

New Mexico Foundation for Open Government

2021 New Mexico Legislature Focus Group

June 21, 2021



Executive Summary

The Covid-19 Pandemic forced individuals, organizations, companies and governments – including the 2021 New Mexico Legislature – to modify how each conducted business. The New Mexico Foundation for Open Government (NMFOG) held two focus group conversations following the 2021 Legislative session to understand the implications of the largely virtual legislative session. Specifically, NMFOG conducted the research to gain insight on the virtual workings of the session, learn if the absence of in-person communication increased or diminished transparency and accountability, and gather recommendations for future sessions from the participants’ attitudes, feelings, experiences and reactions.

Background

NMFOG is a non-profit, nonpartisan organization committed to helping citizens, students, educators, public officials, media, and legal professionals in New Mexico understand, obtain and exercise their rights and responsibilities under New Mexico’s “sunshine laws,” including the Inspection of Public Records Act and Open Meetings Act.

Article IV, Section 5 of the New Mexico Constitution states the regular session of the New Mexico Legislature must begin at 12 noon on the third Tuesday of January, and it is not to exceed 60 days. New Mexico has a citizen legislature; lawmakers are not paid but receive per diem. The session is held in Santa Fe, located in the northern tier of the state.

In New Mexico, the 2021 regular session of the New Mexico Legislature, which got underway on January 19, was unlike any other. The building, affectionally called the Roundhouse due to its circular architecture, was closed to the public during this year’s session. In addition, it was surrounded by concrete barricades, fencing and blocked roads. The barriers were a reaction to the January 6, 2021 deadly assault on the U.S. Capitol. New Mexico State Police officers and members of the New Mexico National Guard patrolled the perimeter during the session.

Inside the Roundhouse, lawmakers allowed only staff and some media members in the building and only if they were regularly tested for the virus and followed other protocols including wearing masks and socially distancing. Lawmakers were permitted in the building and did not require testing for themselves. While a mask mandate was in place, several lawmakers did not wear masks.

Legislative floor sessions and committee hearings were a mix of Zoom communication APP and the Legislative-fed webcast. The Senate and the House

each had its own set of rules for conducting committee meetings and floor sessions.

The 42-member Senate held its floor sessions in person. In the past, the Senate met most days of the session – in this session the Senate floor cut back the number of times it convened. To participate in a Senate committee hearing, advocates, lobbyists, and citizens were required to submit a written email 24 hours prior to the hearing requesting authorization to participate in the hearing. The written email was required to indicate the individual's name, the entity he or she was representing, the bill number, his or her position on the bill, and if he or she would like to speak during the committee hearing. Written comment was also allowed to be submitted to the committee via a singular email.

In the Senate, each committee chair had the authority to determine how public participation would work. Several committees limited the number of individuals who could speak on a topic and limited the time the members of the committee would provide to a single bill.

The 70-member House permitted its members to attend floor sessions remotely, and the members of the public who wished to attend or participate in a committee hearing could consult a general posted notice that contained the login information prior to any committee hearing. Similar to the Senate, the House held fewer floor meetings than in a traditional session. At the beginning of citizen testimony on a bill in the House, the several committee chairs would ask for a poll of those who were in favor or opposed to the legislation. After the vote was taken, the chair called on individuals to provide testimony that was timed. The time allowed for an individual member of the public to speak on the bill varied by chair, but usually was between 60 and 90 seconds.

NMFOG and Legislative Services Council Director Raul Burciaga held conversations about recommendations on how to ensure public transparency and accountability prior to the session. At that time Burciaga said the state adopted some of those recommendations including upgrades to its virtual system, adopted procedures to assist those with disabilities and equipped both chambers with plexiglass shields. He relayed that all Roundhouse staff would be masked throughout the session, that the staff had placed hand sanitizers at strategic locations, and the staff removed furniture from the lawmakers' lounges to prevent gatherings and in-person meetings. FOG recommended in the event the analog or digital streaming of any meetings were interrupted, all debate halt until the system transmissions resumed, which he indicated he would share with leadership. It was also recommended the Legislature should allow reporters and broadcasters the greatest access possible to all proceedings inside the Roundhouse. The legislature adopted both recommendations for the 2021 session.

