

Background

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Davis–Bacon Flaws Hurt South Dakota’s Workers

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The Davis–Bacon Act of 1931 requires contractors on all federal construction projects to pay their workers the prevailing wage in their locality. The law is intended to ensure that the government does not drive down construction workers’ wages, but flaws in the U.S. Department of Labor’s wage determination process cause the law to have the opposite effect in South Dakota.

The Wage and Hour Division (WHD) of the Department of Labor calculates the prevailing construction wage rates across the United States. The WHD, however, uses a fundamentally flawed survey methodology that frequently causes Davis–Bacon rates to bear little relation to market wages. The WHD’s methodology is unscientific and has high error rates, and it takes the WHD years to process and publish the results.

Nationally, Davis–Bacon wages are 22 percent above market wages, meaning that taxpayers overpay for construction projects.¹ In South Dakota, however, the unscientific WHD process results in Davis–Bacon rates that are an average of 12 percent below market wages. The flawed WHD methodology depresses construction wages in South Dakota.

Congress should not do this to South Dakota’s workers. The Labor Department’s Bureau of Labor Statistics (BLS) currently publishes two accurate and timely scientific surveys that report wage rates nationwide. Both of these surveys produce more reliable estimates than the flawed WHD surveys.

Talking Points

- The Department of Labor’s Wage and Hour Division uses highly inaccurate methods to estimate prevailing wages for the Davis–Bacon Act. Davis–Bacon rates in South Dakota average 12 percent below market wages. This drives down the wages of construction workers in South Dakota.
- These inaccuracies are a result of the flawed methods used to calculate Davis–Bacon rates: for example, using a self-selected sample of contractors instead of a scientific random sample.
- The Labor Department takes years to update wage rates after they are published. Some rates in effect in South Dakota have not been updated since 2000.
- The Labor Department’s Bureau of Labor Statistics already estimates wages using accurate scientific methods. Congress should require the Department of Labor to use these surveys to set Davis–Bacon wage rates.

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Davis–Bacon Wages and Market Rates in South Dakota

Davis–Bacon (D–B) wages are below market wages for most construction workers in South Dakota.

Areas where Davis–Bacon wages are below market wages

Metropolitan Statistical Area		Brickmasons and Block-masons	Carpenters	Cement Masons and Concrete Finishers	Electricians	Painters, Construction/Maintenance	Plumbers, Pipefitters, Steamfitters	Roofers	Sheet Metal Workers	Structural Iron/Steel Workers
Rapid City	Market	\$25.12	\$14.48	\$15.77	\$19.10	\$12.13	\$18.04		\$13.66	
	D–B	\$25.69	\$11.23	\$11.60	\$13.83	\$11.61	\$14.02	n/a	\$17.48	n/a
	Diff.	2.3%	-22.5%	-26.4%	-27.6%	-4.3%	-22.3%		28.0%	
Sioux Falls	Market	\$16.41	\$14.57	\$13.31	\$18.84	\$13.34	\$17.69	\$13.85	\$14.56	\$20.13
	D–B	\$23.39	\$12.17	\$12.01	\$21.65	\$11.51	\$14.53	\$10.33	\$18.61	\$12.07
	Diff.	42.5%	-16.4%	-9.8%	14.9%	-13.7%	-17.8%	-25.4%	27.8%	-40.1%

Source: Heritage Foundation calculations based on data from the Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, at <http://www.bls.gov/oes/current/oesrcma.htm>, and Government Printing Office, "Davis–Bacon Prevailing Wage Determinations," at <http://www.gpo.gov/davisbacon>. See Appendix for details.

Table 1 • B 2158  heritage.org

Congress has spent tens of millions of dollars to fix the WHD's Davis–Bacon surveys, but the Labor Department Inspector General has found even higher error rates after these reforms. Congress should require the Department of Labor to base prevailing wage determinations on scientifically valid surveys conducted by the BLS.

