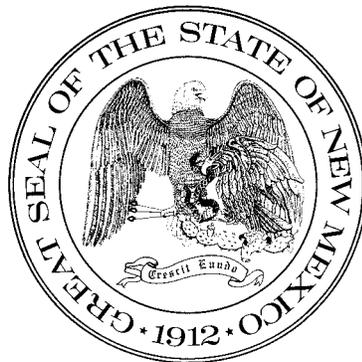


CONSTITUTIONAL AMENDMENTS

**PROPOSED BY THE LEGISLATURE
IN 2005 AND 2006**

**APPEARING ON THE NOVEMBER 7, 2006
GENERAL ELECTION BALLOT**

**BRIEF ANALYSIS
AND
ARGUMENTS FOR AND AGAINST**



New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501
August 2006
162755A

TABLE OF CONTENTS

Foreword	1
Constitutional Amendment No. 1: Protection of Right to Own Property	2
Brief Analysis	2
Arguments For	3
Arguments Against	4
Constitutional Amendment No. 2: Building Lease Agreements for State	5
Brief Analysis	6
Arguments For	7
Arguments Against	8
Constitutional Amendment No. 3: Water Trust Fund	10
Brief Analysis	10
Arguments For	11
Arguments Against	11
Constitutional Amendment No. 4: Local Government Affordable Housing	13
Brief Analysis	15
Arguments For	15
Arguments Against	16

FOREWORD

On November 7, 2006, four proposed constitutional amendments will appear on the New Mexico general election ballot as the result of passage of joint resolutions by the New Mexico Legislature in its 2005 and 2006 regular legislative sessions.

<u>LAWS</u>	<u>SUBJECT</u>
CA 1 (2005)	Repeal constitutional provision prohibiting ownership of land by persons not eligible for citizenship.
CA 2 (2005)	Exempt financial obligations incurred under certain lease-purchase agreements from the cap on indebtedness for the state and for school districts.
CA 3 (2006)	Create the water trust fund to support projects that will preserve and protect the state's water supply.
CA 4 (2006)	Permit state funds to be used for paying for the cost of land acquisition and the cost of construction or renovation of affordable housing.

For adoption, a constitutional amendment requires ratification by a majority of those voting on the constitutional amendment. 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 legislature's joint resolutions proposing the constitutional amendments. Each joint resolution states whether the proposed constitutional 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. The title of the joint resolution, appearing in all caps, is the language that will be shown on the ballot.

Following the text of each proposed amendment is a brief analysis of the amendment and summaries of arguments for and against the amendment. These arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. Instead, they represent suggestions of Legislative Council Service staff of 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 a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

CONSTITUTIONAL AMENDMENT NO. 1

A JOINT RESOLUTION

PROPOSING TO REPEAL ARTICLE 2, SECTION 22 OF THE CONSTITUTION OF NEW MEXICO, IN ORDER TO PROTECT THE RIGHT OF ALL PERSONS TO ACQUIRE AND POSSESS REAL PROPERTY.

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

Section 1. It is proposed to amend Article 2 of the constitution of New Mexico by repealing Section 22.

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.

Section 22 of Article 2 of the constitution of New Mexico, which would be repealed by the proposed amendment, reads as follows:

"Until otherwise provided by law no alien, ineligible to citizenship under the laws of the United States, or corporation, copartnership or association, a majority of the stock or interest in which is owned or held by such aliens, shall acquire title, leasehold or other interest in or to real estate in New Mexico."

