

FIRST REGULAR SESSION

[REPERFECTED]

HOUSE BILL NO. 158

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUDSON.

0185H.01R

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 64.805, 64.870, 137.275, 214.160, 214.270, and 230.205, RSMo, and to enact in lieu thereof nine new sections relating to county bodies.

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

Section A. Sections 64.805, 64.870, 137.275, 214.160, 214.270, and 230.205, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 49.055, 49.056, 49.057, 64.805, 64.870, 137.275, 214.160, 214.270, and 230.205, to read as follows:

49.055. 1. A county commissioner, presiding county commissioner, or county executive in any county of the first classification may be removed by the qualified voters of such county by recall petition in accordance with the procedures under sections 49.055 to 49.057, subject to the following limitations:

(1) The commissioner or county executive shall have held office for at least six months;

(2) The recall election shall be held at least nine months before the end of the commissioner's or county executive's term; and

(3) A recalled commissioner or county executive shall not be a candidate to succeed himself or herself at a special election held to fill the vacancy created by the commissioner's or county executive's recall and shall not be appointed to fill the vacancy.

2. A petition, signed by voters eligible to vote for a successor to the commissioner or county executive sought to be removed, that demands the recall of the commissioner or county executive may be filed with the county election authority. The petition shall have

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.

15 a number of signatures equal to at least ten percent of the total number of registered voters
16 in such county voting in the last election at which the commissioner or county executive
17 was elected. The petition shall contain a statement of the reason recall is sought, which
18 shall not be more than two hundred words in length. The petition for recall shall be filed
19 no later than sixty days after the date of the earliest signature on the petition. A reason for
20 recall may be misconduct in office, incompetence, or failure to perform duties prescribed
21 by law. The signatures to the petition need not all be appended to one page. Each signer
22 to the petition shall add his or her signature; the signer's place of residence, including
23 street and number; and the date signed. One of the signers of each page shall make an
24 oath before an officer competent to administer oaths that the statements made therein are
25 true, as he or she believes, and that each signature to the page appended is the genuine
26 signature of the person whose name it purports to be.

49.056. Within ten days of the date of filing a petition, the county election authority
2 shall examine and, from the voters' register, ascertain whether the petition is signed by the
3 requisite number of voters. The commission shall allow the election authority extra help
4 for this purpose. The election authority shall attach to the petition a certificate that states
5 the result of the examination. If the election authority's certificate states the petition is
6 insufficient, the petition may be amended for ten days after the date of the certificate. If
7 the petition is amended, the election authority shall examine the amendment within ten
8 days of the amendment submission. If the election authority issues a certificate stating the
9 amended petition is insufficient, the petition shall be returned to the person who filed the
10 petition without prejudice to filing a new petition to the same effect. Upon certification of
11 the petition as sufficient, the election authority shall submit the petition to the commission
12 without delay, and the commission shall order the question to be submitted to the voters
13 of the county.

49.057. 1. A special election shall be held on the recall petition as soon as
2 practicable and as may be determined by the election authority of the county. The
3 question to be presented to the voters at such election shall be in substantially the following
4 form:

- 5 FOR the removal of _____ (name of commissioner or county
6 executive) from the office of county commissioner or county
7 executive.
8 AGAINST the removal of _____ (name of commissioner or
9 county executive) from the office of county commissioner or county
10 executive.

11 **2. If at least sixty percent of the qualified voters voting on the question at such**
12 **election vote for the removal of the commissioner or county executive, a vacancy shall exist**
13 **in such office. If less than sixty percent of the qualified voters voting on the question at**
14 **such election vote for the removal of the commissioner or county executive, the**
15 **commissioner or county executive shall continue to serve for the remainder of the term for**
16 **which he or she was elected.**

64.805. The county planning commission shall consist of the county highway engineer,
2 and one resident of the county appointed by the county commission, from the unincorporated part
3 of each township in the county, except that no such person shall be appointed from a township
4 in which there is no unincorporated area. The township representatives are hereinafter referred
5 to as appointed members. The term of each appointed member shall be four years or until a
6 successor takes office, except that the terms shall be overlapping and that the respective terms
7 of the members first appointed may be less than four years. The term of the county highway
8 engineer shall be only for the duration of the engineer's tenure of official position. All members
9 of the county planning commission shall serve as such without compensation, except that an
10 attendance fee as reimbursement for expenses may be paid to the appointed members of the
11 county planning commission in an amount, as set by the county commission, not to exceed
12 [~~twenty-five~~] **seventy-five** dollars per meeting. The planning commission shall elect its
13 chairman, who shall serve for one year.