Davis–Bacon Background

The Davis–Bacon Act requires federal construction contractors to pay at least the prevailing wage rates for private construction projects located in the same areas as their federal projects. Supporters consider it an important measure to prevent the government from distorting construction labor markets. In areas where the government is the largest buyer of construction services, it could use its negotiating power to lower construction wages.

To calculate the wages that contractors must pay, the WHD surveys construction wages and publishes prevailing wage determinations for each county in the United States. Federal contractors must then pay their employees at least the prevailing wage for each class of worker.

Inaccurate Rates

In reality, the Davis–Bacon Act does not prevent the government from distorting labor markets in the construction industry, because the WHD survey methodology reports inaccurate wage rates. Davis–Bacon rates differ wildly from market wages. In some states, the WHD reports Davis–Bacon wages well above market rates; in other states, it reports wages well below market rates. Nationally, prevailing wage rates average 22 percent above market wages.²

To assess the impact of the Davis–Bacon Act on construction workers in South Dakota, The Heritage Foundation calculated the difference between Davis–Bacon wages and market wages in the Sioux Falls and Rapid City metropolitan statistical areas (MSAs). The methodology used to make this comparison is described in the Appendix. Table 1 shows the results. Davis–Bacon rates are below market rates for 11 of the 16 occupations examined in both cities.

Electricians in Rapid City earn an average of \$19.10 an hour, but Davis–Bacon rates are only \$13.83 an hour—28 percent less. Plumbers and pipe fitters in Sioux Falls earn market wages of \$17.69, but Davis Bacon rates are only \$14.53 an hour—18 percent less. Conversely, the Davis–Bacon

1. Sarah Glassman, Michael Head, David G. Tuerck, and Paul Bachman, "The Federal Davis–Bacon Act: The Prevailing Mismeasure of Wages," Suffolk University, Beacon Hill Institute, February 2008, at <http://www.beaconhill.org/BHISTudies/PrevWage08/DavisBaconPrevWage080207Final.pdf> (June 27, 2008).
2. *Ibid.*

Act gives a windfall to sheet-metal workers in Sioux Falls, requiring contractors to pay them a 28 percent premium over market wages. Across all occupations, the Davis–Bacon Act calls for contractors in South Dakota to pay below-market wages. On average, Davis–Bacon rates are 12 percent below market rates in South Dakota.

Harm to South Dakota Workers

Davis–Bacon wages are minimum wages, so the Davis–Bacon Act does not impose a 12 percent pay cut on most construction employees working for federal contractors in South Dakota. However, by setting an artificially low rate (e.g., \$13.83 for electricians), the government encourages contractors to pay lower wages, and the contractors use the lower wages when submitting bids on federal construction projects. In counties where the federal government is a large buyer of construction services, its purchasing power can push down wages. It can insist that employees work for \$14 an hour if they want to work at all.

These effects depress construction wages in any county where the WHD issues prevailing wage determinations below market rates. In many cities, the Davis–Bacon Act has the very effect that Congress intended to prevent.

A Flawed Process

Davis–Bacon wages differ from actual construction wages because fundamental flaws mar the process used to determine prevailing wages. Although the Bureau of Labor Statistics is dedicated to surveying labor markets, the WHD calculates its own prevailing wages for the Davis–Bacon Act. Unlike the BLS, the WHD does not have expertise in surveying wages. Audits by the then-U.S. General Accounting Office (GAO)³ and the Inspector General have

found multiple flaws in the WHD’s methodology that lead to unreliable wage determinations.

Scientifically Unsound Surveys. Unlike BLS surveys that estimate the unemployment rate or average wages, the Davis–Bacon survey is not a statistically random sample. The survey is self-reported, which means that only construction firms that take the time to complete and return the forms influence the result.⁴ This introduces considerable bias into the estimates.

