Negative Brief: Davis-Bacon Exemption

By Harrison Durland & Coach Vance Trefethen

The Affirmative plan amends the federal Davis-Bacon Act, which requires contractors on any federal project to pay "prevailing wages" (which could be higher wages than would otherwise be paid) while doing the project. The exemption would be to allow highway projects to not be covered by Davis-Bacon, therefore allowing the contractors to pay lower wages and get highway projects done at lower cost.

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DEFINITIONS

"Davis Bacon Act" is the law requiring prevailing wage on federal projects

Rep. Tim Walberg 2013 (congressman from Michigan) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

Enacted in 1931, the Davis-Bacon Act requires the payment of local prevailing wages to workers on federal construction projects.

SIGNIFICANCE

1. No substantial increase in cost

Davis-Bacon wages aren't that high

Stanley E. Kolbe Jr. 2013 (Director, Governmental Affairs, the Sheet Metal and Air Conditioning Contractors' National Association) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm> (stars meaning unknown, but they were in the original)

According to Department of Labor reports, more than 75% of Davis-Bacon wage determinations for federal projects pay less than the union wage. In fact, most prevailing wage rates are far below union scale, most without fringe benefits of any kind. Prevailing wage laws seek to prevent the federal government from undermining local economies and prevailing local employment and training standards and practices by reflecting local conditions \* \* \* regardless of the level. Oddly, some members most hostile to Davis-Bacon come from areas with the lowest wage determinations.

Responses to Veronique De Rugy or James Sherk evidence

***Note to reader****: This is addressing the study referenced by James Sherk (with the Heritage foundation), who is referenced by Dr. Veronique de Rugy (with the Mercatus Center). Evidence for some of the various points here are provided below. These points are focused on the “Beacon Hill” study, but for any study that an affirmative references,* ***these should be the basis of methodology questions in CX****.*

* The study never once mentions the word “productivity,” meaning it likely failed to account for changes in skill and thus, savings based on higher productivity and decreased injuries.
* It assumes that labor makes up 50% of construction costs, whereas the actual figure is around half of that.
* It appears to use Bureau of Labor Statistics (BLS) data to determine what prevailing wages “should” be, even though on one BLS page, in bold letters, it says **“The OES program cannot make official classification determinations for… prevailing wages.”**
* The “loss” figure they give does not account for jobs gained by the money spent.

Colorado study: No difference in the cost of federal versus state highway projects, so no impact to Davis-Bacon (States don't use Davis-Bacon)

Dr. Kevin Duncan 2014 (PhD in economics from Univ. of Utah, professor of Economics in Hasan School of Business at Colorado State Univ-Pueblo) 5 September 2014. “The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs” published in the Journal of Industrial Relations and Labor, in association with Cornell University, <http://journals.sagepub.com/doi/pdf/10.1177/0019793914546304>

A challenge of previous research addressing the cost implications of prevailing wage laws has been to isolate the effect of the wage policy from other regulations that may also influence construction costs. I compare cost differences between state and federally funded highway resurfacing projects in Colorado and confront the same challenge. While federal and state highway projects are built under the same antidiscrimination, quality, and safety regulations, federal projects are covered by Davis-Bacon prevailing wage regulations and by the Disadvantaged Business Enterprise Program. Highway resurfacing projects funded by the State of Colorado are not covered by either of these regulations. So the cost comparison between federal and state highway maintenance projects is a test of the effect of the wage and disadvantaged business policies on construction costs. Results indicate that when measures of project size and complexity are included, there is no statistically significant difference in the low bids of state and federal projects.

2. Any hypothetical costs are offset

*Supposed* public expenses from Davis-Bacon are offset by other savings it creates

Dr. Kevin Duncan, Dr. Peter Philips, and Frank Manzo 2017 (Kevin Duncan is a professor of economics in the Hasan School of Business at Colorado State University-Pueblo || Peter Philips holds a PhD in economics from Stanford and is a professor of economics at University of Utah || Frank Manzo IV is the policy director at the Illinois Economic Policy Institute, holding a Masters in Public Policy from University of Chicago) 14 April 2017. “BUILDING AMERICA WITH PREVAILING WAGE” <https://illinoisepi.files.wordpress.com/2017/04/building-america-davis-bacon_final.pdf>

* The Davis-Bacon Act reduces spending on materials, fuel, and equipment on public works projects.
* Repeal of the Davis-Bacon Act would increase spending on public assistance for construction workers.
* By increasing worker incomes, the Davis-Bacon Act increases state and federal tax revenues.

