

Fixing the Wage Infrastructure: The Prevailing Wage

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by

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I would first like to thank the co-chairs Garodnick and James and the members of the taskforce for giving me the opportunity to appear here.

Mayor Bloomberg and the Department of City Planning have projected that in the year 2030 New York City will have 9.1 million people. This projection caught the attention of the media and also lay people, who are now concerned about what will happen to the city if it grows by nearly one million people.

I am here to tell you that when it comes to the physical shape of the city, the challenges ahead are small.

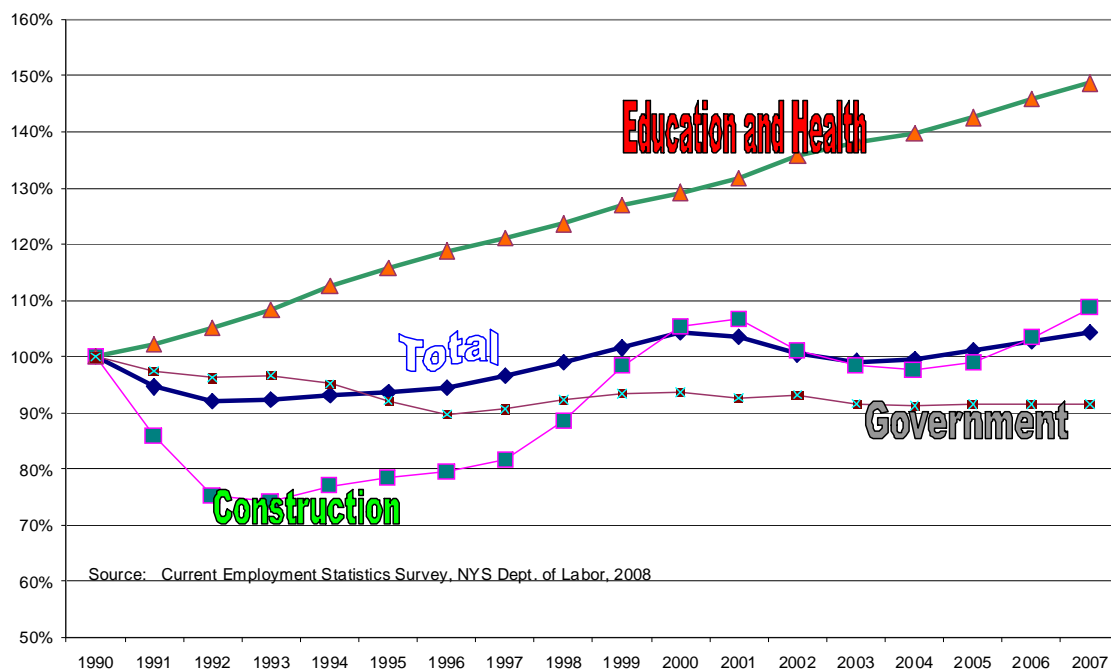
According to the US census, the population of New York City grew by 889,862 people in the 16 year period 1990-2006. The projected growth in the years 2007-2030, a period of 23 years, is actually smaller, 887,574 people.

NYC, Population, 1990-2030		
1990	2006	2030
7,322,564	8,214,426	9,100,000
Growth		
1990-2006	2007-2030	
889,862	887,574	
Source: US Census (1990-2006) and the NYC Department of Planning Projection (2030).		

Three types of labor are necessary in order to accommodate population growth: Construction workers to build the housing and infrastructure required; education and health workers to provide necessary services; and government workers to provide the needed governmental services.

The employment indices in the figure below show the changes in the labor force during the years 1990-2007. It is clear that the labor force is flexible. Between 1993 and 2007 the number of construction workers increased by 46%. In three years alone, from 1997 to 2000, the construction labor force increased by 29%. During the period 1990 and 2007 the number of education and health workers increased by 50%, far exceeding the population growth of 12%, and reflecting the movement of families and children into the city. Only the number of government workers has decreased, perhaps due to the privatization of government that we see all around us.

Employment Index, NYC, 1990-2007



You don't need to see any numbers to see that the bricks-and-mortar New York City has weathered the population growth well. There are more new buildings everywhere, the parks in wealthy neighborhoods are sparkling, and the streets in neighborhoods that can afford to pay for expensive Business Improvement Districts sparkle too. Concern about transportation is on the forefront of the mayor's agenda and he also wants to increase the number of parks in the city. It is likely that future mayors will adopt this agenda as their own.

But the human shape of the city is a different matter altogether. One of the questions that you are discussing today is the availability of a construction labor force. There is little doubt that a sufficient construction labor will be available, and there is therefore little need for the City Council to concern itself with this issue. But a lot work is going to be

necessary in order to assure that the workers who build the city are able to live. I don't mean live in the city, I mean live.

A week and a half ago Jose Palacios, a 42 years old construction worker, fell to his death from a scaffold in Brooklyn. How much was he paid for working on a scaffold 12 stories high? Fifteen hundred dollars a month! A man 42 years old who is making \$1,500 a month cannot even support himself. But Mr. Palacios had a family. As the table below shows, the late Mr. Palacios' pay was not an exception. The median wage of a construction laborer is just \$13.16/hour; half the laborers earn less than that. (The table is of wages in NYS instead of NYC because the NYC sample does not contain enough observations.)

