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SENATE BILL 109

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

William P. Soules

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;

~~[A.]~~ B. "commission" means the public regulation commission, which is the three-member-appointed regulatory and

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1 adjudicatory body;

2 [B-] C. "commissioner" means a person appointed to  
3 the public regulation commission; and

4 [G-] D. "person" means an individual, corporation,  
5 firm, partnership, association, joint venture or similar legal  
6 entity."

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

9 "62-19-4. PUBLIC REGULATION COMMISSION NOMINATING  
10 COMMITTEE.--

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

13 (1) knowledgeable about public utility  
14 regulation;

15 (2) not employed by or on behalf of or have a  
16 contract with a public utility that is regulated by the  
17 commission;

18 (3) not applicants or nominees for a position  
19 on the commission; and

20 (4) appointed as follows:

21 (a) four members appointed one each by  
22 the speaker of the house of representatives, the minority floor  
23 leader of the house of representatives, the president pro  
24 tempore of the senate and the minority floor leader of the  
25 senate, with no more than two members being from the same

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1 political party;

2 (b) two members appointed one each by  
3 the secretary of energy, minerals and natural resources and the  
4 secretary of economic development; and

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

7 B. A committee member shall:

8 (1) be a resident of New Mexico;

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

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

14 C. The committee and individual members shall be  
15 subject to the Governmental Conduct Act, the Inspection of  
16 Public Records Act, the Financial Disclosure Act and the Open  
17 Meetings Act.

18 D. Administrative support shall be provided to the  
19 committee by the [~~staff of the commission~~] agency.

20 E. Initial appointments to the committee shall be  
21 made by the appointing authorities prior to July 1, 2022.  
22 Subsequent appointments shall be made no later than thirty days  
23 before the end of a term.

24 F. The first meeting of the appointed members of  
25 the committee shall be held prior to September 1, 2022. The

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1 committee shall select one member to be chair and one member to  
2 be secretary. Following the first meeting, the committee shall  
3 meet as often as necessary in order to submit a list to the  
4 governor of no fewer than five qualified nominees for  
5 appointment to the commission for the terms beginning January  
6 1, 2023. The list shall be developed to provide geographical  
7 diversity, and nominees on the list shall be from at least  
8 three different counties of the state.

9 G. Subsequent to January 1, 2023, the committee  
10 shall meet at least ninety days prior to the date on which the  
11 term of a commissioner ends and as often as necessary  
12 thereafter in order to submit a list to the governor, at least  
13 thirty days prior to the beginning of the new term, of no fewer  
14 than two qualified nominees from diverse geographical areas of  
15 the state for appointment to the commission for each  
16 commissioner position term that is ending.

17 H. Upon the occurrence of a vacancy in a  
18 commissioner position, the committee shall meet within thirty  
19 days of the date of the beginning of the vacancy and as often  
20 as necessary thereafter in order to submit a list to the  
21 governor, within sixty days of the first meeting after the  
22 vacancy occurs, of no fewer than two qualified nominees from  
23 diverse geographical areas of the state for appointment to the  
24 commission to fill the remainder of the term of each  
25 commissioner position that is vacant.

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1 I. If a position on the committee becomes vacant  
2 during a term, a successor shall be selected in the same manner  
3 as the original appointment for that position and shall serve  
4 for the remainder of the term of the position vacated.

5 J. The committee shall actively solicit, accept and  
6 evaluate applications from qualified individuals for a position  
7 on the commission and may require an applicant to submit any  
8 information it deems relevant to the consideration of the  
9 individual's application.

