

## Davis-Bacon Act and Prevailing Wage

### Background:

- The 1931 [federal Davis-Bacon Act and Related Acts](#) govern wage requirements for contractors and subcontractors performing federal and [certain federally funded or assisted contracts](#) in excess of \$2,000. The Davis-Bacon Act turned 91 years old on March 3, 2022.
- Mandating that contractors pay employees so-called “prevailing” wage and benefit rates determined [through an unscientific and fundamentally flawed survey process administered by the U.S. Department of Labor](#) hinders economic growth, increases the federal deficit, imposes enormous compliance burdens on contractors and decreases quality job creation in the construction industry.
- The Davis-Bacon Act and similar state prevailing wage laws stifle contractor productivity by raising project costs and imposing rigid craft work rules that ignore skill differences.
- Prevailing wage mandates discourage competition from small businesses interested in pursuing public works construction projects.
- ABC supports full repeal of the Davis-Bacon Act, as well as any state and local prevailing wage laws that mandate wage and benefit rates.
- In the absence of full repeal of the Davis-Bacon Act and state prevailing wage laws, ABC continues to support legislative and regulatory reform efforts designed to mitigate the negative effects of these laws and their failure to reflect the current market prevailing rate. [ABC opposes expansion of Davis-Bacon](#) and state and local prevailing wage laws into areas of public and private projects in which they have not been previously mandated. As of April 2022, certain taxpayer-funded construction projects in 28 states and Washington, D.C., are subject to state prevailing wage laws that are similar to the federal Davis-Bacon Act. In addition, numerous municipalities have also enacted their own prevailing wage policies applying to local public works projects.
- Washington, D.C., and eight of the 28 states with a prevailing wage law, as well as some municipalities, adopt rates determined by the DOL, in contrast to other states that determined their rates independent from the DOL.

### Prevailing wage laws increase federal, state and local taxpayer-funded construction costs and cause needless delays.

- Hardworking taxpayers are ultimately the owners of publicly funded construction projects and deserve the best possible product at the best possible price.
  - *Anti-growth:* Prevailing wage mandates are expensive to administer and result in less construction output per tax dollar. Therefore, taxpayers pay more and get less, resulting in fewer roads, schools and bridges without a measurable return in quality, safety or value.
  - *Increased costs:* Researchers at [Suffolk University found in a 2008 study](#) that Davis-Bacon requirements add 9.9% to construction costs and cost U.S. taxpayers an additional \$8.6 billion annually.

- *Above-market government-set rates:* According to a [2011 Joint Economic Committee report](#), government-determined Davis-Bacon wages inflated labor costs an average of 22% above market rates.
- *Waste:* The [Congressional Budget Office has estimated](#) that repealing the Davis-Bacon Act would save the federal government \$17.1 billion between 2021 and 2030.
- The Congressional Budget Office's Davis-Bacon repeal savings estimates do not reflect the true cost savings to taxpayers if Davis-Bacon is repealed. Experts estimate that the Davis-Bacon Act applies to a third of all construction put in place by governments—as many state and local projects are partially or wholly funded with federal dollars that trigger Davis-Bacon requirements. In 2021, \$346.3 billion of public construction [was put in place](#). If a third of the spending (\$114.3 billion) was 10% less expensive, that would save taxpayers \$11.3 billion per year and more than \$100 billion over the next decade.
- State and local prevailing wage studies show government-determined prevailing wages drive up local construction costs:
  - [May 2021 research](#) conducted by the Mackinac Center for Public Policy found that [wages increased and the number of construction workers employed increased](#) following repeal of Indiana's prevailing wage law in 2015.
  - A [May 2020 study](#) conducted by the Wisconsin Institute for Law and Liberty examines the cost impact of Davis-Bacon to contractors in Wisconsin. Key findings include:
    - Costs are increased for counties across the state: Costs to taxpayers were found to be 20% higher across the professions in southeast Wisconsin. Increased costs of 1%-20% were found in the southwest and northwest portions of the state.
    - Davis-Bacon impedes competition: 68% of construction companies in the WILL survey said that a repeal of the legislation would make them more likely to bid on projects.
    - Davis-Bacon raises employment costs: 87% of construction companies in the survey said that compliance with Davis-Bacon makes a project more expensive.
  - [A March 2020 study by the Turner Center for Housing Innovation at the University of California, Berkeley](#), found that prevailing wage requirements on affordable housing projects cost an average of \$30 more per square foot than those without wage requirements.
  - Following the full repeal of West Virginia's prevailing wage law in 2016, [a 2018 study conducted by the University of Kentucky Center for Business and Economic Research](#) found that total costs for public school construction in West Virginia declined by more than 7%. Additionally, the CBER found no evidence that repealing this mandate had any impacts on safety or quality of construction.
  - In California, [a 2017 study](#) by Blue Sky Consulting Group found that prevailing wage requirements on privately financed residential construction would “lead to a reduction in the number of new market rate houses built, fewer affordable housing units and a decrease in the number of construction jobs in the state.” The report concluded, “Overall, our analysis shows that expanding prevailing wage requirements to include privately financed housing construction in California would also increase the costs of building new homes. Requiring prevailing wage rates for residential construction would increase hourly labor costs by 89% on average, with some parts of the state experiencing increases of more than 125%. We estimate that this increase could

translate to a 37% increase in construction costs, or about \$84,000 for a typical new home.”

