

Journal of the Senate

FIRST REGULAR SESSION

SEVENTY-FOURTH DAY—FRIDAY, MAY 18, 2007

The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“I have chosen the way of faithfulness; I set your ordinances before me.” (Psalm 119:30)

Lord, You have given us choices all along the way and these choices have consequences and on this last day of this session we ask have we been faithful in what we have done and is it meaningful and helpful? We pray it is. We thank You for those who have worked in our offices and made our work that much easier and we appreciate their efforts. And in these closing hours bless us and make these rapidly passing minutes be used in important ways and this day end in our praise for Your continuing being with us. And Lord we pray as we return to our other lives, as spouses, companions, fathers or mothers and our other work that will fill our days that we remain faithful and have Your blessings. 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

Barnitz Bartle Bray Callahan

Champion	Clemens	Coleman	Crowell
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Shoemyer	Smith	Stouffer	Vogel
Wilson—33			

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

The Lieutenant Governor was present.

Senator Shields announced that photographers from the St. Louis American Newspaper, KRCG-TV, Missouri Lawyers Weekly, the Associated Press and the News Tribune, were given permission to take pictures in the Senate Chamber today.

RESOLUTIONS

Senator Coleman offered Senate Resolution No. 1408, regarding the Southside Wellness Center, Saint Louis, which was adopted.

Senator Lager offered Senate Resolution No. 1409, regarding the Fiftieth Wedding

Anniversary of Mr. and Mrs. Orville Lynn Trainer, Princeton, which was adopted.

Senator Lager offered Senate Resolution No. 1410, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Robert L. Cheek, Trenton, which was adopted.

Senator Lager offered Senate Resolution No. 1411, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Donald E. McCormick, Chillicothe, which was adopted.

Senator Green offered Senate Resolution No. 1412, regarding Richard Aaron Boggs, which was adopted.

Senator Bartle offered Senate Resolution No. 1413, regarding Nathan D. Ward, which was adopted.

Senator Bartle offered Senate Resolution No. 1414, regarding Joseph Riddings, Blue Springs, which was adopted.

Senator Bartle offered Senate Resolution No. 1415, regarding Timothy Collins, Blue Springs, which was adopted.

Senator Bartle offered Senate Resolution No. 1416, regarding Jesse McCall, Jr., Blue Springs, which was adopted.

Senator Bartle offered Senate Resolution No. 1417, regarding Katherine Gilligan, Blue Springs, which was adopted.

Senator Crowell offered Senate Resolution No. 1418, regarding Elizabeth A. Heeb, Sikeston, which was adopted.

Senator Crowell offered Senate Resolution No. 1419, regarding Kurstin Koch, Sikeston, which was adopted.

Senator Crowell offered Senate Resolution No. 1420, regarding Brittany Koch, Chaffee, which was adopted.

Senator Crowell offered Senate Resolution No. 1421, regarding Sara Petitt, Chaffee, which was adopted.

Senator Crowell offered Senate Resolution No. 1422, regarding Maggie Smith, Sikeston, which was adopted.

Senator Crowell offered Senate Resolution No. 1423, regarding Taylor White, East Prairie, which was adopted.

Senator Crowell offered Senate Resolution No. 1424, regarding Cynthia Cook, East Prairie, which was adopted.

Senator Shields offered Senate Resolution No. 1425, regarding Wes Remington, St. Joseph, which was adopted.

Senator Stouffer offered Senate Resolution No. 1426, regarding Matthew St. John, which was adopted.

Senator Loudon offered Senate Resolution No. 1427, regarding Logan College of Chiropractic, which was adopted.

Senator Vogel offered Senate Resolution No. 1428, regarding Linda L. Sigler, New Bloomfield, which was adopted.

Senator Vogel offered Senate Resolution No. 1429, regarding Andrew W. White, which was adopted.

Senator Purgason offered Senate Resolution No. 1430, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Herbert James, West Plains, which was adopted.

Senator Ridgeway offered Senate Resolution No. 1431, regarding the 325th Field Hospital, Independence, which was adopted.

HOUSE BILLS ON THIRD READING

PRIVILEGED MOTIONS

Senator Shields, on behalf of the conference committee appointed to act with a like committee from the House on **HCS** for **SS** for **SCS** for **SB 577**, as amended, moved that the following conference committee report be taken up, which motion prevailed.

CONFERENCE COMMITTEE REPORT ON
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 577

The Conference Committee appointed on House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, with House Amendment No. 1 to House Amendment No. 1, House Amendment No. 1 as amended, House Amendment No. 2, Part 1 to House Amendment No. 3, Part 3 to House Amendment No. 3, House Amendment No. 4, House Amendment No. 5, House Amendment No. 1 to House Amendment No. 6, House Amendment No. 6 as amended, House Amendment No. 7, House Amendment No. 8, House Amendment No. 9, House Amendment NO. 10, House Amendment No. 11, House Amendment No. 12, House Amendment No. 16, House Amendment No. 17, House Amendment No. 19, House Amendment No. 20, House Amendment No. 21, House Amendment No. 25, and House Amendment No. 26, begs leave to report that we, after free and fair discussion of the differences, have agreed to recommend and do recommend to the respective bodies as follows:

1. That the House recede from its position on House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, as amended;

2. That the Senate recede from its position on Senate Substitute for Senate Committee Substitute for Senate Bill No. 577;

3. That the attached Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, be Third Read and Finally Passed.

FOR THE SENATE:	FOR THE HOUSE:
/s/ Charlie Shields	/s/ Rob Schaaf
/s/ Chuck Purgason	/s/ Stephen Hunter

/s/ Michael R. Gibbons	/s/ David Sater
/s/ Harry Kennedy	Sam Page
/s/ Wes Shoemyer	Michael Talbo

Senator Gross assumed the Chair.

Senator Rupp assumed the Chair.

Senator Shields moved that the above conference committee report be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Griesheimer	Gross	Kennedy
Koster	Lager	Loudon	Mayer
McKenna	Nodler	Purgason	Ridgeway
Rupp	Scott	Shields	Stouffer
Vogel—25			

NAYS—Senators

Bray	Coleman	Graham	Justus
Shoemyer	Smith	Wilson—7	

Absent—Senator Green—1

Absent with leave—Senator Days—1

Vacancies—None

Senator Crowell assumed the Chair.

On motion of Senator Shields, **CCS** for **HCS** for **SS** for **SCS** for **SB 577**, entitled:

CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 577

An Act to repeal sections 105.711, 135.096, 191.411, 191.900, 191.905, 191.910, 198.097, 208.014, 208.151, 208.152, 208.153, 208.201, 208.212, 208.215, 208.217, 208.612, 208.631, 208.640, 208.750, 208.930, 473.398, 660.546, 660.547, 660.549, 660.551, 660.553, 660.555, and 660.557, RSMo, and section 208.755 as truly

agreed to and finally passed in senate substitute for senate committee substitute for house committee substitute for house bill no. 327, ninety-fourth general assembly, first regular session, and to enact in lieu thereof fifty-one new sections relating to health care for needy persons, with penalty provisions and an emergency clause for a certain section.

Was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Green	Griesheimer	Gross
Kennedy	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel—26		

NAYS—Senators

Bray	Coleman	Graham	Justus
Shoemyer	Smith	Wilson—7	

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

The President declared the bill passed.

The emergency clause was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Crowell	Engler
Gibbons	Goodman	Green	Griesheimer
Gross	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Stouffer	Vogel—27	

NAYS—Senators

Coleman	Graham	Justus	Shoemyer
Smith	Wilson—6		

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

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

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

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

BILLS DELIVERED TO THE GOVERNOR

SCS for SB 4 and SS No. 6 for SCS for SB 389, after having been duly signed by the Speaker of the House of Representatives in open session, were delivered to the Governor by the Secretary of the Senate.

HOUSE BILLS ON THIRD READING

HCS for HB 1055, with **SCA 1**, entitled:

An Act to repeal sections 170.015, 188.015, 188.075, and 197.200, RSMo, and to enact in lieu thereof six new sections relating to abortions, with penalty provisions.

Was called from the Informal Calendar and taken up by Senator Scott.

SCA 1 was taken up.

Senator Scott moved that the above amendment be adopted and requested a roll call vote be taken. He was joined in his request by Senators Shields, Gibbons, Bartle and Engler.

Senator Scott submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Delbert Scott

/s/ Charlie Shields

/s/ Gary Nodler

/s/ Michael R. Gibbons

/s/ Kevin Engler

/s/ Matt Bartle

/s/ Chuck Purgason

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle	Clemens	Crowell	Engler
Gibbons	Goodman	Griesheimer	Gross
Lager	Loudon	Mayer	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Stouffer	Vogel—19	

NAYS—Senators

Barnitz	Bray	Callahan	Coleman
Graham	Green	Justus	Kennedy
Koster	McKenna	Shoemyer	Smith

Wilson—13

Absent—Senator Champion—1

Absent with leave—Senator Days—1

Vacancies—None

SCA 1 failed of adoption by the following vote:

YEAS—Senators

Bray	Coleman	Graham	Green
Justus	Smith	Wilson—7	

NAYS—Senators

Barnitz	Bartle	Callahan	Clemens
Crowell	Engler	Gibbons	Goodman
Griesheimer	Gross	Kennedy	Koster
Lager	Loudon	Mayer	McKenna
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Shoemyer	Stouffer

Vogel—25

Absent—Senator Champion—1

Absent with leave—Senator Days—1

Vacancies—None

Senator Scott moved that **HCS for HB 1055** be read the 3rd time and finally passed and

submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Delbert Scott	/s/ Charlie Shields
/s/ Gary Nodler	/s/ Michael R. Gibbons
/s/ Kevin Engler	/s/ Matt Bartle
/s/ Chuck Purgason	

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle	Champion	Clemens	Crowell
Engler	Gibbons	Goodman	Griesheimer
Gross	Lager	Loudon	Mayer
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Stouffer	Vogel—20

NAYS—Senators

Barnitz	Bray	Callahan	Coleman
Graham	Green	Justus	Kennedy
Koster	McKenna	Shoemyer	Smith

Wilson—13

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

HCS for HB 1055 was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Griesheimer	Gross	Kennedy
Koster	Lager	Loudon	Mayer
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Stouffer	Vogel—24

NAYS—Senators

Bray	Coleman	Graham	Green
------	---------	--------	-------

Justus McKenna Shoemyer Smith
Wilson—9

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

The President declared the bill passed.

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

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

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

Senator Shields announced that photographers from the Columbia Tribune, KOLR-10, KMIZ-TV and KOMU-TV were given permission to take pictures in the Senate Chamber today.

Senator Engler moved that **HJR 7**, with **SCS** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage and submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Kevin Engler /s/ Michael R. Gibbons
/s/ Delbert Scott /s/ Charlie Shields
/s/ Gary Nodler

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle Champion Clemens Crowell
Engler Gibbons Goodman Griesheimer
Koster Lager Loudon Mayer
Nodler Purgason Ridgeway Rupp
Scott Shields Stouffer Vogel—20

NAYS—Senators

Barnitz Bray Callahan Coleman
Graham Justus Kennedy McKenna
Shoemyer Smith Wilson—11

Absent—Senators

Green Gross—2

Absent with leave—Senator Days—1

Vacancies—None

On motion of Senator Engler, **HJR 7**, with **SCS** (pending) was brought before the body.

