

CONSTITUTIONAL AMENDMENTS

PROPOSED BY THE LEGISLATURE IN 2003

**APPEARING ON THE SEPTEMBER 23, 2003
SPECIAL ELECTION BALLOT**

**BRIEF ANALYSIS
AND
ARGUMENTS FOR AND AGAINST**

**New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501
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FOREWORD

At a September 23, 2003 special election, two proposed constitutional amendments will appear on the ballot as the result of the passage of joint resolutions by the legislature in its 2003 session.

LAWS

CA 1 (2003)

CA 2 (2003)

SUBJECT

Cabinet-level public education department

Increased distributions from the land grant permanent fund

For adoption, constitutional amendments require ratification by a majority of the electors voting on the question. Proposed constitutional amendments become effective upon approval by the voters unless an effective date is provided within the text of the proposed amendment.

This publication contains the full text of the joint resolutions proposing the constitutional amendments. Each joint resolution states whether the proposed amendment amends an existing section, adds a new section or repeals an existing section. When an existing section is being amended, new material is shown by underscoring and language to be deleted is shown within brackets.

Following the text of each proposed amendment are a brief analysis of the amendment and summaries of arguments for and against the amendment. These arguments do not necessarily reflect any legislative deliberations undertaken at the time of the passage of the proposed amendments. They represent the suggestions of the legislative council service staff of possible arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to have the same number of arguments for or against any particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

CONSTITUTIONAL AMENDMENT 1

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO TRANSFER THE STATE DEPARTMENT OF PUBLIC EDUCATION TO A CABINET DEPARTMENT HEADED BY A SECRETARY OF PUBLIC EDUCATION WHO SHALL SERVE IN THE EXECUTIVE CABINET AND TO CREATE AN ELECTED PUBLIC EDUCATION COMMISSION.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 12, Section 6 of the constitution of New Mexico to read:

"A. There is hereby created a "~~[state department of]~~ public education department" and a "~~state board of education~~". ~~The state board of education shall determine public school policy and vocational educational policy and shall have control, management and direction, including financial direction, distribution of school funds and financial accounting for all public schools, pursuant to authority and powers provided by law. The board shall appoint a qualified, experienced educational administrator to be known as the superintendent of public instruction, who shall, subject to the policies established by the board, direct the operation of the state department of]~~ "public education commission" that shall have such powers and duties as provided by law. The department shall be a cabinet department headed by a secretary of public education who is a qualified, experienced educator who shall be appointed by the governor and confirmed by the senate.

B. Ten members of the ~~[state board of]~~ public education ~~[who]~~ commission shall be ~~[state officers shall be]~~ elected for staggered terms of four years as provided by law. ~~[Board]~~ Commission members shall be residents of the ~~[board of]~~ public education commission district from which they are elected. Change of residence of a ~~[board]~~ commission member to a place outside the district from which he was elected shall automatically terminate the term of that member.

~~[C. Five members of the state board of education who shall be state officers shall be nominated and by and with the consent of the senate appointed by the governor from five districts substantially equal in population for staggered four-year terms as provided by law. Those appointed by the governor shall be qualified electors of the state of New Mexico, no more than one-half or a simple majority of whom at the time of their appointment shall be members of the same political party. After 1990, the number of appointed members may be changed by law not to exceed five members.~~

~~D.]~~ C. The governor shall fill vacancies on the ~~[board]~~ commission by appointment of a resident from the district in which the vacancy occurs until the next regular

election for membership on the [~~board~~] commission.

~~[E. Upon adoption of this amendment]~~ D. The secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools [shall be transferred to the state department of public education] to be performed as provided by law.

E. The elected members of the 2003 state board of education shall constitute the public education commission, if this amendment is approved, until their terms expire and the districts from which the state board of education were elected shall constitute the state public education commission districts until changed by law."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Constitutional Amendment 1 — Brief Analysis Constitutional Amendment 1 proposes to amend Article 12, Section 6 of the constitution of New Mexico to create a public education department headed by a cabinet-level secretary of public education. The secretary would be appointed by the governor and confirmed by the senate. The amendment gives the secretary administrative and regulatory powers and duties, including all functions relating to the distribution of school funds. The amendment also proposes to create a public education commission that would have powers and duties to be defined by law enacted by the legislature. The amendment provides that the existing elected members of the 2003 state board of education shall constitute the membership of the public education commission until their terms expire. Thereafter, the commission would consist of 10 elected members, each serving staggered terms of four years.