Brief Analysis

Constitutional Amendment No. 1 proposes to repeal Section 22 of Article 2, which mandates that unless otherwise provided by law, aliens who are not eligible to become citizens, and certain business entities that are majority-owned by such aliens, are prohibited from acquiring any interest in real property in New Mexico.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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 a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. This section is a remnant of anti-Asian discrimination from the first decades of the twentieth century. The phrase "alien ineligible to citizenship" meant Asians who, not being "free white persons or persons of African nativity or descent", could not become naturalized citizens pursuant to the federal immigration laws in place at that time. The original 1910 Constitution of New Mexico guaranteed that there would be no distinction between resident aliens and citizens regarding the ownership of property, but this section was amended in 1921. Although other states had similar restrictions at one time, many states have now done away with them. Removal of this language is long overdue.
2. This section was rendered ineffective by passage of legislation in 1975 permitting aliens to take title to property (Section 45-2-111 NMSA 1978). As a consequence, repeal of the section will not change current law; it will merely serve to "clean up" the language within the state's constitution.
3. This provision is a symbol of a time when people's opportunity and place in society was defined by race. It creates a negative image of New Mexico. The constitution should reflect the state as it is now and as it strives to be, not as it was 85 years ago.
4. Numerous federal appellate courts have held that state alien land laws violate the equal protection clause of the Fourteenth Amendment to the United States Constitution because they discriminate against individuals on the basis of race and alienage. A provision that may well violate the United States Constitution has no place in the Constitution of New Mexico.
5. Although the prohibition in this section is currently superseded by legislation, if the law allowing aliens to own property should be repealed by some future legislature, this section would again take effect. It is wise to permanently remove this prohibition.
6. Many rights are available to noncitizens in New Mexico, such as the right to a free public education, to the same extent made available to citizens. A policy of maximizing the possibility for all New Mexicans to exercise a full range of rights fosters civic participation and pride. Many noncitizens have lived on or worked land that they would not be permitted to buy if the current constitutional provision were applicable; the state has no legitimate interest in discriminating against purchase of land by such New Mexicans.

Arguments Against:

1. Rather than simply repealing this section completely, it would be better to reinstate the original constitutional language that prohibited any distinction between resident aliens and citizens in regard to the ownership or descent of property.
2. This is an unnecessary amendment. Because of the "unless otherwise provided by law" language in this section, the legislature is free to overrule this provision with statutory language, which it did in 1975. There is no point in repealing an ineffective prohibition.
3. There are many ineffective and irrelevant provisions in the state constitution. If it is considered important to modernize the constitution and remove these provisions, the legislature should authorize a constitutional revision commission or convene a constitutional convention so these revisions can be done in a thorough and logical process. Attempting the type of patchwork rewriting of the constitution exemplified by this amendment is inefficient and a waste of tax dollars.
4. Only persons *ineligible* to become citizens are barred from owning property under this section. In the unlikely event the legislature decides to repeal the existing statute permitting aliens to own property, this section would affect only those who are actually ineligible for citizenship.
5. Retaining this provision would allow future legislatures the flexibility to handle this issue as circumstances demand. Due to current concerns about terrorism and the increasing flow of immigrants illegally entering the United States through New Mexico's southern border, certain aspects of land ownership may have to be restricted for national security purposes. It may be prudent in the future to enact statutes to enforce the prohibition on ownership of property by certain aliens who are seen as threats to the security of the state, and this provision makes it clear that such legislation is allowed under the Constitution of New Mexico.

CONSTITUTIONAL AMENDMENT NO. 2

A JOINT RESOLUTION

PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO ALLOW THE STATE AND SCHOOL DISTRICTS, INCLUDING CHARTER SCHOOLS, TO ENTER INTO AGREEMENTS FOR THE LEASING OF BUILDINGS AND OTHER REAL PROPERTY WITH AN OPTION TO PURCHASE.

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

Section 1. It is proposed to amend Article 9, Section 8 of the constitution of New Mexico to read:

"A. No debt other than those specified in the preceding section shall be contracted by or on behalf of this state, unless authorized by law for some specified work or object; which law shall provide for an annual tax levy sufficient to pay the interest and to provide a sinking fund to pay the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall have been submitted to the qualified electors of the state and have received a majority of all the votes cast thereon at a general election; such law shall be published in full in at least one newspaper in each county of the state, if one be published therein, once each week, for four successive weeks next preceding such election. No debt shall be so created if the total indebtedness of the state, exclusive of the debts of the territory, and the several counties thereof, assumed by the state, would thereby be made to exceed one percent of the assessed valuation of all the property subject to taxation in the state as shown by the preceding general assessment.

B. For the purposes of this section and Article 4, Section 29 of the constitution of New Mexico, a financing agreement entered into by the state for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the state pursuant to the financing agreement is not a debt if:

(1) there is no legal obligation for the state to continue the lease from year to year or to purchase the real property; and

(2) the agreement provides that the lease shall be terminated if sufficient appropriations are not available to meet the current lease payments."

