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AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; DISTINGUISHING BETWEEN THE COMMISSION AND THE AGENCY THAT SUPPORTS THE COMMISSION; CLARIFYING AGENCY STATUTORY DUTIES; MAKING OTHER CLARIFYING AND CLEANUP CHANGES TO THE PUBLIC REGULATION COMMISSION ACT.

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

SECTION 1. Section 62-19-2 NMSA 1978 (being Laws 1998, Chapter 108, Section 2, as amended) is amended to read:

"62-19-2. DEFINITIONS.--As used in the Public Regulation Commission Act:

A. "agency" means the institution and staff that support the commission, including all employees;

B. "commission" means the public regulation commission, which is the three-member-appointed regulatory and adjudicatory body;

C. "commissioner" means a person appointed to the public regulation commission; and

D. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity."

SECTION 2. Section 62-19-4 NMSA 1978 (being Laws 2020, Chapter 9, Section 18) is amended to read:

"62-19-4. PUBLIC REGULATION COMMISSION NOMINATING

1 COMMITTEE.--

2 A. The "public regulation commission nominating
3 committee" is created and consists of seven members who are:

4 (1) knowledgeable about public utility
5 regulation;

6 (2) not employed by or on behalf of or have
7 a contract with a public utility that is regulated by the
8 commission;

9 (3) not applicants or nominees for a
10 position on the commission; and

11 (4) appointed as follows:

12 (a) four members appointed one each
13 by the speaker of the house of representatives, the
14 minority floor leader of the house of representatives, the
15 president pro tempore of the senate and the minority floor
16 leader of the senate, with no more than two members being
17 from the same political party;

18 (b) two members appointed one each by
19 the secretary of energy, minerals and natural resources and
20 the secretary of economic development; and

21 (c) one member who is a member of an
22 Indian nation, tribe or pueblo appointed by the governor.

23 B. A committee member shall:

24 (1) be a resident of New Mexico;

25 (2) serve a four-year term; and

1 (3) serve without compensation, but shall be
2 reimbursed for expenses incurred in pursuit of the member's
3 duties on the committee pursuant to the Per Diem and
4 Mileage Act.

5 C. The committee and individual members shall be
6 subject to the Governmental Conduct Act, the Inspection of
7 Public Records Act, the Financial Disclosure Act and the
8 Open Meetings Act.

9 D. Administrative support shall be provided to the
10 committee by the agency.

11 E. Initial appointments to the committee shall be
12 made by the appointing authorities prior to July 1, 2022.
13 Subsequent appointments shall be made no later than thirty
14 days before the end of a term.

15 F. The first meeting of the appointed members of
16 the committee shall be held prior to September 1, 2022. The
17 committee shall select one member to be chair and one member
18 to be secretary. Following the first meeting, the committee
19 shall meet as often as necessary in order to submit a list to
20 the governor of no fewer than five qualified nominees for
21 appointment to the commission for the terms beginning
22 January 1, 2023. The list shall be developed to provide
23 geographical diversity, and nominees on the list shall be
24 from at least three different counties of the state.

25 G. Subsequent to January 1, 2023, the committee

1 shall meet at least ninety days prior to the date on which
2 the term of a commissioner ends and as often as necessary
3 thereafter in order to submit a list to the governor, at
4 least thirty days prior to the beginning of the new term, of
5 no fewer than two qualified nominees from diverse
6 geographical areas of the state for appointment to the
7 commission for each commissioner position term that is
8 ending.

9 H. Upon the occurrence of a vacancy in a
10 commissioner position, the committee shall meet within thirty
11 days of the date of the beginning of the vacancy and as often
12 as necessary thereafter in order to submit a list to the
13 governor, within sixty days of the first meeting after the
14 vacancy occurs, of no fewer than two qualified nominees from
15 diverse geographical areas of the state for appointment to
16 the commission to fill the remainder of the term of each
17 commissioner position that is vacant.

18 I. If a position on the committee becomes vacant
19 during a term, a successor shall be selected in the same
20 manner as the original appointment for that position and
21 shall serve for the remainder of the term of the position
22 vacated.

23 J. The committee shall actively solicit, accept
24 and evaluate applications from qualified individuals for a
25 position on the commission and may require an applicant to

1 submit any information it deems relevant to the consideration
2 of the individual's application.

3 K. The committee shall select nominees for
4 submission to the governor who, in the committee's judgment,
5 are best qualified to serve as a member of the commission.

6 L. A majority vote of all members of the committee
7 in favor of a person is required for that person to be
8 included on the list of qualified nominees submitted to the
9 governor."

10 SECTION 3. Section 62-19-6 NMSA 1978 (being Laws 2013,
11 Chapter 64, Section 2, as amended) is amended to read:

12 "62-19-6. CONTINUING EDUCATION REQUIREMENTS FOR
13 COMMISSIONERS.--

14 A. A commissioner shall complete:

15 (1) an ethics certificate course provided in
16 person or online by a New Mexico public post-secondary
17 educational institution in the first twelve-month period
18 after taking office and at least two hours of ethics at a
19 course by such educational institution or by a recognized
20 provider of a professional licensing board by which a
21 commissioner is licensed in each subsequent twelve-month
22 period that the commissioner serves in office; and

23 (2) at least thirty-two hours of continuing
24 education relevant to the work of the commission in each
25 twelve-month period that the commissioner serves in office.

1 Continuing education courses shall be endorsed by the
2 national association of regulatory utility commissioners or
3 by a licensing or professional association for a qualifying
4 area of study.

5 B. A commissioner shall be responsible for having
6 the endorsing organization submit certification of completion
7 of the hours of education required pursuant to Subsection A
8 of this section to the chief of staff.

9 C. If a commissioner fails to comply with the
10 education requirements in Subsection A of this section by the
11 last day of a twelve-month period, the matter shall be
12 referred to the ethics commission for review, sanctions and
13 discipline."

14 SECTION 4. Section 62-19-8 NMSA 1978 (being Laws 1998,
15 Chapter 108, Section 19, as amended) is amended to read:

16 "62-19-8. PROHIBITED ACTS--NOMINEES--COMMISSIONERS AND
17 EMPLOYEES.--

18 A. As used in this section, in addition to the
19 definitions provided in Section 62-19-2 NMSA 1978:

20 (1) "affiliated interest" means a person who
21 directly controls or is controlled by or is under common
22 control with a regulated entity, including an agent,
23 representative, attorney, employee, officer, owner, director
24 or partner of an affiliated interest. For the purposes of
25 this definition, "control" includes the possession of the

1 power to direct or cause the direction of the management and
2 policies of a person, whether directly or indirectly, through
3 the ownership, control or holding with the power to vote of
4 ten percent or more of the person's voting securities;

5 (2) "intervenor" means a person who is
6 intervening as a party in an adjudicatory matter before the
7 commission or has intervened in an adjudicatory matter before
8 the commission within the preceding twenty-four months,
9 including an agent, representative, attorney, employee,
10 officer, owner, director, partner or member of an intervenor;

11 (3) "pecuniary interest" includes owning or
12 controlling securities; serving as an officer, director,
13 partner, owner, employee, attorney or consultant; or
14 otherwise benefiting from a business relationship.

15 "Pecuniary interest" does not include an investment in a
16 mutual fund or similar third-party-controlled investment,
17 pension or disability benefits or an interest in capital
18 credits of a rural electric cooperative or telephone
19 cooperative because of current or past patronage; and

20 (4) "regulated entity" means a person whose
21 charges for services to the public are regulated by the
22 commission and includes any direct or emerging competitors of
23 a regulated entity and includes an agent, representative,
24 attorney, employee, officer, owner, director or partner of
25 the regulated entity.

1 B. In addition to the requirements of the
2 Financial Disclosure Act and the Governmental Conduct Act,
3 nominees for appointment to the commission, commissioners and
4 employees of the agency shall comply with the requirements of
5 the Public Regulation Commission Act, as applicable.

6 C. A nominee for appointment to the commission
7 shall not solicit or accept anything of value, either
8 directly or indirectly, from a person whose charges for
9 services to the public are regulated by the commission. For
10 the purposes of this subsection, "anything of value" includes
11 money, in-kind contributions and volunteer services to the
12 nominee or the nominee's organization, but does not include
13 pension or disability benefits.

