



# ALLIANCE FOR WORKER FREEDOM

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## *Davis-Bacon Legislative Briefing Packet: Making the case for prevailing wage survey reform -February 2008-*

### **WHAT IS THE DAVIS-BACON ACT?**

The Davis-Bacon Act (DBA) is a Depression-era wage subsidy law enacted in 1931, when the federal government was the largest construction contractor, to prevent the government’s purchasing power from driving down wages. This is no longer the case and its time has run out. In the 21<sup>st</sup> Century, especially in the new competitive global economy, it is essential to allow the free market system to determine wages.

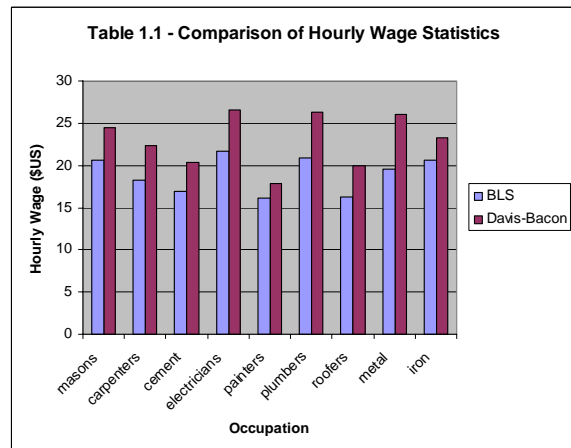
Therefore, we are calling on members in both the House and the Senate to offer amendments and stand alone legislation that will reform the way the prevailing wage data is calculated from the current DBA surveys to the sound, statistically valid surveys of the Bureau of Labor Statistics (BLS).

### **HOW ARE PREVAILING WAGE SURVEYS FLAWED?**

The Davis-Bacon survey is not a statistically random sample like the Bureau of Labor Statistics’ (BLS) unemployment or wage surveys. Rather, the survey results indicate that the prevailing wage is both higher in some regions and lower in others than the average market wages as determined by the BLS (as seen in Tables 1.1 & 1.2)<sup>1</sup>. The federal government and many state governments use various voluntary surveys to determine the wage that “prevails” in the field of construction.

However, unionized contractors and larger construction crews have an exceptionally high incentive to respond to those surveys. By contrast, nonunion contractors and smaller businesses and independent contractors have a low motivation and often limited resources to respond.

As a result, even though only a small share of construction workers are union members, most of the contractors responding to the surveys report paying union scale, and thus the altered wage is determined to be the prevailing wage. Further, investigators from the Office of the Inspector General found that “one or more errors existed in 100 percent of the wage reports they reviewed.”<sup>2</sup> Using proper statistical techniques and BLS survey numbers will reflect true market wages.

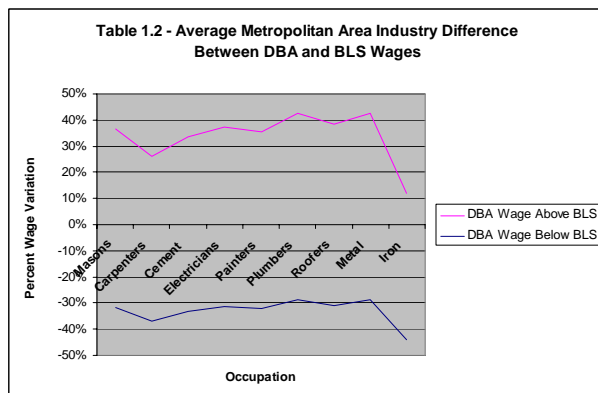


## NOW IS THE TIME TO ACT

For over six years in a Republican dominated House and Senate, members in both chambers had tried unsuccessfully to completely repeal the Davis-Bacon Act. Now, with Democrats controlling both Chambers and the White House, full repeal is no longer politically feasible. While full repeal remains the ultimate goal, we must begin to advocate the using of proper statistical sampling for the calculation of the prevailing wage surveys so the true market wages will be reflected.

Before laws are passed which extend Davis-Bacon coverage to private sector construction projects, as seen in the recent energy legislation, we are urging both chambers to fix the survey problems identified by the Department of Labor, the Government Accountability Office, and the Office of Inspector General.

Inaccurate and out of date self-reported surveys, with an error rate of 100 percent, hardly reflect true prevailing wages. With overwhelming evidence for reform, allowing these distorting practices to continue does nothing more that skew the labor market against the average American worker and business owner.



## OVERWHELMING EVIDENCE OF THE NEED FOR REFORM

According to the James Sherk of the Heritage Foundation, “In almost every case, the prevailing wages do not resemble the actual market wages. Davis-Bacon wages vary from

38 percent below market wages for electricians in Tampa Bay to 73 percent above market wages for plumbers in San Francisco.”<sup>3</sup>

Table 1.1 on the preceding page does not tell the complete story of wage differences using the current, flawed DBA method. Table 1.2 illustrates the average wage differences in metropolitan areas for which DBA wages are both lower and higher than BLS wages for the same job category. The largest where the current DBA wages are lower than the BLS wages are in Sarasota, FL, Wilmington, NC, and Asheville, NC and other Southeast regions.<sup>4</sup> The glaring differences where DBA wages are higher than BLS wages are in Nassau, NY, Riverside, CA, and Edison, NJ – clearly this is a nation-wide pandemic.<sup>5</sup>

This outdated, Depression-era wage subsidy system is forcing the burden on taxpayers in one city and altering market wages in another – reform, not status quo, are the only viable options.

- The average time it takes the Department of Labor to issue a prevailing wage determination, prior to the completion of the survey period, is 2.3 years.
- Current method and calculations used by the Wage and Hour Division (WHD) inflate wages, on average, by 22%.
- The WHD methods inflate construction costs by 9.91%
- **WHD methods raise public construction costs by \$8.6 billion per year.**
- Since 1997, Congress has appropriated \$22 million to modernize DBA surveys – yet the OIG still reports “significant inaccuracies in 65% of surveys.”<sup>6</sup>

## THE CALL FOR REFORM

Rather than broadening the scope of the Davis-Bacon Act and prevailing wage laws, as seen in the recent energy legislation, we are urging you to consider the preceding evidence and pass legislation or offer amendments that will permanently reform the Davis-Bacon Act by requiring BLS data to be used in the wage calculations.

By passing legislation that requires the Department of Labor's Wage and Hour Division to calculate prevailing wages, using proper statistical techniques and using data generated from the Bureau of Labor Statistics using larger geographical areas rather than civil divisions, will generate valid random samples and will actually reflect a true market wage.

## MODEL LEGISLATION

While stand alone legislation that will permanently change the DBA prevailing wage calculations is the ultimate goal (as complete repeal, while the end goal, has failed to pass), offering amendments to any and all legislation that contains DBA provisions is crucial to this strategy.

AWF's suggested model amendment language is as follows:

*Purpose: To require that certain wage determination be made based on surveys that use proper random statistical sampling techniques.*

*Text: Section 3142(b) of Title 40, United States Code, is amended by adding at the following: "Such minimum wages and benefits, as determined by the Secretary for purposes of subchapter, shall be based on surveys carried out by the Bureau of Labor Statistics of the Department of Labor using proper random statistical sampling techniques."*

Stand alone legislation would follow similar suit.

## THE NEXT STEP...

We are committed to working with legislators in both the House and the Senate who are dedicated to offering amendments to change the survey language whenever Davis-Bacon appears in legislation.

If you or your office is interested in obtaining a copy of model amendment language, discussing stand alone legislation to this effect and/or discussing this strategy further, please contact us.



*The Alliance for Worker Freedom is a special project of Americans for Tax Reform dedicated to combating anti-worker legislation and promoting free and open markets.*

<sup>1</sup> Tables 1.1 and 1.2 were created using data from *The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages*. Sarah Glassman, MSEP, Michael Head, MSEP, David G. Tuerck, Ph.D., Paul Bachman, MSIE, Beacon Hill Institute at Suffolk University, Feb 08, 2008.

<sup>2</sup> U.S. Department of Labor, Office of Inspector General, "Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations," March 30, 2004, pp. 12-13, at [www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf](http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf).

<sup>3</sup> James Sherk, The Heritage Foundation, *Congress Should Fix the Flawed Wage Determination Process Before Expanding the Davis-Bacon Act*. WebMemo #1743. [http://www.heritage.org/Research/Labor/wm1743.cfm#\\_ftn5](http://www.heritage.org/Research/Labor/wm1743.cfm#_ftn5)

<sup>4</sup> Sarah Glassman, MSEP, Michael Head, MSEP, David G. Tuerck, Ph.D., Paul Bachman, MSIE. *The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wage*. Beacon Hill Institute at Suffolk University, Feb 08, 2008.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*