

HOUSE BILL NO. 883

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Byron)

A BILL to amend and reenact §§ 2.2-4321.2, 40.1-4321.3, 40.1-6, 40.1-51.19, 40.1-51.19:4.1, 40.1-55, 40.1-57.2, and 40.1-57.3 of the Code of Virginia, relating to project labor agreements; prevailing wage; collective bargaining for employees of local governments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.2, 40.1-4321.3, 40.1-6, 40.1-51.19, 40.1-51.19:4.1, 40.1-55, 40.1-57.2, and 40.1-57.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4321.2. Public works contract requirements.

A. As used in this section:

~~"Project labor agreement" means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.~~

~~"Public body" has the same meaning as provided in § 2.2-4301.~~

"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 public body.

"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. Each public body~~ 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, ~~may,~~ 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:

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

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

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

35 C. A state agency issuing grants, providing financial assistance, or entering into cooperative
36 agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that
37 neither the bid specifications, project agreements, nor other controlling documents therefor awarded by
38 recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any
39 construction manager acting on behalf of such recipients, shall:

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

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

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

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

54 F. The provisions of this section shall not:

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

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

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

66 **§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts;**
67 **penalty.**

68 A. As used in this section:

69 "Locality" means any county, city, or town, school division, or other political subdivision.

70 "Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other
71 remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for
72 the same work in the same trade or occupation in the locality in which the public facility or immovable
73 property that is the subject of public works is located, as determined by the Commissioner of Labor and
74 Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of
75 Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

76 "Public works" means the operation, erection, construction, alteration, improvement, maintenance,
77 or repair of any public facility or immovable property owned, used, or leased by ~~a state agency or~~ locality,
78 including transportation infrastructure projects.

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

81 ~~B. Notwithstanding any other provision of this chapter, each state agency, when procuring services~~
82 ~~or letting contracts for public works paid for in whole or in part by state funds, or when overseeing or~~
83 ~~administering such contracts for public works, shall ensure that its bid specifications or other public~~
84 ~~contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay~~
85 ~~wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained,~~
86 ~~or otherwise hired to perform services in connection with the public contract for public works at the~~
87 ~~prevailing wage rate. Each public contract for public works by a state agency shall contain a provision~~
88 ~~requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker~~
89 ~~on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage~~
90 ~~rate.~~

91 ~~C.~~ Notwithstanding any other provision of this chapter, any locality may adopt an ordinance
92 requiring that, when letting contracts for public works paid for in whole or in part by funds of the locality,
93 or when overseeing or administering a public contract, its bid specifications, project agreements, or other
94 public contracts applicable to the public works shall require bidders, offerors, contractors, and
95 subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker
96 employed, retained, or otherwise hired to perform services in connection with the public contract at the
97 prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this
98 section shall contain a provision requiring that the remuneration to any individual performing the work of
99 any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at
100 a rate equal to the prevailing wage rate.

101 ~~D.~~C. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform
102 work contracted to be done under the public contract for public works ~~for or on behalf of a state agency~~
103 ~~or for or on behalf of a locality that has adopted an ordinance described in subsection ~~C~~B or at a rate that~~
104 is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages
105 due, plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii)
106 shall be disqualified from bidding on public contracts with any public body until the contractor or

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

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

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

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

127 ~~H-G.~~ Each employer subject to the provisions of this section shall keep, maintain, and preserve (i)
128 records relating to the wages paid to and hours worked by each individual performing the work of any
129 mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each
130 individual performing the work of any mechanic, laborer, or worker on the public works project is
131 employed during each work day and week. The employer shall preserve these records for a minimum of
132 six years and make such records available to the Department of Labor and Industry within 10 days of a

133 request and shall certify that records reflect the actual hours worked and the amount paid to its workers
134 for whatever time period they request.

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

142 ~~J-I.~~ The provisions of this section shall not apply to any public contract for public works of
143 \$250,000 or less.

144 **§ 40.1-6. Powers and duties of Commissioner.**

145 The Commissioner shall:

- 146 1. Have general supervision and control of the Department;
- 147 2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating
148 to employers or business establishments before any court of competent jurisdiction;
- 149 3. Make such rules and regulations as may be necessary for the enforcement of this title and
150 procedural rules as are required to comply with the federal Occupational Safety and Health Act of 1970
151 (P.L. 91-596). All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title
152 2.2;
- 153 4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses,
154 and administer oaths and to file a written or printed list of relevant interrogatories and require full and
155 complete answers to the same to be returned under oath within 30 days of the receipt of such list of
156 questions;
- 157 5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his
158 work, with the duties of such representatives to be prescribed by the Commissioner;

159 ~~6. Determine the prevailing wage required to be paid under a public contract for public works as~~
160 ~~provided in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section.~~
161 ~~Any determination of the prevailing wage rate made by the Commissioner shall be based on applicable~~
162 ~~prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the~~
163 ~~Davis Bacon Act, 40 U.S.C. § 276 et seq., as amended;~~

164 ~~7. Have power to require that accident, injury, and occupational illness records and reports be kept~~
165 ~~at any place of employment and that such records and reports be made available to the Commissioner or~~
166 ~~his duly authorized representatives upon request, and to require employers to develop, maintain, and make~~
167 ~~available such other records and information as are deemed necessary for the proper enforcement of this~~
168 ~~title;~~

169 ~~8-7.~~ Have power, upon presenting appropriate credentials to the owner, operator, or agent in
170 charge:

