Multiple Subcommittees

DISCRETIONARY

$177.2
SAVINGS IN MILLIONS[1]

Stop Paying Federal Employees Who Work on the Clock for Outside Organizations

Federal law requires federal agencies to negotiate "official time" with federal labor unions. This allows federal employees to work for their labor unions while on the clock as federal employees. Taxpayers pay for federal unions to negotiate collective bargaining agreements, file grievances, and lobby the federal government. Most agencies also provide unions with free "official space" in federal buildings to conduct union work. These practices provide no public benefit and directly subsidize the operations of government unions.

The government should require union officers to clock out when they are doing union work. The government should also charge unions fair market value for the office space they use. These changes would save over $177 million a year.

ADDITIONAL READING

- James Sherk, "Official Time: Good Value for the Taxpayer?" testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives, June 3, 2011.

MULTIPLE

PROPOSAL	STATUS	EXPLANATION
President's Budget (FY2020)	NOT ADDRESSED	

DISCRETIONARY

$9.0
SAVINGS IN BILLIONS[2]

Repeal the Davis–Bacon Act

The Davis–Bacon Act requires federally financed construction projects to pay "prevailing wages." In theory, these wages should reflect going market rates for construction labor in the relevant area. However, both the Government Accountability Office and the Department of Labor's Inspector General have repeatedly criticized the Labor Department for using self-selected, statistically unrepresentative samples to calculate the prevailing-wage rates. Consequently, actual Davis–Bacon rates usually reflect union rates that average 22 percent above actual market wages.

The Davis–Bacon Act requires taxpayers to overpay for construction labor. Construction unions lobby heavily to maintain this restriction, which reduces the cost advantage of their non-union competitors, but it also needlessly inflates the total cost of building infrastructure and other federally funded construction by nearly 10 percent. The Congressional Budget Office has estimated that the Davis–Bacon Act applies to approximately a third of all government construction. Many state and local projects are partially or wholly funded with federal dollars and without prevailing-wage restrictions would cost substantially less.

Repealing the Davis–Bacon Act and prohibiting states from imposing separate prevailing-wage restrictions on federally funded construction projects would allow lawmakers to reduce federal construction spending by approximately $8.4 billion in appropriations for the Departments of Transportation, Housing and Urban Development, and Defense and other areas. This would save taxpayers billions of dollars every year without reducing the effective amount of funds available for construction projects.

ADDITIONAL READING

- James Sherk, "Examining the Department of Labor's Implementation of the Davis–Bacon Act," testimony before the Committee on Education and the Workforce, U.S. House of Representatives, April 14, 2011.
- James Sherk, "Labor Department Can Create Jobs by Calculating Davis–Bacon Rates More Accurately," Heritage Foundation *Backgrounder* No. 3185, January 21, 2017.

PROPOSAL	STATUS	EXPLANATION
President's Budget (FY2020)	NOT ADDRESSED	

MULTIPLE

DISCRETIONARY

$0
(NO SAVINGS)[3]

Extend FCC Spectrum Auction Authority

One of the Federal Communications Commission's primary functions is the assigning of licenses for frequencies on the electromagnetic spectrum. Originally, recipients of these licenses were selected based on an administrative hearing. That may have sufficed when most applicants were seeking radio or television broadcast licenses, but it was not well suited to the licensing of cellphone networks. Not only did the hearings' slow pace conflict with the needs of the fast-growing industry, but the hearings could not predict which applicant would best serve consumers. Nor did it matter, since most licenses were resold soon after they were assigned.

The idea of auctioning spectrum can be traced back to Nobel-prize winner Ronald Coase, who suggested spectrum auctions as early as 1958.[4] It was not until 1993, however, that Congress authorized the FCC to use them. In the 25 years that followed, auctions have served efficiently to get spectrum to those that value it the most. That in turn made the wireless revolution possible, fundamentally improving how Americans live. As a side benefit, over $114 billion in revenue has been generated for the U.S. Treasury.

The original authorization for auctions was to expire in 1998, but Congress extended this date several times, first to 2007, then to 2011, and again to 2012. Current FCC authority, as provided by the Spectrum Pipeline Act, expires in 2022 (or 2025 for specified spectrum, including 30 MHz of spectrum now used by government agencies). After that date, absent congressional action, the FCC's auction authority will expire. To prevent this from happening, the FCC and the Trump Administration have urged Congress to direct the FCC to auction additional spectrum by 2028 and extend FCC auction authority to 2028.

Congress should go farther, however. Auctions are a success story and have become an integral part of the policy infrastructure. The FCC should be given permanent auction authority exercisable in regard to any spectrum, subject only to a finding that an auction would be beneficial to consumers.

ADDITIONAL READING

- James L. Gattuso, "Raising Revenues with the Auction Option for the Telecommunications Spectrum," Heritage Foundation *Issue Bulletin* No. 147, May 11, 1989.

