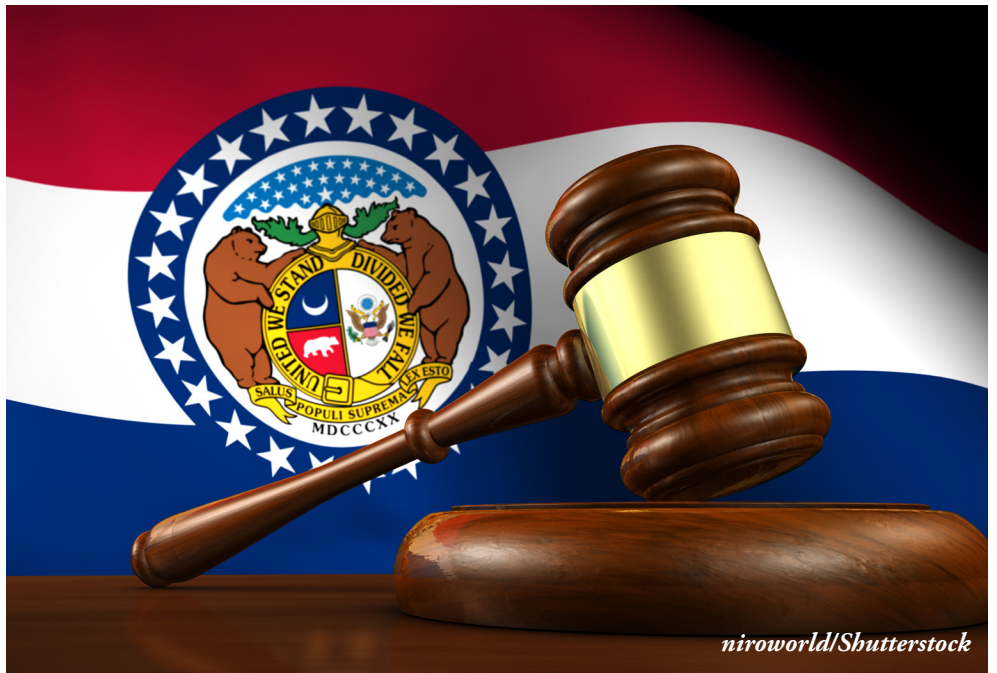




REPORT

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SPECIAL LAWS IN MISSOURI

By David Stokes

KEY TAKEAWAYS

- Special laws are laws that only apply to a very limited number of political subdivisions. The Missouri Constitution contains limitations on such laws, but they are nonetheless common in Missouri.
- Some of these special laws are beneficial and should be expanded to other parts of the state. Among these is St. Louis County's sales tax pool.
- Many of these special laws address very obscure topics, such as fire district annexation policies or hotel sales taxes.
- Not every special law is a state statute; special laws can also be found at the local ordinance level.
- Missouri needs to remove harmful special laws, expand authority for beneficial special laws, and be more careful about the establishment of special laws in the future.

ADVANCING LIBERTY WITH RESPONSIBILITY
BY PROMOTING MARKET SOLUTIONS
FOR MISSOURI PUBLIC POLICY

“There is in all of us a strong disposition to believe that anything lawful is also legitimate. This belief is so widespread that many persons have erroneously held that things are 'just' because the law makes them so.”

—Frederic Bastiat

INTRODUCTION

The Missouri Constitution limits the legislature's authority to pass “local and special laws” that apply the force of law only to certain instances, organizations, or governments. Article III, Section 40 of the state constitution lists 30 ways in which special laws are forbidden. The broadest and most important of these rules is the final one. Article III, Section 40, Subsection 30 prohibits the enactment of “local and special laws where a general law can be made applicable.”

A plain reading of this language would lead one to conclude that the legislature can pass a law that counties can do *X*, or counties cannot do *Y*, but the legislature cannot pass a law saying some counties can do *X*, while others cannot. Yet laws that allow certain cities or counties but not others to do something are extremely common in Missouri. There is no exact count of them, but the total number of “special statutes” is certainly in the hundreds, and likely in the thousands.

While the legislative branch has shown little inclination to reduce its use of special laws and Missouri's executive branch has demonstrated no objection to these laws, the judicial branch has pushed back somewhat.

In 2005, the Missouri Legislature passed a law limiting the authority of fire districts in Jefferson County to adopt fire codes. The law only applied to “fire protection districts lying wholly within first-class counties with more than 198,000 but fewer than 199,200 inhabitants.”¹

The Missouri courts use a three-part test to determine if a law is constitutional under Article III, Section 40 of the Missouri Constitution. That test appears straightforward. A law is considered “special,” and thereby unconstitutional, if:

- The population classification includes only one political subdivision;
- Other political subdivisions similar in size to the targeted political subdivision are not included; and
- The population range is so narrow that the only apparent reason for such a range is to target a particular subdivision and to exclude all others.²

The Missouri Supreme Court determined the Jefferson County fire district law failed this test when the justices overturned it in 2006. The same day the court overruled that law, it upheld a Jackson County–aimed statute requiring competitive bids for all county contracts “in counties with a population between 600,000 and 700,000 with a charter form of government.”³ At the time the law was written, Jackson County was the only county that fit that description. But the county passed the test because the law's range of 100,000 people was broad enough that it could reasonably include other counties in the future without undue restrictions preventing other counties from applying the law once they hit the targeted population range. Those potentially undue restrictions could include many things, such as requiring other counties to also border a major river⁴ or other cities to be home to a state university⁵ (to give two real examples from other statutes).

There are examples around our state where special laws are necessary. Not every special law is unreasonable. There are special laws that deal with unique circumstances. The most common examples for that in Missouri are the many laws drafted solely to apply within the City of St. Louis, the only independent city not within a county in our state. Laws that grant the City of St. Louis certain authorities usually given to counties are, by definition, special laws, but can also be justified and necessary. The Missouri Constitution has made St. Louis an independent city, and special laws are required to make allowances for that unusual constitutional system. Other understandable special laws include statutes that authorize government actions that are applicable for larger counties but not smaller ones, such as zoning authority.

One of the less-discussed potential benefits of a special law is the opportunity to test a statutory or regulatory change in one area. We often discuss federalism as a laboratory of democracy as it relates to states, but rarely

do so in relation to local governments. While there are important differences between how states relate to the federal government and how cities and counties relate to states, the general idea is that one can try a new rule or law in one place to see how it impacts the community before expanding or removing it.

This paper will examine special laws in Missouri. Many of them sow confusion and result in inconsistency, but that does not mean every one of these laws should be eliminated. If they are beneficial laws or regulations, they should be expanded. If they are harmful, they should be rescinded. There may be some special laws that are truly beneficial only for the locations they have been enacted for, and those could be maintained as is.

The first section of this report covers special laws in Missouri that have had positive impacts and should be expanded to other cities, counties, or special taxing districts. The second part focuses on special laws and rules that harm economic growth, impose redundant government, or create undue burdens and should be eliminated or significantly reformed.

SPECIAL LAWS WITH POSITIVE IMPACTS

1. Missouri Constitution Article X, Sections 3 and 4: Land Taxation

Land taxation is nothing more complicated than a property tax on the value of the land only. The rationale behind land taxation for most modern economists is that because the supply of land is fixed and immobile, taxes on land do not distort the tax base as other taxes may. Furthermore, a tax on the land but not the improvements (or a much lower tax rate on the improvements) incentivizes economic development of the land. In the type of theoretical land tax systems espoused and supported by economists as varied as Henry George and Milton Friedman, the property tax would be based entirely on the market value of the land. In a similar system probably more appropriate to our discussion today, the value of the land would be taxed at a higher rate than the value of the homes, buildings, crops, or livestock. This is commonly called a “two-tiered” land tax system.

