

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI, et al.,)
)
Appellants,)
)
v.) Case No. SC87934
)
JACKSON COUNTY)
SPORTS COMPLEX AUTHORITY,)
)
Respondent.)

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY

The Honorable Byron L. Kinder

Brief of Respondent (Plaintiff Below)

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Introduction

The Honorable Byron L. Kinder of the Cole County Circuit Court found that House Bill 58 (2005) and Senate Bill 210 (2005) violate article III, sections 21 and 23 of the Missouri Constitution. Section 21 provides in pertinent part: “No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.” *Mo. Const. art. III, sec. 21*. Section 23 provides: “No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” *Mo. Const. art. III, sec. 23*.

STATEMENT OF FACTS¹

Section 64.920 *et seq.* provide the procedures for establishing a county sports complex authority like Respondent Jackson County Sports Complex Authority (“Authority”). *See L.F. 1800*. Upon meeting the requirements for its creation, an authority “shall be a body corporate and politic and a political subdivision of the state of Missouri.” *Sec. 64.920, RSMo 2000*. An authority has various powers that include:

¹ The majority of the Statement of Facts is quoted directly from the trial court’s “Findings of Facts, Conclusions of Law, and Judgment” entered in this case on July 6, 2006. In order to avoid the cumbersome use of quotation marks throughout this section, however, the quoted material is not indicated and citations to the judgment as it appears in the legal file are instead included.

- constructing, maintaining, and operating recreational facilities and amenities;
- collecting money for the use of those facilities;
- contracting “with counties and other political subdivisions”;
- suing and being sued;
- receiving appropriations “by municipalities, counties, state or other political subdivisions or agencies or by the federal government or any agency or officer thereof or from any other source”;
- disbursing funds for salaries and other lawful activities;
- borrowing money and issuing bonds, notes, or other instruments of indebtedness for constructing, maintaining, and operating recreational facilities and amenities;
- condemning certain property for the authority’s purposes;
- performing all other necessary and incidental functions; and
- exercising additional powers conferred by the state or federal legislatures.

*Sec. 64.940, RSMo Supp. 2005.*² The enumeration of the Authority’s powers expressly excludes the power to levy taxes. *Sec. 64.940.2.*

The current version of section 64.940, found in the 2005 Cumulative Supplement to the Revised Statutes of Missouri, was enacted pursuant to House Bill 58 (“HB 58”) and Senate Bill 210 (“SB 210”) during the 2005 regular legislative session. *See sec.*

² All further references to section 64.940 refer to the version codified in RSMo Supp. 2005.

64.940; *L.F. 1800-01*. Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for HB 58 (“CCS for SS for SCS for HCS for HB 58”) was Truly Agreed and Finally Passed during the First Regular Session of the 93rd General Assembly and approved by Governor Matt Blunt on July 7, 2005. *L.F. 1800 (citing exhibits at L.F. 31, 1369)*. Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for SB 210 (“CCS for HCS for SS for SCS for SB 210”) was Truly Agreed and Finally Passed during the First Regular Session of the 93rd General Assembly and approved by Governor Matt Blunt on July 7, 2005. *L.F. 1800-01 (citing exhibits at L.F. 31, 1369)*.

As passed, HB 58 repealed 165 sections and enacted 165 new sections, *L.F. 1804-05*, and SB 210 repealed 104 sections and enacted 104 new sections of the Revised Statutes of Missouri. *L.F. 1807*. Among the multitude of sections affected by these bills, both repeal and enact section 64.940. *L.F. 1801*. In particular, HB 58 and SB 210 purport to add a new subsection 3 to section 64.940 that provides:

3. Any expenditure made by the authority located in a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, that is over five thousand dollars, including professional service contracts, must be competitively bid.

See sec. 64.940.3; L.F. 1801.

A. House Bill 58

As first read on January 5, 2005, the title of HB 58 stated that it was an act to repeal and enact seven sections “relating to political subdivisions, with penalty

provisions.” *L.F. 1802 (citing exhibit at L.F. 376)*. Six of the original seven sections were from chapter 50, RSMo (“County Finances, Budget and Retirement Systems”), and the remaining section was from chapter 250, RSMo (“Sewerage Systems and Waterworks–City or District”). *L.F. 1802 (citing exhibit at L.F. 376)*. In its original form, HB 58 affected the duties of county commissions in procuring supplies and permitted water supply districts organized pursuant to chapter 247 to recover from an occupant of real estate sums due for services provided. *L.F. 1802 (citing exhibit at L.F. 376)*.

The House Committee Substitute for HB 58 (“HCS for HB 58”) which was reported to the House on March 2, 2005, increased the number of new sections in HB 58 from seven sections to 33 new sections. *L.F. 1802 (citing exhibit at L.F. 392)*. Provisions were added, *inter alia*, relating to “local code violations” in certain cities (section 82.301), authorization for hotel and motel taxes and food establishment taxes in certain municipalities (sections 94.837 and 94.838), city and district sewer systems and waterworks (section 250.140), temporary possession of real property for rehabilitation (sections 447.620, 447.622 and 447.640), and provisions in the chapter on pornography and related offenses relating to the regulation of nudity in adult cabarets (section 573.505). *L.F. 1802-03 (citing exhibit at L.F. 392)*.

