



**House
Legislative
Analysis
Section**

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PSC: APPEALS PROCESS

**House Bill 5871 as introduced
First Analysis (5-16-96)**

**Sponsor: Rep. Barbara Dobb
Committee: Public Utilities**

THE APPARENT PROBLEM:

Public Act 312 of 1986 and subsequent legislation in 1987 altered the Michigan Public Service Commission appeals process. Public Act 312 amended the common carrier act (or "railroad" act) and said that all appeals of PSC orders, except those concerning water utilities and existing commission rules, tariffs, or rate schedules, should be reviewed directly by the state court of appeals and not by the Ingham County Circuit Court, as had previously been the case. According to information from the PSC, the intent of the legislation was to avoid duplicating the evidentiary record built in PSC proceedings and to reduce the amount of time needed for judicial review. (The appeals court review is based on the PSC evidentiary record while the circuit court builds a record of its own.) A PSC analysis says that on very rare occasions, the commission issues an interlocutory order that does not address the issues cited in the statute, and appeals of those orders have been filed in circuit court under the appeals process specified by the Administrative Procedures Act. (The act refers to orders fixing rates, fares, charges, classifications, regulations, practices, and services. Cases heard in circuit court fell outside of these categories and are said to have involved issues of scheduling, discovery, dismissal motions, and other procedural matters.) The PSC is supporting legislation closing what they call this "unintended loophole."

THE CONTENT OF THE BILL:

The bill would amend the common carrier act to amend provisions describing when an appeal of a Michigan Public Service Commission order goes to the court of appeals. The bill would also delete some obsolete language regarding preliminary injunctions.

Under the act, a party in interest could file an appeal as of right in the court of appeals on any final order of the PSC that set any rates, fares, charges, classifications, joint rates, or any order fixing any regulations, practices, or services. The bill would clarify that this also applies to any interim or interlocutory order of the commission on those subjects. In order to appeal any other interim or interlocutory orders, the party would

have to file an application for leave to appeal in the court of appeals.

Under the act, an injunction can only be issued on application to the court of appeals following notice to the commission and a hearing. The bill would specify that this applies as well to a stay or temporary restraining order. Also, under the bill, the court of appeals would be able to transfer the application to the circuit court in Ingham county for a fact-finding hearing. After the hearing the application would be required to be returned to the court of appeals for a determination.

Currently, a party may seek permission from the commission to present additional evidence within 28 days after the filing of an appeal. The bill would specify that the appeal would have to have been from a final order and that the commission could only hear the additional evidence if it were not only different from or in addition to the original evidence but was also not merely cumulative, and the party had good cause for having failed to present it at the original hearing. The bill would also specify that the commission could, after hearing the new evidence, modify any portion of its order.

Finally, the bill would remove the water company act from the list of appeals processes that are specifically exempted from the provisions of the act.

MCL 462.26

FISCAL IMPLICATIONS:

The bill would have no fiscal implications, according to the Department of Commerce. (Analysis dated 5-14-96)

ARGUMENTS:

For:

Supporters of the bill say that it closes an unintentional loophole and restores the intent of legislation from a decade ago that appeals of orders of the Michigan

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Public Service Commission go to the court of appeals and not the circuit court. The statute is said to be silent on where appeals of interim or interlocutory appeals dealing with issues other than those specified in the act are to be heard. (The act refers to orders fixing rates, fares, charges, classifications, regulations, practices, and services.) The bill would no longer permit the cases in question to be heard in circuit court but would permit a dissatisfied party in interest to apply for leave to appeal in the court of appeals. (Cases involving individual customer complaints could still be heard in the circuit court, according to testimony before the Public Utilities Committee.)

Against:

Opponents of the bill say that there has been no abuse of the current procedure and that it is not in the public interest to make this change. The bill takes away the right of intervenors and the attorney general to make interlocutory appeals to the circuit court on important issues. Instead, they would have to file an application for leave to appeal to the appeals court, and the appeals court would not be obliged to hear the case (as they would if the appeal was "as of right.") Few applications for leave to appeal are granted, according to testimony from a representative of the attorney general, and it can be up to a year before the court reviews such an application. Very few cases of the kind in question have occurred. In a recent case, reportedly, an appeal to the circuit court resulted in the undoing of a PSC order on the grounds the PSC had violated its own procedures in reaching an agreement with a utility. The court of appeals is not a trial court and so might have to send a case back to circuit court for an evidentiary hearing before it could decide the case, lengthening the process. Delay in disputes over procedural issues can mean interested parties cannot intervene in a timely manner; that is, their issues can become moot. Also, a representative of the Michigan United Conservation Clubs (MUCC) has said that this bill will create additional difficulties for them and others who intervene in cases before the PSC "to protect public interest values."

POSITIONS:

The Michigan Public Service Commission supports the bill. (5-14-96)

The Michigan Gas and Electric Association supports the concept of the bill. (5-14-96)

A representative of the attorney general testified in opposition to the bill. (5-14-96)

The Michigan United Conservation Clubs (MUCC) opposes the bill. (5-14-96)

The Michigan Consumer Federation is opposed to the bill. (5-14-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.