

**Senate Bill No. 447**

(By Senator Barnes)

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[Introduced March 5, 2013; referred to the Committee on Labor;  
and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §21-5A-5 of the Code of West Virginia,  
1931, as amended, relating to providing that the prevailing  
hourly rate of wages as determined by the Division of Labor  
may not exceed the wage as determined by the federal  
Davis-Bacon Act for a given locality.

*Be it enacted by the Legislature of West Virginia:*

That §21-5A-5 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.**

**§21-5A-5. Prevailing wages established at regular intervals; how  
determined; filing; objections to determination;  
hearing; final determination; appeals to board;  
judicial review.**

(1) The ~~department of labor~~ Division of Labor, from time to

1 time, shall investigate and determine the prevailing hourly rate of  
2 wages in the localities in this state. Determinations thereof  
3 shall be made annually on January ~~one~~ 1 of each year and shall  
4 remain in effect during the successive year: *Provided, ~~however,~~*  
5 That such rates shall not remain in effect for a period longer than  
6 fifteen months from the date they are published.

7 In determining such prevailing rates, the ~~department of labor~~  
8 ~~may~~ Division of Labor shall ascertain and consider the applicable  
9 wage rates established by collective bargaining agreements, if any,  
10 and such rates as are paid generally within the locality in this  
11 state where the construction of the public improvement is to be  
12 performed. Notwithstanding any other provision in this code to the  
13 contrary, the methodology used for calculating the prevailing rate  
14 may not exceed the rate established by the Davis-Bacon Act, 40  
15 U.S.C. §§3141-3148, for the same locality.

16 (2) A copy of the determination so made, certified by the  
17 secretary of the board, shall be filed immediately with the  
18 Secretary of State and with the ~~department of labor~~ Division of  
19 Labor. Copies shall be supplied to all persons requesting same  
20 within ten days after such filing.

21 (3) At any time within fifteen days after the certified copies  
22 of the determination have been filed with the Secretary of State  
23 and the ~~department of labor~~ Division of Labor, any person who may  
24 be affected thereby may object in writing to the determination or

1 such part thereof as he or she deems objectionable by filing a  
2 written notice with the ~~department of labor~~ Division of Labor  
3 stating the specific grounds of the objection.

4 (4) Within ten days of the receipt of the objection, the  
5 ~~department of labor~~ Division of Labor shall set a date for a  
6 hearing on the objection. The date for the hearing shall be within  
7 thirty days after the receipt of the objection. Written notice of  
8 the time and place of the hearing shall be given to the objectors  
9 at least ten days prior to the date set for the hearing and at a  
10 time so as to enable the objectors to be present.

11 (5) The ~~department of labor~~ Division of Labor at its  
12 discretion may hear such written objection separately or  
13 consolidate for hearing any two or more written objections. At the  
14 hearing the ~~department of labor~~ Division of Labor shall introduce  
15 into evidence the results of the investigation it instituted and  
16 such other facts which were considered at the time of the original  
17 determination of the fair minimum prevailing hourly rate including  
18 the sources which formed the basis for its determination. The  
19 ~~department of labor~~ Division of Labor or any objectors thereafter  
20 may introduce such further evidence as may be material to the  
21 issues.

22 (6) Within ten days of the conclusion of the hearing, the  
23 ~~department~~ Division of Labor must rule on the written objections  
24 and make such final determination as shall be established by a

1 preponderance of the evidence. Immediately upon such final  
2 determination, the ~~department of labor~~ Division of Labor shall file  
3 a certified copy of its final determination with the Secretary of  
4 State and with the ~~department of labor~~ Division of Labor and shall  
5 serve a copy of the final determination on all parties to the  
6 proceedings by personal service or by registered mail.

7 (7) Any person affected by the final determination of the  
8 ~~department of labor~~ Division of Labor, whether or not such person  
9 participated in the proceedings resulting in such final  
10 determination, may appeal to the board from the final determination  
11 of the ~~department of labor~~ Division of Labor within ten days from  
12 the filing of the copy of the final determination with the  
13 Secretary of State. The board shall hear the appeal within twenty  
14 days from the receipt of notice of appeal. The hearing by the board  
15 shall be held in Charleston. The hearing by the board shall be  
16 upon the record compiled in the hearing before the ~~department of~~  
17 ~~labor~~ Division of Labor and the board shall have the authority to  
18 affirm, reverse, amend, or remand for further evidence, the final  
19 determination of the ~~department of labor~~ Division of Labor. The  
20 board shall render its decision within ten days after the  
21 conclusion of its hearing.

22 (8) Any party to the proceeding before the board or any person  
23 affected thereby may within thirty days after receipt of the notice  
24 of its decision, appeal the board's decision to the circuit court

1 of the county wherever the construction of a public improvement is  
2 to be performed, which shall consider the case on the record made  
3 before the commissioner of labor and before the board. The  
4 decision of such circuit court may be appealed to the Supreme Court  
5 of Appeals of West Virginia by any party to the proceedings or by  
6 any person affected thereby in the manner provided by law for  
7 appeals in civil actions.

8 (9) Pending the decision on appeal, the rates for the  
9 preceding year shall remain in effect.

NOTE: The purpose of this bill is to provide that the prevailing hourly rate of wages as determined by the Division of Labor may not exceed the wage as determined by the federal Davis-Bacon Act for a given locality.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.