

SECOND REGULAR SESSION

HOUSE BILL NO. 1132

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALTON.

Pre-filed December 4, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2941L.011

AN ACT

To repeal sections 77.340 and 79.240, RSMo, and to enact in lieu thereof twenty new sections relating to the impeachment of municipal elected officials.

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

Section A. Sections 77.340 and 79.240, RSMo, are repealed and twenty new sections
2 enacted in lieu thereof, to be known as sections 77.340, 79.240, 106.301, 106.303, 106.305,
3 106.307, 106.309, 106.311, 106.313, 106.315, 106.317, 106.319, 106.321, 106.323, 106.325,
4 106.327, 106.329, 106.331, 106.333 and 106.335, to read as follows:

77.340. **1.** The mayor may, with the consent of [a majority] **two-thirds** of all the
2 members elected to the city council, remove from office, for [cause shown] **commission of a**
3 **felony upon conviction of such felony, or for gross misconduct, habitual intoxication,**
4 **willful neglect of duty, corruption in office, incompetency, any offense involving moral**
5 **turpitude, or as otherwise provided by law or municipal ordinance,** any elective officer of
6 the city, such officer being first given opportunity, together with his or her witnesses, to be heard
7 before the council, sitting as a court of impeachment as **described in sections 106.301 to**
8 **106.335, RSMo.** Any elective officer, **including the mayor and the members of the city**
9 **council,** may, in like manner, for [cause shown] **commission of a felony upon conviction of**
10 **such felony, or for gross misconduct, habitual intoxication, willful neglect of duty,**
11 **corruption in office, incompetency, any offense involving moral turpitude, or as otherwise**
12 **provided by law or municipal ordinance,** be removed from office by a two-thirds vote of all
13 the members elected to the city council, independently of the mayor's approval or
14 recommendation, as **described in sections 106.301 to 106.335, RSMo.**

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

15 **2.** The mayor may, with the consent of a majority of all the members elected to the
16 council, remove from office any appointive officer **or employee** of the city at will; and any such
17 appointive officer **or employee** may be so removed by a two-thirds vote of all the members
18 elected to the council, independently of the mayor's approval or recommendation.

19 **3.** The council may pass ordinances regulating the **causes, procedure, and** manner of
20 impeachment and removals, **provided that such ordinances are consistent with the provisions**
21 **of sections 106.301 to 106.335, RSMo.**

79.240. **1.** The mayor may, with the consent of [a majority] **two-thirds** of all the
2 members elected to the board of aldermen, remove from office, for [cause shown] **commission**
3 **of a felony, upon conviction of such felony, or for gross misconduct, habitual intoxication,**
4 **willful neglect of duty, corruption in office, incompetency, any offense involving moral**
5 **turpitude, or as otherwise provided by law or municipal ordinance,** any elective officer of
6 the city, such officer being first given opportunity, together with his **or her** witnesses, to be heard
7 before the board of aldermen sitting as a board of impeachment **as described in sections**
8 **106.301 to 106.335, RSMo.** Any elective officer, including the mayor **or members of the**
9 **board of aldermen,** may in like manner, for [cause shown] **commission of a felony upon**
10 **conviction of such felony, or for gross misconduct, habitual intoxication, willful neglect of**
11 **duty, corruption in office, incompetency, any offense involving moral turpitude, or as**
12 **otherwise provided by law or municipal ordinance,** be removed from office by a two-thirds
13 vote of all members elected to the board of aldermen, independently of the mayor's approval or
14 recommendation, **as described in sections 106.301 to 106.335, RSMo.**

15 **2.** The mayor may, with the consent of a majority of all the members elected to the board
16 of aldermen, remove from office any appointive officer **or employee** of the city at will, and any
17 such appointive officer **or employee** may be so removed by a two-thirds vote of all the members
18 elected to the board of aldermen, independently of the mayor's approval or recommendation.

19 **3.** The board of aldermen may pass ordinances regulating the **causes, procedure, and**
20 manner of impeachments and removals, **provided that such ordinances are consistent with**
21 **the provisions of sections 106.301 to 106.335, RSMo.**

106.301. For purposes of sections 106.301 to 106.335, the following terms shall
2 mean:

3 (1) "Chief executive", the mayor of any city, the chairman of the board of trustees
4 of any town or village, or any other person who serves as the chief elected official of any
5 municipality in this state;

6 (2) "Clerk", the city clerk or person serving a similar function in any town or
7 village;

8 (3) "Elected official", any person holding elective office in any municipality in this

9 state;

10 (4) "Governing body", the city council, board of aldermen, or other entity serving
11 as the legislative body of any municipality in this state;

12 (5) "Municipality", any city, town, or village in this state.

