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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR Lovejoy LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Repeal PRC & Recommend Integration SB 475

ANALYST Graeser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$0.0	Nonrecurring	Legislative Balances

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>			\$100.0	\$100.0	Nonrecurring	Legislative Balances

(Parenthesis ( ) Indicate Expenditure Decreases)

Companion to and contingent upon passage of SJR 6

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Conditional upon passage by the voters of the constitutional amendment proposed by SJR 6 in November 2012, Senate Bill 475 would repeal the Public Regulation Commission (PRC) effective July 1, 2014. In the interval between the passage of the CA by the voters and the repeal of the PRC, the bill directs the legislature to convene an integration committee entitled the "regulatory structure committee" to study the jurisdiction, authority and duties of the PRC and to make recommendations to the legislature and governor how to integrate the duties and responsibilities of the PRC into the executive.

The regulatory structure committee would consist of 12 appointed legislators – six from the house of representatives and six from the senate. The charge to the committee is to develop consensus concerning regulatory structure. Another duty is for the legislative council, in consultation with the governor to appoint a panel of experts to advise and assist the committee and make recommendations on technical aspects of the committee’s work. The committee would be appointed and convened as soon after April 1, 2013 as feasible, with a final report due prior to the commencement of the legislature in January 2014.

The bill does not require public hearings, but the committee in its workplan will probably provide for extensive public input from various interest groups, affected companies and regulated enterprises and will solicit input from all regions of the state.

SJR 6 and this implementation bill are products of the deliberations of the Government Restructuring Task Force (GRTF) which began in April 2010 and concluded with a final report delivered in December 2010.

### **FISCAL IMPLICATIONS**

This bill does not appropriate general funds, nor does it indicate the scope or magnitude of the effort. The bill requires the legislative council to appoint an advisory panel of experts, but does not explicitly grant the members per diem and mileage. The budget and proposed workplan will be developed by the appointed legislative members and will be submitted to the legislative council for approval.

### **SIGNIFICANT ISSUES**

SB 475 is contingent upon the passage of SJR 6 by the legislature and subsequent presentation of the constitutional amendment to the voters for approval or rejection. Only if the voters approve the repeal of the constitutional status of the Public Regulation Commission (PRC) would the provisions of SB 475 become effective.

Article XI, Section 2 of the State Constitution is clear on the scope and duties of the Public Regulation Commission:

#### **Article XI, Sec. 2. [Responsibilities of public regulation commission.] (1996)**

The public regulation commission shall have responsibility for chartering and regulating business corporations in such manner as the legislature shall provide. The commission shall have responsibility for regulating public utilities, including electric, natural gas and water companies; transportation companies, including common and contract carriers; transmission and pipeline companies, including telephone, telegraph and information transmission companies; insurance companies and others engaged in risk assumption; and other public service companies in such manner as the legislature shall provide.

However GRTF staff note, “...currently the authority of the PRC Commission is being weakened by a semi-autonomous Insurance Division and Office of the State Fire Marshal. New Mexico is unique compared to other states in the breadth of responsibilities assigned to its regulatory commission. Not only does the PRC provide regulation and oversight of utilities, telecommunications and motor carriers but also provides administrative oversight of the insurance industry and certain public safety functions, such as pipeline safety, the State Fire Marshal Office, and the Firefighter Training Academy.”

“The Commission has constitutional authority to protect the public from ‘natural monopolies’ – utility, transportation, and telecommunication companies. However, a constitutional amendment expanded the Commission’s authority to include insurance regulation. The Commission has limited influence over insurance regulation because, by statute, the authority is vested with the Superintendent of Insurance.”

“Through legislative action, the Office of the State Fire Marshal was transferred to the PRC along with the Fire Fighter Training Academy. As with the Insurance Division, the Commission has limited involvement in the operations of the State Fire Marshal.”

“The structural inefficiency created by duplicative regulatory structures between the commission and the Insurance Division and limited authority over the Office of the State Fire Marshal is weakening the department. Over the years, the mission and purpose of the commission has expanded beyond its original constitutional mandate.”

“Since the PRC was created nearly fifteen years ago, the scope of the commission’s oversight and regulated industries has changed significantly. Despite the growing complexity, PRC commissioners are not required to have a background or experience in rate setting and regulation. Furthermore, once elected, due to ex parte rules, commissioners can’t communicate with hearing officers about pending cases.”

The “high level recommendation” of GRTF relative to the PRC follows:

**“High Level Recommendation:** Certain functions of the PRC have authority granted by the Constitution while other functions are established in statute. Instead of a piecemeal approach to addressing the powers and duties of the PRC, the whole commission should be abolished then reestablished. Certain functions of the PRC should be transferred to other agencies including the following:

1. The Transportation Division from the PRC to the Department of Public Safety (DPS);
2. The Insurance Division from the PRC to the Regulation and Licensing Department (RLD) or to a newly created independent Department of Insurance;
3. The process of collecting insurance tax premiums from PRC to the Taxation and Revenue Department (TRD);
4. The State Fire Marshal’s Office from the PRC to DPS;
5. The Operations Division from the SOS to the PRC”

The corporation and utility regulation functions of the PRC would probably be retained in a standalone Public Regulatory Department.

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

SB 475 is contingent upon approval by the voters of the constitutional amendment proposed in SJR 6.

## **OTHER SUBSTANTIVE ISSUES**

PRC does not support the constitutional amendment and subsequent restructuring of the PRC by spinning off the divisions to other Executive Departments. The PRC statement on this issue follows:

“The Commission’s divisions have been, and are, operating efficiently and in a manner that has protected the interests of all New Mexico citizens. Pursuant to the provisions of the bill, the transfer of the Commission’s functions would not commence until July 14, 2014, and implementation would likely extend well beyond that date. The uncertainty and confusion that would arise from any such reorganization would significantly reduce the Commission’s ability to carry out its statutory functions during that entire period, which potentially could last for more than five years.”

“Until a more definitive plan for the transferring the Commission divisions is put forth, it would not be possible to determine whether or how the citizens of New Mexico would benefit in any way from dismantling the Commission. Nonetheless, it is difficult to discern how merely transferring a function from one agency to one or more as yet-to-be-identified agencies would result in any tangible benefits, especially when there are no significant operational or other problems with any Commission division, with the possible exception of the Insurance Division. However, the Commission recently addressed those problems with the appointment of a new, highly qualified superintendent who is more than willing to work cooperatively with the Commission. A more permanent solution would be to expand the Commission’s statutory authority to review and modify the decisions of the Superintendent of Insurance. Under current law, the Commission, although ultimately responsible for the Superintendent’s decisions, has no authority to review or revise them, except in very limited areas such as title insurance.”

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

The PRC would remain as a quasi-independent agency of state government – with functions partly judicial, partly executive, partly tax collecting, partly fire prevention and fire fighting.

LG/svb