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## About Think New Mexico

Think New Mexico is a results-oriented think tank whose mission is to improve the quality of life for all New Mexicans, especially those who lack a strong voice in the political process. We fulfill this mission by educating the public, the media, and policymakers about some of the most serious challenges facing New Mexico and by developing and advocating for effective, comprehensive, sustainable solutions to overcome those challenges.

Our approach is to perform and publish sound, nonpartisan, independent research. Unlike many think tanks, Think New Mexico does not subscribe to any particular ideology. Instead, because New Mexico is at or near the bottom of so many national rankings, our focus is on promoting workable solutions.

Consistent with our nonpartisan approach, Think New Mexico's board is composed of Democrats, Independents, and Republicans. They are statesmen and stateswomen, who have no agenda other than to see New Mexico succeed. They are also the brain trust of this think tank.

Think New Mexico began its operations on January 1, 1999. It is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. In order to maintain its independence, Think New Mexico does not accept government funding. However, contributions from individuals, businesses, and foundations are welcomed, encouraged, and tax-deductible.

## Results

As a results-oriented think tank, Think New Mexico measures its success based on changes in law we help to achieve. Our results include:

- making full-day kindergarten accessible to every child in New Mexico
- repealing the state's regressive tax on food and successfully defeating efforts to reimpose it
- creating a Strategic Water Reserve to protect and restore New Mexico's rivers
- establishing New Mexico's first state-supported Individual Development Accounts to alleviate the state's persistent poverty
- redirecting millions of dollars a year from the state lottery's excessive operating costs to full-tuition college scholarships
- reforming title insurance to lower closing costs for homebuyers and homeowners who refinance their mortgages

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**Clara Apodaca**, a native of Las Cruces, was First Lady of New Mexico from 1975–1978. She served as New Mexico's Secretary of Cultural Affairs under Governors Toney Anaya and Garrey Carruthers and as senior advisor to the U.S. Department of the Treasury. Clara is President and CEO of the National Hispanic Cultural Center Foundation.



**Paul Bardacke** served as Attorney General of New Mexico from 1983–1986. Paul is a Fellow in the American College of Trial Lawyers, and he currently handles complex commercial litigation and mediation with the firm of Sutin, Thayer, and Browne. In 2009 Paul was appointed by U.S. Interior Secretary Ken Salazar to serve on the National Park System Advisory Board.



**David Buchholtz** has advised more than a dozen Governors and Cabinet Secretaries of Economic Development on fiscal matters. David has served as Chairman of the Association of Commerce and Industry and was appointed to the Spaceport Authority Board of Directors by Governor Martinez. He is the senior member of the New Mexico office of Brownstein Hyatt Farber Schreck.



**Garrey Carruthers** served as Governor of New Mexico from 1987–1990. Garrey is Dean of New Mexico State University's College of Business and was formerly President and CEO of Cimarron Health Plan. He serves on the board of the Arrowhead economic development center in Las Cruces as well as a number of corporate and public organizations.



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**Edward Lujan** is the former CEO of Manuel Lujan Agencies, the largest privately owned insurance agency in New Mexico. Ed is a former Chairman of the National Hispanic Cultural Center of New Mexico, the Republican Party of New Mexico, and the New Mexico Economic Development Commission.



**Fred Nathan** founded Think New Mexico and is its Executive Director. Fred served as Special Counsel to New Mexico Attorney General Tom Udall from 1991–1998. In that capacity, he was the architect of several successful legislative initiatives and was in charge of New Mexico's lawsuit against the tobacco industry.



**Roberta Cooper Ramo** is the first woman elected President of the American Bar Association and the American Law Institute. Roberta served on the State Board of Finance and is a former President of the Board of Regents of the University of New Mexico. She is a shareholder in the Modrall law firm and serves on many national boards.



## **Dear New Mexican:**

It is likely that no local, state, or federal government agency directly affects more New Mexicans on a daily basis than the New Mexico Public Regulation Commission (PRC).

As a result, this year's policy report from Think New Mexico should be of interest to every New Mexican who has ever paid an electric, gas, or water bill, used a landline telephone, or purchased insurance, since the PRC regulates all of these aspects of our lives.

Most New Mexicans, however, are probably more familiar with the PRC because of the parade of controversy that has followed it from its inception in the late 1990's to the recent troubles of PRC Commissioner Jerome Block Jr., which have garnered headlines across the state.

While this report mentions some of these controversies, its focus is instead on the need to fundamentally rethink our approach to regulation in New Mexico in a much more comprehensive way.

The report traces regulatory politics in New Mexico back a full century to statehood and documents the ad hoc evolution of the PRC's predecessors, the State Corporation Commission and Public Utility Commission. The growth of these agencies was at times driven more by animosities between elected officials or special interest politics than by any rational design. That history was capped by the entertaining and improbable passage of the legislation and the constitutional amendment that led to the creation of the PRC 15 years ago with the broadest jurisdiction of any state regulatory body in the country.

The solutions that we advocate are designed to be effective, but also pragmatic. For example, there has been an ongoing debate as to whether the PRC commissioners should be elected or appointed. We believe the debate misses the larger point, which is that PRC commissioners need to have greater qualifications than they currently do, especially given the complexity and the importance of the areas regulated by the PRC.

Beyond the benefits to families and businesses of improving the performance of the PRC, the reforms outlined in this report also have the potential to result in recurring savings of more than \$1 million from streamlining, eliminating duplication, and, in some instances, deregulation.

During the course of researching and writing this report, we consulted with both current and former employees of the PRC, former legislators involved in the creation of the PRC, former PRC commissioners, and former Superintendents of Insurance. We also spoke with advocates for businesses and consumers who regularly appear before the PRC. Many are listed in the acknowledgments in the back inside cover of this report (although for obvious reasons, some have chosen to remain anonymous).

In preparing this report, we reviewed numerous studies about state regulation of utilities and transportation. We closely examined the statutes of different states and compiled our own comparisons. We also dug deeply into historical documents related to the establishment of the State Corporation Commission, the Public Utility Commission, and the PRC. All of these sources can be found in the bibliography at the end of this report or on our website.

In writing and researching this report, my co-author Kristina Fisher, Think New Mexico's Associate Director, and I were greatly assisted by our two colleagues, Jason Espinoza, Field Director, who led our research and fact-checking efforts, and Lynne Buchen, Business Manager, who found many of the images throughout the report and obtained permission to reprint them. Seven interns from across New Mexico with an interest in government and public service also provided a huge amount of help. They are: Arik Burakovsky, a junior at the University of California San Diego; Emma Hamilton, a junior at New Mexico State University; Alicia Leger, a sophomore at Clark University; Sarracina Littlebird, a recent graduate of Columbia University; Seth Montgomery, a senior at Santa Fe Preparatory School; Sarah Zager, a junior at Williams College; and Faye Zhao, a recent graduate of Yale.

If you would like to become involved in this effort to reform the PRC, I encourage you to visit our website at [www.thinknewmexico.org](http://www.thinknewmexico.org) and contact your elected officials. You are also invited to join the hundreds of New Mexicans who invest in Think New Mexico's work by sending a contribution in the enclosed reply envelope.

*Fred Nathan*

Founder and Executive Director

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## THE ACCIDENTAL AGENCY

Those present at the birth of the Public Regulation Commission (PRC) in 1996 still shudder when thinking about how it came into being.

There was surprisingly little deliberation about the formation of what is likely the most powerful state regulatory body in the nation, with appendages reaching into the regulation of utilities, including electricity, natural gas, water, and wastewater; telecommunications; insurance, including health, property, title, and auto; motor carriers, including tow trucks, taxis, moving vans, buses, shuttles, ambulances, and railroads; oil, natural gas, and hazardous liquid pipelines; corporations; and the State Fire Marshal's office.

Representative Bob Perls (D-Corrales), a legislator in his second term, introduced House Joint Resolution (HJR) 16 near the midpoint of the thirty-day 1996 legislative session, just before the deadline for bill introductions.

