

IN SUPPORT OF LEGISLATIVE MODERNIZATION

(Because it is fair and the right thing to do)

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Introduction

On January 6, 1912, New Mexico became the 47th state in the United States of America. Nearly one hundred and eleven years later, it is now time to reform the way that the legislature conducts business in our beloved *Tierra Encantada*.

To better serve the people of New Mexico, it is time to enhance the capacity of the legislature to deal with increasingly complex issues that face our state. A short list of those issues includes climate change, education, infrastructure, energy, health care, tax policy, criminal justice, water allocation, and the management of an annual operating budget in excess of 8 billion dollars.

Smart and effective policies to address the above-mentioned issues, and many others, will demand more from legislators and the legislature, including staff. More research. More study. More debate. More time. More capacity.

Information regarding modernization of the legislature is outlined in an analysis by the University of New Mexico's Bureau of Business and Economic Research (BBER), presented to the NM legislature's Interim Committee on Courts, Corrections and Justice on November 21, 2022.¹ Representatives Joy Garratt and Angelic Rubio co-sponsored an appropriation for BBER to conduct and report a survey of legislative personnel on the needs of the legislature and a survey of legislators to identify the activities and time devoted to their legislative duties outside of legislative sessions and to study the costs and benefits of legislative compensation, modifying the length and scope of legislative sessions and legislative staffing.²

Additionally, a revised, peer-reviewed policy report recently published and updated by professors at the University of New Mexico (UNM) provides analysis and recommendations for modernizing the legislature.³ Professor Timothy Krebs is the Department Chair for the Political Science Department at UNM. His colleague and co-author, Associate Professor Michael Rocca, is the Director of the Political Science Honors Program. Their recommendations include changes regarding increased staffing for legislators, compensation for legislators and increasing the scope and length of legislative sessions.

¹UNM Bureau of Business & Economic Research (BBER), *Legislative Modernization*, November 21, 2022, Presented to the Courts, Corrections & Justice Committee, Research by Rose Elizabeth Roher, <https://www.nmlegis.gov/handouts/CCJ%20112122%20Item%201%20BBER%20LM%20Presentation.pdf>

² Senate Bill 1, 2022 3rd Special Session, p.33, (Chapter 3, Laws of New Mexico), <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=1&year=22s>

³ Dr. Timothy Krebs and Dr. Michael Rocca, *A Report on Legislative Professionalism for the State of New Mexico*, University of New Mexico (Revised December 2022), https://www.nmethicswatch.org/uploads/1/3/6/2/136215453/legis_modernization_paper_updated_decc.2022_6.pdf

New Mexico Ethics Watch favors these recommendations and will examine them in turn, below. While these recommendations are presented individually, Ethics Watch believes that they are all of a piece and need to be undertaken together. **Additionally, we believe that in order to be a truly modern legislature, the following reforms also need to occur:**

- Financial disclosure laws need to be strengthened⁴;
- Lobbyist disclosure requirements need to be expanded and provisions prohibiting revolving door moves from legislature to lobbyist passed;
- Transparency in all capital appropriations, including supplemental appropriations, needs to be statutorily required;
- Penalties for corrupt acts, as outlined in the Governmental Conduct Act, etc. need to be increased; and
- The power of lobbyists, through the provision of meals and gifts and outsized access to legislators needs to be curbed.

This list is not exhaustive.

The good news for New Mexico and New Mexicans, and which supports the timing of current modernization efforts, is that we have the following information in support of these efforts to turn to for guidance:

- (1) A peer-reviewed policy paper on legislative professionalization⁵ from two well-respected University of New Mexico professors at the state's flagship university⁶;
- (2) A report on legislative modernization that includes data from surveys of legislators from the same university's Bureau of Business and Economic Research (BBER)⁷; and
- (3) A poll on legislative modernization commissioned by Common Cause NM and supported by the Thornburg Foundation and prominent individuals and advocacy groups supporting legislative modernization⁸.

These materials will be cited and referred to throughout this paper.