Senator Engler moved that **SCS** for **HJR 7** be adopted and requested a roll call vote be taken. He was joined in his request by Senators Scott, Gibbons, Shields and Nodler.

Senator Engler submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Kevin Engler /s/ Michael R. Gibbons
/s/ Delbert Scott /s/ Charlie Shields
/s/ Gary Nodler

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle Champion Clemens Crowell
Engler Gibbons Goodman Griesheimer
Koster Lager Loudon Mayer
Nodler Purgason Ridgeway Rupp
Scott Shields Stouffer Vogel—20

NAYS—Senators

Barnitz Bray Callahan Coleman
Graham Justus Kennedy McKenna
Shoemyer Smith Wilson—11

Absent—Senators

Green Gross—2

Absent with leave—Senator Days—1

Vacancies—None

SCS for HJR 7 was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Griesheimer	Gross	Koster
Lager	Loudon	Mayer	McKenna
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Shoemyer	Stouffer

Vogel—25

NAYS—Senators

Bray	Coleman	Graham	Justus
Kennedy	Smith	Wilson—7	

Absent—Senator Green—1

Absent with leave—Senator Days—1

Vacancies—None

Senator Engler moved that **SCS for HJR 7** be read the 3rd time and finally passed and submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Kevin Engler	/s/ Michael R. Gibbons
/s/ Delbert Scott	/s/ Charlie Shields
/s/ Gary Nodler	

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle	Champion	Clemens	Crowell
Engler	Gibbons	Goodman	Griesheimer
Koster	Lager	Loudon	Mayer
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Stouffer	Vogel—20

NAYS—Senators

Barnitz	Bray	Callahan	Coleman
Graham	Justus	Kennedy	McKenna
Shoemyer	Smith	Wilson—11	

Absent—Senators

Green Gross—2

Absent with leave—Senator Days—1

Vacancies—None

SCS for HJR 7 was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Griesheimer	Gross	Koster
Lager	Loudon	Mayer	McKenna
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Shoemyer	Stouffer

Vogel—25

NAYS—Senators

Bray	Coleman	Graham	Justus
Kennedy	Smith	Wilson—7	

Absent—Senator Green—1

Absent with leave—Senator Days—1

Vacancies—None

The President declared the bill passed.

Senator Engler moved that the title be agreed to and submitted the following privileged motion:

Motion for Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Kevin Engler	/s/ Michael R. Gibbons
/s/ Delbert Scott	/s/ Charlie Shields
/s/ Gary Nodler	

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Bartle	Champion	Clemens	Crowell
Engler	Gibbons	Goodman	Griesheimer
Koster	Lager	Loudon	Mayer
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Stouffer	Vogel—20

NAYS—Senators

Barnitz	Bray	Callahan	Coleman
---------	------	----------	---------

Graham Justus Kennedy McKenna
Shoemyer Smith Wilson—11

Absent—Senators

Green Gross—2

Absent with leave—Senator Days—1

Vacancies—None

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

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

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

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 **HCS for SCS for SBs 45 and 39**, entitled:

An Act to repeal sections 226.527, 226.530, 226.580, 301.444, 302.720, 390.030, 390.071, and 622.095, RSMo, and to enact in lieu thereof nine new sections relating to transportation.

With House Amendment Nos. 1, 2, 3 and 4.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 45 & 39, Page 1, Section A, Line 4, by inserting after all of said line the following:

“144.062.1. With respect to exempt sales at retail of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for:

(1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri; or

(2) An organization sales to which are exempt from taxation under the provisions of subdivision (19) of subsection 2 of section 144.030; or

(3) Any institution of higher education supported by public funds or any private not-for-profit institution of higher education, exempt from taxation under subdivision (20) of subsection 2 of section 144.030; or

(4) Any private not-for-profit elementary or secondary school exempt from taxation under subdivision (22) of subsection 2 of section 144.030; or

(5) After June 30, 2008, the department of transportation or the state highways and transportation commission, hereinafter collectively referred to as exempt entities, such exemptions shall be allowed for such purchases if the purchases are related to the entities' exempt functions and activities. In addition, the sales shall not be rendered nonexempt nor shall any material supplier or contractor be obligated to pay, collect or remit sales tax with respect to such purchases made by or on behalf of an exempt entity due to such purchases being billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including but not limited to selection of materials, ordering, pickup, delivery, approval on delivery, taking of delivery, transportation, storage, assumption of risk of loss to materials or providing warranties on materials as specified by contract, use of materials or other purchases for construction of the building or other facility, providing labor, management services, administrative services, design or technical services or advice to the exempt entity, whether or not the contractor or other entity exercises dominion or control in any other manner over the materials in conjunction with services or labor provided to the exempt entity.

2. When any exempt entity contracts for the purpose of constructing, repairing or remodeling facilities, and purchases of tangible personal property and materials to be incorporated into or consumed in the construction of the project are to be made on a tax-exempt basis, such entity shall

furnish to the contractor an exemption certificate authorizing such purchases for the construction, repair or remodeling project. The form and content of such project exemption certificate shall be approved by the director of revenue. The project exemption certificate shall include but not be limited to:

(1)The exempt entity's name, address, Missouri tax identification number and signature of authorized representative;

(2)The project location, description, and unique identification number;

(3)The date the contract is entered into, which is the earliest date materials may be purchased for the project on a tax-exempt basis;

(4)The estimated project completion date; and

(5)The certificate expiration date.

Such certificate is renewable for a given project at the option of the exempt entity, only for the purpose of revising the certificate expiration date as necessary to complete the project.

3.The contractor shall furnish the certificate prescribed in subsection 2 of this section to all subcontractors, and any contractor purchasing materials shall present such certificate to all material suppliers as authorization to purchase, on behalf of the exempt entity, all tangible personal property and materials to be incorporated into or consumed in the construction of that project and no other on a tax-exempt basis. Such suppliers shall execute to the purchasing contractor invoices bearing the name of the exempt entity and the project identification number. Nothing in this section shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in constructing, repairing or remodeling facilities for the exempt entity. All invoices for all personal property and materials purchased under a project exemption certificate shall be retained by the purchasing contractor for a period of five years and shall be subject to audit by the director of revenue.

4.Any excess resalable tangible personal property or materials which were purchased for the project by a contractor under a project exemption certificate but which were not incorporated into or consumed in the construction of the project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by such contractor not later than the due date of the contractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the project.

5.No contractor or material supplier shall, upon audit, be required to pay tax on tangible personal property and materials incorporated into or consumed in the construction of the project, due to the failure of the exempt entity to revise the certificate expiration date as necessary to complete any work required by the contract. If it is determined that tax is owed on such property and materials due to the failure of the exempt entity to revise such certificate expiration date, the exempt entity shall be liable for the tax owed.

6.If an entity issues exemption certificates for the purchase of tangible personal property and materials which are incorporated into or consumed in the construction of its project and such entity is found not to have had the authority granted by this section to issue such exemption certificates, then such entity shall be liable for the tax owed on such personal property and materials. In addition, if an entity which does have the authority granted by this section to issue exemption certificates issues such certificates for the purchase of tangible personal property and materials which are incorporated into or consumed in the construction of a project, or part of a project, which is found not to be related to such entity's exempt functions and activities, then such entity shall be liable for the tax owed on such personal property and materials.”; and

Further amend said title, enacting clause and

intersectional references accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 45 and 39, Section 302.720, Pages 7 through 9 by removing said section from the bill; and

Further amend said bill, Page 12, Section 390.021, Line 83, by inserting after said line the following:

“390.025. Notwithstanding any other provision of law to the contrary, any entity created pursuant to sections 388.700 through 388.745, RSMo, shall not have the authority of taxation, eminent domain, condemnation or sovereign immunity.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 3

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 45 & 39, Pages 1 and 2, Section 226.527, Lines 1 to 31, by deleting all of said lines; and

Further amend said bill, Page 5, Section 226.580, Line 84, by inserting after all of said line the following:

“227.103. 1. Notwithstanding any other provision of law to the contrary, the commission is authorized to accept an annual bid bond for its construction and maintenance projects. The commission shall prescribe the form and content of an annual bid bond pursuant to the procedures set forth in the Missouri standard specifications for highway construction, or its successor.

2. The commission is authorized to promulgate administrative rules to administer the provision in this section. 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, 2007, shall be invalid and void.

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to [227.100] **227.105**, the state highways and transportation commission is authorized to enter into highway design-build project contracts. The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects. Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute or upon completion of three projects, whichever is first.

2. For the purpose of this section a “design-builder” is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

3. For the purpose of this section, “design-build highway project contract” is defined as the procurement of all materials and services necessary for the design, construction, reconstruction or improvement of a state highway project in a single contract with a design-builder capable of providing the necessary materials and

services.

4. For the purpose of this section, “highway project” is defined as the design, construction, reconstruction or improvement of highways or bridges under contract with the state highways and transportation commission, which is funded by state, federal or local funds or any combination of such funds.

5. In using a design-build highway project contract, the commission shall establish a written procedure by rule for prequalifying design-builders before such design-builders will be allowed to make a proposal on the project.

6. In any design-build highway project contract, whether involving state or federal funds, the commission shall require that each person submitting a request for qualifications provide a detailed disadvantaged business enterprise participation plan. The plan shall provide information describing the experience of the person in meeting disadvantaged business enterprise participation goals, how the person will meet the department of transportation's disadvantaged business enterprise participation goal and such other qualifications that the commission considers to be in the best interest of the state.

7. The commission is authorized to issue a request for proposals to a maximum of five design-builders prequalified in accordance with subsection 5 of this section.

8. The commission may require approval of any person performing subcontract work on the design-build highway project.

9. The bid bond and performance bond requirements of section 227.100 and the payment bond requirements of section 107.170, RSMo, shall apply to the design-build highway project.

10. The requirements of subsection 9 of this section may be modified by the commission for any design-build highway project contract which is designated by the commission as a

“design-build-finance-maintain” project. For such projects, the commission shall require the design-builder to provide or cause to be provided such bonds in such terms, durations, and amounts as it may determine to be adequate for its protection and provided by a surety or sureties satisfactory to the commission, including but not limited to:

(1) A bid or proposal bond in an amount of not less than five million dollars;

(2) A performance bond or bonds for the construction period specified in the design-build highway project contract in an amount of not less than the maximum cost of construction work performed or caused to be performed by the design-builder in any calendar year of such period and applicable for each year of such period; and

(3) A payment bond or bonds that shall be enforceable under section 522.300, RSMo, for the protection of all persons supplying labor and material in carrying out the work provided for in the design-build highway project contract. The amount of the payment bond or bonds shall equal the total amount payable under the terms of the design-build highway project contract unless the commission determines in writing supported by specific findings that a payment bond or bonds in such amount is impractical, in which case the commission shall establish the amount of the payment bond or bonds; except that the amount of the payment bond or bonds shall not be less than the amount of the performance bond or bonds.

[10.] **11.** The commission is authorized to prescribe the form of the contracts for the work.

[11.] **12.** The commission is empowered to make all final decisions concerning the performance of the work under the design-build highway project contract, including claims for additional time and compensation.

