

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 175 (Chairman, Finance Committee)  
(By Request – Departmental – Public Service Commission)

Finance

Economic Matters

---

**Public Service Commission - Declaratory Judgments**

---

This departmental bill provides that a regulation of the Public Service Commission (PSC) must be challenged according to the provisions for declaratory judgments in the Administrative Procedures Act (APA). The bill specifies that a party to a PSC proceeding, a person granted intervention in a PSC proceeding, or a person ordered to participate in a PSC proceeding that seeks to challenge a PSC decision to act by order rather than regulation must seek judicial review of the PSC's decision within 30 days after PSC issues a final order in that proceeding.

The bill also provides that notwithstanding any provisions of APA, orders of PSC issued on or before June 30, 2000 in a generic or quasi-legislative proceeding that is not the subject of a judicial proceeding pending as of June 1, 2004 is not invalid or unenforceable as a result of the order meeting the definition of a regulation.

The bill is effective June 1, 2004.

---

**Fiscal Summary**

**State Effect:** The bill will not materially affect State government operations.

**Local Effect:** None.

**Small Business Effect:** PSC has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

---

## Analysis

**Current Law:** The validity of a regulation of PSC may be determined on a petition for declaratory judgment whenever it appears that the regulation, or its application, actually or potentially interferes with or impairs the legal rights or privileges of the petitioner. Courts may render declaratory judgments regardless of whether the petitioner has first asked PSC to determine the validity of a regulation. PSC is required to be made a party to any petitions.

**Background:** The commission issued Order No. 76292 on July 1, 2000. This order placed requirements on electric and gas utility companies that are subject to regulation by the commission and imposed limitations on the relationships that those utilities could have with their nonregulated affiliates. The order was the result of a quasi-legislative proceeding requested by the utilities. After appeal of the order by the utility, the Maryland Court of Appeals (in *Delmarva Power v. PSC*, 370 Md. 1 (2002)) ruled that the order was in fact a regulation issued in violation of APA. PSC notes that a key factor in the Court of Appeals' decision was that there are no requirements for a petitioner to file for a declaratory judgment within any specified time period.

The court's decision not only rendered Order No. 76292 void, but will result in hundreds of decisions which were issued since 1970 also being considered void, because under current law a petitioner could challenge these orders as being issued in violation of APA. Thus, these orders will be open to challenge indefinitely.

Pursuant to this legislation, reasonable time limits are placed on a person's ability to challenge a regulation or to challenge an order which the person contends should have been enacted by regulation. Finally, the retroactive provision would validate orders issued between January 1, 1988 and June 1, 2002. The provision will prevent the commission from having to review a multitude of orders and letter orders that have existed and been applied without objection for years. It is important to note, on a going forward basis, the commission will no longer be able to issue orders in generic proceedings but will have to follow the requirements of APA. Thus, the proposed legislation does not overturn the court's decision.

HB 135 of 2002 created a special fund of the commission and the Office of People's Counsel and permitted the commission to charge reasonable fees. On *Sine Die* of the 2002 session, the bill was amended to authorize the commission to implement any provision of the Public Utility Article by either order or regulation, unless specifically required to act through regulation. The bill was enacted as Chapter 494 of 2002. The provisions of Chapter 494 authorizing the commission to implement any provision of the Public Utility Article by either order or regulation, unless specifically required to act

through regulation, was the basis cited by the Court of Appeals as violating the single subject rule.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2004  
mh/hlb Revised - Senate Third Reader - March 25, 2004

---

Analysis by: Daniel P. Tompkins

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510