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# COMMENT: AN ARGUMENT FOR THE REPEAL OF THE DAVIS-BACON ACT

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## I. INTRODUCTION

The Davis-Bacon Act (Davis-Bacon) was enacted in 1931 as a Great Depression emergency measure. n1 Davis-Bacon requires contractors to pay local prevailing wage rates on federal construction projects in excess of two thousand dollars. n2 The measure itself only applies when the United States or the District of Columbia is a party to the construction contract; however, federal aid construction contracts require compliance with Davis-Bacon. n3 In addition, most states have enacted little Davis-Bacon Acts that apply to state and locally funded public construction. n4

When Congress enacted the Davis-Bacon Act, the federal government funded sixty percent of new construction in the country. n5 The stated purpose of Davis-Bacon was to protect local contractors and workers from itinerant construction workers that would travel into an area in which there was a federal construction project and take those jobs for low wages. n6 The glut of labor and the desperation for work during the first years of the Great Depression had reduced construction wages by fifty percent even without the influx of itinerant workers. n7 If there were no wage floor for government contracts, the effect of awarding government projects to the lowest bidder would be to depress local wages as contractors cut wages to compete and win federal construction work. n8 The Davis-Bacon Act set prevailing wage rates for all contractors on federal construction projects so that competition for this work would not further drive down local wage rates. n9

Davis-Bacon effectively eliminates cost penalties associated with unionization within the construction industry. n10

Prevailing wage laws allow unionized firms to be more competitive in bids for federal construction contracts, thus lowering employer resistance to unions and collective bargaining for wages. n11

The Davis-Bacon Act is one of a trio of federal prevailing wage laws. The Walsh-Healey Act of 1936 extends prevailing minimum wage rates to goods-producing industries. n12 However, all wage rates under Walsh-Healey [*287] have been set to the federal minimum wage since 1964. n13 The Services Contract Act of 1965 extends prevailing wage protection to all workers on federal service contracts except executive, administrative, and professional employees. n14 These workers are not covered by the Fair Labor Standards Act (FLSA). n15 The Service Contract Act, while still enforced, is limited in its application by industry and employer group exemptions. n16 By far, the largest impact of the three prevailing wage laws is due to Davis-Bacon. n17

The Davis-Bacon Act is important to small businesses. Results of the 1997 economic census by the U.S. Census Bureau show that approximately fifty-six percent of construction firms have fewer than fifty employees, and that these same firms are responsible for over half of the total value of construction in the United States. n18 Because small businesses comprise over half of the construction industry, they assuredly feel the impact of Davis-Bacon's prevailing wage rate determinations.

One must ask why the Davis-Bacon Act is still needed today. Approximately seventy-four percent of all construction is privately funded, with twenty-one percent funded by state and local governments and five percent [*288] funded by the federal government. n19 As a result, federal construction contracts cannot greatly influence local labor rates. Arguably, the local market determines the wage rates that a contractor must use to bid for federal contracts in order to assure that workers will hire on for the job. It would seem that Davis-Bacon has outlasted its usefulness and has become a poorly administered super-minimum wage law for federal construction projects. Given today's regulatory structure under the FLSA and Occupational Health and Safety Act (OSHA), it is difficult to see why this segment of the construction industry should be singled out for special treatment.

This Comment will discuss the Davis-Bacon Act provisions and their current implementation. It will then analyze the arguments for and against the repeal of Davis-Bacon, and look at the impact of repeal in states that have eliminated their little Davis-Bacon laws. Finally, this Comment will make recommendations concerning the repeal of the federal and state Davis-Bacon Acts, and by extension both the Walsh-Healey Act and the Service Contract Act, and address the potential need for government support in some narrow areas of the construction industry.

## II. DAVIS-BACON ACT PROVISIONS AND THE PREVAILING WAGE DETERMINATION

As enacted in 1931, the Davis-Bacon Act applied to all federal construction projects with a value of at least five thousand dollars. n20 In 1934, the Copeland Act added reporting requirements for all contractors that were subject to Davis-Bacon prevailing wage rates, including the submission of weekly wage reports to the Department of Labor (DOL). n21 Davis-Bacon was amended in 1935, lowering the threshold project value to two thousand dollars, where it remains today. n22 The final amendment to Davis-Bacon was enacted in 1964, adding fringe benefits not required by federal, state, or local law into the prevailing wage determination. n23

Prevailing wage rates are determined for each job category, published before a project is bid, and must be used by all contractors bidding on the project; no contractor can pay less than the prevailing wage [*289] rates. n24 If no rate is published for a given job category, the contractor must use the rate for a category that would encompass the missing category; typically, this would be the rate for a higher skilled job. n25 The executed contract includes the predetermined prevailing wage rates. Once work begins, contractors must pay these rates for the life of the contract regardless of what changes may occur in the economy. n26 Published prevailing wage rates must be posted at the job site and each worker must be paid weekly, in full, at least the prevailing wage for his job category. n27 If a contractor hires workers into a job description that spans across published job categories, those workers must be paid the appropriate Davis-Bacon rate for the time spent in each job category. n28 Coverage includes public buildings and works. n29 Davis-Bacon enforcement provisions include set-asides to pay workers who are underpaid, n30 and allow for contract termination,

n31 blacklisting, n32 and the right to recovery actions by employees. n33

[*290] Davis-Bacon applies only to construction contracts let by the United States or the District of Columbia; however, compliance with Davis-Bacon is added as a condition to federal aid contracts. n34 Thus, the prevailing wage rate determinations are applied to contracts let by agencies such as the Public Roads Administration, the Rural Electrification Administration, and the Public Works Administration, to name but a few contracting agencies that come under the Davis-Bacon umbrella. n35 In addition, most states have their own prevailing wage laws, or little Davis-Bacon Acts, that apply to state and sometimes locally funded construction. n36 As a result, prevailing wage laws impact the majority of government construction projects in the United States.

The Davis-Bacon Act gives no definition of prevailing wage. Instead, DOL has the responsibility of defining the prevailing wage. n37 Until 1985, prevailing wage was the rate paid to at least thirty percent of laborers or mechanics employed in a given job category on similar projects in the same geographic area; if no rate was paid to at least thirty percent, the average rate of all the workers in the category was used. n38 When determining if the same rate was paid to workers in a given job category, the rate with benefits included must be identical to the penny. n39 In 1985, in response to criticism of administrative problems with Davis-Bacon, n40 prevailing wage was redefined as the amount paid to more than fifty percent [*291] of those employed in a given job category, or, if no such majority rate exists, the average rate paid. n41 This change was also projected to garner substantial savings. n42 However, DOL identified areas where the majority of workers were paid union wages as safe union territories when the thirty-percent rule was in effect, and has not made substantive efforts since 1985 to verify that union rates still prevail under the new rule which sets prevailing wage as the amount paid to more than fifty percent of those in a given category. n43 Thus, prevailing wage rates in these safe union territories continue to be set at union wages even though the designation was made under the thirty percent rule and may no longer be correct. n44 As a result, fewer prevailing wage determinations have been affected by the fifty-percent rule than originally anticipated.

