

HCS SB 23 -- POLITICAL SUBDIVISIONS

SPONSOR: Parson (Jones, 50)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on General Laws by a vote of 15 to 0.

This substitute modifies provisions relating to political subdivisions.

SALES TAX ON MOTOR VEHICLES (Sections 32.087, 144.020 - 144.021, 144.069 - 144.525, 144.610 - 144.615, RSMo, and Section 1);

The substitute eliminates both state and local use taxes on the storage, use, or consumption of motor vehicles, trailers, boats, or outboard motors. The substitute specifies that a sales tax is to be collected for the titling of the property. The rate of tax associated with titling will be the sum of state sales tax and the local sales tax rate in effect at the address of the owner of the property.

All local taxing jurisdictions that have not previously approved a local use tax must put to a vote of the people whether to discontinue collecting sales tax on the titling of motor vehicles purchased from a source other than a licensed Missouri dealer. If a taxing jurisdiction does not hold the vote before November 2016, the taxing jurisdiction must cease collecting the sales tax. Taxing jurisdictions may at any time hold a vote to repeal the tax. Language repealing the tax must also be put to a vote of the people any time 15% of the registered voters in a taxing jurisdiction sign a petition requesting it.

PETTIS COUNTY TRANSIENT GUEST TAX (Section 67.1010)

Currently, Pettis County is prohibited from spending revenue from the county's transient guest tax on salaries. The substitute repeals this provision.

TRANSIENT GUEST TAX FOR ENTITIES PROVIDING DISASTER RELIEF (Sections 67.1020 and 144.030)

The substitute exempts nongovernmental agencies congressionally mandated to provide disaster relief services from transient guest taxes and exempts any person from state sales tax, local sales tax, and transient guest tax sales when payment is made by these nongovernmental agencies as part of a disaster relief service.

TECHNOLOGY BUSINESS FACILITIES AND DATA STORAGE CENTERS (Sections 67.2050 and 144.810)

Beginning August 28, 2013, the substitute authorizes a state and local sales and use tax exemption on items related to new data storage centers, limited to the net fiscal benefit of the state calculated over a 10-year period on:

(a) All electrical energy, gas, water, and other utilities including telecommunications and Internet services used in a new data storage center;

(b) All machinery, equipment, and computers used in any new center; and

(c) All retail sales of tangible personal property and materials for the purposes of constructing a new data storage center.

Any new data storage center facility project seeking a tax exemption must submit a notice of intent and a project plan to the Department of Economic Development that identifies each known constructing and operating taxpayer for the project and any additional information that the department may require. The department must determine whether the project is eligible for exemption by verifying that a new facility will invest at least \$5 million within 12 consecutive months and results in the creation of at least five new jobs during a period of up to 12 consecutive months from the date of condition approval. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within the 30 days must result in a project plan being deemed conditionally approved.

Upon approval by the department, project taxpayers for expanding data center projects may, beginning August 28, 2013, and for a period of up to 10 years, be exempted from state and local sales and use taxes on:

(a) All electrical energy, gas, water, and other utilities including telecommunication and Internet services that, on an annual basis, exceed the amount used in the existing or the replaced facility prior to the expansion;

(b) All machinery, equipment, and computers used in any expanding center; and

(c) All retail sales of tangible personal property and materials for the purpose of constructing, repairing, or remodeling an expanding data storage center.

Any expanding data storage center wishing to utilize these

exemptions must submit a notice of intent and a project plan to the department that identifies each known constructing and operating taxpayer and any additional information that the department may reasonably require to determine eligibility for the exemption. The department must determine whether the project is eligible for exemption by verifying that an expanding facility will invest at least \$1 million within 12 consecutive months. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within 30 days will result in a project plan being deemed conditionally approved. The departments of Economic Development and Revenue must conduct random audits to ensure that the intent of these provisions is followed. No recipient of an exemption can be eligible for benefits under any business recruitment tax credit under Section 135.800.

LAND SALES IN CERTAIN CITIES (Section 92.387)

The substitute requires any sale of land under Chapter 92 to be subject to valid recorded covenants running with the land and valid easements of record or in use.