At first glance, it did not seem like a big deal. HJR 16 was a relatively short bill, 54 double-spaced lines spread across three pages, but it had massive policy implications for the people of New Mexico. The bill would amend the state constitution to create a regulatory body with wider-ranging authority than that of any other state. Yet HJR 16 did not require any qualifications for the five elected commissioners who would oversee this body, other than that they must be 1) at least 18 years of age; 2) a resident of the state for at least one year; and 3) not a convicted felon. In other words, HJR 16 would place extremely broad jurisdictional authority under the control of PRC commissioners with extremely few qualifications.

Representative Perls was well-intentioned, however, and the bill had the appeal of creating a sin-

gle five-member elected PRC by merging two separate regulatory bodies: the elected three-member State Corporation Commission, which regulated insurance and telecommunications (among many other things), and the appointed three-member Public Utilities Commission, which regulated electric, gas, and water utilities.

Aware of HJR 16's ramifications, the Speaker of the House, Raymond Sanchez (D-Albuquerque), assigned it to be considered by four committees, seemingly insuring a swift and certain demise for the legislation. There were, after all, only about two weeks left to pass it during a 30-day session in which 1,901 pieces of legislation were vying for the attention of legislators.

However, with only about a week remaining in the session, a funny thing happened on the way to HJR 16's funeral: the bill started to move through committees at an accelerating pace. Its first committee, House Voters and Elections, passed HJR 16 with "no recommendation," legislative parlance for "we are not sure that this legislation should pass, but, as a courtesy to the sponsor, we will let him fight another day."

Next, HJR 16 moved to the House Business and Industry Committee, which has a long and well-deserved reputation for being the committee where legislation goes to die. Surprisingly, HJR 16 survived by a 5-4 vote (with one committee member excused and two others absent).

After that, HJR 16 successfully navigated two more committees: House Judiciary and House Appropriations and Finance. The odds of its passage, however, were still stacked against it as it came up for a vote on the House Floor around 11:00 p.m., the night before the session's adjournment at noon the next day.



Representative Bob Perls (D-Corralles). Photo courtesy Bob Perls.

HJR 16 passed the House with bipartisan support, but also bipartisan opposition, not a promising sign for Senate approval, especially given that there were only about a dozen hours left in the session.

Senator Manny Aragon (D-Albuquerque), the enormously powerful Senate President Pro Tem, assigned HJR 16 to a single Senate committee, Senate Rules, but there was no time for a committee hearing on the last frantic day of the session. HJR 16 finally appeared to be dead.

However, with only about an hour remaining until adjournment of the session, Senator Aragon made a rare parliamentary procedural maneuver. He removed HJR 16 from the Senate Rules Committee – without a hearing – and brought it directly to the Senate Floor as the next order of business. The Senate passed HJR 16 with only a few minutes remaining in the session.

The next morning, Representative Perls told the *Albuquerque Journal*, “It snuck through because nobody expected it to pass.” No one could argue with that assessment, as the bill had survived so many near-death experiences – seemingly more by accident than by design.

Legislative passage, however, was not the last obstacle to the creation of the PRC; it still had to be approved by the voters in the November 1996 election. It was placed on the ballot as Constitutional Amendment (CA) 6.

That year was a presidential election year, and the ballot also included U.S. Senate and Congressional races, every legislative seat, various local offices, judgeships from district court to the state supreme court, as well as local and statewide bonds. CA 6 was near the bottom of the ballot, the sixth of seven constitutional amendments.

As a consequence of the packed ballot, the constitutional amendments received very little attention in the run up to the election. There did not appear to be any organized opposition or support for CA 6, such as radio or television advertising campaigns. Key stakeholders including the Public Service Company of New Mexico and U.S. West Communications, the two largest utilities in the state, and Common Cause and the League of Women Voters were officially neutral.

Others expressed reservations, however. A month before the election, Speaker Sanchez told the *Albuquerque Journal*, “It is going to be way too powerful and much too subject to outside influences,” while Governor Gary Johnson, who rarely saw eye-to-eye with the Speaker, said in the same article, “My concern would be that we might somehow elect unqualified members.” Both concerns proved prescient.

Nevertheless, on November 5, 1996, CA 6 squeaked by the voters 51% to 49% and the PRC was born.

## A BRIEF HISTORY OF REGULATION IN NEW MEXICO

According to the PRC's first annual report, it is "the largest jurisdictional state agency in the United States." The reason that most voters supported the creation of this massive agency was best captured in a 1998 *Santa Fe New Mexican* editorial: "New Mexicans' vote to establish [the PRC] amounted to a vote of no confidence in the two regulatory bodies it replaces [the State Corporation Commission and the Public Utility Commission]."

### The State Corporation Commission

New Mexico's first regulatory agency was the State Corporation Commission (SCC), which the state's founding fathers placed in the constitution. It was very much an early 20th century entity, growing out of the great public concern about the power of corporations, especially monopolies like railroads.

William Sloan, a prominent Albuquerque lawyer and close observer of the SCC, commented that "corporations in 1910, when our constitutional convention was held, were the subject of the prayerful scrutiny and apprehension now reserved for such things as the atomic bomb." Indeed, when New Mexico's constitution was drafted, robber barons and muckrakers were in their ascendancy and Teddy Roosevelt had just concluded two terms as President during which he had crusaded for regulation of corporations with statements like, "The great corporations...are the creatures of the State, and the State not only has the right to control them, but it is duty bound to control them wherever the need of such control is shown."

So, understandably, the SCC was originally created to regulate corporations (hence its name), telephone companies, and railroad companies. States



*In this January 16, 1912 group photo of New Mexico's first elected officials, State Corporation Commissioners George H. Van Stone, Hugh H. Williams, and M. S. Groves stand in the back row (left-right). Photo courtesy the Center for Southwest Research, University of New Mexico, #000-742-0248.*

had begun regulating telephone companies in 1907 to protect consumers and force competing networks to interconnect. New Mexico joined many other states in regulating railroad corporations, whose immense monopoly power frequently brought them into conflict with the states. The constitutional framers made SCC commissioners elected, rather than appointed, likely because they believed that elected commissioners would be more independent and less prone to corruption.

Although the SCC began with a limited mission, as it evolved the commission became something of a repository for a seemingly random assortment of regulatory responsibilities.

For example, an Insurance Bureau was added to the SCC in 1925. Likewise, in 1955 the Legislature established the Office of the State Fire Marshal at the SCC and made the SCC commissioners the Fire Board.

Meanwhile, some of the growth at the SCC was motivated by special interest politics. For instance, although the SCC had been created in part to temper the power of the railroads, the commission took

on the regulation of motor carriers in 1939 because the railroads were concerned about new competition from trucking companies.

Dissatisfaction with the SCC came early in its history. By 1920, a special commission analyzing state revenues recommended “immediate repeal” of the constitutional provision creating the SCC and distribution of its duties to other agencies. The report stated: “We believe that experience has already proven that the Commission is not an effective instrumentality for public good and that the expense involved in its administration is utterly unjustified considering the results attained.”

By the end of its existence, the SCC seemed permanently mired in scandal and controversy. For instance, an SCC commissioner who served for 17 years (14 of them as Chairman) was accused of abusing the perks of his office, urging SCC employees and those with business before the commission to buy jewelry from his wife, and neglecting to recuse himself from matters where he had an apparent conflict of interest. In another instance, two SCC commissioners reached a settlement in a lawsuit accusing them of padding SCC legal bills so that a law firm could recoup political contributions to the same two commissioners.

### **The Public Utility Commission**

When the SCC was created, it lacked specific authority to regulate utilities. In a 1914 report to the Legislature, the SCC had volunteered for the job: “We believe that the interest of the public would be better [served] if the scope of the Commission were enlarged so as to include all electric, gas, water and other public service companies.”

This apparently did not excite the Legislature to act. Nevertheless, the SCC oversaw regulation of utilities until 1932 when the New Mexico Supreme Court ruled that they lacked authority to do so.

Rather than give the SCC jurisdiction over utilities, Governor John Miles and the Legislature created a separate regulatory body in 1941: the Public Service Commission, which was later renamed the Public Utility Commission (PUC). (Miles’ successor as Governor, John Dempsey, appointed Miles as Chairman of the Public Service Commission in 1943.)

