

SUMMARY OF AND ARGUMENTS



THE
CONSTITUTIONAL AMENDMENTS
PROPOSED BY THE LEGISLATURE
IN 2023 AND 2024

AMENDMENTS TO APPEAR ON THE
NOVEMBER 5, 2024
GENERAL ELECTION BALLOT

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Proposed Amendments to Appear
on the November 5, 2024 General Election Ballot
(ballot text)

Constitutional Amendment 1:

"PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO TO EXTEND A PROPERTY TAX EXEMPTION, CURRENTLY ONLY ALLOWED FOR ONE HUNDRED PERCENT DISABLED VETERANS AND THEIR WIDOWS AND WIDOWERS, TO VETERANS WITH LESS THAN A ONE HUNDRED PERCENT DISABILITY AND THEIR WIDOWS AND WIDOWERS AND BASING THE AMOUNT OF THE EXEMPTION ON A VETERAN'S DISABILITY RATING."

Constitutional Amendment 2:

"PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO TO INCREASE A PROPERTY TAX EXEMPTION FOR HONORABLY DISCHARGED MEMBERS OF THE ARMED FORCES AND THEIR WIDOWS AND WIDOWERS."

Constitutional Amendment 3:

"PROPOSING TO AMEND ARTICLE 6, SECTION 35 OF THE CONSTITUTION OF NEW MEXICO BY ALLOWING THE DEAN OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW TO APPOINT A DESIGNEE TO THE JUDICIAL NOMINATING COMMISSION."

Constitutional Amendment 4:

"PROPOSING AN AMENDMENT TO ARTICLE 10, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT THE SALARIES OF COUNTY OFFICERS SHALL BE ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS, REMOVE REFERENCES TO THE FIRST LEGISLATIVE SESSION AND CLARIFY THAT ANY FEES COLLECTED BY A COUNTY OFFICIAL SHALL BE PAID INTO THE TREASURY OF THE COUNTY."

General Information

New Mexico voters will be asked in 2024 to consider four proposed amendments to the state's constitution. Constitutional Amendment 1 would extend a property tax exemption to veterans with less than a 100% disability and their widows and widowers, Constitutional Amendment 2 would increase a property tax exemption for honorably discharged members of the armed forces and their widows and widowers, Constitutional Amendment 3 would allow the dean of the University of New Mexico School of Law to appoint a designee to the Appellate Judges Nominating Commission and Constitutional Amendment 4 would give the board of county commissioners the authority to set the salaries of county officials. All four amendments will appear on the November 5, 2024 general election ballot.

The Constitution of New Mexico provides that the legislature, by a majority vote of all members elected to each house, may propose amendments revising the constitution and that proposed amendments must then be submitted to the voters of the state for approval. A proposed amendment becomes part of the state's constitution if a majority of the votes cast in an election on the proposition is cast in its favor, unless the proposed amendment affects one of the sections for which a three-fourths' majority is required. (This year's proposed constitutional amendments do not affect one of those sections and, thus, need only a simple majority vote to be approved.) 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 a summary and the full text of the joint resolutions proposing the amendments, as well as background information and summaries of arguments for and against the passage of the amendments. New language that is proposed for insertion in the full text of the joint resolutions is shown by underscoring, and language that is proposed for deletion is shown within brackets.

While the full text of the proposed amendments appears in this publication, the title, which appears in capital letters at the top of each joint resolution, is the *only* language that will appear on the ballot.

Disclaimer

The arguments for and against the proposed constitutional amendments in this publication do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. They represent suggestions from the 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. This is not an exhaustive list of all cogent and valid arguments. No attempt has been made to provide 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 a position for or against a proposed amendment.

HOUSE JOINT RESOLUTION 5
56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO TO EXTEND A PROPERTY TAX EXEMPTION, CURRENTLY ONLY ALLOWED FOR ONE HUNDRED PERCENT DISABLED VETERANS AND THEIR WIDOWS AND WIDOWERS, TO VETERANS WITH LESS THAN A ONE HUNDRED PERCENT DISABILITY AND THEIR WIDOWS AND WIDOWERS AND BASING THE AMOUNT OF THE EXEMPTION ON A VETERAN'S FEDERAL DISABILITY RATING.

