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# AMENDMENTS TO THE DAVIS-BACON ACT

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON LABOR  
OF THE  
COMMITTEE ON  
LABOR AND PUBLIC WELFARE  
UNITED STATES SENATE  
EIGHTY-EIGHTH CONGRESS  
SECOND SESSION

ON  
**S. 450 and H.R. 6041**

TO AMEND THE PREVAILING WAGE SECTION OF THE DAVIS-BACON ACT, AS AMENDED; AND RELATED SECTIONS OF THE FEDERAL AIRPORT ACT, AS AMENDED; AND THE NATIONAL HOUSING ACT, AS AMENDED

STATEMENTS SUBMITTED IN LIEU OF ORAL TESTIMONY

FEBRUARY 21, 1964

Printed for the use of the  
Committee on Labor and Public Welfare



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1964

PS C: 2/11 J. AY

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## AMENDMENTS TO THE DAVIS-BACON ACT

FRIDAY, FEBRUARY 21, 1964

U.S. SENATE,  
SUBCOMMITTEE ON LABOR OF THE  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
Washington, D.C.

**In lieu of oral testimony the following individuals and organizations submitted prepared statements and letters on S. 450 and H.R. 6041, and the chairman ordered them printed:**

PREPARED STATEMENT OF HON. WILLARD WIRTZ, SECRETARY OF LABOR

I am grateful for this opportunity to urge the approval of H.R. 6041, which was passed by the House of Representatives on January 28, 1964. H.R. 6041 would modernize wage standards on Federal and federally assisted construction work by including fringe benefits in prevailing wage determinations under the Davis-Bacon Act.

### PURPOSE OF THE DAVIS-BACON ACT

This legislation is essential if the underlying principle of the Davis-Bacon Act—that Federal funds should not be used to depress prevailing local wage standards on federally supported construction work—is to continue to have real meaning.

Prior to 1931 there was no prevailing wage protection for workers on Federal construction projects. However, the changing needs at that time required a revision of public policy, just as present circumstances also demand a revision. Large Federal construction programs were placing qualified local contractors in areas of high labor standards at a disadvantage because contractors who imported lower paid workers from other areas were able to underbid local contractors. The demand to prevent these abuses became more vocal as local contractors and local workers saw outside contractors and outside labor, working under locally substandard conditions, perform work which otherwise would have been theirs.

To curb these abuses Congress enacted the Davis-Bacon Act in 1931. As amended in 1935, the act requires that laborers and mechanics employed on direct Federal construction, alteration, or repair contracts be paid not less than the wage rate found by the Secretary of Labor to be "prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivisions of the State \* \* \* in which the work is to be performed."

With the development of Federal grant, loan and guarantee programs, the prevailing wage standards were extended from time to time to insure that public money would not be spent to depress the

locally prevailing wage structure. The Davis-Bacon Act and its related statutes thus afforded protection to federally assisted projects as well as projects under direct Federal contracts.

#### GROWTH OF WELFARE AND PENSION PLANS

In 1931, when the Davis-Bacon Act was passed, there were virtually no private welfare and pension funds to provide group life insurance, group hospitalization, disability benefits, and medical care and pensions. Since 1931 there has been a tremendous growth of these plans. They received their greatest impetus during World War II when they were frequently granted as a substitute for increases in cash wages which were prohibited or restricted under wage regulations of the National War Labor Board.

As you know, the rapid growth of welfare and pension plans was discussed at length in a report issued in 1958 by the Senate Committee on Labor and Public Welfare on legislation to require the reporting and disclosure of these plans. At that time, it was estimated that almost 85 million persons were relying on benefits from welfare and pension plans. At the present time, that figure has reached almost 110 million. As stated in the report: "Regardless of the form they take, the employers' share of the cost of these plans or the benefits the employers provide are a form of compensation."

The attached summary of a recent survey by the Department's Bureau of Labor Statistics illustrates the pervasiveness of employee-benefit plans in the construction industry. This survey, issued on February 12, 1964, contains information on employer payments to insurance and pension funds for seven building trades in 100 cities. Insurance payments covered by the survey include life insurance, hospitalization, and other types of health and welfare benefits. These employer payments range from 45 cents an hour for plasterers in New York to 7½ cents an hour for the same trade in Omaha and St. Louis; from 22 cents an hour in Los Angeles to 5 cents an hour in Baltimore for bricklayers; and from 41½ cents an hour in San Francisco to 7½ cents an hour in Houston for plumbers. Also included in this survey are insurance and pension, and vacation benefits negotiated by carpenters, electricians, painters, and building laborers unions.

It is clear that fringe benefit plans have become an integral part of the fabric of our modern industrial society, and that employer payments to these plans represent a firmly established wage custom and practice. For example, employers' share of the contributions to health and welfare benefit plans has increased from 47 percent in 1954 to 71 percent in 1961. Employers now finance 85 percent of the costs of retirement plans and almost all multiemployer and unfunded pension plans are financed entirely by employer contributions.

These benefit plans have been held to be bargainable issues by our courts in applying the National Labor Relations Act, requiring both parties to bargain collectively and in good faith on "wages, hours, and other terms and conditions of employment." It is also significant that the courts have held that an employer may be compelled to make payments he owes to a pension and welfare plan under the bonding provisions of the Miller Act.

## NEED FOR AND PROVISIONS OF BILL

Employers who now provide fringe benefits for their employees are subjected to unfair competition, in bidding for Government contracts, from employers who do not provide these socially desirable benefit plans which promote the welfare of our society in general as well as that of our workers. It is inherently unfair to penalize employers who show the greatest concern for the well-being of their employees.

The Davis-Bacon Act does not define the term "wages" as used in the act. Because of the act's requirement that wages be paid "unconditionally," the Department has not included in the term those fringe benefits to employees that are contingent in nature. Only fringe benefits unconditionally paid, such as some vacation allowances, have been considered wages. Therefore, additional legislation is needed to include these fringe benefits within "wages."

H.R. 6041 would define the term "wages" to include, in addition to the basic hourly rate of pay—

- (1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or third person pursuant to a fund, plan or program;

- (2) The rate of cost to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics under an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the employees affected.

Various types of fringe benefits, including medical or hospital care, pensions on retirement or death, unemployment benefits, life insurance and accident insurance, would be recognized. An employer could discharge his obligation under the law by—

- (1) Making payments in cash;

- (2) Making payments to a trustee or third person pursuant to a fund, plan or program; or

- (3) Assuming an enforceable commitment of the nature referred to above.

H.R. 6041 offers a reasonable and practical method of meeting the urgent need to include fringe benefits in Davis-Bacon wage determinations. This legislation must be adopted if the Davis-Bacon Act is to continue to protect local prevailing wage standards.

In closing, I would like to emphasize that the Department is constantly striving to improve the administration of the Davis-Bacon and related laws and recently issued regulations providing a number of particularly significant changes in this program.

In order that we may be in a better position to plan the wage determination program, and anticipate problem areas, the contracting agencies are being required to submit a general outline of their proposed construction programs at the beginning of each year.

The regulations now expressly provide for hearings to supplement the wage information received by the Department through the usual channels. They also provide a specific guarantee of access to information on which wage determinations or the debarment actions are based. These are important procedural devices affording interested parties a full opportunity to present their own views and rebut conflicting ones.

We have extended the effective date of the wage determinations and the period before the opening of bids in which modifications in wage rates need not be made, changes which will significantly improve the use of wage determinations.

Provision for area wage determinations, submission of enforcement reports only in cases where underpayments are willful or total more than \$500, and a flexible regulatory debarment period will also greatly improve the administration and enforcement of the act.

Finally, the Department has established a Wage Appeals Board to exercise the powers of the Secretary of Labor pursuant to Reorganization Plan No. 6 of 1950. The Board is given jurisdiction to decide appeals on wage determinations, debarments, disputes concerning the payment of prevailing wages or of the proper classification of workers and of the recommendations of Federal agencies for adjustment of liquidated damages assessed under the Contract Work Hours Act. In other words, the Board has jurisdiction over all the significant questions arising under these labor standards statutes which are within the jurisdiction of the Department of Labor.

I believe this Board offers the necessary procedural protections for interested parties, without impeding the operation of our construction programs. It will provide full and timely opportunity for aggrieved persons to obtain review of wage determinations and of our interpretation and application of various terms used in the act. I refer, for example, to the scope of the phrase "city, town, village," etc.—the so-called "locality" problem, the determination of what are "projects of a character similar" and the meaning of the phrase "employed directly upon the site of the work."

I would be greatly concerned that to go beyond the type of administrative review provided for through the Wage Appeals Board and provide for judicial review of wage determinations would result in insuperable practical problems which could impair the entire program.

AMENDMENTS TO THE DAVIS-BACON ACT

Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, Jan 2, 1964

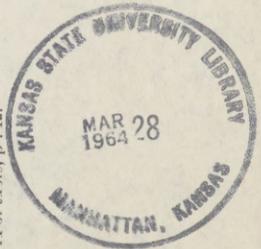
City	Bricklayers			Carpenters			Electricians			Painters		
	Basic scale 1	Employer contribution to fund		Basic scale 1	Employer contribution to fund		Basic scale 1	Employer contribution to fund		Basic scale 1	Employer contribution to fund	
		Insur- ance 2	Pension		Vacation pay 3	Insur- ance 2		Pension	Vacation pay 3		Insur- ance 2	Pension
Albuquerque, N. Mex.	\$4.500			\$4.000	7½¢		\$4.425			\$3.425		
Atlanta, Ga.	4.300			3.800			4.100	10¢	1%	4.000		
Baltimore, Md.	4.950	5¢	15¢	3.825	9¢		4.450	7½¢	1%	3.850	7½¢	
Birmingham, Ala.	4.400			3.650			4.200		1%	3.600		
Boise, Idaho	*4.950			3.700	10¢		4.250		1%	3.500		
Boston, Mass.	4.600	*20¢	15¢	*4.100	10¢	15¢	4.750	17¢	1%+10¢	3.875	12¢	10¢
Buffalo, N. Y.	4.505		12½¢	4.315	10¢	10¢	4.710	15¢	1%+10¢	3.925	17½¢	20¢
Burlington, Vt.	3.750			3.000			3.000			1.750		
Butte, Mont.	3.950			3.750			4.050		1%	3.500	10¢	
Charleston, S. C.	3.000			2.850			3.700		1%	(e)	(e)	(e)
Charleston, W. Va.	3.450			4.075			4.100	10¢	1%	3.375	(e)	(e)
Charlotte, N. C.	3.350			2.750			3.450		1%	(e)	(e)	(e)
Chattanooga, Tenn.	*4.950			3.700			4.000		1%	(e)	(e)	(e)
Cheyenne, Wyo.	4.950			3.400			4.300		1%	(e)	(e)	(e)
Chicago, Ill.	4.800	10¢	10¢	4.450	15¢	15¢	4.950	(e)	1%	4.000	17½¢	20¢
Cincinnati, Ohio	4.375	10¢		4.350			4.400	15¢	1%	3.750	14¢	12¢
Cleveland, Ohio	3.905	20¢	10¢	4.550	7 1/2¢	11¢	4.440		1%	4.115		
Columbia, S. C.	3.000			2.600			3.600		1%	2.600		
Columbus, Ohio	4.210	10¢		4.000			4.300		1%	3.400	12½¢	10¢
Dallas, Tex.	4.150	12½¢		3.850			4.050	7½¢	1%	3.663	10¢	
Dayton, Ohio	*4.505	8 1/2¢		*4.150	12¢		*4.350		1%	3.700	16¢	
Denver, Colo.	4.400			4.135			4.135		1%	3.750		
Des Moines, Iowa	4.525	8 1/2¢	15¢	4.300	12½¢	12½¢	4.275	15¢	1%	3.600	10¢	10 1/2¢
Detroit, Mich.	4.350	15¢	4%	4.400	15¢	6%	4.400	12¢	1%	3.800	15¢	20¢
Duluth, Minn.	*3.120	10¢		*3.600	10¢		*4.100	15 1/2¢	1%+10¢	3.500	10¢	10¢
El Paso, Tex.	4.075			3.620			3.620		1%	3.130		
Erte, Pa.	4.450	10¢		3.965	10¢		4.325		1%	3.550		

See footnotes at end of table, p. 12.



City	Bricklayers				Carpenters				Electricians				Painters			
	Basic scale 1		Employer contribution to fund		Basic scale 1		Employer contribution to fund		Basic scale 1		Employer contribution to fund		Basic scale 1		Employer contribution to fund	
	Insur- ance 2	Pension	Vacation pay 3	Insur- ance 2	Pension	Vacation pay 3	Insur- ance 2	Pension	Vacation pay 3	Insur- ance 2	Pension	Vacation pay 3	Insur- ance 2	Pension	Vacation pay 3	
Evansville, Ind.	\$4,250			10¢			\$3,150	1%		15¢			15¢			
Fargo, N. Dak.	4,150			8¢			3,370	1%		10¢			10¢			
Grand Rapids, Mich.	4,250		(†)	10¢			4,090	1% + 20¢		11¢			11¢			
Hartford, Conn.	4,400			10¢			4,550	1%		2%			15¢		10¢	
Houston, Tex.	4,400			15¢			4,205	1%		7½¢			7½¢			
Indianapolis, Ind.	4,510			7½¢			4,400	1%		2%			22½¢			
Jackson, Miss.	3,750			10¢			3,800	1%		10¢			10¢			
Jacksonville, Fla.	3,900			10¢			4,100	1%		10¢			10¢			
Kansas City, Mo.	4,400			10¢			4,025	1%		10¢			10¢			
Knoxville, Tenn.	4,225			10¢			3,900	1%		10¢			10¢			
Las Vegas, Nev.	4,340			10¢			4,680	1%		10¢			10¢			
Las Vegas, Nev.	4,830			15¢			4,270	1%		11¢			12¢		(†)	
Little Rock, Ark.	4,150			10¢			3,860	1%		10¢			10¢		25¢	
Los Angeles, Calif.	4,475			12½¢			3,500	1%		13¢			12½¢			
Louisville, Ky.	4,255			22¢			3,925	1%		10¢			10¢		7¢	
Madison, Wis.	4,200			14½¢			4,300	1%		10¢			10¢			
Manchester, N. H.	4,300			12½¢			4,340	1%		10¢			10¢			
Memphis, Tenn.	4,550			15¢			3,800	1%		10¢			10¢			
Miami, Fla.	3,970			10¢			4,100	1%		8¢			15¢			
Milwaukee, Wis.	4,260			10¢			4,170	1%		12¢			10¢		10¢	
Minneapolis, Minn.	4,125			15¢			4,100	1%		4%			15¢		(†)	
Mobile, Ala.	4,535			15¢			4,375	1%		1%			15¢			
Montgomery, Ala.	3,000			15¢			3,450	1%		1%			10¢			
Nashville, Tenn.	4,000			15¢			3,900	1%		10¢			10¢			
Newark, N. J.	4,150			20¢			5,000	1%		4%			25¢		20¢	
New Haven, Conn.	4,350			10¢			4,400	1%		10¢			10¢		15¢	
New Orleans, La.	4,050			7½¢			4,175	1%		10¢			10¢		4 15¢	

See footnotes at end of table, p. 12.



## Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, Jan. 2, 1964—Con.