I. Increased Staffing for Legislators

A. BBER Reporting and Polling

1. BBER Reporting

⁴ See the "Disclosure Act," 2023 prefiled legislation, <https://www.nmlegis.gov/Sessions/23%20Regular/bills/senate/prefile/223761.1SA.pdf>. The City of Albuquerque recently adopted this legislation as an ordinance, governing city officials. (See Bill number O-22-45 and enactment number O-2022-043, <https://www.cabq.gov/clerk/documents/o-22-45.pdf>)

⁵ While the professors prefer "professionalization" to indicate an increase in the capacity of the legislature, others use the term "modernization," but both indicate the same reforms in terms of increased staffing for legislators, compensation for legislators, and an increase in the length and scope of legislative sessions.

⁶ Krebs and Rocca, *Legislative Professionalization*.

⁷ BBER, *Legislative Modernization*.

⁸ Research & Polling, Inc., research study for Common Cause NM, November 2022, https://www.commoncause.org/new-mexico/wp-content/uploads/sites/19/2023/01/05_COMMON-CAUSE-RPT.pdf

The preliminary report authored by the Bureau of Business and Economic Research (BBER) includes data points and findings that will be of great interest to policy makers, as the information was collected from legislators themselves. A remarkable 93.8% of lawmakers responded in the affirmative to the following question : Do you feel that individually-assigned staff could provide you with services that are not currently provided by legislative staff?⁹

The report also indicated a plurality of support - more than 35% - for 20 hours of staff support each week (0.5 FTE), while close to 30% of respondents favored a full-time (40 hours) individual staff.¹⁰ It is important to note that the final BBER report, expected to be completed in January 2023, will include cost estimates for various staffing scenarios.

Finally, rural and urban legislators may have different needs for staff, and this will need to be taken into consideration.¹¹

2. Polling

According to Research and Polling's survey data collection

Two-thirds of likely voters either *strongly support* (34%) or *somewhat support* (33%) giving the legislators a budget to hire their own staff to help them meet with voters in their district to address community concerns, research policy issues, and meet with other local government and business organizations in their districts.¹²

B. Discussion

Currently, the following staff support the legislature and legislators on substantive matters:

1. Permanent Staff
 - a. Legislative Council Service: https://www.nmlegis.gov/Staff_Directory?Entity=LCS
 - b. Legislative Finance Committee: <https://www.nmlegis.gov/Entity/LFC/Default>
 - c. Legislative Education Study Committee:
<https://www.nmlegis.gov/Entity/LESC/Default>
 - d. Majority and Minority Offices (House and Senate) and Senate Pro Tem and Speaker of the House Staff:
https://www.nmlegis.gov/Staff_Directory?Entity=House and
https://www.nmlegis.gov/Staff_Directory?Entity=Senate

⁹ BBER, *Legislative Modernization*, p. 9.

¹⁰ *Ibid.*

¹¹ *Id.*, p. 13.

¹² Research and Polling Inc., p. 6.

- e. Chief clerks of the House and Senate:
https://www.nmlegis.gov/Staff_Directory?Entity=House and
https://www.nmlegis.gov/Staff_Directory?Entity=Senate

2. Seasonal Staff

- f. House and Senate Majority Analysts
- g. House and Senate Minority Analysts
- h. House and Senate Committee Analysts
- i. Increased staffing for the Legislative Finance Committee and the Legislative Council Service

While some of these staff support the legislature and legislators year-round, only a few legislators - Senate and House Majority and Minority leaders, the Senate Pro Tem and the Speaker of the House - have individual staff, paid for by the legislature, to whom they can turn year-round on substantive policy matters.

