

FIRST REGULAR SESSION

# HOUSE BILL NO. 663

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE KEATHLEY.

1881H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 536.140, RSMo, and to enact in lieu thereof one new section relating to judicial review of agency determinations.

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

Section A. Section 536.140, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 536.140, to read as follows:

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

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.

17 for in this subsection[; provided, however, that nothing herein contained shall in any way  
18 change or affect the provisions of sections 311.690 and 311.700].

19 3. [~~Whenever the action of the agency being reviewed does not involve the exercise~~  
20 ~~by the agency of administrative discretion in the light of the facts, but involves only the~~  
21 ~~application by the agency of the law to the facts, the court may upon application of any party~~  
22 ~~conduct a de novo review of the agency decision]~~ **In interpreting a state statute, rule,**  
23 **regulation, or other subregulatory document, a court or an officer hearing an**  
24 **administrative action shall not defer to a state agency's interpretation of such statute,**  
25 **rule, regulation, or other document, and shall interpret the meaning and effect de novo.**  
26 **In actions brought by or against a state agency, after applying all customary tools of**  
27 **interpretation, the court or hearing officer shall exercise any remaining doubt in favor**  
28 **of a reasonable interpretation that limits agency power and maximizes individual**  
29 **liberty.**

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

41 5. The court shall render judgment affirming, reversing, or modifying the agency's  
42 order, and may order the reconsideration of the case in the light of the court's opinion and  
43 judgment, and may order the agency to take such further action as it may be proper to require;  
44 but the court shall not substitute its discretion for discretion legally vested in the agency,  
45 unless the court determines that the agency decision was arbitrary or capricious.

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

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