[12.] **13.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the procurement of architectural, engineering or land surveying services for the design-build highway project, except that any person providing architectural, engineering or land surveying services for the design-builder on the design-build highway project must be licensed in Missouri to provide such services.

[13.] **14.** The commission shall pay a reasonable stipend to prequalified responsive design-builders who submit a proposal, but are not awarded the design-build highway project.

[14.] **15.** The commission shall comply with the provisions of any act of congress or any regulations of any federal administrative agency which provides and authorizes the use of federal funds for highway projects using the design-build process.

[15.] **16.** The commission shall promulgate administrative rules to implement this section or to secure federal funds. Such rules shall be published for comment in the Missouri Register and shall include prequalification criteria, the make-up of the prequalification review team, specifications for the design criteria package, the method of advertising, receiving and evaluating proposals from design-builders, the criteria for awarding the design-build highway project based on the design criteria package and a separate proposal stating the cost of construction, and other methods, procedures and criteria necessary to administer this section.

[16.] **17.** The commission shall make a status report to the members of the general assembly and the governor following the award of the design-build project, as an individual component of the annual report submitted by the commission to the joint transportation oversight committee in accordance with the provisions of section 21.795, RSMo. The annual report prior to advertisement of the design-build highway project contracts shall state the goals of the project in reducing costs

and/or the time of completion for the project in comparison to the design-bid-build method of construction and objective measurements to be utilized in determining achievement of such goals. Subsequent annual reports shall include: the time estimated for design and construction of different phases or segments of the project and the actual time required to complete such work during the period; the amount of each progress payment to the design-builder during the period and the percentage and a description of the portion of the project completed regarding such payment; the number and a description of design change orders issued during the period and the cost of each such change order; upon substantial and final completion, the total cost of the design-build highway project with a breakdown of costs for design and construction; and such other measurements as specified by rule. The annual report immediately after final completion of the project shall state an assessment of the advantages and disadvantages of the design-build method of contracting for highway and bridge projects in comparison to the design-bid-build method of contracting and an assessment of whether the goals of the project in reducing costs and/or the time of completion of the project were met.

[17.] **18.** The commission shall give public notice of a request for qualifications in at least two public newspapers that are distributed wholly or in part in this state and at least one construction industry trade publication that is distributed nationally.

[18.] **19.** The commission shall publish its cost estimates of the design-build highway project award and the project completion date along with its public notice of a request for qualifications of the design-build project.

[19.] **20.** If the commission fails to receive **statements of qualifications from at least two design-builders in response to a request for qualifications under subsection 5 of this section or to receive** at least two responsive submissions

from design-builders considered qualified[, submissions shall not be opened and it shall] **for a design-build highway project contract, the design build procurement process shall be suspended and the commission may readvertise the project.**

21. Notwithstanding the provisions of subsection 20 of this section to the contrary, the commission may use the following procurement process for a design-build highway project contract which is not designated by the commission as a “design-build-finance-maintain” project:

(1) In the event the commission issues a request for qualifications under subsection 5 of this section at least twice for such design-build highway project contract, and it receives a statement of qualifications from only one design builder for such contract, the commission may negotiate in good faith with the design-builder for such contract based upon the best value to the state;

(2) In the event the commission issues a request for proposals under subsection 7 of this section at least twice for such design-build highway project contract, and it receives only one responsive submission for such contract, the commission may negotiate in good faith with the design-builder for such contract based upon the best value to the state;

(3) At any time prior to the execution of the design-build highway project contract with the design-builder under this subsection, if the commission is not satisfied with the results of the negotiations with the design-builder, it may terminate the negotiations and reject any and all submissions and proposals by the design-builder.”; and

Further amend said title, enacting clause and intersectional references accordingly.

HOUSE AMENDMENT NO. 4

Amend House Committee Substitute for

Senate Committee Substitute for Senate Bill Nos. 45 & 39, Page 7, Section 301.444, Line 57, by inserting after all of said line the following:

“302.177. 1. To all applicants for a license or renewal to transport persons or property classified in section 302.015 who are at least twenty-one years of age and under the age of seventy, and who submit a satisfactory application and meet the requirements of sections 302.010 to 302.605, the director shall issue or renew such license; except that no license shall be issued if an applicant's license is currently suspended, canceled, revoked, disqualified, or deposited in lieu of bail. Such license shall expire on the applicant's birthday in the sixth year of issuance, unless the license must be issued for a shorter period due to other requirements of law or for transition or staggering of work as determined by the director. The license must be renewed on or before the date of expiration, which date shall be shown on the license.

2. To all applicants for a license or renewal to transport persons or property classified in section 302.015 who are less than twenty-one years of age or greater than sixty-nine years of age, and who submit a satisfactory application and meet the requirements of sections 302.010 to 302.605, the director shall issue or renew such license; except that no license shall be issued if an applicant's license is currently suspended, canceled, revoked, disqualified, or deposited in lieu of bail. Such license shall expire on the applicant's birthday in the third year of issuance, unless the license must be issued for a shorter period due to other requirements of law or for transition or staggering of work as determined by the director. The license must be renewed on or before the date of expiration, which date shall be shown on the license. A license issued under this section to an applicant who is over the age of sixty-nine and contains a school bus endorsement shall not be issued for a period that exceeds one year.

3. To all other applicants for a license or

renewal of a license who are at least twenty-one years of age and under the age of seventy, and who submit a satisfactory application and meet the requirements of sections 302.010 to 302.605, the director shall issue or renew such license; except that no license shall be issued if an applicant's license is currently suspended, canceled, revoked, disqualified, or deposited in lieu of bail. Such license shall expire on the applicant's birthday in the sixth year of issuance, unless the license must be issued for a shorter period due to other requirements of law or for transition or staggering of work as determined by the director. The license must be renewed on or before the date of expiration, which date shall be shown on the license.

4. To all other applicants for a license or renewal of a license who are less than twenty-one years of age or greater than sixty-nine years of age, and who submit a satisfactory application and meet the requirements of sections 302.010 to 302.605, the director shall issue or renew such license; except that no license shall be issued if an applicant's license is currently suspended, canceled, revoked, disqualified, or deposited in lieu of bail. Such license shall expire on the applicant's birthday in the third year of issuance, unless the license must be issued for a shorter period due to other requirements of law or for transition or staggering of work as determined by the director. The license must be renewed on or before the date of expiration, which date shall be shown on the license.

5. The fee for a license issued for a period which exceeds three years under subsection 1 of this section shall be thirty dollars.

6. The fee for a license issued for a period of three years or less under subsection 2 of this section shall be fifteen dollars, except that the fee for a license issued for one year or less which contains a school bus endorsement shall be five dollars, **except renewal fees shall be waived for applicants seventy years of age or older seeking**

school bus endorsements.

7. The fee for a license issued for a period which exceeds three years under subsection 3 of this section shall be fifteen dollars.

8. The fee for a license issued for a period of three years or less under subsection 4 of this section shall be seven dollars and fifty cents.

9. Beginning July 1, 2005, the director shall not issue a driver's license for a period that exceeds an applicant's lawful presence in the United States. The director may establish procedures to verify the lawful presence of the applicant and establish the duration of any driver's license issued under this section.

10. The director of revenue may adopt any rules and regulations necessary to carry out the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.”; and

Further amend said bill, Page 8, Section 302.720, Line 31, by deleting all of said line and inserting in lieu thereof the following: “applicant upon completion of any written or driving test, **except the renewal fee shall be waived for applicants seventy years of age or older seeking school bus endorsements.** The director shall delegate the power”; and

Further amend said title, enacting clause and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS No. 2 for SCS for SB 163**, entitled:

An Act to repeal sections 477.650, 485.077, and 488.2250, RSMo, and to enact in lieu thereof

three new sections relating to the basic civil legal services fund, with an expiration date.

With House Amendments Nos. 1 and 2.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 163, Section 485.077, Page 3, Line 20 by inserting immediately after the word “**deposition**” the following:

“**Such consent shall be filed as a memo with the court no later than seven days prior to the date of the deposition unless the time is shortened by the court**”; and

Further Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 163, Section 485.077, Page 3, Line 32 by inserting immediately after the word “**used**” the following:

“**Such statement shall be in bold fourteen type face on the notice**”; and

Further Amend said Bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute #2 for Senate Committee Substitute for Senate Bill No. 163, by amending the Lines 1-2 of the Title, by deleting the words "the basic civil legal services fund" and inserting in lieu thereof the words "legal services"; and

Further Amend said Bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

PRIVILEGED MOTIONS

Senator Mayer moved that **SCS for SB 163**, with **HCS No. 2**, as amended, be taken up for 3rd reading and final passage, which motion prevailed.

HCS No. 2 for SCS for SB 163, as amended, entitled:

An Act to repeal sections 477.650, 485.077, and 488.2250, RSMo, and to enact in lieu thereof three new sections relating to the basic civil legal services fund, with an expiration date.

Was taken up.

Senator Goodman assumed the Chair.

Senator Mayer moved that **HCS No. 2 for SCS for SB 163**, as amended, be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Crowell	Engler
Gibbons	Goodman	Graham	Green
Griesheimer	Gross	Justus	Koster
Lager	Loudon	Mayer	McKenna
Nodler	Purgason	Ridgeway	Rupp
Scott	Shields	Shoemyer	Smith
Stouffer	Vogel	Wilson—31	

NAYS—Senator Kennedy—1

Absent—Senator Coleman—1

Absent with leave—Senator Days—1

Vacancies—None

On motion of Senator Mayer, **HCS No. 2 for SCS for SB 163**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Koster	Lager	Loudon	Mayer
McKenna	Nodler	Purgason	Ridgeway
Rupp	Scott	Shields	Shoemyer
Smith	Vogel	Wilson—31	

NAYS—Senators

Kennedy Stouffer—2

Absent—Senators—None

Absent with leave—Senator Days—1

Vacancies—None

The President declared the bill passed.

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

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

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

Bill ordered enrolled.

SENATE BILLS FOR PERFECTION

Senator Koster moved that **SB 364**, with **SCS**, **SS** for **SCS**, **SA 1** and **SSA 1** for **SA 1** (pending), be called from the Informal Calendar and again taken up for perfection, which motion failed.

PRIVILEGED MOTIONS

Senator Coleman moved that **SCS** for **SB 384**, with **HCS**, as amended, be taken up for 3rd reading and final passage, which motion prevailed.

HCS for **SCS** for **SB 384**, as amended, entitled:

**HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 384**

An Act to repeal sections 301.130 and 301.301, RSMo, and to enact in lieu thereof two new sections relating to stolen license plate tabs, with an emergency clause for a certain section.

Was taken up.

Senator Gross assumed the Chair.

President Pro Tem Gibbons assumed the Chair.

Senator Coleman moved that **HCS** for **SCS** for **SB 384**, as amended, be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Gibbons	Goodman	Graham	Green
Griesheimer	Gross	Justus	Kennedy
Koster	Lager	Loudon	Mayer
McKenna	Nodler	Purgason	Ridgeway
Rupp	Scott	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—32

NAYS—Senators—None

Absent—Senator Engler—1

Absent with leave—Senator Days—1

Vacancies—None

On motion of Senator Coleman, **HCS** for **SCS** for **SB 384**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Lager	Loudon	Mayer
McKenna	Nodler	Purgason	Ridgeway
Rupp	Scott	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—32

NAYS—Senators—None

Absent—Senator Koster—1

Absent with leave—Senator Days—1

Vacancies—None

The President Pro Tem declared the bill passed.

