

HCS#2 SB 844 -- PUBLIC OFFICIALS

SPONSOR: Shields (Jones, 89)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 9 to 2.

This substitute changes the laws regarding elections, competitive bidding, ethics and lobbying, campaign finance, fee office regulations, labor organizations, lawsuits on behalf of the state, and political subdivision referendums.

ELECTIONS (Sections 21.860, 26.016, 28.190, 29.280, 30.060, 30.080, 105.009, 105.030, 105.040, 105.050, 115.156, 115.276, 115.278 - 115.292, 115.427, 116.160, 116.190, 116.240, and 116.334, RSMo)

The substitute:

(1) Establishes the Joint Committee on Ballot Statements to prepare and review ballot summary statements for all petitions and referendums submitted to the voter by either the General Assembly or the petition process instead of the Secretary of State who currently has these responsibilities. The nine-member committee will consist of non-elected officials with three members appointed by the Governor, three by the President Pro Tem of the Senate, and three by the Speaker of the House of Representatives. A majority of the committee will be required to approve a ballot statement. Subject to appropriations, the committee may be staffed by legislative personnel. The committee members will not receive compensation but may be reimbursed for actual and necessary expenses;

(2) Requires special elections to be held for vacancies in the offices of United States Senator, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer. Currently, the Office of United States Senator and most statewide offices, except for the Office of the Governor, may be filled by a gubernatorial appointment when there is a vacancy. If there is an impeachment proceeding for one of these officers, the Governor will temporarily administer the duties of the office until the trial; and if there is a conviction, the special election process will be used to fill the vacancy. In the case of a vacancy in the Office of the Attorney General, the Office of the State Auditor, or the Office of a United States Senator, the Governor will appoint a temporary acting attorney general, auditor, or senator who will serve until a special election for the office is held;

(3) Requires all state elected officials, executive branch

managerial staff, state department heads, General Assembly members, and officers and leadership staff of the General Assembly to submit to chemical testing for determining the drug content of the blood before taking office and once every two years thereafter. The person tested will be responsible for the cost of the test and, upon request, will have access to the results. To be considered valid, the test must be administered according to methods and devices approved by the Department of Health and Senior Services and be performed by licensed medical personnel or by a person possessing a valid permit issued by the department for this purpose. Anyone administering the test or any other person, firm, or corporation with whom the person is associated will not be civilly liable for damages to the person tested except for negligence or by a willful or wanton act or omission;

(4) Requires the Secretary of State to establish procedures for absent uniformed services voters and overseas voters to request voter registration applications and absentee ballot applications. At least one form of electronic communication for use by absent uniformed services and overseas voters must be designated for requesting voter registration applications and absentee ballots. These voters may request and designate a preferred method of electronic transmission of these applications and ballots or request receipt by mail. The Secretary of State must also develop, in coordination with local election authorities, a free access system by which these voters may determine whether an absentee ballot has been received by the appropriate election authority. A sufficient quantity of paper ballots and envelopes for each general, primary, and special election for federal office must be printed and available for these voters within 45 days prior to the election. Registration applications and paper ballots cannot be rejected by an election authority because of any restriction on the paper or envelope type. Missouri is required to use the special write-in absentee ballot provided in Section 115.292 for all elections for federal office as authorized by federal law instead of the federal write-in absentee ballot;

(5) Requires each election authority to establish one advance voting center in each senatorial district in the state or at least one center in each county in a senatorial district if there is more than one county in a senatorial district. Any registered voter may vote by advance ballot in person at any election for federal or statewide offices. Advance voting will begin on the second Saturday prior to the election until the Wednesday immediately preceding the election, excluding Sundays, using absentee ballots and those procedures. No reason for voting an absentee ballot will be required as is currently required to vote by absentee ballot. All current procedures for casting and

counting absentee ballots and the appointment of election judges and polling places will apply to advance voting. The Secretary of State and each local election authority must provide adequate public notice of the advance voting centers and voting times including a posting in their respective offices and on each of their web sites. All costs associated with advance voting centers will be reimbursed by the state. If there is no state appropriation, an election authority must not conduct advance voting;

