

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 722

(Senator Middleton)

Finance

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**Public Service Commission - Proceedings and Orders**

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This bill authorizes the Public Service Commission (PSC) to conduct a proceeding and issue an order that affects more than one public service company. Prior to instituting a proceeding, PSC must provide notice of its intent to conduct a proceeding. The notice must explain why PSC believes it is necessary to conduct a proceeding instead of adopting a regulation; the issues PSC intends to investigate; and the policy PSC will consider adopting or implementing. Affected parties must be given an opportunity to (1) explain why a proceeding should not be conducted; and (2) submit comments and request and receive an opportunity to present argument, summon witnesses, and cross-examine witnesses. PSC must hold at least one hearing on the issues addressed through the proceeding and must issue an order within 30 days after the close of the record in the proceeding.

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**Fiscal Summary**

**State Effect:** PSC benefits operationally from expanded authority to initiate a proceeding and issue an order instead of proposing a regulation.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:** Under § 2 of Chapter 494 of 2002, unless a provision of the Public Utility Companies Article specifically requires PSC to act through regulation, PSC may implement any provision of the Article by either order or regulation as PSC deems

necessary and proper. In *Delmarva Power and Light Co. v. Public Service Commission of Maryland*, 371 Md. 356 (2002) [*Delmarva II*], the Court of Appeals held that § 2 of Chapter 494 violated the Maryland Constitution's single-subject rule. The *Delmarva II* court ordered § 2 severed from Chapter 494. As a result, PSC must follow the Administrative Procedures Act (APA) if it seeks to implement policies or rules that meet the definition of a regulation.

APA sets forth the requirements for the review of regulations adopted by units of government under the jurisdiction of the Act, including requirements for notice, hearing, review, and publication. A "regulation" is a statement, amendment, or repeal of a statement that has general application and future effect. It is a statement adopted by a unit of government to detail or implement a law administered by the unit, or to govern its organization, procedures, and practices. A regulation may be in any form including a guideline, rule, standard, or statement of interpretation or policy. A regulation is not effective unless it is authorized by statute; therefore, it must contain a citation of the statutory authority for the regulation.

**Background:** A unit of the Executive Branch that proposes a regulation must submit it for preliminary review by the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee) at least 15 days before the proposed regulation is submitted for publication in the *Maryland Register*. The AELR Committee consists of 10 senators and 10 delegates and is charged by statute with the review of all regulations proposed by units of the Executive Branch.

A proposed regulation may not be adopted until after it is submitted to the AELR Committee and at least 45 days after its first publication in the *Maryland Register*. The unit must permit public comment on the proposed regulation for at least 30 days of the 45-day period after it is first published in the *Maryland Register*. Failure by the AELR Committee to approve or disapprove the proposed regulation during the period of review may not be construed to mean that the AELR Committee approves or disapproves the proposed regulation. However, the unit may proceed with adoption of the proposed regulation if the AELR Committee has not taken action to either approve or disapprove it.

An Executive Branch unit may adopt a proposed regulation on an emergency basis if the unit declares that emergency adoption is necessary, the proposed regulation and its fiscal impact are submitted to the AELR Committee, and the AELR Committee approves the emergency adoption. A public hearing must be held on the emergency adoption of the proposed regulation if requested by a member of the AELR Committee. APA also sets forth procedures that must be followed if the AELR Committee opposes adoption of a proposed regulation, and for the notice and publication of regulations once they are adopted.

**Small Business Effect:** Some small businesses may benefit from PSC issuing an order instead of adopting a regulation in certain circumstances. Conversely, to the extent PSC issues an order that adversely affects small businesses without the formal regulatory review required pursuant to APA, some small businesses may be adversely affected. Because any future actions by PSC cannot be predicted, the bill's impact on small business is unknown.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of People's Counsel, Public Service Commission, Department of Legislative Services

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