

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR
SENATE BILL NO. 165
93RD GENERAL ASSEMBLY

Reported from the Committee on Judiciary April 22, 2005 with recommendation that House Committee Substitute No. 2 for Senate Bill No. 165 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0887L.07C

AN ACT

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

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Section A. Sections 386.510, 386.520, 386.530, and 386.540, RSMo, are repealed and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 four new sections enacted in lieu thereof, to be known as sections 386.510, 386.520, 386.530,
3 and 386.540, 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**

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.

14 **shall forward the notice to the appropriate appellate court and issue a written notice of the**
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.**

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 with the appellate court requesting the appointment of a circuit judge or an**
14 **associate circuit judge as a special master for the purpose of determining whether the order**
15 **or decision of the commission sought to be reviewed shall be stayed or suspended. The**

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

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

48 3. [In case any circuit court stays or suspends any] If the special master recommends
49 and the appellate court so orders, that an order or decision of the commission lowering any
50 rate, fare, toll, rental, charge or classification be stayed or suspended, upon the execution and
51 approval of [said suspending] the supersedeas bond, the special master subject to the

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

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

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

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 be**
11 **expedited by the appellate court.**

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

2. Where an appeal is taken to the supreme court or the court of appeals, the cause shall, on the return of the papers to the supreme court or court of appeals, be immediately placed on the docket of the then pending term by the clerk of the court and shall be assigned and brought to a hearing in the same manner as other causes on the then pending term docket, but shall have precedence over all civil causes of a different nature pending in the court. No appeal shall be effective when taken by a corporation, person or public utility unless a cost bond of appeal in the sum of five hundred dollars shall be filed 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 the hearing in the supreme court or court of appeals on appeal, upon the filing of a bond by the corporation, person or public utility with good and sufficient security conditioned as provided for bonds upon actions for review and by further complying with all terms and conditions of this law for the suspension of any order or decision of the commission pending the hearing or review in the circuit court. This bond shall be in addition to the cost bond heretofore provided in this section.

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