

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 361

(SENATOR BLAIR, *ORIGINAL SPONSOR*)

[PASSED MARCH 3, 2015; TO TAKE EFFECT APRIL 13, 2015.]

E N R O L L E D

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(SENATOR BLAIR, *ORIGINAL SPONSOR*)

[Passed March 3, 2015; to take effect April 13, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

§21-5A-1. Definitions.

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

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

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

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

23 (5) The term “construction industry”, as used in this
24 article, shall mean that industry which is composed of
25 employees and employers engaged in construction of
26 buildings, roads, highways, bridges, streets, alleys, sewers,
27 ditches, sewage disposal plants, waterworks, airports and all
28 other structures or works, whether private or public, on which
29 construction work as defined in subsection (2) of this section
30 is performed.

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

36 (7) The term “public money” means funds obtained by
37 a public authority through taxes, fees, fines or penalties. For
38 purposes of this article, public money does not include funds
39 obtained by private donation, contribution, fundraising or
40 insurance proceeds.

41 (8) The term “wages” means the hourly rate paid for
42 work performed by an employee for an employer.

§21-5A-2. Policy declared.

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

7 **§21-5A-3. Fair minimum rate of wages; determination; filing;**
8 **schedule of wages part of specifications.**

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

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

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

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

36 (3) On or before July 1, 2015, Workforce West Virginia,
37 in coordination with the West Virginia University Bureau of
38 Business and Economic Research and the Center for Business
39 and Economic Research at Marshall University, shall
40 determine the prevailing hourly rate of wages for the
41 remainder of 2015 in accordance with the approved
42 methodology set forth in subsection (2) of this section:
43 *Provided*, That if the determination is not in place on July 1,
44 2015, for any reason, no prevailing hourly rate of wages
45 shall be in effect until the determination is made: *Provided*,
46 *however*, That in the event the determination is not in place
47 on July 1, 2015, the Joint Committee on Government and
48 Finance may extend the deadline to a date thereafter, but, in
49 any event, no later than September 30, 2015. During the
50 extension period only, the prevailing wage in place prior to
51 July 1, 2015, shall remain the prevailing wage: *Provided*
52 *further*, That in the event the determination is not in place at
53 the conclusion of such extension period, no prevailing hourly
54 rate of wages shall be in effect until the determination is
55 made.

56 (4) On or before September 30 of every year, Workforce
57 West Virginia, in coordination with the West Virginia
58 University Bureau of Business and Economic Research and
59 the Center for Business and Economic Research at Marshall
60 University, shall determine the prevailing hourly rate of
61 wages for the following year in accordance with the approved
62 methodology set forth in subsection (2) of this section.

63 (5) On or before September 30, 2018, and in every third
64 year thereafter, Workforce West Virginia shall review the
65 methodology for determining the prevailing hourly rate of
66 wages, as set forth in subsection (2) of this section, with the
67 West Virginia University Bureau of Business and Economic
68 Research and the Center for Business and Economic
69 Research at Marshall University, and present such review and

70 make any recommendations regarding such methodology to
71 the Joint Committee on Government and Finance. The Joint
72 Committee on Government and Finance shall review the
73 methodology being used to determine the prevailing hourly
74 rate of wages and recommend to the Legislature any statutory
75 changes needed to clarify the method for determining
76 prevailing wages.

77 (6) Any confidential, individual proprietor-level data
78 submitted to Workforce West Virginia, the West Virginia
79 University Bureau of Business and Economic Research or the
80 Center for Business and Economic Research at Marshall
81 University for the purpose of determining the prevailing rates
82 may not be used for any purpose other than the calculation of
83 the prevailing wage rates: *Provided*, That any such data may
84 be available for purposes of the appeals process referenced in
85 section eleven of this article: *Provided, however*, That any
86 confidential, individual proprietor-level data submitted to
87 Workforce West Virginia, the West Virginia University
88 Bureau of Business and Economic Research or the Center for
89 Business and Economic Research at Marshall University for
90 the purpose of determining the prevailing wage rates shall not
91 be considered a public record for purposes of section three,
92 article one, chapter twenty-nine-b of this code.

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

1 In cases where any public authority has ascertained a fair
2 minimum rate or rates of wages as herein provided, and
3 construction of a public improvement is let to contract, the
4 contract executed between the public authority and the
5 successful bidder shall contain a provision requiring the
6 successful bidder and all his or her subcontractors to pay a
7 rate or rates of wages which shall not be less than the fair
8 minimum rate or rates of wages as provided by this article:

9 *Provided*, That the provisions of this article only apply to
10 contracts let for public improvements whose cost at the time
11 the contract is awarded will be paid with public money in an
12 amount greater than \$500,000.

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

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

§21-5A-10. Existing contracts.

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

§21-5A-11. Rulemaking.

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

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

8 (2) Establish a process for addressing written objections
9 regarding the methodology for calculating the prevailing
10 hourly rate of wages and the calculation of the hourly rate of
11 wages: *Provided*, That Workforce West Virginia may
12 consolidate written objections for hearing and final
13 determination purposes; and

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect April 13, 2015.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2015.

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Governor