



Highway Robbery

The Davis-Bacon Act Increases Costs, Decreases Employment

March 31, 2011

The Highway Trust Fund Would Be Better Off With Its Repeal

The originally temporary Davis-Bacon Act of 1931—now part of federal labor requirements—essentially functions as a wage floor, resulting in billions of excess cost for taxpayer-funded projects and reduced employment for less-specialized and general laborers who are priced out of the market. The Davis-Bacon Act requires that all federally-funded projects worth more than \$2,000 must pay workers the “prevailing wage,” which is typically set equal to the local wage paid to more skilled union workers.¹

As with many temporary government provisions, the Act was initially an emergency measure implemented by the Hoover Administration to prevent contractors from paying their workforce extremely low wages and producing lower quality of construction.² Its subsequent acceptance over time as part of federal labor requirements, however, has led to increasingly expensive total project costs as Davis-Bacon rates average 22 percent higher than prevailing market rates.³ Moreover, since the Act’s implementation, the federal government’s role in construction projects has vastly expanded.

Today, excessive project costs are particularly straining on the Highway Trust Fund (HTF), which provides approximately 80 percent of the funding for most federal highway projects and 45 percent of all highway spending.^{4,5} Back in 1956 when the HTF was created, it was expected that the fund would be terminated by 1972, upon completion of the interstate highway system.⁶ But as with most “temporary” government provisions, the fund has remained intact, and continues to collect excise taxes such as the federal gasoline tax.⁷ Originally, the dedicated HTF gasoline tax was just 3 cents per gallon, but it has been raised multiple times—to its current level of 18.4 cents—in order to meet subsequent extensions of the HTF and additional provisions.⁸ Rather than confront HTF shortfalls once again with either motor fuel tax increases or taxpayer bailouts from general revenues, the unpredictable and constantly rising

Highlights

- ❖ The Davis-Bacon Act requires that all federally-funded projects worth more than \$2,000 must pay workers the “prevailing wage,” which is typically set equal to the local wage paid to more skilled union workers.
- ❖ In addition to paying an average of 22 percent above market wage rates, the Davis-Bacon Act requirements bog down contractors with extra paperwork and compliances which can lead to unanticipated and costly delays.
- ❖ Today, excessive project costs are particularly straining on the Highway Trust Fund.
- ❖ For highway construction, the average Davis-Bacon wage paid in the counties sampled was 34 percent higher than the average Occupational Employment Statistics wage reported by BLS.
- ❖ Instead of taxing individuals more to support unnecessarily costly highway projects, repeal of the Davis-Bacon Act would reduce costs for federally-funded highway projects, increase construction employment, and help improve the solvency of the HTF.

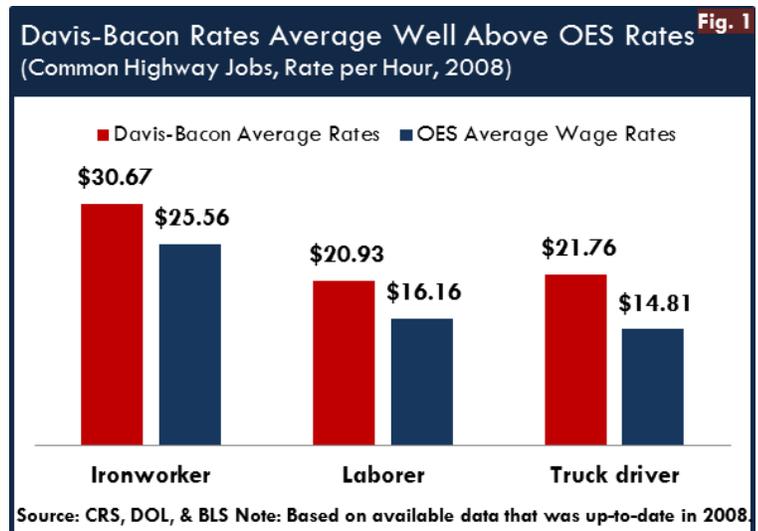
final costs of highway construction could be reduced by allowing federal projects to pay market wages, rather than inflated “prevailing wages.”

