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"EXAMINING THE DEPARTMENT OF LABOR'S IMPLEMENTATION OF THE DAVIS-BACON ACT"

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Good morning, Mr. Chairman and members of the subcommittee. I am Ross Eisenbrey, Vice President of the Economic Policy Institute, a non-partisan think tank whose mission is to document the impact of the economy on working and middle class families and to develop policies to ensure shared prosperity.

The subject of today's hearing, the Davis-Bacon Act and its implementation by the Department of Labor, is important to middle-class Americans. The Act helps stabilize a sector of the economy which is fundamental to our overall economic performance and which provides good jobs to millions of non-college educated men and women.

Congress enacted the Davis-Bacon Act to assure workers on federal construction projects a fair wage and to provide local contractors a fair opportunity to compete for construction contracts. The requirement to pay no less than locally prevailing wages is essential to protect local standards and to prevent competition based on low wages rather than on productivity, efficiency and quality.

The Act has succeeded in those goals for 80 years, so it's easy to forget its importance. Like many things in life, it's only when it's gone that we realize just how valuable its protections really are. Hurricane Katrina is a case in point. After the hurricane struck the Gulf Coast, President Bush suspended the Act by executive order. What happened?

Workers didn't get a fair wage because contractors could bid the work at the minimum wage instead of the prevailing wage. They brought in itinerant crews from outside the Gulf Coast – even from outside the U.S. – and paid rock bottom wages. Roofers, for example were reportedly hired at $60 per day.

Local contractors couldn't compete and got passed over at their hour of greatest need and opportunity. Stories in the *Baltimore Sun*, *Atlanta Journal-Constitution* and *New Orleans Times-Picayune* reported on the unhappiness of local businesses that watched multinationals sweep in and take millions of dollars of federal clean-up contracts. An editorial in the Times-Picayune under the headline "Rebuilding effort should be localized" hit the nail on the head:

> "[W]e are already moving quickly and boldly in the wrong direction…[Y]ou can hardly entice [our citizens] back if you're only willing to pay poverty wages. But in the wake of the disaster, President Bush suspended the Davis-Bacon Act….In essence, there's no ceiling preventing sky-high profits for these [out-of-state] contractors and not much of a floor to ensure that wages to workers are not abysmally low. There is an intelligent way to rebuild our city. This, however, isn't it."

When local workers are hired there's a benefit to local businesses beyond the construction firms themselves because local workers spend locally. Out-of-state crews take their wages with them.

The importance of the locally prevailing wage requirement in the Act goes beyond disaster situations, of course. There are huge regional and state variations in construction

industry pay, just as there were in 1931. In 2010, we have data available for the hourly wage of all workers in the construction industry by state in 43 states. They averaged $24.54. However, the range of state hourly wages was quite large: from a low of $18.33 in Alabama to a high of $36.15 in Alaska. Five states had hourly wages in construction below $20 an hour (Alabama, Arkansas, Maine, Mississippi, Texas), and six states' wages were above $30 an hour (Alaska, Illinois, Massachusetts, New Jersey, New York, Washington). Likewise, within-state differences can be extreme.

Construction wages in adjacent counties can differ remarkably, which is why the Davis-Bacon Act's preference for county-based wage determinations makes sense. In the Chairman's home state, it's perhaps no surprise that carpenters average $9 an hour more in urban Washtenaw County than in rural Charlevoix County, according to BLS data (which do not account for further differences in fringe benefits). But there are enormous differences even between Washtenaw County, where electricians average $33.71 an hour, and next door in Livingston County, where they average $27.41. Tile and marble setters in Livingston County earn $31.69 on average, whereas next door in Genessee County they earn far less – $22.27 an hour.

The Davis-Bacon Act serves another extremely important purpose that was not foreseen by Congress in 1931. It supports high quality training by encouraging the operation of union apprenticeship programs and compelling the non-union sector to try to compete. The typical contractor has very little incentive to invest in skills training since the worker can carry that investment with him to another employer. Unions overcome contractors' natural reluctance to make the investment by compelling employers to contribute to joint apprenticeship funds: every signatory contractor pays his fair share and benefits equally from the training provided.

The Davis-Bacon Act incentivizes apprenticeships by permitting payment of lower wage rates to employees enrolled in bona fide apprenticeship programs. Contractors can submit lower bids when they employ bona fide apprentices as part of their workforce.

