

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961

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ENROLLED

HOUSE BILL No. *255*

(By Mr. *Singleton & Seibert*)

—●—
PASSED *March 11* 1961

In Effect *Ninety Days from* Passage

Filed in Office of the Secretary of State
of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE

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House Bill No. 255

(By MR. SPEAKER, MR. SINGLETON, and MR. SEIBERT)

[Passed March 11, 1961; in effect ninety days from passage.]

AN ACT to repeal article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article five-a, relating to wages for construction of public improvements.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article, designated article five-a, be enacted in lieu thereof, to read as follows:

Article 5-a. Wages for Construction of Public Improvements.

Section 1. *Definitions.*—(1) The term “Public Au-
2 thority,” as used in this article, shall mean any officer,
3 board or commission or other agency of the state of West
4 Virginia, or any political subdivision thereof, authorized

5 by law to enter into a contract for the construction of a
6 public improvement, including any institution supported
7 in whole or in part by public funds of the state of West
8 Virginia or its political subdivisions, and this article shall
9 apply to expenditures of such institutions made in whole
10 or in part from such public funds.

11 (2) The term "Construction," as used in this article,
12 shall mean any construction, reconstruction, improve-
13 ment, enlargement, painting, decorating, or repair of any
14 public improvement let to contract. The term construc-
15 tion shall not be construed to include temporary or emer-
16 gency repairs.

17 (3) The term "Locality" means the county where the
18 construction is to be performed, except that if there is not
19 available in the county a sufficient number of competent
20 skilled laborers, workmen and mechanics to perform such
21 construction efficiently and properly, and may include
22 one or more counties in this state adjacent to the one in
23 which the construction is to be performed and from which
24 such skilled laborers, workmen and mechanics may be
25 obtained in sufficient numbers to perform the construc-

26 tion. With respect to construction of public improvements
27 with the state road commission, "locality" may be con-
28 strued to include one or more counties in this state adja-
29 cent to the one in which the construction or public im-
30 provement is to be performed and from which skilled
31 laborers, workmen and mechanics may be accessible for
32 work on such construction on public improvements.

33 (4) The term "Public Improvement," as used in this
34 article, shall include all buildings, roads, highways,
35 bridges, streets, alleys, sewers, ditches, sewage disposal
36 plants, waterworks, airports, and all other structures upon
37 which construction may be let to contract by the state of
38 West Virginia or any political subdivision thereof.

39 (5) The term "Construction Industry," as used in this
40 article, shall mean that industry which is composed of
41 employees and employers engaged in construction of
42 buildings, roads, highways, bridges, streets, alleys, sew-
43 ers, ditches, sewage disposal plants, waterworks, airports,
44 and all other structures or works whether private or pub-
45 lic on which construction work as defined in subsection
46 (two) of this section is performed.

47 (6) The term "Board" shall mean the minimum wage
48 board as constituted in this article.

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

Sec. 2. *Policy Declared.*—It is hereby declared to be the
2 policy of the state of West Virginia that a wage of no less
3 than the prevailing hourly rate of wages for work of a
4 similar character in the locality in this state in which the
5 construction is performed, shall be paid to all workmen
6 employed by or on behalf of any public authority engaged
7 in the construction of public improvements.

Sec. 3. *Fair Minimum Rate of Wages; Determination.*—
2 Any public authority authorized to let to contract the
3 construction of a public improvement, shall, before ad-
4 vertising for bids for the construction thereof, ascertain
5 from the state commissioner of labor, the fair minimum
6 rate of wages, including fair minimum overtime and holi-
7 day pay, to be paid by the successful bidder to the laborers,

8 workmen or mechanics in the various branches or classes
9 of the construction to be performed; and such schedule of
10 wages shall be attached to and made a part of the specifi-
11 cations for the construction and shall be printed on the
12 bidding blanks when approved by the commissioner of
13 labor where the construction is to be performed by con-
14 tract. The "fair minimum rate of wages," for the intents
15 and purposes of this article, shall be the rate of wages paid
16 in the locality in this state as hereinbefore defined to the
17 majority of workmen, laborers or mechanics in the same
18 trade or occupation in the construction industry. The
19 commissioner of labor or a member of his department
20 designated by him shall assemble the data as to fair mini-
21 mum wage rates and shall file wage rates. Rates shall be
22 established and filed as hereinafter provided on January
23 one of each year. These rates shall prevail as the mini-
24 mum wage rate on all public improvements on which bids
25 are asked during the year beginning with the date when
26 such new rates are filed and until the new rates are filed,
27 the rates for the preceding year shall remain in effect:
28 *Provided, however,* That such rates shall not remain in

29 effect for a period longer than fifteen months from the
30 date they are published, but, this provision shall not affect
31 construction of a public improvement then underway.

