

## HOUSE BILL NO. 569

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Feggans)

*A BILL to amend and reenact §§ 2.2-4321.3, 23.1-1003, 23.1-1006, and 40.1-6 of the Code of Virginia, relating to prevailing wage rate for public works contracts; definitions; civil penalty.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-4321.3, 23.1-1003, 23.1-1006, 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*

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

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

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

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

60 C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring  
61 that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when  
62 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 a rate no less than 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 no less than the prevailing wage rate.

D. Any contractor or subcontractor *subject to the provisions of this section* 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 ~~(+)~~ shall be (i) 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) *liable to the Commissioner for liquidated damages of \$500 for each individual per day that the individual is paid less than the prevailing wage rate for the work performed by such individual*; and ~~(ii) shall be~~ (iii) disqualified from bidding on public contracts with any public body *for three years and* until the contractor or subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

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

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

G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and

94 applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit,  
95 and list the names and addresses of any third party fund, plan or program to which benefit payments will be  
96 made on behalf of employees.

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

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

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

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

general fund.

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

**§ 23.1-1003. Memoranda of understanding.**

A. Each public institution of higher education that meets the state goals set forth in subsection A of § 23.1-1002 may enter into a memorandum of understanding with the appropriate Cabinet Secretary, as designated by the Governor, for restructured operational authority in any operational area adopted by the General Assembly in accordance with law, provided that the authority granted in the memorandum of understanding is consistent with that institution's ability to manage its operations in the particular area and:

1. The institution is certified by the Council pursuant to § 23.1-206 or 23.1-310 for the most recent year that the Council has completed certification;

2. An absolute two-thirds or more of the institution's governing board has voted in the affirmative for a resolution expressing the sense of the board that the institution is qualified to be, and should be, governed by memoranda of understanding;

3. The institution adopts at least one new measure for each area of operational authority for which a memorandum of understanding is requested. Each measure shall be developed in consultation with (i) the appropriate Cabinet Secretary or (ii) the Secretary of Education and the Council if the measure is education-related. Any education-related measure is subject to the approval of the Council; ~~and~~

4. The institution posts on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website; *and*

5. *The institution expressly agrees to comply with the public works contract requirements set forth in § 2.2-4321.3.*

B. Within 15 days of receipt of a request from a public institution of higher education to enter into a memorandum of understanding, the Cabinet Secretary receiving the request shall notify the ~~Chairmen~~ *Chairs* of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations of the request. The Cabinet Secretary shall determine within 90 calendar days whether to enter into the requested memorandum of understanding or a modified memorandum of understanding.

C. If the Cabinet Secretary enters into a memorandum of understanding with the public institution of higher education, he shall forward a copy of the governing board's resolution and a copy of the memorandum of understanding to the ~~Chairmen~~ *Chairs* of the House Committee on Appropriations and the Senate

156 Committee on Finance and Appropriations. Each initial memorandum of understanding shall remain in effect  
157 for three years. Subsequent memoranda of understanding shall remain in effect for five years.

158 D. If the Cabinet Secretary does not enter into a memorandum of understanding with the public institution  
159 of higher education, he shall notify the ~~Chairmen~~ Chairs of the House Committee on Appropriations and the  
160 Senate Committee on Finance and Appropriations of the reasons for denying the institution's request. If an  
161 institution's request is denied, nothing in this section shall prohibit a public institution of higher education  
162 from submitting a future request to enter into a memorandum of understanding pursuant to this section.

163 **§ 23.1-1006. Management agreement; contents and scope.**

164 A. Each covered institution that complies with the requirements of this article shall have the powers set  
165 forth in this article that are expressly included in the management agreement.

166 B. Each management agreement shall include:

167 1. A copy of the governing board's resolution in support of a request for restructured operational authority;

168 2. The institution's express agreement to reimburse the Commonwealth for any additional costs that the  
169 Commonwealth incurs to provide health or other group insurance benefits to employees and undertake any  
170 risk management program that are attributable to the institution's exercise of restructured operational  
171 authority;

172 3. The institution's undergraduate Virginia student enrollment, financial aid requirements and capabilities,  
173 and tuition policy for undergraduate Virginia students; ~~and~~

174 4. A statement of the Governor's power to void the management agreement pursuant to subsection E of  
175 § 23.1-1007; *and*

176 5. *The institution's express agreement to comply with the public works contract requirements set forth in*  
177 *§ 2.2-4321.3.*

178 C. There is a presumption that restructured operational authority is not included in the management  
179 agreement, and such authority shall only be granted to a covered institution if it is expressly included in the  
180 management agreement. The only implied authority that is granted to a covered institution is that which is  
181 necessary to carry out the express grant of restructured operational authority. Each covered institution shall  
182 be governed and administered in the manner provided in (i) this article but subject to the expressed terms of  
183 the management agreement, (ii) the general appropriation act, and (iii) the institution's enabling statutes.

184 D. Except as specifically made inapplicable under this article or the express terms of a management  
185 agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision,

regulation, and control of public institutions of higher education are applicable to covered institutions as provided by the express terms of the management agreement.

E. In the event of a conflict between any provision of Title 2.2 and any provision of the management agreement, the provisions of the management agreement control. In the event of a conflict between any provision of this article and an institution's enabling statutes, the enabling statutes control.

F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the governing board and the covered employees of a covered institution.

G. A covered institution, its officers, directors, employees, and agents, and the members of its governing board are entitled to the same sovereign immunity to which they would be entitled if the institution were not governed by this article.

H. The Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries remain applicable to covered institutions.

I. A management agreement with a public institution of higher education shall not grant restructured operational authority to the Virginia Cooperative Extension Service and Agricultural Experiment Station Division, the University of Virginia's College at Wise, the Virginia Institute of Marine Science, or an affiliated entity of the institution unless the intent to grant such authority and the degree to which such authority is granted is expressly included in the management agreement.

J. For purposes of §§ 23.1-101, 23.1-102, 23.1-103, 23.1-104, and 23.1-107, Chapter 2 (§ 23.1-200 et seq.), §§ 23.1-306, 23.1-402, 23.1-403, and 23.1-404, Chapter 5 (§ 23.1-500 et seq.), Chapter 6 (§ 23.1-600 et seq.), Chapter 7 (§ 23.1-700 et seq.), §§ 23.1-800, 23.1-801, 23.1-901, and 23.1-1001, Chapter 11 (§ 23.1-1100 et seq.), Chapter 12 (§ 23.1-1200 et seq.), subsections G, H, and I of § 23.1-1300, § 23.1-1302, and subdivision B of § 23.1-1303, each covered institution shall remain a public institution of higher education following its conversion to a covered institution governed by this article and shall retain the authority granted and any obligations required by such provisions.

K. State government-owned or operated and state-owned teaching hospitals that are a part of a covered institution as of the effective date of the covered institution's initial management agreement shall continue to be characterized as state government-owned or operated and state-owned teaching hospitals for purposes of payments under the state plan for medical assistance services adopted pursuant to § 32.1-325, provided that the covered institution commits to serve indigent and medically indigent patients. If such covered institution

216 commits to serve indigent and medically indigent patients, the Commonwealth, through the Department of  
217 Medical Assistance Services, shall, subject to the appropriation in the current general appropriation act,  
218 continue to reimburse the full cost of the provision of care, treatment, health-related services, and educational  
219 services to indigent and medically indigent patients and continue to treat hospitals that were part of a covered  
220 institution and that were Type One Hospitals prior to the effective date of the covered institution's initial  
221 management agreement as Type One Hospitals for purposes of such reimbursement.

222 L. Consistent with the terms of the management agreement, the governing board of each covered  
223 institution shall assume full responsibility for management of the institution, subject to the requirements and  
224 conditions set forth in this article and the management agreement, and shall be fully accountable for meeting  
225 the requirements of §§ 23.1-206, 23.1-306, and 23.1-310 and such other provisions as may be set forth in the  
226 management agreement.

227 **§ 40.1-6. Powers and duties of Commissioner.**

228 The Commissioner shall:

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

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

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

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

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

240 6. Determine the prevailing wage required to be paid under a public contract for public works as provided  
241 in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any  
242 determination of the prevailing wage rate made by the Commissioner shall be based on ~~applicable prevailing~~  
243 ~~wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act,~~  
244 ~~40 U.S.C. § 276 et seq., as amended;~~ *a survey of wages and benefits paid in each area, as defined in §*  
245 *2.2-4321.3, conducted once every two years. Prevailing wage rates shall be determined for each construction*  
246 *type, as defined in § 2.2-4321.3, pursuant to this subdivision. For the purposes of this subdivision, "area" and*



"construction type" have the same meanings as provided in § 2.2-4321.3.

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

b. The Commissioner shall encourage voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to laborers and mechanics for various construction types in the area. The Commissioner may also obtain data from state agencies on wage rates paid for construction projects under their jurisdiction, and such data shall reflect the wage rates paid to employees for a particular construction type in the area, the construction types for which such rate or rates shall be paid, and whether such wage rates were paid pursuant to the provisions of § 2.2-4321.3.

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

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

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

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

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

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

b. To inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, without prior notice unless such notice is authorized by the Commissioner or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have power to seek from a court having equity jurisdiction an order compelling such entry or inspection;

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

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

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

**2. That the Commissioner of Labor and Industry (the Commissioner) shall promulgate regulations as necessary to implement the provisions of § 2.2-4321.3 of the Code of Virginia, as amended by this act, including regulations establishing the content, timing, and documentation of orientations required by subsection J of § 2.2-4321.3 of the Code of Virginia, as amended by this act, and any other regulations the Commissioner deems necessary. The Commissioner shall promulgate such regulations to be**

**307 effective within 280 days after the effective date of this act.**