The PUC was assigned responsibility for regulating utilities because they are natural monopolies, meaning that only one company can efficiently provide service (such as with transmission lines for the distribution of electricity). With natural monopolies there is a need for government to intervene in the free market to assure just and reasonable rates as well as efficient and adequate service.

While the PUC did not suffer from nearly as much mission creep and scandal as the SCC, it still



*The Albuquerque Gas and Electric Company building at night in 1930. Photo courtesy the Albuquerque Museum #PA1982.180.75.*

managed to receive its share of public criticism. Some of that was to be expected—that the PUC was either too hard or too soft on regulated industries—but the criticisms also went further. For example, the *Santa Fe New Mexican* complained in a 1995 editorial that “Because [the PUC] is governor-appointed rather than elected, as it is in other states, its membership is subject to the political spoils system rather than merits as judged by voters.” There were also allegations, including one from a PUC commissioner, that the agency was vulnerable to people “attempt[ing] to buy influence” with the PUC.

### The Public Regulation Commission

Unfortunately, the establishment of the Public Regulation Commission (PRC) did not solve the problems with the SCC and the PUC. In fact, the merger of the SCC and the PUC may have unintentionally made matters even worse. Certainly it failed to resolve the most serious underlying problems: the need to streamline and decentralize some functions to other state agencies and the need to raise the qualifications of the commissioners who were charged with making extremely important and complex decisions.

The merger of the SCC and the PUC also failed to create a more efficient regulatory body. As a January 2000 *Santa Fe New Mexican* editorial noted, a Legislative Finance Committee analysis found that the “PRC entered bureaucratic life with 243 employees, the same size public payroll as that of the two old commissions combined. Sixty are supervisors. Twenty of those have no supervisory responsibilities yet they enjoy executive salaries.”

As the timeline on the facing page illustrates, the PRC has continued to suffer from controversy and



*Although utilities have changed significantly since the time this power plant was in operation in Madrid, New Mexico, in the 1930's, the PRC still suffers from many of the problems that plagued the SCC and PUC before it. Photo courtesy Palace of the Governors Photo Archives (NMHM/DCA), #054262.*

lack of public trust throughout its existence. As a 2010 *Albuquerque Journal* editorial put it: “The state Public Regulation Commission has been plagued by ethical problems since its creation in 1996—and before that when it was the Public Utility Commission and State Corporation Commission.”

Calls for reform have mounted throughout the PRC's troubled history and have only grown louder lately as the agency has been accused of failing to protect family budgets, harming economic development, and violating the public's trust. Given the current weak economy, the PRC is urgently in need of being rationalized, restructured, and rethought.

## TIMELINE: REPRESENTATIVE EXAMPLES OF PRC CONTROVERSIES

### **April 26, 1999**

The *Albuquerque Journal* reports that infighting among the new PRC commissioners has marred their first four months in office.

### **July 12, 2000**

A front page article in the *Albuquerque Journal* reports that Commissioner Tony Schaefer has sometimes stayed overnight at the Santa Fe home of a utility company lawyer with large rate cases before the PRC.

### **July 31, 2002**

A front page article in the *Santa Fe New Mexican* reports that "E. Shirley Baca, a candidate for election to the [PRC], has written to every registered lobbyist in the state – including those who represented industries regulated by the commission – asking them for cash contributions to her political-action committee."

### **January 29, 2004**

The PRC elects Commissioner Herb Hughes as its fourth chairman in a month. Commissioner David King states, "I've been persuaded by legislators that we need to stabilize the situation."

### **November 29, 2005**

An independent investigation, undertaken at the behest of Commissioner Lynda Lovejoy, finds that Commissioner Baca violated state law and abused her position when she had an Insurance Division staff member assist her in filing a personal insurance claim following a fire at her home.

### **November 28, 2007**

A New Mexico jury awards \$841,842 to a former PRC employee who sued Commissioner David King for sexual harassment.

### **April 8, 2009**

A grand jury indicts Commissioner Jerome Block Jr. on eight felony counts, and his father, former PRC and SCC commissioner Jerome Block Sr., on four felony counts. The Blocks allegedly violated the election code by misusing taxpayer-supported public campaign funds in 2008 (the case is still pending). Prior to the indictments, the Secretary of State's Office had ordered Block Jr. to return \$10,000 in public campaign funds and fined him \$21,700 for lying on a campaign finance report.

### **July 23, 2009**

PRC Commissioner Carol Sloan is charged with aggravated assault, aggravated burglary and criminal damage to property. Sloan is later convicted on two felony counts and removed from her position by the New Mexico Supreme Court after refusing to leave office.

### **May 8, 2010**

Under pressure from open government groups, the PRC releases heavily redacted results of an ethics survey of PRC employees. Among other findings, 85% of employees who responded had seen unethical behavior at the agency in the past year and 80% said that there is a different ethical standard for commissioners than for employees of the agency.

### **August 10, 2011**

Four of the five PRC commissioners vote to remove Jerome Block Jr. from his position as Vice Chairman following allegations that Block Jr. had fraudulently used his state gas card as well as the gas cards of other PRC employees, driven a state vehicle for nearly a year after his license had been suspended, and was a suspect in a stolen vehicle investigation.

## THE PRC'S PRIMARY PROBLEMS

### Too Much Jurisdiction

The challenges the Public Regulation Commission has faced in its 12 years of existence are due in large part to the fact that the PRC holds power over more different sectors of the economy than any other regulatory agency in the nation.

While every state has an agency responsible for regulating utilities, none has assigned that agency as lengthy, varied, or complex a list of responsibilities as New Mexico's PRC, whose duties include:

- Regulating the rates, service, and financial management of New Mexico's electric, natural gas, and water utilities, including setting the prices utilities charge families and businesses, authorizing the construction of new power plants, approving mergers and consolidations of utility companies, adopting and enforcing safety rules, overseeing the renewable energy portfolio standard and energy efficiency programs, and handling consumer complaints;
- Regulating telecommunications in New Mexico, including granting operating authority to land-line telephone companies, setting their rates, enforcing telecommunications rules, and handling consumer complaints;
- Appointing the Superintendent of Insurance, who oversees the Insurance Division, which licenses insurance companies, insurance agents, and bail bondsmen, and authorizes the rates and policies of annuities and health, life, property, auto, and title insurance; hearing appeals from the Superintendent's insurance rate decisions; and certifying that ski areas are properly insured and that ski lifts are annually inspected;
- Registering New Mexico's for-profit and not-for-profit corporations and LLCs;
- Developing and enforcing rules for any underground excavation that may affect buried electric, telephone, or cable lines, or water or sewage pipes;
- Regulating pipelines carrying oil, natural gas and hazardous liquids, including setting inspection fees, enforcing safety regulations, and conducting field inspections;
- Granting operating authority to buses, shuttles, taxis, limousine companies, moving companies, ambulances, and wreckers performing "non-consensual" vehicle tows within New Mexico, developing and enforcing safety regulations for these vehicles, and regulating their rates;
- Registering the approximately 1,750 commercial trucks that are based in New Mexico and transport goods or supplies across the country;
- Regulating and inspecting the safety of railroad crossings; and
- Appointing the State Fire Marshal, overseeing the State Fire Academy, and developing and enforcing fire safety regulations.

During a typical meeting in May 2010, the PRC considered Blue Cross Blue Shield's request for a health insurance rate increase, acted on requests for operating authority by two ambulance companies, a taxi company, and a limousine service, discussed "the application of Southwestern Electric Cooperative, Inc. for approval of continued use of its fuel and purchased power cost adjustment clause and for a variance from the provision of NMPRC Rule 550," and heard a complaint against Qwest by a competing telecommunications company.

## Too Few Qualifications

The PRC's exceedingly broad jurisdiction has been compounded by the fact that most of the 16 commissioners who have served since the agency's creation have been underqualified for the job.

In March 2011, the Institute of Public Utilities Regulatory Research and Education released a report on the demographics of public utility commissioners across the United States. Nationwide, only 11% of commissioners have less than a college degree, while in New Mexico, a full 44% of PRC commissioners had not completed college when they were elected.

