

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2749

**FISCAL
NOTE**

BY DELEGATES LOVEJOY, BROWN, DISERIO,

HORNBUCKLE AND WILLIAMS

[Introduced February 24, 2021; Referred to the
Committee on Political Subdivisions then Government
Organization then Finance]

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,
 3 §21-5A-8, and §21-5A-9, all relating to reestablishing prevailing wages for certain state
 4 government contracts; declaring policy; defining terms; requiring contractors to ascertain
 5 rates and to include rates in contract specifications; requiring annual determinations of
 6 prevailing wage rates; establishing procedures to file objections to prevailing wage rate
 7 determinations; providing for hearings, judicial review, and appeal; requiring mandatory
 8 provisions in contracts and sub-contracts; providing for posting of rates and record-
 9 keeping; establishing criminal penalties for violations of the act; and limiting the scope of
 10 the law to post-enactment contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§21-5A-1. Definitions.

1 As used in this article:

2 (1) "Public authority" means any officer, board or commission or other agency of the State
 3 of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for
 4 the construction of a public improvement, including any institution supported, in whole or in part,
 5 by public funds of the State of West Virginia or its political subdivisions, and this article shall apply
 6 to expenditures of such institutions made, in whole or in part, from such public funds;

7 (2) "Construction" means any construction, reconstruction, improvement, enlargement,
 8 painting, decorating, or repair of any public improvement let to contract. The term "construction"
 9 shall not be construed to include temporary or emergency repairs.

10 (3) "Locality" means the county where the construction is to be performed, except that if
 11 there is not available in the county a sufficient number of competent skilled laborers, workmen,
 12 and mechanics to perform such construction efficiently and properly, and may include one or more
 13 counties in this state adjacent to the one in which the construction is to be performed and from

14 which such skilled laborers, workmen, and mechanics may be obtained in sufficient numbers to
15 perform the construction. With respect to construction of public improvements with the state
16 division of highways, "locality" may be construed to include one or more counties in this state
17 adjacent to the one in which the construction or public improvement is to be performed and from
18 which skilled laborers, workmen, and mechanics may be accessible for work on such construction
19 on public improvements.

20 (4) "Public improvement" includes all buildings, roads, highways, bridges, streets, alleys,
21 sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which
22 construction may be let to contract by the State of West Virginia or any political subdivision
23 thereof.

24 (5) "Construction industry" means that industry which is composed of employees and
25 employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers,
26 ditches, sewage disposal plants, waterworks, airports, and all other structures or works whether
27 private or public on which construction work as defined in subsection (2) of this section is
28 performed.

29 (6) "Board" means the minimum wage board as constituted in this article.

30 (7) "Employee" may not be construed to conclude such persons as are employed or hired
31 by the public authority on a regular or temporary basis or engaged in making temporary or
32 emergency repairs.

§21-5A-2. Policy declared.

1 It is hereby declared to be the policy of the State of West Virginia that a wage of no 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-3. Fair minimum rate of wages; determination; filing; schedule of wages part of
specifications.

1 (a) Any public authority authorized to let to contract the construction of a public
2 improvement shall, before advertising for bids for the construction thereof, ascertain from the
3 State Commissioner of Labor, the fair minimum rate of wages, including fair minimum overtime
4 and holiday pay, to be paid by the successful bidder to the laborers, workmen or mechanics in
5 the 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.

9 (b) The “fair minimum rate of wages,” for the intents and purposes of this article, shall be
10 the rate of wages paid in the locality in this state as hereinbefore defined to the majority of
11 workmen, laborers, or mechanics in the same trade or occupation in the construction industry.
12 The Commissioner of Labor or a member of his or her department designated by him or her shall
13 assemble the data as to fair minimum wage rates and shall file wage rates. Rates shall be
14 established and filed as hereinafter provided on January 1 of each year. These rates shall prevail
15 as the minimum wage rate on all public improvements on which bids are asked during the year
16 beginning with the date when such new rates are filed and until the new rates are filed, the rates
17 for the preceding year shall remain in effect: *Provided*, That such rates shall not remain in effect
18 for a period longer than 15 months from the date they are published, but, this provision shall not
19 affect construction of a public improvement then underway.

§21-5A-4. 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 15 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 board, 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 10 days after such filing.

13 (c) At any time within 15 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 deems objectionable
16 by filing a written notice with the Division of Labor stating the specific grounds of the objection.

17 (d) Within 10 days of the receipt of the objection, the Division of Labor shall set a date for
18 a hearing on the objection. The date for the hearing shall be within 30 days after the receipt of the
19 objection. Written notice of the time and place of the hearing shall be given to the objectors at
20 least 10 days prior to the date set for the hearing and at a time so as to enable the objectors to
21 be present.

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

28 (f) Within 10 days of the conclusion of the hearing, the division must rule on the written
29 objections and make such final determination as shall be established by a preponderance of the
30 evidence. Immediately upon such final determination, the Division of Labor shall file a certified
31 copy of its final determination with the Secretary of State and with the Division of Labor and shall

32 serve a copy of the final determination on all parties to the proceedings by personal service or by
33 registered mail.

34 (g) Any person affected by the final determination of the Division of Labor, whether or not
35 such person participated in the proceedings resulting in such final determination, may appeal to
36 the board from the final determination of the Division of Labor within 10 days from the filing of the
37 copy of the final determination with the Secretary of State. The board shall hear the appeal within
38 20 days from the receipt of notice of appeal. The hearing by the board shall be held in Charleston.
39 The hearing by the board shall be upon the record compiled in the hearing before the Division of
40 Labor and the board shall have the authority to affirm, reverse, amend, or remand for further
41 evidence, the final determination of the Division of Labor. The board shall render its decision
42 within 10 days after the conclusion of its hearing.

43 (h) Any party to the proceeding before the board or any person affected thereby may within
44 30 days after receipt of the notice of its decision, appeal the board's decision to the circuit court
45 of the county wherever the construction of a public improvement is to be performed, which shall
46 consider the case on the record made before the Commissioner of Labor and before the board.
47 The decision of such circuit court may be appealed to the Supreme Court of Appeals of West
48 Virginia by any party to the proceedings or by any person affected thereby in the manner provided
49 by law for appeals in civil actions.

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

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

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

§21-5A-6. 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-7. 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-8. 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 of said action shall be in the
8 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 or any one of them, 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 is guilty of a misdemeanor and, upon
20 conviction thereof, shall be fined not less than \$50 and not more than \$250.

§21-5A-9. 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 such determination
4 has not been appealed from as may be provided by this article.

NOTE: The purpose of this bill is to restore prevailing wages for certain government contracts to state law. This bill reinstates the Prevailing Wage Law that was in effect until its repeal in 2016.

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