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June 30, 2017

TO THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES
99th GENERAL ASSEMBLY
FIRST REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you Senate Substitute for House Committee Bill No. 3 entitled:

AN ACT

To repeal section 208.1050, RSMo, and to enact in lieu thereof one new section relating to funds for vulnerable senior citizens.

I disapprove of Senate Substitute for House Committee Bill No. 3. My reasons for disapproval are as follows.

Senate Substitute for House Committee Bill No. 3 is an unconstitutional, one-time fix that jeopardizes more than 200 state funds without the courtesy of a public hearing. Senate Substitute for House Committee Bill No. 3 requires the State Treasurer to divert \$35,400,000 from General Revenue into the Missouri Senior Services Protection Fund on or before September 1, 2017. To pay for this diversion, the bill authorizes the Commissioner of Administration to transfer \$35,400,000 into General Revenue “from the unexpended balance remaining from all fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official, or agency of the state government,” with the exception of nine types of funds.

The funding scheme devised by Senate Substitute for House Committee Bill No. 3 violates the Missouri Constitution. Our state’s constitution is clear that taxpayer money cannot be withdrawn or spent without specific appropriation authority. Article IV, Section 23 requires that “[e]very appropriation law shall distinctly specify the amount and purpose of the appropriation” Article III, Section 36 states that “the general assembly shall have no power to divert [revenue collected and money received by the state] or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law.” Finally, Article IV, Section 28 prohibits withdrawing money from the state treasury “except by warrant drawn in accordance with an appropriation made by law,” The Missouri Supreme Court concluded that these constitutional provisions are “unambiguous” and “[t]heir meaning is clear: money may not be withdrawn from

the state treasury for any purpose other than that specified in an appropriation law.” *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209, 213 (Mo. banc 1975).

Despite this clear constitutional direction, the General Assembly failed to pass an appropriations bill this session that contained the funding provisions set forth in Senate Substitute for House Committee Bill No. 3. Likewise, no appropriation bill diverted \$35,400,000 from General Revenue into the Missouri Senior Services Protection Fund. And, no appropriation bill swept \$35,400,000 from specified funds into General Revenue in order to pay for this diversion.

Senate Substitute for House Committee Bill No. 3 is not itself an appropriation bill.¹ Yet Senate Substitute for House Committee Bill No. 3 is the only location for this \$35,400,000 diversion from General Revenue into the Missouri Senior Services Protection Fund, as well as the only authorization for the \$35,400,000 sweep from various funds into General Revenue. Because of the complete lack of authority in any appropriation bill, Senate Substitute for House Committee Bill No. 3 violates multiple provisions of the Missouri Constitution: Article III, Section 36; Article IV, Section 23; and Article IV, Section 28.

These constitutional deficiencies are compounded by the bill’s failure to identify specific funds and amounts that will be swept, which would need to be included in an appropriations bill. Instead, the General Assembly attempted to shift responsibility to the Commissioner of Administration for deciding which funds would be targeted, and how much money would be drained from them.

The Missouri Supreme Court rejected a similar ploy by lawmakers more than 40 years ago. *See State ex inf. Danforth*, 530 S.W.2d at 214. In that instance, the General Assembly authorized the Commissioner of Administration and a committee of legislators to transfer funds from one purpose to another. *Id.* at 211. The Missouri Supreme Court ruled this delegation of appropriation power was unconstitutional and any exercise of it would be a “usurpation of power” by both the legislature and the committee. *Id.* at 214.

The Attorney General has also concluded that the General Assembly’s delegation of appropriation power is unconstitutional. *See* Attorney General Opinion 190-74, at p. 5 (“It is the opinion of this office that the provision in [S.B. 1] which purports to give authority to the Committee on State Fiscal Affairs and the Commissioner of Administration to ‘alter’ the purpose of appropriations is unconstitutional in violation of Article IV, Section 28 and Article III, Sections 21 through 33, Constitution of Missouri.”); Attorney General Opinion 222-73, at p. 2 (“Therefore, it is our opinion that the Office of Administration has no authority to allow expenditures from appropriations in accordance with directives received from the Committee on State Fiscal Affairs contrary to the provisions of an appropriation act.”).

