UNITED STATES SENATE
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Larry E. Craig, Chairman
Jade West, Staff Director

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***Exploiting Tragedy***

# Democrats' Davis-Bacon Grab Would Mean Less Money for Security, Disaster Relief

Senator Lieberman's substitute amendment (#4471) to the "National Homeland Security and Combating Terrorism Act of 2002" (H.R. 5005) would expand the 1931 Davis-Bacon Act to apply it to a long list of existing government agencies, any new programs later created under the new Department of Homeland Security, and any state and local projects partially funded by either. In so doing, it would siphon hundreds of millions of dollars away from homeland security and would further entrench a wasteful and racially discriminatory law.

The Davis-Bacon Act needlessly inflates the cost of federal construction projects by requiring contractors to pay above-market wages. While Davis-Bacon ostensibly claims to require that the minimum wage to be paid for each type of work on federal construction be the local "prevailing wage" for that job, the federally mandated wage is usually much higher. Onerous administrative requirements also prevent small businesses – disproportionately minority-owned and minority-staffed – from bidding on and winning public works contracts.

As a result, taxpayers pay a "Davis-Bacon surcharge" of as much as 38 percent. The nonpartisan Congressional Budget Office (CBO) estimates Davis-Bacon will cost taxpayers $10.5 billion over the next ten years. By expanding Davis-Bacon, Senator Lieberman's substitute will mean less money for homeland security and for recovery from terrorist attacks and national disasters.

## Strategic Ambiguity?

Perhaps supporters were hoping no one would notice. Or that their designs would be underestimated. Section 194 of the Lieberman substitute reads in part:

> "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.)."

At best, the phrase "assistance received under this act" is ambiguous. Some posit it means that only those agencies *created* by the bill would be subject to Davis-Bacon. Others argue it would apply Davis-Bacon to all agencies under the purview of the new Department of Homeland Security, including 22 existing agencies that would be transferred there.

Assuming the first interpretation is correct, Section 194 still would be an unprecedented expansion of Davis-Bacon. Under current law Congress must specifically authorize any expansion of Davis-Bacon's reach. Section 194 would reverse this *status quo* by automatically applying Davis-Bacon to every additional agency created under the new Department of Homeland Security. This alone would be a major coup for the special interests (unions and large union contractors) who benefit from Davis-Bacon.

However, a more reasonable interpretation is that Section 194 would include this reversal *and* apply Davis-Bacon to the 22 existing programs that would be subsumed under the new Department. Because these existing agencies would receive and expend future appropriations under the auspices of "this Act," it is almost certain their funding would be considered to be "received under this Act." This expansion would be both unprecedented and breathtaking.

Unfortunately, the Senate Governmental Affairs Committee has produced no report language to accompany Section 194. This may have been inadvertent. Nonetheless, the non-partisan Congressional Research Service (CRS) laid out both positions and concluded [emphasis in original],

> "[I]f locally prevailing wages were to be paid only on construction projects related to the new programs, alternate language could have been used. Section 194 could have specified construction work financed in whole or in part with assistance *authorized* under the Act rather than assistance *received* under the Act. . . . If section 194 is meant to apply only to construction related to the new programs authorized by the proposal, language that specifies the use of assistance authorized by the proposal may be appropriate."

Senators and the public therefore must assume Section 194 would apply Davis-Bacon wage requirements to all agencies either transferred to the Department of Homeland Security or created under it.

## An Unprecedented and Breathtaking Expansion

The list of agencies that would be transferred to the new Department of Homeland Security includes:

- The Federal Emergency Management Agency
- The United States Customs Service
- The United States Coast Guard

- The law enforcement components of the Immigration and Naturalization Service Relating to Border Patrol, Inspections, Investigations, Intelligence, Detention and Removal and International Affairs
- The Animal and Plant Health Inspection Service of the Department of Agriculture
- The Critical Infrastructure Assurance Office of the Department of Commerce
- The National Infrastructure Protection Center of the FBI
- The National Domestic Preparedness Office of the FBI
- The National Communications System of the Department of Defense
- The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce
- The National Infrastructure Simulation and Analysis Center of the Department of Energy
- The Federal Computer Incident Response Center of the General Services Administration
- The Energy Security and Assurance Program of the Department of Energy
- The Federal Protective Service of the General Services Administration
- The Federal Law Enforcement Training Center of the Department of the Treasury
- The Transportation Security Administration
- The National Institute of Standards and Technology of the Department of Commerce
- The Office of Domestic Preparedness of the Department of Justice
- The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services
- The Strategic National Stockpile of the Department of Health and Human Services
- The Select Agent Registration Program
- The U.S. Secret Service

Supporters of Davis-Bacon would never attempt such a broad and costly expansion outright. Instead, they smelled opportunity in an urgently needed bill that affects an array of government agencies. By inserting a few lines, they now seek to achieve what they would not have even attempted absent so important a vehicle. The fact that this expansion would deprive the nation of funding for national security and disaster relief makes this power-grab particularly shameless.

## Cutting Terrorism, Disaster Relief

Currently, construction related to emergency preparedness is the only Federal Emergency Management Agency (FEMA) activity subject to Davis-Bacon. Section 194, however, would subject all $2 billion of FEMA disaster relief funds to Davis-Bacon. According to the Administration, this would increase disaster relief costs by $200 million to $400 million. Thus Section 194 would take millions of dollars directly away from federal reconstruction efforts after terrorist attacks and natural disasters.

In particular, the Lieberman amendment would severely cut aid to Americans trying to rebuild their homes in the wake of hurricanes, tornadoes, or floods. FEMA provides such grants to individuals whose homes are destroyed by natural disasters. Section 194 would force these homeowners to spend up to 38 percent more on labor costs than they would otherwise. Because grant amounts are fixed, these disaster victims would be forced to make up the difference out of their own pockets.

## "Unsound . . . Extraneous . . . Irresponsible"

The Bush Administration has voiced its opposition to Section 194 repeatedly. Its Statement of Administration Policy on the Senate homeland security bill notes,

> ". . . the bill also contains numerous other provisions that the Administration does not support, either because they represent unsound policy choices or because they are extraneous to the central purpose of the bill and should not be addressed through this legislation. These provisions include the first ever blanket expansion of Davis-Bacon wage guarantees to an entire department where instead existing law should control . . ."

In briefing materials provided to Members of Congress, the Administration writes,

> "Section 194 would be the first ever blanket expansion of Davis-Bacon to an entire department. . . . Any future construction grant-making program created for the new Department will automatically be subject to Davis-Bacon. This is unprecedented. The creation of a new Department of Homeland Security should not be used as an opportunity to make major change and expansion in Davis-Bacon policy. Section 194 should be stricken."

Finally, in a letter to Majority Leader Daschle, presidential Homeland Security Advisor Tom Ridge writes that Section 194 is "an unprecedented expansion of Davis-Bacon that is not only fiscally irresponsible, but also would threaten to undermine future disaster relief efforts. . . . The Administration is strongly opposed to the inclusion of this provision."

## Homeland Security Demands Removal of Section 194

That Senate Democrats want to waste taxpayer dollars is troubling enough. That they would deliberately siphon off money dedicated to homeland defense and disaster recovery – leaving Americans less equipped to combat and recover from acts of terrorism – is intolerable. There hardly could be a clearer case of subverting the public good to a private interest. Section 194 should be removed.

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RPC staff contact: Michael F. Cannon, 224-2946