

SENATE BILL 109

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

William P. Soules

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; DISTINGUISHING BETWEEN THE COMMISSION AND THE AGENCY THAT SUPPORTS THE COMMISSION; CLARIFYING AGENCY STATUTORY DUTIES; MAKING OTHER CLARIFYING AND CLEANUP CHANGES TO THE PUBLIC REGULATION COMMISSION ACT.

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

SECTION 1. Section 62-19-2 NMSA 1978 (being Laws 1998,

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Chapter 108, Section 2, as amended) is amended to read:

"62-19-2. DEFINITIONS.--As used in the Public Regulation Commission Act:

A. "agency" means the institution and staff that support the commission, including all employees;

~~[A-]~~ B. "commission" means the public regulation commission, which is the three-member-appointed regulatory and adjudicatory body;

~~[B-]~~ C. "commissioner" means a person appointed to the public regulation commission; and

~~[C-]~~ D. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity."

SECTION 2. Section 62-19-4 NMSA 1978 (being Laws 2020, Chapter 9, Section 18) is amended to read:

"62-19-4. PUBLIC REGULATION COMMISSION NOMINATING COMMITTEE.--

A. The "public regulation commission nominating committee" is created and consists of seven members who are:

- (1) knowledgeable about public utility regulation;
- (2) not employed by or on behalf of or have a contract with a public utility that is regulated by the commission;
- (3) not applicants or nominees for a position

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on the commission; and

(4) appointed as follows:

(a) four members appointed one each by the speaker of the house of representatives, the minority floor leader of the house of representatives, the president pro tempore of the senate and the minority floor leader of the senate, with no more than two members being from the same political party;

(b) two members appointed one each by the secretary of energy, minerals and natural resources and the secretary of economic development; and

(c) one member who is a member of an Indian nation, tribe or pueblo appointed by the governor.

B. A committee member shall:

(1) be a resident of New Mexico;

(2) serve a four-year term; and

(3) serve without compensation, but shall be reimbursed for expenses incurred in pursuit of the member's duties on the committee pursuant to the Per Diem and Mileage Act.

C. The committee and individual members shall be subject to the Governmental Conduct Act, the Inspection of Public Records Act, the Financial Disclosure Act and the Open Meetings Act.

D. Administrative support shall be provided to the

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committee by the [~~staff of the commission~~] agency.

E. Initial appointments to the committee shall be made by the appointing authorities prior to July 1, 2022. Subsequent appointments shall be made no later than thirty days before the end of a term.

F. The first meeting of the appointed members of the committee shall be held prior to September 1, 2022. The committee shall select one member to be chair and one member to be secretary. Following the first meeting, the committee shall meet as often as necessary in order to submit a list to the governor of no fewer than five qualified nominees for appointment to the commission for the terms beginning January 1, 2023. The list shall be developed to provide geographical diversity, and nominees on the list shall be from at least three different counties of the state.

G. Subsequent to January 1, 2023, the committee shall meet at least ninety days prior to the date on which the term of a commissioner ends and as often as necessary thereafter in order to submit a list to the governor, at least thirty days prior to the beginning of the new term, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission for each commissioner position term that is ending.

H. Upon the occurrence of a vacancy in a commissioner position, the committee shall meet within thirty

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days of the date of the beginning of the vacancy and as often as necessary thereafter in order to submit a list to the governor, within sixty days of the first meeting after the vacancy occurs, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission to fill the remainder of the term of each commissioner position that is vacant.

I. If a position on the committee becomes vacant during a term, a successor shall be selected in the same manner as the original appointment for that position and shall serve for the remainder of the term of the position vacated.

J. The committee shall actively solicit, accept and evaluate applications from qualified individuals for a position on the commission and may require an applicant to submit any information it deems relevant to the consideration of the individual's application.

K. The committee shall select nominees for submission to the governor who, in the committee's judgment, are best qualified to serve as a member of the commission.

L. 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 3. Section 62-19-6 NMSA 1978 (being Laws 2013, Chapter 64, Section 2, as amended) is amended to read:

"62-19-6. CONTINUING EDUCATION REQUIREMENTS FOR

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COMMISSIONERS.--

A. [~~Beginning July 1, 2013~~] A commissioner shall complete:

(1) an ethics certificate course provided in person or online by a New Mexico public post-secondary educational institution in the first twelve-month period after taking office and at least SRC→~~one two-hour ethics course in each~~←SRC SRC→two hours of ethics at a course by such educational institution or by a recognized provider of a professional licensing board by which a commissioner is licensed in each←SRC subsequent twelve-month period that the commissioner serves in office; and

(2) at least thirty-two hours of continuing education relevant to the work of the commission in each twelve-month period that the commissioner serves in office. Continuing education courses shall be endorsed by the national association of regulatory utility commissioners or by [~~the relevant~~] a licensing or professional association for a qualifying area of study [~~for degree holders pursuant to this section~~].