Arguments For:

1. This proposed amendment will lead to a more coherent educational policy and a better-managed public education department for the state. It creates a cabinet-level public education department headed by an experienced, qualified educator as secretary of public education to be appointed by the governor, as well as a 10-member elected public education commission. The current 15-member state board of education is simply too large to create coherent and effective statewide educational policy, and has made it nearly impossible for the superintendent of public instruction to effectively manage New Mexico's public schools. Raising the state department of public education to cabinet-level status clearly sets public education as a priority in New Mexico, and the new structure will allow commission members to provide input from the various regions of the state while making the executive branch more directly responsible and accountable for the improved performance of our public schools.

2. New Mexico currently has a diffuse executive branch of government in which several elected officials and boards govern individual functions within the branch. Unfortunately, a diffuse

executive branch dilutes a governor's ability to directly manage and dramatically hinders the public's access to accountable, efficient and effective government. The administration and governance of New Mexico's public education system, arguably one of the most important functions of government, is administered by a bifurcated and confusingly structured — partly elected, partly appointed and districted — state board of education. Under this current system, a governor cannot fulfill his vision for an improved public education system in New Mexico because he has little input and control over public education policy. This amendment will remedy that situation by placing the administrative and financial responsibility firmly in the hands of a secretary of public education appointed by and serving at the pleasure of the governor. This governing structure will allow public education policy in New Mexico to finally be a part of the governor's comprehensive and cohesive vision for the state.

3. New Mexico's legislature passed major educational reform measures during the 2003 legislative session. The reforms include increased competency requirements for teachers, a new teacher licensing system and more rigorous student testing and reading programs. In the past, even though reform measures have been passed by the legislature, the successful implementation and enforcement of many of those measures has not been achieved. The new governance structure proposed by this amendment will eliminate the bureaucracy associated with the current 15-member state board of education and provide for a streamlined process better suited to ensuring the successful implementation and enforcement of recent and future educational reform measures. The secretary of public education will be directly responsible for implementation and enforcement of education reforms. This amendment should be supported because a streamlined process, combined with an accountable secretary of public education and less administrative bureaucracy, will strengthen accountability, improve student performance and get more dollars directly into each classroom.

4. New Mexico voters have historically been unable to hold the state board of education accountable for the conditions of the state's public schools. The current governance structure — a 15-member state board of education (10 elected and five appointed) with each voter able to vote for only one of the 10 elected members — has proven to make each vote virtually worthless in terms of accountability. With the large number of board members running New Mexico's public schools, voters cannot assign responsibility, nor does any one member of the board take responsibility, for the state's failing education system. As a result, a lot of finger-pointing related to low student performance and underachievement has taken place and few improvements have materialized. The governance structure proposed by this amendment would provide for a secretary of public education and a smaller elected commission. This will allow for more direct accountability and responsiveness within the department, and the voters will be able to assess the success or failure of the state's educational policy and ultimately hold the governor and the commission members accountable at the polls.

5. New Mexico's public school system is in dire need of improvement. No one is happy with the results of the status quo, and the state has continued to throw money at the old system for years with few, if any, positive results. The state department of public education has ranked 126 of

New Mexico's public schools as "probationary". This amounts to almost 20 percent of the 675 public schools that were ranked. Of those probationary schools, 58 have been ranked as probationary for the past three years, the entire time frame for which the department has kept the statistics. These dismal numbers alone provide a powerful reason to dramatically change the governance structure of the state's public school system.

