

Virginia Legislative Update

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Proposed Laws That May Impact Virginia Construction Businesses

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Now with crossover behind the Virginia General Assembly, the list of pending legislation has been shortened. Below is a sample of bills still pending before the General Assembly that may impact the rights and obligations of companies in the construction industry.

PUBLIC PROCUREMENT

HB 907 Term Contracts for A&E Services. Provides an exemption from monetary caps on architectural and engineering services for transportation district commissions.

HB 1108 Experience Modification Restriction. Prohibits the use of any experience modification factor as a condition of eligibility to participate in a solicitation for construction services, even for those projects not covered by the VPPA. "Experience modification factor" is defined as a value assigned to an employer by a rate service organization per its uniform experience rating plan required by Va. Code § 38.2-1913.

HB 1166 / SB 362 Small Purchase Procedures for Transportation Related Construction. Authorizes the establishment of purchase procedures not using competitive sealed bidding or competitive negotiation for a single or term contract less than \$25,000 for transportation-related construction.

SB 169 / HB 578 Request for Proposals for Architectural or Engineering Services. Provides that offerors in the selection process for architectural or engineering services shall not be required to list any exceptions to proposed contractual terms and conditions until after the qualified offerors are ranked.

SB 311 Use of Best Value Procurement. Authorizes any public body to use best value concepts in procurement. The RFP must contain a notice to potential offerors that the procurement decision will be made on a best value procurement basis, describe the criteria that will be considered in evaluating the proposals and the rating or weighting system that will be used in evaluating the proposals, Price must be weighted at least 51 percent as a factor.

SB 418 Authorizing Cooperative Procurement for Artificial Turf. Authorizes the purchase of installation of artificial turf or other athletic surfaces and all associated and necessary using cooperative procurement.

SB 465 Consideration of Alternative Technical Concepts during RFP Process. Provides the submission and consideration of "alternative technical concepts" during the RFP process for a design-build transportation project. "Alternative technical concepts" are defined as proposed changes to agency-supplied design, scope or construction criteria that provide a solution that is equal to or better than the requirements in the RFP.

EMPLOYMENT

HB 4 Constitutional Amendment for Voter Referendum; Right to Work. Provides for a referendum at the November 8, 2016, election to approve or reject an amendment to prohibit any agreement or combination between an employer and a labor union or labor organization in which: (i) nonmembers of the union or organization are denied the right to work for the employer; (ii) membership to the union or organization is made a condition of employment or continuation of employment by such employer; or (iii) the union or organization acquires an employment monopoly in any such enterprise.

HB 66 Grants for Earning Workforce Training Credentials; New Economy Industry Credential Assistance Training Grants. Establishes a program that would pay grants of \$2,000 to individuals who complete eight hours of community service and who subsequently complete a noncredit workforce training program and earn a credential in a high-demand field. The grant would be limited to payment of tuition charged for the training program, the cost of any required textbooks, and the cost of any examination required to earn the credential. The bill has a delayed effective date of January 1, 2017

HB 691 Additional Hours to Report Work-Related Injuries. Extends from eight to 24 hours the time period in which an employer is required to notify the Virginia Department of Labor and Industry of any work-related incident resulting in hospitalization, amputation, or loss of an eye.

HJ 2 Constitutional Amendment (Second Resolution following 2015 Session Referral); Right to Work. Provides that any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.

SB 483 Removes VOSH Vicarious Liability For Unlicensed Subcontractors. Prohibits the Commissioner of Labor and Industry from issuing a citation or assessing a penalty against an employer for a violation of occupational safety and health law if the violation is imputed to the employer vicariously as the result of the failure of the employer's contractor or subcontractor to obtain a contractor's license or maintain a copy of the contractor's license on site. The exemption from liability applies only if the employer did not have actual knowledge of the failure.

WAGES

HB 145 Prevailing Wage Provisions. Prohibits states agencies from requiring contractors to pay wages, salaries, benefits, or other remuneration to persons in connection with a public works project at a rate that is based on the wages and benefits at prevailing wage rates. The measure further states that it is the policy of the Commonwealth not to implement, adopt, enforce, or require any program, policy, or provision that requires a public works contract that requires the payment of wages or other remuneration at a rate based on the prevailing wage, whether modeled on the federal Davis-Bacon Act or similar state law.

HB 264 Prohibiting Localities from Requiring Contractors to Provide Certain Compensation or Benefits. Prohibits localities from establishing provisions that would require a wage floor or any other employee benefit or compensation above what is otherwise required by state or federal law to be provided by a contractor to its employees as part of a contract with the locality. The prohibition would not apply to contracts for economic development incentives in which the company receiving the incentives is required to maintain a certain stated wage level for its employees.

WORKERS' COMPENSATION

HB 44 Injuries Presumed to be in Course of Employment. Revises the provision creating a presumption, in the absence of a preponderance of evidence to the contrary, that an injury is work related if an employee is physically or mentally unable to testify and there is un rebutted prima facie evidence that the injury was work related. This measure clarifies that the employee's inability to testify refers to testimony about how the accident occurred and limits the measure's application to circumstances where the employee's inability to testify is because of injuries from the accident.

SMALL BUSINESS

HB 971 Small Business Certification Requirements. Changes the definition of small business beginning July 1, 2017 to meet the standards established by the regulations of the U.S. Small Business Administration. Also provides for the adoption of regulations beginning July 1, 2017 that will relate certification to the dominant business activity of each small business entity. The bill includes a definition of "dominant business activity," provides for the Department to enter into a Memorandum of Understanding with appropriate agencies establishing provisions for the sharing of information, consistent with the requirements of state and federal law, and requires the Secretary of Commerce and Trade to evaluate the effect of the implementation of the new definition at three-year intervals, reporting to the Governor and General Assembly by December 1, 2020, and December 1, 2023.

SB 119 Small Business Certification Requirements. Changes the definition of small business to require the business and its affiliates to meet the small business size standards established by the regulations of the U.S. Small Business Administration. Currently, a small business is required to have 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

Bills Continued To The 2017 General Assembly Session

HB 887 / SB 586 Requirements for Use of Construction Management. Restricts the use of construction management unless: (i) the total project cost is \$50 million or more; (ii) a written determination is provided stating that competitive sealed bidding is not practicable or fiscally advantageous; (iii) the contract is entered into prior to the schematic phase of design; (iv) construction management experience is not required or considered as part of the award; (v) price is the primary determining factor for award of the contract; and (vi) proposals provide for the participation of small, women-owned, and minority-owned businesses in the project. Where project cost will not exceed \$50 million, a public body may use competitive negotiation to procure construction on a construction management basis only if: (i) all of the above requirements are met; (ii) the project is of substantial historical value or interest or significantly unique or extremely complex in nature; (iii) the public body notifies Department of General Services or the local governing body of its intent to procure construction on a construction management basis; and (iv) the Department of General Services or the local governing body makes a specific written finding that all requirements are met.

HB 253 Certificate of Workers' Compensation Compliance. Removes the requirement that contractors verify workers' compensation compliance before receiving a local license to do business and makes such requirement a condition of receiving a state contractor's license.

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