

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 165**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Judiciary April 11, 2005 with recommendation that House Committee Substitute for Senate Bill No. 165 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

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**AN ACT**

To repeal sections 386.510, 386.520, 386.530, and 386.540, RSMo, and to enact in lieu thereof three new sections relating to judicial appeal of public service commission orders.

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

Section A. Sections 386.510, 386.520, 386.530, and 386.540, RSMo, are repealed and  
2 three new sections enacted in lieu thereof, to be known as sections 386.510, 386.520, and  
3 386.530, to read as follows:

386.510. Within thirty days after the application for a rehearing is denied, or, if the  
2 application is granted, then within thirty days after the rendition of the decision on rehearing, the  
3 applicant may [apply to the circuit court of the county where the hearing was held or in which  
4 the commission has its principal office for a writ of certiorari or review (herein referred to as a  
5 writ of review)] **file a notice of appeal with the commission** for the purpose of having the  
6 reasonableness or lawfulness of the [original] **final** order [or decision or the order or decision on  
7 rehearing] **of the commission** inquired into or determined. [The writ shall be made returnable  
8 not later than thirty days after the date of the issuance thereof, and shall direct the commission  
9 to certify its record in the case to the court. On the return day the cause shall be heard by the  
10 circuit court, unless for a good cause shown the same be continued. No new or additional  
11 evidence may be introduced upon the hearing in the circuit court but the cause shall be heard by  
12 the court without the intervention of a jury on the evidence and exhibits introduced before the  
13 commission and certified to by it.] **Upon the filing of the notice of appeal, the commission**  
14 **shall forward the notice to the appropriate appellate court and issue a written notice of the**

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.

15 **filing to all other parties to the case before the commission. Within thirty days of receipt**  
16 **of the notice of appeal, the commission shall certify and forward its record in the case to**  
17 **the appellate court. The record before the commission shall be the record on review. No**  
18 **new or additional evidence may be introduced.** The commission and each party to the action  
19 or proceeding before the commission shall have the right to appear in the review proceedings.  
20 [Upon the hearing the circuit] **The appellate** court shall enter judgment either affirming or  
21 setting aside the order of the commission under review. [In case] **If** the order is reversed by  
22 reason of the commission failing to receive testimony properly proffered, the **appellate** court  
23 shall remand the cause to the commission, with instructions to receive the testimony so proffered  
24 and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is  
25 directed to receive. The **appellate** court may, in its discretion, remand any cause which is  
26 reversed by it to the commission for further action. No court in this state, except the circuit  
27 courts to the extent herein specified and the supreme court or the court of appeals on appeal,  
28 shall have jurisdiction to review, reverse, correct or annul any order or decision of the  
29 commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or  
30 interfere with the commission in the performance of its official duties. The [circuit] courts of  
31 this state shall always be deemed open for the [trial of suits brought to] review [the] **of** orders  
32 and decisions of the commission as provided in the public service commission law [and the same  
33 shall be tried and determined as suits in equity]. **This section shall not be construed to limit**  
34 **the jurisdiction of any court to issue remedial writs and equitable relief prior to the filing**  
35 **of an appeal.**

386.520. 1. [The pendency of a writ of review shall not of itself stay or suspend the  
2 operation of the order or decision of the commission, but during the pendency of such writ, the  
3 circuit court in its discretion may stay or suspend, in whole or in part, the operation of the  
4 commission's order or decision. No order so staying or suspending an order or decision of the  
5 commission shall be made by any circuit court otherwise than on three days' notice and after  
6 hearing, and if the order or decision of the commission is suspended the same shall contain a  
7 specific finding based upon evidence submitted to the court and identified by reference thereto,  
8 that great or irreparable damage would otherwise result to the petitioner and specifying the nature  
9 of the damage. In case the order or decision of the commission is stayed or suspended, the order  
10 or judgment of the court shall not become effective until a suspending bond shall first have] **The**  
11 **filing of a notice of appeal shall not stay or suspend the operation of the order of decision**  
12 **of the commission sought to be reviewed. The party filing the notice of appeal may file a**  
13 **motion in the appellate court requesting the appointment of a circuit judge or an associate**  
14 **circuit judge as a special master for the purpose of determining whether the order or**  
15 **decision of the commission sought to be reviewed shall be stayed or suspended. The court**

