

JOURNAL OF THE HOUSE

VETO SESSION

Second Regular Session, 92nd GENERAL ASSEMBLY

FIRST DAY, WEDNESDAY, SEPTEMBER 15, 2004

Speaker Hanaway in the Chair.

Prayer by Father David Buescher.

Life-giving God, this House re-assembles today with a heavy heart. Representative Annie Reinhart left us two weeks ago and her desk is vacant. We trust she is at home and rests in You, and we commend her to Your merciful friendship.

Our work here must go on, so we seek out Your mysterious mixture of compassion and justice to give us insight and motivation today. Consecrate this place and all those who serve here, and bless all the citizens of our state. Amen.

The Pledge of Allegiance to the flag was recited.

The Speaker appointed the following to act as an Honorary Page for the Day, to serve without compensation: Alex Kackley.

Representatives Annie Reinhart and Ray Adams were memorialized by Members of the House of Representatives.

HOUSE RESOLUTION

Representative Crowell offered **House Resolution No. 1** which was read.

HOUSE RESOLUTION NO. 1

BE IT RESOLVED, that the Chief Clerk of the House of Representatives of the Ninety-second General Assembly, Second Regular Session, inform the Governor and the Senate that the House is duly convened and is now in session in the 2004 Constitutional Veto Session and ready for consideration of business.

Representative Crowell moved that Rule 59 be suspended to allow for the adoption of **House Resolution No. 1**.

Which motion was adopted by the following vote:

AYES: 151

Abel	Angst	Baker	Barnitz	Bean
Bearden	Behnen	Bishop	Bivins	Black
Bland	Bough	Bringer	Brooks	Brown
Bruns	Burnett	Byrd	Campbell	Carnahan
Cooper 120	Cooper 155	Corcoran	Crawford	Crowell
Cunningham 145	Cunningham 86	Curls	Darrough	Davis 122
Davis 19	Deeken	Dempsey	Dethrow	Dixon
Donnelly	Dougherty	Dusenberg	El-Amin	Emery
Engler	Ervin	Fares	Fraser	George
Goodman	Graham	Green	Guest	Harris 110
Harris 23	Haywood	Henke	Hilgemann	Hobbs
Holand	Hoskins	Hubbard	Hunter	Icet
Jackson	Jetton	Johnson 47	Johnson 61	Johnson 90
Jolly	Jones	Kelly 144	Kelly 36	King
Kingery	Kratky	Kuessner	Lager	Lawson
Lembke	Levota	Liese	Lipke	Lowe
Luetkemeyer	Marsh	May	Mayer	McKenna
Meadows	Meiners	Miller	Moore	Morris
Munzlinger	Myers	Nieves	Page	Parker
Pearce	Phillips	Pratt	Purgason	Quinn
Ransdall	Rector	Richard	Roark	Ruestman
Rupp	Schoemehl	Sander	Schaaf	Schlottach
Schneider	Schoemehl	Seigfreid	Self	Shoemaker
Shoemyer	Smith 118	Smith 14	Spreng	Stefanick
Stevenson	St. Onge	Sutherland	Swinger	Taylor
Thompson	Threlkeld	Townley	Viebrock	Villa
Wagner	Walker	Wallace	Walsh	Walton
Ward	Wasson	Wildberger	Willoughby	Wilson 119
Wilson 130	Wilson 25	Wilson 42	Witte	Wood
Wright	Yaeger	Yates	Young	Zweifel
Madam Speaker				

NOES: 006

Daus	Sager	Selby	Skaggs	Vogt
Whorton				

PRESENT: 000

ABSENT WITH LEAVE: 004

Avery	Boykins	Muckler	Portwood
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VACANCIES: 002

On motion of Representative Crowell, **House Resolution No. 1** was adopted.

MESSAGE FROM THE SENATE

Madam Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and adopted **SR 1**.

SENATE RESOLUTION NO. 1

BE IT RESOLVED by the Senate that the Secretary of Senate inform the House of Representatives that the Senate is duly convened and is now in session as provided by Section 32, Article III of the Constitution and is ready for the consideration of its business.

MESSAGES FROM THE GOVERNOR

OFFICE OF THE GOVERNOR
State of Missouri
Jefferson City 65101

February 25, 2004

TO THE CHIEF CLERK OF THE
HOUSE OF REPRESENTATIVES
92nd GENERAL ASSEMBLY
SECOND REGULAR SESSION
STATE OF MISSOURI:

Herewith I return to you **House Concurrent Resolution No. 5** entitled:

An act by concurrent resolution and pursuant to Article IV, Section 8, to disapprove the final order of rulemaking for the proposed amendment to 1 CSR 10-4.010 relating to State of Missouri Vendor Payroll Deductions.

I disapprove of **House Concurrent Resolution No. 5**. My reasons for disapproval are as follows:

House Concurrent Resolution No. 5 purports to permanently disapprove and suspend an amendment to 1 CSR 10-4.010, filed as an order of rulemaking. The rule amendment filed by the Office of Administration merely clarifies the state's ability to make vendor payroll deductions, including collecting fair share fees from state employees who are members of collective bargaining units and have authorized the deduction of such fees. HCR 5 purports to find the rule amendment in violation of the provisions of sections 536.014 (governing agency rulemaking authority) or 536.205 (governing fiscal notes associated with proposed rules), RSMo.

The rule amendment does not violate any provision of Missouri statute. Because the Office of Administration has rulemaking authority in this area, section 536.014 is satisfied. The Joint Committee has never taken issue with the Office of Administration's authority to promulgate rules including 1 CSR 10-4.010; instead it has only now acted to disapprove this narrow amendment. This action is logically and legally inconsistent: either the Office of Administration has authority to make rules concerning vendor payroll deduction, or it does not. Given the uncontroversial previous promulgation of CSR 10-4.010, as well as the provisions of Section 536.010, 536.023, 33.103, and 370.395 RSMo 2000 (as amended) the Office of Administration plainly has such authority.

Section 536.205, which requires a statement of expenses to be imposed by any rule which would cost private entities more than five hundred dollars, is also satisfied, because the rule amendment does not impose any private cost. The rule amendment only clarifies the ability of the Office of Administration to make certain vendor payroll deductions under specific circumstances. No actual fee is imposed on any private party by the rule amendment.

HCR 5 is misguided, both as a matter of procedure and as a matter of substance. Procedurally, HCR 5 reflects an inappropriate use of the Joint Committee on Administrative Rules, an entity established by executive order for the narrow purpose of reviewing agency rulemaking authority. The General Assembly has produced no

legitimate question as to the legal authority of the Office of Administration to promulgate the rule amendment. Members of the General Assembly simply object to collective bargaining by state government employees and thus seek to block the mechanisms that make such bargaining possible. The General Assembly ought not to use the procedural mechanism of a resolution of disapproval to block a rule that its members only dislike on philosophical grounds.

I disagree with those who oppose collective bargaining rights for state employees. My administration has fought and will continue to fight tirelessly for the right of all working Missourians to have their voice heard by their employers. All of society benefits when working people have a seat at the bargaining table. That is as true in the public sector as it is in the private sector.

Most Missouri state employees do not share the privileges and benefits accorded to their elected officials. Rather, the majority of our public servants do difficult and vital work, often for low pay and little recognition. As Governor, I have a responsibility to ensure that our hard-working state employees are treated fairly and equitably by their employer. An essential component of fair and equitable treatment is the right of workers to bargain collectively and negotiate on a level playing field. I am proud of our record in this area, and I will not tolerate efforts by the General Assembly or any other party to interfere with employees' right of representation. The fair allocation of the costs of such representation is a basic aspect of collective bargaining. The use of fair share fees, voluntarily agreed to by new state employees, is both appropriate and necessary to protect the right of self-representation.

For all of the above stated reasons for disapproval, I am returning **House Concurrent Resolution No. 5** without my approval.

Respectfully submitted,

/s/ Bob Holden
Governor

July 6, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Senate Committee Substitute for House Concurrent Resolution No. 21**.

I disapprove of **Senate Committee Substitute for House Concurrent Resolution No. 21**. My reasons for disapproval are as follows:

This resolution would reauthorize the currently-existing Poultry Industry Committee for an additional year, and would additionally create a Forestry Utilization Committee. Although I support reauthorization of the Poultry Industry Committee in its existing form, I am compelled to veto this resolution because of problems in the creation of the Forestry Utilization Committee.

The Forestry Utilization Committee which would be established by this resolution is poorly structured and unlikely to achieve its goals. Before establishing any new state board or commission, care must be taken to ensure that it has sufficient representation of all interested parties and groups, and that it does not have too many members to do its work effectively. I am concerned that this resolution (and its companion resolution from the Senate) do not meet either of these criteria. For example, as established by this resolution, the committee would have 23 members, a number that could be cumbersome if the structure of the committee has not received careful thought. Further, this number of members conflicts with the number provided in the companion resolution, strengthening my sense that more careful consideration of the composition of this committee is needed.

