

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1888
94TH GENERAL ASSEMBLY

Reported from the Committee on Local Government March 10, 2008 with recommendation that House Committee Substitute for House Bill No. 1888 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4663L.03C

AN ACT

To repeal sections 89.080, 89.090, and 305.410, RSMo, and to enact in lieu thereof three new sections relating to airport zoning.

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

Section A. Sections 89.080, 89.090, and 305.410, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 89.080, 89.090, and 305.410, to read
3 as follows:

89.080. Such local legislative body shall provide for the appointment of a board of
2 adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections
3 89.010 to 89.140 may provide that the board of adjustment may determine and vary their
4 application in harmony with their general purpose and intent and in accordance with general or
5 specific rules therein contained. The board of adjustment shall consist of five members, who
6 shall be residents of the municipality **except as provided in section 305.410, RSMo**. The
7 membership of the first board appointed shall serve respectively, one for one year, one for two
8 years, one for three years, one for four years, and one for five years. Thereafter members shall
9 be appointed for terms of five years each. Three alternate members may be appointed to serve
10 in the absence of or the disqualification of the regular members. All members and alternates
11 shall be removable for cause by the appointing authority upon written charges and after public
12 hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes
13 vacant. The board shall elect its own chairman who shall serve for one year. The board shall

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections
15 89.010 to 89.140. Meetings of the board shall be held at the call of the chairman and at such
16 other times as the board may determine. Such chairman, or in his absence the acting chairman,
17 may administer oaths and compel the attendance of witnesses. All meetings of the board shall
18 be open to the public. The board shall keep minutes of its proceedings, showing the vote of each
19 member upon question, or, if absent or failing to vote, indicating such fact, and shall keep
20 records of its examinations and other official actions, all of which shall be immediately filed in
21 the office of the board and shall be a public record. All testimony, objections thereto and rulings
22 thereon, shall be taken down by a reporter employed by the board for that purpose.

89.090. 1. The board of adjustment shall have the following powers:

- 2 (1) To hear and decide appeals where it is alleged there is error in any order, requirement,
3 decision, or determination made by an administrative official in the enforcement of sections
4 89.010 to 89.140 or of any ordinance adopted pursuant to such sections;
- 5 (2) To hear and decide all matters referred to it or upon which it is required to pass under
6 such ordinance;
- 7 (3) In passing upon appeals, where there are practical difficulties or unnecessary hardship
8 in the way of carrying out the strict letter of such ordinance, to vary or modify the application of
9 any of the regulations or provisions of such ordinance relating to the construction or alteration
10 of buildings or structures or the use of land so that the spirit of the ordinance shall be observed,
11 public safety and welfare secured and substantial justice done, provided that, in any city with a
12 population of three hundred fifty thousand or more inhabitants which is located in more than one
13 county, the board of adjustment shall not have the power to vary or modify any ordinance
14 relating to the use of land.

15 2. In exercising the above-mentioned powers such board may, in conformity with the
16 provisions of sections 89.010 to 89.140, reverse or affirm wholly or partly, or may modify the
17 order, requirement, decision or determination appealed from and may make such order,
18 requirement, decision or determination as ought to be made and to that end shall have all the
19 powers of the officer from whom the appeal is taken. The concurring vote of four members of
20 the board shall be necessary to reverse any order, requirement, decision, or determination of any
21 such administrative official, or to decide in favor of the applicant on any matter upon which it
22 is required to pass under any such ordinance or to effect any variation in such ordinance **except**
23 **as provided in section 305.410, RSMo.**

305.410. 1. Notwithstanding any other law to the contrary, annexation of land located
2 within an airport zone by any city, town or village other than the municipality which owns the
3 airport is prohibited, nor shall any areas be incorporated in such airport zones.

4 2. Notwithstanding the provisions of subsection 1 of this section, a city, town, or
5 village may annex land located within an airport zone if the city, town, or village has
6 entered into an agreement under section 70.220, RSMo, with the municipality that owns
7 the airport. Under the agreement, the city, town, or village shall adopt the airport zoning
8 ordinance of the municipality owning the airport and shall agree to enforce and administer
9 the terms of such airport zoning ordinance. Any city, town, or village, including its officers
10 or employees, that has agreed to enforce and administer the airport zoning ordinance of
11 the municipality that owns the airport who fails to enforce or administer the airport zoning
12 ordinance or the terms of an agreement for enforcement and administration shall be
13 subject to injunction, quo warranto, mandamus, or the remedies set forth in the agreement.
14 If the city, town, or village fails to enforce the municipality's airport zoning law, the
15 municipality owning the airport shall, in addition to all other remedies provided for in this
16 section, have the right to enforce the zoning law against the violator by injunction or
17 declaratory judgment.

18 3. Notwithstanding any other law to the contrary, the powers of the board of
19 adjustment under section 89.080, RSMo, may be vested in a new board of adjustment
20 consisting of members of the board of adjustment of the municipality that own the airport
21 and the members of the board of adjustment of the city, town, or village that annexes land
22 within the airport zone in accordance with an agreement to enforce and administer the
23 zoning regulations set forth in section 305.405 and the airport zoning ordinance of the
24 municipality that owns the airport. Notwithstanding the provisions of section 89.090,
25 RSMo, or any other law to the contrary, the concurring vote of eight members of the new
26 board shall be necessary to reverse any order, requirement, decision, or determination of
27 any such administrative official, or to decide in favor of the applicant on any matter upon
28 which it is required to pass under any such ordinance or to effect any variation in such
29 ordinance.

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