

# SENATE BILL 400

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EMERGENCY BILL

71r1327

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By: **Senators Pipkin, Astle, Della, Exum, Garagiola, Kelley, Klausmeier, ~~and Middleton~~ Middleton, and Pugh**

Introduced and read first time: February 2, 2007

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2007

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Electric Industry Restructuring – Proceedings – Review and Evaluation**

3 FOR the purpose of requiring the Public Service Commission to initiate new  
4 proceedings to review and evaluate certain requirements under a certain Act  
5 ~~beginning on a certain date;~~ requiring the Commission to conduct certain  
6 hearings which include the use of certain experts and consultants; repealing  
7 certain provisions relating to a certain merger and certain reporting  
8 requirements; altering certain considerations that the Commission is required  
9 to review in a certain study; prohibiting the Commission from approving an  
10 opt-out aggregation program under certain circumstances; requiring the  
11 Commission to identify the implications of certain aspects of an opt-out  
12 aggregation program; providing that certain requirements may not be construed  
13 to interfere with the development and implementation of certain programs and  
14 services; requiring the Commission to make certain determinations in its study  
15 of establishing a certain long-term goal; requiring the Commission to provide a  
16 certain interim report by a certain date; requiring the Commission to provide a  
17 certain final report by a certain date; providing that certain hearings are not  
18 required to be evidentiary proceedings; providing that certain unexpended  
19 funds shall be considered encumbered and may not be deducted from certain  
20 appropriations; allowing the Commission to impose on certain persons up to a

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain amount as a special assessment; allowing certain funds to be expended  
 2 for certain purposes in accordance with an approved budget amendment;  
 3 specifying the calculation of certain bills sent to certain electric companies and  
 4 electricity suppliers; allowing the Commission to use a certain procurement  
 5 process under certain circumstances; making stylistic changes; making this Act  
 6 an emergency measure; and generally relating to the Public Service  
 7 Commission.

8 BY repealing and reenacting, with amendments,  
 9 Chapter 5 of the Acts of the General Assembly of the First Special Session of  
 10 2006  
 11 Section 5 and 7

12 BY repealing and reenacting, without amendments,  
 13 Chapter 5 of the Acts of the General Assembly of the First Special Session of  
 14 2006  
 15 Section 18(a)(2) and (3), (b), and (c)

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

18 **Chapter 5 of the Acts of the First Special Session of 2006**

19 SECTION 5. AND BE IT FURTHER ENACTED, That:

20 [(a) The Public Service Commission may not take final action to approve or  
 21 disapprove a merger between FPL Group, Inc., and Constellation Energy Group, Inc.,  
 22 pending as of the effective date of this Act until five members of the Commission have  
 23 been appointed and qualified in accordance with Section 12 or Section 22 of this Act.

24 (b) The Public Service Commission [appointed in accordance with Section 12  
 25 or Section 22 of this Act] shall:

26 (1) conduct ~~investigatory and evidentiary proceedings~~ **HEARINGS**,  
 27 including the use of any necessary outside experts and consultants, to reevaluate the  
 28 general regulatory structure, agreements, orders, and other prior actions of the Public  
 29 Service Commission under the Electric Customer Choice and Competition Act of 1999,  
 30 including the determination of and allowances for stranded costs;

31 (2) ~~on or before June 30, 2007, report the results of that reevaluation~~  
 32 ~~to the General Assembly in accordance with § 2-1246 of the State Government Article;~~

1           ~~(3) promptly and comprehensively review and take action on the~~  
 2 ~~proposed merger between FPL Group, Inc., and Constellation Energy Group, Inc., in~~  
 3 ~~accordance with the standards and procedures contained in § 6-105 of the Public~~  
 4 ~~Utility Companies Article, as enacted by this Act;~~

5           ~~(4)~~ provide to residential customers of the Baltimore Gas and Electric  
 6 Company funds for mitigation of rate increases ~~including:~~