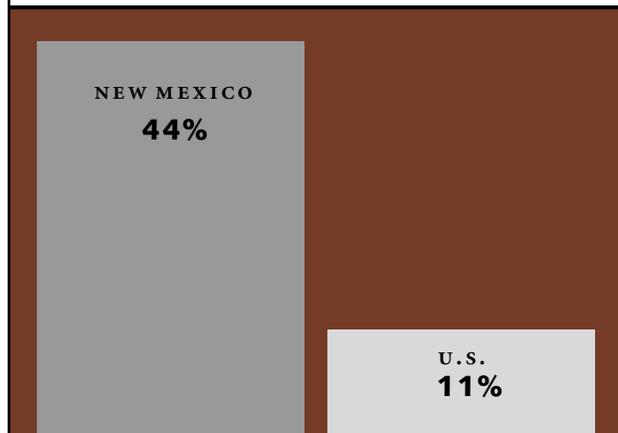
Similarly, 66% of commissioners nationwide have earned an advanced degree, such as a law degree, a Master's, or a PhD, while in New Mexico, only 38% of commissioners have held an advanced degree.

Given the complexity of the decisions PRC commissioners must make on a daily basis, they are at a serious disadvantage when they come into the job with little to no expertise or experience in relevant fields like law, economics, accounting, or engineering.

This knowledge deficit is especially troubling because commissioners are required to make their decisions by evaluating the evidence and applying the law, more like judges than policymakers.

Many of the PRC's decisions have been overturned by the courts, often because the commissioners simply did not understand the law. For example, in August 2011 the New Mexico Supreme Court struck down an energy efficiency surcharge that the PRC had approved for PNM

### Percentage of Utility Commissioners with Less Than a Bachelor's Degree



Source: National data from "Commissioner Demographics 2011," Institute of Public Utilities Regulatory Research & Education. New Mexico data compiled by Think New Mexico.

because the PRC had not followed the legally required ratemaking principles. Two months earlier, the Supreme Court had struck down a PRC decision establishing new regulations for the Qwest telecommunications company. The court found that the PRC had violated the legal requirement of providing due process to all parties. (The lone attorney serving on the PRC had dissented from the commission's decisions in both cases due to his concerns about these legal issues.)

The litigation caused by these appeals of PRC decisions is costly to taxpayers, who must pay to defend them in court, and the fact that the PRC regularly loses in court undermines public confidence in the agency.

Ultimately, New Mexicans are ill-served when the agency responsible for the utility regulation that profoundly affects their lives is at once overwhelmed and underqualified.

## RETHINKING THE PRC

### Part I: Streamline and Decentralize the PRC's Jurisdiction

The PRC's unwieldy jurisdiction is more a result of ad hoc decisions than rational consideration about how best to structure New Mexico's regulatory system.

We recommend refocusing the PRC on its core mission of regulating utilities. This change would allow the PRC to have a much more sensible and manageable agenda, consisting of:

- Regulating the rates, service, and financial management of New Mexico's electric, natural gas, water, and telecommunications utilities;
- Regulating the cables and pipelines that deliver these services to New Mexico customers; and
- Regulating excavations that may affect these utilities.

This streamlined focus would enable the commissioners to develop real expertise about the industries they regulate, something that is simply not possible for them to do in all of the areas they are responsible for today.

Moreover, this refocusing of the PRC would allow it to complete essential tasks like setting utility rates far more quickly and efficiently than it can today. The many months it takes for the PRC to approve rates or changes in service means that those rates often fail to be responsive to rapidly changing economic conditions.

In order to streamline the PRC, we need to fundamentally rethink where its less central duties belong.



*Lowering 561 feet of pipeline in the San Juan Project of El Paso Natural Gas Company in northwestern New Mexico in 1950. Photo courtesy Palace of the Governors Photo Archives (NMHM/DCA), #059054.*

### 1) (Re) Create a Department of Insurance

New Mexico's first Superintendent of Insurance was appointed by the Territorial Governor in 1905. During New Mexico's first decade as a state, the Superintendent of Insurance and State Corporation Commission (SCC) battled for jurisdiction over the growing and increasingly important insurance industry, and in 1925, the Legislature rewrote New Mexico's insurance laws and created the Department of Insurance within the SCC, with the Superintendent appointed by the commission.

Nearly a century later, the Insurance Division of the PRC remains somewhat independent of the rest of the agency. For example, appeals of all of the Superintendent's regulatory decisions except for those involving insurance rates go directly to the courts, not to the PRC commissioners.

The one advantage of having the Superintendent of Insurance selected by the PRC is that the com-

missioners are legally prohibited from accepting campaign contributions—or anything of value—from the industries they regulate, including insurance. By contrast, candidates for governor can and do accept campaign contributions from the insurance industry. Thus, having the PRC appoint the Superintendent helps avoid the appearance or actuality of corruption.

Unfortunately, the track record of the Insurance Division under the PRC demonstrates that the costs outweigh this benefit. Every Superintendent of Insurance that has served under the PRC has either been fired or forced out of the position.

In 2001, about two years after the PRC began operations, the commissioners voted 3-2 to fire the PRC's first Superintendent, Don Letherer, who then sued the agency claiming that he had been fired for speaking out about misuse of funds by the PRC. (The PRC paid Letherer \$150,000 to

settle the lawsuit.) Then, in an action that critics argued violated the Open Meetings Act, the PRC voted 3-2 to appoint Eric Serna, a former 14-year chairman of the SCC, as Superintendent. The PRC's chairman, Bill Pope, resigned from the PRC in protest. Five years later, Superintendent Serna was forced to resign amid allegations of misconduct including pressuring insurance industry lobbyists for contributions to a foundation on whose board he served and using his influence to help his daughter resolve an auto insurance claim.

Then, in the four months between May and August of 2010, the Insurance Division suffered through a revolving door of five Superintendents. Mo Chavez resigned in the wake of a controversy over a rate increase he had approved. Tom Rushton was appointed Interim Superintendent but served for less than two weeks, resigning after the PRC pressured him to reverse the department's decision on the rate increase. Craig Dunbar, a 35-year veteran of the title insurance industry who was then working as PRC Commissioner David King's assistant, served as Superintendent for less than a month, when he had to step down after it was discovered that he failed to meet the residency requirements of the position. Johnny Montoya, the PRC's Chief of Staff, stepped into the role for about two months, after which the PRC appointed John Franchini to the post.

New Mexico is one of only 15 states that places insurance regulation within a larger department. By contrast, 35 states have a stand-alone Department of Insurance.

Placing insurance regulation in its own department with a Superintendent appointed by the Governor makes it easier to attract quality candi-



Adapted from a cartoon by John Trever, copyright April 12, 2006. Reprinted with permission.

dates to the position, because the Superintendent reports to a single boss (the Governor), rather than five separate bosses with five often conflicting agendas. As Don Letherer stated shortly before he was fired: “Insurance matters are too complicated and sensitive to be subjected to the inconsistencies of political pressure when you’ve got five elected officials trying to run the department.”

In addition, having a cabinet-level Superintendent of Insurance improves accountability for the public. Today, if a problem arises with the Superintendent, it is difficult to hold anyone accountable—especially if two of the five commissioners voted against hiring the Superintendent. By contrast, if the Governor is solely responsible for hiring and firing the Superintendent of Insurance, then there is a clear line of accountability and the buck stops at the Governor’s desk.

Moreover, having the Superintendent of Insurance appointed by the Governor and confirmed by the state Senate gives the Legislature a voice in the selection process, which it lacks today.

In order to address any concerns that a Governor-appointed Superintendent might be overly political, the Superintendent of Insurance could serve a staggered term that does not align with the Governor’s tenure. The qualifications of the Superintendent’s position should also be enhanced from the current requirement of three years residency in New Mexico.

We recommend that New Mexico join the majority of states by elevating the PRC’s Division of Insurance to a cabinet-level Department of Insurance, headed by an appropriately qualified Superintendent who is appointed by the Governor and confirmed by the Senate.

