COMMITTEE REPORT

May 16, 2013

**S. 438**

Introduced by Senators L. Martin and Campbell

S. Printed 5/16/13--H.

Read the first time April 11, 2013.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 438) to amend the Code of Laws of South Carolina, 1976, by adding Section 8‑15‑70 so as to provide for the fair and open competition in governmental contracts, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8‑15‑70 SO AS TO PROVIDE FOR THE FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONTRACTS BY STIPULATING THAT STATE OR LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES, IN REGARD TO A PUBLIC BUILDING, MAY NOT REQUIRE OR PROHIBIT A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FROM ENTERING INTO OR ADHERING TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT AND MAY NOT OTHERWISE DISCRIMINATE AGAINST A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FOR BECOMING OR REFUSING TO BECOME A SIGNATORY TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT, TO PROVIDE THAT STATE AND LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES SHALL NOT AWARD A GRANT, TAX ABATEMENT, OR TAX CREDIT CONDITIONED UPON THE INCLUSION OF SUCH AGREEMENTS IN THE AWARD, AND TO PROVIDE EXCEPTIONS TO AND EXEMPTIONS FROM THESE PROVISIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 15, Title 8 of the 1976 Code is amended by adding:

“Section 8‑15‑70. (A) It is the intent of the General Assembly that the provisions of this section provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction‑related services by this State and political subdivisions of this State as market participants. The General Assembly finds that providing for fair and open competition best effectuates this intent.

(B) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or any agent, employee, or board or governing body of any political subdivision of this State awarding a contract for the construction, repair, remodeling, or demolition of a public building shall not in any bid specifications, project agreements, or other controlling documents:

(1) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project; and

(2) otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming, remaining, 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 that project or a related construction project.

(C) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the person receiving the grant, tax abatement, or tax credit include a term described in subsection (B) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

(D) This section does not prohibit an agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the state agent, employee, or board or the political subdivision does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the person’s status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(E) This section does not prohibit a 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 with this State or a political subdivision of this State or funded in whole or in part from a grant, tax abatement, or tax credit from this State or political subdivision.

(F) This State or the governing body of a political subdivision may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of subsection (B) or (C) if the State or governing body of the political subdivision finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section must not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

(G) This section does not do either of the following:

(1) prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. Sections 151-169; or

(2) interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U.S.C. Sections 151-169.”

SECTION 2. This act takes effect upon approval by the Governor.

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