

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Payne DATE TYPED 2/23/05 HB _____

SHORT TITLE PRC Professional Staff SB 947

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 947 amends the Public Regulation Commission Act to explicitly state that the PRC may only remove its chief of staff for cause and the chief of staff shall have significant administrative, budgetary and regulatory experience and expertise and shall be appointed solely based on qualifications to perform the duties of the position and without reference to political party affiliation; and that the chief of staff may remove a division director only for cause and that division directors shall be appointed solely on qualifications to perform the duties of the position.

Additionally, this bill amends current law to state, the PRC may only remove its general counsel for cause and that the general counsel shall be hired solely on the person’s qualifications and fitness to perform the duties of the position.

Significant Issues

Current law allows the PRC to hire “competent attorneys” without reference to their qualifications or grounds for dismissal. Current law also provides that the chief of staff serves “at the pleasure of the commission”.

The AGO provided the following:

- This bill creates “property interests” in the positions of PRC general counsel and chief of staff. The Supreme Court holds that the due process clause of the United States Constitution requires a pretermination hearing before employees may be dismissed if the terms of their employment specify that they may only be terminated “for cause”.
- The bill may also create rights for unsuccessful applicants for the positions of general counsel and chief of staff, if they believe that the successful applicant is unqualified under the terms of this bill or that political party affiliation was considered by the PRC during the hiring process for chief of staff.

The PRC notes the term “cause”, in the context of removable only for cause, is not defined and could be the subject of litigation.

FISCAL IMPLICATIONS

There may be some costs to the PRC in conducting the required termination hearings.

ADMINISTRATIVE IMPLICATIONS

The PRC will have to conduct “special hearings when it wants to dismiss its general counsel or chief of staff. The chief of staff would also have to conduct hearings when he or she wants to dismiss a division director.

DW/yr