Higher Wages and Increased Regulatory Burdens Drive Up Highway Construction Costs

The Government Accountability Office (GAO), the Department of Transportation’s (DOT) Inspector General, and several state audit and evaluation agencies have all reported significant cost growth on many major highway and bridge projects. Among the problems of unpredictable and rising costs is significant underestimation of projected costs. For example, a 1995 Federal Highway Administration examination of 20 active highway projects with the highest percentage cost growth (ranging in estimated total cost from \$205 million to \$2.6 billion) found that cost overruns ranged from around 40 percent to 400 percent.⁹

In addition to paying an average of 22 percent above market wage rates, the Davis-Bacon Act requirements bog down contractors with extra paperwork and compliances which can lead to unanticipated and costly delays.¹⁰ The Congressional Budget Office (CBO) has affirmed three different ways Davis-Bacon increases construction costs: (1) by raising wages on federal projects, (2) by requiring labor to be used in a costly fashion, and (3) by imposing reporting and paperwork requirements on contractors.¹¹

A study by the Congressional Research Service (CRS) found that as a result of Davis-Bacon, significant above-average wages span various highway construction and repair occupations. As Figure 1 shows, even excluding fringe benefits, the average prevailing wage rate which applies to federal highway projects was consistently and significantly higher than the average hourly wage reported by the Bureau of Labor Statistics (BLS) in the same area¹² and for the same job classification.¹³ Davis-Bacon wages for iron workers averaged 20 percent above market wages; those for laborers averaged 29 percent higher; and wages for truck drivers averaged 47 percent higher. In total, the average Davis-Bacon wage paid in the counties sampled was 34 percent higher than the average Occupational Employment Statistics (OES) wage reported by BLS.



A study by the Heritage Foundation estimated that requiring contractors to pay current prevailing wages, rather than leaving the pricing of labor to the open market, inflates average highway construction and repair costs across the country by anywhere between 5 and 38 percent.¹⁴ A state-level study which examined the effect of Davis-Bacon on Arizona’s highway construction costs revealed that the Act resulted in an overall cost increase of 13 percent.¹⁵

In addition to raising costs and reducing employment in many areas, failure of some states to update outdated surveys used to set the prevailing wage (updating the surveys is costly and time-consuming) has actually resulted in an artificially low wage floor.¹⁶ For example, as of 2008, one survey from Sarasota County, Florida had not been modified since 1978.¹⁷ If an outdated prevailing wage is below the market wage, this can place downward pressure on construction wages, which is the very opposite effect of the law’s intent.¹⁸

Prevailing Wages Slow Down Highway Projects with Burdensome Paperwork

Whereas some contractors actually pay wages well above the Davis-Bacon prevailing wage rate (typically the result of outdated, artificially low prevailing wages), these contractors nonetheless have to adhere to cumbersome Davis-Bacon paperwork requirements. A 2008 GAO study examined how federal requirements for highways may influence funding decisions. It cited a New Hampshire DOT official who explained that the Davis-Bacon prevailing wage payroll processing requirements increase administrative responsibilities and compliance costs, often slowing down projects. Within the GAO survey, federal, state, and local transportation officials alike expressed complaints of the costs and time requirements of Davis-Bacon. These reports of widespread costs and burdens imply that repealing the Davis-Bacon Act would allow for the completion of more construction and repair on highway projects at a reduced cost and in many cases, in a shorter amount of time.¹⁹

Evidence Shows Suspension of “Little Davis-Bacons” Increased Highway Construction Employment

The Davis-Bacon law has been suspended a handful of times: once by President Franklin D. Roosevelt for administrative adjustments, once by President Nixon to reduce inflationary pressures, and once each by President George H.W. Bush and George W. Bush for Hurricanes Andrew and Katrina, respectively. These short-term suspensions of the Davis-Bacon Act have provided evidence of the Act’s contribution towards inflated construction costs. In addition to federal suspension of the Davis-Bacon Act, state-level suspensions and repeal of “Little Davis-Bacons” (state wage floors enacted in over 40 states for state-based funding in the wake of the original Act’s passage in 1931) have resulted in a decline in construction costs and a significant rise in the number of constructions jobs.

