

FIRST REGULAR SESSION

# HOUSE BILL NO. 461

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (155) (Sponsor), MOORE, KUESSNER, SKAGGS, DAY, JONES (117), SCHAD, THRELKELD, DETHROW, SANDER, POLLOCK, ROBB, WELLS, PARSON, STEVENSON, WILSON (130), KINGERY, LEMBKE, PORTWOOD, WETER, WOOD, PEARCE, ERVIN, SELF, BRINGER, SCHLOTTACH, SMITH (150), SCHOELLER, HOBBS, TILLEY, BRANDOM, WALLACE, LOEHNER, WHORTON, JONES (89), RICHARD, HUBBARD, FISHER, NOLTE, CUNNINGHAM (86), CASEY, BROWN (50) AND DUSENBERG (Co-sponsors).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1134L.011

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### AN ACT

To repeal sections 36.030, 36.031, 306.161, 306.163, and 650.005, RSMo, and to enact in lieu thereof nine new sections relating to the water patrol.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 36.030, 36.031, 306.161, 306.163, and 650.005, RSMo, are repealed  
2 and nine new sections enacted in lieu thereof, to be known as sections 36.030, 36.031, 306.161,  
3 306.163, 306.227, 306.228, 306.230, 306.232, and 650.005, to read as follows:

36.030. 1. A system of personnel administration based on merit principles and designed  
2 to secure efficient administration is established for all offices, positions and employees, except  
3 attorneys, of the department of social services, the department of corrections, the department of  
4 health and senior services, the department of natural resources, the department of mental health,  
5 the division of personnel and other divisions and units of the office of administration, the  
6 division of employment security, mine safety and on-site consultation sections of the division  
7 of labor standards and administration operations of the department of labor and industrial  
8 relations, the division of tourism and job development and training, the Missouri housing  
9 development commission, and the office of public counsel of the department of economic  
10 development, [the Missouri state water patrol,] the Missouri veterans commission, capitol police

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 and state emergency management agency of the department of public safety, such other agencies  
12 as may be designated by law, and such other agencies as may be required to maintain personnel  
13 standards on a merit basis by federal law or regulations for grant-in-aid programs; except that,  
14 the following offices and positions of these agencies are not subject to this chapter and may be  
15 filled without regard to its provisions:

16 (1) Other provisions of the law notwithstanding, members of boards and commissions,  
17 departmental directors, five principal assistants designated by the departmental directors, division  
18 directors, and three principal assistants designated by each division director; except that, these  
19 exemptions shall not apply to the division of personnel;

20 (2) One principal assistant for each board or commission, the members of which are  
21 appointed by the governor or by a director of the department;

22 (3) Chaplains and attorneys regularly employed or appointed in any department or  
23 division subject to this chapter, except as provided in section 36.031;

24 (4) Persons employed in work assignments with a geographic location principally outside  
25 the state of Missouri and other persons whose employment is such that selection by competitive  
26 examination and standard classification and compensation practices are not practical under all  
27 the circumstances as determined by the board by rule;

28 (5) Patients or inmates in state charitable, penal and correctional institutions who may  
29 also be employees in the institutions;

30 (6) Persons employed in an internship capacity in a state department or institution as a  
31 part of their formal training, at a college, university, business, trade or other technical school;  
32 except that, by appropriate resolution of the governing authorities of any department or  
33 institution, the personnel division may be called upon to assist in selecting persons to be  
34 appointed to internship positions;

35 (7) The administrative head of each state medical, penal and correctional institution, as  
36 warranted by the size and complexity of the organization and as approved by the board;

37 (8) Deputies or other policy-making assistants to the exempt head of each division of  
38 service, as warranted by the size or complexity of the organization and in accordance with the  
39 rules promulgated by the personnel advisory board;

40 (9) Special assistants as designated by an appointing authority; except that, the number  
41 of such special assistants shall not exceed one percent of a department's total authorized full-time  
42 equivalent workforce;

43 (10) Merit status shall be retained by present incumbents of positions identified in this  
44 section which have previously been subject to this chapter.

