



*“Dedicated to the Sovereignty of Missourians”*

## May 9, 2010 – An Evaluation of Problematic Clauses From HCS #2 SB 844

### I. § 21 – Ballot Summary Commission

#### A. Unconstitutional

B. Art III § 49 requires that the initiative process be “independent of the general assembly”. Allowing the House and Senate to select 2/3 of the commission that would be drafting ballot summary statements would hardly be “independent” of those bodies.

### II. § 26.016 – Filling vacated office – Lt. Governor

A. The provision requiring suspension upon impeachment until a verdict is unreasonable and inconsistent with typical jurisprudence. **It is a bad idea.**

1. Note: It takes only a simple majority of the House to impeach.
2. Note: 106.050 already requires suspension upon impeachment. It is a bad idea there and should not be propagated in other statutes.
3. Impeachment is the rough equivalent of a grand jury indictment – it is an accusation, not a finding of guilt in any fashion. Actual loss of rights or privileges is a violation of due process *principles* if not an outright violation of due process rights.
4. Impeachment should be made easier to use, not more difficult. Impeachment is merely raising the question and members of the House will be *less willing* to raise the question (vote on an impeachment resolution) if there are immediate consequences – that is, consequences before a trial.
5. Allowing penalties or consequences before a conviction (e.g. simply from a House vote to impeach) invites misuse of the impeachment process.

### III. § 27.015 – Filling vacated office – Attorney General

A. Same impeachment issue. See notes for Lt. Governor, above **It is a bad idea.**

### IV. § 28.190 – Filling vacated office – SOS

A. Same impeachment issue. See notes for Lt. Governor, above. **It is a bad idea.**

### V. § 28.280 – Filling vacated office – Auditor

A. Same impeachment issue. See notes for Lt. Governor, above. **It is a bad idea.**

### VI. § 30.060 – Filling vacated office – Treasurer

A. Same impeachment issue. See notes for Lt. Governor, above. **It is a bad idea.**

### VII. § 105.470(1) – Loosens standard for requiring one to register as an “Elected local government official lobbyist”.

A. Currently, one hired “specifically” for that purpose must be considered a lobbyist. The new standard will be for one hired “exclusively” to influence local officials. Arguably, that means if any *portion* of the reason for hiring someone was other than influencing local officials, he would not be considered a lobbyist and would escape reporting requirements. **It is a bad idea.**

### VIII. § 105.470(1) – Allows unlimited cash gifts without reporting giving or receiving the gift.

A. Giving an “**honorarium**” of any value has the same status as giving an elected official educational material, such as a pamphlet or book. **It is a bad idea.**

1. Note: This was originally found in HB1846, where it included a \$50 limit.

**IX. § 105.470(5)(d) – Makes any citizen who would attempt to influence a member of the legislature from a district outside his own district a lobbyist.**

- A. Failure to register and file the requisite reports would be a class D felony, as stipulated in 105.473(8). **This is unconstitutional and a VERY bad idea!**
  - 1. Violates right to petition for redress of grievances, etc,
  - 2. Note: This was originally found in HB1846 (Hobbs) in this same form,

**X. § 105.963.1 & 2 – Increases penalty (\$10 to \$50 / day) when a committee forgets to file a statement of limited activity.**

- A. This penalty militates against small grass-roots efforts which may not be able to afford the sort of staff needed to stay on top of reporting requirements. **It is a bad idea.**

**XI. § 116.160.1 – Creates “joint committee on ballot statements”, taking that responsibility away from the SOS.**

- A. This provision is unconstitutional.**
- B. Art III § 49 requires that the petition process be “independent of the general assembly”. Since this provision would have the House and Senate selecting 2/3 of the committee, the ballot statements would be influenced by and not independent of the General Assembly.

**XII. § 130.021(5) – Must file a statement of organization of a new committee at least 30 (or 60) days before receiving donations or spending money on an election.**

- A. This provision is unconstitutional.**
- B. Article I § 25, of the Missouri Constitution declares that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

**XIII. § 575.021.4 – Failure of candidate or committee to pay debts before terminating the committee becomes a felony**

- A. The state would thereby be interfering with private transactions in private commerce.
- B. This provision is potentially in violation of Article I § 13, involving the “impairing the obligation of contracts”.

**XIV. Various felony provisions**

- A. Several new felony penalties are created for infractions of complex and hard to understand campaign law. We will be making felons of ordinary citizens who make honest mistakes while trying to participate in the political process.

**XV. Omnibus Bills**

- A. Omnibus bills are a particular problem, conceptually, from the grass-roots perspective. It is hard enough to track legislation when it's in a single subject bill which is going through the process normally, but the fast paced nature and complexity of omnibus bills militates against citizen involvement.
- B. Omnibus bills result in a greater likelihood of adoption of special interest (selfish interest) measures that don't have broad appeal or application. In other words, things which are less likely to be “common ground” concepts are adopted.
  - 1. Omnibus bills are much like earmarks in Congress. They become a trading grounds for special favors which would not stand on their own merit.
- C. Omnibus bills often violate the principles of “general welfare” and “good of the whole” governance. They violate the principle, if not the letter, of the law requiring single subject legislation.
- D. The use of omnibus bills should end.**