

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1202

91ST GENERAL ASSEMBLY

Reported from the Committee on Transportation, March 13, 2002, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4670S.09C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 389.005, 389.610 and 621.015, RSMo, and to enact in lieu thereof six new sections relating to the directives of executive order number 02-03, signed by the governor February 7, 2002, with an emergency clause.

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

Section A. Sections 389.005, 389.610 and 621.015, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 104.805, 308.010, 389.005, 389.610, 621.015 and 621.040, to read as follows:

104.805. 1. Employees who are earning creditable service in the closed plan of the Missouri state employees' retirement system and who are, as a result of the provisions of this act, transferred to the department of transportation may elect to transfer all of such creditable service to the closed plan of the highways and transportation employees' and highway patrol retirement system. The election must be in writing and must be made within ninety days of the effective date of this act. Any election to transfer creditable service to the highways and transportation employees' and highway patrol retirement system will result in the forfeiture of any rights or benefits in the Missouri state employees' retirement system. Any failure to elect to transfer creditable service pursuant to this subsection will result in the employees remaining in the closed plan of the Missouri state employees' retirement system.

2. Employees who are earning credited service in the year 2000 plan of the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Missouri state employees' retirement system and who are, as a result of the provisions of this act, transferred to the department of transportation may elect to transfer all of such credited service to the year 2000 plan of the highways and transportation employees' and highway patrol retirement system. The election must be in writing and must be made within ninety days of the effective date of this act. Any election to transfer credited service to the highways and transportation employees' and highway patrol retirement system will result in the forfeiture of any rights or benefits in the Missouri state employees' retirement system. Any failure to elect to transfer credited service pursuant to this subsection will result in the employees remaining in the year 2000 plan of the Missouri state employees' retirement system.

3. For any employee who elects under subsection 1 or 2 of this section to transfer to the highways and transportation employees' and highway patrol retirement system, the Missouri state employees' retirement system shall pay to the highways and transportation employees' and highway patrol retirement system, by December 31, 2002, an amount actuarially determined to equal the liability transferred from the Missouri state employees' retirement system.

4. In no event shall any employee receive service credit for the same period of service under more than one retirement system as a result of the provisions of this section.

5. For any transferred employee who elects under subsection 1 or 2 of this section to transfer to the highways and transportation employee's and highway patrol retirement system, the only medical coverage available for the employee shall be the medical coverage provided in section 104.270, RSMo. However, this does not preclude medical coverage for the transferred employee as a dependent under any other health care plan.

308.010. 1. The highways and transportation commission shall have responsibility and authority, as provided in this act, for the administration and enforcement of:

(1) Licensing, supervising and regulating motor carriers for the transportation of passengers, household goods and other property by motor vehicles within this state;

(2) Licensing motor carriers to transport hazardous waste, used oil, infectious waste and permitting waste tire haulers in intrastate or interstate commerce, or both, by motor vehicles within this state;

(3) Compliance by motor carriers and motor private carriers with applicable requirements relating to safety and hazardous materials transportation, within the terminals of motor carriers and motor private carriers of passengers or property;

(4) Compliance by motor carriers and motor private carriers with applicable

requirements relating to safety and hazardous materials transportation wherever they possess, transport or deliver hazardous waste, used oil, infectious waste or waste tires. This authority is in addition to, and not exclusive of, the authority of the department of natural resources to ensure compliance with any and all applicable requirements related to the transportation of hazardous waste, used oil, infectious waste or waste tires;

(5) Collecting and regulating amounts payable to the state from interstate motor carriers in accordance with the provisions of the International Fuel Tax Agreement in accordance with section 142.617, RSMo, and any successor or similar agreements, including the authority to impose and collect motor fuel taxes due pursuant to chapter 142, RSMo, and such agreement;

(6) Registering and regulating interstate commercial motor vehicles operated upon the highways of this state, in accordance with the provisions of the International Registration Plan in accordance with sections 301.271 through 301.277, RSMo, and any successor or similar agreements, including the authority to issue license plates in accordance with sections 301.130 and 301.041, RSMo;

(7) Permitting the transportation of over dimension or overweight motor vehicles or loads that exceed the maximum weights or dimensions otherwise allowed upon the public highways within the jurisdiction of the highways and transportation commission; and

(8) Licensing intrastate house movers.