45 2. All positions in the executive branch transferred to coverage pursuant to this chapter  
46 where incumbents of such positions have at least twelve months' prior service on the effective

47 date of such transfer shall have incumbency preference and shall be permitted to retain their  
48 positions, provided they meet qualification standards acceptable to the division of personnel of  
49 the office of administration. An employee with less than twelve months of prior service on the  
50 effective date of such transfer or an employee who is appointed to such position after the  
51 effective date of such transfer and prior to the classification and allocation of the position by the  
52 division of personnel shall be permitted to retain his or her position, provided he or she meets  
53 acceptable qualification standards and subject to successful completion of a working test period  
54 which shall not exceed twelve months of total service in the position. After the allocation of any  
55 position to an established classification, such position shall thereafter be filled only in  
56 accordance with all provisions of this chapter.

57         3. The system of personnel administration governs the appointment, promotion, transfer,  
58 layoff, removal and discipline of employees and officers and other incidents of employment in  
59 divisions of service subject to this chapter, and all appointments and promotions to positions  
60 subject to this chapter shall be made on the basis of merit and fitness.

61         4. To encourage all state employees to improve the quality of state services, increase the  
62 efficiency of state work operations, and reduce the costs of state programs, the director of the  
63 division of personnel shall establish employee recognition programs, including a statewide  
64 employee suggestion system. The director shall determine reasonable rules and shall provide  
65 reasonable standards for determining the monetary awards, not to exceed five thousand dollars,  
66 under the employee suggestion system. Awards shall be made from funds appropriated for this  
67 purpose.

68         5. At the request of the senate or the house of representatives, the commissioner of  
69 administration shall submit a report on the employee suggestion award program described in  
70 subsection 4 of this section.

       36.031. Any provision of law to the contrary notwithstanding, except for the elective  
2 offices, institutions of higher learning, the department of transportation, the department of  
3 conservation, those positions in the Missouri state highway patrol the compensation of which is  
4 established by subdivision (2) of subsection 2 of section 43.030, RSMo, and section 43.080,  
5 **RSMo, those positions in the Missouri state water patrol the compensation of which is**  
6 **established by section 306.166, RSMo,** those positions in the division of finance and the  
7 division of credit unions compensated through a dedicated fund obtained from assessments and  
8 license fees under sections 361.170 and 370.107, RSMo, and those positions for which the  
9 constitution specifically provides the method of selection, classification, or compensation, and  
10 the positions specified in subsection 1 of section 36.030, but including attorneys, those  
11 departments, agencies and positions of the executive branch of state government which have not  
12 been subject to these provisions of the state personnel law shall be subject to the provisions of

13 sections 36.100, 36.110, 36.120 and 36.130, and the regulations adopted pursuant to sections  
14 36.100, 36.110, 36.120 and 36.130 which relate to the preparation, adoption and maintenance  
15 of a position classification plan, the establishment and allocation of positions within the  
16 classification plan and the use of appropriate class titles in official records, vouchers, payrolls  
17 and communications. Any provision of law which confers upon any official or agency subject  
18 to the provisions of this section the authority to appoint, classify or establish compensation for  
19 employees shall mean the exercise of such authority subject to the provisions of this section.  
20 This section shall not extend coverage of any section of this chapter, except those specifically  
21 named in this section, to any agency or employee. In accordance with sections 36.100, 36.110,  
22 36.120 and 36.130, and after consultation with appointing authorities, the director of the division  
23 of personnel shall conduct such job studies and job reviews and establish such additional new  
24 and revised job classes as the director finds necessary for appropriate classification of the  
25 positions involved. Such classifications and the allocation of positions to classes shall be  
26 maintained on a current basis by the division of personnel. The director of the division of  
27 personnel shall, at the same time, notify all affected agencies of the appropriate assignment of  
28 each job classification to one of the salary ranges within the pay plan then applicable to merit  
29 system agencies. The affected agencies and employees in the classifications set pursuant to this  
30 section shall be subject to the pay plan and rates of compensation established and administered  
31 in accordance with the provisions of this section, and the regulations adopted pursuant to this  
32 section, on the same basis as for merit agency employees. In addition, any elected official,  
33 institution of higher learning, the department of transportation, the department of conservation,  
34 the general assembly, or any judge who is the chief administrative officer of the judicial branch  
35 of state government may request the division of personnel to study salaries within the requestor's  
36 office, department or branch of state government for classification purposes.

