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REPEAL OF THE DAVIS–BACON ACT

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Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 141]

The Committee on Labor and Human Resources, to which was referred the bill (S. 141) to repeal the Davis-Bacon Act to eliminate excessive Federal construction costs and burdensome paperwork requirements, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

CONTENTS

I. PURPOSE

Senate bill 141 repeals the Davis-Bacon Act of 1931, 40 U.S.C. 276a et seq. and the Copeland Act's weekly payroll reporting requirements, 40 U.S.C. 276c. Davis-Bacon requires contractors on Federal construction projects costing over $2,000 to pay their workers no less than the "prevailing wage" as determined by the U.S. Department of Labor. The Copeland Act requires Federal contractors to submit weekly payroll records to the Federal Government.

Through this legislation, the committee will save U.S. taxpayers $2.7 billion over 5 years through more efficient management of

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Federal construction projects. In addition, the legislation will reduce the paperwork associated with Federal procurement.

Davis-Bacon was designed to prevent the Federal Government's purchasing power from depressing local wage rates. Another purpose was to prevent itinerant contractors from undermining local firms' wage schedules. These problems may well have existed during the Great Depression, but circumstances in the construction industry today are quite different.

Senate bill 141 will permit market forces to determine the price of construction. We want the government to pay the market rate for goods and services procured for U.S. citizens. But we strongly oppose having the U.S. Department of Labor's Wage and Hour Division in Washington, DC establish wage rates for workers on Federal construction projects for every single county in the United States, especially when these Davis-Bacon rates are significantly higher than market rates.

In fact, if the Davis-Bacon "prevailing wage" actually were the market wage that prevailed in the locality, then repealing Davis-Bacon would have no effect at all—taxpayers would simply pay the true prevailing market rate. But, as explained below, this is not the case.

The committee believes that Davis-Bacon is no longer necessary to prevent wages from being bid-down when 80 percent of the private sector construction market successfully operates without Davis-Bacon wage supports. Moreover, one original purpose of Davis-Bacon—to prevent outside contractors from undermining local firms—has been turned on its head. Rather than protecting local firms, Davis-Bacon's inflated wage schedules disadvantage local firms and increase the likelihood that outside contractors will successfully bid for Federal projects.

In addition, Davis-Bacon significantly limits job training opportunities for those on the lower rung of the disadvantaged. Repeal will create new training opportunities for the disadvantaged.

Finally, the committee rejects arguments by Davis-Bacon proponents that repeal will reduce quality, productivity and safety on Federal construction sites. The committee also rejects arguments that repeal will cause dire economic consequences for the construction industry.

In sum, Davis-Bacon is an outdated law, and the committee recommends that it be repealed.

II. Background and the Need for the Legislation

The Congress enacted the Davis-Bacon Act of 1931 during the Great Depression, which was a period of great economic instability. As the Nation's economy went into a tail-spin, Congress was rightfully concerned that high unemployment might lead Federal contractors to depress local wage rates as workers competed for any work they could find.

Congressman Bacon, for whom the Federal prevailing wage law was named, stated during the debate in the House of Representatives that "certain itinerant, irresponsible contractors, with itin-

erant, cheap, bootleg labor"[1] were successfully bidding for public works projects. As a result, they were denying local labor and local contractors the opportunity to fairly compete on Federal construction contracts.

Specifically, Rep. Bacon appeared to be concerned that a Southern contractor underbid several New York contractors for a veterans hospital in Rep. Bacon's district. The successful bidder brought workers from the South to complete the project.[2]

During the Depression, work was scarce. The gross national product fell by 30 percent, farm prices fell by 50 percent, and unemployment rose to 25 percent. Construction worker earnings fell by 50 percent as construction dollar volume slid from $10.8 billion to $2.9 billion. And 60 percent of the Nation's new construction was publicly financed.[3]

With the economy contracting, legislators were concerned that competitive pressures would drive down wages. As economist Armand Thioblot stated in his book on prevailing wage laws:

> The actual purpose of prevailing wage legislation can safely be characterized as that of protecting local wage scales from the consequences of competitive pressures on contractors to submit the low bid. * * * [During the Depression] * * * many * * * were willing to take [construction jobs] at almost any wage, thus driving down the already meager pay rates.[4]

As the Depression deepened, President Herbert Hoover sought to deal with the crisis in a variety of ways. In public, he espoused hope and confidence, attempting to reassure the public and to encourage the business community. But "[e]xpressions of confidence could not mitigate the impact of growing unemployment and reduced wages."[5] In private, the President conceded the seriousness of the situation and beseeched business leaders to halt layoffs and not to reduce wages or prices, exacting pledges from industry to hold the line. Unable to stand by such pledges, however, employers "desperately [tried] to cut [wages and employment] faster than prices fell."[6]

Moving through 1930 and into 1931, President Hoover, interested in the concept of using public works to revive a depressed economy, sought additional funding from Congress with which to complete projects already begun.[7] Compared with the scope of the crisis, however, the initiatives were modest.

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[1] U.S. Cong., House, floor debate, "Rates of Wages for Laborers and Mechanics on Public Buildings of the United States," motion to pass S. 5904, Feb. 28, 1931, passed, 71st Cong., 3d Sess. 74 Cong. Rec. at 6510 (1931).

[2] Thioblot, Armand, "Prevailing Wage Legislation," The Wharton School of Industrial Research, University of Pennsylvania, 1986, p. 29.

[3] "The Davis-Bacon Act Should Be Repealed," U.S. General Accounting Office, HRD79–18, April 27, 1979, p. 8 (hereinafter, "GAO Report").

[4] Armand Thioblot, "Prevailing Wage Legislation," supra, p. 28.

[5] Schwarz, Jordan A. "The Interregnum of Despair: Hoover, Congress, and the Depression." Urbana, The University of Illinois Press, 1970. p. 13.

[6] Sternsher, Bernard. "Rexford Tugwell and the New Deal." New Brunswick, Rutgers University Press, 1964. p. 30. Dixon Wecter, in "The Age of the Great Depression, 1929–1941" (New York, The Macmillan Company, 1948), p. 17–18, suggested that employers "contrived to slash pay rolls about 40 percent between 1929 and September 1931," noting: "Many industries and small businesses denied even lip service to the administration's plea for maintenance of wage rates."

[7] Sternsher, supra, p. 142–145.