City	Plasterers			Plumbers			Building laborers			
	Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		
		Insur- ance <sup>2</sup>	Pension		Vacation pay <sup>3</sup>	Insur- ance <sup>2</sup>		Pension	Vacation pay <sup>3</sup>	Insur- ance <sup>2</sup>
Evansville, Ind.	\$4,150			*\$4,030	10¢	10¢	\$2,750	10¢	10¢	
Fargo, N. Dak.	3,650			*3,800	10¢	(†)	2,500			
Grand Rapids, Mich.	3,700	10¢	10¢	14,450	10¢	(†)	2,950	8¢	8¢	\$ 10¢
Hartford, Conn.	4,400	10¢	15¢	4,400	10¢	15¢	3,150	10¢	10¢	
Houston, Tex.	4,100	12¢		4,100	7½¢		2,415			
Indianapolis, Ind.	4,125	10¢		4,250	10¢		2,850	10¢	10¢	
Jackson, Miss.	3,250			*4,050			1,625			
Jacksonville, Fla.	3,680			14,000	10¢	110¢	1,450			
Kansas City, Mo.	4,125	10¢		4,200	12½¢	15¢	2,855	10¢		
Knoxville, Tenn.	*3,850			4,000			2,200			
Kroger, Mich.	3,950	10¢	*12¢	*4,100	11¢	25¢	3,050	8¢	(†)	
Las Vegas, Nev.	4,800	15½¢	25¢	4,980	15¢	20¢	3,600	10¢		
Little Rock, Ark.	3,750			4,000			2,050			
Los Angeles, Calif.	4,345	15¢	10¢	4,900	10¢	67¢	3,360	12½¢	10¢	
Louisville, Ky.	4,000		35¢	4,100	10¢	*15¢	3,925			
Madison, Wis.	3,900			3,970	12 20¢	*10¢	3,200			
Manchester, N.H.	4,300	12½¢		*3,800	10¢	15¢	2,850	10¢		
Memphis, Tenn.	3,850			4,170	5¢		2,000			
Miami, Fla.	3,970	10¢		3,875	*22½¢	*10¢	2,050	10¢	10¢	10¢
Milwaukee, Wis.	3,990	10¢	10¢	4,120	10¢	10¢	3,230	10¢		
Minneapolis, Minn.	3,850	15¢	30¢	4,010	13¢	10¢	*3,250	*15¢		
Mobile, Ala.	*4,100	*15¢		4,300			*2,350			
Montgomery, Ala.	3,000			3,700	10¢		1,350			
Nashville, Tenn.	3,750			4,000	37¢	37¢	2,050			
Newark, N.J.	15,150	20¢	15¢	4,850	10¢	20¢	4,000			
New Haven, Conn.	4,350	10¢	15¢	4,300	10¢	7½¢	3,300	10¢	10¢	
New Orleans, La.	*3,610	10¢	*10¢	4,050	12½¢	5¢	*2,200			

City	Bricklayers			Carpenters			Electricians			Painters		
	Employer contribution to fund			Employer contribution to fund			Employer contribution to fund			Employer contribution to fund		
	Basic scale 1	Insur- ance 2	Pension Vacation pay 3	Basic scale 1	Insur- ance 2	Pension Vacation pay 3	Basic scale 1	Insur- ance 2	Pension Vacation pay 3	Basic scale 1	Insur- ance 2	Pension Vacation pay 3
New York, N. Y.	\$5,350	5%	30¢	\$5,950	5%	*5%	\$4,960	4%	2%	\$4,500	5½%	3½%
Newark, N. J.	*4,650	17¢	20¢	*3,250	18¢	20¢	3,900	---	1%	3,060	4 9¢	---
Oakland, Calif.	6,850	---	20¢	4,350	---	25¢	5,000	15¢	1%	4,220	14½%	20¢
Oklahoma City, Okla.	4,270	---	---	*3,700	---	---	4,100	---	1%	3,500	---	---
Omaha, Neb.	4,275	71¢	---	3,900	71¢	---	4,300	12¢	1%	3,575	---	---
Peoria, Ill.	4,850	12½%	---	4,285	---	---	4,500	---	1%	3,950	---	---
Philadelphia, Pa.	4,650	17¢	18¢	4,200	18¢	15¢	5,025	15¢	1%	3,700	15¢	10¢
Phoenix, Ariz.	4,800	10¢	20¢	4,235	12½%	---	*4,615	15¢	1%	*3,875	10¢	---
Pittsburgh, Pa.	*3,650	18¢	10¢	*4,075	15¢	*15¢	*5,100	*15¢	1%	4,000	17½%	---
Portland, Me.	3,850	18¢	---	3,900	---	---	3,550	20¢	1%	2,350	---	---
Portland, Oreg.	4,370	18¢	15¢	3,850	18¢	15¢	*4,650	10¢	1%	*3,850	*15¢	10¢
Providence, R.I.	4,450	12½%	15¢	3,800	12½%	---	4,100	10¢	1%	3,400	10¢	---
Raleigh, N. C.	3,250	---	---	*2,850	---	---	4,100	---	1%	(5)	(5)	(5)
Reading, Pa.	4,100	20¢	10¢	*3,700	---	---	4,375	*18¢	1%	3,300	11¢	---
Richmond, Va.	4,000	---	---	*3,250	---	---	3,750	---	1%	2,650	---	---
Rochester, N. Y.	4,735	---	15¢	4,350	---	---	4,650	15¢	1%	3,500	15¢	---
Rock Island, Ill. (Dist.)	4,800	---	---	3,820	---	---	*4,250	10¢	1%	3,500	15¢	5¢
St. Louis, Mo.	*4,550	*17¢	*25¢	*4,475	10¢	---	4,650	10¢	1%	*4,210	12¢	15¢
St. Paul, Minn.	3,275	15¢	---	*3,630	15¢	---	4,100	3.88%	1%	*3,600	15¢	---
Salt Lake City, Utah	3,840	11¢	8¢	3,700	10¢	*10¢	*4,350	---	1%	3,500	*12½%	---
San Antonio, Tex.	4,080	---	---	3,625	---	---	4,000	---	1%	3,250	---	---
San Diego, Calif.	4,900	---	---	4,300	18¢	115¢	5,140	15¢	1%	*4,350	*10¢	*10¢
San Francisco, Calif.	*6,400	17½%	20¢	4,830	18¢	25¢	*4,888	*17¢	1%	4,220	14½%	20¢
Santa Fe, N. Mex.	4,800	---	---	4,000	7½%	---	3,425	---	1%	3,425	---	---
Savannah, Ga.	*3,650	---	---	3,450	---	---	3,900	---	1%	3,000	---	---
Schenectady, N. Y.	4,250	15¢	10¢	4,000	10¢	---	4,400	---	1%	3,500	15¢	2½%

See footnotes at end of table, p. 12.

Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, Jan. 2, 1964—Con.

City	Plasterers			Plumbers			Building laborers			
	Basic scale 1	Employer contribution to fund		Basic scale 1	Employer contribution to fund		Basic scale 1	Employer contribution to fund		
		Insurance 2	Pension		Vacation pay 3	Insurance 2		Pension	Vacation pay 3	Insurance 2
New York, N.Y.	\$4,900	45¢	55¢	*\$4,950	3%	42½%	*\$4,500	5%	*5%	-----
Norfolk, Va.	3,800	-----	-----	3,950	15¢	10¢	1,800	-----	-----	-----
Oakland, Calif.	4,465	20¢	4 50¢	5,510	-----	-----	3,475	15¢	5¢	15¢
Oklahoma City, Okla.	4,125	-----	-----	4,170	12½¢	-----	2,600	-----	-----	-----
Omaha, Nebr.	4,050	7½¢	-----	4,210	10¢	-----	2,825	7½¢	-----	-----
Peoria, Ill.	4,525	10¢	-----	4,390	10¢	20¢	3,600	10¢	10¢	-----
Philadelphia, Pa.	4,250	20¢	15¢	4,550	16½¢	11½¢	2,850	10¢	-----	-----
Phoenix, Ariz.	4,400	12½¢	10¢	4,700	15½¢	10¢	*3,165	12½¢	10¢	-----
Pittsburgh, Pa.	*4,780	12½¢	-----	4,635	15¢	-----	*3,250	10¢	10¢	-----
Portland, Maine	4,000	-----	-----	3,750	10¢	10¢	2,350	-----	-----	-----
Portland, Oreg.	*4,150	15¢	10¢	4,260	13¢	4 14¢	*3,250	15¢	15¢	-----
Providence, R.I.	4,225	10¢	-----	4,200	15¢	15¢	12,950	10¢	-----	-----
Raleigh, N.C.	2,750	-----	-----	3,600	-----	-----	1,500	-----	-----	-----
Reading, Pa.	4,075	-----	-----	*3,850	8¢	9¢	*2,760	5¢	-----	-----
Richmond, Va.	3,600	-----	-----	3,750	10¢	-----	1,800	-----	-----	-----
Rochester, N.Y.	4,735	-----	15¢	3,750	20¢	12¢	3,305	12½¢	15¢	-----
Rock Island, Ill. (Dist.) <sup>14</sup>	4,200	-----	-----	4,210	15¢	-----	3,080	-----	-----	-----
St. Louis, Mo.	4,000	7½¢	4 14¢	4,150	15¢	*15¢	3,525	10¢	-----	-----
St. Paul, Minn.	3,950	15¢	20¢	4,750	16¢	10¢	*3,250	-----	-----	-----
Salt Lake City, Utah	3,985	11¢	-----	*3,950	13¢	14¢	2,725	10¢	-----	-----
San Antonio, Tex.	*4,250	-----	-----	4,150	-----	-----	1,825	-----	-----	-----
San Diego, Calif.	*4,700	15¢	10¢	4,900	5½¢	6%	3,405	10¢	10¢	110¢
San Francisco, Calif.	4,650	17¢	20¢	5,110	41½¢	13¢	3,475	15¢	5¢	8¢
Sante Fe, N. Mex.	4,125	-----	-----	4,350	11¢	-----	2,505	7½¢	-----	-----
Savannah, Ga.	*3,000	-----	-----	*3,850	15¢	12¢	11,650	10¢	10¢	-----
Schenectady, N.Y.	4,250	15¢	10¢	4,100	19½¢	-----	3,100	10¢	-----	-----

City	Bricklayers			Carpenters			Electricians			Painters		
	Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund	
		Insur- ance <sup>2</sup>	Pension		Vacation pay <sup>3</sup>	Insur- ance <sup>2</sup>		Pension	Vacation pay <sup>3</sup>		Insur- ance <sup>2</sup>	Pension
Scranton, Pa.	\$4.275	15¢		\$3.450	15¢		\$4.000	15¢		\$3.125		
Seattle, Wash.	4.640	10¢	20¢	3.990	10¢		*4.555	10¢		3.840		4 15¢
Shreveport, La.	4.160			3.300			3.975			*3.100		
Sioux Falls, S. Dak.	4.250			*3.400			4.050			3.150		
South Bend, Ind.	4.350	9¢		3.800		10¢	4.150			3.500		
Spokane, Wash.	*4.000	10¢		4.040	11 1/4¢		*4.450	10¢	3%	3.810	10¢	
Springfield, Mass.	4.175	12¢	15¢	3.905	11¢		4.050	15¢	1 1/2%	3.600	12 1/2¢	
Syracuse, N.Y.	4.600	10¢	10¢	4.220	10¢	10¢	4.600	15¢	1 1/2%	3.850	10¢	
Tampa, Fla.	3.900			3.500			4.100		1 1/2%	3.150		
Toledo, Ohio	4.430	10¢		4.320	10¢		4.450	10¢	1 1/2%	4.040	10¢	
Trenton, N.J.	4.800	15¢		4.600	10¢		5.300	15¢	11 1/2%	3.925	15¢	
Tulsa, Okla.	4.250			3.700			4.230		1 1/2%	*3.600		
Washington, D.C.	4.750			3.900	9¢	15¢	4.900		1 1/2%	4.050	10¢	
Wichita, Kans.	4.275			3.650			4.400		1 1/2%	3.250		
Wilmington, Del.	4.350	15¢		4.075	15 1/2¢		*4.730		3%	3.570	18¢	
Worcester, Mass.	4.300	15¢	10¢	4.100	10¢		4.250		1 1/2%	3.850	15¢	
York, Pa.	3.850	10¢		3.355	5¢		4.000		1 1/2%	2.800	5¢	
Youngstown, Ohio.	4.410	15¢		4.130	15¢		4.280		1 1/2%	3.865	15¢	

See footnotes at end of table, p. 12.

## Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, Jan. 2, 1964—Con.

City	Plasterers			Plumbers			Building laborers			
	Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		Basic scale <sup>1</sup>	Employer contribution to fund		
		Insur-ance <sup>2</sup>	Pension		Vacation pay <sup>3</sup>	Insur-ance <sup>2</sup>		Pension	Vacation pay <sup>3</sup>	Insur-ance <sup>2</sup>
Scranton, Pa.....	\$4.050	15¢					\$2.875			
Seattle, Wash.....	4.150	12¢		\$4.200	15¢		*3.400	15¢		
Shreveport, La.....	3.875		5%	*4.570	*16¢	16¢	1.875			
Sioux Falls, S. Dak.....	3.800			3.850			*2.400			
South Bend, Ind.....	3.975	10¢		4.050			2.900	10¢		
Spokane, Wash.....	3.950		4.22¢	4.275	8½¢	16¢	3.170	10¢		
Springfield, Mass.....	4.175	12¢		4.250	3%	15¢	2.925	10¢		
Syracuse, N. Y.....	4.375	10¢	*15¢	4.950	18¢	15¢	3.450	10¢		
Tampa, Fla.....	3.700			*4.000	10¢		*2.000			
Toledo, Ohio.....	*4.220	10¢		4.300	10¢	10¢	3.390	10¢		
Trenton, N. J.....	4.800	15¢		5.000	10¢	10¢	3.300	10¢		
Tulsa, Okla.....	4.000			*4.210			2.700			
Washington, D. C.....	4.150	15¢		4.650	17½¢		2.750	9¢	8½¢	
White, Kans.....	3.750			4.300			2.500			
Wilmington, Del.....	4.200	15¢		4.290	15¢	10¢	2.550	10¢		
Worcester, Mass.....	4.300	15¢	10¢	4.050	10¢	5¢	3.120	10¢	10¢	
York, Pa.....	3.800	5¢		4.050	10¢	10¢	2.250	5¢	5¢	
Youngstown, Ohio.....	4.125	15¢		4.090	10¢	15¢	3.260	15¢		

1 These scales represent the minimum wage rates (excluding holiday and vacation payments regularly made or credited to the worker each pay period) agreed upon through collective bargaining between employers and trade unions.

2 Includes life insurance, hospitalization, and other types of health and welfare benefits; excludes payments into holiday, vacation, and unemployment funds when such programs have been negotiated.

3 Payments are to a fund unless otherwise indicated.

4 Part of the negotiated scale; not included in basic scale shown.

5 No union scale in effect on survey date.

6 Contract provides for this benefit; payment suspended until further notice.

7 Includes contribution for insurance and holiday; separate data not available.

8 To worker each pay period as part of the negotiated scale; not included in basic scale shown.

9 To worker each pay period in addition to negotiated basic scale.

10 Includes contribution for vacation and sick benefit; separate data not available.

11 Includes contribution for vacation and holidays; separate data not available.

12 Includes contribution for insurance and vacation; separate data not available.

13 Contract provides for this benefit; amount of payment not reported separately.

14 Includes Rock Island and Moline, Ill., and Davenport, Iowa.

15 Following data applicable to Davenport, Iowa; basic scale \$4.200; pension 10 cents; and vacation 15 cents.

16 2½ cents of basic scale transferred to insurance fund.

17 Represents an increase between Oct. 1, 1963, and Jan. 2, 1964.

† Data for previous quarter have been corrected.

Note.—Information on employer contributions to insurance (welfare), pension funds, and for vacations, as provided in labor-management contracts, is presented as cents per hour or as percent of basic scale; in actual practice, however, some employer payments are calculated on the basis of total hours worked or gross payroll. These reports in the method of computations are not indicated in the above tabulation. Payments directly to worker each pay period for or in lieu of benefits are footnoted.

Some contracts also provided for additional payments to other funds such as holiday and unemployment benefits. Information on payments to these funds was not collected.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Washington, D. C.

## PREPARED STATEMENT OF C. J. HAGGERTY, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

In accordance with the decision of the committee to accept written statements in lieu of hearing testimony, this statement is submitted by the president of the Building and Construction Trades Department, AFL-CIO, on its behalf and on behalf of the 18 national and international unions affiliated with the department and their approximately four million members.

The department wholeheartedly supports H.R. 6041, a bill which would amend the Davis-Bacon Act to include fringe benefits within the scope of the term "wages" and similar language in that act. This bill, which passed the House by the overwhelming vote of 357 to 50, is a vital reform of the Davis-Bacon Act which should be enacted into law at this session of the Congress.

When the Davis-Bacon Act was enacted in 1931, to protect the prevailing wage standards for laborers and mechanics on Federal construction in local areas, fringe benefits were virtually unknown. During and after the Second World War, many wage increases were made in the form of fringe benefits. Today, they can be said to form a substantial part of the wage compensation of millions of workers throughout the country. H.R. 6041 would recognize this situation and update the law by including these benefits in the prevailing wage concept of the Davis-Bacon Act.

A bill to afford the necessary relief has been pending in the Congress for 9 years, beginning with H.R. 4566, introduced in the House of Representatives on March 2, 1955. In 1962, H.R. 9596 was introduced to accomplish this purpose, and hearings were held before the General Subcommittee on Labor of the House Committee on Education and Labor on March 8, 9 and 13 of that year. The record of those hearings, which constitutes 231 pages, includes testimony from 14 witnesses and statements on behalf of 17 organizations which did not testify.