Land taxation is rare in the United States outside of Pennsylvania, but Pittsburgh implemented an expanded land tax system in the early 1980s with successful results.⁶ In Harrisburg, which had also adopted land-value taxes in this period, the number of vacant buildings declined from 4,200 in 1982 to 500 by 1997. Land value taxes were working in Pennsylvania, but political difficulties caused them to be phased out in many places around 2000.

In his publications for the Show-Me Institute, economist Joseph Haslag strongly suggested adopting land taxes to replace local income taxes (known as “earnings taxes”) in Missouri.⁷

Land taxation, as was shown in Pennsylvania, is politically difficult. Farmers are a powerful interest group, and their staunch opposition to increased taxation on land is unsurprising and, to be fair, understandable. Homeowners, too, often object when assessments increase solely on their land.

Unfortunately—likely because of that political opposition—land taxation is generally not allowed under the Missouri Constitution. Article X, Sections 3 and 4 of the Missouri Constitution state that taxes “shall be uniform within the same class or subclass of subject. . . .” In short, this means that property taxes must be based on the value of the buildings on the property as well as the value of the land at the same tax rate. Obviously, large areas of land with no buildings, such as farms, are assessed on the value of the land under the agricultural subclass of real property. But the tax rate for the agricultural land is the same as the rate for homes and buildings within the same taxing entity.⁸

Despite legal and political obstacles, Kansas City actually had imposed and collected a land tax until it was phased out in 2012 as part of a series of (mostly bad) local tax changes recommended by a Citizen’s Commission on Municipal Revenue. The tax is still on the books, but the rates are set to zero. Until it was replaced by a higher sales tax in 2012, the land tax helped fund parks and roads in Kansas City. There were three taxes set: a land tax to support parks, a land tax to support trafficways (roads), and a tax based on the frontage for property along Kansas City’s beautiful boulevard system. The rates were modest; the taxes funded a portion and not the entirety of the park and road systems.

How was Kansas City allowed to impose this tax that conflicted with the Missouri Constitution? That is unknown to this author, despite many years of trying to learn the answer.⁹ The most likely reasons that this tax was allowed to continue for decades are: (1) it was declared a special assessment, not a general tax, and as such allowed (although *Crittenton v. Reed* would seem to contradict this interpretation)¹⁰; or (2) inertia allowed it to continue on with judicial acquiescence and/or favoritism toward city government.

To my knowledge, the special assessment on surface parking lots within the Kansas City Streetcar transportation development district (TDD) boundary is the closest thing in Missouri to land taxation. The purpose of the assessment is to help fund the streetcar, and parking lots are a great example of how a switch to land taxation in Missouri could work. Right now, downtown St. Louis and Kansas City are awash in surface parking lots. With the present tax structure, the owners pay low taxes because they have no buildings on them. Under a land tax program, the surface parking lot owners would pay much higher taxes. Presumably, such a tax system would encourage some of them to develop their lots into larger, multi-level parking garages, which would be done with little or no increase in taxation because the land, not the development, would be the primary driver of the taxes. Many surface parking lots would likely be repurposed to more productive uses.

However the Kansas City land tax was allowed, it should be reinstituted by the city of Kansas City and more harmful, alternative taxes should be reduced. It was a mistake a decade ago for the Citizen's Commission on Municipal Revenue in Kansas City (which had no economists on it) to recommend against it.¹¹ In the same way that St. Louis County was granted authority to set different rates on different classes of property, the state law (and constitution) could be amended to authorize land taxation more generally and allow differing tax rates among property subclasses, including land and improvements. The two-tiered rate system would allow one rate (preferably lower) on the property improvements, and a different (preferably higher) rate on the value of the land. Policymakers could address concerns of the agricultural community by keeping rates on farmland low in areas where that is the dominant property classification.

Land taxes would be easy to institute in Missouri, as our current assessment system would only have to be altered slightly. Most properties have separate valuations for the land and the improvements already. More work would be required within the current system to more accurately determine the land-versus-improvement differentiation, but such work would not be overly burdensome.

Land taxation should be authorized, expanded, and encouraged in order to fund local governments in Missouri.

2. Section 137.073 of the Revised Statutes of Missouri (2016):* Variable Property Tax Rates on Classes of Property

Property in Missouri is appraised, assessed, and then taxed. All taxable property (real and personal) is appraised at market value. An assessment ratio is then applied to each property. Those ratios are 32% for commercial property, 19% for residential property, and 12% for agricultural property. (Some agricultural property is actually assessed according to a soil grade value instead of at the flat 12% level.) The assessment ratio for personal property varies by type, with cars being assessed at one third of market value and other types of personal property being assessed at the same rate or less. The tax rates are then applied to the assessed value to determine the tax owed. Thus, a home with a market value of \$100,000 in Missouri would be assessed at \$19,000 and, given a normal combined tax rate of \$8 per \$100 of assessed value, the homeowner would pay a real estate tax of \$1,520 to the various taxing agencies that serve the home's residents.

A combination of state constitutional requirements, statutory laws, and regulatory decisions established these rules. RSMo §137.073 (2016) requires every local government within St. Louis County (including cities, school districts, streetlight districts, etc.) to set a property tax rate for each subclass of property.¹² This means that there are different tax rates for residential, commercial, agricultural, manufacturing, and personal property.¹³ The requirement to break down the tax rate by subclass was originally intended for the entire state, but eventually the rest of the state was given the opportunity to opt out if

*From this point forward, "Revised Statutes of Missouri" is abbreviated as "RSMo" in running text.

their county commission chose to, and every county in the state did so.¹⁴ As a result, the rule currently only applies within St. Louis County and (for an unknown reason) the city of Gladstone¹⁵ in Clay County.

In the rest of Missouri, every government with property tax authority sets one rate, which is then applied to all subclasses of real property. The different subclasses of personal property also are required to have the same tax rate. There are exceptions to this rule for certain agricultural real property and for manufacturing equipment (e.g., manufacturing personal property) in a few cities, as discussed previously. Most governments outside of St. Louis County set the same rate for real and personal property, although that is not legally required.

Without the Hancock Amendment limitations on raising tax rates, enacting variable tax rates would be problematic.¹⁶ It would be too tempting for elected officials to place a significantly higher burden on nonvoting commercial property owners or less-frequently voting renters (via the personal property tax) to the benefit of frequently voting homeowners. However, with Missouri's Hancock Amendment and related property tax rules that require recapitulations of the rates each year, rollbacks after the reassessments every two years, and taxpayer approval for rate increases, some protections against such overreach are in place. Still, a number of 2021 local tax increase proposals in St. Louis County in which the commercial property rate was raised higher than the residential rate demonstrated that additional protections are needed to prevent such abuse.¹⁷

The purpose of the variable rates in St. Louis County was primarily to protect against rising home assessments and related higher property taxes on homes. But in the larger picture, if one class or subclass has values that are changing rapidly, such as an increase in home values or a dramatic decrease in business values (e.g., a town's main factory closes), the variable rates allow for the changes to mainly affect the sector itself. For example, consider a situation in which home values are rising substantially but business values are staying flat. In this case, the governments could focus the bulk of the tax rollbacks on the residential properties instead of being forced to take the large increase in home values and spread the rate relief across all classes of property.

The underassessment of farmland value in Missouri is a major issue in this area. According to the most recent data, the United States Department of Agriculture values the farmland in Missouri at \$93.8 billion.¹⁸ For assessment purposes, that same farmland is valued by the Missouri State Tax Commission at \$1.9 billion.¹⁹ *That's 2% of the market value.* By comparison, commercial property is supposed to be assessed at 32% of market value and residential is assessed at 19% of market value. According to a plain reading of the law, agricultural property should be assessed at 12% (there are major exceptions to that, as stated above). But setting assessed values at 2% of market value makes it difficult for rural areas to fund their local services.²⁰ Raising taxes in such an area is difficult because the rates required to raise sufficient revenues from underassessed farmland must also be applied to much higher assessed values of homes and businesses, leading to very large tax increases for those types of properties. A good option to address the failure of local governments to properly value farmland would be to allow variable tax rates on different subclasses of property. In the rural farmland example, it would allow for one rate on agricultural property with its very low assessment ratios, and different—presumably lower—rates on residential and commercial property with much higher assessment ratios.

