

Senate Bill No. 100

(By Senators Carmichael, Blair and Mullins)

[Introduced January 14, 2015; referred to the Committee on the Judiciary.]

**FISCAL
NOTE**

1
2
3
4 A BILL to amend and reenact §21-5A-5 of the Code of West Virginia, 1931, as amended, relating
5
6 to establishing prevailing hourly rates are to be used in connection with construction of
7
8 public improvements; and providing for review and appeal.

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

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

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

13 **§21-5A-5. Prevailing wages established at regular intervals; how determined; filing;**
14 **objections to determination; hearing; final determination; judicial review.**

15 ~~(a)~~ (a) The ~~department~~ Commissioner of Labor, from time to time, shall investigate and
16 determine the prevailing hourly rate of wages in the localities in this state. Determinations ~~thereof~~
17 shall be made annually on January 1 of each year and ~~shall~~ remain in effect during the successive
18 year: *Provided, however,* That ~~such~~ the rates ~~shall~~ may not remain in effect for a period longer than
19
20
21

1 fifteen months from the date they are published.

2 ~~In determining such prevailing rates, the department of labor may ascertain and consider the~~
3 ~~applicable wage rates established by collective bargaining agreements, if any, and such rates as are~~
4 ~~paid generally within the locality in this state where the construction of the public improvement is~~
5 ~~to be performed.~~ The Commissioner of Labor shall base the determination of prevailing rates on
6 statistics made available by the United States Division of Labor, Bureau of Labor Statistics.

7 (2) (b) A copy of the determination, ~~so made~~ certified by the ~~secretary of the board~~
8 Commissioner of Labor, shall be filed immediately with the Secretary of State. ~~and with the~~
9 ~~department of labor~~ Copies shall be supplied to all persons requesting ~~same~~ them within ten days
10 after ~~such~~ the filing.

11 (3) (c) At any time within fifteen days after the certified copies of the determination have
12 been filed with the Secretary of State, ~~and the department of labor~~ any person who may be affected
13 thereby may object in writing to the determination or ~~such~~ part thereof as he ~~deems~~ or she finds
14 objectionable by filing a written notice with the ~~department of labor~~ county commission of the
15 county where the construction is to be performed stating the specific grounds of the objection.

16 (4) (d) Within ten days of the receipt of the objection, the ~~department of labor~~ county
17 commission shall set a date for a hearing on the objection. The date for the hearing shall be within
18 thirty days after the receipt of the objection. Written notice of the time and place of the hearing shall
19 be given to the objectors at least ten days prior to the date set for the hearing and at a time so as to
20 enable the objectors to be present.

21 (5) (e) The ~~department of labor~~ county commission at its discretion may hear ~~such~~ the written

1 objection separately or consolidate for hearing any two or more written objections. At the hearing
2 the ~~department~~ Commissioner of Labor shall introduce into evidence the results of the investigation
3 it he or she instituted and ~~such~~ the other facts which were considered at the time of the original
4 determination of the fair minimum prevailing hourly rate including the sources which formed the
5 basis for ~~its~~ his or her determination. The ~~department~~ Commissioner of Labor or any objectors
6 thereafter may introduce ~~such further~~ other evidence as may be material to the issues.

7 ~~(6)~~ (f) Within ten days of the conclusion of the hearing, the ~~department~~ must county
8 commission shall rule on the written objections and make ~~such~~ a final determination ~~as shall be~~
9 ~~established~~ that is supported by a preponderance of the evidence. Immediately upon ~~such~~ the final
10 determination, the ~~department of labor~~ county commission shall file a certified copy of its final
11 determination with the Secretary of State and with the ~~department~~ Commissioner of Labor and shall
12 serve a copy of the final determination on all other parties to the proceedings by personal service or
13 by registered or certified mail.

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

1 ~~shall render its decision within ten days after the conclusion of its hearing.~~

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

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

NOTE: The purpose of this bill is to require that prevailing hourly rates be used in connection with the construction of public improvements. The bill provides that the Commissioner of Labor is to base the determination of prevailing rates on statistics made available by the United States Department of Labor, Bureau of Labor Statistics. The bill provides a county commission with the authority to review the determination. The bill also provides for appeals to the circuit court and the Supreme Court of Appeals.

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