6. Effective and fast action in response to changing needs is a fundamental tenet of good governance. By giving clear-cut power to a single, focused decision-maker — a secretary of public education — the public education department will be able to respond in a timely fashion to the educational needs of the state. An experienced, qualified secretary of public education can make policy decisions more effectively, efficiently and rapidly than can the current burdensome system of the 15-member state board of education and the superintendent of public instruction. The secretary's decision-making process will not be encumbered by adhering to time constraints and endless debate among a large number of people. Additionally, creating an elected public education commission to replace the bifurcated, part-elected, part-appointed system currently in place in New Mexico will reduce the propensity for political struggles and eliminate the endless struggles between the state board of education and the superintendent of public instruction.

7. The proposed amendment provides an excellent opportunity for implementing desperately needed, continuous, long-term school reform and improvements in New Mexico's public school system. The amendment will create an elected public education commission. The 10-member commission will be smaller than the existing 15-member state board of education and, in contrast, will consist of only elected members. Elected membership ensures that the various regions of the state will still have a voice reflecting their needs in the development of educational policy. By providing that the duties and powers of the commission will be set by statute, the proponents of this amendment have guaranteed long-term flexibility in the area of public school policymaking. The duties of the commission can be amended as necessary depending on demands and needs as they arise.

Arguments Against:

1. State government spending on elementary and secondary education constitutes more than 45 percent of New Mexico's annual budget. This amendment would place the control over that huge amount of taxpayer dollars and the related financial and administrative control of the state's public education system in the hands of a single person, who is not even elected by the voters. Concentrating so much power in the hands of one person appointed to office is not a fiscally sound decision for the taxpayers to make; at least some of that power should be given to an elected body.

2. History indicates that curtailing the New Mexico voter's right to vote is a hard sell, so the drafters of this measure decided to let the voters continue to vote for members of a public education commission — but conspicuously omitted any language giving powers and duties to that commission. Clearly, this proposed amendment is nothing more than an attempt to fool the voters into believing that a state board of education or similar policymaking body elected by the

voters will remain in charge, at least in part, of New Mexico's public education system. In reality, the amendment strips the current elected state board of education members of their constitutional power to determine public school policy and of the authority to control, manage and direct the public education system, including their ability to direct financial matters relating to school funds and accounting. Consequently, New Mexicans' votes for members of the commission will be rendered meaningless.

3. Fewer people involved in the public education policy decision-making process could lead to decisions lacking in quality. The current structure requiring members of the state board of education to vote on public school policy decisions encourages the debate of issues and leads to the exposure of potential risks, problems, conflicts and other issues that would not otherwise arise if the policies were discussed among only a few like-minded people. Although the constitutional amendment establishes a public education commission, the secretary of public education will not necessarily be bound or constrained by the actions of the commission unless the legislature gives it specific authority. The concentration of decision-making authority in the secretary of public education will reduce debate and hinder the ability of the secretary to ensure that optimal decisions for New Mexico's public schools are made.

4. This amendment is a mishmash attempt to satisfy everyone when, in reality, it will likely cause conflict and uncertainty and satisfy virtually no one. It proposes to make the public education department, with a secretary of public education, a cabinet-level department under the control of the governor, but then throws into the mix an elected commission. The choice should be clear-cut: either the governor runs public education in this state or an elected body runs it. This amendment is anything but clear-cut as it tries to be all things to all people — a little bit of responsibility to the governor and a little bit to the commission. As a consequence, it guarantees fierce fighting among the legislature, which will divide the powers and duties relating to public education; the governor, who will appoint the secretary of public education; and the elected commission, which may or may not have any real function since the amendment fails to assign any duties and powers to it. The situation will be further complicated by the fact that this amendment is vague and ambiguous as to what role, if any, the members of the public education commission will have. Consequently, it will undoubtedly be difficult to recruit candidates for the commission because few people will want to invest time or money into running for election to a constitutionally mandated office such as the public education commission with no idea what the duties and responsibilities will be. The resulting conflict and uncertainty will inhibit any education reform that might otherwise be hoped for.