TAX CREDIT FOR FREIGHT LINE COMPANIES (Section 137.1018)

Currently, a freight line company is allowed a tax credit against its property taxes for eligible expenses incurred in this state to manufacture, maintain, or improve its qualified rolling stock. The substitute extends the tax credit from August 28, 2014, to August 28, 2020.

BUSINESS ACTIVITIES SUBJECT TO SALES AND USE TAXATION (Sections 144.010, 144.030, and 144.605)

The substitute changes the laws regarding the collection of sales and use taxes relating to nexus with Missouri. In its main provisions, the substitute:

(1) Specifies that a person is engaging in business in this state as it relates to the collection of sales and use taxes if the person engages in business in this state or maintains a place of business in this state under Section 144.605;

(2) Voids any ruling, agreement, or contract between the executive branch or any other state agency or department and any person that exempts a vendor from the collection of sales and use tax unless approved by the General Assembly;

(3) Revises the definition of "engages in business activities within this state" as it relates to the collection of use taxes to

remove the provisions including the use of media to purposefully or systematically exploit Missouri's market or being owned or controlled by the same interests that own or control a seller engaged in the same or similar line of business in this state;

(4) Creates a presumption that a vendor engages in business activities within this state if any person, other than a common carrier acting in its capacity as one, that has a substantial nexus with Missouri performs specified activities in relation to the vendor within this state. The presumption may be rebutted by showing that the person's activities are not significantly associated with the vendor's ability to establish or maintain a market in Missouri for the vendor's sales;

(5) Creates a presumption that a vendor engages in business activities within this state if the vendor enters into an agreement with one or more residents of Missouri to refer customers to the vendor and the sales generated by the agreement exceeds \$10,000 in the preceding 12 months. This presumption may be rebutted by showing proof that the Missouri resident did not engage in any activity within Missouri that was significantly associated with the vendor's ability to establish or maintain the vendor's market in Missouri in the preceding 12 months;

(6) Revises the definition of "maintains a place of business in this state" as it applies to the collection of use taxes to exclude a common carrier acting in its capacity as one; and

(7) Repeals the provision that exempts a vendor with less than \$500,000 total gross receipts in Missouri or \$12.5 million nationwide with no selling agents in Missouri and no place of business in this state from the definition of "vendor" as it relates to the collection of use taxes.

MUSEUM AND CULTURAL DISTRICTS IN DISASTER AREAS (Sections 184.800 - 184.865)

The substitute changes the name of the Missouri Museum District Act to the Missouri Museum and Cultural District Act and expands the scope of museum districts to include a building or area used for promoting community culture and the arts, recreation, and knowledge including the performing arts, theater, music, entertainment, public places, libraries, and other public assets. Each proposed district may impose, upon voter approval, a sales tax to restore cultural assets within the district. The substitute restricts the creation of museum and cultural districts under these provisions to include areas where the majority of the property is located within a disaster area. The substitute requires property owners who own at least two-thirds of the property to file a petition to create a

museum and cultural district within five years of the Presidential declaration establishing the disaster area. The museum and cultural district can include parcels of property that are not connected to each other. Legal voters who live in the proposed district will not be required to be listed on the petition to create the district, will not be required to be served a copy of the petition creating the district, and will not have statutory authority to sue to support or oppose the creation of the district. The substitute changes the number of members of the board of directors governing the district from eight to five. All of the members are to be elected at a public meeting removing the Governor's authority to appoint three of the members. The provision prohibiting the board from hiring an employee who is related to a board member within the fourth degree by blood or marriage is repealed. The General Assembly is authorized to make appropriations from general revenue to a district created under this act for a period of 20 years after January 1, 2013. In addition to a sales tax, the board is authorized to impose, upon voter approval, a fee no more than \$1 on any person or entity that offers or manages an event in the district and charges admission for the event. The substitute adds a limited partnership or a limited liability company to the entities that may contract to operate and manage any museum or cultural asset in the district.