LEGISLATION IS ADOPTED

On January 31, 1931, Labor Secretary William Doak appeared before the House Committee on Labor and stressed that the prevailing wage legislation was "really an emergency measure."[8] On February 3, 1931, the Secretary made a similar appeal to the Senate Committee on Manufacturers. The legislation had been treated by the Administration, he noted, "as an emergency matter because it really was an emergency case." Referring to the federal construction program then underway, he explained that "many of these contractors who [were awarded contracts] were going into the higher wage territories and bringing in laborers and mechanics and paying them reduced wage rates." And this practice, Secretary Doak affirmed, "was not only disturbing to labor but disturbing to the business people as well."[9]

Upon the urging of the Administration, Congress acted quickly. The legislation was adopted without a roll call vote and, on March 3, 1931, was signed into law by President Hoover (P.L. 71–798).[10] The act set the locally prevailing wage as the wage floor on public building contracts of $5,000 or more.[11]

Those were the conditions when the Congress enacted the Federal prevailing wage law. At that time, there were no other Federal worker protections.[12]

Supporters of Davis-Bacon rely on protecting local labor conditions and preventing wages from competitive pressures as the justification for a continued commitment to a Federal prevailing wage law. Robert Georgine, the president of the Building and Construction Trades Council, testified before the committee:

> The philosophy of the Davis-Bacon Act is that the Federal Government should not use its vast procurement powers to depress the wages and living standards of construction workers across the country. That philosophy is as valid today as it was when the act was originally passed.[13]

The committee respectfully disagrees with Mr. Georgine that the Federal Government's "vast procurement powers" will depress workers' wages without Davis-Bacon, and that the philosophy applied in 1931 is still applicable today. The committee is confident that our economic situation has dramatically changed over the past 60 years. As a result, repealing Davis-Bacon will not cause wages to be bid-down through competition below the normal local market wage.

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[8] U.S. Congress. House. Committee on Labor. "Regulation of Wages Paid to Employees by Contractors Awarded Government Building Contracts." Hearing, 71st cong., 3rd Sess., Jan. 31, 1931. Washington, U.S. Govt. Print. Off., 1931. p. 2.

[9] U.S. Congress. Senate. Committee on Manufacturers. "Wages of Laborers and Mechanics on Public Buildings." Hearing, 71st Cong., 3rd Sess., Feb. 3, 1931. Washington, U.S. Govt. Print. Off., 1931. p. 2–3.

[10] Congressional Record, Feb. 4, 1931, p. 3918–3919, Feb. 28, 1931, p. 6504–6521, and Mar. 3, 1931, p. 6906.

[11] The threshold was later reduced to $2,000.

[12] Later, Congress passed the Fair Labor Standards Act of 1938 (minimum wage, overtime and child labor protections), the Miller Act of 1935 (performance and payment bond requirements to assure that workers were paid for work performed), the Contract Work House and Safety Standards Act of 1962 (overtime for working more than eight hours per day), and the Social Security and Wagner-Peyser Acts (unemployment compensation and the employment service).

[13] Testimony of Robert Georgine before the Senate Committee on Labor and Human Resources, "Repeal of the Davis-Bacon Act, S. 141," S. Hrg., 104th Cong., 1st Sess., February 15, 1995, p. 4 (hereinafter "S. Hrg., 104th Cong., 1st Sess.").

TIMES CHANGE AND OUR LAWS MUST CHANGE AS WELL

During the Great Depression, Congress was rightfully concerned that competition for work on Federal construction projects might depress local wage rates. When 60 percent of all construction was publicly financed, as was the case in the 1930's, the government was the single dominant economic force in construction.

The committee heard testimony from labor economist Armand Thioblot, who argued that during the Depression, the Federal Government "was about the only game in town."[14] However, Mr. Thioblot pointed out that times have changed:

> As the economy recovered, private construction began again and [Federal] contracting lost the element of the monopsony. Now all public works construction, for State and local as well as Federal Governments, amounts to only about 20 percent of the industry's activity, and government is simply one purchaser among many. The Davis-Bacon Act here applies a cure (of awesome expense and complexity) to a problem that simply does not exist.[15]

When the Federal Government is responsible for less than 20 percent of the construction market, it is difficult to suggest that competition for government contracts would depress local wage rates.[16] Such wage depression does not occur in the private sector, and it will not occur when we repeal Davis-Bacon.

The General Accounting Office agrees with this analysis. While examining the changed economic conditions, GAO concluded:

> The Davis-Bacon Act is no longer needed. Other wage legislation and changes in economic conditions and in the construction industry since the law was passed make the law obsolete; and the law is inflationary. GAO believes it should be repealed.[17]

The General Accounting Office also found that in those rare cases where, for one reason or another, the Davis-Bacon wage rate was lower than the market rate in a locality, that contractors "paid workers at rates higher than those stipulated by Labor."[18] So the competition had "little, if any adverse effect" on local wage markets.[19]

This finding confirmed that competition for Federal contracts will not depress local wages. Otherwise, firms would not have paid workers more than required under Davis-Bacon.

DAVIS-BACON ADVERSELY AFFECTS LOCAL CONTRACTORS

In the committee's view, not only is Davis-Bacon unnecessary, but its original purpose of protecting local contractors from "itinerant" firms has been turned on its head. Davis-Bacon makes it

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[14] Thioblot, S. Hrg., 104th Cong., 1st Sess., p. 2.
[15] Thioblot, supra at p. 3.
[16] The Federal Government finances 10 percent of new construction, and State and local governments finance the other 10 percent. See "Trends in U.S. Construction, 1995 to 1999," Construction Review, International Trade Administration, U.S. Department of Commerce, Fall 1994.
[17] GAO Report, supra at p. i.
[18] GAO Report, supra at p. 69.
[19] GAO Report, supra at p. 69.

more likely that outside contractors will successfully bid on Federal construction projects.