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

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

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

18 "62-19-6. CONTINUING EDUCATION REQUIREMENTS FOR  
19 COMMISSIONERS.--

20 A. [~~Beginning July 1, 2013~~] A commissioner shall  
21 complete:

22 (1) an ethics certificate course provided in  
23 person or online by a New Mexico public post-secondary  
24 educational institution in the first twelve-month period after  
25 taking office and at least one two-hour ethics course in each

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1 subsequent twelve-month period that the commissioner serves in  
2 office; and

3 (2) at least thirty-two hours of continuing  
4 education relevant to the work of the commission in each  
5 twelve-month period that the commissioner serves in office.  
6 Continuing education courses shall be endorsed by the national  
7 association of regulatory utility commissioners or by [~~the~~  
8 ~~relevant~~] a licensing or professional association for a  
9 qualifying area of study [~~for degree holders pursuant to this~~  
10 ~~section~~].

11 B. A commissioner shall be responsible for having  
12 the endorsing organization submit certification of completion  
13 of the hours of education required pursuant to Subsection A of  
14 this section to the [~~commission's~~] chief of staff.

15 C. If a commissioner fails to comply with the  
16 education requirements in Subsection A of this section by the  
17 last day of a twelve-month period, the commissioner's  
18 compensation for performing the duties of the office shall be  
19 withheld by the [~~commission~~] agency until the requirements for  
20 the preceding twelve-month period or periods have been met."

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

23 "62-19-8. PROHIBITED ACTS--NOMINEES--COMMISSIONERS AND  
24 EMPLOYEES.--

25 A. As used in this section, in addition to the

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1 definitions provided in Section [~~16 of this 2020 act~~] 62-19-2  
2 NMSA 1978:

3 (1) "affiliated interest" means a person who  
4 directly controls or is controlled by or is under common  
5 control with a regulated entity, including an agent,  
6 representative, attorney, employee, officer, owner, director or  
7 partner of an affiliated interest. For the purposes of this  
8 definition, "control" includes the possession of the power to  
9 direct or cause the direction of the management and policies of  
10 a person, whether directly or indirectly, through the  
11 ownership, control or holding with the power to vote of ten  
12 percent or more of the person's voting securities;

13 (2) "intervenor" means a person who is  
14 intervening as a party in an adjudicatory matter [~~or commenting~~  
15 ~~in a rulemaking pending~~] before the commission or has  
16 intervened in an adjudicatory [~~or rulemaking~~] matter before the  
17 commission within the preceding twenty-four months, including  
18 an agent, representative, attorney, employee, officer, owner,  
19 director, partner or member of an intervenor;

20 (3) "pecuniary interest" includes owning or  
21 controlling securities; serving as an officer, director,  
22 partner, owner, employee, attorney or consultant; or otherwise  
23 benefiting from a business relationship. "Pecuniary interest"  
24 does not include an investment in a mutual fund or similar  
25 third-party-controlled investment, pension or disability

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1 benefits or an interest in capital credits of a rural electric  
2 cooperative or telephone cooperative because of current or past  
3 patronage; and

4 (4) "regulated entity" means a person whose  
5 charges for services to the public are regulated by the  
6 commission and includes any direct or emerging competitors of a  
7 regulated entity and includes an agent, representative,  
8 attorney, employee, officer, owner, director or partner of the  
9 regulated entity.

10 B. In addition to the requirements of the Financial  
11 Disclosure Act and the Governmental Conduct Act, nominees for  
12 appointment to the commission, commissioners and employees of  
13 the [~~commission~~] agency shall comply with the requirements of  
14 the Public Regulation Commission Act, as applicable.

15 C. A nominee for appointment to the commission  
16 shall not solicit or accept anything of value, either directly  
17 or indirectly, from a person whose charges for services to the  
18 public are regulated by the commission. For the purposes of  
19 this subsection, "anything of value" includes money, in-kind  
20 contributions and volunteer services to the nominee or the  
21 nominee's organization, but does not include pension or  
22 disability benefits.

