
Special Report



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Prevailing Wage Laws Mandate Excessive Costs

Apart from the minimum wage, only for firms engaged in public construction do the federal and 31 state governments set floors under the wages these contractors must pay their workers. Officially, these super-minimum wages are referred to as “prevailing wages.” Typically, they are the same as those that have been negotiated by construction unions with private construction firms.

Nearly all studies of prevailing wages conclude that the laws enforcing them add substantially to the cost of public construction. The Congressional Budget Office has estimated that repeal of Davis-Bacon would save the federal government in excess of \$1 billion a year.

Congress adopted the federal prevailing-wage law, the Davis-Bacon Act, in 1931 to protect the wages of union construction workers from the competition of outside contractors underbidding local contractors on government projects. New York Rep. Robert Bacon introduced his bill after a contractor used black Alabama laborers to build a government hospital in his Long Island district.

The law requires contractors to pay prevailing wages on construction contracts of more than \$2,000 that are wholly or partly

Briefly

The federal government and most states still have laws requiring construction firms on public projects to pay their workers no less than so-called “prevailing” wages, which typically are above market wages.

Ten states, however, have repealed these cost-inflating laws, and nine states have never had them.

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If ever there was a justifiable reason for prevailing wages, its time is long gone. Prevailing wages constitute labor protection that is no longer warranted.

Constructing the Prevailing Wage

State law defines "prevailing wage" as the combination of hourly wage, usual benefits and overtime paid to the majority of workers, laborers and mechanics in the largest city in each county.

The Department of Labor and Industries determines the prevailing wages for each trade and occupation employed in the performance of public work by the use of surveys. Employers and labor unions, according to the department, are "invited" to submit wage and hour data to the Industrial Statistician.

In determining the prevailing wage for a given trade, the department's industrial statistician now sends survey forms to every construction contractor that can be located through the state's industrial insurance records. Contractors, however, are free to decide whether they will complete and return the forms. Some, even many, have chosen to ignore them.

Since the early 1980s, the department has tried hard to increase the number of returned survey forms. "We've done everything possible, within our resource constraints, to increase the available data on which to build prevailing rates," according to Greg Mowat, the department's program manager of employment standards.

Separate survey forms are required for work performed in each county. Hours worked within a county's largest city are separated from hours worked outside the city.

It does not matter where workers live, only where they worked during the year targeted by a survey. Theoretically, it would be possible for all workers to live outside a county's largest city. What matters are the wages they received while working on projects inside the city's limits.

State law ties prevailing wages to "workers, laborers and mechanics," but the industrial statistician, Jim Christensen, counts hours, not noses. He treats hours as a proxy for workers. A full-time worker is the equivalent of about 2,000 hours a year.

Christensen says the phrase "workers, laborers, or mechanics" is legal language denoting blue-collar workers, not three classes of workers.

Prevailing wages are those received by the majority of journey-level workers in a given trade. They are not averages. So, for example, if 6 out of 10 workers received \$25 an hour, and the others \$20, \$19.50, \$19 and \$18.50, the prevailing wage would be \$25. If there is no majority, then the wages are averaged.

State law does not require the industrial statistician to use surveys: "All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries." The use of surveys results from regulations adopted by the Department.

In 1998, the Association of Washington Businesses supported a bill, HB 3073, that would have required the Industrial Statistician to determine prevailing wages by use of stratified random samples. The House passed the bill, the Senate killed it.

funded with federal dollars. Following the federal government's example, most states later passed their own prevailing wage laws, known as "little Davis-Bacon" acts, for state-funded construction projects. Some later repealed them.

Several states had enacted prevailing-wage laws before Congress passed Davis-Bacon. Many more states acted after the federal law was adopted. At the peak, 41 states had such laws.

Because the Davis-Bacon Act applies to state and local projects built with federal funds as well as to federal projects, many state and local projects are subject to both federal and state prevailing wage requirements. In such instances the effect of the state law may be minor. For example, a performance audit prepared for the Washington Legislature's Joint Legislative Audit and Review Committee estimated that repeal of the state prevailing wage law would reduce costs on federally funded highway projects by less than one half of 1 percent. However, in cases where the project is not subject to federal Davis-Bacon, the cost savings from repeal of the state prevailing wage requirement would be considerably larger.

States Shed Prevailing Wage Laws

Washington State adopted its prevailing-wage law, the Washington State Public Works Act, in 1945. In his study "State Prevailing Wage Laws, An Assessment at the Start of 1995," economist A. J. Thieblot, Jr. said Washington's law "has been extensively modified in recent years to rank among the most restrictive of those that do not actually require the union rate."

Today, Washington is one of 31 states, and the District of Columbia, that have prevailing-wage laws. Ten states have repealed such laws: Florida (1979), Alabama (1981), Utah (1981), Arizona (1984), Colorado (1985), Idaho (1985), New Hampshire (1985), Kansas (1987), Louisiana (1988), and Oklahoma (1996).