Section 2. It is proposed to amend Article 9, Section 11 of the constitution of New Mexico to read:

"A. Except as provided in Subsection C of this section, no school district shall borrow money except for the purpose of erecting, remodeling, making additions to and furnishing school buildings or purchasing or improving school grounds or any combination of these purposes, and in such cases only when the proposition to create the debt has been submitted to a vote of such qualified electors of the district as are owners of real estate within the school district and a majority of those voting on the question has voted in favor of creating such debt.

B. No school district shall ever become indebted in an amount exceeding six percent on the assessed valuation of the taxable property within the school district as shown by the preceding general assessment.

C. A school district may create a debt by entering into a lease-purchase arrangement to acquire education technology equipment without submitting the proposition to a vote of the qualified electors of the district, but any debt created is subject to the limitation of Subsection B of this section.

D. For the purposes of this section, a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the school district or charter school pursuant to the financing agreement is not a debt if:

(1) there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and

(2) the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments."

Section 3. 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.

Brief Analysis

Article 9 of the Constitution of New Mexico addresses indebtedness of the state, counties, municipalities and school districts. Section 8 of Article 9 imposes restrictions on state indebtedness, including approval by the voters of debt to be incurred for specified work or objects and limiting indebtedness to not more than one percent of assessed valuation of all property subject to taxation in the state. Section 11 of Article 9 requires voter approval of debt incurred for school buildings and grounds and imposes a limit on school district indebtedness for such purposes of not more than six percent of assessed valuation of all property subject to taxation in the school district. Constitutional Amendment No. 2 would exempt from these restrictions on indebtedness lease-purchase agreements entered into by the state or a school district where there is no obligation to continue the lease from year to year or to purchase the leased property, and where the lease can be terminated if there are insufficient funds to meet

current lease payments. Under this proposed amendment, lease-purchase agreements of real property would not constitute debt, and thus, the requirements to impose a tax levy sufficient to pay interest and principal at maturity set forth in Article 4, Section 29 of the Constitution of New Mexico would also not apply.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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 a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. In 1989, the *Montano* decision was issued, ruling that a lease-purchase agreement was a debt. This decision precluded the state and school districts from being able to engage in public-private partnerships to provide the necessary capital funding to meet their critical capital needs and has severely hindered state agencies from being able to exercise many of the customary financing options used by most states for new office space, thus putting them into the position of having to use critical operational budgets for rent payments, with nothing to show for it after years of payments.
2. The proposed amendment will permit the state and school districts, including charter schools, to enter into specific types of lease agreements for real property with an option to purchase without the existing restrictions of requiring voter approval for every building decision, capping debt and imposition of a maximum period for repayment, thereby finally addressing the 1989 *Montano* decision that has been a roadblock to the state and the schools in addressing their critical capital needs.
3. The state currently spends approximately \$42 million annually on leases for office, warehouse and other space; the schools, including charter schools, spend approximately \$5 million annually on leases for classroom space. This proposed amendment would allow state agencies and school districts, including charter schools, to enter into lease-purchase agreements whereby the state and school districts, including charter schools, would eventually own the property and also give them greater flexibility in managing their budgets over the long term.
4. This proposed amendment would allow the New Mexico Finance Authority to assist the state and school districts, including charter schools, with the acquisition of property secured by lease payments for the minimal amount necessary to cover the debt service and maintenance costs, which would save the state and school districts huge costs incurred in the financing of capital projects.

5. This proposed amendment was carefully crafted to ensure that any lease-purchase agreement entered into by the state or school districts, including charter schools, would still have the necessary accountability and protection because the language provides that there is no legal obligation to continue to lease the property and the lease is terminated if sufficient money is not available to meet the current lease payments. This will allow for oversight and review through the state appropriations process. Municipalities and counties were not included at this time because their funding does not go through the state appropriations process and thus, oversight and review was not clear at this time.

