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HOUSE BILL NO. 58

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 25, 2022)

(Patron Prior to Substitute—Delegate Davis)

*A BILL to amend and reenact § 2.2-4321.3 of the Code of Virginia, relating to prevailing wage rate; localities.***Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4321.3 of the Code of Virginia is 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:

"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 transportation infrastructure projects.

"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 *no locality shall establish provisions related to procurement of goods, professional services, or construction that would require a wage floor or any other employee benefit or compensation above what is otherwise required by state or federal law to be provided by a contractor to one or more of the contractor's employees as part of a contract with the locality. For purposes of this subsection, "professional services" means the same as that term is defined in § 2.2-4301. The provisions of this subsection shall not (i) affect contracts between a locality and another party that were executed prior to January 1, 2023, or the renewal or future rebids of services thereof or (ii) prohibit a locality from entering into contracts for economic development incentives in which the company receiving the incentives is required to maintain a certain stated wage level for its employees.*

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

60 subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A
61 contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

62 E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, shall have
63 standing to challenge any bid specification, project agreement, or other public contract for public works
64 that violates the provisions of this section. Such interested party shall be entitled to injunctive relief to
65 prevent any violation of this section. Any interested party bringing a successful action under this section
66 shall be entitled to recover reasonable attorney fees and costs from the responsible party.

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

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

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

88 I. Contractors and subcontractors performing public works for a state agency ~~or for a locality that has~~
89 ~~adopted an ordinance described in subsection E~~ shall post the general prevailing wage rate for each craft
90 and classification involved, as determined by the Commissioner of Labor and Industry, including the
91 effective date of any changes thereof, in prominent and easily accessible places at the site of the work
92 or at any such places as are used by the contractor or subcontractors to pay workers their wages. Within
93 10 days of such posting, a contractor or subcontractor shall certify to the Commissioner of Labor and
94 Industry its compliance with this subsection.

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