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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 2/3/2020
LAST UPDATED 2/18/2020 HB CS/HB11/aHF1#1
SHORT TITLE PRC Reorganization and Transfer Duties SB _____
ANALYST Martinez/Daly/Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	(\$122.4)	(\$489.7)	(\$489.7)	(\$1,101.8)	Recurring	Fire Protection Fund
	\$122.4	\$489.7	\$489.7	\$1,101.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB245

SOURCES OF INFORMATION

LFC Files

Responses Received on the Original Bill and used where relevant, from:

Regulation and Licensing Department (RLD)

Public Regulation Commission (PRC)

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

State Personnel Office (SPO)

SUMMARY

Synopsis of HF1#1 Amendment

The House Floor #1 Amendments to the House Judiciary Committee Substitute for House Bill 11 requires the Chief of Staff shall be appointed as soon as practical on or after the effective date of this 2020 Act, subject to senate confirmation at the next legislative session, and shall serve for a term ending December 31, 2023. The amendment clarifies that the Chief of Staff, who may only be removed for cause by the appointing authority, must first be provided that notice and an opportunity for a hearing, and the Governor and a majority of the commissioners must approve the removal.

The amendments also require the Office to carry out those duties delegated to it by the commission. Additionally, the director of the Office may only be removed for cause by the Governor after notice and an opportunity for a hearing. A vacancy in the director's position shall

be filled for the remainder of the unexpired term in the same manner as the original appointment was made. The amendment authorizes the commission to delegate authority to the Office.

The amendments also make technical corrections to clarify the use of the pipeline safety fund in Section 17.

The amendments includes temporary provision transferring all classified employees probationary employees, temporary employees and classified employees whose functions are not being transferred to the Office to the commission Resources Division. Lastly, the amendment clarifies that the Fire Marshal Division shall remain in the Public Regulation Commission.

The amendments remove the emergency clause.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

Synopsis of Original Bill

House Judiciary Committee substitute for House Bill 11 restructures the staff of the Public Regulation Commission (PRC). It creates within the PRC the Commission Resources Division (Division). It also creates, as a new stand-alone agency, the Office of Public Regulation Commission Regulatory Affairs (Office), and transfers five divisions currently within PRC to this new Office. The bill includes temporary provisions transferring all classified employee and classified positions, money, appropriations records, furniture and other property of those five divisions, as well as existing contracts and agreements pertaining to the duties of those divisions.

The Division consists of staff necessary to carry out the duties and responsibilities of the Commission, and includes staff, hearing examiners, administrative services, and pipeline safety bureau. A chief of staff manages the Division and directs a staff with the expertise as spelled out in the bill. If Article 11, Section 1 of the constitution of New Mexico provides for the election of Commissioners, the governor shall provide the commission with a list of finalists for the position of chief of staff and, within thirty days, the commission shall select a person from the list to be appointed chief of staff. If the commission fails to select a Chief of Staff within thirty days, the Governor shall appoint the Chief of Staff. If law provides for appointment of commissioners, commissioners appoint the Chief of Staff. The division's Chief of Staff is subject to Senate confirmation and is subject to removal only by the appointing authority. The Chief of Staff of the commission resources division shall oversee operations of the Fire Marshal Division.

The new Office shall represent the public interest in matters before PRC. It is administratively attached to RLD, and consists of existing divisions currently within the PRC: the legal division, the utility division, the transportation division, the administrative services division, and the consumer relations division. It shall perform necessary reviews and analysis of filing before PRC to present recommendations to the Commission as to how to fulfill its responsibility to the public interest and balance the interests of consumers and investors. The Office may seek an order from the commission for the production of books, records, accounts or documents in accordance with Section 6 E.

The duties of each division are set out in Section 2(D) through (J) of the bill. In particular, the legal division serves as counsel to the Office, and represents it before the PRC. The consumer

relations division, among other duties assigned to it, handles informal consumer complaints against a person under the authority of the Commission and assists consumers in resolving those complaints. The Office shall be managed by a Director appointed by the Governor subject to advice and consent of the Senate, who is subject to removal only by the Governor. Staff members of the Office are expressly prohibited from ex parte communications with a Commission or hearing examiner except as expressly permitted by existing law. See Section 8-8-17, NMSA 1978.

Section 8 provides authority for the Office in hearing procedures for change of rate of small water and sewer utilities, and regulation of retail rates of incumbent rural telecommunications carriers. Section 10 also provides authority, under the Motor Carrier Act, for the Office to hold a public hearing specific to a protest or a request. Section 11 provides authority for the Office to request a public hearing on an application whenever a protest is filed concerning the application during the notice period. If no objection, protest or request for hearing by Office is filed during the notice period, the commission may grant the application by ministerial action, if it complies with the provisions of the Motor Carrier Act and commission rules.

New language in existing law governing the Commission expressly requires the commissioners act in the public interest of the state, appoint and employ administrative staff as it deems necessary and may direct the chief of staff of the commission resources division to hire, subject to the Personnel Act, professional and technical staff, as needed and removes the provision requiring surety bonds for all PRC employees.

