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HOUSE BILL 1229

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

J. "ANDY" KISSNER

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; PROVIDING FOR AN ORDERLY  
TRANSITION TO A SINGLE PUBLIC REGULATION COMMISSION BY  
TRANSFERRING REGULATION OF PUBLIC UTILITIES TO THE STATE  
CORPORATION COMMISSION; AMENDING, REPEALING AND ENACTING CERTAIN  
SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] PURPOSE OF ACT. --The purpose of  
this act is to facilitate an orderly transition from existing  
separate utility regulatory agencies to a single consolidated  
public regulation agency as mandated by the adoption of  
Constitutional Amendment 6 at the 1996 general election, which  
agency among other duties is charged with the regulation of  
public utilities, including electric, natural gas, water and  
sewer companies; transportation companies, including common and

Underscored material = new  
[bracketed material] = delete

1 contract carriers; transmission and pipeline companies,  
2 including telephone, telegraph and information transmission  
3 companies; among other governmental areas of public regulation.  
4 The legislature finds that immediate consolidation of the two  
5 existing utility regulatory agencies is necessary to protect the  
6 public health, safety and welfare.

7 Section 2. [NEW MATERIAL] DUTIES OF STATE CORPORATION  
8 COMMISSION. --

9 A. The state corporation commission is responsible  
10 for the administration, implementation and enforcement of the  
11 provisions of the Public Utility Act and such other laws for  
12 which authority has previously been vested in the New Mexico  
13 public utility commission and may establish one or more  
14 departments to assist the commission in performing its duties.

15 B. The state corporation commission shall report to  
16 the legislature with recommendations as to legislation necessary  
17 to effectively implement Constitutional Amendment 6, and shall  
18 cooperate with any interim legislative committee or task force  
19 charged by the legislature with studying such implementation.  
20 The due date for the report shall be established by such  
21 committee or task force or, if no such committee or task force  
22 is established, by the legislative council. The due date  
23 established shall be one that allows for action to be taken on  
24 implementing necessary legislation during the 1998 regular  
25 legislative session.

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1           Section 3.   ~~[NEW MATERIAL]~~   FINANCIAL INTEREST IN UTILITIES  
2   PROHIBITED. --No state corporation commissioner may own any  
3   securities or have any financial or other interest in the  
4   business of any public utility regulated by the provisions of  
5   the Public Utility Act, either directly or indirectly, except as  
6   a customer of the utility's services or as a member-owner of a  
7   rural electric cooperative.

8           Section 4.   Section 62-3-3 NMSA 1978 (being Laws 1967,  
9   Chapter 96, Section 3, as amended) is amended to read:

10           "62-3-3.   DEFINITIONS, WORDS AND PHRASES. --Unless otherwise  
11   specified, when used in the Public Utility Act:

12           A.   "affiliated interest" means a person who directly  
13   or indirectly, through one or more intermediaries, controls or  
14   is controlled by or is under common control with a public  
15   utility.   Control includes instances where a person is an  
16   officer, director, partner, trustee or person of similar status  
17   or function or who owns directly or indirectly or has a  
18   beneficial interest in ten percent or more of any class of  
19   securities of a person;

20           B.   "commission" means the ~~[New Mexico public~~  
21   utility] state corporation commission;

22           C.   "commissioners" means any member of the  
23   commission;

24           D.   "municipality" means any municipal corporation  
25   organized under the laws of the state, and H class counties;

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1           E. "person" means individuals, firms, partnerships,  
2 companies, rural electric cooperatives organized under Laws  
3 1937, Chapter 100 or the Rural Electric Cooperative Act, as  
4 amended, corporations and lessees, trustees or receivers  
5 appointed by any court. It shall not mean any class A county as  
6 described by Section 4-36-10 NMSA 1978 or any class B county as  
7 described by Section 4-36-8 NMSA 1978. It shall not mean any  
8 municipality as defined in this section unless the municipality  
9 has elected to come within the terms of the Public Utility Act  
10 as provided in Section 62-6-5 NMSA 1978. In the absence of  
11 [such] voluntary election by [any] a municipality to come within  
12 the provisions of the Public Utility Act, the municipality shall  
13 be expressly excluded from the operation of that act and from  
14 the operation of all of its provisions, and no such municipality  
15 shall for any purpose be considered a public utility;

16           F. "securities" means stock, stock certificates,  
17 bonds, notes, debentures, mortgages or deeds of trust or other  
18 evidences of indebtedness issued, executed or assumed by any  
19 utility;

20           G. "public utility" or "utility" means every person  
21 not engaged solely in interstate business and, except as stated  
22 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that [~~now does or~~  
23 hereafter] may own, operate, lease or control:

24           (1) any plant, property or facility for the  
25 generation, transmission or distribution, sale or furnishing to

1 or for the public of electricity for light, heat or power or  
2 other uses;

3 (2) any plant, property or facility for the  
4 manufacture, storage, distribution, sale or furnishing to or for  
5 the public of natural or manufactured gas or mixed or liquefied  
6 petroleum gas, for light, heat or power or for other uses; but  
7 the term "public utility" or "utility" shall not include any  
8 plant, property or facility used for or in connection with the  
9 business of the manufacture, storage, distribution, sale or  
10 furnishing of liquefied petroleum gas in enclosed containers or  
11 tank truck for use by others than consumers who receive their  
12 supply through any pipeline system operating under municipal  
13 authority or franchise, and distributing to the public;

14 (3) any plant, property or facility for the  
15 supplying, storage, distribution or furnishing to or for the  
16 public of water for manufacturing, municipal, domestic or other  
17 uses; provided, however, nothing contained in this paragraph  
18 shall be construed to apply to irrigation systems, the chief or  
19 principal business of which is to supply water for the purpose  
20 of irrigation;

21 (4) any plant, property or facility for the  
22 production, transmission, conveyance, delivery or furnishing to  
23 or for the public of steam for heat or power or other uses; or

24 (5) any plant, property or facility for the  
25 supplying and furnishing to or for the public of sanitary sewers

1 for transmission and disposal of sewage produced by  
2 manufacturing, municipal, domestic or other uses; provided that  
3 the terms "public utility" or "utility" as used in the Public  
4 Utility Act do not include any utility owned or operated by any  
5 class A county as described in Section 4-36-10 NMSA 1978 either  
6 directly or through a corporation owned by or under contract  
7 with such a county;

8 H. "rate" means every rate, tariff, charge or other  
9 compensation for utility service rendered or to be rendered by  
10 any utility and every rule, regulation, practice, act,  
11 requirement or privilege in any way relating to such rate,  
12 tariff, charge or other compensation and any schedule or tariff  
13 or part of a schedule or tariff thereof;

14 I. "service" or "service regulation" means every  
15 rule, regulation, practice, act or requirement in any way  
16 relating to the service or facility of a utility;

17 J. "Class I transaction" means the sale, lease or  
18 provision of real property, water rights or other goods or  
19 services by an affiliated interest to any public utility with  
20 which it is affiliated or by a public utility to its affiliated  
21 interest;

22 K. "Class II transaction" means:

23 (1) the formation after May 19, 1982 of a  
24 corporate subsidiary by a public utility or a public utility  
25 holding company by a public utility or its affiliated interest;

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1                   (2) the direct acquisition of the voting  
2 securities or other direct ownership interests of a person by a  
3 public utility if such acquisition would make the  
4 utility the owner of ten percent or more of the voting  
5 securities or other direct ownership interests of that person;

6                   (3) the agreement by a public utility to  
7 purchase securities or other ownership interest of a person  
8 other than a nonprofit corporation, contribute additional equity  
9 to, acquire additional equity interest in or pay or guarantee  
10 any bonds, notes, debentures, deeds of trust or other evidence  
11 of indebtedness of any such person; provided, however, that a  
12 public utility may honor all agreements entered into by such  
13 utility prior to May 19, 1982; or

14                   (4) the divestiture by a public utility of any  
15 affiliated interest that is a corporate subsidiary of the public  
16 utility;

17                   L. "corporate subsidiary" means any person ten  
18 percent or more of whose voting securities or other ownership  
19 interests are directly owned by a public utility; and

20                   M. "public utility holding company" means an  
21 affiliated interest that controls a public utility through the  
22 direct or indirect ownership of voting securities of such public  
23 utility."

24                   Section 5. TEMPORARY PROVISION--TRANSFER OF  
25 APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, PERSONNEL, MONEY

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1 AND CONTRACT-- CONTINUATION OF PROCEEDINGS-- REFERENCES IN LAW. --  
2 A. On the effective date of this act, all contracts,  
3 projects, powers and duties, personnel, appropriations, money,  
4 records, property, equipment and supplies of the New Mexico  
5 public utility commission are transferred to the state  
6 corporation commission for performance of the duties transferred  
7 to it pursuant to this act, except appropriations for salaries  
8 and expenses of the New Mexico public utility commissioners and  
9 the New Mexico public utility commission executive director,  
10 which shall revert to the general fund. After the effective  
11 date of this act and for the remainder of fiscal year 1997, the  
12 budget of the New Mexico public utility commission shall be the  
13 budget of the state corporation commission for performances of  
14 the duties transferred to it pursuant to this act subject to  
15 such transfers as may be required by the state corporation  
16 commission, except budget for salaries and expenses of the New  
17 Mexico public utility commissioners and the New Mexico public  
18 commission executive director, which shall revert to the general  
19 fund.  
20 B. All existing contracts and agreements in effect  
21 as to the New Mexico public utility commission shall be binding  
22 upon the state corporation commission.  
23 C. All suits and proceedings by or against the New  
24 Mexico public utility commission shall, on the effective date of  
25 this act, be continued by or against the state corporation

1 commi ssi on.

2 D. All references in law to the New Mexico public  
3 utility commi ssi on shall be construed as references to the state  
4 corporation commi ssi on.

5 Section 6. REPEAL. --Sections 62-5-1 through 62-5-11 NMSA  
6 1978 (being Laws 1941, Chapter 84, Section 3, Laws 1977, Chapter  
7 255, Section 121 and Laws 1941, Chapter 84, Sections 4 through 8  
8 and 10 through 13, as amended) are repealed.

9 Section 7. EMERGENCY. --It is necessary for the public  
10 health, safety and welfare that this act take effect  
11 immediately.

**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

**March 6, 1997**

Mr. Speaker:

Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to  
whom has been referred

HOUSE BILL 1229

has had it under consideration and reports same WITHOUT  
RECOMMENDATION, and thence referred to the ENERGY AND  
NATURAL RESOURCES COMMITTEE.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

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Lynda M. Lovejoy, Chairwoman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 2 Against

Yes: 5

No: Pearce, Saavedra

Excused: Hobbs

Absent: None

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