

Journal of the Senate

SECOND REGULAR SESSION

TWENTY-FIFTH DAY—THURSDAY, FEBRUARY 19, 2004

The Senate met pursuant to adjournment.

Senator Bartle in the Chair.

Reverend Carl Gauck offered the following prayer:

“There is no Holy One like the Lord, no one besides you; there is no Rock like our God.” (1 Samuel 2:2)

Holy God, You give us life and speech and a sense of security for no one is like You. Direct our work this day and bring us safely home to those we love, so together we come before You and knowing Your love and strength we bow before You and praise Your Name. 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.

Photographers from the Associated Press were given permission to take pictures in the Senate Chamber today.

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
Klindt	Loudon	Mathewson	Nodler
Quick	Russell	Scott	Shields
Steelman	Stoll	Vogel	Wheeler
Yeckel—33			

Absent with leave—Senator Kinder—1

RESOLUTIONS

Senator Kennedy offered Senate Resolution No. 1360, regarding Ralph Reiss, St. Louis, which was adopted.

Senator Kennedy offered Senate Resolution No. 1361, regarding Cub Scout Pack #115, St. Louis, which was adopted.

Senator Nodler offered Senate Resolution No. 1362, regarding the death of James H. Willis, Joplin, which was adopted.

Senator Russell offered Senate Resolution No. 1363, regarding Mrs. Cherry-Ann Fite, South Fork, which was adopted.

CONCURRENT RESOLUTIONS

Senator Vogel offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 38

Relating to approval for the Curators of the University of Missouri to enter into a long-term ground lease of certain real property owned by the University and located in the City of Columbia for the purpose of construction of a hotel/conference center on said real property.

WHEREAS, the Curators of the University of Missouri, a public corporation of the State of Missouri, own certain real property located in the City of Columbia, Boone County, Missouri, more particularly described as follows:

A tract of land being part of the southeast quarter of Section 13, Township 48 North, Range 13 West; part of the southwest quarter of Section 18, Township 48 North, Range 12 West and part of the northwest quarter of Section 19, Township 48 North, Range 12 West in Columbia, Boone County, Missouri.

Starting at the southeast corner of Section 13, Township 48 North, Range 13 West; thence N 1E 15'E, along the range line, 104.73 feet to the north right-of-way of Stadium Boulevard (State Route 740), the point of beginning.

From the point of beginning and following said right-of-way N 88E 18'W 47.10 feet; thence N 88E 54'W 209.92 feet; thence North 44E 10'W 85.00 feet; thence 89E 06'W 15.50 feet to the east line of Monk Drive; thence N 1E 15'E, along said line 737.00 feet to the south line of Hospital Drive; thence S 89E 05'E, along said line 140 feet; thence northeasterly, continuing along said line 860 feet; thence easterly, continuing along the south line of Hospital Drive 440 feet to the west line of College Avenue (State Route 763); thence south, along said line 300 feet; thence southwesterly, continuing along the west line of College Avenue being a curve to the right 1130 feet to the north line of Stadium Boulevard; thence northwesterly, along said line being a curve to the left 750 feet to the beginning.; and

WHEREAS, the University of Missouri has determined that the most appropriate use of the land would be the construction of a hotel/conference center; and

WHEREAS, the Curators of the University of Missouri intend to issue a "Request for Proposals" (RFP) for the construction of a hotel/conference center on said property; and

WHEREAS, the Curators of the University of Missouri will include all of the following principles in the "Request for Proposals" (RFP) for this project:

(1) The University intends to lease the real property for a term not to exceed 50 years;

(2) The University will lease the real property for an amount equal to or in excess of fair market value;

(3) The University will encourage as many interested parties as possible to respond to the RFP; and

(4) The University will not own or operate the hotel/conference center;

(5) The University will not participate in the profits of the hotel/conference center in any way except for the receipt of rents for the real property; and

(6) The University will expect the successful respondent to pay all applicable taxes, including but not limited to, personal property and real property taxes as assessed by governmental entities:

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 approve the Curators of the University of Missouri entering into a long-term ground lease with the successful respondent, as determined by the Curators of the University of Missouri, of the real property described above for the purpose of the construction of a hotel/conference center on said real property; and

BE IT FURTHER RESOLVED that this resolution be sent to the Governor for his approval or rejection pursuant to the Missouri Constitution.