14 D. Commissioners and employees of the agency shall
15 not:

16 (1) accept anything of value from a
17 regulated entity, affiliated interest or intervenor. For the
18 purposes of this paragraph, "anything of value" does not
19 include:

20 (a) the cost of refreshments totaling
21 no more than twenty dollars (\$20.00) a day or refreshments at
22 a public reception or other public social function that are
23 available to all guests equally;

24 (b) inexpensive promotional items that
25 are available to all customers of the regulated entity,

1 affiliated interest or intervenor; or

2 (c) pension or disability benefits
3 received from a regulated entity, affiliated interest or
4 intervenor;

5 (2) have a pecuniary interest in a regulated
6 entity, affiliated interest or intervenor, and if a pecuniary
7 interest in an intervenor develops, the commissioner or
8 employee shall divest that interest or self recuse from the
9 proceeding with the intervenor interest; or

10 (3) solicit any regulated entity, affiliated
11 interest or intervenor to appoint a person to a position or
12 employment in any capacity.

13 E. After leaving the commission or agency:

14 (1) a former commissioner shall not be
15 employed or retained in a position that requires appearances
16 before the commission by a regulated entity, affiliated
17 interest or intervenor within two years of the former
18 commissioner's separation from the commission;

19 (2) a former agency employee shall not
20 appear before the commission representing a party to an
21 adjudication or a participant in a rulemaking within one year
22 of ceasing to be an employee; and

23 (3) a former commissioner or agency employee
24 shall not represent a party before the commission or a court
25 in a matter that was pending before the commission while the

1 commissioner or agency employee was associated with the
2 commission or agency and in which the former commissioner or
3 agency employee was personally and substantially involved in
4 the matter.

5 F. The attorney general or a district attorney may
6 institute a civil action in the district court for Santa Fe
7 county or, in the attorney general's or a district attorney's
8 discretion, the district court for the county in which a
9 defendant resides if a violation of this section has occurred
10 or to prevent a violation of this section. A civil penalty
11 may be assessed in the amount of two hundred fifty dollars
12 (\$250) for each violation, not to exceed five thousand
13 dollars (\$5,000)."

14 SECTION 5. Section 62-19-9 NMSA 1978 (being Laws 1998,
15 Chapter 108, Section 4) is amended to read:

16 "62-19-9. COMMISSION--AGENCY--GENERAL POWERS AND
17 DUTIES.--

18 A. The commission shall administer and enforce the
19 laws with which it is charged and has every power conferred
20 by law.

21 B. The commission may:

22 (1) subject to legislative appropriation,
23 appoint and employ such professional, technical and clerical
24 assistance as it deems necessary to assist it in performing
25 its powers and duties;

1 (2) through the chief of staff, delegate
2 authority to subordinates as it deems necessary and
3 appropriate, clearly delineating such delegated authority and
4 any limitations;

5 (3) retain competent attorneys to handle
6 the legal matters of the commission or agency, as applicable;
7 give advice and counsel in regard to any matter connected
8 with the duties of the commission or agency; and, in
9 the discretion of the commission or agency, provide
10 representation in any legal proceeding;

11 (4) organize the agency into organizational
12 units as necessary to enable it to function most efficiently,
13 subject to provisions of law requiring or establishing
14 specific organizational units;

15 (5) take administrative action by issuing
16 orders not inconsistent with law to assure implementation of
17 and compliance with the provisions of law for which the
18 commission is responsible and to enforce those orders by
19 appropriate administrative action and court proceedings;

20 (6) conduct research and studies to improve
21 the agency's operations or the provision of services to the
22 residents of New Mexico;

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

25 (8) apply for and accept grants and

1 donations in the name of the state to carry out its powers
2 and duties;

3 (9) enter into contracts to carry out its
4 powers and duties;

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

8 (11) cooperate with tribal and pueblo
9 governments on topics over which the commission and the other
10 governments have jurisdiction and conduct joint
11 investigations, hold joint hearings and issue joint or
12 concurrent orders as appropriate; and

13 (12) apply to the district court for
14 injunctions to prevent violations of any laws that it
15 administers or rules or orders adopted pursuant to those
16 laws.

