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SENATE BILL NO. 524

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 2.2-4321.3 of the Code of Virginia, relating to payment of prevailing wage; certified payroll; penalties.

Patron—Barker

Referred to Committee on Commerce and Labor

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:

*"Commissioner" means the Commissioner of Labor and Industry.**"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.

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

E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, shall have standing to challenge any bid specification, project agreement, or other public contract for public works that violates the provisions of this section. Such interested party shall be entitled to injunctive relief to

INTRODUCED

SB524

59 prevent any violation of this section. Any interested party bringing a successful action under this section
60 shall be entitled to recover reasonable attorney fees and costs from the responsible party.

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

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

74 H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i)
75 records relating to the wages paid to and hours worked by each individual performing the work of any
76 mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each
77 individual performing the work of any mechanic, laborer, or worker on the public works project is
78 employed during each work day and week. The employer shall preserve these records for a minimum of
79 six years and make such records available to the Department of Labor and Industry within 10 days of a
80 request and shall certify that records reflect the actual hours worked and the amount paid to its workers
81 for whatever time period they request. *Each employer subject to the provisions of this section shall*
82 *furnish, under oath, to the Commissioner within 30 days after issuance of its first payroll, and every 30*
83 *days thereafter, a certified payroll that shall consist of a complete copy of such records as outlined in*
84 *this subsection accompanied by a statement signed by the employer that indicates that (a) such records*
85 *are true and accurate; (b) the hourly rate paid to each worker is not less than the general prevailing*
86 *rate of hourly wages required by this section; and (c) the contractor or subcontractor is aware that*
87 *filing a certified payroll that he knows to be false is a Class 6 felony as provided by subsection K. The*
88 *method by which employers must submit these records shall be at the discretion of the Commissioner.*

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

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

98 K. *Any contractor or subcontractor who knowingly fails to provide the required certifications in*
99 *accordance with subsection G shall be subject to a civil penalty not to exceed \$1,000 for each violation.*
100 *Any contractor or subcontractor who fails to furnish the required payroll records upon request of the*
101 *Department of Labor and Industry in accordance with subsection H shall be subject to a civil penalty*
102 *not to exceed \$1,000 for each violation. Any contractor or subcontractor who fails to submit copies of*
103 *monthly payroll records as required by subsection H shall be subject to a civil penalty not to exceed*
104 *\$10 per calendar day that the records have not been received by the Department of Labor and Industry.*
105 *Willful violations of the monthly payroll records requirement will be subject to a further civil penalty*
106 *not to exceed \$1,000 per violation. Any contractor or subcontractor who knowingly fails to provide the*
107 *required certifications in accordance with subsection I shall be subject to a civil penalty not to exceed*
108 *\$1,000 for each violation. Any contractor or subcontractor who knowingly files false records or willfully*
109 *fails to file records as required by this section is guilty of a Class 6 felony. The Commissioner shall*
110 *notify any employer that the Commissioner alleges has violated any provision of this section by certified*
111 *mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice*
112 *of the alleged violation, the employer may request an informal conference regarding such violation with*
113 *the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall*
114 *consider the size of the business of the employer charged and the gravity of the violation. The decision*
115 *of the Commissioner shall be final. Civil penalties assessed under this section shall be paid to the*
116 *Commissioner for deposit into the general fund of the State Treasurer. The Commissioner shall*
117 *prescribe procedures for the payment of proposed assessments of penalties that are not contested by*
118 *employers. Such procedures shall include provisions for an employer to consent to abatement of the*
119 *alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without*
120 *admission of any civil liability arising from such alleged violation.*

121 2. That the provisions of this act may result in a net increase in periods of imprisonment or
122 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
123 necessary appropriation cannot be determined for periods of imprisonment in state adult
124 correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I,
125 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of
126 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
127 appropriation cannot be determined for periods of commitment to the custody of the Department
128 of Juvenile Justice.

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SB524