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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/2020  
 SPONSOR HJC LAST UPDATED 2/20/2020 HB CS/HB386/aSFC  
 SHORT TITLE Transfer Fire Marshal's Office SB \_\_\_\_\_  
 ANALYST Martinez/Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			\$1,151.2	\$1,151.2	Recurring	General Fund
		\$125.0 - \$150.0		\$125.0 - \$150.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts/Companion with: HB11  
 Relates to: HB191, SB322

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (NMAG) – For Senate Bill 245  
 Department of Homeland Security and Emergency Management (DHSEM) – For Senate Bill 245  
 Public Regulation Commission (PRC) – For Senate Bill 245  
 Secretary of State (SOS) – For Senate Bill 281

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee Amendment to the House Judiciary Committee Substitute for HB386 adds amendments to the Election Code that remove PRC commissioners as elected officials and amends the Public Regulation Commission Act to create the public regulation commission nominating committee.

Section 1 amends Section 1-3-12, NMSA 1978, to remove the PRC from redistricting completed by the Legislature once every ten years.

Section 2 and 3 amends Sections 1-8-2, NMSA 1978, and to remove PRC from the rules minor parties use to elect certain officers.

Section 4 amends Section 1-8-13, NMSA 1978, to remove PRC from the SOS's election proclamation.

Section 5 amends Section 1-8-33, NMSA 1978 to remove PRC from the calculation of petition signatures need to run in the primary.

Section 6 amends Section 1-8-36.1, NMSA 1978, to remove PRC from the write-in qualifications for certain offices.

Section 7 amends Section 1-8-51, NMSA 1978, to remove PRC from the calculation of petition signatures need to run as an independent candidate.

Section 8 amends Section 1-10-8, NMSA 1978, remove PRC from the order of how candidates appear on the ballot.

Section 9 amends Section 1-14-24, NMSA 1978, to remove PRC from the candidate contests in which recounts apply.

Section 10 through Section 13 amends the Voter Action Act (VAA) to remove PRC as a covered office for which public finance could be attained and other references to the PRC and the PRC subaccount used to pay expenses to carry out the VAA related to PRC elections.

Section 14 removes PRC commissioner from being a compensated elective state officer.

Section 16 removes “elected” from the definition of commissioner.

Section 17 amends NMSA 1978, Section 8-3-3 to change the composition of the PRC from 5 to 3 commissioners who are appointed by the governor with consent of the senate. This section also removes any reference to the PRC Apportionment Act.

Section 18 creates the PRC Nominating Committee (“PRCNC”). PRCNC consists of seven members. Section 18 also lists the PRCNC member’s qualifications. This section requires 4 members be appointed, one each by the speaker of the house, house minority floor leader. The senate president pro tempore and the senate minority floor leader. In addition, the secretary of energy, minerals and natural resources and the secretary of economic development shall each appoint one member. Lastly, the governor shall appoint one member who is a member of an Indian nation, tribe or pueblo. The first meeting of the appointed members of the PRCNC shall be before September 1, 2022 to elect its organization chairs and appoint nominees for terms beginning January 1, 2023. The list of nominees submitted by the PRCNC shall consider geographical diversity, and nominees on the list shall be from at least three different counties of the state. A majority vote of all members of the committee in favor of a person is required for that person to be included on the list of qualified nominees submitted to the governor.

Section 19 removes “elected” and “candidate” from the requirements for a PRC commissioner. This section also removes any reference to election related activity. Section 19 also includes Qualifications of Commissioners, including a commissioner must have a baccalaureate degree from an institution of higher education or a post graduate degree in a field related to an area regulated by the commission, including policy, and at least 10 years of professional experience within the person’s field. Section 19 also requires that a commissioner shall not have a financial interest in a public utility in New Mexico or elsewhere and shall not have been employed by a commission-regulated entity at any time during the two years prior to appointment to the commission. Section 19 also requires that commissioners shall give their entire time to the

business of the commission and shall not pursue any other business or vocation or hold any other office for profit.

Section 22 updates Section 8-8-18 regarding recusal of a commissioner.

Section 23 changes provisions in Section 8-8-19, which relates to prohibited acts of PRC members and nominees to make them consistent with having PRC members who are appointed rather than elected.

Section 24 adds a provision to the State Employee Retirement Act's service credit requirements that applies specifically to persons who become PRC commissioners on or after January 1, 2023.

The SFC Amendment adds a new Section 59, a temporary provision that describes recompiled provisions and a new Section 60 that repeals Sections 8-7-1 through -11 NMSA 1978.

The effective date of Sections 21, 25 through 58 and 61 of the bill is July 1, 2021.