The WD-10 forms that the WHD uses to survey construction wages are highly detailed, requesting data in a format that few contractors keep, and can take several hours to fill out. Smaller construction contractors and contractors who do not do business with the federal government frequently ignore the survey and follow-up letters. They see no reason to fill out a survey that does not affect them. Consequently, wage determinations are based on the self-selected minority of contractors who spend the time and resources to complete the survey.

Unlike a random sample, self-selected survey responses do not reflect the wages paid by all contractors.⁵ This is a fundamental and noncontroversial statistical principle. As Nobel Prize–winning economist James Heckman has noted, “wage or earnings functions estimated on selected samples do not, in general, estimate population wage functions.”⁶

Surveys based on self-selected samples in which contractors choose whether or not to participate are unscientific and unreliable. The Inspector General has criticized the WHD for using this methodology and has recommended that the WHD use scientific random samples to estimate Davis–Bacon wages.⁷ The WHD has not done so. Until it does, Davis–Bacon wages in South Dakota will continue to be inaccurate and harm workers.

3. Now known as the U.S. Government Accountability Office.

4. U.S. Department of Labor, Office of Inspector General, “Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations,” Report No. 04-04-003-04-420, March 30, 2004, pp. 12–13, at <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf> (June 27, 2008).

5. Many common examples demonstrate the unreliability of self-selected surveys. Internet polls often show candidates winning 80 percent of the vote—even when those candidates go on to lose the election. Participants in self-selected Internet polls represent only those politically motivated people who visit the Web sites, not all of the voters in an election. Often, the two bear no relation to each other.

6. James Heckman, “Sample Selection Bias as a Specification Error,” *Econometrica*, Vol. 47, No. 1 (January 1979), pp. 153–154.

High Error Rates. In addition to the unsound methodology, the surveys themselves are plagued with errors. Frequent GAO and Inspector General audits have found continually high error rates in the survey forms submitted to the WHD. In the most recent audit, the Inspector General found that “one or more errors existed in 100 percent of the wage reports” examined.⁸

Errors occurred both because of contractor confusion about how to complete the WD-10 forms and because of sheer carelessness. Few contractors, for instance, normally calculate the hourly costs of their employees’ benefits, and they made mistakes calculating them for the survey.

Out-of-Date Wage Rates. In addition to the unscientific methodology and error-ridden surveys, the WHD takes an average of 2.3 years to process and update Davis–Bacon rates after the survey period ends.⁹ By the time the WHD publishes prevailing wage rates, they are already several years out of date.¹⁰

Following publication, the WHD waits many years before updating the rates. The WHD is nowhere near to meeting its long-term goal of surveying construction wages in every county in America every three years. This would require processing 10 times as many WD-10 forms as it currently processes.¹¹ Already out-of-date wage determinations remain effective for years and decades before being updated again.

This is also a problem in South Dakota. Davis–Bacon rates in South Dakota are based on determi-

nations published between 2000 and 2007, meaning that many workers’ rates are at least *eight years* out of date.

Changing labor market conditions and inflation mean that workers’ wages today are not the same as workers’ wages several years ago. Even if the WHD used a scientifically sound and error-free methodology to estimate wages, the long delays in processing and updating Davis–Bacon rates ensure that they differ starkly from prevailing market wages.

Failed Attempts at Reform

After GAO and Inspector General audits in the 1990s found widespread errors in WHD wage determinations, the government spent tens of millions of dollars to reengineer the wage determination process. An Inspector General investigation after these reforms found that they were not effective.

After the WHD made these reforms, a follow-up audit by the Inspector General found that error rates had become even higher than before and that wage determinations still take years to process.¹² The \$22 million spent to improve wage determinations has done little to improve the accuracy of Davis–Bacon rates.