MULTIPLE

PROPOSAL	STATUS	EXPLANATION
President's Budget (FY2020)	INCLUDED	

POLICY RIDERS

Eliminate Davis–Bacon requirements and project labor agreements. The Davis–Bacon Act, enacted in 1931, effectively requires construction contractors on federal projects to use union wage and benefit scales and follow union work rules. These rules inflate the cost of federal construction by nearly 10 percent on average. Similarly, project labor agreements (PLAs) require the main contractor of a government contract to sign a collective bargaining agreement as a condition of winning a project bid. Collective bargaining agreements require using union compensation rates, following union work rules, and hiring all workers on federally contracted projects through union hiring halls. PLAs inflate construction costs by 12 percent to 18 percent on top of increased costs attributed to Davis–Bacon and discriminate against the 87 percent of workers who are not members of a union. Eliminating Davis–Bacon and prohibiting PLAs would stretch each federal construction dollar, delivering more infrastructure without the need to increase spending levels. Barring complete repeal, Congress could suspend the rule for projects funded by the appropriations bill or require the Labor Department to use superior Bureau of Labor Statistics data to estimate Davis–Bacon "prevailing wages" so that they more closely reflect market pay. Eliminating Davis–Bacon and PLAs would save more than $100 billion over the next 10 years under current spending levels.

Prohibit government discrimination in tax policy, grants, contracting, and accreditation. In June 2015, the Supreme Court of the United States redefined marriage throughout America by mandating that government entities must treat same-sex relationships as marriages. The Court, however, did not say that private schools, charities, businesses, or individuals must also do so. There is no justification for the government to force these entities or people to violate beliefs about marriage that, as even Justice Anthony Kennedy noted in his majority opinion recognizing gay marriage, are held "in good faith by reasonable and sincere people here and throughout the world."[5] As Americans have long understood, the power to tax is the power to destroy. Respect for freedom after the Supreme Court's ruling takes several forms. Charities, schools, and other organizations that interact with the government should be held to the same standards of competence as everyone else, but their view that marriage is the union of a man and a woman should never disqualify them from government programs. Educational institutions, for example, should be eligible for government contracts, student loans, and other forms of support as long as they meet the relevant *educational* criteria. Adoption and foster care organizations that meet the substantive requirements of child welfare agencies should be eligible for government contracts without having to abandon the religious values that led them to help orphaned children in the first place. Congress should prohibit government discrimination in tax policy, grants, contracts, licensing, or accreditation based on an individual's or group's belief that marriage is the union of one man and one woman or that sexual relations are reserved for such a marriage.[6]

Prohibit any agency from regulating greenhouse gas emissions. The Obama Administration proposed and implemented a series of climate change regulations to reduce greenhouse gas emissions from vehicles, heavy-duty trucks, airplanes, hydraulic fracturing, and new and existing power plants. More than 80 percent of America's energy needs is met through conventional carbon-based fuels. Restricting opportunities for Americans to use such an abundant, affordable energy source will only bring economic pain to households and businesses, with no climate or environmental benefit to show for it. The cumulative economic loss will be hundreds of thousands of jobs and trillions of dollars of gross domestic product.

Enforce data-quality standards. No funds should be used for any grant for which the recipient does not agree to make all data produced under the grant publicly available in a manner that is consistent with the Data Access Act, part of the FY 1999 Omnibus Appropriations Act (Public Law 105–277),[7] as well as in compliance with the standards of the Information Quality Act (44 U.S. Code § 3516).[8] The Data Access Act requires federal agencies to ensure that data produced under grants to and agreements with universities, hospitals, and nonprofit organizations are available to the public. The Information Quality Act

requires the Office of Management and Budget, with respect to agencies, to "issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency."[9] However, the OMB has unduly restricted the Data Access Act, and there is little accountability that could ensure agency compliance with the Information Quality Act. Credible science and transparency are necessary elements of sound policy.[10] Standards must be codified; guidelines are insufficient.

Withhold grants for seizure of private property. On June 23, 2005, the United States Supreme Court held in *Kelo v. City of New London* that the government may seize private property and transfer it to another private party for economic development.[11] This type of taking was deemed to be for a "public use" and allowed under the Fifth Amendment of the United States Constitution. Congress has failed to take meaningful action in the decade since this landmark decision and, to the extent that it is within its power, should provide property owners in all states necessary protection from economic development and closely related takings, such as blight-related takings. Since there is a subjective element to determining whether a taking is for economic development, the condemnor should be required to establish that a taking would not have occurred were it not for the purpose of economic development. Local governments often use broad definitions of "blight" to seize private property, including non-blighted property that is located in an allegedly blighted area. The only seizures of property that should be allowed are seizures of property that itself is legitimately blighted, such as property that poses a concrete harm to health and safety. Congress should withhold grants for infrastructure development to states or other jurisdictions that invoke eminent domain to seize private property either for economic development (unless the condemnor can demonstrate that the taking would not have occurred but for economic development and is for a public use) or to address blight (unless the property itself poses a concrete harm to health and safety).[12]

