

Journal of the Senate

SECOND REGULAR SESSION

THIRTY-THIRD DAY—THURSDAY, MARCH 4, 2004

The Senate met pursuant to adjournment.

Senator Nodler in the Chair.

Reverend Carl Gauck offered the following prayer:

“You show me the path of life. In your presence there is fullness of you; in your right hand are pleasures forevermore.”
(Psalm 16:11)

Creator God, in our daily lives we experience You and know life and the fullness of Your joy. As we complete our work and return to loved ones make us mindful of the gifts they are in our lives and the completeness they bring to us. 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 of the previous day was read and approved.

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

Present—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Days	Dolan
Dougherty	Foster	Gibbons	Goode

Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Quick	Russell	Scott
Shields	Steelman	Stoll	Vogel
Wheeler	Yeckel—34		

Absent with leave—Senators—None

The Senate observed a moment of prayer, offered by Senator Nodler, for Don Rackers.

RESOLUTIONS

Senators Gross and Dolan offered Senate Resolution No. 1459, regarding Mayor Thomas W. “Tom” Brown, St. Peters, which was adopted.

REPORTS OF STANDING COMMITTEES

Senator Kinder, Chairman of the Committee on Gubernatorial Appointments, submitted the following reports:

Mr. President: Your Committee on Gubernatorial Appointments, to which were referred the following appointments and reappointments, begs leave to report that it has considered the same and recommends that the Senate do give its advice and consent to the following:

Andrew E. Gray, Jr., as a member of the Unmarked Human Burial Consultation Committee;

Also,

Christi Anne Checkett, as a member of the Missouri Commission on Human Rights;

Also,

Terry D. Milam and Sheldon Lee Lineback, as members of the Amber Alert System Oversight Commission;

Also,

Lorna R. Cockrum, as a member of the Missouri Community Service Commission;

Also,

Erwin P. Gadd, as a public member and Barry J. Drucker, as a member of the State Milk Board;

Also,

Gail McCann Beatty, as a member of the Missouri Real Estate Appraisers Commission;

Also,

Stacy A. Mangum, appointed and reappointed, as a member of the Drug Utilization Review Board.

Senator Kinder requested unanimous consent of the Senate to vote on the above reports in one motion. There being no objection, the request was granted.

Senator Kinder moved that the committee reports be adopted, and the Senate do give its advice and consent to the above appointments and reappointments, which motion prevailed.

President Pro Tem Kinder assumed the Chair.

Senator Childers, Chairman of the Committee on Economic Development, Tourism and Local Government, submitted the following report:

Mr. President: Your Committee on Economic Development, Tourism and Local Government, to which was referred **SB 1180**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Yeckel, Chairman of the Committee on Financial and Governmental Organization,

Veterans' Affairs and Elections, submitted the following report:

Mr. President: Your Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, to which were referred **SB 1027** and **SB 896**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Steelman, Chairman of the Committee on Commerce and the Environment, submitted the following reports:

Mr. President: Your Committee on Commerce and the Environment, to which was referred **SB 988**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Also,

Mr. President: Your Committee on Commerce and the Environment, to which were referred **SB 1069**, **SB 1068**, **SB 1025**, **SB 1005** and **SB 1089**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Loudon, Chairman of the Committee on Small Business, Insurance and Industrial Relations, submitted the following report:

Mr. President: Your Committee on Small Business, Insurance and Industrial Relations, to which was referred **SB 809**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Klindt, Chairman of the Committee on Agriculture, Conservation, Parks and Natural Resources, submitted the following report:

Mr. President: Your Committee on Agriculture, Conservation, Parks and Natural Resources, to which was referred **HCS for HB 1182**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Cauthorn, Chairman of the Committee on Governmental Accountability and Fiscal

Oversight, submitted the following report:

Mr. President: Your Committee on Governmental Accountability and Fiscal Oversight, to which was referred **SB 1232**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Scott, Chairman of the Committee on Pensions and General Laws, submitted the following reports:

Mr. President: Your Committee on Pensions and General Laws, to which was referred **SB 1081**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Also,

Mr. President: Your Committee on Pensions and General Laws, to which was referred **SB 1141**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Vogel, Chairman of the Committee on Ways and Means, submitted the following report:

Mr. President: Your Committee on Ways and Means, to which was referred **SB 960**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Dolan, Chairman of the Committee on Transportation, submitted the following reports:

Mr. President: Your Committee on Transportation, to which were referred **SB 1233**, **SB 840** and **SB 1043**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Also,

