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SENATE BILL NO. 370

Offered January 14, 2026

Prefiled January 13, 2026

A BILL to amend and reenact §§ 2.2-4321.3 and 40.1-6 of the Code of Virginia, relating to prevailing wage rate for public works contracts; civil penalties.

Patron—Carroll Foy

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.3 and 40.1-6 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty.

A. As used in this section:

"Locality" means any county, city, or town, school division, or other political subdivision.

"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located, as determined by the Commissioner of Labor and Industry on the basis of. No prevailing wage rate shall be less than the applicable prevailing wage rate determinations made determined by the U.S. Secretary of Labor under the provisions of the federal Davis-Bacon Act, 40 U.S.C. § 276 3141 et seq., as amended.

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency or locality, including transportation infrastructure projects.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government, including any public institution of higher education, as defined in § 23.1-100. "State agency" does not include any county, city, or town.

B. Notwithstanding any other provision of this chapter, each state agency and locality, when procuring services or letting contracts for public works paid for in whole or in part by state funds, or when overseeing or administering such contracts for public works, shall ensure that its bid specifications or other public contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract for public works at the prevailing wage rate. Each public contract for public works by a state agency or locality shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specifications, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this section shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

D. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform work contracted to be done under the public contract for public works for or on behalf of a state agency or for or on behalf of a locality that has adopted an ordinance described in subsection C or at a rate that is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due; (ii) shall be subject to a civil penalty of \$500 for each day on which any such mechanic, laborer, or worker is employed at a rate that is less than the prevailing wage rate, to be paid to the Commissioner of Labor and Industry, and (iii) shall be disqualified from bidding on public contracts with any public body until (a) the contractor or subcontractor has made full restitution of the amount described in clause (i) owed to such individuals and (b) three years after the final date on which such underpayment occurs. A contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

E. D. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, or labor organization, shall have standing to challenge any bid specification, project agreement, or other public

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59 contract for public works that violates the provisions of this section. Such interested party shall be entitled to
 60 injunctive relief to prevent any violation of this section. Any interested party bringing a successful action
 61 under this section shall be entitled to recover reasonable attorney fees and costs from the responsible party.

62 ~~F. E.~~ A representative of a state agency or a ~~representative of a locality that has adopted an ordinance~~
 63 ~~described in subsection E~~ may contact the Commissioner of Labor and Industry, at least 10 but not more than
 64 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to
 65 ascertain the proper prevailing wage rate for work to be performed under the public contract.

66 ~~G. F.~~ Upon the award of any public contract subject to the provisions of this section, the contractor to
 67 whom such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry the pay
 68 scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's
 69 subcontractors for work to be performed under such public contract. This certification shall, for each craft or
 70 trade employed on the project, specify the total hourly amount to be paid to employees, including wages and
 71 applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit,
 72 and list the names and addresses of any third party fund, plan or program to which benefit payments will be
 73 made on behalf of employees.

74 ~~H. G. 1.~~ Each ~~employer contractor~~ subject to the provisions of this section shall *submit payroll records to*
 75 *the Department of Labor and Industry and the contracting public body within 14 days after the end of each*
 76 *month during which the contractor performs work pursuant to the contract and shall certify that such records*
 77 *reflect the actual hours worked and amount paid to any mechanic, laborer, or worker for the category of*
 78 *work performed. Each contractor or subcontractor subject to the provisions of this section shall keep,*
 79 *maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual*
 80 *performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work*
 81 *classification at which each individual performing the work of any mechanic, laborer, or worker on the public*
 82 *works project is employed during each work day and week. The employer contractor shall preserve these*
 83 *records for a minimum of six years and make such records available to the Department of Labor and Industry*
 84 *within 10 days of a request and shall certify that records reflect the actual hours worked and the amount paid*
 85 *to its workers for whatever time period they request after the work specified in the contract is completed.*

86 2. Any contractor or subcontractor subject to the provisions of this section that the Commissioner of
 87 Labor and Industry determines has failed to submit the information required by subdivision 1 shall be subject
 88 to a civil penalty of up to \$1,000 for a first offense and up to \$2,000 for a second or subsequent offense within
 89 five years, as determined by the Commissioner of Labor and Industry. Each month in which a violation of this
 90 subsection occurs shall constitute a separate offense.