HCS for HB 58 was taken up on the floor of the House of Representatives on March 14, 2005, with continued consideration on March 15, 2005. *L.F. 1803 (citing exhibits at L.F. 1369, 1373, and 1391)*. During that consideration 12 floor amendments were added to HCS for HB 58. *L.F. 1803 (citing exhibit at L.F. 1410)*. With that action

the number of new sections increased from the original seven sections to 44 sections. *L.F. 1803 (citing exhibit at L.F. 1410)*. The additions included provisions, *inter alia*, relating to municipalities supplying water (House Amendment 1 to House Amendment 1), a Local Option Economic Development Sales Tax Trust Fund (House Amendment 7), derelict motor vehicles (House Amendment 8), the Missouri Housing Development Commission (House Amendment 13) and municipal transportation sales taxes (House Amendment 14). *L.F. 1803 (citing exhibits at L.F. 1373 and 1391)*. HCS for HB 58 as perfected by the House of Representatives had a title that enacted 44 new sections “relating to political subdivisions, with an emergency clause for a certain section.” *L.F. 1803 (citing exhibits at L.F. 1391 and 1410)*.

HCS for HB 58, as perfected, was referred to the Senate Committee on Economic Development, Tourism and Local Government. *L.F. 1803*. On April 21, 2005, that Senate Committee reported to the Senate the Senate Committee Substitute for House Committee Substitute for HB 58 (“SCS for HCS for HB 58”). *L.F. 1803 (citing exhibits at L.F. 1369 and 441)*. SCS for HCS for HB 58 further expanded the original HB 58 with seven new sections to 119 new sections. *L.F. 1803*. Provisions were added, *inter alia*, relating to public employee benefits (sections 50.1030 and 50.1031), to make special assessment provisions applicable to certain municipalities (section 67.1003), to change sales tax provision relating to the metropolitan park and recreation system and community children’s service funds (sections 67.1754 and 67.1775), to change provisions relating to the regional taxicab commission (section 67.1809), to provide for a Downtown Revitalization Preservation Program (sections 99.1080 to 99.1092), to change provisions

relating to industrial development (section 100.050), to change procedures relating to establishing a board of election commissioners (section 115.019), to change procedures relating to the collection of state taxes (section 136.010), to change provisions relating to school taxes (section 165.071), to change provisions relating to the establishment of a public health center (section 205.010), to change provisions relating to the licensing of motor vehicles (section 301.025), to change provisions relating to fireworks (section 320.121), to amend probate code provisions relating to public administrators (sections 473.770 and 473.771), to amend court costs provisions (section 488.2220), to amend provisions relating to probation officers (section 559.607) and to authorize the Governor to convey state property in St. Joseph, Park Hills, Jefferson City, Lafayette County and Pilot Knob (sections 1, 2, 5, 6 and 7). *L.F. 1803-04.*

On May 3, 2005, a Senate Substitute for Senate Committee Substitute for House Committee Substitute for HB 58 (“SS for SCS for HCS for HB 58”) was offered that modified SCS for HCS for HB 58. *L.F. 1804 (citing exhibits at L.F. 1369, 1456, 441, and 672).* SS for SCS for HCS for HB 58 was then immediately considered and amendments were presented. *L.F.1804 (citing printed pages 921-74 of exhibit at L.F. 1456).* The Journal of the Senate reflects that at least 35 amendments on diverse subjects were adopted. *L.F. 1804.* Among those adopted was Senate Amendment 12 amending section 64.940 to add a new subsection 3. *L.F. 1804 (citing printed pages 949-51 of exhibit at L.F. 1456).*

On May 13, 2005, the CCS for SS for SCS for HCS for HB 58 was adopted by the House and Senate. *L.F. 1804-05.* At this time, CCS for SS for SCS for HCS for HB 58

was an act to repeal and enact 165 new sections “relating to political subdivisions, with penalty provisions.” *L.F. 1805*. In its final form, CCS for SS for SCS for HCS for HB 58 includes legislation related to topics including: elections; sports complex authorities; industrial development; tax relief; assessment and levy of property taxes; convalescent, nursing and boarding homes; insects, pests, and weeds; liquor control; lost and unclaimed property; and water pollution. *L.F. 1805*. In its final form, HB 58 affects RSMo chapters: 44, 49, 50, 54, 55, 59, 64, 65, 67, 71, 79, 82, 94, 99, 100, 105, 115, 135, 136, 137, 138, 139, 140, 165, 190, 205, 210, 215, 217, 231, 233, 242, 245, 246, 247, 249, 250, 263, 278, 301, 311, 313, 320, 321, 349, 393, 447, 473, 478, 488, 537, 559, 644, 701. *L.F. 1805*. CCS for SS for SCS for HCS for HB 58 included amendments to sections 64.940, 67.2555,³ and 115.348. *L.F. 1805*.

B. Senate Bill 210

As first read on January 20, 2005, SB was an act to repeal and enact 16 sections “relating to county government.” *L.F. 1805*. Fourteen of the original 16 sections were from RSMo Title VI (“County Township and Political Subdivision Government”). *L.F. 1805*. Thirteen of those 14 sections related to salaries of county officials. *L.F. 1805*.

³ This Court recently upheld the constitutionality of section 67.2555, RSMo Supp. 2005, against several constitutional challenges, including that HB 58 violated article III, section 23. *See Jackson County v. State*, 2006 WL 3392066 (*Mo. banc Nov. 21, 2006*). The decision states, however, that the article III, section 23 arguments either reflected a misunderstanding of the law or were not preserved. *Id. at* *3-4.

