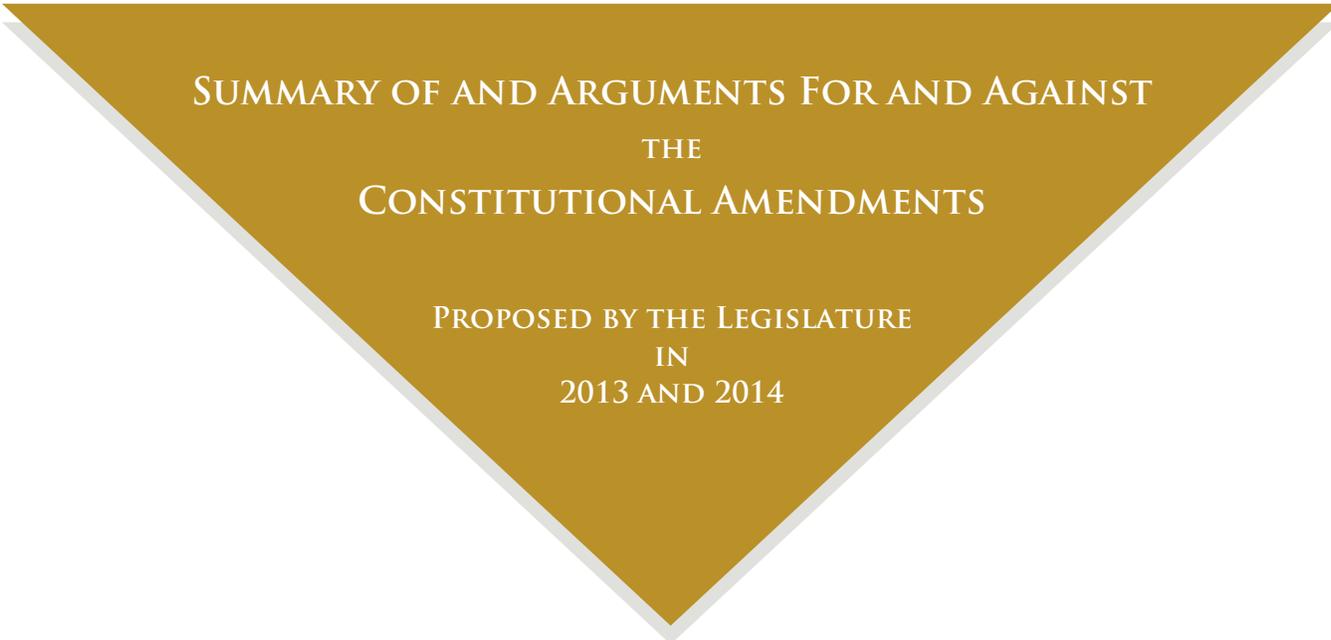


Revised July 8, 2014

SUMMARY OF AND ARGUMENTS FOR AND AGAINST
THE
CONSTITUTIONAL AMENDMENTS

PROPOSED BY THE LEGISLATURE
IN
2013 AND 2014

AMENDMENTS APPEARING ON THE NOVEMBER 4, 2014 GENERAL ELECTION BALLOT



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This publication was revised on July 8, 2014 to correct the return on investment reported for the Land Grant Permanent Fund over the last 25 years from 8.9 percent annually to 8.65 percent annually.

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General Information

In the 2013 and 2014 regular sessions, the Fifty-First New Mexico Legislature passed five joint resolutions proposing amendments to the state constitution, and these proposed amendments will be presented to the voters of New Mexico on the November 4, 2014 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, which is the case this year with Constitutional Amendment 1. 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, for each proposed amendment that will appear on the November 4, 2014 ballot, a summary and the full text of the joint resolution proposing the amendment. Included with the summary are background information and summaries of arguments for and against the passage of the amendment.

Each joint resolution states whether the proposed constitutional amendment repeals an existing section of the constitution, adds a new section or amends 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 capital letters, is the only amendment language that will be shown on the ballot.

