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The "Little Davis-Bacon" Acts and State Prevailing Wage Standards

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Summary

Through the past century, many states have adopted (and, sometimes repealed) protective statutes which, *inter alia*, have required contractors doing work for a state to observe basic labor standards: notably, payment of not less than the locally prevailing wage. Varying from one statute and jurisdiction to another, these laws are intended to stabilize both the earnings of workers and the general structure of industry.

In 1931, the federal government followed in the same path, adopting the Davis-Bacon Act which affects federal contract construction in much the same way the "Little Davis-Bacon" acts affect contract construction undertaken for the states. This report introduces the state prevailing wage laws and provides an inventory of states in which, to varying degrees, they are in effect. It will be updated annually.

Development of Prevailing Wage Standards

Responding both to the perception of irregularities within public contracting and of abuse of workers engaged in public work, many states have adopted statutes that are intended to help stabilize the industry, protect workers, and bring order to the public contracting process. These state statutes provided a foundation from which the authors of the federal Davis-Bacon Act would draw. In some respects, they continue to provide a laboratory in which prevailing wage policies are tested. The pros and cons of such labor standards requirements — Are they still needed? Are they inflationary? Can they be fairly enforced?, etc. — continue to be debated both at the state and federal levels.

"The development of State prevailing wage acts," observed University of Wisconsin economist David Johnson, "can be divided into two periods: pre- and post-Davis-Bacon." In 1891, Kansas adopted the first state statute designed to preserve prevailing labor standards in state contract work. Other states followed suit and, before 1931, six states

had adopted legislation dealing with this issue. They tended to focus upon hours of work, per diem wages and, to a larger degree than later enactments, upon the fair treatment of workers. For laws passed after 1931, however, there appears to have been a greater emphasis upon the stabilization of industry and of the community — an outgrowth of The Depression.[1]

States with prevailing wage laws prior to 1931 included: Kansas (1891), New York (1897), Idaho (1911), Arizona (1912), New Jersey (1913), and Massachusetts (1914).

The architects of the Davis-Bacon Act (1931) pointed to internal industry problems: to itinerant contractors from beyond the area of construction, often dubbed *fly-by-night* firms. Such contractors, it was charged, carried with them a crew of low-wage non-resident labor that worked under adverse conditions — and, in that manner, competed *unfairly* with local companies and retarded the economic recovery in a targeted locality.[2] Federal contracting policy of that period required that public contracts be awarded to the lowest responsible bidder — with "responsible" narrowly defined.[3] After 1931, Johnson concludes, state prevailing wage laws "had their origins in the depression and were designed to protect labor standards from cost cutting pressures attendant upon competitive bidding." They were far more than just labor-protective measures however.[4]

State prevailing wage statutes differ from each other and, for the most part, from the federal Davis-Bacon Act. Some of the early laws have been repealed (or have been found unconstitutional); some have been replaced in modified form. Coverage varies widely — from a broad generic concept of *public works*, to narrow application to a segment of public work: for example, to highways or to school facilities. Dollar volume thresholds for coverage also differ from state-to-state. Some state acts apply to general contractors; others, to sub-contractors as well. Not all craft and skill classifications are treated in precisely the same manner. Concepts ("locality" or "prevailing wage," for example) differ among the statutes as to their enforcement and record-keeping requirements. Where state prevailing wage laws are in place, they operate alongside the federal Davis-Bacon

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[1] On the early prevailing wage statutes, see David B. Johnson, "Prevailing Wage Legislation in the States," *Monthly Labor Review*, Aug. 1961, p. 840. (Hereafter cited as Johnson, *Prevailing Wage Legislation*.) While state statutes shared certain similarities, they were also widely diverse, both in detail and thrust.

[2] See CRS Report 94-408, *The Davis-Bacon Act: Institutional Evolution and Public Policy*, by William G. Whittaker. Though early versions of the Davis-Bacon legislation had been introduced in the late 1920s, the 1931 measure was presented as an emergency anti-Depression bill and was strongly backed by the Hoover Administration.