- In New York, [a 2017 report released by the Empire Center for Public Policy](#) found that prevailing wage requirements inflate the cost of publicly funded construction projects in the state by 13% to 25%. Taxpayers can expect to pay billions in extra costs, given the tens of billions of dollars the state plans to spend on public projects over a five- to 10-year period.
- In 2016, the [New York Independent Budget Office released a report](#) on the impact prevailing wage requirements would have on affordable housing projects built with the 421a property tax break. IBO estimated prevailing wage requirements would cost the city an additional \$4.2 billion, increasing affordable housing construction costs by 23%, or \$80,000 per unit.
- In Illinois, [a 2014 study commissioned by the nonpartisan Anderson Economic Group](#) found that, from 2002 through 2011, the state of Illinois and local governments could have saved an estimated \$1.6 billion on school construction costs by eliminating prevailing wage requirements.
- In Minnesota, the prevailing wage calculation process is flawed and outdated, leading to inaccurate wage rates on construction projects. A 2018 [study released by the Minnesota Center for Fiscal Excellence](#) found a disproportionate 75% of prevailing wages reflected union rates in the period analyzed in the study, even though just 32% of private construction workers in Minnesota belong to a union.
- In 2002, a [report by the Legislative Bureau of the Ohio Legislature determined](#) that rescinding prevailing wage requirements for school construction saved \$487.9 million in aggregate school construction during the post-examination period, an overall savings of 10.7%. Repeal had no negative impact on school construction quality or wages of construction workers building applicable schools.
- A [February 2010 U.S. Government Accountability Office report](#) found that several federal agencies reported that the Davis-Bacon Act had a negative impact on the American Recovery and Reinvestment Act program administration and goals that resulted in needless delays, increased costs and [complaints from stakeholders harmed by the policy change](#).
- A related [February 2010 U.S. Department of Energy Office of Inspector General report](#) cited Davis-Bacon regulations as the prime factor holding up the launch of its Weatherization Assistance Program, which did not begin work until October 2009, eight months after President Obama signed ARRA into law. A [March 4, 2010, GAO report](#) determined that, “as of Dec. 31, 2009, 30,252 homes had been weatherized with Recovery Act funds, or about 5% of the approximately 593,000 total homes that DOE originally planned to weatherize using Recovery Act funds.” This bureaucratic boondoggle [helped shape the narrative that ARRA failed at funding and creating shovel-ready jobs](#).
- There is no credible evidence supporting erroneous claims that prevailing wage laws improve a project’s cost, schedule or quality, or result in better worker safety or training.

### **Prevailing wage laws discourage small contractors from bidding on government projects.**

- Prevailing wage laws require complex and inefficient wage and work restrictions that serve as a barrier to market entry for small contractors, decreasing competition for taxpayer-funded projects.
- For example, the DOL’s failure to provide detailed information about job duties that correspond to each published wage rate makes it difficult to determine the appropriate wage rate for many

construction-related jobs. These wage determinations force federal contractors to use outdated and inefficient union job classifications that ignore the productive work practices successfully used in the merit shop construction industry. Further, the DOL has failed to give contractors notice of many of its letter rulings and, with rare exceptions, has not posted such rulings on its website.

- The DOL has failed to provide any substantive guidance to contractors as to the proper classification of workers under the governing wage determinations. The DOL continues to rely on unpublished union work assignments in most cases, thereby leaving nonunion contractors with little or no notice of their obligations under the Davis-Bacon Act. Though the DOL's Field Operations Handbook requires agency officials to conduct area practice surveys to determine which of several disputed wage classifications controls the work, the guidelines are inconsistently applied, and contractors are often left without any guidance until they receive a complaint or DOL investigatory findings, resulting in costly litigation.
- Prevailing wage requirements deprive equal access to work opportunities for small and minority-owned contractors because complexities and inefficiencies in the act's implementation make it difficult for them to competitively bid on publicly funded projects.