5. The governance structure for the public school system does not really matter. There are several governance models across the country, and none has been shown to be superior. What matters in successful public school systems is the quality and quantity of resources put directly in the classroom. Qualified teachers and principals, enough good textbooks and adequate facilities are far more important than the flow chart of who runs the state department. Constant debate over governance structure merely dissipates energy and money that could go instead to addressing low test scores by students throughout the state. New Mexico's students and taxpayers would have been better served if the legislature, the governor and the state board of

education had spent the time and money that will be spent on the special election to determine the future governance structure on trying to figure out how to help improve the state's low-performing and probationary schools.

6. Passage of this amendment will result in reorganization and restructuring of the public education department and the state's system of public education on a frequent or periodic basis, changing with the political philosophies of each incumbent governor. In addition, the secretary of public education and other officials in the department will be subject to replacement at the whim of a governor or upon unpredictable shifts in the office of the governor, thus compromising or even eliminating continuity and stability within the state's already strained system of public education. By allowing the governor to appoint the secretary of public education, the top position for the state's public education department inevitably becomes a political and not an administrative position. This gives the governor, and politics, too much control over what happens in public education in New Mexico. Decisions made concerning public education should be made on the basis of their ability to improve education and not on politics.

CONSTITUTIONAL AMENDMENT 2

A JOINT RESOLUTION

PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR A LIMITED ADDITIONAL DISTRIBUTION FROM THE PERMANENT FUNDS TO PROVIDE MORE MONEY FOR THE PUBLIC SCHOOLS TO IMPLEMENT AND MAINTAIN EDUCATIONAL REFORMS AND FOR OTHER PERMANENT FUND RECIPIENTS.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 12, Section 7 of the constitution of New Mexico to read:

"A. As used in this section, "fund" means the permanent school fund described in Section 2 of this article and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled "An act to enable the people of New Mexico to form a constitution and state government and be admitted into the union on an equal footing with the original states."

B. The fund shall be invested by the state investment officer in accordance with policy regulations promulgated by the state investment council.

C. In making investments, the state investment officer, under the supervision of the state investment council, shall exercise the judgment and care under the circumstances then prevailing that businessmen of ordinary prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

D. The legislature may establish criteria for investing the fund if the criteria are enacted by a three-fourths vote of the members elected to each house, but investment of the fund is subject to the following restrictions:

(1) not more than sixty-five percent of the book value of the fund shall be invested at any given time in corporate stocks;

(2) not more than ten percent of the voting stock of a corporation shall be held;

(3) stocks eligible for purchase shall be restricted to those stocks of businesses listed upon a national stock exchange or included in a nationally recognized list of stocks; and

(4) not more than fifteen percent of the book value of the fund may be invested in international securities at any single time.

E. All additions to the fund and all earnings, including interest, dividends and capital gains from investment of the fund shall be credited to the fund.

F. Except as provided in Subsection G of this section, the annual distributions from the fund shall be ~~[one hundred two]~~ five percent of the ~~[amount distributed in the immediately preceding fiscal year until the annual distributions equal four and seven-tenths percent of the]~~ average of the year-end market values of the fund for the immediately preceding five calendar years. ~~[Thereafter, the amount of the annual distributions shall be four and seven-tenths percent of the average of the year-end market values of the fund for the immediately preceding five calendar years.]~~

G. In addition to the annual distribution made pursuant to Subsection F of this section, unless suspended pursuant to Subsection H of this section, an additional annual distribution shall be made pursuant to the following schedule; provided that no distribution shall be made pursuant to the provisions of this subsection in any fiscal year if the average of the year-end market values of the fund for the immediately preceding five calendar years is less than five billion eight hundred million dollars (\$5,800,000,000):

(1) in fiscal years 2005 through 2012, an amount equal to eight-tenths percent of the average of the year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law; and

(2) in fiscal years 2013 through 2016, an amount equal to one-half percent of the average of the year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law.

H. The legislature, by a three-fifths' vote of the members elected to each house, may suspend any additional distribution provided for in Subsection G of this section."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

The Permanent Funds: An Explanation

In order to understand Constitutional Amendment 2, some background on the permanent funds is helpful. There are two types of permanent funds provided for the

constitution of New Mexico: the land grant permanent fund and the severance tax permanent fund. Constitutional Amendment 2 pertains only to the land grant permanent fund.

