

1 **H. B. 2753**

2  
3 (By Delegates Overington, Andes, Cowles, Kump,  
4 Faircloth and Householder)

5  
6 [Introduced February 27, 2013; referred to the  
7 Committee on Energy, Industry and Labor, Economic  
8 Development and Small Business then the Judiciary.]

**FISCAL  
NOTE**

9  
10 A BILL to amend and reenact §21-5A-5 of the Code of West Virginia,  
11 1931, as amended, relating to establishing prevailing hourly  
12 rates to be used in connection with the construction of public  
13 improvements; and providing appeal to county commission.

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

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

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

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

21 ~~(1)~~ (a) The ~~department~~ Commissioner of Labor, from time to  
22 time, shall investigate and determine the prevailing hourly rate of  
23 wages in the localities in this state. Determinations ~~thereof~~  
24 shall be made annually on January 1 of each year and ~~shall~~ remain  
25 in effect during the successive year: *Provided, That ~~such~~ the*

1 rates ~~shall~~ may not remain in effect for a period longer than  
2 fifteen months from the date they are published.

3 ~~In determining such prevailing rates, the department of labor~~  
4 ~~may ascertain and consider the applicable wage rates established by~~  
5 ~~collective bargaining agreements, if any, and such rates as are~~  
6 ~~paid generally within the locality in this state where the~~  
7 ~~construction of the public improvement is to be performed~~ The  
8 Commissioner of Labor shall base the determination of prevailing  
9 rates on statistics made available by the United States Department  
10 of Labor, Bureau of Labor Statistics.

11 ~~(2)~~ (b) A copy of the determination, ~~so made~~ certified by the  
12 ~~secretary of the board~~ commissioner, shall be filed immediately  
13 with the Secretary of State. ~~and with the department of labor~~  
14 Copies shall be supplied to all persons requesting ~~same~~ them within  
15 ten days after ~~such~~ the filing.

16 ~~(3)~~ (c) At any time within fifteen days after the certified  
17 copies of the determination have been filed with the Secretary of  
18 State, ~~and the department of labor~~ any person who may be affected  
19 thereby may object in writing to the determination or ~~such~~ part  
20 thereof as he ~~deems~~ or she finds objectionable by filing a written  
21 notice with the ~~department of labor~~ county commission of the county  
22 where the construction is to be performed stating the specific  
23 grounds of the objection.

24 ~~(4)~~ (d) Within ten days of the receipt of the objection, the

1 ~~department of labor~~ county commission shall set a date for a  
2 hearing on the objection. The date for the hearing shall be within  
3 thirty days after the receipt of the objection. Written notice of  
4 the time and place of the hearing shall be given to the objectors  
5 at least ten days prior to the date set for the hearing and at a  
6 time so as to enable the objectors to be present.

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

18       ~~(6)~~ (f) Within ten days of the conclusion of the hearing, the  
19 ~~department must~~ county commission shall rule on the written  
20 objections and make ~~such a~~ final determination ~~as shall be~~  
21 ~~established that is supported~~ by a preponderance of the evidence.  
22 Immediately upon ~~such the~~ final determination, the ~~department of~~  
23 ~~labor~~ county commission shall file a certified copy of its final  
24 determination with the Secretary of State and with the ~~department~~

1 Commissioner of Labor and shall serve a copy of the final  
2 determination on all other parties to the proceedings by personal  
3 service or by registered or certified mail.

4 ~~(7)~~ (g) Any person affected by the final determination of the  
5 ~~department of labor~~ county commission, whether or not ~~such the~~  
6 person participated in the proceedings resulting in ~~such the~~ final  
7 determination, may ~~appeal to the board from the final determination~~  
8 ~~of the department of labor within ten days from the filing of the~~  
9 ~~copy of the final determination with the Secretary of State. The~~  
10 ~~board shall hear the appeal within twenty days from the receipt of~~  
11 ~~notice of appeal. The hearing by the board shall be held in~~  
12 ~~Charleston. The hearing by the board shall be upon the record~~  
13 ~~compiled in the hearing before the department of labor and the~~  
14 ~~board shall have the authority to affirm, reverse, amend, or remand~~  
15 ~~for further evidence, the final determination of the department of~~  
16 ~~labor. The board shall render its decision within ten days after~~  
17 ~~the conclusion of its hearing.~~

18 ~~(8)~~ Any party to the proceeding before the board or any person  
19 ~~affected thereby may~~ within thirty days after receipt of the notice  
20 of ~~it's~~ the decision, appeal the ~~board's~~ decision to the circuit  
21 court of the county wherever the construction of a public  
22 improvement is to be performed, which shall consider the case on  
23 the record made before the ~~commissioner of labor and before the~~  
24 ~~board~~ county commission. The decision of ~~such the~~ circuit court

1 may be appealed to the Supreme Court of Appeals of West Virginia by  
2 any party to the proceedings or by any person affected thereby in  
3 the manner provided by law for appeals in civil actions.

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

NOTE: The purpose of this bill is to require the Commissioner of Labor to base the determination of prevailing rates on statistics made available by the United States Division of Labor, Bureau of Labor Statistics, and to provide county commissions with the authority to review the determination.

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