6. This amendment was carefully crafted to ensure that only those lease-purchase agreements where there was no legal obligation to continue the lease from year to year and where the agreement provides for termination if there are insufficient funds to meet the lease payments would be considered "not a debt" and thus not subject to all the restrictions on debt to which other lease-purchase agreements would be subject.

7. This amendment authorizes an additional and much-needed financing mechanism to allow schools in the state to address the often severe financial constraints faced when trying to renovate and build schools to meet the educational needs of the students of New Mexico.

8. In the worst-case scenario, if the state, a public school or a charter school were to opt out of the purchase at the end of a lease-purchase agreement period, it would be in essentially the same position as if there were not a lease-purchase agreement. The best-case scenario is that at the end of the lease-purchase agreement, the lease payments become the equivalent of equity, because ownership of the property would transfer to the benefit of New Mexico's taxpayers.

Arguments Against:

1. The proposed amendment would thwart the constitution's requirement for fiscal accountability by allowing the state and school districts, including charter schools, to incur debt without voter approval, in excess of the one percent and six percent debt caps and without requiring the imposition of a tax levy sufficient to retire the debt within a 50-year period.

2. If the state or a school district or charter school wishes to acquire capital facilities, it has the option of seeking voter approval to impose a tax levy to finance bonds. These proposed changes are an attempt to avoid the necessity of public scrutiny and approval and instead allow government entities to utilize a low-visibility route to incur long-term financial obligations.

3. This proposed amendment is presumably intended to address the holding in *Montano v. Gabaldon* that certain lease-purchase agreements are subject to the constitutional provisions limiting debt and requiring voter approval of incurring debt. Unfortunately, the wording of Constitutional Amendment No. 2 is not sufficiently clear to ensure that all lease-purchase agreements would be removed from the debt limitation clause, and certain agreements might still be considered "debt" under *Montano*. Rather than opening up the possibility of future litigation

as a result of this unclear wording, it would be better to defeat this proposed amendment and send the issue back to the legislature for clarification.

4. This proposed amendment unfairly requires the voter to give this power to three distinct entities—state agencies, school districts and charter schools—or to none at all. Thus, if a voter thought it might be safe to allow state agencies, but not a school district or a charter school, to enter into lease-purchase agreements at will, the voter must grant that power to all three entities instead of just one of them.

5. The proposed amendment adds charter schools to Article 9, Section 11 of the Constitution of New Mexico, thus adding another provision to the constitution that voters must accept if they want to allow only the state to enter into lease-purchase agreements.

6. The proposed amendment provides flexibility only for the state, school districts and charter schools. If increased flexibility is good for the state and for school districts and charter schools, that same flexibility should be given to counties and municipalities; but the proposed amendment does not do so.

7. If the restrictions imposed by the existing constitutional provisions are too limiting, a better course of action would be to adjust the specific, existing constitutional restrictions rather than providing an uncertain means of avoiding those restrictions.

CONSTITUTIONAL AMENDMENT NO. 3

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 16 OF THE CONSTITUTION OF NEW MEXICO TO ADD A NEW SECTION TO PROVIDE FOR A WATER TRUST FUND.

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

Section 1. It is proposed to amend Article 16 of the constitution of New Mexico by adding a new section to read:

"A. The "water trust fund" is created in the state treasury to conserve and protect the water resources of New Mexico and to ensure that New Mexico has the water it needs for a strong and vibrant future. The purpose of the fund shall be to secure a supply of clean and safe water for New Mexico's residents. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested, and there shall be strict accountability and oversight measures as provided by the state investment council to ensure appropriate safety of and return on investments. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not revert or be expended for any purpose, but an annual distribution shall be made to the water project fund, which shall be used only to support critically needed projects that preserve and protect New Mexico's water supply and is in accordance with Subsection B of this section.

B. On July 1, 2008 and each fiscal year thereafter, an annual distribution shall be made from the water trust fund pursuant to law, and that distribution shall then be appropriated by the legislature only for water projects consistent with a state water plan and as otherwise provided 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.

