

HCS SCS SB 887 -- POLITICAL SUBDIVISIONS

SPONSOR: Schaefer (Franz)

COMMITTEE ACTION: Voted "do pass" by the Committee on Public Safety by a vote of 11 to 0 with 1 present.

This substitute changes the laws regarding political subdivisions, controlled substances, law enforcement agencies, taxes, tax credits, waste management, motor vehicles, and crimes. In its main provisions, the substitute:

(1) Establishes the Joint Committee on Missouri's Eco Friendly Solid Waste composed of five members of the Senate appointed by the President Pro Tem and five members of the House of Representatives, appointed by the Speaker, with no more than three members from either chamber being of the same political party. The committee must examine Missouri's present and future solid waste management needs to determine the best strategy to ensure an affordable and environmentally conscious long-term strategy for waste management that will meet the needs of the people and businesses of Missouri for the next 25 years. The committee may hold hearings and obtain input or information necessary to fulfill its obligations and may make reasonable requests of the House of Representatives and Senate research and appropriations staff, as well as the Committee on Legislative Research, the departments of Economic Development and Natural Resources, and the Missouri Public Service Commission. Committee members will receive no compensation but may be reimbursed for expenses associated with the performance of their official duties. The committee must submit a final report with its recommendations for any legislative action deemed necessary to the General Assembly by December 31, 2010, at which time the committee will be dissolved. Until the committee issues its report, the Department of Natural Resources is prohibited from issuing a permit for any new nonsource separated material recovery facility (Section 21.870, RSMo);

(2) Transfers, effective January 1, 2011, all powers, duties, and functions of the State Water Patrol within the Department of Public Safety to the newly established Division of Water Patrol within the State Highway Patrol and repeals provisions related to the water patrol regarding employment of members; the commissioner; appointment of officers; salaries; rules and instruction of members; and the removal, reduction in rank, or suspension of members based on charges and complaints. The substitute (Sections 36.031 - 43.392, 58.445, 301.716, 306.010, 306.161 - 306.168, 306.185, 306.227 - 306.232, 542.261, 544.157, 577.090, and 650.005):

(a) Increases from five to six the number of majors the Superintendent of the State Water Patrol must appoint from its membership (Section 43.040);

(b) Increases from 25 to 34 the number of captains, from 60 to 68 the number of lieutenants, and from not to exceed 965 to not to exceed 1,064 the total number of patrol officers, patrolmen, and radio personnel that the superintendent may appoint (Section 43.050);

(c) Requires the Superintendent of the State Highway Patrol to appoint a director of the division and allows him or her to assign highway patrol members to serve in the division on a permanent or temporary basis. All salaries and expenses relating to the assignment of highway patrol members to the division must be paid within the limits of appropriations from general revenue, the Missouri State Water Patrol Fund, or from other funding authorized by the General Assembly (Section 43.392);

(d) Specifies that an employee of the water patrol who is earning creditable service in the Closed Plan of the Missouri State Employees' Retirement System (MOSERS) and who is transferred to the highway patrol must elect in writing within 90 days of January 1, 2011, to either remain in MOSERS or transfer membership and creditable service to the Closed Plan of the Missouri Department of Transportation and Highway Patrol Employees' Retirement System (MPERS) after receiving a detailed analysis comparing benefits. An election made is irrevocable and constitutes a waiver to receive benefits other than those provided by the system elected by the employee. An employee making an election agrees to hold both systems harmless with regard to benefit differences resulting from the election. Any employee of the water patrol who is earning credited service in the Year 2000 Plan of MOSERS and who is transferred to the highway patrol must elect in writing within 90 days of January 1, 2011, to either remain in MOSERS or transfer membership and creditable service to the Year 2000 Plan of MPERS after receiving a detailed analysis comparing benefits. An election made is irrevocable and constitutes a waiver to receive benefits other than those provided by the system elected by the employee. An employee making an election agrees to hold both systems harmless with regard to benefit differences resulting from the election. In no event can an employee receive service credit for the same period of service under more than one retirement system. An employee who elects to transfer to the MPERS and who thereafter is a uniformed member of the highway patrol will be subject to the mandatory retirement age in Section 108.081 (Section 104.810); and

