

SECOND REGULAR SESSION

# SENATE BILL NO. 737

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4849S.011

## AN ACT

To repeal sections 621.145 and 621.189, RSMo, and to enact in lieu thereof seven new sections relating to the board of administrative appeals.

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

Section A. Sections 621.145 and 621.189, RSMo, are repealed and seven  
2 new sections enacted in lieu thereof, to be known as sections 536.250, 536.255,  
3 536.260, 536.265, 536.270, 621.145, and 621.189, to read as follows:

**536.250. 1. There is hereby established within the office of  
2 administration the "Board of Administrative Appeals".**

**3 2. The board of administrative appeals shall consist of five voting  
4 nonattorney members of the public, which shall include two members  
5 appointed by the speaker of the house of representatives, two members  
6 appointed by the president pro tempore of the senate, and one member  
7 appointed by the governor, with the advice and consent of the  
8 senate. Each member of the board shall be a citizen of the United  
9 States, a resident of this state for at least one year and a registered  
10 voter. Members shall serve on the board until a successor is appointed.**

**11 3. Beginning with the initial appointments made after August 28,  
12 2016, two members shall be appointed for four years, two members for  
13 five years, and one member for six years. Thereafter, all members shall  
14 be appointed to serve six year terms, and no member shall serve more  
15 than one term or qualify for reappointment. A vacancy in the office of  
16 a member shall be filled by appointment for the remainder of the  
17 unexpired term by the respective appointing authority who initially  
18 appointed the member.**

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

19           4. The appointing authority may remove a member appointed by  
20 that authority for inefficiency, neglect of duty, or misconduct in office,  
21 giving to the member a copy of the charges and an opportunity of being  
22 publicly heard in person or by counsel, in the member's own defense,  
23 upon not less than ten days' notice. If such member shall be removed,  
24 the appointing authority shall file in the office of the secretary of state  
25 a complete statement of all charges made against such member, and the  
26 findings thereon, together with a complete record of the proceedings.

27           5. The board of administrative appeals shall hold an annual  
28 meeting at which it shall elect from its membership a chairperson and  
29 a vice chairperson. The board may hold such additional meetings as  
30 may be required in the performance of its duties. A quorum of the  
31 board shall consist of a majority of its voting members.

32           6. The board of administrative appeals shall keep records of its  
33 official acts, and certified copies of any such records attested by a  
34 designee of the board shall be received as evidence in all courts to the  
35 same extent as the board's original records would be received.

36           7. The board shall have the authority to promulgate rules under  
37 chapter 536 as it deems necessary to implement sections 536.250 to  
38 536.270, including rules of procedure for the conduct of the proceedings  
39 before it. Any rule or portion of a rule, as that term is defined in  
40 section 536.010, that is created under the authority delegated in this  
41 section shall become effective only if it complies with and is subject to  
42 all of the provisions of chapter 536, and, if applicable, section  
43 536.028. This section and chapter 536 are nonseverable and if any of  
44 the powers vested with the general assembly pursuant to chapter 536,  
45 to review, to delay the effective date, or to disapprove and annul a rule  
46 are subsequently held unconstitutional, then the grant of rulemaking  
47 authority and any rule proposed or adopted after August 28, 2016, shall  
48 be invalid and void.

          536.255. There is hereby established in the state treasury the  
2 "Board of Administrative Appeals Fund". The fund shall be  
3 administered by the board of administrative appeals. The state  
4 treasurer shall be custodian of the fund. The fund shall consist of all  
5 moneys that may be appropriated to it by the general assembly and  
6 may also include any gifts, contributions, grants, or bequests received  
7 from federal, state, private, or other sources. In accordance with

8 sections 30.170 and 30.180, the state treasurer may approve  
9 disbursements. The fund shall be a dedicated fund and moneys in the  
10 fund shall be used solely for the payment of expenditures actually  
11 incurred by the board of administrative appeals. Notwithstanding the  
12 provisions of section 33.080, to the contrary, money remaining in the  
13 fund at the end of the biennium shall not revert to the credit of the  
14 general revenue fund. The state treasurer shall invest moneys in the  
15 fund in the same manner as other funds are invested. Any interest and  
16 moneys earned on such investments shall be credited to the fund.

536.260. 1. The principal office of the board of administrative  
2 appeals shall be in the city of Jefferson City. The office required by  
3 this subsection shall be provided and assigned by the board of public  
4 buildings. The offices of the board of administrative appeals shall be  
5 open during business hours on all days except Saturdays, Sundays, and  
6 legal holidays, and one or more responsible persons, designated by the  
7 board, shall be on duty at all times.