Just like the General Assembly’s attempt to sweep funds 40 years ago – rejected as unconstitutional by the State’s high court – Senate Substitute for House Committee Bill No. 3 would give the

¹ Nor could Senate Substitute for House Committee Bill No. 3 be a valid appropriation bill. Under Article III, Section 25, the General Assembly could not consider any appropriation bill after 6 p.m. on May 5, 2017. The Senate did not pass Senate Substitute for House Committee Bill No. 3 until May 8, and the House did not truly agree and finally pass the bill until May 12.

Commissioner of Administration authority to transfer funds from one purpose to another. Under the clear Missouri Supreme Court precedent in *State ex inf. Danforth*, Senate Substitute for House Committee Bill No. 3 is unconstitutional.

That the fund sweep is optional does not save Senate Substitute for House Committee Bill No. 3. In *State ex inf. Danforth*, the Missouri Supreme Court found unconstitutional a law that provided the Commissioner of Administration and a committee of legislators the *option* of transferring funds from one purpose to another. 530 S.W.2d 209, 214. Similarly, Senate Substitute for House Committee Bill No. 3 unconstitutionally provides the Commissioner of Administration the option of transferring funds from one purpose to another. But this “option” is a false choice. The Commissioner of Administration’s failure to perform this fund sweep would unbalance the Fiscal Year 2018 state budget by \$35,400,000.

How the General Assembly passed the final version of Senate Substitute for House Committee Bill No. 3 also raises constitutional concerns. When the bill passed the House and received a public hearing in the Senate General Laws Committee, what was then House Committee Bill No. 3 redirected a property tax credit to fund the Missouri Senior Services Protection Fund. However, the substitute bill first introduced on the Senate floor in the final days of session replaced all of the original language in the House bill with the diversion and fund sweep approach. Neither chamber held a public hearing on the new approach.

Since 1875, the Missouri Constitution has required legislation to be limited to its original purpose. See Article III, Section 21. The original purpose of a bill is determined by “its earliest title and contents,” and this constitutional doctrine prohibits “introduction of a matter that is not germane to the object of the legislation or that is unrelated to its original subject.” *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012) (emphasis added). By completely changing the substance of the original bill, Senate Substitute for House Committee Bill No. 3 violates the Missouri Constitution’s original purpose requirement. Moreover, any claim that the bill’s broad title allowed a total replacement of bill text also implicates the Missouri Constitution’s clear title requirement. See *Home Builders Ass’n of Greater St. Louis v. State*, 75 S.W.3d 267, 270 (Mo. banc 2012).

Practical concerns join these numerous constitutional problems. Missouri has 468 different state funds. When it negotiated the bill substitute, the Senate protected nine categories of funds from the fund sweep. Protected funds include funds for tattoo artists (Tattoo Fund), interior designers (Interior Designer Council Fund), embalmers (Board of Embalmers and Funeral Directors’ Fund), acupuncturists (Acupuncturist Fund), massage therapists (Massage Therapy Fund), and realtors (Real Estate Commission Fund).

The Office of Administration’s Budget and Planning Division estimates that Senate Substitute for House Committee Bill No. 3 exposed 233 state funds to the potential fund sweep. Funds at risk of being drained include programs to prevent child abuse and neglect (Children’s Trust Fund), assistance to workers injured on the job (Workers Compensation Fund and Second Injury Fund), and training to police officers (Highway Patrol Academy Fund) and firefighters (Fire Education Fund).

Because there was no public hearing and the Senate negotiated carve-outs late in the legislative session, Missourians never had the chance to question or comment on this bill's funding priorities. Missourians did not have the chance to question why the Senate protected tattoo artists, interior designers, and realtors, while placing in jeopardy funds for abused children, injured workers, and first responders.

Elected officials in the General Assembly must confront funding issues seriously and not dodge tough decisions through last minute, unconstitutional gimmicks. In accordance with the above stated reasons for disapproval, I am returning Senate Substitute for House Committee Bill No. 3 without my approval.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric R. Greitens', written over a horizontal line.

Eric R. Greitens
Governor