The emergency clause was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell

Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Lager	Loudon	Mayer
McKenna	Nodler	Purgason	Ridgeway
Rupp	Scott	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—32

NAYS—Senators—None

Absent—Senator Koster—1

Absent with leave—Senator Days—1

Vacancies—None

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

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

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

Bill ordered enrolled.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **CCS for SCS for HB 1; CCS for SCS for HCS for HB 2; CCS for SCS for HCS for HB 3; CCS for SCS for HCS for HB 4; CCS for SCS for HCS for HB 5; CCS for SCS for HCS for HB 6; CCS for SCS for HCS for HB 7; CCS for SCS for HCS for HB 8; CCS for SCS for HCS for HB 9; CCS for SCS for HCS for HB 10; CCS for SCS for HCS for HB 11; CCS for SCS for HCS for HB 12; CCS for SCS for HCS for HB 13; SCS for HCS for HB 18; HCS for HB 461; and SS No. 2 for SCS for HCS for HB 818**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills were so read by the Secretary and signed by the President Pro Tem.

OBJECTIONS

Senator Graham submitted the following:

April 30, 2007

Terry Spieler
Secretary of the Senate
State Capitol
Jefferson City, MO 65101
Ms. Spieler:

Pursuant to Senate Rule 68, this letter is to notify you and others that I am filing a constitutional objection to the SS/SCS/HCS/HB 16. Please print this letter in the Senate Journal.

I object to this legislation for the following reasons:

1. Article IV, Section 25 of the Missouri Constitution plainly states: “Until it acts on all the appropriations recommended in the budget, neither house of the general assembly shall pass any appropriation other than emergency appropriations recommended by the governor.”
2. The HCS/HB 16, an emergency appropriation bill, was amended by means of an “emergency governor’s amendment” in the Senate Appropriations Committee to include funding for certain capital projects on various campuses of the state’s higher education institutions, to be funded by the Lewis and Clark Discovery Fund, a fund that did not exist in current law. The amendment was adopted, and such amendment was incorporated into the SCS/HCS/HB 16. A Senate Substitute was offered, immediately followed by a motion to move for the previous question. The previous question motion carried, thereby disallowing the members of the Senate the option to debate or amend the bill.
3. The Governor’s inclusion of the aforementioned capital projects in an emergency appropriation bill is a blatant attempt to circumvent the Legislature’s proper role in the distribution of powers as described in Article II, Section 1 of the Missouri Constitution. The inclusion of said projects in an emergency appropriation bill precluded members of the General Assembly from amending the bill in the same manner allowed in “regular” appropriation bills. Furthermore, there is no reason, other than the usurpation of proper legislative authority, for the inclusion of said projects in an emergency appropriation bill in lieu of including such projects in the “regular” capital appropriations bill, in which case members of the Legislature could have exercised their proper role in the appropriation process.
4. The Governor did not give any justification as to why the inclusion of the projects should be considered an

“emergency,” perhaps because any such justification would be absurd on its face. The provisions of the SS/SCS/HCS/HB 16, an emergency appropriation bill, will terminate on June 30, 2007. The creation of the Lewis & Clark Discovery Fund, and the transfer of assets from the Missouri Higher Education Loan Authority to put moneys in the fund, if ultimately approved by the General Assembly, will not become law until Aug. 28, 2007. Therefore, neither the money, nor the fund itself, can be utilized until two months after the “emergency” appropriation bill terminates.

5. The Governor’s abuse of the emergency appropriation process is nothing more than an obvious attempt to circumvent the proper role of the General Assembly. The Governor’s preposterous assertion, that funding of the capital projects are indeed emergencies, violates the Missouri Constitution specifically and the general concept of the separation of powers, the very bedrock of our democracy.

I ask that the aforementioned objections be attached to the bill.

Thank you,
 Senator Chuck Graham
 District 19

Also,

May 4, 2007

RE: SCS/HCS/HB 17

Dear Madam Secretary:

Pursuant to Senate Rule 68, this letter is to notify you and others that I am filing a constitutional objection to the SCS/HCS/HB 17. Please print this letter in the Senate Journal. I object to this legislation for the following reasons:

1. Article IV, Section 25 of the Missouri Constitution plainly states: “Until it acts on all the appropriations recommended in the budget, neither house of the general assembly shall pass any appropriation other than emergency appropriations recommended by the governor.”
2. The SS/SCS/HCS/HB 16, an emergency appropriation bill, included funding for certain capital projects on various campuses of the state’s higher education institutions, to be funded by the Lewis and Clark Discovery Fund, a fund that does not exist in current law. The Governor’s inclusion of the aforementioned capital projects in an emergency appropriation bill is a blatant attempt to circumvent the Legislature’s proper role in the distribution of powers as described in Article II, Section 1 of the Missouri Constitution. The projects contained in the SS/SCS/HCS/HB 16 are not emergencies in any sense of the word. The only emergency was the Governor’s desire to avoid the annoying wheels of democracy from slowing down this misguided policy, as the inclusion of said projects in the SS/SCS/HCS/HB 16, an emergency appropriation bill, disallowed

members of the General Assembly from amending the bill in the same manner allowed in “regular” appropriation bills. The aforementioned projects could, and should, have been included in a regular capital appropriation bill.

3. Further, the Legislature has taken up and passed the SCS/HCS/HB 17, a “reappropriation” bill that includes all of the “emergency” capital projects included in the SS/SCS/HCS/HB 16. When I attempted to amend the SCS/HCS/HB 17, my amendment was ruled out of order, as, according to the President Pro Tem, no substantive alterations with regard to policy or funding levels, other than removing the entire appropriation from the bill, may even be offered, therefore severely limiting the ability of members of the General Assembly to make substantive amendments to the bill. The Pro Tem’s ruling is not only inconsistent with past practice, (see the SCS/HCS/HB 17 from the 92nd General Assembly), but it is blatantly inconsistent with the bill itself, as the original emergency appropriation bill, the SS/SCS/HCS/HB 16, included the following language: “For the Missouri Technology Corporation/for the attraction and retention of high technology companies and commercialization of existing research being conducted in Missouri. This appropriation may be used for the following projects:...” The reappropriation bill, the SCS/HCS/HB 17, altered the aforementioned “may” to a “shall.” Ironically, the Pro Tem’s ruling on my amendment should have rendered that entire section of the Senate Substitute for the SCS/HCS/HB 17 out of order.

I ask that the aforementioned objections be attached to the bill.

Thank you,
 Senator Chuck Graham

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SS** for **SCS** for **HCS** for **HB 16** and **SCS** for **HCS** for **HB 17**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills would be signed by the President Pro Tem to the end that they may become law. The bills were so read by the Secretary and signed by the President Pro Tem.

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 **HCS** for **SS No. 2**

for **SCS** for **SB 161**, entitled:

An Act repeal sections 160.041, 160.400, 160.480, 163.051, 167.031, 167.231, 168.021, 168.104, 168.114, and 168.221, RSMo, and to enact in lieu thereof nineteen new sections relating to education, with penalty provisions.

With House Amendment No. 1 to House Amendment No. 1, House Amendment No. 1, as amended, House Amendment No. 1 to House Amendment No. 2, Part 1 of House Amendment No. 2, Part 2 of House Amendment No. 2, House Amendments Nos. 3, 4 and 5.

**HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 1**

Amend House Amendment No. 1 to House Committee Substitute for Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 161, Section 168.114, Page 1, Line 10, by inserting the following after all of said line:

“168.133. 1. The school district shall ensure that a criminal background check is conducted on any person employed after January 1, 2005, authorized to have contact with pupils and prior to the individual having contact with any pupil. Such persons include, but are not limited to, administrators, teachers, aides, paraprofessionals, assistants, secretaries, custodians, cooks, and nurses. The school district shall also ensure that a criminal background check is conducted for school bus drivers. The district may allow such drivers to operate buses pending the result of the criminal background check. For bus drivers, the background check shall be conducted on drivers employed by the school district or employed by a pupil transportation company under contract with the school district.

2. In order to facilitate the criminal history background check on any person employed after January 1, 2005, the applicant shall submit two sets of fingerprints collected pursuant to standards determined by the Missouri highway patrol. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the family care safety registry pursuant to sections 210.900 to 210.936, RSMo, and the second set shall be

forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

3. The applicant shall pay the fee for the state criminal history record information pursuant to section 43.530, RSMo, and sections 210.900 to 210.936, RSMo, and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for a position authorized to have contact with pupils pursuant to this section. The department shall distribute the fees collected for the state and federal criminal histories to the Missouri highway patrol.

4. The school district may adopt a policy to provide for reimbursement of expenses incurred by an employee for state and federal criminal history information pursuant to section 43.530, RSMo.

5. If, as a result of the criminal history background check mandated by this section, it is determined that the holder of a certificate issued pursuant to section 168.021 has pled guilty or nolo contendere to, or been found guilty of a crime or offense listed in section 168.071, or a similar crime or offense committed in another state, the United States, or any other country, regardless of imposition of sentence, such information shall be reported to the department of elementary and secondary education.

6. Any school official making a report to the department of elementary and secondary education in conformity with this section shall not be subject to civil liability for such action.

7. For any teacher who is employed by a school district on a substitute or part-time basis within one year of such teacher's retirement from a Missouri school, the state of Missouri shall not require such teacher to be subject to any additional background checks prior to having contact with pupils. Nothing in this subsection shall be construed as prohibiting or otherwise restricting a school district from requiring additional background checks for such teachers employed by the school district.

8. A criminal background check and

fingerprint collection conducted under subsections 1 and 2 of this section shall be valid for a period of at least one year and transferrable from one school district to another district. A teacher's change in type of certification shall have no effect on the transferability of such records.

9. Nothing in this section shall be construed to alter the standards for suspension, denial, or revocation of a certificate issued pursuant to this chapter.

