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FISCAL IMPACT REPORT

SPONSOR Hobbs DATE TYPED 2/9/2004 HB HJR 7

SHORT TITLE Appointment of 3 PRC Commissioners SB _____

ANALYST Garcia

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			(\$32.0)	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HJR 1 and HJR 2.

SOURCES OF INFORMATION

LFC Files

- *Report to the Legislative Council from the Public Regulation Commission Subcommittee in Response to Senate Joint Memorial 41, December 2002.*
- *Report of the Legislative Finance Committee to the Forty-sixth Legislature, First Session, January 2003, Fiscal Year 2003 – 2004, pp. 318 – 324.*

Responses Received From
Public Regulation Commission
Attorney General's Office

SUMMARY

Synopsis of Bill

The bill would submit to the voters at the November general election a proposal to amend Article 11, § 1 of the Constitution of New Mexico. The amendment would reduce the number of PRC commissioners from 5 to 3. Furthermore, the bill would require the 3 commissioners be appointed by the governor, with advice and consent of the Senate, to serve a six-year term, and no more than 2 commissioners shall be from the same political party.

Initially, the bill states the governor shall appoint the first commissioner to a two-year term, the second to a four-year term, and the third to a six-year term beginning January 1, 2005. The bill also states that two of the initial appointments “shall be the individuals elected to the commission at the 2004 general election, who shall not be subject to confirmation by the Senate.” In addition, the terms of the members elected in 2002 shall expire at midnight on December 31, 2004. Lastly,

the bill allows the governor to remove a commissioner for incompetency, neglect of duty, or malfeasance.

Significant Issues

In 2001, the legislature passed Senate Joint Memorial 41 requesting that the New Mexico Legislative Council designate an interim committee to examine the organization, financing and performance of the PRC. The Legislative Council appointed the Public Regulation Commission Subcommittee to meet during the 2001 and 2002 interims to address these issues.

The subcommittee report to the Legislative Council makes recommendations in four areas, including the organization of the PRC. Currently, the responsibilities of the PRC consists of regulating public utilities, including electric, natural gas and water companies; transportation companies, including common and contract carriers; transmission and pipeline companies, including telephone, telegraph and information transmission companies; insurance companies and others engaged in risk assumption; and other public service companies in such manner as the legislature shall provide. The subcommittee acknowledged that, because of the complex issues involved in the decision-making made by the PRC that impact the businesses and citizens of New Mexico, commissioners must have certain qualifications. These qualifications would ensure that commissioners have the background and experience necessary to understand complex regulatory issues.

The subcommittee members, however, supported two different approaches regarding the selection of PRC commissioners, and recommended a full debate by the legislature.

Approach #1

- Three members of the subcommittee supported an appointed commission for the PRC. The Governor should appoint commissioners with the consent of the Senate. An appointed commission would address the need for a statewide focus on regulatory issues and improve accountability in the process. Moreover it would also resolve concerns related to campaign financing as a part of the election process.

This position is consistent with the 1995 Report of the Constitutional Revision Commission to the Governor and the Legislature that stated:

Because the essential task (of utility regulation) requires special expertise, judicial-like adjudicatory responsibility, as well as administrative and rule-making responsibility, it is also recommended that the entity be appointive rather than elective, and that the powers and duties and process of removal be established by law.

The 1997 Report of the Regulation Commission Reorganization Committee also recommended a constitutional amendment “to provide for appointment rather than election of the public regulation commission...”.

Approach #2

- Two members of the subcommittee support an elected, districted commission and recommend the judicial election and retention process be examined to address the need for knowledgeable and experienced commissioners.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. However, an estimated non-recurring cost to the general fund of \$32.0 is expected because of the cost to the Secretary of State for advertising and printing to place an item on the ballot.

ADMINISTRATIVE IMPLICATIONS

As an agency controlled by separately elected officials, the PRC is an administratively independent part of the executive branch. Having governor-appointed commissioners would administratively place the PRC within the governor's portion of the executive branch.

RELATIONSHIP

HJR 07 is very similar to HJR 01 and HJR 02. HJR 02 adds the provision that no PRC appointee can be "employed by an entity regulated by the commission for the ten years prior to appointment." In addition, HJR 02 does not include language that HJR 01 adds that address commissioners' expertise. HJR 01 states: "commissioners shall at minimum have four years of education or experience in regulatory law or affairs."

TECHNICAL ISSUES

- 1) According to the PRC, the terms "incompetency," "neglect of duty," and "malfeasance in office" are not defined and could be the subject of litigation.
- 2) If voters approve the constitutional amendment, the Legislature will subsequently have to repeal the existing laws governing commissioner elections.

OTHER SUBSTANTIVE ISSUES

PRC provided the following comments:

- 1) The commission is responsible for regulation of insurance, transportation, utilities, and telecommunication industries. This is already a large workload on the current 5 commissioners. Reducing the amount of commissioners to 3 can greatly increase the workload and overwhelm the future 3 commissioners. Additionally, reducing the number of commissioners may diminish the expertise of the commission as a whole and can subsequently hurt debate and policy-making on various matters.
- 2) PRC commissioners, as elected, are directly accountable to the citizens of the state and work

on behalf of citizens directly. However, moving commissioners to appointed, they would be directly accountable to the governor and indirectly citizens.

3) PRC commissioners, as elected, serve as consumer advocates where they create policies on utilities rates, insurance regulation, telecommunication regulation, transportation regulation, etc. based solely on consumer interests and independent of legislative or executive mandates or policies. However, moving to appointed, commissioners will likely serve at the pleasure of the governor's policy initiatives, which at times can be counter to consumer interests.

4) Moving PRC commissioners to appointed can create conflicts of interest. For instance, commissioners, as elected and independent officers, are first and foremost consumer advocates and cannot accept campaign contributions from regulated entities. However, the governor is not constrained by the same requirements, which can create conflicts where regulated entities' interests have special favor with the governor/executive and consequently filtrate down to appointed commissioners.

The Attorney General provided the following comments:

1) The two open seats in 2004 (the winners will ultimately be appointed commissioners) are from Bernalillo County and Northern New Mexico. This may spark disputes where the rest of the state may argue they have been disenfranchised by only having on possible appointee from other areas of the state.

2) Other appointments to constitutional commissions (i.e. university regents) have language in the text explaining: (a) on what grounds a commissioner can be removed; (b) whether a commissioner can serve until her replacement is confirmed by the Senate. These items are not required, but help explain how to resolve disputed situations.

POSSIBLE QUESTIONS

- Would governor-appointed commissioners be more accountable to the people of New Mexico than elected commissioners?
- Will moving to appointed commissioners induce more cooperation and professionalism among the commission as a whole?
- Should commissioners be appointed from districts instead of at-large?
- The bill neither provides for nor prohibits the removal of appointed commissioners for cause. Should appointed commissioners be expressly subject to removal for cause?
- Should appointed commissioners be term-limited?

DG/yr