

FOR IMMEDIATE RELEASE (letter attached)

January 6, 2021

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NM House Republicans blast unconstitutional legislative proposals

Santa Fe, NM – House Republican Leadership today requested an opinion or report regarding several rule changes that will be filed by Democrat lawmakers this upcoming 60-day Legislative Session beginning on January 19, 2021. In a letter to the New Mexico Legislative Council, House Republican Leader Jim Townsend (Artesia), Republican Whip Rod Montoya (Farmington), and Republican Caucus Chair Rebecca Row (Truth or Consequences) have raised concern over three proposed rule changes which appear to violate various requirements contained in the New Mexico Constitution.

While the Speaker of the House of Representatives, Brian Egolf, has indicated in recent media interviews that the House will operate completely virtually, the New Mexico Senate has indicated it will operate in a hybrid format. The divide in legislative operations is set to be further amplified by the Speaker's personal opinion that bills within the House chamber should be limited to five per member, with the exception that the House will consider any proposal brought forward by the Governor's endorsement. Republican House leadership contends that these two proposals would negatively impact members of the House and effectively provide one legislative chamber with control over lawmaking in New Mexico in addition to ceding legislative authority to the Governor.

The third concern raised is the legality of the Legislature operating in a 100% virtual format, without a requirement of members to be within the city limits of Santa Fe. The state constitution is clear that the Legislature and its members are required to convene and hold their operations in the Capitol. Operating without members physically present could threaten the legitimacy of any action taken by the House of Representatives this session, and could result in legal challenges.

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State of New Mexico
House of Representatives
State Capitol
Santa Fe

January 6, 2021

Mr. Raul Burciaga
Director
Legislative Council Service
State Capitol, Room 411
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Dear Raul:

We are writing to request a Legislative Council Service opinion/report regarding three likely changes to the rules of the New Mexico House of Representatives which appear to be in violation of various requirements contained in the New Mexico State Constitution.

According to Article IV, Section 1 of the State Constitution, the Legislature "shall hold its sessions at the seat of government." (Traditionally, the seat of government has been defined as the City of Santa Fe.) However, the Democratic leadership of the New Mexico House of Representatives is likely to announce today that during the upcoming 60-day regular session, all legislative business will be conducted virtually and, in turn, will propose a House rule change that will allow Members to participate in the Legislature's 60-day session from anywhere --- their homes, their hotel rooms, their Capitol Building offices, or possibly out-of-state --- via an internet connection.

We believe permitting Members of the NM House of Representatives to no longer be physically present in the Capitol Building, or at the very least from someplace within the city limits of Santa Fe, violates the constitutional mandate within Article IV, Section 1 which clearly states that the legislative session must be held in the seat of government. Further, we contend that conducting such legislative sessions with Members of the NM House of Representatives spread out across the state jeopardizes the legality of any action or decisions made during the upcoming 60-day regular session as these virtual sessions do not adhere to the standards of proper legislative sessions required by the State Constitution.

During 2020, the Legislature met in special session in June and November and at each special session House rules were modified to allow Members to participate in legislative business through the "Zoom" internet platform. However, those special session changes to House rules were only temporary and were only effective for five days during June and one day during November. Now, the House Democratic leadership wants to amend House rules for the complete duration of a 60-day regular session to allow Members to be no longer physically located in Santa Fe to participate in legislative business.

Granting short-term exceptions to a constitutional mandate during a pandemic may be justifiable, but to impose such a dramatic change in how the NM House of Representative operates, and which clearly

violates the constitution, for an entire 60-day session is both inexcusable and improper. It should be noted the New Mexico State Senate is not adopting a similar unconstitutional change to Senate rules for the 60-day regular session as it appears the Senate Democratic leadership recognizes the impropriety of holding virtual legislative sessions that would violate Article IV, Section 1.

