GOVERNOR OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
GOVERNOR

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July 7, 2014

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 entitled:

AN ACT

To repeal sections 50.660, 50.783, 67.281, 72.401, 82.300, 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, 94.579, 99.805, 99.825, 162.481, 182.802, 349.045, and 483.140, RSMo, and to enact in lieu thereof nineteen new sections relating to political subdivisions.

I disapprove of Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553. My reasons for disapproval are as follows:

Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 contains a number of worthwhile provisions that can become law through my action on other legislation. However, Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 does not receive my approval because it contains a provision that would infringe upon private property rights. For this reason, Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 does not receive my approval.

The offending provision in Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 is identical to that found in Senate Committee Substitute for Senate Bill No. 731, which I have also vetoed today. Senate Committee Substitute for Senate Bill No. 731, began as a well-meaning measure intended to provide additional tools for neighborhood organizations and property owners to hold negligent property owners accountable for diminished property values and unsafe conditions. However, an amendment added on the Senate floor would infringe upon private property rights by creating a broad new immunity for polluters creating environmental hazards and contamination that reduce nearby property values. For this reason, Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 does not receive my approval.

The Senate floor amendment to Senate Committee Substitute for Senate Bill No. 731, found in section 1 of Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553, would provide:

> No action shall be brought under section 82.1025 or sections 82.1027 to 82.1030 if the owner of the property that is the subject of the action is in good faith compliance with *any* order issued by the department of natural resources, the United States Environmental Protection Agency, or the office of attorney general.

(emphasis added). This broad immunity would bar statutory nuisance actions by private property owners and neighborhood organizations in the counties of Jefferson, Platte, Franklin, Cass, Clay, Cole, and Cape Girardeau, and the cities of Springfield, St. Louis and Kansas City in the circumstances outlined. This would diminish the rights of property owners under current law to hold someone accountable for actions that reduce property values and create hazards to health, safety and the environment. For example, assume private property owners in St. Louis County are attempting to bring a statutory nuisance action seeking damages from the owner of a landfill that is contaminating nearby properties, creating noxious fumes, and decreasing area property values. Although such an action might proceed under current law, this bill would prohibit it if the Environmental Protection Agency (EPA), the Department of Natural Resources (DNR), or the Attorney General has ordered the landfill operator to clean up the contamination and the company is attempting to comply with that order.

Not only would this new immunity deprive private property owners of rights they enjoy under current law, its ambiguous wording would confer immunity even when the referenced government order does not apply to the property creating the nuisance. For example, assume DNR issues an order requiring a utility company to clean up contamination at a former facility in Randolph County. If the utility is complying with that clean-up order, this bill would also give the company immunity for operations creating a nuisance at its facilities in Franklin, St. Louis, Jefferson, Cape Girardeau, and Cole counties.

In addition, the ambiguous language of this immunity provision does not even require the party creating the nuisance to actually be in compliance with any of the referenced government orders. Instead, the immunity would be triggered upon "good faith," as opposed to *actual*, compliance. This could prevent private property owners from bringing a statutory nuisance action even when the party creating the nuisance is currently violating a government order. For example, a quarry in Cape Girardeau could be violating a DNR order to control dust emissions contaminating nearby property, but under this bill adjoining property owners would be barred from bringing a statutory nuisance action to protect their property so long as the quarry is attempting, even if unsuccessfully, to comply with the DNR order. Similarly, a chemical company in Cass County attempting to comply with a DNR order to clean up hazardous waste on its property may be immune from suit even if contamination from the buried chemicals has migrated into the drinking water used by neighboring property owners.

The provisions of Senate Committee Substitute for Senate Bill No. 731 that were inserted into Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553

would grant a broad new immunity for those damaging the property of others. This I cannot support.

In accordance with the above stated reasons for disapproval, I am returning Conference Committee Substitute for Senate Committee Substitute for House Bill No. 1553 without my approval.

Respectfully submitted,

Jeremiah W. (Jay) Nixon
Governor