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

SECTION 1. It is proposed to amend Article 8, Section 15 of the constitution of New Mexico to read:

A. The legislature shall exempt from taxation the property, including the community or joint property of ~~[husband and wife]~~ married individuals, of every veteran of the armed forces of the United States who has been determined pursuant to federal law to have a ~~[one hundred percent]~~ permanent ~~[and total]~~ service-connected disability, if the veteran occupies the property as ~~[his]~~ the veteran's principal place of residence. The amount of the exemption shall be in a percentage equal to the percentage of the veteran's disability rating determined pursuant to federal law.

B. The legislature shall ~~[also]~~ provide ~~[this]~~ the same amount of exemption from taxation for property owned by the widow or widower of a veteran who was eligible for the exemption provided in this section, if the widow or widower continues to occupy the property as ~~[his]~~ the widow's or widower's principal place of residence.

C. The burden of proving eligibility for the ~~[exemption]~~ exemptions provided in this section is on the person claiming the exemption."

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.

► **SUMMARY of Proposed Constitutional Amendment 1**

Constitutional Amendment 1, passed by the legislature in 2023, would amend Article 8, Section 15 of the Constitution of New Mexico to extend a property tax exemption currently only allowed for 100% disabled veterans and their widowed spouses to veterans with less than a 100% disability and their widowed spouses. The amount of the exemption would be equal to the percentage of the veteran's federal disability rating. Unlike other tax exemptions, the loss of revenue due to property tax exemptions is mitigated by an automatic increase in property taxes for those not eligible for the exemption. Due to a mechanism in the Property Tax Code known as yield control, at least 40% of the estimated loss of revenue from the proposed exemption would be absorbed by an automatic property tax increase of approximately \$34.00 per year for all other taxpayers. The remainder of the loss that occurs would be borne primarily by local governments, not the state. Those local governments may choose to impose additional authority to increase property tax rates to offset the losses not mitigated by yield control. Sixty-three percent of the state's veteran population is concentrated in Bernalillo, Dona Ana, Sandoval, Santa Fe and Otero counties, and the increase in the proposed exemption may have an increased impact on the property tax revenues for those counties as opposed to those with lower veteran populations.

► **BACKGROUND AND INFORMATION**

In 2021, there were an estimated 139,347 veterans living in the State of New Mexico (Workforce Solutions Department, Veterans Profile, 2023). The United States Congress created an extensive military veterans benefits system that New Mexico lawmakers have worked to supplement over the years. The benefits New Mexico provides to eligible veterans and their family members include a property tax exemption of up to \$4,000; a 100% property tax exemption for disabled veterans; reduced motor vehicle registration fees; a motor vehicle tax exemption on vehicle purchases; scholarships for Vietnam or wartime veterans and for the children of deceased veterans; in-state tuition at state-funded colleges for veterans, their spouses and their children; access to reduced-fee specialty license plates; and reduced-fee hunting and fishing licenses. For many years, the New Mexico Legislature has had an interest in providing additional benefits for disabled veterans, including through the passage of joint resolutions to amend the Constitution of New Mexico that were later voted on by the people of New Mexico.

The first constitutional amendment directly related to disabled veterans passed the legislature in 1998 and was approved by the voters that same year. This amendment created Article 8, Section 15 of the Constitution of New Mexico to provide a property tax exemption for the

residence of a veteran with a permanent and total service-connected disability if the residence had been specially adapted to accommodate the veteran's disability through a federal grant. In 2002, two changes to the exemption were approved by the voters: 1) removal of the requirement that a veteran's residence be adapted to accommodate the veteran's disability; and 2) clarification that the veteran must be determined by federal law to have a 100% "permanent and total service-connected disability". Prior to the passage of this amendment, the Constitution of New Mexico required that a veteran receiving a property tax exemption have a "permanent and total service-connected disability", but it did not require an exact disability percentage determined by the United States Department of Veterans Affairs.