8 2. The board of administrative appeals may hire additional  
9 employees as may be needed to carry out the functions and purposes of  
10 the board.

11 3. All salaries and expenses of the board shall be audited and  
12 allowed by the commissioner of administration and paid by the state  
13 treasurer upon warrants out of the fund as provided in section 536.255.

536.265. 1. The board of administrative appeals shall have an  
2 independent technical advisory staff of up to six full-time  
3 employees. The advisory staff shall have expertise in accounting,  
4 economics, finance, law, public policy, or any other subject which  
5 would aid the board in fulfilling its duties.

6 2. In addition, each board member shall also have the authority  
7 to retain one personal advisor, who shall be deemed a member of the  
8 technical advisory staff. The personal advisors will serve at the  
9 pleasure of the individual board member whom they serve and shall  
10 possess expertise in one or more of the following fields: accounting,  
11 economics, finance, law, public policy, or any other subject which  
12 would aid the board member in fulfilling his or her duties.

13 3. It shall be the duty of the technical advisory staff to render  
14 advice and assistance to the board members on technical matters  
15 within their respective areas of expertise that may arise during the

16 course of proceedings before the board.

17 4. The technical advisory staff shall also update the board  
18 periodically on developments and trends in administrative law and  
19 regulations used by agencies in this state and other jurisdictions.

20 5. The technical advisory staff shall never be a party to any case  
21 before the board.

536.270. 1. Any person aggrieved by a final decision in a  
2 contested case may file an appeal with the board of administrative  
3 appeals, and shall be entitled to a hearing before the board after  
4 exhausting all other administrative remedies as provided by law,  
5 including an appeal to the administrative hearing commission. The  
6 person shall file the petition with the board within thirty days after the  
7 decision is delivered.

8 2. Decisions of the board shall be binding and subject to appeal  
9 to a court with competent jurisdiction. The procedures established  
10 under chapter 536 shall apply to any hearings and determinations  
11 under this section.

12 3. Any hearing or proceeding shall only be conducted when a  
13 quorum of the board is present. The method of assignment of petitions,  
14 appeals, or other cases may be determined by rule or other agreement  
15 between the board members. Formal procedural requirements shall not  
16 be required of any complaint filed pursuant to any provision of law  
17 relating to the board of administrative appeals, and substantial  
18 compliance with the requirements of the law relating to the board of  
19 administrative appeals shall be deemed sufficient; however, all  
20 testimony in any hearing shall be under oath and a board member may  
21 administer oaths or affirmations to any witness. It shall not be  
22 necessary for a person to be represented by counsel in order to  
23 institute any such proceeding, and the board shall adopt rules and  
24 procedures which shall facilitate the filing and processing of such  
25 complaints without formal representation. The board may stay or  
26 suspend any action of an administrative agency pending the board's  
27 findings and determination in the cause. The board may condition the  
28 issuance of such order upon the posting of bond or other security in  
29 such amount as the board deems necessary to adequately protect the  
30 public interest.

621.145. Except as otherwise provided by law, all final decisions of the

2 administrative hearing commission shall be subject to [judicial] review **by the**  
3 **board of administrative appeals** as provided in and subject to the provisions  
4 of sections [536.100 to 536.140] **536.250 to 536.270**, except that in cases where  
5 a disciplinary order may be entered by the agency, no decision of the  
6 administrative hearing commission shall be deemed final until such order is  
7 entered. For purposes of review, the action of the commission and the order, if  
8 any, of the agency shall be treated as one decision. The right to [judicial] review  
9 as provided herein shall also be available to administrative agencies aggrieved  
10 by a final decision of the administrative hearing commission.

621.189. Final decisions of the administrative hearing commission in  
2 cases arising pursuant to the provisions of section 621.050 shall be subject to  
3 review pursuant to a petition for review to be filed [in the court of appeals in the  
4 district in which the hearing, or any part thereof, is held or, where  
5 constitutionally required or ordered by transfer, to the supreme court, and by  
6 delivery of copies of the petition to each party of record, within thirty days after  
7 the mailing or delivery of the final decision and notice thereof in such a  
8 case. Review under this section shall be exclusive, and decisions of the  
9 administrative hearing commission reviewable pursuant to this section shall not  
10 be reviewable in any other proceeding, and no other official or court shall have  
11 power to review any such decision by an action in the nature of mandamus or  
12 otherwise except pursuant to the provisions of this section. The party seeking  
13 review shall be responsible for the filing of the transcript and record of all  
14 proceedings before the administrative hearing commission in the case with the  
15 appropriate court of appeals] **with the board of administrative appeals**  
16 **pursuant to sections 536.250 to 536.270.**

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