

SECOND REGULAR SESSION

SENATE BILL NO. 653

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR JOHNSON.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3134S.011

AN ACT

To repeal sections 205.968, 205.969, 205.970, 205.971, 205.972 and 205.973, RSMo, relating to disabilities, and to enact in lieu thereof seven new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 205.968, 205.969, 205.970, 205.971, 205.972 and 205.973, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 205.968, 205.969, 205.970, 205.971, 205.972, 205.973 and 537.617, to read as follows:

205.968. 1. As set forth in section 205.971, when a levy is approved by the voters, the governing body of any county or city not within a county of this state shall establish a board of directors. The board of directors shall be a legal entity empowered to establish and/or operate a sheltered workshop as defined in section 178.900, RSMo, residence facilities, or [related services, for the care or employment, or both, of handicapped persons] **any other services or programs for persons with developmental disabilities and their families**. The [facility] **sheltered workshop, residential facilities, or any other services or programs** may operate at one or more locations in the county or city not within a county. Once established, the board of **directors** may, in its own name engage in and contract for any and all types of services, actions or endeavors, not contrary to the law, necessary to the successful and efficient prosecution and

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

continuation of the business and purposes for which it is created, and may purchase, receive, lease or otherwise acquire, own, hold, improve, use, sell, convey, exchange, transfer, and otherwise dispose of real and personal property, or any interest therein, or other assets wherever situated and may incur liability and may borrow money at rates of interest up to the market rate published by the Missouri division of finance. The board shall be taken and considered as a "political subdivision" **as the term is defined in section 70.210, RSMo, for purposes of sections 70.210 to 70.320, RSMo, and** as the term is defined in section 70.600, RSMo, for the purposes of sections 70.600 to 70.755, RSMo.

2. Services may only be provided for those persons defined as [handicapped persons in section 178.900, RSMo, and those persons defined as handicapped persons] **having a developmental disability** in this section whether or not employed [at the facility] **in a sheltered workshop** or in the community[, and for persons who are handicapped due to developmental disability]. Persons having substantial functional limitations due to a mental illness as defined in section 630.005, RSMo, shall not be eligible for services [under] **pursuant to** the provisions of sections 205.968 to [205.972] **205.973** except that those persons may participate in services under the provisions of sections 205.968 to [205.972] **205.973**. All persons otherwise eligible for [facilities or services under] **services pursuant to** this section shall be eligible regardless of their age; except that, individuals employed in sheltered workshops must be at least sixteen years of age. The board **of directors** may, in its discretion, impose limitations with respect to individuals to be served and services to be provided. Such limitations shall be reasonable in [the] light of available funds, needs of the persons and community to be served as assessed by the board, and the appropriateness and efficiency of combining services to persons with various types of [handicaps or] disabilities. **The board of directors shall devise and conduct an annual assessment of the needs of persons with developmental disabilities, their families and the community. Such assessment shall allow for reasonable input from diverse populations of persons with developmental disabilities and their families.**

3. For the purposes of sections 205.968 to [205.972] **205.973**, the term [(1)] "developmental disability" shall mean either or both [paragraph (a) or (b)] **subdivision (1) or (2)** of this subsection:

[(a)] **(1)** A disability which is attributable to mental retardation, cerebral palsy, autism, epilepsy, a learning disability related to a brain dysfunction or a

similar condition found by comprehensive evaluation to be closely related to such conditions, or to require habilitation similar to that required for mentally retarded persons; and

[a.] **(a)** Which originated before age [eighteen] **twenty-two**; and

[b.] **(b)** Which can be expected to continue indefinitely;

[(b)] **(2)** A developmental disability [as defined in section 630.005, RSMo;

(2) "Handicapped person" shall mean a person who is lower range educable or upper range trainable mentally retarded or a person who has a developmental disability.] **that:**

(a) Is manifested before the person attains twenty-two years of age;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two or more of the following areas of major life activities:

a. Self-care;

b. Receptive and expressive language development and use;

c. Learning;

d. Self-direction;

e. Capacity for independent living or economic self-sufficiency;

and

f. Mobility;

(d) Reflects the person's need for a combination and sequence of special interdisciplinary or generic care, habilitation, or other services; and

(e) Reflects the person's need for services and supports that may be lifelong or extending in duration, and which are individually planned and coordinated.

