HR 5627

FLANNERY: A number of listeners may not be familiar with the Davis-Bacon Act. We might well begin, therefore, Congressman Fogarty, by your telling us what it provides.

FOGARTY: This act seeks to protect workingmen in the construction industry from having their wages driven below the prevailing level in the area, by contractors who had been awarded Federal construction contracts because they had based their bids on substandard wage scales.

Under the Davis-Bacon Act, as originally conceived, rival contractors could bid against each other because of their efficiency, management ability and skill -- but not in terms of wage scales. They could not compete for Federal construction contracts at the expense of human beings and their families.

FLANNERY: How is the prevailing wage which must be a part of a contractor's bid determined?

FOGARTY: The Secretary of Labor is given authority under Davis-Bacon to determine the wage paid to workers on similar construction in the city, town, village or other civil sub-division of the State . . . in which the work is to be performed.

FLANNERY: Congressman Halpern, when did the Davis-Bacon Act become law?

HALPERN: In 1931. It was amended in 1935.

The date of the enactment is significant so far as Republicans are concerned, since the Republican Administration of Herbert Hoover was in charge of the executive branch of the government at that time. One of the authors of the bill, Congressman Robert Bacon from my State

of New York, said in 1927 when he was working to get the proposal enacted:

"I went to cite the specific instance that brought this whole matter to my attention. The Government is engaged in building in my district a Veterans' Bureau hospital. Bids were asked for, several New York contractors bid, and in their bids, of course, they had to take into consideration the high labor standards prevailing in the State of New York. . . . The wages (in the State) are fair, and there has been no difficulty in the building trades between the employee and employer in New York for some time. . . . The New York contractors made their bid, having the labor conditions in mind. The bid, however, was let to an out-of-State contractor and some thousand out-of-State workers were brought to New York. They were hired into this job, they were housed, and they were paid a very low wage. . . . Of course this meant that labor conditions in this part of New York State . . . were entirely upset. It meant that the neighboring community was very much upset."

This Act not only protects the workers in a locality, but also employers in the construction industry against the unfair competition of unscrupulous contractors. It protects the community, which can be substantially hurt by having workers lose their jobs and high standards upset.

FOGARTY: It is also worthwhile to point out that the original act had a definite bi-partisan form, since Davis-Bacon was not only passed during a Republican Administration, but worked out and determined in its present form under a Democratic Administration -- that of President Franklin D. Roosevelt in 1935. In its present form, the Act requires contractors and subcontractors to pay the

prevailing wage to workers on Government construction contracts amounting to $2,000 or more.

The provisions of the Act have been extended in recent years to apply to a number of federal-grant-in-aid programs, such as the federally impacted areas school programs, Hill-Burton hospital construction, the Federal interstate highway and airport programs, the water pollution control program and the National Housing Act.

The theory behind the law is that public money should not be used to take away jobs of local workers or lower their standards, to injure qualified fair contractors and the communities in which the buildings, highways or airports are constructed.

The basic principle of the Act is sound. It does not raise wages. It protects the local prevailing wage structure from being undermined.

FLANNERY: Why are changes proposed in the Act now, Congressman Halpern?

HALPERN: Because of changing conditions in the construction industry. Since 1935, the Secretary of Labor has been authorized to determine the basic hourly wage rate as the prevailing wage in a locality. However, the basic hourly wage rate falls far short today of reflecting the actual hourly labor costs on construction jobs. That's because collective agreements in the building industry today cover many fringe benefits such as health and welfare insurance and retirement plans. The cost of these fringe benefits is just as much a part of the employer's labor costs as are the hourly rates of pay. And the fair employer who pays these fringe benefits would be subject to unfair

competition for Government contracts if he were to be subject to the hazard that some contractor from another part of the country who did not pay such benefits could thereby underbid him. The whole purpose of Davis-Bacon would be defeated. A fair local contractor, the workers in an area with fair labor standards and the community would suffer because of an outside employer who brings in cheap labor.

FLANNERY: Wouldn't you say, Congressman Fogarty, that since these fringe benefits are obtained by workers in so many industries today in addition to the building trades that amendment of the Act today is important beyond the one group of workers?

FOGARTY: Definitely. Group hospitalization, disability benefits, pension fund, supplementary unemployment funds and so on -- the rare exception in the 1930's -- are in almost all labor contracts today. More than 85 million persons in the United States depend upon the benefits they provide. On the other hand, the employer's share of the cost of these plans is a definite part of compensation, and should be reckoned. Testimony before the Labor Committee has shown that failure to include the fringe benefits as a part of prevailing wage determinations has resulted in a recurrence of the basic evils that the original Davis-Bacon Act was set up to eliminate.

Today, in the construction industry alone there are over 5,000 welfare and pension funds. At the present time, in many areas, employers contribute 25 to 35 cents an hour to these funds -- including one we haven't mentioned so far -- those for apprentice training. Also, the amount paid out by the employer into fringe benefit funds is steadily increasing.

These socially desirable welfare programs promote the welfare of our whole society and I don't think it can be said too emphatically that they should be included within the prevailing wage determinations made by the Secretary of Labor.

HALPERN: The idea of including fringe benefits within the definition of "wage" is not new. My own State of New York has such a provision in its law. So do Massachusetts and California. However, as we all realize, this puts these states at a disadvantage with other less progressive states.

I might add to what my colleague has said the fact that in the plumbing and pipe fitting unions alone of the construction industry the U.S. Department of Labor found fringe benefit funds in more than 68 of 100 cities surveyed. Payments to these funds run as high as 46½ cents per straight-time hour or as high as 12 percent of the basic hourly wage. Other crafts in other cities have negotiated even higher payments.

This means that employers in an area paying 12 percent an hour more to their workers because of fringe benefits are forced to figure on these costs, and they are at an impossible competitive advantage when forced to figure against an outsider who doesn't pay such benefits. Under the proposed amendment, all bidders would figure on the basis of the same labor cost.

FLANNERY: As I understand it, Congressman Fogarty, another development of the day makes it advisable for a further amendment of the Davis-Bacon Act.

FOGARTY: Yes, that's right. It used to be that the Post Office Department constructed its own post offices and other buildings -- or at least arranged its own contracts with contractors. Some buildings were erected under lease-purchase agreements. Today, however, both of these operations have been abandoned. The Post Office Department now arranges for a straight lease of buildings erected by private builders. And as the law is now written these private builders do not have to pay their workers the prevailing wage. Obviously this is the kind of situation that also violates the basic purpose of the Davis-Bacon Act, and in my opinion, it must be corrected.

HALPERN: This is another important amendment, as I see it, because the Post Office Department has the biggest building operation in progress so far as any Department of the Government is concerned. In 1960, the Post Office Department made lease contracts for 1,666 new buildings, and in 1961, it constructed 1,904 new buildings under lease arrangements. This means billions in contracts.

FLANNERY: What are the chances for passage, Congressman Fogarty?

FOGARTY: Good, I think, once we get it on the floor. We are late in the session, but this is urgent. Our United States economy has been the marvel of the world. We have led everyone in standard of living, and we cannot afford to endanger or even destroy these high standards. Congress has the responsibility in this case to protect these standards. To that end, amendment of Davis-Bacon is necessary.

HALPERN: The amendments have the approval of experts in labor-management relations, and I feel sure they are necessary not only to

persons in the construction industry, but to the whole country. We must never forget that the construction industry is such a large part of our economy that what affects it affects the nation.

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