Sec. 4. *Minimum Wage Rate Board; Appointment;*

2 *Duties; Secretary.*—A minimum wage rate board shall
3 consist of five members to be appointed by the governor
4 with the advice and consent of the state senate to serve
5 at the will and pleasure of the governor. The governor,
6 in making his appointments, shall name one representa-
7 tive from the state road commission, one from organized
8 labor in the building and construction trades, one from
9 the highway and heavy contractors, one from the build-
10 ing contractors and one from a municipality in this state.
11 The term of each member shall be for a period of four
12 years.

13 The members of the board shall serve without compen-
14 sation.

15 The wage rate board shall annually elect a chairman
16 from its membership, and shall sit at the call of the chair-
17 man to hear and decide appeals from determinations of
18 the commissioner of labor of fair minimum wages; the

19 wage rate board shall be empowered to establish rules
20 for the conduct of its proceedings.

21 The commissioner of labor shall designate an employee
22 of the department of labor to be the permanent secretary
23 to the minimum wage rate board who shall maintain a
24 record of all proceedings of the board. The commissioner
25 is empowered to employ any clerical or other employees
26 necessary to carry out the functions of the board.

Sec. 5. Prevailing Wages Established at Regular Inter-
2 *vals—How Determined—Hearings on Objections—Judicial*
3 *Review.*—(1) The department of labor, from time to time,
4 shall investigate and determine the prevailing hourly
5 rate of wages in the localities in this state. Determinations
6 thereof shall be made annually on January one of each
7 year and shall remain in effect during the successive year:
8 *Provided, however,* That such rates shall not remain in
9 effect for a period longer than fifteen months from the
10 date they are published.

11 In determining such prevailing rates, the department
12 of labor may ascertain and consider the applicable wage
13 rates established by collective bargaining agreements, if

14 any, and such rates as are paid generally within the
15 locality in this state where the construction of the public
16 improvement is to be performed.

17 (2) A copy of the determination so made, certified by
18 the secretary of the board shall be filed immediately
19 with the secretary of state and with the department of
20 labor. Copies shall be supplied to all persons requesting
21 same within ten days after such filing.

22 (3) At any time within fifteen days after the certified
23 copies of the determination have been filed with the secre-
24 tary of state and the department of labor, any person
25 who may be affected thereby may object in writing to
26 the determination or such part thereof as he deems ob-
27- jectionable by filing a written notice with the department
28 of labor stating the specific grounds of the objection.

29 (4) Within ten days of the receipt of the objection, the
30 department of labor shall set a date for a hearing on the
31 objection. The date for the hearing shall be within thirty
32 days after the receipt of the objection. Written notice of
33 the time and place of the hearing shall be given to the
34 objectors at least ten days prior to the date set for the

35 hearing and at a time so as to enable the objectors to be
36 present.

37 (5) The department of labor at its discretion may hear
38 such written objection separately or consolidate for hear-
39 ing any two or more written objections. At the hearing
40 the department of labor shall introduce into evidence
41 the results of the investigation it instituted and such other
42 facts which were considered at the time of the original
43 determination of the fair minimum prevailing hourly
44 rate including the sources which formed the basis for its
45 determination. The department of labor or any objectors
46 thereafter may introduce such further evidence as may be
47 material to the issues.

48 (6) Within ten days of the conclusion of the hearing,
49 the department must rule on the written objections and
50 make such final determination as shall be established by
51 a preponderance of the evidence. Immediately upon such
52 final determination, the department of labor shall file a
53 certified copy of its final determination with the secretary
54 of state and with the department of labor and shall serve

55 a copy of the final determination on all parties to the
56 proceedings by personal service or by registered mail.

57 (7) Any person affected by the final determination of the
58 department of labor, whether or not such person par-
59 ticipated in the proceedings resulting in such final de-
60 termination, may appeal to the board from the final de-
61 termination of the department of labor within ten days
62 from the filing of the copy of the final determination
63 with the secretary of state. The board shall hear the ap-
64 peal within twenty days from the receipt of notice of ap-
65 peal. The hearing by the board shall be held in Charles-
66 ton. The hearing by the board shall be upon the record
67 compiled in the hearing before the department of labor
68 and the board shall have the authority to affirm, reverse,
69 amend, or remand for further evidence, the final deter-
70 mination of the department of labor. The board shall
71 render its decision within ten days after the conclusion of
72 its hearing.