64.870. 1. **(1)** Any county commission which appointed a county zoning commission
2 and which has adopted a zoning plan, as provided in sections 64.800 to 64.905, shall appoint a
3 county board of zoning adjustment.

4 **(2)** The board shall consist of five residents of the county, but not more than two shall
5 be residents of the incorporated area of the county and not more than one may be a member of
6 the county zoning commission. The membership of the first board appointed shall serve
7 respectively: one for one year, one for two years, one for three years, **and** two for four years.
8 Thereafter members shall be appointed for terms of four years each. Members shall be
9 removable for cause by the county commission upon written charges and after public hearings.
10 Vacancies shall be filled by the county commission for the unexpired term of any member whose
11 term becomes vacant. The board of zoning adjustment shall elect its own chairman and shall
12 adopt rules of procedure consistent with the provisions of the zoning regulations and the
13 provisions of sections 64.845 to 64.880. The chairman, or in his absence the acting chairman,
14 may administer oaths and compel the attendance of witnesses.

15 **(3) All members of the county board of zoning adjustment shall serve as such**
16 **without compensation, except that an attendance fee as reimbursement for expenses may**
17 **be paid to the appointed members of the county planning commission in an amount set by**

18 **the county commission, not to exceed seventy-five dollars per meeting. For any member**
19 **of the county planning commission who is also a member of the board of zoning**
20 **adjustment, only one attendance fee shall be paid if the board and commission meet on the**
21 **same day.**

22 (4) All meetings of the board of zoning adjustment shall be open to the public, and
23 minutes shall be kept of all proceedings and official actions, which minutes shall be filed in the
24 office of the board and shall be a public record.

25 (5) Appeals to the board of zoning adjustment may be taken by any owner, lessee or
26 tenant of land, or by a public officer, department, board or bureau, affected by any decision of
27 the administrative officer in administering a county zoning ordinance. The appeals shall be taken
28 within a period of not more than three months, and in the manner provided by the rules of the
29 board. An appeal shall stay all proceedings in furtherance of the action appealed from, unless
30 the officer from whom the appeal is taken shall certify to the board that by reason of facts stated
31 in the certificate a stay would, in his opinion, cause imminent peril to life or property. The board
32 of adjustment shall have the following powers and it shall be its duty:

33 ~~[(1)]~~ (a) To hear and decide appeals where it is alleged there is error of law in any order,
34 requirement, decision or determination made by an administrative official in the enforcement of
35 the county zoning regulations;

36 ~~[(2)]~~ (b) To hear and decide all matters referred to it or which it is required to determine
37 under the zoning regulations adopted by the county commission as herein provided;

38 ~~[(3)]~~ (c) Where, by reason of exceptional narrowness, shallowness, shape or topography,
39 or other extraordinary or exceptional situation or condition of a specific piece of property, the
40 strict application of any regulation adopted under sections 64.845 to 64.880 would result in
41 peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon
42 the owner of the property as an unreasonable deprivation of use as distinguished from the mere
43 grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the
44 strict application so as to relieve the demonstrable difficulties or hardships, provided the relief
45 can be granted without substantial detriment to the public good and without substantially
46 impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning
47 regulations and map.

48 2. In exercising the above powers, the board may reverse or affirm wholly or partly, or
49 may modify the order, requirement, decision or determination appealed from and may take such
50 order, requirement, decision or determination as ought to be made, and to that end shall have all
51 the powers of the officer from whom the appeal is taken. Any owners, lessees or tenants of
52 buildings, structures or land jointly or severally aggrieved by any decision of the board of
53 adjustment or of the county commission, respectively, under the provisions of sections 64.845

54 to 64.880, or board, commission or other public official, may present to the circuit court of the
55 county in which the property affected is located, a petition, duly verified, stating that the decision
56 is illegal in whole or in part, specifying the grounds of the illegality and asking for relief
57 therefrom. Upon the presentation of the petition the court shall allow a writ of certiorari directed
58 to the board of adjustment or the county commission, respectively, of the action taken and data
59 and records acted upon, and may appoint a referee to take additional evidence in the case. The
60 court may reverse or affirm or may modify the decision brought up for review. After entry of
61 judgment in the circuit court in the action in review, any party to the cause may prosecute an
62 appeal to the appellate court having jurisdiction in the same manner now or hereafter provided
63 by law for appeals from other judgments of the circuit court in civil cases.