The land grant permanent fund is an aggregation of several funds, including the permanent school fund, but is managed and invested as one fund and is commonly referred to in the singular as the land grant permanent fund. The current balance in the fund is approximately \$6.7 billion.

Under the Ferguson Act of 1898 and the Enabling Act for New Mexico, which was passed by congress in 1910, New Mexico was given more than nine million surface acres of land and more than 13 million subsurface acres of mineral interests.

These public lands were granted to New Mexico specifically to be held in trust for the purpose of providing funding for public education and other essential public services. There are 21 named beneficiaries of the land grant permanent fund, with the public schools being the largest. The 20 other trust beneficiaries include all of the four-year higher education institutions and other state institutions, such as the school for the visually handicapped, school for the deaf, penitentiaries and state hospital.

The commissioner of public lands manages New Mexico's trust lands, leasing them for mineral exploration, development and production, grazing and other commercial purposes, as well as selling property as the commissioner deems beneficial and appropriate. Revenues from the nonrenewable use of the trust lands, such as royalties from oil and natural gas production and proceeds of land sales, are deposited into the land grant permanent fund. The amount of revenue varies from year to year — over the last 10 years, it has ranged from a low of \$97 million to a high of \$288 million.

The state investment officer invests the land grant permanent fund on behalf of the beneficiaries. Each beneficiary receives an annual distribution from the fund based on its share of the fund. The distribution amount is provided for in the constitution and is the subject of the proposed constitutional amendment. The current distribution amount is 4.7 percent of the five-year average balance of the fund. This amount was set by a constitutional amendment approved by the voters in 1996. The amount of the distribution is intended to allow the fund to grow at least in line with inflation, while providing the beneficiaries with a portion of the annual return to the fund from interest, dividends and capital gains. In fiscal year 2002, distributions from the land grant permanent fund totaled \$312 million, of which \$256 million went to the public schools.

Constitutional Amendment 2 — Brief Analysis Constitutional Amendment 2 proposes to amend Article 12, Section 7 of the constitution of New Mexico to permanently increase the annual distribution to all beneficiaries from the land grant permanent fund from 4.7 percent to five percent of the average of the year-end market values of the fund for the immediately preceding five calendar years. The amendment also provides for an additional distribution of .8 percent for fiscal years 2005 through 2012 and then reduces that additional distribution to .5 percent for fiscal years 2013 through 2016. The portions of the additional distributions applicable to the permanent school fund can only be used to implement and maintain education reforms passed by the state legislature. The amendment requires that the temporary additional distributions will be suspended if the five-year average fund balance falls below \$5.8 billion. Additionally, the amendment provides that the legislature, by a three-fifths' vote, may suspend the payment of the additional distributions.

Arguments For:

1. Most of the additional money to be distributed from the land grant permanent fund as a result of the passage of this amendment is dedicated to education reform, which is intended to provide important and measurable improvements in the public school system of New Mexico. Increased spending on education reform, including improved teacher competencies and rigorous new licensure standards, higher salaries, accountability and enhanced student reading proficiency, will produce a better education system yielding a more literate work force, along with an enhanced ability to attract new businesses to New Mexico and an opportunity to expand the tax base. In short, the use of additional permanent fund revenues to spur education reform will directly improve the quality of life for future generations of New Mexicans, while building a stronger economy that can provide increased revenue for the state. Studies have shown that a well-educated work force is one of the pillars of a successful economic development strategy. Such an investment in children, the "human capital" of the state, will provide a rate of return to New Mexico greater than or equal to investing the money in stocks and bonds.

2. The increased distribution from the land grant permanent fund is not a "raid" on the fund, since the corpus or principal of the fund is not likely to decline. The increased distribution will merely slow the rate of growth in the fund balance. Regardless, the amendment provides two safeguards against significant reductions in the fund balance. First, it automatically suspends the temporary "additional distributions" for any year if the five-year average fund balance drops below \$5.8 billion. Second, it provides that the legislature, by a three-fifths' vote, can suspend the additional distribution at any time. The state investment office, which manages the fund, estimates that if the proposed amendment passes, the fund balance will continue to grow from the current level of \$6.7 billion to \$8.9 billion by the end of 2010 and to \$11.1 billion by the end of 2015. These state investment office projections assume that the fund achieves an average annual rate of return of 8.5 percent, a rate of return that is in line with the historical average rate of return

on endowment funds of a similar size.

