

# PREVAILING WAGE LAWS



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THE MECHANICAL ELECTRICAL SHEET METAL ALLIANCE

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# The Mechanical Electrical 'Sheet' Metal Alliance,

The Alliance represents 12,000 union-employing **construction** contractors within the  
**Mechanical Contractors Association of America (MCAA)**  
**National Electrical Contractors Association (NECA)**  
**Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)**

The establishment of the Mechanical Electrical Sheet Metal Alliance is a reflection of the stability and success of unionized construction in the mechanical electrical and sheet metal contracting fields. Alliance firms remain successful and profitable in the highly competitive private and public construction market because they produce high quality and cost-effective construction. Union contractors epitomize the very best of the free enterprise system, providing good pay; excellent pension plans and extensive health care coverage for employees and their families; and superior training and safety programs yielding a highly skilled and notably stable workforce.

The results from a study conducted in 1994 by the Construction Labor Research Council (CLRC) reflect the growing resurgence of unionized construction in the mechanical, electrical and sheet metal contracting fields and provide the latest market data regarding the status of union-employing contractors in the three specialty trades.

Included in the CLRC findings:

- ◆ Mechanical, electrical and sheet metal contract work represents 25 percent of the total construction industry volume. General contractors represent a 30 percent share.
- ◆ Alliance contractors hold a market share of 60 percent for non-residential construction.
- ◆ Alliance contractors represent an increasingly larger share of industry employment. Some 540,000 union electricians, pipefitters, plumbers and sheet metal workers are employed through Alliance contractors. In the past 20 years, the union-employing contractors' portion of overall industry employment has risen **from** just under 25 percent to almost 30 percent.

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- ◆ Alliance contractors are training some 90,000 apprentices annually-a number **sufficient** to replace those leaving the industry or retiring, while also preparing for **continued** growth. The average Alliance craftworker works about 1800 hours per year-a number similar to that of the other full-time workers in the U.S.

In a joint statement, the Alliance noted that “This research clearly indicates that **union-**employing contractors’ craftsmen are better trained-and **equally** as competitive-as open shop contractors. **This** means that owners are able to make their contractor selections based on the most critical factor-Which contractor is best qualified to handle the project and perform in a cost-effective manner?”

The **Mechanical** Electrical Sheet Metal Alliance contractors are proud to be part of a group that provides high **quality**, cost-effective construction for the nation **utilizing** sound economic principles while at the same time maintaining a philosophy regarding safety, training and benefits for employees that contributes in a positive way to the future of this nation.

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# EXECUTIVE SUMMARY

The economic logic for prevailing **wage statutes** is as valid today as in the many decades since enactment — to take wage competition out of **the contract** bidding process and to emphasize **contractor** efficiency, worker skill and project quality. Created over one hundred years ago to prevent governments at all levels from having a negative impact on local **wages** and construction conditions, the various prevailing **wage** statutes keep **the** government from pushing down wages in a **competitive** bidding process.

As a primary purchaser of construction services, spending more than **\$60** billion annually, **state** and **federal governments** have the potential to **use** government monopoly **bargaining** power to **depress** local, state and national wage rates and **benefits** as well as disrupt prevailing working conditions and rules. Preventing these potential disruptions to prevailing **local** wages and practices has been **the** basic **purpose** behind a **century** of **beneficial** and **economically sound** prevailing **wage** statutes in **the United States**.

Key Facts for Emphasis and Discussion on **Local, State and Federal Prevailing Wage Statutes** are:

- Long before the **turn** of the century **prevailing wage** statutes were a widespread contracting practice by **state** and **local** governments. Requiring the payment of locally prevailing wages on government construction was common before the federal government adopted its **prevailing** wage law in 1931.
- **The** goal of government **when** procuring construction services should be to **seek** a neutral effect to the greatest extent possible on the local economy.
- The wages established for **each** government construction project are not **automatically** the union wage rate as more than **71 percent** of DOL **wage** determinations issued in 1994 were **based** upon non-union scales of labor.
- Construction industry injury rates in **the nine** prevailing **wage** law repeal states have risen by 15

percent since repeal occurred. Further the **rate** of **jobsite** injuries **decreases** substantially as **employee** **length of service** increases. **Skilled** trained **craft-**workers **have** substantially lower workforce **turnover** rates and lower injury rates.

