

VIRGINIA ACTS OF ASSEMBLY - 2026 RECONVENED SESSION

CHAPTER 1060

An Act to amend and reenact §§ 2.2-4321.3, 23.1-1009, and 40.1-6 of the Code of Virginia, relating to prevailing wage rate for public works contracts; definitions; civil penalty; work group; report.

[H 569]

Approved April 22, 2026

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.3, 23.1-1009, 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.

"Covered institution" means a public institution of higher education that has entered into a management agreement with the Commonwealth to be governed by the provisions of Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1.

"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 three 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 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, covered institution, or locality, including and includes transportation infrastructure projects. "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. "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, 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,

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. Notwithstanding any other provision of this chapter, each covered institution, when procuring services or construction contracts initiated after July 1, 2027, with a value greater than or equal to \$5 million for public works paid for in whole or in part by state general funds or by incurring state general fund debt, 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 covered institution 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 no less than the prevailing wage rate.

E. Notwithstanding any other provision of this chapter, public contracts entered into by the Department of Housing and Community Development (DHCD) or the Virginia Housing Development Authority (HDA) for the funding or financing of housing developments for low-income or moderate-income individuals under qualification criteria established by DHCD or HDA and public contracts entered into by HDA paid for in whole or in part by funds other than state appropriated funds shall not be subject to the requirements of this chapter.

F. 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 a covered institution 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; and (ii) ~~shall be~~ disqualified from bidding on public contracts with any public body 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. G.~~ *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. H.~~ *A representative of a state agency, a representative of a covered institution, 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. I.~~ *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 applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third party fund, plan or program to which benefit payments will be made on behalf of employees.*

~~H. J.~~ *Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the public works project is employed during each work day and week. The employer shall preserve these records for a minimum of six years and make such records available to the Department of Labor and Industry within 10 days of a request and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period they request.*

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

~~I. L.~~ *Contractors and subcontractors performing public works for a state agency, a covered institution, or ~~for~~ a locality that has adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such places as are used by the contractor or subcontractors to pay workers their wages. Within*

10 days of such posting, a contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance with this subsection.

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

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

§ 23.1-1009. Covered institutions; operational authority; public works and other projects.

A. Each covered institution may acquire, plan, design, construct, own, rent as landlord or tenant, operate, control, remove, renovate, enlarge, equip, and maintain, directly or through stock or nonstock corporations or other entities, any project. Such project may be owned or operated by the institution, other persons, or jointly by such institution and other persons and may be operated within or outside the Commonwealth as long as (i) the operations of such project are necessary or desirable to assist the institution in carrying out its public purposes within the Commonwealth and (ii) any private benefit resulting to any such other private persons from any such project is merely incidental to the public benefit of such project.

B. Each covered institution may continue, adopt, and enforce policies for the operation of any facility, including any veterinary facility, hospital, or other health care and related facility owned or operated by the institution. Any such policies pertaining to the operation of any veterinary facility, hospital, or other health care or related facility may include the conditions of practicing any health profession or veterinary medicine in the facility, the admission and treatment of patients, the procedures for determining the qualification of patients for indigent care or other programs, and the protection of patients and employees, provided that such policies do not discriminate on the basis of race, religion, color, sex, sexual orientation, gender identity, national origin, or any other factor prohibited by law.

C. Each covered institution shall expressly agree to comply with the public works contract requirements set forth in § 2.2-4321.3.

§ 40.1-6. Powers and duties of Commissioner.

The Commissioner shall:

1. Have general supervision and control of the Department;
2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to employers or business establishments before any court of competent jurisdiction;
3. Make such rules and regulations as may be necessary for the enforcement of this title and procedural rules as are required to comply with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2;
4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses, and administer oaths and to file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within 30 days of the receipt of such list of questions;
5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his work, with the duties of such representatives to be prescribed by the Commissioner;
6. Determine the prevailing wage required to be paid under a public contract for public works as provided in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any determination of the prevailing wage rate made by the Commissioner shall be based on ~~applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended;~~ *a survey of wages and benefits paid in each area, as defined in § 2.2-4321.3, conducted once every three years. Prevailing wage rates shall be determined for each construction 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 rate 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, and any other regulations the Commissioner deems necessary to effectuate the provisions of this act. The Commissioner shall promulgate such regulations to be effective by July 1, 2027. Such regulations shall be promulgated as required by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that § 2.2-4007.06 of the Code of Virginia shall not apply.

3. That the Commissioner of Labor and Industry (the Commissioner) shall convene and consult with a work group to examine the feasibility of and establish requirements and develop a potential timeline for a certified payroll reporting portal and database for use by employers to submit the payroll records required pursuant to subsection J of § 2.2-4321.3 of the Code of Virginia, as amended by this act. The work group shall provide recommendations regarding notice and reporting requirements, submission frequency, and the required format of such submissions, taking into account employer implementation feasibility and payroll record submission efficiency as well as ensuring direct integration with common employer payroll software. The Commissioner shall submit a report of the work group's findings to the Governor and the General Assembly no later than July 1, 2027.

4. No provision of this act shall be construed to alter, affect, or modify any public works contract entered into or amended prior to the effective date of the regulations adopted pursuant to the second enactment of this act.