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FISCAL IMPACT REPORT

SPONSOR Munoz LAST UPDATED _____
ORIGINAL DATE 2/23/23
SHORT TITLE PRC Changes BILL NUMBER Senate Bill 434
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 232 and Senate Bill 136

Sources of Information

LFC Files

Responses Received From

Office of Attorney General (NMAG)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Senate Bill 434

Senate Bill 434 (SB434) would clarify two of three members of the three-member Public Regulation Commission constitute a quorum for public business, with public business specifically excluding the hiring of staff, contractors, or attorneys; the organization of office responsibilities; research into ways to improve the commission's operations; and applications for grants.

To further clarify what constitutes a quorum, SB434 states advisory staff (professional staff with an expertise in regulatory law, engineering, economics, or other technical discipline) may discuss public business and policy with an individual commissioner or a series of individual commissioners without establishing a quorum. The bill requires any final decision resulting from those conversations be made at a public hearing.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill does not create nor eliminate additional duties or expenses and has no fiscal impact.

SIGNIFICANT ISSUES

The title of SB434 expresses the intent of the legislation is to exclude certain internal matters of the commission from the conditions of the Open Meetings Act. The commission comprises three members; without exclusions, two commissioners could not discuss employees or the operations of the agency without meeting the public notification and other requirements of the Open Meetings Act.

PRC staff, in analysis that explicitly states it does not reflect the position of the commission, says SB434 would “significantly” improve the ability of advisory staff to speak with commissioners “efficiently and freely.”

However, NMAG raises concerns the bill contravenes the intent of the Open Meetings Act to ensure “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”

It says the provision in the bill that allows for a series of discussions between advisory staff and individual commissioners authorizes “rolling quorums” and is prohibited by the Open Meetings Act:

Under similar circumstances regarding rolling quorums where public bodies have attempted to use a non-quorum committee or attempted to exempt discussions from being held in a public forum; case law has determined that public bodies may not circumvent the provisions of the OMA. ... Here, potentially using advisory staff as a medium to conduct negotiations between commission members outside of the public’s view would likely constitute a rolling quorum as defined by the OMA, possibly creating a conflict of laws with the provisions of this bill. The provisions of the bill may potentially allow public business and discussions by the commission to be conducted outside of the public’s knowledge in perpetuity except for the formality of a final public vote on matters that likely have been debated and decided by the commission outside of a public meeting.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB434 is related to House Bill 232, which exempts information on critical infrastructure or information technology from the Inspection of Public Records Act, and Senate Bill 136, concerning PRC commissioner salaries.

TECHNICAL ISSUES

PRC staff recommend amending the bill to clarify advisory staff could speak to more than one commissioner at a time about the topics excluded from public business.

HG/al/ne