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# TESTIMONY

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# ST. LOUIS COUNTY PROCUREMENT RULES

*By David Stokes*

**Testimony Before the St. Louis County Council on Bill 182**

## TO THE HONORABLE MEMBERS OF THIS COUNCIL

My name is David Stokes, and I am the director of municipal policy at the Show-Me Institute, a nonprofit, nonpartisan Missouri-based think tank that supports free-market solutions for state and local government policy. The ideas presented here are my own. This testimony is intended to present my views on the proposed changes to the St. Louis County procurement rules.

Bill 182 dramatically expands the mandates for use of prevailing-wage laws, disadvantaged business enterprise rules, and apprenticeship programs in many more St. Louis County public and private projects. It does this by lowering the threshold at which these requirements apply to county government projects and by mandating that any project—public or private—anywhere in St. Louis County that receives any tax incentives or subsidies is now subject to these new rules. (I question the legal authority for some of this, but I'll leave that issue to the lawyers.) Each of these new requirements is problematic in its own way, but taken together these proposed changes are a blatant power-grab by special interests in St. Louis County that will cause real harm to economic growth and public services in the region.

## PREVAILING WAGE LAWS

Prevailing wages set the floor for pay on a variety of government projects and for a variety of construction professions. Aside from the inefficient capital allocation and employment harms such a floor creates, the historical background for such laws forms a rational and substantive basis to reject such policies on their own. The problem isn't only that the prevailing wage is poorly formulated (although it is). The problem is also that whatever its formulation, the prevailing wage ultimately tends to hurt people.

With some exceptions, the conflict surrounding prevailing wage is not really between union and nonunion labor. Indeed, both union and

nonunion operations work on public projects, and qualified bidders who pay prevailing wages on these projects come from both sides.

Rather, the conflict over prevailing wages is really between the taxpayers compelled to pay those inflated wages and the construction operations self-interestedly working to preserve these rate tables. Research on the subject suggests that prevailing wage laws can increase the total cost of public construction projects by anywhere from about 10 percent[1] to as much as 25 percent.[2] For local governments with many projects needing to be built, that could mean lower-priority but beneficial projects will go undone for lack of funding; for smaller governments, it could mean that even necessary projects are too costly for the community to undertake. Repeated year after year, the harm done by leaving these projects uncompleted compounds, leaving the community with fewer and inferior government services compared to what market labor rates would otherwise allow.

The question before you is not whether construction interests should want to be paid more. It is fair for them to want that, as it is fair for us to want to be paid more in our own professions, justifiably or not.

The question is whether it is appropriate for legislators to force constituents to overpay for construction goods and services simply because construction interests want them to. In my view, it is not appropriate. Overpaying for services does not guarantee quality, but even if we assumed that to be true, existing law already protects taxpayers from shoddy construction through the bidding process itself.

## DISADVANTAGED BUSINESS ENTERPRISE DESIGNATIONS

Many Missouri cities, including Kansas City, Columbia, and St. Louis, have enacted disadvantaged business enterprise programs (DBEs) to reserve some portion of government contracts for companies that are designated as women-owned or minority-owned businesses.[3] These cities require that some percentage of contracts (or subcontracts) be reserved for DBEs under the idea that public money spent on governments projects, such as road construction contracts, should help support a wide variety of businesses.

As well intentioned as DBE programs may, in theory, be, any program that makes government contracting more complicated and bureaucratic, incentivizes fraud, and further divides Missourians by unnecessarily inserting race and gender distinctions is bound to be a policy failure. It may not be a *political* failure, but it will be a *policy* failure.

DBE programs impose real costs on taxpayers by mandating goals other than efficiency. A study of highway projects in Tennessee found that the DBE program in that state increased highway costs by four percent for projects participating in DBE goals.[4] This is primarily due to the limited number of DBE firms available for subcontracting, which allowed those small number of firms to command higher prices. A study of California highway projects found that after California voters banned the use of race and gender in government contracts, state highway costs dropped over five percent compared to federal highway projects in California, which still used such preferences.[5]

Unfortunately, beyond just raising costs, fraud and abuse in DBE programs are widespread. Front companies and false ownership claims are the standard methods of fraud. As an article in a construction trade magazine described the situation, "While such programs intend to drive economic growth and remedy past and current discrimination, they have become rife with fraud and abuse.[6] A 2020 report from the American Society of Civil Engineers states that "DBE fraud is pervasive,"[7] According to a *Wall Street Journal* article on that 2020 report, it cited data from the United States Department of Transportation inspector general, covering "over 1,000 investigations related to DBE fraud from 1998 to 2019."[8]

To give just one Missouri example, in 2023, a Clayton business owner admitted to defrauding the City of St. Louis by submitting false documents for participation in the city's minority business enterprise (MBE) program for a city contract.[9] This scheme, like so many of the others, involved false representation of which company was actually doing the work.

The real way to help small businesses of all types, including those owned by women and minorities, get government contracts is to simplify the rules and regulations for those businesses. As Judge Glock wrote about this topic in *City Journal*:

> A government that really cared about disadvantaged businesses would reduce the burdensome rules that make it hard for anybody except the well-connected to get deals. Minority-contracting initiatives add to the number of rules and requirements, advantaging inside players and longtime networkers.[10]

## APPRENTICESHIP PROGRAMS

The new, proposed law lays down several new requirements for companies bidding for a variety of contracts. Of course, it does not specifically say the bids and contracts are "union-only." because that would be illegal. Instead, it mandates a requirement that will legally accomplish the same goal. The new ordinance requires that bidders offer apprentice-training programs that are generally found in union shops. Many nonunion contractors, especially smaller ones, do not have apprentice programs, and it would be a significant burden for the typical small, independent, nonunion company to participate in one. Whatever that burden may be, the county council has no business mandating it. This bill is a blatant ploy to guarantee that union companies will win more county bids and the contracts from private developments covered by these changes. Aside from winning fewer bids, nonunion companies, knowing that the deck is stacked against them, are just as likely to not even participate in the bidding process. This will hurt taxpayers. Limiting the number of potential bidders can only have one effect: raising overall prices. Researchers at the Beacon Hill Institute found that project-labor agreements (PLAs), another method of union-favoring project bidding, raised costs to taxpayers by 20 percent over non-PLA projects (which included many nonunion bidders).[11] This new law for Saint Louis County would likely have a similar result.

## TAX INCENTIVES AND SUBSIDIES

During the length of my work at the Show-Me Institute, I have staunchly opposed the use of tax incentives and subsidies throughout Missouri. I would love to see a substantial reduction in the use of subsidies of all types. However, addressing tax incentives and subsidies by adding large layers of new rules and regulations for them is unlikely to be the best way to limit them. In fact, it will likely lead to an increase in the size of the requested subsidy, as each project will now have new costs that various groups will claim need to be subsidized. Local government, including St. Louis County, should say "No" to far more tax subsidy requests, but this proposal is the wrong way to go about addressing that concern.

## CONCLUSION

Taxpayers want efficiency in government contracts, projects, and spending, not social engineering. Increasing costs to taxpayers, mandating racial and gender documentation and preferences, and facilitating fraud are not the marks of successful programs. Taxpayer interests would be best served by allowing the market to determine what the public must pay for various construction projects and other related government expenditures. Using the council's authority to improperly increase wages for certain groups, limit nonunion contractors from attempting to participate in county projects, and mandate that some contracts go to selected companies is an egregious misuse of power. It is bad enough that this proposal will increase costs to taxpayers, but the use of government for political favoritism is simply indefensible.

Bill 182 will be wonderful for economic growth in St. Charles, Franklin, and Jefferson counties. However, it will be harmful for economic growth in the one county you all represent. This bill would enable abuse of government power and have a powerful and negative impact on St. Louis County's economy.

## NOTES


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