

Senate Bill No. 511

(By Senators Boso and Stollings)

[Introduced February 18, 2015; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §21-5A-1, §21-5A-7, §21-5A-8 and §21-5A-9 of the Code of West Virginia, 1931, as amended, all relating to obligations of a contractor or subcontractor with regard to minimum prevailing wage rates for work performed on a public improvement project under a contract awarded by a state agency; clarifying the scope of a worker’s right of action for recovery from a contractor or subcontractor for nonpayment of minimum prevailing wage rates; defining terms; and providing retroactive application.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-7, §21-5A-8 and §21-5A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§21-5A-1. Definitions.

(1) The term "public authority," as used in this article, ~~shall mean~~ means any officer, board or commission or other agency of the State of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including

1 any institution supported, in whole or in part, by public funds of the State of West Virginia or its
2 political subdivisions, and this article ~~shall apply~~ applies to expenditures of ~~such~~ those institutions
3 made, in whole or in part, from ~~such~~ those public funds.

4 (2) The term "construction," as used in this article, ~~shall mean~~ means any construction,
5 reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement
6 let to contract. The term "construction" ~~shall not be construed to~~ does not include temporary or
7 emergency repairs.

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

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

22 (5) The term "construction industry," as used in this article, ~~shall mean~~ means that industry

1 which is composed of employees and employers engaged in construction of buildings, roads,
 2 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and
 3 all other structures or works whether private or public on which construction work as defined in
 4 subsection (2) of this section is performed.

5 ~~(6) The term "board" shall mean the Minimum Wage Board as constituted in this article.~~

6 ~~(7)~~ (6) The term "employee," for the purposes of this article, shall not be construed to include
 7 such persons as are employed or hired by the public authority on a regular or temporary basis or
 8 engaged in making temporary or emergency repairs.

9 (7) The term "covered contract," as used in this article, means a contract let by a public
 10 authority engaged in the construction of public improvements that contains an express provision
 11 requiring a fair minimum rate of wages to be paid pursuant to this article.

12 **§21-5A-7. Wage rates to be kept posted.**

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

17 **§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to**
 18 **inspection.**

19 The contractor and each subcontractor subject to the provisions of a covered contract, or the
 20 officer of the public authority in charge of the construction of a public improvement, as applicable
 21 shall keep an accurate record showing the names and occupation of all ~~such~~ the skilled laborers,
 22 workmen and mechanics employed by them, in connection with the construction on the public

1 improvement and showing also the actual wages paid to each of the skilled laborers, workmen and
 2 mechanics, which record shall be open at all reasonable hours to the inspection of the ~~department~~
 3 Division of Labor and the public authority which let the contract, its officers and agents. It ~~shall~~ is
 4 not ~~be~~ necessary to preserve ~~such~~ the record for a period longer than three years after the termination
 5 of the contract.

6 **§21-5A-9. Penalties for violation of article.**

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

9 (b) Any skilled laborer, workman or mechanic who is engaged in construction ~~on~~ of a public
 10 improvement let to contract, who is paid less than the ~~posted~~ fair minimum rate of wages ~~applicable~~
 11 ~~thereto~~ required by a covered contract, may recover from ~~such~~ the contractor or subcontractor the
 12 difference between the same and the ~~posted~~ fair minimum rate of wages required by the covered
 13 contract, and in addition thereto, a penalty equal in amount to ~~such~~ the difference, and reasonable
 14 attorney fees. The venue of ~~said~~ the action ~~shall be in~~ is the county where the work is performed:
 15 *Provided, however,* That an honest mistake or error ~~shall not be construed as~~ is not a basis for
 16 recovery under this subsection. This article does not permit a right of action for recovery by a skilled
 17 laborer, workman or mechanic against a contractor or subcontractor for work that is not subject to
 18 the provisions of a covered contract.

19 (c) Where skilled laborers, workmen and mechanics are employed in construction on a public
 20 improvement and their ~~posted~~ rate of wages has been determined as provided by this article, it ~~shall~~
 21 ~~be~~ is unlawful for any person, for himself or herself or another, to request, demand or receive, either
 22 before or after ~~such~~ the skilled laborers, workmen and mechanics are employed in construction on

1 a public improvement, that they or any one of them pay over money or other thing of value or pay
2 back, return, donate, contribute or give any part or all of their ~~said~~ wages, or thing of value, to any
3 person, upon the statement, representation or understanding that failure to comply with ~~such~~ the
4 request or demand will prevent them or any one of them from procuring or retaining employment;
5 and any person who directly or indirectly aids, requests or authorizes any other person to violate any
6 of the provisions of this section ~~shall be~~ is guilty of a misdemeanor and, fined not less than \$50 and
7 not more than \$250.

8 (d) It is the intent of the Legislature that the amendments to this article enacted during the
9 regular session of 2015:

10 (1) Constitute a clarification that this article, as previously enacted by the Legislature, does
11 not create a right of action against a contractor or subcontractor for failure to pay the fair minimum
12 rate of wages for work on construction of a public improvement where the contract let by the public
13 authority does not contain a provision requiring payment of such wage rates;

14 (2) Correct a misinterpretation and misapplication of the law that was expressed by the West
15 Virginia Supreme Court of Appeals in the case of *Grim v. Eastern Electric, LLC*, No. 13-1133
16 (November 3, 2014); and

17 (3) Be given retroactive force and effect.

NOTE: The purpose of this bill is to clarify the obligations of a contractor or subcontractor with regard to minimum prevailing wage rates for work performed on a public improvement project under a contract awarded by a state agency, and to clarify that a worker's right of action for recovery from a contractor or subcontractor for nonpayment of minimum prevailing wage rates applies only when the contract awarded by a state agency expressly requires payment of minimum prevailing wage rates. The changes are intended to have retroactive application.

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