

19101035D

HOUSE BILL NO. 2122

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact § 40.1-6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4321.3, relating to the Virginia Public Procurement Act; public works contracts; prevailing wage; penalty.

Patrons—Carroll Foy, Ayala, Delaney, Kory, Krizek, Levine, Lindsey, Lopez and Simon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4321.3 as follows:

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

A. As used in this section:

"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 the 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.

"Public works" and "state agency" have the same meaning ascribed to such terms in subsection A of § 2.2-4321.2.

B. Notwithstanding any other provision of this chapter, when any state agency is procuring services or letting contracts for public works paid for in whole or in part by state funds, or overseeing or administering such contracts for public works, such state agency shall ensure that its bid specifications, project agreements, or other public contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration at the prevailing wage rate to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract for public works.

C. 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.

D. Any contractor or subcontractor who knowingly or willfully 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 the state agency at a rate that is less than the prevailing wage rate (i) is guilty of a Class 1 misdemeanor; (ii) 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 (iii) 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 (ii) owed to such individuals.

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

F. A representative of a state agency 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 to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract.

H. Each employer subject to the provisions of this section shall maintain (i) records relating to the wages 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.

§ 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 thirty days of the receipt of such list of questions.

(5) Have power to appoint such representatives as may be necessary to aid him in his work; their duties shall be prescribed by the Commissioner.

(6) [Repealed.]

(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. Further, he may 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) All information reported to or otherwise obtained by the Commissioner, the Board or the agents or employees of either which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this title. The Commissioner shall have authority to issue orders to protect the confidentiality of such information. 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 which contains or might reveal a trade secret. Such information shall be limited to those persons who need the 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.~~

(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.

(12) *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.*