The provisions of Sections 1 through 20, 22 through 24, 59 and 60 shall become effective on the following dates upon certification by the secretary of state that the constitution of New Mexico has been amended as proposed by a joint resolution of the first session of the fifty-fourth legislature, entitled "A JOINT RESOLUTION PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT THE PUBLIC REGULATION COMMISSION CONSIST OF THREE MEMBERS APPOINTED BY THE GOVERNOR FROM A LIST OF PROFESSIONALLY QUALIFIED NOMINEES SUBMITTED TO THE GOVERNOR BY A NOMINATING COMMITTEE AS PROVIDED BY LAW AND THAT THE COMMISSION IS REQUIRED TO REGULATE PUBLIC UTILITIES AND MAY BE REQUIRED TO REGULATE OTHER PUBLIC SERVICE COMPANIES". If the certification occurs, the effective date of the provisions of Sections 1 through 17, 19, 20, 22 through 24, 59 and 60 of this act is January 1, 2023; and Section 18 of this act is January 1, 2022.

The sections following Section 21 are misnumbered.

#### Synopsis of Original Bill

The House Judiciary Committee Substitute for HB386 removes the State Fire Marshal Division from the Public Regulation Commission (PRC), and places it within the Homeland Security and Emergency Management Department (DHSEM), and makes the Fire Marshal an at-will position appointed by the Secretary of Homeland Security.

In addition, the bill creates the Fire Services Council, consisting of a presiding officer or designee of the New Mexico Fire Chiefs Association, fire and emergency managers affiliate of New Mexico counties, New Mexico State Firefighters Association, New Mexico Emergency Medical Technical Association, New Mexico Fire Marshals Association, the Metro Chiefs Association, Metro Fire Chiefs Association, New Mexico Professional Fire Fighters Association and one designee each from the governor, president pro-tempore of the Senate and the Speaker of the House.

Section 28 of the bill amends Section 59A-52-25 of the Insurance Code striking language that previously directed any penalty collected as a result of a civil enforcement action to be credited

to the fire protection fund.

The effective date of this bill is July 1, 2021.

### FISCAL IMPLICATIONS

The fire protection fund receives the 3 percent premium tax on auto and fire insurance collected by the Office of Superintendent of Insurance (OSI). The fees are collected in the insurance suspense fund within OSI and transferred to the fire protection fund at PRC.

In the PRC's FY20 operating budget, \$4.8 million of approximately \$96 million in fire protection funds collected annually is used to support administrative operational needs in all three programs of the agency. For example, the Legal Division in the Policy and Regulation program provides expert legal analysis for the Fire Marshal's office, and the Program Support Program administers the collection of funds from the Office of Superintendent of Insurance, and is responsible for all statutorily required disbursements from the fire protection fund.

In FY20, the breakdown of Fire Protection Funds in the PRC's operating budget is as follows:

1. Policy and Regulation Program:	\$489.7
2. Public Safety (Fire Marshall):	\$3,643.3
3. Program Support:	<u>\$661.5</u>
Total	\$4,794.5

If the fire protection funds are no longer available from PRC's operating budget this will result in a decrease in funding of \$1.15 million total for the Policy and Regulation Program and Program Support Program. This analysis assumes an amount of \$3.6 million in fire protection funds that support the State Fire Marshal's office and will move with the State Fire Marshal's Office with passage of this bill.

In order for PRC to continue to operate as normal, providing critical regulatory services, the fire protection funds used to support the Policy and Regulation Program (\$489.7 thousand) and the Program Support Program (\$661.5 thousand), may need to be replaced with \$1.15 million in general fund revenue. This will be a recurring expense to the general fund of \$1.15 million beginning in FY21. Without replacing these funds, the agency may not be able to continue operations as normal, creating staffing issues in critical areas that support multiple areas of the agency including, lawyers, engineers, economists, utility regulation experts, and administrative services staff.

It should be noted that there may be costs associated with moving to a new location or remodeling the existing location to accommodate the reorganization. For example, in the 2019 legislative session, Chapter 48 (Senate Bill 22) included \$1 million dollars to establish new field offices and transfer programs from other departments to the new Early Childhood Education and Care Department. Also included in the General Appropriation Act of 2020 is \$564 thousand for costs associated with the relocation of the AOC.

Under Section 1-16-4 NMSA 1978, SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in

newspapers in every county in the state. The estimated cost per constitutional amendment is \$125 thousand - \$150 thousand, depending upon the number and length of the constitutional amendments, number of registered voters, and whether additional ballot printing systems are needed.

In its analysis of SB 281, which is similar to the SFC Amendment to the HJC Substitute for HB386, SOS noted that the Voter Action Act currently covers PRC races; races for those positions that would be appointed if the constitutional amendment is passed would no longer need to be publicly funded.