73 (8) Any party to the proceeding before the board or
74 any person affected thereby may within thirty days after
75 receipt of the notice of its decision, appeal the board's

76 decision to the circuit court of the county wherever the
77 construction of a public improvement is to be performed
78 which shall consider the case on the record made before
79 the commissioner of labor and before the board. The
80 decision of such circuit court may be appealed to the su-
81 preme court of appeals of West Virginia by any party
82 to the proceedings or by any person affected thereby in
83 the manner provided by law for appeals in civil actions.
84 (9) Pending the decision on appeal, the rates for the
85 preceding year shall remain in effect.

Sec. 6. *Contract to Contain Provisions Relative to Rate
2 of Wages to Be Paid.*—In all cases where any public au-
3 thority has ascertained a fair minimum rate or rates of
4 wages as herein provided, and construction of a public
5 improvement is let to contract, the contract executed be-
6 tween the public authority and the successful bidder shall
7 contain a provision requiring the successful bidder and all
8 his subcontractors to pay a rate or rates of wages which
9 shall not be less than the fair minimum rate or rates of
10 wages as provided by this article.

Sec. 7. *Wage Rates to Be Kept Posted.*—A clearly legible
2 statement of all fair minimum wage rates to be paid the
3 several classes of skilled laborers, workmen and me-
4 chanics employed on the construction on the public im-
5 provement shall be kept posted in a prominent and easily
6 accessible place at the site thereof by each contractor and
7 subcontractor subject to the provisions of this article.

Sec. 8. *Wage Record of Contractor.*—The contractor and
2 each subcontractor or the officer of the public authority
3 in charge of the construction of a public improvement
4 shall keep an accurate record showing the names and oc-
5 cupation of all such skilled laborers, workmen and me-
6 chanics employed by them, in connection with the con-
7 struction on the public improvement and showing also the
8 actual wages paid to each of the skilled laborers, workmen
9 and mechanics, which record shall be open at all reason-
10 able hours to the inspection of the department of labor
11 and the public authority which let the contract, its officers
12 and agents. It shall not be necessary to preserve such
13 record for a period longer than three years after the ter-
14 mination of the contract.

2 Sec. 9. *Penalties for Violation of Act.*—(A) Any con-
3 tractor or subcontractor who wilfully and knowingly
4 violates any provision of this article shall be fined not
5 less than fifty nor more than two hundred and fifty
6 dollars.

7 (B) Any skilled laborer, workman or mechanic who is en-
8 gaged in construction on a public improvement let to con-
9 tract, who is paid less than the posted fair minimum rate of
10 wages applicable thereto, may recover from such contrac-
11 tor or subcontractor the difference between the same and
12 the posted fair minimum rate of wages, and in addition
13 thereto, a penalty equal in amount to such difference, and
14 reasonable attorneys fees. The venue of said action shall be
15 in the county where the work is performed: *Provided,*
16 *however,* That an honest mistake or error shall not be
17 construed as a basis for recovery under this subsection.

18 (C) Where skilled laborers, workmen and mechanics
19 are employed in construction on a public improvement
20 and their posted rate of wages has been determined as
21 provided by this article, it shall be unlawful for any per-
son, for himself or another, to request, demand or receive,

22 either before or after such skilled laborers, workmen and
23 mechanics are employed in construction on a public im-
24 provement, that they or any one of them to pay over money
25 or other thing of value or pay back, return, donate, con-
26 tribute or give any part or all of their said wages, or thing
27 of value, to any person, upon the statement, representa-
28 tion or understanding that failure to comply with such
29 request or demand will prevent them or any one of them
30 from procuring or retaining employment; and any person
31 who directly or indirectly aids, requests or authorizes
32 any other person to violate any of the provisions of this
33 section shall be guilty of a misdemeanor and fined not less
34 than fifty dollars and not more than two hundred fifty
35 dollars.

Sec. 10. *Existing Contracts.*—This article shall apply
2 only to contracts for construction on public improvements
3 let after the effective date of this article, and to construc-
4 tion on public improvements for which there has been
5 determined the fair minimum wage rates as provided in
6 this article, and such determination has not been appealed
7 from as may be provided by this article.

Sec. 11. *Provisions of Act Severable.*—Each section of
2 this article and every part thereof is hereby declared to
3 be an independent section or part of a section, and if any
4 section, subsection, sentence, clause or phrase of this ar-
5 ticle shall for any reason be held unconstitutional, the
6 validity of the remaining phrases, clauses, sentences, sub-
7 sections, and sections of this article shall not be affected
8 thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Thomas Davis, Jr.
Chairman Senate Committee

Mrs. M. W. Witherow
Chairman House Committee

Originated in the House.

Takes effect *twenty days from* passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Singletary Jr.
Speaker House of Delegates

The within *approved* this the *17th*
day of *March*, 1961.

M. Bann
Governor

Filed in Office of the Secretary of State
of West Virginia **MAR 17 1961**

JOE F. BURDETT
SECRETARY OF STATE