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HOUSE BILL NO. 339

Offered January 14, 2026

A BILL to amend and reenact §§ 2.2-4321.3, 40.1-6, and 40.1-22 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-22.2 and 45.2-502.1, relating to employee protections; prevailing wage, wage and hour, occupational health and safety, and mining safety provisions.

Patrons—Lopez, Bennett-Parker, Cousins, Hernandez, Keys-Gamarra, LeVere Bolling, Maldonado, McClure, Price, Shin and Tran

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.3, 40.1-6, and 40.1-22 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 40.1-22.2 and 45.2-502.1 as follows:

§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty.

A. As used in this section:

"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 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 in accordance with subdivision 6 of § 40.1-6.

"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 transportation infrastructure projects. "Public works" also includes all federal construction projects administered or controlled by a state agency or locality if the prevailing wage rate as determined by the Commissioner of Labor and Industry is equal to or greater than the prevailing wage determination by the U.S. Secretary of Labor for the same locality for the same type of construction used to classify the federal construction project.

"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.

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 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 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 the prevailing wage rate.

D. Any contractor or subcontractor 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 (i) shall be 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

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willfully violates this section is guilty of a Class 1 misdemeanor.

E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, 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 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. 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.

I. Contractors and subcontractors performing public works for a state agency 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. The provisions of this section shall not apply to any public contract for public works of \$250,000 or less.

§ 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 *either* (i) 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 or (ii) *the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings successor thereto, provided that said employers or members of said employer associations employ at least 30 percent of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed, whichever is greater*;

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.

§ 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.

~~(1)~~ A. The Safety and Health Codes Commission is continued and shall hereafter be known as the Safety and Health Codes Board. The Board shall consist of fourteen members, twelve of whom shall be appointed by the Governor. One member shall, by reason of previous vocation, employment or affiliation, be chosen to represent labor in the manufacturing industry; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent labor in the construction industry; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent industrial employers; one member shall be chosen from and be a representative of the general public; one member shall be a representative of agricultural employers; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent agricultural employees; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent construction industry employers; one member shall be a representative of an insurance company; one member shall be a labor representative from the boiler pressure vessel industry; one member shall be a labor representative knowledgeable in chemicals and toxic substances; one member shall be an employer representative of the boiler pressure vessel industry; one member shall be an industrial representative knowledgeable in chemical and toxic substances, and the Director of the Department of Environmental Quality or his duly authorized representative shall be a member ex officio with full membership status. The Commissioner of Health or his duly authorized representative shall also be a member ex officio with full membership status.

~~(2)~~ B. The first appointive members shall be appointed as follows: one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Of the members appointed to represent the construction industry, one shall be appointed for the term of two years and one shall be appointed for the term of four years. Succeeding appointments shall be for terms of four years each but other vacancies shall be filled by appointment for the unexpired term.

~~(3)~~ C. The Board shall annually select a chairman from its members. The Board shall meet at least once every six months; other meetings may be held upon call of the chairman or any three members of the Board. Five members of the Board shall constitute a quorum.

~~(4)~~ D. The Board shall study and investigate all phases of safety in business establishments, the application of this title thereto, and shall serve as advisor to the Commissioner.

~~(5)~~ E. The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) (*the Federal Act*), and as may be necessary to carry out its functions established under this title. The Commissioner shall enforce such rules and regulations. All such rules and regulations shall be designed to protect and promote the safety and health of such employees. In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence,

that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). If the U.S. Secretary of Labor (i) revokes or repeals a previously promulgated standard under the Federal Act or (ii) amends a previously promulgated standard under the Federal Act or issues a standard interpretation for a previously promulgated standard under the Federal Act that results in the federal standard becoming less effective in protecting and promoting the safety and health of employees in the Commonwealth, the Board shall, as soon as practical, adopt a standard that incorporates the standard under the Federal Act as it existed prior to being repealed, revoked, amended, or newly interpreted.

In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. Such standards when applicable to products which are distributed in interstate commerce shall be the same as federal standards unless deviations are required by compelling local conditions and do not unduly burden interstate commerce.

(6) F. Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 shall apply to the adoption of rules and regulations under this section and to proceedings before the Board.

(6a) G. The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia, if it determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from such danger. The publication mentioned herein shall constitute notice that the Board intends to adopt such standard within a period of six months. The Board by similar publication shall prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the adoption of a permanent standard. The emergency temporary standard shall expire within six months or when superseded by a permanent standard, whichever occurs first, or when repealed by the Board.

(7) H. Any person who may be adversely affected by a standard issued under this title may challenge the validity of such standard in the Circuit Court of the City of Richmond by declaratory judgment. The determination of the Safety and Health Codes Board shall be conclusive if supported by substantial evidence in the record considered as a whole. Adoption of a federal occupational safety and health standard shall be deemed to be sufficient evidence to support promulgation of such standard. The filing of a petition for declaratory judgment shall not operate as a stay of the standard unless the court issues a preliminary injunction.

§ 40.2-22.2. Wage and hour protections; federal rules.

A. "Federal wage and hour law" means the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.) and federal regulations adopted under that statute.

"Stringent" means a law, rule, or standard's overall effectiveness in protecting the rights of workers. A law, rule, or standard is considered to be more stringent if it imposes an obligation on employers that is stricter or more demanding than what is otherwise imposed by law or if it provides for greater rights, benefits, remedies, or procedures for employees than what is otherwise provided by law.

B. If a federal wage and hour law is repealed, revoked, or amended in any manner that results in the federal protections of employees becoming less stringent, or if the applicable federal agency issues a new interpretation of the federal wage and hour law through an opinion letter, ruling letter, administrative interpretation, program policy manual, or program policy letter that results in the federal protections of employees becoming less stringent, and the provisions of this title or other state law do not have corresponding rules in place that are at least as stringent as the federal wage and hour law being repealed, revoked, amended, or newly interpreted, the Commissioner shall, as soon as practical, promulgate regulations that incorporate the federal wage and hour law being repealed, revoked, amended, or newly interpreted as a minimum requirement. Any such regulation promulgated pursuant to this section may be enforced through the existing enforcement procedures established under this chapter for violations of Article 1.1 (40.1-28.8 et seq.) or Article 2 (40.1-29 et seq.), as applicable, including applicable penalties and remedies.

§ 45.2-502.1. Safety and health; federal rules.

A. As used in this section, "stringent" means a law, rule, or standard's overall effectiveness in protecting the rights of workers. A law, rule, or standard is considered to be more stringent if it imposes an obligation on employers that is stricter or more demanding than what is otherwise imposed by law or if it provides for greater rights, benefits, remedies, or procedures for employees than what is otherwise provided by law.

B. If a federal mine safety law is repealed, revoked, or amended in any manner that results in the federal protections for the safety and health of miners becoming less stringent, or if the applicable federal agency issues a new interpretation of a federal mine safety law through an opinion letter, ruling letter, administrative interpretation, program policy manual, or program policy letter that results in the federal

244 *protections for the safety and health of miners becoming less stringent, and the provisions of this chapter or*
245 *other state law do not have corresponding rules in place that are at least as stringent as the federal mine*
246 *safety law being repealed, revoked, amended, or newly interpreted, the Department shall, as soon as*
247 *practical, promulgate regulations that incorporate the federal mine safety law being repealed, revoked,*
248 *amended, or newly interpreted as a minimum requirement. Any such regulation promulgated pursuant to this*
249 *section may be enforced through the existing enforcement procedures established under the Act, including*
250 *applicable penalties and remedies.*