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HOUSE BILL 11

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC REGULATION; REORGANIZING THE OPERATING
STRUCTURE OF THE PUBLIC REGULATION COMMISSION; CREATING THE
COMMISSION RESOURCES DIVISION WITHIN THE PUBLIC REGULATION
COMMISSION; CREATING THE OFFICE OF PUBLIC REGULATION COMMISSION
REGULATORY AFFAIRS AS AN AGENCY ADMINISTRATIVELY ATTACHED TO
THE REGULATION AND LICENSING DEPARTMENT; TRANSFERRING PERSONNEL
AND NON-REGULATORY DUTIES FROM THE PUBLIC REGULATION COMMISSION
TO THE OFFICE OF PUBLIC REGULATION COMMISSION REGULATORY
AFFAIRS; PROVIDING POWERS AND DUTIES; REQUIRING COMMISSIONERS
TO ACT IN THE PUBLIC INTEREST OF THE STATE; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE PUBLIC REGULATION COMMISSION ACT;
DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Public Regulation

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1 Commission Act is enacted to read:

2 "[NEW MATERIAL] COMMISSION RESOURCES DIVISION--
3 ORGANIZATION--CHIEF OF STAFF--STAFF--DUTIES.--

4 A. The "commission resources division" is created
5 in the public regulation commission and shall consist of staff
6 necessary to carry out the duties and responsibilities of the
7 commission, including:

- 8 (1) commission resources staff;
- 9 (2) hearing examiners; and
- 10 (3) commission resources administrative
11 services.

12 B. A chief of staff of the commission resources
13 division shall be appointed to serve a six-year term; provided
14 that the initial chief of staff shall serve a three-year term.
15 The same individual may serve multiple terms as the chief of
16 staff. If Article 11, Section 1 of the constitution of New
17 Mexico provides for the election of commissioners, the
18 governor, in consultation with the commission, and with the
19 advice and consent of the senate, shall appoint the chief of
20 staff; and if Article 11, Section 1 of the constitution of New
21 Mexico provides for the appointment of commissioners, the
22 commission shall appoint the chief of staff. The chief of
23 staff may only be removed for cause by the appointing
24 authority, and a vacancy shall be filled for the remainder of
25 the unexpired term in the same manner as the original

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1 appointment was made.

2 C. The chief of staff shall:

3 (1) manage the operations of the commission
4 resources division; and

5 (2) hire and direct staff with expertise in
6 regulatory law, engineering, utility accounting, motor carrier
7 regulation, railroad safety, pipeline safety, ambulance
8 standards, telecommunications, economics and other professional
9 or technical disciplines to carry out the duties of the
10 division. The chief of staff may hire on a temporary, term or
11 contract basis other experts or staff as the commission
12 requires for a particular case. The staff shall be subject to
13 the Personnel Act, as applicable.

14 D. Commission resources staff shall:

15 (1) serve as staff to the commission in
16 carrying out its duties and responsibilities;

17 (2) provide advice and counsel to the
18 commission, including hearing examiners, on legal or technical
19 issues and to commissioners on policy issues;

20 (3) analyze case records;

21 (4) analyze recommended decisions;

22 (5) assist the commission in the development
23 of rules;

24 (6) assist the commission in writing final
25 orders;

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1 (7) record and track post-order compliance by
2 regulated entities;

3 (8) conduct research; and

4 (9) perform other duties as required by the
5 chief of staff or the commission.

6 E. The commission resources administrative services
7 shall perform the following functions for the commission:

8 (1) case docketing;

9 (2) records management;

10 (3) budget and accounting;

11 (4) human resources;

12 (5) procurement; and

13 (6) information systems services.

14 F. The commission resources administrative services
15 shall record the rules, orders and other proceedings of the
16 commission and make a complete index to the rules, orders and
17 other proceedings; issue and attest all processes issuing from
18 the commission and affix the seal of the commission to them;
19 and preserve the seal and other property belonging to the
20 commission.

21 G. Upon request and consent of all parties to a
22 formal consumer complaint, the chief of staff, or a commission
23 resources staff member appointed by the chief of staff, may
24 arbitrate the complaint. The arbitration shall be completed
25 within a time period set by the chief of staff, and the

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1 decision may be appealed to the commission. The commission
2 shall adopt rules for arbitration of formal complaints.

3 H. Informal consumer complaints received by the
4 commission resources division against a regulated entity shall
5 be referred to the office of public regulation commission
6 regulatory affairs."

7 SECTION 2. A new section of the Public Regulation
8 Commission Act is enacted to read:

9 "[NEW MATERIAL] OFFICE OF PUBLIC REGULATION COMMISSION
10 REGULATORY AFFAIRS--DIVISIONS--DIRECTOR--DUTIES.--

11 A. The "office of public regulation commission
12 regulatory affairs" is created and is administratively attached
13 to the regulation and licensing department. The office of
14 public regulation commission regulatory affairs consists of:

- 15 (1) the legal division;
16 (2) the utility division;
17 (3) the transportation division;
18 (4) the administrative services division; and
19 (5) the consumer relations division.