Professors Krebs and Rocca phrase their staffing recommendation as follows:

Staffing: Increase the number of permanent legislative staff, especially staff connected to individual legislators as opposed to staff that might work for interim committees such as the Legislative Finance Committee or the other permanent, year-round policy committees. Most legislators in NM do not have dedicated staff; they only have access to staff during the legislative session and/or when their work outside the session puts them in contact with institutional staff members. **Additional staff support is the best way to increase legislative capacity.** Among other benefits, increasing professional staff and broadening their distribution in the legislature will mean **greater ability for the legislature to check executive agencies and governmental programs**, and for **individual legislators to build expertise on policy and to conduct constituency service vital to their districts.**¹³

The following data points provide important context. New Mexico ranks 33rd out of 50 in staff spending, or the 18th lowest in the nation.¹⁴ New Mexico is 36 out of 50 states related to employing permanent staff (15th lowest).¹⁵ And when the number of long-term and short-term staff (hired during legislative sessions) are totaled, that ranks New Mexico 30th out of 50 in total staff per legislator, or the 21st lowest in the nation.¹⁶

New Mexico Ethics Watch is aware of several options for increasing staffing:

1. Provide a stipend to each legislator to hire staff to assist them year-round with substantive policy matters.

¹³ Krebs and Rocca, pp. 3 and 40.

¹⁴ *Id.*, p.2.

¹⁵ *Ibid.*

¹⁶ *Id.*, p. 14.

2. Set up regional offices housing limited staff to be shared by legislators within that region, to assist them with substantive policy matters.
3. Allow the existing Legislative Council Service to increase its existing staff in order to provide legislators with on-demand, year-round access to staff who would assist them on substantive policy matters.

Who controls the staff, the funding for the staff, and how many legislators each staff serves are matters to be ironed out by the legislature. In each instance, however, the capacity of legislators and the legislature is increased, for the benefit of the citizens of New Mexico.

C. New Mexico Ethics Watch Position

NMEW supports increased staffing for legislators and believes that each legislator should have a staff person assigned to them year-round, whether part-time or full-time.

Recently, concerns have arisen that these staffers could be used in a partisan manner, or to conduct campaign-related activities. NMEW submits that use in a partisan manner - say, a republican legislator using a staffer to research and obtain information that would support the republican position on an issue - is to be expected. A way to ensure that a staffer is not used by a legislator for campaign-related activities, however, is to carefully craft a job description for an "analyst" that expressly prohibits that staffer undertaking campaign-related activities.

If the cost of providing an assigned analyst to each legislator is prohibitive, NMEW believes that the next best course of action is to set up regional offices for analysts that can be shared between a set number of legislators for a set number of hours.

II. Compensation for Legislators¹⁷

A. BBER Reporting and Polling

1. BBER Reporting

The BBER analysis indicates that 82.9% of legislators responding indicated that legislators should be paid a salary in New Mexico, with 77.1% of respondents indicating that legislators receiving a salary should also receive per diem and travel expenses.¹⁸

It is also noteworthy that 90.6% of legislators reported that they work 30 or more days annually without claiming per diem.¹⁹

¹⁷ At the time of finalization of this paper, an expected joint resolution amending Article 4 of the Constitution of New Mexico and providing for compensation for legislators had not yet been filed.

¹⁸ BBER, p. 10.

¹⁹ Ibid.

2. Polling

Research and Polling Inc. reports that only 32% of voters correctly believe that legislators are paid a per diem, plus mileage fees and no base salary, while 38% of voters believe that New Mexico legislators are paid a base salary in addition to a per diem and mileage fees.²⁰ Additionally, Research and Polling Inc. reports that 64% of likely voters support paying legislators a yearly salary, with 37% strongly supporting and 27% somewhat supporting.²¹

Research and Polling Inc. also reports that

A significant percentage (28%) of likely voters who believe that legislators already receive a salary think that legislators are paid a salary of \$75,000 or more. An additional 20% believe that legislators receive a salary between \$50,000 to \$74,999.²²

...

Voters are most supportive of having an independent salary commission set the salary level (62% support vs 26% oppose).

...

Just over half (52%) of likely voters say they would support the New Mexico Ethics Commission setting the salary level, though 32% are opposed to the idea and 16% have no opinion.

...

Nearly three-in-four likely voters (72%) are opposed to the idea of having the legislators themselves set the salary levels, while just 20% are supportive.²³

B. Discussion

New Mexico is the only state that does not provide a salary for legislators.²⁴ Instead, in what has been termed a “citizen legislature”²⁵, per Article IV, Section 10 of the Constitution of New

²⁰ Research & Polling Inc., p.5.