The full committee reported H.R. 10946 without amendment by a vote of 22 to 7. The House did not consider the bill in that year, however, since the Rules Committee did not grant a rule.

Last year, the House General Subcommittee on Labor held hearings on March 1, 7, 12, 21, 22 and 26, on H.R. 404, which was identical with H.R. 9656, introduced the previous year. The 1963 hearings are composed of 280 pages and include testimony from 15 witnesses and statements from many organizations which did not testify. The subcommittee, by unanimous voice vote, accepted several amendments to the bill. These amendments were made to meet the reasonable objections to the bill, H.R. 6041, which is essentially a compromise and bipartisan measure. The amended bill was ordered reported to the House by the full committee on May 9, 1963. It should be noted that, although five members of the committee filed supplemental views to the report of the committee, House Report No. 308, of the 88th Congress, 1st session, those members expressly stated their support for the inclusion of fringe benefits in the prevailing wage rate under the Davis-Bacon Act. At page 10 of the report they stated that:

The cost of fringe benefits should be included when the prevailing wage rate is computed under provisions of the Davis-Bacon Act. When the act was passed in

1931, fringe benefits were for the most part unknown. At that time, a worker received a flat amount, usually so much per hour, and this constituted his whole wage. Today, that is not the case. The so-called fringe benefits are an important part of the worker's wage, often being given today in lieu of increases in actual cash wages. Therefore, we believe the present law should be amended to permit the inclusion of fringe benefits when the prevailing wage is determined.

The members who filed the supplemental views did not have specific objections to the bill as amended. They were of the view that enactment should be delayed pending the completion of the study of procedural reforms of the Davis-Bacon Act as a whole. This approach to legislative procedure was rejected by the House Rules Committee by a vote of 11 to 2 and by the House floor as stated above.

There have been many expressions of the need for this legislation. One of the best is set forth in the House committee report itself, at pages 2-3:

The amendments to the Davis-Bacon Act proposed by H.R. 6041 would bring up to date the Davis-Bacon Act by including fringe benefits in prevailing wage determinations. There has been a tremendous change in the concept of earnings since Congress enacted the Davis-Bacon Act. Group hospitalization, disability benefits, and other fringe benefit plans were the rare exception in the 1930's. Today more than 85 million persons in the United States depend upon the benefits they provide. Regardless of the form they take, the employer's share of the cost of these plans or the benefits the employers provide are a form of compensation.

It has become increasingly apparent that if the Davis-Bacon Act is to continue to accomplish its purpose prevailing wage determinations issued pursuant to the act must be enlarged to include fringe benefits. The act was founded on the sound principle of public policy that the Federal Government should not be a party to the destruction of prevailing wage practices and customs in a locality. Unless the law is amended to provide for the inclusion of fringe benefits in wage determinations, prevailing wage practices and customs will not be reflected in these determinations.

Today, in the construction industry alone, there are over 4,000 welfare and pension funds. Most of these funds are of the health and welfare type. They are financed primarily by employer contributions of so many cents per hour for each hour worked by a covered employee. Well over 70 percent of the building tradesmen are covered by welfare and pension benefits alone. When these plans were first started, a 5- or 7-cent contribution per covered employee per hour was typical. Today, during the course of collective bargaining, building trades craftsmen increasingly elect to take proffered wage increases in the form of much-needed welfare programs in order to provide some benefits for their families in an hour of need. It is manifestly unfair and unjust both to the building tradesmen and their enlightened employers that these welfare programs which have been bargained for, in lieu of wages, should not be included as wages within the meaning of the act. It should be noted that the following eight States have recently added fringe benefits to their prevailing wage laws; California, Connecticut, Massachusetts, New York, Pennsylvania, Rhode Island, Washington, and Wisconsin. At the present time in many areas, employers contribute 25 or 35 cents per hour to these health and welfare funds. A constantly increasing portion of the employer's labor costs is being devoted to health, welfare, pension and apprenticeship training plans. Because these types of payments have increased tremendously in the past decade, they now represent a very significant portion of wages and an employer's labor costs and should be recognized by the law.

The record of both the 1962 and 1963 hearings in the House demonstrate that this bill has the unqualified support of the administration.

Similarly, the hearings demonstrate the united support of the American labor movement. For the committee's records, I am submitting with this statement a copy of a letter from Walter Reuther, president of the Industrial Union Department, AFL-CIO, urging support for and prompt enactment of H.R. 404, the predecessor of H.R. 6041.

Fair contractors, as well as unions and workers, have a strong interest in rectifying the present inequitable basis which puts them at a disadvantage in the bidding process. This interest was expressed in the 1962 and 1963 hearings before the House committee by numerous representatives of industry who supported H.R. 9656 and then H.R. 404. For example, J. M. Graney, manager of industrial relations, Ebasco Services, Inc., testified on behalf of the National Constructors Association. At page 105 of the 1963 hearings, he stated that:

Passage of H.R. 404 would be in the public interest because the Government would benefit from full and fair competition, the preponderance of construction contractors would have a measure of protection against unfair competition, and construction workmen would be protected against loss of benefits acquired through free collective bargaining. The National Constructors Association, therefore, urges enactment of this bill.

In addition, Mr. Graney read into the record a resolution of the Joint Industry Program Committee. The composition of the committee and the resolution are as follows:

Since that statement was prepared, the Joint Industry Program Committee has adopted a resolution which I would like to read for the committee.

The Joint Industry Program Committee is a committee made up of people interested in the pipe-erection business, the associations comprising it are as follows: Mechanical Contractors Association of America, National Association of Plumbing Contractors, National Automatic Sprinkler and Fire Control Association, National Constructors Associations, National Lead Burning Association, Refrigeration and Air Conditioning Contractors Association, Pipe Fabrication Institute, Pipe Line Contractors Association, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry.

The resolution is as follows:

"Whereas the amendment would require the Secretary of Labor with respect to certain contracts for construction, alteration and repair work, to make a determination not only of prevailing hourly wage rates in the locality of the work, but also of prevailing rates of payments made by employers into certain funds established for the benefit of mechanics and laborers; and

"Whereas the effect of the proposed amendment will be to prevent erosion and disruption of wages and working conditions established through bona fide collective bargaining; and

"Whereas the proposed amendment will protect free and fair competition among construction contractors in bidding on Government construction projects; and

"Whereas the proposed amendment will, therefore, enhance the original purposes of the act, benefit the Government, and serve the public interest, now, therefore

"The Joint Industry Program Committee, representing association of both management and labor serving a significant segment of the construction industry, urges enactment of H.R. 404" (1963 Hearings at p. 105).

The 1962 hearings contain a strong statement that a fringe benefit law is administratively feasible. Mr. Frank McBride, president of the Mechanical Contractors Association of America, with a membership of approximately 1,200 mechanical contractors throughout the United States who employ from 55,000 to 75,000 pipefitting mechanics and sheet-metal workers, testified concerning the experience with the New York fringe benefit law, enacted in 1956. At pages 155-156 of those hearings, he testified as follows:

It might be well to point out that in the process of collective bargaining, wages and so-called fringes, welfare pension funds, et cetera, are interchangeable. By this I mean that today any discussion of wages in most instances necessarily includes discussion of fringe benefits. The two are generally referred to as the total package.

Logically, the funded fringe benefits are considered by construction management together with hourly wages as the total direct labor cost.

The amendment now before the subcommittee clearly defines the type of funds to be included in wage determinations with the basic hourly rate of pay. The amendment, therefore, is administratively feasible.

For this reason, the association I represent supports the amendment as now presented to the subcommittee.

New York State with a minimum wage law similar to the Davis-Bacon Act amended the law in 1956 to include funded fringe benefits as a part of wage schedules of contracts to which the State of New York and municipalities and subdivisions, et cetera, are a part.

Six years of experience under the amended New York State law by the Department of Labor, New York State, have proven that it is administratively practical.

Also supporting both H.R. 9656 and H.R. 404 was the Master Builders Association, Inc., District of Columbia chapter of the Associated General Contractors of America, which is composed of 44 general contractors performing work in and around the Washington metropolitan area. In testimony during the 1962 hearings and a statement of support submitted before the subcommittee in 1963, the association pointed out the adverse consequences to its membership resulting from the failure to adopt the necessary corrective legislation:

The inroad of nonunion competition did not become alarming until recently in that these contractors were small in size and could not bid on a majority of Government contracts; however they are now well organized and many are large enough to enable them to complete on almost any size project. Union contractors used to construct all of the area schools; however, we now find it useless to bid on Prince Georges County, Montgomery County, or Virginia school work, because we cannot compete due to the differential in the actual wage scale paid. The same is true of bridge projects and certain work at local military installations.

At the inception of the Davis-Bacon Act, there were no fringe benefits to speak of, and consequently, the prevailing wage scale was satisfactory. Since that time, however, the amount of these benefits has steadily increased and we find ourselves now in a position where our labor may run as high as 10 percent above nonunion contractors.

We feel this situation discriminates against union contractors and is a detriment to the entire community \* \* \*. (1962 hearings at p. 162; 1963 hearings at pp. 265-266.)

This testimony was further supported by Mr. Leonard H. Hudson, executive vice president of Baltimore Contractors, Inc., a national construction company with offices in Baltimore, Md. Mr. Hudson is also vice president and chairman of the Labor Committee of the Baltimore Builders' Chapter of the Associated General Contractors. On behalf of this company and the Baltimore AGC Chapter, Mr. Hudson testified in 1962 and submitted a lengthy statement in 1963. Specifically, he recited the unfair and discriminatory advantages accruing to nonunion contractors in the Baltimore area in the absence of fringe benefits legislation:

Determinations of prevailing area wages without including established prevailing area fringe benefits is clearly unrealistic and contrary to the intent and purpose of the Davis-Bacon Act, which is to protect area working conditions. Established fringe benefits are just as much a part of prevailing area working conditions as the prevailing rate per hour, and the continued failure to include this substantial portion of direct labor costs permits and encourages the destruction of prevailing area working conditions. As a union contractor, we are obligated by contract to pay fringe benefits. The same is true, of course, of the other members of the Baltimore Chapter of AGC. Consequently, our labor contracts require us to pay building and construction trades unions benefits as part of the established area working conditions. Nonunion contractors and nonbuilding and construction union contractors have unfair and discriminatory advantage in bidding for Government work for the obvious reason that they are not obligated to pay 15 percent or more of the established prevailing direct labor rate.

We do not suggest that this or any other legislation should impede in anyway the work of nonunion contractors or close the door to nonunion contractors to engage in Government construction. We do believe, however, that no contractor and no union should be permitted to undermine or disregard the established and prevailing area working conditions. Nor do we suggest that any scale of benefits be adopted as part of the prevailing wage rate, except to the extent that that scale, including fringe benefits, is found to be the established and prevailing area rate.

For example, while Baltimore Contractors is a union contractor and the members of the Baltimore Chapter of AGC are union contractors, construction in Baltimore is predominantly nonunion. The fact that our contractual arrangements require us to pay higher benefits than are generally paid in Baltimore is our problem and one which we can and should solve for ourselves. However, the prevailing fringe benefits in Baltimore should not be subject to destruction and impairment any more than the prevailing hourly rate. Prevailing area fringe benefits are in every sense a part of prevailing area wages and it is nonsense to contend that they are not (1963 hearings at pp. 261-262).

In both years, Mr. Robert L. Higgins presented a statement on behalf of the National Electrical Contractors Association, comprised of more than 15,000 small business concerns primarily engaged in the business of making on-the-site electrical installations. The association urged passage of the bills in the interest of the public as well as the members of the association. Mr. Higgin's 1962 statement is particularly instructive:

The protection to the public in the Davis-Bacon Act is that it insists that the contractor pay the prevailing rates and, therefore, it follows that if he has to pay these rates in order to be competitive, he must employ the very best skilled mechanics in the area. It also follows that if he employs the very best skilled mechanics in the area to be competitive, he still must have excellent management to get the proper productivity out of these workmen; all of which, in turn, assures the public that the Government is getting a dollar's worth of value out of each dollar spent for construction.

Private industry does this without the help of Davis-Bacon because it has the right to select the people it wants to do its work and can eliminate those it feels are not capable or qualified. The only way the Government can approach this position is through a prebidding standard such as the Davis-Bacon Act.

It follows that the true prevailing wages should be established to protect both the worker and the Government (1962 hearings at pp. 219 and 220).

In both years, the House subcommittee heard testimony and received statements from the following employer groups: The Construction Contractors Council, composed of approximately 130 union contractors and subcontractors in the Washington Metropolitan Area; the New Jersey Chapter of the Associated General Contractors of America; Philadelphia Insulation Contractors Association, Inc.; Middle Atlantic Insulation Contractors Association, Inc.; Insulation Distributor Contractors National Association, Inc. (the above insulation contractor associations, composed of approximately 140 members, employ more than 10,000 men throughout the United States); Mason Contractors Association of America; Pipe Fabrication Institute; National Association of Plumbing Contractors; National Automatic Sprinkler & Fire Control Association; National Lead Burning Association; Refrigeration & Air Conditioning Contractors Association; Pipe Line Contractors Association; Sheet Metal Contractors Association of the District of Columbia; and Contractors Association of Philadelphia and Eastern Pennsylvania, representing the heavy and highway construction industry in 34 counties in eastern Pennsylvania, affiliated with the Association General Contractors of America.

The testimony and statements of these many construction employers demonstrate a substantial business interest in support of fringe benefits

legislation and affords a quick answer to those who charge that this bill will have an adverse effect on small businessmen. Most of the associations listed above are representatives of small construction businesses who operate on a fair basis with respect to labor. They have gone on record as stating that the legislation is in their own interest, as well as that of labor and the public.

Mr. Lee E. Knack, appearing for the Chamber of Commerce of the United States at the 1962 hearings, voiced another baseless criticism when he stated that: "H.R. 9656 is a completely revolutionary concept" (at p. 61). Mr. Knack was perhaps unaware that eight important industrial States have enacted such legislation in the past. I refer to the law of California, Connecticut, Massachusetts, New York, Pennsylvania, Rhode Island, Washington, and Wisconsin. Further, the administrative experience under these laws has been good. Mr. Leon Kromer, Jr., an employer-member of the New York State Advisory Commission so testified during the 1962 hearings. Similarly, Under Secretary of Labor Henning testified during the 1963 hearings on the excellent experience he encountered with respect to the California law based on his work as industrial commissioner of the State of California. It is in the nature of the legislative process that all objections to proposed legislation should be taken into account. but such objections should be based on facts, rather than on empty words.

The employer groups which are opposing H.R. 6041 are speaking in the interest only of that segment of the employer community which includes open-shop contractors who wish to continue their present unfair bidding advantage under the current wording of the Davis-Bacon Act.

Much of the opposition to H.R. 6041 and its predecessor bills stems not from any valid criticism of the merits of those proposals, but from a desire to repeal entirely the Davis-Bacon Act or to frustrate its objectives. Most of the critics of this legislation do not, of course, admit this. Some, however, are more candid. I cite in this connection the statement made by the Honorable Bruce Alger, Congressman from the State of Texas, during the 1962 hearings. He there stated that:

I would much prefer coming before you today to ask that you take action to repeal the Davis-Bacon Act, because I am firmly convinced that giving this power to set wages to the Federal Government is not in keeping with the constitutional relationship between the States and the Federal Government. However, I know that such an appeal would have little support. Regardless of the constant threat Davis-Bacon poses to the local economies and the dictatorial power it gives to the Federal Government, I know it is an established fact that neither this committee, nor any sizable group in Congress, are likely to challenge it.

I do exhort this committee to defeat this bill, H.R. 9656, because it extends the Davis-Bacon Act and goes far beyond the original intent of the legislation (1962 hearings at p. 147).

Further, Robert T. Borth, chairman of the Federal Labor Standards Committee of the Chamber of Commerce of the United States, also stated forthrightly the objectives of that body:

The national chamber contends that as a principle the minimum wage provisions of the Davis-Bacon Act should be repealed in view of the subsequent enactment of the Fair Labor Standards Act. Until repeal of the Davis-Bacon Act is accomplished, the coverage and scope of this law should not be expanded (1963 hearings at p. 37.)