<b>Regulation of Insurance</b>	
DEPARTMENT OF INSURANCE	WITHIN ANOTHER DEPARTMENT
Alabama	Alaska
Arizona	Florida
Arkansas	Hawaii
California	Kentucky
Colorado	Maine
Connecticut	Massachusetts
Delaware	Michigan
Georgia	Minnesota
Idaho	Nevada
Illinois	<b>New Mexico</b>
Indiana	New York
Iowa	Oregon
Kansas	Rhode Island
Louisiana	South Dakota
Maryland	Virginia
Mississippi	
Missouri	
Montana	
Nebraska	
New Hampshire	
New Jersey	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Pennsylvania	
South Carolina	
Tennessee	
Texas	
Utah	
Vermont	
Washington	
West Virginia	
Wisconsin	
Wyoming	
TOTAL: 35	TOTAL: 15

Source: State statutes, compiled by Think New Mexico.

## 2) Transfer the State Fire Marshal to the Department of Homeland Security

The weak reasoning by which the State Fire Marshal's Office ended up under the PRC's jurisdiction is that it was originally created as a branch of the Insurance Division because fire prevention reduced property insurance premiums. As a result, the Fire Marshal's Office was funded by taxes on insurance premiums.

A much better fit for the Fire Marshal's Office and Fire Academy would be within an agency dedicated to emergency prevention and response, like the Department of Homeland Security and Emergency Management.

This department was created in 2007, when the Governor's Office of Homeland Security merged with the Office of Emergency Management. The agency now serves as New Mexico's lead agency in preventing and responding to disasters.

We recommend transferring the Fire Marshal's Office and Fire Academy out of the PRC and making it a part of the Department of Homeland Security and Emergency Management.

## 3) Consolidate Corporate Reporting in the Office of the Secretary of State

Before the State Corporation Commission (SCC) was created at statehood, the Secretary of the Territory (now the Secretary of State) was responsible for chartering new corporations, both for-profit and not-for-profit, and monitoring existing ones. In fact, as the SCC noted in its inaugural annual report, for the first few months of its existence it operated out of the Secretary of State's office "on account of the corporation files being principally in the office of the Secretary of State."



*Firefighters being trained at the State Firefighters Training Academy in Socorro, NM. Photo courtesy the Public Regulation Commission.*

As the registering and reporting of corporations has become increasingly routine over the past century, this role has become increasingly simple and straightforward. Today, the PRC does not even have a main division in charge of corporations; rather, the 16 employees who handle corporate registration and reporting are classified as part of the Administrative Services division of the PRC, since their work consists primarily of providing and accepting forms, answering basic inquiries, and collecting fees.

Interestingly, most states handle corporate registration the way New Mexico did prior to statehood: they place the Secretary of State in charge of collecting and filing corporate reports. Thirty-five states assign responsibility for these duties to their Secretaries of State, while only four (including New Mexico) assign it to the same agency that regulates utilities.

In fact, it is so common for the Secretary of State to be responsible for corporate reporting that in order to assist the many businesses that expect to report to it, the website of the New Mexico Secretary of State includes a page titled “Corporations,” which directs visitors to the PRC.

New Mexico’s Secretary of State already handles many business duties, including registering Limited Liability Partnerships; registering state trademarks and service marks; serving as the legal agent for some corporations; and filing Uniform Commercial Code documents. Thus, moving corporate registration and reporting to the Secretary of State will reduce the regulatory burden on businesses by creating “one-stop shopping” for all of their reporting and filing needs.

We recommend transferring corporate registration and reporting out of the PRC and to the Secretary of State.

<b>Registration of Corporations</b>	
SECRETARY OF STATE	
Alabama	New Hampshire
Arkansas	New York
Connecticut	North Carolina
Georgia	North Dakota
Idaho	Ohio
Illinois	Oklahoma
Indiana	Oregon
Kansas	Pennsylvania
Kentucky	Rhode Island
Louisiana	South Carolina
Maine	South Dakota
Massachusetts	Tennessee
Minnesota	Texas
Mississippi	Vermont
Missouri	Washington
Montana	West Virginia
Nebraska	Wyoming
Nevada	
ANOTHER AGENCY	
Alaska	Maryland
California	Michigan
Delaware	New Jersey
Florida	Utah
Hawaii	Wisconsin
Iowa	
STATE UTILITY COMMISSION	
Arizona	
Colorado	
New Mexico	
Virginia	

Source: State statutes, compiled by Think New Mexico.

#### 4) Eliminate Duplicative Regulation of Railroads by the PRC and DOT

When the SCC first began regulating them, railroads were some of the nation's largest corporations, and they provided the only way to quickly transport people and products across the country. Due to the immense power the rail industry wielded over the economy, railroad rates, routes, and service were carefully regulated by both state and federal governments.

Over time, the Federal Railroad Administration took over almost all regulation of railroads and state governments played a smaller and smaller role. Today, the PRC's regulation of railroads is limited to ensuring the safety of rail crossings in New Mexico.

Unfortunately, the PRC's lingering jurisdiction over railroads overlaps with that of the state Department of Transportation (DOT), because the PRC is responsible for ensuring the safety of train tracks where they intersect with roads, while the DOT is responsible for ensuring the safety of roads where they intersect with train tracks.

Not surprisingly, this situation has created conflicts, such as occurred in 2008 when the PRC and DOT crossed swords over which agency had the authority to determine how high the tunnels for the Rail Runner Express needed to be under I-25. In that case, each agency believed that a different height standard applied, and each agency argued that it had the jurisdiction to decide. The jurisdictional question was never fully resolved, as the PRC ultimately approved a variance allowing the tunnels to be built at the height the DOT had proposed.



*A passenger train of the Santa Fe Railroad at the Albuquerque station in the 1930s.* Photo courtesy the Center for Southwest Research, University of New Mexico, #000-119-0630.

Having the PRC duplicate safety work being done by the DOT—and occasionally wrestle with that agency over which one of them has jurisdiction—is not an efficient use of state taxpayer dollars. Since New Mexico's DOT is the primary agency responsible for regulating transit, including rail, it is a natural fit for that agency to regulate the safety of both roads and train tracks where they cross.

We recommend allowing the New Mexico Department of Transportation to handle the railroad safety regulation currently being duplicated by the PRC.

## 5) Move Ambulance Regulation to the Department of Health

Like railroads, ambulances are another example in which the PRC's jurisdiction overlaps with that of another state agency—in this case, the New Mexico Department of Health (DOH).

Although the PRC is responsible for granting operating authority and setting rates and standards for ambulances, all other regulation of emergency medical services is handled by the DOH. For instance, the Emergency Medical Services bureau of the DOH certifies emergency medical personnel and other first responders (i.e., the people who staff ambulances) and writes the guidelines for caring for patients while they are being transported to the hospital, among other things.

Perhaps most absurdly, the DOH is responsible for licensing and regulating air ambulances, meaning that if you are being transported to the hospital via an air ambulance, the DOH sets the rules for

your transport, whereas if you are being driven there in a ground ambulance, the PRC does.

Given its expertise in this area, it is not surprising that the DOH is also required by law to provide technical assistance to the PRC regarding the development and implementation of regulations for ambulance services.

Rather than having the PRC oversee this one isolated area of emergency medical response (and requiring them to seek the assistance of the DOH in order to do so), it would be much more efficient for the DOH to simply regulate ground ambulances directly, as they already do for air ambulances.

New Mexico is the only state in the nation that places ambulance licensing and regulation under the authority of the agency regulating utilities, while 35 states place it in their Departments of Health. We recommend transferring ambulance regulation from the PRC to the DOH.



*A patient in northern New Mexico being transferred from a ground ambulance, regulated by the PRC, to an air ambulance, regulated by the DOH. Photo courtesy Lifeguard Air Emergency Services.*

## 6) Deregulate Market Entry and Rates of Motor Carriers of Passengers and Household Goods

Perhaps the most archaic and counterproductive activity that the PRC engages in is regulating the market entry and rates of in-state motor carriers of persons and household goods—in other words, commercial buses, shuttles, taxis, limousine companies, moving companies, and wreckers performing “non-consensual” vehicle tows within New Mexico.

These regulations date from the 1930s, when the federal and state governments first began heavily regulating motor vehicles at the request of the railroads. The railroads sought price controls on motor carriers in order to protect their industry from the growing competition of trucking companies. Moreover, trucking companies themselves welcomed regulations that shielded existing businesses from the “destructive competition” that they argued might destroy the young industry in the tough economic times of the Great Depression.

In response, the federal government enacted laws strictly regulating interstate trucking and bus companies, including rules that limited the ability of new companies to enter the market and controlled the routes companies could travel and the rates they could charge.

States enacted similar regulations to control the motor carrier industry within their borders (the “intrastate” companies). New Mexico enacted its first motor carrier regulations in 1939, requiring every intrastate commercial motor carrier in New Mexico to apply to the SCC for permission to



*The Union Bus Depot in Santa Fe, New Mexico around the time when the state first began regulating motor carriers.*  
Photo by T. Harmon Parkhurst, courtesy Palace of the Governors Photo Archives (NMHM/DCA), #051111.

operate and for approval of its rates, routes, and schedules.

As the national economy grew and developed, it became apparent that heavy-handed government regulation of the trucking industry was increasing transportation costs and harming consumers. In 1980, the federal government deregulated the interstate motor carrier industry when President Carter signed the federal Motor Carrier Act into law.

The effects of this federal deregulation were overwhelmingly positive: competition increased, service to small and rural communities improved, complaints by shippers decreased, and a 1990 study by the Brookings Institute found that American consumers were saving approximately \$20 billion a year due to lower shipping rates.

In 1994, the federal government built on the success of the 1980 Motor Carrier Act by enacting legislation that explicitly prohibited states from regulating the “price, route, or service” of intrastate trucking companies and most other

commercial motor carriers—but states were still permitted to regulate the very narrow categories of intrastate passenger carriers and movers of household goods.

Many states have chosen to deregulate even those narrow categories that they are still allowed to control. A total of 20 states no longer regulate the rates and service of motor carriers of passengers, household goods, or both, and the results have mirrored the success at the federal level.

For example, in 1982 Arizona eliminated economic regulation of motor carriers after voters approved a referendum on deregulation by a 2-1 margin. Studies after the fact found that shipping rates declined and that both urban and rural communities in the state benefitted. A majority of shippers, receivers, and carriers polled by the Arizona Department of Transportation in 1984 viewed motor carrier deregulation favorably.



*A New Mexico Motor Corporation tow truck in 1939, the year New Mexico first began regulating motor carrier rates.*

Photo by the Brooks Studio, courtesy the Albuquerque Museum  
#PA1978.151.389.

Unfortunately, New Mexico is among the states that have continued to cling to the last shreds of regulatory authority over motor carriers left open to them by the 1994 federal law.

The PRC still tightly controls the market entry of buses, shuttles, taxis, and moving companies by requiring them to apply for a “certificate of public convenience and necessity” before they can operate. In order to get such a certificate, entrepreneurs must prove to the commission that they are “fit, willing and able to provide the transportation service to be authorized” and that “the transportation service to be provided...will serve a useful public purpose that is responsive to a public demand or need.” Their potential competitors are allowed to protest their applications.

Making the situation even worse for New Mexico consumers, these businesses have a specific exemption from the state’s anti-trust laws, meaning they are permitted to collude with each other to set a single rate that everyone in the industry agrees to charge, making it impossible to shop around for better prices. In fact, in many cases entrepreneurs have applied to the PRC to charge lower rates only to be harassed by protests from their competitors until they give up and charge the industry standard rate.

Beyond controlling market entry and rates, the PRC also develops safety and insurance regulations for motor carriers of passengers and household goods. While this is actually a reasonable target for government regulation, it is also one that is being regulated twice: the New Mexico Department of Public Safety (DPS) also develops safety and insurance regulations for commercial vehicles, including all of the ones that fall under the PRC’s jurisdiction!

## TAXI ENTREPRENEURS KICKED TO THE CURB

Meet Rached Merheb. Rached is an entrepreneur, precisely the sort of person we need to help improve New Mexico's job-challenged economy.

In 2008, Rached, the owner of Star Limousine in Albuquerque, identified a niche in the Santa Fe taxi market that was not being met: a hybrid vehicle taxicab service that he planned to call Green Taxi. His straightforward business plan was to offer Santa Fe taxi customers an alternative to the industry standard taxis, which he believed would appeal to Santa Fe's many environmentally conscious residents.

"We'll be consuming less fossil fuels and reduce our emissions and we'll be improving our bottom line," Rached told the *Santa Fe Reporter*.

But to start his business, Rached first needed to get the permission of the PRC. Under state law, applicants for a taxi license are required to alert their potential competitors, who may intervene and file their objections with the PRC's Transportation Division.

Three taxi companies filed objections to Rached's application. This included Santa Fe's sole taxi operator, Capital City Cab, with 21 taxis and 31 drivers, which filed 200 pages of objections (with affidavits) urging the PRC to reject the application because they claimed that there was no room for a second taxi service in Santa Fe. Faced with the steep cost of defending his case before the commission, Rached eventually withdrew his application.



*Rached Merheb and his wife Deanna Ballard, with whom he owns and manages Star Limo. Photo courtesy Rached Merheb.*

New Mexico law in this area is akin to allowing Hertz to essentially veto the expansion plans of its competitor and rival, Avis. (Likewise, and somewhat oddly, the PRC still regulates market entry and rates for shuttles taking New Mexicans to the airport to board airplanes, even though airlines have been deregulated by the federal government for more than three decades.)

By deregulating market entry for taxis, as well as moving vans, shuttles, and bus services, and allowing everyday New Mexicans, rather than the PRC, to make decisions about what services they desire, consumers would benefit, entrepreneurs would no longer be locked out of markets, and more jobs would be created.



*New Mexicans can rent a moving truck, like this one photographed near Pecos, New Mexico, on the free market, but if they want to hire a professional mover, they are limited to the companies and prices approved by the PRC. Photo by Juli Werner.*

This means that for the motor carriers regulated by the PRC, two separate agencies are promulgating and enforcing two separate sets of safety and insurance regulations.

We would recommend limiting the government's regulation of motor carriers to a handful of essential tasks:

- Setting safety and insurance requirements;
- Enforcing basic consumer protections (e.g., requiring that moving companies provide customers with enforceable contracts in order to avoid a situation in which a company increases its price once the customer's household possessions are loaded on the truck);
- Preventing discriminatory pricing; and
- Setting the prices for non-consensual tows (such as when a vehicle is towed from an illegal parking place), since these transactions are not ones

in which the consumer can negotiate for better rates.

Since the DPS is already regulating and enforcing the safety and insurance requirements for all of the vehicles under the jurisdiction of the PRC, we would recommend placing this streamlined regulation of motor carriers under the DPS and leaving decisions about who gets to open a motor carrier business and how much they charge to the free market.

## Part II: Enhance Commissioner Qualifications

Over the years, there has been much debate over the question of whether it would be better to have elected or appointed commissioners.

There are advantages and drawbacks to each system: elected commissioners are directly accountable to the voters, but they are too often qualified only by their willingness to run for office. Appointed commissioners tend to have better educational and professional qualifications, but they are often shadowed by the accusation that they are political cronies of the politician who appointed them.

As the scandals and problems with underqualified PRC commissioners began to mount, a number of attempts were made to improve the caliber of commissioners by making the positions appointed, rather than elected. Between 2001 and 2005, legislators of both parties introduced no fewer than 10 bills to shift some or all of the positions on the PRC from elected to appointed. Not one of these bills made it as far as a full vote of either the House or Senate.

Moreover, the people of New Mexico have consistently favored having more elected offices

rather than fewer. For example, voters soundly rejected the 1969 constitutional convention that proposed to have the Attorney General, State Treasurer, Secretary of State, and SCC Commissioners appointed by the Governor rather than elected by the people. A similar proposal by the 1995 constitutional review commission to make the State Auditor and State Treasurer appointed offices had so little support that it was never even placed on the ballot.