137.275. Every person who thinks himself aggrieved by the assessment of his property
2 may appeal to the county board of equalization, in person, by attorney or agent, or in writing.
3 Such appeals shall be lodged with the county board of equalization on or before the second
4 Monday in July. **Upon receiving an appeal, the county board of equalization or its**
5 **representative shall promptly issue a receipt to the person lodging the appeal, confirming**
6 **that the appeal has been received. If the appeal is lodged in person, such receipt shall be**
7 **issued immediately. If the appeal is lodged via mail or electronically, such receipt shall be**
8 **issued within two business days.**

214.160. 1. Under sections 214.140 to 214.180, and as otherwise not prohibited under
2 Article VI, Section 23 of the Constitution of Missouri, the county commission may invest or loan
3 said trust fund or funds in United States government, state, county or municipal bonds,
4 certificates of deposit, first real estate mortgages, or deeds of trust and may utilize investment
5 managers to invest, reinvest, and manage assets, subject to the terms, conditions, and limitations
6 provided in this section and Article IV, Section 15 of the Constitution of Missouri. [~~They~~]
7 **When sufficient, the commission** shall use the net income from said trust fund or funds or such
8 investments or so much thereof as is necessary to support and maintain and beautify any public
9 or private cemetery or any particular part thereof which may be designated by the person, persons
10 or firm or association making said gift or bequest. **If the net income from said trust fund or**
11 **funds is not sufficient to support and maintain and beautify a cemetery, the commission**
12 **may also use as much of the principal thereof as the commission deems necessary for such**
13 **purposes.** In maintaining or supporting the cemetery or any particular part or portion thereof
14 the commission shall as nearly as possible follow the expressed wishes of the creator of said trust
15 fund.

16 2. An investment manager shall discharge his or her duties in the interest of the public
17 or private cemetery and the interest of the person, persons, or firm making the gift or bequest and
18 shall:

19 (1) Act with the same care, skill, prudence, and diligence under the circumstances then
20 prevailing that a prudent person acting in a similar capacity and familiar with those matters
21 would use in the conduct of a similar enterprise with similar aims;

22 (2) Act with due regard for the management, reputation, and stability of the issuer and
23 the character of the particular investments being considered;

24 (3) Make investments for the purpose of supporting, maintaining, and beautifying any
25 public or private cemetery or any particular part thereof, which may be designated by the person,
26 persons, or firm or association making said gift or bequest, and of defraying reasonable expenses
27 of investing the assets;

28 (4) Give appropriate consideration to those facts and circumstances that the investment
29 fiduciary knows or should know are relevant to the particular investment or investment course
30 of action involved, including the role the investment or investment course of action plays in that
31 portion of the investments for which the investment fiduciary has responsibility. For purposes
32 of this subdivision, "appropriate consideration" shall include, but is not limited to, a
33 determination by the investment fiduciary that a particular investment or investment course of
34 action is reasonably designed to further the purposes of supporting, maintaining, and beautifying
35 any public or private cemetery or any particular part thereof, which may be designated by the
36 person, persons, or firm or association making said gift or bequest, while considering the risk of
37 loss and the opportunity for gain or other return associated with the investment or investment
38 course of action and considering the following factors as they relate to the investment or
39 investment course of action:

40 (a) The diversification of the investments;

41 (b) The liquidity and current return of the investments relative to the anticipated cash
42 flow requirements; and

43 (c) The projected return of the investments relative to the funding objectives; and

44 (5) Give appropriate consideration to investments that would enhance the general welfare
45 of this state and its citizens if those investments offer the safety and rate of return comparable
46 to other investments available to the investment fiduciary at the time the investment decision is
47 made.

48 3. As used in this section, "invest" or "investment" means utilization of moneys in the
49 expectation of future returns in the form of income or capital gain.

