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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/11

SPONSOR Lovejoy LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Eliminate Public Regulation Commission SJR 6

ANALYST Graeser

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI	NFI		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 6 would abolish the New Mexico Public Regulation Commission by repealing Article XI, Sections 1 and 2 of the New Mexico Constitution. Section 1 would be replaced with general language that would permit the legislature to provide for the duties now carried out by the commission to be assumed by other entities. SJR 6 repeals Article XI, Section 2 which provides for constitutional duties of the PRC. The resolution provides for a vote by the people on whether to repeal the PRC as currently constituted and reconstitute it as a smaller entity with more clearly defined authority. SJR 6 is a product the Government Reorganization Task Force which met from April through December 2010, and considered various proposals for improving effectiveness and efficiency of state government agencies and reducing costs while improving services to citizens.

### FISCAL IMPLICATIONS

By itself, SJR 6 has no fiscal impact. The implementation of the plan in GRTF draft .182745B.1 is likely to have little or no cost savings, particularly not in the short run, but the point is to reconstitute a regulation commission that can function efficiently, effectively and with probity.

PRC notes, "...however, if the intent of the Constitutional amendment is to set the stage for a later enactment of legislation that would eliminate the PRC, the fiscal implications would be significant – a large agency would have to be closed and a new agency or divisions within existing agencies would have to be created and funded. In addition, such a major change to New Mexico's public regulation scheme would be likely to cause public utilities to incur additional compliance costs, which would eventually be passed along to consumers. Finally, because PRC was created less than 15 years ago, the taxpayers of New Mexico would be incurring these costs for a second time within a relatively short period. Regardless of any future legislation that may or may not be enacted, there is no indication that the proposed Constitutional amendment result in any savings to the taxpayer.

## **SIGNIFICANT ISSUES**

SJR 6 is the constitutional amendment that would, if passed by the voters, repeal the constitutional status of the Public Regulation Commission (PRC). SJR 6 relates to GRTF bill draft .182745B.1, to be introduced by Senator Lovejoy, which will contain the detailed plan for which divisions and functions of the current PRC would be transferred to other departments and which would be retained in a reconstituted regulation commission/department.

See Appendix A for the full text of the problem analysis and proposed solution as prepared by GRTF staff during the interim.

Article XI, Section 2 of the State Constitution is clear on the scope and duties of the Public Regulation Commission:

**Article XI, Sec. 2. [Responsibilities of public regulation commission.] (1996)**

The public regulation commission shall have responsibility for chartering and regulating business corporations in such manner as the legislature shall provide. The commission shall have responsibility for 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.

However GRTF staff note, "...currently the authority of the PRC Commission is being weakened by a semi-autonomous Insurance Division and Office of the State Fire Marshal. New Mexico is unique from other states in the breadth of responsibilities assigned to its regulatory commission. Not only does the PRC provide regulation and oversight of utilities, telecommunications, and motor carriers but also provides administrative oversight of the insurance industry and certain public safety functions, such as pipeline safety, the State Fire Marshal Office, and the Firefighter Training Academy."

"The Commission has constitutional authority to protect the public from "natural monopolies" – utility, transportation, and telecommunication companies. However, a constitutional amendment expanded the Commission's authority to include insurance regulation. The Commission has limited influence over insurance regulation because, by statute, the authority is vested with the Superintendent of Insurance."

“Through legislative action, the Office of the State Fire Marshal was transferred to the PRC along with the Fire Fighter Training Academy. As with the Insurance Division, the Commission has limited involvement in the operations of the State Fire Marshal.”

“The structural inefficiency created by duplicative regulatory structures between the commission and the Insurance Division and limited authority over the Office of the State Fire Marshal is weakening the department. Over the years, the mission and purpose of the commission has expanded beyond its original constitutional mandate.”

“Since the PRC was created nearly fifteen years ago, the scope of the commission’s oversight and regulated industries has changed significantly. Despite the growing complexity, PRC commissioners are not required to have a background or experience in rate setting and regulation. Furthermore, once elected, due to ex parte rules, commissioners can’t communicate with hearing officers about pending cases.”