The remaining two sections were from chapter 137 and 473 and related to annual assessments by county assessors and salaries for county public administrators. *L.F. 1805-06.*

Senate Committee Substitute for SB 210 (“SCS for SB 210”) which was reported to the Senate on February 14, 2005, changed SB 210. *L.F. 1806 (citing exhibits at L.F. 1566 and 1570).* Only three of the sections which were in SB 210 remained in SCS for SB 210. *L.F. 1806.* The title of SCS for SB 210 continued to recite that it was a bill “relating to county government.” *L.F. 1806.*

On March 1, 2005, SCS for SB 210 was taken up on the floor of the Senate and Senate Substitute for Senate Committee Substitute for SB 210 was offered and adopted (“SS for SCS for SB 210”) which further changed SB 210 from its original version. The title of SS for SCS for SB 210 is recited in the Journal of the Senate for that day as one “relating to county government.” *L.F. 1806 (citing printed page 316 of exhibit at L.F. 1590).* Twelve floor amendments to SS for SCS for SB 210 were then adopted. *L.F. 1806.* Five of the amendments related to sections that were already in SS for SCS for SB 210 (Senate Amendments 1, 2, 4, 5, and 12), and six of the amendments related to counties, county officials or county activities (Senate Amendments 3, 7, 8, 9, 10, and 11). *L.F. 1806 (citing exhibit at L.F. 1590).* The remaining amendment, Senate Amendment 4, amended section 64.940 relating to the Authority. *L.F. 1806 (citing printed pages 318-20 of exhibit at L.F. 1590).* As perfected by the Senate on March 1, 2005, the title for SS for SCS for SB 210 continued to be one “relating to county government.” *L.F. 1806-07 (citing exhibit at L.F. 1603).*

On April 20, 2005, House Committee Substitute for Senate Substitute for Senate Committee Substitute for HB 210 (“HCS for SS for SCS for SB 210”) was reported to the House. *L.F. 1806-07 (citing exhibit at L.F. 1648)*. At this time, the title of the Bill was changed from “relating to *county government*” to “enacting ninety-seven new sections relating to *political subdivisions*.” *L.F. 1807 (citing page 2 of exhibit at L.F. 1648) (emphasis added)*.

The activity history for SB 210 reflects that no fewer than 29 floor amendments to HCS for SS for SCS for SB 210 were adopted on May 2, 2005. *L.F. 1807 (citing page 2 of exhibit at L.F. 1566)*. This activity is also reflected in the Journal of the House for May 2. *L.F. 1807 (citing printed pages 1352-90 of exhibit at L.F. 1747)*.

On May 13, 2005, the CCS for HCS for SS for SCS for SB 210 was adopted by the House and Senate. *L.F. 1807*. At this time, SB 210 was an act to repeal and enact 104 new sections “relating to political subdivisions.” *L.F. 1807*. In its final form, SB 210 includes legislation related to topics including: civil defense; municipal housing; convalescent, nursing, and boarding homes; levee districts; insects, pests, and weeds; and pornography and related offenses. *L.F. 1807*. In its final form, SB 210 affects chapters: 44, 50, 52, 54, 55, 56, 59, 64, 65, 67, 89, 94, 100, 110, 115, 136, 137, 139, 140, 165, 190, 205, 210, 233, 242, 245, 250, 263, 301, 321, 473, 483, 488, 545, 573. *L.F. 1807*.

POINTS RELIED ON

In response to Appellants' Point I(1), (3) and Point II(1), (3):

I.

The trial court did not err in concluding that section 64.940 should be set aside because House Bill 58 and Senate Bill 210 violated article III, section 21 of the Missouri Constitution in that section 64.940 was not germane to the original purpose of House Bill 58 or Senate Bill 210.

Mo. Const. art. III, sec. 21

Nat'l Solid Waste Mgmt. Ass'n v. Dir. Dep't of Natural Res., 964 S.W.2d 818 (Mo. banc 1998)

Allied Mut. Ins. Co. v. Bell, 185 S.W.2d 4 (Mo. 1945)

In response to Appellants' Point I(2) and Point II(2):

II.

The trial court did not err in concluding that section 64.940 should be set aside because House Bill 58 and Senate Bill 210 violated article III, section 23 of the Missouri Constitution in that the title of House Bill 58 and Senate Bill 210—"relating to political subdivisions"—was so amorphous as to constitute an unclear title and failed to meaningfully express the bills' respective subjects.

Mo. Const. art. III, sec. 21

Home Builders Ass'n of Greater St. Louis v. State, 75 S.W.3d 267 (Mo. banc 2002)

St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. banc 1998)

Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956 (Mo. banc 1997)

ARGUMENT

Overview

Together, the procedural restrictions in article III, sections 21 and 23 “serve to facilitate orderly legislative procedure. By limiting each bill to a single subject and requiring that amendments not change a bill’s original purpose, the issues presented by each bill can be better grasped and more intelligently discussed.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101 (Mo. banc 1994). In other words, these limitations serve “to keep individual *members of the legislature and the public* fairly apprised of the subject matter of pending laws and to insulate the governor from ‘take-it-or-leave-it’ choices when contemplating the use of the veto power.” *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 326 (Mo. banc 2000) (*emphasis added*). Furthermore, these restrictions are intended to prevent “‘logrolling,’ in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage.” *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325 (Mo. banc 1997).