[9.] 10. The state board of education may promulgate rules for criminal history background checks made pursuant to this section. 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 January 1, 2005, shall be invalid and void.”; and,

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Substitute #2 for Senate Committee Substitute for Senate Bill No. 161, Pages 1 and 2, Section 160.041, Lines 1 to 13; Pages 2 to 4, Section 160.400, Lines 1 to 82; Page 4, Section 160.480, Lines 1 to 18; Pages 4 to 5, Section 161.375, Lines 1 to 34; Pages 5 to 6, Section 161.720, Lines 1 to 22; Pages 6 to 9, Section 162.1031, Lines 1 to 104; Pages 9 to 10, Section 162.1110, Lines 1 to 25; Page 10, Section 163.051,

Lines 1 to 10; Pages 10 to 12, Section 167.031, Lines 1 to 81; Pages 12 to 15, Section 167.128, Lines 1 to 101; Pages 15 to 17, Section 167.231, Lines 1 to 74; Pages 21 to 22, Section 168.104, Lines 1 to 37; Page 22, Section 168.114, Lines 1 to 15; Page 22, Section 168.135, Lines 1 to 10; Pages 22 to 23, Section 168.138, Lines 1 to 8; Pages 23 to 24, Section 168.215, Lines 1 to 43; by striking said all of sections from the bill; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 2

Amend House Amendment No. 2 to House Committee Substitute for Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 161, Page 2, Line 7 of said amendment, by inserting immediately after the word “RSMo.” the following:

“Any adopted rating system shall not award or diminish rating scores for any facility based on criteria that are consistent with the facility's religious beliefs, by laws or mission statement as long as such beliefs, by laws or mission statement do not result in practices that constitute a violation of state law or local ordinance, nor shall such practices affect a facility's eligibility for child care subsidies or grants under this section.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Substitute #2 for Senate Committee Substitute for Senate Bill No. 161, Page 18, Section 168.021, Lines 26 to 42, by deleting all of said lines and inserting in lieu thereof the following:

“(4) By the state board, under rules and regulations prescribed by it for a pilot program

to run through school year 2011-2012, on the basis of certification by the American Board for Certification of Teacher Excellence (ABCTE) in all certification areas available for grades nine through twelve and verification of ability to work with children as demonstrated by sixty contact hours in any one of the following areas as validated by the school principal: sixty contact hours in the classroom, of which at least forty-five must be teaching; sixty contact hours as a substitute teacher, with at least thirty consecutive hours in the same classroom; sixty contact hours of teaching in a public, private or charter school; or sixty contact hours of teaching as a paraprofessional, for an initial four-year ABCTE professional certificate of license to teach. Upon completion of the requirements listed in paragraphs (a), (b), (c), (d), and (e) of this subdivision, an applicant shall be eligible to apply for a career continuous professional certificate under subdivision (2) of subsection 3 of this section:

(a) Completion of thirty contact hours of professional development within four years, which may include hours spent in class in an appropriate college curriculum;

(b) Validated completion of two years of the mentoring program of the American Board for Certification of Teacher Excellence or a district mentoring program approved by the state board of education;

(c) Attainment of a successful performance-based teacher evaluation;

(d) Participation in a beginning teacher assistance program; and

(e) Successful attainment of the Missouri qualifying score on the exit assessment for teachers designated by the state board of education within two years” ; and

Further amend said section, Page 19, Line 68, by deleting the words “and (c)” and inserting in lieu thereof the following:

“(c), (d), and (e)” ; and

Further amend said bill, Page 26, Section 210.205, Line 11, by inserting after the word “system.” the following:

“Adoption of any quality rating system shall be accomplished through the rule-making process under chapter 536, RSMo.”; and

Further amend said bill, Page 26, Section 210.205, Line 18, by deleting the word “outcomes.” and inserting in lieu thereof the following:

“outcomes; and

(4) Permit the appeal of any rating to the department of social services through an appeals process established by rule.

3. The quality rating system shall be:

(1) Voluntary for facilities that are licensed under sections 210.201 to 210.259, and do not receive the child care subsidy under chapter 208, RSMo, or any other state funds;

(2) Mandatory for facilities that are licensed under sections 210.201 to 210.259, and receive a child care subsidy under chapter 208, RSMo, or any other state funds;

(3) Voluntary for facilities that are license-exempt under the exceptions described in section 210.211 to 210.259. A license-exempt facility under the exceptions described in section 210.211 may be rated with an explanation that it is rated but license-exempt.” ; and

Further amend said bill by renumbering the remaining subsections accordingly; and

Further amend said section, Page 27, Lines 56 and 57 by deleting all of said lines and inserting in lieu thereof the following:

“7. For purposes of this section, “early childhood program” shall mean programs that are both centered and home-based and providing services for children from birth to

kindergarten.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 3

Amend House Committee Substitute for Senate Substitute # 2 for Senate Committee Substitute for Senate Bill No. 161, Page 10, Section 162.1110, Line 25, by inserting after all of said line the following:

“163.043. 1. For fiscal year 2007 and each subsequent fiscal year, the “Classroom Trust Fund”, which is hereby created in the state treasury, shall be distributed by the state board of education to each school district in this state qualified to receive state aid pursuant to section 163.021 on an average daily attendance basis. **For fiscal year 2009 and each fiscal year thereafter, one million five hundred thousand dollars of the fund otherwise transferred under the provisions of this subsection shall be transferred to the Missouri exceptional teachers fund created in section 168.745, RSMo. One million dollars of such appropriation shall be directed to the teacher's choice compensation package in certain districts pursuant to section 168.745 to 168.750, RSMo, and five hundred thousand dollars shall be directed towards incentive pay in certain districts as described in sections 168.110, 168.126, and 168.221, RSMo.**

2. The moneys distributed pursuant to this section shall be spent at the discretion of the local school district. The moneys may be used by the district for:

- (1) Teacher recruitment, retention, salaries, or professional development;
- (2) School construction, renovation, or leasing;
- (3) Technology enhancements or textbooks or instructional materials;
- (4) School safety; or

(5) Supplying additional funding for required programs, both state and federal.

3. The classroom trust fund shall consist of all moneys transferred to it under section 160.534, RSMo, all moneys otherwise appropriated or donated to it, and, notwithstanding any other provision of law to the contrary, all unclaimed lottery prize money.

4. The provisions of this section shall not apply to any option district as defined in section 163.042.” ; and

Further amend said bill, Page 22, Section 168.104, Line 37, by inserting after all of said line the following:

“168.106. The contract between a school district and a permanent teacher shall be known as an indefinite contract and shall continue in effect for an indefinite period, subject only to:

(1) Compulsory or optional retirement when the teacher reaches the age of retirement provided by law, or regulation established by the local board of education;

(2) Modification by a succeeding indefinite contract or contracts in the manner hereinafter provided;

(3) The death of the teacher;

(4) Resignation of the teacher with the written consent of the school board;

(5) Termination by the board of education after a hearing as hereinafter provided; [and]

(6) The revocation of the teacher's certificate; **and**

(7) A decision by the teacher to follow the teacher choice compensation package under sections 168.745 to 168.750 in a district and give up the right to an indefinite contract.

168.110. The board of education of a school district may modify an indefinite contract annually on or before the fifteenth day of May in the following particulars:

(1) Determination of the date of beginning and length of the next school year;

(2) Fixing the amount of annual compensation for the following school year as provided by the salary schedule adopted by the board of education applicable to all teachers. **A district that has been provisionally accredited, unaccredited, or lapsed, or any combination thereof for five consecutive years beginning with school year 2001-2002 shall be eligible for incentive pay funds from section 163.043 RSMo, through the transfer of such funds to the Missouri exceptional teachers fund created in section 168.745. Such qualifying districts may provide a salary that includes hiring incentives or salary schedule modifications, which may include but are not limited to credit for all prior years of service in another district, to attract and retain teachers with qualities, experience, or credentials that are exceptionally well suited to a district's needs and who are certified in math, science, special education, or English as a second language. In exchange for such incentives, teachers may be required to teach in the district offering the incentive for a period of up to three school years. Districts shall have the decision-making authority on whether to provide such incentives and modifications within the limits of this section. The modifications shall be effective at the beginning of the next school year. All teachers affected by the modification shall be furnished written copies of the modifications within thirty days after their adoption by the board of education.” ; and**

Further amend said bill, Page 22, Section 168.114, Line 15, by inserting after all of said line the following:

“168.126. 1. A board of education at a regular or special meeting may contract with and employ by a majority vote legally qualified probationary teachers for the school district. The contract shall be made by order of the board; shall specify the number of months school is to be taught and the

wages per month to be paid; shall be signed by the probationary teacher and the president of the board, or a facsimile signature of the president may be affixed at his discretion; and the contract shall be attested by the secretary of the board by signature or facsimile. **A district that has been provisionally accredited, unaccredited, or lapsed, or any combination thereof for five consecutive years beginning with school year 2001-2002 shall be eligible for incentive pay funds from section 163.043, RSMo, through the transfer of such funds to the Missouri exceptional teachers fund created in section 168.745. Such qualifying districts may provide a salary that includes hiring incentives or salary schedule modifications, which may include but are not limited to credit for all prior years of service in another district, to attract and retain teachers with qualities, experience, or credentials that are exceptionally well suited to a district's needs and who are certified in math, science, special education, and English as a second language. In exchange for such incentives, teachers may be required to teach in the district offering the incentive for a period of up to three school years. Districts shall have the decision-making authority on whether to provide such incentives and modifications within the limits of this section.** The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of the board member is necessary to the selection of the person.

2. If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education, through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his

incompetency. If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the board of education. A tie vote thereon constitutes termination. On or before the fifteenth day of April in each school year, the board of education shall notify in writing a probationary teacher who will not be retained by the school district of the termination of his employment. Upon request, the notice shall contain a concise statement of the reason or reasons the employment of the probationary teacher is being terminated. If the reason for the termination is due to a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district, then the district shall in all cases issue notice to the teacher expressly declaring such as the reason for such termination. Nothing contained in this section shall give rise to a cause of action not currently cognizant at law by a probationary teacher for any reason given in said writing so long as the board issues the letter in good faith without malice, but an action for actual damages may be maintained by any person for the deprivation of a right conferred by this act.

3. Any probationary teacher who is not notified of the termination of his employment shall be deemed to have been appointed for the next school year, under the terms of the contract for the preceding year. A probationary teacher who is informed of reemployment by written notice shall be tendered a contract on or before the fifteenth day of May, and shall within fifteen days thereafter present to the employing board of education a written acceptance or rejection of the employment tendered, and failure of such teachers to present the acceptance within such time constitutes a rejection of the board's offer. A contract between a

probationary teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto.” ; and

Further amend said bill, Page 25, Section 168.221, Lines 29 and 30, by deleting all of said lines and inserting in lieu thereof the following:

“public schools of the state, or physical or mental condition which incapacitates him for instructing” ; and

Further amend said bill, section, and page, Line 58, by inserting immediately after the word “instruction.” the following:

“ A permanent teacher may choose to give up the right to an indefinite contract to follow the teacher choice compensation package under sections 168.745 to 168.750.” ; and

Further amend said bill and section, Page 26, Line 78, by adding after all of said line the following:

“7. A district that has been provisionally accredited, unaccredited, or lapsed, or any combination thereof for five consecutive years beginning with school year 2001-2002 shall be eligible for incentive pay funds from section 163.043, RSMo, through the transfer of such funds to the Missouri exceptional teachers fund created in section 168.745. Such qualifying districts may provide a salary that includes hiring incentives or salary schedule modifications, which may include but are not limited to credit for all prior years of service in another district, to attract and retain teachers with qualities, experience, or credentials that are exceptionally well suited to a district's needs and who are certified in math, science, special education, or English as a second language. In exchange for such incentives, teachers may be required to teach in the district for a period of up to three school years. The district shall have the decision-making authority on whether to provide such incentives and modifications within the limits of this section.

168.375. 1. Every certificated teacher who is an employee of a district that has been designated as unaccredited or provisionally accredited through its full accreditation review as part of the school improvement program review cycle shall, in the fifth year following the teacher's initial certification and every fifth year thereafter, submit documentation to the department of elementary and secondary education that the teacher has:

(1) Retaken the appropriate exit assessment under section 168.021 and achieved a score equal to or higher than the required score; or

(2) Successfully completed any course or examination determined by rule of the state board of education for this purpose.

