

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box  
Filing Date

FILED

2015 AUG 28 P 3:51

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: WorkForce West Virginia TITLE NUMBER: 96

CITE AUTHORITY: Article 5A, Chapter 21 of the West Virginia Code

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 04

TITLE OF RULE BEING PROPOSED: West Virginia Prevailing Wage Act

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

During its 2015 Regular Session, the West Virginia Legislature enacted Senate Bill 361 which made substantial changes to West Virginia law governing the determination and administration of prevailing wage rates under Article 5A, Chapter 21 of the West Virginia Code. This legislation mandated that WorkForce West Virginia establish by June 1, 2015, a new methodology to determine the prevailing hourly rate of wages to be paid for the construction of public improvements subject to the article.

Use additional sheets if necessary

Authorized Signature

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title:

West Virginia Prevailing Wage Act

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

WorkForce West Virginia

Address:

112 California Avenue, Charleston, WV 25305

Phone Number:

(304)558-2631

Email: [scott.a.adkins@wv.gov](mailto:scott.a.adkins@wv.gov)**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There is no impact on the revenues of the state anticipated.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	38,040.00	24,460.00	100,000.00
Personal Services	26,964.00	57,238.00	84,202.00
Current Expenses	5,684.00	4,722.00	10,406.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	5,392.00	0.00	5,392.00
2. Estimated Total Revenues	0.00	0.00	0.00

West Virginia Prevailing Wage Act

Rule Title:

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The resources requested for the Prevailing Wage Act include FTEs, which will be utilized by permanent and temporary staff, postage costs, printing costs, and information systems costs (i.e. online survey collection system, survey database, etc.)

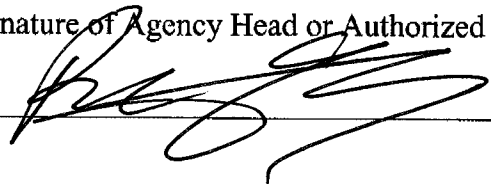
**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: August 31, 2015

Signature of Agency Head or Authorized Representative

\_\_\_\_\_



**EMERGENCY RULE QUESTIONNAIRE**

DATE: August 28, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WorkForce West Virginia

112 California Avenue, Charleston, WV 25305

(304) 558-7024

EMERGENCY RULE TITLE: West Virginia Prevailing Wage

1. Date of filing August 28, 2015
2. Statutory authority for promulgating emergency rule:  
Article 5A, Chapter 21 of the West Virginia Code
3. Date of filing of proposed legislative rule: \_\_\_\_\_
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? \_\_\_\_\_  
Adopts new language
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

This rule is mandated in Article 5A, Chapter 21 of the West Virginia Code, to determine very specifically the regions of the state for determining prevailing wage rates and to establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

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This rule is mandated in Article 5A, Chapter 21 of the West Virginia Code, to determine very specifically the regions of the state for determining prevailing wage rates and to establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages.

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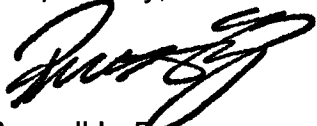
August 28, 2015

Secretary of State  
Natalie E. Tennant  
1900 Kanawha Boulevard East  
Charleston, WV 25305-0770

WorkForce West Virginia respectfully submits Emergency Rules related to the West Virginia Prevailing Wage Act.

This rule is mandated in Article 5A, Chapter 21 of the West Virginia Code, to determine very specifically the regions of the state for determining prevailing wage rates and to establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages.

Respectfully,



Russell L. Fry  
Acting Executive Director

RLF/saa/rb

enc

**TITLE 96  
EMERGENCY RULE  
WORKFORCE WEST VIRGINIA**

FILED

2015 AUG 28 P 3:51

**SERIES 04  
WEST VIRGINIA PREVAILING WAGE ACT**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§96-4-1. General.**

1.1. Scope and Purpose. – This rule defines the regions of the state that WorkForce West Virginia will use to calculate the prevailing hourly rate of wages in the distinct regions of the state where the construction is performed and sets forth the process that WorkForce West Virginia will use to address written objections to the methodology used to calculate the prevailing hourly rate of wages and the hourly rate of wages in the defined regions of the state.

1.2. Authority. – West Virginia Code § 21-5A-11.

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Applicability. –

1.5.1. Any public authority or political subdivision contemplating construction of a public improvement exceeding \$500,000 in public money shall ascertain from WorkForce West Virginia the prevailing hourly rate of wages in the regions of the state for laborers, workers or mechanics in the various classes of the construction to be performed. The rates so determined shall be incorporated in the contract specifications and made a part of those specifications.

1.5.2. Any affected person may object, in writing, to the methodology applied to calculate the prevailing hourly rate of wages or the hourly rate of wages by filing a written objection with the Executive Director in accordance with the process defined in this rule.

**§96-4-2. Definitions.**

2.1. “Executive Director” means the Executive Director of WorkForce West Virginia or his or her designee.