Consider the following actual election. In 2012, Lakeland School District in St. Clair and Henry counties in Missouri proposed a property tax increase of \$0.87 per \$100 of assessed valuation. The proposal was soundly defeated overall, losing widely in both counties, but from this point forward we are considering only St. Clair County, which has more of the district in it. In relative terms, \$0.87 is a large tax increase—it was a 22% tax increase over the present rate at that time. St. Clair County is rural. Over half the total land is farmland, but that farmland had an enormous assessment discrepancy. The market value for all of the farmland in St. Clair County in 2012 was \$395 million, but its assessed valuation for Missouri tax purposes was just \$13.4 million, or 3% percent of the market value for taxation purposes.

At these assessed valuations, an \$0.87 tax increase worked out to a \$165 tax increase for a \$100,000 home (which is a normal price for a St. Clair County home), but only 50 cents per acre of farmland. While one might say, “kids

don't live in acres, they live in homes," and be obviously correct, the larger point is that by having so much of the land in the county assessed at such a low rate, any tax increase (whether necessary or not) that was going to raise a substantial amount of money had to include a large rate increase—large enough to give the average voter reasons to oppose it (which they clearly did). The total assessed valuation for Lakeland School District was only \$30 million in 2012, so even that 22% tax increase was only going to raise about \$260,000. Allowing for differing rates on various classes of property—or focusing on the proper valuation and assessment of land as discussed earlier in this paper—could allow for various parts of Missouri to address the funding of government services in the manner most befitting those areas.

Under our Hancock Amendment, even with variable tax rates, whether or not to increase those rates would be up to the voters of the area, as it should be.

3. Sections 92.040 and 92.043 of the Missouri Revised Statutes (2016): Municipal Business Personal Property Taxes

One of the worst taxes in Missouri is the personal property tax on business equipment. This is the same equipment a business hires employees to use, operate, and maintain. Office computers and copiers, farm and construction machinery, industrial plant equipment, restaurant appliances, and much more are included. Economists Christophe Chamley and Kenneth Judd argued for low taxation rates on capital income to encourage investment, and their arguments apply to this issue.²¹

Rational workers would rather have the extra machines to work with rather than a transfer from a tax on capital. . . .²²

This is not an argument against property taxes on businesses or farms. The argument is simply that property taxes, as stated in the section on land taxation, should be implemented as much as possible on the value of the land and buildings (preferably the former) and should be greatly reduced or eliminated on the value of machines and equipment. Those are the capital pieces that produce our food and goods and that help provide services. A property tax on them is harmful for the economy.²³

There are two different economic views on property taxation.²⁴ There is the “benefits” view, which sees property taxes as a way to accommodate varying desires among the population for differing levels and qualities of public services. In this view, these competing desires for different things are generally factored into housing prices. Second is the “capital” view, which views property taxes as a distortionary tax that results in a misallocation of resources. Of course, both views can be true depending on what type of property is being taxed. The benefits view appears to be the more accurate version for land and homes, while the capital view may be more accurate for personal property, especially business equipment.²⁵

To address the high tax levels on business equipment, the Missouri Legislature authorized the City of St. Louis in RSMo §92.043 (2016) to impose lower property tax rates on business equipment than on other types of property. The very similar RSMo §92.040 (2016) allows both St. Louis and Kansas City to reduce their tax rates on business personal property, although only St. Louis has chosen to do so. Many other cities within St. Louis County also do not impose their municipal property taxes on business equipment, but I can find no legal authority for that decision.²⁶

Generally speaking, governments are required to impose the same tax rates on varying types of property, be it commercial, residential, agricultural, or personal. This will be discussed further in the next section. Two exceptions to that requirement are the aforementioned statutes authorizing lower rates on business personal property in St. Louis and Kansas City.

Along these lines, how much would property taxes on other types of property need to be raised in order to offset the money lost by eliminating the tax on business personal property? Unfortunately, the exact number is unknown. In the annual reports by the Missouri State Tax Commission, business personal property taxes are listed under the heading of “all other tangible personal property.” While business personal property almost certainly makes up the large majority of that category, we cannot be sure it is all of it. In 2020, “all other tangible personal property” made up 5.5% of the total property tax base in Missouri.²⁷ That percentage varies slightly by county. If we assume that business property makes up all of the “all other,” then some combination of assessment or tax

rate increases on commercial land and buildings (again, preferably the former) would be necessary to offset that revenue while positioning ourselves for growth by taxing less economically harmful items. The simplest change (but not the one I recommend) could be an increase in the commercial surtax rate in each county in a revenue-neutral manner. Certainly, some businesses that pay significant personal property taxes (automobile factories and casinos) would benefit more than businesses that pay very little (parking lot operators and singer-songwriters), but overall the switch could be done relatively easily. Adopting variable-rate property taxes and then raising the standard commercial tax rate instead of the commercial surtax would be preferable, however, given the flexibility of the standard property tax rate compared to the surtax.

This change would give local governments some flexibility on their tax-rate levels while giving commercial property taxpayers the rollback protections of Missouri's Hancock Amendment.

In Figure 1 we see a normal, suburban office building. The land, building, parking lot, company truck, and office equipment (in this instance, computers and copiers) are all taxable. The land and building are subject to commercial property tax rates along with the commercial surtax. The company truck and office equipment are subject to personal property taxes. According to the economic theory discussed in this chapter, it would be preferable for the taxes on the land and building (especially the former) to be higher, while the taxes on the business equipment and truck should be lower (or eliminated entirely).

Figure 1

Business Property Tax Quiz

Which parts of this Missouri business location are taxable?

- a. The land b. The building c. The truck d. The office equipment e. All of the above (The answer is "e".)



Moving away from property taxes on capital equipment would move Missouri's property taxes further toward the "benefits" view of the system. The business personal property tax should be eliminated altogether, but if this isn't possible, policymakers could expand RSMo §99.040 (2016) and §99.043 (2016) to allow (or even mandate) lower taxes on business personal property than on other classes and subclasses of property for all cities, counties, and special taxing districts. If that does not happen, Kansas City should follow St. Louis's lead and reduce that tax as it is currently authorized to do. Cutting this tax for all businesses would be a better way to stimulate business expansion in Kansas City than the tax subsidies-for-some-businesses approach it has employed in recent decades.

4. Section 66.620 of the Missouri Revised Statutes (2016): St. Louis County Sales Tax Pool

St. Louis County is the only county in the state where some of the sales taxes collected within the county are put into a pool and then redistributed to the various municipalities within the pool by a formula based primarily on population. Legislation passed in 2021 to compel online sales tax collections in Missouri mandates that any online sales taxes collected within St. Louis County also be distributed through a pooled system.

Municipalities in Saint Louis County are either "point-of-sale" (a.k.a. "A" cities) or "pool" (a.k.a. "B" cities). "A" cities keep the majority of the 1% general county sales tax collected within their city boundaries. They share a portion of their tax collected with the pool on a sliding scale according to a complicated formula. "B" cities put all of the 1% general county sales tax into the pool, which is then distributed to the pool cities based on the same formula. City population is a major part of the formula. There are other factors in the pool formula, such as the optional one-quarter-cent general sales tax, but the larger point is the most important: cities share sales tax collections within Saint Louis County.