This resolution provides for the direct appointment of committee members by private, non-governmental organizations. This approach is undesirable. Members of state boards and commissions are frequently chosen to represent private sector interests, but the actual power to appoint should be reserved to the state.

This resolution also provides that funding for the committee would come out of the Office of Administration's budget. With agency budgets so closely scrutinized for appropriate spending, I find this approach misguided. The Departments of Conservation, Agriculture, and Natural Resources are the more appropriate agencies to oversee the committee budget and staffing needs.

In short, while the purpose of this resolution seems noble and worthwhile, I believe that practical considerations merit a rethinking of the proper approach. I look forward to working with interested parties to establish an appropriately-constituted Forestry Utilization Committee, and will be pleased to sign an Executive Order establishing the Committee once these issues are resolved.

I am disappointed that the Poultry Industry Committee reauthorization was included in this resolution, and that I am thus forced to veto it as well. While I note that the Poultry Industry Committee is subject to some of the same concerns identified above, I am not as concerned about its size because the committee has previously demonstrated its ability to function effectively. The Poultry Industry Committee is also assigned to the Office of Administration - a less than desirable assignment for the same reasons set forth above - but I am advised by the Office of Administration that the Committee's work has never required the expenditure of the Office's resources or any substantial amount of staff time. For these reasons, I will also be pleased to sign an Executive Order re-establishing the Poultry Industry Committee as presently constituted.

For all of the above stated reasons for disapproval, I am returning **Senate Committee Substitute for House Concurrent Resolution No. 21** without my approval.

Respectfully submitted,

/s/ Bob Holden
Governor

June 16, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1005** entitled:

“AN ACT”

To appropriate money for the expenses, grants, refunds, and distributions of the Office of Administration, the Department of Transportation, the Department of Public Safety, and the Chief Executive's Office, and the several divisions and programs thereof to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, and to transfer money among certain funds for the period beginning July 1, 2004 and ending June 30, 2005.

Section 5.226

I hereby veto \$1E general revenue for the payment of principal and interest on bonds for institutions of higher education. The section was contingent upon passage and approval of SB 1221 and SB 1227. Those bills were not passed by the General Assembly.

Said section is vetoed in its entirety by \$1 to \$0 from General Revenue Fund. From \$1 to \$0 in total for the section.

Section 5.227

I hereby veto \$1E life science research trust funds to be transferred to the general revenue fund for reimbursement of principal and interest payments of life science projects. The section was contingent upon passage and approval of SB 1221 and SB 1227. Those bills were not passed by the General Assembly.

Said section is vetoed in its entirety by \$1 to \$0 from Life Science Research Trust Fund. From \$1 to \$0 in total for the section.

On June 16, 2004 I approved said **Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1005**, except for those items specifically vetoed and not approved.

Respectfully submitted,

/s/ Bob Holden
Governor

July 2, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **House Committee Substitute for House Bill No. 1099**, entitled:

“AN ACT”

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to material recovery operations.

I disapprove of **House Committee Substitute for House Bill No. 1099**. My reasons for disapproval are as follows:

House Committee Substitute for House Bill No. 1099 has the potential to severely impact state revenue by creating a poorly-described tax exemption that goes well beyond the stated intent of the legislation. Specifically, Section 144.030.3 is overbroad: it expands a sales tax exemption to companies "involved in the manufacture or material recovery" of any of the products subject to sales and use tax listed in the chapter. The list of manufacturing related exemptions identified in this chapter is lengthy, going well beyond the limited material recovery efforts that are the focus of the remainder of the bill. The bill does not define "involvement" for purposes of this section, nor does it specify any limitations on the "involvement"-based tax exemption or "manufacture..... under this chapter". This language could thereby be interpreted to provide tax exemption to numerous industries, including those only remotely connected with the industries intended to be exempted by the statutory chapter.

The intent of the remainder of this legislation - to encourage and assist companies involved in the material recovery process - is laudable. However, the broad and ambiguous language contained in the final paragraph of the bill is too great a threat to the financial stability of Missouri, and would surely result, at minimum, in numerous new cases of tax litigation in Missouri courts. Therefore, a veto of this legislation is necessary.

In accordance with the above stated reasons for disapproval, I am returning **House Committee Substitute for House Bill No. 1099** without my approval.

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Respectfully submitted,

/s/ Bob Holden
Governor

July 6, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **Senate Committee Substitute for House Committee Substitute for House Bill No. 1177**, entitled:

“AN ACT”

To repeal sections 640.700, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, 644.016, and 644.051, RSMo, and to enact in lieu thereof eleven new sections relating to concentrated animal feeding operations.

