

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 361**

5 (By Senator Blair)

6 _____
7 [Originating in the Committee on Government Organization;
8 reported February 5, 2015.]
9 _____

10
11 A BILL to amend and reenact §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-
12 5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend said
13 code by adding thereto a new section, designated §21-5A-12, all relating to the fair minimum
14 rate of wages; defining terms; providing for determination and methodology of determining
15 prevailing hourly wages by Workforce West Virginia; applying fair minimum rate of wages
16 based on monetary threshold; establishing prevailing wages at specific intervals; requiring
17 contract provisions and exceptions; keeping wage records; providing for review of
18 determinations and methodology; addressing data used in determining prevailing wage rates;
19 requiring Workforce West Virginia to propose legislative rules; and providing provisions of
20 article are severable.

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

22 That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-

1 5A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said
2 code be amended by adding thereto a new section, designated §21-5A-12, all to read as follows:

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

4 **§21-5A-1. Definitions.**

5 (1) The term "public authority", as used in this article, shall mean any officer, board or
6 commission or other agency of the State of West Virginia, or any political subdivision thereof,
7 authorized by law to enter into a contract for the construction of a public improvement, including
8 any institution supported, in whole or in part, by public funds of the State of West Virginia or its
9 political subdivisions, and this article shall apply to expenditures of such institutions made, in whole
10 or in part, from such public funds.

11 (2) The term "construction", as used in this article, shall mean any construction,
12 reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement
13 let to contract. The term "construction" shall not be construed to include temporary or emergency
14 repairs.

15 ~~(3) The term "locality" means the county where the construction is to be performed, except~~
16 ~~that if there is not available in the county a sufficient number of competent skilled laborers, workmen~~
17 ~~and mechanics to perform such construction efficiently and properly, and may include one or more~~
18 ~~counties in this state adjacent to the one in which the construction is to be performed and from which~~
19 ~~such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the~~
20 ~~construction. With respect to construction of public improvements with the state road commission,~~
21 ~~"locality" may be construed to include one or more counties in this state adjacent to the one in which~~
22 ~~the construction or public improvement is to be performed and from which skilled laborers,~~

1 ~~workmen and mechanics may be accessible for work on such construction on public improvements.~~

2 (3) The term “regions of this state”, as used in this article, means the breakup of regions
3 within the state as determined by Workforce West Virginia for the purposes of developing a
4 methodology pursuant to the sections of this article.

5 (4) The term "public improvement", as used in this article, shall include all buildings, roads,
6 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and
7 all other structures upon which construction may be let to contract by the State of West Virginia or
8 any political subdivision thereof.

9 (5) The term "construction industry", as used in this article, shall mean that industry which
10 is composed of employees and employers engaged in construction of buildings, roads, highways,
11 bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other
12 structures or works, whether private or public, on which construction work as defined in subsection
13 (2) of this section is performed.

14 (6) The term "board" shall mean the minimum wage board as constituted in this article.

15 (7) The term "employee", for the purposes of this article, shall not be construed to include
16 such persons as are employed or hired by the public authority on a regular or temporary basis or
17 engaged in making temporary or emergency repairs.

18 **§21-5A-2. Policy declared.**

19 It is hereby declared to be the policy of the State of West Virginia that a wage of no less than
20 the prevailing hourly rate of wages for work of a similar character in the ~~locality in~~ regions of this
21 state in which the construction is performed shall be paid to all ~~workmen~~ workers employed by or
22 on behalf of any public authority engaged in the construction of public improvements.

