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## FISCAL IMPACT REPORT

SPONSOR Payne DATE TYPED 2/07/05 HB \_\_\_\_\_

SHORT TITLE PRC Commissioner Elections and Appointments SJR 4

ANALYST Rosen

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SJR3 and HJR8  
Relates to HJR2

### SOURCES OF INFORMATION

Responses Received From  
Public Regulation Commission (PRC)  
Secretary of State (SOS)

No Responses Received From  
Attorney General's Office (AGO)  
Governor's Office (GO)

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 4 submits to voters a proposal to amend Article 11, Section 1 of the Constitution of New Mexico changing the membership of PRC as follows: the current system of five commissioners elected by district will be replaced with a system in which three commissioners are elected by district and two are appointed by the governor with the consent of the senate. The five existing Commission districts are to be redistricted along the boundaries of the three congressional districts. For commissioners appointed by the governor, removal from office will be based on incompetence, neglect of duty, or malfeasance in office. The amendment does not provide for removal of elected commissioners. The two commissioners appointed by the governor must be of different political parties. Members will serve staggered four-year terms, with no

more than two consecutive terms. Members will elect from amongst themselves a chairperson who will serve as chair for a term of two years.

If the proposed amendment is ratified by the voters, the appointed commissioners take office on January 1, 2009 and the elected commissioners take office on or about January 1, 2011.

### Significant Issues

According to PRC, the proposed amendment does not address qualifications for gubernatorial appointees to the Commission. PRC questions whether mixing elected and appointed commissioners would create greater PRC accountability. PRC notes the proposed amendment provides for removal of appointed commissioners on particular grounds but does not subject elected commissioners to removal on the same grounds. PRC reports the Commission routinely engages in quasi-judicial administrative proceedings that affect the rights of parties and questions whether candidates for gubernatorial appointment should be subject to restrictions based on actual or potential conflict of interest or bias.

### **PERFORMANCE IMPLICATIONS**

According to PRC, the two appointed commissioners would be politically accountable to the governor, while the elected commissioners would be politically accountable to their constituents. This might have performance implications in that it would create different lines of accountability as between the two sets of commissioners, even though the Commission would still have a statutory duty to exercise its overall authority in the public interest

### **FISCAL IMPLICATIONS**

PRC reports this resolution may impact NMSA § 1-19A-10 (Public Election Fund: Creation and Use). Placing this constitutional item on the ballot could also pose some unanticipated costs to the SOS if it is done by special election.

SOS indicates this resolution will not affect the current provisions of the Voter Action Act for Public Regulation Commission campaign financing as set forth in Sections 1-19A-1 through 1-19A-17 NMSA 1978.

### **ADMINISTRATIVE IMPLICATIONS**

According to PRC, having a mixture of elected and appointed commissioners could cause uncertainty about the administrative placement of the Commission within the executive branch. For example, would the Commission be subject to executive orders of the Governor?

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

This resolution duplicates HJR8 and SJR3, which also submit to the voters a proposed constitutional amendment to replace the current system of five commissioners elected by district with a system in which three commissioners would be elected by district and two would be appointed by the governor. SJR3 does not include any requirement that the two appointed commissioners be of different political parties.

This resolution relates to HJR2, which also would submit to the voters a proposed constitutional amendment to make fundamental changes to the Commission, removing the existing constitutional authority of the Commission and replacing it with such authority as might be conferred by the legislature.

### **TECHNICAL ISSUES**

PRC indicates several technical issues with this resolution:

The terms “incompetence,” “neglect of duty,” and “malfeasance in office” are not defined and could be the subject of litigation.

The proposed amendment does not address issues of actual or potential bias, conflicts of interests, or the appearance of such bias or conflicts in the possible appointment of former employees of regulated entities to the commission. Examples of “problem” appointments might include persons currently or formerly affiliated with a regulated entity, such as attorneys, consultants, or contractors for such an entity.

If the proposed amendment is approved by the voters, the legislature would have to conform the Commission’s other organic statutes (such as the Public Regulation Commission Act, NMSA § 8-8-1, et seq.) and statutes relating to the Commission’s substantive authority (such as those relating to public utilities, telecommunications, transportation, and insurance – see, e.g., NMSA §§ 62-1-1, 63-1-1, 63-9A-1, 65-2-80, and 59A-1-1, [et seq.]).

### **ALTERNATIVES**

Retain the current terms of Article 11, § 1 of the New Mexico Constitution.

Refine terms in the proposed amendment relating to the process, standards, and effect of gubernatorial appointments.

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

Status quo

**JR/sb**