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SENATE BILL NO. 324

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 3, 2026)

(Patron Prior to Substitute—Senators McPike and Carroll Foy [SB 366])

A BILL to amend and reenact § 2.2-4343 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 43 of Title 2.2 a section numbered 2.2-4302.3, relating to Virginia Public Procurement Act; additional public works contract requirements; report.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4343 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 43 of Title 2.2 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.

"Construction contract" means any public contract for construction where such contract is valued at an amount greater than \$5 million.

"Employee" means a worker on a construction contract 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 to perform the work under a construction contract. "Labor hours" includes hours performed by employees employed by the contractor and all subcontractors working under the construction contract. "Labor hours" does not include hours worked by superintendents, management personnel, or owners.

B. For any construction contract, 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;

2. Demonstration of no more than one administrative determination, arbitral award, civil judgment, or settlement agreement of more than \$25,000 in the past three years involving the contractor or subcontractor for violations of the National Labor Relations Act, 29 U.S.C. § 151 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; 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; and

3. Demonstration in writing that at least one apprentice has been hired and internal policies have been created that track and increase apprentice labor hours.

C. No contractor, subcontractor, or party on a construction contract shall provide remuneration to more than one independent contractor for the performance of construction work on such construction contract 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 construction contract. 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 construction contract with its own employees and that otherwise complies with the provisions of this section.

D. If a contractor, subcontractor, or any party on a construction contract 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;

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

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

65 5. *Notification that, if the independent contractor hires employees to perform work, the independent
66 contractor or exempt person is responsible as an employer for all tax, unemployment insurance, workers'
67 compensation insurance, and labor and employment law obligations on behalf of those employees;*

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

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

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

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

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

77 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

78 A. *The provisions of this chapter shall not apply to:*

79 1. *The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
80 (§ 62.1-128 et seq.) of Title 62.1, provided that the Authority implements, by policy or regulation adopted by
81 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods
82 and services and in the administration of its capital outlay program. This exemption shall be applicable only
83 so long as such policies and procedures meeting the requirements remain in effect.*

84 2. *The Virginia Retirement System for selection of services related to the management, purchase or sale of
85 authorized investments, actuarial services, and disability determination services. Selection of these services
86 shall be governed by the standard set forth in § 51.1-124.30.*

87 3. *The State Treasurer in the selection of investment management services related to the external
88 management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to
89 competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the
90 Department of General Services.*

91 4. *The Department of Social Services or local departments of social services for the acquisition of motor
92 vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.*

93 5. *The College of William and Mary in Virginia, Virginia Commonwealth University, the University of
94 Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the
95 management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund
96 reserves and balances, or local funds of or held by the respective public institution of higher education
97 pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be
98 governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by
99 §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.*

100 6. *The Board of the Commonwealth Savers Plan for the selection of services related to the operation and
101 administration of the Plan, including, but not limited to, contracts or agreements for the management,
102 purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However,
103 such selection shall be governed by the standard set forth in § 23.1-706.*

104 7. *Public institutions of higher education for the purchase of items for resale at retail bookstores and
105 similar retail outlets operated by such institutions. However, such purchase procedures shall provide for
106 competition where practicable.*

107 8. *The purchase of goods and services by agencies of the legislative branch that may be specifically
108 exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the
109 Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption
110 shall be in writing and kept on file with the agency's disbursement records.*

111 9. *Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305,
112 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 and
113 Chapter 43.1 (§ 2.2-4378 et seq.).*

114 10. *Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative
115 policies and procedures which are (i) based on competitive principles and (ii) generally applicable to
116 procurement of goods and services by such governing body and its agencies, except as stipulated in
117 subdivision 12.*

118 This exemption shall be applicable only so long as such policies and procedures, or other policies and
119 procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such
120 policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the
121 opportunity to share in any cost savings realized by the locality when project costs are reduced by such

122 contractor, without affecting project quality, during construction of the project. The fee, if any, charged by
 123 the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall
 124 not be calculated as part of any cost savings.

125 11. Any school division whose school board has adopted, by policy or regulation, alternative policies and
 126 procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods
 127 and services by the school board, except as stipulated in subdivision 12.

128 This exemption shall be applicable only so long as such policies and procedures, or other policies or
 129 procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision
 130 shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local
 131 governing body.