205.969. 1. The board of directors may provide a sheltered workshop program for the county or city not within a county and as part of the **workshop's** program shall conduct work and developmental programs as provided by section 178.910, RSMo, pursuant to rules and standards developed and adopted by the department of elementary and secondary education. **The board of directors may not discontinue funding to a sheltered workshop unless eight of the nine members vote in favor of such discontinuance.**

2. The board may provide places of residence and [related] activity or social centers for those eligible persons.

205.970. 1. When approved by the voters pursuant to section 205.971, the governing body of the county or city not within a county shall appoint a board of directors consisting of a total of nine members, two of whom shall be related by blood or marriage within the third degree to a [handicapped] person **with a developmental disability** as defined in section 205.968, and four of whom shall be public members. At least seven of the board members shall be residents of the county or city not within a county where the [facility is] **sheltered workshop, residence facilities, or other services or programs are** located. After September 28, 1979, all board members shall be appointed to serve for a term of three years, except that of the first board appointed after September 28, 1979, three members shall be appointed for one-year terms, three members for two-year terms and three members for three-year terms. Board members may be reappointed. The [directors] **board members** shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses.

2. The [administrative control and management of the facility shall rest solely with the board, and the] board shall employ all necessary personnel, fix their compensation, and provide suitable quarters and equipment [for the operation of the facility] from funds made available for this purpose.

3. Notwithstanding any provision of law to the contrary, and irrespective of whether or not a county sheltered workshop or residence facility has been established, the board **of directors** may **provide or** contract to provide [services relating in whole or in part to the services which the board may provide to handicapped persons as defined in this law] **any other services or programs that it deems are needed, based on its most recent needs assessment. Such services may be provided to persons with developmental disabilities and their families as defined in section 205.968,** and for such [purpose] **purposes the board** may expend the tax funds or other funds.

4. The board shall elect a chairman, vice chairman, treasurer, and such other officers as it deems necessary for its membership. Before taking office, the treasurer shall furnish a surety bond, in an amount to be determined and in a form to be approved by the board, for the faithful performance of his **or her** duties and faithful accounting of all moneys that may come into his **or her** hands. The treasurer shall enter into the surety bond with a surety company authorized to do business in Missouri, and the cost of such bond shall be paid by the board of directors.

5. The board **of directors** shall set rules for admission to [the facility, and] **its services and programs; except that, rules for admission to a sheltered workshop shall be those established and adopted by the department of elementary and secondary education. The board** shall do all other things necessary to carry out the purposes of sections 205.968 to [205.972] **205.973.**

6. The board **of directors** may contract with any not-for-profit corporation including any corporation which is incorporated for the purpose of implementing the provisions of sections 178.900 to 178.970, RSMo, for any common services, or for the common use of any property of either group.

7. The board **of directors** may accept any gift of property or money for the [use and benefit of the facility] **provision of its services and programs,** and the board is authorized to sell or exchange any such property which it believes would [be to the benefit of the facility] **benefit its services and programs** so long as the proceeds are used exclusively for [facility purposes] **its services and programs.** The board shall have exclusive control of all gifts, property or money it may accept; of all interest or other proceeds which may accrue from the investment of such gifts or money or from the sale of such property; of all tax revenues collected by the county **or city not within a county** on behalf of the [facilities or] **services and programs;** and of all other funds granted, appropriated, or loaned to it by the federal government, the state, or its political subdivisions so long as these resources are used solely to benefit the [facility or related] **services or programs** except those paid for transportation purposes [under] **pursuant to** the provisions of section 94.645, RSMo.

8. Any board member may, following notice and an opportunity to be heard, be removed from office by a majority vote of the other members of the board for any of the following grounds:

- (1) Failure to attend five consecutive meetings, without good cause;
- (2) Conduct prejudicial to the good order and efficient operation of the [facility or] **services or programs;** or
- (3) Neglect of duty.