Florida's legislators repealed the state's prevailing-wage law upon learning of the 1978 Florida State School Board Association survey showing that during the previous four years in which school construction had been exempted from prevailing wages, taxpayers saved \$37 million, or about 15 percent of total school construction costs, Thieblot reported. "This information persuaded the legislature not only to resist reinstating (prevailing-wage) coverage for school construction, but to begin thinking about eliminating it elsewhere, which it did the following year."

The State Experience

States with prevailing-wage laws*

	Year Enacted		Year Enacted
Alaska	1931	Nebraska	1923
Arkansas	1955	Nevada	1937
California	1931	New Jersey	1913
Connecticut	1935	New Mexico	1937
Delaware	1962	New York	1894
Hawaii	1955	Ohio	1931
Illinois	1931	Oregon	1959
Indiana	1935	Pennsylvania	1961
Kentucky	1940	Rhode Island	1935
Maine	1933	Tennessee	1953
Maryland	1945	Texas	1933
Massachusetts	1914	Washington	1945
Michigan	1965	West Virginia	1933
Minnesota	1973	Wisconsin	1931
Missouri	1957	Wyoming	1967
Montana	1931		

*The District of Columbia has a prevailing-wage law that was enacted in 1931

States that have repealed prevailing-wage laws

	Year Enacted	Year Repealed
Alabama	1941	1980
Arizona	1912	1984*
Colorado	1933	1985
Florida	1933	1979
Idaho	1911	1985
Kansas	1891	1987
Louisiana	1968	1988
New Hampshire	1941	1985
Oklahoma	1909	1996**
Utah	1933	1981

* Declared Unconstitutional in 1979, formally repealed in 1984

** Declared Unconstitutional

States that have not enacted prevailing-wage laws

Georgia
Iowa
Mississippi
North Carolina
North Dakota
South Carolina
South Dakota
Vermont
Virginia

Sources: Peter Phillips et al., "Losing Ground: Lessons from the Repeal of Nine 'Little Davis Bacon' Acts" and Associated Builders and Contractors

Nine states have never had a prevailing-wage law: Georgia, Iowa, Mississippi, North Carolina, North Dakota, South Carolina, South Dakota, Vermont and Virginia.

Forcing High Costs

Of the various studies about the effects of prevailing wage laws, one of the most recent is on Michigan's prevailing-wage law, by Ohio University economics professor Richard Vedder, published in 1999 by the Mackinac Center for Public Policy, in Midland, Michigan.

"What are prevailing wages?" Vedder asked. "The short answer is that in many jurisdictions, including the federal government, prevailing wages are typically wages set at or near the union-scale level. Prevailing wage laws, then, force contractors on government construction or other projects to pay their employees at the same rate as unionized members of the relevant occupation – whether it be bricklayers, carpenters, electricians, or other categories of workers – even if non-union contractors could perform the same work less expensively by paying their workers lower but mutually agreed upon wages."

Vedder examined the effects of Michigan's prevailing-wage law, which had been put into

abeyance for 30 months between 1994 and 1997 as a result of a legal challenge. He concluded, in part, that “Michigan’s prevailing wage law adds at least \$275 million annually to the cost of governmental outlays – approximately the equivalent of five percent of the revenues raised from the state’s individual income tax.”

During the interregnum, the average savings realized for some 20 government projects had exceeded 10 percent. For instance, the lowest non-union contractor bid for a Hastings School District project was nearly 13 percent less than the lowest union-contractor bid. The non-union bid for a Carrollton public school renovation project was more than 16 percent less than the lowest union bid.

In November 1997, the Minnesota Taxpayers Association published “The Fiscal Implications of Prevailing Wage Law on Minnesota School Districts.” Legislators had extended the state’s prevailing-wage law to all public school construction, remodeling and improvement as of July 1 that year. Five school districts scrubbed the first bids they had on projects and accepted new prevailing-wage bids following passage of the law. This increased their construction costs between 4 percent and 10 percent.

The state of Kentucky adopted a prevailing-wage law, effective July 1, 1996. In a 1997 performance audit on the effects of the law, the state’s auditor of public accounts reported that the low bid for a Veteran’s Park Elementary School project, in Fayette County, came to \$92.26 per square foot. The project’s architect had estimated the per-foot construction cost at \$78.95 – 17 percent lower than the accepted bid. The architect had based his estimate on past construction experience, before passage of the law, and had not factored in prevailing wages.

The auditor said the winning contractor indicated he had increased its estimated labor costs by 35 percent to pay prevailing-wage rates. The auditor calculated that the prospect of paying prevailing-wage rates had boosted the contractor’s bid by 8.4 percent.

Kentucky Sen. David Williams later observed that the Fayette County elementary school’s labor cost increased by about 30 percent. “For every five of these projects that they build, the increased costs by virtue of prevailing wage would not allow them to build the sixth project,” he said.

In early 1996, the Legislative Program Review and Investigations Committee of Connecticut’s General Assembly voted to study the state’s prevailing-wage law, which had been on the books since the 1930s. The committee determined that on average, prevailing

wages affected 25 percent of a public construction project, and they estimated that the differences between prevailing and non-prevailing wage projects were between 20 and 40 percent.

“Given those estimates,” the committee said, “the portion of a prevailing wage project’s cost that is attributable to the law is between 4 percent and 7 percent of the total.” (The committee recommended that “the state prevailing wage should be continued.”)

In 1994, The Commonwealth Foundation published a report prepared by University of Delaware economics professor Eleanor Craig, “The Impact of Pennsylvania’s Prevailing Wage Law on Public Construction Costs.”

At the outset, Craig commented on the peculiarity of the law: “While Pennsylvania purchases millions of dollars a year in computer maintenance and installation, automotive, janitorial, window cleaning, advertising and a wide variety of other services – only in the area of construction does it establish the wage rates that its contractors pay their employees.

“Obviously, Pennsylvania believes in competitive bidding when it comes to most of the products and services it purchases – but not when it comes to construction,” she observed. “The end results are labor rates that are higher than the average competitive rates by nearly 30 percent and much higher total construction costs for public projects.”

Craig compared the average yearly wages of four categories of workers with the yearly average wages of these four on prevailing-wage jobs and then calculated the percentage differences, which ranged from 141 percent to –9.3 percent. The median of that range was 30 percent.

In 1984, Oregon State University’s Department of Economics published a study, “Effect of the Davis-Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States,” based on the interviews with contractors employed on 215 randomly chosen non-residential buildings across the country. The study’s authors gleaned data on wages, costs, project characteristics, size and other variables affecting construction costs.

“Holding all other variables constant, the results show that the impact of the (Davis-Bacon) Act ranges between 26 percent and 38 percent depending on the economic model employed,” the authors wrote. “The Act raises costs primarily by raising wages; however, costs are raised in other ways as well. Work assignments to a particular trade, required for applying the posted prevailing wage rate, also may have increased costs.”

School Construction Costs Rise

In 1997, as an associate professor at the University of Maryland, Thieblot authored a study for the Merit Shop Foundation Ltd., called “Prevailing Wage Laws and School Construction Costs.” In this study, he compared the cost of the average school room built in the 28 states with prevailing-wage laws controlling wage rates on school construction (not including Alaska, Hawaii and the District of Columbia) with the 20 states free of this constraint.

For the 75,911 classrooms built in the constraint-free states between 1968 and 1974, the average cost per classroom was \$60,100 – 13 percent lower than the \$69,100 cost per classroom for the 185,547 classrooms built in the states where prevailing-wage laws apply to school construction.

“Other things being equal,” Thieblot wrote, “if all states were to eliminate their prevailing wage laws, total savings in school construction costs could be \$1.675 billion over the seven year period, or \$239 million per year, for the same volume of construction.”

The only notable study in recent years to question the cost savings from repealing prevailing wage laws is an unpublished 1995 working paper out of the University of Utah, “Losing Ground, The Lessons from the repeal of Nine ‘Little Davis-Bacon’ Acts.” This study suggests that repeal of the state laws would break the power of construction unions, thereby driving down wages for all construction workers and costing governments more in lost tax revenue than they gained from lower construction costs.

The analytic apparatus that the authors employ is insufficient to support their conclusions, however, and their analysis is riddled with flaws. Some of these flaws are explored in A. J. Thieblot’s devastating review, published in the spring 1996 issue of the *Journal of Labor Research*.

Thieblot is not alone in urging the repeal of prevailing wage laws. In 1995 Congressional testimony on Senate bill 141, which would have repealed the Davis-Bacon Act, the president of the National School Board Association, Boyd Boehlje, endorsed repeal, noting that “the act has outlived its usefulness” as a Depression-era statute “intended to prevent big construction companies from hiring low-wage itinerant workers and underbidding local companies for coveted government contracts.”

Exception Sought for Education

“Especially odious” is how Boehlje characterized the law’s effect on school districts. “At a time when taxpayers are demanding a more efficient government, and exhibit less willingness to spend money on governmental services, school districts are stymied in their effort to reduce their construction costs.”

Boehlje said a recent informal survey of school districts by the National School Boards Association “found that 61 percent of the respondents thought that the federal or state Davis-Bacon law had increased the construction costs of a recent project. Although estimates of the increase varied, 55 percent placed it in the 11-20 percent range.”

In 1997, Ohio legislators approved a measure, SB 102, exempting construction undertaken by local school districts from the state’s prevailing-wage laws. A fiscal note to the bill estimated savings to lie between \$11.1 million and \$23.8 million for fiscal 1998 and annually thereafter, and said, “This expenditure decrease (or savings) would be attributable to lower labor costs associated with public improvement projects.”

In 1998, Ohio state’s Legislative Budget Office (LBO) issued an interim, first-year, report on the 1997 prevailing-wage law exemption for school construction and renovation projects. “Based on surveys completed and returned to LBO by contractors bidding on school construction and renovation projects, where there are savings, savings averaging 10.2 percent are possible,” the report said.

Time to Change

The demand for new and renovated public buildings in Washington far outstrips available resources. From correctional facilities to public schools, from college campuses to highways and roads, population growth and migration within the state have increased the pressure to provide adequate facilities for Washington’s citizens.

State and federal laws dictating labor prices inflate the costs of public projects. Taxpayers pay more and get less. Clearly, this is one labor protection law that has outlived its time.