DOL has defined four construction categories, within which projects are considered similar; these are residential, building, heavy, and highway construction. n45 The same geographic area is "the city, town, village, county or other civil subdivision of the State in which the work is to be performed." n46 Project prevailing wage determinations are usually made on the basis of wages paid countywide for three of the four major categories of construction; highway prevailing wage rates are often determined on a statewide basis. n47

Historically, DOL made wage determinations for each project before the request for bids was issued. n48 This became an onerous task as the number of projects increased, with increasing numbers of job categories on each project and multiple perturbations of fringe benefits within each job category. n49 In the 1960s, DOL started making general area wage determinations effective for all construction projects within a specified area until superseded. n50 DOL has defined the county as the area to be used in general area wage determinations. n51

To make the wage determinations, DOL requests wage and fringe benefit data by sending surveys to construction contractors, construction employer associations, labor organizations, and other interested third [*292] parties. n52 Submission of the data is voluntary; however, failure to submit truthful answers can result in criminal liability. n53 Individual nonunion contractors typically have little incentive to return the surveys. Because the amount of available Davis-Bacon work is small compared to available private sector work, they can reasonably choose not to pursue any Davis-Bacon work at all. Moreover, they assume the risk of criminal liability if their submission is found in error. n54 Unions, on the other hand, are well equipped to submit wage rate data for multiple job categories, n55 relieving union contractors of the burden of submitting data individually. Additionally, if a wage determination was initially based on wage rates in a union collective bargaining agreement and DOL has no indication that union affiliation in the area has dropped such that union rates no longer prevail, DOL may base updated wage determinations on updated collective bargaining agreements. n56 Additionally, unions and trade associations often submit wage data to DOL when new contracts are negotiated. n57 Wage specialists use the data received back from DOL surveys and any additional file data to compute prevailing wage rates. n58 Individual wage rate determinations are still made for projects when there is no general area rate in effect. n59 Every mechanic and laborer on a federal construction contract must be paid the

prevailing wage rate for his job category as determined under Davis-Bacon. n60

Davis-Bacon, as administered, favors unions. n61 As noted earlier, once an area is determined to have union wage rates as prevailing wage rates, DOL continues to presume that union rates prevail until shown that they do not. n62 It became common for DOL to rely on this presumption as the number of determinations required each year continued to rise and DOL wage specialists were stretched to keep up with the demand. n63 This may have made some sense before 1985, when prevailing wage rates were determined on the basis of the rate paid to at least thirty percent of workers in a given job category, because sixty-seven percent of construction industry employees were union members in 1936, forty-five percent in [*293] 1967, and thirty percent in 1984. n64 However, as late as 1995, more than forty percent of all individual job wage determinations issued by DOL adopt the union rate. n65 This is despite the fact that union membership in the construction industry has dropped to nineteen percent, and prevailing wage rates are now determined by using the wage paid to at least fifty percent of all workers in a given job category. n66 Additionally, the 1964 amendment added a pro-union provision to the Davis-Bacon Act by including fringe benefits in the prevailing wage determinations; nonunion companies could no longer use fringe benefits as an area of competitive advantage. n67

## III. THE ARGUMENTS FOR AND AGAINST REPEAL OF THE DAVIS-BACON ACT

Legislation was introduced during the 106th Congress in both the House of Representatives and the Senate to repeal the Davis-Bacon Act and its companion measure, the Copeland Act; neither bill was enacted. n68 The Senate Committee on Labor and Human Resources considered a similar measure in 1995, but the full Senate never voted on it; a bill to repeal Davis-Bacon also stalled in the House of Representatives in 1995. n69 However, nine states have repealed their little Davis-Bacon Acts, and nine more never enacted prevailing wage legislation for state or local construction projects. n70

Strong advocates are on either side of the debate. Lining up for the Davis-Bacon Act are the AFL-CIO Building and Construction Trades Department, the NAACP, and the Congressional Black Congress. n71 Arguing for the repeal of Davis-Bacon are the National Association of Minority Contractors, n72 the Congressional Budget Office (CBO), n73 the National [*294] League of Cities, n74 the National School Boards Association, n75 the Associated General Contractors of America, n76 and the Heritage Foundation. n77

Critics of Davis-Bacon label it a costly measure that is no longer necessary, n78 while proponents argue that it ensures that construction work remains a stable career for working people and encourages investment in training. n79 CBO estimates that discretionary spending by the federal government would be reduced by $ 9.6 billion over the next ten years if Davis-Bacon were repealed. n80

Davis-Bacon supporters argue that repealing Davis-Bacon will cost the federal government federal tax revenues because of the resultant drop in construction wages and lower annual pay to construction workers. n81 Additionally, because Davis-Bacon imposes wage, benefit, and safety standards, construction workers are not draining the treasury through use of food stamps, public health support, and low-income tax credits. n82

### A. Market Forces Will Set Fair Wages for Construction Workers

Private funding now pays for most U.S. construction, with government funding supporting approximately one-quarter of the industry's activities. n83 State and local governments account for most of the government funding; only five percent of construction is funded through federal contracts and thus, directly affected by the Davis-Bacon Act. n84

One of the original reasons for Davis-Bacon was the idea that the federal government should not undercut local employment conditions when it funds a construction project. n85 It was feared that, because the federal government awards its business to the lowest qualified bidder, construction contractors would cut wage rates in order to achieve the lowest total cost and win the bid if there were no prevailing wage protection. n86 The federal government would thus drive down local wages because of its contracting practices. n87 The maintenance of a level playing [*295] field, so

that "responsible, higher-paying contractors" can compete successfully for contracts against contractors that "drive down wages and 'lowball' bid[]," continues to be cited as a major benefit of both the federal and state Davis-Bacon laws. n88

This may have been a reasonable fear when the federal government was funding sixty percent of all construction in the country and there was a large pool of unemployed construction workers willing to work at below-market rates because of the Great Depression. n89 The argument loses its impact when considered in today's economy. The majority of construction in the country is now privately funded, and the unemployment rate is significantly lower than during the Great Depression. n90 Even if a contractor bidding on a federal construction project prepares its bid using a wage rate that is below the market rate, it would not be able to hire workers at that low rate. Instead, construction workers would opt to work at the higher market rate on the privately funded projects. In order to hire workers to complete the project, the contractor would have to bring its pay scale up to the market level, thus jeopardizing its profit. As a result, the contractor would have a strong incentive to bid the project using market-level wages. Even if unemployment rates were to grow, the federal government's contracting practices would have little impact on wages in the industry because it only controls five percent of the construction dollars.

In practice, Davis-Bacon tends to drive local wages up. n91 If the prevailing wage rate is lower than a given contractor's rate, that contractor will still pay its normal, higher rate on the federal contract. n92 However, if the contractor's rate is lower, it will be forced to increase its rate for the federal contract. n93 Thus, the impact of Davis-Bacon is to force some of the wage rates in an area higher, while leaving those already at or above the prevailing rate unchanged.

Until 1985, federal construction wages were included in the pool of local wage rates when determining the next round of prevailing wage rates, continuously edging local rates higher. n94 Since 1985, DOL considers only privately funded local wage rates when making Davis-Bacon determinations for residential and building construction. n95 However, federal construction wage rates are still considered for heavy and highway [*296] construction prevailing wage determinations because the privately funded construction in these sectors is insufficient to make accurate determinations. n96

Davis-Bacon drives wages above local prevailing rates and does not protect local contractors from outsiders that vie for federal construction projects. Oregon State University (OSU) published a report in 1982 that addressed the effect of Davis-Bacon in rural areas. n97 The OSU study found that wage rates were thirteen to twenty-three percent higher on public non-residential building projects than on private projects; contractors on a quarter of the public projects had to raise their wages above the rate they normally paid to comply with Davis-Bacon. n98 This translated to an increase in total construction costs of twenty-six to thirty-eight percent on federally funded projects. n99 Additionally, Davis-Bacon did not protect local contractors from outsiders; local contractors built forty-seven percent of privately funded projects in the study, but only twenty-eight percent of federally funded projects. n100 Contractors on federally funded projects were more likely to come from non-contiguous counties and from urban areas than those on privately funded projects. n101 The Government Accounting Office (GAO) reached the same conclusion in another study, stating that "nonlocal contractors worked on the majority of [federal Davis-Bacon] projects, indicating that the higher rates may have discouraged local contractors from bidding." n102 Both the GAO and OSU studies found that local contractors avoid disruption in their wage structures and loss of worker morale by not bidding on federally financed projects. n103