BLS Surveys Are More Accurate

The flaws in the WHD wage determination process are not surprising. The WHD enforces federal laws regulating wages and many working conditions, such as minimum wages, prevailing wages, child labor, overtime, and the Family and Medical Leave Act, but has no institutional expertise in sur-

7. U.S. Department of Labor, “Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations,” p. 24. See also U.S. Department of Labor, Office of Inspector General, “Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis–Bacon Act,” Report No. 04-97-013-04-420, March 10, 1997, at http://www.oig.dol.gov/public/reports/oa/pre_1998/04-97-013-04-420s.htm (June 27, 2008), and U.S. General Accounting Office, *Davis–Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement*, HEHS-99-21, January 1999, at <http://www.gao.gov/archive/1999/he99021.pdf> (June 27, 2008).
8. U.S. Department of Labor, “Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations,” p. 1.
9. *Ibid.*, pp. 13–15.
10. U.S. Department of Labor, Wage and Hour Division, *Davis–Bacon and Related Acts: Data Collection Completed*, at <http://www.dol.gov/esa/whd/programs/dbra/complete.htm#FL> (June 27, 2008).
11. Victoria Lipnic, Assistant Secretary of Labor for the Employment Standards Administration, letter to Senator Thad Cochran, Chairman, Committee on Appropriations, U.S. Senate, May 8, 2006, p. 6.
12. U.S. Department of Labor, “Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations,” p. 10.

veying wage rates. The Bureau of Labor Statistics is tasked with this primary responsibility and already conducts highly accurate wage surveys.

Congress gives more than \$500 million to the BLS every year. Among other surveys, the BLS conducts two nationwide wage surveys that estimate occupational wages across America: the National Compensation Survey (NCS) and the Occupational Employment Statistics (OES). Both surveys are conducted in a timely manner and updated annually.

The WHD's prevailing wage surveys duplicate—highly inaccurately—these existing surveys. Either the OES or the NCS, with only slight modifications, could be used to estimate local prevailing construction wages. This would allow the WHD to focus on enforcing the Davis–Bacon Act instead of on estimating prevailing wages.

This is how the Department of Labor enforces other prevailing wage statutes. Prevailing wages for the Foreign Labor Certification program and the Service Contract Act are calculated using OES estimates. It makes little sense for the WHD to spend millions of dollars annually to produce inaccurate estimates of prevailing wage rates when the Bureau of Labor Statistics already produces highly accurate estimates.

The WHD has previously considered using BLS data to estimate prevailing wages. In 2001, it concluded that surveys by the BLS would be both more accurate and more up-to-date than the current process, but that difficulties in calculating employee fringe benefits and the geographic scope of the BLS surveys made reengineering the WHD's methodology the more attractive solution.¹³

However, the Inspector General has since found that the reengineering effort did not improve the accuracy of Davis–Bacon rates and that these difficulties could be surmounted. For example, the Inspector General determined that transferring funds from the WHD to the Bureau of Labor Statistics would allow the BLS to expand the scope of the National Compensation Survey to cover construc-

tion wages throughout the United States and provide the necessary data for the WHD.¹⁴

What Congress Should Do

Congress should:

- **Direct** the Wage and Hour Division to stop duplicating Bureau of Labor Statistics surveys and stop using a fundamentally flawed methodology.
- **Transfer** the resources currently spent on WHD surveys to the Bureau of Labor Statistics. This would allow the BLS to expand the scope of the National Compensation Survey to produce construction wage estimates that fully meet the Davis–Bacon statutory requirements.
- **Require** the WHD to base Davis–Bacon wages on accurate and scientifically valid surveys by the Bureau of Labor Statistics.

Conclusion

The Wage and Hour Division's methods for calculating Davis–Bacon wages are scientifically unsound. Davis–Bacon rates are calculated using a self-selected sample instead of a statistically representative sample. They take years to process and even more years to update, meaning that contractors must pay out-of-date wage rates. The survey forms confuse contractors and investigators, and the most recent audit of the WHD found errors in every wage report that it examined.

These flaws depress the wages of construction workers in South Dakota. On average, Davis–Bacon wages in South Dakota are 12 percent below market wages. A decade of effort to reengineer and improve the flawed wage determination process has failed. Rather than allowing the WHD to continue duplicating the work of the Bureau of Labor Statistics, Congress should require the WHD to use BLS wage surveys to calculate prevailing wages.