Brief Analysis

Constitutional Amendment No. 3 would add a new section to Article 16 of the Constitution of New Mexico creating the "water trust fund" to support critically needed projects designed to preserve and protect the state's water supply and, for fiscal year 2009 and subsequent fiscal years, mandating an annual distribution for that purpose.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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 a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. Creating a constitutional trust fund to finance critical water projects is an effective way to finance the protection and management of one of New Mexico's most precious resources. Establishing in the Constitution of New Mexico the criteria for expending the funds ensures that policymakers will allocate trust funds to protect New Mexico's water and not other projects.
2. By establishing a constitutional water trust fund and mandating an annual distribution from that fund for water projects consistent with a state water plan, this proposed amendment will ensure that money will be distributed over the long term for New Mexico's vital water needs.
3. Establishing the water trust fund in the state constitution will increase New Mexico's likelihood of leveraging federal funds to support the state's water projects. Congress has indicated a reluctance to allocate federal money to states lacking a coherent, unified strategy to address their water problems. This proposed amendment would send a strong message to Congress that New Mexico has a sound approach to addressing its water needs through constitutionally guaranteeing annual distributions for critical water projects based on a state water plan.
4. The severance tax permanent fund was initially created in statute. It was subsequently put in the state constitution and the corpus of the fund was protected. The foresight of New Mexico's leaders in protecting the severance tax permanent fund has benefited and will benefit New Mexicans for generations and thus, establishing the water trust fund in the constitution is the right way to go forward. Additionally, creating the water trust fund in the constitution protects the fund from subsequent repeal without the approval of New Mexico's voters.

Arguments Against:

1. The water trust fund already exists, having been statutorily enacted in 2001 as a part of the Water Project Finance Act. This proposed amendment duplicates what already exists in law.
2. Restricting the expenditure of state funds to a specific purpose, no matter how worthy that purpose, unnecessarily and inappropriately limits state policymakers' ability to respond to the state's changing needs. Legislators and the governor should have the ability through the existing

lawmaking process to spend state money on any of a variety of legitimate needs, from public education to health care programs. They should be allowed to perform that duty and they should be held accountable for the results.

3. Although the water trust fund was created in 2001, no money was appropriated to that fund until \$40 million was appropriated for fiscal year 2007. Constitutional Amendment No. 3 does not address the fundamental problem that money needs to be appropriated to address New Mexico's water issues. The lack of a sufficient, ongoing funding source for vital water projects in New Mexico will not be remedied by this amendment.

4. The existing statutory water trust fund provides for an annual distribution to the water project fund for fiscal years 2007 through 2016 of at least \$4 million. The proposed constitutional amendment would preclude any distribution from that fund in fiscal year 2008.

CONSTITUTIONAL AMENDMENT NO. 4

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT THE STATE, AN INSTRUMENTALITY OF THE STATE AND LOCAL GOVERNMENTS TO PROVIDE OR PAY A PORTION OF THE COST OF LAND, BUILDINGS OR NECESSARY FINANCING FOR AFFORDABLE HOUSING PROJECTS.

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

Section 1. It is proposed to amend Article 9, Section 14 of the constitution of New Mexico to read:

"Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through F of this section.

A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.

B. Nothing in this section prohibits the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States.

C. The state may establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law.

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law.

E. Nothing in this section prohibits the state, or the instrumentality of the state designated by the legislature as the state's housing authority, or a county or a municipality from:

(1) donating [~~land owned by the state, county or municipality~~] or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing;

(2) donating [~~an existing building owned by the state, county or municipality for~~] or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing or the costs of conversion or renovation of buildings into affordable housing; or

(3) providing or paying the costs of financing or infrastructure necessary to support affordable housing projects.

F. The provisions of Subsection E of this section are not self-executing. Before the described assistance may be provided, enabling legislation shall be enacted by a majority vote of the members elected to each house of the legislature. This enabling legislation shall:

(1) define "affordable housing";

(2) establish eligibility criteria for the recipients of land, buildings and infrastructure;

(3) contain provisions to ensure the successful completion of affordable housing projects supported by assistance authorized pursuant to Subsection E of this section;

(4) require a county or municipality providing assistance pursuant to Subsection E of this section to give prior formal approval by ordinance for a specific affordable housing assistance grant and include in the ordinance the conditions of the grant; [~~and~~]

(5) require prior approval by law of [~~a specific~~] an affordable housing assistance grant by the state; and

(6) require the governing body of the instrumentality of the state, designated by the legislature as the state's housing authority, to give prior approval, by resolution, for affordable housing grants that are to be given by the instrumentality."