Read 1st time.

Senator Nodler offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 39

To authorize the state of Missouri and its political subdivisions to implement energy savings performance contracting.

WHEREAS, energy efficiency, conservation, and consumption have significant cost implications to the state of Missouri; and

WHEREAS, cost savings policies affect buildings owned or operated by the state by and through its state agencies, departments, colleges, and universities, and buildings owned or operated by governmental subdivisions of the state, including but not limited to, cities, counties, and school districts; and

WHEREAS, facility alteration, service, or operations designed to reduce energy consumption or operating costs while ensuring state and local building code compliance provides further cost benefits to the state; and

WHEREAS, reducing costs necessitates evaluating and recommending energy conservation and facility improvement measures by qualified providers experienced in the design, implementation, and installation or energy conservation, and who

have the ability to provide labor, materials, and performance bonds necessary to bring to completion such projects; and

WHEREAS, energy conservation measures may include, but are not limited to, automated or computerized energy control and facility management systems or computerized maintenance management systems, replacement, or modification of lighting fixtures and systems, energy recovery systems, cogeneration systems, and window and door system modifications designed to reduce energy consumption; and

WHEREAS, such energy conservation measures must be implemented without adversely impacting the natural environment, including air and water pollution, energy use, development outside compact urban areas and contribution to urban sprawl:

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 request that the Governor, the state of Missouri, and its governmental subdivisions herein described to enter into contracts for the implementation of any energy conservation or facility improvement measures so long as such entities:

(1) Obtain a report from a qualified provider containing recommendations concerning the costs of installation, modifications, or remodeling, including costs of design, engineering, maintenance, repairs, and financing; and

(2) The report shall guarantee to such governmental entity an amount of cost savings in energy or operating costs if such installation, modification, or remodeling is performed by that qualified provider; and

BE IT FURTHER RESOLVED that prior to such governmental unit entering into such contract, it shall solicit bids, or competitive sealed proposals from qualified providers awarding the contract to a qualified provider that best meets the needs of the governmental entity, which need not be the lowest cost provider; and

BE IT FURTHER RESOLVED that energy savings shall be guaranteed by the qualified provider for the entire term of the contract, and such reductions in energy consumption and cost savings attributable to the energy conservation and facility improvement measures shall be periodically provided in writing to the contracting governmental entity; and

BE IT FURTHER RESOLVED that the Secretary of the Senate be instructed to prepare properly inscribed copies of this resolution for the Governor for his approval or rejection pursuant to the Constitution of Missouri.

Read 1st time.

INTRODUCTION OF BILLS

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

SB 1274—By Shields.

An Act to amend chapter 191, RSMo, by adding thereto one new section relating to area health education centers.

SB 1275—By Vogel.

An Act to repeal section 137.115, RSMo, and to enact in lieu thereof two new sections relating to property taxation of broadcasting equipment, with an effective date for a certain section.

SB 1276—By Vogel.

An Act to repeal section 137.016, RSMo, and to enact in lieu thereof one new section relating to residential property.

SB 1277—By Yeckel.

An Act to amend chapter 324, RSMo, by adding thereto twelve new sections relating to the creation of a board of licensed private fire investigator examiners, with penalty provisions.

SB 1278—By Yeckel.

An Act to amend chapter 324, RSMo, by adding thereto five new sections relating to licensing of amusement machine operators.

REPORTS OF STANDING COMMITTEES

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 920**, 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 32**, begs leave to report that it has considered the same and recommends that the concurrent resolution do pass, with Senate Committee Amendment No. 1.

SENATE COMMITTEE AMENDMENT NO. 1

Amend Senate Concurrent Resolution No. 32,

appearing on Page 156 of the Senate Journal for Monday, January 26, 2004, Column 1, Line 22 of said column, by inserting immediately after “utilized” the following: “; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare a properly inscribed copy of this resolution for the Commissioner of the Department of Elementary and Secondary Education; and

BE IT FURTHER RESOLVED that the Commissioner of the Department of Elementary and Secondary Education be instructed to copy this resolution and distribute one to each school district for distribution to its school board members.”.

Also,

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCR 35**, begs leave to report that it has considered the same and recommends that the concurrent resolution do pass.

SENATE BILLS FOR PERFECTION

Senator Yeckel moved that **SB 1038**, with **SCS** and **SA 2** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SA 2 was again taken up.

At the request of Senator Jacob, the above amendment was withdrawn.

Senator Jacob offered **SA 3**, which was read:

SENATE AMENDMENT NO. 3

Amend Senate Committee Substitute for Senate Bill No. 1038, Page 19, Section 443.130, Line 4, by striking all of said line and inserting in lieu thereof the following: “deliver to the person making satisfaction a sufficient”; and further amend line 5, by striking “[forfeit] be liable” and inserting in lieu thereof the following: “forfeit”; and further amend line 6, by striking “for an amount of three hundred dollars a”; and further amend lines 7-8, by striking all of said lines and inserting in lieu thereof the following: “ten percent upon the amount of the security instrument,”; and

further amend line 9, by striking the opening bracket “[”; and further amend line 10, by striking the following: “] plus court costs and attorney fees,”.

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

Senator Nodler assumed the Chair.

Senator Jacob offered **SA 4**, which was read:

SENATE AMENDMENT NO. 4

Amend Senate Committee Substitute for Senate Bill No. 1038, Section 166.520, Page 10, Line 28, by inserting the words “**The board shall allow participants to contribute in minimum increments of fifty dollars without additional fees or charges.**” immediately following “2.”.

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

Senator Days offered **SA 5**, which was read:

SENATE AMENDMENT NO. 5

Amend Senate Committee Substitute for Senate Bill No. 1038, Page 4, Section 166.510, Lines 10-11, by striking all of said lines and inserting in lieu thereof the following: “**(3) “Board”, the Missouri Higher Education Savings Program Board established in section 166.415;**”; and further amend page 5, section 166.515, line 3, by striking the words “deposit program board which shall consist” and insert in lieu thereof the following: “**Savings Program Board.**”; and further amend said section and page, lines 4 to 20 by striking all of said lines.

Senator Days moved that the above amendment be adopted.

At the request of Senator Days, **SA 5** was withdrawn.

Senator Days offered **SA 6**:

SENATE AMENDMENT NO. 6

Amend Senate Committee Substitute for Senate Bill No. 1038, Page 3, Section 33.103, Line 62, by inserting after all of said line the following:

“166.415. 1. There is hereby created the “Missouri Higher Education Savings Program”. The program shall be administered by the Missouri higher education savings program board which shall consist of the Missouri state treasurer who shall serve as chairman, the commissioner of the department of higher education, the commissioner of the office of administration, the director of the department of economic development [and], two persons having demonstrable experience and knowledge in the areas of finance or the investment and management of public funds, one of whom is selected by the president pro tem of the senate and one of whom is selected by the speaker of the house of representatives[.], **and one person having demonstrable experience and knowledge in the area of banking or deposit rate determination and placement of depository certificates of deposit or other deposit investments. Such member shall be appointed by the Governor with the advice and consent of the senate.** The **three** [two] appointed members shall be appointed to serve for terms of four years from the date of appointment, or until their successors shall have been appointed and shall have qualified. The members of the board shall be subject to the conflict of interest provisions of section 105.452, RSMo. Any member who violates the conflict of interest provisions shall be removed from the board. In order to establish and administer the savings program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education savings program and, notwithstanding any provision of sections 166.400 to 166.455 to the contrary, the savings programs and services consistent with the purposes and objectives of sections 166.400 to 166.455;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.400 to 166.455, to permit the savings program to qualify as a “qualified state tuition program” pursuant to Section 529 of the Internal Revenue Code and to ensure the savings program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution for investment services, and their families, including special programs and materials to inform families with young children regarding methods for financing education and training beyond high school;

