



# Prestige + Powers

## *Strategic Government Relations*

### **The Powers Report**

*A Weekly Summary of Activities in Jefferson City*

The Powers Report is produced by Prestige Powers, a strategic government relations firm.

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#### **To lobby or not to lobby, that is the question**

Work on the ethics front continued at a snail's pace in both legislative chambers this week.

In the Senate, floor debate continued on SB 577, the ethics bill filed by Sen. Charlie Shields (R-St. Joseph). Very little progress has been made, with the Senate hung up on an amendment offered by Sen. Jason Crowell (R-Cape Girardeau) to forbid legislators from serving as legislative lobbyists or working for any state department or being appointed to any board, commission or committee for at least two years after leaving office. Crowell calls it a "cooling off period."

When Sen. Luann Ridgeway (R-Smithville) offered an amendment to make sure the "cooling off period" applied to the legislators currently serving, Sen. Kevin Engler (R-Farmington) stood to object. He doesn't like the idea of keeping legislators from being involved in further service to the state. "I don't think that's positive," Engler said. "I'm going to vote no and you can call me unethical."

Ridgeway's amendment failed on a vote of 15-17. SB 577 was set aside for another day.

In the House, the ethics committee has been slogging through the process of drafting its own ethics bill from the many ethics bills filed in that chamber. So far, the committee has agreed to include campaign contribution limits of some kind without agreeing to a specific amount; creating a state "obstruction of justice" law similar to the federal law, making it a crime to provide false information to investigators; putting a limit on things like meals and travel paid for by lobbyists, after deciding an outright ban was "unworkable"; and prohibiting legislators from becoming lobbyists for one year after leaving office.

The House ethics committee is hoping to finish writing its bill next week.

#### **The deputy lieutenant governor gets some unexpected time off**

The deputy lieutenant governor, Jerry Dowell, was placed on five days of unpaid leave after it was discovered he had sent a political fundraising appeal from his state computer using an e-mail account maintained by the Tour of Missouri bicycle race. Dowell also serves as the executive director of Tour of Missouri.

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The e-mail was an invitation to a fundraiser for John Cauthorn, a former senator running for the House in an open seat. Chief of Staff Rich AuBuchon said, “While I believe this is an honest mistake, this is one that I will not tolerate.”

### **Budget pains**

The painful part of the budget process is starting to hit home. This week, the House committee that deals with the welfare portions of the budget voted to cut some \$60 million from the budget proposed by Gov. Jay Nixon. The cuts – all on party-line votes – impact programs like health clinics, domestic violence, and child care.

At least one representative fought back tears. Another, Rep. Kiki Curls (D-Kansas City), said, “Some of the cuts we’re making are potentially life-threatening.”

The CEO of the Missouri Primary Care Association, which lobbies for federally qualified health clinics, said, “People are going to lose access to care.”

All the House committees dealing with various areas of the budget are under the gun to try and find ways to cut 5% from the FY11 budget presented by the governor, at the request of House Budget Chairman Allen Icet. And if they can cut more than 5%, so much the better.

The \$60 million cut amounts to just 2.5%. The committee chairman, Rep. David Sater (R-Cassville), acknowledged the difficulty in making the cuts, but said, “We have to be proactive in this.”

The committee’s decision is not the final word. The full budget committee could vote to restore some or all of the cuts, or vote to cut even further.

Meanwhile, Gov. Nixon said this week he might have to take another whack at the current budget next month, as state revenue collections continue to lag well behind expectations.

Another victim of the budget situation appears to be a plan to borrow \$800 million through the sale of bonds to finance a construction blitz. Rep. Paul LeVota (D-Independence) said, “There’s no appetite for it.” Sen. Charlie Shields (R-St. Joseph) said it’s a tough sell. “The ability to incur more debt is just not there.”

### **Tax problems**

A sweeping state supreme court decision from last year – which people didn’t think would be quite so sweeping – and an equally broad interpretation by the Department of Revenue has a large coalition of entities scrambling to change a portion of the state’s sales tax law.

It’s called the ICC Management case. ICC operates a private jail near Holden, Missouri. It provides inmates with meals and things like clothing, soap, and shampoo. Because ICC calculates all of this into the fees they charge cities and counties, they weren’t paying any sales tax on the purchase of the items. After an audit, the Department of Revenue said the reseller exclusion to paying sales tax didn’t apply because the items were essentially sold to government entities, which don’t pay tax, so ICC owed almost \$20,000 in sales and use taxes.

The Supreme Court agreed with the department in a 7-0 decision. Writing for the court, Judge Laura Denvir Stith declared, “The resale exemption applies only where the item purchased is later subject to a taxable sale at retail.” She further wrote, “To be a ‘seller’ as that term is used in Missouri’s taxing statutes, therefore, a tax must be imposed on the receipts from sale of personal property or services.”

In a nutshell, the court declared that taxable goods and services must be taxed once. If the buyer isn’t paying it, then the seller has to pay it. This has any entity that sells to governments – and that’s a lot of folks – in a tizzy. Adding to the frustration is a decision by the

Department of Revenue – issued December 23<sup>rd</sup> – to apply the decision to “all affected transactions” retroactively to September 1, 2009, when the court issued the decision.

The Ryan Company – which provides guidance to tax professionals – put it this way: “Implementation of this decision is expected to cause numerous difficulties for retailers, both from a compliance perspective as well as from an economic standpoint. Many retailers may not have internal systems to track the purchase cost of goods ultimately sold to exempt purchasers. Additionally, some retailers may be forced to increase retail prices charged to governmental entities to cover the additional tax cost incurred on the purchase of the goods.”

