

FIRST REGULAR SESSION

# HOUSE BILL NO. 677

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BYRD.

Read 1<sup>st</sup> time March 1, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1935L.011

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### AN ACT

To repeal sections 536.100 and 536.140, RSMo, and to enact in lieu thereof two new sections relating to judicial review of administrative decisions.

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

Section A. Sections 536.100 and 536.140, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 536.100 and 536.140, to read as follows:

536.100. Any person who has exhausted all administrative remedies provided by law and  
2 who is aggrieved by a final decision in a contested case, whether such decision is affirmative or  
3 negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to  
4 536.140, unless some other provision for judicial review is provided by statute; provided,  
5 however, that nothing in this chapter contained shall prevent any person from attacking any void  
6 order of an agency at any time or in any manner that would be proper in the absence of this  
7 section. [Unreasonable delay on the part of any agency in deciding any contested case shall be  
8 grounds for an order of the court either compelling action by the agency or removing the case  
9 to the court for decision.] **If the agency fails to issue a final decision in a contested case**  
10 **within the earlier of:**

11 **(1) Sixty days after the conclusion of a hearing on the contested case; or**

12 **(2) One hundred eighty days after the receipt by the agency of a written request for**  
13 **the issuance of a final decision, then the person shall be considered to have exhausted all**  
14 **administrative remedies and shall be considered to have received a final decision in favor**  
15 **of the agency and shall be entitled to immediate judicial review as provided in sections**  
16 **536.100 to 536.140.**

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.

536.140. 1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4 **of this section**, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

(1) Is in violation of constitutional provisions;

(2) Is in excess of the statutory authority or jurisdiction of the agency;

(3) Is unsupported by competent and substantial evidence upon the whole record;

(4) Is, for any other reason, unauthorized by law;

(5) Is made upon unlawful procedure or without a fair trial;

(6) Is arbitrary, capricious or unreasonable;

(7) Involves an abuse of discretion.

The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of sections 311.690 and 311.700, RSMo.

3. Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may [weigh the evidence for itself and determine the facts accordingly. The law applied by the agency as aforesaid may include the agency's own rules. In making such determination the court shall give due weight to the opportunity of the agency to observe the witnesses, and to the expertness and experience of the particular agency] **upon application of any party conduct a de novo review of the agency decision.**

4. Wherever under subsection 3 **of this section** or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency. Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may remand the case to the agency with directions to reconsider the same in the light of such evidence. The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

5. The court shall render judgment affirming, reversing, or modifying the agency's order,

37 and may order the reconsideration of the case in the light of the court's opinion and judgment,  
38 and may order the agency to take such further action as it may be proper to require; but the court  
39 shall not substitute its discretion for discretion legally vested in the agency, **unless the court**  
40 **determines that the agency decision was arbitrary or capricious.**

41           6. Appeals may be taken from the judgment of the court as in other civil cases.