- Minority participation in union-management **sponsored** training programs is **more** than **double** the participation rate in programs **sponsored** by non-union contractors and non-union contractor **organizations**.
- It is a myth that the repeal of prevailing **wage** statutes would lower black **unemployment relative** to white unemployment by opening up jobs for less skilled black labor. Therefore, it is no **surprise** that almost **all** groups **representing** minorities and women support prevailing **wage** laws.
- In **the** 9 states that **have** repealed prevailing **wage** laws **over the** past two **decades**:
  - Apprenticeship training opportunities were **reduced** by 40 percent and ultimately eliminated, forcing **government** to **establish** training **alternatives**.
  - **The** availability of skilled **workers** declined as **the** most qualified and productive **workers** abandoned construction for **higher** paying jobs in **other** industries.
  - Injuries and deaths increased in construction jobs as less **reputable** contractors and **more** unskilled high turnover workers **became** **involved**.
  - Workers' wages and **benefits** **declined** rapidly and severely.
- **The** Republican **created** federal statute received **renewed** support under President Dwight Eisenhower and his administration during **construction of the interstate** highway system.

laws. Florida, which passed its prevailing wage law in 1933, was the first state to repeal.

## THE FEDERAL STATUTE MIRRORS LOCAL AND STATE CONCERNS

In 1927 Representative Robert Bacon (R-NY) introduced legislation to require that locally prevailing wage standards be met in Federal construction projects of \$5,000 or more. The popularity of the legislation grew rapidly as in district after district traveling firms hiring unskilled laborers followed large government contracts to grossly underbid local contracting firms, suppliers and related businesses by underbidding locally prevailing wages in the larger metropolitan and suburban areas of the country. In his own district Representative Bacon testified that a major Federal project was lost to a non regional firm that trucked in over a thousand unskilled workers, housed them in squalid shacks and paid them substandard wages far below those prevailing for the locality, region or state. In Bacon's view, the least Government could do, when contracting, was "to comply with the standards of wages and labor prevailing in the locality where the building construction is to take place." His legislation did not seek to inflate wages artificially, but to assure that Government respected the existing local standards.

While Bacon's initial effort failed in its first year of introduction, it was reintroduced in 1928 with stronger backing from President Coolidge and the Secretary of Labor James J. Davis. The Department of Labor issued a statement in 1928 in strong support of prevailing wage laws asking, "is the Government willing for the sake of the lowest bidder to break down all labor standards and have its work done by the cheapest labor that can be secured and shipped from State to State?" Davis thought that the Federal government should not lower standards throughout the nation and when in 1930 he became a U.S. Senator from Pennsylvania the first bill he introduced in the Senate was the prevailing wage legislation. With the endorsement of the Hoover Administration, contracting industries and organized labor the bill passed on a unanimous consent motion and became law on March 3, 1931. A year later problems resulting from insufficient enforcement moved President Hoover to issue Executive

Order No. 5776 to establish penalties for ignoring the Act, to define worker classifications and to make payroll record keeping mandatory and open to inspection by government officials.

In 1935 Senator David Walsh (D-MA) conducted oversight hearings on the Act and led the effort to amend the law. The Davis-Bacon amendments, which were passed without discussion included:

- lowering the threshold to \$2,000 from \$5,000,
- expanding coverage to all Federal construction,
- providing for withholding of contractor funds to pay established wages left unpaid,
- requiring the Comptroller General to post a debarment list of firm violating the Act,
- providing employees a right of action and/or intervention,
- establishing predetermined wage rates for each classification.

The Act remained little changed or challenged until the 1950s when the Federal government began expanding its application to approximately 50 Federal programs and to more areas of government contracting. A Republican-created statute the Act received renewed support under President Dwight Eisenhower and his administration. Importantly, little objection was heard to the cost impact of Davis-Bacon Act as applied to the interstate highway program. The position of the Congress at that time was best stated by Representative Russell Mack (R-WA) on the House floor, "the Act simply keeps wages at the prevailing rate, it does not raise wages but it does prevent wage cutting and it is wage cutting and labor standard lowering that we wish to prevent."

## FRINGE BENEFIT COVERAGE

A major change occurred in 1964 when the Congress expanded the coverage of Davis-Bacon to include fringe benefits. It was argued that absent a requirement to include prevailing fringe benefits as well as prevailing wages the law would allow contractors to

# THE NEED FOR PREVAILING WAGE STATUTES

The purpose of prevailing wage statutes is to take wage competition out of the contract bidding process and to emphasize contractor efficiency, worker skill and project quality. Created to prevent governments at all levels from causing a negative impact on local wages and construction conditions, the various prevailing wage statutes disallow the government from pushing down wages in a competitive bidding process. As a primary purchaser of construction services, the state and federal governments hold the potential to use monopoly bargaining power to force down local, state and national wage rates, benefits and disrupt prevailing working conditions and rules. This potential harm to prevailing local wages and practices is the major reason behind the more than 100 years of prevailing wage statutes in the United States.

