

# JOURNAL OF THE HOUSE

## VETO SESSION

First Regular Session, 96th GENERAL ASSEMBLY

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WEDNESDAY, SEPTEMBER 14, 2011

Speaker Tilley in the Chair.

Prayer by Msgr. Robert A. Kurwicki, Chaplain.

*Give ear to my prayer, O God; and hide not Thyself from my supplication. (Psalm 55:1)*

Our Ancient God, Whose love is from everlasting to everlasting and Whose truth endures forever, we pause in Your presence with bowed heads, lifting our spirits to You - unto Whom all hearts are open, all desires known, and from Whom no secrets are hid. Cleanse the thoughts of our hearts by the inspiration of Your Holy Spirit that we may love You more perfectly, do Your will more confidently, and serve You and our state more faithfully.

We come disturbed by the troubles of our time, burdened by the weight of worry, and distressed by our inability to see clearly what we ought to do. We pray for our nation, for our state and for ourselves that we may increase the spirit of goodwill and thus be a part of the solution and not a part of the problem that confronts us. Give us the courage to carry on knowing that in You we find strength for each task.

And the House says, "Amen!"

The Pledge of Allegiance to the flag was recited.

The Speaker appointed the following to act as an Honorary Page for the Day, to serve without compensation: Louisa Cassity Curchin.

### SPECIAL RECOGNITION

Keith Sappington, former Director of Operations, was introduced by Speaker Tilley and presented with a resolution honoring his 35 years of dedicated service to the Missouri House of Representatives.

Mr. Sappington addressed the House.

Speaker Pro Tem Schoeller assumed the Chair.

The New Bloomfield Wildcats Boys Baseball Team was introduced by Representative Riddle and recognized for attaining the 2011 State Championship.

Participants in the 2011 session of the American Legion Boys State of Missouri Legislature were introduced by Representative Colona and presented with resolutions.

**HOUSE COURTESY RESOLUTIONS OFFERED AND ISSUED**

House Resolution No. 4494 through House Resolution No. 4506

**HOUSE RESOLUTION**

Representative Jones (89) offered **House Resolution No. 1**, which was read.

HOUSE RESOLUTION NO. 1

BE IT RESOLVED, that the Chief Clerk of the House of Representatives of the Ninety-sixth General Assembly, First Regular Session, inform the Governor and the Senate that the House is duly convened and is now in session in the 2011 Constitutional Veto Session and ready for consideration of business.

On motion of Representative Jones (89), **House Resolution No. 1** was adopted by the following vote:

AYES: 156

Allen	Anders	Asbury	Atkins	Aull
Bahr	Barnes	Bernskoetter	Berry	Black
Brandom	Brattin	Brown 50	Brown 85	Brown 116
Burlison	Carlson	Carter	Casey	Cauthorn
Cierpiot	Colona	Conway 14	Conway 27	Cookson
Cox	Crawford	Cross	Curtman	Davis
Day	Denison	Dieckhaus	Diehl	Dugger
Ellinger	Elmer	Entlicher	Fallert	Fisher
Fitzwater	Flanigan	Fraker	Franklin	Franz
Frederick	Fuhr	Funderburk	Gatschenberger	Gosen
Grisamore	Guernsey	Haefner	Hampton	Harris
Higdon	Hinson	Hodges	Holsman	Hoskins
Hough	Houghton	Hubbard	Hummel	Johnson
Jones 89	Jones 117	Kander	Keeney	Kelley 126
Kelly 24	Kirkton	Klippenstein	Koenig	Korman
Kratky	Lair	Lampe	Lant	Largent
Lasater	Lauer	Leach	Leara	Lichtenegger
Loehner	Long	Marshall	May	McCaherty
McCann Beatty	McDonald	McGeoghegan	McGhee	McManus
McNary	McNeil	Molendorp	Montecillo	Nance
Nasheed	Neth	Newman	Nichols	Nolte
Oxford	Pace	Parkinson	Phillips	Pierson
Pollock	Quinn	Redmon	Reiboldt	Richardson
Riddle	Rizzo	Rowland	Ruzicka	Sater
Schad	Scharnhorst	Schatz	Schieber	Schieffer
Schneider	Schoeller	Schupp	Shively	Shumake
Sifton	Silvey	Smith 71	Smith 150	Solon
Spreng	Still	Stream	Swearingen	Swinger
Talboy	Taylor	Thomson	Torpey	Wallingford
Walton Gray	Webb	Webber	Wells	Weter
White	Wieland	Wright	Wyatt	Zerr
Mr Speaker				