3. New Mexico has one of the largest permanent funds in the world. The question that must be asked is: how large should the state's land grant permanent fund be? The current value is over \$6 billion, making it a huge endowment for such a poor state, and the fund will continue to increase in value over the coming years. It is far better to take some of that increase and invest in our children rather than invest it to merely further increase the fund. Students need the additional money now, and to use this small increase in the fund for public schools is the right thing to do.

4. New Mexico has many failing public schools and needs to improve the education provided to its public school students. In addition, there are new education mandates from the federal government that must be funded. The state's public school budget is already close to 50 percent of the annual budget, and there is no excess money remaining in the general fund to increase funding for schools. The land grant permanent fund was set aside as an endowment for the public schools and other schools and institutions of the state. This amendment, through increased distributions from the fund, will provide money that will be used for state-inspired and federally mandated school programs. It is reasonable that, when the schools need money, the greatest amount possible within prudent limits be taken from the land grant permanent fund to meet that monetary need. The amendment provides only moderate increases in the distribution from the fund, and most of those increases decrease beginning in 2013 and terminate after 2016. New Mexico's schools clearly need the additional money, and the fund is large enough to provide less than one percent of its average value over the last five years to fulfill that need.

5. Billions of dollars are sitting in the permanent fund at the same time that schools are in crisis. It only makes sense to have a rainy day fund if the state is willing to tap into that fund when it rains. The modest additional distributions proposed by this amendment will provide the much-needed money for education reforms, and yet are limited to protect the corpus of the fund in case its market value drops below \$5.8 billion. The permanent increase of an additional three tenths of one percent in the distribution from the permanent fund will provide for a much-needed long-term increase in funding for public schools, while the temporary additional increases for fiscal years 2005 through 2016 will help to jump-start education reform efforts.

6. Based on the actual performance of the fund over the past 15 years, the increased distribution rate proposed by the amendment is quite conservative and will not erode the real value of the fund. According to the state investment office, since 1988 the total fund return, which is the growth in the fund balance after distributions are paid out, has averaged 9.8 percent. Inflation during that same period averaged 3.1 percent, resulting in a real rate of return of 6.7 percent. It is well worth noting that, as calculated by the state investment office, the annual distribution from the fund during that same period averaged 5.9 percent of the fund balance. Thus, the proposed increased permanent distribution rate of five percent, and even the temporary increased distribution rate of 5.8 percent, will in

actuality be lower than those rates in effect during the past 15 years, when the fund grew by 9.8 percent.

7. The New Mexico land grant permanent fund is one of the largest among the states. However, New Mexico is also one of the poorest states. In essence, New Mexico is asset rich but cash poor, with a long list of needs. Since all of those needs, including education reform, cannot be adequately addressed by current revenue sources, this amendment proposes to use a limited additional distribution from the land grant permanent fund to implement and maintain desperately needed public school reform. Allowing the permanent fund to continue to grow well in excess of inflation when there are so many unmet needs in the state, particularly in the area of public education, is a luxury New Mexico can ill afford. Increasing the distribution to pay for high-priority needs in public schools simply makes good business sense as a wise investment in the future.

8. Overall state revenues are inadequate at a time when the needs of public education are sky high. Unemployment is rising, the economy is struggling and the taxpayers cannot be burdened with a tax increase at this time. Yet, it cannot be denied that the state needs money to fund education reform now. There is no choice but to approve this small increase in the distributions from the land grant permanent fund. At least, if money is used from the fund, the state is not borrowing against the future because the money is there now. The state can always adjust the distribution rate downward as the tax base grows and other funding sources are found. Meeting the fiscal needs of public schools is not a choice — it is a necessity and a duty.