The Tenth Amendment to the Constitution restricts the ability of the Federal government to dictate contract terms for the states. Therefore, state work does not come under the Federal prevailing wage law. If the states desire prevailing wage legislation, it must be enacted through state legislation.

The major points for retaining and enforcing prevailing wage statutes include:

- maintaining fair wage and benefit levels,
- encouraging quality training programs, and
- quality construction.

## WAGES AND BENEFITS

Government has the ability as the primary purchaser of construction services to drive down wage and benefit levels below those prevailing on average in localities. This is also true of state government and to a lesser extent local government procurement decisions. For more than a century the state and local governments

have been prevented from using the tax dollars of state and local citizens to drive down the wages of taxpayers in the community where the construction project is located. When government enters the construction markets through government-funded contracts, its monopoly power if misused may depress the market for wages, benefits and related market factors unfairly and disrupt the local economy for suppliers and a wide range of construction related firms. The goal of the government when procuring construction services should be to seek a neutral effect to the greatest extent possible on the local economy.

The prevailing wage laws in the states and localities, as well as at the federal level,

achieve this goal not by setting specific wage levels; but by providing that contractors must base their bids upon a level of wages and fringe benefits that are typical to the local area, set through private-sector market forces. In this way, all contractors bid for government funded projects based upon a common labor cost, and competition is focused upon management, quality, timeliness and productivity. This is fair to workers, contractors, the government and the communities where the construction is located.

The wages established for each government construction project are not automatically the union wage rate but result from the government survey of the typical wages and benefits paid for construction work in each community regardless of whether those workers are union members. According to the Department of Labor, more than 71 percent of wage determinations issued in 1994 were based upon non-union scales of labor, a union wage only prevails if most construction workers in a community are union members. This is most common in the area of heavy and highway construction, where the majority of workers are covered by collective bargaining agreements.

John T. Dunlop, Ph.D., Secretary of Labor under President Ford and Harvard University professor, has concluded after decades of study, that paying prevailing wages on government construction projects is at least neutral with respect to costs. The nation's preeminent economist on construction, Dunlop has observed that productivity is so much greater among high-wage, high-skill workers that often projects using such workers cost LESS than

construction fell by more than half in the nine states that repealed their prevailing wage laws. States that retained their prevailing wage laws did not lose ground in apprenticeship training and states that never had prevailing wage laws had relatively low training rates in construction throughout the period.

The repeal of prevailing wage laws had the effect of reducing training and retraining as well as directly hindering the formation of a skilled labor force. When unions declined in the wake of repeal, only state government could have picked up the pieces of first rate apprenticeship training programs. The cost of expanded state-financed, government administered vocational training is a substantial but hidden cost of repealing prevailing wage laws. So far, it is a hidden cost that few repeal states have been willing to pay.

Dr. Bernard Anderson, Assistant Secretary of Labor, for Employment Standards Administration testified before the U.S. Senate February 15, 1995 that prevailing wage laws encourage apprenticeship training by awarding contracts to firms with skilled training program and by creating a financial incentive for contractors to fund and support apprenticeship training by allowing them to pay employees in registered apprenticeship programs less than the prevailing wage otherwise required for the job. Significantly, to the extent repeal of prevailing wage law would diminish support for apprenticeship programs, it would also limit a vehicle which has been used increasingly by women and minorities to gain access to skilled and relatively high-paying construction jobs.

Dr. Anderson testified that without the prevailing wage statutes, it may be significantly more difficult to maintain a sufficient pool of skilled construction workers in this country. This is in contrast to the direction we should be heading in this time of growing global competition and increased demand for high-skilled workers.

In the 9 states where prevailing wage laws have been repealed, the availability of skilled workers has declined as the most qualified workers abandoned construction for higher paying jobs in other industries. More importantly, apprenticeship training opportunities were reduced and ultimately eliminated due to a government preference for low bid contractors most frequently cutting costs by offering meager if any apprenticeship

training, health benefits and pension plans. The number of contractors providing training, health and retirement benefits declined rapidly and severely after state prevailing wage repeal action. The negative impact on training is illustrated by the fact that in states without prevailing wage laws a low apprentice-to-journeyman ratio is the norm. In addition, workplace injuries and deaths increased on repeal state construction projects as unskilled, untrained workers replaced a skilled workforce, educated on workplace safety and health, in certified training programs.

The results of a recent study of unionized construction in the mechanical/electrical and sheet metal contracting fields demonstrate the over reliance the construction industry has on union-management training to provide a skilled workforce. Just three union-management training efforts train more than 90,000 apprentices annually - a number sufficient to replace those leaving the industry or retiring, while also preparing for continued growth. The Mechanical/Electrical/Sheet Metal Alliance, representing the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA) and the Sheet Metal & Air Conditioning Contractor National Association (SMACNA) is composed of contractor members making expenditures of \$175 million annually for apprenticeship and journeymen upgrade training. The contract work done by these Alliance member firms represent 25 percent of the total construction industry volume and 60 percent of non-residential construction.

A recent study by the Bureau of Labor Statistics (BLS) '1993 Survey of Employer-Provided Training' also supports with documentation the dominant role union Alliance contractors play in training a skilled industry workforce. The survey of Alliance industry local labor-management joint apprenticeship training committees (JATC) revealed that the JATCs have more than \$62 million invested in training schools and equipment.

The BLS survey findings indicated that only 60 percent of all construction establishments provided formal training of any kind in 1993, ranking behind establishments in finance, insurance and real estate, where roughly 75 percent of all establishments provided training.



While according to a recent BLS report nearly 100 percent of union Alliance contractors provide safety and health training to their employees, less than a third of all construction industry firms do like wise. This statistic helps explain the large differences in safety and productivity of the union Alliance contractor on public or private work. Increased injury rates lead to increased costs for contractors, who must pay higher worker's compensation premiums. And, as consumers of construction services, local, state, and federal governments pay a share of those higher worker's compensation premiums.

### MINORITY PARTICIPATION IN APPRENTICESHIP PROGRAM TRAINING

Concerning the participation of women and minorities in construction apprenticeship and training programs, studies demonstrate that repealing prevailing wage laws will be most harmful to just these industry workers. GAO found that "since 1973, the proportion of minorities in apprenticeship programs has risen by nearly 50 percent to 22.5 percent of apprentices... about the same as their representation in the labor force." Minority participation in union apprenticeship programs — the surest route to high-wage, high-benefit construction work — is "substantially higher" than non-union programs "both in terms of percentages and absolute numbers," according to a study by Dr. Clinton C. Bourden of Harvard and Dr. Raymond E. Levit of MIT. Further, the proportion of minority graduates of union apprenticeship programs is even higher because more minorities (and non-minorities) drop out of non-union programs.

According to the Department of Labor, in 1991 the percentage of minorities employed by contractors working on federally-funded projects was higher than the percentage of minorities employed by non-federal contractors in high-skilled classifications covered by Davis-Bacon: craftworkers, operators and laborers.

Over 95 percent of all minority graduates of government registered apprenticeship training programs are found in union contracting firms. Minority participation in union-management sponsored training programs is more than double the participation rate in

programs sponsored by non-union contractors and non-union contractor organizations.

Former Secretary of Labor, John T. Dunlop, Ph.D., noted the essential role of certified apprenticeship and training programs — and implicitly warned of the risks of repeal of prevailing wage laws — when he said:

*My experience teaches that formal training programs are essential to recruit and train minorities for the construction industry. Indeed, this is how progress has been made. Over the past decade, substantial progress has been made in recruiting minorities and now women into the ranks of the trades and also in placing them into bona fide craft apprentice programs. That system deserves the support of our government.*

Without prevailing wage protections, unscrupulous contractors will underbid legitimate business people by hiring workers at rock-bottom wages and having them do work that should be done by apprentices and fully-skilled craftspersons. The result, Dr. Dunlop maintains, is that

*minorities and women who have achieved employment in the building trades and are currently enrolled in bona fide craft apprentice programs will be replaced with lower paid and untrained worker.*

Before the nine states repealed their prevailing wage statutes, participation by minority group members — male and female non-whites — in construction apprenticeships mirrored the minority populations in each state.

In the repeal states before the repeal of their prevailing wage laws, minorities accounted for almost 20 percent of all construction apprentices. After repeal, minority participation fell to 12.5 percent of all construction apprentices. Thus, after these repeals, minorities became significantly under-represented in construction apprenticeships.

One reason for this decline is that union apprenticeship programs usually enrolled dozens of apprentices. Non-union apprenticeship programs tied to single employers tended to be smaller, often involving no more than one, two, or three apprentices. Affirmative

action and increased automation efforts.