Davis-Bacon critics ignore a multitude of offsetting factors, especially productivity increases

Nooshin Mahalia with the Economic Policy Institute 2008 (economic policy analyst with the EPI, graduated from Georgia Tech with a BA in Journalism || The EPI is a nonprofit, nonpartisan think tank that seeks to broaden the public debate about strategies to achieve a prosperous and fair economy.) 3 July 2008. “Prevailing wages and government contracting costs: A review of the research” <http://www.epi.org/publication/bp215/>

A growing body of economic analysis finds that prevailing wage regulations do not inflate the costs of government construction contracts. A simple premise underlies the hypothesis that prevailing wages raise costs: the laws result in higher wage costs for contractors, and contractors pass these costs on to the government. Although this seems like a plausible outcome, there are many reasons why the costs to the government might be the same regardless of the wage differences. For example:

* Contractors might pay the wages required under prevailing wage laws even if the law does not require it.
* Labor costs are not the dominant costs in government construction contracts. Even including benefits and payroll taxes, labor costs are roughly 20-30% of construction contracts, according to the Census of Construction (Phillips 1998).Thus, for example, if labor costs are 25% of total costs and prevailing wage rules raise wages by 10%, the impact on contract costs would be no more than 2.5%. Thus, even if there is an increase in contract costs, it is likely to be small—to the point of being undetectable in some instances and/or by some studies.
* Higher wages might be offset by a rise in productivity. Prevailing wages can attract better-skilled, more productive workers, or firms may rely on higher managerial productivity or invest in labor-saving technologies to offset higher labor costs (Philips 1996).
* Higher wage costs might also be offset through “factor substitution,” i.e., substituting more expensive labor with, say, cheaper materials.
* Contractors not subject to prevailing wage laws might retain the money they save in wages as higher profits rather than passing the savings on to the government. Alternatively, contractors paying prevailing wages might absorb the higher wage costs, paying for them out of their profits rather than passing them on.

As with any economic analysis examining the impact of a policy on an economic outcome, the challenge is to isolate the impact of the policy from all of the other factors that might influence the outcome.

3. Labor costs aren't a significant factor in highway construction anyway

Labor is a lower percentage than people estimate, and so the potential savings are not significant

Dr. Peter Philips 1998 (PhD in economics from Stanford and professor of economics at Univ of Utah ) 20 February 1998. “Kansas and Prevailing Wage Legislation,” prepared for the Kansas Senate Labor and Industries Committee <http://www.faircontracting.org/PDFs/prevailing_wages/kansas_prevailing_wage.pdf> [Brackets and bolding added]

When Kansas repealed its prevailing wage law, Kansans were promised anywhere from a 6% to a 17% savings on public construction costs. How were such estimates calculated?

The answer is the estimates were hypothetical calculations. The calculation typically went like this.

* Assume that labor costs are 50% of total construction costs.
* Assume wage rates fall by 12% to 40% with the repeal of Kansas’ prevailing wage law. Assume labor productivity does not fall when wage rates fall by 12% to 40%.
* With these three assumptions in hand, the hypothetical calculation is simple. If 50% of total costs fall by 40%, then 100% of total costs will fall by 20%. If 50% of total costs fall by 12%, then total costs fall by 6%. There you have it. A savings of 6% to 20% on total construction costs. Kansans can now build five schools for the cost of four (a 20% savings) by repealing the state's prevailing wage law.