9. This proposed amendment is fiscally sound. The decision to distribute the current 4.7 percent of the value of the fund was adopted only after a study of the long-term gains and losses and distribution practices of many comparable funds. Those other funds generally distributed between 4 percent and 6 percent of their values. The increased rate in the distribution proposed by this amendment falls safely within the same 4 percent to 6 percent range reflected in the earlier study. Consequently, the increased distribution is prudent and reasonable.

10. The title of the joint resolution gives clear notice to the voters that the amendment proposes to provide a limited additional distribution from the permanent fund. The limited additional distribution referred to in the title includes an increased permanent distribution that will be limited to .3 percent, as well as temporary increased distributions limited to .8 percent for eight years and then .5 percent for the following four years. The notice of the limited nature of the additional distribution from the fund is both clear and sufficient.

11. A number of the opponents to this limited, prudent increased distribution from the permanent fund equate the fund to an "endowment fund". Public endowment funds are not taxed and regulated by the federal internal revenue service ("IRS"); however, private endowment funds are taxed and regulated. Pursuant to IRS rules governing private endowment funds, each such fund must distribute at least five percent of the value of its

fund annually or be subject to taxation on the undistributed income. Presumably, the logic behind the rule is to ensure that a private endowment fund does not amass huge sums of money without dispersing a reasonable portion to the beneficiaries for which it was intended. The permanent increased distribution rate that would be imposed by the proposed amendment is five percent and is, therefore, not only in line with IRS rules governing private endowment funds, but is both reasonable and rational.

Arguments Against:

1. The increased distribution from the land grant permanent fund may result in the corpus or principal of the fund not growing enough to keep up with inflation, violating the basic principle of an endowment fund. It also means that future distributions to public schools and other beneficiaries will decline in real terms, and that decline will, in turn, require the state to raise taxes in order to maintain the funding for necessary public services. Based on the recent performances of the stock and bond markets, the 8.5 percent rate of return forecast by the state investment office seems unrealistically high. If the fund grows at a more modest rate, say seven percent for a few years, the 5.8 percent distribution amount added to a two percent annual inflation rate will result in the real value of the corpus of the fund declining. Further, the supposed safeguard of making the additional distributions contingent on the five-year average value of the fund being in excess of \$5.8 billion is not as stringent as it may appear. In order for the five-year average to fall below \$5.8 billion in 2005, the fund would have to lose 20 percent of its value in 2003! It would have been a better safeguard provision if a much smaller decrease in the value of the fund would trigger automatic limits on the distribution.

2. Any increase in the distribution from the permanent fund amounts to borrowing from future generations of beneficiaries to fund benefits today, and this is the start down a slippery slope of using the permanent funds for increased government spending. During the past few years, the legislature has considered a number of proposals to use an increased distribution from the permanent funds for other purposes — water projects and public school capital outlay, to name a few. If this amendment passes, future additional proposed amendments can be expected, each of which may have merit when considered in isolation. However, when looked at together, the total cumulative effect on the endowment for future generations could be significant, with little more than an empty promise passed on to them. If funding education reform is a priority, it should be paid for by reducing spending for other, lower priority programs, or by raising taxes.

