

117TH CONGRESS
2D SESSION

S. 3941

To amend subchapter IV of chapter 31 of title 40, United States Code, regarding prevalent wage determinations in order to expand access to affordable housing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2022

Mr. THUNE (for himself and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend subchapter IV of chapter 31 of title 40, United States Code, regarding prevalent wage determinations in order to expand access to affordable housing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Housing Supply Ex-
5 pansion Act”.

6 **SEC. 2. UPDATES TO WAGE RATE CALCULATIONS.**

7 (a) IN GENERAL.—Section 3142(b) of title 40,
8 United States Code, is amended by inserting “or from geo-

1 graphic groupings other than civil subdivisions of the
 2 State (which may include metropolitan statistical areas or
 3 other groupings determined appropriate by the Sec-
 4 retary)” after “in which the work is to be performed”.

5 (b) CHANGES TO SURVEY METHODOLOGY.—Section
 6 3142 of title 40, United States Code, is amended by add-
 7 ing at the end the following:

8 “(f) SURVEY INFORMATION COLLECTION.—By not
 9 later than 1 year after the date of enactment of the Hous-
 10 ing Supply Expansion Act, the Secretary shall—

11 “(1) review the Secretary’s method of collecting
 12 survey information for determining prevailing wages
 13 for purposes of subsection (a); and

14 “(2) revise how such survey information is col-
 15 lected, following a public notice and opportunity for
 16 public comment, by—

17 “(A) including surveys that allow for reli-
 18 able and objective sources of data and a defend-
 19 able methodology, which may include informa-
 20 tion collected through Bureau of Labor Statis-
 21 tics surveys; and

22 “(B) improving the percentage of busi-
 23 nesses choosing to participate in prevailing
 24 wage determination surveys and ensuring pro-
 25 portional representation of businesses rep-

1 resented by labor organizations and businesses
 2 not represented by labor organizations in the
 3 prevailing wage determination surveys that are
 4 completed.”.

5 **SEC. 3. MULTIPLE WAGE RATE DETERMINATIONS.**

6 Section 3142 of title 40, United States Code, as
 7 amended by section 2, is further amended by adding at
 8 the end the following:

9 “(g) FEDERAL HOUSING ACTS.—A determination of
 10 prevailing wages by the Secretary of Labor applicable
 11 under section 212(a) of the National Housing Act (12
 12 U.S.C. 1715c(a)), section 104(b)(1) of the Native Amer-
 13 ican Housing Assistance and Self Determination Act of
 14 1996 (25 U.S.C. 4114(b)(1)), section 12(a) of the United
 15 States Housing Act of 1937 (42 U.S.C. 1437j(a)), or sec-
 16 tion 811(j)(5) of the Cranston-Gonzalez National Afford-
 17 able Housing Act (42 U.S.C. 8013(j)(5)) shall be limited
 18 to 1 wage rate determination under subsection (b) of this
 19 section that corresponds to the overall residential char-
 20 acter of the project.”.

21 **SEC. 4. DAVIS-BACON MODERNIZATION WORKING GROUP.**

22 (a) DEFINITION.—In this section, the term “Davis-
 23 Bacon Modernization Working Group” means the working
 24 group established under subsection (b)(1).

25 (b) ESTABLISHMENT.—

1 (1) IN GENERAL.—Not later than 60 days after
2 the date of enactment of this Act, the Secretary of
3 Labor, in consultation with the Secretary of Housing
4 and Urban Development, shall establish within the
5 Department of Labor, a Davis-Bacon Modernization
6 Working Group to recommend the update and mod-
7 ernization of certain requirements under subchapter
8 IV of chapter 31 of title 40, United States Code, as
9 described in subsection (c).

10 (2) DATE OF ESTABLISHMENT.—The Davis-
11 Bacon Modernization Working Group shall be con-
12 sidered established on the date on which a majority
13 of the members of the Davis-Bacon Working Group
14 have been appointed, consistent with subsection (d).

