

1 **H. B. 2575**

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3 (By Delegates Kump, Folk, Evans, D., Faircloth)
4 [Introduced February 20, 2013; referred to the
5 Committee on Energy, Industry and Labor, Economic
6 Development and Small Business then the Judiciary.]
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10 A BILL to amend and reenact §21-5A-5 of the Code of West Virginia,
11 1931, as amended, relating to setting West Virginia prevailing
12 wage rates by county.

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

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

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

17 **§21-5A-5. Prevailing wages established at regular intervals; how**
18 **determined; filing; objections to determination;**
19 **hearing; final determination; appeals to board;**
20 **judicial review.**

21 (1) The Department of Labor, from time to time, shall
22 investigate and determine the prevailing hourly rate of wages in
23 the localities in this state. Determinations thereof shall be made

1 annually on January 1 of each year and shall remain in effect
2 during the successive year: Provided, That such rates shall not
3 remain in effect for a period longer than fifteen months from the
4 date they are published.

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

11 (2) A copy of the determination so made for each county within
12 the locality of this state, certified by the secretary of the
13 board, shall be filed immediately with the Secretary of State and
14 with the Department of Labor. Copies shall be supplied to all
15 persons requesting same within ten days after such filing.

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

22 (4) Within ten days of the receipt of the objection, the
23 Department of Labor shall set a date for a hearing on the
24 objection. The date for the hearing shall be within thirty days

1 after the receipt of the objection. Written notice of the time and
2 place of the hearing shall be given to the objectors at least ten
3 days prior to the date set for the hearing and at a time so as to
4 enable the objectors to be present.

5 (5) The Department of Labor at its discretion may hear such
6 written objection separately or consolidate for hearing any two or
7 more written objections. At the hearing the Department of Labor
8 shall introduce into evidence the results of the investigation it
9 instituted and such other facts which were considered at the time
10 of the original determination of the fair minimum prevailing hourly
11 rate including the sources which formed the basis for its
12 determination. The Department of Labor or any objectors thereafter
13 may introduce such further evidence as may be material to the
14 issues.

15 (6) Within ten days of the conclusion of the hearing, the
16 department must rule on the written objections and make such final
17 determination as shall be established by a preponderance of the
18 evidence. Immediately upon such final determination, the Department
19 of Labor shall file a certified copy of its final determination
20 with the Secretary of State and with the Department of Labor and
21 shall serve a copy of the final determination on all parties to the
22 proceedings by personal service or by registered mail.

23 (7) Any person affected by the final determination of the
24 Department of Labor, whether or not such person participated in the

1 proceedings resulting in such final determination, may appeal to
2 the board from the final determination of the Department of Labor
3 within ten days from the filing of the copy of the final
4 determination with the Secretary of State. The board shall hear
5 the appeal within twenty days from the receipt of notice of appeal.
6 The hearing by the board shall be held in Charleston. The hearing
7 by the board shall be upon the record compiled in the hearing
8 before the Department of Labor and the board shall have the
9 authority to affirm, reverse, amend, or remand for further
10 evidence, the final determination of the Department of Labor. The
11 board shall render its decision within ten days after the
12 conclusion of its hearing.

13 (8) Any party to the proceeding before the board or any person
14 affected thereby may within thirty days after receipt of the notice
15 of its decision, appeal the board's decision to the circuit court
16 of the county wherever the construction of a public improvement is
17 to be performed, which shall consider the case on the record made
18 before the Commissioner of Labor and before the board. The
19 decision of such circuit court may be appealed to the Supreme Court
20 of Appeals of West Virginia by any party to the proceedings or by
21 any person affected thereby in the manner provided by law for
22 appeals in civil actions.

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

NOTE: The purpose of this bill is to require prevailing wage rates within a county be based solely on the wages paid by employers, who are based within that county, to their employees working in that county.

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