B. A commissioner shall be responsible for having the endorsing organization submit certification of completion of the hours of education required pursuant to Subsection A of this section to the [~~commission's~~] chief of staff.

C. If a commissioner fails to comply with the

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education requirements in Subsection A of this section by the last day of a twelve-month period, SRC→~~the commissioner's compensation for performing the duties of the office shall be withheld by the [commission] agency until the requirements for the preceding twelve-month period or periods have been met.~~←SRC SRC→the matter shall be referred to the ethics commission for review, sanctions and discipline."←SRC

SECTION 4. Section 62-19-8 NMSA 1978 (being Laws 1998, Chapter 108, Section 19, as amended) is amended to read:

"62-19-8. PROHIBITED ACTS--NOMINEES--COMMISSIONERS AND EMPLOYEES.--

A. As used in this section, in addition to the definitions provided in Section [~~16 of this 2020 act~~] 62-19-2 NMSA 1978:

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

(2) "intervenor" means a person who is

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intervening as a party in an adjudicatory matter [~~or commenting in a rulemaking pending~~] before the commission or has intervened in an adjudicatory [~~or rulemaking~~] matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

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

B. In addition to the requirements of the Financial Disclosure Act and the Governmental Conduct Act, nominees for appointment to the commission, commissioners and employees of the [~~commission~~] agency shall comply with the requirements of

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the Public Regulation Commission Act, as applicable.

C. A nominee for appointment to the commission shall not solicit or accept anything of value, either directly or indirectly, from a person whose charges for services to the public are regulated by the commission. For the purposes of this subsection, "anything of value" includes money, in-kind contributions and volunteer services to the nominee or the nominee's organization, but does not include pension or disability benefits.

D. SRC → ~~A commissioner or employee~~ ← SRC

SRC → **Commissioners and employees** ← SRC of the [commission] agency shall not:

(1) accept anything of value from a regulated entity, affiliated interest or intervenor. For the purposes of this paragraph, "anything of value" does not include:

(a) the cost of refreshments totaling no more than SRC → ~~five dollars (\$5.00)~~ ← SRC SRC → **twenty dollars (\$20.00)** ← SRC a day or refreshments at a public reception or other public social function that are available to all guests equally;

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

(c) pension or disability benefits received from a regulated entity, affiliated interest or

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intervenor;

(2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest that interest or self recuse from the proceeding with the intervenor interest; or

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

E. After leaving the commission or agency:

(1) a former commissioner shall not be employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of the former commissioner's separation from the commission;

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

(3) a former commissioner or agency employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or agency employee was associated with the commission or agency and in which the former commissioner or agency employee was personally and substantially involved in

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the matter.

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

SECTION 5. Section 62-19-9 NMSA 1978 (being Laws 1998, Chapter 108, Section 4) is amended to read:

"62-19-9. COMMISSION--AGENCY--GENERAL POWERS AND DUTIES.--

A. The commission shall administer and enforce the laws with which it is charged and has every power conferred by law.

B. The commission may:

(1) subject to legislative appropriation, appoint and employ such professional, technical and clerical assistance as it deems necessary to assist it in performing its powers and duties;

(2) through the chief of staff, delegate authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and

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any limitations;

(3) retain competent attorneys to handle the legal matters of the commission ~~[and]~~ or agency, as applicable; give advice and counsel in regard to any matter connected with the duties of the commission or agency; and, in the discretion of the commission ~~[to represent the commission]~~ or agency, provide representation in any legal proceeding;

(4) organize the agency into organizational units as necessary to enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(5) take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings;

(6) conduct research and studies to improve the ~~[commission's]~~ agency's operations or the provision of services to the ~~[citizens]~~ residents of New Mexico;

(7) conduct investigations as necessary to carry out the commission's responsibilities;

(8) apply for and accept grants and donations in the name of the state to carry out its powers and duties;

(9) enter into contracts to carry out its powers and duties;

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(10) adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties;

(11) cooperate with tribal and pueblo governments on topics over which the commission and the other governments have jurisdiction and conduct joint investigations, hold joint hearings and issue joint or concurrent orders as appropriate; and

(12) apply to the district court for injunctions to prevent violations of any laws that it administers or rules or orders adopted pursuant to those laws.