Mr. President: Your Committee on Transportation, to which was referred **SB 710**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Gibbons, 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, after examination of **SB 1166**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, after examination of **SJR 24**, with **SCS**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, after examination of **SB 1188**, with **SCS**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, after examination of **SB 1105**, with **SCS**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, after examination of **SB 817**, with **SCS**, respectfully requests that it be removed from the Senate Consent Calendar in accordance with the provisions of Senate Rule 45.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCR 36**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do

pass.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 36

WHEREAS, underage drinking is an issue of concern to the citizens of our state; and

WHEREAS, research indicates teenagers and their parents are not well informed about the legal, social, and other consequences of underage drinking; and

WHEREAS, underage drinking may lead to automobile crashes, truancy, academic failure, dysfunctional family relationships, subsequent use of controlled substances, suicide, sexual activity or violence, or other adverse consequences:

NOW, THEREFORE, BE IT RESOLVED that the members of the Missouri Senate, Ninety-second General Assembly, Second Regular Session, the House of Representatives concurring therein, hereby create a Joint Interim Committee on Underage Drinking; and

BE IT FURTHER RESOLVED that the joint interim committee shall study the current public and private efforts to combat underage drinking, evaluate their effectiveness, and make recommendations to the General Assembly; and

BE IT FURTHER RESOLVED that the joint interim committee be authorized to call upon any department, office, division, or agency of this state to assist in gathering information pursuant to its objective; and

BE IT FURTHER RESOLVED that the joint interim committee herein established shall consist of eighteen members, of which four shall be members of the Senate appointed by the President Pro Tem of the Senate, of which at least two shall be members of the minority party; four shall be members of the House of Representatives, of which two shall be appointed by the Speaker of the House of Representatives and two of which shall be members of the minority party appointed by the Minority Floor Leader, with approval of the Speaker of the House of Representatives; two shall be representatives of the medical community who specialize in alcohol abuse and prevention, one which shall be appointed by the President Pro Tem of the Senate and one which shall be appointed by the Speaker of the House; two shall be representatives of the law enforcement community who work with schools in the prevention of alcohol abuse, one which shall be appointed by the President Pro Tem of the Senate and one which shall be appointed by the Speaker of the House; two shall be representatives of the commercial alcoholic beverage industry, one of which shall be appointed by the President Pro Tem of the Senate and one of which shall be appointed by the Speaker of the House; two parents of teenage children, one which shall be appointed by the President Pro Tem of the Senate and one which shall be appointed by the Speaker of the House; and two school students between the ages of 18 and 20 years, one which shall be appointed by the President Pro Tem of the Senate and one which shall be appointed by the Speaker of the House; and

BE IT FURTHER RESOLVED the President Pro Tem of the Senate and the Speaker of the House of Representatives shall collaborate to ensure that the membership of the joint interim committee reflects adequate minority and gender representation; and

BE IT FURTHER RESOLVED that the staffs of House Research, Senate Research, and the Committee on Legislative Research shall provide such legal, research, clerical, technical, and bill drafting services as the committee may require in the performance of its duties; and

BE IT FURTHER RESOLVED that the committee, its members, and any staff personnel assigned to the committee shall receive reimbursement for their actual and necessary expenses incurred in attending meetings of the committee or any subcommittee thereof; and

BE IT FURTHER RESOLVED that the members of the joint interim committee shall be appointed by June 1, 2004; and

BE IT FURTHER RESOLVED that the joint interim committee shall expire on December 31, 2004, and on that same date deliver a report of findings and recommendations to the General Assembly; and

BE IT FURTHER RESOLVED that the Secretary of the Senate be instructed to prepare a properly inscribed copy of this resolution for the President Pro Tem of the Senate and the Speaker of the House of Representatives.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCR 37**, begs leave to report that it has considered the same and recommends that the concurrent resolution do pass.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCR 41**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 41

WHEREAS, the United States Fish and Wildlife Service has mandated that the United States Army Corps of Engineers implement a plan for operating the Missouri River that calls for a "spring rise" and a "summer low flow." This plan would result in an increase in the flow of the Missouri River in the spring when the risk of flooding of bottomland farms is already high. The plan also would result in a reduction of the flow of the Missouri River in the summer of each year, thereby negatively affecting farmers, utilities,

and businesses from Omaha to the Gulf of Mexico, purportedly to improve habitat for the pallid sturgeon, an endangered fish; and

WHEREAS, the United States Fish and Wildlife Service has dictated these controversial flow changes primarily to benefit only a short segment of the Missouri River where pallid sturgeon have not even been found in six years of sampling; and

WHEREAS, analyses have shown that low river flows could actually degrade habitat important to the pallid sturgeon in segments of the lower Missouri and Mississippi Rivers where pallid sturgeon have been found in recent years; and

WHEREAS, in the summer months of 2002 and 2003, record low flows on the Missouri River increased transportation costs for Missouri farmers by halting navigation, increased power plant cooling costs for private utilities, increased drinking water treatment costs for public utilities across the state of Missouri, and caused water quality violations with the temperature in the Missouri River exceeding 90 degrees. Despite the economic harm already experienced by Missourians, the United States Fish and Wildlife Service has unilaterally mandated summer low flows during the next two years that are virtually identical to those experienced in 2002 and 2003; and

WHEREAS, while the United States Fish and Wildlife Service has failed to provide sufficient scientific evidence that proves that their mandated "spring rise" and "summer low flow" will improve habitat for the pallid sturgeon, analysis has shown that their proposal will increase the risk of flooding bottomland farms along the Missouri River, will result in economic harm to public and private utilities, and will risk the jobs of those who rely on the Missouri and Mississippi Rivers for their livelihoods; and

WHEREAS, the so-called "drought conservation measures" under consideration by the United States Army Corps of Engineers for inclusion in the Missouri River Master Manual would take away usable water from Missourians by shifting the storage of more water to upstream reservoirs while decreasing the amount of water available for other designated downstream uses; and

WHEREAS, the Missouri River contributes up to 65 percent of the Mississippi River flow at St. Louis during low-water conditions; and

WHEREAS, reduction of Missouri River flows would result in more frequent and more costly impediments to commerce on the Mississippi River where more than 120 million tons of cargo, which includes 60 percent of the nation's grain harvest, is shipped annually past St. Louis.

WHEREAS, the United States Eighth Circuit Court of Appeals recently affirmed that the dominant functions of the Missouri River Reservoir System are flood control and navigation, with recreation and other interests being secondary uses:

NOW, THEREFORE, BE IT RESOLVED that the members of the Missouri Senate, Ninety-Second General Assembly, Second Regular Session, the House of Representatives concurring therein,

hereby respectfully request that the President of the United States direct the United States Fish and Wildlife Service and the United States Army Corps of Engineers to develop a plan for operating the Missouri River Reservoir System that will not increase the risk of flooding for bottomland farmers and will not harm the economy of the Midwestern states by failing to provide adequate flows to meet all designated downstream uses on the Missouri and Mississippi Rivers; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare properly inscribed copies of this resolution for the President of the United States, each member of the Missouri Congressional Delegation, the United States Fish and Wildlife Service, and the United States Army Corps of Engineers.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were referred SCS for SB 754, SCS for SB 1040, SB 1123 and SCS for SB 1160, begs leave to report that it has examined the same and finds that the bills have been truly perfected and that the printed copies furnished the Senators are correct.

Senator Nodler assumed the Chair.

THIRD READING OF SENATE BILLS

SB 870, introduced by Senator Bartle, entitled:

An Act to amend chapter 226, RSMo, by adding thereto one new section relating to billboards, with penalty provisions.

Was taken up.

On motion of Senator Bartle, **SB 870** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dolan	Dougherty
Foster	Gibbons	Goode	Griesheimer
Gross	Jacob	Kennedy	Kinder
Klindt	Loudon	Mathewson	Nodler
Quick	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler

Yeckel—33

NAYS—Senator Caskey—1

Absent—Senators—None

Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Bartle, title to the bill was agreed to.

Senator Bartle moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

SCS for SB 700, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 700

An Act to repeal section 135.207, RSMo, and to enact in lieu thereof two new sections relating to enterprise zones.

Was taken up by Senator Russell.

On motion of Senator Russell, **SCS for SB 700** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bland	Bray	Callahan
Caskey	Cauthorn	Champion	Childers
Clemens	Coleman	Days	Dolan
Dougherty	Foster	Gibbons	Goode
Griesheimer	Gross	Jacob	Kennedy
Kinder	Klindt	Loudon	Mathewson
Nodler	Quick	Russell	Scott
Shields	Steelman	Stoll	Vogel
Wheeler	Yeckel—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Russell, title to the bill was agreed to.