The “high level recommendation” of GRTF relative to the PRC follows:

**“High Level Recommendation:** Certain functions of the PRC have authority granted by the Constitution while other functions are established in statute. Instead of a piecemeal approach to addressing the powers and duties of the PRC, the whole commission should be abolished then reestablished.

Certain functions of the PRC should be transferred to other agencies including the following:

1. The Transportation Division from the PRC to the Department of Public Safety (DPS);
2. The Insurance Division from the PRC to the Regulation and Licensing Department (RLD) or to a newly created independent Department of Insurance;
3. The process of collecting insurance tax premiums from PRC to the Taxation and Revenue Department (TRD);
4. The State Fire Marshal’s Office from the PRC to DPS;
5. The Operations Division from the SOS to the PRC”

The corporation and utility regulation functions of the PRC would probably be retained in a standalone Public Regulatory Department.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SJR 6 is the constitutional amendment that would, if passed by the voters, repeal the constitutional status of the Public Regulation Commission (PRC). SJR 6 relates to GRTF bill draft .182745B.1, to be introduced by Senator Lovejoy, which will contain the detailed plan for which divisions and functions of the current PRC would be transferred to other departments and which would be retained in a reconstituted regulation commission/department.

### **OTHER SUBSTANTIVE ISSUES**

PRC does not support this constitutional amendment and subsequent restructuring of the PRC by spinning off the named divisions to other Executive Departments. The PRC statement on this issue follows:

“Although the PRC is a Constitutionally-created entity, the agency performs its functions pursuant to various statutes. Thus, absent additional legislation amending those statutes, the proposed Constitutional amendment likely would not immediately affect the PRC’s work. That said, the proposed amendment would create some conflicts and inconsistencies with existing statutes, most importantly NMSA Article 8, which refers to the agency as a Constitutionally-created entity.”

“If the proposed amendment were to be enacted, at a minimum, existing legislation would need to be amended for language consistency.”

“If the intent of the Constitutional amendment is to set the stage for a later enactment of legislation that would eliminate the PRC, the amendment does not indicate who would perform the regulatory functions currently performed by PRC. This would have to be addressed. Such a major change would create an administrative quagmire for State employees, public utilities, and the many residents of New Mexico who have become familiar with the PRC’s policies and procedures.”

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The PRC would remain as a quasi-independent agency of state government – with functions partly judicial, partly executive, partly tax collecting, partly fire prevention and fire fighting.

LG/svb

## **APPENDIX A**

### **GRTF Staff Document**

**Core Services Category:** Business and Industry

**Study Area:** Amend the Constitution of New Mexico to eliminate the Public Regulation Commission as a constitutional agency. Repeal the acts that provide statutory authority to the PRC. Convene an organizational committee to make recommendations on how the PRC should be reestablished.

**High Level Recommendation:** Certain functions of the PRC have authority granted by the Constitution while other functions are established in statute. Instead of a piecemeal approach to addressing the powers and duties of the PRC, the whole commission should be abolished then reestablished.

Certain functions of the PRC should be transferred to other agencies including the following:

1. The Transportation Division from the PRC to the Department of Public Safety (DPS);
2. The Insurance Division from the PRC to the Regulation and Licensing Department (RLD) or to a newly created independent Department of Insurance;
3. The process of collecting insurance tax premiums from PRC to the Taxation and Revenue Department (TRD);
4. The State Fire Marshal's Office from the PRC to DPS;
5. The Operations Division from the SOS to the PRC

**Problem Statement:** The authority of the PRC Commission is being weakened by a semi-autonomous Insurance Division and Office of the State Fire Marshal. New Mexico is unique from other states in the breadth of responsibilities assigned to its regulatory commission. Not only does the PRC provide regulation and oversight of utilities, telecommunications, and motor carriers but also provides administrative oversight of the insurance industry and certain public safety functions, such as pipeline safety, the State Fire Marshal Office, and the Firefighter Training Academy.