The only problem with this hypothetical calculation is that all its assumptions are wrong. Labor costs are not 50% of total costs. They are around 30% in building construction and less on street and highway construction. Furthermore, labor productivity is not constant when wage rates fall. Skilled and experienced workers leave for better jobs elsewhere. Training falls off. Consequently, productivity falls--offsetting in part, or in full, the fall in wage rates. The key source on information for the construction industry is the U.S. Census of Construction. This Census comes out every five years. The results for 1997 are not yet released. In 1992, for all construction in Kansas, labor costs--wages, benefits, payroll taxes of construction workers--as a percent of total construction costs were 25%. Total cost here does not include land acquisition, architect fees or construction management fees. It also adjusts for possible over-counting by netting out of each contractor's value of construction the cost charged to that contractor by subcontractors.

4. Doesn't discourage contract bidders

Davis-Bacon doesn't discourage non-union contractors from bidding on projects: They're jumping at the contracts

Rep. Joe Courtney 2013 (congressman from Connecticut) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm

Your members were in my office, Mr. Baskin, last week. And we walked together through a lot of the stimulus projects and the MILCON projects. Again, I have the largest operating military base in New England with the Groton Sub Base. Over $100 million of work over the last few years since the last BRAC round--every penny of it to nonunion ABC contractors who, again, had to comply with Davis-Bacon. The fact of the matter is they were stampeding towards those projects. I mean, the notion that there is some kind of an obstruction or an obstacle that is forcing nonunion contractors to shy away because of Davis-Bacon, again, the experience over the last 2 or 3 years in terms of the Recovery Act and MILCON has been completely the opposite. And again, I can walk you through sewer treatment plants, surface projects, streetscape projects--even the small ones--where again, you know, that is not the problem out there right now.

5. No compliance cost problems with Davis Bacon

Compliance costs and paperwork are not a problem with Davis-Bacon

Stanley E. Kolbe Jr. 2013 (Director, Governmental Affairs, the Sheet Metal and Air Conditioning Contractors' National Association) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

The Davis-Bacon Act has been in effect for more than 75 years. After on-line compliance reforms made over the last decade, compliance is fair and simple for any experienced public and/or private market contractors. Compliance takes just a minimum of administrative personnel for reporting and on-line instruction is available for those needing assistance. Remember, the vast majority of self-described construction contractors are very small with a one to three employees generally not equipped or staffed to bid or complete federal construction work. Two-thirds of all firms have five or fewer employees, including the owner! Only a fraction will ever bid or work on a federal project. This is not due to Davis-Bacon surveys or prevailing rates but because they do not possess the necessary, minimal administrative resources, skilled workforce, experience or interest to do so. Rarely will the average small contractor with their few employees rule out bidding a large federal project due to the prevailing wage reporting requirements alone or the strict quality apprenticeship and training standards the Act is also designed to encourage.

6. Beacon Hill Study flawed [if Aff uses it]

Beacon Hill Study relies on BLS numbers, which aren’t accurate because BLS doesn’t estimate prevailing wages

***Note*** *to reader: The affirmative’s Beacon Hill evidence is unclear as to what BLS program they base their estimates on; the methodology does not appear to make this clear. However, it does at one point state “In contrast [to the WHD survey], the BLS uses the Occupational Employment Survey (OES), which collects wage data from over 1.2 million establishments.” Thus, you should ask the affirmative to explain the methodology on this issue.*

Bureau of Labor Statistics 2017 (The BLS is the government agency tasked with recording data on labor, among other functions) last modified 31 March, 2017. “Occupational Employment Statistics: Frequently Asked Questions” <https://www.bls.gov/oes/oes_ques.htm> (click on “expand all” or D-13) [Bold and italics are in original]

However, this guidance is solely to help users of statistical data find workers who perform a specific set of work activities or to help statistical data collectors. **The OES program cannot make official classification determinations for non-statistical purposes, such as prevailing wages.** It is up to customers using the SOC for non-statistical purposes to review the detailed definitions for the SOC codes and determine the best match, in light of their own program and policy purposes.

