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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.

"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, used, or leased by a state agency or locality, including and includes transportation infrastructure projects and projects at public institutions of higher education. "Public works" does not include work performed at a non-governmental property or facility used to provide broadband or other telecommunications services, regardless of whether such property or facility was installed under a federal, state, or local grant or other infrastructure expansion program, and regardless of whether such property or facility is held in trust or is otherwise subject to a partial federal or state interest for any period of time.

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

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

B. Notwithstanding any other provision of this chapter, each state agency or 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 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.

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 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,

60 laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to no
61 less than the prevailing wage rate.

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

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

77 F. A representative of a state agency or a representative of a locality that has adopted an ordinance
78 described in subsection C may contact the Commissioner ~~of Labor and Industry~~, at least 10 but not more than
79 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to
80 ascertain the proper prevailing wage rate for work to be performed under the public contract.

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

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

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

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

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

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

120 **§ 23.1-1003. Memoranda of understanding.**

121 A. Each public institution of higher education that meets the state goals set forth in subsection A of

122 § 23.1-1002 may enter into a memorandum of understanding with the appropriate Cabinet Secretary, as
 123 designated by the Governor, for restructured operational authority in any operational area adopted by the
 124 General Assembly in accordance with law, provided that the authority granted in the memorandum of
 125 understanding is consistent with that institution's ability to manage its operations in the particular area and:

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

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

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

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

138 5. *The institution expressly agrees to comply with the public works contract requirements set forth in*
 139 *§ 2.2-4321.3.*

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

145 C. If the Cabinet Secretary enters into a memorandum of understanding with the public institution of
 146 higher education, he shall forward a copy of the governing board's resolution and a copy of the memorandum
 147 of understanding to the ~~Chairmen~~ *Chairs* of the House Committee on Appropriations and the Senate
 148 Committee on Finance and Appropriations. Each initial memorandum of understanding shall remain in effect
 149 for three years. Subsequent memoranda of understanding shall remain in effect for five years.

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

155 **§ 23.1-1006. Management agreement; contents and scope.**

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

158 B. Each management agreement shall include:

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

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

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

166 4. A statement of the Governor's power to void the management agreement pursuant to subsection E of
 167 § 23.1-1007; *and*

168 5. *The institution's express agreement to comply with the public works contract requirements set forth in*
 169 *§ 2.2-4321.3.*

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

176 D. Except as specifically made inapplicable under this article or the express terms of a management
 177 agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision,
 178 regulation, and control of public institutions of higher education are applicable to covered institutions as
 179 provided by the express terms of the management agreement.

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

183 F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) that are

184 applicable to officers and employees of a state governmental agency shall continue to apply to the members
185 of the governing board and the covered employees of a covered institution.

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

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

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

196 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
197 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
198 seq.), Chapter 7 (§ 23.1-700 et seq.), §§ 23.1-800, 23.1-801, 23.1-901, and 23.1-1001, Chapter 11
199 (§ 23.1-1100 et seq.), Chapter 12 (§ 23.1-1200 et seq.), subsections G, H, and I of § 23.1-1300, § 23.1-1302,
200 and subdivision B of § 23.1-1303, each covered institution shall remain a public institution of higher
201 education following its conversion to a covered institution governed by this article and shall retain the
202 authority granted and any obligations required by such provisions.

203 K. State government-owned or operated and state-owned teaching hospitals that are a part of a covered
204 institution as of the effective date of the covered institution's initial management agreement shall continue to
205 be characterized as state government-owned or operated and state-owned teaching hospitals for purposes of
206 payments under the state plan for medical assistance services adopted pursuant to § 32.1-325, provided that
207 the covered institution commits to serve indigent and medically indigent patients. If such covered institution
208 commits to serve indigent and medically indigent patients, the Commonwealth, through the Department of
209 Medical Assistance Services, shall, subject to the appropriation in the current general appropriation act,
210 continue to reimburse the full cost of the provision of care, treatment, health-related services, and educational
211 services to indigent and medically indigent patients and continue to treat hospitals that were part of a covered
212 institution and that were Type One Hospitals prior to the effective date of the covered institution's initial
213 management agreement as Type One Hospitals for purposes of such reimbursement.

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

219 **§ 40.1-6. Powers and duties of Commissioner.**

220 The Commissioner shall:

- 221 1. Have general supervision and control of the Department;
- 222 2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to
223 employers or business establishments before any court of competent jurisdiction;
- 224 3. Make such rules and regulations as may be necessary for the enforcement of this title and procedural
225 rules as are required to comply with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596).
226 All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2;
- 227 4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses, and
228 administer oaths and to file a written or printed list of relevant interrogatories and require full and complete
229 answers to the same to be returned under oath within 30 days of the receipt of such list of questions;
- 230 5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his work,
231 with the duties of such representatives to be prescribed by the Commissioner;
- 232 6. Determine the prevailing wage required to be paid under a public contract for public works as provided
233 in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any
234 determination of the prevailing wage rate made by the Commissioner shall be based on ~~applicable prevailing~~
235 ~~wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act,~~
236 ~~40 U.S.C. § 276 et seq., as amended; a survey of wages and benefits paid in each area, as defined in §~~
237 ~~2.2-4321.3, conducted once every two years. Prevailing wage rates shall be determined for each construction~~
238 ~~type, as defined in § 2.2-4321.3, pursuant to this subdivision. For the purposes of this subdivision, "area" and~~
239 ~~"construction type" have the same meanings as provided in § 2.2-4321.3.~~

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

244 *b. The Commissioner shall encourage voluntary submission of wage rate data by contractors, contractors'*
245 *associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to*

246 laborers and mechanics for various construction types in the area. The Commissioner may also obtain data
 247 from state agencies on wage rates paid for construction projects under their jurisdiction, and such data shall
 248 reflect the wage rates paid to employees for a particular construction type in the area, the construction types
 249 for which such rate or rates shall be paid, and whether such wage rates were paid pursuant to the provisions
 250 of § 2.2-4321.3.

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

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

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

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

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

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

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

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

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

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

294 **2. That the Commissioner of Labor and Industry (the Commissioner) shall promulgate regulations as**
 295 **necessary to implement the provisions of § 2.2-4321.3 of the Code of Virginia, as amended by this act.**
 296 **The Commissioner shall promulgate such regulations to be effective within 280 days after the effective**
 297 **date of this act.**