The Commission has constitutional authority to protect the public from “natural monopolies” – utility, transportation, and telecommunication companies. However, a constitutional amendment expanded the Commission's authority to include insurance regulation. The Commission has limited influence over insurance regulation because, by statute, the authority is vested with the Superintendent of Insurance.

Through legislative action, the Office of the State Fire Marshal was transferred to the PRC along with the Fire Fighter Training Academy. As with the Insurance Division, the Commission has limited involvement in the operations of the State Fire Marshal.

The structural inefficiency created by duplicative regulatory structures between the commission and the Insurance Division and limited authority over the Office of the State Fire Marshal is weakening the department. Over the years, the mission and purpose of the commission has expanded beyond its original constitutional mandate.

Since the PRC was created nearly fifteen years ago, the scope of the commission's oversight and regulated industries has changed significantly. Despite the growing complexity, PRC commissioners are not required to have a background or experience in rate setting and

regulation. Furthermore, once elected, due to ex parte rules, commissioners can't communicate with hearing officers about pending cases.

**Background and Findings:** The PRC has regulatory authority over utilities, telecommunications, motor carriers, and insurance, as well as administrative authority over the State Fire Marshal's Office, the Firefighter Training Academy, pipeline safety, and the registration of all corporations doing business in New Mexico.

Day to day operation of the department is managed by the Chief of Staff, except for activities of the Insurance Division and those of the Hearing Officers. The Chief of Staff is an 'at-will' employee appointed by the commission.

- The Transportation Division of the PRC works with the Motor Transportation Division of the DPS to comply with Federal Motor Carrier Safety requirements and the New Mexico Motor Carrier Act. Both departments work to ensure commercial vehicles are safe and legally authorized to drive on our roadways. Both departments perform safety inspections, enforce compliance and issue fines. Transferring the Transportation Division to DPS could improve compliance and enforcement efforts. Additional consideration may include whether the PRC Pipeline Safety Bureau, a bureau of the PRC Transportation Division, should also be combined with DPS. According to the National Association of Pipeline Safety Representatives, pipeline safety is part of a federal and state partnership to protect communities and protect national interests.
- The Insurance Division is semi-autonomous from the Commission except that the Superintendent of Insurance is appointed by the Commission, and can only be removed for cause. In addition, the PRC Chief of Staff does not generally oversee operations in the Insurance Division. Disputes over insurance rate regulation are generally not reviewed by the Commission and are usually litigated in court. Both the Commission and the Insurance Division could be strengthened if the Insurance Division were to be transferred from the PRC to another agency or elevated to an independent office.
- The Revenue Processing Unit of the Insurance Division collects over \$200 million of insurance premium taxes and assessments, as well as compliance and enforcement functions. Collecting and ensuring compliance is a core function of the Taxation and Revenue Department (TRD). The PRC and TRD are duplicating revenue processing and enforcement functions. Both departments support independent IT systems that are in need of upgrading. Collection, compliance, and enforcement of insurance premium taxes may be improved, with cost savings, if the Revenue Processing Unit of the PRC were transferred to TRD. The process of collecting revenue is not considered to be a constitutional regulatory authority and could therefore be transferred without an amendment.
- The State Fire Marshal's Office is also semi-autonomous from the Commission except that the State Fire Marshal is appointed by the Commission. The State Fire Marshal and the Fire Fighter Training Academy is not part of the constitutional regulatory authority and could therefore be transferred without a constitutional amendment. Combining firefighting training with other public safety training academies could improve coordination and leverage training assets.

- The Operations Bureau of the Secretary of State is responsible for issuing partnership registrations and other business related functions while the Corporations Bureau of the PRC is responsible for issuing certificates of incorporation/authority, overseeing the organization and registration of limited liability companies, and verifying the completeness and accuracy of related charter documents. Both departments support independent IT systems that are in need of upgrading.