²¹ *Id.*, p. 12.

²² *Id.*, p. 11.

²³ *Id.*, p. 13. The final report details additional demographic information.

²⁴ National Conference of State Legislatures (NCSL), *2022 Legislator Compensation*, July 12, 2022.

²⁵ The National Conference of State Legislatures (NCSL) defines “traditional or citizen legislatures” as those where on average lawmakers spend the equivalent of half of a full-time job doing legislative work, where compensation received is quite low and requires legislators to have other sources of income in order to make a living, and which have relatively small staffs. <https://www.ncsl.org/about-state-legislatures/full-and-part-time-legislatures> . Ethics Watch submits that to call these legislatures “citizen legislatures” is a misnomer, as all legislatures are comprised of and serve a state’s “citizens.” Instead, these legislatures, including New Mexico’s, are more aptly called “big interest” or “special interest” legislatures, where primarily only the monied (or retirees) can serve, and cater to and seek to influence those who serve.

Mexico, legislators receive a legislatively-determined per diem.²⁶ Thus, this reform will require a joint resolution to amend the constitution, with approval by the citizens of New Mexico in a general election.²⁷

Professors Krebs and Rocca note their compensation recommendation as follows:

Salary: Work to provide a salary to legislators not because of its effects on the legislature, but because it is the fair thing to do. Legislative salary as an indicator of professionalism is linked to a number of important phenomena such as who runs, time spent on the job, legislative productivity and non-voting, district legislation, good government reforms, economic development, etc., but the overall effect of salary is probably not as important as staffing. The question here of course will be where that salary is set..²⁸

It should be noted that New Mexico is the only state that does not provide a salary for legislators. As the preliminary BBER report notes, New Mexico also ranks near the bottom for overall legislator compensation, although it does not have the lowest overall compensation among states.²⁹

Interestingly, the salary provided to legislators by some states is quite low - for example, New Hampshire pays their legislators \$100/yr. in salary and no per diem. At this rate, many New Mexico legislators exceed the salary amount for legislators set by New Hampshire and other states, despite receiving a per diem only, of up to \$194/day.³⁰

Why pay New Mexico legislators a salary then? Because it is fair and the right thing to do. Given the increased level of complexity of legislation in New Mexico and the overwhelming increase in the state's budget since the current legislative set-up was configured (1912), legislators are increasingly called upon to do more work, learn more about complex issues and spend more time doing both.

²⁶ Legislators receive per diem to cover the expense of meals and lodging while traveling away from home on official business. See <https://www.ncsl.org/about-state-legislatures/2022-legislator-compensation> for information regarding the per diem rate for New Mexico legislators.

²⁷ Joint resolutions must be passed by both legislative chambers. Joint resolutions do not require a Governor's signature. NMEW has crafted a draft joint resolution that can be found at <http://nmethicsreform.org/wp-content/uploads/2022/07/NMEW-Draft-joint-resolution-compensation-commission.pdf>

²⁸ Krebs and Rocca, pp. 3 and 40.

²⁹ BBER, p. 13.

³⁰ See <https://www.ncsl.org/research/about-state-legislatures/2022-legislator-compensation.aspx>. NCSL reports that in 2022 legislators received a per diem of \$165/day for January and February, and \$194/day for March. Additionally, NCSL reports that the per diem rises to \$202/day for FY 2023, which began on July 1, 2022. As another example, according to the NCSL, South Carolina pays its legislators a salary of \$10,400/yr. New Mexico legislators serving during at 60-day session at a \$194 per diem rate would receive \$11,640 in income from the state, and more than the salary of South Carolina's legislators.

There is a split between those who favor having an independent salary commission determine the salaries of legislators and others, and those who favor salaries being set by the existing State Ethics Commission (SEC).³¹ New Mexico Ethics Watch believes that the task is better done by an independent salary commission, as the SEC is called upon to investigate and adjudicate matters involving legislators and the ethics commission is funded by the legislature. Placing the salary setting duties with an independent salary commission will eliminate potential conflicts and the appearance of the same.³²

New Mexico is the only state to not provide a salary to its legislators and ranks near the bottom for overall legislator compensation, though it does not have the lowest overall compensation nationally.³³ Paying legislators a fair salary will allow more people to seek office, which will produce a legislature that is more reflective of the diversity of our population.