15 (c) DUTIES.—The Davis-Bacon Modernization Work-
16 ing Group shall—

17 (1) recommend whether, and if so by how
18 much, the residential classification can be applied to
19 affordable housing units with 5 stories or more for
20 purposes of prevailing wage determinations under
21 subchapter IV of chapter 31 of title 40, United
22 States Code;

23 (2) develop administrative and legislative rec-
24 ommendations of ways, and for what specific cir-
25 cumstances in which, the prevailing wage rate re-

quirements under subchapter IV of chapter 31 of title 40, United States Code, could be waived or streamlined for certain affordable rental Federal Housing Administration new construction projects; and

(3) review the potential positive and negative outcomes of directing the Bureau of Labor Statistics to determine prevailing wages (rather than the Secretary of Labor under section 3142(b) of title 40, United States Code), in a way that would not rely on the collection of voluntary surveys from businesses but rather on data that is already collected by the Bureau of Labor Statistics.

(d) MEMBERS.—

(1) IN GENERAL.—The Davis-Bacon Modernization Working Group shall be composed of the following representatives of Federal agencies and relevant non-Federal industry stakeholder organizations:

(A) A representative from the Department of Labor, appointed by the Secretary of Labor.

(B) A representative from the Department of Housing and Urban Development, appointed by the Secretary of Housing and Urban Development.

1 (C) A representative of a housing construc-
2 tion industry association, appointed by the Sec-
3 retary of Labor in consultation with the Sec-
4 retary of Housing and Urban Development.

5 (D) A representative of a financial services
6 industry association, appointed by the Secretary
7 of Labor in consultation with the Secretary of
8 Housing and Urban Development.

9 (E) A representative of an affordable hous-
10 ing industry association, appointed by the Sec-
11 retary of Labor in consultation with the Sec-
12 retary of Housing and Urban Development.

13 (F) A representative of a State public
14 housing agency, as defined in section 3 of the
15 United States Housing Act of 1937 (42 U.S.C.
16 1437a), appointed by the Secretary of Labor in
17 consultation with the Secretary of Housing and
18 Urban Development.

19 (G) A representative of a tribally des-
20 ignated housing entity, as defined in section 4
21 of the Native American Housing Assistance and
22 Self-Determination Act of 1996 (25 U.S.C.
23 4103), appointed by the Secretary of Labor in
24 consultation with the Secretary of Housing and
25 Urban Development.

1 (H) A representative of a labor organiza-
2 tion representing the housing construction
3 workforce, appointed by the Secretary of Labor
4 in consultation with the Secretary of Housing
5 and Urban Development.

6 (2) CHAIR.—The representative from the De-
7 partment of Labor appointed under paragraph
8 (1)(A) shall serve as the chair of the Davis-Bacon
9 Modernization Working Group, and that representa-
10 tive shall be responsible for organizing the business
11 of the Davis-Bacon Modernization Working Group.

12 (e) OTHER MATTERS.—

13 (1) NO COMPENSATION.—A member of the
14 Davis-Bacon Modernization Working Group shall
15 serve without compensation.

16 (2) SUPPORT.—The Secretary of Labor may
17 detail an employee of the Department of Labor to
18 assist and support the work of the Davis-Bacon
19 Modernization Working Group, though such a
20 detailee shall not be considered to be a member of
21 the Davis-Bacon Modernization Working Group.

22 (f) REPORT.—

23 (1) REPORTS.—Not later than 1 year after the
24 date on which the Davis-Bacon Modernization Work-
25 ing Group is established, the Davis-Bacon Mod-

1 ernization Working Group shall submit a report con-
2 taining its findings and recommendations under sub-
3 section (c), including recommendations resulting
4 from the review under subsection (c)(3), to the Sec-
5 retary of Labor, the Committee on Health, Edu-
6 cation, Labor, and Pensions of the Senate and the
7 Committee on Education and Labor of the House of
8 Representatives.