C. The commission shall:

(1) prepare an annual budget for submission to the legislature;

~~[(2) provide for surety bond coverage for all employees of the commission as provided in the Surety Bond Act and pay the costs of such bonds;~~

~~(3)]~~ (2) adopt rules to streamline the resolution of cases before it when appropriate by:

- (a) the use of hearing examiners;
- (b) the taking of evidence with the least delay practicable;
- (c) limiting repetitious testimony; and
- (d) adopting procedures for resolving cases in ways other than by trial-type hearings when

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appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions; and
[~~(4)~~] (3) provide a toll-free telephone number and publish it and the [~~commission's~~] agency's general telephone number in local telephone directories SRC→and on the agency's website←SRC .

D. [~~A majority of the commission constitutes a quorum for the transaction of business; provided, however, that~~] A majority vote of the commission is needed for a final decision of the commission for matters involving public business. As used in this subsection, "public business" means matters within the commission's constitutional or statutory regulatory or adjudicatory powers and duties and does not include matters pertaining to agency operations such as those enumerated in Paragraphs (1), (3), (4), (6), (8) and (9) of Subsection B of this section."

SECTION 6. Section 62-19-11 NMSA 1978 (being Laws 1998, Chapter 108, Section 5, as amended) is amended to read:

"62-19-11. CHIEF OF STAFF--DIVISION DIRECTORS--OTHER STAFF.--

A. The commission shall appoint a "chief of staff" who is responsible for the day-to-day operations of the [~~commission staff~~] agency under the general direction of the commission. The chief of staff shall serve at the pleasure of

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the commission.

B. With the consent of the commission, the chief of staff shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

C. Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of the director's division. Employees shall be hired solely on the ground of their fitness to perform the job for which they are hired. Division staff are subject to the provisions of the Personnel Act."

SECTION 7. Section 62-19-12 NMSA 1978 (being Laws 1998, Chapter 108, Section 6, as amended) is amended to read:

"62-19-12. [~~COMMISSION~~] AGENCY--ORGANIZATIONAL UNITS.--
The [~~commission includes~~] agency may include the following organizational units:

- A. the administrative services division;
- B. the consumer relations division;
- C. the legal division;
- D. the utility division; and
- E. the pipeline safety bureau."

SECTION 8. Section 62-19-13 NMSA 1978 (being Laws 1998, Chapter 108, Section 7, as amended) is amended to read:

"62-19-13. ADMINISTRATIVE SERVICES DIVISION--CHIEF

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CLERK.--

A. The [~~director of the~~] administrative services division [~~of the commission~~] shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The administrative services division [~~shall~~] may perform the following functions:

- (1) case docketing;
- (2) budget and accounting;
- (3) personnel services;
- (4) procurement; and
- (5) information systems services."

SECTION 9. Section 62-19-14 NMSA 1978 (being Laws 1998, Chapter 108, Section 8) is amended to read:

"62-19-14. CONSUMER RELATIONS DIVISION.--

A. The consumer relations division [~~shall~~] may:

(1) receive and investigate nondocketed consumer complaints and assist consumers in resolving, in a fair and timely manner, complaints against a person under the authority of the commission, including mediation and other methods of alternative dispute resolution; provided, however,

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that assistance pursuant to this paragraph does not include legal representation of a private complainant in an adjudicatory proceeding;

(2) work with the consumer protection division of the ~~[attorney general's office]~~ state department of justice, the governor's constituent services office and other state agencies as needed to ensure fair and timely resolution of complaints;

(3) advise the commission on how to maximize public input into commission proceedings, including ways to eliminate language, disability and other barriers;

(4) identify, research and advise the commission on consumer issues;

(5) assist the commission in the development and implementation of consumer policies and programs; and

(6) perform such other duties as prescribed by the ~~[commission]~~ chief of staff.

B. All complaints received by the consumer relations division with regard to quality or quantity of service provided by a regulated entity or its competitors shall be recorded by the division for the purpose of determining general concerns of consumers. A report of consumer complaints and their status shall be included in the commission's annual report."

SECTION 10. Section 62-19-15 NMSA 1978 (being Laws 1998,

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Chapter 108, Section 10) is amended to read:

"62-19-15. LEGAL DIVISION.--

A. The [~~commission~~] chief of staff shall set minimum requirements for the director of the legal division, including membership in the New Mexico bar and administrative and supervisory experience.

