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FISCAL IMPACT REPORT

SPONSOR Begaye DATE TYPED 2/2/2004 HB HJR 02

SHORT TITLE Governor to Appoint PRC Members SB _____

ANALYST Garcia

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			NFI.		

(Parenthesis () Indicate Expenditure Decreases)

Relationship HJR 1

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission

SUMMARY

Synopsis of Bill

The bill would submit to the voters a proposal to amend Article 11, § 1 of the Constitution of New Mexico. The amendment would require the five Public Regulation Commission (Commission, or PRC) commissioners to be appointed by the governor with the consent of the Senate instead of being elected. Governor-appointed commissioners would be appointed from districts to staggered four-year terms and would not be term-limited. The bill would require the commissioners' office to be in Santa Fe. Potential nominees to the commission would be barred from nomination or appointment if they had "been employed by an entity regulated by the commission for the ten years prior to appointment." The bill would continue the prohibition against the acceptance by commissioners of anything of value from a person or entity whose charges for services to the public are regulated by the commission.

Significant Issues

Moving PRC commissioners from elected to appointed officials create a myriad of significant

issues and questions.

1) PRC commissioners, as elected, are directly accountable to the citizens of the state and work on behalf of citizens directly. However, moving commissioners to appointed, they would be directly accountable to the governor and indirectly citizens.

2) PRC commissioners, as elected, serve as consumer advocates where they create policies on utilities rates, insurance regulation, telecommunication regulation, transportation regulation, etc. based solely on consumer interests and independent of legislative or executive mandates or policies. However, moving to appointed, commissioners will likely serve at the pleasure of the governor's policy initiatives, which at times can be counter to consumer interests.

3) Moving PRC commissioners to appointed can create conflicts of interest. For instance, commissioners, as elected and independent officers, are first and foremost consumer advocates and cannot accept campaign contributions from regulated entities. However, the governor is not constrained by the same requirements, which can create conflicts where regulated entities' interests have special favor with the governor/executive and consequently filtrate down to appointed commissioners.

FISCAL IMPLICATIONS

The bill presents no fiscal impact.

ADMINISTRATIVE IMPLICATIONS

As an agency controlled by separately elected officials, the PRC is an administratively independent part of the executive branch. Having governor-appointed commissioners would administratively place the PRC within the governor's portion of the executive branch.

RELATIONSHIP

HJR 02 is very similar to HJR 01. The only difference is that HJR 02 adds the provision that no PRC appointee can be "employed by an entity regulated by the commission for the ten years prior to appointment." In addition, HJR 02 does not include language that HJR 01 adds that address commissioners' expertise. HJR 01 states: "commissioners shall at minimum have four years of education or experience in regulatory law or affairs."

TECHNICAL ISSUES

The bill does not provide for an effective date. However, if passed by the Legislature during this session and ratified by the voters at the next general election (i.e., the one scheduled for November 2004), it would apparently be self-executing and have immediate effect. If so, would the governor be able to make appointments to the commission immediately upon voter approval, or would he have to await the expiration of current commissioner terms?

By declaring that commission terms would begin on January 1 of the year following their appointment, the bill could have the effect of creating terms as long as five years, depending on the time of appointment. For example, if a commissioner were appointed on January 2, his or her term would not begin until the following January 1, thereby granting an additional year to

that commissioner's term. The bill also appears to leave open the question of when an interim appointment might take effect.

If the voters approve the constitutional amendment, the Legislature will subsequently have to repeal the existing laws governing commissioner elections.

OTHER SUBSTANTIVE ISSUES

1) Other appointments to constitutional commissions (i.e. university regents) have language in the text explaining: (a) on what grounds a commissioner can be removed; (b) whether a commissioner can serve until her replacement is confirmed by the Senate; and (c) political diversity. These items aren't required, but help explain how to resolve disputed situations.

2) The language is not expressly clear that the existing commissioners will no longer serve after December 31st.

3) It is difficult to determine if policymaking from the PRC will improve from moving from elected to appointed commissioners. The primary objective of the PRC is to balance industry interests with consumer interest and in the end protecting consumers from paying unnecessary expenses. It is unclear if the ratemaking process will work better.

POSSIBLE QUESTIONS

- Would governor-appointed commissioners be more accountable to the people of New Mexico than elected commissioners?
- Will moving to appointed commissioners induce more cooperation and professionalism among the commission as a whole?
- Should commissioners be appointed from districts instead of at-large?
- The bill neither provides for nor prohibits the removal of appointed commissioners for cause. Should appointed commissioners be expressly subject to removal for cause?
- Should appointed commissioners be term-limited?

DG/yr