

26107921D

HOUSE BILL NO. 1046

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on _____)

(Patron Prior to Substitute—Delegates Carr and Krizek [HB 850])

A BILL to amend and reenact § 23.1-1003 of the Code of Virginia and to amend the Code of Virginia by adding 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 23.1-1003 and 23.1-1006 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 initiated after July 1, 2027, 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 by a construction contract, and includes hours performed by employees employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by superintendents, management personnel, or owners.

B. For any 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.

C. Any contractor, subcontractor, or party to a construction contract shall collect information on independent contractors hired, to include the independent contractor's trade and at least one point of contact. The prime contractor shall collect all such information on behalf of remunerating parties on the construction contract and submit it as written notification to the project owner. The project owner shall, in turn, remit this information to the Department of Labor and Industry and to the Department of Taxation within 30 days of receipt. In addition, any remunerating party on a construction contract shall:

1. Demonstrate that they made a good faith effort to directly hire employees to perform the work sought;

2. Demonstrate 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. Provide adequate notice to all independent contractors pursuant to subsection D.

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

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

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

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

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

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

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

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

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

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

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

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

F. For any construction contract, a public body shall require at least one apprentice has been hired on a project and internal policies have been created that track and increase apprentice labor hours.

§ 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. *For any memoranda of understanding entered into on or after July 1, 2027, the institution expressly agrees to comply with the public works contract requirements set forth in § 2.2-4302. Any memoranda of understanding already in effect on July 1, 2027 that is renegotiated or amended for any reason at a later date shall also be amended to include such express agreement.*

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

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

2. That the provisions of this act shall become effective on July 1, 2027.

3. That the Department of General Services shall, starting July 1, 2027, conduct a five-year evaluation of appropriateness and financial feasibility of requiring all public bodies of the Commonwealth to hire apprentices. It shall determine in its review the current utilization rate of apprentices on public works contracts and the skilled trades most likely to benefit from apprenticeship requirements on public works contracts. All public bodies of the Commonwealth shall assist with the evaluation as needed. The Department shall provide to the General Assembly an annual report on its evaluation efforts starting on November 1, 2028.

122 4. That the Department of General Services and the Department of Labor and Industry shall develop
123 guidelines for use by state agencies in collecting independent contractor information as directed by
124 subsection C of § 2.2-4302.3 of the Code of Virginia, as created by this act, and in transmitting such
125 information to the Department of Labor and Industry and Department of Taxation.