With respect to Congressman Alger's statement that a fringe benefit bill extends the Davis-Bacon Act and goes beyond its original intent, it is abundantly clear from the testimony of the many Government, employer, and union representatives giving testimony and submitting statements before the House subcommittee in 1962 and 1963, that this bill is completely consistent with the original intention of the act.

As pointed out above, the House has decisively rejected the tactic of delaying this meritorious legislative measure to await the outcome of hearings which have been commenced on procedural problems under the Davis-Bacon Act as a whole.

The House has also rejected the effort to include a questionable judicial review amendment in the fringe-benefits bill. It is strongly urged that the Senate should do likewise. It is the view of this Department that the judicial review proposals which have been advanced are not practicable and would cause substantial harm to the bidding process. A detailed study of these proposals has been made by the lawyers representing the Department and its affiliates. The study is set forth at pages 1152 to 1154 of the Congressional Record. A copy of the study is attached for the information of the committee. This legal review of the problem supports the conclusions set forth above which are adverse to the current judicial review proposals. It is of interest that the House voted down the judicial review proposals in the "fringe benefits" bill debate as a matter of substance as well as legislative procedure.

H.R. 6041 incorporates not only the views of those who initiated the idea of adding fringe benefits to the prevailing wage rate pre-determinations issued under the Davis-Bacon Act but also of those who expressed objections thereto on behalf of contractors not using formal trustee plans for providing such benefits. The bill endeavors to meet the problems of these contractors by providing an area of flexibility which would permit these contractors to secure credit for their less formal plans. There are some who now express objection to H.R. 6041 because there will be a need for interpretation of those portions of the bill which provide for the relief previously described. No statute can be written to be automatically self-interpreting. It is suggested that the interpretative problems in H.R. 6041 are not excessive and that the bill is a reasonably clear piece of legislation. Certain it is that any effort to restore the original version of the fringe-benefits bill which would have given credit only for formal plans would meet even more violent opposition from the critics who now, without justification, characterize the language of H.R. 6041 as "vague." These critics are also concerned with the status of contractors who have so-called unwritten plans providing for fringe benefits. It is respectfully submitted that this committee should not abandon the trimmed-down safeguards of the bill with respect to fringe benefit programs. It should also be realized that the contractor always has a simple remedy for the unwritten phase of the problem and that is to put his plans in writing.

It is respectfully urged that this committee report the bill favorably, without amendment.

INDUSTRIAL UNION DEPARTMENT, AFL-CIO,  
 March 22, 1963.

Hon. JAMES ROOSEVELT,  
 Chairman, Special Subcommittee on Labor, Education and Labor Com-  
 mittee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN ROOSEVELT: The Industrial Union Department, AFL-CIO, urges the support of H.R. 404, which includes certain fringe benefits in minimum-wage determinations under the Davis-Bacon Act.

In the building industry some nonunion contractors seeking Government contracts gain a competitive advantage over union contractors by denying their employees equitable fringe benefits. The present law permits this unsound advantage seeking at the expense of workers. In our judgment, H.R. 404 directly tends to restore competition on an equitable basis between union and nonunion contractors. This obviously is in the best public interest.

The industrial union department hopes that your subcommittee will give quick approval to H.R. 404 and will use its influence to secure the early passage of this wholesome measure.

Sincerely,

WALTER P. REUTHER,  
 President.

JANUARY 23, 1964.

Mr. C. J. HAGGERTY,  
 President, Building and Construction Trades Department, AFL-CIO,  
 Washington, D.C.

DEAR MR. HAGGERTY: This is in response to your request for a legal analysis of H.R. 9590, a proposal to amend the Davis-Bacon Act by providing for judicial review of wage predeterminations and to provide new judicial review procedures with respect to enforcement of that act.

The undersigned are the legal counsel for the various labor organizations in the building and construction industry. Each of us has specialized in the field of labor law and, in particular, with respect to the legal problems involving labor in the building and construction industry.

We have given careful consideration to the proposal in the Goodell bill (H.R. 9590) to amend the Davis-Bacon Act for the purpose of providing a new system of judicial review. It is our unanimous conclusion that the judicial review proposal would not be workable insofar as the predeterminations of wage rates under this act are concerned. We also believe that the legislation is not needed insofar as enforcement procedures are concerned because there is presently available an entirely adequate system of judicial review of these enforcement procedures by way of suit in the U.S. Court of Claims.

The present system of wage predeterminations has the important value of giving all competing contractors definite and uniform wage rates as the basis for making cost estimates in their formulation of bids. The Goodell judicial review proposal would render uncertain the predeterminations of the Secretary of Labor because no one would know in connection with any contract whether the final judicial judgment would establish a rate different from the predetermined rate on which contractors bid. This would result in placing contractors in a position where they would have to take a "business gamble" on the final judicial judgment. Contractors who submit bids on the basis of the predetermination would be at a competitive disadvantage as against those who take the risk of estimating on a lower rate which they think will be supported by the final judicial judgment.

The original Davis-Bacon Act of 1931 contained a provision that the wages paid "shall not be less than the prevailing rate of wages \* \* \*" and left the issue of the determination of the prevailing rate to a post hoc determination by the Government. The difficulties created by this system led to the current procedure of predeterminations in the present act. The basic reason for the change was set forth succinctly by the Associated General Contractors in a letter by Mr. Walbridge to President Hoover which states that—

We ask only that the officials who are now charged with making decisions as to what constitutes the prevailing wage to exercise the same function *previous* to the taking of bids, thereby placing all bidders on a parity and again establish competitive bidding on a *known* basis. [Italic supplied.] (Legis. Hist. Davis-Bacon Act, p. 47.)

It is our view that adoption of the Goodell judicial review proposal would return the administration of the act to the difficulties which were the reason why the law had to be changed to the present system of predeterminations.

It must also be recognized that the judicial review proposal must, in order to avoid serious constitutional problems, provide for judicial review at the instance of individual employees as well as labor organizations. There are 50,000 predeterminations issued by the Secretary of Labor each year which involve 5 million different wage classifications. We believe it is reasonable to anticipate that many suits may be filed at the instance of individual employees and classes of employees, not necessarily organized into labor unions, for the purpose of increasing the wage rate above the level predetermined by the Secretary of Labor. It is our judgment that it would be reasonable to anticipate a substantial wave of litigation in this regard which may duplicate the conditions under the wage-hour law which led to the adoption of the Portal-to-Portal Act.

The Davis-Bacon Act has been in operation for more than 30 years without a procedure for judicial review of the validity of wage predeterminations. The complexities and intricacies of the problems created by the Goodell judicial review proposal are such, in our judgment, that they require careful examination by committees of the Congress after adequate and full hearings.

It is respectfully submitted that the floor of the House is not the proper place to draft an original proposal for judicial review of the Davis-Bacon Act.

Respectfully submitted,

LOUIS SHERMAN, General Counsel, Building and Construction Trades Department, AFL-CIO and International Brotherhood of Electrical Workers, AFL-CIO, Washington, D.C.

LESTER ASHER, General Counsel, United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Association, AFL-CIO, Chicago, Ill.

FRANK GRAYSON, General Counsel, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, Kansas City, Kans.

VINCENT MORREALE, General Counsel, International Hod Carriers, Building & Common Laborers Union, AFL-CIO, Washington, D.C.

CLARENCE M. MULHOLLAND, General Counsel, Sheet Metal Workers' International Association, AFL-CIO, Toledo, Ohio.

MARTIN F. O'DONOGHUE, General Counsel, United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, and Operative Plasterers & Cement Masons International Association, AFL-CIO, and International Union of Elevator Constructors, AFL-CIO, Washington, D.C.

JOSEPH A. SICKLES, General Counsel, International Association of Heat and Frost Insulators & Asbestos Workers, AFL-CIO, Washington, D.C.

HAROLD STERN, General Counsel, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, New York, N.Y.

HERBERT S. THATCHER, General Counsel, Brotherhood of Painters, Decorators & Paperhangers of America, AFL-CIO, Washington, D.C.

FRED WARD, General Counsel, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, Washington, D.C.

LOUIS H. WILDERMAN, General Counsel, Wood, Wire & Metal Lathers' International Union, AFL-CIO, Philadelphia, Pa.

J. ALBERT WOLL, General Counsel, International Union of Operating Engineers, AFL-CIO, and Bricklayers, Masons & Plasterers' International Union, AFL-CIO, Washington, D.C.

LEGAL ANALYSIS OF THE JUDICIAL REVIEW PROPOSAL CONTAINED IN  
H.R. 9590 (INTRODUCED JAN. 8, 1964)

H.R. 9590, a bill introduced by Representative Goodell on January 8, 1964, proposes to amend the Davis-Bacon Act by providing judicial review of wage predeterminations issued by the Secretary of Labor and of enforcement proceedings under this act. This bill has been re-

ferred to the House Committee on Education and Labor which has obviously had no time to give it consideration.

It should be noted that the House Committee on Education and Labor reported the fringe benefits bill on May 9, 1963, and that at no time during 1963 did Congressman Goodell or any other Congressman introduce a judicial review bill for consideration by the committee. Actually, Congressman Goodell did introduce a bill on April 4, 1962, to provide for judicial review of Davis-Bacon Act administrative actions but his recent bill of January 8, 1964, contains so many changes in the 1962 bill that it is clear that the original bill is not considered an appropriate vehicle for consideration of the amendment.

The delay in formulating a legislative measure for committee consideration is an index to the difficulty and intricacies of the subject matter.

The analysis of H.R. 9590 which is set forth below demonstrates clearly that the decision by Congress on the matter of judicial review should be made only after hearings on a specific measure at which testimony can be secured from experts in the contracting agencies, the Comptroller General's Office, the Department of Labor, and from industry and labor. The complexities of Government contract bidding and enforcement procedures are such that unwise decisions on the floor of the House can be avoided only by appropriate study of specific proposals, through the time-honored method of hearings before the appropriate House subcommittee and a report by the full committee.

H.R. 9590, is a substantial revision of the proposals contained in H.R. 11115, introduced by Representative Goodell on April 4, 1962. Under the earlier bill, the review procedure would have been initiated by a charge that a contractor paid wages less than those stipulated in his contract and less than those found prevailing under the act. Thereafter, the Secretary of Labor was to investigate the charge, hold a hearing, issue findings and determine wages owing by the contractor. Persons aggrieved by such a decision could have sought review from a U.S. court of appeals, which was specifically authorized to stay any action under sections 2 and 3 of the act, pending completion of judicial review. The proposal contained in H.R. 11115 was defective in several respects in terms of the orderly operation of the act and the relative position of fair and unfair contractors. H.R. 9590 appears to be an attempt to avoid the problems arising from the earlier judicial review proposal. For the reasons discussed below, however, the new bill is subject to the same criticism.

#### PROVISIONS OF THE BILL

H.R. 9590 provides two avenues for judicial review. Section 1 of the bill would add a new section 8 to the act permitting "Any person (defined to include contractors, subcontractors, bidders, prospective bidders, labor organizations, employees, prospective employees, and public and private contracting agencies), aggrieved by a wage determination" to initiate an action in a U.S. district court against the Secretary of Labor and the contracting agency to "enjoin the application of such wage determination to the invitation for bids for the advertised contract and to determine the prevailing wage lawfully applicable thereto." Such action must be commenced within 15 days after the publication of the advertised specifications

which contain the challenged wage determination. The district court is empowered to issue a temporary restraining order relieving all bidders from stipulating that they will comply with the determination being challenged, provided, that the court "may" require any bidder to whom the contract is awarded to post an indemnity bond to guarantee the fulfillment of any wage obligation if the challenged determination is sustained. The court is then charged with the duty of deciding whether the challenged determination was in accordance with law, and, if not, to establish the prevailing wage. Thereafter, review is provided to the appropriate U.S. court of appeals and the U.S. Supreme Court.

Section 2 of H.R. 9590 would amend section 7 to provide that whenever it is claimed that a contractor or subcontractor has failed to pay the prevailing wage rate, the contracting agency is to investigate the claim and issue a written ruling on the claim. No penalties, including the withholding of funds from the contractor or subcontractor, can be imposed prior to such ruling. Any contractor or subcontractor aggrieved by such a ruling may bring a de novo action in the U.S. district court where the violation is alleged to have occurred. The district court, which may stay any penalty pending the completion of judicial review, is to determine whether the contractor or subcontractor has failed to comply with his obligations under the wage provisions of his contract. Similarly, employees aggrieved or adversely affected by the ruling of the contracting agency may seek review in a U.S. district court. While employees may maintain such actions on behalf of other employees similarly situated, only those employees who give their consent in writing may become a party plaintiff to any action brought under this section. It may be noted here that this limitation is entirely contrary to the recognized concept of a class action. In practice, this provision will operate in discriminatory fashion, since some employees will recover additional sums owing to them under the law, while others, entitled to exactly the same sums, will not receive them because of their failure to consent in writing to become a party. Following the decision of the district court, review is provided to the U.S. court of appeals and the Supreme Court. Although it appears that section 7 is intended to be limited to enforcement, there is no explicit statement in the bill that the validity of wage predeterminations cannot be challenged in the judicial proceedings related to the enforcement issue. The language of section 7(d) is of such ambiguous nature that it is possible that the validity of a wage predetermination could be challenged in a section 7 case. The answer to such question would not be known, under the present language of the bill, until a judicial test case had been completed.

#### EXISTING ENFORCEMENT PROCEDURES AND THE EFFECT OF THE BILL

To understand the detrimental effects upon the operation of existing law which would result from the enactment of H.R. 9590, it is necessary to review briefly the present enforcement machinery contained in sections 1 to 3 of the act. Section 2 presently provides that, upon a finding by the contracting officer involved that any laborer or mechanic is being paid a rate of wages less than that required to

be paid by the contract, the Government may terminate the contractor's right to proceed with the work involved, to complete the work through other means and to recover from the contractor any existing costs occasioned by his violation. Section 3, read in conjunction with section 1, authorizes the Government to withhold from a contractor so much of any accrued payments as may be necessary to pay to his employees the difference between the rate of wages required by the contract to be paid them and the rates actually received by them, and authorizes the Comptroller General of the United States to pay directly to the employees affected the wages so withheld. In addition, the Comptroller General is authorized to distribute to all Government departments a list of contractors whom he has found to be in a violation, and such firms may receive no further contracts for a period of 3 years from the date of their appearance on the list.

The effectiveness of these enforcement procedures arises from the fact that, with the exception of the ineligible list, come into play while the work is still in progress. Under both of the Goodell bills, however, provision is made for the delay of these enforcement procedures until all administrative and judicial appeals have been exhausted. Under proposed section 7, the contractor can wait until a claim of violation is made, and then proceed to an investigation before the contracting agency. Thereafter, he may start all over again by bringing a *de novo* action in the U.S. district court and again follow the appeal route up through the Supreme Court of the United States. And, during all of this lengthy period, the withholding order of the Government may be stayed by judicial order.

Under proposed section 7, it is specifically provided that no penalties, "including the withholding of funds from the contractor or subcontractor," can be imposed prior to the ruling of the contracting agency. Further, upon initiation of a *de novo* action in a U.S. district court, the court has authority to stay any penalty imposed "pending the completion of judicial review." Thus, a contractor receiving an adverse ruling could seek—and in most situations obtain—a stay of the well-established and necessary withholding procedure. Since, as noted above, no presumption of validity can attach to the Secretary's determination based on prior administrative rules, practices, etc.—which would ordinarily serve as support for the administrative action challenged and thus as a defense to a request for a stay—the likelihood that the contractor will be able to stay this essential enforcement procedure is further enhanced. In effect, the admitted danger has been disguised, but not removed.

As noted above, the provision for an indemnity bond is made permissive by use of the word "may." In view of the not uncommon business occurrence of bankruptcy of contractors, such a provision cannot be fully effective to protect employees covered under the act unless it is made mandatory. In any event, even a fully effective indemnity bond for purposes of employees' protection does not mitigate against the damage to our fair bidding system, as described more fully below.

## JUDICIAL REVIEW IN ENFORCEMENT PROCEEDINGS IS NOW AVAILABLE

It should also be noted that, at the present time, contractors who feel aggrieved by the enforcement procedures of the Davis-Bacon Act have the right of judicial review from the Court of Claims. Generally, this review arises through an action by the contractor to recover from the Government wages which he was required to pay in excess of those specified in his contract. In such a suit, the subjects open to review include whether the Government acted properly in withholding funds, whether the Government is responsible for increased labor costs to the contractor, whether the affected employees performed work which would place them in the classification requiring the increased payments to which the contractor objects, the amount of time worked by employees in the pertinent classifications, etc. Thus it is not accurate to say that a contractor has no right of judicial review under present operation of the act; and the present form of judicial review in no way impairs the effectiveness of the statutory enforcement procedures.

## DAMAGE TO OUR FAIR BIDDING SYSTEM

The proposals in H.R. 9590 will also tend to destroy or weaken the contract bidding and awarding procedures as such. Contractors are invited by the bill to base their bids or rates less than those predetermined by the Secretary of Labor as prevailing, pay their laborers and mechanics wages at such lower rates and seek review of the determination through the proposed judicial procedures. Even the most scrupulous contractor may be forced to take a "business gamble" on the rate to keep himself in a competitive position. Those even vaguely familiar with the process of appellate litigation realize that 3 or 4 years may pass before such an appeal procedure would be completed. Indeed, in this respect, the new bill is even worse than the old one which provided for initial court review in a court of appeals. Under H.R. 9590, however, the first step of judicial review begins with a district court determination. Whatever the results of the review proceedings, the contractor will have obtained his contract on a cost basis different from his competitors who used the specified prevailing wage rates in figuring and submitting their bids. The judicial review proposal thus operates in a manner contrary to a full and fair system of fair and competitive bidding, and places fair bidders who are operating in a manner consistent with the law at a disadvantage.

Obviously no final judicial determination can be made of the validity of Davis-Bacon Act predeterminations prior to the opening of bids in the particular Government contract.

The danger to a fair bidding process and to the orderly administration of the Davis-Bacon Act can be brought into sharp focus by a brief examination of the legislative development of the act. The 1931 act required only that advertised specifications for covered contracts contain a provision that the wages paid "shall not be less than the prevailing rate of wages \* \* \*." The act contained no provision for a system of wage predeterminations or for effective enforcement machinery. Almost immediately following passage of the act, many contractors, as well as the Comptroller General of the United States, recognized the danger of a system of postdeterminations rather than predeterminations.

An amendment to the act was passed in 1932 which, to establish a system of wage predeterminations, required a provision "stating the prevailing rate of wages as determined by the Secretary of Labor." [Emphasis added.] In addition, the amendment added enforcement provisions. (See Senate report to accompany S. 3847, 1932, p. 1.) The act was vetoed by President Hoover. During the hearings which preceded the 1932 amendment, representatives of the National Association of Builders Exchanges and the Associated General Contractors supported the amendment. The Associated General Contractors, in a letter by Mr. Walbridge to President Hoover, stated that:

We ask only that the officials who are now charged with making decisions as to what constitutes the prevailing wage to exercise the same function *previous* to the taking of bids, thereby placing all bidders on a parity and again establish competitive bidding on a *known* basis. [Italic supplied.] (Legis. Hist. Davis-Bacon Act, p. 47.)

In a letter to Congressman Connery, Mr. Harding, of the Associated General Contractors, stated that it would be for the good of all that prevailing wages should be stipulated and made a part of the advertisement, specification, and contract. Congressman Mead, of New York, urged passage of the amendment as protection for workers and builders and to the end that "all contractors would have an equal and fair opportunity."

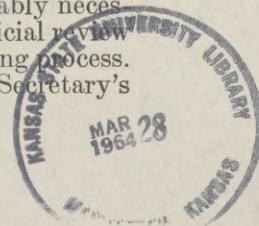
Congressional hearings in 1933 and 1934 added further evidence of the need of enforcement machinery and a system of wage predeterminations. These hearings led to passage of the Copeland (Anti-Kickback) and False Statement Acts of 1934, and the Davis-Bacon Amendments of 1935. The 1935 amendment added the requirement that the advertised specifications contain a provision stating the minimum wage to be paid "which shall be based upon the wages that will be determined by the Secretary of Labor \* \* \*"

Thus, for the first time, a system of wage predeterminations by the Secretary of Labor became a part of the law. The purpose of the amendment in this regard is clearly stated by the Senate and House reports accompanying S. 3303 at page 7:

To provide for a predetermination of the prevailing wage on contracts so that the contractor may know *definitely in advance of submitting his bid* what his approximate labor costs will be \* \* \*. [Emphasis added.]

Reduced to its fundamentals, the proposals embodied in H.R. 9590 will have the effect of returning the law and conditions thereunder to the status existing prior to the 1935 amendments; a status which representatives of industry and the Congress recognized were not desirable or feasible. In operation, these proposals would strip the act's enforcement machinery of its effectiveness and would do away with the system of wage predeterminations. The ideas underlying these proposals are neither new nor feasible. They have been tried, and abandoned nearly 30 years ago.

Labor unions are in favor of all valid procedures which assure proper compensation for employees. We must point out, however, that the availability of judicial review proceedings to labor organizations and employees and prospective employees (all of which is probably necessary from a constitutional point of view if there is to be judicial review for employers) would add a further uncertainty to the bidding process. Even if all contractors bidding on a particular job use the Secretary's



predetermination and do not challenge same in court, the challenge may come from the employee side to secure a higher rate.

The inclusion of the judicial review amendment may have the effect of starting a wave of litigation comparable to the flood of wage-hour suits preceding the Portal-to-Portal Act.

The backlog on our already overburdened courts, and particularly the U.S. district courts, is a fact well known to lawyers and lawmakers alike. Yet, the proposals embodied in H.R. 9590 would add substantially to the burdens of these district courts—which have little knowledge of or experience with the subject matter involved—and, in the process, serve to increase the delay in a final determination in ever-increasing fashion. The problems of the district courts under both proposed sections is made even more difficult by the fact that the actions before them are either specifically made a *de novo* action or are in the nature of such an action.

Specifically, under proposed section 8, the district court, if it finds that the wage predetermination of the Secretary of Labor was not made “in accordance with law” must “determine the prevailing wage” itself, and, in the course of its review, the court is not permitted to accord any presumption of validity to the Secretary’s determination by reason of any prior administrative finding, action, practice, policy or rule. Under proposed section 7, the action is specifically designated as a *de novo* action, and, once again, no presumption of validity can be accorded the administrative agency’s finding of violations. The courts are thus invited to second guess the Secretary of Labor and the contracting agencies and to substitute their judgment for that of administrative officers, even though such judgments may be supported by substantial evidence in the record. It is to be noted in this regard that under proposed section 7(b) of Representative Goodell’s original bill, H.R. 11115, the findings of the Secretary as to the facts were to be conclusive if supported by substantial evidence—which is the more customary provision in the relationship of administrative agencies to courts.

If only a small percentage of the some 5 million individual determinations issued yearly were subjected to this proposed procedure, the magnitude of the increased burden on our courts would be staggering. By subjecting the effectiveness of the existing enforcement machinery under the act to a cumbersome system of continual delay, the proposal would have as its end result the emasculation of that enforcement machinery.

#### CONCLUSION

There is no need for a new procedure for judicial review of enforcement cases because the present Court of Claims judicial procedure is entirely adequate to remedy any injustices caused by the contracting agencies to contractors.

It is not possible to have predeterminations and the judicial review of such predeterminations proposed by H.R. 9590, because no judicial review proceeding could be processed to final judgment of the Supreme Court or even a circuit court of appeals before the bids are submitted on a particular Government construction contract.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.,  
Washington, D.C., February 20, 1964.

HON. PAT MCNAMARA,  
Chairman, Subcommittee on Labor, Committee on Labor and Public  
Welfare, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR MCNAMARA: We understand your subcommittee has invited interested parties to file written statements on the bill, H.R. 6041, to amend the Davis-Bacon Act to provide for the inclusion of locally prevailing fringe benefits in Davis-Bacon wage predeterminations. In response to that invitation, we are submitting the enclosed statement. We respectfully request that the statement and this letter be made part of the subcommittee's record on this bill.

In addition to our statement, we wish to comment on a proposal offered by several organizations. These organizations—none of whom represent the mechanical or specialty construction industries—suggest that Davis-Bacon wage predeterminations be made subject to judicial review. Under the provisions of such proposal, any disgruntled bidders or employees could effectively impede the present orderly Federal construction procedures by simply filing suits in Federal district courts. A number of these suits could very quickly disrupt existing and proposed Federal construction programs. It is general knowledge that district court dockets are now substantially overburdened to a greater or lesser degree dependent upon the geographic jurisdiction involved. Why clutter these courts with wage predetermination cases? The majority of Davis-Bacon predeterminations are established through routine and mechanistic processes. It is obvious that wage predetermination disputes do not warrant the often lengthy, frequently complex, and usually expensive legal proceedings inherent in the judicial system when administrative review is now both feasible and accessible to interested parties. Hence, any amendment providing for judicial review should be rejected as being unnecessary and impractical.

We are sending a copy of this letter to each member of the Senate Committee on Labor and Public Welfare. We ask their support and endorsement of H.R. 6041. We also sincerely request that they oppose any amendment providing for judicial review in lieu of the present impartial administrative review procedures available to interested parties.

Yours truly,

ROBERT L. HIGGINS,  
*Assistant Executive Vice President.*

STATEMENT OF THE NATIONAL ELECTRICAL CONTRACTORS  
ASSOCIATION, WASHINGTON, D.C.

The National Electrical Contractors Association is the recognized representative of the electrical contracting industry, which includes more than 15,000 small business concerns primarily engaged in the business of making on-the-site electrical installations. On the average, they individually employ fewer than 10 workmen. These concerns are located in every community of the United States and are engaged in building projects which range from small homes to such complex installations as atomic energy plants and missile complexes.

The largest single purchaser of our services is the U.S. Government. We are aware of their construction problems and are truly interested in serving them as we do our private customers.

We must first review the Davis-Bacon Act to evaluate H.R. 6041. The Davis-Bacon Act does assure workers a reasonable (the prevailing) wage on Government projects, and we endorse this, but it also assures the Government a quality installation which could not be accomplished without the Davis-Bacon Act. It allows the Government to buy a dollar's worth of value in every dollar spent on construction. The Davis-Bacon Act and lump-sum public bidding are the two guardians of the Public Treasury when the Government purchases construction work. We commend the Congress for its stand for hard money (lump-sum) competitive bidding on public contracts. The Davis-Bacon Act is equally as important as lump-sum competitive bidding because of the following situations:

First of all, no licensing of contractors is required on Federal projects. Most communities protect themselves from the unqualified contractor by licensing laws. This protection is not available to the Government.

Secondly, it is impossible to properly inspect any construction job because to do the job correctly an inspector would have to be present when practically every bit of the work was installed. This obviously is economically unsound. Inspection has value but is not an absolute guarantee of quality.

Thirdly, the Government bidding regulations insist that any contractor who desires to bid and can produce a bond must be given the chance to bid. Experience has shown us that even if a contractor's performance is not adequate, the Government has a tremendous job to stop him from bidding on future construction jobs.

The protection to the public in the Davis-Bacon Act is that it insists that the contractor pay the prevailing rates, and, therefore, it follows that if he has to pay these rates he must employ the very best skilled mechanics in the area in order to be competitive. It also follows that if he employs the very best skilled mechanics in the area to be competitive, he still must have excellent management to get the proper productivity out of these workmen; all of which, in turn, assures the public that the Government is getting a dollar's worth of value out of each dollar spent for construction.

Private industry does this without the help of Davis-Bacon because it has the right to select the people it wants to do its work and can eliminate those it feels are not capable or qualified. The only way the Government can approach this position is through a prebidding standard such as the Davis-Bacon Act.

To acquire this protection for the worker and the Government, the true prevailing wages should be established. There is no question that so-called fringe benefits are wages. They are the part of the contractor's cost to employ a workman and the benefits accrue to the economic benefit of the workman. Actually, most fringe benefits extend the purchasing power of a man's wages by his joining with his fellow workers to buy insurance protection and other benefits which would cost him considerably more if he were to buy them individually.

Obviously, some think of these fringe benefits being negotiated aside from basic wages and then honestly have some doubts as to whether they are truly part of wages. We do not have these doubts because we are the people who have negotiated these conditions with labor unions

and are aware that in many cases we negotiate wages first and then have agreed with labor to deduct from their wages certain amounts of money for the purpose of establishing trusts which will use this portion of wages to buy necessary protection for the workers and their families. To assure the protection of Davis-Bacon, we should reflect the total prevailing wage in any determination made by the Department of Labor. To do this, we must include fringe benefits along with basic wages.

H.R. 6041 is in the public interest and we wholeheartedly endorse it. We sincerely hope that individual members of the Subcommittee on Labor, as well as members of the full committee, feel as we do and that they will do everything within their power to enact H.R. 6041 into law.

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FEBRUARY 21, 1964.

PREPARED STATEMENT OF E. D. HOEKSTRA, EXECUTIVE SECRETARY,  
NATIONAL CONSTRUCTORS ASSOCIATION

The National Constructors Association which consists of approximately 30 companies engaged in engineering and construction throughout the United States and throughout the world submits this statement in support of H.R. 6041. Attached hereto is a brochure prepared by NCA which lists its members, the members of various committees and briefly describes its history and purposes.

Members of the National Constructors Association are engaged in large engineering design and construction projects in the refining, chemical, power, and steel industries, and in other industries. On these projects, NCA members regularly employ journeymen who are generally represented by the unions which comprise the Building and Construction Trades Department of the AFL-CIO. Member companies are signatory in many instances to national agreements with the international unions which require the contractor to pay the wages and to contribute to the various welfare and other funds negotiated by locals of those unions with employers in the area where the project is undertaken. The unions in turn agree that their locals will supply, on request, the skilled journeymen required to perform work on these projects. Furthermore, these agreements usually contain provisions against the interruption of work as a result of strikes or lockouts.

NCA members have frequently performed construction contracts for various agencies of the Federal Government, often as prime contractors and frequently as subcontractors. These projects have included essential defense installations consisting of missile bases and have also included installations for the Atomic Energy Commission.

By virtue of the agreements with international unions, member companies have no difficulty in complying with the Davis-Bacon Act. Frequently, the rates set in the local agreements which the NCA members adopt equal or exceed Davis-Bacon rates. In those instances in which rates paid by NCA members exceed Davis-Bacon rates, this differential has generally been offset by the skills of the journeymen employed by NCA members.

In addition to paying the prevailing wages, NCA members also contribute to health and welfare funds, to vacation funds, to pension

funds, to apprenticeship and other employee training programs, and to other similar programs. The amounts contributed to these funds range as high as \$1 per man-hour and it is in this connection that the NCA member, under existing law, is at a disadvantage in submitting bids on Government contracts in competing with contractors who do not employ persons under the terms of collective agreements or company practices which provide for such benefits.

In the construction industry, unlike manufacturing, and as a result of the sporadic nature of employment, it is the standard practice for employers to contribute a stated sum for each man-hour worked into a jointly administered fund from which the various benefits are provided. Similarly, employees qualify for benefits, not on the basis of employment with a single employer, but on the basis of employment in the industry with employers who have contributed to the fund. In this manner, it has been possible to provide far greater and more extensive benefits than any individual employer could hope to provide.

In addition to the funds which provide a benefit directly to the employees and their dependents, most agreements require contributions to funds which are used to finance the training of apprentices or to finance retraining or additional training of journeymen. While the initial benefit from such a program flows to the employee who is trained, the major benefit from such programs accrues to the industry generally. Once again, because of the sporadic nature of employment and the immediate need for skilled employees, at all stages of the project, it is impossible for a single employer to hire and train unskilled employees. It is this pool of skilled trained employees, usually called journeymen, upon which the construction industry must rely in undertaking any project. This pool of skilled labor provides a direct and essential benefit to the industry and to all employers.

It would unnecessarily lengthen this statement and duplicate evidence and information secured by other committees as well as by this committee to outline the history of the growth of health, welfare, pension and training programs. The extensive nature of these programs and their benefits was well recognized by Congress in 1958 when the Welfare and Pension Plans Disclosure Act was adopted. Section 2(a) of this act (29 U.S.C. 301 et. seq.) reflects the universally recognized beneficial nature of such plans and Congress on the basis of extensive hearings found:

\* \* \* that the growth in size, scope and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

Further evidence of the approval given to these plans appears in section 404 of the Internal Revenue Code.

When Davis-Bacon was adopted in 1931, the vast majority of these programs were unknown and unheard of. These programs have grown and developed in the years since the start of World War II.

Today, they are a universally recognized part of the labor cost of all employers. One recent survey has estimated the cost of fringe benefit programs as averaging 61.6 cents per man-hour. If the committee deems it appropriate, we will gladly submit statistics on the cost of programs which may range from a low of 25 cents per man-hour to a high which will exceed \$1 per hour.

