

116TH CONGRESS
1ST SESSION

H. R. 2122

To require the Comptroller General of the United States to carry out a study on the contracting practices of the Corps of Engineers, with a specific focus on how the Corps complies with and enforces the requirement to pay prevailing wages on federally financed construction jobs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2019

Mr. SMITH of New Jersey (for himself and Mr. NORCROSS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Comptroller General of the United States to carry out a study on the contracting practices of the Corps of Engineers, with a specific focus on how the Corps complies with and enforces the requirement to pay prevailing wages on federally financed construction jobs.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protect Our Workers
3 Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The Davis-Bacon Act of 1931 (40 U.S.C.
7 3141 et seq.) requires that contractors and sub-
8 contractors on certain government projects pay con-
9 struction workers locally prevailing wages as deter-
10 mined by the Department of Labor.

11 (2) Locally prevailing wages vary by job classi-
12 fication and consist of a basic hourly rate of pay and
13 benefits.

14 (3) Generally, the Davis-Bacon Act applies to
15 projects that meet three criteria—

16 (A) there is a contract for construction in
17 excess of \$2,000;

18 (B) the United States or the District of
19 Columbia is a party to the contract; and

20 (C) the contract is for construction, alter-
21 ation, or repair.

22 (4) Under the Davis-Bacon Act, the Govern-
23 ment may terminate a contract if locally prevailing
24 wages have not been paid to employees working on
25 the project.

1 (5) For close to 90 years, this law has helped
2 ensure quality craftsmanship on Federal projects,
3 protected the standard of living of skilled and
4 trained blue-collar construction workers, improved
5 workplace safety by discouraging low-road contrac-
6 tors from bidding, and stimulated the economy.

7 (6) The Wage and Hour Division of the De-
8 partment of Labor administers the Davis-Bacon Act
9 by, among other things, determining prevailing wage
10 rates and prescribing regulations and standards to
11 be observed by contracting agencies.

12 (7) Contracting agencies, such as the Corps of
13 Engineers, however, have the primary day-to-day re-
14 sponsibility for enforcement of the Davis-Bacon Act
15 and its labor standards requirements. See, e.g., sub-
16 parts 22.406 and 22.407 of the Federal Acquisition
17 Regulation.

18 (8) Some irresponsible contractors and sub-
19 contractors often avoid their prevailing wage obliga-
20 tions by, among other things, engaging in craft and
21 independent contractor misclassification.

22 (9) Craft misclassification refers to the practice
23 in which contractors misclassify high-skilled workers
24 as general laborers or other classifications in order

1 to avoid paying the higher prevailing wage rate ap-
2 plicable to the high-skilled work actually performed.

3 (10) Independent contractor misclassification
4 refers to the practice in which contractors
5 misclassify employees as independent contractors to
6 avoid paying prevailing wages, reduce labor costs,
7 and avoid State and Federal taxes.

8 (11) This practice denies workers access to fed-
9 erally prescribed prevailing wages for the work done
10 and related benefits. Communities also suffer be-
11 cause misclassification results in lower tax revenues
12 for Federal, State, and local governments.

13 (12) In 2000, the Department of Labor com-
14 missioned a study to determine the extent of
15 misclassification, and found that up to 30 percent of
16 audited firms had employees misclassified as inde-
17 pendent contractors.

18 (13) In light of the intended Federal invest-
19 ment for military construction projects for fiscal
20 year 2020, it is appropriate to investigate the com-
21 pliance of the Corps of Engineers with the require-
22 ments of the Davis-Bacon Act.

23 **SEC. 3. GAO STUDY.**

24 (a) STUDY REQUIRED.—The Comptroller General of
25 the United States shall conduct a study on the contracting

1 practices of the Corps of Engineers, with a specific focus
2 on how the Corps of Engineers complies with and enforces
3 the requirement to pay prevailing wages on federally fi-
4 nanced construction jobs, as required by subchapter IV
5 of chapter 31 of title 40, United States Code (commonly
6 referred to as the Davis-Bacon Act). The study shall con-
7 sider the following:

8 (1) Any programs or protocols the Corps of En-
9 gineers has in place for the purpose of carrying out
10 its Davis-Bacon Act enforcement obligations as set
11 forth in the Federal Acquisition Regulation.

12 (2) Any programs or protocols the Corps of En-
13 gineers has in place for the purpose of identifying
14 and addressing independent contractor
15 misclassification on projects subject to the Davis-
16 Bacon Act.

17 (3) The frequency with which the Corps of En-
18 gineers conducts site visits on each covered project
19 to monitor Davis-Bacon Act compliance.

20 (4) The frequency with which the Corps of En-
21 gineers monitors certified payroll reports submitted
22 by contractors and subcontractors on each covered
23 project.

24 (5) Whether the Corps of Engineers accepts
25 and investigates complaints of Davis-Bacon Act vio-

1 lations submitted by third parties, such as contrac-
2 tors and workers' rights organizations.

3 (6) Whether the Corps of Engineers maintains
4 a database listing all contractors and subcontractors
5 who have, in one way or another, violated the Davis-
6 Bacon Act and whether the Corps consults this
7 database as part of its contract award process.

8 (7) The frequency, over the last five years, with
9 which the Corps of Engineers penalized, disqualified,
10 terminated, or moved for debarment of a contractor
11 for Davis-Bacon violations.

12 (8) How the Corps of Engineers verifies that
13 the contractors it hires for its projects are properly
14 licensed.

15 (b) REPORT TO CONGRESS.—Not later than 1 year
16 after the date of enactment of this Act, the Comptroller
17 General of the United States shall submit to the Com-
18 mittee on Education and Labor, the Committee on Armed
19 Services, and the Committee on Transportation and Infra-
20 structure of the House of Representatives and the Com-
21 mittee on Health, Education, Labor, and Pensions, the
22 Committee on Armed Services, and the Committee on
23 Commerce, Science, and Transportation of the Senate a
24 report that summarizes the results of the study required
25 under subsection (a), together with any recommendations

- 1 for legislative or regulatory action that would improve the
- 2 efforts of enforcing the requirement to pay prevailing
- 3 wages on federally financed construction jobs.