Methodology

To conduct the conversation, NMFOG decided on hosting two sessions – a morning session and an evening session, NMFOG selected the following dates and times:

Session 1, April 20 at 10 a.m.

Session 2, April 21 6 p.m.

NMFOG emailed invitations to those in the sessions – citizens and advocates and current Legislators. NMFOG also made follow up telephone calls to extend the invitations to those who did not respond. Email reminders were also sent to the prior to their session. Only one individual who indicated he would attend, did not actually participate in the session. The invitation list included individuals who had reached out to NMFOG during the session because they were seeking guidance, assistance or needed to vent. Invitations were extended to:

1. Carol Miller, citizen and resident of rural New Mexico*
2. Jason Barker, citizen
3. Charles Goodmacher, Do Good LLC*
4. Sharon Berman, New Mexico First*
5. Jeremy Ferris, Ethics Commission
6. Paul Gessing, Rio Grande Foundation*
7. Carmen Bailey, citizen
8. Larry Horan, Advocate and lobbyist
9. Lilly Irvin-Vitela, New Mexico First*
10. Camilla Feibelman, Sierra Club
11. Kathleen Burke, citizen
12. Tsiporah Nephesh, New Mexico Thrives*
13. Sammy Lopez, New Mexico Press Association*
14. Susan Wilson, NM Coalition for Healthcare Value
15. Jerry Walker, Independent Community Banking Assoc.
16. Rob Black, NM Chamber of Commerce
17. Kathleen Sabo, NM Ethics Watch*
18. Allison Smith, Roadrunner Capitol Reports*
19. Mario Jimenez, Common Cause

Of that number, nine participated in the exercise.

Legislators who had reached out to NMFOG, including committee chairs, or who expressed frustration with the process were targeted for an invitation. Of the 12 selected for an invitation, six participated in the exercise including:

1. Sen. Gerald Ortiz y Pino (D)
2. Sen. Daniel Ivey Soto (D)
3. Rep. Kelly Fajardo (R)
4. Rep. Rebecca Dow (R)

5. Rep. Natalie Figueroa (D)
6. Rep. Matthew McQueen (D)¹

As noted above, legislative participants included four Democrats and two Republicans, four members of the House of Representatives and two members of the Senate, three committee chairs, and an even split of women and men.

Video recordings were made of the sessions and notes were taken.

A list of the questions the facilitator asked were as follows:

1. Do you feel the way the 2021 session was conducted enhanced or decreased meaningful public engagement?
2. What do you feel went well during the 2021 legislature?
3. What do you feel was a negative during the 2021 legislature?
4. What was the biggest issue with the technology during the 2021 session?
5. How were problems with technology solved when they arose during the 2021 session?
6. Technology was important to the 2021 Legislative process. How could technology be used in the future to increase participation?
7. Each chamber had different procedures for constituent comment. Did you prefer one system over the other and why?
8. How did limited access to legislators impact the public's ability to weigh in on important bills?
9. What is your number one suggestion for ensuring public input reaches individual legislators?
10. What role if any did social media play in the 2021 legislature?
11. What type of system (hybrid, all virtual, all in person) should the legislature adopt for its operations moving forward?
12. What was your biggest frustration with the 2021 legislature?
13. The absence of social events may have eliminated an escape valve for legislative members. What value do you place on the social aspects of the legislature?

¹ * indicates participant

14. Individual legislators especially new legislators had virtually no opportunities to interact with other lawmakers. How could this be remedied in the future and did it have an effect on the 2021 legislature?

Session Outline

Melanie Majors, NMFOG executive director, provided a welcome, thanked the participants and served as notetaker.

