

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 235
94TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 235, adopted February 27, 2007.

Taken up for Perfection February 27, 2007. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0876S.05P

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.

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Section A. Sections 36.030, 36.031, 306.161, 306.163, and 650.005, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 36.030, 36.031, 306.161, 306.163, 306.226, 306.228, 306.230, 306.232, and 650.005, to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 to secure efficient administration is established for all offices, positions and employees, except attorneys, of the department of social services, the department of corrections, the department of health and senior services, the department of natural resources, the department of mental health, the division of personnel and other divisions and units of the office of administration, the division of employment security, mine safety and on-site consultation sections of the division of labor standards and administration operations of the department of labor and industrial relations, the division of tourism and job development and training, the Missouri housing development commission, and the office of public counsel of the department of economic development, [the Missouri state water patrol,] the Missouri veterans commission, capitol police and state emergency

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

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

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

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

26 (3) Chaplains and attorneys regularly employed or appointed in any
27 department or division subject to this chapter, except as provided in section
28 36.031;

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

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

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

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

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

48 (9) Special assistants as designated by an appointing authority; except
49 that, the number of such special assistants shall not exceed one percent of a

50 department's total authorized full-time equivalent workforce;

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

53 2. All positions in the executive branch transferred to coverage pursuant
54 to this chapter where incumbents of such positions have at least twelve months'
55 prior service on the effective date of such transfer shall have incumbency
56 preference and shall be permitted to retain their positions, provided they meet
57 qualification standards acceptable to the division of personnel of the office of
58 administration. An employee with less than twelve months of prior service on the
59 effective date of such transfer or an employee who is appointed to such position
60 after the effective date of such transfer and prior to the classification and
61 allocation of the position by the division of personnel shall be permitted to retain
62 his or her position, provided he or she meets acceptable qualification standards
63 and subject to successful completion of a working test period which shall not
64 exceed twelve months of total service in the position. After the allocation of any
65 position to an established classification, such position shall thereafter be filled
66 only in accordance with all provisions of this chapter.

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

72 4. To encourage all state employees to improve the quality of state
73 services, increase the efficiency of state work operations, and reduce the costs of
74 state programs, the director of the division of personnel shall establish employee
75 recognition programs, including a statewide employee suggestion system. The
76 director shall determine reasonable rules and shall provide reasonable standards
77 for determining the monetary awards, not to exceed five thousand dollars, under
78 the employee suggestion system. Awards shall be made from funds appropriated
79 for this purpose.

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

36.031. Any provision of law to the contrary notwithstanding, except for
2 the elective offices, institutions of higher learning, the department of
3 transportation, the department of conservation, those positions in the Missouri
4 state highway patrol the compensation of which is established by subdivision (2)

5 of subsection 2 of section 43.030, RSMo, and section 43.080, RSMo, **those**
6 **positions in the Missouri state water patrol the compensation of which**
7 **is established by section 306.228, RSMo**, those positions in the division of
8 finance and the division of credit unions compensated through a dedicated fund
9 obtained from assessments and license fees under sections 361.170 and 370.107,
10 RSMo, and those positions for which the constitution specifically provides the
11 method of selection, classification, or compensation, and the positions specified
12 in subsection 1 of section 36.030, but including attorneys, those departments,
13 agencies and positions of the executive branch of state government which have
14 not been subject to these provisions of the state personnel law shall be subject to
15 the provisions of sections 36.100, 36.110, 36.120 and 36.130, and the regulations
16 adopted pursuant to sections 36.100, 36.110, 36.120 and 36.130 which relate to
17 the preparation, adoption and maintenance of a position classification plan, the
18 establishment and allocation of positions within the classification plan and the
19 use of appropriate class titles in official records, vouchers, payrolls and
20 communications. Any provision of law which confers upon any official or agency
21 subject to the provisions of this section the authority to appoint, classify or
22 establish compensation for employees shall mean the exercise of such authority
23 subject to the provisions of this section. This section shall not extend coverage
24 of any section of this chapter, except those specifically named in this section, to
25 any agency or employee. In accordance with sections 36.100, 36.110, 36.120 and
26 36.130, and after consultation with appointing authorities, the director of the
27 division of personnel shall conduct such job studies and job reviews and establish
28 such additional new and revised job classes as the director finds necessary for
29 appropriate classification of the positions involved. Such classifications and the
30 allocation of positions to classes shall be maintained on a current basis by the
31 division of personnel. The director of the division of personnel shall, at the same
32 time, notify all affected agencies of the appropriate assignment of each job
33 classification to one of the salary ranges within the pay plan then applicable to
34 merit system agencies. The affected agencies and employees in the classifications
35 set pursuant to this section shall be subject to the pay plan and rates of
36 compensation established and administered in accordance with the provisions of
37 this section, and the regulations adopted pursuant to this section, on the same
38 basis as for merit agency employees. In addition, any elected official, institution
39 of higher learning, the department of transportation, the department of
40 conservation, the general assembly, or any judge who is the chief administrative
41 officer of the judicial branch of state government may request the division of