Pooled sales tax systems are not unique to Saint Louis County. New York, Illinois, Colorado, and California are four states that allow various forms of sales tax pooling or sharing. Pennsylvania authorized a major sales tax pool

in Allegheny County, which includes Pittsburgh. This is notable because Pittsburgh, like St. Louis, is considered a heavily fragmented area with many local governments. The goal for Allegheny County, much like St. Louis, was to reduce disparities in funding among cities. According to one case study, the Allegheny County pool system "has worked well."²⁸

How has this system worked within Saint Louis County? In my opinion, it has been a major success. Cities that are "pool" cities use tax-increment financing (TIF) and other tax subsidies far less than "point-of-sale" cities. The differences are substantial. As of 2020, within Saint Louis County "point-of-sale" cities have enacted 56 TIF projects and redirected \$650 million to developers. The "pool" cities have enacted only 33 TIF projects and redirected \$322 million to developers. That difference is even larger than it may appear, because "point-of-sale" cities constitute only 31 of the 89 municipalities in the county and make up only about 30% of the county's population.²⁹ Yet, taken together they have redirected more than twice as much money to developers as pool cities have. The facts are clear. The "point-of-sale" cities use TIF with greater frequency than the rest of the county. This means that the "pool" cities are staying out of local development decisions and letting markets work with far greater frequency.³⁰ The lack of government involvement in local economic planning is something that should be encouraged and incentivized. Sales tax pools are a disincentive for centralized economic planning—even if just at the local level—and a free-market reason for businesses to locate based on market choices and business decisions, not tax subsidies.

A "pool" city benefits from development wherever it occurs in the county. A successful retail development will contribute to the pool to at least a small degree. However, "point-of-sale" cities only benefit from retail development within their boundaries. That encourages "point-of-sale" cities to abuse subsidies, which harms the region. For example, there used to be a Walmart on the border of the two St. Louis County suburbs of Bridgeton and St. Ann. Both cities received tax revenue from the store. But Bridgeton gave Walmart a \$7.2 million subsidy to open a new store entirely within Bridgeton. The region's tax base was reduced by the subsidy, St. Ann lost revenue when the store moved, and no real economic growth was created—there was still one Walmart in the area.³¹

In recent years, some cities have tried to revise the pooling system through legislation and lawsuits. Minor changes were made to the pooling system by the general assembly, but larger attempts at changing, and even eliminating, the system through a lawsuit were rejected by the Missouri Supreme Court in 2019.³²

Where else in Missouri could sales tax pools be introduced? With the dramatic increases in online purchasing, they could work for every county in Missouri. Jackson County in particular should consider a sales tax pool. The majority of Jackson County's 19 cities have made use of TIF, as has Jackson County itself. Sugar Creek is one example of a very small city that has aggressively used TIF, alongside eminent domain, to subsidize new retail developments.³³ What is more, Jackson County cities, including Independence and Kansas City, have witnessed substantial TIF failures where taxpayers have ended up directly footing the bill when project bond payments could not be made.³⁴ A county sales tax pool is one way to reduce the amount of harm done by TIF.

Many key Missouri counties should consider sales tax pooling. There need be no single formula for a sales tax pool. Each county could create a formula that is right for that county. While it may sound great that cities compete with each other for retail development, the reality is that such government competition has been devastating for Missouri. It has resulted in tax giveaways and home takeaways, all because bureaucrats attempted to plan local economies. As discussed in the next section on county TIF commissions, government planning and the abuse of TIF have failed to benefit our state's economy. There is a better way—a way that is more oriented toward the free market. Sales tax pools are a free-market policy that encourages economic growth for the whole region instead of having cities fighting with each other over retail development.

5. Section 99.82 of the Revised Statutes of Missouri (Supp. 2021): County Tax-Increment Financing Commissions

Tax-increment financing (TIF) is an economic development program that allows developers to use future taxes generated by their proposed developments to offset the costs of the projects. Developers get to use all of the incremental increase in property taxes and half of the incremental increase in sales and earnings taxes toward allowable expenses for their projects.

In Missouri, municipal TIF commissions typically determine whether a project is approved for TIF. The city where the proposed development would be located (or the county, if the proposed site is unincorporated) appoints the majority of the TIF commissioners. On most commissions, the city gets 6 out of 11 total spots. The remaining spots are split among the school district, county, and other taxing districts. The problem with this arrangement is obvious: the city appointees can approve any TIF project they want without needing any votes from the other taxing districts. Cities, which depend more on sales taxes for their revenue, suffer less from this arrangement than school, fire, and library districts, which depend more on property taxes. Half of the new sales taxes from a new Walmart is still a significant amount, especially compared to zero new property taxes. As the TIF commission is empowered to grant subsidies from the future taxes of every taxing district, this flaw grants city appointees the authority to give away future tax dollars intended for other, independent taxing districts, even if the commissioners from those other taxing districts are opposed to the TIF project. Even worse, if a TIF commission rejects a TIF proposal (a TIF commission decision that rarely happens in the first place), the city council can simply override the rejection with a supermajority vote (which has not proven difficult to get in the few times it has been required).³⁵

In 2007, the operation of TIF commissions in St. Louis, St. Charles, and Jefferson counties was amended. RSMo §99.820 (Supp. 2021) now grants increased county representation to the TIF commission in these counties. There are 12 members of the commission, and the county gets six appointees. The other six appointees are split among the city, school district, and other taxing bodies. This change applies whether the proposal is within a municipality or in the unincorporated parts of the county. This change was not particularly impactful until 2016. Before 2016, the law still provided that a city council could simply override the TIF commission. In 2016, the law was changed so that when a city council overrode a county TIF commission, the use of the TIF subsidy was limited to demolishing buildings and grading land (RSMo §99.825 (Supp. 2021)). This revision removed many of the previously authorized uses of TIF and limited its scope.

According to the substantial economic literature on the subject, the harms and failures of TIF are clear. The

East-West Gateway Council of Governments studied the use of TIF in St. Louis and concluded that TIF and transportation development districts (TDDs) have created jobs in St. Louis, but at the rate of one retail job for every \$370,000 in taxpayer subsidies.³⁶ That is not a path to growth. In a 2017 study of the use of TIF in Missouri, the authors determined that they “do not find evidence that the use of TIF generated economic development opportunities that would not have arisen in the absence of TIF.”³⁷

A study on the use of TIF in Iowa concluded that “on net . . . there is no evidence of economy-wide benefits . . . fiscal benefits, or population gains.”³⁸ A study out of Chicago showed that the city’s heavy use of TIF has not led to net job creation for residents.³⁹ Another study on Illinois’ use of TIF found that economic growth was stronger in cities that did *not* use TIF than in cities that did.⁴⁰

In addition to the substantial economic evidence that TIF is overused, the fragmentation of St. Louis County has made the situation worse than in many other places. Approximately 90 municipalities (the exact amount has varied over the years) competing for retail dollars and sales taxes to fund their cities has led to a race to the bottom with subsidies and tax giveaways. To combat this, the state legislature added more county members to the TIF commission in St. Louis County, as mentioned previously. The reasoning, which history has borne out, is that county appointees will take a more regional view of subsidy proposals than municipal appointees, who might care more about what is good for their municipality. Due to the anti-TIF position of local officials in St. Charles and Jefferson counties, along with the influence of the large, anti-TIF duck-hunting community in St. Charles,⁴¹ those two counties were included in this reform along with St. Louis County.

These county TIF commissions have indeed proved more disciplined in evaluating TIF proposals than the municipal TIF commissions.⁴² Before the 2016 changes gave the three county TIF commissions more authority, the St. Louis County TIF Commission rejected major TIF proposals in Ellisville, Shrewsbury, and elsewhere, only to have those rejections overridden by the respective city councils. The St. Louis County TIF commission

represented the interests of approximately 1.3 million people. (Because some of the taxing jurisdictions impacted by TIF also served the City of St. Louis, those residents can be fairly counted in the total.) The city councils empowered to override the county TIF commission often represented only 5,000 or so people, yet until 2016 they were able to impose their factional views and biases on 1.3 million other people they did not represent.