ALCOHOL-RELATED TRAFFIC OFFENSES (Sections 302.060, 302.302 - 302.309, 302.525, 476.385, and 577.041)

The substitute changes the laws regarding alcohol-related traffic offenses. In its main provisions, the substitute:

(1) Requires the court to order the Director of the Department of Revenue to issue a license to a person who is otherwise qualified and has been convicted more than twice of driving while intoxicated upon the person petitioning the court after the expiration of 10 years from the date of conviction of the last driving while intoxicated offense and the court finding that he or she has not been convicted, pled guilty to or been found guilty of, and has no pending charges for any offense related to alcohol, controlled substances, and no other alcohol-related enforcement contacts during the preceding 10 years and his or her habits and conduct show he or she is no longer a threat to public safety (Section 302.060);

(2) Requires the court to order the Director of the Department of Revenue to issue a license to a person who is otherwise qualified and has pled guilty to or been convicted of the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition or has been convicted twice within a five-year period of driving while intoxicated or any other

intoxication-related traffic offense, if the court finds that he or she has not been convicted, pled guilty to, or been found guilty of, and has no charges pending for any offense related to alcohol, controlled substances, or drugs, has no other alcohol-related enforcement contacts during the preceding five years, and his or her habits and conduct show he or she no longer poses a threat to public safety (Section 302.060);

(3) Specifies that an operator must be given the option to complete a driver-improvement program through an online or in-person course to stay the assessment of points against a license (Sections 302.302 and 476.385);

(4) Allows a person whose license is to be suspended for a first offense of driving while intoxicated or driving with excessive blood alcohol content to complete a 90-day period of restricted driving privilege in lieu of the suspension if he or she provides proof to the department that all vehicles operated by the person have a functioning, certified ignition interlock device. If the person fails to maintain proof of the device, the restricted driving privilege will be terminated. Upon completion of the 90-day period of restricted driving privilege, compliance with other requirements of law, and filing proof of financial responsibility with the department, the license must be reinstated. However, if the monthly monitoring reports during the 90-day period indicate that the ignition interlock device has registered a confirmed BAC level above the alcohol setpoint or the reports indicate the device has been tampered with or circumvented, then the license will not be reinstated until the person completes an additional 30-day period of restricted driving privilege (Section 302.304);

(5) Specifies that any person who has had a license to operate a motor vehicle suspended or revoked as a result of an assessment of points for a conviction for an intoxication-related traffic offense and has a prior alcohol-related enforcement contact will be required to file proof with the department that any motor vehicle operated by the person is equipped with a functioning, certified ignition interlock device as a required condition of reinstatement of the license (Section 302.304);

(6) Allows a person to receive a limited driving privilege if his or her license at the time of application has been suspended or revoked due to a failure to submit to a chemical test and the person has completed the first 90 days of revocation and files proof of installation with the department that any vehicle operated by him or her is equipped with a functioning, certified ignition interlock device immediately upon the person's license revocation, provided he or she is not otherwise ineligible for a limited

driving privilege (Section 302.309);

(7) Specifies that a circuit court or the department may allow a person who has been convicted more than twice for driving while intoxicated and has had his or her license revoked for a period of 10 years without the ability to obtain a new license or for a person who has been convicted twice for driving while intoxicated and has had his or her license revoked for a period of five years to apply for a limited driving privilege and repeals the requirement that he or she must serve at least 45 days of the disqualification or revocation. A circuit court must grant a limited driving privilege to any person who otherwise is eligible, has filed proof of installation of a certified ignition interlock device, and has had no alcohol-related enforcement contacts since the contact that resulted in his or her license denial (Section 302.309);

(8) Allows a person whose driving record shows no prior alcohol related enforcement contacts in the immediately preceding five years to complete a 90-day period of restricted driving privilege in lieu of the suspension if he or she provides proof to the department that all vehicles operated by the person have a functioning, certified ignition interlock device. Upon completion of the restricted driving period, compliance with other requirements of law, and filing proof of financial responsibility with the department, the license must be reinstated. However, if the monthly monitoring reports during such 90-day period indicate that the ignition interlock device has registered a confirmed BAC level above the alcohol setpoint or has been tampered with or circumvented, then the license cannot be reinstated until he or she completes an additional 30-day period of restricted driving privilege (Section 302.525); and

(9) Specifies that any person who has a license to operate a motor vehicle revoked under these provisions and has a prior alcohol-related enforcement contact will be required to file proof with the department that any motor vehicle operated by him or her is equipped with a functioning, certified ignition interlock device as a required condition of reinstatement. The ignition interlock device must be required on all motor vehicles operated by the person for a period of at least six months immediately following reinstatement. If the monthly monitoring reports show that the device has registered a confirmed blood alcohol concentration reading above the alcohol setpoint or has been tampered with or circumvented, then the period will be extended for an additional six months (Section 577.041).

MOVING TRAFFIC VIOLATIONS (Section 302.341)

Currently, if a Missouri resident fails to dispose of a moving traffic violation charge, the court must order the Director of the Department of Revenue to suspend his or her driving privileges if the charges are not disposed of and fully paid within 30 days. Upon proof of disposition of charges and payment of fine, court costs, and reinstatement fee, the director must return the license and remove the suspension from the driving record if he or she was not operating a commercial motor vehicle or a commercial driver's license holder at the time of the offense. The substitute removes the requirement that the director return the license upon proof of the disposition of charges.

MISSOURI ANGEL INVESTMENT INCENTIVE ACT (Sections 348.273 and 348.274)

The substitute establishes the Missouri Angel Investment Incentive Act that is to be administered by regional Missouri Small Business and Technology Development Centers (SBTDCs) and the SBTDC home office. The primary goal of the act is to encourage individuals to provide seed-capital financing for emerging Missouri businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services. Each regional SBTDC must establish a regional committee of at least three but no more than five people to review applications from businesses requesting designation as a qualified Missouri business and allocate tax credits to qualified investors who make cash investments in the qualified Missouri business. The coordinator must establish its own rules of procedure, including the form and substance of applications to be used by each regional SBTDC and the criteria to be considered by each regional SBTDC when evaluating a qualified Missouri business and issue tax credits to qualified investors that have been allocated available tax credits by a regional SBTDC.

A tax credit must be allowed for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit must be in a total amount equal to 50% of the investor's cash investment in any qualified Missouri business. This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit can be allowed in a year prior to 2013. If the amount by which that portion of the credit allowed exceeds the investor's liability in any one taxable year, beginning in 2013, the remaining portion of the credit may be carried forward five years or until the total amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the credit must be claimed by the owners of the permitted entity investor in proportion to their equity investment in the permitted entity investor. The maximum tax credit allowed is \$50,000 for a single qualified Missouri business per investor

who is a natural person or permitted entity investor or a total of \$250,000 for a single year per investor who is a natural person or owner of a permitted entity investor. No tax credits can be allowed for any cash investments in qualified securities for any year beginning after December 31, 2023. The total amount of tax credits that can be allowed cannot exceed \$6 million.

The tax credits must be administered by the regional SBTDCs. At the beginning of each year, the coordinator must equally designate the tax credits available during that year to each regional SBTDC. At the beginning of each calendar quarter, the coordinator must allocate to each regional SBTDC one-fourth of the total tax credits designated to the regional SBTDC for the year so that the regional SBTDC can allocate tax credits to qualified Missouri businesses and the coordinator can then issue tax credits to qualified investors for cash investments in the qualified Missouri businesses during that quarter.

At the end of each calendar quarter, each regional SBTDC must report to the coordinator any unallocated tax credits for the preceding quarter. The coordinator must aggregate all the tax credits and reallocate them equally among the regional SBTDCs as soon as possible during the next consecutive calendar quarter. Each regional SBTDC must receive the reallocation in addition to the new allocation of designated tax credits for the quarter. During the fourth calendar quarter, a regional SBTDC may request that another regional SBTDC with unallocated tax credits permit the unallocated tax credits to be allocated by the requesting SBTDC. No regional SBTDC can be required to grant the request. When a granting SBTDC transfers the allocation of the unallocated tax credits to a requesting SBTDC, the granting SBTDC must provide to the requesting SBTDC a written confirmation authorizing the transfer. The granting and the requesting SBTDC must include a copy of the written confirmation in its reports.

Before an investor may be entitled to receive tax credits, the investor must have made a cash investment in a qualified security of a qualified Missouri business. The business must have been approved by a regional SBTDC as a qualified Missouri business before the date on which the cash investment was made. To be designated as a qualified Missouri business, a business must make application to a regional SBTDC that includes specified information.

The designation of a business as a qualified Missouri business must be made by the regional SBTDC and must be renewed annually. A business must be so designated if the regional SBTDC determines specified criteria as established by the coordinator. A business may be considered as a qualified Missouri business under the

provisions of the substitute if it falls within a standard industrial classification code established by the coordinator. A qualified Missouri business must have the burden of proof to demonstrate to the regional SBTDC the qualifications of the business.