106.303. 1. No elective officer of any municipality shall be removed from office
2 except upon the consent of two-thirds of all the members elected to the governing body,
3 and except for commission of a felony upon conviction of such felony, or for gross
4 misconduct, habitual intoxication, willful neglect of duty, corruption in office,
5 incompetency, or any offense involving moral turpitude, or as otherwise provided by law,
6 municipal charter, or ordinance, such officer being first given opportunity, together with
7 his or her witnesses, to be heard before the governing body, sitting as a court of
8 impeachment as described in sections 106.301 to 106.335.

9 2. Except as otherwise provided by law, charter, or municipal ordinance, the chief
10 executive of a municipality may, with the consent of a majority of all the members elected
11 to the council, remove from office any appointive officer or employee of the municipality
12 at will; and except as otherwise provided by law, charter, or municipal ordinance, any such
13 appointive officer or employee may be so removed by a two-thirds vote of all the members
14 elected to the governing body, independently of the chief executive's approval or
15 recommendation.

16 3. The governing body may pass ordinances regulating the causes, procedure, and
17 manner of impeachment and removals, provided that such ordinances are consistent with
18 the provisions of sections 106.301 to 106.335.

106.305. When any person or any elected official has knowledge that any elected
2 official may be subject to removal from office for the causes set forth in section 77.340,
3 RSMo, or section 79.240, RSMo, or in any city charter, or in any other provision of law,
4 such person or such elected official may make an affidavit before any person authorized
5 to administer oaths, setting forth the facts constituting such causes and file the same with
6 the clerk, for the use of the chief executive or governing body, furnishing also the names
7 of witnesses who have knowledge of the facts constituting such offense. The chief executive
8 or any member of the governing body may file articles of impeachment with the clerk if
9 such person is of the opinion that the facts stated in such affidavit justify the removal of
10 the elected official from office. The articles shall set forth, in plain and concise language,
11 the charge against such official.

106.307. 1. No proceedings or trial of impeachment shall be stopped by injunction
2 or restrained in any other way by any court prior to judgment on such impeachment.
3 Judicial review of the removal of any elected official from office may only be had by way

4 of appeal after judgment of removal. In all prosecutions pursuant to section 77.340, RSMo,
5 or section 79.240, RSMo, or pursuant to any city charter or any other law providing for
6 impeachment of elected officials, the defendant shall, upon conviction, after judgment of
7 removal is entered, be entitled to a direct appeal to the court of appeals, and such cause
8 shall have precedence in such court, and the court shall hear the appeal as soon as is
9 practicable.

10 2. Pending such appeal, the impeached elected official shall be suspended from
11 office, and the governing body shall appoint a resident of the municipality of like
12 qualifications as the elected official so removed from office, who shall assume the duties of
13 that office pending the appeal. If the decision on the appeal shall be in favor of the
14 defendant, the official shall be entitled to the pay for the time for which he or she was
15 removed. The person assuming the duties of the elected official during the appeal shall be
16 entitled to the same compensation, rights, privileges, and duties of office as the suspended
17 elected official. The costs provided for in this section shall be paid by the municipality in
18 which the proceedings originated. The fee of any special prosecutor, as provided for in
19 section 106.335, shall be a reasonable one, fixed by the court, and payable out of the
20 treasury of the municipality.

106.309. If any elected official shall be impeached, that official is hereby suspended
2 from performing the duties of that office until his or her acquittal; provided that the
3 suspension shall not take effect until the official is notified of his or her impeachment.

106.311. If any elected official against whom an impeachment proceeding has been
2 filed shall be found guilty as charged, the governing body shall render judgment removing
3 him or her from such office, and such person shall not be elected or appointed to fill the
4 vacancy thereby created. The vacancy shall be filled as provided by law for filling
5 vacancies in such municipality in other cases. All actions and proceedings for removal of
6 an elected official shall be in the nature of administrative procedure actions, and shall be
7 tried and appealed pursuant to section 536.140, RSMo, unless otherwise provided in
8 sections 106.301 to 106.335.

106.313. When the governing body is satisfied that there is good cause to impeach
2 any elected official, the body shall cause articles of impeachment to be made out pursuant
3 to section 106.305, and shall immediately appoint a special prosecutor to prosecute such
4 impeachment. In case of death, resignation, or failure to serve on the part of any special
5 prosecutor, the governing body shall fill such vacancy as provided by law for other
6 vacancies.