(4) Enter into agreements with any financial institution, the state or any federal or other agency or entity as required for the operation of the savings program pursuant to sections 166.400 to 166.455;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the savings program;

(7) Invest the funds received from participants in appropriate investment instruments to achieve long-term total return through a combination of capital appreciation and current income;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.400 to 166.455 and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the savings program;

(11) Effectuate and carry out all the powers granted by sections 166.400 to 166.455, and have all other powers necessary to carry out and effectuate the purposes, objectives and provisions of sections 166.400 to 166.455 pertaining to the savings program; and

(12) Procure insurance, guarantees or other

protections against any loss in connection with the assets or activities of the savings program.

2. Any member of the board may designate a proxy for that member who will enjoy the full voting privileges of that member for the one meeting so specified by that member. No more than three proxies shall be considered members of the board for the purpose of establishing a quorum.

3. Four members of the board shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. No action shall be taken by the board except upon the affirmative vote of a majority of the members present.

4. The board shall meet within the state of Missouri at the time set at a previously scheduled meeting or by the request of any four members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

5. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims, as provided in section 105.688, RSMo. The board may delegate to duly appointed investment counselors authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such counselors the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring or disposing of any or all of the securities and investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys. Such investment counselors shall be registered as investment advisors with the United States Securities and Exchange Commission. In exercising or delegating its investment powers and

authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care and skill which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

6. No investment transaction authorized by the board shall be handled by any company or firm in which a member of the board has a substantial interest, nor shall any member of the board profit directly or indirectly from any such investment.

7. No trustee or employee of the savings program shall receive any gain or profit from any funds or transaction of the savings program. Any trustee, employee or agent of the savings program accepting any gratuity or compensation for the purpose of influencing such trustee's, employee's or agent's action with respect to the investment or management of the funds of the savings program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery.”; and

Further amend page 4, section 166.510, lines 10-11, by striking all of said lines and inserting in lieu thereof the following:

“(3) “Board”, the Missouri Higher Education Savings Program Board established in section 166.415;”; and

Further amend page 5, section 166.515, line 3, by striking the words “deposit program board which shall consist” and insert in lieu thereof the following: **“savings program board.”**; and further amend said section and page, lines 4 to 20, by striking all of said lines; and

Further amend the title and enacting clause accordingly.

Senator Days moved that the above

amendment be adopted, which motion prevailed.

Senator Yeckel moved that **SCS** for **SB 1038**, as amended, be adopted, which motion prevailed.

On motion of Senator Yeckel, **SCS** for **SB 1038**, as amended, was declared perfected and ordered printed.

REPORTS OF STANDING COMMITTEES

Senator Gibbons, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following report:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SCS** for **SB 969**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

MESSAGES FROM THE HOUSE

The following message was 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 **HB 994**, entitled:

An Act to repeal section 488.2205, RSMo, and to enact in lieu thereof one new section relating to court costs in the thirtieth judicial circuit.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

INTRODUCTION OF BILLS

The following Bill was read the 1st time and ordered printed:

SB 1279—By Steelman, Kinder, Goode, Dougherty, Foster, Yeckel, Gibbons and Champion.

An Act to amend chapter 197, RSMo, by adding thereto one new section relating to the Missouri hospital infection control act of 2004, with penalty provisions.

CONCURRENT RESOLUTIONS

Senator Steelman offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 40

Relating to approval for the Curators of the University of Missouri to enter into a long-term ground lease of certain real property owned by the University for the purpose of construction of a student residential facility in the City of Rolla.

