GOVERNOR OF MISSOURI

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JEREMIAH W. (JAY) NIXON
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TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Committee Substitute for Senate Bill No. 731 entitled:

AN ACT

> To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, and to enact in lieu thereof six new sections relating to property regulations in certain cities and counties.

I disapprove of Senate Committee Substitute for Senate Bill No. 731. My reasons for disapproval are as follows:

Senate Committee Substitute for Senate Bill No. 731 began as a well-meaning measure 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 giving a broad new immunity for polluters creating environmental hazards and contamination that reduce nearby property values. For this reason, Senate Committee Substitute for Senate Bill No. 731 does not receive my approval.

The Senate floor amendment to Senate Committee Substitute for Senate Bill No. 731, added as section 1 to the bill, 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.

Senate Committee Substitute for Senate Bill No. 731 began with a noble purpose of strengthening the rights of property owners and neighborhood organizations, but the changes during the legislative process, particularly the Senate floor amendment providing a broad new immunity for those damaging the property of others, would move the state in the opposite direction. This I cannot support.

In accordance with the above stated reasons for disapproval, I am returning Senate Committee Substitute for Senate Bill No. 731 without my approval.

Respectfully submitted,

Jeremiah W. (Jay) Nixon
Governor