Standard of Review

The standard of review for constitutional challenges to a statute is *de novo*. Rizzo v. State, 189 S.W.3d 576, 578 (Mo. banc 2006). The Court liberally interprets constitutionally imposed procedural limitations and will uphold the constitutionality of a statute against an attack unless the act clearly and undoubtedly violates the constitution. Akin v. Dir. of Revenue, 934 S.W.2d 295, 301 (Mo. banc 1996).

In response to Appellants’ Point I(1), (3) and Point II(1), (3):

I.

The trial court did not err in concluding that section 64.940 should be set aside because House Bill 58 and Senate Bill 210 violated article III, section 21 of the Missouri Constitution in that section 64.940 was not germane to the original purpose of House Bill 58 or Senate Bill 210.

Article III, section 21 of the Missouri Constitution provides in pertinent part: “No law shall be passed except by bill, and *no bill shall be so amended in its passage through either house as to change its original purpose.*” (*emphasis added*). “Art[icle] III, section 21 was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made.” *Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier*, 681 S.W.2d 925, (Mo. banc 1984) (*rev’d on other grounds*). Instead, it serves to preclude “the introduction of subject matter that is not germane to the object of the legislation or that is unrelated to its original subject. Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if germane.”⁴ *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000).

⁴ The Appellants’ Brief separates the “original purpose” arguments for HB 58 and SB 210 into two components, namely whether the change was “germane” and whether it was within the “core subject” of the bill. *See Appellants’ Brief at 17-18*. Because discussion

“‘Purpose’ is the key word in the provision, and it means the general purpose of the bill, not the mere details through which and by which the purpose is manifested and effectuated.” *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 302 (Mo. banc 1996). “The original purpose of a bill must . . . be measured at the time of the bill’s introduction.” *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). “[T]he effect of the bill as introduced should have some weight in determining its general purpose.” *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 6 (Mo. 1945) (emphasis added).

At first glance, it is unclear what were the initial intended purposes for HB 58 and SB 210. In lieu of active titles evincing that they were acts intended to accomplish anything in particular, their respective titles merely indicated that they were acts “relating to political subdivisions” and “relating to county government.” Cf. *SSM Cardinal Glennon Children’s Hosp. v. State*, 68 S.W.3d 412, 416-17 (Mo. banc 2002) (evaluating constitutionality of bill titled “relating to professional licensing”). Thus, their titles lend no insight into divining their distinct original purposes.

of the latter component, or the “core subject,” merely provides a means to examine the germaneness of a challenged provision, it is not necessary to replicate herein the separation of arguments. See *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994) (test for determining whether bill violates single subject requirement “has remained virtually the same since 1869”; test is whether the matter is “germane, connected and congruous”; subject “includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation”).

Nonetheless, after discerning the potential effects of the original bills, the respective legislative histories for the voluminous HB 58 and SB 210 evidence the deviation from their original purposes. *See State ex rel. Karbe v. Bader*, 78 S.W.2d 835, 838 (Mo. 1934) (resort to legislative history “show[ed] pertinent facts with respect to the two bills . . . under scrutiny”). “In Missouri, legislative journals are not only admissible in evidence but the courts may judicially notice the history of legislation as reflected by the record thereof in the legislative journals.” *Brown v. Morris*, 290 S.W.2d 160, 167-68 (Mo. banc 1956); *see Karbe*, 78 S.W.2d at 838.

The legislative histories for HB 58 and SB 210 respectively evidence periods of inordinate activity on different dates. In particular, both bills experienced an extreme amount of activity on particular dates in March and May 2005.

For example, the activity history for HB 58 displays the inordinate amount of activity that occurred on March 14-15 and then on May 3 and 5, 2005. HCS for HB 58 was taken up on the floor of the House of Representatives on March 14, 2005, with continued consideration on March 15, 2005. *L.F. 1803 (citing exhibits at L.F. 1369, 1373, and 1391)*. During that consideration 12 floor amendments were added to HCS for HB 58. *L.F. 1803 (citing exhibit at L.F. 1410)*. With that action the number of new sections increased from the original seven sections to 44 sections. *L.F. 1803 (citing exhibit at L.F. 1410)*. On May 3, 2005, SS for SCS for HCS for HB 58 was offered that modified SCS for HCS for HB 58. *L.F. 1804 (citing exhibits at L.F. 1369, 1456, 441, and 672)*. SS for SCS for HCS for HB 58 was then immediately considered and amendments were presented. *L.F.1804 (citing printed pages 921-74 of exhibit at L.F.*

1456). The Journal of the Senate reflects that at least 35 amendments on diverse subjects were adopted, including Senate Amendment 12 amending section 64.940 to add a new subsection 3. *L.F. 1804 (citing printed pages 949-51 of exhibit at L.F. 1456).*

Similarly, the journal for SB 210 shows an overabundance of activity on March 1 and then hyperactivity on May 2, 2005. On March 1, 2005, SCS for SB 210 was taken up on the floor of the Senate and SS for SCS for SB 210 was offered and adopted, which further changed SB 210 from its original version. The title of SS for SCS for SB 210 is recited in the Journal of the Senate for that day as one “relating to county government.” *L.F. 1806 (citing printed page 316 of exhibit at L.F. 1590).* Twelve floor amendments to SS for SCS for SB 210 were then adopted. *L.F. 1806.* Five of the amendments related to sections that were already in SS for SCS for SB 210 (Senate Amendments 1, 2, 4, 5, and 12), and six of the amendments related to counties, county officials or county activities (Senate Amendments 3, 7, 8, 9, 10, and 11). *L.F. 1806 (citing exhibit at L.F. 1590).* The remaining amendment, Senate Amendment 4, amended section 64.940 relating to the Authority. *L.F. 1806 (citing printed pages 318-20 of exhibit at L.F. 1590).* Continuing the trend, the activity history for SB 210 reflects that no fewer than 29 floor amendments to HCS for SS for SCS for SB 210 were adopted on May 2, 2005. *L.F. 1807 (citing page 2 of exhibit at L.F. 1566).* This activity is also reflected in the Journal of the House for May 2. *L.F. 1807 (citing printed pages 1352-90 of exhibit at L.F. 1747).*

