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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/12
 LAST UPDATED 02/12/12 HB 300/a HLC

SPONSOR Egolf

SHORT TITLE Certain Employees Appearing Before PRC SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HLC Amendment

The House Labor & Human Resources amendment to House Bill 300 states that after leaving the PRC a former commissioner or hearing examiner, division director of the utilities division, general counsel or attorney employee be employed or retained by a regulated entity, affiliated interest or intervenor within two years of separation from the PRC.

In addition, a former commissioner or hearing examiner, division director of the utilities division, general counsel or attorney employee shall not represent a party before the PRC or a court in a matter that was pending before the PRC when they were still part of the PRC.

The amendment enumerates who cannot profit for two years from their date of separation. This narrows down the scope of the bill by allowing all other employees not named in this amendment to be employed by a regulated entity without a two year wait.

Synopsis of Original Bill

House Bill 300 prohibits an employee from appearing before the PRC for two years after employment.

After leaving the PRC a former commissioner or employee shall not be employed or retained by a regulated entity, affiliated interest or intervenor within two years of separation from the PRC or represent a party before the PRC or a court in a matter that was pending before the PRC while the commissioner or employee was associated with the PRC and in which the former commissioner or employee was personally and substantially involved in the matter.

The bill clarifies existing legislative language.

FISCAL IMPLICATIONS

There are no fiscal implications.

SIGNIFICANT ISSUES

The bill extends a prohibition against involvement with a regulated entity, affiliated interest or intervenor for two years after separation. This includes commissioners and employees.

The PRC provided the following:

The current language “regulated entity, affiliated interest or intervenor” is broad enough to include virtually any commercial or nonprofit entity within the state. That language, however, now is limited by the subsequent phrase which only prohibits “appearances before the PRC.”

Similarly, the injunction against PRC employees under current law is limited to one year, and again, only bars appearance before the PRC, not any and all forms of employment or retention. A PRC employee, once removed from service, yet could not even be hired as a janitor by any corporation, affiliated interest or intervenor, which could be anyone. For example, a PRC staff attorney would not be able to work for the Attorney General, because the latter is often an intervenor in proceedings before the PRC. Such a prohibition might well be subject to challenge as interfering with a civil service public employee’s right to work.

It should be pointed out that the PRC has received no complaints during the past dozen years regarding violation of the statute in its current form. Because the subject matter of regulation is highly complex, technical and industry specific, often the only viable alternative to employment with the PRC is employment in the regulated sector, which includes any one of a number of interest groups who participate in proceedings before the PRC, whether as consumer advocates, environmentalists, shareholders or others.

ADMINISTRATIVE IMPLICATIONS

The PRC claims they could experience greater difficulty in filling key technical positions, as well as routine administrative positions with no policy responsibility, because subsequent employment anywhere in the private sector would be prohibited for a period of two years. This could also result in conflicts based on the Collective Bargaining Agreement between the State and the AFSCME.

OTHER SUBSTANTIVE ISSUES

A provision in the Governmental Conduct Act (Act), NMSA 1978, section 10-16-8(D) requires that for a period of one year after leaving government service or employment, a former public

House Bill 300/a HLC - Page 3

officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked. The PRC is not excluded in the Act

DW/svb:lj