2. A certificated teacher who has failed to achieve the required score on the chosen assessment under subsection 1 of this section may retake the assessment at the next available date. If a teacher fails a second time, or wishes to appeal after an initial failure, the teacher shall present documentation of effectiveness such as student test scores on a value-added instrument advancing, on average, by one grade level. The appeal shall be made through the administrative hearing commission under Chapter 621, RSMo.

3. Notwithstanding the provisions of sections 168.114 or 168.221, a teacher who fails to demonstrate a minimum level of competency shall not be considered a permanent employee of the school district.

168.745. 1. There is hereby created the "Teacher Choice Compensation Package" to permit performance-based salary stipends upon the decision of the teacher as described in section 168.747, to reward teachers for objectively demonstrated superior performance in any district that has been provisionally accredited, unaccredited, or lapsed, or any combination thereof for five consecutive years

beginning with school year 2001-2002.

2. The "Missouri Exceptional Teachers Fund" is hereby created as a special trust fund in the state treasury. Moneys in the fund shall consist of any grant, gift, or contribution from any and all public and private sources whatsoever that is designated for such purpose, including funds appropriated from the classroom trust fund created in section 163.043, RSMo. The state treasurer shall be custodian of the fund and may approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. The department of elementary and secondary education shall administer the fund and shall ensure that money in the fund is used only for the salaries of teachers subject to the provisions of sections 168.745 to 168.750, and for the purposes of incentive pay set forth in sections 168.110, 168.126, and 168.221 in districts meeting qualifications. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

168.747. 1. To be eligible for the teacher choice compensation package, any classroom personnel reported as a code forty, fifty, or sixty through the core data system of the Missouri department of elementary and secondary education shall opt out of his or her indefinite contract under section 168.106 or section 168.221 for the duration of employment with the district. A teacher may decide to end his or her eligibility for the teacher choice stipend but may not resume permanent teacher status with that district. A probationary teacher may opt out of consideration for a permanent contract in the second or subsequent years of employment by the district to participate in the teacher

choice compensation package but may not return to permanent status in that district or resume the process for qualification for an indefinite contract in that district. A teacher who has chosen the teacher choice compensation package and changes employment to another district may choose to resume the process for qualification for an indefinite contract in that district or may choose to remain in the teacher choice compensation package of the new district.

2. Teachers shall qualify annually in October for the stipends described in section 168.749. Stipends shall be offered in five thousand dollar increments, up to fifteen thousand dollars, but shall not exceed fifty percent of a teacher's salary, before deductions for retirement but including designated pay for additional duties such as coaching, sponsoring, or mentoring. Any stipend received under section 168.749 shall be in addition to the salary to which the teacher would otherwise be entitled. Teachers receiving the stipend shall receive any pay and benefits received by teachers of similar training, experience, and duties. Such stipends shall not be considered compensation for retirement purposes.

3. Subject to appropriation, the department of elementary and secondary education shall make a payment to the district in the amount of the stipend, to be delivered as a lump sum in January following the October of qualification. If the amount appropriated is not enough to fund the total of five thousand dollar increment payments, the department may prorate the payments.

4. Teachers who receive the stipend shall have their achievement acknowledged at an annual districtwide ceremony. Invitations to the ceremony shall be extended to the district's superintendent, the principal of each school in which such a teacher works, the commissioner of education, the chairperson of the state board

of education and all local and statewide elected officials who represent the school district, as well as other interested parties.

5. Every person employed by the district in a teaching position, regardless of the certification status of the person, who qualifies under any of the indicators listed in section 168.749 is eligible for the teacher choice compensation package. Teachers who are employed less than full-time are eligible for teacher choice stipends on a pro-rated basis. Any teacher who is dismissed for cause who has otherwise qualified for a teacher choice stipend shall forfeit the stipend for that year.

168.749. 1. Beginning with school year 2008-2009, teachers who elect to participate in the teacher choice compensation package in qualifying districts shall be eligible for stipends based on the following criteria:

(1) Score on a value-added test instrument or instruments. Such instruments shall be defined as those which give a reliable measurement of the skills and knowledge transferred to students during the time they are in a teacher's classroom and shall be selected by the school district from one or more of the following assessments:

(a) A list of recognized value-added instruments developed by the department of elementary and secondary education;

(b) Scores on the statewide assessments established under section 160.518, RSMo, may be used for this purpose, and the department of elementary and secondary education shall develop a procedure for identifying the value added by teachers that addresses the fact that not all subjects are tested at all grade levels each year under the state assessment program;

(c) Scores on annual tests required by the federal Elementary and Secondary Education Act reauthorization of 2002 for third through eighth grade may be used as value-added

instruments if found appropriate after consideration and approval by the state board of education; and

(2) Evaluations by a peer review group. For purposes of this subdivision, the term “peer review group” shall include the principal of the school where the teacher is employed, one or more teachers employed in the school where the teacher is employed, one or more parents of students attending the school where the teacher is employed, and, for grades six to twelve, one or more students of the teacher. The principal shall appoint such teacher, parent and student members of the peer review group.

Model instruments for these evaluations shall be developed or identified by the department of elementary and secondary education. Districts may use such models or may develop their own instruments, subject to the provisions of subsection 2 of this section. A district that develops its own instrument shall not use that instrument as its sole method of evaluation.

2. The department of elementary and secondary education shall develop criteria for determining eligibility for stipend increments, including a range of target scores on assessments for use by the districts. The test-score options listed in subdivision (1) of subsection 1 of this section shall be given higher weight than the evaluation options listed in subdivision (2) of subsection 1 of this section. The decision of individual districts about the qualifications for each increment based on the evaluations listed in subdivision (2) of subsection 1 of this section and for value-added instruments for which target scores have not been developed by the department of elementary and secondary education may address the district’s unique characteristics but shall require demonstrably superior performance on the part of the teacher, based primarily on improved student achievement while taking into account classroom

demographics including but not limited to students’ abilities, special needs, and class size. Districts shall submit any instruments they have developed on their own to the department for approval.

168.750. 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 sections 168.745 to 168.749 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, 2007, shall be invalid and void.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 4

Amend House Committee Substitute for Senate Substitute #2 for Senate Committee Substitute for Senate Bill No. 161, Page 28, Section 210.205, Line 66, by inserting after all of said line the following:

“Section 1. Whenever any school district in this state attains a score or displays criteria for classification of the district on its annual performance review consistent with the classification of “unaccredited”, the state board of education shall, within ninety days, study all of the pertinent, current data from the district and shall either classify the district as “unaccredited” or issue a report to the general assembly and the governor delineating the factors considered and the reasons for not classifying the district as “unaccredited”.

Should the state board vote to classify a district as “unaccredited”, the board may vote to apply such classification prospectively to a date no later than ten days after the last scheduled day of classes for the district in the current academic year.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 5

Amend House Committee Substitute for Senate Substitute #2 for Senate Committee Substitute for Senate Bill No. 161, Page 6, Section 161.720, Line 22, by inserting after all of said line the following:

“162.961. 1. A parent, guardian or the responsible educational agency may request a due process hearing by the state board of education with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child. Such request shall include the child's name, address, school, issue, and suggested resolution of dispute if known. Except as provided in subsection 4 of this section, the board or its delegated representative shall within fifteen days after receiving notice empower a hearing panel of three persons who are not directly connected with the original decision and who are not employees of the board to which the appeal has been made. All of the panel members shall have some knowledge or training involving children with disabilities, none shall have a personal or professional interest which would conflict with his or her objectivity in the hearing, and all shall meet the department of elementary and secondary education's training and assessment requirements pursuant to state regulations and federal law and regulation requirements of the Individuals With Disabilities Education Act. One person shall be chosen by the local school district board or its delegated representative or the responsible educational agency, and one person shall be chosen at the

recommendation of the parent or guardian. If either party has not chosen a panel member ten days after the receipt by the department of elementary and secondary education of the request for a due process hearing, such panel member shall be chosen instead by the department of elementary and secondary education. Each of these two panel members shall be compensated pursuant to a rate set by the department of elementary and secondary education. The third person shall be appointed by the state board of education and shall serve as the chairperson of the panel. The chairperson shall be an attorney licensed to practice law in this state. During the pendency of any three-member panel hearing, or prior to the empowerment of the panel, the parties may, by mutual agreement, submit their dispute to a mediator pursuant to section 162.959.

2. The parent or guardian, school official, and other persons affected by the action in question shall present to the hearing panel all pertinent evidence relative to the matter under appeal. All rights and privileges as described in section 162.963 shall be permitted.

3. After review of all evidence presented and a proper deliberation, the hearing panel, within the time lines required by the Individuals With Disabilities Education Act, 20 U.S.C. Section 1415 and any amendments thereto, shall by majority vote determine its findings, conclusions, and decision in the matter in question and forward the written decision to the parents or guardian of the child and to the president of the appropriate local board of education or responsible educational agency and to the department of elementary and secondary education. A specific extension of the time line may be made by the chairman at the request of either party, except in the case of an expedited hearing as provided in subsection 4 of this section.

4. An expedited due process hearing by the state board of education may be requested by a parent to challenge a disciplinary change of placement or to challenge a manifestation

determination in connection with a disciplinary change of placement or by a responsible educational agency to seek a forty-five school day alternative educational placement for a dangerous or violent student. The board or its delegated representative shall appoint a hearing officer to hear the case and render a decision within the time line required by federal law and state regulations implementing federal law. The hearing officer shall be an attorney licensed to practice law in this state. The hearing officer shall have some knowledge or training involving children with disabilities, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall meet the department of elementary and secondary education's training and assessment requirements pursuant to state regulations and federal law and regulation requirements of the Individuals With Disabilities Education Act. A specific extension of the time line is only permissible to the extent consistent with federal law and pursuant to state regulations.

5. If the responsible public agency requests a due process hearing to seek a forty-five school day alternative educational placement for a dangerous or violent student, the agency shall show by substantial evidence that there is a substantial likelihood the student will injure himself or others and that the agency made reasonable efforts to minimize that risk, and shall show that the forty-five school day alternative educational placement will provide a free appropriate public education which includes services and modifications to address the behavior so that it does not reoccur, and continue to allow progress in the general education curriculum.

6. Any due process hearing request and responses to the request shall conform to the requirements of the Individuals With Disabilities Education Act (IDEA). Determination of the sufficiency shall be made by the chairperson of the three-member hearing panel, or in the case of an expedited due process hearing, by the hearing

officer. The chairperson or hearing officer shall implement the process and procedures, including time lines, required by the IDEA, related to sufficiency of notice, response to notice, determination of sufficiency dispute, and amendments of the notice.

7. A preliminary meeting, known as a resolution session, shall be convened by the responsible public agency, under the requirements of the IDEA. The process and procedures required by the IDEA in connection to the resolution session and any resulting written settlement agreement shall be implemented. **The responsible public agency or its designee shall sign the agreement. The designee identified by the responsible public agency shall have the authority to bind the agency. A local board of education, as a responsible public agency, shall identify a designee with authority to bind the school district.**

162.963. 1. At any hearing held pursuant to the provisions of section 162.961, except as otherwise provided in this section, either party or a representative shall be entitled to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation, at the hearing that has not been disclosed to that party at least five business days before the hearing[, except this shall not be applicable in the case of an expedited hearing where no discovery shall take place];

(4) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decision.