Critics claim these goals are achieved at too high a price, that the Act raises the cost of construction, benefitting the workers at the expense of taxpayers. But a great deal of empirical research refutes the claim that prevailing wage laws inflate construction costs. Work by Professors Peter Philips and Garth Magnum of the University of Utah, by Prof. Dale Belman of Michigan State University, and Prof. Hamid Azari-Rad of the State University of New York, among others, shows that prevailing wage laws lift workers' wages and compensation without significantly increasing construction costs.

Higher wages lead employers to invest in labor-saving tools and equipment, which increases productivity. Better paid, more skilled workers are safer, work more efficiently, and deliver a better product. Prof. Philips has calculated that construction workers in states with "little Davis-Bacon" prevailing wage laws are more productive, on average, than construction workers in non-prevailing wage states. Their value added is 13-15% higher per employee. Given that construction wages and benefits are only about

30% of construction costs, it is easy to see how higher productivity offsets the increased cost of prevailing wages.

The GAO report

GAO makes three recommendations, one for Congress and two for the Department of Labor:

1. Congress should consider giving DOL more flexibility in the requirement that wage rates be issued by civil subdivision.
2. DOL should obtain expert advice on its survey design and methodology.
3. DOL should take steps to increase transparency in its wage determinations.

None of these recommendations is earth-shaking, and the report makes clear that DOL is engaged in the process of making improvements. The Department seems to be on the verge of ending a long period of neglect, when many wage determinations were not updated for more than a decade and the survey process itself was allowed to drag on interminably. Highway surveys, for example, which have taken an average of 42 months, will be completed in eight months.

GAO admits that it is too early to fully assess the effects of changes DOL made in 2009, but it goes on to criticize the timeliness of survey data nevertheless. It is important, however, to remember that the use of older data usually means that wage rates are set lower than would otherwise be the case. It is employees, first and foremost, who pay the price for delays.

With respect to the first recommendation, it is clear that DOL already has considerable flexibility in choosing the survey area for wage determinations and uses it. If there aren't sufficient responses in a county, DOL combines nearby counties in groups and super groups, only resorting to statewide data when absolutely necessary. The large use of statewide data in the four states GAO examined is an indication that DOL needs to do more to improve the survey response rate.

As we saw earlier, there are very real differences, county by county, in how construction workers are compensated. To prevent the federal government from altering the market, wage determinations based on surveys that perfectly reflect county wage patterns would be ideal. The Bureau of Economic Affairs and the Bureau of Labor Statistics do not collect and report wage data consistently at the county level for all of the construction industry's occupational classifications. The most direct solution is to improve the DOL surveys and collect more complete information.

The surveys are voluntary, and that is a major source of the response-rate problem. Many reasons have been offered for the lack of participation: some people don't understand the survey's importance, others don't trust or want to assist the government, while others feel they can't afford to take the time to respond. The oddest reason GAO proffered was that

some people think the surveys lead to inaccurate wage determinations, even though their non-participation is a cause of the inaccuracy they complain about.

GAO's recommendations for greater outreach and transparency seem like obvious pieces of the puzzle. And I have trouble understanding DOL's reluctance to seek expert advice on ways to increase the survey response rate. The quality of the surveys depends on maximizing the rate and accuracy of the responses. Getting help can never be premature. But two other solutions seem to be called for and could make a bigger difference.

First, OMB could require as a precondition for bidding on federal contracts that contractors participate in every relevant Davis-Bacon survey. This would be a small price to pay for the privilege of working on a federal construction project. And second, paying the respondents for their time – even $100 per completed survey – might substantially increase the response rate, especially among small businesses. I am told the surveys actually take even a small contractor very little time to complete – about 55 minutes for first-time filers, and less thereafter.

Suggestions that DOL abandon the Davis-Bacon Act survey process and rely on the Bureau of Labor Statistics Occupational Employment Statistics (OES) for wage determinations have been made for many years and rejected after serious consideration. Among the many problems with the OES are the fact that it doesn't collect benefits data – which can make up 20% or more of a worker's compensation, and that its sample size is much too small to report data at the county or even MSA level on all of the construction occupations in each of the separate, key market areas: residential, building, highway and heavy. There would be considerable cost involved in redesigning the OES and increasing its sample size, and even then it could not meet the statutory requirement of determining the prevailing wage in the sense of identifying the single wage paid to a majority of workers in the locality of the construction, because the OES is an estimate constructed from a three-year average of reported wages in various ranges.