I disapprove of **Senate Committee Substitute for House Committee Substitute for House Bill No. 1177**. My reasons for disapproval are as follows:

Senate Committee Substitute for House Committee Substitute for House Bill No. 1177 would alter Missouri's regulation of Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs). Missouri regulates these entities pursuant to a delegation of authority under federal law. The changes in **Senate Committee Substitute for House Committee Substitute for House Bill No. 1177** jeopardize the state's ability to maintain delegation from the United States Environmental Protection Agency (EPA) to implement programs under the Federal Clean Water Act. Without such delegation, Missouri would risk substantial and undesirable federal interference with state environmental policy.

Specifically, this legislation would alter the definitions of "discharge" and "water contaminant source" thus narrowing their meaning and placing Missouri law out of compliance with the federal Clean Water Act. With Missouri law out of compliance, Missouri would risk a federal takeover of our clean water program, and a substantial loss of federal funds.

Section 644.051.3 of the bill prohibits enforcement activities where an accidental spill occurs and the discharge of effluent is wholly contained within the landowner's property. This language would prevent the Missouri Department of Natural Resources from issuing violation notices or even investigating these spills, severely limiting the agency's ability to monitor pollution in and around a CAFO.

The Missouri Attorney General has stated (in a letter dated June 14, 2004) that this legislation "significantly curtails the authority of the Missouri Clean Water Commission to protect waters of the state." The Attorney General also expressed serious reservations about the issues set forth above, noting that under this bill "the state has no lawful recourse no matter how devastating the discharge has been on the natural resources, fish, and wildlife lying within the affected property."

Similarly, the EPA has expressed concern about this legislation (in a letter dated April 13, 2004). The EPA states that the federal Clean Water Act does not provide limitations or exclusions relating to the cause or amount of discharge, nor does the federal act prevent enforcement when a discharge is confined to one person's property. Such a change in definition could jeopardize EPA approval of the state's National Pollution Discharge Elimination System (NPDES) program, thereby endangering Missouri's ability to receive significant federal funding for program implementation. I cannot and will not endorse legislation that seeks to reduce protection of Missouri's water resources and is inconsistent with federal law and regulations. While Missouri's livestock production sector is critical to rural communities, legislation modifying state implementation plans must meet basic criteria outlined by the EPA and Clean Water Act. Regulatory changes in this area must not come at the expense of Missouri's environment or the health of its citizens.

For all of the above stated reasons, I am returning **Senate Committee Substitute for House Committee Substitute for House Bill No. 1177** without my approval.

Respectfully submitted,

/s/ Bob Holden
Governor

July 2, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you **House Committee Substitute for House Bill No. 1614** entitled:

“AN ACT”

To amend chapter 376, RSMo, by adding thereto one new section relating to the repeal of the expiration date for certain mental health insurance statutes.

I disapprove of said **House Committee Substitute for House Bill No. 1614**. My reasons for disapproval are as follows:

The signing of **House Committee Substitute for House Bill No. 1614** is in conflict with Senate Committee Substitute for House Committee Substitute for House Bill No. 855, which I signed on June 28, 2004. **House Committee Substitute for House Bill No. 1614** extends the sunset date on a section of law that is repealed by Senate Committee Substitute for House Committee Substitute for House Bill No. 855.

House Committee Substitute for House Bill No. 1614 extends the Mental Health and Chemical Dependency Act, which would expire on January 1, 2005 pursuant to current law. One provision of this act is section 376.840 RSMo. Senate Committee Substitute for House Committee Substitute for House Bill No. 855, which allows Missourians with group health insurance to access mental health coverage in the same manner as other health conditions, also extends the Mental Health and Chemical Dependency Act. However, because it is no longer necessary, Senate Committee Substitute for House Committee Substitute for House Bill No. 855 repeals section 376.840 RSMo. Because **House Committee Substitute for House Bill No. 1614** extends a provision of law that is repealed by Senate Committee Substitute for House Committee Substitute for House Bill No. 855, the signing of **House Committee Substitute for House Bill No. 1614** creates an unresolved statutory conflict.

This veto has no substantive effect. Senate Committee Substitute for House Committee Substitute for House Bill No. 855 extends the sunset date in the same fashion that **House Committee Substitute for House Bill No. 1614** would have. This veto will only prevent the unresolved statutory conflict.

For all of the above stated reasons for disapproval, I am returning **House Committee Substitute for House Bill No. 1614** without my approval.

Respectfully submitted,

/s/ Bob Holden
Governor

**HOUSE BILLS VETOED FROM THE
THE SECOND REGULAR SESSION**

Speaker Hanaway read the following House Bills vetoed from the Second Regular Session and no action was taken thereon: **HCR 5, SCS HCR 21, CCS SCS HS HCS HB 1005, HCS HB 1099, SCS HCS HB 1177 and HCS HB 1614.**

HOUSE RESOLUTION

Representative Crowell offered **House Resolution No. 2** which was read.

HOUSE RESOLUTION NO. 2

BE IT RESOLVED by the House of Representatives, that the Chief Clerk of the House inform the Senate that the House, having been duly convened as provided by Section 32, Article III of the Constitution, made no motions to override the Governor's vetoes on **HCR 5, SCS HCR 21, CCS SCS HS HCS HB 1005, HCS HB 1099, SCS HCS HB 1177 and HCS HB 1614** when the bills were called by the Speaker.

Representative Crowell moved that Rule 59 be suspended to allow for the adoption of **House Resolution No. 2.**

Which motion was adopted by the following vote:

AYES: 151

Abel	Angst	Baker	Barnitz	Bean
Bearden	Behnen	Bishop	Bivins	Black
Bland	Bough	Bringer	Brooks	Brown
Bruns	Burnett	Byrd	Campbell	Carnahan
Cooper 120	Cooper 155	Corcoran	Crawford	Crowell
Cunningham 145	Cunningham 86	Curls	Darrough	Davis 122
Davis 19	Deeken	Dempsey	Dethrow	Dixon
Donnelly	Dougherty	Dusenberg	El-Amin	Emery
Engler	Ervin	Fares	Fraser	George
Goodman	Graham	Green	Guest	Harris 110
Harris 23	Haywood	Henke	Hilgemann	Hobbs
Holand	Hoskins	Hubbard	Hunter	Icet
Jackson	Jetton	Johnson 47	Johnson 61	Johnson 90
Jolly	Jones	Kelly 144	Kelly 36	King
Kingery	Kratky	Kuessner	Lager	Lawson
Lembke	Levota	Liese	Lipke	Lowe
Luetkemeyer	Marsh	May	Mayer	McKenna
Meadows	Meiners	Miller	Moore	Morris
Munzlinger	Myers	Nieves	Page	Parker
Pearce	Phillips	Pratt	Purgason	Quinn
Ransdall	Rector	Richard	Roark	Ruestman
Rupp	Salva	Sander	Schaaf	Schlottach
Schneider	Schoemehl	Seigfreid	Self	Shoemaker
Shoemyer	Smith 118	Smith 14	Spreng	Stefanick
Stevenson	St. Onge	Sutherland	Swinger	Taylor
Thompson	Threlkeld	Townley	Viebrock	Villa
Wagner	Walker	Wallace	Walsh	Walton
Ward	Wasson	Wildberger	Willoughby	Wilson 119

Wilson 130	Wilson 25	Wilson 42	Witte	Wood
Wright	Yaeger	Yates	Young	Zweifel
Madam Speaker				

NOES: 006

Daus	Sager	Selby	Skaggs	Vogt
Whorton				

PRESENT: 000

ABSENT WITH LEAVE: 004

Avery	Boykins	Muckler	Portwood
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VACANCIES: 002

On motion of Representative Crowell, **House Resolution No. 2** was adopted.

MESSAGE FROM THE SENATE

Madam Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and adopted **SR 5**.

SENATE RESOLUTION NO. 5

BE IT RESOLVED by the Senate that the Secretary of Senate inform the House of Representatives that the Senate, having been duly convened as provided by Section 32, Article III of the Constitution, made no motion to override the Governor's vetoes of House Committee Substitute for Senate Substitute for Senate Concurrent Resolution No. 26; House Committee Substitute for Senate Committee Substitute for Senate Bill No. 799; Senate Bill No. 1111; and Senate Committee Substitute for Senate Bill No. 1304 when the bills were so called by the President.

LETTER OF RESIGNATION

August 2, 2004

The Honorable Catherine Hanaway
Speaker
House of Representatives
State Capitol, Room 308
Jefferson City, MO 65101-6806

Dear Speaker Hanaway:

It has been an honor and privilege to serve these past three terms in the Missouri House of Representatives representing my constituents of the 147th District. However, I have accepted the position of high school principal for the Summersville R-II School district and will resign my seat effective August 15, 2004.

I have enjoyed serving in the Missouri General Assembly and look forward to continuing my public service to the students and community of the Summersville School District.

Sincerely,

Mark Hampton

ADJOURNMENT

On motion of Representative Crowell, the House adjourned until 9:00 a.m., Thursday, September 16, 2004.