

LFC Requester:	Jon Clark
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** February 4, 2016
Original **Amendment** **Bill No:** HJR 8s
Correction **Substitute**

Sponsor: Rep. P. Bandy **Agency Code:** 305
Short Appointment of PRC Members, **Person Writing** Rick Word, AAG
Title: CA **Phone:** 827-6029 **Email** Rick.word@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SJR 7
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

The House Government, Elections, and Indian Affairs Committee Substitute for HJR 8 and HJR 18 proposes an amendment to the New Mexico Constitution that would, among other things, change the manner of selection of members of the Public Regulation Commission (PRC). The proposed amendment would repeal Article XI, Section 1 of the New Mexico Constitution and replace it with a new Section 1.

Under the amendment proposed in this committee substitute, as in the amendments proposed in HJR 8 and HJR 18, the five PRC commissioners would no longer be elected from districts but would be appointed by the governor with the advice and consent of the senate. However, under this committee substitute the governor must appoint each commissioner from a list three potential appointees submitted by the legislative council. The committee substitute also specifies that commissioners be appointed from districts provided by law.

The committee substitute keeps the requirement that appointees be residents of the state, and retains the prohibitions against members serving more than two terms consecutively or from accepting anything of value from a regulated person or entity. The committee substitute also retains language specifying that the legislature may - as opposed to shall - provide additional qualifications as well as continuing education requirements for members. The committee substitute also keeps the provision specifying that a commissioner can be removed only for malfeasance, misfeasance, or neglect of duty following a hearing before the New Mexico Supreme Court, which has exclusive and final jurisdiction.

Also as in HJR 8 and 18, the committee substitute further provides that the proposed amendment be placed on the ballot in the next general election or any special election prior to that date called for that purpose.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

While the proposed amendment requires that commissioners be residents of the state, it does not specifically require that commissioners reside in the districts from which they are appointed. Nor does it specifically require that the legislative council only recommend appointees who reside in the district for which they are recommended to represent. Currently, the question of residence within the district is addressed by NMSA 1978, Section 8-7-3 (1998). However, by its own terms that section only applies to elected commissioners.

In addition, the following significant issues identified in this agency's prior analyses of HJR 8 and 18 and are applicable:

1. Whether to return to a prior New Mexico practice to provide for appointed rather than elected officials to the body that oversees State public utilities. In its various iterations over recent decades, New Mexico has vacillated between having an elected State Corporation Commission, an appointed Public Utility Commission and as currently provided an elected Public Regulation Commission. States around the country have been similarly split. One argument for elected commissioners is that they are arguably more responsive to the voters and all the State's citizens as a result of having to run for election. An argument in favor of appointed Commissioners, particularly with criteria for professional backgrounds as provided in SJR 7, is that the body can be composed of officials with proven expertise in the often complicated issues and areas being regulated, which can result in better informed decisions.
2. The proposed constitutional amendment's provision that "[a] commission member shall be removed only for malfeasance, misfeasance, or neglect of duty after a hearing before the supreme court pursuant to court rules" (emphasis added) could be in conflict with, or create confusion as to the applicability of, other constitutionally sanctioned methods of removing public officials from office. One such method is impeachment. Article IV, Section 6 of the New Mexico Constitution states that "[a]ll state officials and judges of the district court shall be liable to impeachment for crimes, misdemeanors or malfeasance in office. . . ." Another is the writ of quo warranto. Article VI, Section 3 vests original jurisdiction with the Supreme Court for quo warranto actions. As our Supreme Court recently noted, "[o]ne of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims". *State ex rel. King v. Sloan*, 2011-NMSC-020, ¶9, 253 P.3d 33. By providing that a commission member can only be removed for malfeasance, misfeasance, or neglect of duty, the proposed amendment suggests that a member could not be removed pursuant to a writ of quo warranto where, for instance, they no longer met a requirement for serving as a member such as being a resident of the state or not working in a regulated industry. Correspondingly, by providing that a commission member could only be removed after a hearing before the Supreme Court, the proposed amendment can be interpreted to at least suggest that commission members, as state officials, are not subject to impeachment. The supreme court recognized in the Sloan decision that "the related constitutional powers of legislative impeachment and judicial quo warranto can co-exist as part of a harmonious, constitutional whole. . . ." *Sloan*, 2011-NMSC-020, ¶12, 253 P.3d 33. However, the use here of the qualifier "only" in the proposed amendment suggests otherwise.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR 7 also provide for the appointment of PRC Commission members.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS