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SENATE BILL 249

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; PROVIDING FOR
APPOINTMENT AND RETENTION ELECTION OF PUBLIC REGULATION
COMMISSIONERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 8-7-1 NMSA 1978 (being Laws 1997,
Chapter 262, Section 1) is amended to read:

"8-7-1. SHORT TITLE.--~~[This act]~~ Chapter 8, Article 7
NMSA 1978 may be cited as the "Public Regulation Commission
Apportionment Act"."

SECTION 2. Section 8-7-2 NMSA 1978 (being Laws 1997,
Chapter 262, Section 2) is amended to read:

"8-7-2. MEMBERSHIP.--The public regulation commission is
composed of five members to be ~~[elected]~~ appointed from
districts established by law. The members may stand for a

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1 nonpartisan retention election at the conclusion of their
2 appointed term."

3 SECTION 3. Section 8-7-3 NMSA 1978 (being Laws 1997,
4 Chapter 262, Section 3) is amended to read:

5 "8-7-3. RESIDENCE.--At the time of [~~filing a declaration~~
6 ~~of candidacy~~] submitting an application for the office of
7 public regulation commission member, [~~a candidate~~] an applicant
8 shall reside in the district for which [~~he~~] the applicant
9 files. If any [~~elected~~] member of the public regulation
10 commission permanently removes [~~his~~] the member's residence
11 from or maintains no residence in the district from which [~~he~~]
12 the member was [~~elected, he~~] appointed or retained, the member
13 shall be deemed to have resigned and [~~his~~] a successor shall be
14 selected as provided in the Public Regulation Commission
15 Apportionment Act."

16 SECTION 4. Section 8-7-4 NMSA 1978 (being Laws 1997,
17 Chapter 262, Section 4, as amended) is amended to read:

18 "8-7-4. APPOINTMENT--RETENTION ELECTION [VACANCY].--[A.]
19 Members of the public regulation commission shall be [~~elected~~]
20 appointed for staggered four-year terms [~~provided that~~
21 ~~commission members elected at the 1998 general election shall~~
22 ~~classify themselves by lot so that two commission members shall~~
23 ~~initially serve terms of two years and three commission members~~
24 ~~shall serve terms of four years. Thereafter, all commission~~
25 ~~members shall serve four-year terms~~], and thereafter may stand

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1 in a nonpartisan retention election for an additional term, as
2 provided in Article 11, Section 1 of the constitution of New
3 Mexico. After ~~[serving two terms]~~ being retained in a
4 retention election, a commission member shall be ineligible to
5 hold office as a commission member until one full term has
6 intervened.

7 ~~[B. The governor shall by appointment fill~~
8 ~~vacancies on the public regulation commission. An appointment~~
9 ~~to fill a vacancy on the public regulation commission shall be~~
10 ~~for a term ending on December 31 after the next general~~
11 ~~election, at which election a person shall be elected to fill~~
12 ~~any remainder of the unexpired term.~~

13 ~~G. An appointment to fill a vacancy on the public~~
14 ~~regulation commission made before the general election of 2002~~
15 ~~shall be made from the district as it was described in Laws~~
16 ~~1997, Chapter 262, Sections 6 through 10. After the general~~
17 ~~election of 2002, a vacancy shall be filled by appointment from~~
18 ~~the district set out in Sections 8-7-6 through 8-7-10 NMSA~~
19 ~~1978.]"~~

20 SECTION 5. Section 8-8-3 NMSA 1978 (being Laws 1998,
21 Chapter 108, Section 3) is amended to read:

22 "8-8-3. PUBLIC REGULATION COMMISSION.--

23 A. The "public regulation commission", created in
24 Article 11, Section 1 of the constitution of New Mexico, is
25 composed of five commissioners ~~[elected]~~ appointed from

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1 districts and eligible for a nonpartisan retention election as
2 provided in that article and the Public Regulation Commission
3 Apportionment Act.

4 B. The commission shall annually elect one of its
5 members [~~chairman~~] chair, who shall preside at hearings. In
6 the absence of the [~~chairman~~] chair, the commission may appoint
7 any other member to preside."

8 SECTION 6. A new section of the Public Regulation
9 Commission Act is enacted to read:

10 "[NEW MATERIAL] COMMISSIONER QUALIFICATIONS.--

11 A. A person shall not be qualified to hold the
12 office of public regulation commissioner unless that person has
13 the following qualifications:

14 (1) a baccalaureate or more advanced degree
15 from a regionally accredited post-secondary educational
16 institution; or

17 (2) five years of managerial or supervisory
18 experience in one or more of the industries and organizations
19 regulated by the commission.

20 B. The public regulation commission nominating
21 committee shall certify to the governor that a proposed
22 applicant's professional experience meets the requirements of
23 this section."