Disclaimer

The arguments for and against a proposed constitutional amendment do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions from 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. 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 2
51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 7, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT SCHOOL ELECTIONS SHALL BE HELD AT DIFFERENT TIMES FROM PARTISAN ELECTIONS.

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

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

"A. Every citizen of the United States who is over the age of twenty-one years and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which [he] the person offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors. All school elections shall be held at different times from [~~other~~] partisan elections.

B. The legislature shall have the power to require the registration of the qualified electors as a requisite for voting and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot and the purity of elections and guard against the abuse of elective franchise. Not more than two members of the board of registration and not more than two judges of election shall belong to the same political party at the time of their appointment."

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 [~~bracketed material~~] = delete

► SUMMARY of Proposed Constitutional Amendment 1

Constitutional Amendment 1 would amend Article 7, Section 1 of the Constitution of New Mexico to replace the prohibition against holding school elections with any other election with a more limited prohibition against holding school elections with partisan elections. If the amendment is adopted by the voters, school elections could be held at the same time as nonpartisan elections, including municipal elections, bond elections, conservancy district elections and other special district elections.

Pursuant to Article 7, Section 3 of the Constitution of New Mexico, a proposed amendment to this section of the constitution must be ratified by the affirmative vote of three-fourths of the people voting on the amendment.

► BACKGROUND AND INFORMATION Regarding School Elections

One of the national points of controversy during the period when the Constitution of New Mexico was being drafted was whether women should be granted the right to vote. An initial step toward women's suffrage that many states adopted was to allow women to vote in school elections, and New Mexico continued this trend. Accordingly, school elections, which are financed by each school district, were separated from other elections to facilitate the administration of those elections in which women were allowed to vote and those in which they were not. In 1920, New Mexico's women's suffrage provision was superseded by the ratification of the Nineteenth Amendment to the United States Constitution, which granted women the right to vote in all public elections. Subsequent amendments to the Constitution of New Mexico brought the language up to date, but did not change the requirement that school elections be held separately from other elections.

► ARGUMENTS FOR AND AGAINST Proposed Constitutional Amendment 1

Arguments For

1. Separate school elections no longer necessary.

The reason for the prohibition against holding school elections in conjunction with other elections no longer exists. Women have had the right to vote in all public elections in New Mexico since 1920.

2. May increase voter participation.

At least in recent years, voter turnout for school elections has tended to be very low. This may be partly due to "voter fatigue". In some New Mexico counties, voters may be faced with numerous elections in a given year. Reducing the number of elections by allowing school and other nonpartisan elections to be combined might, therefore, increase overall voter participation.

3. May lower costs for school districts.

If adopted, school districts could choose to lower their costs by holding their elections in tandem with other nonpartisan elections.

Arguments Against

1. Does not allow school elections during regular November general elections; may be unfairly combined with other elections.

The proposed amendment is too limited. It continues the prohibition against holding school elections in conjunction with partisan elections; however, the regular November general elections are always partisan elections. Therefore:

- 1) combined election dates will typically be limited to municipal and special district elections. Often, school district boundaries extend over several municipalities and special districts, which may hold their local elections on different dates. Choosing to combine a school district's election day with one municipality would unfairly favor the voters in that community over the other voters within that school district; and
- 2) adopting the proposed amendment would continue to bar school districts from the potential opportunities for cost savings and increased voter participation resulting from holding their elections in conjunction with November general elections.

2. Diluted focus.

Setting school elections aside from all other elections permits the focus of public discussion on education issues. It allows voters to learn about school board candidates, school bonds and education ballot initiatives without the distraction of competing issues.

3. Diluted impact of knowledgeable voters.

Current voter turnout for school elections is likely determined by the number of people who are more interested in, and informed about, education issues. Allowing school elections to be combined with other nonpartisan elections dilutes the impact of knowledgeable voters in exchange for incremental cost savings for school districts.

4. **Ballots too long and confusing.**

Allowing combined nonpartisan elections will make those ballots longer and potentially confusing to voters.

SENATE JOINT RESOLUTION 7
51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO CHANGE THE BOARD OF REGENTS OF NORTHERN NEW MEXICO STATE SCHOOL BY FILLING ONE REGENT POSITION WITH A STUDENT.