Senator Russell moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

SS for SCS for SBs 740, 886, and 1178, introduced by Senator Klindt, entitled:

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 740, 886 and 1178

An Act to repeal sections 148.330, 263.534, 267.470, 267.472, 267.475, 267.480, 267.485, 267.490, 267.495, 267.500, 267.505, 267.510, 267.515, 267.520, 267.525, 267.531, 267.535, 267.540, 267.545, 267.550, 267.551, 267.552, 267.553, 267.554, 267.555, 267.556, 348.406, 348.410, 348.412, 348.430, and 348.432, RSMo, and to enact in lieu thereof twenty-one new sections relating to agriculture programs.

Was taken up.

On motion of Senator Klindt, **SS for SCS for SBs 740, 886, and 1178** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Callahan	Cauthorn	Champion
Childers	Clemens	Coleman	Days
Dolan	Dougherty	Foster	Gibbons
Goode	Griesheimer	Gross	Jacob
Kennedy	Kinder	Klindt	Loudon
Mathewson	Nodler	Quick	Russell
Scott	Shields	Steelman	Stoll
Vogel	Yeckel—30		

NAYS—Senators

Caskey	Wheeler—2
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Absent—Senators

Bland	Bray—2
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Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Klindt, title to the bill was agreed to.

Senator Klindt moved that the vote by which

the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

SB 920, introduced by Senator Caskey, entitled:

An Act to repeal sections 306.165, 306.167, and 542.261, RSMo, and to enact in lieu thereof four new sections relating to the Missouri state water patrol.

Was taken up.

On motion of Senator Caskey, **SB 920** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dolan	Dougherty
Foster	Gibbons	Goode	Griesheimer
Gross	Jacob	Kennedy	Kinder
Klindt	Loudon	Mathewson	Nodler
Quick	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—33			

NAYS—Senators—None

Absent—Senator Bland—1

Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Caskey, title to the bill was agreed to.

Senator Caskey moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

SCS for SB 1045, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1045

An Act to amend chapter 574, RSMo, by adding thereto one new section relating to the burning of crosses, with penalty provisions.

Was taken up by Senator Kinder.

On motion of Senator Kinder, **SCS for SB 1045** was read the 3rd time and passed by the following vote:

YEAS—Senators

Bartle	Bray	Callahan	Caskey
Cauthorn	Champion	Childers	Clemens
Coleman	Days	Dolan	Dougherty
Foster	Gibbons	Goode	Griesheimer
Gross	Kennedy	Kinder	Klindt
Loudon	Mathewson	Nodler	Quick
Russell	Shields	Steelman	Stoll
Vogel	Wheeler	Yeckel—31	

NAYS—Senators—None

Absent—Senators

Bland Jacob Scott—3

Absent with leave—Senators—None

The President declared the bill passed.

On motion of Senator Kinder, title to the bill was agreed to.

Senator Kinder moved that the vote by which the bill passed be reconsidered.

Senator Gibbons moved that motion lay on the table, which motion prevailed.

REFERRALS

President Pro Tem Kinder referred **SR 1451** to the Committee on Rules, Joint Rules, Resolutions and Ethics.

President Pro Tem Kinder referred **SCS for SB 1040; SB 1123; and SCS for SB 937** to the Committee on Governmental Accountability and Fiscal Oversight.

SENATE BILLS FOR PERFECTION

Senator Shields moved that **SB 968**, with **SCS**, as amended (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SCS for SB 968, as amended, was again taken

up.

Senator Shields offered **SS** for **SCS** for **SB 968**, entitled:

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 968

An Act to repeal sections 168.104, 168.124, and 168.126, RSMo, and to enact in lieu thereof three new sections relating to teachers.

Senator Shields moved that **SS** for **SCS** for **SB 968** be adopted.

Senator Bray offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 968, Page 3, Section 168.104, Line 10, by inserting after all of said line the following:

“168.114. 1. An indefinite contract with a permanent teacher shall not be terminated [by the board of education of a school district] except for one or more of the following causes:

(1) Physical or mental condition [unfitting him] **making such teacher unfit** to instruct or associate with children;

(2) Immoral conduct;

(3) Incompetency, inefficiency or insubordination in line of duty;

(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing [him] **such teacher**;

(5) Excessive or unreasonable absence from performance of duties; or

(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may

have been adopted by the school board.

168.116. 1. The indefinite contract of a permanent teacher may not be terminated [by the board of education] until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing on charges and a hearing [by the board of education] on charges if requested by the teacher.

