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SENATE BILL NO. 518  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Rouse)

*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; definitions; penalty.*

**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:

*"Area" means each planning district, as defined in § 15.2-4202, for which the Commissioner collects wage and benefit information to determine a prevailing wage rate.*

*"Commissioner" means the Commissioner of Labor and Industry.*

*"Department" means the Department of Labor and Industry.*

*"Financial assistance" means grants, loans, loan guarantees, expenditures, investments, tax abatements, exemptions, incentives, rebates, or any other financial support provided, authorized, facilitated, or administered by a state agency or locality.*

*"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 applicable surveys conducted every two years, provided that (i) in no event shall the prevailing wage rate determinations made be lower than the prevailing wage rate 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, and (ii) the method for determining the prevailing wage is consistent with the definition of "prevailing wage" in 29 C.F.R. § 1.2 as of January 20, 2026.*

*"Public institution of higher education" means the same as that term is defined in § 23.1-100.*

*"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, subsequently owned, used, or leased, or*

32 *subsequently leased by a state agency or locality, including or a state agency or locality has provided*  
33 *financial assistance, and includes transportation infrastructure projects and projects at public institutions of*  
34 *higher education. "Public works" does not include work performed at a non-governmental property or*  
35 *facility used to provide broadband or other telecommunications services, regardless of whether such*  
36 *property or facility was installed under a federal, state, or local grant or other infrastructure expansion*  
37 *program, and regardless of whether such property or facility is held in trust or is otherwise subject to a*  
38 *partial federal or state interest for any period of time. A state agency or locality shall be considered to have*  
39 *provided financial assistance if (i) at least 55 percent of the facility or property is leased by a state agency or*  
40 *locality or is subject to an agreement to be subsequently leased by a state agency or locality; and (ii) the*  
41 *portion of the facility or property that is leased or subject to an agreement to be subsequently leased by the*  
42 *state agency or locality measures more than 10,000 square feet.*

43 "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit  
44 of state government, *including any public institution of higher education.* "State agency" does not include any  
45 county, city, or town.

46 "Type of construction" or "construction type" means the general category of construction as established  
47 by the Commissioner for the publication of general wage determinations and includes building, residential,  
48 heavy, and highway.

49 B. Notwithstanding any other provision of this chapter, each state agency or locality, when procuring  
50 services or letting contracts for public works paid for in whole or in part by state funds, or when overseeing  
51 or administering such contracts for public works, shall ensure that its bid specifications or other public  
52 contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay  
53 wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or  
54 otherwise hired to perform services in connection with the public contract for public works at the prevailing  
55 wage rate. Each public contract for public works by a state agency shall contain a provision requiring that the  
56 remuneration to any individual performing the work of any mechanic, laborer, or worker on the work  
57 contracted to be done under the public contract shall be at a rate ~~equal to~~ *no less than* the prevailing wage  
58 rate.

59 C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring  
60 that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when  
61 overseeing or administering a public contract, its bid specifications, project agreements, or other public  
62 contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay

63 wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or  
64 otherwise hired to perform services in connection with the public contract at *a rate no less than* the prevailing  
65 wage rate. Each public contract of a locality that has adopted an ordinance described in this section shall  
66 contain a provision requiring that the remuneration to any individual performing the work of any mechanic,  
67 laborer, or worker on the work contracted to be done under the public contract shall be at a rate ~~equal to~~ *no*  
68 *less than* the prevailing wage rate.

69 D. Any contractor or subcontractor *subject to the provisions of this section* who employs any mechanic,  
70 laborer, or worker to perform work contracted to be done under the public contract for public works for or on  
71 behalf of a state agency or ~~for or on behalf of a locality that has adopted an ordinance described in subsection~~  
72 ~~C or~~ at a rate that is less than the prevailing wage rate ~~(i)~~ shall be (i) liable to such individuals for the payment  
73 of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due;  
74 (ii) *liable to the Commissioner for liquidated damages of \$500 for each individual per day that the individual*  
75 *is paid less than the prevailing wage rate for the work performed by such individual;* and ~~(ii) shall be~~ (iii)  
76 disqualified from bidding on public contracts with any public body *for three years and* until the contractor or  
77 subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A  
78 contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

79 E. Any interested party, which shall include a bidder, offeror, contractor, ~~or~~ subcontractor, *or labor*  
80 *organization* shall have standing to challenge any bid specification, project agreement, or other public  
81 contract for public works that violates the provisions of this section. Such interested party shall be entitled to  
82 injunctive relief to prevent any violation of this section. Any interested party bringing a successful action  
83 under this section shall be entitled to recover reasonable attorney fees and costs from the responsible party.