(6) Specifies that a person seeking to vote in a public election must establish his or her identity and eligibility to vote by presenting a specified form of personal identification containing a photograph of the individual to election officials. All costs incurred by an election authority to implement the photo identification requirements will be reimbursed by the state. If there is no state appropriation, the election authority must not enforce the photo identification requirement;

(7) Allows an individual to vote by casting a provisional ballot after signing an affidavit if he or she does not possess a required form of personal identification because of the inability to pay for a birth certificate or other documentation necessary to obtain the identification;

(8) Requires the state to provide at no cost at least one form of personal identification required to vote to an otherwise qualified citizen who does not already possess the required identification and desires the identification in order to vote; and

(9) Repeals the provision regarding disabled or elderly persons obtaining a nondriver's license photo identification through a mobile processing system operated by the Department of Revenue.

COMPETITIVE BIDDING (Sections 34.047, 37.900, 67.314, and Section 2)

The substitute:

(1) Requires the Commissioner of the Office of Administration to give priority as the lowest and best bidder to a Missouri company with a physical office and employees located in this state. A corporation bidding for work in Missouri must be properly registered to work in this state. A minority-owned business, disabled veteran business, and any cost-saving measure benefitting the state such as data repositories and Go Green programs will also be given priority. The Office of Administration must let bids based on a competitive bid process;

(2) Allows a statewide elected official to request a determination of the lowest and best bidder regarding a contract for purchasing, printing, or services from the Office of Administration which must respond to the elected official within 45 days after the submission of the request;

(3) Establishes the Political Subdivision Construction Bidding Standards Act which regulates the advertising and lowest bidding practices of political subdivisions that are not currently governed by state or federal requirements or a local construction procurement policy when soliciting bids and awarding construction contracts of \$10,000 or more. Criteria for the construction projects covered by the substitute are specified. Certain contracts for construction or construction management services are exempt as well as design build projects authorized by local regulations. Mandatory regulations for political subdivisions include a good faith standard for the award of construction contracts; requirements for making, opening, and accepting bids; compliance with state statutes or a local construction procurement policy; and a bonding requirement in Section 107.170. Electronic bidding that is comparable to the requirements for written bids will be allowed. If a contractor is injured by a violation of the act, he or she may seek equitable relief and monetary damages in a court of competent jurisdiction. Attorney fees may be awarded to the plaintiff if the court finds a violation or there is a determination of fraud, collusion, or corruption. A defendant may receive attorney fees if the court finds that there is no substantial cause for the action or that the action was initiated for purposes of harassment or disruption of the awarded contract. Any action brought by a contractor more than 15 business days after the awarding of a contract must be dismissed by the court; and

(4) Specifies that the Office of Administration cannot prevent any state agency or other state entity from purchasing supplies from an authorized General Services Administrator vendor if the contract does not exceed the competitive bid limits in Section 34.040.

ETHICS AND LOBBYING (Sections 105.456, 105.459, 105.463, 105.470, 105.473, 105.479, and 105.963)

The substitute:

(1) Specifies that the crime of bribery of a public servant includes when the Governor or an agent of the Governor exchanges various appointed positions for an official vote on a public matter by a member of the General Assembly;

(2) Specifies that the crime of acceding to corruption by a

public servant includes when a member of the General Assembly exchanges an official vote on a public matter for an appointment to certain specified positions;

(3) Prohibits a member of the General Assembly from acting, serving, or soliciting clients to represent as a lobbyist; providing consulting services to any lobbyist; or registering as a legislative lobbyist under the Conflict of Interest and Lobbying Laws, Chapter 105, within two years after the conclusion of the general assembly of which the person was a member;

(4) Specifies that any elected or appointed official of this state or any political subdivision who is found guilty of or pleads guilty to any felony must immediately forfeit all benefits provided to him or her by the state or political subdivision;

(5) Requires the Speaker of the House of Representatives and the President Pro Tem of the Senate to publicly disclose the name of any nonmember appointee and the amount of any contribution made by the appointee, the appointee's spouse, or any business in which the appointee or the appointee's spouse holds a substantial interest to any committee for the benefit of the legislator during the four years immediately preceding the appointment;

