

Journal of the Senate

SECOND REGULAR SESSION

EIGHTEENTH DAY—MONDAY, FEBRUARY 6, 2012

The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“Therefore, my beloved, be steadfast, immovable, always excelling in the work of the Lord, because you know that in the Lord your labor is not in vain.” (I Corinthians 15:57,58)

Gracious God, we are thankful for bringing us safely to this new week of opportunities to serve You. We are grateful for the strength You provide us to fulfill the task each day brings and for providing the wherewithal we need. Keep us focused on You so our work and lives show forth our commitment to You. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal for Thursday, February 2, 2012 was read and approved.

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

The following Senators were present during the day’s proceedings:

Present—Senators

Brown	Callahan	Chappelle-Nadal	Crowell	Cunningham	Curls	Dempsey	Dixon
Engler	Goodman	Green	Justus	Keaveny	Kehoe	Kraus	Lager
Lamping	Lembke	Mayer	McKenna	Munzlinger	Nieves	Parson	Pearce
Purgason	Richard	Ridgeway	Rupp	Schaaf	Schaefer	Schmitt	Stouffer
Wasson	Wright-Jones—34						

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

Senator Dempsey requested unanimous consent to allow deputies from the McDonald County Sheriff's office to enter the Chamber with side arms, which request was granted.

RESOLUTIONS

Senator Lager offered Senate Resolution No. 1348, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. D.C. Macrander, Clearmont, which was adopted.

Senator Engler offered Senate Resolution No. 1349, regarding Brendan Michael Pingel, which was adopted.

Senator Engler offered Senate Resolution No. 1350, regarding Levi William Mills, which was adopted.

Senator McKenna offered Senate Resolution No. 1351, regarding Dawn Neupert, Fenton, which was adopted.

Senator Pearce offered Senate Resolution No. 1352, regarding Ethan Ambrose, Belton, which was adopted.

Senator Pearce offered Senate Resolution No. 1353, regarding James "Aaron" Person, which was adopted.

Senator Goodman offered Senate Resolution No. 1354, regarding the American Legion Hobbs-Anderson Post 91 of Monett, which was adopted.

Senator Brown offered Senate Resolution No. 1355, regarding the Missouri Society of Professional Engineers, which was adopted.

Senator Purgason offered Senate Resolution No. 1356, regarding Hannah Ramsey, Mountain Grove, which was adopted.

Senator Purgason offered Senate Resolution No. 1357, regarding Mattison Noelle Reed, Mountain Grove, which was adopted.

Senator Purgason offered Senate Resolution No. 1358, regarding Kayla L. Wells, Cabool, which was adopted.

Senator Munzlinger offered Senate Resolution No. 1359, regarding the One Hundredth Birthday of Rex Sloop, Queen City, which was adopted.

INTRODUCTION OF BILLS

The following Bills were read the 1st time and ordered printed:

SB 750—By Schmitt.

An Act to amend chapter 324, RSMo, by adding thereto one new section relating to health care providers.

SB 751—By Schaaf.

An Act to repeal section 171.031, RSMo, and to enact in lieu thereof one new section relating to the length of the school day.

SB 752—By Kehoe, Lamping and McKenna.

An Act to amend chapter 226, RSMo, by adding thereto twenty-five new sections relating to a public-private partnership between the state highways and transportation commission and a private partner to reconstruct an interstate highway as a toll facility, with penalty provisions.

SB 753—By Green.

An Act to repeal section 393.1075, RSMo, and to enact in lieu thereof one new section relating to utility regulation, with penalty provisions in existing language.

SB 754—By Mayer.

An Act to amend chapter 227, RSMo, by adding thereto one new section relating to the designation of a memorial highway.

SB 755—By Mayer.

An Act to repeal section 574.085, RSMo, and to enact in lieu thereof two new sections relating to crimes involving institutions, with penalty provisions.

Senator Rupp assumed the Chair.

SENATE BILLS FOR PERFECTION

Senator Dixon moved that **SB 469**, with **SCS** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SCS for **SB 469** was again taken up.

Senator Dixon offered **SS** for **SCS** for **SB 469**, entitled:

SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 469

An Act to repeal sections 536.041, 536.087, and 536.325, RSMo, and to enact in lieu thereof five new sections relating to administrative procedures and review.

Senator Dixon moved that **SS** for **SCS** for **SB 469** be adopted.

Senator Stouffer assumed the Chair.

Senator Crowell offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 469, Page 1, Section 536.041, Line 14, by striking “1.”; and

Further amend said bill and section, page 2, lines 22-28 by striking all of said lines from the bill; and

Further amend said bill and section, page 3, lines 1-28 by striking all of said lines from the bill; and

Further amend said bill, pages 4-7, section 536.087 by striking all of said section from the bill; and

Further amend said bill, page 11, section 536.325, line 13 by inserting after all of said line the following:

“[536.087. 1. A party who prevails in an agency proceeding or civil action arising therefrom, brought

by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

2. In awarding reasonable fees and expenses under this section to a party who prevails in any action for judicial review of an agency proceeding, the court shall include in that award reasonable fees and expenses incurred during such agency proceeding unless the court finds that during such agency proceeding the position of the state was substantially justified, or that special circumstances make an award unjust.

3. A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed. The party shall also allege that the position of the state was not substantially justified. The fact that the state has lost the agency proceeding or civil action creates no legal presumption that its position was not substantially justified. Whether or not the position of the state was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by an agency upon which a civil action is based) which is made in the agency proceeding or civil action for which fees and other expenses are sought, and on the basis of the record of any hearing the court or agency deems appropriate to determine whether an award of reasonable fees and expenses should be made, provided that any such hearing shall be limited to consideration of matters which affected the agency's decision leading to the position at issue in the fee application.

4. A prevailing party in an agency proceeding shall submit an application for fees and expenses to the administrative body before which the party prevailed. A prevailing party in a civil action on appeal from an agency proceeding shall submit an application for fees and expenses to the court. The filing of an application shall not stay the time for appealing the merits of a case. When the state appeals the underlying merits of an adversary proceeding, no decision on the application for fees and other expenses in connection with that adversary proceeding shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

5. The court or agency may either reduce the amount to be awarded or deny any award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

6. The decision of a court or an agency on the application for reasonable fees and expenses shall be in writing, separate from the judgment or order of the court or the administrative decision which determined the prevailing party, and shall include written findings and conclusions and the reason or basis therefor. The decision of a court or an agency on the application for fees and other expenses shall be final, subject respectively to appeal or judicial review.

7. If a party or the state is dissatisfied with a determination of fees and other expenses made in an agency proceeding, that party or the state may within thirty days after the determination is made, seek judicial review of that determination from the court having jurisdiction to review the merits of the underlying decision of the agency adversary proceeding. If a party or the state is dissatisfied with a determination of

fees and other expenses made in a civil action arising from an agency proceeding, that party or the state may, within the time permitted by law, appeal that order or judgment to the appellate court having jurisdiction to review the merits of that order or judgment. The reviewing or appellate court's determination on any judicial review or appeal heard under this subsection shall be based solely on the record made before the agency or court below. The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court's or agency's jurisdiction. Awards made pursuant to this act shall be payable from amounts appropriated therefor. The state agency against which the award was made shall request an appropriation to pay the award.]" and

Further amend the title and enacting clause accordingly.

Senator Crowell moved that the above amendment be adopted.

Senator Pearce assumed the Chair.

At the request of Senator Dixon, **SB 469**, with **SCS, SS** for **SCS** and **SA 1** (pending), was placed on the Informal Calendar.

RE-REFERRALS

President Pro Tem Mayer re-referred **SB 661** to the Committee on Jobs, Economic Development and Local Government.

INTRODUCTIONS OF GUESTS

Senator Richard introduced to the Senate, Angel Barr, Katie Smith, Keisha Burton, Taylor Edwards, Korra Ackerson, Shelby Perry, Ashley Wynn, Kenzie Moore, Kyra England, Cheyenne Black, Megan Cotten, Paige Burr, Caitlyn Jennings and Sadie Burns, cheerleaders from Seneca High School.

Senator Richard introduced to the Senate, Deputy John Wynn, McDonald County Sheriff's office.

Senator Wright-Jones introduced to the Senate, Mollie Mees, Illinois.

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

SENATE CALENDAR

NINETEENTH DAY—TUESDAY, FEBRUARY 7, 2012

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SB 738-Stouffer
SB 739-Keaveny
SB 740-Pearce

SB 741-Parson
SB 742-Brown
SB 743-Brown

SB 744-Wright-Jones
 SB 745-Lembke
 SB 746-Schaefer
 SB 747-Schaefer
 SB 748-Brown
 SB 749-Lamping, et al

SB 750-Schmitt
 SB 751-Schaaf
 SB 752-Kehoe, et al
 SB 753-Green
 SB 754-Mayer
 SB 755-Mayer

HOUSE BILLS ON SECOND READING

HCS for HJR 43
 HB 1135-Smith (150), et al

HCS for HB 1140

THIRD READING OF SENATE BILLS

SS for SCS for SB 592-Lager (In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

SB 442-Stouffer, with SCS
 SB 564-Brown
 SB 470-Dixon, with SCS

SB 572-Dempsey, with SCS
 SB 589-Kraus, with SCS
 SB 498-Munzlinger, with SCS

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 438-Mayer
 SB 439-Mayer, with SCS
 SB 455-Pearce
 SB 469-Dixon, with SCS, SS for SCS & SA 1
 (pending)

SB 547-Purgason
 SBs 553 & 435-Brown, with SCS, SS for
 SCS and SA 1 (pending)
 SB 596-Brown, with SCS
 SJR 29-Lamping

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