Cost overruns are a hidden cost of repealing prevailing wage laws. In Utah, the overruns resulted from an over-heated bidding process in which contractors, uncertain about each other's labor costs and confronted with the entry of many start-up construction companies, shaved their bids in a desperate effort to obtain government contracts. After the repeal, winning bids on state jobs came in lower than ever before, but the final job costs were a higher percentage of original estimates than ever before. Having underbid jobs, contractors and subcontractors would arrange change orders to get the jobs done or simply walk away from badly underbid jobs and leave the state to pick up the pieces. In Utah, cost overruns on the construction of state roads tripled in the 10 years after repeal, compared with the 10 years before.

Therefore low bid, low wage government procurement does not automatically and proportionately translate to contract savings as claimed by those seeking repeal of prevailing wage statutes. For example, if someone is paid half the wage previously paid someone else, but the person takes twice as long to do the job, using the low wage worker you haven't saved a penny. And if the job is done so poorly that it requires hiring someone else to bring it up to standard, costs are more, not less.

Repeated studies have proven that there is a direct correlation between wage levels and productivity - that well-trained workers produce more value per hour than poorly trained, low-wage workers. For example, a recent study of 10 states where nearly half of all highway and bridge work in the U.S. is done showed that when high wage workers were paid double that of low-wage workers, they built 74.4 more miles of roadbed and 32.8 more miles of bridges for \$557 million less.

Furthermore, most analyses fail to take into account the spin-off economic impact of maintaining prevailing wages. When workers' income goes down, they have less money to spend purchasing goods and making investments. When businesses close or cut back as a result, tax revenues to the federal government decline and social expenditures rise. When construction projects go to outside firms undercutting local prevailing wages and benefits, community and state economies are harmed. It is simply questionable economics to assume that driving wages and benefit standards

down will be of any benefit in increasing construction productivity, reducing government construction costs or in stimulating local economies.

Prevailing wage laws promote productive investment in human capital and in quality infrastructure construction. As the Wall Street Journal and the Business Roundtable recently noted, there are severe shortages of skilled work in construction in many areas of the country. When wages are cut, the industry's ability to attract and afford to train qualified individuals to work in high quality construction projects is hindered.

Quality high productivity construction results only when workers are well trained in their skill specialty. It takes a significant financial commitment to training, schooling and apprenticeship to gain proper experience. Studies and jobsite experience provide evidence that prevailing wage statutes assure the government of higher quality construction services as employers who are required to pay at least the locally prevailing wage are likely to hire more competent and productive workers. This results in better workmanship, less waste, reduced need for supervision, and fewer mistakes requiring corrective action. This also may lead to fewer cost overruns and more timely completion of public construction — and, in the long-term, lower rehabilitation and repair needs.

In addition, prevailing wage laws deter contractors from fragmenting construction tasks to utilize low-wage, and low-skill or pick-up crews. This could result in a trade-off of long-term social benefits for short-term profits. Without prevailing wage statutes and in the absence of a collective bargaining agreement, contractors would not be likely or financially able to provide training, whether formally through a certified program of certified apprenticeship training or through an uncertified program. Rapid technological advances in construction equipment, materials and design processes have also increased the need for quality-based skill training of construction employees. Prevailing wage laws support quality training programs designed to meet the high skill needs of the future construction marketplace. By supporting local and state prevailing wage standards, government procurement supports a properly functioning labor market where contractors compete over more efficient management techniques and quality construction rather than low contract bids.

# CONCLUSION

The economic logic for prevailing wage statutes is as valid today as in the many decades since enactment — to take wage competition out of the contract bidding process and to emphasize contractor efficiency, worker skill and project quality. Created over one hundred years ago to prevent governments at all levels from having a negative impact on local wages and construction conditions, the various prevailing wage statutes disallow the government from pushing down wages in a competitive bidding process in order to “level the playing field” between a wide variety of bidders. In the 9 states that have repealed prevailing wage laws over the past two decades:

- Apprenticeship training opportunities were reduced by 40 percent and ultimately eliminated; forcing government to establish training alternatives,
- The availability of skilled workers declined as the most qualified and productive workers abandoned construction for higher paying jobs in other industries,
- Injuries and deaths increased in construction jobs as less reputable contractors and more unskilled high turnover workers became involved,
- Workers’ wages and benefits declined rapidly and severely.

As a primary purchaser of construction services, spending more than \$60 billion annually, state and federal governments have the potential to use government monopoly bargaining power to depress local, state and national wage rates, and benefits as well as disrupt prevailing working conditions and rules. Preventing these potential disruptions to prevailing local wages and practices has been the basic purpose behind a century of beneficial and economically sound prevailing wage statutes in the United States.

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