(e) Specifies that members of the water patrol division can

request and serve search warrants to investigate an accident or crime originally committed within their jurisdiction if the sheriff or his designee of the county in which the warrant is to be served participates in the serving of the search warrant, except for offenses pertaining to boating while intoxicated and the investigation of vessel accidents (Section 306.168);

(3) Increases the assessed valuation threshold that a county must maintain in order to move into a higher classification. The minimum assessed valuation threshold for counties of the first classification is increased from \$600 million to \$900 million and from \$450 million to \$600 million for counties of the second classification. All counties with an assessed valuation of less than \$600 million will be third classification counties. The governing body of any county of the second classification which, on August 28, 2010, has had an assessed valuation of at least \$600 million for at least one year may, by resolution of the county governing body, elect to become a county of the first classification after it has maintained that valuation for the period of time required under Section 48.030. Currently, only the counties of Lincoln and St. Francois qualify. Any county of the second classification which, on August 28, 2010, has had an assessed valuation of at least \$600 million for at least five years may, by resolution of the county governing body duly adopted before December 31, 2010, elect to remain a county of the second classification until the assessed valuation of the county after 2009 results in placing it in another classification and it has maintained the necessary valuation for the period of time required under Section 48.030. Currently, only the counties of Christian and Newton qualify. The required assessed valuation thresholds for changes in county classification will be increased each year by an amount equal to the percentage change in the annual average of the federal Consumer Price Index or zero, whichever is greater. The State Tax Commission must calculate and publish the amount so that it is available to all the counties (Section 48.020);

(4) Increases the threshold, from \$4,500 or less to from \$6,000 or less, when a county is not required to obtain a bid on a purchase (Section 50.660);

(5) Authorizes compensation of \$15,000 annually to the county counselor in Boone County for duties relating to mental health and mental health facilities and up to \$15,000 annually for investigative and clerical personnel costs for assisting the county counselor in carrying out these duties. The additional compensation is to be paid out of the state treasury from funds appropriated for these purposes in the form of a reimbursement to the county general revenue fund (Section 56.700);

(6) Specifies that Jefferson County cannot adopt any charter provision or any order or ordinance that prevents the county from contracting out the county's probation services with a private entity (Section 66.720);

(7) Allows any county to establish ordinances regarding curfew hours for persons younger than 17 years of age. Any minor who violates a curfew ordinance will be guilty of a class C misdemeanor. If the minor's parent or guardian has knowledge of the violation, he or she will also be guilty of a class C misdemeanor (Section 67.309);

(8) 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, RSMo. 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 be awarded monetary damages or equitable relief. 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 (Section 67.314);

(9) Authorizes the City of Jefferson City to impose, upon voter approval, a transient guest tax of up to 7%, instead of the current up to 5%, per occupied room per night for promoting the city as a convention, visitor, and tourist center (Section 67.1000);

(10) Authorizes counties which have imposed certain county taxes, upon voter approval, for a specific period of time that must be extended by another voter approval to use ballot language which indicates that the tax is an extension of an existing tax and not a new tax (Section 67.1080);

(11) Authorizes Montgomery County and the cities of Ashland and Sugar Creek to impose, upon voter approval, a transient guest tax of between 2% and 5% per occupied room per night for the promotion of tourism (Section 67.1360);

(12) Allows real property owners in the counties of Caldwell, Clinton, Daviess, and DeKalb to petition the governing body of the county for the creation of an exhibition center and recreational facility district (Section 67.2000);

