

SENATE BILL NO. 324

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 43 a section numbered 2.2-4302.3, relating to Virginia Public Procurement Act; additional public works contract requirements.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 43 a section numbered 2.2-4302.3 as follows:

§ 2.2-4302.3. Additional public works contract requirements.

A. For purposes of this section:

"Apprentice" means the same as that term is defined in § 2.2-2043.

"Capital outlay project" means the same as that term is defined in § 2.2-1515.

"Employee" means a worker on a capital outlay project that (i) is free from the control and direction of the remunerating entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (ii) performs work outside the usual course of the remunerating entity's business; and (iii) is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

"Labor hours" means the total hours of employees receiving an hourly wage who are directly employed on the site of a capital outlay project. "Labor hours" includes hours performed by employees employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by superintendents, management personnel, or owners.

B. For any capital outlay project, a public body shall require the contractor and its subcontractors at any tier to demonstrate compliance with the following requirements:

1. Completion of specified safety training programs established by the U.S. Department of Labor's Occupational Safety and Health Administration; and

2. Demonstration of no more than one administrative determination, arbitral award, civil judgment, or settlement agreement involving the contractor or subcontractor for violations of the National Labor Relations Act, 29 U.S.C. § 151 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; the Davis-Bacon Act, 40 U.S.C. § 3141, or Davis-Bacon Related Acts; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; the Americans with Disabilities Act,

42 U.S.C. § 12101 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.); Article 2 (§ 40.1-29 et seq.) of Chapter 3 of Title 40.1; the provisions of § 2.2-4321.3; or the provisions of § 40.1-28.7:7.

C. No contractor, subcontractor, or party on a capital outlay project shall provide remuneration to an independent contractor for the performance of construction work on such capital outlay project unless the remunerating party received written authorization from the public body to enter into an agreement with the independent contractor to provide construction services on the specific capital outlay project. Such written authorization shall state that the public body finds that:

1. The remunerating party demonstrated that they made a good faith effort to directly hire employees to perform the work sought;

2. The remunerating party demonstrated that it was not feasible to directly hire employees to perform the work sought due to the work being of a specialized nature that cannot be performed by the remunerating party's own workforce, and it would require significant investment of time and resources on the part of the remunerating party to directly hire employees to perform the work sought; and

3. The remunerating party has provided adequate notice to all independent contractors pursuant to subsection D.

Nothing in this subsection shall be construed as limiting a contractor's right to subcontract work to a bona fide firm that performs work on a capital outlay project with its own employees and that otherwise complies with the provisions of this section.

D. If a contractor, subcontractor, or any party on a capital outlay project who receives authorization pursuant to subsection C provides remuneration to an independent contractor, such remunerating party shall provide a written notice to each such independent contractor that contains the following information:

1. Notification to the individual that they have been hired as an independent contractor;

2. A statement by the remunerating party that the independent contractor will perform work free from control of the remunerating party except as to the product and result;

3. Notification regarding the independent contractor's tax obligations, including the filing of self-employment income tax with the U.S. Internal Revenue Service;

4. Notification that the individual's classification as an independent contractor means that they are not eligible for protection under protective laws, including employment discrimination and anti-retaliation laws, occupational safety and health laws, living wage and prevailing wage laws, and wage and hour laws;

5. Notification that, if the independent contractor hires employees to perform work, the independent

64 contractor or exempt person is responsible as an employer for all tax, unemployment insurance, workers'
65 compensation insurance, and labor and employment law obligations on behalf of those employees;

66 6. Notification that the independent contractor is obligated to provide a written notice containing the
67 information in this subsection to independent contractors or exempt persons with whom they contract;

68 7. Notification that the individual is required to provide copies of any licenses or registrations issued to
69 the individual related to the work to be performed;

70 8. The name, address, telephone number, and email address of the Commissioner of Labor and Industry if
71 the individual has any questions; and

72 9. A detailed statement of the work to be performed by the independent contractor or exempt person or the
73 appropriate provisions of the contract between the parties, which shall be attached to the notice.

74 E. The provisions of this section shall not apply to transportation-related construction projects.