



# Essential Resources for the Establishment of an Independent Ethics Commission

by Tony Ortiz and Kathleen Sabo



## **Essential Resources for the Establishment of an Independent Ethics Commission**

### **Introduction**

A primary goal of this brief is to centralize essential resources for policy discussions regarding the establishment of a strong, independent ethics commission. The resources include a University of New Mexico law review article, findings from focus groups regarding the pros and cons of an ethics commission, assessments of the current system of ethics oversight, the laws and rules that govern the work of the New Mexico Judicial Standards Commission, a 2006 task force report on ethics reform, prior legislative efforts and the work of the Ethics Commission Working Group during the 2018 interim. Hyper-links to these resources are sprinkled throughout the brief and the Appendix.

Forty-four states provide oversight of public officials through an ethics commission. While commissions in those states are a diverse lot, their goals are similar: to fairly and effectively investigate allegations of ethics violations by public officials; to levy and recommend sanctions for ethics violations; to provide advisory opinions; and to conduct ethics training. The brief includes a link to a site administered by The Center for Ethics in Government, National Conference of State Legislatures (NCSL), which summarizes the diverse approaches used in other jurisdictions.

There is no research that identifies a best practice for establishing a state ethics commission. However, there are clearly articulated principles that are certainly useful for crafting ethics commission enabling legislation. The principles outlined in this brief are distilled from the above-mentioned resources and are respectfully offered for the consideration of policy makers, the public and the press.

### **House Joint Resolution 8 (2017) and the enactment of an amendment to the Constitution of New Mexico**

At the general election held on November 6, 2018, New Mexico voters were asked to consider an amendment to Article 5 of the Constitution of New Mexico. The amendment proposed to create an independent State

Ethics Commission and the voters overwhelmingly approved it by a 3:1 ratio (466,029 for and 153,869 against).

The language enshrined in the state constitution includes general directives regarding the appointment process for the seven commissioners and the scope of the ethics commission's authority.

<https://nmlegis.gov/Sessions/17%20Regular/final/HJR08.pdf>

The citizens of New Mexico have spoken. Now, enabling legislation is required to detail the duties, processes and powers to be provided for the state ethics commission.

### **The Ethics Commission Working Group**

During the 2018 interim, in an encouraging display of bipartisanship and advance planning, the Courts, Corrections and Justice Committee established an Ethics Commission Working Group. Senator Linda Lopez and Representative Jim Dines served as Co-Chairs of the working group, which met six times: August 7<sup>th</sup>, September 7<sup>th</sup>, September 24<sup>th</sup>, October 18<sup>th</sup>, December 5<sup>th</sup> and December 10<sup>th</sup>.

All working group meetings were open to the public and a list of the individuals who participated is included in the Appendix. Also to be found in the Appendix is a link to video footage of the working group's final meeting, held on December 10, 2018.

The Ethics Commission Working Group discussions were substantive and civil, based upon research and prior efforts to establish an ethics commission in New Mexico. No votes were taken during working group meetings. Instead, the goal was to seek consensus when possible and in some instances, to provide a menu of choices for the consideration of policy makers during the 2019 legislative session.

In late December 2018, the working group submitted a discussion draft to the Legislative Council Service that will hopefully inform the upcoming debates on the elements of a state ethics commission. Many in attendance at the working group meetings were in agreement about most of the provisions in the discussion draft. However, strong and differing opinions on issues such as transparency and jurisdiction kept the group from achieving consensus on a complete bill.

## **New Mexico literature regarding an independent ethics commission**

“The Proposed State Ethics Commission Act: Reform for New Mexico’s Wild West Politics, or Simply a Mirage”, (Erin McSherry) 39 N.M. Law Review 597 (2009). This deeply insightful law review article summarizes previous efforts to establish an ethics commission in New Mexico, analyzes substantive issues and offers-up some thoughtful recommendations.

<https://nmlegis.gov/Sessions/InterimCommittees/CCJ/2018/EthicsCommissionWorkingGroup/The%20Proposed%20State%20Ethics%20Commission%20Act%20-%20Reform%20for%20New%20Mexico's%20Wild%20West%20Politics,%20or%20Simply%20a%20Mirage%20-%202009.pdf>

New Mexico First is a public policy organization that produces non-partisan policy reports. In 2016, New Mexico First published a background report entitled, “Establishing a New Mexico Ethics Commission: Benefits, Drawbacks and Alternatives”. The background report includes an analysis of past efforts in New Mexico, approaches taken by other states, and potential future options. Additionally, the report includes a flow chart that describes current New Mexico ethics processes.

<https://nmlegis.gov/Sessions/InterimCommittees/CCJ/2018/EthicsCommissionWorkingGroup/Establishing%20a%20New%20Mexico%20Ethics%20Commission%20-%20Benefits,%20Drawbacks%20and%20Alternatives%20-%202016.pdf>

The New Mexico First background report was then provided to participants in a series of focus groups conducted in December 2016. Four of the focus groups were held in Las Cruces and Albuquerque and participants included current and former: state legislators, cabinet secretaries, mayors, county commissioners, city councilors, state and federal judicial branch officials and state agency officials. A fifth focus group gathered feedback from working members of the media. Focus group participants cited a number of reasons for establishing an ethics commission: re-building public trust, fragmented existing systems,

preventing honest mistakes, limitations of existing legal structures, and policymakers being asked to police themselves.

<https://nmlegis.gov/Sessions/InterimCommittees/CCJ/2018/EthicsCommissionWorkingGroup/Establishing%20a%20New%20Mexico%20Ethics%20Commission%20-%20Benefits,%20Drawbacks%20and%20Alternatives%20-%202017.pdf>

### **Characteristics of ethics commissions in other states**

The Center for Ethics in Government, National Conference of State Legislatures (NCSL) was organized in 1999. The center's web site includes a table that summarizes the powers and duties assigned by the many states to ethics commissions.

<http://www.ncsl.org/research/ethics/50-state-chart-state-ethics-commissions-powers-a.aspx>

### **Assessments of the current system of ethics oversight in New Mexico**

The Committee for Economic Development (CED) is a non-partisan, business-led public policy organization based in Washington, D.C. CED commissioned a research study by Research and Polling, Inc. to survey New Mexico business leader's perceptions of the influence of money in politics, campaign finance reform and transparency, the effects of crony capitalism on government corruption, and proposals the New Mexico Legislature may consider. An important finding: Over eight-in-ten (83%) business leaders somewhat or strongly support the creation of an independent ethics commission to establish and enforce rules regarding the ethical behavior and actions of state officials.

<https://www.ced.org/reports/single/new-mexico-business-leaders-survey>

The Center for Public Integrity (CPI) is a non-profit investigative journalism organization. In 2015, the center partnered with Global Integrity to publish a "State Integrity Investigation," a comprehensive assessment of state government accountability and transparency. The assessment assigned overall grades and ranks to the states and also assigned grades to thirteen discrete categories, including: executive accountability; legislative accountability and ethics enforcement agencies.

<https://publicintegrity.org/accountability/new-mexico-gets-d-grade-in-2015-state-integrity-investigation/>

### **Principles of an Effective Ethics Commission**

New Mexico Ethics Watch, New Mexico First and other advocacy groups are whole-heartedly in agreement that the following principles must be addressed in discussions regarding ethics commission enabling legislation.

<http://nmethicswatch.org/wp-content/uploads/2019/02/NMEW-Principles-of-An-Effective-Ethics-Comission.pdf>

For additional thoughts on the topic, please see “Principles For Designing An Independent Ethics Commission” (Campaign Legal Center) (2018)

<http://www.campaignlegalcenter.org/sites/default/files/Principles%20for%20Designing%20an%20Independent%20Ethics%20Commission.pdf>

## **Appendix**

New Mexico Legislative Council Service Ethics Guide (2016). This comprehensive guide for state legislators is updated every two years. As noted in the introduction: “This guide captures the essence of the law, rule, or opinion cited as it applies to legislators. Members are strongly urged to consult the specific law, rule or opinion.”

[https://nmlegis.gov/Publications/Legislative\\_Procedure/Ethics\\_Guide\\_2016.pdf](https://nmlegis.gov/Publications/Legislative_Procedure/Ethics_Guide_2016.pdf)

Report of the 2006 Task Force on Ethics Reform in New Mexico. (Co-Chaired by Garrey E. Carruthers and Suellyn Scarneccia) The final report is concise, well-reasoned and endures as a valuable resource. The Number #1 recommendation: establishment of a state ethics commission.

[https://digitalrepository.unm.edu/law\\_service\\_ethicsreform/1/](https://digitalrepository.unm.edu/law_service_ethicsreform/1/)

Video of Ethics Commission Working Group meeting on December 10, 2018.

<https://www.youtube.com/watch?v=kHC5CFX77FE&pbjreload=10>

New Mexico Judicial Standards Commission. This link includes constitutional and statutory provisions and rules for the operation of the New Mexico Judicial Standards Commission (JSC). It was established in 1968 by state constitution and statute and is a valuable reference for discussions concerning a state ethics commission.

<http://www.nmjsc.org/resources/governing-provisions-of-law/>

### **Prior legislation**

House Bill 190 (2013) (Representative Brian Egolf)

<https://nmlegis.gov/Sessions/13%20Regular/bills/house/HB0190.pdf>

Senate Bill 218 (2017) (Senator Linda Lopez)

<https://nmlegis.gov/Sessions/17%20Regular/bills/senate/SB0218.pdf>

Original version of House Joint Resolution 8 (2017) (Rep. Jim Dines)

<https://nmlegis.gov/Sessions/17%20Regular/resolutions/house/HJR08.pdf>

### **Discussion drafts**

Committee substitute for House Bill 10 (2017) (202.206908.9)

<http://nmethicswatch.org/wp-content/uploads/2019/02/NMEW-Prior-Ethics-Commission-Draft-Legislation-Rep.-Ely-.9-version.pdf>

Version 6.0 discussion draft prepared by the Ethics Commission Working Group (2018)

<http://nmethicswatch.org/wp-content/uploads/2019/02/NMEW-Ethics-Commission-Working-Group-Draft-Enabling-Legislation.pdf>

**Individuals who attended a meeting of the  
Ethics Commission Working Group**

Senator Linda Lopez, Co-Chair  
Representative Jim Dines, Co-Chair  
Representative Daymon Ely  
Maggie Toulouse Oliver, Secretary of State  
John Blair, Deputy Secretary of State  
Former Senator Dede Feldman, Common Cause New Mexico  
Heather Ferguson, Common Cause New Mexico  
Deborah Condit, Common Cause New Mexico  
Kathleen Sabo, New Mexico Ethics Watch  
Pamela Blackwell, New Mexico First  
Gabrielle Ontiveros, New Mexico First  
Meredith Machen, League of Women Voters of New Mexico  
Judy Williams, League of Women Voters of New Mexico  
Dick Mason, League of Women Voters of New Mexico  
Melanie Majors, New Mexico Foundation for Open Government  
Rob Black, New Mexico Association of Commerce and Industry  
Trip Jennings, New Mexico In Depth  
Andrew Oxford, Santa Fe New Mexican  
Matt Baca, Senate Rules Committee Analyst  
Cliff Rees, Senate Analyst  
Norm Gagne, Citizen  
Dianne Goodman, Citizen  
Charles Arasim, Citizen  
Celia Ludi, Legislative Council Service  
Randall Cherry, Legislative Council Service  
Marianna Padilla, for Governor-Elect Michelle Lujan Grisham  
Stephanie Kean, for Governor-Elect Michelle Lujan Grisham  
Douglas Carver, Citizen  
Tony Ortiz, New Mexico Ethics Watch