[3] During the 1920s and 1930s, industry had become concerned about *unfair* competition from firms it regarded as irresponsible and unable to make good on contract commitments. Some firms, it was alleged, would bid low and, once awarded a federal contract, would shop for sub-contractors who, in the depressed state of the general economy, were willing to accept work (and to provide workers) at progressively lower rates. See, for example G. F. Schlesinger, "Responsibility as a Pre-Requisite," *The Constructor*, Aug. 1928, pp. 24-25, 55-61; A. E. Horst, "Accomplishments in Cooperation: Elimination of Irresponsibility Marks Progress of the Industry," *The Constructor*, Nov. 1929, pp. 28-30, 56; and E. A. St. John, "Cooperation Eliminating Irresponsibility," *The Constructor*, Apr. 1930, pp. 35-36.

[4] Johnson, *Prevailing Wage Legislation*, pp. 840 and 842.

Act. To the extent that coverage (state and federal) may overlap, the higher standard normally prevails.[5]

Impacts of State Prevailing Wage Laws

As with the federal Davis-Bacon Act, the "Little Davis-Bacon" acts have been a focus of controversy.[6] Critics argue, among other things, that they are burdensome for employers, costly to enforce, inflate the cost of construction, and are basically unnecessary with the Fair Labor Standards (minimum wage) Act of 1938 in place. Defenders of the acts contend that they serve to stabilize the construction industry, protect workers (and the industry) from cutthroat employers, promote skills transfer through apprenticeship training, and have increasingly opened new fields to minority and women workers. Defenders would argue that the prevailing wage requirements help to assure a higher quality of public work (given the often low-bid mandate in public contracting); but, critics argue that private sector construction is every bit as good as public construction — even though the prevailing wage statutes do not apply to the private sector. The debate is circular with counter arguments for each assertion, pro and con.

Armand Thieblot, a Maryland-based management specialist and longtime critic of prevailing wage statutes, argues that the absence of such statutes "has little effect on unionization in the industry or on individuals' wages." He notes that in the private construction market where prevailing wage laws are not an issue, "union contractors not only are able to participate, but remain the major force in such sectors of construction as large office buildings and major industrial construction." He concedes, however, that a wage differential between union and open shop firms "has undoubtedly cut into their [the union firm's] market share." He affirms, however, that states without a prevailing wage law still manage "to retain adequate construction work forces." Thieblot concludes:

> All state prevailing wage laws subject contractors to risks and to the possibility of civil or criminal prosecution for carrying out their businesses in ways which are perfectly acceptable to all other purchasers of construction except governments and government agencies. All of them tend to make buildings and projects more expensive and give governments less value for their construction dollar than a private person would receive. All of them tend to use the contracting mechanism as a hidden conduit for income transfers from taxpayers to construction workers.

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[5] In general, see *Little Davis-Bacon Acts: State of the States*, Washington, Center to Protect Worker's Rights, 1979; and Armand J. Thieblot's compilation and analysis in *Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon" Acts, the Walsh-Healey Act, and the Service Contract Act* (Philadelphia: University of Pennsylvania Press, 1986). The Wage and Hour Division, U.S. Department of Labor, maintains an updated catalogue of these statutes.

[6] Efforts to repeal the prevailing wage statutes (some successful, others not) have taken place in a number of states during recent decades. See, for example Mark Erlich, *Labor at the Ballot Box: The Massachusetts Prevailing Wage Campaign of 1988* (Philadelphia: Temple University Press, 1990). See also Janice Fine, "Organizing for Prevailing Wage in Florida," *Labor Research Review*, fall 1988, pp. 70-79; and Jeff Vincent, "Indiana's Prevailing Wage Law: A Preliminary Evaluation of Its Impact on the State Construction Industry," *Labor Studies Journal*, fall 1990, pp. 17-31.

Thieblot, who has appeared before committees of the Congress in opposition to the Davis-Bacon Act, counsels that by interfering with the free market, prevailing wage laws "insure that wage inflation in the construction industry will outpace that in other fields."[7]

Others argue fervently in support of such legislation. Peter Philips and a team from the University of Utah have investigated the implications of repealing the "Little Davis-Bacon" acts and have come to conclusions different from those of Professor Thieblot. Whether prevailing wage laws are wise public policy can be disputed; but, "the original purpose" of such legislation was not to find the cheapest possible labor but, rather, to sustain local standards: "to prevent the government from hiring labor at below-standard rates." Repeal, they found (using Utah as a case study), resulted in lowered construction wages — but also in a loss of tax revenues and increasing project cost overruns. These, they explain, are part of the "hidden cost" of the repeal of prevailing wage laws.