(13) Allows the governing body of a municipality to annex a parcel of land within a research, development, or office park project located in an unincorporated area of the county if the parcel is compact and contiguous to the existing boundaries of the municipality and the municipality obtains the written consent of all the property owners within the unincorporated area of the parcel (Section 71.275);

(14) Authorizes the collector of revenue in the City of St. Louis to collect charges for trash collection in the same manner that property taxes are collected and specifies that delinquent or unpaid charges will be deemed a personal debt of the person owing the charges and a lien on the person's real property until paid (Section 92.013);

(15) Increases the monthly interest rate charged from 1% to 2%, increases the maximum annual interest rate from 10% to 18%, and repeals the prime rate limitation on the interest rate for delinquent property taxes in the City of St. Louis (Sections 92.715, 140.100, and 141.830);

(16) Authorizes the City of Grandview to impose, upon voter approval, a transient guest tax of up to 5% per occupied room per night for the promotion of tourism (Section 94.271);

(17) Specifies that the combined rate of sales taxes adopted under the city sales tax law cannot exceed 2%. This change is not to be construed as a new tax or an increase in the current levy of an existing tax for the purpose of Article X, Section 22, of the Missouri Constitution, commonly known as the Hancock Amendment, which requires voter approval. Cities that have already imposed and collected taxes under the city sales tax law can continue to do so without voter approval as a continuation of a tax previously approved by the voters of the city. Currently, under the general city sales tax law, cities may impose a city sales tax, upon voter approval, at a rate of one-half of 1%, seven-eighths of 1%, or 1%; and the City of St. Louis may impose the tax at a rate not to exceed one and three-eighths percent for the benefit of the city (Sections 94.510 and 94.550);

(18) Specifies that the combined rate of sales taxes adopted under the capital improvement city sales tax law cannot exceed 1%. This change is not to be construed as a new tax or an increase in the current levy of an existing tax for the purpose of the Hancock Amendment which requires voter approval. Cities that have already imposed and collected taxes under the city sales tax law can continue to do so without voter approval as a continuation of a tax previously approved by the voters of the city. Currently, under the capital improvements city sales tax law, cities not in St. Louis County may impose a sales tax, upon voter approval, at a rate of one-eighth, one-fourth, three-eighths, or one-half of 1% for the purpose of funding, operating, and maintaining capital improvements. Municipalities in charter counties are authorized to impose a capital improvements tax under Section 94.890 (Section 94.577);

(19) Authorizes the City of North Kansas City to impose, upon voter approval, a transient guest tax of one-half of 1% per occupied room per night for the promotion of tourism and infrastructure improvements (Section 94.832);

(20) Defines "certified industrial zone" as an area of real property that encompasses at least 100 acres which has been approved by the department as a certified site; has been found by ordinance of the governing body to be blighted; and is located in a census tract which has a poverty rate at least 20% or for which the median income is less than 80% of the statewide median income or is less than 80% of the metropolitan median income for the metropolitan statistical area in which the zone is located, whichever is greater and specifies that "enhanced business enterprise" includes a business enterprise located within a certified industrial zone that engages in data processing, hosting, and related services and Internet publishing, broadcasting, and web search portals as it relates to the tax credit (Section 135.950);

(21) Authorizes an annual tax credit for up to 10 years if approved by the Department of Economic Development to a taxpayer who establishes a new business facility in a certified industrial zone approved or designated as an enhanced enterprise zone. A taxpayer who receives this tax credit cannot also receive tax credits from enterprise zones, relocating a business to a distressed community, or Missouri Quality Jobs programs. To receive the tax credit, a taxpayer must employ at least two new individuals at the new business facility, have a total aggregate new business facility investment of at least \$10 million, or invest at least \$1 million during the taxable year in which the credit is claimed. The tax credit will be equal to 10% of the gross wages of each new employee at the facility and 5% of the investment made in the new business facility within an enhanced

enterprise zone. The maximum annual amount of tax credits is \$24 million (Section 135.969);