306.161. The Missouri state water patrol is authorized to employ, within the limits of  
2 appropriations [made therefor and subject to the provisions of chapter 36, RSMo,] **and**  
3 **notwithstanding any other provision of law to the contrary**, such personnel as may be  
4 necessary to properly perform the duties of the water patrol, and the water patrol shall prescribe  
5 the duties and responsibilities of such personnel.

306.163. 1. The governor, by and with the advice and consent of the senate, shall  
2 appoint a commissioner of the Missouri state water patrol to serve at the pleasure of the  
3 governor. [He] **The commissioner** shall take and subscribe an oath of office to perform [his]  
4 **the commissioner's** duties faithfully and impartially.

5 2. The commissioner shall prescribe rules for instruction and discipline and make  
6 administrative rules and regulations and fix the hours of duty for the members of the patrol. [He]  
7 **The commissioner** shall have charge of the office of the patrol, shall be custodian of the records

8 of the patrol, and shall direct the day-to-day activities of the officers, patrolmen and office  
9 personnel.

10 3. [He] **The commissioner** shall be given a certificate of appointment, a copy of which  
11 shall be filed with the secretary of state, granting him **or her** all the powers of a peace officer to  
12 enforce all the laws of this state within the jurisdiction of the water patrol as listed in section  
13 306.165, provided that he has completed a law enforcement training course which meets the  
14 standards established in chapter 590, RSMo.

15 4. **In the absence, or upon the disability, of the commissioner, or at the time the**  
16 **commissioner designates, the lieutenant colonel shall assume the duties of the**  
17 **commissioner. In case of the disability of the commissioner and the lieutenant colonel, the**  
18 **governor may designate a major as acting commissioner and when so designated, the acting**  
19 **commissioner shall have all the powers and duties of the commissioner.**

**306.227. Patrolmen and radio personnel of the water patrol shall not be less than**  
2 **twenty-one years of age. No person shall be appointed as commissioner or as a member**  
3 **of the patrol or as a member of the radio personnel who:**

4 (1) **Has been convicted of a felony or any crime involving moral turpitude, or**  
5 **against whom any indictment or information may then be pending charging the person**  
6 **with having committed a crime;**

7 (2) **Is not of good character;**

8 (3) **Is not a citizen of the United States;**

9 (4) **At the time of appointment is not a citizen of the state of Missouri;**

10 (5) **Is not a graduate of an accredited four-year high school or in lieu thereof has**  
11 **not obtained a certificate of equivalency from the state department of elementary and**  
12 **secondary education or other source recognized by such department; or**

13 (6) **Does not possess ordinary physical strength, and who is not able to pass the**  
14 **physical and mental examination that the commissioner prescribes.**

**306.228. Notwithstanding any other provision of law to the contrary, the**  
2 **commissioner of the Missouri state water patrol shall establish, with the advice of the**  
3 **director of the division of personnel of the office of administration, a pay plan for members**  
4 **of the water patrol and radio personnel employed by the water patrol that is equitable to**  
5 **the pay plan established for members of the highway patrol under chapter 43, RSMo.**  
6 **Such pay plan shall consider length of service and ranking within the water patrol.**

**306.230. 1. The commissioner shall prescribe rules for instruction and discipline**  
2 **and make all administrative rules and regulations and fix the hours of duty for the**  
3 **members of the patrol. Any rule or portion of a rule, as that term is defined in section**  
4 **536.010, RSMo, that is created under the authority delegated in this section shall become**

5 effective only if it complies with and is subject to all of the provisions of chapter 536,  
6 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
7 nonseverable and if any of the powers vested with the general assembly under chapter 536,  
8 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are  
9 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
10 proposed or adopted after August 28, 2007, shall be invalid and void. The commissioner  
11 shall divide the state into districts and assign members of the patrol to such districts in a  
12 manner deemed proper to carry out the purposes of this chapter. The commissioner may  
13 call members of the patrol from one district to another.

14       2. The commissioner may, by general order, establish for the circumstances under  
15 which members of the patrol are promoted. The commissioner shall classify and, by  
16 promotion, increase the rank of lieutenant colonels, majors, captains, lieutenants,  
17 sergeants, corporals, patrolmen, and radio personnel from the next lower rank after not  
18 less than one year of service satisfactorily performed therein. If the commissioner finds the  
19 candidate pool to fill a position through promotion is not sufficient from which to select,  
20 the commissioner may promote an individual from the next lower rank.