171 a. To enter without delay and at reasonable times any business establishment, construction site, or
172 other area, workplace, or environment where work is performed by an employee of any employer in this
173 Commonwealth; and

174 b. To inspect and investigate, during regular working hours and at other reasonable times and
175 within reasonable limits and in a reasonable manner, without prior notice unless such notice is authorized
176 by the Commissioner or his representative, any such business establishment or place of employment and
177 all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to
178 question privately any such employer, officer, owner, operator, agent, or employee. If such entry or
179 inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have power to seek
180 from a court having equity jurisdiction an order compelling such entry or inspection;

181 ~~9-8.~~ Make rules and regulations governing the granting of temporary or permanent variances from
182 all standards promulgated by the Board under this title. Any interested or affected party may appeal to the
183 Board, the Commissioner's determination to grant or deny such a variance. The Board may, as it sees fit,
184 adopt, modify, or reject the determination of the Commissioner;

185 ~~10-9.~~ Have authority to issue orders to protect the confidentiality of all information reported to or
186 otherwise obtained by the Commissioner, the Board, or the agents or employees of either that contains or
187 might reveal a trade secret. Such information shall be confidential and shall be limited to those persons
188 who need such information for purposes of enforcement of this title. Violations of such orders shall be
189 punishable as civil contempt upon application to the Circuit Court of the City of Richmond. It shall be the
190 duty of each employer to notify the Commissioner or his representatives of the existence of trade secrets
191 where he desires the protection provided herein; and

192 ~~11-10.~~ Serve as executive officer of the Virginia Safety and Health Codes Board and of the
193 Apprenticeship Council and see that the rules, regulations, and policies that they promulgate are carried
194 out.

195 **§ 40.1-51.19. Variances.**

196 Upon application pursuant to the provisions of subdivision ~~(9)~~ 8 of § 40.1-6, the Commissioner
197 may allow variances from a specific regulation provided the applicant proves by clear and convincing
198 evidence his boiler or pressure vessel meets substantially equivalent operating criteria and standards.

199 **§ 40.1-51.19:4.1. Variances.**

200 Upon application pursuant to the provisions of subdivision ~~9~~ 8 of § 40.1-6, the Commissioner may
201 allow variances from a specific statutory requirement of this article provided the applicant proves by clear
202 and convincing evidence his hobby or model boiler meets substantially equivalent construction and
203 operating criteria and standards.

204 **§ 40.1-55. Employee striking terminates, and becomes temporarily ineligible for, public**
205 **employment.**

206 ~~A-~~ Any employee of the Commonwealth, or of any county, city, town or other political subdivision
207 thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for
208 the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or
209 any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall,
210 by such action, be deemed to have terminated his employment and shall thereafter be ineligible for
211 employment in any position or capacity during the next 12 months by the Commonwealth, or any county,

212 city, town or other political subdivision of the Commonwealth, or by any department or agency of any of
213 them.

214 ~~B. The provisions of subsection A shall apply to any employee of any county, city, or town or local~~
215 ~~school board without regard to any local ordinance or resolution adopted pursuant to § 40.1-57.2 by such~~
216 ~~county, city, or town or school board that authorizes its employees to engage in collective bargaining.~~

217 **§ 40.1-57.2. Collective bargaining.**

218 ~~A. No state, county, city, town, or like governmental officer, agent, or governing body is vested~~
219 ~~with or possesses any authority to recognize any labor union or other employee association as a bargaining~~
220 ~~agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining~~
221 ~~contract with any such union or association or its agents with respect to any matter relating to them or~~
222 ~~their employment or service unless, in the case of a county, city, or town, such authority is provided for~~
223 ~~or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for~~
224 ~~procedures for the certification and decertification of exclusive bargaining representatives, including~~
225 ~~reasonable public notice and opportunity for labor organizations to intervene in the process for designating~~
226 ~~an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes~~
227 ~~any local school board, and "public officers or employees" includes employees of a local school board.~~

228 ~~B. No ordinance or resolution adopted pursuant to subsection A shall include provisions that~~
229 ~~restrict the governing body's authority to establish the budget or appropriate funds.~~

230 ~~C. For any governing body of a county, city, or town that has not adopted an ordinance or~~
231 ~~resolution providing for collective bargaining, such governing body shall, within 120 days of receiving~~
232 ~~certification from a majority of public employees in a unit considered by such employees to be appropriate~~
233 ~~for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to~~
234 ~~provide for collective bargaining by such public employees and any other public employees deemed~~
235 ~~appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt~~
236 ~~an ordinance or resolution authorizing collective bargaining.~~

237 ~~D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution~~
238 ~~granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the~~

239 ~~Constitution of Virginia or any employee of such officer is vested with or possesses any authority to~~
240 ~~recognize any labor union or other employee association as a bargaining agent of any public officers or~~
241 ~~employees, or to collectively bargain or enter into any collective bargaining contract with any such union~~
242 ~~or association or its agents, with respect to any matter relating to them or their employment or service.~~

243 **§ 40.1-57.3. Certain activities permitted.**

244 Nothing in this article shall be construed to prevent employees of the Commonwealth, of its
245 political subdivisions, or of any governmental agency of any of them from forming associations for the
246 purpose of promoting their interests before the employing agency ~~and, if they are employees of a county,~~
247 ~~city, or town or local school board that has, by a local ordinance or resolution as provided in § 40.1-57.2,~~
248 ~~authorized its employees to engage in collective bargaining, from doing so as provided in such ordinance~~
249 ~~or resolution.~~

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