Beyond the competitive advantage afforded the employer who does not contribute to any other welfare fund, there is the obvious injustice in permitting an employer who has not contributed to the financing of training programs but uses the persons trained in such programs to incur smaller labor costs on Government contracts than the employer who has contributed to such funds.

The purpose of Davis-Bacon in requiring the payment of prevailing wages was to place competing bidders on a basis of relative equality and to prevent one employer from gaining an unfair advantage on the basis of lower wage rates. In the intervening years, wage costs have come to include not only the direct hourly rate but the cost of fringe benefits. The passage of H.R. 6041 will assure the equality of competition originally sought by Davis-Bacon and will eliminate the disadvantage now suffered by those employers who contribute to welfare and other benefit programs.

The method proposed for determining the amount of such contributions and the effect of such payments on regular and overtime rates is, in our opinion, the most equitable which could be devised and we believe that the committee which ultimately produced the present bill deserves to be commended for its efforts.

#### NATIONAL CONSTRUCTORS ASSOCIATION

##### MEMBERS

The Badger Co., Inc., 363 Third Street, Cambridge, Mass.  
 Bechtel Corp., 220 Bush Street, San Francisco, Calif.  
 Blaw-Knox Co., Chemical Plants Division, 300 Sixth Avenue, Pittsburgh, Pa.  
 C. F. Braun & Co., 1000 South Fremont Avenue, Alhambra, Calif.  
 C. & I. Girdler Corp., 256 McCullough Street, Cincinnati, Ohio.  
 Chemical Construction Corp., 320 Park Avenue, New York, N.Y.  
 Day & Zimmermann, Inc., 1700 Sansom Street, Philadelphia, Pa.  
 Dravo Corp., Machinery Division, Dravo Building, Pittsburgh, Pa.  
 Ebasco Services, Inc., 2 Rector Street, New York, N.Y.  
 The H. K. Ferguson Co., Ferguson Building, Cleveland, Ohio.  
 The Fluor Corp., Ltd., 2500 South Atlantic Boulevard, Los Angeles, Calif.  
 Ford, Bacon & Davis Construction Corp., Post Office Box 1762, Monroe, La.  
 Foster Wheeler Corp., 110 South Orange Avenue, Livingston, N.J.  
 Hydrocarbon Research, Inc., 115 Broadway, New York, N.Y.  
 Kaiser Engineers, Division of Henry J. Kaiser Co., 300 Lakeside Drive, Kaiser Center, Oakland, Calif.  
 The M. W. Kellogg Co., 711 Third Avenue, New York, N.Y.  
 Koppers Co., Inc., Engineering & Construction Division, Koppers Building, Pittsburgh, Pa.  
 The Lummus Co., 385 Madison Avenue, New York, N.Y.  
 Arthur G. McKee & Co., 2300 Chester Avenue, Cleveland, Ohio  
 J. F. Pritchard & Co., 4625 Roanoke Parkway, Kansas City, Mo.  
 Procon, Inc., 1111 Mount Prospect Road, Des Plaines, Ill.  
 The Rust Engineering Co., 930 Fort Duquesne Boulevard, Pittsburgh, Pa.  
 Sanderson & Porter, Inc., 72 Wall Street, New York, N.Y.  
 Stearns-Roger Corp., 660 Bannock Street, Denver, Colo.  
 Stone & Webster Engineering Corp., 49 Federal Street, Boston, Mass.  
 United Engineers & Constructors, Inc., 1401 Arch Street, Philadelphia, Pa.  
 Wilputte Coke Oven Division, Allied Chemical Corp., 40 Rector Street, New York, N.Y.

## ASSOCIATE MEMBERS

The Babcock & Wilcox Co., Erection Department, 20 Van Buren Avenue South, Barterton, Ohio.  
 Combustion Engineering, Inc., Prospect Hill Road, Windsor, Conn.  
 Graver Tank & Mfg. Co., Division—Union Tank Car Co., 111 West Jackson Boulevard, Chicago 4, Ill.

## REGIONAL LABOR COMMITTEE CHAIRMEN

East coast: J. M. Graney, Ebasco Services, Inc.  
 Great Lakes: Rex Vermilyea, the Badger Co., Inc.  
 Gulf coast: T. Lawrence Cronin, the Lummus Co.  
 Mid-Continent: Ted Orme, Stearns-Roger Corp.  
 West coast: Ken Weston, the Fluor Corp., Ltd.

## ACCIDENT PREVENTION COMMITTEE

Chairman: F. A. Campbell, J. F. Pritchard & Co.  
 Cochairman: William Fitz, the Rust Engineering Co.

## INTERNATIONAL COMMITTEE

Chairman: J. T. Wolcott, the H. K. Ferguson Co.  
 Cochairman: W. D. Lavers, Ebasco Services, Inc.

## PUBLIC AFFAIRS COMMITTEE

Chairman: J. E. Quinn, Procon, Inc.  
 Vice chairman: P. S. Lyon, J. F. Pritchard & Co.

## LABOR COST COMMITTEE

Chairman: Paul L. Wetcher, C. F. Braun & Co.  
 Vice chairman: J. J. O'Donnell, Bechtel Corp.

## OFFICERS

H. A. Denny, president.  
 W. L. Sheets, vice president.  
 E. D. Hoekstra, executive secretary.

## EXECUTIVE COMMITTEE

Eric Miller, manager, Industrial Relations-Overseas, Bechtel Corp.  
 Thomas W. Hopper, executive vice president, Operations, Day & Zimmermann, Inc.  
 George O. Phillips, executive vice president, Ford, Bacon & Davis Construction Corp.  
 H. A. Denny, vice president and general manager, Engineering & Construction Division, Koppers Co., Inc.  
 James C. Reed, executive vice president, Procon, Inc.  
 Niels K. Steenhil, vice president, the Rust Engineering Co.  
 W. L. Sheets, vice president, Stone & Webster Engineering Corp.

## FORMER PRESIDENTS

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J. J. O'Donnell, Bechtel Corp.	J. F. Pritchard, J. F. Pritchard & Co.
P. L. Wetcher, C. F. Braun & Co.	Carl B. Whyte, Procon, Inc.
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D. W. Darnell, the Fluor Corp., Ltd.	T. C. Williams, Stone & Webster Engineering Corp.
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 P. K. Kintz, C. & I. Girdler Corp.  
 J. F. O'Neill, Chemical Construction Corp.  
 Thomas R. Kenney, Day & Zimmermann, Inc.  
 G. T. Leonard, Dravo Corp.  
 J. M. Graney, Ebasco Services, Inc.  
 Ben T. Cherry, the H. K. Ferguson Co.  
 Ken Weston, the Fluor Corp. Ltd.  
 B. O. Yeldell, Ford, Bacon & Davis Construction Corp.  
 J. G. Hand, Foster Wheeler Corp.  
 C. C. Balding, Hydrocarbon Research, Inc.

Bert Hartford, Kaiser Engineers  
 R. K. Matthews, Koppers Co., Inc.  
 T. Lawrence Cronin, the Lummus Co.  
 D. A. Miller, Arthur G. McKee & Co.  
 R. A. Murray, Procon Inc.  
 T. L. English, the Rust Engineering Co.  
 W. J. Monaco, Sanderson & Porter, Inc.  
 Ted Orme, Stearns-Roger Corp.  
 V. D. Van Horn, Stone & Webster Engineering Corp.  
 R. J. Cunningham, United Engineers & Constructors Inc.  
 G. J. Sullivan, Wilputte Coke Oven Division, Allied Chemical Corp.  
 H. C. Gransee, the Babcock & Wilcox Co.  
 E. F. Jones, Combustion Engineering, Inc.  
 M. D. Kinghorn, Graver Tank & Manufacturing Co.

## A SYMBOL OF PROGRESS IN THE CONSTRUCTION INDUSTRY

Since its inception 17 years ago, the National Constructors Association has sought through group effort to improve the services which its member companies offer to industry at home and abroad.

The association, composed of engineering and construction contractors engaged primarily in designing and building chemical plants, steel mills, power generating facilities, and oil refineries, carries out concerted programs to improve and stabilize field labor relations. Acting through national and regional labor committees, it has made significant contributions in this field which have been recognized by industry, government, and labor organizations.

NCA's Labor Committee is composed of representatives of all member companies. It has pioneered in developing and maintaining national agreements with major building trades unions. Four years ago, it joined with the Building and Construction Trades Department, AFL-CIO in creating the national disputes adjustment plan, the first such agreement ever negotiated by the department on a national basis with any employer group. The plan's basic objective is to prevent disputes from arising on projects of member companies and to settle without work stoppages any disputes which might occur.

The problem of field labor costs is of continuing concern to the association and its members. Through an established labor cost committee, NCA carries out studies of job practices and conditions, seeking to eliminate uneconomical work practices and to promote general cost reduction. This committee was influential a few years ago in the development by the building trades of the 10-point work practices code.

Creation of safe working conditions on industrial construction projects is a special concern of NCA. Its accident prevention committee annually carries out a number of programs to enhance the safety of workmen and the public. The committee's work has been credited with achieving significantly lower accident frequency and severity rates in the operations of member companies.

Work of other NCA groups, including the international and public affairs committees, has proved beneficial to association members, the industry and the public.

## PREPARED STATEMENT OF NATIONAL CRUSHED STONE ASSOCIATION

The National Crushed Stone Association, with headquarters in Washington, D.C., is a nationwide, nonprofit trade association of producers of crushed stone and related products. A substantial portion of the crushed stone produced by the association's members is supplied either to Government or federally assisted construction projects. Hence, they have a direct and vital interest and concern in the principles of this proposed legislation. On their behalf, the association submits this statement in opposition to the proposal embodied in H.R. 6041.

H.R. 6041, as passed by the House of Representatives, proposes to amend the Davis-Bacon and related acts so as to authorize the Secretary of Labor to include certain "fringe benefits" in his computation and determination of the prevailing wage rate which the act requires be paid to all laborers and mechanics engaged in Federal construction projects exceeding \$2,000. Contractors and subcontractors engaged in construction work to which the act applies would then be required to pay these fringe benefit rates either to funds established by employer-employee agreements or directly to the employees as a part of the "prevailing wage" required by the act. Thus the "prevailing wage rate" determination, in addition to wages, would also include the dollar amount paid by employers for the following present and future "fringe benefits":

1. Medical or hospital care;
2. Pensions on retirement or death;
3. Compensation for injuries or illnesses resulting from occupational benefits; or
4. Insurance to provide any of the above;
5. Unemployment benefits;
6. Life insurance;
7. Disability and sickness insurance;
8. Accident insurance;
9. Vacation and holiday pay;
10. Apprenticeship or other similar programs;
11. Other bona fide fringe benefits.

This proposal has long been advocated by the AFL-CIO Building Trades Department on the ground that it is only by this means that the large unionized contractors presently required by collective bargaining agreements to pay their employees such fringe benefits, can be placed on a competitive parity with smaller nonunionized contractors. These nonunion contractors, the reasoning goes, have lower labor costs as a consequence of not being required to pay "fringes" and, thus, can consistently underbid the larger unionized contractors on Government construction projects.

Even if we assume this to be a desirable legislative objective (which we most emphatically do not believe it to be), examination of the bill makes plain that the probable consequences of its enactment are so diametrically opposed to other long-recognized concepts of the national interest as to require its rejection.

## FAILS TO ADVANCE ACT'S OBJECTIVES

At the outset it should be emphasized that this proposal cannot, without recourse to exceedingly tenuous reasoning, be justified in terms of the purposes for which the Davis-Bacon Act was enacted. The act, like the Walsh-Healey Public Contracts Act, was originally passed to insure that the Federal Government, in its continuing effort to get the most value for each tax dollar spent, would not depress local area wage standards by allowing Government contract work to be performed by firms which paid their employees substandard wages. To say, as the bill's proponents do, that the addition to prevailing wage rates of a "fringe benefit rate" factor would further this basic policy of the act completely ignores reality. The application of the act has long since eliminated substandard wages on Government and federally financed construction projects.

Indeed, the more normal situation today is for wages paid on such projects to set the standard for the local area. This has come about primarily as a result of the application of administratively formulated rules. For example, when a contract is to be performed in a small community, the "source of labor supply" rule is employed. Under this rule the wage rate being paid in the nearest metropolitan area is utilized as the yardstick for computing the prevailing wage rate. Inevitably, it is higher than the rate actually being paid for such work in the community where the contract is to be performed. The so-called 30 percent rule produces similar results. Under this rule, where it appears that no one wage rate predominates, the Department of Labor adopts that rate which is being paid to at least 30 percent of the workers as the "prevailing" rate, notwithstanding that it may be substantially in excess of the rate which a majority of the employees in the area are receiving.

Thus, rather than serving, as originally intended, as a minimum rate designed to prevent the depression of area labor standards, the "prevailing" wage rate has become a pacesetter. Moreover, as a consequence of the normal economic processes of the labor market, this "prevailing" rate soon becomes the norm for the area with the result that instead of serving to prevent a depression of local labor standards, the act has actually served to bring about a rise in local wage rates. The proposal to add a "fringe benefit factor" to the determination of the prevailing wage rate can only serve to intensify this trend by substantial amounts.

## WOULD INCREASE GOVERNMENT EXPENDITURES AND AID INFLATION

The House committee report reflects that this "fringe benefit factor" would amount, in some areas, to "25 or 35 cents per hour."<sup>1</sup> Such a substantial increase in the rate required to be paid by contractors and subcontractors can have two possible effects. First, the cost of Government and federally assisted construction projects will rise as contractors and subcontractors pass on their increased labor costs to the Government and, ultimately, to the taxpayer. Second, smaller firms will find themselves, as a result of their lesser ability to absorb these increased labor costs, effectively shut out from an ever-increasing portion of such contracts and subcontracts.

<sup>1</sup> H. Rept. 308, 88th Cong., 1st sess., p. 3. On Feb. 17, 1964, Secretary Wirtz, testifying before the House Labor Committee in regard to the double time bill (H.R. 9802), stated that fringe benefits today "average about 20 percent" of the hourly wage rate.

The first of these effects alone would seem to be sufficient reason for rejecting this proposal at this time when there is so much effort being given to the reduction of Government expenditures. It makes little sense for the right hand of the executive department to be turning off a few light switches while the left hand is turning on an increase in Government construction costs.

Moreover, as noted earlier, the ultimate effect of this increase would not be limited to Government and federally assisted construction projects. It would, in time, have the foreseeable result of raising wage rates in all construction work in the particular area so that all construction costs, both Government and private, would rise. This can only have the effect of fueling inflationary pressures on price levels generally.

#### RESTRAINT OF GOVERNMENT CONSTRUCTION MARKET

The second effect noted above, the removal of smaller contractors from effective competition for Government and federally assisted construction contracts is likewise to be deplored. It is directly contrary to the long-recognized and expressly stated Federal procurement policy of insuring small business a fair share of the Government contract market.

The bill's proponents argue that this measure is necessary to give unionized contractors, normally the larger ones, competitive parity with smaller nonunionized contractors. The assumption implicit in this argument that, but for wage differentials, small contractors can effectively compete with large contractors is so unrealistic that we do not believe detailed comment to be necessary. Neither do we believe that this argument reflects the true purpose of this proposal. Rather, it would more logically seem to be an attempt to secure the means whereby benefits which are secured by the processes of collective bargaining from a portion (not necessarily a majority) of the employers in a particular area would then be imposed by administrative fiat upon all contractors and subcontractors in the area.

#### DANGEROUS PRECEDENT

Fringe benefits have heretofore been considered to be solely a matter between the employer and his employees, a proper subject for collective bargaining but not for standardization by statutory decree or administrative fiat. The enactment of this proposal would mark a complete departure from the current policy of abstention by the Government from areas better served by and hence traditionally reserved to collective bargaining. This bill marks only the first step of such departure. If enacted, legislative consistency would then require similar amendment of both the Fair Labor Standards Act and the Walsh-Healey Act.

#### IMPOSSIBILITY OF APPLICATION IN CERTAIN INSTANCES

Even aside from the objectionable effects of this measure which we have discussed above, there are some very practical reasons why the proposal could not be logically and consistently applied to at least some contractors and subcontractors since, under many existing welfare funds, it is not arithmetically possible to reduce the employer's

contribution to a wage rate equivalent. This would plainly seem to be the case in those many instances where the amount of the contribution is not related to current wages or current payroll. An example lies in those instances where the amount of the contribution is measured by production or output or incentive. Moreover, there is, in fact, no relation between current contribution to benefit funds and current wages. This is because today's contributions are determined on a basis designed to provide not present but future benefits. Hence, such variables as age of work force, sex of the work force, mortality experience, interest earnings, turnover rates, as well as existing wage levels, enter into such determinations. Additionally, in many instances the employer does not bear the entire cost of the fund—the employees also contribute. And it is well recognized that often large portions of present contributions by employers have nothing to do with either the present or the future but, in fact, are made to fund past service liabilities.