Notably, despite the facts that these journals are admissible in evidence and that courts may judicially notice the history of legislation as reflected by the legislative

journals, the Appellants' Brief omitted any discussion of the respective legislative histories for HB 58 or SB 210.

Certainly, a certain amount of legislative activity on a bill reflects the democratic process at work. A flurry or frenzy of activity, however, evidences that the legislators and their constituents who would be affected by the pending legislation were unable to ascertain exactly what was at stake in the pending legislation or to provide any input into the provisions of these gargantuan bills that would affect them. *See Nat'l Solid Waste Mgmt. Ass'n v. Dir. Dep't of Natural Res.*, 964 S.W.2d 818, 819-20 (Mo. banc 1998) (amendment to end of 31-page bill two days before end of session “[w]ithout question” indicated circumstance as to which article III, sections 21 and 23 were addressed; it was a “last-minute amendment about which even the most wary legislators could hardly have given their considered attention and about which concerned citizens likely had no input”); *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325 (Mo. banc 1997) (constitutional prohibitions intend to protect against legislative logrolling). A review of the various amendments to HB 58 and SB 210 and their contents reveals that many logs were rolling in March and May 2005.

A. House Bill 58

The title to HB 58 as truly agreed and finally passed indicates that its purpose is to repeal certain sections of the Revised Statutes of Missouri and to enact 165 new sections “relating to political subdivisions, with penalty provisions.” As first read on January 5, 2005, HB 58 was an act to repeal and enact seven sections “relating to political subdivisions, with penalty provisions.”

On March 15, 2005, the HCS for HB 58 was adopted by the House. At this time, HB 58 was an act to repeal and enact 44 new sections “relating to political subdivisions, with an emergency clause for a certain section.” On May 3, 2005, the Senate adopted the SS for SCS for HCS for HB 58, which provided for the repeal and enactment of 119 sections.

On May 13, 2005, the CCS for SCS for HCS for HB 58 was adopted by the House and Senate. It was approved by the governor on July 7, 2005. As approved, it is an act to repeal and enact 165 new sections “relating to political subdivisions, with penalty provisions.”

At the time of its first reading in January 2005, HB 58 included seven sections that all legitimately addressed political subdivisions. Six of the original seven sections were from chapter 50, titled “County Finances, Budget and Retirement Systems.” The remaining section was from chapter 250, “Sewerage Systems and Waterworks—City or District.”

In contrast, by the time it was enacted, HB 58 included legislation related to a myriad of topics. For example, the range of topics includes: industrial development; tax

relief; assessment and levy of property taxes; sports authorities; convalescent, nursing, and boarding homes; insects, pests, and weeds; liquor control; lost and unclaimed property; and water pollution. HB 58 affects chapters: 44, 49, 50, 54, 55, 59, 64, 65, 67, 71, 79, 82, 94, 99, 100, 105, 115, 135, 136, 137, 138, 139, 140, 165, 190, 205, 210, 215, 217, 231, 233, 242, 245, 246, 247, 249, 250, 263, 278, 301, 311, 313, 320, 321, 349, 393, 447, 473, 478, 488, 537, 559, 644, 701.

“It would seem that the effect of the bill as introduced should have some weight in determining its general purpose.” *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 6 (Mo. 1945). In its original form, the sole effects of HB 58 would have been tighter controls on county expenditures, *see secs. 50.760-.780, .800-.815*, and an improved ability for water supply districts to recover for past due amounts. *See sec. 250.140*. In contrast, the numerous topics resulted in HB 58 affecting everything from allowing the issuance of liquor licenses in special entertainment districts, *see sec. 311.0987*, to limiting candidates’ eligibility for elective public office, *see sec. 115.348*, to extending landowners’ duties for controlling brush, *see sec. 263.245*. Indeed, the effects of the bill as introduced and as enacted differ. *See Bell*, 185 S.W.2d at 6.

Several examples of sections affected by HB 58 in its final form further evidence that the transmutation of HB 58 from its first reading until its approval by the governor extended beyond what was “germane.” *See Akin v. Dir. of Revenue*, 934 S.W.2d 295, 302 (Mo. banc 1996) (constitution prohibits “the introduction of matters not germane to the object of the legislation or unrelated to its original subject”). This appeal, however, particularly concerns section 64.940.

Section 64.920, RSMo 2000, allows for the creation of an independent entity known as an authority. The commissioners of an authority are expressly prohibited from being “elective or appointed official[s] of any political subdivision of the state of Missouri.” *Sec. 64.930.1, RSMo. Supp. 2005*. The commissioners are appointed by the governor upon the advice and consent of the senate and determine their own compensation with a cap provided by the legislature. *Sec. 64.930.1, .5, RSMo. Supp. 2005*. The authority presents its annual financial report directly to the governor. *Sec. 64.950.2, RSMo 2000*. The expenditures of an authority are completely separate and distinct from those of any county. *Waris v. Carnes, 760 S.W.2d 573, 577 (1988)*. “As such, [an authority] is not a county board or commission and its commissioners are not county officers.” *Id.* To extend the purpose of HB 58 from affecting county expenditures to include an authority distorts and exceeds the original purpose of the bill.