20 B. The office of public regulation commission
21 regulatory affairs shall represent the public interest in
22 matters before the commission. In order to represent the
23 public interest, the office shall perform economic, accounting
24 and engineering reviews and analysis of regulated entities'
25 operations, regulatory compliance and applications and other

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1 filings before the commission to present the commission with
2 its recommendations on how the commission should fulfill its
3 responsibility to the public interest and balance the interests
4 of consumers and investors.

5 C. The governor, with the advice and consent of the
6 senate, shall appoint a director of the office of public
7 regulation commission regulatory affairs to serve a six-year
8 term. The director may only be removed for cause by the
9 governor, and the same individual may serve multiple terms as
10 the director.

11 D. The director shall:

12 (1) manage the operations of the office of
13 public regulation commission regulatory affairs;

14 (2) direct the legal, utility and
15 transportation divisions in representing the public interest in
16 matters before the commission;

17 (3) direct the work of the consumer relations
18 division; and

19 (4) hire division directors and the
20 professional, technical and support staff necessary to carry
21 out the duties of the office. Division directors and staff
22 shall be subject to the Personnel Act.

23 E. The director may:

24 (1) apply for and receive, with the governor's
25 approval, in the name of the office any public or private

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1 funds, including United States government funds, available to
2 the office to carry out its programs, duties or services;

3 (2) enter into contracts to carry out the
4 office's powers and duties; and

5 (3) adopt reasonable administrative,
6 regulatory and procedural rules as may be necessary or
7 appropriate to carry out the duties of the office.

8 F. The legal division shall serve as counsel to the
9 office of public regulation regulatory affairs and represent
10 the office in matters before the commission. The legal
11 division may present testimony and evidence and cross-examine
12 witnesses in matters before the commission.

13 G. The utility division shall serve as subject
14 matter experts in the areas of electric, natural gas, renewable
15 energy sources, telecommunications and water and wastewater
16 systems regulation.

17 H. The transportation division shall serve as
18 subject matter experts and technical staff in the areas of
19 motor carrier regulation and enforcement, railroad safety
20 enforcement, pipeline safety and ambulance standards.

21 I. The administrative services division shall
22 provide administrative services to the office of public
23 regulation commission regulatory affairs, including:

24 (1) budget and accounting;

25 (2) human resources;

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1 (3) procurement; and

2 (4) information systems services.

3 J. The consumer relations division shall:

4 (1) receive and investigate informal consumer
5 complaints and assist consumers in resolving, in a fair manner
6 and within sixty days unless extended by the director,
7 complaints against a person under the authority of the
8 commission, including mediation and other methods of
9 alternative dispute resolution; provided, however, that
10 assistance pursuant to this paragraph does not include legal
11 representation of a private complainant in an adjudicatory
12 proceeding;

13 (2) record complaints received regarding
14 quality or quantity of service provided by a regulated entity
15 or its competitors to determine general concerns of consumers.
16 A report of consumer complaints and their status shall be
17 included in the commission's annual report;

18 (3) inform the commission of the necessity for
19 and progress of corrective action against a regulated entity
20 based on complaints received against a regulated entity;

21 (4) work with the consumer protection division
22 of the attorney general's office, the governor's constituent
23 services office and other state agencies as needed to ensure
24 fair and timely resolution of complaints; and

25 (5) identify, research and advise the

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1 commission on consumer issues and assist the commission in the
2 development and implementation of consumer policies and
3 programs.

4 K. Office of public regulation commission
5 regulatory affairs staff shall not have ex parte communications
6 with commissioners or a hearing examiner assigned to a pending
7 matter before the commission, except as expressly permitted by
8 Section 8-8-17 NMSA 1978."

9 SECTION 3. Section 8-8-4 NMSA 1978 (being Laws 1998,
10 Chapter 108, Section 4) is amended to read:

11 "8-8-4. COMMISSION--GENERAL POWERS AND DUTIES.--

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

15 B. In carrying out the duties of the commission,
16 commissioners shall act in the public interest of the state.

17 [~~B-~~] C. The commission may:

18 (1) [~~subject to legislative appropriation~~]
19 appoint and employ such professional, technical and clerical
20 assistance as it deems necessary to assist it in performing its
21 powers and duties;

22 (2) delegate authority to subordinates as it
23 deems necessary and appropriate, clearly delineating such
24 delegated authority and any limitations;

25 (3) retain competent attorneys to handle the

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1 legal matters of the commission and give advice and counsel in
2 regard to any matter connected with the duties of the
3 commission and, in the discretion of the commission, to
4 represent the commission in any legal proceeding;