23 D. A commissioner or employee of the [~~commission~~]  
24 agency shall not:

25 (1) accept anything of value from a regulated



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1 entity, affiliated interest or intervenor. For the purposes of  
2 this paragraph, "anything of value" does not include:

3 (a) the cost of refreshments totaling no  
4 more than five dollars (\$5.00) a day or refreshments at a  
5 public reception or other public social function that are  
6 available to all guests equally;

7 (b) inexpensive promotional items that  
8 are available to all customers of the regulated entity,  
9 affiliated interest or intervenor; or

10 (c) pension or disability benefits  
11 received from a regulated entity, affiliated interest or  
12 intervenor;

13 (2) have a pecuniary interest in a regulated  
14 entity, affiliated interest or intervenor, and if a pecuniary  
15 interest in an intervenor develops, the commissioner or  
16 employee shall divest that interest or self recuse from the  
17 proceeding with the intervenor interest; or

18 (3) solicit any regulated entity, affiliated  
19 interest or intervenor to appoint a person to a position or  
20 employment in any capacity.

21 E. After leaving the commission or agency:

22 (1) a former commissioner shall not be  
23 employed or retained in a position that requires appearances  
24 before the commission by a regulated entity, affiliated  
25 interest or intervenor within two years of the former

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1 commissioner's separation from the commission;

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

6 (3) a former commissioner or agency employee  
7 shall not represent a party before the commission or a court in  
8 a matter that was pending before the commission while the  
9 commissioner or agency employee was associated with the  
10 commission or agency and in which the former commissioner or  
11 agency employee was personally and substantially involved in  
12 the matter.

13 F. The attorney general or a district attorney may  
14 institute a civil action in the district court for Santa Fe  
15 county or, in the attorney general's or a district attorney's  
16 discretion, the district court for the county in which a  
17 defendant resides if a violation of this section has occurred  
18 or to prevent a violation of this section. A civil penalty may  
19 be assessed in the amount of two hundred fifty dollars (\$250)  
20 for each violation, not to exceed five thousand dollars  
21 (\$5,000)."

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

24 "62-19-9. COMMISSION--AGENCY--GENERAL POWERS AND  
25 DUTIES.--

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1           A. The commission shall administer and enforce the  
2 laws with which it is charged and has every power conferred by  
3 law.

4           B. The commission may:

5                   (1) subject to legislative appropriation,  
6 appoint and employ such professional, technical and clerical  
7 assistance as it deems necessary to assist it in performing its  
8 powers and duties;

9                   (2) through the chief of staff, delegate  
10 authority to subordinates as it deems necessary and  
11 appropriate, clearly delineating such delegated authority and  
12 any limitations;

13                   (3) retain competent attorneys to handle the  
14 legal matters of the commission [~~and~~] or agency, as applicable;  
15 give advice and counsel in regard to any matter connected with  
16 the duties of the commission or agency; and, in the discretion  
17 of the commission [~~to represent the commission~~] or agency,  
18 provide representation in any legal proceeding;

19                   (4) organize the agency into organizational  
20 units as necessary to enable it to function most efficiently,  
21 subject to provisions of law requiring or establishing specific  
22 organizational units;

23                   (5) take administrative action by issuing  
24 orders not inconsistent with law to assure implementation of  
25 and compliance with the provisions of law for which the

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1 commission is responsible and to enforce those orders by  
2 appropriate administrative action and court proceedings;

3 (6) conduct research and studies to improve  
4 the [~~commission's~~] agency's operations or the provision of  
5 services to the [~~citizens~~] residents of New Mexico;

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

8 (8) apply for and accept grants and donations  
9 in the name of the state to carry out its powers and duties;

10 (9) enter into contracts to carry out its  
11 powers and duties;

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

15 (11) cooperate with tribal and pueblo  
16 governments on topics over which the commission and the other  
17 governments have jurisdiction and conduct joint investigations,  
18 hold joint hearings and issue joint or concurrent orders as  
19 appropriate; and

20 (12) apply to the district court for  
21 injunctions to prevent violations of any laws that it  
22 administers or rules or orders adopted pursuant to those laws.