1 **§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of**
2 **specifications.**

3 Any public authority authorized to let to contract the construction of a public improvement
4 shall, before advertising for bids for the construction thereof, ascertain from ~~the state commissioner~~
5 ~~of labor~~ Workforce West Virginia, the fair minimum rate of wages, ~~including fair minimum overtime~~
6 ~~and holiday pay~~, to be paid by the successful bidder to the laborers, ~~workmen~~ workers or mechanics
7 in the various branches or classes of the construction to be performed; and such schedule of wages
8 shall be made a part of the specifications for the construction and shall be published in an electronic
9 or other medium and incorporated in the bidding blanks by reference when approved by ~~the~~
10 ~~commissioner of labor~~ Workforce West Virginia where the construction is to be performed by
11 contract. The fair minimum rate of wages, for the intents and purposes of this article, shall be the
12 prevailing rate of wages compensation paid in the ~~locality in~~ regions of this state as hereinbefore
13 defined to the ~~majority of workmen~~ workers, laborers or mechanics in the same trade or occupation
14 in the construction industry. ~~The commissioner of labor or a member of his or her department~~
15 ~~designated by him or her~~ Workforce West Virginia shall assemble the data as to the fair minimum
16 wage rates and shall file wage rates. Rates shall be established and filed as hereinafter provided on
17 January 1, of each year, unless otherwise specified within this article. These rates shall prevail as
18 the minimum wage rate ~~on~~ for all public improvements in excess of \$500,000 in cost on which bids
19 are asked during the year beginning with the date when such new rates are filed and, until the new
20 rates are filed, the rates for the preceding year shall remain in effect: *Provided*, That such rates shall
21 not remain in effect for a period longer than fifteen months from the date they are published, but this
22 provision shall not affect construction of a public improvement then underway.

1 **§21-5A-5. Prevailing wages established at specified intervals; how determined; filing;**
2 **legislative review.**

3 (1) ~~The department of labor, from time to time, Workforce West Virginia, in coordination~~
4 ~~with the West Virginia University Bureau of Business and Economic Research and the Center for~~
5 ~~Business and Economic Research at Marshall University in furtherance of section four, article three,~~
6 ~~chapter eighteen-b of this code, shall investigate and determine the prevailing hourly rate of wages~~
7 ~~in the localities in regions of this state. Determinations thereof shall be made annually on January~~
8 ~~1 of each year, unless otherwise specified within this article, and shall remain in effect during the~~
9 ~~successive year: *Provided*, That such rates shall not remain in effect for a period longer than fifteen~~
10 ~~months from the date they are published. A copy of the determination so made, certified by~~
11 ~~Workforce West Virginia, shall be filed immediately with the Secretary of State.~~

12 ~~In determining such prevailing rates, the department of labor may ascertain and consider the~~
13 ~~applicable wage rates established by collective bargaining agreements, if any, and such rates as are~~
14 ~~paid generally within the locality in this state where the construction of the public improvement is~~
15 ~~to be performed.~~

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

19 (3) ~~At any time within fifteen days after the certified copies of the determination have been~~
20 ~~filed with the Secretary of State and the department of labor, any person who may be affected thereby~~
21 ~~may object in writing to the determination or such part thereof as he or she deems objectionable by~~
22 ~~filing a written notice with the department of labor stating the specific grounds of the objection.~~

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

6 ~~(5) The department of labor at its discretion may hear such written objection separately or~~
7 ~~consolidate for hearing any two or more written objections. At the hearing the department of labor~~
8 ~~shall introduce into evidence the results of the investigation it instituted and such other facts which~~
9 ~~were considered at the time of the original determination of the fair minimum prevailing hourly rate~~
10 ~~including the sources which formed the basis for its determination. The department of labor or any~~
11 ~~objectors thereafter may introduce such further evidence as may be material to the issues.~~

12 ~~(6) Within ten days of the conclusion of the hearing, the department must rule on the written~~
13 ~~objections and make such final determination as shall be established by a preponderance of the~~
14 ~~evidence. Immediately upon such final determination, the department of labor shall file a certified~~
15 ~~copy of its final determination with the Secretary of State and with the department of labor and shall~~
16 ~~serve a copy of the final determination on all parties to the proceedings by personal service or by~~
17 ~~registered mail.~~

18 ~~(7) Any person affected by the final determination of the department of labor, whether or not~~
19 ~~such person participated in the proceedings resulting in such final determination, may appeal to the~~
20 ~~board from the final determination of the department of labor within ten days from the filing of the~~
21 ~~copy of the final determination with the Secretary of State. The board shall hear the appeal within~~
22 ~~twenty days from the receipt of notice of appeal. The hearing by the board shall be held in~~

