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FISCAL IMPACT REPORT

SPONSOR: Hobbs DATE TYPED: 2/12/03 HB HJR 8

SHORT TITLE: PRC Commissioners Appointed by Governor, CA SB _____

ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI		\$32.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 222, HB 410

SOURCES OF INFORMATION

- *Report to the Legislative Council from the Public Regulation Commission Subcommittee in Response to Senate Joint Memorial 41, December 2002.*
- *Report of the Legislative Finance Committee to the Forty-sixth Legislature, First Session, January 2003, Fiscal Year 2003 – 2004, pp. 318 – 324.*

Public Regulation Commission (PRC)
 Energy Minerals & Natural Resources Department (EMNRD)
 Attorney General's Office (AG)
 LFC Files

SUMMARY

Synopsis of Bill

House Joint Resolution 8 would submit to the voters a proposal to amend Article 11, Section 1 of the Constitution of New Mexico. The amendment would require the five Public Regulation Commissioners to be appointed by the Governor instead of being elected from districts. Governorially appointed commissioners would be appointed to staggered four-year terms, would be limited to two consecutive terms, and could be appointed at large.

Significant Issues

In 2001, the legislature passed Senate Joint Memorial 41 requesting that the New Mexico Legislative Council designate an interim committee to examine the organization, financing and performance of the PRC. The Legislative Council appointed the Public Regulation Commission Subcommittee to meet during the 2001 and 2002 interims to address these issues.

The subcommittee report to the Legislative Council makes recommendations in four areas, including the organization of the PRC. Currently, the responsibilities of the PRC consists of 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. It is acknowledged by the subcommittee that because of the complex issues involved in the decision-making made by the PRC that impact the businesses and citizens of New Mexico, commissioners must have certain qualifications. These qualifications would ensure that commissioners have the background and experience necessary to understand complex regulatory issues.

The subcommittee members, however, support two different approaches regarding the selection of PRC commissioners, and recommend a full debate by the legislature.

Approach #1

- Three members of the subcommittee support an appointed commission for the PRC. The Governor should appoint commissioners with the consent of the Senate. An appointed commission would address the need for a statewide focus on regulatory issues and improve accountability in the process. Moreover it would also resolve concerns related to campaign financing as a part of the election process.

This position is consistent with the 1995 Report of the Constitutional Revision Commission to the Governor and the Legislature that states:

Because the essential task (of utility regulation) requires special expertise, judicial-like adjudicatory responsibility, as well as administrative and rule-making responsibility, it is also recommended that the entity be appointive rather than elective, and that the powers and duties and process of removal be established by law.

The 1997 Report of the Regulation Commission Reorganization Committee also recommended a constitutional amendment “to provide for appointment rather than election of the public regulation commission...”.

Approach #2

- Two members of the subcommittee support an elected, districted commission and recommend the judicial election and retention process be examined to address the need for knowledgeable and experienced commissioners. This may also be a good opportunity for public campaign financing to separate the commissioners from the regulated entities.

FISCAL IMPLICATIONS

The bill contains no appropriations. However, an estimated non-recurring cost to the general fund of \$32.0 is expected because of the cost to the Secretary of State for advertising and printing to place an item on the ballot. This non-recurring cost will be realized in FY05 (the next general election is November 2004 unless a special election is called).

ADMINISTRATIVE IMPLICATIONS

As an agency controlled by separately elected officials, the PRC is an administratively independent part of the executive branch. Having gubernatorially appointed commissioners would administratively place the PRC within the Governor's portion of the executive branch.

CONFLICT

Senate Bill 222 and House Bill 420 are identical bills that proposes campaign financing of elections for commissioners of the Public Regulation Commission through a "public election fund" with money provided in part by utilities and insurance companies.

TECHNICAL ISSUES

The following issues were noted by the Attorney General:

1. The joint resolution does not explain what will occur if a current (elected) Commissioner resigns/leaves office. Does the governor appoint the successor? Pursuant to existing law, NMSA 1978, Section 8-7-4(B), the governor appoints the successor who serves until the next general election.
2. The joint resolution would likely require the repeal of the existing laws governing PRC elections, Sections 8-7-1 to -11.

Further, the bill neither provides for nor prohibits the removal of appointed commissioners for cause.

OTHER SUBSTANTIVE ISSUES

1. The joint resolution does not explain whether the appointed members serve at the pleasure of the governor.
2. The joint resolution does not explain whether they need to be confirmed by the state Senate.
3. The joint resolution does not provide qualifications for the members.
4. The joint resolution does not provide geographic, political, or professional diversity.

POSSIBLE QUESTIONS

1. Would gubernatorially appointed commissioners be more accountable to the people of New Mexico than elected commissioners?
2. Should commissioners be appointed from districts instead of at large?