**§96-4-3. Regions of the State.**

3.1. Regions. – Regions for determining the prevailing rate of wages shall align with the seven (7) Workforce Investment Regions prescribed by the West Virginia Workforce Investment Act, W. Va. Code § 5B-2B-1, *et seq.* The designated regions are a combination of regional areas that are partly or completely in a single labor market area or economic development region. The regions are as follows:

3.1.1. Region 1 Counties. – Fayette, Greenbrier, McDowell, Mercer, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Webster, and Wyoming.

3.1.2. Region 2 Counties. – Boone, Cabell, Lincoln, Logan, Mingo, Putnam, and Wayne.

3.1.3. Region 3 Counties. – Kanawha.

3.1.4. Region 4 Counties. – Calhoun, Clay, Jackson, Mason, Pleasants, Ritchie, Roane, Wirt, and Wood.

3.1.5. Region 5 Counties. – Brooke, Hancock, Marshall, Ohio, Tyler, and Wetzel.

3.1.6. Region 6 Counties. – Barbour, Braxton, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Preston, Randolph, Taylor, Tucker, and Upshur.

3.1.7. Region 7 Counties. – Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton.

**§96-4-4. Process for Addressing Written Objections Regarding the Methodology for Calculating the Prevailing Hourly Rate of Wages and Hourly Rate of Wages.**

4.1. Time Period for Filing an Objection. – At any time within fifteen (15) days after the prevailing wage rates are filed, any affected person may object, in writing, to the methodology applied to calculate the prevailing hourly rate of wages or the hourly rate of wages by filing a written objection with the Executive Director.

4.2. Objection in Writing. – The written objection shall include:

4.2.1. Name and address of the objecting party;

4.2.2. A complete description of the concern, including the affected trade(s);

4.2.3. Documentation or evidence supporting why the method is believed to be calculated incorrectly, if any;

4.2.4. Recommendations for modifying the methodology; and

4.2.5. Signature of the objecting party or counsel.

4.3. Review of Written Objection. –

4.3.1. Within fifteen (15) days of the receipt of such written objection, the Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at



Marshall University, shall review the written objection and determine if the concerns set forth in the written objection, if addressed, would improve the methodology.

4.3.2. If the Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University determine that addressing the concerns raised in the written objection is warranted, the Research, Information and Analysis Division shall incorporate the recommended changes, as appropriate, into WorkForce West Virginia's prevailing wage data collection process used to calculate prevailing hourly wage rates in the regions of the state for the next succeeding year.

4.3.3. If the Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University determine that addressing the concerns set forth in the written objection will not improve the methodology, such written objection shall be dismissed and no further action is necessary.

4.3.4. The Executive Director shall notify all parties of the decision to accept or reject the recommendations to improve the methodology by personal service or registered mail, return receipt requested.

#### 4.4. Right to Appeal. –

4.4.1. At any time within fifteen (15) days of the receipt of the decision to accept or reject the recommendation to improve the methodology, any affected party may appeal the decision by filing a written notice of appeal with the Executive Director in accordance with subsection 4.5 of this rule.

4.4.2. Within ten (10) days of the receipt of such written notice of appeal, the Executive Director shall set a date for hearing and that date shall be within thirty (30) days after receipt of the notice to appeal.

#### 4.5. Notice to Appeal in Writing. – The written notice to appeal must include:

4.5.1. Name and address of the appealing party;

4.5.2. Statement detailing the grounds and rationale for the appeal and the specific trade(s) affected; and

4.5.3. Signature of the appealing party or counsel.

4.6. Notice of Hearing. – Notice of the date, time, and place of the appeal hearing shall be sent to all interested parties at least ten (10) days in advance of the hearing date.

4.7. Withdrawal of Appeals. – If, after filing a notice of appeal, the appealing party decides to withdraw the appeal, the party shall file a written notice of withdrawal to the Executive Director.

4.8. In Camera Treatment of Confidential Information. – The Executive Director shall have authority to order documents or oral testimony offered in evidence during the appeal hearing, whether admitted or rejected, to be heard in camera.

4.9. Notice of Decision. – Upon consideration of all evidence, the Executive Director shall issue a decision within fifteen (15) days of the conclusion of the hearing. Such decision shall be filed with the Secretary of State and a copy delivered to all parties by registered mail, return receipt requested.

4.10. Right to Appeal. – Any party affected by the appeal hearing may appeal the decision to the Kanawha County Circuit Court within thirty (30) days of receipt of the notice of decision. The decision of the Kanawha County Circuit Court may be appealed to the Supreme Court of Appeals of West Virginia in the manner provided by law for appeals of administrative action.

4.11. Consolidation of Written Objections. – Notwithstanding any other provision of this rule to the contrary, the Executive Director may consolidate written objections for hearing and final determination purposes in the interest of efficiency.

4.12. Calculation of Days. – If the last day of a time period set forth in this rule is a Saturday, Sunday, or legal holiday, the time period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The day of the event that triggers the time period shall be excluded from the calculation of the time period.