214.270. As used in sections 214.270 to 214.410, the following terms mean:

2 (1) "Agent" or "authorized agent", any person empowered by the cemetery operator to
3 represent the operator in dealing with the general public, including owners of the burial space
4 in the cemetery;

- 5 (2) "Burial merchandise", a monument, marker, memorial, tombstone, headstone, urn,
6 outer burial container, or similar article **[which] that** may contain specific lettering, shape, color,
7 or design as specified by the purchaser;
- 8 (3) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface
9 lawn crypt, niche, or space used or intended for the interment of the human dead;
- 10 (4) "Cemetery", property restricted in use for the interment of the human dead by formal
11 dedication or reservation by deed but shall not include any of the foregoing held or operated by
12 the state or federal government or any political subdivision thereof, any incorporated city or
13 town, any county, or any religious organization, cemetery association, or fraternal society holding
14 the same for sale solely to members and their immediate families;
- 15 (5) "Cemetery association", any number of persons who shall have associated themselves
16 by articles of agreement in writing as a not-for-profit association or organization, whether
17 incorporated or unincorporated, formed for the purpose of ownership, preservation, care,
18 maintenance, adornment and administration of a cemetery. Cemetery associations shall be
19 governed by a board of directors. Directors shall serve without compensation;
- 20 (6) "Cemetery operator" or "operator", any person who owns, controls, operates or
21 manages a cemetery;
- 22 (7) "Cemetery prearranged contract", any contract with a cemetery or cemetery operator
23 for burial merchandise or burial services covered by sections 214.270 to 214.410 **[which] that**
24 is entered into before the death of the individual for whom the burial merchandise or burial
25 services are intended;
- 26 (8) "Cemetery service" or "burial service", those services performed by a cemetery owner
27 or operator licensed as an endowed care or nonendowed cemetery including setting a monument
28 or marker, setting a tent, excavating a grave, interment, entombment, inurnment, setting a vault,
29 or other related services within the cemetery;
- 30 (9) "Columbarium", a building or structure for the inurnment of cremated human
31 remains;
- 32 (10) "Community mausoleum", a mausoleum containing a substantial area of enclosed
33 space and having either a heating, ventilating, or air conditioning system;
- 34 (11) "Department", department of commerce and insurance;
- 35 (12) "Developed acreage", the area **[which] that** has been platted into grave spaces and
36 has been developed with roads, paths, features, or ornamentations and in which burials can be
37 made;
- 38 (13) "Director", director of the division of professional registration;
- 39 (14) "Division", division of professional registration;

40 (15) "Endowed care", the maintenance, repair, and care of all burial space subject to the
41 endowment within a cemetery, including any improvements made for the benefit of such burial
42 space. Endowed care shall include the general overhead expenses needed to accomplish such
43 maintenance, repair, care, and improvements. Endowed care shall include the terms perpetual
44 care, permanent care, continual care, eternal care, care of duration, or any like term;

45 (16) "Endowed care cemetery", a cemetery, or a section of a cemetery, ~~[which]~~ **that**
46 represents itself as offering endowed care and ~~[which]~~ **that** complies with the provisions of
47 sections 214.270 to 214.410;

48 (17) "Endowed care fund", "endowed care trust", or "trust", any cash or cash equivalent,
49 to include any income therefrom, impressed with a trust by the terms of any gift, grant,
50 contribution, payment, devise, or bequest to an endowed care cemetery, or its endowed care trust,
51 or funds to be delivered to an endowed care cemetery's trust received pursuant to a contract and
52 accepted by any endowed care cemetery operator or ~~[his]~~ **the operator's** agent. This definition
53 includes the terms endowed care funds, maintenance funds, memorial care funds, perpetual care
54 funds, or any like term;

55 (18) "Escrow account", an account established in lieu of an endowed care fund as
56 provided under section 214.330 or an account used to hold deposits under section 214.387;

57 (19) "Escrow agent", an attorney, title company, certified public accountant, or other
58 person authorized by the division to exercise escrow powers under the laws of this state;

59 (20) "Escrow agreement", an agreement subject to approval by the office between an
60 escrow agent and a cemetery operator or its agent or related party with common ownership[-] to
61 receive and administer payments under cemetery prearranged contracts sold by the cemetery
62 operator;

63 (21) "Family burial ground", a cemetery in which no burial space is sold to the public
64 and in which interments are restricted to persons related by blood or marriage;

65 (22) "Fraternal cemetery", a cemetery owned, operated, controlled, or managed by any
66 fraternal organization or auxiliary organizations thereof, in which the sale of burial space is
67 restricted solely to its members and their immediate families;

68 (23) "Garden mausoleum", a mausoleum without a substantial area of enclosed space
69 and having its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by forced
70 air or otherwise does not constitute a garden mausoleum as a community mausoleum;

71 (24) "Government cemetery", or "municipal cemetery", a cemetery owned, operated,
72 controlled, or managed by the federal government, the state, or a political subdivision of the
73 state, including a county or municipality or instrumentality thereof;

74 (25) "Grave" or "plot", a place of ground in a cemetery, used or intended to be used for
75 burial of human remains;

76 (26) **"Human and pet cemetery"**, a tract of real estate separate from a cemetery in
77 **which both human remains and the remains of creatures other than human may be**
78 **interred and memorialized at the discretion of the lot holder and subject to the rules of the**
79 **human and pet cemetery. Burial space in a human and pet cemetery shall have the same**
80 **meaning as defined in this section but be applicable to pets as well as human dead. A**
81 **human and pet cemetery shall be treated as a cemetery under sections 214.270 to 214.410**
82 **for purposes of licensing and endowed care;**

83 (27) "Human remains", the body of a deceased person in any state of decomposition, as
84 well as cremated remains;

85 [~~27~~] (28) "Inurnment", placing an urn containing cremated remains in a burial space;

86 [~~28~~] (29) "Lawn crypt", a burial vault or other permanent container for a casket [~~which~~]
87 **that** is permanently installed below ground prior to the time of the actual interment. A lawn
88 crypt may permit single or multiple interments in a grave space;

89 [~~29~~] (30) "Mausoleum", a structure or building for the entombment of human remains
90 in crypts;

91 [~~30~~] (31) "Niche", a space in a columbarium used or intended to be used for inurnment
92 of cremated remains;

93 [~~31~~] (32) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a
94 section of a cemetery for which no endowed care trust fund has been established in accordance
95 with sections 214.270 to 214.410;

96 [~~32~~] (33) "Office", the office of endowed care cemeteries within the division of
97 professional registration;

98 [~~33~~] (34) "Owner of burial space", a person to whom the cemetery operator or [~~his~~] **the**
99 **operator's** authorized agent has transferred the right of use of burial space;

100 [~~34~~] (35) "Person", an individual, corporation, partnership, joint venture, association,
101 trust, or any other legal entity;

102 [~~35~~] (36) "Registry", the list of cemeteries maintained in the division office for public
103 review. The division may charge a fee for copies of the registry;

104 [~~36~~] (37) "Religious cemetery", a cemetery owned, operated, controlled, or managed
105 by any church, convention of churches, religious order, or affiliated auxiliary thereof in which
106 the sale of burial space is restricted solely to its members and their immediate families;

107 [~~37~~] (38) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the
108 land surface;

109 [~~38~~] (39) "Total acreage", the entire tract [~~which~~] **that** is dedicated to or reserved for
110 cemetery purposes;

111 ~~[(39)]~~ (40) "Trustee of an endowed care fund", the separate legal entity qualified under
112 section 214.330 appointed as trustee of an endowed care fund.

230.205. 1. The alternative county highway commission provided by sections 230.200
2 to 230.260 shall not become operative in any county unless adopted by a vote of the majority of
3 the voters of the county voting upon the question at an election. All counties of this state which
4 have adopted the alternative county highway commission may abolish it ~~[and return to the county~~
5 ~~highway commission provided for by sections 230.010 to 230.110]~~ by submitting the question
6 to a vote of the voters of the county in the manner provided by law **or by a vote of the**
7 **governing body.**

8 2. Any county which does not adopt the alternative county highway commission
9 provided by sections 230.200 to 230.260, or any county in which ~~[a majority of the voters of the~~
10 ~~county voting upon the question reject]~~ the alternative county highway commission provided by
11 sections 230.200 to 230.260 **is abolished** shall ~~[retain]~~ **adopt either** the county highway
12 commission provided by sections 230.010 to 230.110 **or the provisions of sections 231.010 to**
13 **231.130.**

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