

Journal of the Senate

FIRST REGULAR SESSION

FIRST EXTRA SESSION

NINTH DAY—FRIDAY, SEPTEMBER 23, 2011

The Senate met pursuant to adjournment.

President Pro Tem Mayer in the Chair.

Senator Dempsey announced that photographers from KSDK-TV, KTVI/KPLR, Missouri News Horizon, News Tribune, and KRCG-TV were given permission to take pictures in the Senate Chamber today.

RESOLUTIONS

On behalf of Senator Rupp, Senator Dempsey offered Senate Resolution No. 61, regarding Andrew Gordon Reader, Weldon Spring, which was adopted.

On behalf of Senator Brown, Senator Dempsey offered Senate Resolution No. 62, regarding the Fiftieth Anniversary of Central Hog Market, Rich Fountain, which was adopted.

On behalf of Senator Brown, Senator Dempsey offered Senate Resolution No. 63, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Martin Rohlfing, Hermann, which was adopted.

On behalf of Senator Brown, Senator Dempsey offered Senate Resolution No. 64, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Ralph Kloeppel, Dixon, which was adopted.

On behalf of Senator Nieves, Senator Dempsey offered Senate Resolution No. 65, regarding Zachary Scott Myers, Pacific, which was adopted.

On behalf of Senator Kehoe, Senator Dempsey offered Senate Resolution No. 66, regarding Claudia Goodin, Jefferson City, which was adopted.

On behalf of Senator Crowell, Senator Dempsey offered Senate Resolution No. 67, regarding the Sixtieth Wedding Anniversary of Mr. and Mrs. Carl Leuckel, Perryville, which was adopted.

On behalf of Senator Crowell, Senator Dempsey offered Senate Resolution No. 68, regarding the Fiftieth Wedding Anniversary of Dr. and Mrs. Harold Hager, Cape Girardeau, which was adopted.

On behalf of Senator Crowell, Senator Dempsey offered Senate Resolution No. 69, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Wes Steffen, Cape Girardeau, which was adopted.

On behalf of Senator Nieves, Senator Dempsey offered Senate Resolution No. 70, regarding the One Hundredth Anniversary of Mathaushek Council #1576 of the Knights of Columbus, Union, which was adopted.

On behalf of Senator Rupp, Senator Dempsey offered Senate Resolution No. 71, regarding the Sixty-fifth Wedding Anniversary of Dr. and Mrs. Richard L. Dalton, Old Monroe, which was adopted.

On behalf of Senator Rupp, Senator Dempsey offered Senate Resolution No. 72, regarding Noah Gresham Krull, O'Fallon, which was adopted.

On behalf of Senator Schaefer, Senator Dempsey offered Senate Resolution No. 73, regarding Jack D. Bragg, D.O., Columbia, which was adopted.

On behalf of Senator Ridgeway, Senator Dempsey offered Senate Resolution No. 74, regarding the Fortieth Anniversary of the Clay County Investigative Squad, Liberty, which was adopted.

MESSAGES FROM THE HOUSE

The following messages were 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 passed **SCS** for **SB 1**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **SS** for **SCS** for **SB 7**.

Bill ordered enrolled.

REPORTS OF STANDING COMMITTEES

Senator Dempsey, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following reports:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were referred **SCS** for **SB 1** and **SS** for **SCS** for **SB 7**, begs leave to report that it has examined the same and finds that the bills have been duly enrolled and that the printed copies furnished the Senators are correct.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SCS** for **SB 1**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bill would be signed by the President Pro Tem to the end that it may become law. No objections being made, the bill was so read by the Secretary and signed by the President Pro Tem.

OBJECTIONS

Senator Lembke submitted the following:

**CONSTITUTIONAL OBJECTION
IN THE FIRST EXTRAORDINARY SESSION OF THE
NINETY-SIXTH GENERAL ASSEMBLY
OF THE STATE OF MISSOURI**

Comes now, Senator Jim Lembke, duly elected member of the Missouri Senate from the First Senatorial District, to present the following Point

of Order with respect to Senate Substitute for Senate Committee Substitute for Senate Bill Seven.

I believe this bill is constitutionally infirm for the following reasons:

1. SS/SCS for Senate Bill No. 7 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".
2. SS/SCS for Senate Bill No. 7 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.
3. SS/SCS for Senate Bill No. 7 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.
4. SS/SCS for Senate Bill No. 7 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..."
5. 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. SS/SCS for Senate Bill No. 7 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 applicable.

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 senator 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 Substitute for Senate Committee Substitute for Senate Bill Seven 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 submitted,
/s/ James W. Lembke
Senator James W. Lembke

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SS** for **SCS** for **SB 7**, having passed both branches of the General Assembly, would be read at length by the Secretary, and, the objection notwithstanding, the bill would be signed by the President Pro Tem to the end that it may become law. The bill was so read by the Secretary and signed by the President Pro Tem.

Senator Pearce assumed the Chair.

On motion of Senator Dempsey, the Senate adjourned until 10:30 a.m., Monday, September 26, 2011.

SENATE CALENDAR



TENTH DAY—MONDAY, SEPTEMBER 26, 2011



FORMAL CALENDAR

HOUSE BILLS ON THIRD READING

HB 1-Nasheed and Tilley (Keaveny)
(In Fiscal Oversight)

HB 2-Flanigan, with SCS (Schaefer)
(In Fiscal Oversight)

INFORMAL CALENDAR

HOUSE BILLS ON THIRD READING

HCS for HB 3 (Engler)

RESOLUTIONS

To be Referred

SR 60-Lembke, et al