2. Parents involved in hearings have the right to have the child who is the subject of the hearing present and the right to open the hearing to the public.

3. Prior to the resolution conference or hearing, the parent or guardian or a representative of the parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the action to be reviewed was wholly or partially based which could reasonably have a bearing on the correctness of the determination.

4. A complete record shall be made of all proceedings unless otherwise specified by statute, which records shall include verbatim transcription of all testimony and shall include all documents, writings, or other evidence presented by any party. Costs incurred during these proceedings, except those of the parties for purchasing diagnostic services or legal counsel or other services of a personal nature, shall be the responsibility of the state board of education.” ; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

PRIVILEGED MOTIONS

Senator Shields moved that **HCS for SS No. 2** for **SCS for SB 161**, as amended, be taken up for 3rd reading and final passage, which motion failed on a standing division vote.

MESSAGES FROM THE GOVERNOR

The following message was received from the Governor, reading of which was waived:

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City
65101

May 18, 2007

TO THE SECRETARY OF THE SENATE
94th GENERAL ASSEMBLY
FIRST REGULAR SESSION
STATE OF MISSOURI:

Herewith I return to you House Committee Substitute for Senate Committee Substitute for Senate Bill No. 288 and Senate Bill No. 152 and Senate Committee Substitute for Senate Bill No. 115 entitled:

AN ACT

To authorize the conveyance of certain state properties, with an emergency clause.

On May 18, 2007, I approved said House Committee Substitute for Senate Committee Substitute for Senate Bill No. 288 and Senate Bill No. 152 and Senate Committee Substitute for Senate Bill No. 115.

Respectfully submitted,
MATT BLUNT
Governor

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**, as amended for **HCS** for **HBs 619** and **118** and has taken up and passed **SCS** for **HCS** for **HBs 619** and **118**, as amended.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has concurred in **SA 1** to **HCS** for **HBs 654** and **938** and has taken up and passed **HCS** for **HBs 654** and **938**, as amended.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has adopted **SCS** for **HCS** for **HB 329** and has taken up and passed **SCS** for **HCS** for **HB 329**.

Also,

Mr. President: I am instructed by the House of

Representatives to inform the Senate that the House has adopted **SS**, as amended for **SCS** for **HCS** for **HB 583** and has taken up and passed **SS** for **SCS** for **HCS** for **HB 583**, as amended.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has adopted **SS** for **HCS** for **HB 820** and has taken up and passed **SS** for **HCS** for **HB 820**.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has adopted **SCS** for **HCS** for **HB 431** and has taken up and passed **SCS** for **HCS** for **HB 431**.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report No. 2 on **HCS** for **SCS** for **SB 308**, as amended and has taken up and passed **CCS No. 2** for **HCS** for **SCS** for **SB 308**.

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 **HCS** for **SB 315**, entitled:

An Act to repeal sections 260.546, 537.353, and 640.703, RSMo, and to enact in lieu thereof four new sections relating to liability for agricultural damage or destruction.

With House Amendment No. 2.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Bill No. 315, Page 3, Section 260.546, Line 51, by inserting after all of said Line the following:

“537.340. **1.** If any person shall cut down, injure or destroy or carry away any tree placed or growing for use, shade or ornament, or any timber, rails or wood standing, being or growing on the

land of any other person, including any governmental entity, or shall dig up, quarry or carry away any stones, ore or mineral, gravel, clay or mold, or any ice or other substance or material being a part of the realty, or any roots, fruits or plants, or cut down or carry away grass, grain, corn, flax or hemp in which such person has no interest or right, standing, lying or being on land not such person's own, or shall knowingly break the glass or any part of it in any building not such person's own, the person so offending shall pay to the party injured treble the value of the things so injured, broken, destroyed or carried away, with costs. Any person filing a claim for damages pursuant to this section need not prove negligence or intent.

2. Notwithstanding the provisions of subsection 1 of this section, the following rules shall apply to the trimming, removing, and controlling of trees and other vegetation by any electric supplier:

(1) Every electric supplier that operates electric transmission or distribution lines shall have the authority to maintain the same by trimming, removing, and controlling trees and other vegetation posing a hazard to the continued safe and reliable operation thereof;

(2) An electric supplier may exercise its authority under subdivision (1) of this subsection if the trees and other vegetation are within the legal description of any recorded easement or, in the absence of a recorded easement, the following:

(a) Within ten feet, plus one-half the length of any attached crossarm, of either side of the centerline of electricity lines potentially energized at or below 34.5 kilovolts measured line to line and located within the limits of any city; or

(b) Within thirty feet of either side of the centerline of electricity lines potentially energized at or below 34.5 kilovolts measured

line to line and located outside the limits of any city; or

(c) Within fifty feet of either side of the centerline of electricity lines potentially energized between 34.5 and one hundred kilovolts measured line to line; or

(d) Within the greater of the following for any electricity lines potentially energized at one hundred kilovolts or more measured line to line:

a. Seventy-five feet to either side of the centerline; or

b. Any required clearance distance adopted by either the Federal Energy Regulatory Commission or an Electric Reliability Organization authorized by the Energy Policy Act of 2005, 16 U.S.C. Section 824o. Such exercise shall be considered reasonable and necessary for the proper and reliable operation of electric service and shall create a presumption that the electric supplier acted with reasonable care, operated within its rights regarding the operation and maintenance of its electricity lines, and has not committed a trespass;

(3) An electric supplier may trim, remove, and control trees and other vegetation outside the provisions in subdivision (2) of this subsection if such actions are necessary to maintain the continued safe and reliable operation of its electric lines;

(4) An electric supplier may secure from the owner or occupier of land greater authority to trim, remove, and control trees and other vegetation than the provisions set forth in subdivision (2) of this subsection and may exercise any and all rights regarding the trimming, removing, and controlling of trees and other vegetation granted in any easement held by the electric supplier;

(5) An electric utility may trim or remove any tree of sufficient height outside the

provisions of subdivision (2) of this subsection when such tree, if it were to fall, would threaten the integrity and safety of any electric transmission or distribution line and would pose a hazard to the continued safe and reliable operation thereof;

(6) Prior to the removal of any tree under the provisions of subdivision (5) of this subsection, an electric utility shall notify the owner or occupier of land, if available, at least fourteen days prior to such removal unless either the electric supplier deems the removal to be immediately necessary to continue the safe and reliable operation of its electricity lines, or the electric supplier is trimming or removing trees and other vegetation following a major weather event or other emergency situation;

(7) If any tree which is partially trimmed by an electric supplier dies within three months as a result of said trimming, the owner or occupier of land upon which the tree was trimmed may request in writing that the electric supplier remove said tree at the electric supplier's expense. The electric supplier shall respond to such request within ninety days;

(8) Nothing in this subsection shall be interpreted as requiring any electric utility to fully exercise the authorities granted in this subsection.

3. For purposes of this section, the term "electric supplier" means any rural electric cooperative that is subject to the provisions of chapter 394, RSMo, and any electrical corporation which is required by its bylaws to operate on the not-for-profit cooperative business plan, with its consumers who receive service as the stockholders of such corporation, and which holds a certificate of public convenience and necessity to serve a majority of its customer-owners in counties of the third classification as of August 28, 2003."; and

Further amend said Bill by amending the title,

enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report No. 2 on **HCS No. 2 for SB 406**, as amended and has taken up and passed **CCS No. 2 for HCS No. 2 for SB 406**.

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 adopted the Conference Committee Report on **HCS No. 2 for SS for SCS for SB 3**, as amended and has taken up and passed **CCS for HCS No. 2 for SS for SCS for SB 3**.

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 215**.

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 adopted the Conference Committee Report No. 2 on **HCS for SS for SCS for SB 22**, as amended, and has taken up and passed **CCS for HCS for SS for SCS for SB 22**, as amended by Conference Committee Amendment No. 1 and Senate Amendment No. 1.

Emergency clause defeated.

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 adopted the Conference

Committee Report on **HCS for SCS for SB 299** and **SS for SCS for SB 616**, as amended, and has taken up and passed **CCS for HCS for SCS for SB 299** and **SS for SCS for SB 616**.

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 adopted the Conference Committee Report No. 2 on **HCS for SCS for SB 86**, as amended, and has taken up and passed **CCS No. 2 for HCS for SCS for SB 86**.

Emergency clause adopted.

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 adopted the Conference Committee Report on **HCS for SS for SCS for SB 577**, as amended, and has taken up and passed **CCS for HCS for SS for SCS for SB 577**.

Emergency clause adopted.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has adopted **SS**, as amended, for **HCS for HB 741** and has taken up and passed **SS for HCS for HB 741**.

Also,

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

Also,

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 420**.

Emergency clause defeated.

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 **HCS No. 2** for **SCS** for **SB 333**, entitled:

An Act to repeal sections 58.451, 58.720, 192.667, 192.745, 192.925, 194.210, 194.220, 194.230, 194.233, 194.240, 194.250, 194.260, 194.270, 194.280, 194.290, 194.304, 197.500, 198.006, 198.070, 198.090, 198.097, 198.532, 199.001, 199.003, 199.007, 199.009, 199.010, 199.029, 199.031, 199.037, 199.039, 199.041, 199.043, 199.051, 208.909, 208.912, 208.915, 210.900, 210.906, 210.933, 302.171, 304.028, 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 570.145, 660.010, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.070, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, and to enact in lieu thereof one hundred twenty-one new sections relating to the department of health and senior services, with penalty provisions.

With House Amendment Nos. 1, 2, 3, 4, 5, 6, 7, House Amendment No. 1 to House Amendment No. 9, House Amendment No. 9, as amended, and House Amendment No. 11.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Pages 79 to 85, Sections 197.551, 197.554, 197.557, 197.560, 197.563, 197.566, 197.569, 197.572, 197.575, 197.578, 197.581, 197.584, and 197.587 by deleting all of said sections from the bill; and

Further amend said bill by amending the title, enacting clause, and intersectional references

accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Page 77, Section 194.285, Lines 1-3, by deleting all of said lines and inserting in lieu thereof the following:

“194.285. 1. A person who acts without negligence and in good faith in accordance with sections 194.210 to 194.294 or with the anatomical gift laws of another state or foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act. A party claiming another person was negligent shall have the burden of proving the claimed negligence.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 3

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Page 112, Section 620.510, Line 2, by deleting the words **“economic development”** and inserting in lieu thereof the words **“health and senior services”**; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 4

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Page 46, Section 192.2175, Lines 114 through 117, by deleting all of said lines and inserting in lieu thereof the following:

“288.100, RSMo. Any person who is employed in a position for”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 5

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Section 570.145, Page 111, Line 10 by deleting the open bracket “[”]; and

Further amend said Substitute, said Section, said Page, Line 11 by deleting the closed bracket “]”]; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 6

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333; Page 5; Section 58.451; Line 92; by inserting after the word “on” and before the word “the” the following:

“the coroner to determine”; and

Further amend said bill; page 7; Section 58.570; line 71; by inserting after the word “on” and before the word “the” the following:

“The coroner to determine”; and

Further amend said bill; page 111; Section 570.145; line 3; by deleting the “[” before the word “with”, inserting an “[” before the word “permanently”, removing the “]” after the word “deprive” and inserting a “]” after the word “permanently”.