9 (2) MAJORITY SUPPORT.—Each recommenda-
10 tion made under paragraph (1) shall be agreed to by
11 a majority of the members of the Davis-Bacon Mod-
12 ernization Working Group.

13 (g) NONAPPLICABILITY OF FACA.—The Federal Ad-
14 visory Committee Act (5 U.S.C. App.) shall not apply to
15 the Davis-Bacon Modernization Working Group.

16 (h) SUNSET.—The Davis-Bacon Modernization
17 Working Group shall terminate on the date the report is
18 completed under subsection (f)(1).

19 **SEC. 5. NATIONAL HOUSING ACT.**

20 Section 212(a) of the National Housing Act (12
21 U.S.C. 1715c(a)) is amended by striking “similar char-
22 acter, as determined by the Secretary of Labor in accord-
23 ance with the Davis-Bacon Act, as amended (40 U.S.C.
24 276a—276a-5)” and inserting “residential character, as
25 determined by the Secretary of Labor in accordance with

1 subchapter IV of chapter 31 of title 40, United States
 2 Code, that is applicable at the time the application is
 3 filed”.

4 **SEC. 6. HOUSING ACT OF 1959.**

5 Section 202(j)(5)(A) of the Housing Act of 1959 (12
 6 U.S.C. 1701q(j)(5)(A)) is amended by striking “similar
 7 character, as determined by the Secretary of Labor in ac-
 8 cordance with the Act of March 3, 1931 (commonly known
 9 as the Davis-Bacon Act)” and inserting “residential char-
 10 acter, as determined by the Secretary of Labor in accord-
 11 ance with subchapter IV of chapter 31 of title 40, United
 12 States Code, that is applicable at the time the application
 13 is filed”.

14 **SEC. 7. NATIVE AMERICAN HOUSING ASSISTANCE AND**
 15 **SELF-DETERMINATION ACT OF 1996.**

16 Section 104(b)(1) of the Native American Housing
 17 Assistance and Self-Determination Act of 1996 (25 U.S.C.
 18 4114(b)(1)) is amended by striking “, as predetermined
 19 by the Secretary of Labor pursuant to the Act of March
 20 3, 1931 (commonly known as the Davis-Bacon Act; chap-
 21 ter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.),” and
 22 inserting “for corresponding classes of laborers and me-
 23 chanics employed on construction of a residential char-
 24 acter, as predetermined by the Secretary of Labor pursu-
 25 ant to subchapter IV of chapter 31 of title 40, United

1 States Code, that is applicable at the time the application
2 is filed”.

3 **SEC. 8. CRANSTON-GONZALEZ NATIONAL AFFORDABLE**
4 **HOUSING ACT.**

5 Section 811(j)(5)(A) of the Cranston-Gonzalez Na-
6 tional Affordable Housing Act (42 U.S.C. 8013(j)(5)(A))
7 is amended by striking “similar character, as determined
8 by the Secretary of Labor in accordance with the Act of
9 March 3, 1931 (commonly known as the Davis-Bacon
10 Act)” and inserting “residential character, as determined
11 by the Secretary of Labor in accordance with subchapter
12 IV of chapter 31 of title 40, United States Code, that is
13 applicable at the time the application is filed”.

14 **SEC. 9. UNITED STATES HOUSING ACT OF 1937.**

15 Section 12(a) of the United States Housing Act of
16 1937 (42 U.S.C. 1437j(a)) is amended by striking “, as
17 predetermined by the Secretary of Labor pursuant to the
18 Davis-Bacon Act (49 Stat. 1011)” and inserting “for cor-
19 responding classes of laborers and mechanics employed on
20 construction of a residential character, as predetermined
21 by the Secretary of Labor pursuant to subchapter IV of
22 chapter 31 of title 40, United States Code, that is applica-
23 ble at the time the application is filed”.

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