17 C. The commission shall:

18 (1) prepare an annual budget for submission
19 to the legislature;

20 (2) adopt rules to streamline the resolution
21 of cases before it when appropriate by:

22 (a) the use of hearing examiners;

23 (b) the taking of evidence with the
24 least delay practicable;

25 (c) limiting repetitious testimony; and SB 109
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1 (d) adopting procedures for resolving
2 cases in ways other than by trial-type hearings when
3 appropriate, including consent calendars, conferences,
4 settlements, mediation, arbitration and other alternative
5 dispute resolution methods and the use of staff decisions;
6 and

7 (3) provide a toll-free telephone number and
8 publish it and the agency's general telephone number in local
9 telephone directories and on the agency's website.

10 D. A majority vote of the commission is needed
11 for a final decision of the commission for matters
12 involving public business. As used in this subsection,
13 "public business" means matters within the commission's
14 constitutional or statutory regulatory or adjudicatory powers
15 and duties and does not include matters pertaining to agency
16 operations such as those enumerated in Paragraphs (1), (3),
17 (4), (6), (8) and (9) of Subsection B of this section."

18 SECTION 6. Section 62-19-11 NMSA 1978 (being Laws 1998,
19 Chapter 108, Section 5, as amended) is amended to read:

20 "62-19-11. CHIEF OF STAFF--DIVISION DIRECTORS--OTHER
21 STAFF.--

22 A. The commission shall appoint a "chief of staff"
23 who is responsible for the day-to-day operations of the
24 agency under the general direction of the commission. The
25 chief of staff shall serve at the pleasure of the commission.

1 B. With the consent of the commission, the chief
2 of staff shall appoint division directors. Appointments
3 shall be made without reference to party affiliation and
4 solely on the ground of fitness to perform the duties of
5 their offices.

6 C. Each director, with the consent of the chief of
7 staff, shall employ such professional, technical and support
8 staff as necessary to carry out the duties of the director's
9 division. Employees shall be hired solely on the ground of
10 their fitness to perform the job for which they are hired.
11 Division staff are subject to the provisions of the Personnel
12 Act."

13 SECTION 7. Section 62-19-12 NMSA 1978 (being Laws 1998,
14 Chapter 108, Section 6, as amended) is amended to read:

15 "62-19-12. AGENCY--ORGANIZATIONAL UNITS.--

16 A. The agency shall include the following
17 organizational units:

- 18 (1) the administrative services division;
- 19 (2) the consumer relations division;
- 20 (3) the legal division;
- 21 (4) the utility division; and
- 22 (5) the pipeline safety bureau.

23 B. The agency shall perform the duties outlined in
24 Sections 62-19-8 through 62-19-19 NMSA 1978, which may be
25 carried out by any organizational unit within the agency."

1 SECTION 8. Section 62-19-13 NMSA 1978 (being Laws 1998,
2 Chapter 108, Section 7, as amended) is amended to read:

3 "62-19-13. ADMINISTRATIVE SERVICES DIVISION--CHIEF
4 CLERK.--

5 A. The administrative services division shall
6 record the judgments, rules, orders and other proceedings of
7 the commission and make a complete index to the judgments,
8 rules, orders and other proceedings; issue and attest all
9 processes issuing from the commission and affix the seal of
10 the commission to them; and preserve the seal and other
11 property belonging to the commission.

12 B. The administrative services division may
13 perform the following functions:

- 14 (1) case docketing;
- 15 (2) budget and accounting;
- 16 (3) personnel services;
- 17 (4) procurement; and
- 18 (5) information systems services."

