54-60)

Existing law, with certain exceptions, prohibits a public body from: (1) requiring or prohibiting a bidder, ~~[or]~~ contractor or subcontractor from entering into or adhering to any agreement with one or more labor organizations in regard to a public work; or (2) discriminating against a bidder, ~~[or]~~ contractor or subcontractor for entering or not entering into, or adhering or refusing to adhere to, any agreement with one or more labor organizations in regard to the public work. ~~[Existing law authorizes a public body to exempt a particular public work from these restrictions if the public body makes a finding, after notice and a hearing, that: (1) special circumstances require such an exemption to avert an imminent threat to public health or safety; or (2) the public work is a part of critical infrastructure for an airport or a water system.]~~ (NRS 338.1405) [Section 1 of this bill authorizes a public body to grant such an exemption for a public work that is a part of critical infrastructure for a convention hall.]

~~— Senate Bill No. 1 (S.B. 1) of the 30th Special Session of the Legislature established a method to finance the renovation or expansion of the Las Vegas Convention Center. (Sections 53-61.7 of chapter 2, Statutes of Nevada 2016, 30th Special Session, pp. 54-60) S.B. 1 required any contract or agreement entered into by a prime contractor, construction manager or project manager for the construction of the renovation and expansion of the Convention Center to require that at least 15 percent of the project be subcontracted to small local~~

businesses. Under this provision, a contractor that subcontracts work on the project to a small local business is prohibited from imposing requirements on the small local business relating to the employees selected by the small local business to perform the subcontracted work. (Section 61.5 of chapter 2, Statutes of Nevada 2016, 20th Special Session, p. 59.) Section ~~(2)~~ 1.5 of this bill creates an exception to this ~~requirement~~ prohibition by authorizing ~~to~~ a contractor that is subcontracting work to a small local business to the Las Vegas Convention and Visitors Authority to require ~~the small local business to~~ a bidder, contractor or subcontractor to enter into and adhere to an agreement with one or more labor organizations ~~that relates to the employees selected by the small local business to perform the subcontracted work~~, in regard to the project to renovate or expand the Convention Center, which is authorized by S.B. 1. However, section 1.5 maintains the provision of S.B. 1 that prohibits a contractor that subcontracts work on the project to a small local business from imposing requirements on the small local business relating to the employees selected by the small local business to perform the subcontracted work.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. ~~NRS 338.1405 is hereby amended to read as follows:~~
~~338.1405 1. The Legislature hereby finds and declares that the provisions of this section prohibiting requirements for certain terms in contracts entered into by a public body for a public work or entered into by the awardee of a grant, tax abatement, tax credit or tax exemption from a public body are:~~
~~(a) Intended to provide:~~
~~(1) More economical, nondiscriminatory, neutral and efficient contracts for public works by public bodies in this State as market participants; and~~
~~(2) Fair and open competition in awarding contracts, grants, tax abatements, tax credits and tax exemptions.~~
~~(b) The best method for effectuating the intent of paragraph (a):~~
~~2. Except as otherwise provided in subsection 5 or 6, a public body, in any advertisement, solicitation, specification, contract or any other document related to a contract for a public work, shall not:~~
~~(a) Require or prohibit an eligible bidder, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.~~
~~(b) Discriminate against an eligible bidder, contractor or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.~~
~~3. Except as otherwise provided in subsection 5 or 6, a public body shall not award a grant, tax abatement, tax credit or tax exemption that is conditioned upon a requirement that the awardee include a term described in paragraph (a) or (b) of subsection 2 in a contract for any construction, improvement, maintenance or renovation to real property that is the subject of the grant, tax abatement, tax credit or tax exemption.~~
~~4. The provisions of subsections 2 and 3 do not:~~
~~(a) Prohibit a public body from awarding a contract for a public work or a grant, tax abatement, tax credit or tax exemption to an owner who is not a public body, an eligible bidder, a contractor or a subcontractor who enters into, who is a party to or who adheres to an agreement with a labor organization if:~~

~~(1) Entering into, being or becoming a party to or adhering to an agreement with a labor organization is not a condition for awarding the contract, grant, tax abatement, tax credit or tax exemption; and~~

~~(2) The public body does not discriminate against an owner who is not a public body, an eligible bidder, a contractor or a subcontractor in the awarding of the contract, grant, tax abatement, tax credit or tax exemption based upon the status of entering into, being or becoming a party to or adhering to an agreement with a labor organization;~~

~~(b) Prohibit an eligible bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract;~~

~~(1) With a public body for a public work; or~~

~~(2) Funded in whole or in part by a grant, tax abatement, tax credit or tax exemption from a public body;~~

~~(c) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.;~~

~~(d) Interfere with labor relations of parties that are left unregulated by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.; or~~

~~(e) Affect any provision of NRS 338.020 to 338.090, inclusive.~~

~~5. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that a special circumstance requires such an exemption to avert an imminent threat to the public health or safety. A finding of a special circumstance pursuant to this subsection must not be based on the possibility or presence of a labor dispute concerning:~~

~~(a) The use of a contractor or subcontractor who is not a signatory to or does not adhere to an agreement with one or more labor organizations; or~~

~~(b) Employees on the public work who are not members of or affiliated with a labor organization.~~

~~6. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that the public work or construction, improvement, maintenance or renovation to real property that is the subject of the grant, tax abatement, tax credit or tax exemption, as applicable, is a part of critical infrastructure for:~~

~~(a) An airport, including, without limitation, a runway, taxiway, air traffic control tower or project to improve airport security; [or]~~

~~(b) A water system [.] ; or~~

~~(c) A convention hall.~~

~~7. As used in this section [“labor”]:~~

~~(a) “Convention hall” means a facility which incorporates both space for exhibitions and a substantial number of smaller spaces for meetings, and which is primarily for use by trade shows, public shows, conventions or related activities.~~

~~(b) “Labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. (Deleted by amendment.)~~

Sec. 1.5. The Southern Nevada Tourism Improvements Act, being chapter 2, Statutes of Nevada 2016, 30th Special Session, at page 59, is hereby

1 amended by adding thereto a new section to be designated as section 61.3,
2 immediately following section 61, to read as follows:

3 Sec. 61.3. 1. Notwithstanding the provisions of NRS 338.1405
4 and except as otherwise provided in section 61.5 of this act, in any
5 advertisement, solicitation, specification, contract or any other
6 document related to a contract for the project described in paragraph
7 (a) of subsection 3 of section 59 of this act, the Convention Authority
8 may require an eligible bidder, contractor or subcontractor to enter
9 into or adhere to an agreement with one or more labor organizations in
10 regard to the project or any construction project integrated into the
11 project.

12 2. As used in this section:

13 (a) "Contract" means a written contract entered into between a
14 contractor and the Convention Authority for the provision of labor,
15 materials, equipment or supplies for the project described in
16 paragraph (a) of subsection 3 of section 59 of this act.

17 (b) "Contractor" has the meaning ascribed to it in NRS 338.010.

18 (c) "Eligible bidder" has the meaning ascribed to it in NRS
19 338.010.

20 (d) "Labor organization" has the meaning ascribed to it in NRS
21 338.1405.

22 (e) "Subcontractor" has the meaning ascribed to it in NRS 338.010.

23 Sec. 2. [Section 61.5 of chapter 2, Statutes of Nevada 2016, 30th Special
24 Session, at page 59, is hereby amended to read as follows:

25 ~~Sec. 61.5. 1. Except as otherwise provided in subsection 8, any~~
26 ~~contract or other agreement entered into by any prime contractor,~~
27 ~~construction manager or project manager selected by the Convention~~
28 ~~Authority for the project described in paragraph (a) of subsection 3 of~~
29 ~~section 59 of this act must include a provision requiring that at least 15~~
30 ~~percent of the project must be subcontracted to small local businesses.~~

31 ~~2. A business shall be deemed to be a small local business for the~~
32 ~~purposes of this section if:~~

33 ~~(a) The business is financially and operationally independent from any~~
34 ~~other business;~~

35 ~~(b) The business is not temporary and has operated for at least 4 years~~
36 ~~before entering into the contract or agreement;~~

37 ~~(c) The business maintains its principal place of business in a fixed~~
38 ~~location within this State;~~

39 ~~(d) The business has obtained all necessary licenses and registrations~~
40 ~~within the State of Nevada; and~~

41 ~~(e) The annual revenues of the business for each of the immediately~~
42 ~~preceding 3 fiscal years has not exceeded:~~

43 ~~(1) For public works projects, \$20,000,000;~~

44 ~~(2) For any other construction projects, \$10,000,000;~~

45 ~~(3) For any goods, materials, equipment and general services~~
46 ~~contracts, \$10,000,000;~~

47 ~~(4) For professional services including, without limitation,~~
48 ~~architectural and engineering services, \$2,500,000; and~~

49 ~~(5) For trucking services, \$3,500,000.~~

50 ~~3. A contractor that subcontracts work to a small local business~~
51 ~~pursuant to a contract or other agreement described in subsection 1 shall~~
52 ~~allow the small local business to be covered by any bond or insurance of~~

1 the contractor and may require the subcontractor to pay a proportionate
2 share of the cost for such coverage by the bond or insurance.

3 ~~4. A small local business to which work is subcontracted by a~~
4 ~~contractor pursuant to a contract or other agreement described in subsection~~
5 ~~1 must ensure that its employees are hired in a manner that does not~~
6 ~~discriminate against any person on any basis prohibited by law. Such a~~
7 ~~contractor that subcontracts such work:~~

8 ~~(a) Except as otherwise provided in paragraph (b), shall not impose~~
9 ~~any requirements on the small local business relating to the employees~~
10 ~~selected by the small local business to perform the subcontracted work [.]~~
11 ~~and~~

12 ~~(b) May require the small local business to enter into and adhere to~~
13 ~~an agreement with one or more labor organizations that relates to the~~
14 ~~employees selected by the small local business to perform the~~
15 ~~subcontracted work.~~

16 ~~5. A contractor that subcontracts work to a small local business~~
17 ~~pursuant to a contract or other agreement described in subsection 1 shall~~
18 ~~provide a mentorship program to assist the small local business to develop~~
19 ~~skills necessary to carry out the work that is subcontracted.~~

20 ~~6. A prime contractor, construction manager or project manager and~~
21 ~~each contractor that subcontracts work to a small local business pursuant to~~
22 ~~a contract or other agreement described in subsection 1 shall submit~~
23 ~~information to the Oversight Panel verifying that the prime contractor,~~
24 ~~construction manager, project manager or contractor has complied with the~~
25 ~~provisions of this section, and shall maintain all records, including, without~~
26 ~~limitation, any information required by the Oversight Panel, to ensure~~
27 ~~compliance with this section for not less than 5 years after the expiration of~~
28 ~~the subcontract. Such records must be made available for inspection to the~~
29 ~~Oversight Panel upon request.~~

30 ~~7. Unless the requirements of subsection 1 are waived by the~~
31 ~~Convention Authority pursuant to subsection 8, the failure of a prime~~
32 ~~contractor, construction manager or project manager to comply with the~~
33 ~~requirements of subsection 1 shall be deemed a material breach of contract.~~

34 ~~8. The Convention Authority may waive the requirements of~~
35 ~~subsection 1 if a prime contractor, construction manager or project manager~~
36 ~~presents proof satisfactory to the Convention Authority that there is an~~
37 ~~insufficient number of small local businesses available and qualified to~~
38 ~~subcontract for the work to be performed. Such proof must include, without~~
39 ~~limitation, evidence that:~~

40 ~~(a) Reasonable efforts were made to notify small local businesses of~~
41 ~~the availability of work to be performed under a contract or other~~
42 ~~agreement described in subsection 1, which must include evidence of public~~
43 ~~advertisement calling for bids for a period of not less than 20 days before~~
44 ~~the date on which such bids must be submitted; and~~

45 ~~(b) In considering the availability and qualifications of a small local~~
46 ~~business to perform work under a contract or other agreement described in~~
47 ~~subsection 1, a contractor reasonably considered the work experience,~~
48 ~~safety history and financial stability of the small local business.~~

49 ~~9. As used in this section, "labor organization" has the meaning~~
50 ~~ascribed to it in NRS 338.1405.~~ **(Deleted by amendment.)**

51 **Sec. 3.** This act becomes effective upon passage and approval.