

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.80194 Petition for review of determination; order setting cause for hearing; service; authority and duty of court; applicability of section.

Sec. 80194. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 80190, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 80190 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 80190, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a vessel on the waters of this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 80190, the court shall confine its consideration to a review of the record prepared pursuant to section 80190 to determine whether the hearing officer properly determined the issues enumerated in section 80190.

(5) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 80176, section 80185 or 80186, former sections 171, 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), or former section 73 or 73b of the marine safety act.

(6) In reviewing a determination resulting in issuance of an order under section 80192(1)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to section 80190 or the boating record. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

- (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
- (b) In excess of the statutory authority or jurisdiction of the secretary of state.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA