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***NEBRASKA TAXPAYERS FOR FREEDOM* ISSUE PAPER:**

**HELP CONG. ADRIAN SMITH REPEAL THE DAVIS-BACON ACT.**

**BACKGROUND.** In 2013, about 50% of all federal or federally-financed construction received funding through the Department of Transportation, a significant portion of such projects receiving funds through the Departments of Defense, Housing and Urban Development, and Homeland Security. This funding fell under mandates of the Davis-Bacon Act (DBA). This act inflates the cost of wages on federal construction contracts by mandating local union scale The Obama Regime expanded its already complex prevailing wage requirements.

**THE BILL.** **HR 743**, a bill sponsored by conservative Cong. Steve King (IA.) and co-sponsored by *NE Cong. Adrian Smith*, would repeal the inflationary Davis-Bacon Act. References to wage requirements of this law after repeal null and void. Repeal would not affect contracts existing on the date of enactment or invitations for bids outstanding on such date. King first dealt with this mandate when starting his construction company in 1975. The Act dictated wages to all his employees on federally-funded projects. This micromanaging and inefficiency forced on his business caused 20% higher costs to taxpayers. The bill currently is in the House Committee on Education and the Workforce awaiting action.

**COMPANION BILL.** Conservative Sen. Mike Lee (UT.) introduced an identical companion bill, **S. 244,** in the Senate.

**HISTORY.** Davis-Bacon passed Congress in 1931 to protect union labor from competition by African-Americans often excluded from union membership but who successfully competed for jobs by agreeing to work for lower wages. In 1927, a New York representative became miffed and first introduced such legislation, because the low bidder for a construction project in his district, a veterans hospital, was an Alabama contractor who employed blacks. So prejudiced, he inserted into the Congressional Record a bigoted statement by 34 professors requesting an immigration quota for all countries in the Western Hemisphere that would stop most immigration by non-whites and preserve a white U.S. By 1931, the Great Depression had made federal construction funds very coveted, and the DBA passed with heavy labor support. The intent of the law meant to stop traveling contractors from submitting low bids based on lower labor costs. The congressional debate frequently referred to cheap and imported labor competing with white labor throughout the U.S. Implementation immediately saw black employment opportunities drop. Emil Preiss, business manager of the New York branch of the International Brotherhood of Electrical Workers (a powerful AFL affiliate that banned black workers from its ranks), told the House of Representatives that black workers were "an undesirable element of people." Bill co-sponsor Sen. James Davis of Pennsylvania was an outspoken racist who had argued in 1925 that Congress must restrict immigration in order "to dry up the sources of hereditary poisoning." The result was that black workers, largely unskilled and therefore considered working for lower wages, mostly banned from the upcoming New Deal construction spree. Davis-Bacon nullified their competitive advantage when they needed it most. In 1992, to speed cleanup after 2 hurricanes, Pres. George H.W. Bush suspended parts of Davis-Bacon in South Florida, coastal Louisiana, and Hawaii, but Pres. Clinton quickly reversed the suspension following union pressure.

**MANY PROBLEMS.** The DBA imposes at least $1 billion in extra federal construction costs and $100 million in extra administrative expenses annually. Industry compliance costs total nearly $190 million per year. Prevailing wages hamper economic growth, increase the federal deficit, and impose enormous business burdens. Davis-Bacon stifles contractor productivity by raising project costs and imposes rigid craft work rules that ignore skill differences. It forces all companies working on federally-funded projects for construction, alteration, or repair of public buildings or public works costing over $2,000 to pay all classes of employees a union prevailing wage and benefits set by federal bureaucrats in Washington, D.C., not the free market. The burden of this Act imposes on very small projects. Consequently, federal contractors must pay about a 22% premium on their labor costs above what private companies would pay for an identical project. In some cases the wage is over **50% higher**. As a result of this flawed methodology, the Labor Dept. prevailing wage bears no resemblance to fair market value. A 2008 study by the Beacon Hill Institute found that the Labor Dept. set prevailing wages 22% higher than the actual market rate for work. The Dept. of Labor calculates wage rates with flawed methods and old wage surveys. It sets wage scales higher than those prevailing in a community to favor union labor on public construction. It never has developed an effective system to plan, control, or manage the data collection, compilation, and wage determination functions. Review of wage determination activities in 5 regions showed continual inadequacies, problems, and obstacles to develop and issue wage rates based on prevailing rates. A review of 30 federal or federally-assisted projects costing about $25.9 million revealed that most rates were higher than prevailing rates in 12

localities and lower than in 18. In the 18 projects, local contractors won contracts and paid employees the prevailing community rates. In the higher category, outside contractors worked on most projects, local contractors discouraged from bidding. In 2011, a Heritage Foundation study found that the law added almost $11 billion to construction costs that year. Liberal congressmen have extended the Act to cover other federal programs like matching grants and federal loan guarantees. The problem compounded by the fact that many fed-funded programs pay a small percent of the costs of state and local construction projects, increasing their costs also. The Act now applies to about 25% of all domestic construction.[1] Unionized companies have an advantage when bidding on infrastructure projects, keeping taxpayer costs high and competition minimized. The Act inflates construction costs by about 10%, which means there is more unnecessary spending from government, which means higher taxes. Davis-Bacon is a price-fixing scheme, enforced by government, designed to shield high-cost unionized workers against competition from more efficient nonunion contractors. By preventing those more efficient contractors from underbidding the union rates, prevailing wage laws ensure that union workers will receive most government construction work. A union electrician, for example, can work at the set union scale, higher than pay in the open market, while the nonunion electrician cannot gain a job at the rate for which he will work. Construction unions are labor cartels, eager to keep wages artificially high by suppressing competition, and like other cartels, they succeed only if they can pressure government to stifle the competition that naturally occurs in the free market. When prevailing wages (including fringe benefits) rise higher than the wages and benefits paid in the absence of the Act, DBA distorts the market for construction workers. Because only 13.2% of the private construction workforce is unionized nationally, Davis-Bacon discriminates against 86.8% of construction workers. Federally- funded or federally- assisted construction projects then use more capital and less labor than they otherwise would, thus reducing the employment of construction workers. Under the current law, contractors that violate its provisions barred from obtaining future contracts. DBA imposes unnecessary and expensive regulatory burdens on contractors. They must file weekly reports of wages paid every employee. Because of the complexity and cost of paperwork, many small contractors refuse to submit bids, thus depriving the taxpayer of savings achieved by more competition for contracts. It requires the strict assignment of workers and payrolls on a craft-by-craft basis, thus undercutting the types of human resource flexibility that yield enhanced productivity, efficiency, and cost savings common in the workplace. Because Davis-Bacon inflates the cost of construction, it has an inflationary impact on the whole economy. It continues to have a discriminatory impact against minorities in the construction industry.


**DAVIS-BACON FLAWS.** To calculate the wages that contractors must pay, the Wage & Hour Division of the Labor Dept. surveys construction wages and publishes prevailing wage determinations for each county. Contractors then must pay employees at least the prevailing wage for each class of employees by county. Act wages differ from actual construction wages because of several flaws in the Dept. process. WHD utilizes unscientific survey samples. Inspector-Gen. audits found mistakes in 100% of wage reports examined. Most prevailing wage surveys outdated, several rates not updated since the 1970s. The General Accounting Office (GAO) and the Inspector General determined multiple times that DBA rates use unscientific self-selected survey samples. Their audits discovered that most Act estimates base on responses from fewer than 30 workers, years outdated, and contain multiple errors. Dept. bureaucrats set the prevailing rate in a rural area that actually matches the union scale in the nearest large city. Davis-Bacon hikes the cost of fed-funded construction projects by 9.9%.[2] Act requirements make it very difficult for minority, non-union contractors who want to bid to hire and train unskilled minority workers, as there exists no incentive. A minority contractor who wins an Act contract must hire skilled labor, mostly white, thus defeating a main purpose of encouraging minority enterprise development and creating jobs for minorities.[3]

**HR 743 THE SOLUTION.** Repealing this law would offer contractors the ability to hire additional skilled employees and lower the overall costs of federal transportation construction projects, particularly those promoted by Pres. Trump. The Congressional Budget Office estimated that repealing the law would save $12.7 billion over 10 years.[4] Repeal would make it easier for small construction companies to compete against large unionized contractors. The Fair Labor Standards Act and National Labor Relations Act, according to the GAO, make Davis-Bacon unnecessary. A rationale for repealing the Act results from the enactment of other federal and state wage laws. The Act no longer needed to ensure minimum wages for workers employed in federal or federally- financed construction. By reducing the cost, repeal would result in more construction projects undertaken for a given amount of federal dollars. Repeal would permit the feds to build more

[1] Congressional Budget Office, 2017.
[2] Heritage Foundation Jobs & Labor Report, 2011.
[3] Ralph C. Thomas, Exec. Director, National Association of Minority Contractors.
[4] Congressional Budget Office, Nov. 2013.

infrastructure and create 155,000 more construction jobs at the same cost to taxpayers. Repeal would make government operate more efficiently, reduce the power of special interests, and rebuild American infrastructure.

**TRUMP FAVORS REPEAL.** President Trump favors Davis-Bacon repeal to assist his plan on infrastructure. In his first address to a joint session of Congress, he requested it to pass a 10-year, $1 trillion infrastructure plan to update American roads, rails, bridges, and ports. Repealing the Act would mean a potential increase in profit margins for private contractors, because the Trump infrastructure plan emphasizes private investment along with government funding. Ending DB would save tens, perhaps hundreds of billions of dollars, depending on the ultimate scope of the program. Repealing Davis-Bacon rules might help earn Republican congressional votes for a Trump infrastructure spending bill, because they could argue that doing so would stretch dollars further. Trump legitimately also could suspend Davis-Bacon in areas with the greatest unemployment to promote job expansion.

**MINORITIES HELPED.** Repeal of the Act would create an estimated 31,000 new construction jobs, many of which would go to members of minority groups. The Act impact on the ability of minorities to find work in the construction industry is devastating. The Department of Labor initial set of regulations did not recognize categories of unskilled workers except for union apprentices. Therefore, contractors must pay an unskilled, non-union worker in a training program as much as a skilled laborer, which almost completely excludes blacks from working on Davis-Bacon projects. This effectively choked the only means by which unskilled blacks could learn the necessary skills to become skilled workers. The paperwork burden discriminates against minority firms, as many have no personnel with the needed expertise to complete the many forms and reports mandated. Therefore, Davis-Bacon prevents rural and inner city people and contractors from bidding and working on projects in their own communities, a problem the DBA supposedly solves.

**SUPPORTERS.** National conservative organizations like the National Taxpayers Union endorse repeal. The Association of Builders & Contractors, which primarily consists of nonunion contractor members, supports the full repeal of Davis-Bacon. The association also supports smaller-scale reforms regarding implementation and enforcement, the makeup of the survey method currently used to determine prevailing wage rates, definitions of job classifications, and pay for workers based on the type of work they perform. The Construction Employers of America, a coalition of specialty contractor groups, pledges to work with the Trump Administration and Congress for repeal.

**REPEAL OPPONENTS.** Congressional Democrats strongly protect Davis-Bacon because of its importance to their labor union allies. Labor unions support the Act, because it forces contractors to pay their workers inflated wages that typically match union wage rates. Building trades unions 100% oppose changes to Davis-Bacon.

**TAKE ACTION NOW**. Instead of completing a job for the lowest possible cost, contractors must pay artificially inflated wages for building bridges, repairing roofs, or painting line dividers on federal highways. By stopping federal transportation dollars from being wasted on Davis-Bacon prevailing wages, **Congressmen King and Smith** ensure finite resources spent in a more responsible way and infrastructure projects paying workers a wage that truly reflects the free market. Urge Cong. Bacon and Fortenberry to join other congressmen to co-sponsor **HR 743** and help advance it into law. Email netaxpayers@gmail.com for Capitol Hill contact information.

Congressman Adrian Smith.

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