After the 2016 changes to the statute, the St. Louis County TIF commission rejected a major TIF proposal in Maryland Heights that would have done major economic and environmental harm. Maryland Heights sued to overturn that decision, but the preliminary rulings have been in favor of St. Louis County. While the county TIF commission has approved a few TIF proposals in recent years, the days of rubber-stamping any TIF proposal that comes along in St. Louis County are apparently gone.

In St. Charles and Jefferson counties, the number of TIF applications after the change to the county commissions has declined to zero. The known opposition to TIF by county officials in those two locations combined with the increased authority of the county TIF commissions seems to deter most TIF proposals before they even start.

There are 45 *active* TIF arrangements in these three counties. Of these, 42 were approved prior to the changes to the law in 2016, *and only three have been approved since then*. This total does not include dozens of TIF projects that were completed before 2021, as records for them are not fully available.

The impact of having county TIF commissions that can make decisions with real teeth is a signal that TIF commissions in every Missouri county should be similarly empowered. City commissions answer to city voters, but they make tax decisions for other taxing districts, such as school districts, that often go far outside those municipal lines. In Shrewsbury, Missouri, for instance, the city council overrode the county commission and approved a TIF proposal that was located in the portion of Shrewsbury that lies within the Affton School District. Most residents of Shrewsbury live in the Webster Groves School District, so the city council was approving tax subsidies that would harm a school district where (1) most Shrewsbury residents did not live, and (2) the large

majority of the people who would be affected by the TIF project have no way to express their opinions (i.e., by voting for candidates to the Shrewsbury City Council).

County TIF commissions, along with the elected officials who would either serve on these commissions or appoint the members, represent a much larger group of voters and interests. They have taken, and should take, a more regional view of subsidy decisions. The success of this type of commission has been demonstrated by the willingness of TIF commissions in St. Louis County to reject some TIF applications, a simple act that is extremely rare in Missouri. The county TIF commissions in St. Charles and Jefferson counties have not had to say “no,” as their mere existence seems to have dramatically reduced the TIF requests in the counties. Legislation passed in 2021 has added Cass County in the Kansas City region to the list of county TIF commissions.

Regional decision-making for tax subsidies reduces municipal competition and provides greater overall fiscal discipline. TIF is one of the largest local subsidy programs in our state, and there is no evidence that it has succeeded in growing our economy. Tax incentives such as TIF interfere with market-oriented business activities in numerous ways, such as encouraging business decisions based on maximizing the subsidy instead of sound business practices. A better practice is for TIF decisions to be made by county-based TIF commissions. Policymakers should revise RSMo §99.820 to make that change.

6. Section 238.237 of the Missouri Revised Statutes (2016): Lake of the Ozarks Community Bridge

How should one pay for public goods and services—through taxes or user fees? Good public policy often comes down to the economic questions of rivalry and excludability. Pure public goods are non-rivalrous (meaning that your consumption of them does not limit my consumption) and non-excludable (meaning that it is difficult to prevent someone from using a particular good). Sound public policy suggests that general taxes pay for those pure public goods. A local road system is not excludable (there is no means of keeping someone from leaving their driveway and driving on the street) and non-rivalrous (your use does not impede my use, although

congestion makes any road rivalrous in certain conditions). Taxes, such as a general gasoline tax, are preferred for these systems.

Interstate highways connecting major cities (and many bridges) do not meet those standards for public goods. Their limited entry points make it easy to control access, so they are readily excludable. And while highways are not considered rivalrous, they are more rivalrous than local roads because of greater issues with congestion due to peak travel time demands and limited alternative routes. It's smart policy to pay for services like this via fees—in this case, tolls.

Tolls provide the necessary funds to build and maintain the road assets that benefit certain users, such as truckers, more than others. They provide a reliable source of funds to maintain the road in the future. The direct connection between use and payment greatly reduces the chance that infrastructure will be built for political reasons instead of actual demand. With recent technological improvements to tolling, fees can be efficiently collected without the long lines at toll plazas that some people may remember.

The Lake of the Ozarks Community Bridge is the only tolled transportation facility in Missouri. It was originally approved and created as a Missouri Transportation Corporation in 1992. The bridge opened to the traveling public in 1998. It was converted into a TDD in 2012. It was a tolled bridge under both systems. Rates differ based upon the season. In the busier part of the year, the toll is \$3 per car (higher for trucks). In the less-busy parts of the winter, it is just \$2 per car (and also reduced for trucks).

The bridge was financed by \$43 million in bonds. These tolls pay off the bonds. In 2018, the bridge collected \$3.8 million. The bonds were expected to mature in 2042, although they may be paid off early. The pandemic reduced collections substantially in 2020, which will make paying off the bonds early more difficult. Once the bonds are paid off, the bridge will become free. However, the toll could be maintained to fund ongoing maintenance for the bridge and—if the law were to be changed—other infrastructure investments in the region.

This bridge is a good example of how user fees can fund good policy. When it was built, the bridge substantially reduced travel time around the lake. To get from Sunrise

Beach to Lake Ozark used to require a long drive through Camdenton. Now the trip is dramatically shorter. For most users, the gas and time savings more than justify the toll. For users with plenty of time and cars with good gas mileage, the longer “free” route without a toll may be preferred. Either way, an important, new transportation asset was built through user fees, and it is benefitting the Lake of the Ozarks region.

This toll bridge’s implementation was not strictly done via a special law. It is better described as a special use of the TDD law. RSMo §238.237 (2016) authorizes TDDs to use tolls. There were 237 TDDs in Missouri as of 2020 according to the Missouri State Auditor. A large majority of them are funded by sales taxes. Some are funded with property taxes. The Lake of the Ozarks Community Bridge is the only TDD funded by a toll.

Missouri could benefit from making greater use of user fees such as tolling to address our current and future transportation needs. A constitutional amendment could allow for greater use of tolling or, short of that, the Missouri Department of Transportation and local highway departments could expand the use of TDDs for tolled transportation infrastructure where appropriate.⁴³ This would be particularly well suited for new bridges in rapidly growing suburban areas, such as any proposed new bridges connecting St. Louis and St. Charles counties.

The Lake of the Ozarks Community Bridge should not be the only toll road or bridge in our state.

SPECIAL LAWS THAT SHOULD BE REPEALED

1. City of St. Louis Code Chapter 5.23: St. Louis Payroll Tax

The payroll tax is the lesser-known brother of the City of St. Louis 1% earnings tax. The earnings tax is a 1% tax paid by all people who live or work in the City of St. Louis. The payroll tax is a 0.5% tax paid by many employers within the City of St. Louis. Unlike with the St. Louis and Kansas City earnings taxes, the City of Saint Louis did not have specific state statutory authority to enact the city’s payroll tax.

The Missouri Constitution certainly appears to require that all local taxes must be authorized by the state:

Missouri Constitution Article X, Section 1

Taxing power—exercise by state and local governments.

Section 1. The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes.

Source: Const. of 1875, Art. X, 1. (1968)

Proposed amendment to Kansas City charter that purported to impose a total earnings tax higher than the tax permitted by statute was invalid.

Grant v. Kansas City (Mo.), 431 S.W.2d 89.

Nevertheless, in *Neuner v. City of St. Louis*, the Missouri courts declared that the city’s imposition of the payroll tax was, and is, valid.⁴⁴ The city successfully argued in court that as a constitutional charter city with home rule authority, it can enact the tax without specific state approval. The city’s position has been that all ordinances are constitutional until someone successfully challenges them in court. The payroll tax was challenged in court and determined to be legal. However, the fact that it may be legal does not make it beneficial policy. The payroll tax is a unique and special municipal ordinance among Missouri municipalities, and the City of St. Louis should eliminate it.

Voters in the City of St. Louis approved the payroll tax in 1988, along with a graduated business license tax. The two new taxes replaced a monthly business license tax of \$5 per employee per month, which was eliminated as part of a restructuring of the city’s tax system. The two new taxes also replaced some of the specific occupational license taxes that the city had in place at the time. The payroll tax does not get as much attention as the earnings tax because it brings in far less revenue.⁴⁵ Beyond the obvious fact that the payroll tax rate is one-half that of the earnings tax, there are numerous exemptions to the payroll tax. For example, nonprofit and government entities are not required to pay the payroll tax, and several of the largest employers in the City of St. Louis (e.g., Barnes Hospital,

the federal government, and St. Louis University, as well as the employer of the author of this essay) fall into these categories.

Economists Joe Haslag and Howard Wall have authored studies demonstrating that having a local income tax harms St. Louis and Kansas City.⁴⁶ The presence of a local income tax encourages movement of population, employment, and growth outside of these two central cities to surrounding parts of the metropolitan areas that do not have an earnings tax. While those studies focused on the earnings tax, Haslag's first study, in particular, noted that the effects of the earnings taxes were harmful in both cities but slightly more harmful in St. Louis than in Kansas City.⁴⁷ The presence of the payroll tax on top of the earnings tax in St. Louis—but not Kansas City—is a reasonable explanation for that increased difference.

The payroll tax just adds to the harmful effects of local income taxes on population, employment, and income growth in St. Louis.⁴⁸ The City of St. Louis should eliminate the payroll tax and replace the revenue with a combination of budget cuts, reduced use of tax subsidies, shared services, privatization, and increases in other, less economically harmful taxes.

2. Missouri Constitution Article X, Section 11(G): Kansas City School District Property Tax Rollback Exemption

This is the only special law addressed in this report that is not in state statutes but instead in our state constitution. That makes it harder to change, but change is still needed.

In 1998, Missouri voters amended the state's constitution by approving Article X, Section 11(g):

X Section 11(g). Operating levy for Kansas City school district may be set by school board.—The school board of any school district whose operating levy for school purposes for the 1995 tax year was established pursuant to a federal court order may establish the operating levy for school purposes for the district at a rate that is lower than the court-ordered rate for the 1995 tax year. The rate so established may be changed from year to

year by the school board of the district. Approval by a majority of the voters of the district voting thereon shall be required for any operating levy for school purposes equal to or greater than the rate established by court order for the 1995 tax year. The authority granted in this section shall apply to any successor school district or successor school districts of such school district.

This proposal was one of many to come from the famous Kansas City desegregation lawsuit from the 1980s. In practical terms, the amendment means that the Kansas City School District is the only local governmental unit in Missouri that is exempt from the requirement to roll back property tax rates as property assessments increase over time.

In 2019, Jackson County assessments increased 23% after the Missouri State Tax Commission ordered the county to correct its faulty, underassessed property valuations.⁴⁹ At that time, the assessed value of the school district itself increased by 29%. Even with that assessment increase, the school district unfortunately chose not to lower its tax rate.⁵⁰ Other taxing entities are required to roll back rates as assessments increase to lessen the tax increases people face. In 2021, the Kansas City School District's total assessed valuation went up a further 7.27%, but the school district only lowered its tax rate by a miniscule 0.14%.

The exemption and resulting taxes might be worthwhile if they were leading to better outcomes for students in the Kansas City School District, but it is reasonable to doubt whether such improvement is happening. As of 2019, only 25% of Kansas City School District students were proficient in language arts, and only 21% were proficient in math according to state standards for each subject.⁵¹ Those are among the lower proficiency scores in the state.

What was the result of the Kansas City School Board's decision not to roll back its property tax rates (beyond a miniscule amount) after substantial assessment increases in 2019 and 2021? Very large tax increases for many people. That is not supposed to happen via reassessment, but it did. It is time to remove the Kansas City School District's rollback exemption.

3. Sections 67.1003 and 67.1009 of the Missouri Revised Statutes (2016): (and other local ordinances): St. Louis Hotel Taxes

Hotel and motel taxes are great examples of special laws, because they may involve more special legislation than any other tax. There is no reason why some cities should be allowed to impose hotel and motel taxes and others are not. The question before the legislature should be as simple as, “Should counties or cities be allowed to impose taxes on hotel and motel room rentals to fund local priorities?” That question, along with capping the tax rate if the legislature’s answer is “yes,” is all the general assembly needs to ask and answer. Perhaps the legislature would only grant counties the power to tax hotel rooms. Perhaps it would grant that authority to cities. Perhaps the differences between large and small counties are substantial enough in this regard that some distinction between them would pass both the Missouri Supreme Court and a commonsense test. But drawing up a new, specific law for every single city, county, or tourism-related special taxing district that wishes to be added to the authorized statutory list for hotel taxes is burdensome and creates opportunities for abuse.

All that said, this section is not about hotel taxes in general. It is about the hotel tax system in St. Louis. There are other regional hotel tax pools in Missouri. Branson and the Lake of the Ozarks each fund tourism advertising and convention recruitment with pooled hotel taxes from various counties and cities within those communities. Hotel taxes within St. Louis City and St. Louis County are also pooled, similarly to the St. Louis County sales tax pool. Every hotel and motel in St. Louis City and St. Louis County charges a 3.5% tax to fund the downtown convention center and the forsaken domed stadium adjoining it. Alongside that hotel tax is a 3.75% tax to fund the region’s convention and visitors commission (CVC). Both of these taxes go to the CVC instead of individual cities, and those cities are not allowed to impose additional hotel sales taxes beyond the standard sales tax rate within that city. However, there are several exceptions to this pooling system, and these exceptions are the subject of this section.

A sales tax pooling system can be very conducive to free-market public policy. One reason, in regard to a

pooled hotel tax, is that it diminishes the opportunity for municipal tax incentives for hotels if the hotel tax money is not yours to give away. Economic development done via government subsidies is a poor strategy for economic growth.⁵² Another reason a sales tax pool is market friendly is that it helps hotels compete with each other on the important things—service, location, and market price—rather than government tax rates. It should be noted that other tax incentives for hotels do exist in areas with a pooled hotel tax.

In 2011, the municipal hotel tax issue came to a head in the St. Louis region. Several cities attempted to impose new, higher municipal hotel taxes including Woodson Terrace, Edmundson, Richmond Heights, and regional heavyweight Clayton. Voters killed the plans in Richmond Heights and Clayton, but the other cities (along with other towns including St. Peters in St. Charles County) moved ahead with hotel taxes. The hotel industry pushed back, properly fearful that if every city in St. Louis County started imposing its own hotel taxes, the result would be a combination of confiscatory taxes, consumer anger, and confusing accounting. After a few years, agreements were reached to prevent any additional local hotel taxes in St. Louis County. There were exemptions granted for the four cities that had already adopted the taxes, but that compromise resulted in lower tax rates than three of the cities (excluding Hazelwood) had originally sought.

Hotel taxes can be a reasonable way to raise local tax revenues on a generally inelastic good, although the levels of regional competition and tax rates can clearly impact their effectiveness.⁵³ Less understandable are the *exceptions* to the hotel tax pool in St. Louis. Four cities are authorized to have municipal hotel taxes above the regional 7.25% rate: Maryland Heights, Hazelwood, Woodson Terrace, and Edmundson. Three of them are at least very low rates of under 1%, but Hazelwood’s rate is 5%, for a total hotel tax of 12.15% and a combined general sales and hotel tax rate of approximately 20% in Hazelwood. Two cities, Maryland Heights and Hazelwood, use their hotel taxes to promote local tourism, while Woodson Terrace and Edmundson use their admittedly low taxes to support general services. Would it surprise you to learn that three of these cities border the airport, with Maryland Heights not much farther away and having a major casino?