### **Eliminating prevailing wage laws would level the playing field among all construction firms for public projects, creating the conditions for all Americans to compete to build America.**

- Many prevailing wage mandates require contractors to pay union wages and benefits and force contractors to use archaic and inefficient union work rules set by local union collective bargaining agreements, which are incongruent with nonunion contractors' ability to utilize construction workers across multiple craft disciplines—e.g., laborer, carpenter, operator—on a jobsite.
- By favoring unionized contractors, these requirements discriminate against the [87.4% of private-sector construction workers](#) who choose not to join a union. In [12 states](#), more than 95% of workers do not belong to a union.
- The DOL Wage and Hour Division sets the Davis-Bacon rate by using [a convoluted survey process](#) and [formula](#) that is not an average of reported wages but simply the most frequent wage rate in most instances: If a single rate is paid to a majority of the employees in a given classification and locality, it is adopted as prevailing. If no single rate is paid to a majority, then the weighted average of all rates paid is adopted as prevailing wage. Because all workers subject to a local collective bargaining agreement must be paid the same rate, unionized rates are more frequently adopted as prevailing rates set by the DOL.
- [A 2019 DOL OIG report](#) found that 48% of all Davis-Bacon rates are union rates, even though less than 12.8% of the construction workforce belonged to a union when the study was conducted.
- [A 2011 GAO report](#) found that 63% of all Davis-Bacon rates are union rates, even though less than 14% of the construction workforce belonged to a union when the study was conducted.
- It is estimated the union wage rates prevail at a much greater percentage for nonresidential construction wage rates because there are few unions and prevailing union wage rate determinations in residential construction. So, taxpayer-funded nonresidential infrastructure is more likely subject to union-scale rates.
- The government-set rates are a mere reflection of those employers motivated to return a paper survey sent to contractors of the Wage and Hour Division's choosing.

**According to a [study by the Heritage Foundation](#), more construction jobs would be created if the DOL accurately calculated Davis-Bacon rates using Bureau of Labor Statistics data and statistically valid methodology to find the true prevailing wage.**

- *100% flawed:* The GAO and DOL's own inspector general reports found widespread errors in Davis-Bacon wage rates and identified errors in the agency's wage survey process. A [2011 GAO study](#), referencing 2004 research from the [DOL's inspector general](#), noted that 100% of sampled wage determinations were flawed.
- *Outdated:* Rates are rarely current market rates because the survey system takes too long to determine a rate. The DOL's Wage and Hour Division sets roughly 130,000 wage and benefit rates through a survey process. However, the DOL's wage determinations are less than market rates in areas without updated surveys, which may harm workers.
- *Unaccountable:* The DOL is unable to provide clear job classifications to nonunion contractors. Murky descriptions expose firms to potential wage and hour violations that unions exploit to file wage and hour violation misclassification charges, penalize and/or drive nonunion competitors out of business.
- *Dysfunction multiplied across state governments:* Eight states plus Washington, D.C., have prevailing wage rates set by simply adopting Davis-Bacon Act rates established by the DOL. Other states set rates using a similar but inaccurate survey process managed by state government, which costs millions of state tax dollars to administer.

#### Findings of a [March 2021 Survey](#) of ABC Members on Davis-Bacon/Prevailing Wage:

- 83% of respondents support full repeal of prevailing wage laws.
- 82% of respondents support reforms to prevailing wage laws.
- 88% of respondents do not support prevailing wage laws and the Davis-Bacon Act in its current form.
- 92% of respondents would be less likely to vote for a lawmaker who supports prevailing wage policies on taxpayer-funded construction projects.

In addition, survey respondents said prevailing wage requirements would:

1. Make them less likely to bid on a project (75%).
2. Make projects more expensive (94%).
3. Make no difference (61%) or harm (37%) a company's investment in workforce development strategies.
4. Have no impact on their ability to attract skilled workers (77.8%), while 8% said it would result in them attracting less skilled workers.
5. Make no difference with respect to a company's safety performance on a project (95%), while 2% said it would make a project less safe.
6. Make no difference with respect to project's construction quality (92%), while 5% said it would decrease quality.
7. Make no difference with respect to project's on-time and on-budget delivery (62%), while 36% said it would decrease on-time and on-budget delivery.
8. Result in less competition from subcontractors (68%), while 25% said it would make no difference.
9. Make no difference in local hiring outcomes (65%), while 28% said it would result in worse local hiring outcomes.
10. Make no difference in the hiring of minority, women, veteran and disadvantaged business enterprises (77%), while 19% said it would decrease hiring of disadvantaged businesses.

11. Make no difference in the hiring of hiring of minority, women, veteran and ex-offender construction workers (76%), while 20% said it would decrease hiring of these disadvantaged workforce populations.
12. Decrease hiring of small businesses (44%), while 54% said it would make no difference.
13. Force firms to hire or assign additional staff, consultants, attorneys or vendors to comply with prevailing wage regulations (58%).

**Findings of an August 2021 survey of ABC members federal contractors concerning Davis-Bacon/prevailing wage rules:**

- Almost 95% of ABC federal contractors said construction projects subject to Davis-Bacon regulations are more expensive than identical or similar projects procured without Davis-Bacon requirements.
- Almost 76% of ABC federal contractors said construction projects subject to Davis-Bacon regulations would result in less competition from small, women-owned, minority-owned and disadvantaged businesses compared to their procurement without Davis-Bacon regulations.
- ABC federal contractors support reform of the Davis-Bacon Act (65% support reform, 19% oppose, 15% undecided).
- ABC federal contractors support full repeal of the Davis-Bacon Act (58% support full repeal, 25% oppose, 18% undecided).