Each regional SBTDC is authorized to allocate tax credits to qualified Missouri businesses and the coordinator is authorized to issue tax credits to qualified investors in those qualified Missouri businesses. The tax credits must be allocated to those qualified Missouri businesses that, as determined by the regional SBTDC, are most likely to provide the greatest economic benefit to the region, the state, or both. The regional SBTDC may allocate and the coordinator may issue whole or partial tax credits based on the regional SBTDC's assessment of the qualified Missouri business. The regional SBTDC may consider numerous factors in the assessment including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.

Each qualified Missouri business for which a regional SBTDC has allocated tax credits to the qualified investors of the qualified Missouri business must submit to the regional SBTDC a report before the tax credits are issued that includes specified information. The State of Missouri cannot be held liable for any damages to any investor that makes an investment in any qualified security of a qualified Missouri business, any business that applies to be designated as a qualified Missouri business and is turned down, or any investor that makes an investment in a business that applies to be designated as a qualified Missouri business and is turned down. Each qualified Missouri business must notify in a timely manner the regional SBTDC that allocated the tax credits and the coordinator of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

The coordinator must provide specified information to the Department of Revenue on an annual basis. The coordinator must conduct an annual review of the activities to ensure that tax credits issued under these provisions are issued in compliance with the substitute or rules and regulations established by each regional SBTDC or the coordinator. If the coordinator determines that a business is not in substantial compliance to maintain its designation, the coordinator, by written notice, may inform the business that it will lose its designation as a qualified Missouri business 120 days from the date of mailing the notice unless the

business corrects the deficiencies and is once again in compliance with the requirements for designation. After the 120-day period, if the qualified Missouri business is still not in compliance, the coordinator may send a notice of loss of designation to the business, each regional SBTDC, the Director of the Department of Revenue, and to all known investors in the business. A business may lose its designation as a qualified Missouri business by moving its operations outside Missouri within 10 years after receiving financial assistance under the provisions of the substitute. In the event that a business loses its designation as a qualified Missouri business, it will be precluded from being issued any additional tax credits with respect to the business, must be precluded from being approved as a qualified Missouri business, and must repay any financial assistance to the regional SBTDC in an amount to be determined by the regional SBTDC. Each qualified Missouri business that loses its designation must enter into a repayment agreement with the regional SBTDC specifying the terms of the repayment obligation.

Investors in a qualified Missouri business must be entitled to keep all of the tax credits properly issued to the investors under these provisions.

The portions of documents and other materials submitted to any regional SBTDC or the coordinator that contain trade secrets must be kept confidential and must be maintained in a secured environment by the regional SBTDC and the coordinator.

Any qualified investor who makes a cash investment in a qualified security of a qualified Missouri business may transfer the tax credits to any natural person. Only the full credit for any one investment must be transferred and this interest must only be transferred one time. Documentation of any tax credit transfer must be provided by the qualified investor in the manner required by the coordinator.

Each qualified Missouri business for which tax credits have been issued must report specified information to the applicable regional SBTDC on an annual basis, on or before February 1. Each regional SBTDC and the coordinator must also report annually, on or before April 1, to the Governor; Director of the Department of Economic Development; Senate Committee on Commerce, Consumer Protection, Energy and the Environment; House Committee on Economic Development; any successor committees; and the coordinator specified information on the allocation and issuance of the tax credits.

Any violation of the reporting requirements may be grounds for the loss of designation of the qualified Missouri business, and the

business must be subject to the specified restrictions.

The substitute contains an emergency clause for the provisions regarding the sales tax on motor vehicles.

The provisions regarding technology business facilities and data storage centers will expire on September 1, 2019.

The provisions regarding alcohol-related traffic offenses become effective on March 3, 2014, except for section 302.309, which will become effective July 1, 2013.

The provisions regarding the Angel Investment Act will expire December 31, 2023.

PROPOSERS: Supporters say that the bill removes the current prohibition imposed upon Pettis County that prohibits the use of transient guest taxes to pay salaries on the tourism committee. Recently, both Pettis County and the City of Sedalia passed the tax and being able to use these funds to pay salaries is needed.

Testifying for the bill was Senator Parson.

OPPOSERS: There was no opposition voiced to the committee.