HOUSE AMENDMENT NO. 7

Amend House Committee Substitute # 2 for Senate Committee Substitute for Senate Bill No. 333, Section 58.785, Page 10, Line 59, by inserting after all of said section, the following:

“191.227. 1. All physicians, chiropractors, hospitals, dentists, and other duly licensed practitioners in this state, herein called “providers”, shall, upon written request of a patient, or guardian or legally authorized representative of a patient, furnish a copy of his or

her record of that patient's health history and treatment rendered to the person submitting a written request, except that such right shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. [Beginning August 28, 1994,] Such record shall be furnished within a reasonable time of the receipt of the request therefor and upon payment of a fee as provided in this section.

2. Health care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records upon payment of a fee for:

(1) Copying, in an amount [not more than seventeen] **of eighteen** dollars and [five] **forty-nine** cents plus [forty] **forty-four** cents per page for the cost of supplies and labor;

(2) Postage, to include packaging and delivery cost; and

(3) **Certification and** notary fee[, not to exceed two] **of eight** dollars, if **certification is** requested.

3. Notwithstanding provisions of this section to the contrary, providers may charge for the reasonable cost of all duplications of health care record material or information which cannot routinely be copied or duplicated on a standard commercial photocopy machine.

4. The transfer of the patient's record done in good faith shall not render the provider liable to the patient or any other person for any consequences which resulted or may result from disclosure of the patient's record as required by this section.

5. Effective February first of each year, the fees listed in subsection 2 of this section shall be increased or decreased annually based on the annual percentage change in the unadjusted, U.S. city average, annual average inflation rate of the

medical care component of the Consumer Price Index for All Urban Consumers (CPI-U). The current reference base of the index, as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be used as the reference base. For purposes of this subsection, the annual average inflation rate shall be based on a twelve-month calendar year beginning in January and ending in December of each preceding calendar year. The department of health and senior services shall report the annual adjustment and the adjusted fees authorized in this section on the department's Internet web site by February first of each year.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 9

Amend House Amendment No. 9 to House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Page 1, Line 21, by deleting the number “2006” and inserting in lieu thereof the following “[2006,] **2008, and biannually thereafter,**”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 9

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Page 101, Section 199.051, Line 2, by inserting immediately after said line the following:

“208.014. 1. There is hereby established the “Medicaid Reform Commission”. The commission shall have as its purpose the study and review of recommendations for reforms of the state Medicaid system. The commission shall consist of ten members:

(1) Five members of the house of representatives appointed by the speaker; and

(2) Five members of the senate appointed by the pro tem.

No more than three members from each house shall be of the same political party. The directors of the department of social services, the department of health and senior services, and the department of mental health or the directors' designees shall serve as ex officio members of the commission.

2. Members of the commission shall be reimbursed for the actual and necessary expenses incurred in the discharge of the member's official duties.

3. A chair of the commission shall be selected by the members of the commission.

4. The commission shall meet as necessary.

5. The commission is authorized to contract with a consultant. The compensation of the consultant and other personnel shall be paid from the joint contingent fund or jointly from the senate and house contingent funds until an appropriation is made therefor.

6. The commission shall make recommendations in a report to the general assembly by January 1, 2006, on reforming, redesigning, and restructuring a new, innovative state Medicaid healthcare delivery system under Title XIX, Public Law 89-97, 1965, amendments to the federal Social Security Act (42 U.S.C. Section 30 et. seq.) as amended, to replace the current state Medicaid system under Title XIX, Public Law 89-97, 1965, amendments to the federal Social Security Act (42 U.S.C. Section 30, et seq.), which shall sunset on June 30, [2008] **2010**.

208.631. 1. Notwithstanding any other provision of law to the contrary, the department of social services shall establish a program to pay for health care for uninsured children. Coverage pursuant to sections 208.631 to 208.660 is subject to appropriation. The provisions of sections 208.631 to 208.657 shall be void and of no effect

after June 30, [2008] **2010**.

2. For the purposes of sections 208.631 to 208.657, “children” are persons up to nineteen years of age. “Uninsured children” are persons up to nineteen years of age who are emancipated and do not have access to affordable employer-subsidized health care insurance or other health care coverage or persons whose parent or guardian have not had access to affordable employer-subsidized health care insurance or other health care coverage for their children for six months prior to application, are residents of the state of Missouri, and have parents or guardians who meet the requirements in section 208.636. A child who is eligible for medical assistance as authorized in section 208.151 is not uninsured for the purposes of sections 208.631 to 208.657.”; and

Further amend said bill, Page 102, Section 208.909, Line 36, by inserting immediately after said section the following:

“208.930. 1. As used in this section, the term “department” shall mean the department of health and senior services.

2. Subject to appropriations, the department may provide financial assistance for consumer-directed personal care assistance services through eligible vendors, as provided in sections 208.900 through 208.927, to each person who was participating as a non-Medicaid eligible client pursuant to sections 178.661 through 178.673, RSMo, on June 30, 2005, and who:

(1) Makes application to the department;

(2) Demonstrates financial need and eligibility under subsection 3 of this section;

(3) Meets all the criteria set forth in sections 208.900 through 208.927, except for subdivision (5) of subsection 1 of section 208.903;

(4) Has been found by the department of social services not to be eligible to participate under guidelines established by the Medicaid state plan; and

(5) Does not have access to affordable employer-sponsored health care insurance or other affordable health care coverage for personal care assistance services as defined in section 208.900. For purposes of this section, “access to affordable employer-sponsored health care insurance or other affordable health care coverage” refers to health insurance requiring a monthly premium less than or equal to one hundred thirty-three percent of the monthly average premium required in the state's current Missouri consolidated health care plan.

Payments made by the department under the provisions of this section shall be made only after all other available sources of payment have been exhausted.

3. (1) In order to be eligible for financial assistance for consumer-directed personal care assistance services under this section, a person shall demonstrate financial need, which shall be based on the adjusted gross income and the assets of the person seeking financial assistance and such person's spouse.

(2) In order to demonstrate financial need, a person seeking financial assistance under this section and such person's spouse must have an adjusted gross income, less disability-related medical expenses, as approved by the department, that is equal to or less than three hundred percent of the federal poverty level. The adjusted gross income shall be based on the most recent income tax return.

(3) No person seeking financial assistance for personal care services under this section and such person's spouse shall have assets in excess of two hundred fifty thousand dollars.

4. The department shall require applicants and the applicant's spouse, and consumers and the consumer's spouse, to provide documentation for income, assets, and disability-related medical expenses for the purpose of determining financial need and eligibility for the program. In addition to the most recent income tax return, such

documentation may include, but shall not be limited to:

- (1) Current wage stubs for the applicant or consumer and the applicant's or consumer's spouse;
- (2) A current W-2 form for the applicant or consumer and the applicant's or consumer's spouse;
- (3) Statements from the applicant's or consumer's and the applicant's or consumer's spouse's employers;
- (4) Wage matches with the division of employment security;
- (5) Bank statements; and
- (6) Evidence of disability-related medical expenses and proof of payment.

5. A personal care assistance services plan shall be developed by the department pursuant to section 208.906 for each person who is determined to be eligible and in financial need under the provisions of this section. The plan developed by the department shall include the maximum amount of financial assistance allowed by the department, subject to appropriation, for such services.

6. Each consumer who participates in the program is responsible for a monthly premium equal to the average premium required for the Missouri consolidated health care plan; provided that the total premium described in this section shall not exceed five percent of the consumer's and the consumer's spouse's adjusted gross income for the year involved.

7. (1) Nonpayment of the premium required in subsection 6 shall result in the denial or termination of assistance, unless the person demonstrates good cause for such nonpayment.

(2) No person denied services for nonpayment of a premium shall receive services unless such person shows good cause for nonpayment and makes payments for past-due premiums as well as current premiums.

(3) Any person who is denied services for

nonpayment of a premium and who does not make any payments for past-due premiums for sixty consecutive days shall have their enrollment in the program terminated.

(4) No person whose enrollment in the program is terminated for nonpayment of a premium when such nonpayment exceeds sixty consecutive days shall be reenrolled unless such person pays any past-due premiums as well as current premiums prior to being reenrolled. Nonpayment shall include payment with a returned, refused, or dishonored instrument.

8. (1) Consumers determined eligible for personal care assistance services under the provisions of this section shall be reevaluated annually to verify their continued eligibility and financial need. The amount of financial assistance for consumer-directed personal care assistance services received by the consumer shall be adjusted or eliminated based on the outcome of the reevaluation. Any adjustments made shall be recorded in the consumer's personal care assistance services plan.

(2) In performing the annual reevaluation of financial need, the department shall annually send a reverification eligibility form letter to the consumer requiring the consumer to respond within ten days of receiving the letter and to provide income and disability-related medical expense verification documentation. If the department does not receive the consumer's response and documentation within the ten-day period, the department shall send a letter notifying the consumer that he or she has ten days to file an appeal or the case will be closed.

(3) The department shall require the consumer and the consumer's spouse to provide documentation for income and disability-related medical expense verification for purposes of the eligibility review. Such documentation may include but shall not be limited to the documentation listed in subsection 4 of this section.

9. (1) Applicants for personal care assistance services and consumers receiving such services pursuant to this section are entitled to a hearing with the department of social services if eligibility for personal care assistance services is denied, if the type or amount of services is set at a level less than the consumer believes is necessary, if disputes arise after preparation of the personal care assistance plan concerning the provision of such services, or if services are discontinued as provided in section 208.924. Services provided under the provisions of this section shall continue during the appeal process.

(2) A request for such hearing shall be made to the department of social services in writing in the form prescribed by the department of social services within ninety days after the mailing or delivery of the written decision of the department of health and senior services. The procedures for such requests and for the hearings shall be as set forth in section 208.080.

10. Unless otherwise provided in this section, all other provisions of sections 208.900 through 208.927 shall apply to individuals who are eligible for financial assistance for personal care assistance services under this section.

11. The department may promulgate rules and regulations, including emergency rules, to implement the provisions of this section. 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. Any provisions of the existing rules regarding the personal care assistance program promulgated by the department of elementary and secondary education in title 5, code of state regulations, division 90, chapter 7, which are inconsistent with

the provisions of this section are void and of no force and effect.

12. The provisions of this section shall expire on June 30, [2008] **2010.**"; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 11

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 333, Section 198.006, Page 89, Line 141, by inserting after all of said line the following:

"198.069. For any resident of an assisted living facility who is released from a hospital or skilled nursing facility and returns to an assisted living facility as a resident, such resident's assisted living facility shall immediately, upon return, implement physician orders in the hospital or discharge summary, and within twenty-four hours of the patient's return to the facility, review and document such review of any physician orders related to the resident's hospital discharge care plan or the skilled nursing facilities discharge care plan and modify the individual service plan for the resident accordingly. The department of health and senior services may adjust personal care units authorized as described in subsection 14 of section 208.152, RSMo, upon the effective date of the physicians orders to reflect the services required by such orders."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

On motion of Senator Shields, the Senate adjourned until 8:30 a.m., Friday, May 25, 2007.

✓