

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **House Bill 2659**

**FISCAL  
NOTE**

BY DELEGATES BREWER, DISERIO, PETHTEL, FERRO,  
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MILEY AND MOYE

[Introduced February 22, 2017; Referred  
to the Committee on Industry and Labor then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7 §21-  
 3 5A-8, §21-5A-9 and §21-5A-10, all relating to reestablishing prevailing wages for certain  
 4 state government contracts; declaring policy; defining terms; requiring regular  
 5 determinations of prevailing wage rates; providing for objection, hearing and judicial  
 6 review of determinations of prevailing wages; requiring prevailing wage rates as an  
 7 element of bid requests and public contracts; providing for posting of rates and record-  
 8 keeping; establishing criminal penalties; and providing for prospective application of this  
 9 article.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7 §21-  
 3 5A-8, §21-5A-9 and §21-5A-10, all to read as follows:

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

### **§21-5A-1. Legislative findings.**

1 The Legislature finds that the repeal of the state prevailing wage law has resulted in no  
 2 identified savings but many measurable losses to the State of West Virginia and its citizens and  
 3 that while no savings have been realized for the state for costs in construction projects, the  
 4 resulting cuts in wages, benefits, and jobs, and tax revenues to the state and its subdivisions are  
 5 measurable and have adversely impacted this state and many of its citizens. Therefore, the  
 6 Legislature finds that reenactment of a state prevailing wage law is necessary to prevent further  
 7 deterioration of the state's construction industry and help preserve living wages for many West  
 8 Virginians working in the state construction industry.

### **§21-5A-2. Definitions.**

1 (1) The term "construction," as used in this article, shall mean any construction,  
 2 reconstruction, improvement, enlargement, painting, decorating, or repair of any public

3 improvement let to contract. The term "construction" shall not be construed to include temporary  
4 or emergency repairs.

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

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

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

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

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

**§21-5A-3. Policy declared.**

1           It is hereby declared to be the policy of the State of West Virginia that a wage of not less  
2 than the prevailing hourly rate of wages for work of a similar character in the locality in this state  
3 in which the construction is performed, shall be paid to all workmen employed by or on behalf of  
4 any public authority engaged in the construction of public improvements.

**§21-5A-4. Fair minimum rate of wages; determination; filing; schedule of wages part of**  
**specifications.**

1           Any public authority authorized to let to contract the construction of a public improvement,  
2 shall, before advertising for bids for the construction thereof, ascertain from the State  
3 Commissioner of Labor, the fair minimum rate of wages, including fair minimum overtime and  
4 holiday pay, to be paid by the successful bidder to the laborers, workmen or mechanics in the  
5 various branches or classes of the construction to be performed; and such schedule of wages  
6 shall be made a part of the specifications for the construction and shall be published in an  
7 electronic or other medium and incorporated in the bidding blanks by reference when approved  
8 by the Commissioner of Labor where the construction is to be performed by contract. The "fair  
9 minimum rate of wages," for the purposes of this article, shall be the rate of wages paid in the  
10 locality in this state to the majority of workmen, laborers or mechanics in the same trade or  
11 occupation in the construction industry. The Commissioner of Labor or a member of his or her  
12 division designated by him or her shall assemble the data as to fair minimum wage rates and shall  
13 file wage rates. Rates shall be established and filed as hereinafter provided on January 1 of each  
14 year. These rates shall prevail as the minimum wage rate on all public improvements on which  
15 bids are asked during the year beginning with the date when such new rates are filed and until

16 the new rates are filed, the rates for the preceding year shall remain in effect: *Provided*, That such  
17 rates shall not remain in effect for a period longer than fifteen months from the date they are  
18 published, but, this provision shall not affect construction of a public improvement then underway.

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

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

6 In determining such prevailing rates, the Division of Labor may ascertain and consider the  
7 applicable wage rates established by collective bargaining agreements, if any, and such rates as  
8 are paid generally within the locality in this state where the construction of the public improvement  
9 is to be performed.

10 (b) A copy of the determination so made, certified by the secretary of the division, shall be  
11 filed immediately with the Secretary of State and with the Division of Labor. Copies shall be  
12 supplied to all persons requesting same within ten days after such filing.

13 (c) At any time within fifteen days after the certified copies of the determination have been  
14 filed with the Secretary of State and the Division of Labor, any person who may be affected  
15 thereby may object in writing to the determination or such part thereof as he or she deems  
16 objectionable by filing a written notice with the Division of Labor stating the specific grounds of  
17 the objection.

18 (d) Within ten days of the receipt of the objection, the Division of Labor shall set a date  
19 for a hearing on the objection. The date for the hearing shall be within thirty days after the receipt  
20 of the objection. Written notice of the time and place of the hearing shall be given to the objectors  
21 at least ten days prior to the date set for the hearing and at a time so as to enable the objectors

22 to be present.

23 (e) The Division of Labor at its discretion may hear such written objection separately or  
24 consolidate for hearing any two or more written objections. At the hearing the Division of Labor  
25 shall introduce into evidence the results of the investigation it instituted and such other facts which  
26 were considered at the time of the original determination of the fair minimum prevailing hourly  
27 rate including the sources which formed the basis for its determination. The Division of Labor or  
28 any objectors thereafter may introduce such further evidence as may be material to the issues.

29 (f) Within ten days of the conclusion of the hearing, the division must rule on the written  
30 objections and make such final determination as shall be established by a preponderance of the  
31 evidence. Immediately upon such final determination, the Division of Labor shall file a certified  
32 copy of its final determination with the Secretary of State and with the Division of Labor and shall  
33 serve a copy of the final determination on all parties to the proceedings by personal service or by  
34 registered mail.

35 (g) Any person adversely affected by the final determination of the Division of Labor,  
36 whether or not such person participated in the proceedings resulting in such final determination,  
37 may petition for judicial review of the determination in the circuit court of the county wherever the  
38 construction of a public improvement is to be performed, which shall consider the case on the  
39 record made before the Commissioner of Labor.

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

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

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

**§21-5A-7. Wage rates to be kept posted.**

1        A clearly legible statement of all fair minimum wage rates to be paid the several classes  
 2 of skilled laborers, workmen and mechanics employed on the construction of the public  
 3 improvement shall be kept posted in a prominent and easily accessible place at the site thereof  
 4 by each contractor and subcontractor subject to the provisions of this article.

**§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 the public authority in charge of  
 2 the construction of a public improvement shall keep an accurate record showing the names and  
 3 occupation of all such skilled laborers, workmen and mechanics employed by them, in connection  
 4 with the construction on the public improvement and showing also the actual wages paid to each  
 5 of the skilled laborers, workmen and mechanics, which record shall be open at all reasonable  
 6 hours to the inspection of the Division of Labor and the public authority which let the contract, its  
 7 officers and agents. It shall not be necessary to preserve such record for a period longer than  
 8 three years after the termination of the contract.

**§21-5A-9. Penalties for violation of article.**

1        (a) Any contractor or subcontractor who willfully and knowingly violates any provision of  
 2 this article shall be fined not less than \$50 nor more than \$250.

3        (b) Any skilled laborer, workman or mechanic who is engaged in construction on a public  
 4 improvement let to contract, who is paid less than the posted fair minimum rate of wages  
 5 applicable thereto, may recover from such contractor or subcontractor the difference between the  
 6 same and the posted fair minimum rate of wages, and in addition thereto, a penalty equal in  
 7 amount to such difference, and reasonable attorney fees. The venue for said action shall be in  
 8 the county where the work is performed: *Provided*, That an honest mistake or error shall not be  
 9 construed as a basis for recovery under this subsection.

10        (c) Where skilled laborers, workmen and mechanics are employed in construction on a  
 11 public improvement and their posted rate of wages has been determined as provided by this

12 article, it shall be unlawful for any person, for himself, herself or another, to request, demand or  
13 receive, either before or after such skilled laborers, workmen and mechanics are employed in  
14 construction on a public improvement, that they or any one of them pay over money or other thing  
15 of value or pay back, return, donate, contribute or give any part or all of their said wages, or thing  
16 of value, to any person, upon the statement, representation or understanding that failure to comply  
17 with such request or demand will prevent them or any one of them from procuring or retaining  
18 employment; and any person who directly or indirectly aids, requests or authorizes any other  
19 person to violate any of the provisions of this section shall be guilty of a misdemeanor and, fined  
20 not less than \$50 and not more than \$250.

**§21-5A-10. Existing contracts.**

1 This article shall apply only to contracts for construction on public improvements let after  
2 the effective date of this article, and to construction on public improvements for which there has  
3 been determined the fair minimum wage rates as provided in this article, and no appeal or judicial  
4 review has been sought of the determination as provided by this article.

NOTE: The purpose of this bill is to restore the requirements for prevailing wages for certain government contracts to state law. This law was repealed during the 2016 Legislative Session, and this bill restores prior law.

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