B. The legal division, under the direction of the chief of staff, shall:

(1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and

(2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission."

SECTION 11. Section 62-19-17 NMSA 1978 (being Laws 1998, Chapter 108, Section 12, as amended) is amended to read:

"62-19-17. UTILITY DIVISION.--

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The [~~commission~~] chief of staff shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public

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interest in utility matters before the commission and may present testimony and evidence and cross-examine witnesses. In order to represent the public interest, the utility division shall present to the commission its beliefs on how the commission should fulfill its responsibility to balance the public interest, consumer interest and investor interest.

~~[D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.]~~

~~E.]~~ D. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case, except as expressly permitted pursuant to Section ~~[8-8-17]~~ 62-19-23 NMSA 1978."

SECTION 12. Section 62-19-18 NMSA 1978 (being Laws 2000, Chapter 100, Section 1 and Laws 2000, Chapter 102, Section 1) is amended to read:

"62-19-18. TELECOMMUNICATIONS BUREAU.--

A. The "telecommunications bureau" is created in the utility division of the ~~[public regulation commission]~~ agency.

B. The telecommunications bureau ~~[shall]~~ may:

(1) review disputes between telecommunications providers;

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(2) investigate each complaint on an expedited basis;

(3) address other telecommunications-related duties as required by the New Mexico Telecommunications Act and the commission; and

(4) recommend actions to the commission.

C. Each complaint shall be resolved by the commission within sixty days unless extended for good cause by an order of the commission or hearing examiner that states with specificity the reason for and length of the extension."

SECTION 13. Section 62-19-20 NMSA 1978 (being Laws 1998, Chapter 108, Section 14, as amended) is amended to read:

"62-19-20. HEARING EXAMINERS.--

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. A hearing examiner [~~shall~~] may provide the commission with a recommended decision on the matter assigned to the hearing examiner, including findings of fact and conclusions of law. [~~The~~] A recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

C. When the commission has appointed a hearing examiner to preside over a matter, at least one member of the

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commission shall, at the request of a party to the proceedings, attend oral argument."

SECTION 14. Section 62-19-21 NMSA 1978 (being Laws 1998, Chapter 108, Section 15, as amended) is amended to read:

"62-19-21. COMMISSION RULES--PROCEDURES FOR ADOPTION.--[A.] Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except [~~after public notice and public hearing before the commission or a hearing examiner designated by the commission.~~

~~B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. Additional notice may be made by posting on the internet or by using other~~

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~~alternative methods of informing interested persons.~~

~~G. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.~~

~~D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.~~

~~E. All rules shall be filed in accordance with the State Rules Act. Emergency rules shall be effective on the date the rules are filed with the state records center. All other rules shall be effective fifteen days after filing, unless a later date is provided by the rule] as provided in the State Rules Act."~~

SECTION 15. Section 62-19-22 NMSA 1978 (being Laws 1998, Chapter 108, Section 16) is amended to read:

"62-19-22. RECORD OF PROCEEDINGS.--Unless otherwise

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provided by law, the commission may by rule provide that oral proceedings before the commission may be taken by any means that provides a full and complete record, including tape recording or stenography. The commission by rule shall determine when tape recordings are transcribed. A party to the proceeding may request a copy of a tape recording or a written transcript if one is provided. The ~~[commission]~~ agency may charge a reasonable fee for a copy of a proceeding. Copy costs shall be determined by the commission by rule, and money collected shall be deposited in the general fund."

SECTION 16. Section 62-19-23 NMSA 1978 (being Laws 1998, Chapter 108, Section 17, as amended) is amended to read:

"62-19-23. ~~[EX-PARTE]~~ PROHIBITED AND PERMITTED COMMUNICATIONS.--

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or ~~[his]~~ the party's representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or ~~[his]~~ the party's representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Subject to the provisions of Section 62-19-9 NMSA 1978 and notwithstanding the provisions of Subsections A

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and B of this section, the following [~~ex parte~~] communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities; provided that such discussion that takes place outside of a meeting held in accordance with the Open Meetings Act shall not concern a vote or opinion as to the ultimate disposition of a particular matter or issue; and provided further that any action on the commission's rulemaking or adjudicative responsibilities must be taken at an open meeting;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in

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the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the ~~[public regulation]~~ commission's rulemaking authority, a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made ~~[a]~~ an ex parte communication ~~[prohibited by this section]~~ shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why ~~[his]~~ the party's claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section."