## **SIGNIFICANT ISSUES**

It should be noted HB11, the PRC reorganization does not make provision for the Fire Marshal Division. Section 6 of HB11 repeals existing law that creates divisions in PRC, including the Fire Marshal, but leaves in place the section of existing law defining the duties of the Fire Marshal. See Sections 8-8-6 and 8-8-9.3. Therefore, HB386 helps clarify where the Fire Marshal will reside.

The Public Regulation Commission notes (In response to SB245):

The Fire Service Advisory Council was originally established by resolution of the PRC in September 2019. Currently, the purpose of the Fire Service Advisory Council is to provide advisory assistance to the State Fire Marshal regarding fire and emergency services issues. Under existing resolution, the authority given to the Fire Service Advisory Council is limited within the scope established by the PRC and is managed by the PRC Chief of Staff. According to this bill, the Fire Service Advisory Council will have greater authority in the operations of the State Fire Marshal's Division to include: having public hearings regarding pending rules, administering administrative hearings in appellate cases, reviewing and commenting on proposed changes in fire codes and the proposed budget of the State Fire Marshal's Office, considering complaints regarding the performance of the State Fire Marshal's Office and making recommendations to the State Fire Marshal, and making recommendation to the NM Homeland Security Cabinet Secretary on the appointment of the State Fire Marshal. Additionally, the members of the Fire Service Advisory Council will increase from 7 to 10 may contribute to split votes on the council.

The authority to consider complaints regarding employee performance of the State Fire Marshal's Office may conflict with Human Resources authority and has not been vetted by the employees' union representatives.

The bill states on Page 17, lines 22-24 "the state fire marshal shall train at least one certified firefighter per county to perform fire and fire safety inspections." This provision is in conflict with 28 of the NM County Fire Marshals who may conduct fire investigations and/or inspections already and may be receiving administration monies from the fire protection fund to carry out those services. Additionally, this provision may require counties to adopt their own fire code. The trained experienced professional fire code inspectors and fire/arson investigators of the SFMD are subject matter experts in the field of fire prevention and typically serve rural areas of the state that do not have trained fire inspectors/fire investigators. Due to statutory authority, resources, experience, and

training, the services provided by the SFMD in fire inspections/fire investigations are extensive and will better serve the NM fire service and citizens of NM.

The Department of Homeland Security and Emergency Management notes (In response to SB245):

SB245 will enhance some important capabilities of the department. It will increase the ability to offer more refined training statewide to emergency managers and other parties. This is accomplished through the blending of the training side of each agency. This bill also opens many opportunities for the formation of a better and more capable Hazardous Material Safety Board and increases the importance of the State Emergency Commission in their duties to tie in training and subject matter expertise for prevention of serious hazmat issues across the state. Lastly, the merge with the fire marshal brings a new arm of enforcement capabilities for Tier II reporting statewide and fee collections. This would allow an enforcement of fines and additional fees for unsafe operators using hazardous chemical in the state not reporting currently per NMSA and EPA rule. Currently DHSEM is charged with these duties and with this merger could perform them to better.

The Office of the Attorney General notes (In response to SB245):

Section 19 A. takes rule making authority from the state fire board and gives it exclusively to the fire marshal and directs that rules be promulgated governing the “sale, servicing or use of fire safety, prevention detection or suppression equipment or material.” While Section 25 charges the Fire Services Council with hearing administrative appeals for violations of those rules, it does not give the Council the authority to issue the procedural rules necessary to establish hearing procedures and ensure they conform to due process requirements. In fact, Section 29 charges the fire marshal with promulgating rules relating to the Fire Services Council, and requires only that the marshal consider the advice of the Council.

Similarly, Section 31 charges the Fires Services Council with reviewing and commenting on proposed changes to the fire codes and the proposed budget of the fire marshal’s division; considering complaints regarding the performance of the division, as well as hearing administrative appeals of the fire marshal’s order, but does not grant the Council substantive authority to actually propose rules.

## **ADMINISTRATIVE IMPLICATIONS**

The Office of the Attorney General notes (In response to SB245):

Unless Homeland Security intends to provide counsel to the Fire Services Council, it is likely that NMAG services would be required.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB386/HJCS may conflict/or be a companion to HB11 PRC Reorganization.

Relates to HB191 Volunteer Firefighters Recruitment and Retention Programs.

Duplicates SB245.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. If this bill is not enacted, PRC commissioners will continue to serve on Fire Protection Grants Council and the firefighters survivors supplemental death benefits review committee. The fire marshal division will continue to be a division of the PRC and the fire marshal will continue to be a position appointed by the PRC chief of staff.

JM/sb/al