Another problem is the Davis-Bacon threshold of two thousand dollars. n104 This threshold was intended to exclude construction contracts too small to impact local wage standards. n105 While two thousand dollars may have been a reasonable threshold in the 1930s, years of inflation and economic growth make it absurdly low today. This low threshold likely has its greatest impact on small, local contractors. Imposing Davis-Bacon's wage structure and reporting requirements on small contracts serves to exclude small companies that might otherwise compete successfully for this work because Davis-Bacon's administrative and added wage costs are [*297] typically more than small contractors can bear. n106 CBO has looked at the impact of raising the threshold to $ 1 million; even this large a change would only realize approximately one-third of the savings of repealing Davis-Bacon outright. n107

One must be cautious of looking just at the industry-wide picture. The highway and heavy construction segments of the industry are not dominated by private funding. n108 Nearly three-quarters of highway construction and almost forty percent of heavy construction are publicly funded. n109 In both cases, the federal government is responsible for about ten to fifteen percent of the publicly funded construction. n110 Thus, wages paid on state and local government projects are key in setting the market wage rates in these two industry segments, and the little Davis-Bacon laws come into play in the thirty-two states that have them.

Davis-Bacon advocates assert that prevailing wage laws supported a well-trained pool of highway construction workers who were able to repair the Santa Monica Freeway efficiently after the 1994 Northridge earthquake. n111 They also argue that Davis-Bacon is needed because construction workers are "twice as likely to be laid off as other workers" because of weather, fluctuations in the business cycle, and completion of construction projects. n112 They claim that without the stabilizing effect of Davis-Bacon, qualified construction workers and contractors would leave the industry. n113 However, if these claims did prove true, the resulting decrease in workers would drive up wages as buyers bid for qualified [*298] labor for their jobs. Stability would be reached when sufficient workers became available to meet the demands of the construction industry in these segments. Thus, the operation of the market system would counterbalance the feared effects of repealing Davis-Bacon.

Highway and heavy construction together account for less than one third of the construction industry, n114 and it is reasonable to assume that wage rates in these segments are heavily influenced by the market-driven rates in the residential and building segments. In both of these industry segments, federal funding accounts for less than ten percent of overall funding. n115 The impact that federally funded construction can have on wage rates is small when compared to private or state and local funding; ten percent of the market is not going to drive the other ninety percent. Sufficient justification to retain Davis-Bacon at the federal level does not exist even in the highway and heavy construction segments. The dominance of state and local government funding in these areas is also not enough to justify retaining little Davis-Bacon Acts at the state level when one considers that three quarters of all construction is privately funded. The market should set wage rates throughout the construction industry, without prevailing wage law protection for the publicly funded quartile. Should the market system fail, state and local governments are well suited to assess the health of local construction industry segments and take narrowly focused corrective measures as required.

Davis-Bacon wages apply only to a small segment of the working population, and Davis-Bacon wage determinations are well above the state and federal minimum wages. n116 While construction work is variable, n117 over one-quarter of construction workers earn more than half of their yearly pay in other industries. n118 It is hard to justify more wage protection for this narrow segment of the population than for workers in other industries who are equally or more dependent on their wages.

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B. Davis-Bacon Wage Determinations Do Not Accurately Reflect Local Construction Wages

The prevailing wage rates set by DOL are inaccurate because of the process used to make the determinations. n119 Approximately fifty wage specialists are responsible for making thousands of wage determinations each year. n120 For example, in 1982, DOL made 1238 area determinations and 12,788 project determinations; each determination included rates for 12 to 300 job categories. n121 In addition, each job category was further split into as many as four separate rates to properly include various fringe benefits. n122

When making rate determinations, the wage specialists rely on data submitted by contractors, employers associations, labor organizations and unions, and other interested third parties. n123 Historically, unions and trade associations submit most of the data; there is little incentive for most independent contractors to submit data and no incentive for those not doing any government work. n124 Trade associations include contractor associations, many of which are all or partially composed of union firms. n125 Wage specialists are largely autonomous and exercise discretion in determining rates, deciding which data to use, which data to verify, and when there is sufficient data to

make a determination. n126 If there is insufficient data within a geographic area to make a determination, data is imported from outside the locality. n127 On average, survey data used in wage rate determinations is seven years old. n128 The result is that wage determinations are as often higher than the average wage in a locality as they are lower and do not reflect reality. n129 There have been instances when the DOL prevailing wage rate was not equal to the union rate even though the only workers in a given job category in the area were union workers. n130

DOL's wage determinations are not judicially reviewed for correctness. n131 It is not settled whether the practices and procedures of DOL are subject to judicial review under the Administrative Procedures Act; the United States Courts of Appeals for the Fourth and Fifth Circuits found [*300] that they were, but the Tenth Circuit found otherwise. n132 The Supreme Court has so far declined to address this issue. n133

Any party that wishes to protest a Davis-Bacon rate must submit data to DOL to justify a different rate; however, DOL is not required to justify its rate determinations. n134 If DOL rejects the protest, appeal is within DOL. n135 The protestor can request an in-depth field investigation, a conference with DOL in Washington, D.C., to discuss and review DOL's supporting data, or both. n136 If the protest is still refused, there is a final appeal to the Wage Appeals Board within DOL. n137 There is no appeal of the Wage Appeals Board's decision. n138 Protests are permitted only between the time wage rates are issued with requests for bid and the time bids are subsequently opened. n139 During this time, because there is not yet a contractor, the only parties in interest are the contracting agency, unions, and contractors associations. n140 After the bids are opened and there is a contractor, it is too late to protest rates; only clerical corrections are allowed after bid opening. n141 Thus, individual contractors who win the federal construction contracts have no opportunity to protest Davis-Bacon rates.

Problems with the wage rate determination process have been reported through the years. In 1979, GAO reviewed 73 wage determinations with 277 worker classifications. n142 Eighty-seven percent of these determinations were incorrect, ranging from $ 5.44 too high to $ 5.30 too low. n143 In July 1997, an Oklahoma jury found a labor union official guilty of fourteen counts of making false statements to the government in response to DOL wage survey requests. n144 That same year, the Inspector General of DOL reported results of wage survey audits that found significant errors in two-thirds of the wage survey reports subjected to on-site [*301] audits; DOL officials were responsible for sixteen percent of the errors. n145 More recently, DOL's procedures have also come under scrutiny from the House Appropriations Committee. n146 As a result, DOL undertook two major efforts in 1997 to improve the accuracy of the wage determinations that it issues for federal construction projects. n147

The first effort, which addresses the accuracy of data used to make wage determinations, will have limited success correcting data problems. n148 DOL started verifying wage survey data on a random sample basis in 1997, using telephone verification by DOL staff and on-site verification by a private accounting firm. n149 GAO has identified factors within the DOL process that limit the effectiveness of verification. n150 One such factor cited was that DOL assumes that data is correct when contractors refuse to allow verification and use that data in wage determination calculations. n151 Another factor cited was the additional time needed for data verification, which varies from two weeks for telephone verification to an average of 211 days for on-site verification. n152 Additionally, the random sample mandated by Congress cannot adequately ensure the accuracy of wage determinations unless DOL verifies most of the data it receives; a more suitable sampling method should be used. n153 GAO noted that, despite these issues, verification might improve the accuracy of future wage determinations. n154 Verification will deter submission of incorrect and fraudulent data because parties submitting data know that it may be subject to DOL verification; verification will also provide information to DOL for long-term improvement of the wage determination process. n155