7           ~~(i)~~ **RESULTING FROM** any adjustment, in favor of those  
 8 customers, to allowances for stranded costs for assets that were transferred from  
 9 Baltimore Gas and Electric Company to an affiliate; and

10           ~~(ii) any funds identified by the Commission as properly~~  
 11 ~~allocated to Baltimore Gas and Electric Company and its residential customers as~~  
 12 ~~conditions of approval of the merger between FPL Group, Inc., and Constellation~~  
 13 ~~Energy Group, Inc.; and~~

14           ~~(5)~~ **(3)** require that any funds for mitigating rates for residential electric  
 15 customers under item ~~(4)~~ **(2)** of this subsection must be in the form of a nonbypassable  
 16 credit on the customer's bill, and may not be recovered subsequently from those  
 17 customers in rates or otherwise.

18           SECTION 7. AND BE IT FURTHER ENACTED, That:

19           (a) The Public Service Commission [appointed in accordance with Section 12  
 20 of this Act] shall ~~initiate an evidentiary proceeding~~ **CONDUCT HEARINGS,**  
 21 **INCLUDING THE USE OF ANY NECESSARY OUTSIDE EXPERTS AND CONSULTANTS,**  
 22 to study and evaluate the status of electric restructuring in the State as it pertains to  
 23 the availability of competitive generation to residential and small commercial  
 24 customers and the structure, procurement, and terms and conditions of standard offer  
 25 service for residential and small commercial customers. In its evaluation, the  
 26 Commission shall consider changes that are necessary to provide ~~residents~~  
 27 **RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS** the benefit of a reliable  
 28 electric system at the best possible price ~~and,~~ **INCLUDING** options for reregulation, if  
 29 advisable, and to allow electric companies to develop a portfolio of electricity supply  
 30 that provides electricity at the lowest cost with the least volatility.

31           (b) Among other considerations, the Commission shall consider the  
 32 implications of the following:

1 (1) requiring or allowing investor-owned electric companies to  
 2 purchase electricity by competitive or negotiated contracts of various durations or  
 3 through other appropriate methods to minimize price volatility;

4 (2) requiring or allowing investor-owned electric companies to  
 5 construct, acquire, or lease peak-load or other generating plants and associated  
 6 transmission lines;

7 (3) IN ORDER TO ENCOURAGE THE PROCUREMENT AND  
 8 IMPLEMENTATION OF COST-EFFECTIVE ENERGY EFFICIENCY AND  
 9 CONSERVATION PROGRAMS AND SERVICES:

10 (I) providing a process, at the time bids by investor-owned  
 11 electric companies for electricity supply are obtained for the standard offer service, to  
 12 solicit bids for the procurement of COST-EFFECTIVE energy efficiency and  
 13 conservation ~~measures~~ PROGRAMS and services if energy efficiency and conservation  
 14 ~~measures~~ PROGRAMS and services are less expensive than electricity generation; AND

15 (II) ESTABLISHING A LONG-TERM GOAL FOR SAVINGS OVER  
 16 A PERIOD OF TIME OF THE TOTAL RESIDENTIAL RETAIL ENERGY CONSUMED IN  
 17 A YEAR IN AN ELECTRIC COMPANY'S SERVICE TERRITORY THROUGH THE  
 18 PROCUREMENT AND IMPLEMENTATION OF COST-EFFECTIVE ENERGY  
 19 EFFICIENCY AND CONSERVATION PROGRAMS AND SERVICES UNDER §§ 7-211  
 20 AND 7-510(C)(4)(II)2C OF THE PUBLIC UTILITY COMPANIES ARTICLE;

21 (4) providing a process to allow investor-owned electric companies to  
 22 obtain a portion of its electricity supply for standard offer service through the  
 23 negotiation of bilateral contracts with wholesale electricity suppliers, either in  
 24 conjunction with or outside of procurement through competitive wholesale auctions;  
 25 ~~and~~

26 (5) allowing opt-out aggregation of residential electric customer  
 27 demand AND SMALL COMMERCIAL ELECTRIC CUSTOMER DEMAND by local  
 28 governments in the service territories of investor-owned electric companies; AND

29 (6) ESTABLISHING AN OFFICE OF RETAIL MARKET  
 30 DEVELOPMENT.

31 (c) ~~On or before December 31, 2006, the Commission shall report to the~~  
 32 ~~Governor and, in accordance with § 2-1246 of the State Government Article, to the~~  
 33 ~~General Assembly on its findings and recommendations.~~

1       ~~(d)~~ (1) The Commission may not implement any of the actions under  
 2 subsection (b)(1) through (4) of this section that are otherwise authorized by this Act  
 3 unless the Commission finds that the action is in the public interest.

4           (2) ~~On or before December 31, 2006, and based~~ **BASED** on its  
 5 consideration of energy efficiency and conservation measures under subsection (b)(3) of  
 6 this section, the Commission shall establish, by regulation or order:

7                   (i) the process for procurement of energy and conservation  
 8 ~~measures~~ **PROGRAMS** and services; and

9                   (ii) criteria to evaluate bids that are submitted for energy and  
 10 conservation ~~measures~~ **PROGRAMS** and services.

11           (3) As a part of its review of electric restructuring in the State as it  
 12 pertains to the availability of competitive generation to residential and small  
 13 commercial customers and the structure, procurement, and terms and conditions of  
 14 standard offer service for residential and small commercial customers, the  
 15 Commission shall:

16                   1. adopt a uniform definition of a “small commercial customer”  
 17 for purposes of standard offer service that applies in all service territories in the State;  
 18 and

19                   2. consider whether it benefits small commercial customers for  
 20 an electric company not to be required to provide the standard offer service under §  
 21 7-510(c) for small commercial customers.

22       ~~(e)~~ **(D)** The requirement to study opt-out local governmental aggregation  
 23 **FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS IN THE SERVICE**  
 24 **TERRITORIES OF INVESTOR-OWNED ELECTRIC COMPANIES** under subsection  
 25 (b)(5) of this section may not be construed to interfere with any pilot program to  
 26 implement local aggregation in existence on the effective date of this Act. **THE**  
 27 **COMMISSION MAY NOT APPROVE AN OPT-OUT AGGREGATION PROGRAM UNLESS**  
 28 **THE GENERAL ASSEMBLY THROUGH LEGISLATION AUTHORIZES THE**  
 29 **COMMISSION TO ALLOW OPT-OUT AGGREGATION. IN ITS STUDY OF OPT-OUT**  
 30 **AGGREGATION, THE COMMISSION SHALL IDENTIFY THE IMPLICATIONS OF THE**  
 31 **VARIOUS ASPECTS OF AN OPT-OUT AGGREGATION PROGRAM, INCLUDING:**

1           **(1) LIMITING THE ESTABLISHMENT OF AN OPT-OUT**  
2 **AGGREGATION PROGRAM TO ONLY RESIDENTIAL CUSTOMERS;**

3           **(2) RESTRICTING THE AMOUNT OF LOAD THAT MAY BE MOVED**  
4 **FROM THE STANDARD OFFER SERVICE IN ANY YEAR TO AN OPT-OUT**  
5 **AGGREGATION PROGRAM;**

6           **(3) LIMITING VOLUMETRIC RISK COSTS FOR CUSTOMERS**  
7 **REMAINING WITH THE STANDARD OFFER SERVICE;**

8           **(4) ENSURING THE ABILITY OF ELIGIBLE LOW-INCOME**  
9 **CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM TO OBTAIN FUNDS**  
10 **THROUGH THE ELECTRIC UNIVERSAL SERVICE PROGRAM AND OTHER**  
11 **PROGRAMS AVAILABLE TO LOW-INCOME CUSTOMERS;**

12           **(5) TO PREVENT COST SHIFTING, REQUIRING A FIREWALL**  
13 **BETWEEN RATEPAYERS AND TAXPAYERS IN A LOCAL GOVERNMENT THAT HAS**  
14 **AN OPT-OUT AGGREGATION PROGRAM;**

15           **(6) IF AN OPT-OUT AGGREGATION PROGRAM IS MORE EXPENSIVE,**  
16 **OR BECOMES MORE EXPENSIVE, THAN THE STANDARD OFFER SERVICE DUE TO**  
17 **THE PROCUREMENT OF RENEWABLE ENERGY, REQUIRING AN ALTERNATIVE**  
18 **OPTION FOR CUSTOMERS IN THE OPT-OUT AGGREGATION PROGRAM;**

19           **(7) SPECIFYING THE METHODS, TIMING, AND ADEQUACY OF**  
20 **NOTIFICATION TO CUSTOMERS WHO ARE PLACED IN AN OPT-OUT AGGREGATION**  
21 **PROGRAM;**

22           **(8) SPECIFYING WHETHER DELINQUENT ACCOUNTS IN AN**  
23 **OPT-OUT AGGREGATION PROGRAM WOULD BE RETURNED TO THE STANDARD**  
24 **OFFER SERVICE;**

25           **(9) REQUIRING THAT NO ADDITIONAL FEES, TAXES, OR OTHER**  
26 **CHARGES OTHER THAN THE ACTUAL COST OF THE SERVICE MAY BE CHARGED**  
27 **TO CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM;**

28           **(10) IDENTIFYING UP FRONT COSTS OF IMPLEMENTING AN**  
29 **OPT-OUT AGGREGATION PROGRAM, INCLUDING SPECIFYING THE COSTS**

1 ASSOCIATED WITH THE ROLE OF HIRING CONSULTANTS, AND DETERMINING  
2 HOW COSTS ARE PAID;

3 (11) IDENTIFYING WHEN CONTRACTS WOULD BEST BE AWARDED  
4 FOR AN OPT-OUT AGGREGATION PROGRAM IN RELATION TO THE STANDARD  
5 OFFER SERVICE;

6 (12) SPECIFYING OTHER STANDARDS AND PROCEDURES TO  
7 PROTECT CUSTOMERS IN AN OPT-OUT AGGREGATION PROGRAM, INCLUDING  
8 PROHIBITING DISCRIMINATION BASED ON THE LOCATION OF THE CUSTOMER;  
9 AND

10 (13) ENSURING THAT THE RENEWABLE PORTFOLIO STANDARD  
11 REQUIREMENTS UNDER TITLE 7, SUBTITLE 7 OF THE PUBLIC UTILITY  
12 COMPANIES ARTICLE APPLY TO AN OPT-OUT AGGREGATION PROGRAM.

13 (E) REGARDLESS OF WHETHER THE ELECTRIC SUPPLY MARKET  
14 REMAINS RESTRUCTURED OR RETURNS TO A REGULATED ELECTRIC SUPPLY  
15 MARKET, THE REQUIREMENT UNDER SUBSECTION (B)(3)(II) OF THIS SECTION  
16 RELATING TO ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND  
17 SERVICES MAY NOT BE CONSTRUED TO INTERFERE WITH THE DEVELOPMENT  
18 AND IMPLEMENTATION OF PROGRAMS AND SERVICES TO ENCOURAGE AND  
19 PROMOTE THE EFFICIENT USE AND CONSERVATION OF ENERGY BY CONSUMERS,  
20 GAS COMPANIES, AND ELECTRIC COMPANIES UNDER § 7-211 OF THE PUBLIC  
21 UTILITY COMPANIES ARTICLE. IN ITS STUDY OF ESTABLISHING A LONG-TERM  
22 GOAL FOR SAVINGS OVER A PERIOD OF TIME OF THE TOTAL RESIDENTIAL  
23 RETAIL ENERGY CONSUMED IN A CERTAIN YEAR IN AN ELECTRIC COMPANY'S  
24 SERVICE TERRITORY THROUGH THE PROCUREMENT AND IMPLEMENTATION OF  
25 COST-EFFECTIVE ENERGY EFFICIENCY AND CONSERVATION PROGRAMS AND  
26 SERVICES, THE COMMISSION SHALL DETERMINE:

27 (I) HOW A REASONABLE AND ACHIEVABLE LONG-TERM  
28 GOAL WOULD BE ESTABLISHED;

29 (II) WHO SHOULD PAY THE COSTS OF IMPLEMENTING  
30 PROGRAMS AND SERVICES THAT ARE TIED TO A LONG-TERM GOAL;

31 (III) TO ENCOURAGE THE CONTINUATION OF  
32 COST-EFFECTIVE PROGRAMS AND SERVICES PROCURED OR IMPLEMENTED  
33 THROUGH AN ELECTRIC COMPANY PRIOR TO THE ESTABLISHMENT OF A

LONG-TERM GOAL, HOW THOSE PROGRAMS AND SERVICES WOULD BE FACTORED INTO ESTABLISHING A LONG-TERM GOAL REQUIREMENT ON THE ELECTRIC COMPANY; AND

(IV) HOW THE DEVELOPMENT AND IMPLEMENTATION OF PROGRAMS AND SERVICES FROM PERSONS OTHER THAN GAS COMPANIES AND ELECTRIC COMPANIES COULD CONTRIBUTE TO ACHIEVING A LONG-TERM GOAL.

SECTION 18. AND BE IT FURTHER ENACTED, That:

(a) Pursuant to Article III, § 52(14) of the Maryland Constitution, in addition to the amounts provided under Chapter 216 of the Acts of 2006 (The Budget Bill), the following appropriations shall be made for fiscal year 2007 to implement the requirements of this Act:

(2) Public Service Commission

	<u>C90G00.01 General Administration and Hearings</u>	.....	<u>\$750,000</u>
<u>Special Funds</u>			

(3) People's Counsel

	<u>C91H00.01 General Administration</u>	.....	<u>\$500,000</u>	<u>Special</u>
<u>Funds</u>				

(b) Special funds appropriated in subsection (a)(2) through (4) of this section shall be recovered through the assessment on public utilities authorized under § 2-110 of the Public Utility Companies Article.

(c) Special funds appropriated in subsection (a)(5) of this section shall be credited from funds assessed under § 7-512.1 of the Public Utility Companies Article, as enacted by this Act, and the repeal of the income tax credit and designation of special funding under Sections 2 and 10 of this Act.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) The Notwithstanding the reporting dates established under Section 5(b) and Section 7(c) of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006 prior to the amendment of those sections by this Act, the Public Service Commission shall initiate new proceedings to review and evaluate the requirements under Section 5(4) and Section 7 of Chapter 5 of the Acts of the General Assembly of the First Special Session of 2006, as amended by this Act.



1           (2) The review and evaluation shall include any orders that were  
2 issued by the Commission relating to the requirements of those sections and may  
3 include review and evaluation of the open record for any case pending before the  
4 Commission relating to the requirements of those sections.

5           ~~(b) The new proceedings shall begin on the earlier of:~~

6           ~~(1) the date a Chairman of the Public Service Commission is~~  
7 ~~appointed to replace the Chairman who served on January 30, 2007; or~~

8           ~~(2) July 1, 2008.~~

9           ~~(e)~~ (b) (1) On or before January 1, 2008, the Public Service Commission shall  
10 submit an interim report to the Governor and, in accordance with § 2-1246 of the  
11 State Government Article, the General Assembly. The interim report shall include at a  
12 minimum:

13                   (i) the identification of the issues relating to options for  
14 reregulation, as required to be studied under Section 7 of Chapter 5 of the Acts of the  
15 General Assembly of the First Special Session of 2006, as amended by this Act; and

16                   (ii) to the extent possible, discussion of costs and benefits to  
17 residential and small commercial customers of returning to a regulated electric supply  
18 market.