The House Ways & Means Committee got the ball rolling this week by holding a public hearing on HB 2048, which would clarify things by stating that “**Notwithstanding any other provision of law to the contrary, when a purchase of tangible personal property or taxable service is made for the purpose of resale, such purchase is exempt or excluded under this chapter...**”

While there is significant support for passing this clarification, there will be some headwinds from those concerned about a potential reduction in sales tax revenue.

And there’s an interesting sidebar to this story, too. In a concurring opinion, the often colorful Judge Michael Wolff agreed with the ICC decision, but disagreed with the assumption that a privately operated jail is even lawful. He wrote: “Is there any constitutional or statutory authority for a private corporation to hold human beings in jail against their will? I am not willing to assume that private jailing is lawful. But whether the business of operating a private jail is lawful or not, I do agree it is not entitled to a tax exemption.”

The unofficial summary of the ICC decision is here:

<http://www.courts.mo.gov/file.jsp?id=33040>.

The full decision is here: <http://www.courts.mo.gov/file.jsp?id=33029>.

## **Over and out**

The House of Representatives pounded the final nail in the coffin of the attempt by the State Tax Commission to change the productivity values of agricultural land. The vote was 143-11. The Senate had passed the identical resolution on a vote of 30-3 last month.

The vote means the productivity value of agricultural land, which is used to calculate property taxes, will remain the same for at least 2011 and 2012.

The State Tax Commission had voted to increase the productivity value of the best farmland and reduce the value of the worst farmland. Missouri Farm Bureau led a revolt against the decision, claiming the end result would be an average tax increase of 11% on farmers.

“It’s just not the time to be increasing taxes,” noted Rep. Brian Munzlinger (R-Williamstown).

Because the measure overturning the tax commission decision is a concurrent resolution, (SCR 35) no action by the governor is required.

## **The pace on the floor is picking up**

The House sent the Senate four measures this week. The Senate sent nine bills to the House. The highlights:

- HB 1311 mandates insurance coverage for autism treatment, 135-18
- HB 1497 requires special elections to fill vacancies in the offices of lieutenant governor, attorney general, secretary of state, state auditor, state treasurer, and United States senator, 90-62

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- HB 1675 establishes the Manufacturing Jobs Act with incentives for saving or creating jobs, 134-17
- HB 1750 requires certain phone companies to reduce their intrastate access rates by 50% over ten years with an exemption for companies with fewer than 25,000 customers, 111-40
- SB 580 is an omnibus local government bill, 25-6

### **The pace of filing bills is slowing down**

Only about a hundred new bills to read this week! Roll the highlight tape:

- HB 2153 moves the primary election from August to June beginning in 2012, and makes numerous changes to the frequency and timing of local elections.
- HB 2159 names a portion of I-64 the Jack Buck Memorial Highway. “That’s a winner!”
- HB 2164 establishes a public campaign financing system.
- HB 2165 requires DNR to post water testing results in plain language within three days of collecting samples.
- HB 2176 creates the Federal Tax Fund and is almost an act of secession. See below.
- HB 2178 allows cities to create clean energy development boards.
- HB 2182 finally defines agritourism: *the act of visiting a working farm or any agricultural operation for the purpose of enjoyment, education, training, or active involvement in the activities of the agricultural operation.* A new cash cow!
- HB 2183 creates a statewide energy code.
- HB 2191 creates the Anti-cramming Protection Act.
- HB 2193 requires chain restaurants to post nutritional information for menu items.
- HB 2202 prohibits digital billboards within 1,500 feet of an intersection.
- HB 2206 allows Revised Statutes to be distributed electronically.
- HB 2207 makes it a crime to mislead a public servant about your identity.
- HB 2212 allows an “In God We Trust” license plate.
- HCR 62 makes the fourth Thursday of April “Take Our Daughters and Sons to Work Day.”
- SB 944 exempts automatic gratuities from the sales tax.
- SB 947 requires telecommunications companies to make it just as easy to cancel a service as it is to sign up for it.
- SB 954 requires tax credits to be subject to appropriations.
- SB 956 allows foreign language immersion charter schools to enroll 4-year-old kids. *Je veux aller à l'école, maman!*
- SB 964 allows criminal investigators with the Department of Revenue to carry guns.

Your lobbyist can help you with any information you need about these or any other bills.

By the way, over 1,500 bills have been filed so far.

### **HB 2176**

This bill, filed by Rep. Jim Guest (R-King City), states that, “In light of the continuing unconstitutional federal expenditures, the state hereby reasserts its authority under the tenth amendment” and creates the Federal Tax Fund. Under the bill, all federal tax moneys collected

by the state on behalf of the feds shall be deposited into the fund and dispersed to the feds on a quarterly basis.

Any person, including corporations and such, owing tax dollars to the federal government will instead send the money to the state for deposit into the fund on their behalf. The state will inform the IRS that the federal tax obligations have been collected and the taxpayers should be credited with paying their federal taxes. Then, the tax dollars will be used “for the benefit of the people of this state only.”

If the feds react by withholding matching funds or other penalties, the quarterly disbursements of funds collected on behalf of the feds will stop. The general assembly could pass a concurrent resolution declaring any sanctions by the federal government to be unconstitutional.

The bill also requires the governor, lieutenant governor, legislators, judges, attorney general, secretary of state, auditor, treasurer, department directors and all state employees to carry out the requirements of HB 2176 “regardless of any sanctions, threats, court action, or other pressure brought to bear by federal authorities.”

### **Quote of the Week**

In an interview with Steve Kraske of the *Kansas City Star*, Rep. Curt Dougherty (D-Independence) defended his advice to a group of home inspectors to hire a good lobbyist to help them fight a bill they oppose. He said:

***“Anybody who doesn’t understand that you need to have a hired gun who keeps their issues in front of legislators has their head in the sand.”***

Keep your head out of the sand and have a great week!

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