When it is considered that no judicial review is provided as to the Labor Department's actions under the Davis-Bacon Act, it is easy to envision "wage determination bureaucracy" running riot under this proposal without even minimal legislative standards to guide or limit their action.

#### SUMMARY

The proposal embodied in H.R. 6041 is wholly unrelated to the purposes of the Davis-Bacon Act. It is at variance with the basic Federal policies of encouraging small business participation in Government contract work and reluctance to interfere with the collective bargaining process. In practice, it would effectuate an increase in the cost of Government construction and the costs of Federal-aid programs. It would give rise to substantial inflationary pressures. For these reasons, the National Crushed Stone Association vigorously opposes its adoption.

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#### PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

The National Association of Manufacturers is a voluntary organization of industrial and business firms, large and small, located in every State, which vigorously support principles that encourage individual freedom and which through the association develop and engage in sound programs for the advancement of the economic well-being and social progress of the American people. While this association does not presume to speak for the construction industry, we appreciate the opportunity to present our views on the legislative proposal, H.R. 6041, now pending before the special Subcommittee on Labor. At the outset, we respectfully register our opposition to this proposal to include so-called fringe benefits, as listed in the bill, within the scope of coverage of the Davis-Bacon Act (40 U.S.C. 276a).

The declared purpose of this act is to preclude the Federal Government from being a party to substandard wage agreements for certain Government contracts. The motivation for this legislation when enacted in the depths of the depression was to protect mechanics and laborers on Government public works projects by seeking to prevent

employer cost cutting at the expense of such employees. With the growth of a sophisticated and militant trade union movement and the coverage of other protective laws such as the Fair Labor Standards Act, the Davis-Bacon concept is a legal anachronism. It should be repealed—not expanded through the technique of ever broadening the scope of the law.

The House-passed bill H.R. 6041, would add a new section to the Davis-Bacon Act which would materially revise the terms and scope of the prevailing wage provisions of this statute and other public construction laws which incorporate this law by reference.

The basic, and vague, terms of reference of the underlying statute, such as, "wages," "wage rates," "minimum wages," and "prevailing wages," would be expanded to include specifically enumerated fringe benefits. Such listed fringe benefits cover the rate of payments to a fund provided for by specific agreement to provide from principal or income, or both, for—

- Medical or hospital care;
- Pensions or retirement or death benefits;
- Compensation for occupational injury or illness;
- Insurance for such injury or illness;
- Unemployment benefits;
- Life insurance;
- Disability, accident, or sickness insurance;
- Apprentice or other training programs.

The vague and ambiguous phrases of the basic statute have created controversy and uncertainty over the years, and the broad sweep of this proposed expansion would serve only to compound the uncertainties—and the costs of Government construction contracts. The bill deals with broad principles of employer-employee compensation or benefits but does not provide any realistic or meaningful criteria for the effective utilization of these principles. The proponents of this amendatory legislation seem to assume that the type and form of benefits referred to in the bill can all be quickly converted into a meaningful cents-per-hour-per-employee formula. In some instances, this may be possible, but in many cases it will be impossible to convert employer benefit programs into a "wage rate" concept envisioned in this bill. Moreover, no recognition is given to the cost factor of providing benefits, of which there are an infinite variety peculiar to industries, areas and companies, which are not included in the above listing but which are for the benefit of the employee. The assumption of the bill is thus based upon a fallacy and is a gross oversimplification of a highly complex matter.

There is a further unsound assumption implicit in this proposal based on the undefined premise that wages in the construction industry are substandard and thus should be expanded through Federal Government statutory intervention. The Bureau of Labor Statistics reports that the average construction worker is earning \$4.10 per hour, exclusive of fringe benefits. This amount can hardly be considered a substandard wage. The hearing records of this committee on this law clearly indicate that the present determinations under the Davis-Bacon Act are generally higher than the average wage paid in areas surveyed for similar work. To include by law the so-called fringe benefit factor would only serve to further compound and distort this situation.

Past practices of the Department of Labor in administratively determining local wage rates indicates a trend to ever-expanding wage rates. The imposition of union or urban wage scales on rural areas where some classes of craftsmen are not regularly employed is a constantly recurring issue. Thus, a vague law, coupled with questionable administrative techniques, can only serve to contribute to inflation, contractor dissatisfaction, and added project costs.

In these days of ever-spiraling Government budgets—and deficits—it is anomalous that the Congress should contribute to the costs of Government by seeking to add on further project costs in the manner proposed by this legislation. The hearing records of this committee adequately sustain the point that greater costs would result with more burdens of Government placed on the taxpayers. This argument cannot be ignored or rationalized as being against needed social and economic protections for workers.

It is a legal fact of life that a basic deficiency in the Davis-Bacon Act is a lack of judicial review of the administrative determinations of the Department of Labor in this area. These techniques are questionable and to further the complexities of this law with the difficult fringe benefit problem without contemporaneously considering the matter of judicial review is unrealistic.

In conclusion, our concern with this matter is twofold. The inclusion of fringe benefits within the scope of the Davis-Bacon Act is unnecessary and should be abandoned as a legal concept. The concept is generally erroneous and specifically deficient because of the patent ambiguities of the instant proposal. Our further concern is addressed to a future implication. If this proposal is enacted, it is logical to assume that the same concept will be extended to the Walsh-Healey Public Contracts Act, a law of much broader sweep. The economic consequences of this probability are of real concern. We submit that it would be almost impossible under our present benefits system to prepare comparable legislation without materially and drastically changing the employee benefit structure of American industry. This is a future consideration, but we respectfully urge that members of this committee and their colleagues in Congress seriously add this new dimension in appraising the legislative proposal under deliberation.

We urge that this measure not be favorably reported by this committee.

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#### STATEMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

This bill (H.R. 6041) would amend the Davis-Bacon Act by requiring payment of fringe benefits by contractors on construction subject to the act and other related statutes. The resultant increase in construction costs would contribute to further Federal deficits and exert an additional pressure on prices, contrary to the administration's expressed hope for a stable wage-price level.

The most revealing impact of this fringe proposal was made public 2 years ago when former Secretary of Labor Arthur Goldberg appeared before the House Subcommittee on Appropriations for the Department of Labor and other related agencies. The Department's proposed legislative program for 1962 referred to its proposal to

add fringe benefits for employees on construction work subject to the Davis-Bacon Act and related prevailing wage statutes. The following is taken from the record of Mr. Goldberg's testimony:

The Department of Labor draft bill (on fringe benefits) was sent to the Bureau of the Budget for clearance during the past session of Congress. All *Government agencies except the Department of Commerce*, to which the bill was circulated for clearance, stated that if the administration considered such legislation desirable they would not object to it although *it would raise contract costs*. Cost estimates are being prepared by the Department for additional staff required to administer the proposed act. (P. 71, hearing before House Subcommittee on Appropriations, Labor Department, fiscal 1963.) [Emphasis added.]

The best documented case involving additional cost to the Government is the so-called Quantico case. In a report to Congress entitled "Review of Wage Rate Determination for Construction of Capehart Housing at the Marine Corps Schools, Quantico, Va.," the Comptroller General of the United States carefully reviewed the circumstances surrounding the Secretary of Labor's determination of prevailing wage rates for use in contracting for construction of the 450-unit Capehart housing project at the Marine Corps schools in the vicinity of Quantico, Va. The report is 60 pages long and contains 53 exhibits. As a result of his investigation, the Comptroller General concluded that the wage determinations made by the Labor Department under the Davis-Bacon Act had resulted in "upward revisions in the wage rates for additional labor costs amounting to about \$1.1 million and deletions in planned facilities or in the substitutions of materials." The Comptroller General stated:

The *increase* in labor costs would represent *about 15 percent* of the total contract cost of \$7.5 million. [Emphasis added.]

H.R. 6041, if enacted, would double the work and compound the administrative problems of the Labor Department since each Davis-Bacon determination will involve prevailing fringe benefits as well as prevailing cash wages. The Quantico case is one of many examples presented to the General Subcommittee on Labor during hearings on the maladministration of the act at the 2d session of the 87th Congress. (See House report of the General Subcommittee on Labor Administration of the Davis-Bacon Act, June 1963.) Indeed, the language of H.R. 6041 raises many problems and questions which were unanswered during House hearings on the bill and the House debate. The present Davis-Bacon Act is vague and ambiguous and vests far too much discretion in the Secretary of Labor, as disclosed in these hearings. The addition of further vague and ambiguous amendments to the act will simply increase the already high potential for administrative error, without the necessary safeguard of judicial review. It should be noted that the Davis-Bacon Act is the only Federal wage-fixing law on the books which does not provide for court review.

An analysis of H.R. 6041 reveals that it is so loosely drawn as to be confusing. Without court review, or guidance from Congress by way of legislative history, broad discretionary power is vested with the Labor Department without any check whatsoever. It is also submitted that H.R. 6041 may contravene the constitutional prohibition against vague, ambiguous, and confusing legislation.

The following analysis of H.R. 6041 provokes these questions:

1. What is the meaning and intent of the words "fund, plan, or program" as used in 1(b)(2)(A)?

2. Are 1(b)(2)(A) and 1(b)(2)(B) mutually exclusive provisions, or is the conjunction "and" to be interpreted as meaning that these sections are to be lumped together in determining the "prevailing fringe benefits?"

3. Why are the "prevailing fringes" to be determined only by the type of formal arrangements specified in (A) and (B), namely, either a trusted "fund, plan, or program," or "a plan on an enforceable commitment—communicated in writing," which would mean that the average benefit program followed by an open shop contractor which is neither funded nor in the form of a written contract would not be considered in determining the prevailing benefits?

4. What is meant by the provision in (B) that the prevailing benefits shall be based on "rate of costs to the contractor or subcontractor which may be reasonably anticipated?"

5. Assuming that there were no union contractors in a county where a Davis-Bacon project was to be constructed, and therefore no fringe benefits provided either by way of a funded plan or a written contract, would the Secretary of Labor then go to the next nearest locality where such existed in order to determine the so-called prevailing fringes? This, of course, has been done with respect to wages under the law as it presently reads.

6. What is meant by the term "or other bona fide fringe benefits" as contained in (2)? Would this catch-all include such things as coffee breaks, premium pay, hazard pay, travel pay, etc.?

7. Why does this act require that in order for a contractor or subcontractor to comply with the fringe benefit provisions, he must either pay the equivalent in cash or set up his fringe program in accordance with (A) and (B)? Would a responsible open shop contractor, who has been paying holidays, vacations, and health and welfare for years without a collective bargaining agreement have to discontinue his program to comply with this law? Or, would he have to actually pay a special premium if he wanted to maintain his own benefit program and still bid on Davis-Bacon work if this act were to become law?

8. Is not this law confiscatory and discriminatory and therefore constitutionally invalid, because it discriminates against the open shop contractor? Can the U.S. Government say, in effect, that it will contract only with unionized employers or their equivalent?

Before H.R. 6041 is enacted by Congress it is essential that court review of the Davis-Bacon Act as proposed in H.R. 9590 (Goodell, Republican, of New York) be enacted. At the present time, every finding of the Secretary of Labor, with or without any investigation and with or without a hearing, is final. The lamentable practice that has existed for over 30 years is for the employer or employee to beg the Labor Department for reversal and, in many instances, to urge his Congressman to intervene. Is it wise to invest such authority in the office of the Secretary of Labor without the democratic principle of judicial review?

The national chamber supports H.R. 9590 because it will bring about fair play which has been lacking since the Davis-Bacon Act was passed in 1931. It will require the Department of Labor to account for its decisions. It will relieve the Department of Labor from the pressures of employers, unions, and Members of Congress to reverse its wage determinations. It will permit any contractor, subcontractor, bidder, prospective bidder, union, employee, and any

public or private contracting agency to obtain court review of a wage rate set by the Department of Labor.

The summary, we oppose H.R. 6041 because of the additional cost to the taxpayers of our country, and the added confusion and ambiguity that will ensue in its administration. In the interest of fair play which has been lacking since the Davis-Bacon Act was passed in 1931, if H.R. 6041 is enacted, court review of the law as proposed in H.R. 9590 should be added to the House-passed bill.

AMERICAN FARM BUREAU FEDERATION,  
Washington, D.C., February 17, 1964.

Re H.R. 6041, Davis-Bacon fringe benefits.

HON. PAT McNAMARA,

*Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, Washington, D.C.*

DEAR SENATOR McNAMARA: It will be appreciated if you will incorporate this letter in the hearing record on H.R. 6041.

It is our view that the enactment of this bill would be unwise for the following reasons:

(1) *The adverse effect on employment.*—National policy with respect to wages is being determined without adequate study of the relationship between wages and employment. The demand for labor is elastic; that is, employment is reduced more than one percent for each one percent increase in wage costs. The enactment of H.R. 6041 would inevitably reduce employment in the construction industry substantially below the level that would otherwise be the case.

(2) *The adverse effect on the employment of unskilled workers.*—The three major categories of unemployed persons are young people just entering the labor market, Negroes, and older people with obsolete skills. Wage fixing creates a barrier to employment for such workers—those in most need of employment. An inevitable consequence of the enactment of H.R. 6041 would be to reduce substantially the employment of such elements of the work force in the construction industry below the level otherwise prevailing.

(3) *The adverse effect on taxpayers.*—The enactment of H.R. 6041 would increase the cost of Federal or federally aided construction. These decreased costs must be paid in one form or another by taxpayers. This might perhaps be warranted if any beneficial purpose were served, but for the reasons stated in (1) and (2) above, beneficial consequences are illusory.

(4) *The delegation of broad, discretionary power.*—The enactment of H.R. 6041 would constitute, in our opinion, an excessive delegation of power to one individual, the Secretary of Labor, without adequate statutory standards or effective remedy against abuse of discretion. If the concept is established that the Secretary of Labor should have power to control fringe benefits or valuations thereof for purposes of the Davis-Bacon Act, this creates a precedent for an extension of similar authority under the Walsh-Healey and Fair Labor Standards Act.

For these reasons we submit that the enactment of H.R. 6041 would not be in the public interest nor in the interest of the people the bill is intended to help.

Very sincerely,

MATT TRIGGS,  
*Assistant Legislative Director.*

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA,  
*Washington, D.C., February 20, 1964.*

Subject: S. 450.

Senator PATRICK V. McNAMARA,  
*Committee on Labor and Public Welfare,  
Room 255, Old Senate Office Building,  
Washington, D.C.*

DEAR SENATOR McNAMARA: The purpose of this letter is to furnish your subcommittee the views of this association in connection with your consideration of S. 450 (H.R. 6041), for adding fringe benefits to Davis-Bacon Act wage determinations. This association represents about 7,800 general contractors across the country, and has 129 local chapters in all 50 States and Puerto Rico. The legislation under consideration would, as you no doubt know, vitally affect our members, since many, perhaps most of them at one time or another, engage in Federal and Federal-aid construction subject to the Davis-Bacon Act and related laws.

Policies of this association opposing extensions of the Davis-Bacon Act and calling for legislative reforms have been established over a period of many years. Opposition to the extension of the Davis-Bacon Act was expressed at our annual conventions in 1955, 1956, 1957, and 1962. The 43d convention policy in 1962 reaffirmed AGC's opposition to the extension of the act in any manner and particularly opposed the inclusion of health and welfare, pension, and other fringe benefit payments in Davis-Bacon wage predeterminations as proposed in legislation pending at that time. This policy was discussed with a subcommittee of the House considering Davis-Bacon fringe benefit legislation in 1962 and again in 1963.

The Davis-Bacon matter was again discussed at the 44th annual AGC convention in New York in 1963, and additional clarification of AGC policy was made when the board unanimously adopted reports of the labor and legislative committees of this association, excerpts of which are noted below for the full information of your subcommittee:

1. The legislative committee recommends that AGC reaffirm its policy of opposing legislation to include fringe benefits in the Davis-Bacon Act and that we continue to seek amendments to the Davis-Bacon Act in order to bring about needed reforms in that law.

