

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 221

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

0882S.02P

KRISTINA MARTIN, Secretary

## 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Section A. Section 536.140, RSMo, is repealed and one new  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;

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

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

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

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

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