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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/16

SPONSOR Trujillo, CA LAST UPDATED _____ HJR 18

SHORT TITLE Appointment of PRC Members SB _____

ANALYST Clark

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$104.0			Nonrecurring	General Fund
		\$3.0 - \$10.0	\$3.0 - \$10.0	\$6.0 - \$20.0	Recurring	PRC Operating Budget, General Fund

Parenthesis () indicate expenditure decreases

Conflicts with HJR 8, SJR 7

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Joint Resolution 18 calls for a constitutional amendment to replace the five-member elected commission with a five-member commission appointed by a newly created Public Regulation Commission (PRC) Nominating Committee.

The Attorney General's Office (AGO) reports the proposed amendment retains the prohibitions against members serving more than two terms consecutively or from accepting anything of value from a regulated person or entity. In addition to providing for the appointment, rather than election, of PRC members, the proposed amendment also:

- requires the governor and nominating committee ensure to the greatest extent practicable that members represent the ethnic diversity of the state;
- specifies PRC is a full-time commission and that its members be residents of New Mexico;

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- provides that the Legislature may, as opposed to shall, provide additional qualifications as well as continuing education requirements for members;
- provides that a member can be removed only for malfeasance, misfeasance, or neglect of duty following a hearing before the New Mexico Supreme Court, which has exclusive and final jurisdiction;
- specifies that the nominating committee be comprised of one person with knowledge of PRC's work appointed by the speaker of the House, one such person appointed by the minority leader of the House, one such person appointed by the president pro tempore of the Senate, and one such person appointed by the minority leader of the Senate, as well as three retired district or appellate judges with relevant experience appointed by the chief justice of the Supreme Court;
- requires that the nominating committee meet within 30 days of a vacancy occurring on the commission to consider applicants and, following majority vote, recommend qualified applicants for appointment to the governor; and
- establishes the objective that the commission, after the transition period, be comprised of one member from each congressional district and two members from the state at large.

The joint resolution further provides that the proposed amendment be placed on the ballot in the next general election or any special election prior to that date called for that purpose.

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. If the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers. SOS estimates the cost per constitutional amendment to be \$104 thousand based on 2010 actual expenditures.

Additionally, there is a small operating budget impact to PRC to pay for staff time, per diem, advertising, and other resources necessary for the PRC Nominating Committee.

SIGNIFICANT ISSUES

PRC has the constitutional responsibility for 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; and other public service companies in such manner as the legislature shall provide. The agency currently is composed of five members elected by district.

AGO reports the following significant issues.

1. The proposed constitutional amendment addresses whether to return to a prior New Mexico practice to provide for appointed rather than elected officials to the body that oversees state public utilities. In its various iterations over recent decades, New Mexico

has vacillated between having an elected State Corporation Commission, an appointed Public Utility Commission, and as currently provided an elected Public Regulation Commission. States around the country have been similarly split. One argument for elected commissioners is that they are arguably more responsive to the voters and all the state's citizens as a result of having to run for election. An argument in favor of appointed commissioners, particularly if relevant professional backgrounds are required, is that the body can be composed of officials with proven expertise in the often complicated issues and areas being regulated, which can result in better informed decisions.

2. The proposed amendment specifies that the nominating committee shall meet within thirty days of a vacancy on the commission. The provision is ambiguous, however, as to how long the committee then has to submit the names of qualified applicants to the governor.
3. The proposed constitutional amendment's provision that "[a] commission member shall be removed only for malfeasance, misfeasance, or neglect of duty after a hearing before the supreme court pursuant to court rules" could be in conflict with, or create confusion as to the applicability of, other constitutionally sanctioned methods of removing public officials from office. One such method is impeachment. Article IV, Section 6 of the New Mexico Constitution states that "[a]ll state officials and judges of the district court shall be liable to impeachment for crimes, misdemeanors or malfeasance in office...." Another is the writ of quo warranto. Article VI, Section 3 vests original jurisdiction with the Supreme Court for quo warranto actions. As our Supreme Court recently noted, "[o]ne of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims". *State ex rel. King v. Sloan*, 2011-NMSC-020, ¶9, 253 P.3d 33. By providing that a commission member can only be removed for malfeasance, misfeasance, or neglect of duty, the proposed amendment suggests that a member could not be removed pursuant to a writ of quo warranto where, for instance, they no longer met a requirement for serving as a member such as being a resident of the state or not working in a regulated industry. Correspondingly, by providing that a commission member could only be removed after a hearing before the supreme court, the proposed amendment can be interpreted to at least suggest that commission members, as state officials, are not subject to impeachment. The Supreme Court recognized in the Sloan decision that "the related constitutional powers of legislative impeachment and judicial quo warranto can co-exist as part of a harmonious, constitutional whole. . . ." *Sloan*, 2011-NMSC-020, ¶12, 253 P.3d 33. However, the use here of the qualifier "only" in the proposed amendment suggests otherwise.

ADMINISTRATIVE IMPLICATIONS

As mentioned in Fiscal Implications, there would be a minimal to moderate administrative impact to PRC to provide staff and resources to the PRC Nominating Committee.

CONFLICT

This joint resolution conflicts with HJR 8 and SJR 7, which also call for a constitutional amendment to replace the five-member elected commission with a five-member appointed commission but do so through a different process. HJR 8 and SJR 7 do not create a PRC

Nominating Committee and therefore have smaller fiscal impacts.

TECHNICAL ISSUES

PRC notes the Public Regulation Commission Act, at NMSA 1978, § 8-8-1 *et seq.* (2013), would need to be amended to conform to those portions of the joint resolution that differ from the current constitutional provision.

It might be helpful to clarify the timeframe within which the PRC Nominating Committee must submit its list of qualified nominees to the governor.

JC/al/jle