

SECOND REGULAR SESSION

SENATE BILL NO. 943

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLEMENS.

Read 1st time January 15, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4179S.01I

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Section A. Sections 89.080, 89.090, and 305.410, RSMo, are repealed and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

89.080. Such local legislative body shall provide for the appointment of a
2 board of adjustment, and in the regulations and restrictions adopted pursuant to
3 the authority of sections 89.010 to 89.140 may provide that the board of
4 adjustment may determine and vary their application in harmony with their
5 general purpose and intent and in accordance with general or specific rules
6 therein contained. The board of adjustment shall consist of five members, who
7 shall be residents of the municipality **except as provided in section 305.410,**
8 **RSMo.** The membership of the first board appointed shall serve respectively, one
9 for one year, one for two years, one for three years, one for four years, and one for
10 five years. Thereafter members shall be appointed for terms of five years
11 each. Three alternate members may be appointed to serve in the absence of or
12 the disqualification of the regular members. All members and alternates shall
13 be removable for cause by the appointing authority upon written charges and
14 after public hearing. Vacancies shall be filled for the unexpired term of any
15 member whose term becomes vacant. The board shall elect its own chairman who
16 shall serve for one year. The board shall adopt rules in accordance with the
17 provisions of any ordinance adopted pursuant to sections 89.010 to
18 89.140. Meetings of the board shall be held at the call of the chairman and at
19 such other times as the board may determine. Such chairman, or in his absence
20 the acting chairman, may administer oaths and compel the attendance of
21 witnesses. All meetings of the board shall be open to the public. The board shall

22 keep minutes of its proceedings, showing the vote of each member upon question,
23 or, if absent or failing to vote, indicating such fact, and shall keep records of its
24 examinations and other official actions, all of which shall be immediately filed in
25 the office of the board and shall be a public record. All testimony, objections
26 thereto and rulings thereon, shall be taken down by a reporter employed by the
27 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
3 order, requirement, decision, or determination made by an administrative official
4 in the enforcement of sections 89.010 to 89.140 or of any ordinance adopted
5 pursuant to such sections;

6 (2) To hear and decide all matters referred to it or upon which it is
7 required to pass under such ordinance;

8 (3) In passing upon appeals, where there are practical difficulties or
9 unnecessary hardship in the way of carrying out the strict letter of such
10 ordinance, to vary or modify the application of any of the regulations or
11 provisions of such ordinance relating to the construction or alteration of buildings
12 or structures or the use of land so that the spirit of the ordinance shall be
13 observed, public safety and welfare secured and substantial justice done, provided
14 that, in any city with a population of three hundred fifty thousand or more
15 inhabitants which is located in more than one county, the board of adjustment
16 shall not have the power to vary or modify any ordinance relating to the use of
17 land.

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

305.410. 1. Notwithstanding any other law to the contrary, annexation
2 of land located within an airport zone by any city, town or village other than the

3 municipality which owns the airport is prohibited, nor shall any areas be
4 incorporated in such airport zones.

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

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

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