84 F. A representative of a state agency or a representative of a locality that has adopted an ordinance  
85 described in subsection C may contact the Commissioner ~~of Labor and Industry~~, at least 10 but not more than  
86 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to  
87 ascertain the proper prevailing wage rate for work to be performed under the public contract.

88 G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom  
89 such contract is awarded shall certify, under oath, to the Commissioner ~~of Labor and Industry~~ the pay scale  
90 for each craft or trade employed on the project to be used by such contractor and any of the contractor's  
91 subcontractors for work to be performed under such public contract. This certification shall, for each craft or  
92 trade employed on the project, specify the total hourly amount to be paid to employees, including wages and  
93 applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit,

94 and list the names and addresses of any third party fund, plan or program to which benefit payments will be  
95 made on behalf of employees.

96 H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records  
97 relating to the wages paid to and hours worked by each individual performing the work of any mechanic,  
98 laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual  
99 performing the work of any mechanic, laborer, or worker on the public works project is employed during  
100 each work day and week. The employer shall preserve these records for a minimum of six years and make  
101 such records available to the Department of ~~Labor and Industry~~ within 10 days of a request and shall certify  
102 that records reflect the actual hours worked and the amount paid to its workers for whatever time period they  
103 request. *The employer shall submit such records within 10 days after the payment of wages to the Department*  
104 *on certified payroll forms prescribed by the Department. Any contractor or subcontractor subject to the*  
105 *provisions of this section and any officer, employee, or agent of the contractor or subcontractor whose duty*  
106 *as the officer, employee, or agent is to file the certified payroll, who the Commissioner finds has failed to file*  
107 *the certified payroll for any public works project as required under this section, shall be subject to a civil*  
108 *penalty to be assessed by the Commissioner for deposit in the general fund. Such civil penalty shall be no*  
109 *more than \$500 for a first violation of this section and up to \$1,000 for a second or subsequent violation*  
110 *within five years of the first violation. A second or subsequent violation that occurs more than five years after*  
111 *the first violation shall be considered a first violation. Each month in which a failure to file the certified*  
112 *payroll as required under this subsection occurs shall constitute a separate violation.*

113 I. *No employer subject to the provisions of this section shall hire a subcontractor to perform work under a*  
114 *public contract for public works if such subcontractor is not registered with the Commonwealth's statewide*  
115 *electronic procurement system.*

116 J. Contractors and subcontractors performing public works for a state agency or for a locality that has  
117 adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft and  
118 classification involved, as determined by the Commissioner of ~~Labor and Industry~~, including the effective  
119 date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such  
120 places as are used by the contractor or subcontractors to pay workers their wages. Within 10 days of such  
121 posting, a contractor or subcontractor shall certify to the Commissioner of ~~Labor and Industry~~ its compliance  
122 with this subsection.

123 ~~J.K.~~ *Any fines or penalties levied by the Commissioner under this section shall be deposited into the*  
124 *General Fund.*

125 L. The provisions of this section shall not apply to any public contract for public works of \$250,000 or  
126 less.

127 **§ 40.1-6. Powers and duties of Commissioner.**

128 The Commissioner shall:

129 1. Have general supervision and control of the Department;

130 2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to  
131 employers or business establishments before any court of competent jurisdiction;

132 3. Make such rules and regulations as may be necessary for the enforcement of this title and procedural  
133 rules as are required to comply with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596).

134 All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2;

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

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

140 6. Determine the prevailing wage required to be paid under a public contract for public works as provided  
141 in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any  
142 determination of the prevailing wage rate made by the Commissioner shall be based on ~~applicable prevailing~~  
143 ~~wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act,~~  
144 ~~40 U.S.C. § 276 et seq., as amended;~~ *a survey of wages and benefits paid in each area, as defined in §*  
145 *2.2-4321.3, conducted once every two years. Prevailing wage rates shall be determined for each construction*  
146 *type, as defined in § 2.2-4321.3, pursuant to this subdivision. For the purposes of this subdivision, "area" and*  
147 *"construction type" have the same meanings as provided in § 2.2-4321.3.*

148 *a. For the purposes of making wage determinations, the Commissioner shall conduct a continuing*  
149 *program to obtain and compile wage rate information. In determining prevailing wage rates at the time of*  
150 *issuing a wage determination, the Commissioner shall use the same definition of "prevailing wage" as*  
151 *provided in 29 C.F.R. § 1.2 as of January 20, 2026, and the requirements of this subdivision.*