We believe that the debate over the merits of elected versus appointed misses the essential point: regardless of how commissioners are selected, they need to be more qualified than they are today.

As was noted earlier, there are currently only three requirements for PRC commissioners: they must be at least 18 years old, they must have lived in New Mexico for at least a year, and they must not have been convicted of any felonies.

Or, as the *Albuquerque Journal* put it more colorfully in a 2010 editorial, "about the only requirement to take on those daunting responsibilities [of PRC Commissioner] and take home the \$90,000-a-year salary is a pulse."



A recent meeting of the PRC commissioners (Jerome Block Jr. absent, as he was for 11 of the 31 PRC meetings between January and April 2011). Photo by Clyde Mueller, courtesy the Santa Fe New Mexican.

The reason the job of PRC commissioner pays \$90,000 a year is in order to adequately compensate qualified professionals who could earn that much in the private sector. If taxpayers are going to provide this level of compensation, we should expect the same level of qualifications that the private sector would require for such an important and challenging position: a solid education or a proven track record of experience—and ideally, both.

We recommend requiring that, in order to be eligible to run for a seat on the PRC, a person must hold a Bachelor's degree (or higher) from an accredited college or university, or have five years of professional experience in law, engineering, economics, or accounting.

New Mexico state law already specifies qualifications for one elected state office: in order to run for the position of Attorney General, candidates must be licensed attorneys. Like the Attorney General, PRC commissioners are responsible for making decisions in a highly specialized field that requires the ability to understand and apply a great deal of technical information. In fact, utility regulation and rate-making is arguably even more complex than the field of law, since it requires a grasp of not only legal concepts, but engineering and economics as well.

A growing number of states, now totaling 15, include specific educational or professional experience requirements for their public utility commissioners.

For example, Nevada requires commissioners to have a minimum of two years experience in accounting, business administration, finance or economics, administrative law, or professional

engineering. Alaska requires commissioners to have either a degree from an accredited university in engineering, finance, economics, accounting, business administration, or public administration, or at least five years experience working in one of these fields.

South Carolina requires that commissioners have both a Bachelor's degree and professional experience in a field relevant to utility regulation (which that state defines as energy, telecommunications, consumer protection and advocacy, water and wastewater, finance, economics, statistics, accounting, engineering, or law).

By requiring either a four-year college degree or five years of relevant professional experience, New Mexico can achieve the goal of having more qualified PRC candidates while being as inclusive as possible. This proposal recognizes that there are many New Mexicans who have not had the opportunity to attend or graduate from college, but who have worked hard to gain the skills and expertise necessary to serve as PRC commissioners, and who have earned the right to run for the office.

Improving the qualifications of PRC commissioners has the potential to improve the performance of the entire agency. In a 2010 survey of the PRC's staff, one of the recurring themes was low morale due to the poor example set by commissioners (for example, one staff member commented: "It's embarrassing to tell anyone that I'm an employee of this organization."). As several of the responses to the survey noted, the culture of an agency is set at the top, and professionalizing the commissioners themselves is the best way to professionalize the agency as a whole.

## THE MILLION DOLLAR BONUS

The reforms we recommend in this report will not only improve the performance of the PRC and streamline state government—they will also potentially result in a savings for state taxpayers.

Significant savings will result from (1) eliminating duplication with other agencies, and (2) deregulating market entry and rates of motor carriers.

The PRC currently spends over \$660,000 on transportation regulation (not including the employees working on pipeline safety issues, who for some reason are organized under the PRC's Transportation Division). Meanwhile, the Department of Public Safety (DPS) spends over \$1.8 million a year on support personnel (i.e., not law enforcement officers) to administer its commercial vehicle size and weight permitting program.

By abolishing the PRC's regulation of market entry and rates for commercial motor carriers and allowing the DPS to have sole responsibility for the development and enforcement of safety and insurance regulations, we estimate New Mexico taxpayers would save almost all of the money they currently spend on the PRC's Transportation Division: approximately \$599,000.

Similarly, the PRC spends over \$571,000 a year to oversee corporate reporting; meanwhile, the Secretary of State is spending approximately \$257,000 on its business-related responsibilities (not including the costs of two vacant positions).

Together, these two agencies have 25 positions dedicated to business filings, 16 at the PRC and 9 at the Secretary of State. By contrast, in Nebraska (whose population of 1.8 million people is very

### Potential Savings from Rethinking the PRC

<b>Deregulation of Market Entry and Rates for Most Motor Carriers</b>	<b>\$599,000</b>
<b>Consolidating Corporate Reporting and Filing</b>	<b>\$463,000</b>
<b>TOTAL</b>	<b>\$1,062,000</b>

Source: Compiled by Think New Mexico.

close to New Mexico's 2 million) the Secretary of State manages all the business reporting in the state with a staff of 12.

Based on the experience in similar states, if New Mexico consolidated all business reporting in the Secretary of State's Office, it should cost closer to \$432,000 a year, rather than \$895,000 – for a savings of approximately \$463,000.

Finally, because these reforms would result in more highly qualified commissioners, they would likely not need to lean so heavily on expert staff. Commissioners with backgrounds in law, accounting, or engineering might require fewer expert lawyers, accountants, and engineers to assist them in understanding the industries they regulate. In addition, commissioners with more expertise would be less likely to make decisions that would be vulnerable to legal challenge, which would save New Mexico taxpayers the cost of those lawsuits.

Based on a consideration of these factors, we estimate that our proposals have the potential to save New Mexico taxpayers at least \$1 million annually.

## **TOMORROW'S PRC: PROFESSIONAL, RESTRUCTURED, AND COMPETENT**

It is telling that the only person who went on to serve in the New Mexico legislature after serving on the PRC, Senator Lynda Lovejoy (D-Crownpoint), is one of the leading voices for reform of the PRC. Senator Lovejoy has introduced bills in each of the last three sessions to make changes to the PRC.

Several of Senator Lovejoy's colleagues, both Democrats and Republicans, have also introduced a variety of bills over the past decade to reform aspects of the PRC. These legislators include Senator Rod Adair (R-Roswell), Representative Ray Begaye (D-Shiprock), Senator Pete Campos (D-Las Vegas), Representative Ken Martinez, (D-Grants), Senator Bill Payne (R-Albuquerque) Representative Kiki Saavedra (D-Albuquerque), and Representative Lucky Varela (D-Santa Fe).

In addition to these efforts, an interim subcommittee of key legislators, co-chaired by Representative Martinez and Senator Michael Sanchez (D-Belen) produced an excellent report in 2002 proposing a fundamental reorganization of the PRC. Many of our ideas in the preceding pages borrow from their proposals, including making the Insurance Division its own department, consolidating corporate reporting in the Office of the Secretary of State, transferring the regulation of ambulances to the Department of Health, and removing the Fire Marshal's Office from the PRC.

Similar recommendations were made by the 2010 Government Restructuring Task Force, led by

Senator Tim Eichenberg (D-Albuquerque) and Representative Patricia Lundstrom (D-Gallup), which was set up to improve government efficiency and save taxpayer dollars.

Governor Susana Martinez also appears ready to embrace a restructuring of the PRC. During her 2010 campaign for Governor, Martinez said of the PRC, "In an office that oversees so much, there are opportunities to reduce over-bloated bureaucracies and consolidate duplicative administrative functions to achieve budget savings."

Although previous attempts to reform aspects of the PRC have fallen short, the weak economy and the mounting scandals at the PRC make passage of a comprehensive reform of the agency more urgent and more likely than it has been in the past. Between the timing and the strong political support from key legislators and the Governor, we believe that real reform of the PRC is finally ripe for passage.

Enacting the comprehensive reforms summarized on the facing page will require amending the state constitution, just as occurred back in 1996 when the PRC was first created.

However, the need for a comprehensive solution is growing increasingly apparent. For example, a 2010 Standard and Poor's report assessed U.S. utility regulatory environments and gave New Mexico its lowest ranking (along with only four other states and the District of Columbia). This low ranking makes it more difficult for New Mexico's utility companies to borrow money, which can ultimately translate into higher rates for New Mexico's businesses and families.