ENDNOTES

1. Estimated savings of $177 million for FY 2020 are based on U.S. Office of Personnel Management, *Official Time Usage in the Federal Government: Fiscal Year 2016*, May 2018, https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/reports/2016-official-time-usage-in-the-federal-government.pdf (accessed March 13, 2019). The OPM estimated the cost of official time in FY 2016 at $177.2 million. Absent more recent data, Heritage experts assume the same figure of $177.2 million for FY 2020. This estimate almost certainly understates the true costs of official time, as a 2014 GAO report found significant problems and inaccuracies in agencies' reporting of official time that led to underreporting. See U.S. Government Accountability Office, *Labor Relations Activities: Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time*, GAO-15-9, October 2014, https://www.gao.gov/assets/670/666619.pdf (accessed March 13, 2019). Heritage experts do not include any estimated savings for charging unions for their use of federal office space because Heritage experts do not have the necessary data to estimate those savings.
2. Estimated savings of $9.040 billion for FY 2020 were calculated by comparing current public construction spending of $313.6 billion annually as found in press release, "Monthly Construction Spending, January 2019," U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, March 13, 2019, https://www.census.gov/construction/c30/pdf/release.pdf (accessed March 13, 2019), to spending levels in the absence of Davis–Bacon. Davis–Bacon increases construction costs by an estimated 9.9 percent as documented in Sarah Glassman, Michael Head, David G. Tuerck, and Paul Bachman, *The Federal Davis–Bacon Act: The Prevailing Mismeasure of Wages*, Beacon Hill Institute at Suffolk University, February 2008, http://www.beaconhill.org/BHIStudies/PrevWage08/DavisBaconPrevWage080207Final.pdf (accessed March 15, 2019). "Using data from the Congressional Budget Office, we estimate that 32% of total public construction spending is subject to the DBA." Ibid., p. 6. According to the CBO, as noted, public construction spending as of January 2019 totaled $313.6 billion, 32 percent of which is $100.352 billion. In the absence of Davis–Bacon's 9.9 percent increase in costs, that spending would cost only $91.312 billion, a difference of $9.040 billion. Heritage experts assume that the FY 2019 public construction costs remain constant in FY 2020 and that federal taxpayers capture all of the value of the savings from eliminating Davis–Bacon.
3. Because the FCC currently holds spectrum auction authority through FY 2025, this proposal would not generate any new sale proceeds, some of which go toward deficit reduction, until FY 2026. Proceeds from auctions are highly variable and depend on the type of spectrum being auctioned and the number of licenses available. From 2013–2017, the FCC held seven spectrum auctions with average proceeds of $8.95 billion per auction. Federal Communication Commission, *Spectrum Auctions: Fiscal Year 2018*, https://www.fcc.gov/sites/default/files/spectrum-auctions-program-2018.pdf (accessed March 15, 2019).
4. R. H. Coase, "The Federal Communications Commission," *Journal of Law and Economics*, Vol. II (October 1959), pp. 1–40.
5. *Obergefell v. Hodges*, 576 U.S. ___ (2015), https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf (accessed May 14, 2018).
6. The Heritage Foundation, "People of Faith Deserve Protection from Government Discrimination in the Marriage Debate," *Factsheet* No. 160, July 2, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/FS_160.pdf.
7. See Eric A. Fischer, "Public Access to Data from Federally Funded Research: Provisions in OMB Circular A-110," Congressional Research Service *Report for Congress*, March 1, 2013, https://fas.org/sgp/crs/secrecy/R42983.pdf (accessed March 15, 2019), and Center for Regulatory Effectiveness, "President Signs Data Access Law (P.L. 105-277," http://www.thecre.com/ombpapers/PL105-277.htm (accessed March 15, 2019).
8. See Curtis W. Copeland and Michael Simpson, "The Information Quality Act: OMB's Guidance and Initial Implementation," Congressional Research Service *Report for Congress*, August 19, 2004, https://fas.org/sgp/crs/RL32532.pdf (accessed March 15, 2019).
9. H.R. 4577, Consolidated Appropriations Act, 2001, Public Law 106–554, 106th Cong., December 21, 2000, § 515, https://www.congress.gov/bill/106th-congress/house-bill/4577/text (accessed March 15, 2019).
10. Robert Gordon and Diane Katz, eds., *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform*, The Heritage Foundation, 2015, http://www.heritage.org/research/reports/2015/03/environmental-policy-guide.
11. *Kelo v. City of New London*, 545 U.S. 469 (2005), https://www.law.cornell.edu/supct/html/04-108.ZS.html (accessed April 12, 2018).
12. Daren Bakst, "A Decade After *Kelo*: Time for Congress to Protect American Property Owners," Heritage Foundation *Backgrounder* No. 3026, June 22, 2015, http://www.heritage.org/research/reports/2015/06/a-decade-after-kelo-time-for-congress-to-protect-american-propertyowners#_ftn1.