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HOUSE BILL NO. 2327

Offered January 22, 2021

A BILL to amend and reenact §§ 2.2-4321.3 and 23.1-1017 of the Code of Virginia, relating to prevailing wage rate; public contractors.

Patrons—Krizek, Helmer, Levine and Murphy

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.3 and 23.1-1017 of the Code of Virginia are amended and reenacted as follows:
§ 2.2-4321.3. (Effective May 1, 2021) 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.

"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 work to be performed for state-owned institutions of higher education and transportation infrastructure projects.

"State agency" has the same meaning ascribed to such term in subsection A of § 2.2-4321.2.

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, bidders, offerors, contractors, and subcontractors shall 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 willfully violates this section is guilty of a Class I misdemeanor.

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. Any interested party bringing a successful action under this section shall be entitled to recover reasonable attorney fees and costs from the

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59 responsible party.

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

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

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

81 I. Contractors and subcontractors performing public works for a state agency or for a locality that has
82 adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft
83 and classification involved, as determined by the Commissioner of Labor and Industry, including the
84 effective date of any changes thereof, in prominent and easily accessible places at the site of the work
85 or at any such places as are used by the contractor or subcontractors to pay workers their wages. Within
86 10 days of such posting, a contractor or subcontractor shall certify to the Commissioner of Labor and
87 Industry its compliance with this subsection.

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

90 **§ 23.1-1017. Covered institutions; operational authority; procurement.**

91 A. Subject to the express provisions of the management agreement, each covered institution may be
92 exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for §§
93 2.2-4321.3, 2.2-4340, 2.2-4340.1, 2.2-4340.2, and 2.2-4342, which shall not be construed to require
94 compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided,
95 however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement
96 shall be uniform across all covered institutions and (ii) the governing board of the covered institution
97 shall adopt, and the covered institution shall comply with, policies for the procurement of goods and
98 services, including professional services, that shall (a) be based upon competitive principles, (b) in each
99 instance seek competition to the maximum practical degree, (c) implement a system of competitive
100 negotiation for professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2, (d) prohibit
101 discrimination in the solicitation and award of contracts on the basis of the bidder's or offeror's race,
102 religion, color, sex, sexual orientation, gender identity, national origin, age, or disability or on any other
103 basis prohibited by state or federal law, (e) incorporate the prompt payment principles of §§ 2.2-4350
104 and 2.2-4354, (f) consider the impact on correctional enterprises under § 53.1-47, and (g) provide that
105 whenever solicitations are made seeking competitive procurement of goods or services, it shall be a
106 priority of the institution to provide for fair and reasonable consideration of small, women-owned, and
107 minority-owned businesses and to promote and encourage a diversity of suppliers.

108 B. Such policies may (i) provide for consideration of the dollar amount of the intended procurement,
109 the term of the anticipated contract, and the likely extent of competition; (ii) implement a
110 prequalification procedure for contractors or products; and (iii) include provisions for cooperative
111 arrangements with other covered institutions, other public or private educational institutions, or other
112 public or private organizations or entities, including public-private partnerships, public bodies, charitable
113 organizations, health care provider alliances or purchasing organizations or entities, state agencies or
114 institutions of the Commonwealth or the other states, the District of Columbia, the territories, or the
115 United States, and any combination of such organizations and entities.

116 C. Nothing in this section shall preclude a covered institution from requesting and utilizing the
117 assistance of the Virginia Information Technologies Agency for information technology procurements
118 and covered institutions are encouraged to utilize such assistance.

119 D. Each covered institution shall post on the Department of General Services' central electronic
120 procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and

121 emergency award notices to ensure visibility and access to the Commonwealth's procurement
122 opportunities on one website.
123 E. As part of any procurement provisions of the management agreement, the governing board of a
124 covered institution shall identify the public, educational, and operational interests served by any
125 procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§
126 2.2-4300 et seq.).

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