

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 361**

5 (Senator Blair, *original sponsor*)

6 _____
7 [Passed March 3, 2015; to take effect April 13, 2015.]
8 _____
9

10 AN ACT to amend and reenact §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8,
11 §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend
12 said code by adding thereto a new section, designated §21-5A-12, all relating to the fair
13 minimum rate of wages; eliminating, modifying and defining terms; providing for
14 determination and methodology of determining fair minimum rate of wages by Workforce
15 West Virginia; applying fair minimum rate of wages based on monetary threshold;
16 establishing prevailing wages at specific intervals and exception; providing for review of
17 determinations and methodology; addressing data used in determining prevailing wage rates;
18 providing limitation on use of confidential, individual proprietor-level data and excluding
19 from definition of public record under section three, article one, chapter twenty-nine-b;
20 requiring contract provisions and exceptions; keeping wage records; requiring Workforce
21 West Virginia to propose emergency and legislative rules; and providing provisions of article
22 are severable.

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

2 That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-
3 5A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said
4 code be amended by adding thereto a new section, designated §21-5A-12, all to read as follows:

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

6 **§21-5A-1. Definitions.**

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

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

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

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

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

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

9 (7) The term "public money" means funds obtained by a public authority through taxes, fees,
10 fines or penalties. For purposes of this article, public money does not include funds obtained by
11 private donation, contribution, fundraising or insurance proceeds.

12 (8) The term "wages" means the hourly rate paid for work performed by an employee for an
13 employer.

14 **§21-5A-2. Policy declared.**

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

19 **§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of**
20 **specifications.**

21 Any public authority authorized to let to contract the construction of a public improvement
22 shall, before advertising for bids for the construction thereof, ascertain from Workforce West

1 Virginia, the fair minimum rate of wages to be paid by the successful bidder to the laborers, workers
2 or mechanics in the various branches or classes of the construction to be performed; and such
3 schedule of wages shall be made a part of the specifications for the construction and shall be
4 published in an electronic or other medium and incorporated in the bidding blanks by reference when
5 approved by Workforce West Virginia where the construction is to be performed by contract. The
6 fair minimum rate of wages, for the intents and purposes of this article, shall be the prevailing rate
7 of wages paid in the regions of this state as hereinbefore defined to the workers, laborers or
8 mechanics in the same trade or occupation in the construction industry. Workforce West Virginia
9 shall assemble the data as to the fair minimum wage rates and shall file wage rates. Rates shall be
10 established and filed as hereinafter provided on January 1, of each year, unless otherwise specified
11 within this article. These rates shall prevail as the minimum wage rate for all public improvements
12 for which bids are asked during the year beginning with the date when such new rates are filed and,
13 until the new rates are filed, the rates for the preceding year shall remain in effect: *Provided*, That
14 such rates shall not remain in effect for a period longer than fifteen months from the date they are
15 published, but this provision shall not affect construction of a public improvement then underway:
16 *Provided, however*, That this section applies only to contracts let for public improvements whose
17 cost at the time the contract is awarded will be paid with public money in an amount greater than
18 \$500,000.

19 **§21-5A-5. Prevailing wages established at specified intervals; how determined; filing;**
20 **legislative review.**

21 (1) Workforce West Virginia, in coordination with the West Virginia University Bureau of
22 Business and Economic Research and the Center for Business and Economic Research at Marshall

1 University in furtherance of section four, article three, chapter eighteen-b of this code, shall
2 investigate and determine the prevailing hourly rate of wages in the regions of this state.
3 Determinations thereof shall be made annually on January 1 of each year, unless otherwise specified
4 within this article, and shall remain in effect during the successive year: *Provided*, That such rates
5 shall not remain in effect for a period longer than fifteen months from the date they are published.
6 A copy of the determination so made, certified by Workforce West Virginia, shall be filed
7 immediately with the Secretary of State.