23 C. The commission shall:

24 (1) prepare an annual budget for submission to  
25 the legislature;

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1                    [~~(2)~~ provide for surety bond coverage for all  
2 employees of the commission as provided in the Surety Bond Act  
3 and pay the costs of such bonds;

4                    ~~(3)~~] (2) adopt rules to streamline the  
5 resolution of cases before it when appropriate by:

- 6                    (a) the use of hearing examiners;  
7                    (b) the taking of evidence with the  
8 least delay practicable;  
9                    (c) limiting repetitious testimony; and  
10                   (d) adopting procedures for resolving  
11 cases in ways other than by trial-type hearings when  
12 appropriate, including consent calendars, conferences,  
13 settlements, mediation, arbitration and other alternative  
14 dispute resolution methods and the use of staff decisions; and

15                    [~~(4)~~] (3) provide a toll-free telephone number  
16 and publish it and the [~~commission's~~] agency's general  
17 telephone number in local telephone directories.

18                    D. [~~A majority of the commission constitutes a~~  
19 ~~quorum for the transaction of business; provided, however,~~  
20 ~~that~~] A majority vote of the commission is needed for a final  
21 decision of the commission for matters involving public  
22 business. As used in this subsection, "public business" means  
23 matters within the commission's constitutional or statutory  
24 regulatory or adjudicatory powers and duties and does not  
25 include matters pertaining to agency operations such as those

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1 enumerated in Paragraphs (1), (3), (4), (6), (8) and (9) of  
2 Subsection B of this section."

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

5 "62-19-11. CHIEF OF STAFF--DIVISION DIRECTORS--OTHER  
6 STAFF.--

7 A. The commission shall appoint a "chief of staff"  
8 who is responsible for the day-to-day operations of the  
9 [~~commission staff~~] agency under the general direction of the  
10 commission. The chief of staff shall serve at the pleasure of  
11 the commission.

12 B. With the consent of the commission, the chief of  
13 staff shall appoint division directors. Appointments shall be  
14 made without reference to party affiliation and solely on the  
15 ground of fitness to perform the duties of their offices.

16 C. Each director, with the consent of the chief of  
17 staff, shall employ such professional, technical and support  
18 staff as necessary to carry out the duties of the director's  
19 division. Employees shall be hired solely on the ground of  
20 their fitness to perform the job for which they are hired.  
21 Division staff are subject to the provisions of the Personnel  
22 Act."

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

25 "62-19-12. [~~COMMISSION~~] AGENCY--ORGANIZATIONAL UNITS.--

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1 The [~~commission includes~~] agency may include the following  
2 organizational units:

- 3 A. the administrative services division;
- 4 B. the consumer relations division;
- 5 C. the legal division;
- 6 D. the utility division; and
- 7 E. the pipeline safety bureau."

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

10 "62-19-13. ADMINISTRATIVE SERVICES DIVISION--CHIEF  
11 CLERK.--

12 A. The [~~director of the~~] administrative services  
13 division [~~of the commission~~] shall record the judgments, rules,  
14 orders and other proceedings of the commission and make a  
15 complete index to the judgments, rules, orders and other  
16 proceedings; issue and attest all processes issuing from the  
17 commission and affix the seal of the commission to them; and  
18 preserve the seal and other property belonging to the  
19 commission.

20 B. The administrative services division [~~shall~~] may  
21 perform the following functions:

- 22 (1) case docketing;
- 23 (2) budget and accounting;
- 24 (3) personnel services;
- 25 (4) procurement; and

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1 (5) information systems services."

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

4 "62-19-14. CONSUMER RELATIONS DIVISION.--

5 A. The consumer relations division [~~shall~~] may:

6 (1) receive and investigate nondocketed  
7 consumer complaints and assist consumers in resolving, in a  
8 fair and timely manner, complaints against a person under the  
9 authority of the commission, including mediation and other  
10 methods of alternative dispute resolution; provided, however,  
11 that assistance pursuant to this paragraph does not include  
12 legal representation of a private complainant in an  
13 adjudicatory proceeding;

14 (2) work with the consumer protection division  
15 of the [~~attorney general's office~~] state department of justice,  
16 the governor's constituent services office and other state  
17 agencies as needed to ensure fair and timely resolution of  
18 complaints;

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

22 (4) identify, research and advise the  
23 commission on consumer issues;

24 (5) assist the commission in the development  
25 and implementation of consumer policies and programs; and

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1 (6) perform such other duties as prescribed by  
2 the [~~commission~~] chief of staff.