NOES: 000

PRESENT: 000

ABSENT WITH LEAVE: 003

Hughes Jones 63 Meadows

VACANCIES: 004

## MESSAGES FROM THE GOVERNOR

EXECUTIVE OFFICE

June 10, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 10** entitled:

"AN ACT"

To appropriate money for the expenses, grants, refunds, and distributions of the Department of Mental Health, the Department of Health and Senior Services, and the several divisions and programs thereof, and the Missouri Health Facilities Review Committee to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, and to transfer money among certain funds for the period beginning July 1, 2011 and ending June 30, 2012; provided that no funds from these sections shall be expended for the purpose of costs associated with travel or staffing for the offices of the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, or Attorney General.

Section 10.215

I hereby veto \$30,000 General Revenue Fund for Boone County Legal Fees. These funds are unable to be expended because they do not qualify under Section 56.700, RSMo.

For distribution through the Office of Administration to counties pursuant to Section 56.700, RSMo by \$30,000 from \$162,550 to \$132,550 General Revenue Fund.

From \$900,916 to \$870,916 in total from General Revenue Fund.

From \$900,916 to \$870,916 in total for the section.

On June 10, 2011, I approved said **Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 10** except for those items specifically vetoed and not approved.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 8, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI:

Herewith I return to you **Senate Substitute for Senate Committee Substitute for House Bill No. 184**, entitled:

"AN ACT"

To repeal sections 233.280, 537.620, and 537.635, RSMo, and to enact in lieu thereof three new sections relating to political subdivisions.

I disapprove of **Senate Substitute for Senate Committee Substitute for House Bill No. 184**. My reasons for disapproval are as follows:

**Senate Substitute for Senate Committee Substitute for House Bill No. 184** allows public entity risk associations, significantly reliant on taxpayer dollars, to "close meetings, records and votes as authorized in chapter 610 to the extent that such meetings, records and votes pertain to actuarial analysis, loss history, claims, data, reports and similar information relating to the determination of member rates and contributions." Chapter 610 does not provide for closure of meetings, records and votes for the purposes stated. **Senate Substitute for Senate Committee Substitute for House Bill No. 184**, therefore, creates a new exception to chapter 610, diminishing government transparency, contrary to the public policy of this state. The closure of these meetings, records and votes effectively places a significant portion of the operations of these public entity risk associations beyond public scrutiny. Further, the closure of this information may limit the members of these entities from obtaining information needed to make informed decisions about their membership.

In accordance with the above stated reasons for disapproval, I am returning **Senate Substitute for Senate Committee Substitute for House Bill No. 184** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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May 2, 2011

TO THE CHIEF CLERK OF THE  
HOUSE OF REPRESENTATIVES  
96<sup>TH</sup> GENERAL ASSEMBLY  
FIRST REGULAR SESSION  
STATE OF MISSOURI

Herewith I return to you **Senate Substitute for Senate Committee Substitute for House Bill No. 209** entitled:

"AN ACT"

To repeal sections 67.402, 226.720, and 537.296, RSMo, and to enact in lieu thereof three new sections relating to nuisance actions, with penalty provisions.

I disapprove of **Senate Substitute for Senate Committee Substitute for House Bill No. 209**. My reasons for disapproval are as follows:

**Senate Substitute for Senate Committee Substitute for House Bill No. 209** is flawed because certain of its provisions apply to nuisances not related to crop or animal production, and because it prohibits recovery of punitive damages in nuisance actions emanating from property used for crop or animal production.

**Senate Substitute for Senate Committee Substitute for House Bill No. 209** is overbroad because it goes beyond its purported intent of addressing only agricultural nuisances. Section 537.296.3 of **Senate Substitute for Senate Committee Substitute for House Bill No. 209** converts a second temporary nuisance claim to a claim for permanent nuisance, but importantly, does not contain language limiting its application to nuisances emanating from crop or animal production. By contrast, the exclusive damages provision of **Senate Substitute for Senate Committee Substitute for House Bill No. 209** and the “good faith” abatement provision of **Senate Substitute for Senate Committee Substitute for House Bill No. 209** are expressly limited to “crop or animal production.” By its own terms, therefore, the two lawsuit limitation in Section 537.296.3 applies to all types of nuisances and not just those relating to crop or animal production. Application of this provision beyond the purported intent of the bill, and the unintended consequences of this application, necessitates my disapproval.

