



# Prestige + Powers

## *Strategic Government Relations*

### **The Powers Report**

*A Weekly Summary of Activities in Jefferson City*

The Powers Report is produced by Prestige Powers, a strategic government relations firm.

[www.PrestigePowers.com](http://www.PrestigePowers.com)

February 26, 2010

#### **DNR “has become a department in chaos”**

That’s just one of the many bruising conclusions in a draft report put together by the chairman of the Senate Commerce Committee regarding the Department of Natural Resources and its handling of the E. coli situation at the Lake of the Ozarks last summer. The draft report says the committee’s investigation found DNR failed to act after test results showed E. coli levels “outrageously high...needlessly endangering the health and safety of Missouri’s citizens and visitors.”

“It is concerning that a department with such a critical mission is failing the taxpayers of this state,” the draft report says. “Either the Director lacks the ability to lead the department...or Governor Nixon has failed to provide direction. In either instance, Missourians are the ones paying the price.”

The full draft report is available here: <http://bit.ly/cz1HgO>.

On May 26<sup>th</sup> of last year, the first regular water testing of the year was conducted at the Lake of the Ozarks. 31 of the 56 samples were above the EPA single sample maximum (SSM). Two of the coves tested had readings “more than ten times the allowable amount.” Despite this, the results were not released to the public until a month later, and the particular coves were not re-tested until July. Also, on May 18<sup>th</sup> of last year, DNR testing found E. coli levels five times the SSM at Public Beach #1 at Lake of the Ozarks State Park. Despite a long policy of closing the public beaches when high E. coli levels were found, DNR did NOT close the beach the following weekend, which was Memorial Day.

The *Kansas City Star* broke the story on July 16<sup>th</sup>. Eleven days later, the Senate Commerce Committee was directed to investigate what happened and what needs to be done to keep it from happening again.

According to the draft report, that’s when DNR began “a conscious effort to mislead” through “a series of executive level created impediments.” In other words, the draft report alleges there was an attempted cover-up by DNR.

The draft report points out that while the DNR general counsel was engaged “in a clear effort to obstruct interviews of state employees” and demanding that an attorney be present at all times, the *Kansas City Star* was given an exclusive interview with former deputy director Joe Bindbeutel with no attorney present. That’s the interview where Bindbeutel took responsibility for the withholding of the E. coli testing results from the public. That interview, the draft report emphasizes, was arranged not by DNR, but by the press secretary of the Governor.

The draft report also says the DNR general counsel specifically requested that the 500,000 e-mail documents sent to the Commerce Committee be in an unsearchable format, and that some 5,000 requested e-mail messages were withheld.

The draft report also declares that “E. coli in the Lake of the Ozarks did make people sick.” Some of the reviewed e-mail messages were from people who got sick or knew of others who got sick after swimming in the lake. The draft report says, “Undoubtedly there may have been more people from around the state, and possibly the country, who visited the Lake of the Ozarks...and became ill...but did not know the cause so that they could report it or seek appropriate treatment.”

The draft report concludes DNR “violated the public trust...while putting the public health and safety of Missouri’s citizens and visitors at risk.” It was, quite simply, “a complete failure” by DNR.

So now what? The draft report makes a number of recommendations, including:

- Moving the E. coli testing from DNR to the Department of Health, and require the publication of testing results within 48 hours “regardless of the implications or circumstances.”
- Require the adoption of a plumbing code for all residential and commercial buildings in counties with a “water of the state.” No more “straight-piping” sewage into the lake, which Bindbeutel claimed was happening.
- Merge DNR’s Environmental Services Program into the Department of Health to ensure “greater communication of potentially dangerous environmental issues.”
- Affirm the state’s responsibility to comply with both the letter and spirit of the Sunshine Law. Every request for information, regardless of form, must be treated as a Sunshine Law request.
- “Serious and substantive personnel changes are needed at DNR” that only the Governor can make.
- Establish adequate fee levels to ensure a workable clean water program.

The committee chairman, Sen. Brad Lager (R-Savannah), has filed legislation to move the E. coli testing to the Department of Health. “We’ll just move it to a department that can be responsible,” he said.