You could argue that the cities alongside the airport need the CVC campaign less than hotels elsewhere. After all, they have a captured market of travelers who need convenient lodging next to the airport. Should these airport communities be allowed out of the tourism hotel tax pool and authorized to collect their own hotel taxes for municipal services? That would, in my opinion, be like passing a sales tax and then exempting the shopping centers from it. Taxes should be set as broadly as possible so that they may be as low as possible, and exempting one of the largest markets (in this case, the airport area) from the regional hotel tax would have large, negative impacts on the goal (tourism promotion) and the level of taxation needed to fund that goal.

A pooled hotel tax for the region should be just that—a pooled hotel tax for the region. The exceptions should be removed. It makes no sense for the regional CVC to be spending tax dollars attracting tourists to our entire region, only to have Hazelwood collecting another 5% from customers at airport hotels to tell people to just go to Hazelwood. As low as the hotel taxes in the other cities may be (either 0.5% or 0.6%), they should be removed, too. RSMo §67.1003 (2016) and §67.1009 (2016) should be further amended to make the St. Louis hotel tax a consistent tax pool.

4. Section 72.418 of the Revised Statutes of Missouri (Supp. 2021): Fire District Annexation Policies

Missouri, like every state, has a process for the creation and management of local governments. That process should be consistent, but not set in stone. It should be amenable to changes to consumer (i.e., taxpayer and resident) preferences over time.

Several special laws have been written specifically to alter the basic rules of municipal annexations and incorporations and how they provide services related to fire districts. Not surprisingly, with the political power of the firefighters unions in Missouri, those laws have been written to favor independent fire districts over municipal fire departments.⁵⁴ As the *St. Louis Post-Dispatch*⁵⁵ has documented many times, politically active firefighters union have frequently gained control of the operations of independent fire districts in Missouri; something that

is harder (but by no means impossible) for them to do within municipalities.

Section 72.418 (Supp. 2021) is a law written specifically to prevent newly formed cities within St. Louis County from establishing fire departments. Furthermore, section B of that law mandates that any city within St. Louis County with its own fire department that annexes an area that had previously been served by a fire district cannot perform fire protection services in the annexed area. The city must pay the fire district out of city tax dollars for the fire district to perform fire services within the newly annexed area, even if the city is ready, willing, and able to provide fire services there with its own fire department, and even if that is the preference of the residents of the newly annexed area.

The City of Hazelwood within St. Louis County has been battling with the obscure Robertson Fire Protection District for years now over the exorbitant costs that the Robertson Fire District demands to provide fire protection for the small part of Hazelwood that Robertson serves, even though Hazelwood is entirely capable of providing fire services within that area at much less cost.⁵⁶ For comparison, Hazelwood's entire property tax rate for its citizens *for all services, including fire protection*, was 92.3 cents per \$100 of assessed value as of 2021. The Robertson Fire District rate *for fire protection alone* was \$2.4095 per \$100 of assessed value. While Hazelwood has alternative funding options—primarily a one-quarter-cent fire protection sales tax—that explain some of that stark disparity, the overall difference is still astounding. Hazelwood city officials have stated that they could provide fire protection to the area currently served by Robertson for \$1.8 million less per year.⁵⁷

The economist Charles Tiebout⁵⁸ first proposed the idea that cities compete with each other through a menu of public services at various prices (i.e., property and other taxes) with the full cost of participating in those municipal services being capitalized into housing prices. People want to live in a well-run community with efficient public services and modest tax rates, so housing prices increase in cities, school districts, and counties that have these characteristics. Cities with poor public services and high tax rates will see housing prices decline.

Special laws that shield fire protection districts from municipal competition for local tax dollars harm taxpayers

and need to be removed. If residents and voters wish to have municipal annexations or incorporations that include fire protection, they should be able to do that throughout Missouri.

5. Section 190.528 of the Revised Statutes of Missouri (2016) (and many other state and local examples): Local Occupational Licensing Requirements

“Stretcher van” is the common name for non-emergency medical transport services. Often, the people using such a service are not sick at all, but simply disabled (e.g., they require use of a wheelchair) and in frequent need of transportation providers with more room and equipment than a standard taxicab. Not only does this statute set unnecessary state regulations for stretcher vans—making them more expensive to customers than they would otherwise be—but Section 3 of the law further requires St. Louis County to set its own local standards for stretcher vans that must be met *in addition to* the state requirements.

There are many other local licensing examples like this. Rolla, Missouri, may license electricians even though most cities of its size are prevented from doing so:

“The provisions of this section shall not apply to third class cities located in counties of the first class having a charter form of government or to third class cities located in a county of the third class; except, *however, the provisions of this section shall apply to a city of the third class in a county of the third class which contains a state university whose primary mission is engineering studies and technical research.*”⁵⁹

Pemiscot County licenses contractors. Lawrence County licenses septic tank cleaners. Ste. Genevieve County has a local permit requirement for a ferryboat operator. These examples stand out as they are the only occupations within those counties subjected to special, local occupational requirements. Licensing laws are virtually always enacted, or made more stringent, because existing practitioners of a profession lobby for it, not because of customer complaints or safety concerns.⁶⁰ Moreover, current practitioners are typically “grandfathered” in, so they

do not have to meet the new stricter standards that are imposed on their future competitors. The added costs to earn the right to enter that profession in the future allow existing practitioners to charge higher prices—and earn higher profits—than they would in a truly free market. Occupational licensing laws reflect the will of special interests, not the public interest. In short, licensure requirements add costs and harm consumers.

Numerous economic studies have shown that government licensing standards do not improve consumer health or safety. In fact, licensing requirements often cause product or service quality and consumer safety to decrease. This is because licensing requirements are often arbitrary and not necessarily related to practical job skills or knowledge, and the false sense of security that a license provides causes people to be less discriminating about who they do business with. In addition, the artificially high prices that licensed practitioners charge have consequences, causing people to do more dangerous do-it-yourself work, reduce their medical visits, or resort to black markets. This explains why, for example, massage therapy is more expensive in Kansas than in Missouri,⁶¹ electrocution rates are higher in places where there are stricter electrician licensing laws,⁶² and states with stricter dental licensing laws have a higher incidence of poor dental hygiene.⁶³

While I know of no studies specifically examining whether or not Lawrence County has cleaner and safer septic systems than neighboring counties without a septic license, I would find it hard to believe it does. I similarly doubt St. Louis County has safer stretcher vans than other counties, although I would expect them to be more expensive. Many targeted, special local licensing laws that are required or even just authorized by state statute should be ended. This could be done by sunseting all local occupational licenses in five years.⁶⁴ After the five-year period, all licenses should be subject to a strict test to determine if they address a legitimate health and safety need in that county. Many of these laws would fail such a test.

6. Section 65.10 of the Revised Statutes of Missouri (2016): Townships

Townships are a level of government in between counties and municipalities. Townships are most often used in

the American states that made up the historic Northwest Territory: Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin. Within those states, townships have defined responsibilities. In neighboring Illinois, townships are responsible for property assessment, road maintenance, and provision of local welfare benefits.⁶⁵ Most counties in Illinois have townships, although the City of Chicago and several counties do not use them.

In Missouri, we use townships sparingly and in our smallest counties only. Missouri only allows townships in 3rd- and 4th-class counties, which are Missouri's smaller county classifications. (Note: we are not talking here about political townships, which are voting boundaries like wards or precincts for election purposes. Many Missouri counties have those. We are only discussing government townships, which have defined government responsibilities.) Currently, there are 21 counties in Missouri that have townships.⁶⁶ The primary role for townships in Missouri is local road management. Some townships are also authorized to manage fire protection and planning and zoning, but road operations are the primary purpose.

One of the primary themes of the study of local government is the trade-off between the costs and benefits of smaller versus larger governmental units.⁶⁷ Residents like the feeling of connection they have with smaller units of government where their voice will be heard. Conversely, they appreciate the cost savings that can come with greater economies of scale as the size of governmental units increases.⁶⁸ At some point, local government units become so large that costs start to increase again even as economies of scale would, in theory, continue to keep them lower.⁶⁹ The reasons for the last fact may be attributed to, among other things: the influence of public employee unions, political logrolling, or the difficulty of overseeing very large bureaucracies.