**Options to Consider:**

- 1) **Transportation Division** – Transfer to Department of Public Safety Motor Transportation Division to eliminate duplicative compliance and enforcement efforts. Additional consideration warranted to move the Pipeline Safety Bureau to DPS.

Fiscal Implications: Transferring the Transportation Division to DPS may result in a minimal amount of general fund savings; however, there could be a substantial improvement in compliance and enforcement. The potential savings would occur from the elimination of 1 manager and possibly 1 administrative assistant/office clerk. The analysis assumes the division would remain in a state-owned building and includes the Pipeline Safety Bureau. The remaining \$3.8 million FY11 operating budget would be transferred.

	<b>Potential Savings Amount (in thousands)</b>					Exhibit A1
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>	
Personal Svcs and Empl Benefits	\$58.3	\$30.3	\$4.0	\$18.7	\$111.3	
Contractual Services:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
Other Costs	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>TOTAL</b>	<b>\$58.3</b>	<b>\$30.3</b>	<b>\$4.0</b>	<b>\$18.7</b>	<b>\$111.3</b>	

	<b>Potential Transfer Amount (in thousands)</b>				
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>
Personal Svcs and Empl Benefits	\$733.8	\$761.8	\$788.1	\$773.4	\$3,057.1
Contractual Services:	\$10.3	\$22.8	\$0.0	\$14.1	\$47.2
Other Costs	\$114.8	\$342.4	\$0.0	\$210.2	\$667.4
<b>TOTAL</b>	<b>\$859.0</b>	<b>\$1,127.0</b>	<b>\$788.1</b>	<b>\$997.7</b>	<b>\$3,771.8</b>

**Obstacles to Consider:**

The PRC was created in 1996 through an amendment to the New Mexico Constitution. As such, it would have to be determined whether the constitution would have to be amended if the Transportation Compliance and Applications Bureaus were to be transferred from the PRC to DPS. In theory, the PRC could retain jurisdiction over transportation rates (without a constitutional amendment) while DPS would be responsible for compliance and enforcement.

- 2) **Department of Insurance** – Create a whole new agency, or possibly consolidate/combine with the RLD Financial Institutions Division.

Fiscal Implications: Transferring the Department of Insurance to RLD would not result in any general fund savings; however, there could be a substantial improvement in operations of both the Insurance Division and the PRC.

	<b>Potential Transfer Amount (in thousands)</b>				
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>
Personal Srvcs and Empl Benefits	\$0.0	\$0.0	\$4,736.7	\$0.0	\$4,736.7
Contractual Services:	\$0.0	\$0.0	\$194.7	\$0.0	\$194.7
Other Costs	\$0.0	\$0.0	\$473.5	\$0.0	\$473.5
<b>TOTAL</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$5,404.9</b>	<b>\$0.0</b>	<b>\$5,404.9</b>

**Obstacles to Consider:**

- The PRC was created in 1996 through an amendment to the New Mexico Constitution. As such, it would require an additional amendment to the constitution to move the insurance regulation function from the PRC to another department.
- If the Department of Insurance were to be consolidated into a Commerce and Insurance Department, careful consideration regarding the appointment of the Superintendent of Insurance should be made and who would have judicial authority or review over the superintendent's actions.

- 3) **Insurance tax collection.** Transfer the unit that collects insurance premium taxes from the Department of Insurance to the Taxation and Revenue Department. The process of collecting insurance premium taxes is not part of the constitutional regulatory authority, and as such could be performed alongside other tax reporting and collection efforts.

Fiscal Implications:

	<b>Potential Transfer Amount (in thousands)</b>				
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>
Personal Srvcs and Empl Benefits	\$0.0	\$0.0	\$385.4	\$0.0	\$385.4
Contractual Services:	\$0.0	\$0.0	\$10.7	\$0.0	\$10.7
Other Costs	\$0.0	\$0.0	\$52.8	\$0.0	\$52.8
<b>TOTAL</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$448.9</b>	<b>\$0.0</b>	<b>\$448.9</b>

**Obstacles to Consider:**



- The Insurance Division IT system, IDEAL, shares data with the National Association of Insurance Commissioner’s (NAIC) databases. Tax data would have to be able to be uploaded from TRD’s GenTax system to IDEAL.