DNR is no doubt talking about the draft report internally, but so far, not publicly. “It would be improper for us to comment on a report we haven’t read,” noted DNR spokesman Judd Slivka.

A couple of the Democrats on the Senate Commerce Committee are not real happy the draft report was released before they had an opportunity to submit comments or suggested changes.

“To release a report before we all sign it is a little political and a little less-than-sincere as public policy,” observed Sen. Tim Green (D-St. Louis).

Sen. Joan Bray (D-University City), who once likened the committee’s investigation to a “witch hunt,” said, “There’s some stuff in there I don’t agree with.”

The official report will be released next week, and will likely include comments from the Democrats, or maybe even a dissenting report.

### **We’re told the state’s budget numbers keep going from bad to worse**

Next week we’ll get the February revenue collections for the state of Missouri. But budget director Linda Luebbering has already taken a peek behind the curtain, and it’s ugly.

Simply put, state revenues haven’t declined like this since the Great Depression. January collections were down 22.4% from a year earlier, and Luebbering says February’s numbers “appear to be worse.”

She said talks are already underway to revise the consensus revenue estimate – the number budget writers use to “balance” the budget. FY11 revenue growth was predicted to be 3.6% -- albeit growth from a lower number. Now it looks like that number will shrink to 2.6%.

Already this year, \$700 million has been cut from this year’s budget. Luebbering says the budget could be \$800 million out of balance by 2012.

The only real option, it appears, is for government to shrink.

“There are programs we simply can no longer afford,” Luebbering said.

As bad as things are in the current budget, and as tough as things look for FY11, those in the know are describing FY 12 as an absolute train wreck because the federal funds being used to balance things now will disappear. What then?

“Let me get through this year first,” pleaded House Speaker Ron Richard (R-Joplin). “One train wreck at a time.”

### **But the Health Information Exchange is moving forward**

The feds have announced a \$13.8 million stimulus grant to Missouri to help the state create an electronic network where medical records can be securely updated and accessed by medical providers.

It’s all under the leadership of the Department of Social Services and the Missouri Office of Health Information Technology. The state’s operation plan needs to be submitted to the feds by the end of May and could be up and operating by next year.

“There’s an opportunity here over time to improve quality and reduce cost,” noted DSS director Ron Levy.

Not to mention this benefit: not having to fill out so many annoying forms at the doctor’s office.

### **Senate ethics bill advances**

Last week, the Senate was hopelessly tangled up in a web of debate over a so-called “cooling off period” before a former legislator could become a lobbyist or take a job offered by the governor. This week, Sen. Charlie Shields (R-St. Joseph) found a way to untangle the web.

Shields offered a new version of his ethics bill, SB 577, with a tightly worded title: “...relating to Missouri ethics commission oversight over public officials while serving in and running for office...”

Suddenly, all those amendments dealing with what a legislator might do *after* leaving office were out of order. But he also had to jettison some things that were in the original senate substitute. These items are gone:

- Barring legislators from contracting with each other for political consulting
- Expanded definition of a legislative lobbyist
- Requiring legislative staff to file financial disclosure statements
- Capping term extensions for ethics commission members to 120 days

During debate, amendments were offered to reinstate campaign contribution limits. In each case, the amendments failed. Clearly, as a body, the Senate has no appetite for contribution limits.

Here’s what SS#2 SCS SB 577 does:

- Requires complaints filed with the Ethics Commission to be signed and notarized, and allege facts that, if true, would fall within the commission’s jurisdiction.
- Requires the executive director of the Ethics Commission to launch an independent investigation upon the unanimous vote of the commission to do so and there are reasonable grounds to believe that a violation has occurred.

- Requires all investigations to be “strictly confidential.” Revealing information “shall be cause for removal or dismissal.”
- Bars committee-to-committee fund transfers, except from a committee to a candidate committee, or from a candidate committee to a continuing committee, unless the intent is to “conceal the identity of the actual source of the funds.”
- Requires legislators and legislative candidates to electronically report all contributions exceeding \$250 within 48 hours if received during the legislative session. The same requirement applies to statewide officeholders and candidates for statewide office, except the requirement extends to the entire time legislation is awaiting gubernatorial action (normally July 14).