Similarly, Section 537.296.5 of **Senate Substitute for Senate Committee Substitute for House Bill No. 209** makes substantive changes to standing requirements, but again does not contain language limiting it to nuisances emanating from crop or animal production. The omission of language limiting this provision to crop or animal production has the presumably unintended effect of making all manner of nuisances – those involving blasting, vehicle exhaust, noise, dust, or leaking gas tanks or oil lines, to name just a few – subject to the standing provision of this bill and making changes to nuisance law not contemplated by either the proponents or opponents of **Senate Substitute for Senate Committee Substitute for House Bill No. 209**.

Finally, **Senate Substitute for Senate Committee Substitute for House Bill No. 209** unacceptably prohibits punitive damages in a nuisance action arising out of crop or animal production. Under Missouri law, punitive damages are recoverable in a temporary nuisance action, i.e., where the nuisance is capable of abatement, and in a permanent nuisance action, i.e., where the nuisance cannot be abated. These damages are currently recoverable for agricultural and non-agricultural nuisances. Section 537.296.2 of **Senate Substitute for Senate Committee Substitute for House Bill No. 209** changes Missouri law to provide that the “exclusive damages” awardable in temporary and permanent nuisance actions emanating from crop or animal production are the reduction in fair rental value or fair market value, plus compensatory damages arising from a medical condition caused by the nuisance. This exclusivity provision does not contain an exception for punitive damages. On its face, therefore, **Senate Substitute for Senate Committee Substitute for House Bill No. 209** turns back decades of Missouri common law by prohibiting the recovery of punitive damages in an agricultural nuisance action. The recovery of punitive damages is an important tool to incent the abatement of noxious activity, and must continue to be available to persons aggrieved by a nuisance arising out of crop or animal production.

In accordance with the above stated reasons for disapproval, I am returning **Senate Substitute for Senate Committee Substitute for House Bill No. 209** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 8, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Senate Committee Substitute for House Bill No. 256**, entitled:

"AN ACT"

To repeal section 477.650, RSMo, and to enact in lieu thereof one new section relating to the basic civil legal services fund.

I disapprove of **Senate Committee Substitute for House Bill No. 256**. My reasons for disapproval are as follows:

**Senate Committee Substitute for House Bill No. 256** is identical to Senate Bill No. 165 which I approved on July 8, 2011. As a result, the extension of the sunset provision contained in **Senate Committee Substitute for House Bill No. 256** will become law without the necessity of approving this duplicative legislation.

In accordance with the above stated reasons for disapproval, I am returning **Senate Committee Substitute for House Bill No. 256** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 8, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 430**, entitled:

"AN ACT"

To repeal sections 21.795, 70.441, 226.540, 227.107, 301.010, 301.147, 301.225, 301.559, 301.560, 301.562, 301.3084, 302.302, 302.309, 302.341, 302.700, 304.120, 304.180, 304.200, 387.040, 387.050, 387.080, 387.110, 387.207, 390.051, 390.061, 390.116, 390.280, and 577.023, RSMo, and to enact in lieu thereof forty-two new sections relating to transportation, with penalty provisions, a contingent effective date for certain sections, and an effective date for a certain section.

I disapprove of **Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 430**. My reasons for disapproval are as follows:

This bill would severely restrict the authority of local communities to regulate billboards. By invalidating any local billboard regulation that is contrary to "customary usage" or one that prohibits billboards in certain areas, this bill would limit local government efforts to preserve community character and promote community values. Local control of billboards ensures that billboards are placed in areas that complement local economic development and local community values. It is unfortunately all too common for a poorly located billboard to define an area in a manner anathema to the morals and values of the local community. Local elected officials can make the best decisions about the location and placement of billboards within their communities in ways that preserve local character and promote business.

In accordance with the above stated reasons for disapproval, I am returning **Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 430** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 5, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **House Committee Substitute for House Bill No. 465** entitled:

"AN ACT"

To repeal sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, and to enact in lieu thereof thirteen new sections relating to credit unions.