19           (2) On or before December 31, 2008, the Public Service Commission  
20 shall submit a final report of its review ~~and evaluations~~, evaluation, and findings and  
21 recommendations, as required under subsection (a) of this section, to the Governor  
22 and, in accordance with § 2-1246 of the State Government Article, the General  
23 Assembly. As required to be studied under Section 5 and Section 7 of the Acts of the  
24 General Assembly of the First Special Session of 2006, as amended by this Act, the  
25 report shall include a full discussion of the costs and benefits to residential and small  
26 commercial customers of:

27                   (i) continuing in a restructured electric supply market;

28                   (ii) returning to a regulated electric supply market; and

29                   (iii) allowing an electric supply market that includes a  
30 combination of competitive and regulated electric supply aspects.

1           (c) Any hearing conducted under this Act need not be an evidentiary  
2 proceeding.

3           SECTION 3. AND BE IT FURTHER ENACTED, That notwithstanding §  
4 2-110(c)(10) of the Public Utility Companies Article, any unexpended funds at the end  
5 of fiscal 2007 that were appropriated under Section 18(a)(2) and (3) of Chapter 5 of the  
6 Acts of the General Assembly of the First Special Session of 2006:

7           (1) shall be considered encumbered by the Public Service Commission  
8 and the Office of People's Counsel, respectively, by June 30, 2007; and

9           (2) may not be deducted from the appropriation for fiscal 2008.

10           SECTION 4. AND BE IT FURTHER ENACTED, That:

11           (a) Notwithstanding any other provision of law, for fiscal 2008 only, in  
12 addition to the amounts appropriated in the budget bill for fiscal 2008, the Public  
13 Service Commission may impose up to \$4,000,000 as a special assessment using the  
14 assessment process authorized under § 2-110 of the Public Utility Companies Article,  
15 provided that:

16           (1) the assessment shall be imposed only on those electric companies  
17 and electricity suppliers otherwise subject to the assessment under § 2-110 of the  
18 Public Utility Companies Article; and

19           (2) the limit under § 2-110(c)(12) of the Public Utility Companies  
20 Article does not apply to any assessment made under this section.

21           (b) (1) The amounts collected under subsection (a) of this section may be  
22 expended for fiscal 2008 for the support of the Commission in accordance with an  
23 approved budget amendment.

24           (2) Notwithstanding § 2-110(c)(10) of the Public Utility Companies  
25 Article, any unexpended funds at the end of fiscal 2008 that were collected under this  
26 section:

27           (i) shall be considered encumbered by the Public Service  
28 Commission by June 30, 2008; and

29           (ii) may not be deducted from the appropriation for fiscal 2009.

30           (c) The bill sent to each electric company and electricity supplier subject to  
31 the assessment under subsection (a) of this section shall equal the product of:

1           (1) the amount authorized to be collected under this section;  
2 multiplied by

3           (2) the ratio of the gross operating revenues of the entity subject to the  
4 special assessment to the total gross operating revenues for all entities subject to the  
5 assessment.

6           SECTION 5. AND BE IT FURTHER ENACTED, That notwithstanding any  
7 other provision of law, that the Public Service Commission may use an emergency  
8 procurement under § 13-108 of the State Finance and Procurement Article to obtain  
9 any outside experts or consultants necessary to conduct the studies required under  
10 this Act.

11           SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act is an  
12 emergency measure, is necessary for the immediate preservation of the public health  
13 or safety, has been passed by a yea and nay vote supported by three-fifths of all the  
14 members elected to each of the two Houses of the General Assembly, and shall take  
15 effect from the date it is enacted.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.