

**Journal of the Senate**  
**NINETY-FIRST GENERAL ASSEMBLY**  
**OF THE**  
**STATE OF MISSOURI**  
**SECOND REGULAR SESSION**  
**VETO SESSION**

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**FIRST DAY—WEDNESDAY, SEPTEMBER 11, 2002**

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The Senate was called to order in Veto Session by Lieutenant Governor Joe Maxwell.

The Reverend Carl Gauck offered the following prayer:

“So acknowledge today and take to heart that the Lord is God in heaven above and on the earth beneath; there is no other.” (Deuteronomy 4:30)

Holy God, we gather today to complete our constitutional responsibilities, so we ask that You guide our decisions for good and actions for effective service. Yet as we gather we are mindful of the day and the devastation and the trauma one year ago. So we pray for Your healing and compassion to ease any pain by the survivors and the victims’ families that continues as they remember this day. O Lord let us never forget the infamy of the terror that struck our country and give to our leaders strength to address the future responsibly. And, we pray, protect those who are in harm’s way and help all of us to be instruments of Your justice and peace. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

Photographers from KOMU-TV were given permission to take pictures in the Senate Chamber today.

The following Senators were present during

the day's proceedings:

Present—Senators

Bentley	Bland	Caskey	Cauthorn
Childers	Coleman	DePasco	Dougherty
Foster	Gibbons	Goode	Gross
House	Jacob	Johnson	Kennedy
Kenney	Kinder	Klindt	Loudon
Mathewson	Quick	Russell	Schneider
Sims	Singleton	Staples	Steelman
Stoll	Westfall	Wiggins	Yeckel—32

Absent with leave—Senator Rohrbach—1

Vacancies—1

The Lieutenant Governor was present.

The Senate observed a moment of silent prayer in memory of Gloria Gauck, wife of Reverend Carl Gauck.

On motion of Senator Kenney, the Senate recessed until 1:15 p.m.

**RECESS**

The time of recess having expired, the Senate was called to order by President Maxwell.

President Pro Tem Kinder read the following names of Missourians who lost their lives on 9/11/01: Denease Conley, Randy Drake, Julie Geis, Sergeant Major Lacy B. Ivory, John Willett and others known only to God.

The Senate observed a moment of silence in their memory.

### **RESOLUTIONS**

Senator Kenney offered the following resolution, which was read and adopted:

#### SENATE RESOLUTION NO. 1

BE IT RESOLVED by the Senate that the Secretary of Senate inform the House of Representatives that the Senate is duly convened and is now in session as provided by Section 32, Article III of the Constitution and is ready for the consideration of its business.

Senator Kenney offered the following resolution, which was read and adopted:

#### SENATE RESOLUTION NO. 2

BE IT RESOLVED by the Senate that the rules of the Senate, as adopted by the Ninety-first General Assembly, Second Regular Session, be declared to be the rules of the Veto Session of the Ninety-first General Assembly.

### **COMMUNICATIONS FROM THE GOVERNOR**

The following communications, regarding vetoed Senate bills, were received by the Secretary of State, reading of which was waived:

#### OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City, Missouri

July 12, 2002

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI:

Herewith I return to you House Committee Substitute for Senate Bill No. 961, entitled:

#### AN ACT

To repeal sections 86.370, 86.398, 86.447, 86.600, 86.671, and 86.745, RSMo, and to enact in lieu thereof eight new sections relating to police retirement systems.

I disapprove of House Committee Substitute for Senate Bill No. 961. My reason for disapproval is as follows:

This bill creates two new subsections of law, subsections 86.374.1(2) and 86.611.1(2), both of which state that "any policy adopted by the board in contravention of any provision in the statutes shall remain valid only until the close of the next regular session of the general assembly that convenes after the adoption of the policy unless the statutes are amended during the session to adopt and incorporate the policy within the statutes."

This unusual delegation of power would allow the relevant retirement board to promulgate policy that is inconsistent with state law for substantial periods of time. It is not wise policy to authorize the board to act in a manner that is above the law. Prior to the time the legislature acts to change retirement policy affecting the members of the retirement system by passing a bill and having it signed by the Governor, the board should continue to abide by state law.

For the above-stated reason for disapproval, I am returning House Committee Substitute for Senate Bill No. 961 without my approval.

Respectfully submitted,

Bob Holden

Governor

Also,

#### OFFICE OF THE GOVERNOR

State of Missouri

Jefferson City, Missouri

July 12, 2002

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI:

Herewith I return to you House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1070, entitled:

#### AN ACT

To repeal sections 43.540, 547.170, 589.400, and 589.410, RSMo, and to enact in lieu thereof four new sections relating to protection of children, with penalty provisions.

I disapprove of House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1070 (hereinafter SB 1070). My reasons for disapproval are as follows:

Subsection 589.400.1(5) of this bill requires a person to register as a sexual offender if he or she has committed or does commit a sexual offense in another state or under federal jurisdiction that would require them to register if they were in Missouri **and** if he or she is

required to register in another state or under federal law.

The same subsection in both Conference Committee Substitute for House Substitute No. 2 for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 969, 763, & 855 (hereinafter SB 969) and Conference Committee Substitute for House Committee Substitute for Senate Bill No. 758 (hereinafter SB 758), both of which were passed by the General Assembly during the 1992 session and signed into law on July 10, 2002, requires a person to register as a sexual offender if he or she has committed or does commit a sexual offense in another state or under federal jurisdiction that would require them to register if they were in Missouri or if he or she is required to register in another state or under federal law.

By creating two requirements for registration instead of one, SB 1070, as written, makes it more difficult for law enforcement to register sexual offenders relative to SB 969 and SB 758 and does not, therefore, protect the public interest and welfare to the same degree as SB 969 or SB 758. If all three bills are signed there would be a direct conflict between them, causing some question regarding which sexual offenders would be required to register.

I am compelled, therefore, to veto SB 1070 on technical grounds. SB 969 and SB 758, moreover, contain all of the other, correctly-drafted sections in SB 1070, ensuring that no useful public policy is lost by my technical veto of SB 1070.

For all of the above-stated reasons for disapproval, I am returning House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1070 without my approval.

Respectfully submitted,  
Bob Holden  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
July 12, 2002

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI:

Herewith I return to you House Committee Substitute for Senate Bill No. 749, entitled:

AN ACT

To repeal sections 21.250 and 116.050, RSMo, relating to powers of the general assembly, and to

enact in lieu thereof three new sections relating to the same subject.

I disapprove of House Committee Substitute for Senate Bill No. 749. My reasons for disapproval are as follows:

Article III, section 52(b) of the Missouri Constitution specifies that the effective date of a measure referred to the people is the date on which the measure is "approved by a majority of the votes cast thereon, and not otherwise." Similarly, Article III, section 51 of the Missouri Constitution provides that the effective date for measures proposed by initiative is the date on which it is "approved by a majority of the votes cast thereon." Also, Article XII, section 2(b) provides that constitutional amendments approved by a majority of the votes cast thereon "shall take effect at the end of thirty days after the election."

This bill, which attempts to grant the authority to the General Assembly and to those who submit an initiative petition to set the effective dates of referenda and initiative measures, may in practice contravene these constitutional provisions unless the members of the General Assembly and those who submit petitions are careful to provide that the effective date is the constitutionally-required date in each instance. This bill is an unnecessarily confusing addition to settled law.

Furthermore, because the effective date of a referendum or initiative petition is the date of the public vote, or thirty days after the election for constitutional amendments, and because the voting date may be set by the General Assembly or the Governor depending on what is being voted upon (see Article III, section 52(b) and Article XII, section 2(b)), this bill may in practice unnecessarily impinge on the rights of the executive and legislative branches to set a voting date for certain public votes.

For all of the above-stated reasons for disapproval, I am returning House Committee Substitute for Senate Bill No. 749 without my approval.

Respectfully submitted,  
Bob Holden  
Governor

Also,

OFFICE OF THE GOVERNOR  
State of Missouri  
Jefferson City, Missouri  
July 12, 2002

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI:

Herewith I return to you House Committee Substitute for Senate Committee Substitute for Senate Bill No. 980, entitled:

AN ACT

To repeal section 334.540, RSMo, and to enact in lieu thereof one new section relating to the licensing of physical therapists.

I disapprove of House Committee Substitute for Senate Committee Substitute for Senate Bill No. 980. My reasons for disapproval are as follows:

This bill deletes the section of law that prohibits the board of registration for the healing arts from issuing a license to an out-of-state physical therapist who has failed a licensing examination three or more times. It does not, however, amend section 334.530, RSMo, which prohibits the board from issuing a license to in-state physical therapists who have failed the licensing examination three or more times. Nor does the bill amend sections 334.655 and 334.660, RSMo, which prohibit the board from issuing a license to in-state or out-of-state physical therapy assistants who have failed a licensure examination three or more times. Signing this bill, therefore, would result in similarly situated persons being treated differently under the law with no apparent rationale.

