



**House
Legislative
Analysis
Section**

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ADOPTION: AGENCY CONSENT

House Bill 4063

Sponsor: Rep. David M. Gubow

Committee: Judiciary

Complete to 5-10-93

A SUMMARY OF HOUSE BILL 4063 AS INTRODUCED 2-2-93

Under the adoption code, if the DSS or a child placing agency whose consent is required for an adoption has not executed a consent within a reasonable period of time, a person who has filed a petition to adopt may seek to have the probate court determine whether the withholding of consent was arbitrary and capricious. If the court finds clear and convincing evidence that consent was being arbitrarily and capriciously withheld, the court may terminate the agency's rights and enter a final order of adoption.

The bill would replace this language with provisions barring the filing of an adoption petition unless the petition was accompanied either by the required agency consent or a motion alleging that the decision to withhold consent was arbitrary and capricious. If the latter was alleged, the petitioner would have to explain the specific steps that he or she had taken to obtain the required consent, any results of those efforts, and the specific reasons why the petitioner believed the decision was arbitrary and capricious. If the child had already been placed with someone who had already received consent, the petitioner would have to file the motion within 56 days after the child placement order was issued, and before the entry of the order adoption.

The court would have 91 days to rule on the motion, unless good cause was shown for delay. The court would have to deny the motion unless the petitioner showed by clear and convincing evidence that the decision regarding consent had been arbitrary and capricious; if the motion was denied, the court would also dismiss the petition to adopt. If the court found in favor of the petitioner, it could terminate the rights of the appropriate court or agency and could enter further orders as it considered appropriate. In addition, the court could order the petitioner reimbursed for his or her legal costs in the matter.

MCL 710.26 and 710.45

House Bill 4063 (5-10-93)