2. It was the sense of the labor committee that with respect to the Davis-Bacon Act—

- (1) The AGC vigorously opposes the passage of H.R. 404 which would add to wage predeterminations the predetermination of payments actually being made for health and welfare, pensions, and apprentice training programs.

- (2) The experience of our members and the testimony before the House Labor Committee clearly demonstrates the need for major reform of the act to correct abuses that have long existed in the administration of the act

- (3) In view of the foregoing positions, the AGC advocates that all legislation affecting Davis-Bacon be consolidated in one bill.

This association is as strongly of the opinion today as in our testimony to the House subcommittee in 1962 and 1963 that it is bad legislative practice to add provisions to a law which is basically unsound (as is the Davis-Bacon Act), just as it is bad engineering practice to build a superstructure on a weak foundation. The addition of fringe benefit provisions to the Davis-Bacon Act without curing the inherent and serious defects of that law violates that principle.

In making this observation, we of course are not criticizing any particular Secretary of Labor, because the criticism is directed to the act itself which fails to provide the administrative branch of Government with proper guidelines and review, so that they may know the will of Congress with regard to the purposes and objectives of this law. We must again point out that whenever there are lacking proper checks and balances on any program or administration, there is bound to follow what will be termed as abuses and arbitrary decisions. We suggest that these checks and balances can be obtained through court review, plus any intermediate appellate procedure which the Congress in its wisdom may deem necessary.

We urge upon this subcommittee the extreme importance which we attach to the need of getting the Davis-Bacon Act reformed and put in proper order before adding one iota to its present vague provisions, which have led to a serious disrespect for the law and severe criticism from both labor and management. We would, therefore urge your subcommittee to withhold action on this bill until Davis-Bacon reform legislation has been developed to accompany its enactment into law.

The fringe benefit bill would multiply the administrative problems involved in the Davis-Bacon Act itself, since it adds many new and vague provisions which are not adequately defined and cannot be adequately defined on an administrative level. In view of the propensity of the Labor Department to construe minimum wage legislation to achieve the highest possible wage minimums, this power should not be further enlarged without adequate safeguards. If the fringe benefit bill were enacted as it stands before your subcommittee, there would be no adequate safeguards against the imposition of excessive costs through the erroneous determination of prevailing wage rates. This, to us, seems to be legislating against the public interest.

Our observations are well documented in the voluminous record of information on Davis-Bacon administration made by the House subcommittee on Davis-Bacon administration which we would highly commend to you reading. In fact, Democrat and Republican alike on the House subcommittee indicated dissatisfaction with Davis-Bacon administration as documented before the House Labor Subcommittee and indicated sentiments for reforms. The difference between the minority and majority views, however, is that to the latter, fringe benefits should come first and reforms last. As all are agreed on the need for reforms, we would urge the minority views as most sound, that reforms must come first; otherwise, the country is in serious danger of never getting them.

We can see no hardship to any group in marking time on S. 450 until adequate reform legislation is drawn up. After all, the Davis-Bacon Act has been in use for some 32 years without fringe benefits,

and another year or two will obviously make no appreciable difference, but the difference between getting and not getting reforms would be a major setback for the taxpayers of this country.

In case you may not be familiar with the entire House subcommittee record, we would like to summarize some of the highlights of faulty decisions characteristic of Davis-Bacon administration:

In the *Quantico* case, the Labor Department imported the Washington, D.C., rates across a State line into a rural area of Virginia, contrary to the Davis-Bacon mandate that the Secretary reflect rates paid and prevailing in the civil subdivision of the State in which the work is to be performed. The Comptroller General of the United States reviewed this case and condemned the Labor Department's position as unauthorized by law, and wasteful of the taxpayers funds, perhaps reaching as high as \$1 million waste in that case.

In the *Houston Space Center* case, the Labor Department specified building construction rates for roads and site preparation work contrary to area practice as indicated by the overwhelming bulk of construction in the area, which again was wasteful of the taxpayers funds. The contracting officer estimated the waste to be upward of \$1 million in that case as well.

In the Ellsworth Missile Base in South Dakota, and the Minot Missile Base in North Dakota, the Labor Department initially specified the correct heavy and highway rates, and at an unreasonably late date, some day or two before bid opening in both cases, upped the minimum rates considerably on the argument that it suddenly decided building rates should be used. After an airing with various Congressmen from those areas, the Labor Department admitted it was wrong, and made the proper adjustments.

In the *Missouri River Bridge* case in North Dakota, the Labor Department again specified the correct highway rates, and again at an unreasonably late date switched to the building construction rates. After another airing with Congressmen from the area, the Labor Department spokesmen admitted there was no basis for the higher rates, but the Department declined to make any corrections, and let the wasteful ruling remain in effect. The unconscionable nature of the Labor Department's position was such that the legislative house of North Dakota passed a resolution condemning the Labor Department's position, and later, the Comptroller General of the United States reinvestigated the matter and stated in his report that no justification could be found for the Labor Department's position.

In another instance, the Labor Department imported high city rates to an old folks' home at Fremont, Mich., the excessive nature of which made the cost of the project prohibitive. The Department did not make the necessary adjustments, and the project could not be built with Federal funds. In still another case, the University of Virginia rejected Federal aid for a construction project, again due to the unreasonable position taken by the Department of Labor.

Many similar illustrations are established in the House subcommittee's records, indicating a serious unwillingness or inability on the part of the Labor Department to make accurate and proper wage determinations as required, and in fact, as expected by the Congress. There can be no more sensible reaction to this record than to conclude that Congress should add some reasonable safeguards to the act to make sure that what it intends and expects to be done by the executive department is in fact being accomplished.

The major difference we have with the advocates of the fringe benefit bill is that we emphasize the urgency of providing those reasonable safeguards before the area for administrative bungling is enlarged. Rather than legislate in the dark, we would highly urge that all the members of the Senate Labor and Public Welfare Committee read the report of the House subcommittee on Davis-Bacon administration before taking final action. We trust you will give our recommendations your best consideration.

Sincerely,

WILLIAM E. DUNN, *Executive Director.*

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PREPARED STATEMENT OF WILLIAM BLACKFIELD, PRESIDENT,  
NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. Chairman and members of the subcommittee, I am William Blackfield of San Francisco, Calif., and Honolulu, Hawaii, and would like to present this statement as an active member of the homebuilding industry and in my capacity as president of the National Association of Home Builders.

The National Association of Home Builders (NAHB) represents over 40,000 members of the homebuilding industry affiliated in 385 State and local associations in each of the 50 States plus Puerto Rico and the Virgin Islands. We are opposed to S. 450 and H.R. 6041 which proposed to expand the Federal prevailing wage concept to include fringe benefit payments, and to extend this new concept to certain Federal housing programs covered by section 212(a) of the National Housing Act.

The NAHB board of directors at the association's annual convention in Chicago, Ill. (December 1962) approved the following as the official policy concerning labor standards and Federal prevailing wage standards in the industry:

"We oppose any legislative or administrative extension of the Davis-Bacon Act or similar federally determined wage requirements and other related provisions. Any proposal to reduce the standard 40-hour workweek should be rejected.

"We support action to prohibit any determination of labor standards or wage setting applying to homebuilding based on anything other than the conditions prevailing in the homebuilding industry."

We believe this legislation is unrealistic, could seriously affect the participation by builders in certain FHA housing programs, and prove contrary to the best interests of the American public. Our major objections are as follows:

1. H.R. 6041 and S. 450 are single purpose bills and do not attempt to correct any of the deficiencies in administration of the Davis-Bacon Act pointed out by testimony during the 1962 general hearings on this subject held by the House Education and Labor Committee, including the lack of court review of the U.S. Labor Department decisions made under the law.

2. FHA housing programs covered by this legislation are not awarded on a competitive bid basis. Therefore, the principal purpose of this legislation, namely, to equalize labor costs in competitive bidding on Federal construction work, bears no direct relationship to such programs.

3. Adding fringe benefit costs to Federal prevailing wage orders without a clear statutory requirement that the Department of Labor recognize that different prevailing wages and fringe benefit payments exist on residential building projects as distinguished from commercial construction projects will unnecessarily raise the cost of housing to many American families of moderate or low income under covered FHA housing programs. These are the very families who can least afford to absorb such increased housing costs.

4. If enacted into law in its present form, this legislation would impose a confusing prevailing wage determination standard on covered FHA programs in the homebuilding industry.

#### *Background*

The volume of residential nonfarm construction performed in 1963 is estimated at about \$25.7 billion, according to the Bureau of Census' construction report on construction value put in place. This clearly indicates the importance which this segment of the construction industry bears to the national economy. Similarly, the cost of labor in building American homes is a vital factor within the industry, and constitutes between 45 to 55 percent of the overall cost of providing suitable living accommodations and housing. Thus, any legislation which involves increased labor costs would have a serious and adverse impact on the homebuilding industry, and housing costs to the Nation's home buyers.

#### *Federal prevailing wages and housing*

The Federal prevailing wage concept applies specifically to certain housing programs through section 212(a) of the National Housing Act. These include the FHA urban renewal, rental housing for moderate and low income families, and home improvement programs. These are the very programs which the present administration showed special concern in its recent message to the Congress on housing legislation.

The Davis-Bacon Act now applied to all Federal construction contracts exceeding \$2,000 and other programs brought within the coverage of the act. It requires the Secretary of Labor to predetermine the prevailing hourly wages existing where such construction is to be performed, and to require the payment of such wages to all workers employed on such work.

The bills before the committee propose to add the rate of fringe benefit payments found to be prevailing in local areas, such as the cost of programs, for pensions, health and welfare, unemployment compensation, life insurance, accident insurance, apprenticeship training, and other training programs to Federal prevailing wage orders. We are convinced this would add substantially to the costs of FHA programs approved by Congress expressly to aid moderate and lower-income families in the National Housing Act because such benefit payments are prevalent on commercial construction work and will arbitrarily be applied to cover residential construction where the existence of such benefits is nominal.

#### *Double standard created*

The Federal prevailing wage proviso in the National Housing Act requires that the FHA Commissioner shall not insure mortgage investments in property under certain programs unless certification is made that—

the laborers and mechanics employed in the construction of the *dwelling or dwellings or the housing project involved* have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor \* \* \*. [Emphasis supplied.]

H.R. 6041 as passed the House, and S. 450 would add to the above quoted language the phrase "in accordance with the Davis-Bacon Act as amended \* \* \*."

Basically, the Davis-Bacon Act requires the payment of prevailing minimum wages to laborers and mechanics which—

shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the *contract work in the city, town, village, or other civil subdivision of the State* \* \* \*. [Emphasis supplied.]

At present, it is clear that prevailing wage determinations made by the Secretary of Labor under the Housing Act must be based upon the language of section 212(a). The additional language proposed to be added to this provision by the bills does create confusion as to which prevailing wage base will apply; namely, the Davis-Bacon Act or the Housing Act. If the proposed change were enacted into law, the Labor Department could arbitrarily find ground for the issuance of wage determinations for covered FHA housing programs based upon wages paid on contract work projects in the area. Actually, the vast majority of residential construction is of a development type and noncommercial in nature.

#### *Needed changes*

There have been instances in the past when the Department of Labor has erroneously attempted to establish the higher wage level of commercial building construction on FHA housing programs through the prevailing wage requirement. The inadvertent creation of any ambiguity over applicable statutory authority would certainly seriously complicate industry efforts to have the law properly administered and such wage determination errors corrected.

This matter could easily be resolved by revising section 3 of the bills to add the word "residential" between the words "similar" and "character" as they appear in section 212(a) of the Housing Act. Also, from a technical standpoint, it would be advisable to revise the present language proposed in section 3 of the bills to read "in accordance with section 1(b) of the Davis-Bacon Act, as amended (40 U.S.C. 276(a))" for insertion after the words "Secretary of Labor" in the Housing Act.

This change would strictly limit the permissive action by the Labor Department to only the proper determination on covered FHA housing programs of a "prevailing wage" on residential projects and avoid any tie-in with the existing broad "contract" standard of the Davis-Bacon Act.

The association on behalf of its members earnestly recommends that these changes in the language of section 3 in either bill be seriously considered as appropriate in view of the important role FHA housing programs have in the homebuilding industry and its efforts to provide needed housing throughout the Nation.

*Conclusion*

In summary NAHB and its members and associates within the industry do not for the reasons stated believe adding prevailing fringe benefit costs to Federal prevailing wage orders on FHA housing programs to be justified or in the overall public interest. Therefore, we would urge that this legislation in its present form be rejected.

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
*Washington, D.C., February 20, 1964.*

Hon. LISTER HILL,  
*Chairman, Senate Committee on Labor and Public Welfare,  
Washington, D.C.*

DEAR MR. CHAIRMAN: The International Brotherhood of Electrical Workers, AFL-CIO, on behalf of its approximately 1,700 local unions and more than 800,000 members throughout the country, strongly supports H.R. 6041, which would amend the Davis-Bacon Act to include fringe benefits within the prevailing-wage concept of that act.

This amendment is as essential to the present-day effectiveness of the Davis-Bacon Act as the original act was essential at the time of its passage in 1931. At that time, the Congress recognized that legislation was required to halt the destruction of local fair wage standards by outside contractors, with their imported labor, who were able to underbid fair contractors in the locality by basing bid estimates on their low wage scales. The prevailing-wage concept embodied in the Davis-Bacon Act served to insure equality of bidding for fair contractors and to protect the established wages of local workmen.

Just as the original act was necessary then to halt the abuses described above, the passage of H.R. 6041 is necessary today to halt the present advantage accruing to contractors who provide few, or none, of the fringe benefits paid by fair contractors. With the change in the pattern of collective bargaining, whereby an increasing percentage of employees benefits take the form of health, welfare, and pension plans, apprenticeship training programs, etc., the contractor who does not provide for such plans enjoys a bidding differential similar to that of his low-wage counterpart in 1931, even though his straight wage rate may be at or near the level of fair contractors in the area. As a result, the employment opportunities and full wage standards of construction workers are again being depressed under the existing definition of prevailing wages. Only by updating the Davis-Bacon Act and its definition of prevailing wages, through passage of H.R. 6041, can these workers be afforded the actual protection intended by the drafters of the original act.

The International Brotherhood of Electrical Workers, AFL-CIO, supports the position of the Building and Construction Trades Department, AFL-CIO, which has been presented to this committee urging that H.R. 6041 be reported favorably without amendment.

Very truly yours,

GORDON M. FREEMAN,  
*International President.*  
JOSEPH D. KEENAN,  
*International Secretary.*

AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
Washington, D.C., February 20, 1964.

HON. PAT MCNAMARA,  
Chairman, Subcommittee on Labor, Committee on Labor and Public  
Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR MCNAMARA: It is my understanding that the Subcommittee on Labor, of which you are the chairman, is providing an opportunity to interested organizations and individuals to submit their views on H.R. 6041, a bill to include fringe benefits under the Davis-Bacon Act. I would like to ask that this letter expressing the views of the AFL-CIO on this legislation be included in the record of proceedings before your subcommittee.

The AFL-CIO strongly supports H.R. 6041, and urges that your subcommittee and the full Senate Labor and Public Welfare Committee report the bill favorably to the Senate without irrelevant or crippling amendments.

In 1931, when the Davis-Bacon law was enacted by Congress, fringe benefits such as health, welfare, insurance, and pension plans scarcely existed. There are now in the construction industry more than 5,000 health, welfare, and pension funds covering more than 70 percent of the building and construction trades workers and financed primarily by employer contributions. Today these fringe benefits are as much a part of the wage structure as the cash wage payment itself.

An employer who does not pay these fringe benefits clearly has an unfair advantage in bidding on Federal construction contracts over a contractor who does provide such benefits for his workers. Updating the Davis-Bacon Act by including such fringe benefits in the prevailing wage determinations made by the Secretary of Labor is essential to protect the local wage rates and local community living standards.

We are familiar with the testimony presented by Mr. C. J. Haggerty, president of the building and construction trades department, and wish to associate ourselves with it.

Thank you for the opportunity you have afforded us to submit our views on the highly important and beneficial legislation contained in H.R. 6041.

Sincerely yours,

ANDREW J. BRENNAN,  
Director, Department of Legislation.

WASHINGTON, D.C., February 20, 1964.

HON. PAT MCNAMARA,  
U.S. Senate, Senate Office Building, Washington, D.C.:

"For the record" the IAM supports H.R. 6041 without amendments. Sincerely hope your subcommittee can expedite this legislation which is of prime importance to workers in the building trades industries.

A. J. HAYES, *International President.*