C. New Mexico Ethics Watch Position

NMEW believes that the best course of action is to create an independent salary commission that is given responsibility to determine an appropriate level of compensation for legislators and other public officials. Per diem and mileage for legislators should be retained, as it is intended to cover the expense of lodging and food while legislators are discharging official business.

III. Scope and Length of Session³⁴

A. BBER Reporting and Polling

1. BBER Reporting

According to BBER, 35% of legislators responding to their survey indicated that a 90-day session length would be most effective, while just over 25% of respondents indicated that a 60-day session would be best.³⁵

With regard to removing the “every other year” restriction on scope of session, 77.4% of legislators responding answered “yes,” while an additional 16.1% of respondents answered “possibly.”³⁶

³¹ Recent legislative proposals on this subject include: HJR 10 (2022) (sponsored by Representatives Angelica Rubio, Javier Martinez and Daymon Ely); and SJR 8 (2022) (sponsored by Senators Daniel Ivey-Soto, Bobby Gonzales, Kay Duhigg and Brenda McKenna).

³² See <https://www.ncsl.org/about-state-legislatures/legislative-compensation-setting> . As discussed in the link, legislatures take several different approaches to set legislator salary. Three methods are most frequently used: pay set by legislative measures, pay tied to external factors like rate scales or pay indexes, or pay set by compensation commissions.

³³ BBER, p.13.

³⁴ See 2023's HJR 2,

<https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legType=JR&legNo=2&year=23>

³⁵ BBER, p. 11.

³⁶ BBER, p. 12.

2. Polling

According to Research & Polling's survey data collection, 70% of likely voters surveyed support extending the length of each legislative session, with 46% strongly supporting lengthening and 24% somewhat supporting.³⁷

NOTE: Likely voters were not surveyed about extending the scope of the session to allow for the introduction of substantive legislation during each session.

B. Discussion

The scope and length of legislative sessions reforms will require a joint resolution to amend Article IV, Section 5 of the Constitution of New Mexico. We propose changing the provision in the New Mexico Constitution that permits substantive matters to be heard only every other year (odd-numbered years) unless there is a special message from the governor or a governor's veto of a bill from the last previous legislative session.

In their peer-reviewed report, UNM professors Krebs and Rocca address the scope and length of session issues as follows:

Days in Session: Days in session should be increased to enhance legislative capacity, especially in bargaining with the executive. Increasing session lengths will allow the legislature to become more involved in making policy, in shaping the budget, and running the government itself. As a result, the legislature will become a constant presence that cannot be ignored by the executive or anyone else.³⁸

Session length is a major concern to legislators, as BBER reported that 80.7% of legislator respondents expressed feeling both overworked and not having enough time to deal with the problems facing New Mexicans as effectively as they would like.³⁹

The most recent legislative proposal on this subject was HJR 13 (2021) (sponsored by Representatives Rod Montoya, Daymon Ely, Georgene Louis and James Townsend).

C. New Mexico Ethics Watch Position

Ethics Watch is calling for longer sessions without restrictions on proposed legislation and scope of issues that can be considered. We support at least a five-day recess at the mid-point of legislative sessions, so that lawmakers can return home to visit with constituents and gather

³⁷ Research & Polling Inc., p. 5..

³⁸ Krebs and Rocca, pp. 3 and 40.

³⁹ BBER, p.11.

themselves for the sprint to the finish of a legislative session. We believe committees need to meet from the get go.⁴⁰

CONCLUSION

One hundred and eleven years after statehood was granted, New Mexico is poised to make necessary changes to the way that its state legislature operates.

As noted earlier in this paper, we are fortunate to have a wealth of qualitative and quantitative information, all from reputable sources, that supports the push for modernization: a peer-reviewed study from political scientists at the University of New Mexico (UNM); findings from a study conducted by the Bureau of Business and Economic Research at UNM; and polling data provided by Research and Polling Inc., courtesy of Common Cause, the Thornburg Foundation and others.