So why has Missouri authorized township-level governments only in our least populated counties? If townships are beneficial in less-populated counties, then political science, public-choice economic theory, and research would seem to suggest townships might be more beneficial in larger counties. In large counties townships could play a middle role performing certain functions best provided by an intermediate level of government between very small municipalities within very large counties.⁷⁰ But that is not what we have in Missouri.

As stated previously, road management is the main use of township government in Missouri. A study of rural road management by townships in Illinois, Wisconsin, and Minnesota cast doubt on whether road money is well spent by townships. The study determined that “nearly 45 percent of rural road expenditures may be unnecessarily incurred due to managerial inefficiencies.”⁷¹ Forty-five percent! The combination of a lack of professional expertise in very small, rural governments and very limited economies of scale is harming taxpayers. This result, according to the study's authors, is “consistent with previous analysis.”⁷²

It is highly unlikely that township government is more efficient at managing road funds in Missouri than in Illinois, Wisconsin, and Minnesota. The results from the study of road expenditures in Illinois, Wisconsin, and Minnesota townships are likely to apply to Missouri townships. Those states use townships throughout the state, including in larger counties where there is evidence that cost savings may be realized⁷³ and producing (perhaps) a level of managerial professionalism within township staffing. The same study of rural road management that found such a high degree of unnecessary costs for road expenditures also found that larger townships were more efficient than smaller townships, but we have no large townships in Missouri.⁷⁴

There have also been concerns about oversight and financial reporting practices by townships in Missouri. This problem is common in very small, independent government districts with limited oversight.⁷⁵ In a 2003 general audit of township governments, the Missouri State Auditor's office stated, “The financial reporting practices of Missouri's townships need significant improvement.”⁷⁶

Missouri state government needs to ask why we have townships, why counties operate road funds in most counties but not in township counties, and what evidence (if any) there is to support the continued use of townships in our state. RSMo §65.10 (2016) should be thoroughly reviewed, and townships should be reconsidered in Missouri. A few former township counties (Wright and Sullivan) have already made the choice to abolish townships, and others should consider it.⁷⁷ I question whether there is a need for such a small subdistrict of government in Missouri counties, large or small.

CONCLUSION

There are hundreds—if not thousands—of Missouri statutes that have been written to apply exclusively in a specific city or county. Many of them deal with matters so minor that nobody ever challenges them, despite their potential unconstitutionality. In many cases these “special” laws are popular with the people they affect.

So why should anyone care? Who cares if Saint Louis County has variable tax rates or if Pemiscot County licenses contractors when no other local governments do so? It is important because constitutions need to be followed. If something is wrong with the constitution, the people should amend it, and it is worth noting that state constitutions are not that difficult to amend.⁷⁸ Legislators and bill drafters should not write laws to “get around” the plain meaning of the constitution.

One of public-choice economics’ primary insights is that governments act in their own selfish interests, just like individuals and firms. Local governments act in ways that expand their power and increase their ability to tax, spend, and benefit the interests within their communities.

I believe it would benefit Missouri if options at the local government level for toll roads and bridges, variable property tax rates, land taxation, sales tax pooling, county TIF commissions, and reduced business personal property taxation were expanded to much more of our state. Similarly, I believe we would be better off if local occupational licensing rules, townships, payroll (and earnings) taxes, and special rules that made local consolidation and cooperation more difficult (e.g., fire district annexation rules, hotel tax pool exemptions, and property tax rollback exemptions) were rescinded.

As I stated in the introduction, the benefit of special laws is that they allow governments to try new policies and test them before forcing new rules upon everyone. That is a frequently cited benefit of federalism in our country—the right of states to function as the “laboratories of democracy.” While the relationship between the states and the federal government is different from that between local governments and states, such a laboratory is nonetheless valuable at the state level. But special laws that create local laboratories should not remain special forever. If they

work, they should be expanded, and if they do not they should be ended. Our local government tax and regulatory systems should encourage a broad tax base, business creation, reduced use of tax subsidies, and local service sharing. I believe my recommendations here would further those goals.

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at the Show-Me Institute.*

NOTES

1. Supreme Court of Missouri Opinion, 11/21/06, *Jefferson County Fire Protection Districts Association, et al., Appellants v. Matt Blunt, Jeremiah Nixon, et al.*, Respondents. Case number SC87239.
2. Ibid., page 2.
3. Supreme Court of Missouri Opinion, 11/21/06, *Jackson County, Missouri v. State of Missouri, et al.* Case number SC87405.
4. RSMo §71.012.1 (2016).
5. RSMo §77.505.5 (2016).
6. Oates, Wallace E. and Robert M. Schwab. 1997, “The Impact of Urban Land Taxation” The Pittsburgh Experience,” *National Tax Journal*, 50(1), 1–21.
7. Haslag, Joe. “How to Replace the Earnings Tax in Kansas City.” Show-Me Institute Policy Study No. 6, 2007. See in particular Figure 2 and the accompanying discussion on pages 5–7.
8. Within St. Louis County, governments are allowed to set different rates for different classes of real property.
9. Old hands in Kansas City government had told me there was a lawsuit decades ago about the issue, but I have had difficulty finding that lawsuit.
10. I am aware of *Crittenton v. Reed*, 932 S.W.2d 403 (1996), which debated the issue of the frontage fee and the question of special assessments vs. general taxes. That case had more to do with charitable exemptions from these fees than their legality.
11. Haslag, Joseph, and Stokes, David. “Kansas City Land Tax Should Be Expanded, Not Eliminated.” Show-Me Institute op-ed published by the *Missouri Record*, July 2012.
12. They may choose to set the rates the same, but rollback rules will result in different rates for each subclass after the next reassessment.
13. Manufacturing is a subclass of the personal property classification. The others are subclasses of the real property classification.
14. RSMo §137.114 (2016).
15. RSMo §137.115 (2016).
16. Kevin-Meyers, Bridget and Hembree, Russ. “The Hancock Amendment: Missouri’s Tax Limitation Measure.” *Missouri Legislative Academy*. November 2012. <https://truman.missouri.edu/sites/default/files/publication/17-2012-hancock-amendment.pdf>.
17. The St. Louis suburb of Frontenac was the largest example of this, with a property tax proposal approved by the voters that raised the commercial tax rate significantly more than the residential tax rate.
18. USDA, Land Values 2020 Summary, August 2020, page 16.
19. Missouri State Tax Commission, 2020 Annual Report, page 202.
20. Stokes, David and Tsapelas, Elias. “Do Boonville and Cooper County Need \$40 Million?” Show-Me Institute. March 9, 2021. <https://showmeinstitute.org/blog/subsidies/do-boonville-and-cooper-county-need-40-million>.
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“With the increasing government interference with business it became necessary to appoint executives whose main duty it was to smooth away difficulties with the authorities. First it was only one vice-president in charge of “affairs referring to government administration.” Later the main requirement for the president and for all vice-presidents was to be in good standing with the government and the political parties. Finally no corporation could afford the “luxury” of an executive unpopular with the administration, the labor-unions, and the great political parties. Former government officials, assistant secretaries, and councilors of the various ministries were considered the most appropriate choice for executive positions.

Such executives did not care a whit for the company’s prosperity. They were accustomed to bureaucratic management and they accordingly altered the conduct of the corporation’s business. Why bother about bringing out better and cheaper products if one can rely on support on the part of the government? For them government contracts, more effective tariff protection, and other government favors were the main concern. And they paid for such privileges by contributions to party funds and government propaganda funds and by appointing people sympathetic to the authorities.

It is long since the staffs of the big German corporations were selected from the viewpoint of commercial and technological ability. Ex-members of smart and politically reliable students’ clubs often had a better chance of employment and advancement than efficient experts.”

—Ludwig von Mises
Bureaucracy (1944)



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