

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

27 administering such contracts for public works, shall ensure that its bid specifications or other public
28 contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay
29 wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained,
30 or otherwise hired to perform services in connection with the public contract for public works at the
31 prevailing wage rate. Each public contract for public works by a state agency shall contain a provision
32 requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker
33 on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage
34 rate.

35 C. Notwithstanding any other provision of this chapter, ~~any locality may adopt an ordinance~~
36 ~~requiring that, when letting contracts for public works paid for in whole or in part by funds of the locality,~~
37 ~~or when overseeing or administering a public contract, its bid specifications, project agreements, or other~~
38 ~~public contracts applicable to the public works shall require bidders, offerors, contractors, and~~
39 ~~subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker~~
40 ~~employed, retained, or otherwise hired to perform services in connection with the public contract at the~~
41 ~~prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this~~
42 ~~section shall contain a provision requiring that the remuneration to any individual performing the work of~~
43 ~~any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at~~
44 ~~a rate equal to the prevailing wage rate~~ no locality shall establish provisions related to procurement of
45 goods, professional services, or construction that would require a wage floor or any other employee benefit
46 or compensation above what is otherwise required by state or federal law to be provided by a contractor
47 to one or more of the contractor's employees as part of a contract with the locality. For purposes of this
48 subsection, "professional services" means the same as that term is defined in § 2.2-4301. The provisions
49 of this subsection shall not (i) affect contracts between a locality and another party that were executed
50 prior to January 1, 2023, or the renewal or future rebids of services thereof or (ii) prohibit a locality from
51 entering into contracts for economic development incentives in which the company receiving the
52 incentives is required to maintain a certain stated wage level for its employees.

53 D. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform
54 work contracted to be done under the public contract for public works for or on behalf of a state agency
55 ~~or for or on behalf of a locality that has adopted an ordinance described in subsection C~~ or at a rate that is
56 less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due,
57 plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii) shall
58 be disqualified from bidding on public contracts with any public body until the contractor or subcontractor
59 has made full restitution of the amount described in clause (i) owed to such individuals. A contractor or
60 subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

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

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

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

78 H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i)
79 records relating to the wages paid to and hours worked by each individual performing the work of any

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

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

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

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