F I S C A L I M P A C T R E P O R T

SPONSOR Egolf **ORIGINAL DATE** 01/27/15 **LAST UPDATED** 03/17/15 **HB** 27/aHGEIC/aSRC

SHORT TITLE Employment of Former PRC Employees **SB**

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission (PRC)
Office of the Attorney General (AGO)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment to House Bill 27 as amended by the HGEIC would reinsert the words “in a position that requires appearances before the commission.”

This means that the affected employees of the PRC—a commissioner, hearing examiner, utility division director, general counsel or attorney employee—after separation from the PRC now would be able to accept a position with a regulated entity within two years of the separation, as long as the position will not require them to appear before the PRC.

Synopsis of HGEIC Amendment

The House Government, Elections & Indian Affairs Committee amendment to House Bill 27 elminates “leaving” and inserts “separation from” on page 4, line 24. This is consistent with one of the recommendations for amendment from the AGO.

Synopsis of Original Bill

House Bill 27 extends a prohibition on future employment that is currently in the Public Regulation Commission Act, Section 8-8-1, NMSA 1978, Prohibited acts; candidates;

commissioners and employees.

HB 27 extends the two-year prohibition on employment that is currently in place for former commissioners, to also include PRC hearing examiners, the utility division director and general counsel and attorney employees.

HB 27 also amends the language such that the two-year prohibition on employment following separation from the PRC, currently only applicable specifically to employment positions that would require appearances before the commission, now prohibits any form of employment with a regulated entity, affiliated interest, or intervenor.
Both former commissioners and employees are prohibited from representing "a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which he was personally and substantially involved in the matter."

Additionally, HB 27 requires that any candidate for election to the commission shall not accept any gift or donation valued at more than $500, not only to the candidate as is currently the case, but to the candidate's campaign organization as well.

FISCAL IMPLICATIONS

HB 27 carries no appropriation. It has no fiscal impact.

SIGNIFICANT ISSUES

HB 27 would prohibit former commissioners, hearing examiners, utility division directors, and general counsel or attorney employees from being employed or retained in a position by a regulated entity, affiliated interest, or intervenor within two years after that person's separation from employment.

Some aspects of HB 27 area already covered by the Governmental Conduct Act (Section 10-16, 8D and 13.2D, NMSA 1978) that prohibits government lawyers for *one year* after leaving government employment from representing a regulated entity or intervenor before the state agency or local government at which the former government lawyer worked. It also stipulates that a public officer or employee cannot accept an offer of employment from a person over whom the public officer or employee has regulatory authority.

Rule 16-111 and Rule 16-109, NMRA of the Rules of Professional Conduct already state that a government lawyer shall not represent an intervenor or regulated entity in connection with a matter in which the lawyer personally and substantially participated in as a government lawyer unless the agency gives informed consent in writing.

According to analysis from the PRC:

> The two-year prohibition against employment by intervenors could include employment by nearly every commercial, nonprofit, Native American or even public entity within the state. Motions to intervene in PRC proceedings are generally granted and may include virtually any customer or competitor of the regulated entity, including municipalities, Native American tribes and pueblos, educational institutions such as the University of

New Mexico, and developers/installers of renewable energy systems. Moreover, intervenor status is routinely granted to the New Mexico Attorney General who represents residential and small business consumers in matters before the PRC, and also to environmental interest groups, such as the Coalition for Clean and Affordable Energy and Western Resource Advocates.

PRC analysis also states that, "Such a broad prohibition may be subject to challenge as interfering with a civil service public employee's right to work. Additionally, employment in the regulated sector is often the only viable alternative to employment with the PRC because the subject matter of regulation is highly complex, technical and industry-specific."

PRC's hearing examiners, general counsel lawyers and legal division lawyers develop an expertise in utility law and a potentially marketable specialty skill by working at the PRC. If this law is enacted, these lawyers will not be able to use that specialty skill for two years after they leave employment with the PRC, for any reason including retirement, preventing these attorneys from using their specialty skills and from being employed by any regulated entity or any intervenor. In addition, these lawyers will not be able to be work for a private firm that is retained on a contract with a regulated entity or intervenor.

ADMINISTRATIVE IMPLICATIONS

HB 27 may adversely affect the PRC's ability to fill key technical positions and the PRC's ability to hire lawyers.

AMENDMENTS

AGO analysis recommends resolution of the following issues in the bill:

- Language in HB 27 Subsection 8-8-19(D)(2) should be clarified. The middle of the clause contemplates pecuniary interest of a regulated entity for both commissioners and employees. However, proposed language states that "the commissioner or employee shall divest [~~himself of~~] that interest or recuse [~~himself~~] the commissioner's self from the proceeding …" The language, as proposed, would only give an employee one option – to divest from any pecuniary interest in question – but allow for a commissioner to either divest or simply choose to be recused from the proceeding. It is unclear whether this is the intent or if there is a desire to allow for an employee to be recused from a specific proceeding without having to divest their interest of the entity in question.

  A possible change might be "... or recuse [~~himself~~] the commissioner's or the employee's self from the proceeding..." However, some thought should be given to whether the option to recuse is available only to commissioners, all employees, or certain employees (i.e. Hearing examiners, etc.).

- There is no distinction between "leaving" and "separation," and a consistent term should be applied to Subsection 8-8-19(E). A suggested change would be: "E. After [~~leaving~~] separation from the commission:"

CAC/bb/je