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13. Bernard Anderson, Assistant Secretary of Labor for the Employment Standards Administration, letter to Congress, January 17, 2001.

14. U.S. Department of Labor, "Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations," p. 17.

APPENDIX

Bureau of Labor Statistics (BLS) and Wage and Hour Division (WHD) wage estimates are not directly comparable because the agencies measure wages using different methodologies. The Heritage Foundation followed the methodology outlined in a Beacon Hill Institute study, “The Federal Davis–Bacon Act: The Prevailing Mismeasure of Wages,” to make BLS and WHD data comparable.¹⁵

BLS wage data come from the Occupational Employment Statistics (OES) program within the BLS, “May 2007 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates,” which is found online at <http://www.bls.gov/oes/current/oessrcma.htm>. Data on Davis–Bacon wages came from U.S. Government Printing Office, “Davis–Bacon Wage Determinations,” at <http://www.gpo.gov/davisbacon>.

Nine job categories were selected for comparison. Nationally, these nine jobs account for 59 percent of all construction workers. Table 2 lists the BLS and corresponding WHD job descriptions.

The WHD and OES define occupations differently. When the WHD used more job categories than the BLS did for similar work, a simple average of the Davis–Bacon categories was used. For example, the wages of both Cement Masons and Concrete Finishers (separate Davis–Bacon occupations)

were averaged and compared with BLS wages for Cement Masons and Concrete Finishers (a single job description in the OES data). If the WHD provided wages for only one such occupation, however, then only it was used.

Davis–Bacon rates often specify wages for general and specific tasks within an occupation. There may be wages for general “electricians” but also separate rates for electricians who perform specialized tasks. In these cases, the wages of the general category were considered most comparable with the BLS data and used in the comparison.

The WHD calculates occupational wage rates for four different construction categories: “Highway,” “Heavy,” “Residential,” and “Building.” The Davis–Bacon rates in this paper refer to the “Building” rates.

The BLS and WHD estimate wages for different geographic areas. The WHD surveys wages at the county level, while the OES estimates wages for metropolitan statistical areas (MSAs). The Heritage Foundation used county-level Davis–Bacon wages to create MSA-level Davis–Bacon wage rates. In MSAs with only one county, Davis–Bacon rates were calculated as explained above and directly compared to BLS data. In MSAs with multiple counties, Davis–Bacon rates were calculated separately for each county. A weighted average of Davis–Bacon rates was constructed, using as weights the relative population of each county according to Census Bureau estimates. This weighted average was the final Davis–Bacon rate compared to BLS data.

When WHD data were missing for one occupation in one county in a multi-county MSA, wage data from the most populous county in that MSA were used for that county. Occupations in MSAs in which WHD data were unavailable in all counties, or for which BLS data were not available, were omitted.

Occupation Descriptions

Bureau of Labor Statistics	Wage and Hour Division
Brickmasons and Blockmasons	Bricklayer
Carpenters	Carpenter
Cement Masons and Concrete Finishers	Cement Mason, Concrete Finisher
Electricians	Electrician
Painters, Construction and Maintenance	Painter, Painter (Brush), Painter (Spray)
Plumbers, Pipe Fitters, and Steam Fitters	Plumber, Pipefitter
Roofers	Roofer
Sheet Metal Workers	Sheet Metal Worker
Structural Iron and Steel Workers	Ironworker (Structural)

Table 2 • B 2158  heritage.org

15. Glassman *et al.*, “The Federal Davis–Bacon Act: The Prevailing Mismeasure of Wages.”

In order to calculate how BLS and WHD rates differ for the entire state, a weighted average of both BLS and WHD wages across every occupation and

MSA was constructed for South Dakota. The weights are the number of workers in each MSA employed in each occupation as estimated by the OES.