During the 103d Congress, the committee received testimony from the National Association of Minority Contractors (NAMC), whose Executive Director, Samuel Carradine, wrote:

> Rather than protecting local contractors from unfair competition, Davis-Bacon has practically fostered a closed group of large contractors who follow Federal * * * construction work around the country to the exclusion of smaller, local contractors.[20]

This anecdotal evidence confirmed the findings of both the GAO and a research team at Oregon State University, both of whom found that Davis-Bacon worked to the disadvantage of local contractors. According to the GAO:

> [t]he increased costs [due to Davis-Bacon] may have had the most adverse effect on local contractors and their workers—those the act was to protect—by promoting the use of nonlocal contractors on Federal projects. We found that nonlocal contractors worked on the majority of these projects, indicating that the higher rates may have discouraged local contractors from bidding.[21]

Through interviews with contractors, GAO found that "rather than disrupt their wage structures and worker classification practices, they [local contractors] would not bid on federally financed projects."[22] This "limited the competition" for Federal projects and "probably accounted for the success of nonlocal contractors with receiving the majority of the contracts in those localities where Labor's rates were higher than prevailing rates."[23]

Similar to GAO's findings, the Oregon State University study of Davis-Bacon in rural areas found that the Federal prevailing wage law adversely affected local contractors. The authors stated:

> There appears to be some validity to the charge that the way the Davis-Bacon Act is now administered puts local contractors at a disadvantage instead of ensuring local firms and residents their share of the jobs as the law apparently intended. Compared to contractors on private projects, contractors on public projects are less likely to be within the same county as the project. * * *
>
> Contractors on public jobs were more likely to come from noncontiguous counties. * * * If we use private projects as a guide to what would happen in the absence of Davis-Bacon, the act does seem to have the effect of making it more difficult for local contractors to successfully bid on public projects.[24]

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[20] Testimony of the National Association of Minority Contractors, "Davis-Bacon Reform," S. Hrg. 103–749, July 28, 1994, p. 74.
[21] GAO Report, supra at p. 68–69.
[22] GAO Report, supra at p. 73.
[23] GAO Report, supra at p. 74.
[24] Fraundorf, Martha Norby, Farrell, John P., and Mason, Robert, "Effect of the Davis-Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States," Department of Economics, Oregon State University, January 1982, p. 18.

DAVIS-BACON UNNECESSARILY RAISES CONSTRUCTION COSTS

The Davis-Bacon Act promotes a failed procurement policy by artificially increasing Federal construction costs. According to the Congressional Budget Office (CBO), Davis-Bacon repeal will save taxpayers $2.7 billion over a 5-year period.[25] This represents a significant budget savings for the country.[26]

We can discern no justification for taxpayers footing the bill for higher construction costs, particularly at a time when the Federal Government is experiencing a large budget deficit. This would be reason enough to justify Davis-Bacon repeal.

The committee heard testimony from numerous witnesses regarding the construction premium that accompanies Davis-Bacon. Cindy Athey, owner of Precision Wall Tech in Northern Virginia, testified that her painters earn $14 per hour on private sector projects, but the Davis-Bacon wage is $21.24 per hour for projects at the National Institutes of Health (NIH) and the Navy Yard in the metropolitan DC area.[27]

Similarly, Hamilton Bowser, owner of Evanbow Construction in East Orange, N.J., testified that his journeymen earn $15 per hour on private sector projects and $25 per hour on Davis-Bacon projects.[28] Again, U.S. citizens pay a premium for Federal construction that is wholly unjustifiable.

And finally, Boyd Boehlje testified for the National School Boards Association that Loudon County, VA, at one point had been offered a $24,000 grant for a technical center, but the school board declined the grant. If the school board had accepted the grant, then Davis-Bacon would have applied to the project and the Federal grant money would have been used to cover the increased construction costs associated with Davis-Bacon.[29]

Numerous academic studies confirm that Davis-Bacon raises construction costs. The GAO found that Federal prevailing wage increased construction costs by 3.4 percent, and the Oregon State study indicated cost increases of 26–38 percent of rural areas.

At the State level, scholars and experts also have concluded that State prevailing wage laws increase construction costs.[30] For instance, before repealing their State prevailing wage law, Florida experimented by exempting school construction from the State pre-

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[25] In its 1983 analysis of Davis-Bacon, CBO (under the direction of CBO Director Alice Rivlin) stated: "CBO estimates that the total amount by which Davis-Bacon raises Federal construction costs (the sum of these effects) is approximately 3.7 percent.* * *" "Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget," Congressional Budget Office, July 1983, p. xii.

[26] In his testimony before the committee, Robert Georgine criticized the CBO estimate because it allegedly failed to account for Labor Department administrative changes in computing the prevailing wage and failed to account for decreased compliance costs in the age of computer technology. CBO has responded in a letter to the House Economic and Educational Opportunities Committee that it has adjusted its methodology over the years and stands by its most recent budget savings estimates.

[27] Testimony of Cindy Athey before the Senate Committee on Labor and Human Resources, "Davis-Bacon Reform," S. Hrg. 103–749, July 28, 1994, p. 35.

[28] Testimony of Hamilton Bowser before the Senate Committee on Labor and Human Resources, S. Hrg. 103–749, supra, at p. 34.

[29] Boehlje, S. Hrg. 104th Cong., 1st Sess., at p. 3.

[30] See also testimony of Armand Thioblot before the Senate Labor and Human Resources Committee, 104th Cong., 1st Sess., at p. 6:

> Studies performed in Florida, Iowa, Kentucky, Louisiana, Maryland, Minnesota, and New Hampshire in conjunction with repeal or attempted repeal of State prevailing wage laws in those States found average anticipated construction savings of 9.4 percent from eliminating them.

vailing wage law between 1974–78. Surveying local school districts, the Florida State School Board found that State taxpayers had saved $37 million, or approximately 15 percent of total construction costs.[31]

Similarly, the West Virginia Graduate Business School analyzed the costs associated with construction of an academic center in Preston County, WV from 1987–89. The study found that $1.5 million could have been saved if there were no prevailing wage requirements. In addition, the State prevailing wage law added $405,000 to the $1.35 million cost of building a garage and municipal building in Clarkesburg, WV.[32]

Sometimes the increased costs were due to higher than market wages being paid on prevailing wage projects, and other times the increased costs were due to declining productivity. The Florida school system contended that wages were 23–41 percent higher than market rates, and the West Virginia study found the State prevailing wage law "significantly [drove up] the labor costs on public construction projects by approximately 30 percent."[33]

DAVIS-BACON REDUCES PRODUCTIVITY

Witnesses who testified before the committee suggested that Davis-Bacon's wage rates and prevailing work rule restrictions significantly diminished productivity. For instance, Cindy Athey of Precision Wall Tech testified that a 5,000 hour job would take 6,000 hours to complete under Davis-Bacon.[34]

Work rule restrictions decrease productivity as well. The CBO highlighted this point in its 1983 cost study:

> Although the effect of Davis-Bacon on wages receives the most attention, the act's largest potential cost impact may derive from its effect on the use of labor. For one thing, DOL wage determinations require that, if an employee does the work of a particular craft, the wage paid should be for the craft. * * * For example, carpentry work must be paid for at carpenters' wages, even if performed by a general laborer, helper or member of another craft.[35]