(22) Allows a taxpayer to receive the tax credit for an existing facility which expands if he or she invests at least \$100,000 and hires at least two additional employees during the tax year in which the credits are claimed. The substitute explains the manner in which the taxpayer's investment in the original facility prior to expansion must be determined (Section 135.969);

(23) Requires \$10 million of the \$24 million annually authorized for enhanced business enterprises to be issued for enterprises located in certified industrial zones. The credits must be claimed for the taxable year in which commencement of commercial operations occurs at the new business facility and for each of the following nine years in which the credit is issued. The credits are refundable and transferable but cannot be carried forward (Section 135.969);

(24) Requires the department, prior to the issuance of any tax credits, to verify that the applicant does not owe any delinquent taxes, penalties, fees, assessments, or insurance taxes. Taxpayers who are delinquent between June 15 and July 1 will be given 30 days to satisfy the delinquency. Available credits will be applied to delinquencies and any remaining credits will be issued to the applicant (Section 135.969);

(25) Specifies that tools, telecommunications equipment, power production and transmission machinery and equipment, data processing machinery and equipment, and other machinery and equipment that can be used by any company which is located within certain enhanced enterprise zones will be assessed and valued for purposes of taxation at one-half of 1%. Commercial vehicles licensed with a gross weight of 10,100 pounds or more that are powered only by battery-generated electrical energy if produced before January 1, 2014, will be assessed and valued for purposes of taxation at 17%. The substitute also exempts these tools, equipment, machinery, and commercial vehicles from all state and local sales and use taxes (Sections 137.115, 144.054, and 144.055);

(26) Clarifies that certain purchases made for resale are not to be considered as retail for sales and use tax purposes when the subsequent sale is taxed in the state or another state, is for resale, is excluded from tax, is subject to tax but is exempt, or is exempt in another state where the subsequent sale occurs; clarifies that operators of amusement parks and places of entertainment or recreation, including games or athletic events, must charge sales taxes on the amount of gross receipts charged for admission, but any subsequent sale of the admissions or

seating accommodations will not be subject to the taxes if it was an arms length transaction for fair market value with an unaffiliated entity; and clarifies that operators of hotels, motels, taverns, restaurants, drugstores, dining cars, tourist camps, or similar businesses must charge sales taxes on the amount of gross receipts charged for all rooms, meals, and drinks furnished at the establishment, but any subsequent sale of those same rooms, meals, and drinks is exempt from sales and use taxes if it was an arms length transaction for fair market value with an unaffiliated entity (Section 144.019);

(27) Authorizes a state and local sales and use tax exemption for any sale of utilities at cost by a sports complex authority which is ultimately consumed in the operation of a sports complex leased to a professional sports team and for all gratuities, whether mandatory or voluntary, provided with the receipt of property or services regardless of whether the property or services may be subject to tax (Section 144.030);

(28) Allows any ambulance district established under Chapter 190 on or after August 28, 2010, to impose, upon voter approval, a sales tax in lieu of a property tax to fund the district. A petition to establish an ambulance district must state whether it will be funded by a property or a sales tax. Currently, a district can only levy a property tax (Sections 190.015, 190.035, and 190.040);

(29) Expands the definition of "marijuana" to include all forms of cannabis, including synthetic compounds or structures that are molecularly similar, cannabimimetic indoles, and all such cannabinoid-like substances that are not approved drugs by the federal Food and Drug Administration (Section 195.010);

(30) Adds spice cannabinoids, commonly known as "spice" or "K2", and other similar synthetic cannabinoids that are similar in structure and are not approved for human consumption by the United States Food and Drug Administration to the list of Schedule I controlled substances. Boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione are added to the list of Schedule III controlled substances. Fospropofol is added to the list of Schedule IV controlled substances and lacosamide and pregabalin are added to the list of Schedule V controlled substances (Section 195.017);

(31) Allows a licensed physician assistant or advance practice registered nurse or comparable mid-level practitioner located in another state to prescribe controlled substances if he or she has fulfilled the requirements of the state in which he or she is licensed and practicing as well as those of the United States, he or she writes the prescription in compliance with the applicable



laws of the state in which he or she is licensed and practicing as well as those of the United States, and the prescription is dispensed to a patient who is a resident of another state. Supply limitations for the quantity of Schedule II, III, IV, or V controlled substances that may be prescribed or dispensed do not apply if the prescription was written by a practitioner located in another state, dispensed to a patient who is a resident of another state, or the prescription is dispensed directly to a member of the armed forces serving outside the United States (Sections 195.070, 195.080, and 334.747);

(32) Increases, from eight to 10, the number of members on the sewer district boards of trustees in the counties of Cass and Jackson. Each board will consist of the county executive, mayors of the five largest-user cities, mayors of three other cities who are members of the sewer district advisory board, and one member of the county legislature. In the event the district extends its boundaries into a bordering county, the presiding commissioner or county executive of the bordering county will become the eleventh member of the board (Section 204.300);

(33) Requires the chief law enforcement official responsible for a municipal detention facility or a county or regional jail or the chief administrator of a private jail to notify the Missouri Uniform Law Enforcement System (MULES) as soon as reasonably possible but no later than five hours after an escape of a prisoner who has been convicted of a dangerous felony or who is being held on suspicion of having committed a dangerous felony. The notification must include the name, description, and photograph of the prisoner as well as other relevant facts (Section 221.505);

(34) Specifies that the provisions of Section 262.802, relating to the abeyance of water and sewer assessments, will not apply to any drainage or levee district (Section 246.310);

(35) Requires the Department of Natural Resources to establish minimum design, siting, operation, inspection, monitoring, financial assurance, and closure requirements by regulation for all material recovery facilities. The department may establish different requirements depending on the nature and content of the solid waste streams processed by the facility, the degree of automation to be used in the processing and recovery activities, the amount and type of nonrecyclable wastes remaining after resource recovery, and other factors as determined by the department. Until the material recovery facility regulations have become final and effective, the department is prohibited from issuing any permit to construct or operate a material recovery facility unless the facility processes only solid waste collected as part of a source-separated or single-stream

residential, commercial, or industrial recycling program (Section 260.205);

(36) Requires any city or political subdivision that owns or operates a solid waste processing facility where the collection or processing of solid waste is currently being provided by a private entity to notify the entity by certified mail of its intent to own or operate a processing facility in the area. No city or political subdivision may begin ownership or operation of a solid waste reprocessing facility where solid waste processing is currently handled by a private entity until at least five years from notifying the private entity of its intent to begin operation. If the city or political subdivision does not begin processing solid waste within six years of the notification, it must renotify the private entity and pay the private entity an amount at least equal to the sum the entity would have received for providing the services if the services were provided under a contract (Section 260.247);

(37) Requires a nonresident motorist operating or who allows another person to operate a vehicle within the state to maintain financial responsibility that meets the requirements of his or her state. Anyone who fails to maintain financial responsibility will be guilty of a class C misdemeanor (Section 303.025);

(38) Specifies that a person will be guilty of the crime of endangerment of emergency personnel or emergency responder if, while in an active emergency zone as defined in the substitute, the person commits certain specified acts. Any person who commits this crime will be subject to a fine of up to \$1,000 and have four points assessed against his or her driver's license in addition to any other penalty authorized by law. If the offense results in the injury or death of an emergency responder or emergency personnel, the person will be guilty of aggravated endangerment of an emergency responder and subject to a fine of up to \$5,000 for an injury and up to \$10,000 for a death with 12 points assessed against the person's driver's license. The substitute also increases the amount of the fine assessed for certain traffic violations if the violation occurred in an active emergency zone (Sections 304.890, 304.892, and 304.894);

(39) Specifies that after February 28, 2011, all vehicles operated by a contract carrier that transport passengers for compensation must be equipped with one or more operable oscillating amber or white strobe lights mounted on the roof in the rear one-third portion or integrated into the rear bumper of the vehicle to warn other motorists when the vehicle has stopped on or directly adjacent to a roadway for the loading or unloading of passengers or equipment (Section 307.129);

(40) Requires all records maintained by a licensed pharmacy in an electronic record keeping system to contain all information otherwise required in a manual record keeping system and be readily retrievable. Pharmacies may electronically maintain the original prescription for each drug and any change or alteration to a prescription record if the original written or faxed prescription is physically maintained on file at the pharmacy (Section 338.100);

(41) Specifies that the required continuing instruction for public administrators in certain counties of the first classification does not have to be classroom instruction in order for them to receive compensation (Section 473.739);

(42) Specifies that a public administrator from a second, third, or fourth classification county or St. Louis City who chooses to receive an annual salary will receive \$2,000 of his or her salary only if he or she has completed at least 20 hours of instruction each year that has been approved by a professional association of the county public administrators of Missouri unless the public administrator is exempted from the training by the association. The association approving the program must provide a certificate of completion for the training program and send a list of certified public administrators to the treasurer of each county. The public administrator will be reimbursed for expenses incurred for attending the training in the same manner as other expenses (Section 473.742);

(43) Specifies that when three or more political subdivisions of the state form a business entity for the purpose of providing liability and other insurance, including public and quasi-public governmental bodies, the risk coverages procured by a member of the entity will not be deemed to constitute a contract, purchase, or expenditure of public funds for which competitive bids must be solicited (Section 537.620);

(44) Requires the prosecuting or circuit attorney to file a motion for the court-ordered sexually transmitted disease testing of a defendant charged with certain sexual offenses upon the request of the victim with notice given to the defense attorney. A motion can also be filed upon the prosecuting or circuit attorney's own initiative and for good cause shown with the proper notice given. The testing must occur within 48 hours of when the defendant was charged. The results of the testing and any follow-up testing must be released to the victim, the victim's parent or guardian if he or she is a minor, the prosecuting or circuit attorney, and the defendant's attorney as soon as practicable. All costs of the testing are to be paid by the Department of Public Safety (Section 566.135);

(45) Specifies that a person commits the crime of unlawful use of weapons if he or she knowingly handles or uses a firearm or projectile weapon in a negligent or unlawful manner while intoxicated (Section 571.030);

(46) Establishes Susie's Law which prohibits any child younger than 18 years of age from riding as a passenger on any machinery or heavy equipment not manufactured for passengers, excluding farm machinery as defined in Section 32.085. Any operator who violates this provision will be subject to a fine of \$100 for the first violation and \$500 for any subsequent violation (Section 578.275); and

(47) Adds one active member of the Missouri Deputy Sheriff's Association to the Missouri Sheriff Methamphetamine Relief Taskforce (MoSMART). The taskforce member will serve a two-year term and be appointed by the Governor from a list of five names submitted by the association (Section 650.350).

The substitute contains an emergency clause for the provisions regarding assessed valuation thresholds for county classifications, sales taxes charged on certain purchases made for resale, and the additions to the schedules of controlled substances.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown in FY 2011, FY 2012, and FY 2013. Estimated Cost on Other State Funds of Unknown in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that prohibiting the sale of K2 is an important safety measure that needs to be addressed quickly.

Testifying for the bill were Representative Franz for Senator Schaefer; Department of Health and Senior Services; Missouri Police Chiefs' Association; Missouri State Troopers Association; and Department of Public Safety.

OPPOSERS: Those who oppose the bill say that by designating K2 as a Schedule I drug, harsh punishments will be given for a substance that is not harmful. Sales of K2 have led to many businesses being able to hire more employees.

Testifying against the bill were Micah Riggs; Joy Dishneau; Kevin Bay; Dustin Decker; and John Hawkins.