42 personnel to study salaries within the requestor's office, department or branch of
43 state government for classification purposes.

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

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

6 2. The commissioner shall prescribe rules for instruction and discipline
7 and make administrative rules and regulations and fix the hours of duty for the
8 members of the patrol. [He] **The commissioner** shall have charge of the office
9 of the patrol, shall be custodian of the records of the patrol, and shall direct the
10 day-to-day activities of the officers, patrolmen and office personnel.

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

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

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

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

- 8 (2) Is not of good character;
- 9 (3) Is not a citizen of the United States;
- 10 (4) At the time of appointment is not a citizen of the state of
11 Missouri;
- 12 (5) Is not a graduate of an accredited four-year high school or in
13 lieu thereof has not obtained a certificate of equivalency from the state
14 department of elementary and secondary education or other source
15 recognized by such department; or
- 16 (6) Does not possess ordinary physical strength, and who is not
17 able to pass the physical and mental examination that the
18 commissioner prescribes.

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

306.230. 1. The commissioner shall prescribe rules for
2 instruction and discipline and make all administrative rules and
3 regulations and fix the hours of duty for the members of the
4 patrol. Any rule or portion of a rule, as that term is defined in section
5 536.010, RSMo, that is created under the authority delegated in this
6 section shall become effective only if it complies with and is subject to
7 all of the provisions of chapter 536, RSMo, and, if applicable, section
8 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
9 and if any of the powers vested with the general assembly pursuant to
10 chapter 536, RSMo, to review, to delay the effective date, or to
11 disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or
13 adopted after August 28, 2007, shall be invalid and void. The
14 commissioner shall divide the state into districts and assign members
15 of the patrol to such districts in a manner deemed proper to carry out
16 the purposes of this chapter. The commissioner may call members of
17 the patrol from one district to another.

18 2. The commissioner may, by general order, establish for the

19 circumstances under which members of the patrol are promoted. The
20 commissioner shall classify and, by promotion, increase the rank of
21 lieutenant colonels, majors, captains, lieutenants, sergeants, corporals,
22 patrolmen, and radio personnel from the next lower rank after not less
23 than one year of service satisfactorily performed therein. If the
24 commissioner finds the candidate pool to fill a position through
25 promotion is not sufficient from which to select, the commissioner may
26 promote an individual from the next lower rank.

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

- 19 (1) Suspension without pay for not more than thirty days;
- 20 (2) Reduction in rank; or
- 21 (3) Disciplinary transfer at the member's expense.

22 Nothing in this section shall be construed to prevent non-disciplinary
23 transfers of members if the commissioner determines that such
24 transfers are for the good of the patrol. No hearings shall be required
25 in the case of reprimands or suspensions of three days or less which
26 may be imposed at the discretion of the commissioner.