19 SECTION 9. Section 62-19-14 NMSA 1978 (being Laws 1998,
20 Chapter 108, Section 8) is amended to read:

21 "62-19-14. CONSUMER RELATIONS DIVISION.--

22 A. The consumer relations division shall:

23 (1) receive and investigate nondocketed
24 consumer complaints and assist consumers in resolving, in a
25 fair and timely manner, complaints against a person under the

1 authority of the commission, including mediation and other
2 methods of alternative dispute resolution; provided, however,
3 that assistance pursuant to this paragraph does not include
4 legal representation of a private complainant in an
5 adjudicatory proceeding;

6 (2) work with the consumer protection
7 division of the state department of justice, the governor's
8 constituent services office and other state agencies as
9 needed to ensure fair and timely resolution of complaints;

10 (3) advise the commission on how to maximize
11 public input into commission proceedings, including ways to
12 eliminate language, disability and other barriers;

13 (4) identify, research and advise the
14 commission on consumer issues;

15 (5) assist the commission in the development
16 and implementation of consumer policies and programs; and

17 (6) perform such other duties as prescribed
18 by the chief of staff.

19 B. All complaints received by the consumer
20 relations division with regard to quality or quantity of
21 service provided by a regulated entity or its competitors
22 shall be recorded by the division for the purpose of
23 determining general concerns of consumers. A report of
24 consumer complaints and their status shall be included in the
25 commission's annual report."

1 SECTION 10. Section 62-19-15 NMSA 1978 (being
2 Laws 1998, Chapter 108, Section 10) is amended to read:

3 "62-19-15. LEGAL DIVISION.--

4 A. The commission shall set minimum requirements
5 for the director of the legal division, including membership
6 in the New Mexico bar and administrative and supervisory
7 experience.

8 B. The legal division, under the direction of the
9 chief of staff, shall:

10 (1) provide legal counsel for the commission
11 in matters not involving advice on contested proceedings
12 before the commission; and

13 (2) provide legal counsel to all divisions,
14 including the legal component of the staff that represents
15 the public interest in matters before the commission."

16 SECTION 11. Section 62-19-17 NMSA 1978 (being
17 Laws 1998, Chapter 108, Section 12, as amended) is amended to
18 read:

19 "62-19-17. UTILITY DIVISION.--

20 A. The utility division shall serve as staff to
21 the commission in the regulation of electric, natural gas,
22 renewable energy sources, telecommunications and water and
23 wastewater systems as provided by law.

24 B. The commission shall set minimum educational
25 and experience requirements for the director of the utility

1 division.

2 C. The utility division shall represent the public
3 interest in utility matters before the commission and may
4 present testimony and evidence and cross-examine witnesses.

5 In order to represent the public interest, the utility
6 division shall present to the commission its beliefs on how
7 the commission should fulfill its responsibility to balance
8 the public interest, consumer interest and investor interest.

9 D. Utility division staff shall not have ex parte
10 communications with commissioners or a hearing examiner
11 assigned to a utility case, except as expressly permitted
12 pursuant to Section 62-19-23 NMSA 1978."

13 SECTION 12. Section 62-19-18 NMSA 1978 (being
14 Laws 2000, Chapter 100, Section 1 and Laws 2000, Chapter 102,
15 Section 1) is amended to read:

16 "62-19-18. TELECOMMUNICATIONS BUREAU.--

17 A. The "telecommunications bureau" is created in
18 the utility division of the agency.

19 B. The telecommunications bureau shall:

20 (1) review disputes between
21 telecommunications providers;

22 (2) investigate each complaint on an
23 expedited basis;

24 (3) address other telecommunications-related
25 duties as required by the New Mexico Telecommunications Act

1 and the commission; and

2 (4) recommend actions to the commission.

3 C. Each complaint shall be resolved by the
4 commission within sixty days unless extended for good cause
5 by an order of the commission or hearing examiner that states
6 with specificity the reason for and length of the extension."

7 SECTION 13. Section 62-19-20 NMSA 1978 (being
8 Laws 1998, Chapter 108, Section 14, as amended) is amended to
9 read:

10 "62-19-20. HEARING EXAMINERS.--

11 A. The commission may appoint a commissioner or a
12 hearing examiner to preside over any matter before the
13 commission, including rulemakings, adjudicatory hearings and
14 administrative matters.

15 B. A hearing examiner may provide the commission
16 with a recommended decision on the matter assigned to the
17 hearing examiner, including findings of fact and conclusions
18 of law. A recommended decision shall be provided to the
19 parties, and they may file exceptions to the decision prior
20 to the final decision of the commission.

21 C. When the commission has appointed a hearing
22 examiner to preside over a matter, at least one member of the
23 commission shall, at the request of a party to the
24 proceedings, attend oral argument."