(6) Requires the Governor to publicly disclose the name of any appointee, the amount and date of any contribution made by the appointee to any committee during the four years immediately preceding the appointment. The disclosure must be included in the letter of transmittal to the Senate announcing the appointment, printed in the Senate journal, and accessible to the public on the Governor's and the Senate's web site;

(7) Prohibits the Governor from appointing a legislator to certain positions until 365 days after the conclusion of the general assembly of which the person was a member;

(8) Specifies that the definitions used in Section 105.470 regarding lobbying will also apply to Section 105.456. Currently, the definitions only apply to Section 105.473;

(9) Specifies that anyone who attempts to influence an elected official other than the elected official who represents the legislative district where that person resides and who meets other specified requirements will be deemed a "legislative lobbyist" as defined in Section 105.470, except for a person testifying before any legislative, executive, or administrative committee;

(10) Specifies that a lobbyist found to knowingly omit, conceal, or falsify information required on the monthly lobbyist report

will be guilty of a class D felony;

(11) Repeals the provisions requiring the Missouri Ethics Commission to provide the monthly lobbyist spending report to legislators, judges or judicial officers, and state and local elected officials;

(12) Prohibits members of the General Assembly, statewide officials, and persons acting on their behalf or at their request from accepting or receiving any cumulative expenditures in excess of \$2,500 from a lobbyist, except for certain specified expenditures and items valued at less than \$10;

(13) Sets the late fees that may be assessed for delinquent reports to the commission at consistent rates for all report types with a maximum of \$3,000 per report; and

(14) Allows an appeal of late filing fees by lobbyists, individuals, and treasurers of committees who receive notice of a violation related to disclosure statements or statements of limited activity. Currently, only candidates are allowed to appeal matters related to campaign reports using the procedures of Section 105.963.

CAMPAIGN FINANCING (Sections 130.021, 130.031, 130.032, 575.021, and Section 1)

The substitute:

(1) Prohibits a person from forming a new committee or serving as a treasurer or deputy treasurer of any committee until he or she or the treasurer of any committee previously formed by the person or on which he or she served as the treasurer or deputy treasurer has filed all required campaign disclosure reports or statements of limited activity for all prior elections and paid any outstanding fees. The treasurer or deputy treasurer must file a statement of organization with the appropriate officer within 20 days after the person or organization becomes a committee but no later than 30 days prior to an election for which it receives contributions or makes expenditures with the exception of a continuing committee. Currently, the statement must be filed no later than the date required in Section 130.046;

(2) Prohibits a person authorized to transfer committee funds from transferring any funds received by the committee to any other committee with the intent to conceal the identity of the fund's actual source. Any person who violates this provision will be notified by the commission within five days of determining that the transfer is prohibited, and the person must notify the committee to which the funds were transferred that

they must be returned within 10 days. For a second violation, the person transferring the funds will be guilty of a class C misdemeanor and a class D felony for any subsequent violation;

(3) Prohibits statewide office holders from accepting or soliciting contributions or fund-raising activities from any person whom the statewide holder appoints with the advice and consent of the Senate, the appointee's spouse, or any business in which the appointee or the appointee's spouse holds a substantial interest during and for 180 days after the appointment ends;

(4) Prohibits persons appointed by the Governor with the advice and consent of the Senate, the appointee's spouse, or any business in which either of them holds a substantial interest from being solicited by a statewide office holder to make any contribution to or engage in fund-raising activities or events for the statewide office holder during and for 180 days after the appointment ends;

(5) Prohibits a person or business from making a gift, donation, or contribution of any kind to a candidate committee or state political party committee that makes expenditures on behalf of a statewide office holder, executive branch official, or state agency when that person or business has certain matters requiring a decision or determination pending before the statewide office holder, executive branch official, or state agency;

(6) Prohibits statewide office holders from soliciting contributions from any person or business while that person or business has certain specified matters requiring a decision or determination pending before the statewide office holder, executive branch official, or state agency;

(7) Limits the amount of contributions made by or accepted from any person other than the candidate in any one election to \$20,000 for all elective statewide offices, elected judicial offices, or an elected political subdivision or special district position;

(8) Creates the crime of obstruction of an ethics investigation, a class D felony. A person who knowingly confers or accepts anything of benefit to any person in direct exchange for that person's concealing or withholding any information concerning a violation of the provisions regarding conflicts of interest and lobbying or the provisions regarding campaign finance disclosures or makes or submits a false statement or submits inaccurate documentation to any commission member or employee or to any investigating official will be guilty of the crime. Retraction of the false statement, writing, or documentation is a defense in certain specified circumstances;

and

(9) Specifies that if a candidate committee fails to pay its outstanding debts within 18 months after the termination of the committee, the candidate will become responsible for the debt. Failure to pay the debt will be a class D felony for conversion of campaign funds.

FEE OFFICE REGULATIONS (Section 136.055)

The Department of Revenue is required to use only county or city collectors or treasurers or their agents as fee office agents. The department is given discretion in determining the number and geographic distribution of fee offices. Fees collected under this provision must be deposited into the general revenue fund of the appropriate county and will be distributed according to local regulation, ordinance, or charter. Administrative costs will be granted to county or city officials collecting the fees.

LABOR ORGANIZATIONS (Sections 3 and 4)

The substitute guarantees the right to vote by secret ballot in elections involving the formation of a union or labor organization. Union dues may not be used for any political activity if designated as not for political use by the member contributing the dues. Any person whose dues are actually diverted in violation of this provision may bring a suit in a court of competent jurisdiction for compensatory damages of up to \$10,000 per violation, attorney fees, and injunctive relief. Anyone knowingly violating the union dues requirements by diverting funds to unauthorized political activities will be guilty of a class D felony.

LAWSUITS ON BEHALF OF THE STATE (Section 5)

In addition to the Attorney General, the substitute allows the Governor, Lieutenant Governor, President Pro Tem of the Senate, or Speaker of the House of Representatives to file a lawsuit defending the constitutional rights of Missouri residents and to bring the suit in the name of and on behalf of the state. All officials will be notified upon the filing of a lawsuit by the official filing the suit.

The Commission for the Defense of the Natural and Constitutional Rights is established to approve any rule of procedure and to adopt the single lead position to represent the state in cases. If there is no objection on the single lead position within 10 business days, the lawsuit may proceed. If there is an objection, a majority of the four officials acting as the commission will determine what, if any, legal position may be

brought on behalf of the state. Any dispute will be resolved by the Missouri Supreme Court which may order the termination of any suit not in conformity with these provisions or may order the termination of multiple lawsuits in the instance that the commission has approved inconsistent legal positions.

POLITICAL SUBDIVISION REFERENDUMS (Section 6)

No political subdivision is allowed to submit any question as an advisory referendum to the voters if the referendum does not have the force and effect of law.

The provisions of the substitute regarding procedures for absent uniformed services voters and overseas voters, advanced voting centers, and photo identification will become effective only upon the passage and approval by the voters of a constitutional amendment. These provisions will be nonseverable; and if any of these provisions are held invalid, all of these provisions will be invalidated.

FISCAL NOTE: Estimated Effect on General Revenue Fund of a cost of Unknown greater than \$4,935,762 to an income of Unknown in FY 2011, a cost of Unknown greater than \$4,935,762 to an income of Unknown, and a cost of Unknown greater than \$6,867,750 to an income of Unknown in FY 2013. Estimated Effect on Other State Funds of an income of Unknown to a cost of Unknown in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that the bill allows state officials to use the Office of Administration to determine the lowest and best bids for projects. There needs to be a transparent process for the hiring of legal counsel.

Testifying for the bill were Senator Shields; and Office of the Attorney General.

OPPOSERS: Those who oppose the bill say that the open access to the dome of the State Capitol Building should be removed because it is a safety concern and exposes the state to liability.

Testifying against the bill were Office of Administration; and Missouri Capitol Police.

OTHERS: Others testifying on the bill say that Missouri corporations should be given preference in the bidding process.

Testifying on the bill was Betty Weaver, Missouri Litigation Services.