Associated Builders and Contractors of Michigan

Joint House Committee Meeting
House Commerce Committee and House Labor Committee
February 26, 2008
Testimony of Chris Fisher
Associated Builders and Contractors of Michigan

Good Morning Chairman Meisner, Chairman Miller and members of the Committee. Thank you for the opportunity to be here today. My name is Chris Fisher and I am with Associated Builders and Contractors of Michigan. I appear before this committee in opposition to HB 5783.

While our statewide membership appreciates the intent of this bill and the desire to encourage a good faith compliance with existing state law, there are serious flaws that should first be addressed before reporting this particular bill out of committee.

Our concern stems from the prevailing wage component of this bill. At this time we do not seek to weigh in on the pros or cons or prevailing wage. Instead, what we seek to bring to the attention of the committee is the untenable, unpractical and over-reaching penalties contained within this bill and what we believe to be unintended and detrimental effects that extend beyond the intent we think that is likely driving this legislation.

As members of the committee may know, this bill states that if a contractor or subcontractor is to be found in violation of Public Act 166 of 1965, Michigan's Prevailing Wage law, that contractor faces the following:

- The contractor shall not receive any further payments under the contract.
- The contractor may be held financial liable for costs incurred to rebid the contract.
- The contractor may face debarment form participating in future bidding opportunities.
- The contractor may be required to return any payments already received under the contract.

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Clearly the intent of this bill is to discourage contractors from deliberately underpaying their employees and to enable the State of Michigan to further panelize contractors who do not comply with state law.

Unfortunately though, the wording of this bill does not differentiate between those contractors who knowingly, willingly and continuously violate the prevailing wage act from those contractors who on a single occasion mistakenly classified the wage of an employee and immediately correct the error.

I would hope that members of this committee would recognize the difference between (A) A contractor who knowingly, willingly, continuously and illegally violates our state's prevailing act; and (B) A reputable contractor who has a single instance where the work classification of an employee is mistakenly inputted, and the error is then rectified immediately once the oversight is discovered.

Clearly these are instances where one firm continues to do the wrong thing, and another does the right thing. Clearly there is a difference between right and wrong. However this bill does not distinguish between a contractor doing what is right and one doing what is wrong because the bill is currently worded in such a way that a good contractor who does the right thing is treated the same why as the shoddy contractor who continually violates the law.

For those not completely familiar with the workings of Michigan's prevailing wage act, make no mistake, honest classification errors do occur from time to time. For example, if a carpenter were to put down his hammer, then goes over and picks up a paintbrush and then a shovel, he may have passed over three different job classifications in a matter of minutes, all of which require a different prevailing wage pay rate. If that same carpenter uses that same hammer at a different location on a building site, for example on a roof, he has also crossed over at least one other classification with an entirely different prevailing wage and fringe benefit rate.

Taking this into consideration, it's easy to imagine therefore, that there will be those instances where a misclassification of wage rates occur, no matter how diligent a contractor is. It's inevitable. Unfortunately, even if a contractor immediately corrects an error, that company

would still have violated Michigan's Prevailing Wage Act. Because of that, this bill would stipulate that the state stop all payments to the contractor and bar the contractor and his employees from future work opportunities. Moreover, the state would be allowed to make that contractor repay all payments made on a project back to the state.

Just think about what this means: If a contractor has finished 99% of a $50 million construction project without a single prevailing wage violation, and then an isolated instance occurs where a human resources glitch results in an employee being misclassified and hence underpaid 30 cents an hour for five or six hours, that company is now in violation of the act. That means that if this bill were to be adopted without changes, as it currently reads the state could actually go after that contractor for repayment for almost the entire cost of the nearly completed $50 million project.

And honest mistakes do occur. I know of a contractor who recently completed a multi-million dollar project who inadvertently mis-paid four employees. One employee was underpaid a relatively small amount of dollars while the other three employees were inadvertently overpaid a small amount. Even though the employer naturally went back and corrected the mistake (only for the employee who was underpaid) he was still cited for violating the prevailing wage act. As members of this committee and as men and women of good conscience, do you truly intend for this bill to result in such a contractor from being disbarred, subjected to stopped payments, financially liable for rebidding the contract and then forced to return all payments received for the contract even if the project is nearly completed all because of a technical violated that was corrected?

I doubt this is the case and that instead this bill is meant to go after the sort of chronic and intentional shoddy contractor who knowingly, willingly, continuously and illegally violates our state's prevailing act. However, that needs to be clarified before this bill can be reported out of committee.

And there are other concerns as well. For example, this bill does not take the important step of ensuring there will be no secondary liability for prime contractors, who have no authority to interfere with internal affairs of the independent businesses with whom they subcontract. Yet if a

subcontractor is found to be in violation of the prevailing wage act, the general contractor could actually be liable as well according to how this bill is currently written.

Clearly Mr. Chairmen and members of the committee, we need to allow for the committee process to work and address the need of correcting these serious flaws that I cannot imagine ever being part of what this bill is intended to do. At the very least minor, technical violations resulting from wage classification errors like those I shared should not be affected by this bill; we would also suggest that only those firms who have multiple serious violations be subjected to the penalties prescribed by this bill, and that the bill add a protection to prevent a prime contractor from being held secondarily liable for a subcontractor's violation.

These changes would make this bill much better by addressing some of the unattended consequences that the bill presently does not take into consideration and bring it into line to better reflect the intent we think that is likely driving this legislation, which is to go after those who knowing and continuously seek to violate state law.

Because of the language contained in the bill as it is currently before you, we therefore urge you to not report House Bill 5783 out of committee.

Once again, I would like to thank you Chairman Meisner, Chairman Miller and members of the Committee for the privilege to be here today. I would be happy to take any questions you or your fellow committee members may have.