Currently, Article 8, Section 15 of the Constitution of New Mexico provides a property tax exemption for 100% disabled veterans of the armed forces and their widowed spouses. If a veteran has been determined by the United States Department of Veterans Affairs to have a 100% permanent and total service-connected disability and the property in question is the veteran's principal place of residence, that veteran or the veteran's widowed spouse may be eligible for a property tax exemption.

► **ARGUMENTS FOR**

1. Exemption would provide disabled veterans protection from rising property taxes.

Allowing the property tax exemption for veterans with a permanent service-connected disability will support property-owning disabled veterans and their widowed spouses in an amount proportional to the percentage of the veteran's disability rating. This may be especially beneficial to many who are now or will soon be living on fixed incomes, since their property taxes may keep increasing even though their incomes do not.

2. Exemption allows service-connected disabled veterans to be treated equally.

Expanding the property tax exemption sends the message that anyone who suffers a disability while serving in the armed forces deserves to be taken care of equally, regardless of the severity of the injury.

3. Expresses support of the state for veterans.

Expanding this property tax exemption demonstrates New Mexico's support for and appreciation of members of the armed forces who risked their lives and served their country, especially those who made the ultimate sacrifice of their bodies and health.

4. Exemption may result in more veterans moving to New Mexico.

A decrease in property tax could provide an incentive for veterans of the armed forces to move to and buy property in New Mexico, which may increase the state's population and tax base.

5. Benefits of exemption for veterans outweigh extra costs for other taxpayers.

The estimated cost of an additional annual per capita burden of \$34.00 for the general population of the state is comparatively low to the benefit provided to the nearly 30,000 service-related disabled veterans with property tax liability in the state.

► ARGUMENTS AGAINST

1. Exemption may benefit those who do not need financial assistance.

The exemption may be too broad in application since it would apply to any veteran who has been determined to have a permanent service-connected disability, regardless of financial status. If the purpose is to relieve the financial burden on those who are unable, due to their disability, to pay property taxes, then the exemption should target those with limited incomes.

2. Financial assistance is already available for disabled veterans through a number of programs.

There are other social programs that disabled veterans may access to assist with living expenses. For instance, there are numerous state, federal and nonprofit programs that serve veterans. The policy for this resolution may rely on a perceived need that does not reflect the availability of these resources.

3. Non-disabled-veteran property taxpayers will pay more due to exemption.

By expanding eligibility for a property tax exemption, the property tax bills of other state residents will increase. Other property taxpayers must compensate for the revenue that is lost, which is used to pay for the needs of all state residents.

4. Exemption violates property tax principles.

A property tax is traditionally based on the value and nature of the property, not the personal characteristics of the owner. Creating an exemption for certain individuals is a departure from the underlying principle of property taxation and could set a precedent for other groups to seek a similar exemption.

5. The federal government should help disabled veterans, not the state.

Congress should be responsible for addressing the needs of those who became disabled as a result of their national military service. Since the state is tasked with providing this exemption to disabled veterans, the state also receives a financial burden that is better suited for the finances of the nation. If voters believe that more compensation is due to disabled veterans and their spouses, then they should ask their representatives in Congress to address the issue.

6. Property tax benefit for veterans already exists in the Constitution of New Mexico.

Article 8, Section 5 of the Constitution of New Mexico already provides a tax benefit for honorably discharged members of the military. An additional benefit for veterans may not be

necessary.

7. Exemption excludes other property taxpayers who are disabled due to work-related injuries.

The nation has maintained an all-volunteer military for many years, so military service is a chosen employment. There are many dangerous but necessary occupations with a high chance of disability from injury, so it is unclear why disabled veterans warrant preferable treatment in comparison to other disabled persons. There is no justification for the state to give a property tax exemption to only one class of disabled workers based solely on their choice of employment.

HOUSE JOINT RESOLUTION 6
56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO TO INCREASE A PROPERTY TAX EXEMPTION FOR HONORABLY DISCHARGED MEMBERS OF THE ARMED FORCES AND THEIR WIDOWS AND WIDOWERS.

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

SECTION 1. It is proposed to amend Article 8, Section 5 of the constitution of New Mexico to read:

A. The legislature shall exempt from taxation the property of each head of the family in the amount of two thousand dollars (\$2,000).

