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HOUSE BILL NO. 883

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 10, 2022)

(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:

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 private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the

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60 *private party is a signatory and is thus legally bound with its own employees and the employees of its*
61 *contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C.*
62 *§ 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;*

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

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

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

69 A. As used in this section:

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

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

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

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

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

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

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

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

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

120 G. F. Upon the award of any public contract subject to the provisions of this section, the contractor
121 to whom such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry

the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third party fund, plan or program to which benefit payments will be made on behalf of employees.

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

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

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

§ 40.1-6. Powers and duties of Commissioner.

The Commissioner shall:

1. Have general supervision and control of the Department;
2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to employers or business establishments before any court of competent jurisdiction;

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

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

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

6. Determine the prevailing wage required to be paid under a public contract for public works as provided in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any determination of the prevailing wage rate made by the Commissioner shall be based on 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;

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

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

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

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

9. 8. Make rules and regulations governing the granting of temporary or permanent variances from all standards promulgated by the Board under this title. Any interested or affected party may appeal to

183 the Board, the Commissioner's determination to grant or deny such a variance. The Board may, as it
184 sees fit, 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
187 or might reveal a trade secret. Such information shall be confidential and shall be limited to those
188 persons who need such information for purposes of enforcement of this title. Violations of such orders
189 shall be punishable as civil contempt upon application to the Circuit Court of the City of Richmond. It
190 shall be the duty of each employer to notify the Commissioner or his representatives of the existence of
191 trade secrets 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 may
197 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
202 clear 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,
208 for the purpose of obstructing, impeding or suspending any activity or operation of his employing
209 agency or any other governmental agency, strikes or willfully refuses to perform the duties of his
210 employment shall, by such action, be deemed to have terminated his employment and shall thereafter be
211 ineligible for employment in any position or capacity during the next 12 months by the Commonwealth,
212 or any county, city, town or other political subdivision of the Commonwealth, or by any department or
213 agency of any of 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
216 such county, city, or town or school board that authorizes its employees to engage in collective
217 bargaining.

218 **§ 40.1-57.2. Collective bargaining.**

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

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

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

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

245 service.

246 **§ 40.1-57.3. Certain activities permitted.**

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