Similarly, we believe Article IV, Section 1 also instills a requirement that legislators must be given unfettered access to the facilities and resources inherent within the Capitol Building during a legislative session. If legislators are not assumed to have complete freedom to utilize the equipment and technology contained within the House chamber or in other parts of the Capitol Building, why would the State Constitution mandate that legislative sessions must be held at the seat of government? Yet, the House Democratic leadership is likely to propose a second change to House rules to prohibit Members from using House chamber microphones during upcoming floor debates and to restrict video coverage of those debates to the cameras installed on legislators' lap top computers connected to the "Zoom" platform. We find no reasonable rationale for such limitations in how Members can utilize the House chamber's taxpayer financed microphones and video cameras that have been part of the House's legislative operations for years.

In fact, the installation and use of House chamber microphones and video cameras are an integral part of the public's right to know in how the Legislature conducts its business and in holding legislators accountable. In our view, restricting the use of these tools of transparency, apparently to avoid a perception of political disadvantage for the majority party, is unbecoming to the "peoples' House" and fundamentally hinders Members' ability to fulfill their constitutional responsibilities at the seat of government.

Thirdly, Article IV, Sections 5 and 6 describes what business the Legislature is permitted to consider during even-numbered years and in special sessions, as the framers gave the Governor considerable influence in both instances in setting the legislative agenda. However, Section 5 clearly places no such limitations or restrictions as to what legislative business is permissible in odd-numbered years and this constitutional provision has been universally interpreted to mean that it is solely the Legislature, not the executive branch, who shall determine what issues and legislative business will be considered.

Yet, the House Democratic leadership is planning on proposing a House rule change in the upcoming legislative session to restrict Members from introducing no more than five bills, but provides an exemption to this limit if Members introduce bills submitted or requested by the executive branch. Notwithstanding the inherent unfairness of allowing more Democrat sponsored bills than Republican sponsored bills, the likely constitutional impact of this restriction means the power of the Legislature to set the legislative agenda is significantly diminished, while the power of the executive branch is greatly enhanced. Such a result is contrary to explicit provisions of Article IV, Section 5 as the framers crafted this section to ensure that the executive branch would not be able to unduly influence or try to dictate to the Legislature what legislative business could be transacted in those odd-numbered years.

Further, in Article IV, Section 16, the framers were clear that while a time limitation on the introduction of bills during any session could be set by statute, they made no attempt to limit the number of bills that Members of the Legislature could sponsor. In addition, limiting the number of bills a Member can carry is an inappropriate restriction on every legislator's basic constitutional responsibility of fully representing their constituents and communities by no longer having a reasonable opportunity to propose needed solutions to a wide range of statewide and local problems. For example, one House

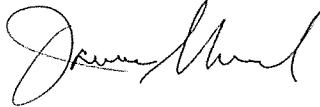
Member represents seven counties and, if the five bill limitation is approved, this legislator will not be able to introduce legislation on behalf of constituents in at least two of those counties.

It must also be noted the NM State Senate is not imposing any limitation on the number of bills a Member can introduce during the upcoming 60-day regular session. This means there will be an imbalance of legislative power between the House and Senate as one body will be able to unilaterally exert a greater level of influence as to the number of bills which can move through the legislative process. Our system of government is based upon the premise that of no one branch of government or one body of the Legislature shall be no more powerful than any other branch or body. But, the limitation on bill introductions in the House violates this constitutionally-imposed balance of power and threatens the basic foundation of fair and representative governing.

In order to uphold these long standing constitutional standards as to how legislative sessions must be held at the seat of government, what tools legislators need to perform their duties, how legislators can best represent their districts, and maintaining equal power between governmental institutions, we strongly encourage the Legislative Council Service to immediately review the aforementioned constitutional mandates and proposed House rules and issue an opinion/report prior to the opening of the 55th Legislature on January 19. Your determination as to whether these proposed changes to House rules for the upcoming 60-day regular session are consistent with the explicit and implied provisions of the State Constitution is essential to reassuring the people of New Mexico the upcoming legislative session will be proper and legal.

Thank you for your consideration of our request. We look forward to a prompt and timely reply.

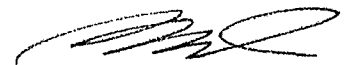
Respectfully yours,



James G. Townsend
Republican Leader



Rod Montoya
Republican Whip



Rebecca Dow
Caucus Chair