Can’t use BLS numbers to estimate prevailing wages

Drs. Duncan and Philips, and Manzo 2017 (Kevin Duncan is a professor of economics in the Hasan School of Business at Colorado State University-Pueblo || Peter Philips holds a PhD in economics from Stanford and is a professor of economics at University of Utah || Frank Manzo IV is the policy director at the Illinois Economic Policy Institute, holding a Masters in Public Policy from University of Chicago) 14 April 2017. “BUILDING AMERICA WITH PREVAILING WAGE” <https://illinoisepi.files.wordpress.com/2017/04/building-america-davis-bacon_final.pdf>

* By including wages, fringe benefits, and training contributions by job classification where the work is performed, Davis-Bacon wage surveys reveal actual market rates in more than 3,000 counties across America.
* The Commissioner of the Bureau of Labor Statistics says that use of BLS data is not appropriate for prevailing wage determinations because it excludes benefits, over-represents residential construction, does not account for the skill level of workers, does not survey actual construction sites, and is often based on small sample sizes.
* Changing the Davis-Bacon wage survey by using BLS data or other faulty procedures would impose a significant wage cut on millions of middle-class American construction workers.

DISADVANTAGES

1. Poorly trained workers

Link: Without Davis-Bacon, workers get inadequate training

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The construction industry is inherently seasonal in nature, with major projects built and repaired during peak months with desirable weather. Construction work is also cyclical and contingent on both private market conditions and public sector investment. When workers finish a project, there is often a period of unemployment while they look for another job, sometimes with new employers. The turbulence caused by these seasonal, cyclical, and fiscal factors creates strong disincentives for employers and employees to invest in the type of training that leads to a highly-skilled, efficient, and safe workforce. Contractors are afraid of losing the investment if workers who they train decide to leave to work for a competitor after a project is finished. On the other hand, workers do not have the incentive to pay for training out-of-pocket because the possibility of prolonged spells of unemployment could prevent the investment from paying off. The result is a “market failure” in which insufficient worker training is provided in construction. The Davis-Bacon Act helps correct this market failure by reflecting local, market-based standards for wages, benefits, and training contributions in the community where the project is being built. The law ensures that the next generation of construction workers is trained, the current skilled workforce is retained, and the previous generation is cared for in retirement. For over eight and a half decades, the Davis-Bacon Act has helped employers to invest in the human capital development of construction workers, promoting a skilled workforce that completes high-quality public construction projects on-time and under budget. Furthermore, these benefits are not confined to the public construction projects themselves. The apprenticeship training that is incentivized and supported by the Davis-Bacon Act and “related” laws carries over to private infrastructure construction projects because once a worker is trained, he or she retains that training throughout his or her career.

Impacts: Reduced productivity, safety, and efficiency without Davis-Bacon

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The Davis-Bacon Act Boosts Productivity, Safety, and Efficiency

* The Davis-Bacon Act promotes hiring and retention of higher-skilled workers.
* Worksite productivity is up to 33% higher in states with little Davis-Bacon Acts.
* States with little Davis-Bacon Acts have 15% fewer injuries on construction sites. Repeal of the federal Davis-Bacon Act would result in 76,000 more injuries and 675,000 more workdays lost to injury every year.
* The Davis-Bacon Act prevents skilled trade workforce shortages by boosting investment in apprenticeship training. At the state-level, states that have repealed little Davis-Bacon Acts have seen training drop by 40%.

Impact: Deaths. Prevailing wage laws reduce fatalities at no additional cost to government

Nooshin Mahalia with the Economic Policy Institute 2008 (Mahalia is an economic policy analyst with the EPI, having graduated from Georgia Tech with a BA in Journalism || The EPI is a nonprofit, nonpartisan think tank that seeks to broaden the public debate about strategies to achieve a prosperous and fair economy.) 3 July 2008. “Prevailing wages and government contracting costs: A review of the research” <http://www.epi.org/publication/bp215/>

An overwhelming preponderance of the literature shows that prevailing wage regulations have no effect one way or the other on the cost to government of contracted public works projects. And as studies of the question become more and more sophisticated, this finding becomes stronger, and is reinforced with evidence that prevailing wage laws also help to reduce occupational injuries and fatalities, increase the pool of skilled construction workers, and actually enhance state tax revenues.

