

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 221

AN ACT

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

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Section A. Section 536.140, RSMo, is repealed and one new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

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

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

7 (1) Is in violation of constitutional provisions;

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

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

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

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

15 (6) Is arbitrary, capricious or unreasonable;

16 (7) Involves an abuse of discretion.

17 The scope of judicial review in all contested cases, whether
18 or not subject to judicial review pursuant to sections
19 536.100 to 536.140, and in all cases in which judicial
20 review of decisions of administrative officers or bodies,
21 whether state or local, is now or may hereafter be provided

22 by law, shall in all cases be at least as broad as the scope
23 of judicial review provided for in this subsection[;
24 provided, however, that nothing herein contained shall in
25 any way change or affect the provisions of sections 311.690
26 and 311.700].

27 3. [Whenever the action of the agency being reviewed
28 does not involve the exercise by the agency of
29 administrative discretion in the light of the facts, but
30 involves only the application by the agency of the law to
31 the facts, the court may upon application of any party
32 conduct a de novo review of the agency decision] In
33 interpreting a state statute, rule, regulation, or other
34 subregulatory document, a court or an officer hearing an
35 administrative action shall not defer to a state agency's
36 interpretation of such statute, rule, regulation, or other
37 document, and shall interpret the meaning and effect de
38 novo. In actions brought by or against a state agency,
39 after applying all customary tools of interpretation, the
40 court or hearing officer shall decide any remaining doubt in
41 favor of a reasonable interpretation that limits agency
42 power and maximizes individual liberty.

43 4. Wherever under [subsection 3 of] this section or
44 otherwise the court is entitled to weigh the evidence and
45 determine the facts for itself, the court may hear and
46 consider additional evidence if the court finds that such
47 evidence in the exercise of reasonable diligence could not
48 have been produced or was improperly excluded at the hearing
49 before the agency. Wherever the court is not entitled to
50 weigh the evidence and determine the facts for itself, if
51 the court finds that there is competent and material
52 evidence which, in the exercise of reasonable diligence,
53 could not have been produced or was improperly excluded at
54 the hearing before the agency, the court may remand the case

55 to the agency with directions to reconsider the same in the
56 light of such evidence. The court may in any case hear and
57 consider evidence of alleged irregularities in procedure or
58 of unfairness by the agency, not shown in the record.

59 5. The court shall render judgment affirming,
60 reversing, or modifying the agency's order, and may order
61 the reconsideration of the case in the light of the court's
62 opinion and judgment, and may order the agency to take such
63 further action as it may be proper to require; but the court
64 shall not substitute its discretion for discretion legally
65 vested in the agency, unless the court determines that the
66 agency decision was arbitrary or capricious.

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