- 4) **State Fire Marshal’s Office and Firefighter Training Academy** – Transfer the Fire Marshal’s Office and Academy to the Department of Public Safety/Homeland Security and Emergency Management where various other training, disaster, emergency response, and investigation functions have consolidated. Although there would be no general fund savings, an opportunity may exist to leverage public safety assets and improve coordination between fire safety, state police, and training academies.

**State Fire Marshal's Office**

	<b>Potential Transfer Amount (in thousands)</b>				
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>
Personal Srvcs and Empl Benefits	\$0.0	\$1,683.0	\$0.0	\$0.0	\$1,683.0
Contractual Services:	\$0.0	\$100.2	\$0.0	\$0.0	\$100.2
Other Costs	\$0.0	\$753.6	\$0.0	\$0.0	\$753.6
<b>TOTAL</b>	<b>\$0.0</b>	<b>\$2,536.8</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$2,536.8</b>

**Firefighter Training Academy**

	<b>Potential Transfer Amount (in thousands)</b>				
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>
Personal Srvcs and Empl Benefits	\$0.0	\$951.8	\$385.4	\$0.0	\$1,337.2
Contractual Services:	\$0.0	\$221.5	\$10.7	\$0.0	\$232.2
Other Costs	\$0.0	\$496.7	\$52.8	\$0.0	\$549.5
<b>TOTAL</b>	<b>\$0.0</b>	<b>\$1,670.0</b>	<b>\$448.9</b>	<b>\$0.0</b>	<b>\$2,118.9</b>

- 5) Transfer the Operations Unit of the Secretary of State (SOS) and combine with the Corporations Bureau of the PRC. The Operations Unit of the SOS provides various administrative and business-related services including the registration of general partnerships, limited partnerships, limited liability partnerships, trademarks, and Uniform Commercial Code filings. Additional analysis is required to determine whether SOS and PRC IT data bases could be merged. Although the general fund savings would be minimal, there could be an improved level of service provided by consolidating.

Fiscal Implications:

**Secretary of State Operations Division**

	<b>Potential Savings Amount (in thousands)</b>					Exhibit B1
	<b>General Fund</b>	<b>Other State</b>	<b>Inter-agency</b>	<b>Federal</b>	<b>Total</b>	
Personal Srvc and Empl Benefits	\$120.0	\$0.0	\$0.0	\$0.0	\$120.0	
Contractual Services:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
Other Costs	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>TOTAL</b>	<b>\$120.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$120.0</b>	

<b>Exhibit A1</b>						
Transportation Division Potential FTE to Delete						
Number of FTE		Salary and Benefits	General Fund	Other State Funds	Int. Svcs/Int-Trfers	Federal Funds
1	<b>Transportation Bureau</b>	<b>\$62,246</b>	<b>\$58,262</b>	<b>\$0</b>	<b>\$3,984</b>	<b>\$0</b>
1	<b>Pipeline Safety Bureau</b>	<b>\$49,007</b>	<b>\$0</b>	<b>\$30,286</b>	<b>\$0</b>	<b>\$18,721</b>
<b>2</b>	<b>TOTAL</b>	<b>\$111,253</b>	<b>\$58,262</b>	<b>\$30,286</b>	<b>\$3,984</b>	<b>\$18,721</b>

<b>Exhibit B1</b>						
Secretary of State Operations Division Potential FTE to Delete						
Number of FTE		Salary and Benefits	General Fund	Other State Funds	Int. Svcs/Int-Trfers	Federal Funds
1	Operations Division	\$120	\$120	\$0	\$0	\$0
<b>1</b>	<b>TOTAL</b>	<b>\$120</b>	<b>\$120</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>