State prevailing wage laws vary widely; in states like Nebraska where there is relatively less labor organization, wage determinations are closer to market rates than in states with high labor organization like New Jersey, which determines wages near or at union rates. Currently, 31 states and the District of Columbia enforce state-level “Little Davis-Bacons”—which apply to state and local contracts, and may apply to projects receiving both federal and state funding if the state-determined prevailing wage is higher than the Davis-Bacon-determined wage rate.²⁰ For example, in 1994, Michigan’s prevailing wage law was suspended for 30 months due to a court case that brought the law’s legitimacy into question. From December 1994 to June 1997, Michigan experienced a 48 percent increase in new construction jobs (compared to the rate construction jobs increased over the 30 months prior to suspension). Additionally, evidence from lower contract bids, which resulted in real savings from decreased costs in wage labor, suggests that Michigan and its municipalities potentially saved up to \$275 million in FY 1995 (equal to 5 percent of the state’s individual income tax revenue) by suspending prevailing wage provisions.²¹

As evidenced by its suspension in cases of national emergency, past administrations, both Republican and Democrat alike, have implicitly recognized the negative impact of Davis-Bacon on employment, project costs, and timeliness of projects. Thus, if jobs can be gained and costs can be reduced by suspension of Davis-Bacon, why then does the Act remain in effect?

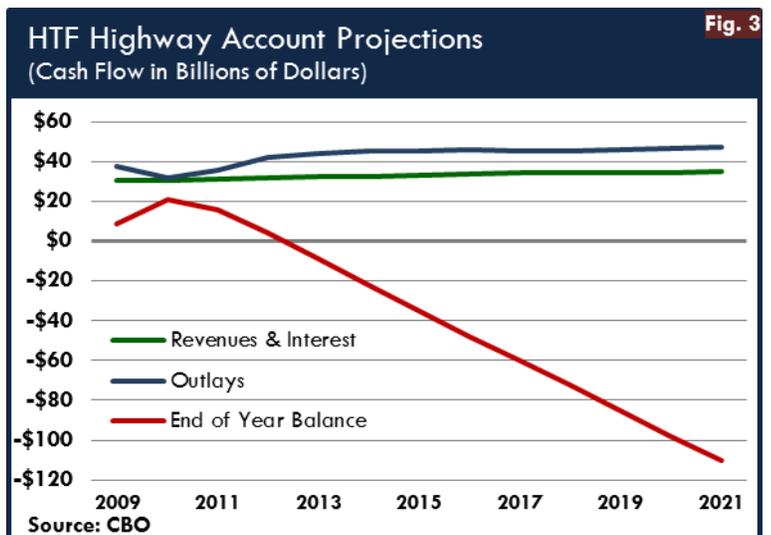
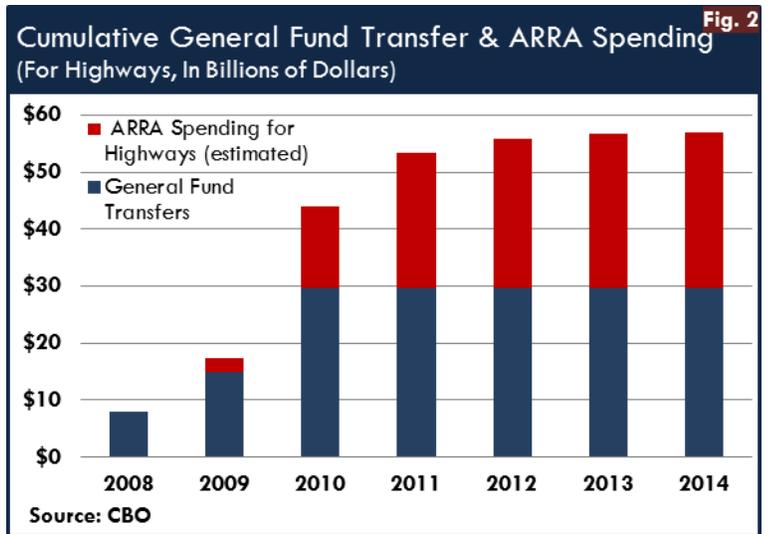
Davis-Bacon Act One of Many Factors Draining the Highway Trust Fund

Over the years from 1956 to 2009, the HTF has paid out 14 percent more than has been paid in, and in FY 2009 alone, 42 percent more was paid out than was paid in.²² Since 2008, Congress has transferred \$34 billion from the general treasury to the HTF to keep it afloat.²³ Adding existing legislation to this total would increase total estimated general revenue transfers to fully fund the HTF’s highway spending through FY 2014 to \$57 billion (see Figure 2).