CBO noted that many construction firms categorize these individuals as "general building mechanics," but if the Labor Department has not issued a wage determination for the class of workers, then "workers must be paid a composite rate reflecting several crafts, weighted for how much time is spent on each task; this increases * * * contractors' costs for labor."[36]

As Sam Carradine, Executive Director of the National Association of Minority Contractors, testified, "Davis-Bacon requires work assignments and payroll reporting along rigid craft-by-craft lines

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[31] Thioblot, "Prevailing Wage Legislation," at p. 163.
[32] Government Union Review, Summer 1990, at p. 41.
[33] Government Union Review, Summer 1990, at p. 41.
[34] According to Ms. Athey, "This makes sense. Why would anyone want to complete a project that is almost doubling their paycheck?" S. Hrg. 103–749, supra, at p. 36. See also the testimony of Hamilton Bowser that workers on Davis-Bacon projects have a "tendency to string out the work." Id., at p. 37.
[35] CBO Report, supra, at p. 27.
[36] CBO Report, supra, at p. 27.

reminiscent of the 1930s. It fails to reflect industry practice in private sector construction today."[37]

Precision Wall Tech's Cindy Athey also expressed these concerns. Ms. Athey testified that the "tools of the trade" restrictions in David-Bacon reduced productivity. Either she had to pay a high wage to an unskilled worker simply because he held a paint brush, or she had to pay a high wage to an experienced worker for menial tasks. In Ms. Athey's view, "There are many individuals who are able to hold a paint brush or a pipe wrench, but could not be classified as a painter or even a plumber. However, these individuals are required to be paid the rate of a painter or plumber by the Davis-Bacon Act."[38]

DAVIS-BACON DIMINISHES TRAINING OPPORTUNITIES AND ENTRY-LEVEL JOBS

In addition to raising construction costs, Davis-Bacon also makes it harder to hire lower-skilled workers on construction projects. As described above, contractors must pay the Davis-Bacon wage scale for individuals that perform a given craft's work. As a result, Davis-Bacon creates a disincentive to hire entry-level workers and train them on-the-job.

Testifying for the Davis-Bacon Repeal Coalition, Maurice Baskin told the committee this year that the Federal prevailing wage law made it more difficult to hire lower-skilled workers on construction projects. Mr. Baskin stated:

> Helpers assist skilled journeymen and provide entrance into the industry and the opportunity to receive hands-on training. Clearly if contractors must pay one high "prevailing" wage, they will always choose the already skilled worker and have limited slots available for new entrants into the industry. This is seen most clearly in the inner cities, where a large amount of Federal construction dollars are concentrated.[39]

Other witnesses who appeared before the committee reiterated the concerns expressed by Mr. Baskin. The National Association of Minority Contractors argued that Davis-Bacon "freezes out lower-skill minority workers."[40] And Clark Becker, testified for the National League of Cities that:

> A large portion of Federal construction dollars are 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 for local government contractors to offer inner city residents a chance to work in their own neighborhoods. Repeal of the Davis-Bacon Act would give urban cities the discretion to create more opportunities for the

[37] S. Hrg. 103–749, supra, at p. 74.
[38] Athey, S. Hrg. 103–749, supra, at p. 86.
[39] Baskin, S. Hrg. 104th Cong., 1st Sess., supra, at p. 3.
[40] S. Hrg. 103–749, supra, at p. 73.

> citizens who are most in need of training and employment.[41]

By repealing Davis-Bacon, the committee seeks to create job opportunities for thousands of individuals in a high paying industry. Art Pearson, a minority contractor in Washington State, told Readers' Digest in December 1994, that Davis-Bacon repeal would enable him to hire inner-city kids that are not being hired now for Federal construction projects. Mr. Pearson stated that he knew "gang leaders who got [construction] jobs at $10 per hour and it changed their lives."[42]

DAVIS-BACON IS IMPRACTICAL TO ADMINISTER

In addition to raising construction costs and decreasing job opportunities Davis-Bacon also is highly impractical to administer. GAO concluded that after over 50 years trying to determine "prevailing wages," the U.S. Department of Labor has yet to develop an effective system to plan or manage the data collection for producing accurate wage schedules.[43]

Most recently, GAO updated its seminal 1979 report recommending Davis-Bacon repeal. In 1994, GAO wrote:

> [O]ther concerns we noted in 1979 remain, most notably the potential for wage determinations to be based on low-quality data. For example, wage determinations [were] completed with response rates as low as 25 percent. * * * In addition, Labor does not verify the data received, even on a sample basis. Finally, Labor reports that the average age of a wage survey is more than 7 years.[44]

Even assuming that the Labor Department could effectively determine accurate market wages, the paperwork burdens for Federal contractors to comply with Davis-Bacon reporting requirements overwhelm many construction firms and city administrators. Mayor Clark Becker told the committee that Dallas, TX each year devotes over 4,000 hours of city staff time to ensuring compliance with Davis-Bacon requirements.[45]

The paperwork component of the Davis-Bacon Act, known as the Copeland Act of 1934, which we also repeal in S. 141, requires Federal contractors to file weekly payroll schedules (hours worked, wages, earnings, deductions and net pay) of all workers on the Davis-Bacon project. CBO estimated in 1983 that this added $50 to $100 million to Federal contractor costs,[46] and the Davis-Bacon Repeal Coalition's counsel, Maurice Baskin concurred with this figure during the committee hearing.[47]

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[41] Becker, 104th Cong., 1st Sess., supra, at p. 5.

[42] Eugene Methvin, "A Scandalous Law That's Costing Taxpayers Billions," Readers' Digest, December 1994, p. 125. Mr. Pearson's comments are easily understood because construction is a high paying industry. The average hourly earnings of construction workers was $14.41 per hour in 1993, second only to mining workers who earned $14.68 per hour. In contrast, the average hourly wage in private firms was $10.96 per hour.

[43] See generally, GAO Report, supra, at p. ii.

[44] GAO Letter to Sen. Larry Craig, Rep. Charles Stenholm, et. al., GAO/HEHS–94–95R, February 7, 1994, at p. 3–4.

[45] 104th Cong., 1st Sess., supra, at p. 5.

[46] CBO Report, supra, at p. 29.

[47] S. Hrg, 104th Cong., 1st Sess., supra, at p. 3.

The committee notes that the Clinton administration appears to agree that significant paperwork burdens accompany the Davis-Bacon Act. In its initial reinventing government initiative, Vice President Gore recommended eliminating the weekly payroll submissions and substituting a monthly certification of compliance.

The committee firmly believes that Davis-Bacon is no longer needed to prevent competition from depressing wage rates and to protect local contractors from outside competition. In fact, contrary to its original purpose, Davis-Bacon now disadvantages local contractors by disrupting their wage schedules and makes it more likely that outside contractors will successfully bid for Federal construction projects.

In addition, Davis-Bacon raises construction costs and decreases productivity on construction sites. The act reduces training opportunities and remains highly impractical to administer.

For all these reasons, the committee strongly endorses Davis-Bacon repeal.

III. Legislative Consideration and Votes in Committee

On the first day of the 104th Congress, (January 4, 1995), Senator Kassebaum, along with Senators Jeffords, Coats, Gregg, Chafee, Brown, Craig, Nickles, Cochran, Domenici, Grassley, Simpson, Warner, Pressler, and Gramms introduced the Davis-Bacon Repeal Act, S. 141.

On February 15, 1995, the Senate Committee on Labor and Human Resources held a hearing on Davis-Bacon repeal. The following individuals provided testimony:

The Honorable John Chafee, U.S. Senator from Rhode Island and Chairman of the Senate Committee on Environment and Public Works;

The Honorable Clark Becker, Mayor of Woodland Park, Colorado, testifying on behalf of the National League of Cities;

Boyd Boehlje, School Board Member in Pella, Iowa, and President of National School Boards Association, testifying on behalf of the National School Boards Association;

Gary Hess, Hess Mechanical Corporation of Upper Marlboro, MD;

Mill Butler, Handon Diving Inc., of Washington, DC;

Armand Thioblot, Economist, Baltimore, MD;

Maurice Baskin, Esq., testifying on the Davis-Bacon Repeal Coalition;

The Honorable Bernard Anderson, Assistant Secretary for the Employment Standards Administration, U.S. Department of Labor, Washington, DC;

Robert Georgine, President of the Building and Construction Trades Council, Washington, DC.

Additional statements or letters regarding S. 141 were also received and placed in the record.

On March 29, 1995, the committee considered S. 141. A quorum being present, Senator Simon offered an amendment in the nature of a substitute, which was defeated by a 9–7 vote. Senator Frist offered an amendment to except the Tennessee Valley Authority from prevailing wage requirements, which the committee adopted. The committee then ordered the bill reported favorably by a 9–7 vote.

IV. EXPLANATION OF THE BILL AND COMMITTEE VIEWS

Senate bill 141 repeals the Davis-Bacon Act of 1931, a law that requires firms performing Federal construction costing over $2,000 to pay their workers no less than the "prevailing wage," as determined by the U.S. Department of Labor. Senate bill 141 also repeals the section of the Copeland Act that requires Federal contractors to submit weekly payroll records to the Federal Government.

Specially, Section 2 of S. 141 states as follows: "The Act of March 3, 1931 (commonly known as the Davis-Bacon Act) (40 U.S.C. 276a et seq.) is repealed."

Section 3 of S. 141 states as follows: "Section 2 of the Act of June 13, 1934 (40 U.S.C. 276c) (commonly known as the Copeland Act) is repealed."

In repealing the Davis-Bacon Act, the legislation permits local market forces to govern the bidding process. As a result, firms will not be required to include wage schedules prepared by the U.S. Department of Labor in their bid submissions for Federal public works projects. Wages will no longer be regulated, just as the prices for materials and supplies are not regulated by the Federal Government.

In repealing the weekly reporting requirements of the Copeland Act, S. 141 reduces the burdensome paperwork associated with Federal construction projects. The Vice President's reinventing government initiative has recognized that these payroll submissions place an unnecessary burden on Federal contractors.

The committee believes that Davis-Bacon repeal will promote an efficient Federal Government procurement process. The price of construction services will be established by local markets, rather than by U.S. Department of Labor employees in Washington, DC. And private sector work rules and pay schedules will apply to government-funded construction.

The committee concludes that Davis-Bacon, a Depression-era labor standards statute, is no longer necessary to prevent competition from depressing wages. Roughly 80 percent of U.S. construction is private sector work.[48]

The private sector functions well without a federally established wage schedule. The committee has not witnessed "cut-throat" competition in the private sector with respect to wages, or the pricing of materials and supplies, and the committee does not believe that repealing Davis-Bacon will cause wages to be bid-down in the public sector.

Because Davis-Bacon wage schedules tend to be higher than the actual local market wage, and productivity is lower when workers must follow narrow "prevailing" work rules, the Federal prevailing wage law raises Federal construction costs. The Congressional Budget Office estimates that Davis-Bacon repeal will save U.S. taxpayers $2.7 billion over the 5-year budget cycle. The committee believes that Davis-Bacon repeal constitutes a significant budgetary savings during a time when the Federal Government is experienc-

[48] Ten percent of U.S. construction is federally funded, and 10 percent is funded by State and local governments. In contrast, during the Depression, 60 percent of construction was government-funded. See "Construction Review," U.S. Department of Commerce, supra and GAO Report, supra.

ing a severe budgetary shortfall. The Congress can ill-afford to spend hard-earned taxpayer dollars to finance Federal construction at higher than market rates.

The committee has taken notice of the General Accounting Office study indicating that Davis-Bacon, contrary to its original purpose of protecting local firms and local wage standards, actually disadvantages local contractors. When Davis-Bacon rates were higher than local market rates, local firms frequently did not bid for projects because they did not wish to disrupt their wage schedules. As a result, outside contractors frequently were the successful bidder.

The committee believes that Davis-Bacon adds costs and reduces efficiency by requiring Federal construction contractors to follow local prevailing work rules. The private sector knows how to staff a job. It does not need the U.S. Department of Labor to interpret the locally prevailing work rules.

As a result, Davis-Bacon reduces training opportunities for entry level workers. The committee believes that when contractors must pay Davis-Bacon wage rates for all individuals who handle the tools of the trade,[49] then firms most likely will hire the most experienced workers and actually have a disincentive to hire entry level workers.

For all the above reasons, the committee believes that Davis-Bacon repeal is in the best interest of the country at this time. Nevertheless, Davis-Bacon supporters have advanced various arguments for the Federal prevailing wage law, and the committee will briefly address those arguments.

Serious Economic Consequences: Davis-Bacon supporters have argued that serious economic and social consequences will follow if Congress repeals the Federal prevailing wage law. The committee rejects this argument.

The U.S. Department of Labor raised this contention in 1979 when GAO recommended Davis-Bacon repeal, and GAO responded to the Labor Department with this statement:

> Labor said that repeal of the Davis-Bacon Act would have a serious social and economic effect on construction workers and would undermine a basic legal protection of the wage of American workers in one of the largest, most economically unstable, and complex industries. * * *
>
> We [GAO] disagree * * * less than an estimated 1 million construction workers in 1977 were working on contracts subject to the Davis-Bacon Act. * * * *We found no indications, and Labor did not present any evidence, of an adverse effect on or exploitation by contractors of the estimated 3.0 million workers employed on construction projects not covered by the act.* (emphasis added)[50]

[49] That is to say, any workers who handle a hammer must be paid the journeyman carpenter's rate.

[50] GAO Report, supra, p. 17.

NEGATIVE EFFECT ON MINORITY JOB OPPORTUNITIES

Davis-Bacon repeal opponents also claim that job opportunities will decline for minorities if repeal efforts are successful. The committee rejects this contention.

The committee notes that Federal contractors remain subject to Executive Order 11246, which prohibits Federal contractors from discriminating on the basis of race, religion, gender or national origin. Similarly, all firms with more than 15 employees are covered by Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, gender, national origin, or religion.

In addition, the committee received testimony from the National Association of Minority Contractors that Davis-Bacon "freezes out lower-skill minority workers." At the hearing, the National League of Cities, which endorsed Davis-Bacon repeal, testified that:

> Davis-Bacon Act's prevailing wage restrictions create a disincentive for local government contractors to offer inner city residents a chance to work in their own neighborhoods. Repeal of the Davis-Bacon Act would give urban cities the discretion to create more opportunities for the citizens who are most in need of training and employment.[51]

Finally, the U.S. Department of Labor argued in 1979 that minorities had a "tenuous foothold" in the construction industry and they would be "especially vulnerable to the wage exploitation which could occur with repeal of Davis-Bacon."[52] GAO, responding to the Labor Department "provide[d] no factual or logical basis for its viewpoint."[53]

QUALITY, SAFETY AND PRODUCTIVITY

Davis-Bacon supporters contend that Federal construction is higher quality work due to Federal prevailing wage requirements. They believe that "you get what you pay for," and any attempt to save funds through Davis-Bacon repeal will be unsuccessful because the projects will cost more in the long run.

The committee has considered and rejects this argument. We have seen 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.

During the committee hearing, Mr. Mill Butler, testifying in favor of Davis-Bacon, told the committee that 70 percent of his work was covered by Davis-Bacon and 30 percent of his business was private sector work. When Senator John Ashcroft asked Mr. Butler whether his company, Handon Diving, Washington, DC, performed lower quality work on private sector projects, he replied, "No, absolutely not, no."[54] And Gary Hess, testifying against Davis-Bacon, pointed out that the "contract specifications are the

[51] Testimony of Clark Becker, S. Hrg. 104th Cong., 1st Sess., supra.
[52] GAO Report, supra, p. 31.
[53] GAO Report, supra, at p. 31.
[54] S. Hrg, 104th Cong., 1st Sess., transcript at p. 68.

same, the quality requirements are the same" whether or not Davis-Bacon requirements apply to the project.[55]

The committee finds no merit to the claim that Davis-Bacon requirements per se improve construction quality. If the concern is that the Federal Government cannot control the quality of products it procures, then we must direct our attention to our procurement laws. But we note that no one appears to be complaining about the quality of other goods and services in the nonconstruction arena and yet these products are not subject to Davis-Bacon mandates.

Davis-Bacon supporters also claim that safety is higher on prevailing wage projects. The committee rejects this argument.

During the committee hearing, Senator Ashcroft inquired whether Occupational Safety and Health Act (OSHA) requirements were the same on Davis-Bacon and non-Davis-Bacon sites. The witness, Mr. Hess of Hess Mechanical Corporation in Maryland, replied, "Of course they are." [56]

Mr. Georgine, relying upon a flawed University of Utah study,[57] suggested during the committee hearing that injury rates would increase by 15 percent if Congress repealed the Federal prevailing wage law. The committee rejects this argument. There is no reason to believe that injury rates would increase simply because private sector compensation and work rules would apply to publicly funded construction projects.

To the best of our knowledge, no one has performed a comprehensive study comparing safety records for Davis-Bacon and non-Davis-Bacon work sites. However, OSHA has compared union versus non-union construction safety records and found their safety records to be comparable.[58]

Finally the committee rejects arguments that Davis-Bacon improves productivity. Davis-Bacon supporters cite Federal Highway Administration statistics suggesting that with regard to highway construction, many low-wage States had higher average costs per mile and therefore lower productivity, and many high-wage States had lower average costs and therefore higher productivity. [59] Accordingly, supporters argue that prevailing wage laws improve productivity.

We have not reviewed the study's methodology, so we cannot thoroughly analyze its findings, but we believe that climate, State

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[55] Id., at p. 69.

[56] S. Hrg., 104th Cong., 1st Sess., supra, hearing transcript at p. 69.

[57] Mangum, Garth, et. al., "Losing Ground: Lessons from the Repeal of Nine 'Little Davis-Bacon' Acts," University of Utah, February 1995. The self-described "working paper" was funded by the AFL–CIO and the Plumbers and Pipefitters of Utah, which support the Davis-Bacon Act.

[58] OSHA's Analysis of Construction Fatalities database for 1985–89 found that "the distribution of fatalities among union and nonunion work sites is similar to the composition of the construction work force in terms of union and nonunion workers."

Some have argued that the Journal of Occupational Medicine (Nov. 1990) found that union sites were safer. However, the study also concluded that when age differences were taken into account, the safety records of union and nonunion sites were comparable. Apparently, from a statistical standpoint, older workers have fewer accidents.

Using union safety records as a proxy for Davis-Bacon site safety records is not a perfect analogy because some non-union firms successfully bid for Federal construction projects and many unionized firms perform private sector work. Nevertheless, the Utah working paper appears to assume that prevailing wage laws primarily affect union firms (see working paper, p. 11), so it seems appropriate in responding to the working paper to analyze safety records as a function of union status.

[59] See testimony of Robert Georgine, S. Hrg., 104th Cong., 1st Sess., supra, pp. 6–7, citing "Wages, Productivity and Highway Construction Costs," National Alliance for Fair Contracting, Washington, DC, 1995.

sales taxes on construction, the amount of bridge versus road work and other factors probably account for much of the difference in cost per mile of highway construction. However, we note that the allegedly low-wage, low-productivity States in the study include Tennessee, Texas, West Virginia, and Minnesota, which have State prevailing wage laws. So it seems that prevailing wage laws failed to improve productivity in these States.