It is harder to find anyone who is willing to

defend the status quo. Even the PRC's original architect, former Representative Bob Perls, wants to see the PRC restructured. In an e-mail interview, Perls was refreshingly candid about his disappointment with the PRC and his belief that the 1996 reforms did not go far enough.

For example, Perls now favors streamlining the PRC, writing: "I never looked at whether or not certain agencies should be deleted from the constitutional regulation language, but clearly that is true. The PRC has too much to do...and should probably stick to its core mission of [regulating] utilities." With regard to the PRC commissioners, Perls writes: "Somehow we need to get a higher quality of candidate and I am not sure how to do that...I like elected because of the accountability, but it has not worked out particularly well due to the mediocre candidates we have had."

Our vision of tomorrow's PRC is an agency that is professional, restructured in a rational way, and overseen by competent, qualified commissioners. Such a commission would help facilitate strong economic development, protect family budgets, and restore the public's trust, while potentially saving New Mexico taxpayers more than a million dollars a year.

## Think New Mexico's Recommended PRC Reforms

### **I. STREAMLINE THE PRC'S JURISDICTION BY:**

- **Creating a separate Department of Insurance**
- **Moving the State Fire Marshal to the Department of Homeland Security**
- **Consolidating corporate reporting in the Office of the Secretary of State**
- **Eliminating duplicative regulation of railroads by the PRC and the Department of Transportation**
- **Transferring ambulance regulation to the Department of Health**
- **Deregulating market entry and rates for almost all motor carriers of passengers and household goods**

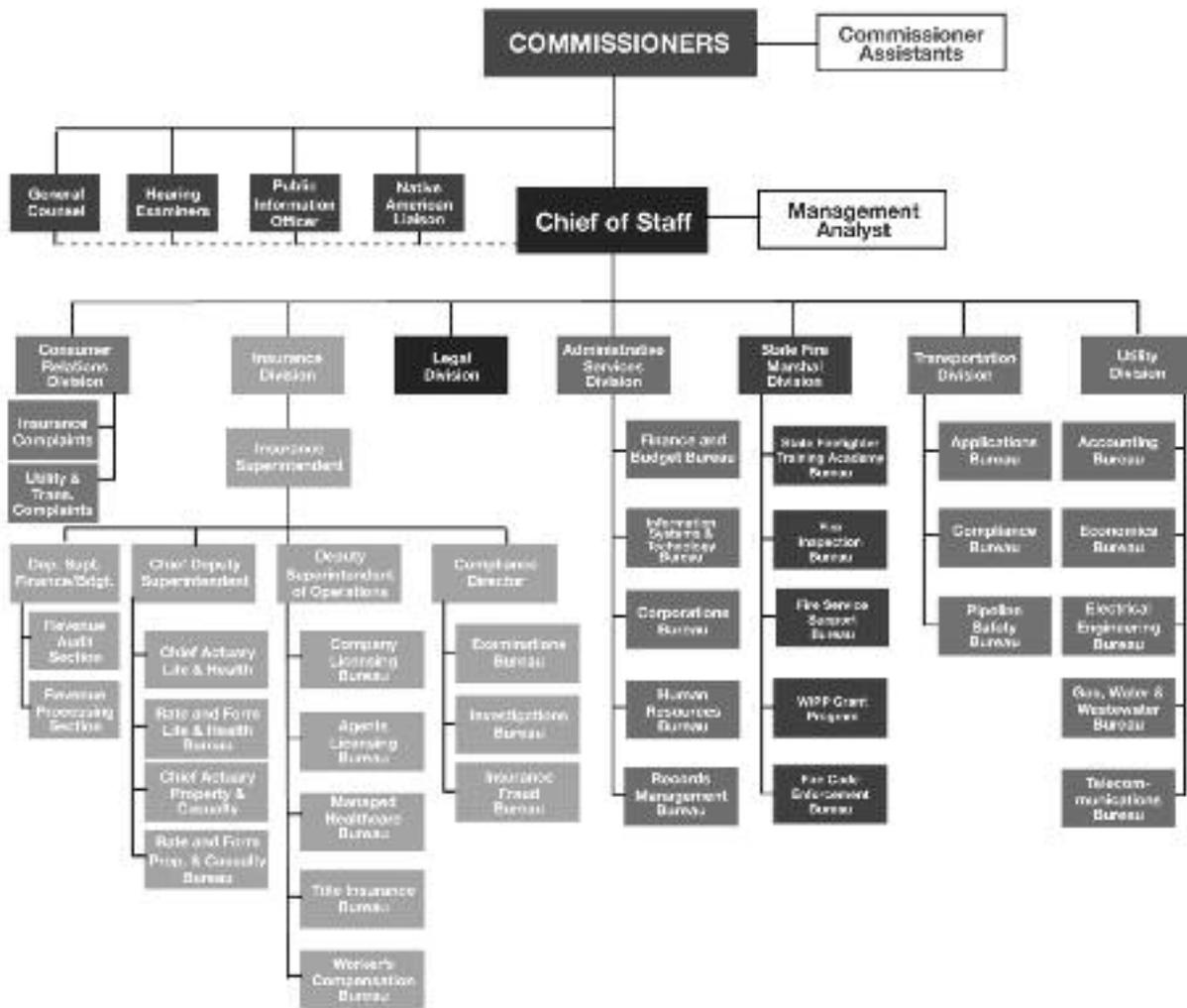
### **II. ENHANCE COMMISSIONER QUALIFICATIONS BY REQUIRING CANDIDATES TO HAVE EITHER:**

- **A Bachelor's degree or higher from an accredited college or university,**
- **or five years professional experience in law, engineering, economics, or accounting**

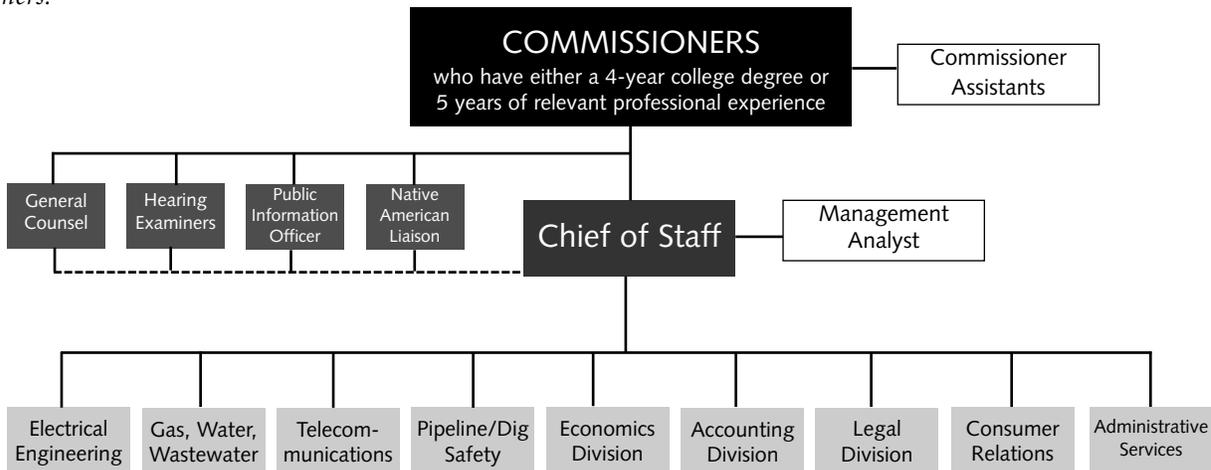
## **TAKE ACTION!**

Visit [www.thinknewmexico.org](http://www.thinknewmexico.org) and sign up for our email action alerts to find out how you can join the effort to rethink and reform the PRC.

**BEFORE:** The PRC's organizational chart, from its 2009 Annual Report, shows how utility regulation (right-hand side) is marginalized due to the agency's overloaded agenda.



**AFTER:** Our vision of tomorrow's PRC is an agency that is rationally restructured and overseen by qualified commissioners.



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