2. The highways and transportation commission shall carry out all powers, duties and functions relating to intrastate and interstate transportation previously performed by:

(1) The division of motor carrier and railroad safety within the department of economic development, and all officers or employees of that division;

(2) The department of natural resources, and all officers or employees of that division, relating to the issuance of licenses or permits to transport hazardous waste, used oil, infectious waste or waste tires by motor vehicles operating within the state;

(3) The highway reciprocity commission within the department of revenue, and all officers or employees of that commission; and the director of revenue's powers, duties and functions relating to the highway reciprocity commission, except that the highways and transportation commission may allow the department of revenue to enforce the provisions of the International Fuel Tax Agreement, as required by such agreement; and

(4) The motor carrier services unit within the traffic functional unit of the department of transportation, relating to the special permitting of operations on state

highways of motor vehicles or loads that exceed the maximum length, width, height or weight limits established by law or by the highways and transportation commission.

3. All the powers, duties and functions described in subsections 1 and 2 of this section, including but not limited to, all powers, duties and functions pursuant to chapters 387, 390 and 622, RSMo, including all rules and orders, are hereby transferred to the department of transportation, which is in the charge of the highways and transportation commission, by type I transfer, as defined in the Omnibus State Reorganization Act of 1974, and the preceding agencies and officers shall no longer be responsible for those powers, duties and functions.

4. All the powers, duties and functions, including all rules and orders, of the administrative law judges of the division of motor carrier and railroad safety, as amended by the provisions of this act, are hereby transferred to the administrative hearing commission within the state office of administration.

5. The division of motor carrier and railroad safety and the highway reciprocity commission are abolished.

6. Personnel previously employed by the division of motor carrier and railroad safety and the highway reciprocity commission shall be transferred to the department of transportation, but the department of natural resources shall not be required to transfer any personnel pursuant to this section. Administrative law judges of the division of motor carrier and railroad safety are hereby transferred to the administrative hearing commission, in accordance with section 621.040, RSMo.

7. Credentials issued by the transferring agencies or officials before the effective date of this act shall remain in force or expire as provided by law. In addition, the highways and transportation commission shall have the authority to suspend, cancel or revoke such credentials after the effective date of this act.

8. Notwithstanding any provision of law to the contrary, on and after the effective date of this section all surety bonds, cash bonds, certificates of deposit, letters of credit, drafts, checks or other financial instruments payable to:

(1) The highway reciprocity commission or the department of revenue pursuant to section 301.041, RSMo, or pursuant to the International Fuel Tax Agreement; or

(2) Any other agency or official whose powers, duties or functions are transferred pursuant to this section, shall be payable instead to the state highways and transportation commission.

9. The department of natural resources shall have authority to collect and establish by rule the amount of the fee paid by applicants for a permit to transport waste tires.

10. The Missouri hazardous waste management commission created in section 260.365, RSMo, shall have the authority to collect and establish by rule the amount of the fee paid by applicants for a license to transport hazardous waste, used oil, or infectious waste. This fee shall consist of an annual application fee, plus an annual use fee based upon tonnage, mileage or a combination of tonnage and mileage and shall be set to generate, as nearly as practicable, six hundred thousand dollars annually.

389.005. [The term "division", as used in this chapter, means the division of motor carrier and railroad safety within the department of economic development, unless such use is clearly contrary to the context.] **Except as otherwise provided in this act, all the powers, duties and functions of the division of motor carrier and railroad safety relating to rail transportation activities, including all rules and orders, as provided in this chapter and chapters 388, 391 and 622, RSMo, are hereby transferred to the department of transportation, which is in the charge of the highways and transportation commission, by type I transfer as set forth in the Omnibus State Reorganization Act of 1974. All personnel of the division of motor carrier and railroad safety are transferred to the department of transportation by section 308.010, RSMo, except that administrative law judges are transferred by section 308.010, RSMo, to the administrative hearing commission.**

389.610. 1. No public road, highway or street shall be constructed across the track of any railroad corporation, nor shall the track of any railroad corporation be constructed across a public road, highway or street, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade nor shall the track of a street railroad corporation be constructed across the tracks of a railroad corporation at grade, without having first secured the permission of the [division of motor carrier and railroad safety] **highways and transportation commission**, except that this subsection shall not apply to the replacement of lawfully existing tracks. The [division] **commission** shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

2. Every railroad corporation shall construct and maintain good and sufficient crossings and crosswalks where its railroad crosses public roads, highways, streets or sidewalks now or hereafter to be opened.

3. The [division of motor carrier and railroad safety] **highways and transportation commission** shall make and enforce reasonable rules and regulations pertaining to the construction and maintenance of all public grade crossings. These rules and regulations shall establish minimum standards for:

- (1) The materials to be used in the crossing surface;
- (2) The length and width of the crossing;

(3) The approach grades;

(4) The party or parties responsible for maintenance of the approaches and the crossing surfaces.

4. The [division] **highways and transportation commission** shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, apportionment of expenses, use and warning devices of each crossing of a public road, street or highway by a railroad or street railroad, and of one railroad or street railroad by another railroad or street railroad. In order to facilitate such determinations, the [division] **highways and transportation commission** may adopt pertinent provisions of The Manual on Uniform Traffic Control Devices for Streets and Highways or other national standards.

5. The [division] **highways and transportation commission** shall have the exclusive power to alter or abolish any crossing, at grade or otherwise, of a railroad or street railroad by a public road, highway or street whenever the [division] **highways and transportation commission** finds that public necessity will not be adversely affected and public safety will be promoted by so altering or abolishing such crossing, and to require, where, in its judgment it would be practicable, a separation of grades at any crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made.

6. The [division] **highways and transportation commission** shall have the exclusive power to prescribe the proportion in which the expense of the construction, installation, alteration or abolition of such crossings, the separation of grades, and the continued maintenance thereof, shall be divided between the railroad, street railroad, and the state, county, municipality or other public authority in interest.

7. Any agreement entered into after October 13, 1963, between a railroad or street railroad and the state, county, municipality or other public authority in interest, as to the apportionment of any cost mentioned in this section shall be final and binding upon the filing with the [division] **highways and transportation commission** of an executed copy of such agreement. If such parties are unable to agree upon the apportionment of the cost, the [division] **highways and transportation commission** shall apportion the cost among the parties according to the benefits accruing to each. In determining such benefits, the [division] **highways and transportation commission** shall consider all relevant factors including volume, speed and type of vehicular traffic, volume, speed and type of train traffic, and advantages to the public and to such railroad or street railroad resulting from the elimination of delays and the reduction of hazard at the crossing.

8. Upon application of any person, firm or corporation, the [division] **highways and transportation commission** shall determine if an existing private crossing has become or a proposed private crossing will become utilized by the public to the extent that it is necessary to

protect or promote the public safety. The [division] **highways and transportation commission** shall consider all relevant factors including but not limited to volume, speed, and type of vehicular traffic, and volume, speed, and type of train traffic. If it be determined that it is necessary to protect and promote the public safety, the [division] **highways and transportation commission** shall prescribe the nature and type of crossing protection or warning device for such crossing, the cost of which shall be apportioned by the [division] **highways and transportation commission** among the parties according to the benefits accruing to each. In the event such crossing protection or warning device as prescribed by the [division] **highways and transportation commission** is not installed, maintained or operated, the crossing shall be closed to the public.

9. The exclusive power of the highways and transportation commission pursuant to this section shall be subject to review, determination, and prescription by the administrative hearing commission, upon application to that commission by any interested party. Upon filing of an application pursuant to this subsection, the administrative hearing commission is vested with the exclusive power of the highways and transportation commission otherwise provided in this section, with reference to matters reviewed, determined or prescribed by the administrative hearing commission.

621.015. The "Administrative Hearing Commission" is assigned to the office of administration. It shall consist of no more than [three] **four** commissioners. The commissioners shall be appointed by the governor with the advice and consent of the senate. The term of each commissioner shall be for six years, **beginning on the date of appointment**, and **continuing** until [his] **that commissioner's** successor is appointed, qualified and sworn. The commissioners shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not practice law during their term of office. Each commissioner shall receive annual compensation of fifty-one thousand dollars plus any salary adjustment provided pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the performance of his duties. The office of the administrative hearing commission shall be located in the City of Jefferson and it may employ necessary clerical assistance, compensation and expenses of the commissioners to be paid from appropriations from general revenue made for that purpose.

621.040. 1. After the effective date of this act, all individuals authorized on that date as administrative law judges of the division of motor carrier and railroad safety within the department of economic development shall be commissioners of the administrative hearing commission within the office of administration, and shall serve out the unexpired remainder of their terms as commissioners. They shall have the same powers, duties, functions and compensation as provided by law for the other commissioners, and after the expiration of their terms they may be reappointed in the

same manner as other commissioners.

2. The administrative hearing commission shall have jurisdiction to conduct hearings, make findings of fact and conclusions of law, and issue orders in all applicable cases relating to motor carrier and railroad regulation transferred to the highways and transportation commission pursuant to this act, except that, notwithstanding any provision of law to the contrary, the highways and transportation commission may issue final agency orders without involvement of the administrative hearing commission in relation to:

(1) Uncontested motor carrier cases, and other uncontested motor carrier matters, or in which all parties have waived a hearing in writing; and

(2) Approval of settlement agreements or issuance of consent orders in motor carrier or railroad enforcement cases, if all parties have consented in writing to the issuance of the commission's order.

Section B. Because of the need to ensure safe and efficient administration of commercial motor vehicles within this state, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval, or July 1, 2002, whichever later occurs.

^T
Bill

Copy