The fact is that if prevailing wages laws actually improved productivity, then private sector contractors immediately would voluntarily adopt Davis-Bacon wage scales and work rules to assure they were the successful bidders on all construction projects. Moreover, if prevailing wage laws actually improved productivity, then after Davis-Bacon repeal, Federal contractors would retain prevailing wage scales to maintain their productivity. However, the committee believes this would not be the case.

In the committee's view, without Davis-Bacon, firms bidding for Federal projects will use the same practices that they utilize in the private sector. The committee firmly believes that Davis-Bacon repeal will not affect productivity.

BOOST LOCAL DEMAND

Davis-Bacon supporters also argue that the Federal prevailing wage law is necessary to boost local demand. By increasing government spending, construction workers have more money to spend and the local and national economy benefit.

This argument assumes that Federal money is free. As economist Armand Thioblot testified, "The local economy would be improved even more by mandating a double-prevailing-rate wage, and would be staggering boosted by requiring construction workers to be paid the prevailing professional baseball player wage rate,"[60] but neither of those policies would be sound. The goal of boosting local demand cannot justify paying artificially high Federal construction costs.

The committee also rejects the contention that repealing Davis-Bacon will increase the deficit by lowering Federal tax revenues. When we spend less money at the Federal level, that will save money. Only in the Congress would individuals argue that if the Federal Government spent more money, then the Federal Government would collect more revenue and the deficit would be lower.

UNIONS WILL COLLAPSE WITHOUT DAVIS-BACON

Some have argued that without Davis-Bacon, organized labor in the construction industry will cease to exist. We reject this argument.

Over 80 percent of the construction industry is private sector construction that is not subject to Federal prevailing wage laws. Union contractors compete effectively for these projects under current law and they will continue to do so without Davis-Bacon.

SIMON SUBSTITUTE WAS UNACCEPTABLE

The committee notes that the substitute offered by Senator Simon during the committee markup constituted a vast expansion

[60] S. Hrg., 104th Cong. 1st Sess., supra, p. 5.

of the Federal prevailing wage law. The committee rejected Senator Simon's amendment by a 9–7 vote.

The Simon substitute failed to produce significant budget savings. Although it raised the Davis-Bacon contract threshold from $2,000 to $100,000 for new construction and $50,000 for renovation and repair, CBO estimated in 1993 that only $115 million would be saved over 5 years—an almost insignificant amount. Significantly, under the new threshold, 96.5 percent of the Federal construction contract dollar volume would still be subject to Davis-Bacon.

In addition, the Simon substitute expanded Davis-Bacon to cover off-site work and leased construction. In fact, the legislation sought to codify U.S. Department of Labor regulations expanding Davis-Bacon to off-site work despite the fact that two recent appellate court decisions invalidated the regulations as inconsistent with Davis-Bacon.[61]

Moreover, the substitute added a new private cause of action, with liquidated damages, to the Federal prevailing wage law. These provisions would provide yet another litigation incentive at a time when we want to reduce litigation and its associated costs.

For all of the above reasons, the committee rejected the substitute offered during the committee markup.

The committee adopted an amendment by Senator Frist to eliminate the Federal prevailing wage requirements for construction by the Tennessee Valley Authority (TVA). When Congress created the TVA, rather than include Davis-Bacon by reference, the Congress instead provided a separate prevailing wage provision. The committee sees not reason why the TVA should be required to follow prevailing wage requirements and therefore approved the Frist Amendment.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 21, 1995.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 141, a bill to repeal the Davis-Bacon Act, as ordered by the Committee on Labor and Human Resources on March 29, 1995.

Enactment of S. 141 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

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[61] *Building and Construction Trades Department, AFL–CIO* v. *U.S. Department of Labor Wage Appeals Board,* 932 F. 2d 985 (D.C. Cir. 1991) ("Midway Excavators"); *Ball, Ball & Brosamer, Inc.* v. *Reich,* No. 92–5366, (D.C. Cir. 1994).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 141.

2. Bill title: The Davis-Bacon Repeal Act.

3. Bill status: As ordered reported by the Committee on Labor and Human Resources on March 29, 1995

4. Bill purpose: Effective 30 days after enactment, S. 141 would repeal the Davis-Bacon Act, which requires that employees working on Federal or federally financed construction projects receive prevailing wages and fringe benefits. The Department of Labor determines the prevailing wage rates and benefits for workers on Federal construction projects, generally based on the construction wages and benefits in the locality of the proposed project.

5. Estimated cost to the Federal Government: S. 141 would reduce the cost of federal or federally financed construction projects by allowing the payment of lower compensation than under current law. The following table shows the potential savings to the federal government if appropriations are reduced to reflect the lower costs of construction beginning in 1996.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
Estimated authorization of appropriations	−826	−848	−875	−900	−931
Estimated outlays	−150	−440	−616	−723	−809

The budgetary impacts of this bill fall in many budget functions.

The authorizations of appropriations in the above table represent estimated obligational authority, which includes estimates of appropriated budget authority as well as estimated obligations from certain transportation trust funds, which are not considered budget authority. Budget authority savings for construction projects subject to the Davis-Bacon Act (not including trust fund obligations) are estimated to be $432 million for fiscal year 1996 and $2.3 billion over the five years from 1996 to 2000.

6. Basis of estimate: The requirements of the Davis-Bacon Act (DBA) affect contracts on Federal construction or federally assisted construction of $2,000 or more, without regard to the nature of the project. Currently, the Department of Labor makes it wage determinations based on the specific wages and benefits earned by at least 50 percent of workers in a classification, or on the weighted average of the wages and benefits paid to workers in that classification. The former method tends to be used in heavily unionized construction markets, and the latter in less unionized settings.

A Congressional Budget Office (CBO) study in 1983 estimated that the requirements of the DBA increase federal construction costs by 3.7 percent. This estimate was based on a method of determining prevailing wages called the "30 percent rule." When the 30 percent rule was changed to the currently used "majority wage" calculations, CBO revised its estimate to 3.3 percent. The 3.3 percent estimate also included the effects of certain restrictions on the use of helpers, which contributed 1.6 percentage points of the total effects of the DBA. Since that time, a Federal Court of Appeals has ruled that the Department of Labor could impose regulations designating helpers as a separate class of workers, which effectively would eliminate the DBA restriction on helpers. Although the fiscal

year 1995 appropriations bill for the department prohibited the Secretary from using any funds under that act to implement the new helper regulations, the prohibition expires with the 1995 funds themselves. Therefore, CBO estimates that the DBA will increase federal construction costs for contracts let after 1995 by 1.7 percent. A repeal of the DBA would allow for a reduction in federal outlays of $150 million in fiscal year 1996 and $2.7 billion over the next five years, if appropriations are reduced accordingly.