The second DOL effort to improve the accuracy of prevailing wage determinations addresses the low response rates to the wage rate surveys and the use of data that is an average of seven years old for making wage determinations. n156 DOL has begun to redesign its survey process and is testing the use of data from other DOL surveys to determine prevailing wage rates, in order to get more data from each local area to use in wage determinations. n157 DOL's goal is to be able, by fiscal year 2002, to conduct [*302] surveys for all four types of construction in each area of the country every three years and to issue ninety percent of wage determinations within sixty days of receiving wage survey data at

the national office. n158 This would mean that area determinations would be no more than three years old at any given time, as opposed to the present average of seven years. Currently, DOL issues "almost all" wage determinations within sixty days of receiving the survey information from the regional offices; their stated goal is to maintain this timeliness ninety percent of the time. n159 GAO cautions that the improvements DOL is making will increase by approximately ten times the volume of data that wage specialists are required to handle. n160 This could require significant expansion of DOL resources for wage determinations and affect the timeliness with which wage determinations are issued. n161 Results of this effort will be evaluated when it is completed to choose what parts of the improvement program should be institutionalized; no cost estimate is available for the long term. n162 DOL "believes it is premature" to consider cost and resource trade-offs until it sees the results of the improvements. n163 Given that DOL has allotted about fifty full-time staff since 1978 for determining Davis-Bacon rates, n164 a substantial increase in staff seems unlikely.

In 1979, GAO recommended that Davis-Bacon be repealed because DOL had not, in over fifty years of trying, devised an effective program to issue and maintain accurate wage determinations. n165 Although GAO sees potential for improvement in DOL's process as a result of the two ongoing efforts, it also cautions that these solutions are not perfect. n166 To date, these efforts have cost over $ 11 million; they were expected to cost another $ 3.75 million in fiscal year 2000. n167 Given the concern that DOL resources may be insufficient to handle the volume of data that will need to be processed as a result of these improvements, the total cost of improvement is indeterminate.

However, even if wage determinations were perfectly accurate, Davis-Bacon would not affect most local wage economies and local jobs because the volume of federal construction is just too low to affect overall market-driven wage rates. n168 Wage rates in five percent of the construction industry [*303] are not going to drive wage practices in the other ninety-five percent. Because the United States has a market-driven economy, the wage practices in the rest of the industry will act to hold the wage rates in the five percent of the industry funded by the federal government near the local prevailing wages. DOL's corrections to the Davis-Bacon wage determinations are expensive band-aids for a measure that has outlived its usefulness, and federal tax money can be better spent elsewhere.

C. The Cost of Compliance with Davis-Bacon Is a Barrier to Local Businesses

The OSU and GAO studies both found that the increased costs of Davis-Bacon wage compliance most adversely affect local contractors and their local workers. n169 As discussed earlier, the OSU study found that local contractors built approximately seventy percent more privately funded projects than publicly funded projects. n170 Many local contractors opt not to disrupt their wage and worker classification practices by bidding on federal contracts. n171 Firms must pay the cost of increasing wages to meet Davis-Bacon requirements; at the same time, they lose flexibility in job assignments because every worker must be in a published job classification. n172 Contractors also suffer diminished morale by raising wages for workers on federal projects only. n173

In the OSU study, wages were reported to be from thirteen to twenty-three percent higher on Davis-Bacon projects; correspondingly, union contractors built significantly more Davis-Bacon projects than private projects. n174 Labor costs make up about one-third of the cost of construction. n175 One could thus expect Davis-Bacon project costs to be higher than private project costs by one-third of the amount that Davis-Bacon wages are higher, or four to eight percent. However, the OSU study found that costs on Davis-Bacon projects were higher by twenty-six to thirty-eight percent. n176 The OSU study attributed this larger difference to the requirement that contractors assign work to "a particular trade for purposes of applying the posted prevailing wage rate." n177 As a result, contractors lack the flexibility to control costs by assigning workers to a general [*304] category and letting them perform a variety of tasks, as they do on privately funded projects. n178

In addition, the Copeland Act imposes costly reporting requirements on Davis-Bacon contractors. n179 They must file weekly payroll reports with DOL that include hours worked, wages, earnings, deductions, and net pay, for all employees that worked on a Davis-Bacon project. n180 The paperwork burden to comply with this requirement "overwhelms many construction firms and city administrators." n181 It cost the city of Dallas, for example, over four thousand hours to ensure compliance with Davis-Bacon requirements. n182 CBO estimated in 1983 that this

requirement added $ 50 million to $ 100 million dollars to federal construction contractor costs. n183

Davis-Bacon clearly adds cost to federal construction contracts. Almost fifty-five percent of respondents to a 1974 survey stated that they were either not interested in bidding on Davis-Bacon contracts, or would only do so if there was no other work available. n184 Without this high-cost barrier to entry, the number of local contractors that compete for and win federal contracts in their own geographic areas would most likely increase. This would increase the opportunities for local construction firms of all sizes.

D. Davis-Bacon May Affect Training and Minority Representation in the Construction Industry

Proponents of repeal argue that Davis-Bacon restricts training opportunities in the construction industry for the economically disadvantaged. n185 Davis-Bacon creates a disincentive to hire lower-skilled workers because contractors must pay the Davis-Bacon wage rate; as a result, contractors will choose already-skilled workers and have limited slots for new entrants to the construction industry. n186 Clark Becker, of the National League of Cities, testified before the Senate in 1995:

A large portion of Federal construction dollars is targeted toward inner city development and repair. Unemployed residents of the inner cities, a large percentage of whom are minorities, often have not previously been trained in the skills of the construction industry. The Davis-Bacon Act's prevailing wage restrictions create a disincentive [*305] for local government contractors to offer inner city residents a chance to work in their own neighborhoods. n187

The AFL-CIO counters that because it allows contractors to pay less to employees in bona-fide training programs, Davis-Bacon creates an incentive for contractors to support well-structured training programs. n188 The minority graduation rate from apprenticeship programs in the union sector is higher than from non-union programs. n189 In states that have repealed their little Davis-Bacon laws, minority participation in registered apprenticeship programs dropped from nineteen to thirteen percent. n190 Further, Davis-Bacon ensures that all workers on federal construction projects are paid the prevailing wage and that there is no wage rate discrimination against minorities because Davis-Bacon applies to everyone. n191 These assertions are not persuasive in the face of published findings that, among states with similar proportions of African Americans in the population, those with strong prevailing wage laws have fewer African Americans in construction. n192

Davis-Bacon is not needed to eradicate discrimination on federal contracts; federal contractors are subject to Executive Order 11246, which prohibits discrimination, as well as Title VII if they have more than fifteen employees. n193 Data is mixed on whether Davis-Bacon helps or hinders training programs for entry construction workers. However, these programs could be supported directly by the government, if necessary, without Davis-Bacon.

