

FIRST REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 165

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR BARTLE.

Read 1st time January 12, 2005, and ordered printed.

Read 2nd time January 18, 2005, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 14, 2005, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 24, 2005. Read 3rd time and placed upon its final passage; bill passed.

0887S.01P

TERRY L. SPIELER, Secretary.

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Section A. Sections 386.510, 386.520, 386.530, and 386.540, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 386.510, 386.520, 386.530, and 386.540, to read as follows:

386.510. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may [apply to the circuit court of the county where the hearing was held or in which the commission has its principal office for a writ of certiorari or review (herein referred to as a writ of review)] **file a notice of appeal in the court of appeals in the district in which the commission has its principal office** for the purpose of having the reasonableness or lawfulness of the [original] **final order [or decision or the order or decision on rehearing] of the commission** inquired into or determined. [The writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard by the circuit court, unless for a good cause shown the same be continued. No new or additional evidence may be introduced upon the hearing in the circuit court but the cause shall be heard by the court without the intervention of a jury on the

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

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

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

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

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

3. [In case any circuit court stays or suspends any] If the special master recommends that an order or decision of the commission lowering any rate, fare, toll, rental, charge or classification be stayed or suspended, upon the execution and approval of [said suspending] the supersedeas bond, the special master shall forthwith require the corporation, person or public utility affected, under penalty of the immediate enforcement of the order or decision of the commission, pending the [review] appeal and notwithstanding the suspending order, to keep such accounts, verified by oath, as may, in the judgment of the [court] special master, suffice to show the amounts being charged or received by such

corporation, person or public utility, pending the [review] **appeal**, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations and persons to whom overcharges will be refundable in case the charges made by the corporation, person or public utility, pending the [review] **appeal**, be not sustained by the [circuit] court **of appeals**; provided, that street railroad corporations shall not be required to keep a record of the names and addresses of such persons paying such overcharge of fares, but such street railroad corporations shall give to such persons printed receipts showing such overcharges of fares, the form of such printed receipts to be approved by the commission.

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

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

386.530. [All actions or proceedings under this or any other chapter, and all actions and proceedings commenced or prosecuted by order of the commission, and all actions and proceedings to which the commission, the public counsel or the state may be parties, and in which any question arises under this or any other chapter, or under or concerning any order or decision or action of the commission, shall be preferred over all other civil causes except election contests in all the circuit courts of the state of Missouri, and shall be heard and determined in preference to all other civil business pending therein except election contests, irrespective of position on the calendar. The same preference shall be granted upon application of the public counsel or the commission counsel in any action or proceeding in which either or both may be allowed to intervene.] **Where an appeal is taken to the court of appeals, the case shall, on the filing of the record on appeal in the 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 heard 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 is filed within ten days after the entry of judgment by the commission in an appealed order or decision.**

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] **proceeding before the court of appeals** 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] **the order, seek a transfer to the supreme court of the state of Missouri. The transfer may be permitted and governed under the rules for transfers** 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 **of appeals** 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.