27 2. If a complaint is filed against a member, the member shall be
28 provided a copy of the complaint promptly after the complaint is filed
29 by or received by the patrol. Unless the member consents in writing to

30 an earlier time, the member shall not be questioned by the patrol about
31 the complaint or ordered to respond in writing to the complaint until
32 forty-eight hours after the member has received a copy of the
33 complaint. The member shall have a reasonable opportunity to have
34 counsel present during any questioning related to the complaint. Prior
35 to the commissioner or the patrol making an initial recommendation of
36 discipline, the member shall be entitled to a copy of any investigation
37 reports and any other written or recorded information or other
38 evidence reviewed by the patrol which relates to the complaint; and the
39 member will be afforded an opportunity to present a written response
40 thereto.

41 3. Notwithstanding the provisions of subsections 2 or 3 of this
42 section to the contrary, the commissioner may postpone notifying a
43 member that a complaint has been filed against him or her and may
44 withhold the complaint and part or all of the investigation report and
45 other evidence if the commissioner determines that such disclosures
46 shall seriously interfere with the investigation regarding such
47 complaint or any other investigation being conducted by the patrol or
48 may likely jeopardize the health or safety of any person. Nothing in
49 this subsection shall be construed to limit the rights of parties to
50 discovery in civil or criminal litigation.

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

9 2. All the powers, duties and functions of the state highway patrol,
10 chapter 43, RSMo, and others, are transferred by type II transfer to the
11 department of public safety. The governor by and with the advice and consent of
12 the senate shall appoint the superintendent of the patrol. With the exception of
13 sections 43.100 to 43.120, RSMo, relating to financial procedures, the director of
14 public safety shall succeed the state highways and transportation commission in
15 approving actions of the superintendent and related matters as provided in
16 chapter 43, RSMo. Uniformed members of the patrol shall be selected in the

17 manner provided by law and shall receive the compensation provided by
18 law. Nothing in the Reorganization Act of 1974, however, shall be interpreted to
19 affect the funding of appropriations or the operation of chapter 104, RSMo,
20 relating to retirement system coverage or section 226.160, RSMo, relating to
21 workers' compensation for members of the patrol.

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

30 4. The director of public safety, superintendent of the highway patrol and
31 transportation division of the department of economic development are to
32 examine the motor carrier inspection laws and practices in Missouri to determine
33 how best to enforce the laws with a minimum of duplication, harassment of
34 carriers and to improve the effectiveness of supervision of weight and safety
35 requirements and to report to the governor and general assembly by January 1,
36 1975, on their findings and on any actions taken.

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

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

43 7. All the powers, duties and functions of the state fire marshal, chapter
44 320, RSMo, and others, are transferred to the department of public safety by a
45 type I transfer.

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

52 9. The director of public safety shall promulgate motor vehicle regulations
53 and be ex officio a member of the safety compact commission in place of the

54 director of revenue and all powers, duties and functions relating to chapter 307,
55 RSMo, are transferred by type I transfer to the director of public safety.

56 10. The office of adjutant general and the state militia are assigned to the
57 department of public safety; provided, however, nothing herein shall be construed
58 to interfere with the powers and duties of the governor as provided in article IV,
59 section 6 of the Constitution of the state of Missouri or chapter 41, RSMo.

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

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

76 13. Any rule or portion of a rule, as that term is defined in section
77 536.010, RSMo, that is promulgated under the authority of this chapter, shall
78 become effective only if the agency has fully complied with all of the requirements
79 of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if
80 applicable, after August 28, 1999. If the provisions of section 536.028, RSMo,
81 apply, the provisions of this section are nonseverable and if any of the powers
82 vested with the general assembly pursuant to section 536.028, RSMo, to review,
83 to delay the effective date, or to disapprove and annul a rule or portion of a rule
84 are held unconstitutional or invalid, the purported grant of rulemaking authority
85 and any rule so proposed and contained in the order of rulemaking shall be
86 invalid and void, except that nothing in this section shall affect the validity of
87 any rule adopted and promulgated prior to August 28, 1999.