Furthermore, deleting the requirement that each out-of-state physical therapist who wishes to be licensed in this state come from a state "whose requirements are substantially equal to, or greater than, the requirements for licensure of physical therapists in Missouri at the time the applicant applies for licensure" also reduces protections for Missouri citizens who rely on physical therapists for treatment.

For all of the above-stated reasons for disapproval, I am returning House Committee Substitute for Senate Committee Substitute for Senate Bill No. 980 without my approval.

Respectfully submitted,

Bob Holden  
Governor

Senator Kenney moved that the Senate proceed to the order of business, Vetoed Bills, and that the calendar be called, which motion prevailed.

**HCS for SB 961** was called thereafter and no action was taken thereon.

**HCS for SCS for SB 1070** was called thereafter and no action was taken thereon.

**HCS for SB 749** was called thereafter and no action was taken thereon.

**HCS for SCS for SB 980** was called thereafter and no action was taken thereon.

## RESOLUTIONS

Senator Kenney offered the following resolution, which was read and adopted:

### SENATE RESOLUTION NO. 3

BE IT RESOLVED by the Senate that the Secretary of Senate inform the House of Representatives that the Senate, having been duly convened as provided by Section 32, Article III of the Constitution, made no motion to override the Governor's vetoes of House Committee Substitute for Senate Bill No. 961; House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1070; House Committee Substitute for Senate Bill No. 749; and House Committee Substitute for Senate Committee Substitute for Senate Bill No. 980 when the bills were so called by the President.

Senator Foster offered Senate Resolution No. 4, regarding William F. "Buck" Provance, Malden, which was adopted.

Senator Dougherty offered Senate Resolution No. 5, regarding the One Hundred Fifth Birthday of Jackie Duerbeck, St. Louis, which was adopted.

Senator Wiggins offered Senate Resolution No. 6, regarding Jim Turnbaugh, Grandview, which was adopted.

## MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HR 1**.

### HOUSE RESOLUTION NO. 1

BE IT RESOLVED, that the Chief Clerk of the House of Representatives of the Ninety-first General Assembly, Second Regular Session, inform the Governor and the Senate that the House is duly convened and is now in session in the 2002 Constitutional Veto Session and ready for consideration of

business.

## COMMUNICATIONS

President Pro Tem Kinder submitted the following:

July 3, 2002

Governor Bob Holden  
State Capitol Building  
Suite 216  
Jefferson City, Missouri 65101

RE: Appointment, Labor and Industrial Relations Commission

Dear Governor Holden:

It is an honor to receive the nomination as the employer representative to the labor and Industrial Relations Commission. The opportunity to continue serving the citizens of Missouri in such a capacity is a privilege, and I am truly grateful.

Accordingly, I hereby resign the office of state Senator of the twenty-sixth district effective 12:00 pm, July 3, 2002, and accept the appointment to the Labor and Industrial Relations Commission pursuant to Article IV, Section 49, of the Missouri Constitution.

Sincerely,  
/s/ David J. Klarich  
David J. Klarich

Also,

September 10, 2002

Mrs. Terry Spieler  
Secretary of the Senate  
State Capitol, Room 325  
Jefferson City, MO 65101

RE: Appointment of New Chairman of the Senate Judiciary Committee

Dear Terry:

Please consider this letter my official appointment of Senator Mike Gibbons as the Chairman of the Senate Judiciary Committee to

replace Senator David Klarich.

Thank you for your assistance in this matter.

Sincerely,  
/s/ Peter Kinder  
PETER D. KINDER  
President Pro Tem

Also,

September 10, 2002

Mrs. Terry Spieler  
Secretary of the Senate  
State Capitol, Room 325  
Jefferson City, MO 65101

RE: Appointment for the Joint Legislative Committee on Public Employee Retirement

Dear Terry:

Pursuant to Section 21.553 of the Missouri Revised Statutes (RSMo 2000), I am appointing Senator Wayne Goode to the Joint Committee on Public Employee Retirement to replace Senator Sidney Johnson who resigned from the Committee in July.

Thank you for your assistance in this matter.

Sincerely,  
/s/ Peter Kinder  
PETER D. KINDER  
President Pro Tem

## INTRODUCTIONS OF GUESTS

Senator Wiggins introduced to the Senate, Senator-elect Dr. Charles B. Wheeler, Jr., Kansas City.

Senator Kenney introduced to the Senate, Susan Jones, Liberty.

On motion of Senator Kenney, the Senate adjourned under the rules.