E. Safety Benefits of Davis-Bacon Are Overstated

Davis-Bacon supporters argue that prevailing wage laws minimize the number of workers that are inexperienced or unskilled, and reduce pressure on workers to "cut corners and work fast." n194 Supporters assert that repeal of state little Davis-Bacon laws has resulted in a fifteen percent increase in work-related injuries and illnesses. n195 They expect similar [*306] results on federal construction projects if the Davis-Bacon Act is repealed, costing taxpayers hundreds of millions of dollars. n196 They further argue that workers hired at prevailing wages are more skilled, and thus the risks of environmental and health disasters due to shoddy construction are fewer. n197

This argument ignores the fact that OSHA requirements are the same on Davis-Bacon and non-Davis-Bacon construction sites. n198 Although there is no study comparing safety records for Davis-Bacon and non-Davis-Bacon

sites, OSHA found safety records from union and nonunion construction sites to be comparable. n199 A study published in 1990 by the Journal of Occupational Medicine also concluded that union and nonunion construction sites had comparable safety records. n200 Although union versus nonunion construction site comparisons are not perfectly analogous to Davis-Bacon versus non-Davis-Bacon site comparisons, they tend to indicate that there is no difference in safety records between Davis-Bacon and non-Davis-Bacon sites. Further, comparison of construction injury incidence rates in states that repealed little Davis-Bacon Acts versus those states that still have little Davis-Bacon Acts shows that the average rate for both groups decreased between the mid 1970s and early 1990s, by eight percent and eleven percent, respectively. n201 Interestingly, states that never had little Davis-Bacon had the lowest overall average rates. n202

As for the quality of construction, as the Senate Committee on Labor Resources noted in 1995, there is "no evidence that private sector commercial construction suffers from lack of quality. Commercial office buildings are not falling down. They all meet local and state building codes, even in areas known for earthquakes and other natural disasters." n203 Federal contract specifications and quality requirements are independent of the Davis-Bacon prevailing wage requirement. n204 Furthermore, federal contracts are awarded to the lowest qualified bidder. The pool of qualified bidders does not include low-bid contractors that cannot [*307] perform to the specifications. Thus, there is no reason to believe that worker safety and project safety will suffer if Davis-Bacon is repealed.

## IV. IMPACT OF STATE REPEAL OF LITTLE DAVIS-BACON ACTS

Nine of forty-one states repealed their little Davis-Bacon prevailing wage laws between 1979 and 1988. n205 A study at the University of Utah found that the average income of construction workers in these nine states dropped approximately six percent, but the unemployment rate dropped only approximately two percent. n206 As a result, construction worker income declined by four percent overall, with a comparable resultant revenue loss to the government. n207 Evidence from other studies shows that unemployment rates are not driven primarily by changes in the minimum wage. Instead, they are influenced by broader economic conditions such as overall demand for goods and services. n208 Additionally, the study calculated average income by translating pre-and post-repeal annual salaries to 1991 dollars, using the consumer price index. n209 Construction workers actually received higher salaries, but the translation to constant dollars resulted in a loss that was due to the high inflation rates during 1979 through 1988. n210 Using constant dollars, average construction worker yearly earnings declined in almost every state during the time period studied, which undercuts the argument that repeal of little Davis-Bacon prevailing wage laws drove down earnings. n211

Repealing prevailing wage laws saves public construction costs. n212 Before repealing its prevailing wage law, Florida exempted school construction from its prevailing wage rate requirements between 1974 and 1978. n213 The state school districts saved approximately fifteen percent in school construction costs during that time period. n214 The West Virginia Graduate Business School concluded in 1990 that the West Virginia prevailing wage law increased public construction project costs by approximately thirty percent. n215

These findings are consistent with the conclusions of the OSU study - prevailing wage laws increase the taxpayer costs of public construction projects. n216 The Utah study's conclusion that construction workers' [*308] incomes fell merely indicated that wages in the construction industry did not keep pace with inflation, an occurrence that was not uncommon in the 1980s. The Utah study cannot be used as justification for continued prevailing wage laws.

## V. RECOMMENDATIONS FOR REPEAL OF THE DAVIS-BACON ACT AND OTHER FEDERAL PREVAILING WAGE LAWS

The Davis-Bacon Act has outlived its usefulness. Economic conditions have changed radically since the measure was first enacted. Today, instead of dominating the construction industry, federal construction accounts for a mere five percent of the total industry. n217 The federal procurement process of awarding contracts to the lowest qualified bidder no longer has much impact on local wages, which are driven by market forces. n218 Davis-Bacon increases wages above market rates on federal construction projects, and results in loss of flexibility in applying the work force to the

task at hand. n219 The federal government would save $ 9.6 billion in discretionary spending over the next ten years if Davis-Bacon were repealed. n220

Arguments for retaining Davis-Bacon lack merit. Worker safety and health are now protected by OSHA regulations. n221 FLSA sets minimum wage standards sufficient for the rest of the workers in the country, and requires premium payment for overtime work. n222 Title VII and Executive Order 11246 protect workers in federal construction projects from discrimination. n223

Davis-Bacon wage determinations suffer from inaccuracies, and improving the process of making determinations will likely be costly to implement and may have only limited success. n224 Additionally, the cost of compliance with Davis-Bacon, both in meeting administrative paperwork requirements imposed by the Copeland Act and in paying inflated wage rates for government construction projects, acts as a barrier to contractors that might otherwise perform government contracts. n225 This most likely excludes a greater number of small construction firms than it does larger ones.

The Davis-Bacon Act and the Copeland Act, its companion measure, should be repealed now. Based on the experience of states that have repealed their little Davis-Bacon Acts, the remaining state laws should [*309] also be repealed. n226 Congress should not stop at removing federal prevailing wage protection only in the construction industry. The Walsh-Healey Act no longer has any effect on wages, since all Walsh-Healey minimum prevailing wages are set to the federal minimum wage as defined by FLSA. Walsh-Healey should be repealed as a bookkeeping or clean-up measure. FLSA minimum wage coverage should be amended to include the workers on federal service contracts currently covered only by the minimum prevailing wage provisions of the Services Contract Act. Once that is done, the Services Contract Act should also be repealed. This would leave all workers in the United States protected by the same minimum wage laws, regardless of the workers' industry.

Repeal of the Davis-Bacon Act may have an adverse impact on training of new construction workers. If this is so, narrow legislation could be enacted to directly support training.

The heavy construction and highway construction segments of the industry would also require attention after repeal of Davis-Bacon to ensure that market rates do not diminish the country's ability to rebuild infrastructure in times of acute need. Since state and local governments are dominant players in these segments, any remedial measures should be accomplished at those levels; the federal government should exercise restraint. State and local action also makes sense because local economies would be affected more significantly than the national economy.

Shedding these outdated laws will not harm the construction industry, but will let the market properly drive the industry in response to demand at any point in time. No sensible reason exists for the federal government to subsidize an industry as healthy as construction. Repeal will allow us to properly focus our attention and resources on the challenges that we face in the twenty-first century.

**Legal Topics:**

For related research and practice materials, see the following legal topics:
Labor & Employment LawWage & Hour LawsCoverage & DefinitionsPrevailing WagesLabor & Employment LawWage & Hour LawsStatutory ApplicationDavis-Bacon ActPublic Contracts LawTypes of ContractsConstruction Contracts

**FOOTNOTES:**

n1. Armand J. Thieblot, Jr., Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon"

Acts, the Walsh-Healey Act, and the Service Contract Act (1986).

n2. Davis-Bacon Act, *40 U.S.C. 276a* (1994 & Supp. IV 1998).

n3. Thieblot, supra note 1, at 36.

n4. Robert Pollin & Stephanie Luce, The Living Wage: Building a Fair Economy (1998).

n5. S. Rep. No. 104-80, at 3 (1995).

n6. Thieblot, supra note 1, at 29.

n7. Id. at 28.

n8. S. Rep. No. 104-80, at 4.

n9. Id. at 5.

n10. Thieblot, supra note 1, at 4.

n11. Id.

n12. Id. at 207.

n13. Id. at 2.

n14. Pollin & Luce, supra note 4, at 29. The Service Contract Act gives the Secretary of Labor the authority to grant exemptions from the provisions of the act when such an exemption is "necessary and proper in the public interest or to avoid the serious impairment of government business." *41 U.S.C. 353*(b) (1994).

n15. Thieblot, supra note 1, at 33.

n16. Pollin & Luce, supra note 4, at 29.

n17. Id.