The CBO estimates that total trust fund losses of the highway account will rise to \$110.3 billion by 2021 (the HTF's transit account is projected to sustain an additional \$30.3 billion in losses over the same time period), as shown in Figure 3.²⁴ Under current law, the HTF cannot incur negative balances, so when funds run short, the pace of project advancement and completion is governed by the pace of motor fuel and other tax revenue collections. In addition to its lack of solvency, the HTF is plagued with problems of inequality (some states are net donors and others are net recipients) and has been regularly abused for spending on non-highway purposes and pet projects.

Several attempts to repeal the Davis-Bacon Act, or at least limit its scope, have been unsuccessful. The most recent attempt at complete repeal occurred in late January 2009, when Representative Virginia Foxx (R-NC) included repeal of the Davis-Bacon Act in the Highway Trust Fund Reform Act of 2009. Proposals to repeal the Davis-Bacon Act recognize that the law increases costs and has contributed to the deteriorating state of the HTF. Rather than seek taxpayer bailouts or raise motor fuel taxes, current and future solvency of the HTF could be improved simply by repealing the Davis-Bacon Act and allowing market wages to prevail.

If the Davis-Bacon Act is repealed, it is likely to relieve shortfalls in the HTF and negate the proposal put forth by the National Commission on Fiscal Responsibility and Reform for a 15-cent increase in the federal gasoline tax to bring solvency to the HTF. Instead of taxing individuals more to support unnecessarily costly highway projects, repeal of the Davis-Bacon Act would reduce costs for federally-funded highway projects, increase construction employment, and help improve the solvency of the HTF.



¹ "Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)," Wage and Hour Division, U.S. Department of Labor, April 2009, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf>

² William G. Whittaker, "The Davis-Bacon Act: Suspension," CRS Report for Congress, Congressional Research Service, Updated February 8, 2006, <http://www.crs.gov/Products//rl/pdf/RL33100.pdf>

³ Sarah Glassman, Michael Head, David G. Tuerck, and Paul Bachman, "The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages," The Beacon Hill Institute at Suffolk University, February 2008, <http://www.beaconhill.org/bhistudies/prevwage08/davisbaconprevwage080207final.pdf>

⁴ Katherine Siggerud, "HIGHWAY TRUST FUND: Overview of Highway Trust Fund Estimates," Testimony Before the Subcommittee on Highways, Transit, and Pipelines, Committee on Transportation and Infrastructure, House of Representatives, Government Accountability Office, April 4, 2006, <http://www.gao.gov/new.items/d06572t.pdf>; see also: "Federal-aid Financing Procedures," Federal Highway Administration, Department of Transportation, <http://www.fhwa.dot.gov/reports/financingfederalaid/procs.htm#h>

⁵ "Spending and Funding for Highways," Economic and Budget Issue Brief, Congressional Budget Office, January 2011, http://www.cbo.gov/ftpdocs/120xx/doc12043/01-19-HighwaySpending_Brief.pdf

⁶ “The Highway Trust Fund,” Federal Highway Administration, Department of Transportation,

<http://www.fhwa.dot.gov/reports/financingfederalaid/fund.htm>

⁷ This includes proceeds from fines and penalties imposed for violation of motor carrier safety requirements since October 30, 1984. See:

“Financing Federal-Aid Highways,” Federal Highway Administration, Department of Transportation,

<http://www.fhwa.dot.gov/reports/fifahiwy/fifahi05.htm>

⁸ Table 1 Summary of Changes in the Rate of the Federal Manufacturers' Excise Tax on Gasoline. See: Pamela J. Jackson, “The Federal Excise Tax on Gasoline and the Highway Trust Fund: A Short History,” Congressional Research Service Report, April 4, 2006,

<http://www.crs.gov/Products//rl/pdf/RL30304.pdf>

⁹ JayEtta Z. Hecker, “TRANSPORTATION INFRASTRUCTURE: Cost and Oversight Issues on Major Highway and Bridge Projects,” Testimony Before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, House of Representatives, Government Accountability Office, May 1, 2002, <http://www.gao.gov/new.items/d02702t.pdf>

¹⁰ Glassman, *et al.* (2008); see also: Gerald Mayer, “The Davis-Bacon Act and Changes in Prevailing Wage Rates, 2000 to 2008,” December 2008, <http://www.crs.gov/products/r/pdf/R40663.pdf>

¹¹ “Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget,” Congressional Budget Office, July 1983,

<http://www.cbo.gov/ftpdocs/50xx/doc5030/doc12-Entire.pdf>

¹² Note that the data used are OES average hourly wage rates for the metropolitan or nonmetropolitan area that include the counties for which Davis-Bacon wages are set.

¹³ In a Congressional Research Service (CRS) study of changes in the prevailing wage rates and the Occupational Employment Statistics (OES) hourly wage reported by the Bureau of Labor Statistics (BLS), the CRS made a comparison of hourly wage compensation for several key construction jobs, including those in highway projects. Figure 1 provides a sample of the wage differences for key occupations in highway construction and repair in select counties, where data was available and up-to-date on prevailing wage surveys based on the study. Additionally, the ironworker category includes structural ironworkers; the labor category includes laborers labeled as asphalt, common, construction, flagman, general, highway, and unskilled laborers; and the truck driver category includes asphalt, dump trucks, five-axle, single- or double-axle, and tandem axle trucks. These broad categories represent 3 of 8 key classes for highway occupations identified by the Davis-Bacon Act, and they were the most consistently defined key highway jobs across counties in the study. See: Gerald Mayer, “The Davis-Bacon Act and Changes in Prevailing Wage Rates, 2000 to 2008,” December 2008, <http://www.crs.gov/products/r/pdf/R40663.pdf>

¹⁴ Ronald Utt, Ph.D., “Reauthorization of TEA-21: A Primer on Reforming the Federal Highway and Transit Programs,” Backgrounder #1643, The Heritage Foundation, April 7, 2003, <http://www.heritage.org/research/reports/2003/04/reauthorization-of-tea-21>

¹⁵ Robert W. Poole, Jr. “Defederalizing Transportation Funding,” October 1996,

<http://reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>

¹⁶ In the counties selected by CRS for study, New Hampshire’s prevailing hourly wages for county-level data are based on 2005 surveys; Texas’ are from 2004; Maine’s are from 2000; and Oklahoma’s are based on data from 1991. Many of the surveys are rife with errors; the Wage and Hour Division of the Department of Labor takes an average 2.3 years to process and update Davis-Bacon rates after the survey period ends.

¹⁷ Glassman, *et al.* (2008)

¹⁸ James Sherk and Patrick Tyrell, “Davis-Bacon Flaws Hurt Virginia's Workers,” Backgrounder #2159, The Heritage Foundation, July 7, 2008, <http://www.heritage.org/research/reports/2008/07/davisbacon-flaws-hurt-virginias-workers>

¹⁹ “FEDERAL-AID HIGHWAYS: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked,” Report to Congressional Requesters, Government Accountability Office, December 2008,

<http://www.gao.gov/new.items/d0936.pdf>

²⁰ George C. Leef, “Prevailing Wage Laws: Public Interest or Special Interest Legislation?” *Cato Journal*, Vol. 30, No. 1 (Winter 2010), Cato Institute, <http://www.cato.org/pubs/journal/cj30n1/cj30n1-7.pdf>

²¹ Richard Vedder, Ph. D. “Michigan’s Prevailing Wage Law and Its Effects on Government Spending and Construction Employment,” A Mackinac Center Report, The Mackinac Center for Public Policy, September 1999, <http://www.mackinac.org/2380>

²² Latest figures. “Comparison of Federal Highway Trust Fund Highway Account Receipts Attributable to the States and Federal-Aid Apportionments and Allocations from the Highway Account,” Fiscal Years 1957-2009, Highway Statistics 2009, Federal Highway Administration, Department of Transportation, October 2010, <http://www.fhwa.dot.gov/policyinformation/statistics/2009/fe221.cfm>

²³ Robert Puentes, “Moving Past Gridlock: A Proposal for a Two-Year Transportation Law,” Metropolitan Policy Program, Brookings Institution, December 2010,

http://www.brookings.edu/~media/Files/rc/papers/2010/1214_transportation_puentes/1214_transportation_puentes.pdf

²⁴ “Highway Trust Fund Projections,” CBO Winter FY 2011 Baseline 2010-2011, Congressional Budget Office, January 26, 2011.