

## **Outline of James Lopach telephone comments to ETIC, Nov. 17, 2011**

1. Governmental reorganization – always problematic because uncertain results, insiders will oppose, public support depends on perceived crisis being addressed by the reform
2. Need for expertise- a central point because of complexity of economic regulation; two possible sources of expertise: commissioners and/or staff
3. Gubernatorial appointment rather than election of commissioners – because excellence in regulation is dependent more on commissioners’ analytical ability, good judgment, and professional expertise rather than the democratic values of representativeness or accountability
4. Qualifications of commissioners – should be individuals with solid professional credentials, sharp analytical ability, and good judgment; for technical expertise can look to both commissioners and staff; too narrow expertise on commission could give rise to conflicts leading to need to disqualify
5. Size of commission – regulatory commissions, state and federal, have run between 3 and 11; generally smaller is better because larger size leads to more divergence of views and more conflict
6. Overlapping terms – better than concurrent terms because guarantees continuity but still admits of new perspectives
7. Length of terms – not too long (i.e., more than six years); long terms could also stifle the supply of new perspectives
8. Reappointment of commissioners – should allow in order to retain competence
9. Commission chair – automatically rotate among commissioners as opposed to selection by commission itself or by executive and/or legislative branches
10. Salary – needs to be respectable, understanding it can’t be equal to what a professionally credentialed person makes outside of government; possibly, tie it to what state supreme court associate justice makes
11. Removal of commissioner – by the governor, without any legislative involvement, for cause (e.g., nonfeasance, malfeasance, misfeasance)
12. Confirmation of appointment – always problematic: pro argument is it’s a check on a bad nomination and interjects a quality of representativeness into the process; con argument is it can admit political maneuvering and posturing
13. Geographical representation – not applicable to the work of an expert quasi-judicial body and dangerous because creates an expectation that regulation is primarily political
14. Bipartisanship commission membership – because of today’s situation, in Montana and nationally, of inordinately partisan public officials