16 of appeals shall appoint the special master within three business days of the filing of the  
17 motion. The special master shall make no finding and recommendation staying or  
18 suspending the operation of the order or decision of the commission sought to be reviewed  
19 except after hearing. The parties shall receive at least three business days' notice of such  
20 hearing. If the special master recommends staying or suspending the decision or order, the  
21 special master's findings and recommendations shall contain a specific finding based upon  
22 evidence submitted to the special master and identified by reference that great or  
23 irreparable damage would otherwise result to the petitioner or to the residents of this state  
24 and specifying the nature of the damage. The findings and recommendations of the special  
25 master shall become the decree of the appellate court if adopted by the appellate court.  
26 The order or decision of the commission shall not be stayed or suspended until a  
27 supersedeas bond has been executed and filed with[,] the special master and approved by[,]  
28 the [circuit court,] appellate court. The supersedeas bond shall be made payable to the state  
29 of Missouri, and sufficient in amount and security to secure the prompt payment, by the party  
30 [petitioning for the review] pursuing the appeal, of all damages caused by the delay in the  
31 enforcement of the order or decision of the commission, and of all moneys which any person or  
32 corporation may be compelled to pay, pending the [review] appeal proceedings, for  
33 transportation, transmission, product, commodity or service in excess of the charges fixed by the  
34 order or decision of the commission, in case such order or decision is sustained.

35 2. [The circuit court, in case it stays or suspends] If the order or decision of the  
36 commission is stayed or suspended in any manner affecting rates, fares, tolls, rentals, charges  
37 or classifications, [shall] the special master may also [by order], subject to the approval of the  
38 appellate court, direct the corporation, person or public utility affected to pay into [court] the  
39 state treasury to the credit of the supersedeas bond revolving fund created in subsection  
40 6 of this section, from time to time, there to be impounded until the final decision of the case,  
41 or into some bank or trust company paying interest on deposits, under such conditions as the  
42 [court] special master, subject to the approval of the appellate court, may prescribe, all sums  
43 of money which [it may collect] may be collected from any corporation or person in excess of  
44 the sum such corporation or person would have been compelled to pay if the order or decision  
45 of the commission had not been stayed or suspended.

46 3. [In case any circuit court stays or suspends any] If the special master recommends,  
47 and the appellate court so orders, that an order or decision of the commission lowering any  
48 rate, fare, toll, rental, charge or classification be stayed or suspended, upon the execution and  
49 approval of [said suspending] the supersedeas bond, the special master, subject to the  
50 approval of the appellate court, shall forthwith require the corporation, person or public utility  
51 affected, under penalty of the immediate enforcement of the order or decision of the commission,

52 pending the [review] **appeal** and notwithstanding the suspending order, to keep such accounts,  
53 verified by oath, as may, in the judgment of the [court] **special master**, suffice to show the  
54 amounts being charged or received by such corporation, person or public utility, pending the  
55 [review] **appeal**, in excess of the charges allowed by the order or decision of the commission,  
56 together with the names and addresses of the corporations and persons to whom overcharges will  
57 be refundable in case the charges made by the corporation, person or public utility, pending the  
58 [review] **appeal**, be not sustained by the [circuit] **appellate** court; provided, that street railroad  
59 corporations shall not be required to keep a record of the names and addresses of such persons  
60 paying such overcharge of fares, but such street railroad corporations shall give to such persons  
61 printed receipts showing such overcharges of fares, the form of such printed receipts to be  
62 approved by the commission.

63 4. The [court] **special master** may, **subject to the approval of the appellate court**,  
64 from time to time, require [said] **the** party [petitioning for a review] **filing an appeal** to give  
65 additional security on, or to increase, the [said suspending] **supersedeas** bond, whenever [in the  
66 opinion of the court] the same may be necessary to secure the prompt payment of [said] **the**  
67 damages or [said] overcharges.