106.315. If, upon the trial of such cause, the defendant is acquitted, the defendant
2 shall be allowed reasonable attorney's fees and costs expended, to be paid by the

3 municipality, and such fees and costs shall be paid by the defendant in case of a judgment
4 of removal.

106.317. 1. In all trials pursuant to sections 106.301 to 106.335, the accused shall
2 have a right to be heard and a right to counsel. All matters relating to the procedure and
3 conduct of the trial shall be determined by the chief executive, who shall preside over such
4 impeachment, and such determinations on procedure shall be subject to a majority vote
5 of the governing body and shall be entered and made a part of the record of the
6 proceeding. Notwithstanding any other provision of law to the contrary, no judgment or
7 sentence of conviction shall be given against any person upon any impeachment without
8 concurrence of two-thirds of the members of the governing body.

9 2. In the event that the chief executive is the elected official being impeached, then
10 the governing body shall select one of their number to fulfill the duties of the chief
11 executive for purposes of the impeachment proceedings.

106.319. All writs by the governing body involving any impeachment shall run in
2 the name of the municipality, shall be subscribed by the chief executive and countersigned
3 by the clerk and shall be served by the chief law enforcement official of the municipality
4 or by a police officer appointed by the chief law enforcement official for that purpose.

106.321. The judgment of the governing body, whether of conviction or acquittal,
2 shall be signed by the chief executive, and the judgment shall be attested by the clerk and
3 deposited in the office of the clerk. Upon appeal by the defendant of any judgment of
4 conviction, the governing body shall cause a transcript of the proceedings had on any
5 impeachment to be made out and deposited both in the office of the clerk and with the
6 clerk of the court of appeals. In addition, the clerk shall cause all documents and exhibits
7 as well as the judgment of conviction included in the record of the proceedings to be
8 certified and filed with the court of appeals.

106.323. The elected official convicted or acquitted shall, notwithstanding such
2 conviction or acquittal, be subject to indictment, trial, judgment, and punishment for any
3 indictable offense, and subject to any civil action in equity or law, according to law.

106.325. Upon service of the articles of impeachment upon the accused official, such
2 official shall have twenty days to file with the clerk an answer to the impeachment, with
3 a copy to be served on the special prosecutor, postmarked not more than one day after the
4 answer is filed with the clerk. When the answer is filed with the clerk, the special
5 prosecutor may, not more than fifteen days thereafter, file with the clerk a reply and serve
6 a copy of the reply by first class regular mail upon the accused, postmarked not more than
7 one day after the date of filing. When issue shall be joined on any such impeachment, the
8 governing body shall appoint a time for trial, not less than forty-five days from the date of

9 the filing of the reply with the clerk. The accused shall be given notice of the trial by first
10 class regular mail postmarked not more than one day after the trial is set by the governing
11 body.

2 **106.327.** The articles of impeachment and summons shall be filed for record in the
3 office of the clerk and entered for record in the minutes of proceedings before the
4 governing body and shall be served on the accused by certified or registered mail, and by
5 posting a copy of such summons and articles of impeachment at the office of the clerk and
6 at the dwelling house or usual place of abode of the accused.

2 **106.329.** The chief executive, on application of the respondent, or any of the
3 respondent's counsel, or of the special prosecutor, shall issue subpoenas for witnesses and
4 commissions to take depositions where the witness is unable to attend from sickness or
5 other infirmity, or where the witness is not in the state, which subpoenas may be enforced
6 by the circuit court. Such depositions shall be taken in the same manner, and the same
7 notice shall be given, as when depositions are taken in circuit court.

2 **106.331.** If the accused shall not appear after being notified, or, after appearing
3 shall fail to answer, the governing body may proceed ex parte and enter a default
4 judgment.

2 **106.333.** Upon being sworn, the governing body shall proceed to hear, try, and
3 determine such impeachment, and may adjourn the trial to any other time. The governing
4 body shall determine all questions of law arising during the trial upon the admissibility of
5 evidence, the competency of witnesses, or otherwise, and may punish any person for
6 contempt committed toward it, or for obstructing the administration of justice on such
7 trial, in as full a manner as any administrative tribunal of record could do for like
8 contempt toward such administrative tribunal. The rules of evidence and procedure
9 applicable in administrative actions before administrative tribunals pursuant to chapter
536, RSMo, shall be followed in all trials of impeachment before a governing body.

2 **106.335.** The special prosecutor shall be allowed reasonable compensation for
3 services rendered and actual and necessary expenses incurred in the performance of his
4 or her duties.