

JOURNAL OF THE HOUSE

First Extraordinary Session, 97th GENERAL ASSEMBLY

FIFTH DAY, FRIDAY, DECEMBER 6, 2013

The House met pursuant to adjournment.

Speaker Jones in the Chair.

Prayer by Msgr. Robert A. Kurwicky, Chaplain.

Trust in the Lord with all thine heart; and lean not unto thine own understanding. (Proverbs 3:5)

Eternal God, unfailing source of light and life, we thank You for Your presence which gives power to Your people and courage to Your representatives. With You may we find strength in the time of trouble, deliverance in the hour of temptation, and serenity in the moment when we wrestle with worry.

Teach us to love You with all our hearts and our fellow citizens as ourselves on this St. Nicholas Day. Give us such a measure of Your spirit that we may be used by You to usher in a greater day for our state and a better day for all.

We lift up to You the memory of the late President Nelson Mandela of South Africa who taught us all a lesson of national reconciliation and unity despite personal pain and suffering. May all peoples in all countries let this example burn into their hearts!

And the House says, "Amen!"

The Pledge of Allegiance to the flag was recited.

The Journals of the first, second, third and fourth days were approved as printed.

HOUSE RESOLUTION

Representative Diehl 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-seventh General Assembly, First Regular Session, inform the Senate that the House duly convened in the First Extraordinary Session of the First Regular Session on Monday, December 2, 2013, and is convened in full session and ready for consideration of its business.

On motion of Representative Diehl, **House Resolution No. 1** was adopted.

THIRD READING OF SENATE BILL

SCS SB 1, relating to aerospace industry job creation, was taken up by Representative Zerr.

Speaker Pro Tem Hoskins assumed the Chair.

Speaker Jones resumed the Chair.

SCS SB 1 was laid over.

MESSAGE FROM THE SENATE

December 6, 2013

Mr. Speaker: I hereby transmit to you the “Corrected” Perfected **Senate Committee Substitute for Senate Bill No. 1** as third read and finally passed by the Senate on Wednesday, December 4, 2013 as such action is reflected in the Senate Journal for that day.

Respectfully submitted,

/s/ Terry L. Spieler
Secretary of the Senate

A corrected copy of **SCS SB 1** was distributed on the members’ desks.

HOUSE RESOLUTION

Representatives Diehl and Hummel offered **House Resolution No. 2**, which was read.

HOUSE RESOLUTION NO. 2

WHEREAS, Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Missouri Senate during the First Extraordinary Session of the Ninety-Seventh General Assembly was received by the Missouri House of Representatives on December 4, 2013, with the title “relating to aerospace industry job creation, with an emergency clause”; and

WHEREAS, the Missouri House of Representatives first read Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Missouri Senate during the First Extraordinary Session of the Ninety-Seventh General Assembly by title and number on December 4, 2013; and

WHEREAS, the Missouri House of Representatives second read Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Missouri Senate during the First Extraordinary Session of the Ninety-Seventh General Assembly by title and number on December 5, 2013; and

WHEREAS, the Secretary of the Senate delivered a message on December 6, 2013, to the Missouri House of Representatives including a corrected copy of Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Missouri Senate during the First Extraordinary Session of the Ninety-Seventh General Assembly; and

WHEREAS, the Missouri Senate acknowledges that the proper language of Senate Amendment No. 5 for Senate Committee Substitute for Senate Bill No. 1 was properly printed in the Journal of the Missouri Senate for the Third Day of the First Extraordinary Session of the Ninety-Seventh General Assembly on Pages 30 through 32 on Wednesday, December 4, 2013; and

WHEREAS, by printing a corrected copy of Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Missouri Senate during the First Extraordinary Session of the Ninety-Seventh General Assembly, the Senate has properly enrolled a bill correctly encompassing the language contained within Senate Amendment No. 5 as adopted by the Senate as a body on December 4, 2013:

NOW THEREFORE BE IT RESOLVED that we, the members of the Missouri House of Representatives, Ninety-seventh General Assembly, acknowledge that the corrected Senate Committee Substitute for Senate Bill No. 1 as perfected and third read by the Senate and as first read and second read by the Missouri House of Representatives during the First Extraordinary Session of the Ninety-Seventh General Assembly accurately reflects the proposed statutory language; and

BE IT FURTHER RESOLVED that the Chief Clerk of the Missouri House of Representatives be instructed to prepare a properly inscribed copy of this resolution to be delivered to the President Pro Tem of the Missouri Senate and Governor of the State of Missouri.

On motion of Representative Diehl, **House Resolution No. 2** was adopted.

THIRD READING OF SENATE BILL

SCS SB 1, relating to aerospace industry job creation, was again taken up by Representative Zerr.

On motion of Representative Zerr, **SCS SB 1** was truly agreed to and finally passed by the following vote:

Ayes: 127

Allen	Anders	Austin	Bernskoetter	Berry
Black	Brown	Burns	Butler	Carpenter
Cierpiot	Colona	Conway 10	Cookson	Comejo
Crawford	Cross	Curtis	Curtman	Davis
Diehl	Dohrman	Dugger	Dunn	Ellinger
Engler	English	Englund	Entlicher	Fitzpatrick
Fitzwater	Flanigan	Fowler	Fraker	Frame
Funderburk	Gannon	Gardner	Gatschenberger	Gosen
Grisamore	Haahr	Haefner	Hampton	Hansen
Harris	Hicks	Higdon	Hinson	Hoskins
Hough	Houghton	Hummel	Hurst	Jones 50
Justus	Kelley 127	Kolkmeyer	Korman	Kratky
LaFaver	Lair	Lant	Lauer	Leara
Lichtenegger	Love	Lynch	May	Mayfield
McCaherty	McCann Beatty	McDonald	McGaugh	McKenna
McNeil	Meredith	Miller	Mims	Mitten
Molendorp	Montecillo	Morgan	Morris	Muntzel
Neth	Nichols	Norr	Otto	Pace
Peters	Pfautsch	Phillips	Pierson	Pike
Redmon	Reiboldt	Remole	Rhoads	Richardson
Riddle	Rizzo	Roorda	Rowden	Rowland
Runions	Scharnhorst	Schatz	Schieffer	Schupp

Shull	Shumake	Solon	Sommer	Spencer
Stream	Swan	Swearingen	Thomson	Torpey
Walker	Walton Gray	Wieland	Wood	Wright
Zerr	Mr Speaker			

Noes: 20

Anderson	Bahr	Barnes	Brattin	Burlison
Cox	Ellington	Elmer	Guernsey	Johnson
Keeney	Kirkton	Marshall	Pogue	Rehder
Ross	Schieber	Webber	White	Wilson

Present: 2

Parkinson	Smith
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Absent with Leave: 12

Conway 104	Franklin	Frederick	Hodges	Hubbard
Kelly 45	Koenig	McManus	Messenger	Moon
Neely	Newman			

Vacancies: 2

Speaker Jones declared the bill passed.

The emergency clause was adopted by the following vote:

Ayes: 127

Allen	Anders	Austin	Bernskoetter	Berry
Black	Brown	Burns	Butler	Carpenter
Cierpiot	Colona	Conway 10	Cookson	Comejo
Crawford	Cross	Curtis	Davis	Diehl
Dohrman	Dugger	Dunn	Ellinger	Engler
English	Englund	Entlicher	Fitzpatrick	Fitzwater
Flanigan	Fowler	Fraker	Frame	Frederick
Funderburk	Gannon	Gatschenberger	Gosen	Grisamore
Haahr	Haefner	Hampton	Hansen	Harris
Hicks	Higdon	Hinson	Hoskins	Hough
Houghton	Hummel	Hurst	Jones 50	Justus
Kelley 127	Kolkmeier	Korman	Kratky	LaFaver
Lair	Lant	Lauer	Leara	Lichtenegger
Love	Lynch	May	Mayfield	McCaherty
McCann Beatty	McDonald	McGaugh	McKenna	McNeil
Meredith	Miller	Mims	Mitten	Molendorp
Montecillo	Morgan	Morris	Muntzel	Neth
Nichols	Norr	Otto	Pace	Peters
Pfautsch	Phillips	Pierson	Pike	Redmon
Reiboldt	Remole	Rhoads	Richardson	Riddle
Rizzo	Roorda	Ross	Rowden	Rowland
Runions	Scharnhorst	Schatz	Schieffer	Schupp
Shull	Shumake	Solon	Sommer	Spencer
Stream	Swan	Swearingen	Thomson	Torpey
Walker	Walton Gray	Wieland	Wood	Wright
Zerr	Mr Speaker			

Noes: 19

Anderson	Bahr	Barnes	Brattin	Burlison
Cox	Ellington	Elmer	Guernsey	Johnson
Keeney	Kirkton	Marshall	Pogue	Rehder
Schieber	Webber	White	Wilson	

Present: 3

Gardner	Parkinson	Smith
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Absent with Leave: 12

Conway 104	Curtman	Franklin	Hodges	Hubbard
Kelly 45	Koenig	McManus	Messenger	Moon
Neely	Newman			

Vacancies: 2

RECESS

On motion of Representative Diehl, the House recessed until such time that **SCS SB 1** is signed and then stand adjourned.

The hour of recess having expired, the House was called to order by Speaker Jones.

SIGNING OF SENATE BILL

All other business of the House was suspended while **SCS SB 1** was read at length and was signed by the Speaker to the end that the same may become law.

Representative Bahr offered an objection to **SCS SB 1**, which was appended to the bill.

CONSTITUTIONAL OBJECTION

Mr. Speaker:

My honor and duty to my sworn oath to support and defend the Missouri state Constitution compels me to raise a constitutional objection to Senate Bill 1. It is my opinion that the bill is unconstitutional for the following reasons:

1. SB 1 violates Article I, Section 2 of the Missouri Constitution by denying equal protection under the laws of Missouri through its treatment of Missouri businesses and other taxpayers differently based on the geographic region and industries they serve.
2. SB 1 further violates Article I, Section 2 of the Missouri Constitution by providing a competitive advantage to some citizens through state supplied subsidies for the development of new enterprises at the expense of citizens who have already made investments in competing projects. The result is state sponsored diminution of their property and the state's failure to "give security" to the "gains of their own industry".
3. SB 1 further violates Article I, Section 2 of the Missouri Constitution by providing preferential and unequal treatment to some citizens, who would receive state supplied subsidies for the development of new enterprises, over

other citizens who might otherwise seek development of new enterprises in competition with them in an open and free marketplace.

4. SB 1 violates Article III, Section 36 of the Missouri Constitution, because it has the effect of “divert[ing]” money from the treasury independent of the appropriation process.

5. SB 1 violates Article III, Section 38(a) of the Missouri Constitution, which states that “The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation...”

The potential for public benefit does not remediate the fatal flaws in this bill, for as the Missouri Supreme Court pointed out in 1987, “Accordingly, in our application of Article III, Section 38(a) of the Missouri Constitution, we have held grants with a primarily private effect to be unconstitutional, despite the possible beneficial impact upon the economy of the locality and of the state.” *Curchin v. Missouri Indus. Development Bd.*, 722 SW 2d 930 (Mo: Supreme Court 1987)

6. SB 1 violates Missouri Constitution's Article III, Section 40 prohibition of “special laws” in several ways, notably those in Section 40(30) which forbids the General Assembly from passing a local or special law where a general law can be made

Article I, Section 2 of the Missouri Constitution provides guidance for all that the state would task itself with – it defines the role of Missouri government, what it calls its “principal office”. That section was brought forward from our 1875 constitution and it was explained eloquently when introduced to the body of delegates during the 1875 Constitutional Convention:

“It [in the Bill of Rights] is then declared that the main office of government is the security of life, liberty and property - the protection of those things - not protection in the sense in which capital is employed in thousands of industries in order to render bloated one or two in some favored locality - not protection in that sense, but equal protection to all, so that every man may sit secure under the shadow of his own vine and fig tree, and have none to make him afraid.” Debates of the Missouri Constitutional Convention, 1875 – Volume I, P. 430 at 24 (emph. added)

As a duly elected Representative of the great state of Missouri, I have taken an oath to support and defend the Constitution from which these principles emanate. While I have a responsibility to consider guidance from the Courts, I also have a personal responsibility to understand our Constitution and apply my understanding in the execution of my duties. In the present instance, both the preponderance of guidance from the courts and my understanding are in agreement.

Accordingly, I conclude that Senate Bill 1 is unconstitutional for the above-stated reasons and should not be agreed to or passed by this body and in the event it is finally passed by both houses of the legislature, should not be signed by the governor.

Respectfully,

/s/ Rep. Kurt M. Bahr
District 102

REFERRAL OF HOUSE BILL

The following House Bill was referred to the Committee indicated:

HB 2 - Economic Development

COMMITTEE CHANGES

December 6, 2013

Mr. Adam Crumbliss
Chief Clerk
Missouri House of Representatives
State Capitol, Room 317A
Jefferson City, MO 65101

Dear Mr. Crumbliss:

Pursuant to House Rule 22, I hereby appoint Representative Mike Moon to the Committee on Appropriations – Agriculture and Natural Resources.

If you have any questions regarding this communication, please contact my office.

Very truly yours,

/s/ Timothy W. Jones
Speaker of the House

December 6, 2013

Mr. Adam Crumbliss
Chief Clerk
Missouri House of Representatives
State Capitol, Room 317A
Jefferson City, MO 65101

The Speaker hereby appoints Representative Bart Korman to the Committee on Budget.

If you have any questions, please let me know.

Very truly yours,

/s/ Timothy W. Jones
Speaker of the House

December 6, 2013

Mr. Adam Crumbliss
Chief Clerk
Missouri House of Representatives
State Capitol, Room 317A
Jefferson City, MO 65101

Dear Mr. Crumbliss:

Pursuant to House Rule 22, I hereby remove Representative Noel Torpey from the Committee on Fiscal Review and appoint Representative Scott Fitzpatrick.

If you have any questions regarding this communication, please let me know.

Very truly yours,

/s/ Timothy W. Jones
Speaker of the House

December 6, 2013

Mr. Adam Crumbliss
Chief Clerk
Missouri House of Representatives
State Capitol, Room 317A
Jefferson City, MO 65101

Dear Mr. Crumbliss:

The Speaker hereby appoints Representative Mike Moon to the Committee on Higher Education.

If you have any questions, please contact my office.

Very truly yours,

/s/ Timothy W. Jones
Speaker of the House

December 6, 2013

Mr. Adam Crumbliss
Chief Clerk
Missouri House of Representatives
State Capitol, Room 317A
Jefferson City, MO 65101

Dear Mr. Crumbliss:

I hereby remove Representative Bart Korman from the Committee on Professional Registration and Licensing and appoint Representative Kathy Swan.

If you have any questions, please let me know.

Very truly yours,

/s/ Timothy W. Jones
Speaker of the House

The following member's presence was noted: Hodges.

ADJOURNMENT

Speaker Jones declared the House of Representatives of the Ninety-seventh General Assembly, convened in the First Extraordinary Session of the First Regular Session on December 2, 2013, adjourned.

TIMOTHY W. JONES
Speaker of the House

D. ADAM CRUMBLISS
Chief Clerk of the House