2. At least [thirty] **one hundred twenty** days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or [his] **the superintendent's** designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of **right to request** a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher [at least twenty days prior to the date of the hearing]. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to [him] **the teacher** at [his] **the teacher's** last known address. If the teacher or [his] **the teacher's** agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education **of the school district** may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by [either] the teacher [or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.], **the superintendent shall forward a copy of the notice to the state board of education. Within five days after receiving this notice of hearing, the state board of education shall provide a list of five prospective, impartial hearing officers. Each person on the list shall be accredited by a national arbitration organization. No one on the list shall be a resident of the school district.**

Within seven days of receipt of the list, the board of education of the school district and the teacher, or their legal representatives, shall alternately strike one name from the list until only one name remains. The board of education of the school district shall proceed first with the striking. The state board of education shall promulgate uniform standards and rules of procedure for such hearings. Such rules and regulations shall, at a minimum, provide for:

(1) Discovery of names and addresses of persons who may be called as expert witnesses at the hearing. The omission of any such name shall result in a preclusion of the testimony of such witness in the absence of the showing of good cause and the express permission of the hearing officer;

(2) Written interrogatories; and

(3) The production of relevant documents.

4. The school district shall pay the per diem allowance for the hearing officer, not to exceed four hundred dollars, and the expenses of the hearing officer.

5. On the filing of charges in accordance with this section, the board of education of the school district may suspend the teacher from active performance of duty until a decision is rendered by the [board of education] hearing officer but the teacher's salary and benefits shall be continued during such suspension. If a decision to terminate a teacher's employment [by the board of education] is appealed, and the decision is reversed, the teacher shall be paid [his] the teacher's salary lost during the pending of the appeal.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to

delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

168.118. If a hearing is requested on the termination of an indefinite contract it shall be conducted by the [board of education] hearing officer in accordance with the following provisions:

(1) The hearing shall be public unless closed at the request of the teacher, and shall be scheduled not less than thirty nor more than forty-five days from the date of selection of the hearing officer, unless the period is shortened or extended by mutual agreement of the teacher and the board of education of the school district;

(2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;

(3) Testimony at hearings shall be on oath or affirmation administered by the [president of the board of education] hearing officer, who for the purpose of hearings held [under sections 168.102 to 168.130] pursuant to this section shall have the authority to administer oaths;

(4) The [school board] hearing officer shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077, RSMo, and shall do so on [its own] the motion or at the request of the administration or the teacher against whom charges have been made. The [school board] hearing officer shall hear testimony of all witnesses named by the administration and the teacher; however, the [school board] hearing officer may limit the number of witnesses to be subpoenaed on behalf of the administration or the teacher to not more than ten;

(5) The board of education of the school district shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the

conclusion thereof, furnish **the hearing officer**, the board of education **of the school district** and the teacher, at no cost to **the hearing officer or the teacher**, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the [board] **hearing officer** is taken by the teacher **or the board of education of the school district**;

(6) All costs of the hearing shall be paid by the school board **of education of the school district** except the cost of counsel for the teacher;

(7) [The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.] **No later than thirty days after the conclusion of the hearing, the hearing officer shall make a decision as to whether or not the teacher shall be dismissed and shall deliver copies of the decision to both the teacher and the board of education of the school district. The hearing officer shall also have the authority to decide that a teacher shall be given appropriate discipline, but not be dismissed. In the case of a charge of incompetency, inefficiency, or insubordination in the line of duty, the hearing officer shall also have the option of ordering an extension of the period in which the superintendent and the teacher shall meet and confer in an effort to resolve the matter as provided in subsection 2 of section 168.116. The decision of the hearing officer is final unless appealed as provided in section 168.120.**

168.120. 1. The teacher **or the board of education of the school district** shall have the right to appeal from the decision of the [board of education] **hearing officer** to the circuit court of the county where the employing school district is

located. The appeal shall be taken within fifteen days after service of a copy of the decision of the [board of education upon the teacher] **hearing officer**, and if an appeal is not taken within the time, then the decision of the [board of education] **hearing officer** shall become final.

2. The appeal may be taken by filing notice of appeal with the board of education **of the school district**, whereupon the board of education **of the school district**, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the [board of education] **hearing officer**, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in chapter 536, RSMo.

3. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education **of the school district**, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education **of the school district** shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education **of the school district** by the appellate court. In all appeals from the board of education **of the school district** or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

4. If the circuit court finds for the teacher, [he] **the teacher** shall be restored to permanent teacher status and shall receive compensation for the period during which [he] **the teacher** may have been suspended from work, and such other relief as may be granted by the court.”; and

Further amend the title and enacting clause

accordingly.