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

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

14 (6) conduct research and studies to improve
15 the commission's operations or the provision of services to the
16 citizens of New Mexico;

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

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

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

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

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

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

9 ~~[G.]~~ D. The commission shall:

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

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

15 ~~(3)]~~ (2) adopt rules to streamline the
16 resolution of cases before it when appropriate by:

17 (a) the use of hearing examiners;

18 (b) the taking of evidence with the
19 least delay practicable;

20 (c) limiting repetitious testimony; and

21 (d) adopting procedures for resolving

22 cases in ways other than by trial-type hearings when

23 appropriate, including consent calendars, conferences,

24 settlements, mediation, arbitration and other alternative

25 dispute resolution methods and the use of staff decisions; and

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1 [~~(4)~~] (3) provide a toll-free telephone number
2 and publish it and the commission's general telephone number in
3 local telephone directories.

4 [~~D-~~] E. A majority of the commission constitutes a
5 quorum for the transaction of business; provided, however, that
6 a majority vote of the commission is needed for a final
7 decision of the commission."

8 SECTION 4. TEMPORARY PROVISION--EXEMPT AND CLASSIFIED
9 PERSONNEL AND POSITIONS--APPOINTMENT--ADDITIONAL PERSONNEL.--On
10 the effective date of this act:

11 A. all classified employees and classified
12 positions, filled or not filled, of the legal division of the
13 public regulation commission, whose functions are being
14 transferred to the office of public regulation commission
15 regulatory affairs, shall be transferred to the office of
16 public regulation commission regulatory affairs;

17 B. all classified employees and classified
18 positions, filled or not filled, of the transportation division
19 of the public regulation commission, whose functions are being
20 transferred to the office of public regulation commission
21 regulatory affairs, shall be transferred to the office of
22 public regulation commission regulatory affairs;

23 C. all classified employees and classified
24 positions, filled or not filled, of the utility division of the
25 public regulation commission, whose functions are being

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1 transferred to the office of public regulation commission
2 regulatory affairs, shall be transferred to the office of
3 public regulation commission regulatory affairs;

4 D. all classified employees and classified
5 positions, filled or not filled, of the administrative services
6 division of the public regulation commission, whose functions
7 are being transferred to the office of public regulation
8 commission regulatory affairs, shall be transferred to the
9 office of public regulation commission regulatory affairs;

10 E. all classified employees and classified
11 positions, filled or not filled, of the consumer relations
12 division of the public regulation commission shall be
13 transferred to the office of public regulation commission
14 regulatory affairs;

15 F. the governor shall appoint the newly created
16 chief of staff of the commission resources division and the
17 director of the office of public regulation commission
18 regulatory affairs within a reasonable time;

19 G. after appointment, the chief of staff of the
20 commission resources division may hire additional personnel in
21 accordance with the Personnel Act;

22 H. after appointment, the director of the office of
23 public regulation commission regulatory affairs may hire
24 division directors for the newly created divisions and
25 additional personnel in accordance with the Personnel Act;

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1 I. subject to the Personnel Act, any qualified
2 person, including present or past employees of the public
3 regulation commission, may apply for any position in the
4 commission resources division or the office of public
5 regulation commission regulatory affairs; and

6 J. the executive assistants selected by each
7 commissioner shall remain exempt employees of the public
8 regulation commission.

9 SECTION 5. TEMPORARY PROVISION--TRANSFER OF
10 APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, MONEY AND
11 CONTRACTS TO THE OFFICE OF PUBLIC REGULATION COMMISSION
12 REGULATORY AFFAIRS.--On the effective date of this act:

13 A. all money, appropriations, records, furniture,
14 equipment, supplies and other property of the legal division,
15 transportation division, utility division, administrative
16 services division and consumer relations division of the public
17 regulation commission related to duties transferred to the
18 office of public regulation commission regulatory affairs, as
19 necessary, shall be transferred to the office of public
20 regulation commission regulatory affairs;

21 B. all existing contracts and agreements in effect
22 pertaining to the duties of the legal division, transportation
23 division, utility division, administrative services division
24 and consumer relations division of the public regulation
25 commission transferred to the office of public regulation

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1 commission regulatory affairs shall be binding and effective on
2 the office of public regulation commission regulatory affairs;
3 and

4 C. the rules, orders and decisions of the legal
5 division, transportation division, utility division and
6 consumer relations division of the public regulation commission
7 shall remain in effect until repealed or amended.

8 SECTION 6. REPEAL.--Sections 8-8-5 through 8-8-8 and
9 8-8-10 through 8-8-13 NMSA 1978 (being Laws 1998, Chapter 108,
10 Sections 5 through 8 and 10 through 12; Laws 2000, Chapter 100,
11 Section 1 and Laws 2000, Chapter 102, Section 1; and Laws 1998,
12 Chapter 108, Section 13, as amended) are repealed.

13 SECTION 7. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.