1 ~~Charleston. The hearing by the board shall be upon the record compiled in the hearing before the~~
2 ~~department of labor and the board shall have the authority to affirm, reverse, amend, or remand for~~
3 ~~further evidence, the final determination of the department of labor. The board shall render its~~
4 ~~decision within ten days after the conclusion of its hearing.~~

5 ~~(8) Any party to the proceeding before the board or any person affected thereby may within~~
6 ~~thirty days after receipt of the notice of its decision, appeal the board's decision to the circuit court~~
7 ~~of the county wherever the construction of a public improvement is to be performed, which shall~~
8 ~~consider the case on the record made before the commissioner of labor and before the board. The~~
9 ~~decision of such circuit court may be appealed to the Supreme Court of Appeals of West Virginia~~
10 ~~by any party to the proceedings or by any person affected thereby in the manner provided by law for~~
11 ~~appeals in civil actions.~~

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

13 (2) On or before June 1, 2015, Workforce West Virginia, in coordination with the West
14 Virginia University Bureau of Business and Economic Research and the Center for Business and
15 Economic Research at Marshall University, shall determine the methodology for annually calculating
16 the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not
17 limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual
18 rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade
19 or occupation in the construction industry, regardless of the wages listed in collective bargaining
20 agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the
21 construction of the public improvement is to be performed. Workforce West Virginia shall present
22 such methodology for the determination of the prevailing hourly rate of wages to the Joint

1 Committee on Government and Finance, which shall review the methodology being used to
2 determine annually the prevailing hourly rate of wages and recommend to the Legislature any
3 statutory changes needed to clarify the method for determining prevailing wages.

4 (3) On or before July 1, 2015, Workforce West Virginia, in coordination with the West
5 Virginia University Bureau of Business and Economic Research and the Center for Business and
6 Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for
7 the remainder of 2015 in accordance with the approved methodology set forth in subsection (2) of
8 this section.

9 (4) On or before September 30 of every year, Workforce West Virginia, in coordination with
10 the West Virginia University Bureau of Business and Economic Research and the Center for
11 Business and Economic Research at Marshall University, shall determine the prevailing hourly rate
12 of wages for the following year in accordance with the approved methodology set forth in subsection
13 (2) of this section.

14 (5) On or before September 30, 2018, and in every third year thereafter, Workforce West
15 Virginia shall review the methodology for determining the prevailing hourly rate of wages, as set
16 forth in subsection (2) of this section, with the West Virginia University Bureau of Business and
17 Economic Research and the Center for Business and Economic Research at Marshall University, and
18 present such review and make any recommendations regarding such methodology to the Joint
19 Committee on Government and Finance. The Joint Committee on Government and Finance shall
20 review the methodology being used to determine the prevailing hourly rate of wages and recommend
21 to the Legislature any statutory changes needed to clarify the method for determining prevailing
22 wages.

1 such record for a period longer than three years after the termination of the contract.

2 **§21-5A-10. Existing contracts.**

3 This article shall apply only to contracts for construction on public improvements let after
4 the effective date of this article and to construction on public improvements for which there has been
5 determined, pursuant to section five of this article, the fair minimum wage rates ~~as provided in this~~
6 ~~article, and such determination has not been appealed from as may be provided by this article.~~

7 **§21-5A-11. Rulemaking.**

8 (a) The Executive Director of Workforce West Virginia shall propose rules for legislative
9 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to
10 implement the provisions of this article.

11 (b) Rules promulgated under this section shall, at a minimum:

12 (1) Establish an appeals process for hearing any objections regarding Workforce West
13 Virginia's annual determination of the prevailing hourly rate of wages;

14 (2) Implement any necessary provisions to implement the provisions of this article.

15 (c) Any legislative rule filed prior to the effective date of this article implementing the
16 provisions of this article is hereby repealed as of July 1, 2015.

17 **§21-5A-12. Provisions of article severable.**

18 Each section of this article, and every part thereof, is hereby declared to be an independent
19 section or part of a section and if any section, subsection, sentence, clause or phrase of this article
20 shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses,
21 sentences, subsections and sections of this article shall not be affected thereby.