WHEREAS, the Curators of the University of Missouri own certain real property in the City of Rolla, Phelps County, Missouri, more particularly described as follows:

Those portions of Lots 31, 32, 36, 37, and 38 Railroad Addition to the City of Rolla, Missouri that lie south of Interstate 44, north of University Drive, and west of Bishop Avenue and Watts Drive owned by the Curators of the University of Missouri; and

WHEREAS the Curators of the University of Missouri intend to lease the property to the successful respondent of the RFP of the University of Missouri-Rolla (UMR) for the construction of a student residential facility on the above described property; and

WHEREAS, the Curators intend to enter into a contract with the successful respondent that will contain all of the following specific conditions:

- (1) UMR will lease the building from the successful respondent for a ten-year period;
- (2) The successful respondent will give title to the building back to UMR after ten years; and
- (3) UMR will provide repair and maintenance as well as programming for the building;

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 approve the University of Missouri-Rolla entering into a long-term ground lease with the successful respondent, as determined by the Curators of the University of Missouri, of the real property described above for the purpose of the construction of a student residential facility in the City of Rolla on said real property; and

BE IT FURTHER RESOLVED that this resolution be sent to the Governor for his approval or rejection pursuant to the Missouri Constitution.

Read 1st time.

INTRODUCTIONS OF GUESTS

Senator Days introduced to the Senate, Dr.

Thomas George, Chancellor, University of Missouri-St. Louis.

Senator Foster introduced to the Senate, the Physician of the Day, Dr. Gene Leroux, M.D., Doniphan.

Senator Kennedy introduced to the Senate, Patricia Kaspar and Major Donald Cognata, St. Louis.

Senator Russell introduced to the Senate,

Bruce Mitchell and the Leadership Class from Camden County.

Senator Gross introduced to the Senate, Patti Hall and Vicky Klaus, and thirty-four fourth grade students from Living Word Christian School, St. Peters.

On motion of Senator Gibbons, the Senate adjourned until 4:00 p.m., Monday, February 23, 2004.

SENATE CALENDAR

TWENTY-SIXTH DAY—MONDAY, FEBRUARY 23, 2004

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SB 1259-Childers

SB 1260-Dolan

SB 1261-Dolan

SB 1264-Scott

SB 1265-Bartle

SB 1266-Kennedy, et al

SB 1267-Kinder

SB 1268-Shields

SB 1269-Yeckel

SB 1270-Yeckel

SB 1271-Coleman

SB 1272-Coleman

SB 1273-Coleman

SB 1274-Shields

SB 1275-Vogel

SB 1276-Vogel

SB 1277-Yeckel

SB 1278-Yeckel

SB 1279-Steelman, et al

SJR 47-Cauthorn

HOUSE BILLS ON SECOND READING

HB 994-Cunningham (145), et al

THIRD READING OF SENATE BILLS

SS for SCS for SB 730-Gross

SB 1080-Nodler, et al

SCS for SJR 44-Dolan (In Fiscal Oversight)

SS for SCS for SB 1099-Gibbons

(In Fiscal Oversight)

SCS for SB 969-Shields

SENATE BILLS FOR PERFECTION

SJR 29-Steelman, et al
SB 1138-Bartle

SB 870-Bartle

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 715-Childers and Caskey, with SCS, SS
for SCS & SA 6 (pending)
SB 718-Yeckel, et al
SB 856-Loudon, with SCS
SB 933-Yeckel, et al

SB 990-Loudon, with SCS
SBs 1020, 889 & 869-Steelman, et al, with
SCS
SB 1123-Gibbons, et al

CONSENT CALENDAR

Unofficial
Senate Bills

Reported 2/9

SB 1075-Coleman, with SCS
SB 808-Klindt
SB 741-Klindt
SB 1100-Gibbons and Gross, with SCS
SB 1052-Jacob
SB 781-Caskey
SB 827-Bartle, with SCS

SB 803-Gross
SB 1093-Gibbons and Yeckel, with SCS
SB 783-Mathewson
SB 837-Caskey, with SCS
SB 859-Klindt, with SCS
SB 799-Steelman, with SCS
SB 878-Goode, et al, with SCS

Reported 2/16

SB 1197-Quick, with SCS
SB 1107-Shields
SB 1106-Shields, with SCS

SB 921-Caskey, with SCS
SRB 1108-Bartle

RESOLUTIONS

To be Referred

SCR 38-Vogel
SCR 39-Nodler

SCR 40-Steelman

Reported from Committee

SCR 32-Gibbons and Stoll, with SCA 1

SCR 35-Russell, et al

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