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

21 (3) On or before July 1, 2015, Workforce West Virginia, in coordination with the West
22 Virginia University Bureau of Business and Economic Research and the Center for Business and

1 Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for
2 the remainder of 2015 in accordance with the approved methodology set forth in subsection (2) of
3 this section: *Provided*, That if the determination is not in place on July 1, 2015, for any reason, no
4 prevailing hourly rate of wages shall be in effect until the determination is made: *Provided*,
5 *however*, That in the event the determination is not in place on July 1, 2015, the Joint Committee
6 on Government and Finance may extend the deadline to a date thereafter, but, in any event, no later
7 than September 30, 2015. During the extension period only, the prevailing wage in place prior to
8 July 1, 2015, shall remain the prevailing wage: *Provided further*, That in the event the determination
9 is not in place at the conclusion of such extension period, no prevailing hourly rate of wages shall
10 be in effect until the determination is made.

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

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

1 to the Legislature any statutory changes needed to clarify the method for determining prevailing
2 wages.

3 (6) Any confidential, individual proprietor-level data submitted to Workforce West Virginia,
4 the West Virginia University Bureau of Business and Economic Research or the Center for Business
5 and Economic Research at Marshall University for the purpose of determining the prevailing rates
6 may not be used for any purpose other than the calculation of the prevailing wage rates: *Provided,*
7 That any such data may be available for purposes of the appeals process referenced in section eleven
8 of this article: *Provided, however,* That any confidential, individual proprietor-level data submitted
9 to Workforce West Virginia, the West Virginia University Bureau of Business and Economic
10 Research or the Center for Business and Economic Research at Marshall University for the purpose
11 of determining the prevailing wage rates shall not be considered a public record for purposes of
12 section three, article one, chapter twenty-nine-b of this code.

13 **§21-5A-6. Contracts to contain provisions relative to minimum wages to be paid; exceptions.**

14 In cases where any public authority has ascertained a fair minimum rate or rates of wages as
15 herein provided, and construction of a public improvement is let to contract, the contract executed
16 between the public authority and the successful bidder shall contain a provision requiring the
17 successful bidder and all his or her subcontractors to pay a rate or rates of wages which shall not be
18 less than the fair minimum rate or rates of wages as provided by this article: *Provided,* That the
19 provisions of this article only apply to contracts let for public improvements whose cost at the time
20 the contract is awarded will be paid with public money in an amount greater than \$500,000.

21 **§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to**
22 **inspection.**

1 The contractor and each subcontractor or the officer of the public authority in charge of the
2 construction of a public improvement shall keep an accurate record showing the names and
3 occupations of all such skilled laborers, workers and mechanics employed by them, in connection
4 with the construction on the public improvement and showing also the actual wages paid to each of
5 the skilled laborers, workers and mechanics, which record shall be open at all reasonable hours to
6 the inspection of Workforce West Virginia and the public authority which let the contract, its officers
7 and agents. It shall not be necessary to preserve such record for a period longer than three years after
8 the termination of the contract.

9 **§21-5A-10. Existing contracts.**

10 This article shall apply only to contracts for construction on public improvements let after
11 the effective date of this article and to construction on public improvements for which there has been
12 determined, pursuant to section five of this article, the fair minimum wage rates.

13 **§21-5A-11. Rulemaking.**

14 (a) The Executive Director of Workforce West Virginia shall promulgate emergency rules
15 and propose, for legislative promulgation, legislative rules pursuant to the provisions of article three,
16 chapter twenty-nine-a of this code to effectuate the provisions of this article. All rules, whether
17 emergency or not, promulgated pursuant to this section shall at a minimum:

18 (1) Define the regions of the state as used in the article;

19 (2) Establish a process for addressing written objections regarding the methodology for
20 calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages:
21 *Provided*, That Workforce West Virginia may consolidate written objections for hearing and final
22 determination purposes; and

1 (3) Propose any other rules necessary to effectuate the purposes of this article.

2 (b) Any legislative rule in effect prior to the effective date of this article implementing the
3 provisions of this article is hereby repealed..

4 **§21-5A-12. Provisions of article severable.**

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

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