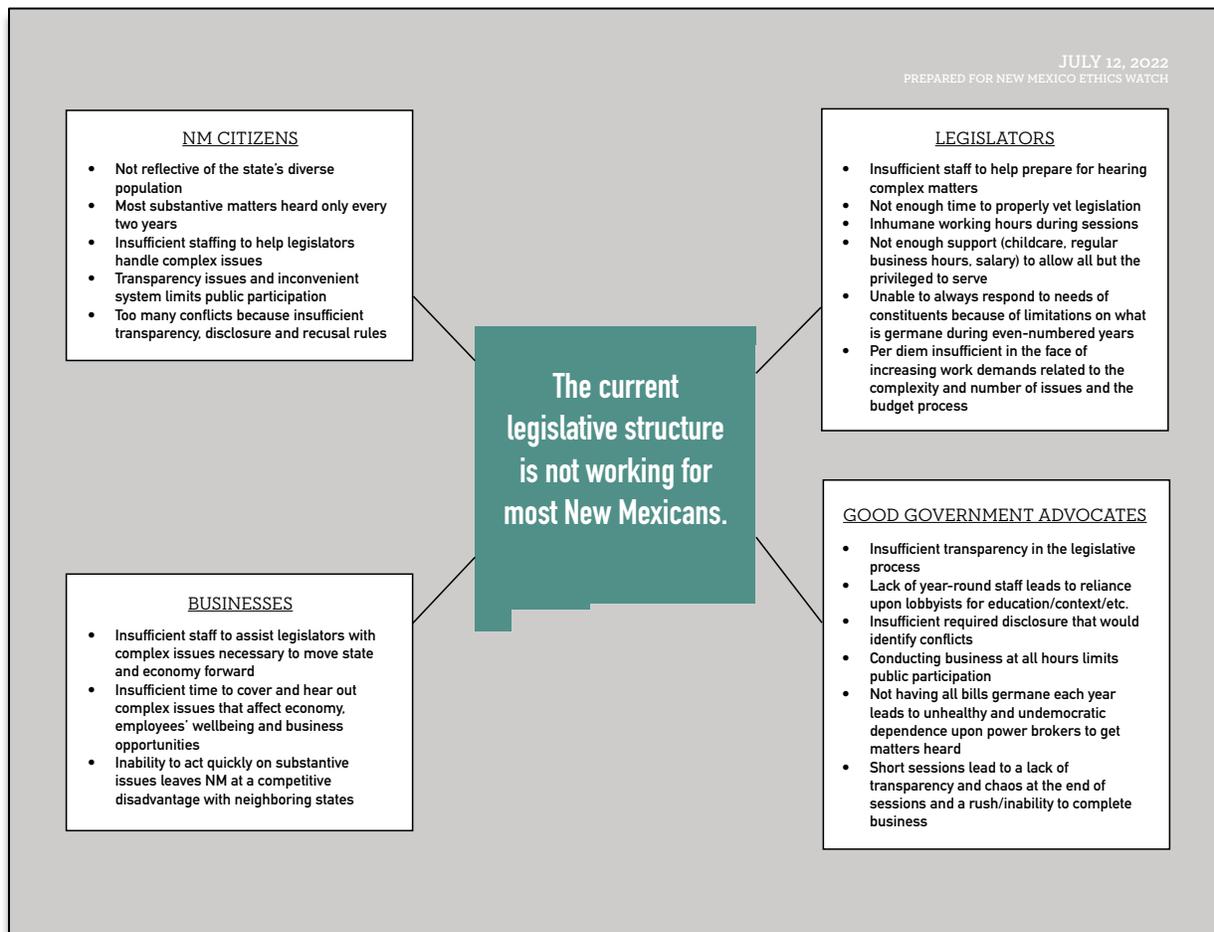
A growing coalition of good government advocates, business leaders, environmental groups, and legislators themselves are forming a diverse coalition to support modernization efforts, with legislators poised to introduce or already having introduced the necessary constitutional amendments to provide for compensation of legislators and to extend the length and scope of legislative sessions.⁴¹