3. The way the proposed new distribution is structured, it will not provide for the long-term, ongoing costs of education reform. By having an additional distribution of .8 percent for eight years and then .5 percent for five years, the state will build up expenditures without a way to continue to pay for them. If the additional distribution is truly justified, it should be ongoing and not phased out over 12 years because public education needs are likely to increase rather than diminish.
4. Any set distribution rate is arbitrary and will inevitably be too high at certain times and too low at others. If the corpus of the fund is to be protected, at the same time the distributions to the beneficiaries are maximized, the state should set a distribution rate based on the actual performance of the fund over some set period of time. Tying the distribution rate to current economic conditions should not be difficult. It is no different, in concept, to the use of variable mortgage rates, which is now a widely accepted method employed in the financing of homes.
5. The land grant permanent fund was created as an endowment for the schools of New Mexico, as well as other beneficiaries. Although it is popular to think of the permanent fund as a "rainy day fund" available for expenditure when times are tough, this is not entirely accurate. The philosophy underlying the fund has been that it is indeed "permanent". It is more like an endowment, with the beneficiaries receiving distributions of earnings while the principal remains intact. This amendment creates the very real possibility that annual distributions will exceed earnings, which will lead to an erosion of the principal of the fund. The body of the fund should be left to grow and not be depleted by constantly increasing the amount of money taken out of the fund. The income on the fund is not much more than the amount already distributed from the fund. If the state continues to increase the distribution rates from the fund, the fund will stop growing. As inflation continues to increase, even if it increases at low annual rates, the value of the fund will eventually begin to decline. This will mean that the fund is no longer serving its endowment purpose of providing increased earnings over time.
6. If the schools start to receive additional money from the land grant permanent fund, they will simply become dependent on the increased amounts of money. The legislature could decide to reduce the amount of general fund money that is appropriated to the schools because of the new higher distribution from the land grant permanent fund. In the event that the additional money distributed from the fund is cut off because the value of the fund falls to \$5.8 billion, the legislature will have to make up the lost money that the schools will have come to depend on. If the economy is in bad shape, it is likely that to continue stable funding for schools, taxes will have to be raised or other critical programs, such as medicaid or law enforcement, will have to be cut to keep the schools operating at the funding level to which they will undoubtedly become accustomed.
7. The proposed amendment is not fiscally prudent. The existing distribution formula was adopted in 1996 after careful study of the gains and losses in the value of the fund over a long period. It was settled on as a formula that would ensure that enough of the earnings

from the fund would be reinvested to compensate for losses from inflation to protect the principal of the fund. There has been no recent corresponding study to support the contention that the proposed new formula would still do that. Rather, the proposed increase in distributions is arbitrary and based simply on a wish to have more money to spend.

8. The title of this joint resolution is misleading in that it only mentions the creation of a limited additional distribution from the permanent fund, yet the changes proposed to Article 12, Section 7 of the constitution of New Mexico also include permanently increasing the existing 4.7 percent distribution to an annual five percent distribution. Consequently, voters think they are voting for only a limited temporary increase in the distribution from the fund when, in fact, they will be voting on both a limited additional distribution *and* a permanent increase in the distribution at the same time.

9. There is a degree of disingenuousness in the argument that this amendment is a "good public schools" measure and is the best way to pay for education reform. If this is the "best way", the amendment is flawed because it provides only a temporary fix. True education reform necessarily revolves around increased teacher salaries and other ongoing and continually increasing expenses. The amendment does not provide a way for the state to continue to pay for such expenses in 12 years when the temporary permanent fund increased distributions cease. Additionally, it is important to note that New Mexico's public schools are not the lone beneficiaries of the fund. Consequently, no one yet knows how the legislature intends to use the increased distributions for the other 20 beneficiaries now and in the future. It is troublesome to contemplate that the legislature may offset the beneficiaries' general fund support by an amount equal to that of their increased distributions. It is equally troublesome to note that the legislature and the governor have not made any promises concerning how any of the permanent fund increased distributions not pertaining to public schools will be used. For that matter, the amendment provides no guarantee that the legislature will not also offset the public school fund's general fund support at some time. The only requirement contained in the amendment is that the increased permanent fund distributions for public schools must be used for education reform. There should be some sort of guarantee that the increases in distributions will not be used to simply offset decreases in the amount of general fund expenditures for education and other programs. Otherwise, New Mexicans could find themselves paying for tax cuts with money from the permanent fund.

10. There are better ways to pay for education reform than dipping further into the permanent fund. It is irresponsible to increase the distribution from the state's endowment fund in the same year that the legislature passed a personal income tax cut that is projected ultimately to cost the state \$360 million in revenues per year. If New Mexico cannot afford to pay for school reform without taking a larger distribution from the fund, the legislature should start by repealing the tax cut. It is also worth noting that the percentage of money from the general fund that is appropriated to public education in New Mexico has fallen from more than 54 percent in 1983 to less than 46 percent this year; the

legislature and the governor could simply appropriate more money to education by cutting other state spending.