> In Utah, cost overruns resulted from an over-heated bidding process in which contractors, shaved their bids in an urgent effort to obtain government contracts. After the repeal, winning bids on state jobs came in lower than ever before .... Having underbid jobs, contractors and subcontractors would arrange change orders to get the jobs done or simply walk away from badly underbid jobs and leave the state to pick up the pieces.[8]

Such irresponsible practices had been an industry concern in the late 1920s and seem to have contributed to enactment of Davis-Bacon.[9] In addition, the Utah team pointed to such issues as a "less-skilled labor force" because of reduced training opportunities in the absence of Davis-Bacon or "Little Davis-Bacon" requirements — with subsequent skills and manpower shortages. They refer as well to "[s]lowed economic gains by minority workers," and to increased work-related injury rates. "The construction industry is turbulent," they state, and characterized by "a perennial boom-bust cycle" with "fleeting relationships." They conclude:

> ... the construction labor market has traditionally been tempered by prevailing wage legislation and labor unions. Absent these institutions, it is unclear how — or whether — the market will regularly and carefully train workers, or assure safety and health on the job site, or provide training opportunities for minority workers, or offer the incomes needed to make construction an attractive career.

These hidden costs — "loss of human capital and career jobs in this industry" — they observe, do not appear as an entry in "the ledgers of any single contractor." But, if not part of a project's direct cost, they argue, they are costs nonetheless.[10]

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[7] Armand J., Thieblot, Jr., "Prevailing Wage Laws of the States," *Government Union Review*, fall 1983, pp. 62-65.

[8] Peter Philips, Garth Mangum, Norm Waitzman, and Anne Yeagle, *Losing Ground: Lessons from the Repeal of Nine "little Davis-Bacon" Acts*, Working Paper, Economics Department, University of Utah, February 1995, pp 68.-69. (Hereafter cited as Philips, et al., *Losing Ground*.)

[9] See, for example "When Low Bids Are Too Expensive," *The Constructor*, Feb. 1930, pp. 40-41, 58.

[10] Philips, et al, *Losing Ground*, pp. 68-76. See also Hamid Azari-Rad, Anne Yeagle, and Peter (continued...)

Table 1. State Prevailing Wage Laws

State	Has a prevailing wage law	Does not have a prevailing wage law	Current status
Alabama	—	x	Repealed in 1980
Alaska	x	—	—
Arizona	—	x	Invalidated by 1980 court decision; repealed in referendum in 1984
Arkansas	x	—	—
California	x	—	—
Colorado	—	x	Repealed in 1985
Connecticut	x	—	—
Delaware	x	—	—
Florida	—	x	Repealed in 1979
Georgia	—	x	—
Hawaii	x	—	—
Idaho	—	x	Repealed in 1985
Illinois	x	—	—
Indiana	x	—	—
Iowa	—	x	—
Kansas	—	x	Repealed in 1987
Kentucky	x	—	—
Louisiana	—	x	Repealed in 1988
Maine	x	—	—
Maryland	x	—	—
Massachusetts	x	—	—
Michigan	x	—	—
Minnesota	x	—	—
Mississippi	—	x	—
Missouri	x	—	—

[10] (...continued)
Philips, "The Effects of the Repeal of Utah's Prevailing Wage Law on the Labor Market in Construction," in Sheldon Friedman, et al., (eds.), *Restoring the Promise of American Labor Law* (Ithaca: Cornell University Press, 1994), pp. 207-222.

State	Has a prevailing wage law	Does not have a prevailing wage law	Current status
Montana	x	—	—
Nebraska	x	—	—
Nevada	x	—	—
New Hampshire	—	x	Repealed in 1985
New Jersey	x	—	—
New Mexico	x	—	—
New York	x	—	—
North Carolina	—	x	—
North Dakota	—	x	—
Ohio	x	—	—
Oklahoma	—	x	Invalidated by 1995 court decision
Oregon	x	—	—
Pennsylvania	x	—	—
Rhode Island	x	—	—
South Carolina	—	x	—
South Dakota	—	x	—
Tennessee	x	—	—
Texas	x	—	—
Utah	—	x	Repealed in 1981
Vermont	x	—	—
Virginia	—	x	—
Washington	x	—	—
West Virginia	x	—	—
Wisconsin	x	—	—
Wyoming	x	—	—

Source: Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. See [http://www.dol.gov/esa/welcome.html].