In addition, these statutes that were contained in HB 58 are unrelated to political subdivisions and demonstrate that HB 58 should be stricken:

- section 105.711 creates a “State Legal Expense Fund”;
- section 135.010 provides definitions for state tax relief;
- section 137.078 establishes state standards for calculating taxes;
- section 447.622 pertains to petitions by organizations for abandoned property, in which “organization” is defined as “any Missouri not-for-profit organization validly organized pursuant to law . . . whose purpose includes the provision or enhancement of housing opportunities”; and

- section 447.640 allows for a quitclaim deed to be granted if any owner fails to take action to regain possession of abandoned property during the redemption period.

These additions extend beyond those “necessary to comply with the legislative intent.” *Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier*, 681 S.W.2d 925, (Mo. banc 1984) (rev’d on other grounds). As the trial court found, the additions by substitutes and amendments to HB 58 “changed its original purpose” and rendered it constitutionally infirm for violating article III, section 21. *L.F. 1805*.

B. Senate Bill 210

The title to SB 210 as truly agreed and finally passed indicates that its purpose is to repeal certain sections of the Revised Statutes of Missouri and to enact 104 new sections “relating to political subdivisions.” As first read on January 20, 2005, SB 210 was an act to repeal and enact 16 sections “relating to county government.” On March 1, 2005, the SS for SCS for SB 210 was adopted by the Senate, at which time SB 210 was an act to repeal and enact 27 new sections relating to county government.

On April 20, 2005, the HCS for SS for SCS for SB 210 was referred to the Rules Committee pursuant to Rule 25(26)(f). At this time, the title for SB 210 was changed from “relating to counties” to “relating to political subdivisions.”

On May 13, 2005, the CCS for HCS for SS for SCS for SB 210 was adopted by the House and Senate. It was later signed into law by Governor Matt Blunt on July 7, 2005. As signed, it is an act to repeal and enact 104 new sections “relating to political subdivisions.”

At the time of its first reading in January 2005, SB 210 included 16 sections that all addressed county government. All but two of the sections were from Title VI of the Revised Statutes of Missouri, “County Township and Political Subdivision Government.” The other two sections were from chapters 137 and 473 and, respectively, related to annual assessments by county assessors and salaries for county public administrators.

In contrast, by the time it was enacted, SB 210 included legislation related to an abundance of topics. For example, the range of topics includes: civil defense; municipal housing; convalescent, nursing, and boarding homes; levee districts; insects, pests, and weeds; and pornography and related offenses. SB 210 affects chapters: 44, 50, 52, 54, 55, 56, 59, 64, 65, 67, 89, 94, 100, 110, 115, 136, 137, 139, 140, 165, 190, 205, 210, 233, 242, 245, 250, 263, 301, 321, 473, 483, 488, 545, 573.

“It would seem that the effect of the bill as introduced should have some weight in determining its general purpose.” *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 6 (Mo. 1945). In its original form, the sole effects of SB 210 would have been to augment the salaries of county officials and employees, see secs. 49.082, 50.334, 50.343, 51.281, 52.269, 52.271, 53.082, 54.320, 55.091, 56.265, to permit communities to establish costs for computer software providing access to information aggregated with geographic information system information, see sec. 67.1850, to modify county assessors’ opt-out eligibility and inspections for unlisted property, see secs. 137.115, 137.130, and to increase county public administrators’ salaries, see sec. 4743.742.

In contrast, the numerous topics resulted in SB 210 affecting everything from the sale of properties with unpaid taxes or assessments, see sec. 140.150, to regulating rent in

nursing home districts, *see sec. 198.345*, to extending landowners' duties for controlling brush, *see sec. 263.245*, to amending documentation required to obtain a state motor vehicle operator's license, *see sec. 301.025*. Indeed, the effects of the bill as introduced and as enacted differ. *See Bell, 185 S.W.2d at 6.*

Several examples of sections affected by SB 210 in its final form further evidence that the transformation of SB 210 from its first reading until it was signed by the governor exceeded what was "germane." *See Akin v. Dir. of Revenue, 934 S.W.2d 295, 302 (Mo. banc 1996) (constitution prohibits "the introduction of matters not germane to the object of the legislation or unrelated to its original subject")*. As stated previously, this appeal particularly concerns section 64.940.

Again, section 64.920, RSMo 2000, allows for the creation of an independent entity known as an authority. The commissioners of an authority are expressly prohibited from being "elective or appointed official[s] of any political subdivision of the state of Missouri." *Sec. 64.930.1, RSMo Supp. 2005*. The commissioners are appointed by the governor upon the advice and consent of the senate, and they determine their own compensation with a cap provided by the legislature. *Sec. 64.930.1, .5, RSMo Supp. 2005*. The authority presents its annual financial report directly to the governor. *Sec. 64.950.2, RSMo 2000*. The expenditures of an authority are completely separate and distinct from those of any county. *Waris v. Carnes, 760 S.W.2d 573, 577 (1988)*. "As such, [an authority] is not a county board or commission and its commissioners are not county officers." *Id.* To extend the purpose of SB 210 from affecting county expenditures to include an authority distorts and exceeds the original purpose of the bill.