B. The legislature shall ~~also~~ exempt from taxation the property, including the community or joint property of ~~husband and wife~~ married individuals, of every honorably discharged member of the armed forces of the United States and the widow or widower of every such honorably discharged member of the armed forces of the United States, in the sum of ~~three thousand dollars (\$3,000) in 2004; three thousand five hundred dollars (\$3,500) in 2005; and~~:

(1) in 2006 and in each year through 2023, four thousand dollars (\$4,000);

(2) in ~~2006~~ 2024, ten thousand dollars (\$10,000); and

(3) in 2025 and each subsequent year, ~~Provided, that~~ the amount provided in Paragraph (2) of this subsection, adjusted for inflation.

C. In every case where exemption is claimed on the ground of the claimant's having served with the armed forces of the United States ~~as aforesaid~~ pursuant to Subsection B of this section, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed shall be upon the claimant."

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.

► **SUMMARY of Proposed Constitutional Amendment 2**

In 2023, the New Mexico Legislature passed Constitutional Amendment 2 that, if approved by the voters, would amend Article 8, Section 5 of the Constitution of New Mexico to increase a property tax exemption for honorably discharged veterans and their widowed spouses from \$4,000 to \$10,000, an amount that will be adjusted annually for inflation. As discussed in the summary for Constitutional Amendment 1, the loss of revenue due to property tax exemptions is mitigated by an automatic increase in property taxes for those not eligible for the exemption. While the budgets of local governments will bear most of the loss of revenue, at least 40% will be absorbed by an automatic property tax increase of approximately \$34.00 per year for all other property taxpayers.

► **BACKGROUND AND INFORMATION**

The legislature's interest in providing benefits for veterans has been evident since at least 1921 when the first iteration of a \$200 property tax exemption for heads of household was expanded to "every honorably discharged soldier, sailor, marine and army nurse", and the widows of those individuals, who "regularly and officially engaged in any war". In 1949, the exemption was extended to the community or joint property of a veteran's spouse and to every "member of the armed forces of the United States". In 1953, the exemption was amended to clarify that, to be eligible for a property tax exemption, veterans must have engaged in armed conflict, striking previous language requiring eligible veterans to have been "regularly and officially engaged in any war". In 1973, eligibility for the property tax exemption was expanded to include widowers. The original language of the exemption permitted, but did not require, the legislature to provide this property tax exemption. In 1988, the word "may" was replaced with "shall" to make the exemption mandatory. Additionally, the amount of the exemption was increased to \$2,000. As approved by the voters in 2002, the amount of the exemption was increased to \$4,000 for veterans, and in 2004, the requirement that veterans have been engaged in armed conflict was removed, which broadened the pool of eligible veterans to include those who never served during an armed conflict.

► **ARGUMENTS FOR**

1. Helps honorably discharged veterans and their widowed spouses to maintain homeownership.

Reducing the property tax paid by honorably discharged members of the armed forces and their widowed spouses supports property-owning veterans and their widows or widowers and helps them maintain homeownership, which may be especially beneficial to many who are now or will soon be living on fixed incomes, since their property taxes may keep rising even though their incomes do not.

2. Exemplifies appreciation of the state for those who sacrificed for the nation.

Increasing property tax exemptions for honorably discharged veterans demonstrates New Mexico's support for and appreciation of members of the armed forces who risked their lives and served their country honorably.

3. Could boost New Mexico's population and tax base.

A decrease in property tax could provide an incentive for veterans of the armed forces to move to and buy property in New Mexico, which may increase the state's population and tax base.

4. Provision for inflation adjustment negates need for future constitutional amendments.

By adjusting the amount of the exemption for inflation, the amount of the exemption for veterans will increase without requiring a future constitutional amendment, which is a challenging, lengthy and costly process.

5. Increased exemption amount accounts for increased property values and value of the dollar.

The increased exemption amount is fairer to veterans and their spouses in 2024. The current exemption was set in 2002 and, since then, the value of the dollar has increased approximately 72% while property values have increased by approximately 80%.