3 B. All complaints received by the consumer  
4 relations division with regard to quality or quantity of  
5 service provided by a regulated entity or its competitors shall  
6 be recorded by the division for the purpose of determining  
7 general concerns of consumers. A report of consumer complaints  
8 and their status shall be included in the commission's annual  
9 report."

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

12 "62-19-15. LEGAL DIVISION.--

13 A. The [~~commission~~] chief of staff shall set  
14 minimum requirements for the director of the legal division,  
15 including membership in the New Mexico bar and administrative  
16 and supervisory experience.

17 B. The legal division, under the direction of the  
18 chief of staff, shall:

19 (1) provide legal counsel for the commission  
20 in matters not involving advice on contested proceedings before  
21 the commission; and

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

25 SECTION 11. Section 62-19-17 NMSA 1978 (being Laws 1998,

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1 Chapter 108, Section 12, as amended) is amended to read:

2 "62-19-17. UTILITY DIVISION.--

3 A. The utility division shall serve as staff to the  
4 commission in the regulation of electric, natural gas,  
5 renewable energy sources, telecommunications and water and  
6 wastewater systems as provided by law.

7 B. The [~~commission~~] chief of staff shall set  
8 minimum educational and experience requirements for the  
9 director of the utility division.

10 C. The utility division shall represent the public  
11 interest in utility matters before the commission and may  
12 present testimony and evidence and cross-examine witnesses. In  
13 order to represent the public interest, the utility division  
14 shall present to the commission its beliefs on how the  
15 commission should fulfill its responsibility to balance the  
16 public interest, consumer interest and investor interest.

17 ~~[D. The utility division shall perform the~~  
18 ~~functions of the telecommunications department of the former~~  
19 ~~state corporation commission and staff functions, not including~~  
20 ~~advisory functions, of the former New Mexico public utility~~  
21 ~~commission.~~

22 E.] D. Utility division staff shall not have ex  
23 parte communications with commissioners or a hearing examiner  
24 assigned to a utility case, except as expressly permitted  
25 pursuant to Section [~~8-8-17~~] 62-19-23 NMSA 1978."

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1 commission, including rulemakings, adjudicatory hearings and  
2 administrative matters.

3 B. A hearing examiner [~~shall~~] may provide the  
4 commission with a recommended decision on the matter assigned  
5 to the hearing examiner, including findings of fact and  
6 conclusions of law. [~~The~~] A recommended decision shall be  
7 provided to the parties, and they may file exceptions to the  
8 decision prior to the final decision of the commission.

9 C. When the commission has appointed a hearing  
10 examiner to preside over a matter, at least one member of the  
11 commission shall, at the request of a party to the proceedings,  
12 attend oral argument."

13 SECTION 14. Section 62-19-21 NMSA 1978 (being Laws 1998,  
14 Chapter 108, Section 15, as amended) is amended to read:

15 "62-19-21. COMMISSION RULES--PROCEDURES FOR  
16 ADOPTION.--~~[A.] Unless otherwise provided by law, no rule~~  
17 ~~affecting a person outside the commission shall be adopted,~~  
18 ~~amended or repealed except [after public notice and public~~  
19 ~~hearing before the commission or a hearing examiner designated~~  
20 ~~by the commission.~~

21 ~~B. Notice of the subject matter of the rule, the~~  
22 ~~action proposed to be taken, the manner in which interested~~  
23 ~~persons may present their views and the method by which copies~~  
24 ~~of the proposed rule, amendment or repealing provisions may be~~  
25 ~~obtained shall be published at least once at least thirty days~~

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1 ~~prior to the hearing date in the New Mexico register and two~~  
2 ~~newspapers of general circulation in the state and mailed at~~  
3 ~~least thirty days prior to the hearing date to all persons who~~  
4 ~~have made a written request for advance notice. For each rule,~~  
5 ~~amendment or repealing provision that affects only one or a~~  
6 ~~limited number of municipalities, towns, villages or counties,~~  
7 ~~notice shall be published in the largest circulation newspaper~~  
8 ~~published and distributed locally in those areas as well as in~~  
9 ~~a newspaper of general circulation in the state. Additional~~  
10 ~~notice may be made by posting on the internet or by using other~~  
11 ~~alternative methods of informing interested persons.~~

12 ~~C. If the commission finds that immediate adoption,~~  
13 ~~amendment or suspension of a rule is necessary for the~~  
14 ~~preservation of the public peace, health, safety or general~~  
15 ~~welfare, the commission may dispense with notice and public~~  
16 ~~hearing and adopt, amend or suspend the rule as an emergency.~~  
17 ~~The commission's finding of why an emergency exists shall be~~  
18 ~~incorporated in the emergency rule, amendment or suspension~~  
19 ~~filed with the state records center. Upon adoption of an~~  
20 ~~emergency rule that is intended to remain in effect for longer~~  
21 ~~than sixty days, notice shall be given within seven days of~~  
22 ~~filing the rule as required in this section for proposed rules.~~

23 ~~D. The commission shall issue a rule within~~  
24 ~~eighteen months following the publication of that proposed rule~~  
25 ~~or it shall be deemed to be withdrawn. The commission may~~

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1 ~~propose the same or revised rule in a subsequent rulemaking.~~

2 ~~E. All rules shall be filed in accordance with the~~  
3 ~~State Rules Act. Emergency rules shall be effective on the~~  
4 ~~date the rules are filed with the state records center. All~~  
5 ~~other rules shall be effective fifteen days after filing,~~  
6 ~~unless a later date is provided by the rule] as provided in the~~  
7 ~~State Rules Act."~~

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

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

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

23 "62-19-23. ~~[EX PARTE]~~ PROHIBITED AND PERMITTED  
24 COMMUNICATIONS.--

25 A. A commissioner shall not initiate, permit or

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1 consider a communication directly or indirectly with a party or  
2 ~~[his]~~ the party's representative outside the presence of the  
3 other parties concerning a pending rulemaking after the record  
4 has been closed or a pending adjudication.

5 B. A hearing examiner shall not initiate, permit or  
6 consider a communication directly or indirectly with a party or  
7 ~~[his]~~ the party's representative outside the presence of the  
8 other parties concerning a pending rulemaking or 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 ~~[ex parte]~~ communications  
12 are 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 issues  
16 on the merits are allowed if the commissioner or hearing  
17 examiner reasonably believes that no party will gain an  
18 advantage as a result of the ex parte communication and the  
19 commissioner or hearing examiner makes provision to promptly  
20 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 advise  
24 the commission in carrying out the commissioner's rulemaking or  
25 adjudicative responsibilities; provided that such discussion

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1 that takes place outside of a meeting held in accordance with  
2 the Open Meetings Act shall not concern a vote or opinion as to  
3 the ultimate disposition of a particular matter or issue; and  
4 provided further that any action on the commission's rulemaking  
5 or adjudicative responsibilities must be taken at an open  
6 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 ~~[public regulation]~~  
16 commission's rulemaking authority, a party to a proceeding may  
17 consult with the commission's advisory staff. By July 1, 2004,  
18 the commission shall establish such rules.

19 D. A commissioner or hearing examiner who receives  
20 or who makes or knowingly causes to be made ~~[a]~~ an ex parte  
21 communication ~~[prohibited by this section]~~ shall disclose it to  
22 all parties and give other 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

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

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