Finally, the state of New Mexico is fortunate to be in a position where it can afford the cost of modernization...and perhaps cannot afford to resist modernization efforts. Recent forecasts indicate that the state will enjoy at least a 3.5 billion dollar surplus going into the 2023 legislative session. The expense of modernization will be a tiny fraction of that surplus amount. And, the longer New Mexico waits to modernize, the more out of step it is and unable to compete with surrounding states for modern business opportunities that require deep thought and research, a nimble, informed and empowered legislature, and the confidence of business leaders and citizens.

⁴⁰ 2023's HJR 2 also calls for allowing pending legislation pending at the end of an odd-numbered year session to be continued between regular legislative sessions. In addition to changes involving staffing, compensation and session length, there are numerous other institutional changes that are needed to support a more diverse legislative body, including child care and keeping regular business hours on most legislative days. See <https://www.ksfr.org/education/2022-09-19/new-childcare-facility-opened-for-new-mexico-state-employees> .

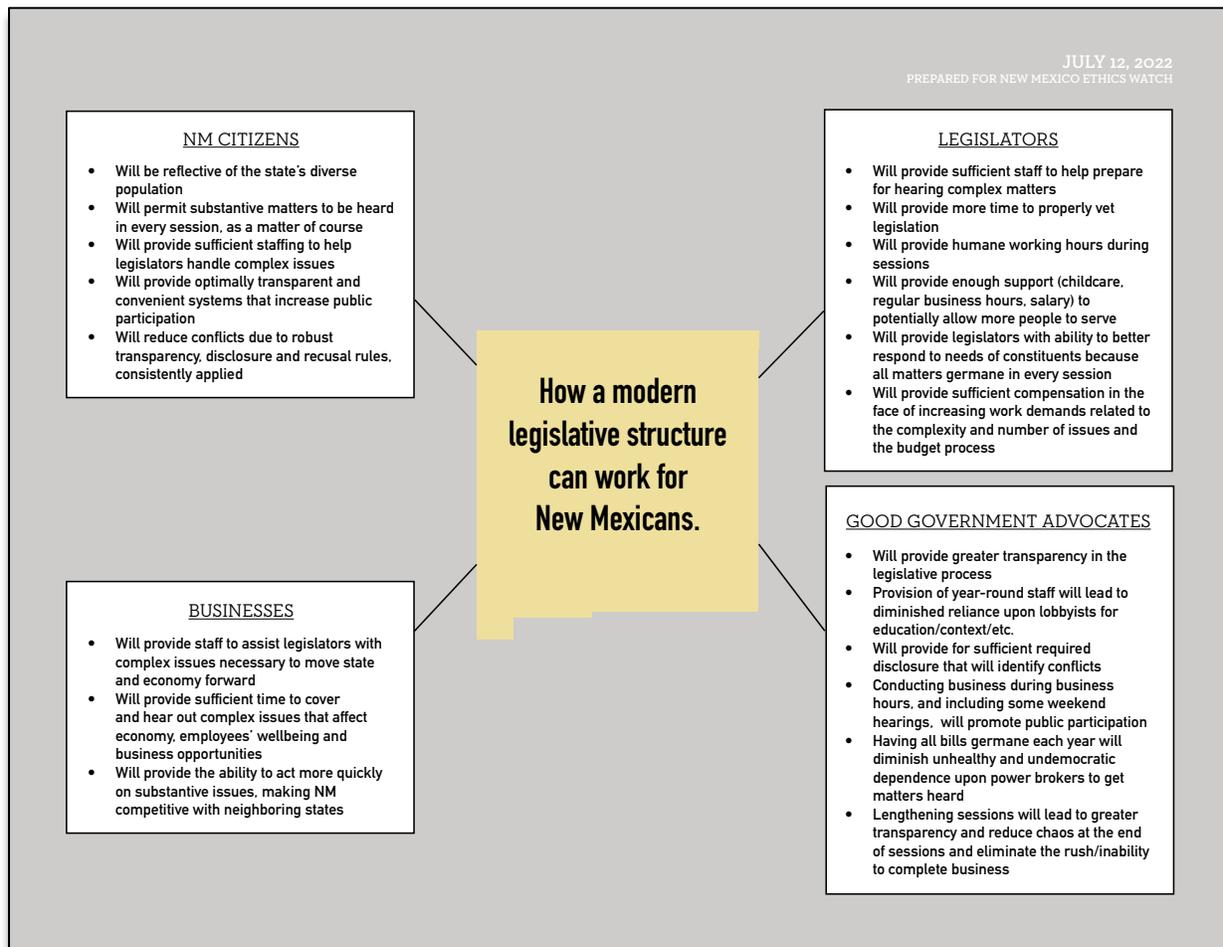
⁴¹ See 2023's HJR 2, <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legType=JR&legNo=2&year=23> .