► ARGUMENTS AGAINST

1. Congress should be responsible for providing veterans' benefits.

It is inappropriate for state and local governments to bear the expense of providing extended benefits to veterans in return for their service in a branch of the United States armed forces. If more generous benefits are due to veterans and their spouses, Congress should provide those benefits. The compensation and benefits given to veterans in return for their service are a national responsibility, not a state or local responsibility.

2. Exemption could benefit those who chose to enlist.

The mandatory United States military draft ended in 1973, and the military has been an all-volunteer force for a little more than 50 years. Special property tax benefits should not be extended to someone who makes the choice to work in a branch of the United States armed forces.

3. Unfair to other property taxpayers who will pay more due to exemption increase.

An increase in this property tax exemption will shift the tax burden, and the tax bills of all other New Mexico property owners will increase.

4. Property tax exemption increase not based on financial need.

Tax relief measures should be based on need. There is no evidence that veterans have lower incomes or a greater need for property tax relief than other taxpayers. If additional property tax relief is to be granted, low-income taxpayers who spend a disproportionate share of their income on property taxes may benefit more from this type of relief. It is possible that, with the passage of the proposed constitutional amendment, veterans who are financially stable and who own large, high-value homes will be relieved from contributing their property tax share.

5. Exemption for special groups of property taxpayers could set precedent for other individuals to seek tax relief.

Property tax is based on the value and nature of the property, not the personal characteristics of the owner. Creating an exemption for certain individuals is a departure from the underlying principle of property taxation and could set a precedent for other groups to seek similar exemptions.

6. Exemption exclusionary to some honorably discharged veterans.

The exemption amount benefits a portion of veterans as it only applies to owner-occupied

residences that are used as a principal place of residency and will exclude veterans who are institutionalized, homeless or renters.

7. Inflation provision would increase property taxes even more for non-veteran property taxpayers.

The proposal to index the amount of exemption for inflation may continue to erode the property tax base and annually increase the property tax bills for those who are not eligible for the property tax exemption.

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION 1
56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 6, SECTION 35 OF THE CONSTITUTION OF NEW MEXICO BY ALLOWING THE DEAN OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW TO APPOINT A DESIGNEE TO THE JUDICIAL NOMINATING COMMISSION.

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

SECTION 1. It is proposed to amend Article 6, Section 35 of the constitution of New Mexico to read:

"There is created the "appellate judges nominating commission", consisting of: the chief justice of the supreme court or the chief justice's designee from the supreme court; two judges of the court of appeals appointed by the chief judge of the court of appeals; the governor, the speaker of the house of representatives and the president pro tempore of the senate shall each appoint two persons, one of whom shall be an attorney licensed to practice law in this state and the other who shall be a citizen who is not licensed to practice law in any state; the dean of the university of New Mexico school of law ~~[who]~~ or the dean's designee, who shall be an associate dean, a faculty member, a retired faculty member or a former dean of the university of New Mexico school of law; the dean or the dean's designee shall serve as chair of the commission and shall vote only in the event of a tie vote; and four members of the state bar of New Mexico, representing civil and criminal prosecution and defense, appointed by the president of the state bar and the judges on the commission.

The appointments shall be made in such manner that each of the two largest major political parties, as defined by the Election Code, shall be equally represented on the commission. If necessary, the president of the state bar and the judges on the commission shall make the minimum number of additional appointments of members of the state bar as is necessary to make each of the two largest major political parties be equally represented on the commission. These additional members of the state bar shall be appointed such that the diverse interests of the state bar are represented. The dean of the university of New Mexico school of law shall be the final arbiter of whether such diverse interests are represented. Members of the commission shall be appointed for terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original

Note: underscored material = new language proposed for insertion ~~[bracketed material]~~ = existing language proposed for deletion

appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated.

The commission shall actively solicit, accept and evaluate applications from qualified lawyers for the position of justice of the supreme court or judge of the court of appeals and may require an applicant to submit any information it deems relevant to the consideration of the application.

Upon the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the court of appeals, the commission shall meet within thirty days and within that period submit to the governor the names of persons qualified for the judicial office and recommended for appointment to that office by a majority of the commission.