68 5. Upon the **final** decision of the [circuit] **appellate** court, all moneys which the  
69 corporation, person or public utility may have collected pending the appeal, in excess of those  
70 authorized by such decision, together with interest, in case the [court] **special master, with the**  
71 **approval of the appellate court**, ordered the deposit of such moneys in **the supersedeas bond**  
72 **revolving fund** or a bank or trust company, shall be promptly paid to the corporations or persons  
73 entitled thereto, in such manner and through such methods of distribution as may be prescribed  
74 by the [court] **special master and approved by the appellate court**, unless [an appeal be] **a**  
75 **transfer to the supreme court** is granted such corporation, person or public utility, as [herein]  
76 provided **by law**.

77 6. **There is hereby created in the state treasury the "Supersedeas Bond Revolving**  
78 **Fund", which shall consist of money collected under this section. The state treasurer shall**  
79 **be custodian of the fund. The special master, upon approval of the appellate court, shall**  
80 **make deposits and approve disbursements from the fund in accordance with this section.**  
81 **Money in the fund shall be used solely for the administration of this section.**  
82 **Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys**  
83 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
84 **general revenue fund. The state treasurer may invest moneys in the fund in the same**  
85 **manner as other funds are invested. Any interest and moneys earned on such investments**  
86 **shall be credited to the fund.**

386.530. [All actions or proceedings under this or any other chapter, and all actions and  
2 proceedings commenced or prosecuted by order of the commission, and all actions and  
3 proceedings to which the commission, the public counsel or the state may be parties, and in  
4 which any question arises under this or any other chapter, or under or concerning any order or  
5 decision or action of the commission, shall be preferred over all other civil causes except election  
6 contests in all the circuit courts of the state of Missouri, and shall be heard and determined in  
7 preference to all other civil business pending therein except election contests, irrespective of  
8 position on the calendar. The same preference shall be granted upon application of the public  
9 counsel or the commission counsel in any action or proceeding in which either or both may be  
10 allowed to intervene.] **Where an appeal is taken to the appellate court, the case shall, on the  
11 filing of the record on appeal in the appellate court, be heard in an expedited manner by  
12 the appellate court.**

[386.540. 1. The commission and any party, including the public  
2 counsel, who has participated in the commission proceeding which produced the  
3 order or decision may, after the entry of judgment in the circuit court in any  
4 action in review, prosecute an appeal to a court having appellate jurisdiction in  
5 this state. Such appeal shall be prosecuted as appeals from judgment of the  
6 circuit court in civil cases except as otherwise provided in this chapter. The  
7 original transcript of the record and testimony and exhibits, certified to by the  
8 commission and filed in the circuit court in any action to review an order or  
9 decision of the commission, together with a transcript of the proceedings in the  
10 circuit court, shall constitute the record on appeal to the supreme court or any  
11 court of appeals.

2. Where an appeal is taken to the supreme court or the court of appeals,  
13 the cause shall, on the return of the papers to the supreme court or court of  
14 appeals, be immediately placed on the docket of the then pending term by the  
15 clerk of the court and shall be assigned and brought to a hearing in the same  
16 manner as other causes on the then pending term docket, but shall have  
17 precedence over all civil causes of a different nature pending in the court. No  
18 appeal shall be effective when taken by a corporation, person or public utility  
19 unless a cost bond of appeal in the sum of five hundred dollars shall be filed  
20 within ten days after the entry of judgment in the circuit court appealed from.

3. The circuit court may in its discretion suspend its judgment pending  
22 the hearing in the supreme court or court of appeals on appeal, upon the filing of  
23 a bond by the corporation, person or public utility with good and sufficient  
24 security conditioned as provided for bonds upon actions for review and by further  
25 complying with all terms and conditions of this law for the suspension of any  
26 order or decision of the commission pending the hearing or review in the circuit  
27 court. This bond shall be in addition to the cost bond heretofore provided in this  
28 section.

29                   4. The general laws relating to appeals to the supreme court and the court  
30 of appeals in this state shall, so far as applicable and not in conflict with the  
31 provisions of this chapter, apply to appeals taken under the provisions of this  
32 chapter.]