n18. See U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2332A(RV), Single-Family Housing Construction 10 (1999) [hereinafter U.S. Census Bureau, Single-Family Housing]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2332B(RV), Multifamily Housing Construction 10 (1999) [hereinafter U.S. Census Bureau, Multifamily Housing]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2333A(RV), Manufacturing and Industrial Building Construction 10 (1999) [hereinafter U.S. Census Bureau, Manufacturing and Industrial Building]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2333B, Commercial and Institutional Building Construction 10 (2000) [hereinafter U.S. Census Bureau, Commercial and Institutional Building]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2341A, Highway and Street Construction 10 (1999) [hereinafter U.S. Census Bureau, Highway and Street]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2341B(RV), Bridge and Tunnel Construction 10 (1999) [hereinafter U.S. Census Bureau, Bridge and Tunnel]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2349A, Water, Sewer, and Pipeline Construction 10 (1999) [hereinafter U.S. Census Bureau, Water, Sewer, and Pipeline]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2349B, Power and Communication Transmission Line Construction 10 (1999) [hereinafter U.S. Census Bureau, Power and Communication Transmission Line]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2349C, Industrial Nonbuilding Structure Construction 10 (2000) [hereinafter U.S. Census Bureau, Industrial Nonbuilding Structure]; U.S. Census Bureau, U.S. Dep't of Commerce, EC97C-2349D, All Other Heavy Construction 10 (2000) [hereinafter U.S. Census Bureau, All Other Heavy].

n19. See U.S. Census Bureau, Single-Family Housing, supra note 18, at 9; U.S. Census Bureau, Multifamily Housing, supra note 18, at 9; U.S. Census Bureau, Manufacturing and Industrial Building, supra note 18, at 9; U.S. Census Bureau, Commercial and Institutional Building, supra note 18, at 9; U.S. Census Bureau, Highway

and Street, supra note 18, at 9; U.S. Census Bureau, Bridge and Tunnel, supra note 18, at 9; U.S. Census Bureau, Water, Sewer, and Pipeline, supra note 18, at 9; U.S. Census Bureau, Power and Communication Transmission Line, supra note 18, at 9; U.S. Census Bureau, Industrial Nonbuilding Structure, supra note 18, at 9; U.S. Census Bureau, All Other Heavy, supra note 18, at 9.

n20. Thieblot, supra note 1, at 32.

n21. Id.

n22. Id.

n23. Id. at 34.

n24. Id. at 33. See also infra notes 37-60 and accompanying text (discussing how prevailing wage rates are determined).

n25. Id.

n26. Davis-Bacon requires that the contractor pay at least the predetermined prevailing wage rate; later changes to the prevailing wage determination by the Secretary of Labor have no impact on existing contracts unless there is a clause so providing in those contracts. *Bushman Constr. Co. v. United States, 164 F. Supp. 239, 240 (Ct. Cl. 1958).*

n27. Thieblot, supra note 1, at 33.

n28. Id.

n29. Id.

n30. The government contracting officer may withhold accrued payments from the contractor as necessary to pay workers the difference between their rate of pay and the contractually required prevailing wage; the Comptroller General is directed to pay wages due directly to the workers. *40 U.S.C. 276a-1,* 276a-2(a) (1994). See, e.g., *Unity Bank & Trust Co. v. United States, 5 Cl. Ct. 380, 384 (Cl. Ct. 1984),* aff'd, *756 F.2d 870 (Fed. Cir. 1985)* (holding that government properly withheld funds for contractor violation of Davis-Bacon Act, and neither contractor nor its assignee could be entitled to those funds until underpaid employees were compensated at the prevailing wage rate).

n31. Every contract that falls under the provisions of the Davis-Bacon Act includes a provision that allows the federal government to terminate the contract if the contractor or any of his subcontractors pays less than the prevailing wage required by the contract to any workers employed at the work site; the terminated contractor is liable to the federal government for damages incurred in completing the contracted work. *40 U.S.C. 276a-1.*

n32. The Comptroller General is directed to distribute a list of contractors that do not comply with Davis-Bacon to all departments of the federal government; no contract can be awarded to listed contractors for three years after the list is published. *40 U.S.C. 276a-2*(a).

n33. The United States Court of Appeals for the Seventh Circuit held that an implied private right of action for workers not paid the prevailing wage exists under *Davis-Bacon. McDaniel v. Univ. of Chi., 548 F.2d 689, 695 (7th Cir. 1977).* See also *Hartt v. United Constr. Co., 655 F. Supp. 937, 939 n.2 (W.D. Mo. 1987),* aff'd, *909 F.2d 508 (8th Cir. 1990)* (stating that private right of action exists under Davis-Bacon).

n34. Thieblot, supra note 1, at 36.

n35. Id.

n36. Pollin & Luce, supra note 4, at 28, 43 (reporting that as of 1988, thirty-two states, plus the District of Columbia, which is subject to the federal Davis-Bacon Act, have prevailing wage laws). See *Alaska Stat. 36.05.010* (Lexis 2000); *Ark. Code Ann. 22-9-301* (Michie 1987); *Cal. Lab. Code 1771* (West 1989); *Conn. Gen. Stat. Ann. 31-53* (West Supp. 2000); *Del. Code Ann. tit. 29 6960* (1997 & Supp. 2000); *Haw. Rev. Stat. 104-2* (1993 & Supp. 1999); *820 Ill. Comp. Stat. Ann. 130/3* (West 1999); *Ind. Code Ann. 5-16-7-1* (Michie 1997); *Ky.*

*Rev. Stat. Ann. 337.510* (Michie 1995); *Me. Rev. Stat. Ann. tit. 26, 1306* (West Supp. 2000); *Md. Code Ann., State Fin. & Proc. 17-214* (Michie Supp. 2000); *Mass. Gen. Laws Ann. ch. 149, 26* (West Supp. 2000); Mich. Stat. Ann. 17.256 (Callaghan 1989); *Minn. Stat. Ann. 177.43* (West 1993); *Mo. Ann. Stat. 290.230* (West 1993); *Mont. Code Ann. 18-2-403* (1999); *Neb. Rev. Stat. 73-102* to 73-104 (1996); *Nev. Rev. Stat. 338.020* (2000); *N.J. Stat. Ann. 34:11-56.28* (West 2000); *N.M. Stat. Ann. 13-4-11* (Michie 1997); *N.Y. Lab. Law 220* (McKinney 1986 & Supp. 2001); *Ohio Rev. Code Ann. 4115.05* (West Supp. 2000); Okla. Stat. Ann. tit. 40, 196.3 (West 1999); *Or. Rev. Stat. 279.350* (1999); *Pa. Stat. Ann. tit. 43, 165-5* (West 1992); *R.I. Gen. Laws 37-13-7* (Lexis Supp. 1999); *Tenn. Code Ann. 12-4-403* (1999); *Tex. Gov't Code Ann. 2258.023* (West 2000); *Wash. Rev. Code 39.12.020* (2000); *W. Va. Code 21-5A-3* (1996); *Wis. Stat. Ann. 103.49* (West Supp. 2000); *Wyo. Stat. Ann. 27-4-403* (Michie 1999). But see A.J. Thieblot, The Failure of Arguments Supporting Prevailing Wage Laws and a New Evaluation of the Benefits of Repeal, Gov't Union Rev., Fall 1995, at 1, 11-12 (reporting that Michigan prevailing wage law was declared unconstitutional in 1994 and Oklahoma prevailing wage law was declared unconstitutional in 1995).

n37. Thieblot, supra note 1, at 34.

n38. Id. at 41.

n39. Id. at 69.

n40. Id. at 85-86.

n41. *29 C.F.R. 1.2(a)(1) (2000)*.

n42. Thieblot, supra note 1, at 86.

n43. A.J. Thieblot, Fraud Prevalent in Prevailing Wage Surveys, Gov't Union Rev., Winter 1997, at 1, 7.

n44. Id.; General Accounting Office, GAO/HEHS-99-97, Davis-Bacon Act: Labor's Actions Have Potential to Improve Wage Determinations 8 n.8 (1999).