Jason Espinoza, advocate, was the facilitator for both sessions. After the introduction, he too welcomed the participants and in the case of the first group, asked each member to introduce themselves. He then reviewed ground rules and told the group how the session would be conducted and how the results would be compiled and shared.

The ground rules utilized for each focus group discussion included:

- Participation in the focus group is voluntary.
- It is okay to abstain from discussing specific topics if participants are not comfortable.
- All responses are valid—there are no right or wrong answers.
- Please respect the opinions of others even if you do not agree.
- Try to stay on topic; we may need to interrupt so that we can cover all the material.
- Speak as openly as you feel comfortable.
- Help protect others' privacy by not discussing details outside the group.

Session 1 lasted for one and a half hours, and Session 2 lasted for one hour.

Overall results

Both groups indicated they hoped that the Legislature would not host a strictly virtual session again. From complaints about technology glitches, access to technology, different processes for testifying in individual committees, limits on communication and access to personnel, each indicated it was not how good government should operate.

Session 1 Outcomes

Participants indicated they felt the number of individuals who could participate in the overall session increased. The increase may have occurred because those wishing to testify did not have to travel hundreds of miles to Santa Fe to meet individually with legislators or provide testimony. However, participants overwhelmingly said personal public engagement decreased as they were unable to talk to individual lawmakers prior to a committee hearing. They also indicated because of the limitations of the technology, there was no overall view of the lawmakers who attended each committee hearing or other citizens interested in the proposed legislation and no way to gauge the number of individuals in a session. This limited collaboration among advocates and between advocates and lawmakers.

It was also pointed out that those with knowledge of the inner workings of the Legislature and those with personal relationships with individual lawmakers had better access to the process.

Participants in Session 1 indicated the process the House used for committee participation was far superior to the system used in the Senate, but again there were issues.

Participants voiced complaints about the Senate sign-up procedures. Several indicated their sign ups were lost and therefore they could not participate in a particular hearing. Additionally, it was noted by several participants that -- although members of the public had to submit written requests 24 hours prior to a Senate hearing—the agenda was not always posted in a timely manner that would allow the public to do so. Others voiced frustration that lawmakers did not respond to emails and therefore they were unsure if the lawmakers received their information. Others pointed out that information sent to a central staff point for distribution was not always distributed.

Technical proficiency was another area of major concern. Some committee chairs and lawmakers were comfortable with the technology; others were not. The technology extended to the Senate's language interpreter software. There was little or no initial instruction for the software. As New Mexico is a multi-lingual state, the ability for individuals to testify in their native language(s) is essential.

Participants pointed out that the Zoom webcast was superior to the Legislature's webcast, as the webcast has a timed delay.

Time limits on testimony, which in some committees was indicated by an interruption during the testimony, was also criticized. Several participants noted that while there may have been an increased number of public comments that necessitated a time limit on testimony. The time limit on testimony may have had the effect of diminishing the quality of public testimony. This may have happened because it was difficult to speak on complex issues within such a small timeframe.

Legislation was often amended in committee hearings and participants said there was no way for the public to view an amendment and no way it was shared until days later when it was posted online. (This was also exacerbated by the reduced number of floor sessions where a committee report, which includes amendments made in committee, were formally adopted and posted on the legislative website.)

Other areas included limitations on the number of bills leadership allowed to be filed in the House; an overall feeling that certain bills were already given a greenlight towards acceptance; and that it was problematic to engage lawmakers in discussions concerning the state's budget. As advocates and citizens were kept out of the Roundhouse, there were no opportunities to meet face to face with the limited number of legislators on the budget committees. In budget committee hearings, the time allotted for each comment was inadequate to make the case for complex financial issues. Attempts to leave phone messages were met with full mailboxes.

Participants responded to questions about the social aspects of the session by saying the lack of social outlets was discouraging. One participant indicated his organization uses a breakfast to introduce new members and remind long-time lawmakers about the importance of his industry to the state. Others pointed out the annual basketball game between lawmakers is a time to mingle, serves as an opportunity for networking, and an opportunity to diffuse tension amongst colleagues. Others indicated the lack of networking opportunities was detrimental to advocates and the lawmakers.