132 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, § 2.2-4302.3, the provisions of
 133 subsections B, C, and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333
 134 through 2.2-4338, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, Chapter 43.1 (§ 2.2-4378 et seq.),
 135 and § 58.1-1902 shall apply to all counties, cities, and school divisions and to all towns having a population
 136 greater than 3,500 in the Commonwealth.

137 The method for procurement of professional services through competitive negotiation set forth in
 138 §§ 2.2-4302.2, 2.2-4303.1, and 2.2-4303.2 shall also apply to all counties, cities, and school divisions, and to
 139 all towns having a population greater than 3,500, where the cost of the professional service is expected to
 140 exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project. A school board that
 141 makes purchases through its public school foundation or purchases educational technology through its
 142 educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt
 143 from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the
 144 provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

145 13. A public body that is also a utility operator may purchase services through or participate in contracts
 146 awarded by one or more utility operators that are not public bodies for utility marking services as required by
 147 the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this
 148 subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made
 149 in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable
 150 or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

151 14. Procurement of any construction or planning and design services for construction by a Virginia
 152 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or
 153 construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or
 154 organization is obligated to conform to procurement procedures that are established by federal statutes or
 155 regulations, whether those federal procedures are in conformance with the provisions of this chapter.

156 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting
 157 the Executive Mansion.

158 16. The Department of Corrections in the selection of pre-release and post-incarceration services and the
 159 Department of Juvenile Justice in the selection of pre-release and post-commitment services.

160 17. The University of Virginia Medical Center to the extent provided by subdivision A 3 of § 23.1-2213.

161 18. The purchase of goods and services by a local governing body or any authority, board, department,
 162 instrumentality, institution, agency or other unit of state government when such purchases are made under a
 163 remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative
 164 officer of a county, city or town pursuant to § 15.2-965.1.

165 19. The contract by community services boards or behavioral health authorities with an administrator or
 166 management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

167 20. The purchase of Virginia-grown food products for use by a public body where the annual cost of the
 168 product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining
 169 written informal solicitation of a minimum of three bidders or offerors if practicable and (ii) including a
 170 written statement regarding the basis for awarding the contract.

171 21. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for
 172 use in commodities and services furnished to the federal government in connection with its operation as an
 173 AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act, 41 U.S.C.
 174 §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are
 175 used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding
 176 contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be required to purchase such
 177 components, materials, supplies, services, or commodities.

178 22. The purchase of personal protective equipment for private, nongovernmental entities by the Governor
 179 pursuant to subdivision (11) of § 44-146.17 during a disaster caused by a communicable disease of public
 180 health threat for which a state of emergency has been declared. However, such purchase shall provide for
 181 competition where practicable and include a written statement regarding the basis for awarding any contract.
 182 As used in this subdivision, "personal protective equipment" means equipment or supplies worn or employed
 183 to minimize exposure to hazards that cause serious workplace injuries and illnesses and may include items

184 such as gloves, safety glasses and shoes, earplugs or earmuffs, hard hats, respirators, coveralls, vests, full
185 body suits, hand sanitizer, plastic shields, or testing kits for the communicable disease of public health threat.

186 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the
187 receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations
188 not in conformance with the provisions of this chapter, a public body may comply with such federal
189 requirements, notwithstanding the provisions of this chapter, only upon the written determination of the
190 Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that
191 acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such
192 determination shall state the specific provision of this chapter in conflict with the conditions of the grant or
193 contract.

194 **2. That the Department of General Services (the Department) Public Body Procurement Workgroup**
195 **(the Workgroup) shall evaluate the appropriateness and financial feasibility of requiring all public**
196 **bodies of the Commonwealth to (i) hire apprentices and (ii) require contractors and subcontractors of**
197 **public bodies to hire apprentices beyond the requirements specified in subdivision B 3 of § 2.2-4302.3**
198 **of the Code of Virginia, as created by this act. In conducting its evaluation, the Workgroup shall**
199 **consult with relevant stakeholders and review any other information it determines relevant to its**
200 **evaluation. The Department shall report the Workgroup's findings and any recommendations to the**
201 **Chairs of the House Committee on General Laws and the Senate Committee on General Laws and**
202 **Technology on or before November 1, 2026.**