24 SECTION 7. Section 8-8-19 NMSA 1978 (being Laws 1998,
25 Chapter 108, Section 19) is amended to read:

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1 "8-8-19. PROHIBITED ACTS--CANDIDATES--COMMISSIONERS AND
2 EMPLOYEES.--

3 A. As used in this section, in addition to the
4 definitions provided in Section [~~2 of the Public Regulation~~
5 ~~Commission Act~~] 8-8-2 NMSA 1978:

6 (1) "affiliated interest" means a person who
7 directly controls or is controlled by or is under common
8 control with a regulated entity, including an agent,
9 representative, attorney, employee, officer, owner, director or
10 partner of an affiliated interest. For the purposes of this
11 definition, "control" includes the possession of the power to
12 direct or cause the direction of the management and policies of
13 a person, whether directly or indirectly, through the
14 ownership, control or holding with the power to vote of ten
15 percent or more of the person's voting securities;

16 (2) "intervenor" means a person who is
17 intervening as a party in an adjudicatory matter or commenting
18 in a rulemaking pending before the commission or has intervened
19 in an adjudicatory or rulemaking matter before the commission
20 within the preceding twenty-four months, including an agent,
21 representative, attorney, employee, officer, owner, director,
22 partner or member of an intervenor;

23 (3) "pecuniary interest" includes owning or
24 controlling securities; serving as an officer, director,
25 partner, owner, employee, attorney or consultant; or otherwise

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1 benefiting from a business relationship. "Pecuniary interest"
2 does not include an investment in a mutual fund or similar
3 third-party-controlled investment, pension or disability
4 benefits or an interest in capital credits of a rural electric
5 cooperative or telephone cooperative because of current or past
6 patronage; and

7 (4) "regulated entity" means a person whose
8 charges for services to the public are regulated by the
9 commission and includes any direct or emerging competitors of a
10 regulated entity and includes an agent, representative,
11 attorney, employee, officer, owner, director or partner of the
12 regulated entity.

13 B. In addition to the requirements of the Financial
14 Disclosure Act and the Governmental Conduct Act, applicants and
15 candidates for the commission, commissioners and employees of
16 the commission shall comply with the requirements of this
17 section and Sections [~~17 and 18 of the Public Regulation~~
18 ~~Commission Act~~] 8-8-17 and 8-8-18 NMSA 1978, as applicable.

19 C. An applicant to or a candidate for election to
20 the [~~public regulation~~] commission shall not solicit or accept:

21 (1) anything of value, either directly or
22 indirectly, from a person whose charges for services to the
23 public are regulated by the commission. For the purposes of
24 this paragraph, "anything of value" includes money, in-kind
25 contributions and volunteer services to the applicant, the

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1 candidate or [~~his~~] the candidate's campaign organization, but
2 does not include pension or disability benefits; or

3 (2) more than five hundred dollars (\$500) per
4 election from any other person.

5 D. A commissioner or employee of the commission
6 shall not:

7 (1) accept anything of value from a regulated
8 entity, affiliated interest or intervenor. For the purposes of
9 this paragraph, a commissioner may accept allowable campaign
10 contributions when campaigning for [~~reelection~~] retention. For
11 the purposes of this paragraph, "anything of value" does not
12 include:

13 (a) the cost of refreshments totaling no
14 more than five dollars (\$5.00) a day or refreshments at a
15 public reception or other public social function that are
16 available to all guests equally;

17 (b) inexpensive promotional items that
18 are available to all customers of the regulated entity,
19 affiliated interest or intervenor; or

20 (c) pension or disability benefits
21 received from a regulated entity, affiliated interest or
22 intervenor;

23 (2) have a pecuniary interest in a regulated
24 entity, affiliated interest or intervenor, and if a pecuniary
25 interest in an intervenor develops, the commissioner or

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1 employee shall divest [~~himself of~~] that interest or recuse
2 himself or herself from the proceeding with the intervenor
3 interest; or

4 (3) solicit any regulated entity, affiliated
5 interest or intervenor to appoint a person to a position or
6 employment in any capacity.

7 E. After leaving the commission:

8 (1) a former commissioner shall not be
9 employed or retained in a position that requires appearances
10 before the commission by a regulated entity, affiliated
11 interest or intervenor within [~~two~~] three years of [~~his~~] the
12 former commissioner's separation from the commission;

13 (2) a former employee shall not appear before
14 the commission representing a party to an adjudication or a
15 participant in a rulemaking within one year of ceasing to be an
16 employee; and

17 (3) a former commissioner or employee shall
18 not represent a party before the commission or a court in a
19 matter that was pending before the commission while the
20 commissioner or employee was associated with the commission and
21 in which [~~he~~] the former commissioner or employee was
22 personally and substantially involved in the matter.

23 F. The attorney general or a district attorney may
24 institute a civil action in the district court for Santa Fe
25 county or, in [~~his~~] the attorney general's or a district

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1 attorney's discretion, the district court for the county in
2 which a defendant resides if a violation of this section has
3 occurred or to prevent a violation of this section. A civil
4 penalty may be assessed in the amount of two hundred fifty
5 dollars (\$250) for each violation, not to exceed five thousand
6 dollars (\$5,000)."

7 SECTION 8. REPEAL.--Section 8-7-11 NMSA 1978 (being Laws
8 2001 (1st S.S.), Chapter 3, Section 8) is repealed.

9 SECTION 9. EFFECTIVE DATE.--The provisions of this act
10 shall become effective upon certification by the secretary of
11 state that the constitution of New Mexico has been amended as
12 proposed by a joint resolution of the second session of the
13 fiftieth legislature entitled "A JOINT RESOLUTION PROPOSING AN
14 AMENDMENT TO ARTICLE 11, SECTION 1 OF THE CONSTITUTION OF NEW
15 MEXICO TO PROVIDE FOR THE TERMS, QUALIFICATIONS AND APPOINTMENT
16 OF PUBLIC REGULATION COMMISSIONERS WHO WILL BE SUBJECT TO A
17 RETENTION ELECTION.".