These statutes are unrelated to political subdivisions and further demonstrate that HB 58 should be stricken: section 137.078 establishes state standards for calculating taxes; section 483.537 requires state court clerks to account for passport application fees; and section 488.426 provides an expiration date for surcharges charged in circuit courts.

These additions extend beyond those “necessary to comply with the legislative intent.” *Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier*, 681 S.W.2d 925, (Mo. banc 1984) (*rev’d on other grounds*). As the trial court found, the amendments to SB 210 also “changed its original purpose” and rendered it constitutionally infirm for violating article III, section 21. *L.F. 1808*.

In response to Appellants’ Point I(2) and II(2):

II.

The trial court did not err in concluding that section 64.940 should be set aside because House Bill 58 and Senate Bill 210 violated article III, section 23 of the Missouri Constitution in that the title of House Bill 58 and Senate Bill 210–“relating to political subdivisions”–was so amorphous as to constitute an unclear title and failed to meaningfully express the bills’ respective subjects.

Section 23 provides: “No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” *Mo. Const. art. III, sec. 23*. Thus, the constitutional restrictions in article III, section 23 are twofold: a bill cannot contain “more than one subject,” and that subject “shall be clearly expressed in its title.” “[T]itles that are so broad and amorphous as to violate the ‘clear title’ provision . . . will also often violate the ‘single subject’ provision.” *Home Builders Ass’n of Greater St. Louis v. State*, 75 S.W.3d 267, 270 (Mo. banc 2002) (successful clear title challenge to “relating to property ownership”); see *Carmack v. Dir., Mo. Dep’t of Agric.*, 945 S.W.2d 956, 960 (Mo. banc 1997) (holding words “economic development” too broad and amorphous to describe with adequate precision to provide notice of bill’s contents when plaintiff challenged on “single subject” versus “clear title” provision).

“The determination of whether a bill violates the article III, section 23 single subject requirement is made concerning the bill as it is finally passed.” C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 328-29 (Mo. banc 2000).” Courts “look first to the title of the bill to determine its subject.” Id. at 329.

“The single subject limitation requires the *contents* of the bill, not the entities affected by the bill, fairly relate to the subject expressed in the title of the act.” SSM Cardinal Glennon Children’s Hosp., 68 S.W.3d 412, 417 (Mo. banc 2002) (quotation omitted). “The dispositive question in determining whether a bill contains more than one subject is ‘whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith, or are incidents or means to accomplish its purpose.’” Akin v. Dir. of Revenue, 934 S.W.2d 295, 301 (Mo. banc 1996) (quoting Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. banc 1994)). “This test does not concern the relationship between individual provisions, but between the individual provision and the subject as expressed in the title.” C.C. Dillon Co., 12 S.W.3d at 328.

“A title may be constitutionally unclear in two ways: the subject may be too broad and amorphous *or* so restrictive and underinclusive that some provisions fall outside it.” Mo. State Med. Ass’n v. Mo. Dep’t of Health, 39 S.W.3d 837, 841 (Mo. banc 2001). An over- or underinclusive title “fails in its purpose to apprise legislators and the public of the subject matter of pending laws.” McEuen v. Mo. State Bd. of Educ., 120 S.W.3d 207, 210-11 (Mo. banc 2003). “In order to survive a clear title challenge, a bill’s title need not give specific details of a bill, but need indicate only generally what the act contains. The

title cannot, however, be so general that it tends to obscure the contents of the act.” St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. banc 1998).

As used in the titles of HB 58 and SB 210, the term “political subdivisions” is so amorphous as to render those titles in violation of both the single subject and clear title provisions of article III, section 23. As a general matter, it cannot be said that the title “relating to political subdivisions” is any narrower than “relating to property ownership” or “relating to economic development.” See Home Builders Ass’n of Greater St. Louis v. State, 75 S.W.3d at (title “relating to property ownership” held “so amorphous as to violate the clear title provisions”); Carmack, 945 S.W.2d at 960 (holding that “the words ‘economic development’ are too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents”). Furthermore, had the titles to HB 58 and SB 210 included the counterpart to “political subdivisions,” namely “the state,” the title would be so amorphous as to render it unclear and it would embrace more than one subject. See L.F. 1809. In lieu of solely stating “relating to the state,” the title would need some sort of qualifier, for example, “relating to state highways” or “relating to state universities or colleges.” Thus, it follows that the title “relating to political subdivisions” is overly expansive and in need of clarification.

Reference to the Revised Statutes of Missouri further demonstrates the indeterminate nature of the term “political subdivision.” The term is defined differently

in no fewer than 15 statutes.⁵ While not an exhaustive list, these sections accordingly define “political subdivision”:

- section 44.010(14): “any county or city, town or village, or any fire district created by law”;
- section 67.1830: “a city, town, village, county of the first classification or county of the second classification”;
- section 70.120(3): “any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied”;
- section 70.600(19): “ any governmental subdivision of this state created pursuant to the laws of this state, and having the power to tax except school districts; a board of utilities or public works . . . ; a joint municipal utility commission . . . ;
- section 105.145.1(2): “any agency or unit of this state, except counties and school districts, which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied”;

⁵ Article X, section 15 defines “other political subdivision” as follows: “townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.” *See, e.g. art. X, sec. 10(a)* (“*Except as provided in this constitution, the general assembly shall not impose taxes upon counties or other political subdivisions*”). Application of the definition is expressly restricted to Article X. *Art. X, sec. 15.*

- section 105.300(8): “any county, township, municipal corporation, school district, or other governmental entity of equivalent rank.”