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.

Brief Analysis

Existing language in Article 9, Section 14 of the Constitution of New Mexico permits the state, counties and municipalities to "donate" land or buildings or "provide or pay the costs of" infrastructure to support affordable housing projects. Constitutional Amendment No. 4 would amend the existing exception to also allow the state, counties, municipalities and the state's designated housing authority to pay a portion of the costs of land, building, construction or renovation or financing of affordable housing.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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 a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. This proposed amendment gives flexibility to state and local governments and to the state's housing authority, the New Mexico Mortgage Finance Authority, in supporting affordable housing projects. Rather than being restricted to donating land or buildings or paying the cost of infrastructure only, these governmental entities would be able to participate in the financing of land acquisition and the construction, conversion or renovation of buildings for affordable housing purposes.

2. Although the state has earmarked funds for an affordable housing trust fund, these funds may be used only to offset the costs of infrastructure. This amendment would enable the trust fund to finance many other affordable housing activities, such as land acquisition, construction and down payment assistance and other low-interest loan assistance.
3. This carefully worded exception to the "anti-donation clause" will allow the state, local governments and the New Mexico Mortgage Finance Authority more flexibility in implementing a change already approved to the state constitution in 2002 to help create affordable housing. In many ways, it can be considered a technical correction that helps further the intent of the original amendment and will make it easier for local governments and the New Mexico Mortgage Finance Authority to make affordable housing available while ensuring that the underlying principle of the anti-donation clause remains intact.
4. The existing affordable housing exception to the anti-donation clause requires that the legislature must enact legislation to implement affordable housing programs, counties and municipalities must approve affordable housing projects through adoption in public hearings of public ordinances and the New Mexico Mortgage Finance Authority must approve projects through resolution of its public governing body. Also, the legislature has an oversight group to watch over the activities of the New Mexico Mortgage Finance Authority. All this ensures that the public funds used will achieve the necessary public purpose of creating affordable housing for all New Mexicans.
5. The lack of affordable housing is a significant problem in New Mexico. This problem leads to the loss of young adults and families who might otherwise remain in New Mexico and contribute to the state's economy, thwarts community efforts to recruit and retain valuable employees and businesses and stymies efforts to provide temporary emergency and transition housing for the homeless. Allowing the state, a county or municipality or the New Mexico Mortgage Finance Authority to provide incentives for development of affordable housing by helping to pay the cost of construction or renovation, land acquisition or financing required to construct affordable housing will help increase the supply of affordable housing in New Mexico and better serve New Mexicans.

Arguments Against:

1. The anti-donation clause of the state constitution, which this proposal would amend, is intended to ensure that public funds are not expended for the direct benefit of private individuals or groups. The continued liberalization of the restrictions contained in the anti-donation clause is troubling and should be carefully scrutinized. To expand the affordable housing exception enacted in 2002 to permit governments and the New Mexico Mortgage Finance Authority to fund land acquisition and construction and renovation in addition to funding necessary infrastructure for affordable housing projects is unwarranted. The anti-donation clause, which is designed to protect the public's funds from being used for private benefit, should not be eroded further.

2. The lack of affordable housing in New Mexico should be addressed through programs overseen by public officials who are accountable to the public. The existing affordable housing exception to the anti-donation clause requires the legislature to provide enabling legislation and the counties and municipalities to approve projects through enactment by their governing bodies of ordinances and the state's housing authority to approve projects through resolutions of its governing body in open meetings. However, the public must still consider if these mechanisms are adequate to ensure that there is accountability on these projects overseen by public officials and that private developers do not improperly benefit from government subsidies.

3. In 2002, the anti-donation clause was amended to allow the state and local governments to provide land for affordable housing. Relaxing the anti-donation clause further so that the state can use tax revenue to cover the costs of financing an affordable housing project or to pay for the costs of renovating or converting a building for affordable housing is unnecessary and provides too great an opportunity for public funds to be used to enrich a private individual or group.