Immediately after receiving the commission nominations, the governor may make one request of the commission for submission of additional names, and the commission shall promptly submit such additional names if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment to the judicial office. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of justice of the supreme court or judge of the court of appeals within thirty days after receiving final nominations from the commission by appointing one of the persons nominated by the commission for appointment to that office. If the governor fails to make the appointment within that period or from those nominations, the appointment shall be made from those nominations by the chief justice or the acting chief justice of the supreme court. The person appointed shall serve until the first general election following one year after appointment. The appointee's successor shall be chosen at such election and shall hold the office until the expiration of the term in effect at the time of election."

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.

Note: underscored material = new language proposed for insertion [~~bracketed material~~] = existing language proposed for deletion

► **SUMMARY of Proposed Constitutional Amendment 3**

Constitutional Amendment 3 proposes to amend Article 6, Section 35 of the Constitution of New Mexico to allow the dean of the University of New Mexico School of Law to appoint a designee to serve as chair of the Appellate Judges Nominating Commission. The dean's designee must be an associate dean, a faculty member, a retired faculty member or a former dean of the University of New Mexico School of Law.

► **BACKGROUND AND INFORMATION**

The Appellate Judges Nominating Commission, created in the Constitution of New Mexico after voter adoption in 1988, is required to evaluate and nominate qualified lawyers for the position of justice of the New Mexico Supreme Court or judge of the New Mexico Court of Appeals. When there is a vacant supreme court or court of appeals position, the commission sends a list of nominees for the position to the governor. The governor must appoint one of the nominees to fill the vacant position.

Currently, Article 6, Section 35 of the Constitution of New Mexico requires the dean of the University of New Mexico School of Law to serve as chair of the Appellate Judges Nominating Commission. The chair presides over meetings of the commission, but only acts as a voting member of the commission in the event of a tie vote.

► **ARGUMENTS FOR**

1. The dean of the University of New Mexico School of Law is not uniquely qualified to serve as chair of the Appellate Judges Nominating Commission.

The role of chair of the Appellate Judges Nominating Commission is primarily administrative. The Rules Governing Judicial Nominating Commissions outline the role of the chair and task the chair with the duties of announcing the existence of a judicial vacancy to the public and members of the commission, scheduling meetings of the commission and providing the media with notice of the meetings, preparing application packets and preparing agendas for meetings. These are not tasks that require the legal mind of the dean of a school of law, but even if they were, this proposed amendment ensures that there will be an esteemed legal scholar serving as chair of the commission. The dean may only designate an associate dean, a faculty member, a retired faculty member or a former dean of the University of New Mexico School of Law to serve as chair. Each of those categories of potential designees will include many people who are qualified to serve as chair of the Appellate Judges Nominating Commission.

2. Allows the dean of the University of New Mexico School of Law to focus on the role as the dean of New Mexico's only law school.

The University of New Mexico School of Law serves a vital interest to the state by educating a vast majority of the attorneys who practice here since it is the only school of law in New Mexico. This places a significant amount of responsibility on the dean of the school of law. Beyond the normal duties of being the dean of a school of law, and the current requirement to serve as chair of the Appellate Judges Nominating Commission, the dean is also required by statute to serve as the chair of the Judicial Compensation Commission. Allowing the dean's designee to serve on the Appellate Judges Nominating Commission would support the dean in focusing on the dean's law school duties, ensuring the successful legal education of New Mexico's aspiring attorneys.

3. The dean of the University of New Mexico School of Law is already entrusted to designate members of several important commissions.

The dean of the University of New Mexico School of Law is already permitted to have a designee for important commissions, including the New Mexico Sentencing Commission and the New Mexico Compilation Commission. The dean is also required to appoint three members to the Public Defender Commission. Each of these commissions have functioned adequately without requiring the dean to attend every meeting. Since the dean of the University of New Mexico School of Law has been entrusted to make good decisions on the membership of important commissions for decades, there should be no harm in allowing the dean to designate someone as the chair of the Appellate Judges Nominating Commission.

► ARGUMENTS AGAINST

1. Potentially removes a neutral tie-breaking vote from the commission.

When the Appellate Judges Nominating Commission was created, there was a desire to have a neutral person who could break any of the commission's tie votes. The legislature, which passed the joint resolution to create the commission, and the people, who voted to pass the constitutional amendment in 1988, believed that the dean of the University of New Mexico School of Law was the best person to put into this neutral tie-breaking role.

2. Could remove one of New Mexico's most prominent legal scholars from the judicial appointment process.

The Appellate Judges Nominating Commission serves a vital role in New Mexico's judicial system by vetting and nominating candidates for the most prominent judicial positions in the state. The dean of the University of New Mexico School of Law has a unique level of legal experience that makes the dean an important resource during the commission's vetting process. Furthermore, the dean is tapped into New Mexico's legal community by virtue of being the head of the state's only law school. The dean's connections in the legal community could provide insight into the careers and backgrounds of the applicants that the commission vets. If the dean of the University of New Mexico School of Law does not serve as the chair of the Appellate Judges Nominating Commission, the commission will lose a very valuable resource.

SENATE JOINT RESOLUTION 16
56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 10, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT THE SALARIES OF COUNTY OFFICERS SHALL BE ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS, REMOVE REFERENCES TO THE FIRST LEGISLATIVE SESSION AND CLARIFY THAT ANY FEES COLLECTED BY A COUNTY OFFICIAL SHALL BE PAID INTO THE TREASURY OF THE COUNTY.

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

SECTION 1. It is proposed to amend Article 10, Section 1 of the constitution of New Mexico to read:

"The legislature shall ~~[at its first session]~~ classify the counties ~~[and fix salaries for all county officers, which shall also apply to those elected at the first election under this constitution. And]~~ of the state. No county officer shall receive ~~[to his own use]~~ any fees or emoluments other than ~~[the]~~ an annual salary, [provided by law and] as established by the board of county commissioners. All fees ~~[earned by any officer shall be by him]~~ collected ~~[and]~~ by a county official shall be paid into the treasury of the county."

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.

► **SUMMARY of Proposed Constitutional Amendment 4**

Counties are local political subdivisions created by the state. Article 10, Section 1 of the Constitution of New Mexico currently reads:

The legislature shall at its first session classify the counties and fix salaries for all county officers, which shall also apply to those elected at the first election under this constitution. And no county officer shall receive to his own use any fees or emoluments other than the annual salary *provided by law*, and all fees earned by any officer shall be by him collected and paid into the treasury of the county. (emphasis added)

Within Article 10, Section 1, the term "county officers" refers to elected county officials and includes county commissioners, treasurers, assessors, sheriffs, clerks and probate judges. This section has been interpreted to mean that the salaries of county officers must be established by the legislature in state law. Accordingly, when the legislature decides to increase or otherwise adjust salaries for county officials, it updates existing statutes that set out separate salary caps for each county classification. The current statutes are compiled as Sections 4-44-4, 4-44-4.1, 4-44-5 and 4-44-14 NMSA 1978.

Constitutional Amendment 4 proposes to amend Article 10, Section 1 of the Constitution of New Mexico to replace "provided by law" with "established by the board of county commissioners", therefore eliminating the legislature's role in setting the salaries for county officers and authorizing the individual boards of county commissioners to set the salaries for their own officers. In addition, it makes several proposed technical amendments to remove a reference to the first legislative session, clarify that fees collected by a county official shall be paid into the treasury of the county and use gender-neutral language.

► **BACKGROUND AND INFORMATION**

Prior to statehood, New Mexico's territorial government compensated its officials pursuant to a fee system in which a flat rate was paid for the execution of each official action. For example, a county sheriff was paid a fee for each warrant served, a clerk was paid a fee for each oath administered, et cetera. The delegates at the constitutional convention eliminated this system with the inclusion of Article 10, Section 1 in the Constitution of New Mexico, which required the legislature to classify the counties and fix the salaries for all county officers as one of its first orders of business after statehood.

There are currently four county classifications for officer salary purposes: class A; class B, high valuation; class B, intermediate valuation; and H class. The A and B classifications are based on a combination of population size and the total value of real estate within a county, while the H classification is based on geographical size. The law currently only provides for salary caps and allows boards of county commissioners to provide salary increases for their officers. Bernalillo County, Dona Ana County, Sandoval County, San Juan County and Santa Fe County are class A counties, Los Alamos County is an H class county and the other 27 counties are class B counties.

► ARGUMENTS FOR

1. Provides more local control to boards of county commissioners.

While it made sense for the legislature to set county officer salaries when the state was new, the counties are now longstanding, established entities that handle their own affairs without such close state guidance. Like the elimination of the fee system at the time the constitution was ratified, this amendment is similarly a measure to modernize the system to better reflect the realities of day-to-day governance. The current law only sets maximum salaries for county officers and already allows boards of county commissioners discretion in determining salary increases for their officers within the statutory limitations. Proposed Constitutional Amendment 4 would promote government efficiency by allowing these local decisions to be made locally.

2. Could recruit more quality candidates for county officer positions.

County officers manage complex bureaucracies and require executive experience and specialized skills to be effective on behalf of their constituents. To ensure that voters have the opportunity to elect qualified officers, counties need the flexibility to set salaries to attract experienced and skilled candidates. Additionally, different counties face different job market pressures and have different needs. Because county officer salaries in all but one county currently rely on county classifications based on a combination of population size and the total value of real estate within a county, a small-population county with a low total real estate valuation may need to provide higher salaries than its classification currently allows in order to attract a candidate pool similar to those available in higher-population, higher-valuation urban counties. This amendment would allow counties to be more responsive to their own needs and provide for more professional management.

3. Constitutional and statutory safeguards exist to check the power of county commissioners in setting salaries.

The constitution and laws of the state have measures that serve as a check on the powers of county commissioners in setting the salaries of county officers. For example, Article 4, Section 27 of the Constitution of New Mexico prohibits public officials from receiving extra compensation and from increasing or diminishing the salaries of incumbents during their terms in office; Article 9, Section 10 of the constitution restricts county indebtedness; and various sections of Chapter 6 NMSA 1978 govern public finances and the expenditure of public funds.

4. Will give voters more say in how their counties are managed.

County officers are locally elected and directly accountable to their constituents. Setting salaries for county officers at the local level will give the local voters a stronger voice in how their counties are managed. This amendment would localize salary decisions and make county officers more accountable to their constituents.

► ARGUMENTS AGAINST

1. Without legislative oversight, county official salaries will be wide-ranging and inconsistent among counties.

Pursuant to its current obligation to fix the salaries for county officers, the legislature has established a comprehensive classification system based on a combination of a county's population and the total value of real estate within the county. This system helps to ensure that salaries are uniform and proportional across the state. This proposed amendment empowers boards of county commissioners to establish officer salaries without any standards such as attaching salaries to county classifications or guardrails such as salary minimums or maximums. Without standards or guardrails, county constituents will face unpredictability and potential issues regarding fairness and transparency. This amendment would disrupt an established and uniform system and could give rise to unforeseen problems.

2. Removing legislature's authority could lead to negative consequences for counties.

Allowing boards of county commissioners full discretion to determine salaries for their officers takes authority and power away from the legislature. Counties are political subdivisions of the state created by the legislature, and, although counties have separate revenue sources, county money is still public money. The people of the state have an interest in the legislature retaining the power to set county officer salaries because it serves as a mutual check – it is a reasonable limit on counties' powers and requires accountability from the legislature. For example, the current system ensures that the legislature reviews important county metrics and the work demands of various county officers every few years. This builds a greater knowledge base about counties within the legislature, helping it make better decisions about funding infrastructure and services in counties each year. This amendment may disconnect the legislature from the counties, which could have a negative impact on public policy.

3. County commissioners would set their own salaries.

Currently, Article 10, Section 1 of the Constitution of New Mexico places the legislature in a neutral third-party role and provides assurances to the people of the state that county officer salaries are determined impartially. This proposed amendment may make these determinations more susceptible to short-term political or personal considerations. If this measure passes, county commissioners will not only be determining the salaries for officials they directly oversee, they will be setting salaries for themselves. By removing the legislature from this determination process, this amendment may give rise to issues concerning public trust and accountability.