Wages, NYS, 2006		
	Mean	Median
Construction laborers	\$ 16.13	\$ 13.16
Carpenters	\$ 19.56	\$ 16.00
Electricians	\$ 23.45	\$ 20.26
Plumbers	\$ 21.11	\$ 19.23
Painters	\$ 18.34	\$ 14.57
Sources: Current Population Survey, 2004-2006, pooled data.		
Note: In the CPS poole data 2004 and 2005 wages were adjusted to 2006 wages by the wage increase for all construction and extraction occupations, \$2006/\$2004 and \$2006/\$2004 respectively.		

While history shows that the physical planning of the city is a relatively easy task, history also shows that setting the legal infrastructure that will assure that the workers who build the city can also afford to live decent lives, is far more difficult. The legal structure that governs construction work is anti-worker and highly resistant to change.

Nearly one-quarter (24 percent) of construction output in the US is purchased by governments of all levels -- federal, state, and local. As a result, almost one in four construction workers work on projects that are purchased directly by government entities. These different government entities also finance projects that they do not own, such as low income housing or economic development projects. The proportion of construction workers who work either for the government or on government-financed projects is therefore higher than one in four. Surely the government has a responsibility to make sure that construction workers who perform jobs that involve tax payers' funds earn a decent wage.

By federal law, workers who work on construction projects that receive US government funds must be paid the “prevailing wage” for their work. It is important to note that the applicability of the federal prevailing wage law is determined by who funds it: A project is subject to the law if it receives federal financial assistance. This is very different from the way that New York State and therefore New York City determine the applicability of the state prevailing wage law.

According to the relevant section of New York State law, all “laborers, workmen or mechanics” employed pursuant to a “public works” contract—i.e., a “contract to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party”—are supposed to earn the prevailing wage. But the New York State Appellate court disagreed.

In 1988, twenty years ago, a developer of a housing project that received government subsidies decided he should be exempt from paying the prevailing wage. The New York State appellate division agreed with him. It explained that the test for whether the law applied should be not whether the project benefitted from public funds, but whether the project would be owned by the government. The court’s logic defies common sense. The state law was modeled after the federal law, and in order to determine what the New York legislature intended all the court had to do is observe how the federal government applies the federal law. It is wrong for the court to have the last word on this issue. Twenty years after this decision the time has come to pass a new law that requires that projects that receive public subsidies, public land, or the right to use eminent domain, pay the workers who build them the prevailing wage.

But even workers on projects that are subject to the prevailing wage law many times do not receive the prevailing wage. This is because the city does not enforce the prevailing wage law. The only enforcement that occurs is complaint-driven. If a worker files a complaint, the Comptroller, who is in charge of enforcing the law, will investigate it. But the Comptroller does not have the budget or staff to initiate random inspections. It is not surprising, then, that contractors fail to pay their workers what they are owed.

Perhaps the biggest case of underpayment under the prevailing wage law that has yet been uncovered in New York City was in contracts for the Housing Authority. Between 2000 and 2004, over a period of five years, workers were underpaid by \$6.5 million. This violation was discovered not by NYCHA or the Comptroller but by two unions and their respective contractors. The fact that the violation festered for so long is a direct result of the lack of inspections. As early as 2001 the newsletter of the tenants of the NYCHA warned that because NYCHA does not investigate compliance with the prevailing wage law on the site, violations can go undetected.

While there is no way of knowing precisely how often eligible workers are not paid the prevailing wage, there is evidence that the abuse is wide-spread. The table below shows wages in the construction industry as reported by workers and as reported by their employers. The gap between what workers are getting paid and what employers say they pay them is large. One reason for the gap is probably that employers who are subject to

the prevailing wage law overstate the wages they pay. They have an incentive to do so to appear in compliance with the law.

Wages, NYS, 2006						
	<u>Workers' Survey</u>		<u>Employer's Survey</u>			Difference Between Medians
	Mean	Median	Mean	Median		
Construction laborers	\$ 16.13	\$ 13.16	\$19.53	\$18.12		38%
Carpenters	\$ 19.56	\$ 16.00	\$22.47	\$20.68		29%
Electricians	\$ 23.45	\$ 20.26	\$28.38	\$25.70		27%
Plumbers	\$ 21.11	\$ 19.23	\$28.78	\$27.87		45%
Painters	\$ 18.34	\$ 14.57	\$20.90	\$19.40		33%
Sources: Current Population Survey, 2004-2006, pooled data and Current Employment Statistics, NYS Dept. of Labor, 2007.						
Note: In the CPS poole data 2004 and 2005 wages were adjusted to 2006 wages by the wage increase for all construction and extraction occupations, \$2006/\$2004 and \$2006/\$2004 respectively.						

In conclusion, the government is a major funder of the construction industry and it is its duty to assure that developers who receive public funds do not exploit their workers. To achieve these goals, first New York State law should require that any developer who receives government money pay her workers the prevailing wage. Enforcement is equally important, however. Recommendations of how to better enforce the law are contained in my report prepared for the Van Arsdale Center for Labor Studies, "Dereliction of Duty: Government's Systematic Failure to Enforce Prevailing Wage Laws for Construction Workers in New York City." Copies are available today.

Thank you for your time.