152 *b. The Commissioner shall encourage voluntary submission of wage rate data by contractors, contractors'*  
153 *associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to*  
154 *laborers and mechanics for various construction types in the area. The Commissioner may also obtain data*  
155 *from state agencies on wage rates paid for construction projects under their jurisdiction, and such data shall*

156 *reflect the wage rates paid to employees for a particular construction type in the area, the construction types*  
157 *for which such rate or rates shall be paid, and whether such wage rates were paid pursuant to the provisions*  
158 *of § 2.2-4321.3.*

159 *c. The following information may be considered by the Commissioner in determining a prevailing wage*  
160 *rate: (i) statements showing wage rates paid on projects, including the names and addresses of contractors*  
161 *and subcontractors; (ii) statements showing the locations, approximate costs, dates of construction, and*  
162 *construction types and projects; (iii) statements showing the number of workers employed in each*  
163 *classification on each project and the respective wage rates paid to such workers; (iv) signed collective*  
164 *bargaining agreements, for which the Commissioner may request that the parties to such agreements submit*  
165 *statements certifying their scope and application; (v) prevailing wage rates determined pursuant to the*  
166 *Virginia Public Procurement Act (§ 2.2-4300 et seq.); and (vi) relevant information obtained from the*  
167 *Department of Transportation.*

168 *d. The Commissioner may obtain or supplement information pursuant to this section on a voluntary basis*  
169 *by any means deemed necessary, including through holding hearings.*

170 *e. In determining the prevailing wage rate, the Commissioner may treat variable wage rates paid by a*  
171 *contractor or subcontractor to workers within the same wage classification as the same wage rate if the*  
172 *variable wage rates are functionally equivalent, as explained in one or more collective bargaining*  
173 *agreements or written policies otherwise maintained by a contractor or subcontractor.*

174 7. Have power to require that accident, injury, and occupational illness records and reports be kept at any  
175 place of employment and that such records and reports be made available to the Commissioner or his duly  
176 authorized representatives upon request, and to require employers to develop, maintain, and make available  
177 such other records and information as are deemed necessary for the proper enforcement of this title;

178 8. Have power, upon presenting appropriate credentials to the owner, operator, or agent in charge:

179 a. To enter without delay and at reasonable times any business establishment, construction site, or other  
180 area, workplace, or environment where work is performed by an employee of any employer in this  
181 Commonwealth; and

182 b. To inspect and investigate, during regular working hours and at other reasonable times and within  
183 reasonable limits and in a reasonable manner, without prior notice unless such notice is authorized by the  
184 Commissioner or his representative, any such business establishment or place of employment and all  
185 pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to

186 question privately any such employer, officer, owner, operator, agent, or employee. If such entry or  
187 inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have power to seek  
188 from a court having equity jurisdiction an order compelling such entry or inspection;

189 9. Make rules and regulations governing the granting of temporary or permanent variances from all  
190 standards promulgated by the Board under this title. Any interested or affected party may appeal to the Board,  
191 the Commissioner's determination to grant or deny such a variance. The Board may, as it sees fit, adopt,  
192 modify, or reject the determination of the Commissioner;

193 10. Have authority to issue orders to protect the confidentiality of all information reported to or otherwise  
194 obtained by the Commissioner, the Board, or the agents or employees of either that contains or might reveal a  
195 trade secret. Such information shall be confidential and shall be limited to those persons who need such  
196 information for purposes of enforcement of this title. Violations of such orders shall be punishable as civil  
197 contempt upon application to the Circuit Court of the City of Richmond. It shall be the duty of each employer  
198 to notify the Commissioner or his representatives of the existence of trade secrets where he desires the  
199 protection provided herein; and

200 11. Serve as executive officer of the Virginia Safety and Health Codes Board and of the Apprenticeship  
201 Council and see that the rules, regulations, and policies that they promulgate are carried out.

202 **2. That the Commissioner of Labor and Industry (the Commissioner) shall promulgate regulations as**  
203 **necessary to implement the provisions of § 2.2-4321.3 of the Code of Virginia, as amended by this act,**  
204 **including regulations establishing the content, timing, and documentation of orientations required by**  
205 **subsection J of § 2.2-4321.3 of the Code of Virginia, as amended by this act, and any other regulations**  
206 **the Commissioner deems necessary. The Commissioner shall promulgate such regulations to be**  
207 **effective within 280 days after the effective date of this act.**