

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2468

FISCAL
NOTE

By Delegate Walker

[Introduced January 11, 2023; Referred to the
Committee on Workforce Development then
Government Organization then the Judiciary]

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, §21-
3 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. 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 in
3 which the construction is performed, shall be paid to all workers employed by or on behalf of any
4 public authority engaged in the construction of public improvements.

§21-5A-2. Definitions.

1 As used in this article,

2 "Construction" means any construction, reconstruction, improvement, enlargement,
3 painting, decorating, or repair of any public improvement let to contract, but "construction" shall not
4 be construed to include temporary or emergency repairs.

5 "Construction industry" means that industry which is composed of employees and
6 employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers,
7 ditches, sewage disposal plants, waterworks, airports, and all other structures or works whether
8 private or public on which construction work, as the term "construction" is defined in this section, is

9 performed.

10 "Employee" shall not be construed to include such persons as are employed or hired by the
11 public authority on a regular or temporary basis or engaged in making temporary or emergency
12 repairs.

13 "Locality" means the county where the construction is to be performed, except that if there
14 is not available in the county a sufficient number of competent workers to perform such
15 construction efficiently and properly, then may include one or more counties in this state adjacent
16 to the one in which the construction is to be performed and from which such workers may be
17 obtained in sufficient numbers to perform the construction. With respect to construction of public
18 improvements with the Department of Transportation, "locality" may be construed to include one
19 or more counties in this state adjacent to the one in which the construction or public improvement
20 is to be performed and from which workers may be accessible for work on such construction on
21 public improvements.

22 "Public authority" means any officer, board, or commission or other agency of the State of
23 West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the
24 construction of a public improvement, including any institution supported, in whole or in part, by
25 public funds of the State of West Virginia or its political subdivisions, and this article shall apply to
26 expenditures of such institutions made, in whole or in part, from such public funds.

27 "Public improvement" as used in this article, shall include all buildings, roads, highways,
28 bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all
29 other structures upon which construction may be let to contract by the State of West Virginia or any
30 political subdivision thereof.

§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of specifications.

1 (a) Any public authority authorized to contract for the construction of a public improvement,
2 shall, before advertising for bids for the construction thereof, ascertain from the State

3 Commissioner of Labor, the fair minimum rate of wages, including fair minimum overtime and
4 holiday pay, to be paid by the successful bidder to the workers in the various branches or classes
5 of the construction to be performed; and such schedule of wages shall be made a part of the
6 specifications for the construction and shall be published in an electronic or other medium and
7 incorporated in the bidding blanks by reference when approved by the Commissioner of Labor
8 where the construction is to be performed by contract.

9 (b) The "fair minimum rate of wages" shall be the rate of wages paid in the locality in this
10 state to the majority of workers in the same trade or occupation in the construction industry. The
11 Commissioner of Labor, or a member of the division designated by the commissioner, shall
12 assemble the data as to fair minimum wage rates and shall file tables of these wage rates. Rates
13 shall be established and filed as hereinafter provided on January 1 of each year. These rates shall
14 prevail as the minimum wage rate on all public improvements on which bids are asked during the
15 year beginning with the date when such new rates are filed and, until the new rates are filed, the
16 rates for the preceding year shall remain in effect: *Provided*, That such rates shall not remain in
17 effect for a period longer than 15 months from the date they are published, but, this provision shall
18 not 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 shall be filed by the Commissioner of Labor
11 immediately with the Secretary of State. Copies shall be supplied to all persons requesting same
12 within 10 days after such filing.

13 (c) At any time within 15 days after the certified copies of the determination have been filed
14 with the Secretary of State, any person who may be affected thereby may object in writing to the
15 determination or such part thereof as he deems objectionable by filing a written notice with the
16 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 a
18 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 least
20 10 days prior to the date set for the hearing and at a time so as to enable the objectors to be
21 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 rate
26 including the sources which formed the basis for its determination. The Division of Labor or any
27 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 commissioner must rule on the
29 written objections and make such final determination as shall be established by a preponderance
30 of the evidence. Immediately upon such final determination, the commissioner shall file a certified
31 copy of its final determination with the Secretary of State and shall serve a copy of the final
32 determination on all other parties to the proceedings by personal service or by registered mail.

33 (g) Any party to the proceeding before the commissioner or any person affected thereby
34 may within 30 days after receipt of the notice of its decision, appeal the commissioner's decision to

35 the circuit court of the county wherever the construction of a public improvement is to be
36 performed, which shall consider the case on the record made before the Division of Labor. The
37 decision of such circuit court may be appealed to the Supreme Court of Appeals of West Virginia
38 by any party to the proceedings or by any person affected thereby in the manner provided by law
39 for appeals in civil actions.

40 (h) 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 of
2 skilled laborers, workers, and mechanics employed on the construction of the public improvement
3 shall be kept posted in a prominent and easily accessible place at the site thereof by each
4 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 the
2 construction of a public improvement shall keep an accurate record showing the names and
3 occupation of all such workers employed by them, in connection with the construction on the public
4 improvement and showing also the actual wages paid to each of the workers, which record shall
5 be open at all reasonable hours to the inspection of the Division of Labor and the public authority
6 which let the contract, its officers and agents. It shall not be necessary to preserve such record for

7 a period longer than 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 worker who is engaged in construction on a public improvement contract, who is
4 paid less than the posted fair minimum rate of wages applicable thereto, may recover from such
5 contractor or subcontractor the difference between the same and the posted fair minimum rate of
6 wages, and in addition thereto, a penalty equal in amount to such difference, and reasonable
7 attorney fees. The venue of said action shall be in the county where the work is performed:
8 Provided, That an honest mistake or error shall not be construed as a basis for recovery under this
9 subsection.

10 (c) Where workers are employed in construction on a public improvement and their posted
11 rate of wages has been determined as provided by this article, it shall be unlawful for any person to
12 request, demand, or receive, either before or after workers are employed in construction on a
13 public improvement, that they or any one of them pay over money or other thing of value or pay
14 back, return, donate, contribute, or give any part or all of their said wages, or thing of value, to any
15 person, upon the statement, representation or understanding that failure to comply with such
16 request or demand will prevent them or any one of them from procuring or retaining employment;
17 and any person who directly or indirectly aids, requests, or authorizes any other person to violate
18 any of the provisions of this section shall be guilty of a misdemeanor and, fined not less than \$50
19 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.