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By: **Chairman, Finance Committee (By Request - Departmental - Public Service Commission)**

Introduced and read first time: January 23, 2004

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2004

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CHAPTER 99

1 AN ACT concerning

2 **Public Service Commission - Declaratory Judgments**

3 FOR the purpose of providing that certain petitions to challenge the validity of  
4 ~~application of a regulation of the Public Service Commission must be filed~~  
5 ~~within certain periods; providing for the determination of the application of~~  
6 ~~certain regulations under certain circumstances; repealing a provision that~~  
7 ~~allowed a court to determine the validity of a regulation regardless of whether~~  
8 ~~the petitioner had asked the Commission to do so; providing that a party must~~  
9 ~~raise an objection to the Commission's decision to act by order rather than by~~  
10 ~~regulation in a court proceeding of a regulation of the Public Service~~  
11 Commission shall be filed in accordance with a certain section of law; providing  
12 that certain persons, in seeking to challenge a certain decision of the  
13 Commission to act by order rather than regulation, shall seek judicial review  
14 ~~within a certain time period; prohibiting a party from appealing the~~  
15 ~~Commission's decision to act by order under certain circumstances; providing for~~  
16 ~~the application of this Act; providing that a certain order issued before a certain~~  
17 date in a certain proceeding, that is not the subject of a certain judicial  
18 proceeding, is not invalid or unenforceable as a result of the order meeting a  
19 certain definition; and generally relating to the authority of the Public Service  
20 Commission.

21 BY repealing and reenacting, with amendments,  
22 Article - Public Utility Companies  
23 Section 3-201  
24 Annotated Code of Maryland  
25 (1998 Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Public Utility Companies**

4 3-201.

5 (a) ~~(1) A PETITION FOR DECLARATORY JUDGMENT CHALLENGING THE~~  
6 ~~VALIDITY OF A REGULATION OF THE COMMISSION MUST BE FILED WITHIN 30 DAYS~~  
7 ~~AFTER THE FINAL REGULATION IS PUBLISHED IN THE MARYLAND REGISTER.~~

8 (2) ~~(1)~~ The [validity] APPLICATION NOTWITHSTANDING § 10-120 OF  
9 THE STATE GOVERNMENT ARTICLE, THE VALIDITY of a regulation of the Commission  
10 ~~may be determined on a petition for declaratory judgment whenever it appears that~~  
11 SHALL BE CHALLENGED IN ACCORDANCE WITH § 10-125 OF THE STATE  
12 GOVERNMENT ARTICLE. [the regulation, or] its application[,] actually or potentially  
13 ~~interferes with or impairs the legal rights or privileges of the petitioner.~~

14 ~~(H) A PETITION CHALLENGING THE APPLICATION OF A~~  
15 ~~REGULATION MUST BE FILED WITHIN 30 DAYS AFTER THE COMMISSION ISSUES THE~~  
16 ~~DECISION THAT DETERMINED THE CHALLENGED APPLICATION.~~

17 ~~[(2) A court may render a declaratory judgment in accordance with~~  
18 ~~paragraph (1) of this subsection whether or not the petitioner has first asked the~~  
19 ~~Commission to determine the validity of the regulation in question.]~~

20 ~~(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:~~

21 ~~(1) A PARTY TO A COMMISSION PROCEEDING MUST~~

22 ~~(B) A PARTY TO A COMMISSION PROCEEDING, A PERSON THAT HAS BEEN~~  
23 ~~GRANTED INTERVENTION IN A COMMISSION PROCEEDING, OR A PERSON THAT HAS~~  
24 ~~BEEN ORDERED TO PARTICIPATE IN A COMMISSION PROCEEDING THAT SEEKS TO~~  
25 ~~CHALLENGE A DECISION BY THE COMMISSION TO ACT BY ORDER RATHER THAN~~  
26 ~~REGULATION SHALL SEEK JUDICIAL REVIEW OF THE COMMISSION'S DECISION TO~~  
27 ~~ACT BY ORDER RATHER THAN REGULATION WITHIN 30 DAYS AFTER THE~~  
28 ~~COMMISSION ISSUES A FINAL ORDER IN THAT PROCEEDING; AND.~~

29 ~~(C) NOTWITHSTANDING ANY PROVISION OF THE ADMINISTRATIVE~~  
30 ~~PROCEDURE ACT, AN ORDER OF THE COMMISSION ISSUED ON OR BEFORE JUNE 30,~~  
31 ~~2000 IN A GENERIC OR QUASI-LEGISLATIVE PROCEEDING, THAT IS NOT THE SUBJECT~~  
32 ~~OF A JUDICIAL PROCEEDING PENDING AS OF JUNE 1, 2004, IS NOT INVALID OR~~  
33 ~~UNENFORCEABLE AS A RESULT OF THE ORDER MEETING THE DEFINITION OF A~~  
34 ~~REGULATION UNDER § 10-101 OF THE STATE GOVERNMENT ARTICLE.~~

35 ~~(2) A PARTY WHO REQUESTS THAT THE COMMISSION ACT BY ORDER OR~~  
36 ~~WHO FAILS TO OBJECT TO THE ACTION OF THE COMMISSION BY ORDER RATHER~~  
37 ~~THAN BY REGULATION MAY NOT APPEAL THE COMMISSION'S DECISION TO ACT BY~~  
38 ~~ORDER.~~

1    ~~[(b)]~~    ~~(C)~~    The Commission shall be made a party to a proceeding under this  
2 section.

3    ~~[(c)]~~    ~~(D)~~    A petition under this section shall be filed in the Circuit Court for  
4 Baltimore City or the circuit court for the county where the petitioner has its  
5 principal office in the State.

6    ~~SECTION 2. AND BE IT FURTHER ENACTED, That notwithstanding any~~  
7 ~~provision of the Administrative Procedure Act, an order of the Public Service~~  
8 ~~Commission issued in a generic or quasi legislative proceeding after January 1, 1988,~~  
9 ~~and prior to June 1, 2002, is valid and enforceable regardless of whether the order~~  
10 ~~meets the definition of a regulation under § 10-101 of the State Government Article.~~  
11 ~~This section may not be applied or interpreted to affect any court case that is filed or~~  
12 ~~has become final on or before June 1, 2004.~~

13    ~~SECTION 3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take  
14 effect June 1, 2004.