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SENATE BILL NO. 374

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 2.2-4321.2, 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 and to repeal § 2.2-4321.3 of the Code of Virginia, relating to project labor agreements; prevailing wage; collective bargaining for employees of local governments.

Patron—Obenshain

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4321.2, 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, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, may, 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 project labor agreements with one or more labor organizations, on the same or related public works projects; and

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

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

C. 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.

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 such authority, recipient, or party 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 section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the

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59 *private body have the right to control its labor relations policy and perform all work associated with*
 60 *such investment or partnership in compliance with all collective bargaining agreements to which the*
 61 *private party is a signatory and is thus legally bound with its own employees and the employees of its*
 62 *contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C.*
 63 *§ 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;*

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

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

68 **§ 40.1-6. Powers and duties of Commissioner.**

69 The Commissioner shall:

70 1. Have general supervision and control of the Department;

71 2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to
 72 employers or business establishments before any court of competent jurisdiction;

73 3. Make such rules and regulations as may be necessary for the enforcement of this title and
 74 procedural rules as are required to comply with the federal Occupational Safety and Health Act of 1970
 75 (P.L. 91-596). All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title
 76 2.2;

77 4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses, and
 78 administer oaths and to file a written or printed list of relevant interrogatories and require full and
 79 complete answers to the same to be returned under oath within 30 days of the receipt of such list of
 80 questions;

81 5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his
 82 work, with the duties of such representatives to be prescribed by the Commissioner;

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

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

93 8. 7. Have power, upon presenting appropriate credentials to the owner, operator, or agent in charge:

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

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

104 9. 8. Make rules and regulations governing the granting of temporary or permanent variances from
 105 all standards promulgated by the Board under this title. Any interested or affected party may appeal to
 106 the Board, the Commissioner's determination to grant or deny such a variance. The Board may, as it
 107 sees fit, adopt, modify, or reject the determination of the Commissioner;

108 10. 9. Have authority to issue orders to protect the confidentiality of all information reported to or
 109 otherwise obtained by the Commissioner, the Board, or the agents or employees of either that contains
 110 or might reveal a trade secret. Such information shall be confidential and shall be limited to those
 111 persons who need such information for purposes of enforcement of this title. Violations of such orders
 112 shall be punishable as civil contempt upon application to the Circuit Court of the City of Richmond. It
 113 shall be the duty of each employer to notify the Commissioner or his representatives of the existence of
 114 trade secrets where he desires the protection provided herein; and

115 11. 10. Serve as executive officer of the Virginia Safety and Health Codes Board and of the
 116 Apprenticeship Council and see that the rules, regulations, and policies that they promulgate are carried
 117 out.

118 **§ 40.1-51.19. Variances.**

119 Upon application pursuant to the provisions of subdivision (9) 8 of § 40.1-6, the Commissioner may
 120 allow variances from a specific regulation provided the applicant proves by clear and convincing

evidence his boiler or pressure vessel meets substantially equivalent operating criteria and standards.

§ 40.1-51.19:4.1. Variances.

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

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

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

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

§ 40.1-57.2. Collective bargaining.

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

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

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

D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

§ 40.1-57.3. Certain activities permitted.

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

2. That § 2.2-4321.3 of the Code of Virginia is repealed.