

Prevailing Wage: California and Beyond

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Affordable housing, an oxymoron in most California cities and other areas throughout the United States, continues its struggle under prevailing wage laws that, according to many industry experts, drive up the cost of housing by 10 to 11 percent.

Under California's Senate Bill 975, signed into law in October 2001, virtually all affordable housing projects are considered public works and therefore the wages of workers are subject to prevailing wage mandates. "Public works" is defined as construction done under contract and paid for in whole or in part out of public funds.

While SB 975 applies only to California, the matter of prevailing wage is of national significance to developers of affordable housing because such laws can increase the cost of construction to a point where projects become financially unworkable. The National Association of Home Builders reports that as of August of 2003, 34 states had some form of prevailing wage laws. These state laws are in addition to the federal Davis-Bacon Act, enacted in 1931, which requires all federally funded projects of more than \$2,000 to pay workers a minimum wage determined by the U.S. Department of Labor. Of the 34 states with prevailing wage laws, 21 have prevailing wage laws with threshold amounts higher than the \$2,000 threshold.

According to the U.S. Department of Labor, there are only 18 states that do not have prevailing wage laws. They include: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Virginia. Of these many either repealed previously existing prevailing wage laws or had them invalidated by a court decision: Florida (1979), Alabama (1981), Utah (1981), Arizona (1984), Colorado (1985), Idaho (1985), New Hampshire (1985), Kansas (1987), Louisiana (1988), and Oklahoma (1996).

There is surprisingly little research on the subject of project cost increases for residential construction under prevailing wage laws. On the non-residential side, national studies of the Davis-Bacon have reached

differing conclusions; some have shown that paying prevailing wage increases the cost of commercial construction substantially, while other studies have failed to find any effect.

It is generally accepted that these laws result in cost increases. Even as far back as 1999, a policy brief by the Washington Research Council noted that "nearly all studies of prevailing wages conclude that the laws enforcing them add substantially to the cost of public construction. The Congressional Budget Office has estimated that repeal of Davis-Bacon would save the federal government in excess of \$1 billion a year."

Efforts to ameliorate prevailing wage laws continue on several levels. In April of this year, Assemblyman Dave Cox, a Republican from California's 5th District, carried AB 1995, which would have limited the application of prevailing wage laws on public construction projects. His bill, which failed to muster enough support in committee, was based on the premise that prevailing wage laws apply artificially high wage requirements on public agencies that want to construct projects such as affordable housing. His bill would have prohibited the application of prevailing wages to materials manufactured away from the construction site.

Other efforts include a spate of recent studies by organizations such as the California Institute for County Government and the California Council for Affordable Housing, as well as a working paper prepared at the University of California at Berkeley. These reports document the prevailing wage controversy in California and its effects on affordability and highlight the attempts of industry organizations to bring awareness to the issue.

In California, the California Coalition for Affordable Housing met with Gov. Arnold Schwarzenegger, Secretary of Business, Transportation and Housing Sunne McPeak and Undersecretary of Labor Vicki Bradshaw in search of an answer to the industry's concerns about spiraling production costs for low-income housing. The coalition requested that the Department of Industrial Relations (DIR) issue an

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opinion that stated, among other things, that bonds and tax credits are not public financing and therefore prevailing wages do not apply. They also asked that projects that restrict 40 percent of units to families earning 80 percent or less of area median income (AMI) not be subject to prevailing wages.

In a move that may improve matters slightly in California, Schwarzenegger appointed a new director to the state's DIR. Industry observers, who see the present administration as being more open to the concerns of the affordable housing industry than was the case with the previous administration, say this appointment could result in a change in the way the department administers prevailing wage laws.

While there is little the governor himself can do to stall the application of California's prevailing wage law to low-income projects, there is hope that the DIR can begin to turn around "business-as-usual" procedures. In the meantime, affordable housing professionals in states with prevailing wage laws can take their concerns to state legislators because it is only at the legislative level that significant changes can be made. ❖