Impacts: State data confirms, repealing similar law at state level harmed minorities, lower wages, lower quality, more workplace injuries

Rep. Suzanne Bonamici 2013 (congresswoman from Oregon) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

And I certainly have seen very good policy reasons why Davis-Bacon was passed decades ago and some of the benefits of Davis-Bacon, including ensuring that contractors compete based on who can best train, best equip, and best manage a construction crew. And if you look at the examples at the state level when prevailing wage laws have been repealed, which, of course, some here have advocated, it has led to fewer apprenticeship programs, especially affecting minority communities, pressure to lower wages and benefits, and declines in quality, increases in injuries. And I certainly have seen very good policy reasons why Davis-Bacon was passed decades ago and some of the benefits of Davis-Bacon, including ensuring that contractors compete based on who can best train, best equip, and best manage a construction crew. And if you look at the examples at the state level when prevailing wage laws have been repealed, which, of course, some here have advocated, it has led to fewer apprenticeship programs, especially affecting minority communities, pressure to lower wages and benefits, and declines in quality, increases in injuries.

Impact: 10% more injuries without Davis Bacon

Ross Eisenbrey 2013 (Vice President, Economic Policy Institute) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

We also know--and, you know, we have our competing studies, but I have a book here that includes a review of states with and without prevailing wages that does economic regressions to tease out what is the effect of prevailing wage on safety and health, and the prevailing wage laws are associated with a 10 percent decline in significant injuries. That is a significant difference in a nation where we have about 6 million injuries on the job each year.

2. Lower wages and families harmed

Davis-Bacon Act protects wages of millions of workers – they would be driven down without it, and not be able to support families

Rep. Joe Courtney 2013 (congressman from Connecticut) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

For the last eight decades, the Davis-Bacon Act has provided millions of hard working Americans fair wages for the their hard work. During all these years, the Davis-Bacon Act has done exactly what it was intended to do--prevent federal projects from driving down local wage rates. At its core, the Davis-Bacon Act enables local contractors to compete for local projects without being underbid and undercut by contractors who import workforces from outside the local community. The Davis-Bacon Act is about local jobs and fair wages--and this is why the Davis-Bacon Act continues to enjoy strong bipartisan support. Look at the chart to my right. It shows that time and time again in the last couple of years, efforts to repeal the Davis-Bacon Act have met with crushing defeat. That is why it is surprising that we are even having this hearing today, rather than focusing on the many serious economic challenges workers are facing today. Millions of workers receive wages today that are just flat out insufficient to support a family. The minimum wage has been frozen at $7.25 per hour for four years. Low wage workers and families are falling further behind. You would think there would be bipartisan interest in rewarding hard work. Wage disparity, low wages for hard working Americans is real problem with far- reaching consequences for our economy.

New Orleans experience confirms: Wages hit rock bottom without Davis Bacon

Ross Eisenbrey 2013 (Vice President, Economic Policy Institute) 18 June 2013 PROMOTING THE ACCURACY AND ACCOUNTABILITY OF THE DAVIS-BACON ACT, HEARING before the SUBCOMMITTEE ON WORKFORCE PROTECTIONS COMMITTEE ON EDUCATION AND THE WORKFORCE <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>

Well, we saw what happened when Davis-Bacon was suspended in New Orleans and the Gulf Coast after Katrina. That is the best way to get a sense of what the world would be like without Davis-Bacon. And really, for the workers there it was a disaster. Companies came in--non-local companies--bringing workforces of, you know, varying skills and quality, and they underbid all the local contractors. Here was the time for that community to rebuild and for the local people to join in rebuilding and they were underbid and the result was a lot of heartache in the area and wages that were, you know, pushed down to rock bottom. So that is the world without Davis-Bacon.

3. Higher welfare costs

Taxpayer savings on construction costs are offset because the "cheaper" workers get training, health or pension costs at public expense instead of from private contractors

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Support of prevailing wages on direct or federally assisted public infrastructure represents a commitment to construction quality and the future. Without prevailing wage statutes, the competitive bid system will erode the wage and fringe benefit standards common in localities across the nation and dismantle proven training programs funded by private employers at more than $700 million annually. Support for a prevailing wage policy fosters practices and programs lessening today and tomorrow's burden on the public sector. Our member firms DO NOT shift their health, pension and training costs to the local, state and federal government but include them in our contract bids on private and public work.

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