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HOUSE BILL NO. 1596

Offered January 11, 2017

Prefiled January 2, 2017

A BILL to amend and reenact § 2.2-4321.2 of the Code of Virginia, relating to the Virginia Public Procurement Act; public works contracts; prohibited terms.

Patrons—Webert, Cole, Freitas, Pogge, Poindexter, Robinson, Stolle and Wilt

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4321.2 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4321.2. Public works contract requirements.**

A. As used in this section:

"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.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; ~~or~~

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects; *or*

3. *Require bidders, offerors, contractors, or subcontractors to pay, or require the payment of, wages, salaries, benefits, or other remuneration to persons employed, retained, or otherwise hired to perform services in connection with such a project at a rate, amount, or level that is based, directly or indirectly, on the wages and benefits prevailing for the corresponding classes of laborers and mechanics employed.*

Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. *Except as required by federal law, a state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:*

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; ~~or~~

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related projects; *or*

3. *Require bidders, offerors, contractors, or subcontractors to pay, or require the payment of, wages, salaries, benefits, or other remuneration to persons employed, retained, or otherwise hired to perform services in connection with such a project at a rate, amount, or level that is based, directly or indirectly, on the wages and benefits prevailing for the corresponding classes of laborers and mechanics employed.*

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this

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59 section.

60 F. The provisions of this section shall not:

61 1. Apply to any public-private agreement for any construction or infrastructure project in which the
62 private body, as a condition of its investment or partnership with the state agency, requires that the
63 private body have the right to control its labor relations policy and perform all work associated with
64 such investment or partnership in compliance with all collective bargaining agreements to which the
65 private party is a signatory and is thus legally bound with its own employees and the employees of its
66 contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C.
67 § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;

68 2. Prohibit an employer or any other person covered by the National Labor Relations Act or the
69 Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or

70 3. Be interpreted to interfere with the labor relations of persons covered by the National Labor
71 Relations Act or the Railway Labor Act.

72 **2. That it shall be the policy of the Commonwealth not to implement, adopt, enforce, or require**
73 **any program, policy, or provision that requires the Commonwealth or any agency or political**
74 **subdivision thereof, in any contract for the construction, remodeling, refinishing, refurbishing,**
75 **rehabilitation, alteration, or repair of any public works project by the Commonwealth or any**
76 **political subdivision thereof, to require the payment of wages, salaries, benefits, or other**
77 **remuneration to persons employed, retained, or otherwise hired to perform services in connection**
78 **therewith at a rate, amount, or level that is based, directly or indirectly, on the wages and benefits**
79 **prevailing for the corresponding classes of laborers and mechanics employed, whether modeled on**
80 **the federal Davis-Bacon Act, 40 U.S.C. § 276, or similar prevailing wage law of any other state.**