

# Coalition for Integrity

President Pro Tempore Mary Kay Papen  
490 Old Santa Fe Trail  
Santa Fe, NM 87501

Dear President Pro Tempore of the Senate Mary Kay Papen and Members of the Senate Leadership:

I am writing on behalf of the Coalition for Integrity, a non-profit organization which works with a broad network of individuals and organizations to combat corruption and promote integrity in the public and private sectors. When government is for sale, it destroys public trust in democratic institutions and denies people the right to accountable, responsive government and the rule of law. Our view is simple: Democracy is best served when elected officials are wholly committed to representing the public interest.

The citizens of New Mexico recognized the importance of honest government in November 2018 with approval of Constitutional Amendment 2, which passed with 75 percent of the vote. Creating an effective Ethics Commission is a challenge for the Legislature and we commend the efforts contained in House Bill 4 to ensure this mandate from the people becomes a reality.

Background: Last October, the Coalition for Integrity released its [States With Anti-Corruption Measures for Public officials \(S.W.A.M.P.\) Index](#). The index rates the 50 States and the District of Columbia based on the laws and regulations governing ethics and transparency in the executive and legislative branches of individual states. New Mexico received a score of 36 out of 100 and ranked 41<sup>st</sup> overall. This low score was because the state did not have an independent ethics agency.

Based on our research and findings we put forward several recommendations for a minimum legal framework to promote ethical behavior and transparency. They include:

- The ethics agency should be independent of the executive and legislative branches.
- The agency should have jurisdiction over all officials, elected and appointed, as well as employees of the executive and legislative branches.
- The agency needs wide powers to investigate alleged violations of ethics rules, including the ability to subpoena individuals and documents.
- To promote transparency, hearings regarding alleged violations should be open to the public.
- The agency should have to authority to sanction all government personnel.



1023 15th Street NW  
Suite 300  
Washington, DC 20005

Tel: 202-589-1616  
Fax: 202-589-1512  
EMAIL: [coalition@coalitionforintegrity.org](mailto:coalition@coalitionforintegrity.org)  
WEBSITE: [www.coalitionforintegrity.org](http://www.coalitionforintegrity.org)

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The citizens of New Mexico should be congratulated on agreeing to establish an independent ethics agency with jurisdiction to investigate, adjudicate and issue advisory opinions concerning civil violations of laws governing ethics, standards of conduct and reporting requirements as provided by law. House Bill 4 provides further confirmation that many of Coalition for Integrity's recommendations for a minimum legal framework would be addressed.

Comments on Proposed Legislation. There are several positive aspects of House Bill 4, which align well with our minimum legal framework. These provisions make the proposed legislation a great starting point that ensures the establishment of an independent ethics agency in New Mexico.

First, House Bill 4 explicitly includes many of the provisions we recommend. The proposed Ethics Commission is independent of the executive and legislative branch and appears to have sufficient jurisdiction over all elected and appointed officials and employees. Furthermore, the Commission has the authority to investigate on its own without waiting for a complaint. It has the ability to subpoena and compel production of documents, which is crucial for a well-functioning ethics agency. The bill protects members of the Ethics Commission from removal without cause and gives the Ethics Commission authority to sanction including the authority to take personnel actions, enjoin covered officials, and impose fines.

It is our understanding that House Bill 4 includes provisions that allow the Ethics Commission to hold public hearings and the Amendment adopted by the House Judiciary Committee clarifies that once the general counsel determines there is probable cause, the notification, complaint, specific allegations to be investigated and any response to the complaint shall be made public. This is a positive improvement which would increase transparency of the operation of the Ethics Commission. It is certainly proper to protect an individual's reputation against allegations of improper behavior. But once the Commission has found probable cause that a violation exists, the right to confidentiality of the proceedings and results should cease. There is no reason to treat ethics violations different than criminal violations in this respect. Ethics agencies in 27 states are required to hold public hearings.

Senate Bill 619 includes some of the provisions we recommend. The proposed Ethics Commission is independent and appears to have sufficient jurisdiction over all elected and appointed officials and employees. However, it is our understanding that the Commission does not have the ability to hold public hearings and has a more limited authority to sanction individuals that the Commission determines have committed ethics violations. As noted previously, once the Commission finds probable cause that a violation exists, the right to confidentiality should cease. Public hearings contribute to the transparency of the operation of the Ethics Commission and public confidence in its independence.



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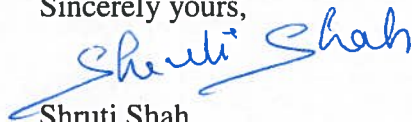
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Finally, there are some additional best practices that the State Ethics Commission could adopt without requiring additional legislation that increase transparency and effectiveness. First, ensure that the identity of potential whistleblowers can be protected when necessary. Given the requirement that complainants must file “verified complaints” which are signed and sworn before a notary public, it is possible that the identity of the complainant may be revealed to the alleged offender so there should be a procedure in place to protect the identity of whistleblowers to protect them from retaliation. Additionally, to ensure individuals come forward it may be beneficial to set up an anonymous whistleblower hotline to garner initial information about potential violations. Finally, House Bill 4 includes a provision that requires the Ethics Commission to submit an annual report. This is an important step and we would urge the Ethics Commission to include in the annual report details of how many complaints were filed, dismissed, referred for criminal prosecution, resolved with a finding of no ethics violation, resolved with a finding of an ethics violation, and a summary of the sanctions adopted in cases where a violation was found. This information increases transparency, which is crucial to further public trust.

Ultimately, House Bill 4 represents a positive step that would increase New Mexico’s score in the S.W.A.M.P. Index to approximately 70 out of 100. This would move New Mexico from the bottom of the rankings to the top 10. The bill does a lot to ensure that New Mexico’s Ethics Commission begins from a point of strength. While there is always some room for improvement we find House Bill 4 to be a significant advancement.

We hope that our comments are useful as the House and Senate work to pass implementing legislation.

Sincerely yours,



Shruti Shah  
President & CEO



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Washington, DC 20005

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