The chairman of the board shall preside at such removal hearing, unless he or she is the person sought to be removed. In which case the hearing shall be presided over by another member elected by the majority vote of the other board members. All interested parties may present testimony and arguments at such

hearing, and the witnesses shall be sworn by oath or affirmation before testifying. Any interested party may, at his or her own expense, record the proceedings.

9. Vacancies in the board occasioned by removals, resignations or otherwise shall be reported by the board chairman to the mayor's office of a city not within a county or the county commission or county executive officer and shall be filled in like manner as original appointments; except that, if the vacancy occurs during an unexpired term, the appointment shall be for only the unexpired portion of that term.

10. Individual board members shall not be eligible for employment by the board within twelve months of termination of service as a member of the board.

11. No person shall be employed by the board who is related within the third degree by blood or by marriage to any member of the board.

205.971. **1.** The board of aldermen or other governing body of a city not within a county and the county commission or other governing body of the county, except for a county of the first classification having a charter form of government containing in part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first classification having a charter form of government with a population of at least nine hundred thousand inhabitants may, upon approval of a majority of the qualified voters of such city or county thereon, levy and collect a tax not to exceed four mills per dollar of assessed valuation upon all taxable property within the city or county for the purpose of establishing and maintaining [the county] a sheltered workshop, residence, facility [and/or related services], **or any other services or programs.** The county commission or other governing body of a county of the first classification having a charter form of government containing in whole or part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first classification having a charter form of government with a population of at least nine hundred thousand inhabitants may, upon approval of a majority of the qualified voters of such county or city voting thereon, levy and collect a tax not to exceed two mills per dollar of assessed valuation upon all taxable property within such county or city for the purpose of establishing and maintaining [the county or city] a sheltered workshop, residence, facility [and/or related services] **or any other services or programs.** The tax so levied shall be collected along with other county taxes, or in the case of a city not within a county, with other city taxes, in the manner provided by law. All funds collected for this purpose

shall be deposited in a special fund and shall be used for no other purpose. Deposits in the fund shall be expended only upon approval of the board. **Funding for sheltered workshops shall be at a minimum of fifteen percent of the audited county tax receipts for the prior year. A county board may provide additional funding to sheltered workshops. The operating board of the sheltered workshop may, at its discretion, contractually decrease the minimum level of funding for a given year.**

2. Subject to the provisions of this subsection, all funds must be spent in the manner in which the ballot language imposing the tax specifies, or a question shall be submitted to the voters pursuant to section 205.972 without a change in the existing rate.

205.972. 1. The tax may not be levied to exceed forty cents per each one hundred dollars assessed valuation therefor except for a county of the first classification having a charter form of government containing in whole or part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first classification having a charter form of government with a population of at least nine hundred thousand inhabitants voting thereon shall not levy a tax to exceed twenty cents per each one hundred dollars assessed valuation therefor.

2. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

Shall (name of county or city not within a county) establish, improve, (and) (or) maintain a sheltered workshop (and) (or) residence facility (and) (or) [related services for developmentally disabled and handicapped persons] **any other services or programs for persons with developmental disabilities and their families**, and for which the county or city shall levy a tax of (insert exact amount to be voted upon) cents per each one hundred dollars assessed valuation therefor?

YES

NO

205.973. No employer of a [handicapped or developmentally disabled] person **with developmental disabilities** employed in a sheltered workshop shall be liable for any head tax imposed by any city in this state.

537.617. 1. The state of Missouri hereby grants limited consent to be sued under the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., in the state courts for the state of Missouri. The state of

Missouri does not consent to be sued under the Americans with Disabilities Act in federal courts.

2. The consent hereby granted is for a maximum monetary award in the amounts described in section 537.610. No state court shall enter a judgment for an amount in excess of the monetary limits in said section. The monetary limits set forth in said section shall apply regardless of whether the state has insurance for defense of the claim. The amount may include attorneys' fees, but shall not include punitive or exemplary damages.

3. This section shall apply to all actions pending or initiated on or after February 21, 2001.

Section B. Because immediate action is necessary to avoid disruption in services to persons with developmental disabilities, 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.

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Bill

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