Although the Appellants’ Brief argues that the definition of “political subdivision” is relatively clear, it is worth noting that none of the definitions from the Revised Statutes of Missouri that it cites on pages 32-37 of its Brief includes the Authority. It is not clear, then, how the public could be alerted to the contents of a particular bill by the bare recitation of the term “political subdivisions.”

The Appellants’ Brief cites at page 32 to Black’s Law Dictionary in support of its argument that the term “political subdivisions” is not amorphous. While it is the Authority’s position that the question of whether the legislation at issue contains more than one subject and whether that subject is clearly expressed in the title should be determined by Missouri law and what its citizenry and legislature believe based on that law, it is nonetheless worth noting that the definition quoted in the Appellants’ Brief from Black’s Law Dictionary does not include the Authority insofar as the Authority is not an entity that has been created “for purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public.” *Respondent’s Brief at 32 (quoting Black’s Law Dictionary 803 (6th ed. 1991))*.

Nothing in either HB 58 or SB 210 established that its title was limited to any particular definition of political subdivision. *See St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo. banc 1998) (bill’s title did not establish definition of term “entity” as used therein). Furthermore, the definition of “political subdivision” as used

in HB 58 at section 115.013(19) (“Political subdivision,’ a county, city, town, village, or township of a township organization county”) does not include the Authority. Because of the varying definitions of “political subdivisions,” the titles to HB 58 and SB 210 including that term alone were insufficient to notify legislators or the general public what was at stake, thereby violating article III, section 23.

The term “political subdivisions” is too amorphous to constitute a clear title or identify a single purpose. The title “relating to political subdivisions” did not fairly alert the legislature or the public that HB 58 and SB 210 would affect the multitude of sections they did or that they would include legislation directly affecting the Authority. Adequate notice to the legislature and the public of the contents of HB 58 and SB 210 would have permitted informed debate about the enactment of the amended section 64.940.3 with its competitive bidding requirement for professional services when this Court has held in the past that such services were exempt from the statutory requirement that they be competitively bid. *Hellman v. St. Louis County*, 302 S.W.2d 911, 919 (Mo. 1957). “The requirement of competitive bidding is always subject to the qualification that the contract must be naturally competitive. A contract for professional services does not for that reason come within the requirements of such a statute.” *Id.* at 918. Requiring competitive bidding for professional services contracts would require the subject entity “to accept the services of incompetent persons” thereby failing to protect the public and defeating the purpose of the statute. *See id.*

The Appellants’ Brief makes much ado about the fact that this Court’s severability analysis in *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. banc 2006), determined that HB 58

“is legislation relating to political subdivisions.” *Id.* The context of this statement, however, reveals that it is not conclusive of the arguments before the Court in the instant case.

Rizzo dealt with whether the inclusion of section 115.348, RSMo Supp. 2005, as part of HB 58 violated article III, section 23 of the Missouri Constitution insofar as section 115.348 prohibited federal criminals from running for any elective office *in Missouri* whereas HB 58 purported only to relate to “political subdivisions.” *Rizzo*, 189 S.W.3d at 579. Without analyzing the relationship of any other section in HB 58 to its title or examining whether its title was amorphous in violation of article III, section 23, the Court concluded that section 115.348 was severable from the remainder of HB 58 in that section 115.348 clearly did not relate to political subdivisions. *Id.* at 581; *see id.* at 580, n.5 (Court expressly did not determine whether HB 58’s title was “so amorphous as to prevent th[e] Court from ascertaining its subject” and instead determined that HB 58’s subject did not relate to “statewide entities or activities”). Therefore, the *Rizzo* holding is inapposite to the Authority’s article III, section 23 arguments.

Although the Appellants’ Brief incorrectly states at page 38 that “the circuit court did not address the Authority’s single-subject challenge,” the trial court’s judgment found that “relating to political subdivisions” violated both the clear title *and* single purpose provisions in article III, section 23. *See L.F. 1808-09*. Because of the nebulous titles of HB 58 and SB 210, it is difficult to ascertain exactly what were their intended purposes. To the extent there is any connection between the disparate contents in relation to the titles of HB 58 and SB 210, “it is simply too extended and too tenuous to keep legislators

or members of the general public fairly apprised of [their] contents.” *SSM Cardinal Glennon Children’s Hosp.*, 68 S.W.3d 412, 417 (Mo. banc 2002). As the trial court found, the titles of HB 58 and SB 210 violate the clear title and single subject restrictions in article III, section 23.

CONCLUSION

The judgment of the trial court striking section 64.940 as enacted in House Bill 58 and Senate Bill 210 for violating article III, section 21 and section 23 should be affirmed and costs should be awarded to Respondent Jackson County Sports Complex Authority.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b), (c), and (g)

The undersigned certifies:

1. That this Brief complies with Rule 84.06(g) of this Court; and
That this Brief contains 8,226 words according to the word count feature of Microsoft Word Version 2002 SP3 software with which it was prepared.
 2. That the disk accompanying this Brief has been scanned for viruses, and to the best of his knowledge are virus-free.
 3. That this Brief meets the standards set out in Mo. Civil Rule 55.03.
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate printed copy and a diskette copy of the foregoing was served by hand delivery this 20th day of December, 2006, to:

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