Testimony of Donald G. Cole, Executive Director of the Public Services Commission Before the Committee on Rules & Judiciary of the 33rd Legislature of the United States Virgin Islands

St. Thomas, United States Virgin Islands
February 26, 2020
Good afternoon Honorable Members of the Committee on Rules & Judiciary: Chairperson Janelle K. Sarauw, Vice-Chairperson Novelle E. Francis, Jr., Senator Alicia Barnes, Senator Kenneth Gittens, Senator Myron Jackson, Senator Stephen Payne, and Senator Javan James, Sr. The Public Services Commission wants to thank you for the opportunity to testify today on Bill 33-0211 regarding the composition of the Public Services Commission.

While the Commission has not met in the days since we received the proposed legislation, I have solicited comments from the current Commissioners, and I believe that the following comments represent a consensus of the Commissioners as to the proposed legislation. For the convenience of all, we have attached a redline of the current Section 273, showing the changes as proposed in Bill 33-0211.

The Commissioners were generally in support of the proposed changes. Concern was expressed as to the specific language to define what constitutes "shall have a background in...", with respect to Commissioner qualifications. In new subsection (h), we understand that the intention is that each Commissioner possess experience in one of these areas; as it is currently written it could be interpreted as requiring all, which is an impossible standard. Finally, as to new subsection (h), we note that the phrase “governing board” is used; we understand that to be a reference to the Commission, and that word should be substituted.

An additional concern is how the transition to a new membership structure would occur. These requirements would preclude one current Commissioner from the district of St. Croix from further service and may be construed to also disqualify others on the basis of qualifications. How would this change apply to the current Commission?

Finally, Commissioners have expressed concern regarding the modification that would allow ex officio members to vote. The Public Services Commission is intended to be an apolitical, quasi-judicial institution. With two elected Senators voting, it would increase the politicization of the Commission. In this configuration, the Governor might also reasonably expect that his nominee(s) be specifically responsive to his policy interests, which is not currently the case. A final concern in regard to the ex officio vote is that with a reduced Commission, the ex officio
votes could be expected to determine majority votes on a regular basis. For example, if the appointed Commissioners split 3-2 on an issue, the ex officio votes could overturn that majority a change the vote to 4-3.

A further concern with ex officio votes on Commission is that the Legislature has oversight over the Public Services Commission, the Water and Power Authority, and the Waste Management Authority. The possibility of conflicting interests and roles is significant.

In subsection (c) the minimum quorum for the Commission to take action is set at four, without regard to the number of Commissioners currently appointed. For much of the past decade, the Commission has operated with only four or five Commissioners. That has made obtaining a legal quorum very difficult. If the number of Commissioners is reduced from seven to five, the quorum should either be reduced to three, or to a majority of those presently appointed.

The work of the Commission requires the review of hundreds of pages of technical, financial and legal information in advance of each meeting, and a meeting is generally six hours or more. The current stipend does not even approach the minimum wage for meetings, and does not address much of the work that must be done. Commissioners have expressed concern about the cost to them for essentially volunteering their time, effort and expertise in critical decisions on our utilities and infrastructure.

Donald G. Cole
Executive Director

cc: Sandra L. Setorie, Assistant Executive Director – PSC
    PSC Commissioners
    Raymond Williams
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