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HOUSE BILL NO. 833

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend the Code of Virginia by adding sections numbered 2.2-4321.3 and 40.1-9.1, relating to prevailing wage rate requirement for public works contracts; penalty.*

Patron—Carroll Foy

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.2-4321.3 and 40.1-9.1 as follows:

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

A. As used in this section:

"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration that is determined by the Department of Labor and Industry pursuant to § 40.1-9.1.

"Public works" and "state agency" have the same meaning ascribed to such terms in subsection A of § 2.2-4321.2.

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, project agreements, 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.

C. 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.

D. Any contractor or subcontractor who knowingly or willfully 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 the state agency at a rate that is less than the prevailing wage rate (i) is guilty of a Class 1 misdemeanor; (ii) 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 (iii) 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 (ii) owed to such individuals.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, 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 prevent any violation of this section.

F. A representative of a state agency may contact the Department of Labor and Industry, at least 10 but not more than 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to ascertain the proper prevailing wage rate for work to be performed under the public contract.

G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom such contract is awarded shall certify, under oath, to the Department of Labor and Industry the pay scale to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract.

H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records relating to the wages 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 workday and workweek.

§ 40.1-9.1. Determination of prevailing wage rate.

A. The Department shall determine the prevailing wage rate required to be paid under a public contract for public works as provided in § 2.2-4321.3 for the locality in which a public work is to be performed for each craft or trade or classification of all workmen needed to perform the contract for

59 public works.

60 B. The prevailing wage rate shall be the rate, amount, or level of wages, salaries, benefits, and other
61 remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for
62 the same work in the same trade or occupation in the locality in which the public facility or immovable
63 property that is the subject of the public works is located; however, in no event shall a prevailing wage
64 rate be less than the applicable prevailing wage rate determination made by the U.S. Secretary of Labor
65 under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

66 C. Prevailing wage rates shall be determined and computed by the Department in accordance with
67 such rules and regulations adopted by the Commissioner as may be required to carry out the provisions
68 of this section.

69 D. Employer contributions for employee benefits pursuant to a then existing bona fide collective
70 bargaining agreement shall be considered an integral part of the wage rate paid by employers of any
71 craft or trade in the locality under consideration for the purpose of determining the prevailing wage
72 rate under this section. Any prevailing wage rate determination shall be conclusive for a period of two
73 years from date of issuance unless superseded within the two-year period by a later determination.

74 E. The Department shall immediately announce all such determinations and give notice by mail of
75 all determinations of prevailing wage rates made pursuant to this section to any representative of any
76 craft or trade, any employer, or any representative of a state agency who shall in writing request the
77 Department so to do.