

THE DAVIS-BACON ACT
The History and Future of Prevailing Wage

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Davis-Bacon foundations

The general intent of a prevailing wage law is to stabilize local wages and industry standards by preventing unfair and/or unregulated bidding practices. Prevailing wage laws were originally intended to encourage the development of a high-skill, high-wage growth path for the labor market in general, and the construction labor market in particular. That was the thought because where prevailing wage regulations are applied, union and nonunion contractors win public works jobs based on having the most productive, best equipped and best managed workforce.¹

The first federal prevailing wage law was passed by the Republican Congress of 1868 when it passed the National Eight-Hour Law that provided for an eight-hour day on public construction while ensuring workers were still to be paid the prevailing daily wage. That law was enforced by President Ulysses Grant.

The first state prevailing wage law was enacted in 1891 by the Republican and Populist legislature of Kansas.

The current federal law — the Davis Bacon Act — was passed by the Republican Congress of 1931 and signed by President Herbert Hoover. Congressman Robert L. Bacon (R-NY) introduced the first version of the eventual Davis-Bacon Act in the pre-Depression year of 1927. He obtained crucial support in 1930 from newly elected Sen. James L. Davis (R-PA). The combined Davis-Bacon bill received strong backing from the Hoover administration and easily passed both houses of Congress.

In upholding the constitutionality of the law, Supreme Court Justice John Marshall Harlan stated that its purpose was to raise labor standards not only in construction but by example for all blue collar workers.²

The prevailing wage law the Davis-Bacon Act created requires that construction workers on public projects be paid the wages and benefits that are

found by the Department of Labor to be “prevailing” for similar work in or near the locality in which the construction project is to be performed.

In 1935, President Franklin Roosevelt’s secretary of labor established the original rules for determining the Davis-Bacon wage rate. It stated that the prevailing wage was to be the wage paid to the majority of workers, if it existed; if not, the 30% rule was applied. The 30% rule simply stated that if 30% of the workers in an area are paid the same rate, that rate becomes the prevailing wage in that locality. This rule applied to the prevailing wage statute until 1985, when President Ronald Reagan changed the 30% rule to the 50% rule. The impact of the 50% rule was to decrease the prevailing wage in areas where unions are relatively weak.³

Because the U.S. Constitution prohibits the federal government from dictating contract terms for the states in construction, the Davis-Bacon Act does not cover construction work funded entirely by state and local governments. State prevailing wage laws set a minimum pay for construction workers on state and local projects, and the terms of the respective prevailing wage statutes among the states differ substantially.

Prior to Davis-Bacon at the federal level, nine states had enacted their own such law for state-funded projects. Within four years of Davis-Bacon’s passage, 16 more states added a state-level prevailing wage law (called “mini” Davis-Bacon acts). At one time or another, 42 states and the District of Columbia have had a prevailing wage law.

During the 1970s however, many states suffered fiscal crisis and on the belief that they might save tax dollars, many state and local governments began to consider repeal of prevailing wage laws. Florida, which had enacted a prevailing wage law in 1933, was the first to repeal its law, in 1979.³

Currently, 32 states and the District of Columbia still have prevailing wage statutes, 10 states have repealed their prevailing wage statutes and 8 states have never enacted a prevailing wage statute.

Davis-Bacon advantages

The fact that prevailing wage laws tend to stabilize and support local economies and labor markets has earned them bi-partisan favor among legislators.³

And prevailing wage regulations, by not undercutting collective bargaining, support the largest privately financed system of higher education in the country — apprenticeship training, the foundation of a productive construction workforce and quality workmanship. When apprenticeship and journey-worker training is cut back, productivity falls. That is why wages can be cut 50% and show little or no effect in overall labor costs.¹

The payment of prevailing wages may serve to attract workers with more experience and training. Increased labor productivity may result in fewer hours of labor being required, thus offsetting the higher wage rate.²

A study of over 6,000 school construction projects in the U.S. in the 1990s did not find a statistically significant relationship between prevailing wage regulations and school construction costs. However, the study does find that school authorities can save as much as 4% on total construction costs if they begin their projects after the coldest weather has subsided.¹

Prevailing wage regulations promote training directly by requiring all contractors on public works to pay prevailing wage rates that include apprenticeship costs when collectively bargained rates apply. Prevailing wage regulations support training indirectly by not undercutting collective bargaining. In construction, 66% to 99% of all graduating apprentices, depending on trade, come out of joint labor-management programs established through collective bargaining.¹

When prevailing wage regulations are eliminated, worker wages and benefits go down. Indeed, that is the stated aim of deregulation — the cutting of wages and benefits in the hopes of cutting costs. But when this does occur, experienced and trained workers leave the industry. A younger, less experienced and less

trained set of workers shoulder the job. This not only puts at risk the quality of work, it puts at risk the workers themselves.¹

In Kentucky, in the nine years after schools were exempted from prevailing wage regulations in 1982, serious injuries among Kentucky construction workers rose 11% compared to the six years prior to exemption.¹

When collective bargaining is absent in construction, most workers are not paid health insurance or pensions. Construction workers form roughly 5% of the labor force. When the construction industry and, ultimately, its customers fail to pay for the family health costs and the old-age costs of 5% of the community, then eventually social services are forced to pick up some of that tab.¹

Davis-Bacon under fire

Opponents of prevailing wage contend that its elimination can substantially cut public construction costs. Their calls for repeal or reform of prevailing wage laws have been motivated by the suspicion that they increase public construction costs and hinder competition.

In all cases, policy-makers are concerned with the costs associated with prevailing wage laws. But claims of the added costs associated with prevailing wage laws and of cost savings from repeal have not been adequately supported by empirical evidence. Some efforts to estimate the impact of prevailing wages on construction costs have used differences in wage rates between union and nonunion construction workers. Yet wage differences have a moderate effect on total construction costs – labor costs are less than a third of total construction costs and may have been falling.²

When wages are cut substantially, worker skills, experience and motivation also fall off. Contractors no longer compete on the basis of who can best train, best equip and best manage a construction crew. Rather, they compete on who can find the cheapest workers either locally or through importing labor from elsewhere.¹

This puts the quality of construction at risk and may lead to increased cost overruns and downstream increases in building and road maintenance costs. And it does lead to an increase in construction injuries and a decline in the health and pension coverage of construction workers, putting pressure on worker compensation costs.¹

It also puts pressure on social services, as family health needs go unmet and retired workers cannot make ends meet. The original prevailing wage laws were passed at the same time and often in tandem with compulsory schooling and child labor laws. All these laws share a similar philosophy. In the short run, some employers can turn a profit based on cheaper labor. Indeed, that was the claim of those who hired child labor and opposed compulsory public schooling.¹

But in the long run, society is better off supporting regulations that encourage skill formation and competition based on increased worker productivity.¹

1 – “Kentucky’s Prevailing Wage Law: Its History, Purpose and Effect;” Peter Philips, University of Utah, October 1999.

2 – “Prevailing Wage Laws and School Construction Costs: An Analysis of Public School Construction in Maryland and the Mid Atlantic States;” Mark J. Prus, State University of New York – Cortland; January 1999.

3– “The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri;” Michael P. Kelsay, L. Randall Wray, Kelly D. Pinkham; University of Missouri – Kansas City; January 2004.