25 SECTION 14. Section 62-19-21 NMSA 1978 (being

1 Laws 1998, Chapter 108, Section 15, as amended) is amended to
2 read:

3 "62-19-21. COMMISSION RULES--PROCEDURES FOR ADOPTION.--
4 Unless otherwise provided by law, no rule affecting a person
5 outside the commission shall be adopted, amended or repealed
6 except as provided in the State Rules Act."

7 SECTION 15. Section 62-19-22 NMSA 1978 (being
8 Laws 1998, Chapter 108, Section 16) is amended to read:

9 "62-19-22. RECORD OF PROCEEDINGS.--Unless otherwise
10 provided by law, the commission may by rule provide that oral
11 proceedings before the commission may be taken by any means
12 that provides a full and complete record, including tape
13 recording or stenography. The commission by rule shall
14 determine when tape recordings are transcribed. A party to
15 the proceeding may request a copy of a tape recording or a
16 written transcript if one is provided. The agency may charge
17 a reasonable fee for a copy of a proceeding. Copy costs
18 shall be determined by the commission by rule, and money
19 collected shall be deposited in the general fund."

20 SECTION 16. Section 62-19-23 NMSA 1978 (being
21 Laws 1998, Chapter 108, Section 17, as amended) is amended to
22 read:

23 "62-19-23. PROHIBITED AND PERMITTED COMMUNICATIONS.--

24 A. A commissioner shall not initiate, permit or
25 consider a communication directly or indirectly with a party

1 or the party's representative outside the presence of the
2 other parties concerning a pending rulemaking after the
3 record has been closed or a pending adjudication.

4 B. A hearing examiner shall not initiate, permit
5 or consider a communication directly or indirectly with a
6 party or the party's representative outside the presence of
7 the other parties concerning a pending rulemaking or
8 adjudication.

9 C. Subject to the provisions of Section 62-19-9
10 NMSA 1978 and notwithstanding the provisions of Subsections A
11 and B of this section, the following communications are
12 permitted:

13 (1) where circumstances require, ex parte
14 communications for procedural or administrative purposes or
15 emergencies that do not deal with substantive matters or
16 issues on the merits are allowed if the commissioner or
17 hearing examiner reasonably believes that no party will gain
18 an advantage as a result of the ex parte communication and
19 the commissioner or hearing examiner makes provision to
20 promptly notify all other parties of the substance of the
21 ex parte communication;

22 (2) a commissioner may consult with another
23 commissioner or with advisory staff whose function is to
24 advise the commission in carrying out the commissioner's
25 rulemaking or adjudicative responsibilities; provided that

1 such discussion that takes place outside of a meeting held in
2 accordance with the Open Meetings Act shall not concern a
3 vote or opinion as to the ultimate disposition of a
4 particular matter or issue; and provided further that any
5 action on the commission's rulemaking or adjudicative
6 responsibilities must be taken at an open meeting;

7 (3) a hearing examiner may consult with the
8 commission's advisory staff;

9 (4) a commissioner or hearing examiner may
10 obtain the advice of a nonparty expert on an issue raised in
11 the rulemaking or adjudication if the commissioner or hearing
12 examiner gives notice to the parties of the person consulted
13 and the substance of the advice and affords the parties
14 reasonable opportunity to respond; and

15 (5) pursuant to the commission's rulemaking
16 authority, a party to a proceeding may consult with the
17 commission's advisory staff. By July 1, 2004, the commission
18 shall establish such rules.

19 D. A commissioner or hearing examiner who receives
20 or who makes or knowingly causes to be made an ex parte
21 communication shall disclose it to all parties and give other
22 parties an opportunity to respond.

23 E. Upon receipt of a communication knowingly made
24 or caused to be made by a party to a commissioner or hearing
25 examiner in violation of this section, the commissioner or

1 hearing examiner may, to the extent consistent with the
2 interests of justice and the policy of the underlying
3 statutes, require the party to show cause why the party's
4 claim or interest in the proceeding should not be dismissed,
5 denied, disregarded or otherwise adversely affected on account
6 of the violation of this section." _____

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