

H. B. 2886

(By Delegates Householder, Overington,
J. Miller, Gearheart, Michael, Cowles
and Kump)

[Introduced January 27, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to amend and reenact §21-5A-5 of the Code of West Virginia,
1931, as amended, relating to the calculation of prevailing
wages by changing the process and considerations and, also,
altering the procedure used for hearing objections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

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

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

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

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

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

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

24 ~~(5) The department of labor at its discretion may hear such~~
25 ~~written objection separately or consolidate for hearing any two or~~
26 ~~more written objections. At the hearing the department of labor~~

1 ~~shall introduce into evidence the results of the investigation it~~
2 ~~instituted and such other facts which were considered at the time~~
3 ~~of the original determination of the fair minimum prevailing hourly~~
4 ~~rate including the sources which formed the basis for its~~
5 ~~determination. The department of labor or any objectors thereafter~~
6 ~~may introduce such further evidence as may be material to the~~
7 ~~issues.~~

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

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

1 ~~authority to affirm, reverse, amend, or remand for further~~
2 ~~evidence, the final determination of the department of labor. The~~
3 ~~board shall render its decision within ten days after the~~
4 ~~conclusion of its hearing.~~

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

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

17 (1) The Department of Labor, each year, must determine the
18 true prevailing wage rate of the counties in this state.
19 Calculation of the prevailing wage rates must include the actual
20 gross wages of all four quarters of payroll from West Virginia
21 contractors as recorded by Workforce, West Virginia, and shall
22 remain in effect during the successive year and be posted by
23 February 15 of the successive year.

24 In determining prevailing wage rates, the Department of Labor
25 must determine prevailing wage rates on actual hours worked, not on
26 available hours worked, per trade, on a county by county basis, as

1 evidenced by using the West Virginia unemployment quarterly tax
2 returns from each West Virginia contractor to determine the true
3 prevailing wage rates. The WV Workforce office will certify the
4 total gross wages from all West Virginia contractors by each trade
5 classification for each county to the Department of Labor.

6 (2) A copy of the certification of wages, certified by WV
7 Workforce, must be filed immediately with the Secretary of State
8 from the Department of Labor. Copies shall be supplied to all
9 persons requesting same within thirty days after such filing.

10 (3) At any time within the thirty days of the wages filed with
11 the Secretary of State, any person who may be affected may object
12 to the certification by filing a written notice to the Department
13 of Labor stating the specific grounds for the objection.

14 (4) Within ten days of the receipt of the objection, the
15 Department of Labor shall set a date for a hearing. The date of
16 the hearing shall be within thirty days after the receipt of the
17 objection. Written notice of the time and place of the hearing
18 shall be given to the objectors at least ten days prior to the date
19 set for the hearing and at a time to enable the objectors to be
20 present.

21 (5) The Department of Labor shall hear the objection and shall
22 render its decision within ten days after the conclusion of its
23 hearing. After the hearing, the objector may appeal the Department
24 of Labor's decision to the circuit court of the county where the
25 construction of a public improvement is to be performed. The
26 decision of the circuit court may be appealed to the Supreme Court

1 of Appeals of West Virginia by any party to the proceedings, or by
2 any person affected, in the manner provided by law for appeals in
3 civil actions.

4 (6) Pending the decision on appeal, the rates for the
5 preceding year shall remain in effect.

NOTE: The purpose of this bill is to modify the manner in which prevailing wages are determined and alter the manner in which objections are heard.

This section has been completely rewritten; therefore, it has been completely underscored.