Section 16 and Section 17 provides the chief of staff of the Commission Resources Division of the PRC or the Chief of Staff Representative to make payments from the transportation fund, and the pipeline safety fund.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

Currently, the Policy & Regulation program at PRC includes most of the divisions being transferred to the Office with the exception of the Commissioners, hearing examiners, and other administrative services functions. This program's operating budget for FY20 was \$8 million which included general fund transfers of \$7.3 million. Until PRC breaks out the portion of revenue and expenses attributable to the transfer of those five divisions (bureaus), it is unknown what will be available to fund a new Commission Resources Division at the PRC.

The fire protection fund receives the 3 percent premium tax on auto and fire insurance collected by the Office of the Superintendent of Insurance (OSI). The fees are collected in the insurance suspense fund within OSI and transferred to the fire protection fund at PRC. It should be noted that fire protection funds are currently used to support all programs within the Public Regulation Commission, as noted below.

1. Policy and Regulation Program: \$489.7
2. Public Safety: \$3,643.3, and
3. Program Support: \$661.5

It is unclear if fire protection fund revenue currently used to cover some administrative costs of

those five divisions within the Policy and Regulation Program would still be available, if not it may need to be replaced by general fund revenue in the amount of \$1.1 million as indicated in the table on page 1. It should be noted that HJC substitute for HB11 administratively attaches five new divisions to RLD. However, according to RLD, the bill has no fiscal impact on the Department.

HJC substitute for House Bill 11 includes a temporary provision that includes the transfer of approximately 70 FTE, equipment, supplies, records, and other property currently at PRC to the new Office. It should be noted that there may be costs associated with moving to a new location or remodeling the existing location to accommodate the reorganization. For example, in the 2019 legislative session, Chapter 48 (Senate Bill 22) included \$1 million dollars to establish new field offices and transfer programs from other departments to the new Early Childhood Education and Care Department. Also included in the General Appropriation Act of 2020 is \$564 thousand for costs associated with the relocation of the AOC.

The General Services Department's office space standard suggests one FTE per 215 per square foot. If the new Office is located in Santa Fe, the average cost per square foot is \$22.00. Using these metrics, a new lease for approximately 15,000 square feet could cost as much as \$330 thousand annually. However, the 70 FTE could be housed in existing state space. Since 2008, state employment has fallen by 3.5 thousand workers while the number of state facilities has remained constant resulting in vacant state-owned space that might be repurposed to accommodate these transferred employees in the event relocation is necessary.

It is unclear if this reorganization will result in additional employees. If so, the average cost of one state employee is approximately \$72.9 thousand, including benefits.

SIGNIFICANT ISSUES

PRC suggests that having a chief of staff appointed by the Governor providing advice to the elected Commission may create a conflict of interest. It also expresses concern that the emergency clause may make actual implementation of the transitions required by this bill difficult.

The State Personnel Office notes:

The classified employees in the PRC's existing Legal Division, Utility Division, Transportation Division, Administrative Services Division, and Consumer Relations Division would be transferred to the Regulatory Affairs. Therefore, existing classified staff would remain intact and move with their respective divisions. Job classifications in the divisions moving to RLD would remain classified according to the State Personnel Office's classification system. HB11 brings the PRC's exempt division directors into the classified service.

The Office of the Attorney General notes:

The bill, in Section 2 and Section 3, uses the term "public interest" but it is undefined and may be vague. Providing a definition of "public interest" as used in the bill may be advisable. Section 2 of the bill requires the newly created office of public regulation commission regulatory affairs to represent the public

interest, and goes on to say that it should perform reviews prior to presenting the commission with recommendations on how it should fulfill its responsibility to the public interest and balance the interests of consumers and investors. The phrasing of this sentence may mean that the balance of interests is somehow different from the public interest, but it may not be different. In Section 3, the bill provides “In carrying out the duties of the commission, commissioners shall act in the public interest of the state.” Thus, a definition of public interest, or a listing of the issue to be considered when determining the public interest may help avoid ambiguity and vagueness.

The Public Regulation Commission notes:

The proposed legislation assigns regulatory and enforcement duties to the new Commission Resources Division that the current Utility, Transportation and Legal Division staff now normally perform, while eliminating such functions and responsibilities from the proposed Office of Regulatory Affairs, this may create problems.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJC substitute for House Bill 11 relates to and may conflict with SB245, which removes the State Fire Marshal’s Office from the PRC and places it as its own division at the Department of Homeland Security and Emergency Management.

OTHER SUBSTANTIVE ISSUES

The bill provides that the new Office shall be administratively attached to RLD. Pursuant to existing law, the Office will exercise its functions independently of that department and without its approval or control, but must submit its budget requests, along with any reports required of it by law or by the governor, through the department. RLD may mutually agree to provide budgeting, record-keeping and related administrative and clerical assistance to the Office, but must include the Office’s budget requests in the department’s budget as submitted and without change. See Section 9-1-7 NMSA 1978.

The Public Regulation Commission notes:

The Constitutional Amendment adopted during the 2019 Legislative Session is on the November 2020 ballot for the general public’s consideration. If passed, this amendment would not only convert the PRC from 5 elected officials to 3 appointed it also limits the Commission’s jurisdiction to public utilities.

JM/MD/AHO/al/rl/al