n45. General Accounting Office, supra note 44, at 3.

n46. *29 C.F.R. 1.2(b) (2000)*.

n47. General Accounting Office, supra note 44, at 3.

n48. Thieblot, supra note 1, at 35.

n49. Id. at 44-45.

n50. Id. at 45.

n51. General Accounting Office, supra note 44, at 18 (indicating that there are over 3000 counties in the United States; in fiscal year 1997, DOL conducted forty-three area wage surveys).

n52. Thieblot, supra note 1, at 46; General Accounting Office, supra note 44, at 3.

n53. General Accounting Office, GAO/HEHS-99-21, Davis-Bacon Act: Labor Now Verifies Wage Data, But Verification Process Needs Improvement 5-6 (1999).

n54. Thieblot, supra note 43, at 23.

n55. Union business agents, as part of their job, submit wage rate data for all of the job classifications that

are served by the hiring hall. Id.

n56. See supra note 44 and accompanying text.

n57. Thieblot, supra note 1, at 46.

n58. Id. at 73-74.

n59. DOL issued 15,674 project determinations in 1979, compared to 2257 general area determinations and 12,788 project determinations in 1982, compared to 1238 general area determinations. Id. at 48-49.

n60. Id. at 219.

n61. Id. at 44.

n62. See supra notes 44, 56 and accompanying text.

n63. Thieblot, supra note 1, at 44.

n64. Id.

n65. Thieblot, supra note 43, at 7.

n66. Id.

n67. Thieblot, supra note 1, at 35.

n68. H.R. 736, 106th Cong. (1999); S. 1157, 106th Cong. (1999). The Copeland Act of 1934 imposes reporting requirements, including the submission of weekly wage reports to the Department of Labor, on contracts subject to *Davis-Bacon. Thieblot, supra* note 1, at 33.

n69. S. 141, 104th Cong. (1995); S. Rep. No. 104-80 (1995), at 1; H.R. 500, 104th Cong. (1995).

n70. Thieblot, supra note 36, at 11 (Alabama, Arizona, Colorado, Florida, Idaho, Kansas, Louisiana, New Hampshire, and Utah have repealed their prevailing wage laws since 1979).

n71. Bldg. and Constr. Trades Dep't, AFL-CIO, Davis-Bacon Works! Prevailing Wage Laws Are Good for America 8-9 (1996).

n72. S. Rep. No. 104-80, at 6.

n73. Congressional Budget Office, Maintaining Budgetary Discipline: Spending and Revenue Options 920-06-A (1999).

n74. S. Rep. No. 104-80, at 9.

n75. Id. at 7.

n76. Repeal of the Davis-Bacon Act: Hearing on S. 141 Before the Senate Comm. on Labor and Human

Res., 104th Cong. 113 (1995) (prepared statement of the Associated General Contractors of America).

n77. Mark Wilson, Four Reasons Why Congress Should Repeal Davis-Bacon, Backgrounder No. 252 ( Heritage Found., D.C.), June 7, 1995, at 1.

n78. See S. Rep. No. 104-80, at 5 (summarizing criticisms of Davis-Bacon's cost effectiveness).

n79. Pollin & Luce, supra note 4, at 42.

n80. Congressional Budget Office, supra note 73, 920-06-A.

n81. Pollin & Luce, supra note 4, at 43.

n82. Id.

n83. See supra note 19 and accompanying text.

n84. Id.

n85. Thieblot, supra note 1, at 122.

n86. Id.

n87. Id.

n88. Pollin & Luce, supra note 4, at 42-43.

n89. From 1929 to 1933, construction jobs fell from 1.5 million to 800,000. Thieblot, supra note 1, at 29 n.17.

n90. The current unemployment rate is 4.4%, compared to 25% during the Great Depression. Press Release, Bureau of Labor Statistics, Commissioner's Statement on the Employment Situation (June 1, 2001), http://stats.bls.gov/news.release/jec.nr0.htm; S. Rep. No. 104-80, at 3.

n91. Thieblot, supra note 1, at 71.

n92. Id.

n93. Id.

n94. Id. at 89.

n95. Id.

n96. Id. See infra notes 108-10 and accompanying text for discussion of funding of heavy and highway construction segments.

n97. Martha Norby Fraundorf et al., Effect of the Davis-Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States 1 (1982).

n98. Id. at 27.

n99. Id.

n100. Id. at 17.

n101. Id. at 17-18.

n102. S. Rep. No. 104-80, at 6 (1995) (quoting General Accounting Office, HRD79-18, The Davis-Bacon Act Should Be Repealed (1979)).

n103. Id.; Fraundorf et al., supra note 97, at 18.

n104. Davis-Bacon Act, *40 U.S.C. 276a* (1994 & Supp. IV 1998).

n105. Thieblot, supra note 1, at 131.

n106. See infra Part III.C for a discussion of the costs of compliance with Davis-Bacon.

N107. Congressional Budget Office, supra note 73, at 920-06-B (predicting a $ 3.4 billion savings in federal discretionary spending over the next ten years if the threshold is raised to $ 1 million).

n108. See U.S. Census Bureau, Highway and Street, supra note 18, at 9; U.S. Census Bureau, Bridge and

Tunnel, supra note 18, at 9; U.S. Census Bureau, Water, Sewer, and Pipeline, supra note 18, at 9; U.S. Census Bureau, Power and Communication Transmission Line, supra note 18, at 9; U.S. Census Bureau, Industrial Nonbuilding Structure, supra note 18, at 9; U.S. Census Bureau, All Other Heavy, supra note 18, at 9.

n109. See U.S. Census Bureau, Highway and Street, supra note 18, at 9; U.S. Census Bureau, Bridge and Tunnel, supra note 18, at 9; U.S. Census Bureau, Water, Sewer, and Pipeline, supra note 18, at 9; U.S. Census Bureau, Power and Communication Transmission Line, supra note 18, at 9; U.S. Census Bureau, Industrial Nonbuilding Structure, supra note 18, at 9; U.S. Census Bureau, All Other Heavy, supra note 18, at 9.

n110. See U.S. Census Bureau, Highway and Street, supra note 18, at 9; U.S. Census Bureau, Bridge and Tunnel, supra note 18, at 9; U.S. Census Bureau, Water, Sewer, and Pipeline, supra note 18, at 9; U.S. Census Bureau, Power and Communication Transmission Line, supra note 18, at 9; U.S. Census Bureau, Industrial Nonbuilding Structure, supra note 18, at 9; U.S. Census Bureau, All Other Heavy, supra note 18, at 9.

n111. *Bldg & Constr. Trades Dep't, supra* note 71, at 11.

n112. Id. at 6.

n113. Id. at 7.

n114. See U.S. Census Bureau, Single-Family Housing, supra note 18, at 9; U.S. Census Bureau, Multifamily Housing, supra note 18, at 9; U.S. Census Bureau, Manufacturing and Industrial Building, supra note 18, at 9; U.S. Census Bureau, Commercial and Institutional Building, supra note 18, at 9; U.S. Census Bureau, Highway and Street, supra note 18, at 9; U.S. Census Bureau, Bridge and Tunnel, supra note 18, at 9; U.S. Census Bureau, Water, Sewer, and Pipeline, supra note 18, at 9; U.S. Census Bureau, Power and Communication Transmission Line, supra note 18, at 9; U.S. Census Bureau, Industrial Nonbuilding Structure, supra note 18, at 9; U.S. Census Bureau, All Other Heavy, supra note 18, at 9.

n115. See supra notes 109-10 and accompanying text.

n116. Pollin & Luce, supra note 4, at 42.

n117. See supra note 112 and accompanying text.

n118. Lisa Morowitz, Government Contracts, Social Legislation, and Prevailing Woes: Enforcing the Davis-Bacon Act, 9 In Pub. Interest 29, 33 (1989).