      306.232. 1. After a probation period of one year, members of the patrol shall be  
2 subject to removal, reduction in rank, or suspension of more than three days only for cause  
3 after a petition with a formal charge has been filed in writing before or by the  
4 commissioner and upon a finding and vote by a majority of a board of six patrol members  
5 after a hearing. The members of the board shall be randomly selected from districts or  
6 divisions other than that of the accused. The board shall be composed of six unbiased  
7 members including one nonvoting captain, one lieutenant, and four members of the same  
8 rank as the accused member. The randomly selected captain shall serve as presiding  
9 officer at the hearing. Within thirty days after the petition is filed, unless the accused  
10 consents to an extension of the time, the board shall conduct a hearing and report to the  
11 commissioner the finding and vote of the majority of the board, whether the charges are  
12 true, and what discipline, if any, should be imposed. All lawful rules, regulations, and  
13 orders of the commissioner shall be obeyed by the members of the patrol, who shall be  
14 subject to dismissal or one or more of the following as adjudged by the commissioner:

15       (1) Suspension without pay for not more than thirty days;

16       (2) Reduction in rank; or

17       (3) Disciplinary transfer at the member's expense. Nothing in this section shall be  
18 construed to prevent nondisciplinary transfers of members if the commissioner determines  
19 that such transfers are for the good of the patrol. No hearings shall be required in the case

20 of reprimands or suspensions of three days or less which may be imposed at the discretion  
21 of the commissioner.

22 **2. If a complaint is filed against a member, the member shall be provided a copy**  
23 **of the complaint promptly after the complaint is filed by or received by the patrol. Unless**  
24 **the member consents in writing to an earlier time, the member shall not be questioned by**  
25 **the patrol about the complaint or ordered to respond in writing to the complaint until**  
26 **forty-eight hours after the member has received a copy of the complaint. The member**  
27 **shall have a reasonable opportunity to have counsel present during any questioning related**  
28 **to the complaint. Prior to the commissioner or the patrol making an initial**  
29 **recommendation of discipline, the member shall be entitled to a copy of any investigation**  
30 **reports and any other written or recorded information or other evidence reviewed by the**  
31 **patrol which relates to the complaint; and the member will be afforded an opportunity to**  
32 **present a written response thereto.**

33 **3. Notwithstanding the provisions of this subsection or subsection 2 of this section**  
34 **to the contrary, the commissioner may postpone notifying a member that a complaint has**  
35 **been filed against him or her and may withhold the complaint and part or all of the**  
36 **investigation report and other evidence if the commissioner determines that such**  
37 **disclosures shall seriously interfere with the investigation regarding such complaint or any**  
38 **other investigation being conducted by the patrol or may likely jeopardize the health or**  
39 **safety of any person. Nothing in this subsection shall be construed to limit the rights of**  
40 **parties to discovery in civil or criminal litigation.**

650.005. 1. There is hereby created a "Department of Public Safety" in charge of a  
2 director appointed by the governor with the advice and consent of the senate. The department's  
3 role will be to provide overall coordination in the state's public safety and law enforcement  
4 program, to provide channels of coordination with local and federal agencies in regard to public  
5 safety, law enforcement and with all correctional and judicial agencies in regard to matters  
6 pertaining to its responsibilities as they may interrelate with the other agencies or offices of state,  
7 local or federal governments.

8 **2. All the powers, duties and functions of the state highway patrol, chapter 43, RSMo,**  
9 **and others, are transferred by type II transfer to the department of public safety. The governor**  
10 **by and with the advice and consent of the senate shall appoint the superintendent of the patrol.**  
11 **With the exception of sections 43.100 to 43.120, RSMo, relating to financial procedures, the**  
12 **director of public safety shall succeed the state highways and transportation commission in**  
13 **approving actions of the superintendent and related matters as provided in chapter 43, RSMo.**  
14 **Uniformed members of the patrol shall be selected in the manner provided by law and shall**  
15 **receive the compensation provided by law. Nothing in the Reorganization Act of 1974, however,**

16 shall be interpreted to affect the funding of appropriations or the operation of chapter 104,  
17 RSMo, relating to retirement system coverage or section 226.160, RSMo, relating to workers'  
18 compensation for members of the patrol.