SB 577 will likely be voted out of the Senate next week. The House ethics committee is still working on its bill.

Meanwhile, Indiana is poised to pass a sweeping ethics reform measure that would bar lawmakers from becoming lobbyists for one year after their terms expire. According to the National Conference of State Legislatures, 30 states currently have laws requiring some type of “cooling off period.”

Sen. Jason Crowell (R-Cape Girardeau), who had the Senate tied up over his amendment for a two-year cooling off period, took the Shields strategy with good humor, but said to reporters, “Obviously, no one wants to vote on whether they can be a lobbyist.”

Shields said, “I don’t think this debate that evolved into what legislators can and can’t do after their career was particularly helpful.”

### **The Supreme Court of the *Kansas City Star***

The *Kansas City Star* ran a front page story this week, pointing out that “A 2006 law requiring lobbyists to receive permission before they can treat Missouri lawmakers to out-of-state junkets is widely being ignored.”

The story goes on to say, “The law in question requires lobbyists to receive approval from the House Administration and Accounts Committee, or the Senate Administration Committee, before taking lawmakers on trips outside Missouri.”

Later, the story says, “Under the law, responsibility for compliance falls on the lobbyists...” None of these interpretations of the law are attributed to anyone.

We think the *Star* interpretation is questionable. Here’s the law, 105.473(4): “No expenditure shall be made on behalf of a state senator or state representative, or such public official’s staff, employees, spouse, or dependent children for travel or lodging outside the state of Missouri unless such travel or lodging was approved prior to the date of the expenditure by the administration and accounts committee of the house or the administration committee of the senate.”

Here’s the problem: neither committee has any authority over registered lobbyists or their expenditures. The committees have direct authority over certain actions of legislators. Any permission granted by the committees would be for the legislator to accept the expenditure, not permission for the lobbyist to make the expenditure. The law hasn’t been tested in court, so who knows which interpretation is correct, but here’s our take on it: It’s up to the legislator to seek advance permission from the appropriate committee, and it’s up to the lobbyist to make sure the permission was received, preferably in writing, before making the expenditure.

### **Fewer than a hundred bills filed this week**

Here are the high points:

- HB 2214 establishes the “Every Child Can Learn Act,” requiring St. Louis-area schools to develop personalized learning plans for slow readers, and to forbid passing kids out of the third grade if they can’t read at the third grade level.
  - HB 2215 phases out the sales tax on food and replaces it with higher taxes on booze.
  - HB 2214 creates the Missouri Farmland Trust to help beginning farmers.
  - HB 2227 institutes collective bargaining for public employees.
  - HB 2247 requires police to try and contact the owner of an abandoned vehicle before hauling it off.
  - HB 2249 requires legislators to disclose to constituents whether the member’s office is wheelchair accessible.
  - HB 2251 lets purchasers request refunds of erroneously collected sales taxes.
  - HCR 67 supports policies to create roads and communities where all road users can feel safe, secure, and welcome.
  - SB 973 exempts shooting ranges from sales taxes.
  - SB 980 requires a study of voluntary prekindergarten.
  - SB 988 creates the Missouri Soil Enrichment Initiative.
  - SB 1001 declares the first week in May “Local Government Week” in Missouri.
- Your lobbyist will have whatever information you need about these or other bills.

### **A few bills are passing**

The Senate sent 9 bills to the House, the House sent 2 to the Senate, and they both sent one to the Governor. Here are the highlights:

- HB 1498, which requires insurance companies to promptly pay claims, 157-0.
- HB 1540, which rectifies a problem created by a bill last year dealing with certain traffic offenses, was signed by the Governor and became law immediately.
- SB 636, which resembles HB 1498, 34-0.
- SB 806, which lets children depicted in child pornography sue those who download the images, 34-0.

Call your lobbyist with questions.

### **Quote of the Week**

While presenting his HB 2131, which requires the Governor to buy a Powerball ticket every week and use the winnings to help balance the budget to the House Tax Reform Committee, Rep. Mark Parkinson (R-St. Charles) said this:

*“I know people came here expecting something funny, but this is no laughing matter!”*

Make sure your life is no laughing matter, and have a great week!

##