Senator Bray moved that the above amendment be adopted and requested a roll call vote be taken. She was joined in her request by Senators Coleman, Jacob, Kennedy and Wheeler.

SA 1 failed of adoption by the following vote:

YEAS—Senators

Bray	Callahan	Coleman	Days
Dougherty	Goode	Gross	Jacob
Kennedy	Quick	Wheeler—11	

NAYS—Senators

Bartle	Caskey	Cauthorn	Champion
Childers	Clemens	Dolan	Foster
Gibbons	Griesheimer	Kinder	Klindt
Loudon	Nodler	Russell	Scott
Shields	Steelman	Vogel	Yeckel—20

Absent—Senators

Bland	Mathewson	Stoll—3
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Absent with leave—Senators—None

Senator Jacob offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 968, Page 6, Section 168.126, Line 23, by adding after all of said line the following:

“168.303. The state board of education shall adopt rules to facilitate job-sharing positions for classroom teachers, as the term “job-sharing” is defined in this section. These rules shall provide that a classroom teacher in a job-sharing position shall receive paid legal holidays, annual vacation leave, sick leave, and personal leave on a pro rata basis. “Job-sharing position” shall mean any position:

- (1) Shared with one other employee;
- (2) Requiring employment of at least [seventeen] **fifteen** hours per week but not more than twenty hours per week on a regular basis; and
- (3) Requiring at least seventy percent of all time spent in classroom instruction as determined

by the employer; provided that, job-sharing position shall not include instructional support or school services positions including, but not limited to, guidance counselor, media coordinator, psychologist, social worker, audiologist, speech and language pathologist, and nursing positions.

169.712. 1. Notwithstanding any provision of law to the contrary, any person duly certificated under the law governing the certification of teachers in Missouri who, after August 28, 1997, is first employed in a position which would otherwise qualify the person for membership in the nonteacher school employee retirement system pursuant to the provisions of sections 169.600 to 169.710 shall be a member of the public school retirement system pursuant to the provisions of sections 169.010 to 169.141, and shall receive creditable service on a pro rata basis in that system for subsequent certificated services which would otherwise have been creditable in the nonteacher school employee retirement system. Any such person shall have the option of being a member of the nonteacher school employee retirement system. The option election must be filed with the board of trustees of the public school retirement system within ninety days of first such employment following August 28, 1997.

2. Notwithstanding any provision of law to the contrary, any person duly certificated under the law governing the certification of teachers in Missouri who, on or after August 28, 2003, is employed by a public school, as defined in section 169.010, for at least [seventeen] **fifteen** but less than twenty hours per week on a regular basis shall be a member of the public school retirement system pursuant to the provisions of sections 169.010 to 169.141, and shall receive creditable service on a pro rata basis in that system. Any such person shall have the option of being a member of the nonteacher school employee retirement system. The option election must be filed with the board of trustees of the public school retirement system within ninety days of first such employment or within ninety days of August 28, 2003, whichever later occurs.

3. Any person who is a member of the public school retirement system or the nonteacher school employee retirement system pursuant to subsection 2 of this section may purchase credit in such system for service after August 28, 1991, that would have qualified such person for membership in either retirement system pursuant to subsection 2 of this section had such subsection been in effect prior to August 28, 2003; provided that such purchase of credit in the public school retirement system shall be subject to the provisions of section 169.056 and such purchase of credit in the nonteacher school employee retirement system shall be subject to the provisions of section 169.655.”; and

Further amend the title and enacting clause accordingly.

Senator Jacob moved that the above amendment be adopted, which motion prevailed.

Senator Bartle assumed the Chair.

Senator Nodler assumed the Chair.

Senator Shields moved that **SS** for **SCS** for **SB 968**, as amended, be adopted, which motion prevailed.

On motion of Senator Shields, **SS** for **SCS** for **SB 968**, as amended, was declared perfected and ordered printed.

SECOND READING OF SENATE BILLS

The following Bills were read the 2nd time and referred to the Committees indicated:

SB 1288—Financial and Governmental Organization, Veterans’ Affairs and Elections.

SB 1313—Aging, Families, Mental and Public Health.

SB 1328—Financial and Governmental Organization, Veterans’ Affairs and Elections.

SB 1333—Commerce and the Environment.

SB 1334—Education.

SB 1336—Financial and Governmental Organization, Veterans’ Affairs and Elections.

SB 1337—Ways and Means.

SB 1338—Economic Development, Tourism and Local Government.

SB 1339—Education.

SB 1340—Economic Development, Tourism and Local Government.