19         3. All the powers, duties and functions of the supervisor of liquor control, chapters 311  
20 and 312, RSMo, and others, are transferred by type II transfer to the department of public safety.  
21 The supervisor shall be nominated by the department director and appointed by the governor  
22 with the advice and consent of the senate. The supervisor shall appoint such agents, assistants,  
23 deputies and inspectors as limited by appropriations. All employees shall have the qualifications  
24 provided by law and may be removed by the supervisor or director of the department as provided  
25 in section 311.670, RSMo.

26         4. The director of public safety, superintendent of the highway patrol and transportation  
27 division of the department of economic development are to examine the motor carrier inspection  
28 laws and practices in Missouri to determine how best to enforce the laws with a minimum of  
29 duplication, harassment of carriers and to improve the effectiveness of supervision of weight and  
30 safety requirements and to report to the governor and general assembly by January 1, 1975, on  
31 their findings and on any actions taken.

32         5. The Missouri division of highway safety is transferred by type I transfer to the  
33 department of public safety. The division shall be in charge of a director who shall be appointed  
34 by the director of the department.

35         6. All the powers, duties and functions of the safety and fire prevention bureau of the  
36 department of public health and welfare are transferred by type I transfer to the director of public  
37 safety.

38         7. All the powers, duties and functions of the state fire marshal, chapter 320, RSMo, and  
39 others, are transferred to the department of public safety by a type I transfer.

40         8. All the powers, duties and functions of the law enforcement assistance council  
41 administering federal grants, planning and the like relating to Public Laws 90-351, 90-445 and  
42 related acts of Congress are transferred by type I transfer to the director of public safety. The  
43 director of public safety shall appoint such advisory bodies as are required by federal laws or  
44 regulations. The council is abolished.

45         9. The director of public safety shall promulgate motor vehicle regulations and be ex  
46 officio a member of the safety compact commission in place of the director of revenue and all  
47 powers, duties and functions relating to chapter 307, RSMo, are transferred by type I transfer to  
48 the director of public safety.

49         10. The office of adjutant general and the state militia are assigned to the department of  
50 public safety; provided, however, nothing herein shall be construed to interfere with the powers



51 and duties of the governor as provided in article IV, section 6 of the Constitution of the state of  
52 Missouri or chapter 41, RSMo.

53 11. All the powers, duties and functions of the Missouri boat commission, chapter 306,  
54 RSMo, and others, are transferred by type I transfer to the "Missouri State Water Patrol", which  
55 is hereby created, in the department of public safety. The Missouri boat commission and the  
56 office of secretary to the commission are abolished. The Missouri state water patrol shall be  
57 headed by a boat commissioner who shall be appointed by the governor, with the advice and  
58 consent of the senate. All deputy boat commissioners and all other employees of the commission  
59 who were employed on February 1, 1974, shall be transferred to the water patrol [and they shall  
60 be immediately covered by the provisions of chapter 36, RSMo,] without further qualification.  
61 [All deputy boat commissioners and others employed by the water patrol after May 2, 1974, shall  
62 be selected and removed pursuant to the provisions of chapter 36, RSMo.]

63 12. The division of veterans affairs, chapter 42, RSMo, is assigned to the office of  
64 adjutant general. The adjutant general, with the advice of the veterans' board, shall appoint the  
65 director of the division of veterans affairs who shall serve at the pleasure of the adjutant general.

66 13. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
67 is promulgated under the authority of this chapter, shall become effective only if the agency has  
68 fully complied with all of the requirements of chapter 536, RSMo, including but not limited to,  
69 section 536.028, RSMo, if applicable, after August 28, 1999. If the provisions of section  
70 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers  
71 vested with the general assembly pursuant to section 536.028, RSMo, to review, to delay the  
72 effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or  
73 invalid, the purported grant of rulemaking authority and any rule so proposed and contained in  
74 the order of rulemaking shall be invalid and void, except that nothing in this section shall affect  
75 the validity of any rule adopted and promulgated prior to August 28, 1999.

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