The majority of participants in the first focus group indicated the Legislative should have dealt only with the budget, and lawmakers should have adjourned and postponed action on everything else until the Legislature and the public could meet in person.

Suggestions moving forward included:

- Ask the chambers to adopt consistent processes to sign up to testify and procedures for providing testimony
- Provide training for staff and lawmakers on technology
- Fund upgrades to technology
- Apply consistency to the committee hearing calendars
- Address the webcast time delay (why does a delay event exist? – is there history behind this)
- Provide a hybrid system for subsequent sessions

Session 2 outcomes

Participants indicated they felt the number of individuals who could participate in the overall session increased as those wishing to testify did not have to travel hundreds of miles to Santa Fe to meet with legislators or testify in committee hearings. This was a definite plus with one lawmaker stating there were more than 300 citizens signed up to speak in one of his committee hearings resulting in citizens being allowed only one minute to speak.

One lawmaker indicated she saw more diversity among constituents who participated in the session with many citizen advocates joining lobbyists.

One lawmaker said the process prohibited one-on-one access not only between citizens and lawmakers but also between individual lawmakers. Lawmakers indicated newly elected legislators had little opportunity to communicate with colleagues and personal relations suffered. “We didn’t see a lot of collaboration. There was little coming together and building relationships.” “There was not a lot of new relationship building.”

Others said:

“We didn’t have an opportunity to connect with each other, learn about people. We need common ground when building policy.”

Another pointed out non-verbal communication was eliminated, stating it “depersonalized” and “dehumanized” the session.

One lamented because of restrictions on person-to-person interaction, the session moved slowly – “lots of bills just died because we couldn’t get to them.”

Technology also presented issues for lawmakers. Lawmakers said they were tied to multiple screens to monitor their bills in multiple committees and that focusing on screens all days was tiring. They also pointed out difficulties with the interpretation software – issues that seem to be resolved as the session progressed.

One participant said they heard from constituents that when they called to connect to a hearing, no one responded, severely hampering their ability to contribute.

Several indicated working on legislation was more difficult and one lawmaker insisted that bills were not vetted before reaching committee, taking up time and resources. Another admitted the session was, “disastrous and abomination of representative government.” And still another said there would be multiple “clean up” efforts of bills in the next session. “It was difficult to get a casual answer, every little thing was done in public--making things slow and difficult.”

Legislators said following their bills from the House to the Senate was difficult as House members did not have access to shared drives in the Senate chambers and vice versa.

Several pointed out there were few opportunities to work out issues with individual bills and one stated, “We have the votes, there is no time to work through the issues. We are the majority, and we don’t need to compromise.”

Lawmakers indicated they missed the social aspects of the session adding getting to know each legislator as a person was important to finding common ground. However, one did indicate they hated the social calendar and that he did not miss after-hours socializing.

Suggestions moving forward included:

- Adopting the use of technology for interim committee meetings
- Making upgrades to the technology, adding additional cameras to committee meetings
- Providing training on the interpretation program

Not necessarily a suggestion, but something important to note is the need for in-person interactions amongst legislative colleagues.

Conclusion

The overriding responses from both groups was that the session was less than positive. As one commented, “I never want to do this again.”

Participants in both sessions saw value in allowing for virtual connections while pointing out the limitations that the technology created. Everyone agreed that upgrades to technology were needed – upgrades to the systems in the Roundhouse and upgrades for portions of the state classified as rural.

While participants did not specifically say that transparency and accountability suffered during the session, both groups seemed to indicate that personal communication and the relationships it produced were invaluable in the legislative process.

Comments from advocates and lawmakers were not very different with both groups looking forward to a future in-person session.

“The world has changed and at some level we will probably not go back to the way things once were. We will see government working remotely. This was the exception not the rule and it was not good for the state.”