n119. Thieblot, supra note 1, at 55.

n120. Id. at 48.

n121. Id. at 48-49.

n122. Id. at 45.

n123. See supra notes 52-58 and accompanying text.

n124. Thieblot, supra note 1, at 46.

n125. Id.

n126. Id. at 73-74.

n127. Id. at 71. However, the 1985 change to the regulations eliminated the application of urban rates to rural areas. Id. at 89.

n128. General Accounting Office, supra note 44, at 1.

n129. Thieblot, supra note 1, at 75-76.

n130. Id.

n131. *Univs. Research Ass'n v. Coutu, 450 U.S. 754, 761 n.10 (1981)* (citing *United States v. Binghamton Constr. Co., 347 U.S. 171, 177 (1954)).*

n132. *Va. ex rel. Comm'r, Va. Dep't of Highways & Transp. v. Marshall, 599 F.2d 588, 592 (4th Cir. 1979); N. Ga. Bldg. & Constr. Trades Council v. Goldschmidt, 621 F.2d 697, 707-08 (5th Cir. 1980); Fry Bros. Corp. v. Dep't of Hous. & Urban Dev., 614 F.2d 732, 733 (10th Cir. 1980).*

n133. See, e.g., *Univs. Research Ass'n, 450 U.S. at 761 n.10.*

n134. Thieblot, supra note 1, at 50.

n135. Id.

n136. Id.

n137. Id. at 51.

n138. *United States v. Binghamton Constr. Co., 347 U.S. 171, 177 (1954)* ("The correctness of the Secretary's determination is not open to attack on judicial review.") (citations omitted).

n139. Thieblot, supra note 1, at 49-50.

n140. Id. at 50.

n141. Id.

n142. Id. at 77 (citing General Accounting Office, HRD79-18, The Davis-Bacon Act Should Be Repealed (1979)).

n143. Id.

n144. Thieblot, supra note 43, at 4.

n145. Id. at 4-5 (citing Office of Inspector Gen., Dep't of Labor, Rep. No. 04-97-013-04-420, Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis-Bacon Act (1997)).

n146. General Accounting Office, supra note 53, at 3; General Accounting Office, supra note 44, at 1-2.

n147. General Accounting Office, supra note 53, at 1-2; General Accounting Office, supra note 44, at 2.

n148. General Accounting Office, supra note 53, at 2.

n149. Id.

n150. Id. at 3.

n151. Id.

n152. Id.

n153. Id. at 18-19.

n154. Id. at 28.

n155. Id.

n156. General Accounting Office, supra note 44, at 1.

n157. Id. at 2.

n158. Id. at 13.

n159. Id.

n160. Id. at 12.

n161. Id.

n162. Id. at 3.

n163. Id. at 14.

n164. General Accounting Office, supra note 53, at 4; Thieblot, supra note 1, at 48.

n165. Thieblot, supra note 1, at 55 (citing General Accounting Office, HRD79-18, The Davis-Bacon Act Should Be Repealed (1979)).

n166. General Accounting Office, supra note 53, at 28-30; General Accounting Office, supra note 44, at 10-14.

n167. General Accounting Office, supra note 44, at 10.

n168. See discussion supra Part III.A.

n169. Fraundorf et al., supra note 97, at 17; S. Rep. No. 104-80, at 6 (1995) (citing General Accounting Office, HRD79-18, The Davis-Bacon Act Should Be Repealed (1979)).

n170. See supra note 100 and accompanying text.

n171. Fraundorf et al., supra note 97, at 17; S. Rep. No. 104-80, at 6 (citing General Accounting Office, HRD79-18, The Davis-Bacon Act Should Be Repealed (1979)).

n172. Fraundorf et al., supra note 97, at 17; Thieblot, supra note 1, at 58.

n173. Fraundorf et al., supra note 97, at 18.

n174. Id. at 19. Union contractors built 42 Davis-Bacon projects and 16 private projects; sample sizes were 113 and 102, respectively. Id.

n175. Id.

n176. See supra note 99 and accompanying text.

n177. Fraundorf et al., supra note 97, at 27.

n178. Id.

n179. S. Rep. No. 104-80, at 10 (1995).

n180. Id.

n181. Id.

n182. Id.

n183. Id. (citing Congressional Budget Office, Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget 27 (1983)).

n184. Armand J. Thieblot, Jr., The Davis-Bacon Act 163 (1976).

n185. S. Rep. No. 104-80, at 2 (1995).

n186. Id. at 9.

n187. Repeal of the Davis-Bacon Act: Hearing on S. 141 Before the Senate Comm. on Labor and Human Res., 104th Cong. 12 (1995) (statement of Clarke Becker, Mayor of Woodland Park, Colo.).

n188. *Bldg. & Constr. Trades Dep't, supra* note 71, at 7. See also *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., 519 U.S. 316, 319-20 (1997)* (holding that if an apprenticeship program is approved by DOL or a state apprenticeship agency, wages paid to participating apprentices employed on federally funded construction projects can be below the prevailing wage for a journeyman).

n189. *Bldg. & Constr. Trades Dep't, supra* note 71, at 8.

n190. Id.

n191. Id.

n192. Thieblot, supra note 36, at 5.

n193. S. Rep. No. 104-80, at 14 (1995).

n194. *Bldg. & Constr. Trades Dep't, supra* note 71, at 9.

n195. Id.; Pollin & Luce, supra note 4, at 45-46 (citing Peter Phillips et al., Losing Ground: Lessons from the Repeal of Nine "Little Davis-Bacon" Acts (1995) (unpublished manuscript, Dep't of Econ., Univ. of Utah)).

n196. *Bldg. & Constr. Trades Dep't, supra* note 71, at 9-10.

n197. Id. at 10.

n198. S. Rep. No. 104-80, at 15.

n199. Id.

n200. Id. at 15 n.58 (stating that after age differences are accounted for, union and nonunion safety records were comparable; apparently, the union workers were older and older workers have fewer accidents).

n201. Thieblot, supra note 36, at 33. The author compared average construction injury incidence rates for the period 1975 to 1978 with the period 1990 to 1992. The average rate in states that never had little Davis-Bacon Acts decreased from 14.2% to 13.6%; the average rate in states that repealed little Davis-Bacon Acts decreased from 17.1% before repeal to 15.7% after repeal; and the average rate in states that had little Davis-Bacon Acts in both periods decreased from 16.6% to 14.8%. Id.

n202. Id.

n203. S. Rep. No. 104-80, at 14.

n204. Id. at 14-15.

n205. Pollin & Luce, supra note 4, at 43 (forty-two states if the District of Columbia is included).

n206. Id. at 42-45 (citing Peter Phillips et al., supra note 194).

n207. Id. at 45.

n208. Id. at 46.

n209. See Thieblot, supra note 36, at 20-21.

n210. Id.

n211. Id. at 19-20.

n212. S. Rep. No. 104-80, at 7 (1995).

n213. Id. at 7-8.

n214. Id. at 8.

n215. Univ. of W. Va. Coll. of Graduate Studies Sch. of Bus. Mgmt., The 1990 West Virginia Prevailing Wage Law Study, Gov't Union Rev., Summer 1990, at 33, 41.

n216. See supra notes 97-103 and accompanying text.

n217. See supra note 84 and accompanying text.

n218. See discussion supra Part III.A.

n219. See discussion supra Part III.C.

n220. See supra note 80 and accompanying text.

n221. See supra note 198 and accompanying text.

n222. *29 U.S.C. 206*-207 (1994 & Supp. IV 1998).

n223. See supra note 193 and accompanying text.

n224. See discussion supra Part III.B.

n225. See discussion supra Part III.C.

n226. See discussion supra Part IV.

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