The reality is that our current legislative structure is not working for most New Mexicans, whether citizens, legislators, businesses and advocates, all of whom have a strong desire and need for the state to move forward and prosper.⁴²



⁴² http://nmethicsreform.org/wp-content/uploads/2022/07/NMModernization_Mindmap_1_071222.pdf

Conversely, we can demonstrate how a modern legislative structure can work for New Mexicans.⁴³



Whether legislator, business person or advocate, we are all citizens of New Mexico, desiring to see our state and all citizens prosper, now and in the future. Numerous coalitions, statewide, have gathered in support of these changes and the call for legislative modernization.

After 110 years of statehood, this is the moment to make major changes to propel New Mexico into the future. As this paper and the materials it cites have demonstrated, we have a perfect storm of information, support and will to make this long-sought change of modernizing our legislature, for the benefit of all New Mexicans. Let's do it!

⁴³ http://nmethicsreform.org/wp-content/uploads/2022/07/NMModernization_Mindmap_2_071222.pdf

APPENDICES

A. Recent legislation regarding compensation and length and scope of legislative sessions:

House Joint Resolution 10 (2022 Regular Session) (Representatives Angelica Rubio, Javier Martinez, and Daymon Ely) regarding the establishment of a public officer salary commission. See [HJR10 \(nmlegis.gov\)](https://nmlegis.gov/HJR10)

Senate Joint Resolution 8 (2022 Regular Session) (Senators Daniel Ivey-Soto, Bobby Gonzales, Katy Duhigg, and Brenda McKenna) providing the State Ethics Commission with authority to establish salaries for elected officials. See [SJR08 \(nmlegis.gov\)](https://nmlegis.gov/SJR08)

House Joint Resolution 13 (2021 Regular Session) (Representatives Rod Montoya, Daymon Ely, Georgene Louis, and James Townsend) regarding legislative session changes. See [HJR13 \(nmlegis.gov\)](https://nmlegis.gov/HJR13)

B. Links to tools mentioned (presentations, reports, materials):

1. University of New Mexico Bureau of Business & Economic Research, November 21, 2022 report to the NM Legislature's Courts, Corrections and Justice Committee, <https://nmlegis.gov/handouts/CCJ%20112122%20Item%201%20BBER%20LM%20Presentation.pdf>
2. *A Report on Legislative Professionalism for the State of New Mexico*, Dr. Timothy Krebs and Dr. Michael Rocca, University of New Mexico, Revised December 2022, https://www.nmethicswatch.org/uploads/1/3/6/2/136215453/legis_modernization_paper_updated_decc.2022_6.pdf
3. Research & Polling, Inc., research study for Common Cause NM, November 2022, https://www.commoncause.org/new-mexico/wp-content/uploads/sites/19/2023/01/05_COMMON-CAUSE-RPT.pdf
4. New Mexico Ethics Watch materials re: legislative modernization:
 - a. "The current legislative structure is not working for most New Mexicans," http://nmethicsreform.org/wp-content/uploads/2022/07/NMModernization_Mindmap_1_071222.pdf
 - b. "How a modern legislative structure can work for New Mexicans," http://nmethicsreform.org/wp-content/uploads/2022/07/NMModernization_Mindmap_2_071222.pdf