91 ~~I. H.~~ Contractors and subcontractors performing public works for a state agency or ~~for a locality that has~~
 92 ~~adopted an ordinance described in subsection E~~ shall post the general prevailing wage rate for each craft and
 93 classification involved, as determined by the Commissioner of Labor and Industry, including the effective
 94 date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such
 95 places as are used by the contractor or subcontractors to pay workers their wages. Within 10 days of such
 96 posting, a contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance
 97 with this subsection.

98 ~~J. I.~~ The provisions of this section shall not apply to any public contract for public works of \$250,000 or
 99 less.

100 **§ 40.1-6. Powers and duties of Commissioner.**

101 The Commissioner shall:

102 1. Have general supervision and control of the Department;
 103 2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to
 104 employers or business establishments before any court of competent jurisdiction;

105 3. Make such rules and regulations as may be necessary for the enforcement of this title and procedural
 106 rules as are required to comply with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596).
 107 All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2;

108 4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses, and
 109 administer oaths and to file a written or printed list of relevant interrogatories and require full and complete
 110 answers to the same to be returned under oath within 30 days of the receipt of such list of questions;

111 5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his work,
 112 with the duties of such representatives to be prescribed by the Commissioner;

113 6. Determine the prevailing wage required to be paid under a public contract for public works as provided
 114 in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. ~~Any~~
 115 ~~determination of the No~~ prevailing wage rate ~~made determined~~ by the Commissioner shall be ~~based on less~~
 116 ~~than the~~ applicable prevailing wage rate ~~determinations~~ made by the U.S. Secretary of Labor under the
 117 provisions of the *federal Davis-Bacon Act, 40 U.S.C. § 276 3141 et seq., as amended;*

118 7. Have power to require that accident, injury, and occupational illness records and reports be kept at any
 119 place of employment and that such records and reports be made available to the Commissioner or his duly
 120 authorized representatives upon request, and to require employers to develop, maintain, and make available

121 such other records and information as are deemed necessary for the proper enforcement of this title;
122 8. Have power, upon presenting appropriate credentials to the owner, operator, or agent in charge:
123 a. To enter without delay and at reasonable times any business establishment, construction site, or other
124 area, workplace, or environment where work is performed by an employee of any employer in this
125 Commonwealth; and
126 b. To inspect and investigate, during regular working hours and at other reasonable times and within
127 reasonable limits and in a reasonable manner, without prior notice unless such notice is authorized by the
128 Commissioner or his representative, any such business establishment or place of employment and all
129 pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to
130 question privately any such employer, officer, owner, operator, agent, or employee. If such entry or
131 inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have power to seek
132 from a court having equity jurisdiction an order compelling such entry or inspection;
133 9. Make rules and regulations governing the granting of temporary or permanent variances from all
134 standards promulgated by the Board under this title. Any interested or affected party may appeal to the Board,
135 the Commissioner's determination to grant or deny such a variance. The Board may, as it sees fit, adopt,
136 modify, or reject the determination of the Commissioner;
137 10. Have authority to issue orders to protect the confidentiality of all information reported to or otherwise
138 obtained by the Commissioner, the Board, or the agents or employees of either that contains or might reveal a
139 trade secret. Such information shall be confidential and shall be limited to those persons who need such
140 information for purposes of enforcement of this title. Violations of such orders shall be punishable as civil
141 contempt upon application to the Circuit Court of the City of Richmond. It shall be the duty of each employer
142 to notify the Commissioner or his representatives of the existence of trade secrets where he desires the
143 protection provided herein; and
144 11. Serve as executive officer of the Virginia Safety and Health Codes Board and of the Apprenticeship
145 Council and see that the rules, regulations, and policies that they promulgate are carried out.
146 **2. That the Commissioner of Labor and Industry (the Commissioner) shall promulgate regulations as**
147 **necessary to effectuate the provisions of § 2.2-4321.3 of the Code of Virginia, as amended by this act,**
148 **including regulations determining the prevailing wage rate for public works contracts and developing**
149 **procedures for the submission of payroll information pursuant to such provisions, and shall take any**
150 **other actions the Commissioner deems necessary to effectuate the provisions of this act.**