

HOUSE No. 2581

Substituted by the House, on motion of Mr. Driscoll of Boston, for a report of the committee on the Judiciary, reference to the next annual session (under Joint Rule 10), on so much of the recommendations of the Department of Public Utilities (House, No. 85) as relates to appeals from decisions, orders or rulings of said department and relative to the enforcement of orders of said department (accompanied by bill, House, No. 86). June 26.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Two.

AN ACT RELATIVE TO APPEALS FROM DECISIONS, ORDERS OR RULINGS OF THE DEPARTMENT OF PUBLIC UTILITIES AND RELATIVE TO THE ENFORCEMENT OF ORDERS OF SAID DEPARTMENT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 25 of the General Laws is hereby amended
2 by striking out section 5, as appearing in the Ter-
3 centenary Edition, and inserting in place thereof the
4 following: —

5 *Section 5.* When so requested by any party in-
6 terested, the commission shall rule upon any question
7 of substantive law properly arising in the course of
8 any proceeding before the commission or any mem-
9 ber or members thereof, and any party interested
10 aggrieved by such ruling may object thereto, and
11 may secure a review as hereinafter provided. Any

12 failure or refusal of the commission to rule upon such
13 a question at or prior to the entry of a final order or
14 decision shall be taken and recorded as a ruling ad-
15 verse to the party requesting the ruling. An appeal
16 as to matters of law from any final decision, order or
17 ruling of the commission may be taken to the su-
18 preme judicial court by an aggrieved party in interest
19 by the filing of a written petition praying that the
20 order of the commission be modified or set aside in
21 whole or in part.

22 Such petition for appeal shall be filed with the sec-
23 retary of the commission within twenty days after
24 the date of the decision, order or ruling of the com-
25 mission, or within such further time as the commis-
26 sion may allow upon request filed prior to the expira-
27 tion of the twenty days after said decision, order or
28 ruling. Within ten days after such petition has been
29 filed, the appealing party shall enter the appeal in
30 the supreme judicial court sitting in Suffolk county
31 by filing a copy thereof with the clerk of said court,
32 and shall file therewith a certificate that he is of the
33 opinion that there is such probable ground for the
34 appeal as to make it a fit subject for judicial inquiry,
35 and that it is not intended for delay; and double
36 costs may be assessed by the court upon any such
37 party whose petition shall appear to the court not
38 to be a fit subject for judicial inquiry or shall appear
39 to be intended for delay.

40 The record on appeal shall then be certified to the
41 supreme judicial court by the secretary of the com-
42 mission, and shall include the petition of the appel-
43 lant or other original papers, and the decision, order
44 or ruling of the commission; and if and to the extent
45 that either the commission or the appellant so re-

46 quests, it shall include the exhibits and other docu-
47 ments introduced in the proceeding before the com-
48 mission, the official report of the proceedings and
49 the findings of fact of the commission.

50 Each claim of appeal shall set forth separately and
51 particularly each error of law asserted to have been
52 made by the commission. Upon the entry of the
53 appeal it shall be heard and determined by the court,
54 which shall have jurisdiction to affirm, modify or set
55 aside such decision, order or ruling of the commission
56 in whole or in part, or remand the proceeding to the
57 commission with instructions subject to review by
58 the full court upon appeal.

59 The procedure before said court, except as other-
60 wise set forth herein, shall be that prescribed by its
61 rules, which shall state upon what terms the enforce-
62 ment of the order shall be stayed.

63 The burden of proof shall be upon the appealing
64 party to show that the decision, order or ruling of the
65 commission appealed from is incorrect as a matter of
66 law.

67 No evidence beyond that contained in the record
68 shall be introduced before the court, except that in
69 cases where issues of confiscation or of constitutional
70 right are involved the court may order such addi-
71 tional evidence as it deems necessary for the deter-
72 mination of such issues to be taken before the com-
73 mission and to be adduced at the hearing in such
74 manner and upon such terms and conditions as to
75 the court may seem proper. Whenever the court
76 shall order additional evidence to be taken, the com-
77 mission shall promptly hear and report such evidence
78 to the court so that the proof may be brought as
79 nearly as reasonably possible down to the date of its

80 report thereof to the court. The commission may,
81 after hearing such evidence, modify its findings as
82 to facts and its original decision or orders by reason
83 of the additional evidence so taken, and it shall file
84 with the court such amended decision or orders and
85 such modified or new findings. If the commission
86 shall modify or amend its original decision or orders,
87 the appealing party or any other party aggrieved by
88 such modified or amended decision or order may file
89 with the court, within such time as the court may
90 allow, a specification of any errors of law claimed to
91 have been made by the commission in such modified
92 decision or orders, which specification of errors shall
93 thereupon be considered by the court in addition to
94 the errors of law asserted in the claim of appeal.

95 Any proceeding in any court in the commonwealth
96 directly affecting an order of the commission, or to
97 which it is a party, shall have preference over all
98 other civil proceedings pending in such court, except
99 election cases.

100 The supreme judicial court shall also have juris-
101 diction upon application of the commission to enforce
102 all orders of the commission.