I disapprove of **House Committee Substitute for House Bill No. 465**. My reasons for disapproval are as follows:

**House Committee Substitute for House Bill No. 465**, relating to credit unions, amends the same provisions of Chapter 370, RSMo, as Senate Substitute for Senate Bill No. 306. However, although the two bills are substantively similar, their language is not identical. Approval of both bills would create an ambiguity as to the process for appointing the director of the division of credit unions. In order to avoid the unnecessary confusion occasioned by the approval of nearly duplicative legislation, I am disapproving **House Committee Substitute for House Bill No. 465**. My approval of Senate Substitute for Senate Bill No. 306 on July 5, 2011, will result in the enactment of all of the substantive components of **House Committee Substitute for House Bill No. 465**.

In accordance with the above stated reasons for disapproval, I am returning **House Committee Substitute for House Bill No. 465** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 8, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **House Bill No. 484**, entitled:

"AN ACT"

To amend chapter 226, RSMo, by adding thereto one new section relating to the Missouri state transit assistance program.

I disapprove of **House Bill No. 484**. My reasons for disapproval are as follows:

**House Bill No. 484** is entirely contained in Conference Committee Substitute for House Committee Substitute for Senate Bill No. 173 which I approved on July 7, 2011. As a result, the provision contained in **House Bill No. 484** will become law without the necessity of approving this duplicative legislation.

In accordance with the above stated reasons for disapproval, I am returning **House Bill No. 484** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

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July 8, 2011

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Senate Committee Substitute for House Bill No. 1008**, entitled:

"AN ACT"

To amend chapter 226, RSMo, by adding thereto one new section relating to highway infrastructure improvement agreements.

I disapprove of **Senate Committee Substitute for House Bill No. 1008**. My reasons for disapproval are as follows:

**Senate Committee Substitute for House Bill No. 1008** authorizes the State Highways and Transportation Commission to enter into agreements with third parties to finance state road and bridge construction projects. While not the stated purpose of this provision, this could allow a private entity to finance all or a part of such project, and in the agreement set forth that it be constituted as a toll road with tolls to be used to repay such private entity. At this juncture, without a full and fair public debate on this issue, the statutory authorization of toll roads would be inappropriate.

In accordance with the above stated reasons for disapproval, I am returning **Senate Committee Substitute for House Bill No. 1008** without my approval.

Respectfully submitted,

/s/ Jeremiah W. (Jay) Nixon  
Governor

## HOUSE BILLS VETOED FROM THE FIRST REGULAR SESSION

The Speaker read the following House Bills vetoed from the First Regular Session: **CCS SCS HCS HB 10, SS SCS HB 184, SS SCS HB 209, SCS HB 256, CCS SS SCS HCS HB 430, HCS HB 465, HB 484 and SCS HB 1008**.

## HOUSE RESOLUTION

Representative Jones (89) offered **House Resolution No. 2**, which was read.

### HOUSE RESOLUTION NO. 2

BE IT RESOLVED by the House of Representatives, that the Chief Clerk of the House of Representatives inform the Senate that the House, having been duly convened as provided by Section 32, Article III of the Constitution, made no motions to override the Governor's vetoes on **CCS SCS HCS HB 10, SS SCS HB 184, SS SCS HB 209, SCS HB 256, CCS SS SCS HCS HB 430, HCS HB 465, HB 484 and SCS HB 1008** when the bills were called by the Speaker.

On motion of Representative Jones (89), **House Resolution No. 2** was adopted.

**MESSAGES FROM THE SENATE**

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

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 Article III, Section 32 of the Constitution and is ready for the consideration of its business.

Mr. Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and adopted **SR 3**.

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 Article III, Section 32 of the Constitution, made no motion to override the Governor's veto of House Committee Substitute No. 2 for Senate Bill No. 3; House Committee Substitute for Senate Substitute for Senate Bill No. 118; House Committee Substitute for Senate Committee Substitute for Senate Bill No. 163; House Committee Substitute for Senate Bill No. 220 and Conference Committee Substitute for House Committee Substitute for Senate Bill No. 282 when the bills were so called by the President.

**ADJOURNMENT**

On motion of Representative Jones (89), the Veto Session of the Ninety-sixth General Assembly, First Regular Session, adjourned sine die pursuant to the Constitution.

STEVEN TILLEY  
Speaker of the House

D. ADAM CRUMBLISS  
Chief Clerk of the House