Any estimate of the cost implications of the DBA is uncertain. Very little empirical work has been published on the subject since CBO's 1983 report, and even then there was little consensus as to the precise cost impacts. At the time, CBO's estimate was toward the low end of the range of estimated impacts, which stretched from 0.1 percent in a study by Steven Allen of North Carolina State University to as much as 11 percent in a study by President Carter's Council of Economic Advisers.

Trends since 1983 give conflicting indications as to possible changes in the impact of the DBA. For example, fewer construction workers are represented by unions—21.0 percent in 1993, compared with 29.4 percent in 1983. As a result, union wages could have less of an impact in the determination of a prevailing wage, thereby lessening the impact of the DBA on federal construction costs. Furthermore, the wage differential between union and nonunion construction workers has declined in the past decade. The ratio of cash wages for union construction workers to those for nonunion construction workers was 1.62 in 1993, as compared with 1.72 in 1983.

However, the cash wage ratio does not account for fringe benefits, which are also covered by the requirements of the DBA. While the wage differential may have declined, the difference between total compensation—including fringe benefits like health insurance—received by union and nonunion construction workers may have grown. Unfortunately, there is no continuous data series for total compensation of construction workers. The first year that wage and compensation data are available for blue collar workers is 1987, but these data cover all blue collar workers, of which construction workers are a subset. CBO's 1983 report was based on 1979 figures, which indicated that the ratio of the total compensation for union construction workers to that of nonunion workers was 1.54. The corresponding ratio for blue collar workers (of which construction workers are a subset) was 1.74 in 1994, the same level as in 1987.

Finally, the data discussed above apply to a broad spectrum of construction or blue collar workers, while much of the federal construction funding is for highways. Whether broad trends are indicative of the compensation patterns in highway construction is uncertain. Thus, relevant data are sparse, the broad trends are ambiguous, and the applicability of the available information to estimating the impact of the DBA is uncertain. Therefore, although we have made minor changes to our method for estimating the federal cost impact of the DBA, in the absence of any clear evidence to contradict the results of the 1983 report, CBO has based this estimate on the findings indicated in its 1983 study.

CBO projects spending authority for Federal or federally financed construction to grow from about $48 billion in 1996 to about $55 billion by 2000. The largest percentage of federal construction spending is for transportation programs, at $22.7 billion in spending authority for fiscal year 1996,a or about 47 percent of the total. This amount includes spending from the Highway Trust Fund, the Airport and Airway Trust Fund, the Harbor Maintenance Trust Fund, and the Inland Waterways Trust Fund. Other major areas of construction spending are natural resources and environment ($8.4 billion), national defense (($6.0 billion), and income security ($4.7 billion). Construction outlays tend to flow slowly from spending authority. Accordingly, outlays from new spending authority in fiscal year 1996 are expected to be approximately $8.8 billion, including $3.3 billion for transportation, $0.7 billion for defense, and $3.5 billion for natural resources and environment. Fiscal year 1996 construction authority in the income security function is not reflected in outlays until fiscal year 1997 and subsequent years. The estimated savings from repeal of the Davis-Bacon Act are 1.7 percent of these amounts.

7. Pay-as-you-go considerations: None.

8. Estimated cost to State and local government: The provisions of S. 141 would have some impact on construction costs for State and local governments. Projects involving State and local matching funds would become less costly under S. 141. CBO has not estimated these savings.

9. Estimate comparison: None.

10. Previous CBO estimate: On April 21, 1995, CBO prepared a cost estimate for H.R. 500, a similar bill forwarded to the House Committee on Economic and Educational Opportunities by the Subcommittee on Workforce Protections on March 2, 1995. The two estimates are identical.

11. Estimate prepared by: Christi Hawley.

12. Estimate approved by: Robert C. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

VI. Regulatory Impact

The committee has determined that there will be no increase in the regulatory burden imposed by this bill.

VII. Section-By-Section Analysis

Section 2 of the bill repeals the Davis-Bacon Act of 1931, 40 U.S.C. 276a, 276a–1 through 276a–5. This eliminates the current requirement that all contracts for construction, renovation and repair over $2,000 to which the United States or the District of Columbia is a party, contain a provision that firms will pay workers on those projects no less than the prevailing wage as determined by the Secretary of Labor.

Section 3 of the bill repeals section 2 of the Copeland Act of 1934, 40 U.S.C. 276c, that requires Federal contractors to submit weekly payroll records to the Federal Government.

Section 4 of the bill provides that the legislation will take effect 30 days after the date of enactment. However, the legislation will not affect any contract already in existence at that time, or any

contract that is made pursuant to an invitation for bids that is outstanding at that time.

VIII. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DAVIS–BACON REPEAL ACT

TITLE 40—UNITED STATES CODE

[§ 276a. Rate of wages for laborers and mechanics

[(a) The advertised specifications for every contract in excess of $2,000 to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

[(b) As used in sections 276a to 276a–5 of this title the term "wages" "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

[(1) the basic hourly rate of pay; and
[(2) the amount of—
[(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
[(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforcible commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,
for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a–5 of this title and other Acts incorporating sections 276a to 276a–5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforcible commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of payment described in paragraph (1) plus the amount referred to in paragraph (2).

[In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a–5 of this title, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.]

* * * * * * *

[§ 276a–1. Termination of work on failure to pay agreed wages; completion of work by Government

[Every contract within the scope of sections 276a to 276a–5 of this title shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic em-

ployed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.]

* * * * * * *

[§ 276a–2. Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts

[(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a–5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

[(b) If the accrued payments withheld under the terms of the contract, as aforesaid are insufficient to reimburse all the laborers and mechanics, with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a–5 of this title, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.]

* * * * * * *

[§ 276a–3. Effect on other Federal laws

[Sections 276a to 276a–5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.]

* * * * * * *

[§ 276a–4. Effective date of sections 276a to 276a–5

[Section 276a to 276a–5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then exist-

ing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.]

* * * * * * *

[§ 276a–5. Suspension of sections 276a to 276a–5 during emergency

[In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a–5 of this title.]

* * * * * * *

[§ 276c. Regulations governing contractors and subcontractors

[The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each contractors and subcontractor shall furnish weekly a statement with respect to the wages paid to each employee during the preceding week. Section 1001 of Title 18 shall apply to such statements.]

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