

LFC Requester:

Julisa Rodriguez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 27, 2025

Check all that apply:

Bill Number: SB109

Original Correction
Amendment Substitute

Sponsor: Sen. William P. Soules

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: PRC & SUPPORTING AGENCY

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

SB109 proposes amendments to the existing Public Regulation Commission Act. Some are non-substantive and are included for clarity (examples seen in **Sections 3-5, 9, 11, 13, 16**), such as removing certain “beginning by” dates that have passed and are no longer relevant (**Section 3**) and changing the use of “his” to gender neutral descriptors (**Section 16**).

The most significant proposed change is the addition/change to the following definitions as provided in 62-19-2 (**Section 1**):

- A. "agency" means the institution and staff that support the commission, including all employees;
- [A.] B. "commission" means the public regulation commission, which is the three-member-appointed regulatory and adjudicatory body.

This new distinguishing language in the definitions is then reflected in proposed changes throughout the bill (**Sections 2-8, 12, 15, 16**). The purpose of the proposed changes appears to be an attempt to clarify and distinguish between the appointed Public Regulation Commission (“PRC”) commissioners and all other PRC employees.

The other substantive proposed changes are:

Removing “rulemaking” from the definition of “intervenor,” limiting their involvement to only adjudicatory matters. (**Section 4**)

Changing the responsibility of delegating certain tasks as articulated in 62-19-6(B), 62-19-9(B)(2), 62-19-14(A)(6), 62-19-15(A)&(B), and 62-19-17(B) from the “commission” more specifically to the PRC chief of staff. (**Sections 3, 5, 9-11**)

Striking 62-19-9(C)(2) which currently authorizes the PRC to provide for surety bond coverage for all PRC employees as provided in the Surety Bond Act and to pay the costs of such bonds (**Section 5**)

Changing Section 62-19-9(D) as follows: [A majority of the commission constitutes a quorum for the transaction of business; provided, however, that] A majority vote of the

commission is needed for a final decision of the commission for matters involving public business. As used in this subsection, "public business" means matters within the commission's constitutional or statutory regulatory or adjudicatory powers and duties and does not include matters pertaining to agency operations such as those enumerated in Paragraphs (1), (3), (4), (6), (8) and (9) of Subsection B of this section." (Section 5)

Changing mandatory language or "shall" to "may" in 62-19-12 (what organizational units the PRC includes), 62-19-13(B) (administrative services duties), 62-19-14(A) (consumer relations division duties), 62-19-18(B) (responsibilities of the telecommunications bureau), and 62-19-20(B) (responsibility of the hearing examiners to provide commissioners with a recommended decision). (Sections 7-9, 12, 13)

Striking 62-19-17(D) which vested the functions of the former PRC telecommunications department in the existing utility division. (Section 11) The following section, 62-19-18, enacted in previous versions of the Statute, established the telecommunications bureau within the utility division, so the language proposed to be stricken from 62-19-17 is no longer needed.

Striking the vast majority of 62-19-21 and instead providing that no rules affecting the public shall be adopted, amended, or appealed by the PRC except as provided in the State Rules Act. (Section 14)

Changing 62-19-23(C)(2) as follows: a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities; provided that such discussion that takes place outside of a meeting held in accordance with the Open Meetings Act shall not concern a vote or opinion as to the ultimate disposition of a particular matter or issue; and provided further that any action on the commission's rulemaking or adjudicative responsibilities must be taken at an open meeting. (Section 16)

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

In its existing form, the statute already distinguishes between the three appointed commissioners and the PRC staff who serve various supporting functions. Stakeholders and the public colloquially refer to the PRC, inclusive of the support staff and commissioners, as the "commission." Needing to start distinguishing between the "agency" and the "commission" may be difficult and cause confusion. Many may find it simpler or as easy to continue referring to the appointed commissioners as "the commissioners," and the support staff as either "support staff" or by their unique roles (administrative services, consumer relations, staff attorneys, general counsel, utility division, pipeline safety division, etc.).

The proposed change in 62-19-20(B) making it no longer mandatory for a hearing examiner to provide a recommended decision ("RD") to the commissioners is likely to cause confusion. It appears that it makes it permissive, rather than mandatory, for a hearing examiner to provide their RD to the commissioners, yet it remains mandatory for the hearing examiner to provide an RD to the parties to the case so that they may file exceptions (in which the parties articulate ways

in which they believe that the RD is wrong about the law or facts of the case). As the process currently exists, it is the RD and the filed exceptions which are taken under advisement by the commissioners in determining the final order of that case, and the final order is usually largely based on the RD. This is because it is the hearing examiners who have heard the evidence and legal arguments, and have therefore been deemed to be in the best position to communicate the facts and legal issues to the commissioners, which they do through the provision of an RD. If a hearing examiner chooses not to provide an RD (as it would no longer be required under the statute), it is unclear what will be provided to inform the commissioners about the details of the case on which they need to provide an informed vote.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The proposed change to 62-19-20(B), which changes the provision of a recommended decision to the commissioners (discussed further in “Significant Issues,” *supra*) from mandatory to permissive, conflicts with the PRC Rules of Procedure, 1.2.2.29(D)(4) which provides:

Hearing examiners **shall** have the following duties:

....

(4) to submit final recommended decisions subject to commission review and treatment as provided in this rule; the hearing examiner **shall** file the final recommended decision and provide copies to all parties, staff, **each commissioner**, and the advisory staff; (emphasis added)

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A (status quo)

AMENDMENTS

N/A