SB 1342—Aging, Families, Mental and Public Health.

SB 1343—Economic Development, Tourism and Local Government.

SB 1344—Economic Development, Tourism and Local Government.

SB 1345—Judiciary and Civil and Criminal Jurisprudence.

SB 1347—Education.

SB 1348—Judiciary and Civil and Criminal Jurisprudence.

SB 1349—Education.

SB 1350—Education.

SB 1351—Aging, Families, Mental and Public Health.

SB 1352—Education.

SB 1353—Economic Development, Tourism and Local Government.

SB 1354—Judiciary and Civil and Criminal Jurisprudence.

SB 1355—Education.

SB 1359—Judiciary and Civil and Criminal Jurisprudence.

SB 1360—Judiciary and Civil and Criminal Jurisprudence.

SB 1361—Education.

SB 1362—Small Business, Insurance and Industrial Relations.

SB 1363—Judiciary and Civil and Criminal Jurisprudence.

SB 1364—Economic Development, Tourism and Local Government.

SB 1365—Financial and Governmental Organization, Veterans' Affairs and Elections.

SB 1367—Education.

SB 1368—Financial and Governmental Organization, Veterans' Affairs and Elections.

SB 1369—Financial and Governmental Organization, Veterans' Affairs and Elections.

SB 1370—Governmental Accountability and Fiscal Oversight.

SB 1371—Aging, Families, Mental and Public Health.

SB 1372—Agriculture, Conservation, Parks and Natural Resources.

SB 1373—Judiciary and Civil and Criminal Jurisprudence.

SB 1374—Ways and Means.

SB 1375—Financial and Governmental Organization, Veterans' Affairs and Elections.

SB 1376—Agriculture, Conservation, Parks and Natural Resources.

SB 1377—Pensions and General Laws.

SB 1378—Financial and Governmental Organization, Veterans' Affairs and Elections.

SB 1379—Commerce and the Environment.

SB 1380—Commerce and the Environment.

SB 1381—Judiciary and Civil and Criminal Jurisprudence.

SB 1382—Judiciary and Civil and Criminal Jurisprudence.

SB 1383—Commerce and the Environment.

SB 1384—Pensions and General Laws.

SB 1385—Small Business, Insurance and Industrial Relations.

SB 1388—Ways and Means.

President Pro Tem Kinder assumed the Chair.

REPORTS OF STANDING COMMITTEES

Senator Childers, Chairman of the Committee on Economic Development, Tourism and Local

Government, submitted the following report:

Mr. President: Your Committee on Economic Development, Tourism and Local Government, to which was referred **SB 1220**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Bartle, Chairman of the Committee on the Judiciary and Civil and Criminal Jurisprudence, submitted the following report:

Mr. President: Your Committee on the Judiciary and Civil and Criminal Jurisprudence, to which were referred **SB 738** and **SB 790**, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

Senator Nodler assumed the Chair.

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 adopted **SCS** for **HB 916** and has taken up and passed **SCS** for **HB 916**.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS** for **HB 1338**, entitled:

An Act to repeal sections 407.670 and 407.671, RSMo, and to enact in lieu thereof eight new sections relating to the buyers club law.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HB 841**, entitled:

An Act to amend chapter 306, RSMo, by adding thereto one new section relating to containers on watercraft, with a penalty provision.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **SCR 33**.

RESOLUTIONS

Senator Cauthorn offered Senate Resolution No. 1460, regarding the Waynesville Technical Academy Culinary Arts Program, Waynesville, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Clemens introduced to the Senate, the

Physician of the Day, Dr. John Esther, M.D. and his daughter, Madeleine, Springfield; and Madeleine was made an honorary page.

On behalf of Senator Gibbons and himself, Senator Loudon introduced to the Senate, Allison Kenemer and students from Twin Oaks Christian School, Twin Oaks.

Senator Griesheimer introduced to the Senate, Jane Haberberger and Judge Gael Wood, Washington.

Senator Cauthorn introduced to the Senate, Betsy Barnes, Bowling Green; and Missy Johns and Melissa Rainey, Hannibal.

Senator Kennedy introduced to the Senate, Willie Oberman and fourth grade students from Bismarck Elementary School, Bismarck.

On motion of Senator Gibbons, the Senate adjourned until 3:00 p.m., Monday, March 8, 2004.

SENATE CALENDAR

THIRTY-FOURTH DAY—MONDAY, MARCH 8, 2004

Journal

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SB 1289-Kennedy and Gibbons
 SB 1331-Gibbons
 SB 1332-Caskey and Mathewson
 SB 1335-Dougherty, et al
 SB 1341-Cauthorn, et al
 SB 1346-Coleman
 SB 1356-Jacob and Bray
 SB 1357-Jacob and Bray
 SB 1358-Jacob and Bray
 SB 1366-Yeckel
 SB 1386-Scott
 SB 1387-Dolan

SB 1389-Dolan
 SB 1390-Foster
 SB 1391-Foster
 SB 1392-Goode and Dougherty
 SB 1393-Vogel
 SB 1394-Vogel
 SB 1395-Shields
 SB 1396-Shields
 SB 1397-Gibbons, et al
 SB 1398-Jacob and Kinder
 SB 1399-Kennedy
 SB 1400-Loudon, et al

SJR 48-Jacob and Bray
SJR 49-Klindt

SJR 50-Stoll
SJR 51-Goode

HOUSE BILLS ON SECOND READING

HCS for HB 1338

HB 841-Angst

THIRD READING OF SENATE BILLS

SCS for SB 937-Gross (In Fiscal Oversight)
SCS for SB 754-Vogel
SCS for SB 1040-Griesheimer (In Fiscal Oversight)

SB 1123-Gibbons, et al (In Fiscal Oversight)
SCS for SB 1160-Shields, et al

SENATE BILLS FOR PERFECTION

SB 1180-Shields and Kinder, with SCS
SBs 1027 & 896-Cauthorn, et al, with SCS
SB 988-Steelman, with SCS
SBs 1069, 1068, 1025, 1005 & 1089-Gross
and Griesheimer, with SCS
SB 809-Klindt, with SCS
SB 1232-Clemens, et al, with SCS

SB 1081-Kinder, et al, with SCS
SB 1141-Loudon, with SCS
SB 960-Gibbons, with SCS
SBs 1233, 840 & 1043-Dolan, with SCS
SB 710-Goode and Bray, with SCS
SB 1220-Caskey, with SCS
SBs 738 & 790-Loudon, with SCS

HOUSE BILLS ON THIRD READING

HCS for HB 1182, with SCS

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 715-Childers and Caskey, with SCS, SS
for SCS & SA 24 (pending)
SB 718-Yeckel, et al
SB 755-Shields, with SCS
SB 856-Loudon, with SCS
SB 933-Yeckel, et al

SB 989-Gross, et al, with SCS (pending)
SB 990-Loudon, with SCS
SBs 1020, 889 & 869-Steelman, et al, with
SCS, SA 2 & SSA 1 for SA 2 (pending)
SB 1122-Shields, with SCS & SS for SCS (pending)
SB 1138-Bartle

CONSENT CALENDAR

Senate Bills

Reported 2/9

SB 741-Klindt
 SB 1093-Gibbons and Yeckel, with SCS

SB 799-Steelman, with SCS

Reported 2/23

SB 1229-Caskey	SB 1078-Loudon, with SCS
SB 1218-Quick, with SCS	SB 883-Klindt
SB 1162-Jacob	SB 966-Shields
SB 1048-Nodler, et al	SB 757-Shields, with SCS
SB 1044-Shields, with SCS	SB 771-Bray, with SCS
SB 1172-Gibbons, et al, with SCS	SB 772-Bray and Griesheimer
SB 1007-Goode, et al	SB 788-Childers, with SCS
SB 962-Clemens, with SCS	SB 845-Yeckel, with SCS
SB 992-Cauthorn, with SCS	SB 894-Goode
SB 1177-Klindt, with SCS	SB 899-Goode
SB 900-Goode, with SCA 1	SB 956-Scott, with SCS
SB 945-Gibbons, with SCS	SB 1225-Dougherty, et al, with SCS
SB 1087-Days, et al	SB 1114-Loudon
SB 1086-Cauthorn	

Reported 3/1

SB 762-Champion, with SCS#2	SB 768-Nodler
SB 1212-Wheeler and Russell, with SCS	SB 1111-Klindt
SB 1243-Wheeler	SB 1064-Scott and Clemens
SB 1253-Mathewson, et al, with SCS	SB 974-Dougherty, with SCS
SBs 1085 & 800-Foster, et al, with SCS	SB 1130-Scott
SB 884-Klindt	SB 1055-Bartle and Wheeler

RESOLUTIONS

Reported from Committee

SCR 36-Gibbons and Dougherty, with SCS	SCR 41-Klindt, with SCS
SCR 37-Shields and Bartle	