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

SECTION 1. It is proposed to amend Article 12, Section 13 of the constitution of New Mexico to read:

"A. The legislature shall provide for the control and management of each of [~~said~~] the institutions, except the university of New Mexico, by a board of regents for each institution, consisting of five members, four of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the institution and no more than three of whom at the time of their appointment shall be members of the same political party; provided, however, that the student body member provision in this [~~section~~] subsection shall not apply to the New Mexico school for the deaf, the New Mexico military institute [~~the northern New Mexico state school~~] or the New Mexico school for the blind and visually [~~handicapped~~] impaired, and for each of those [~~four~~] three institutions all five members of the board of regents shall be qualified electors of the state of New Mexico.

B. The governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents for each of [~~said~~] the institutions. The terms of [~~said~~] nonstudent members shall be for staggered terms of six years, [~~provided that of the five first appointed the terms of two shall be for two years, the terms for two shall be for four years, and the term of one shall be for six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on each eligible institution's board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term]~~ and the terms of student members shall be two years.

C. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the institution. In making the list, the president of

Note: underscored material = new [~~bracketed material~~] = delete

the institution shall give due consideration to the recommendations of the student body president of the institution. Following the approval by the voters of this 2014 amendment and upon the first vacancy of a position on the northern New Mexico state school board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term.

D. The legislature shall provide for the control and management of the university of New Mexico by a board of regents consisting of seven members, six of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the university of New Mexico and no more than four of whom at the time of their appointment shall be members of the same political party. The governor shall nominate and by and with the consent of the senate shall appoint the members of the board of regents. The present five members shall serve out their present terms. The two additional members shall be appointed in 1987 for terms of six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on the university of New Mexico's board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the university of New Mexico. In making the list, the president of the university of New Mexico shall give due consideration to the recommendations of the student body president of the university.

E. Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final."

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 [~~bracketed material~~] = delete

► SUMMARY of Proposed Constitutional Amendment 2

Constitutional Amendment 2 would amend Article 12, Section 13 of the Constitution of New Mexico to add Northern New Mexico College (NNMC) to the group of state educational institutions that are required to have a member of the student body on the board of regents. This amendment, if approved by voters, provides that the next vacant position on NNMC's board will be filled by an NNMC student who is selected from a list of candidates compiled by NNMC's president and who is appointed by the governor to serve a two-year term. The amendment also requires NNMC's president to give due consideration to the recommendations of the college's student body president when compiling the list of candidates.

► BACKGROUND AND INFORMATION Regarding Northern New Mexico College and State Educational Institution Boards of Regents

The Northern New Mexico State School in El Rito is one of 10 state educational institutions established in Article 12 of the Constitution of New Mexico. Originally known as the Spanish-American School, this institution was created in 1909 as a "normal school", with a primary focus on training teachers. As the curriculum grew, the school began offering a variety of two-year associate's degrees and, eventually, changed its name to "Northern New Mexico College" in 1959.

The Constitution of New Mexico prescribes that each of the state educational institutions is to be managed by separate boards of regents, some of which include student members and some of which do not. Students were added in 1994 to the boards of all six institutions that offer four-year post-secondary education programs. NNMC began offering four-year degree programs in 2004.

Duties of State Educational Institution Boards of Regents

The Constitution of New Mexico states that the board of regents for each institution, pursuant to direction from the legislature, is responsible for the control and management of the institution. The legislature has specifically set out, by statute, the rights and obligations of the boards of regents. Those statutes provide that regents, including student regents where applicable, have responsibilities that include: 1) determining requirements for admission; 2) establishing fees; 3) coordinating scholarship programs; 4) establishing a tenure review process for faculty; 5) acquiring land for a campus or building site; 6) borrowing money; 7) issuing bonds; and 8) providing boarding for students.

► ARGUMENTS FOR AND AGAINST Proposed Constitutional Amendment 2

Arguments For

1. Consistency among institutional boards.

The boards of regents of all state educational institutions that grant four-year degrees, including NNMC, should include a student regent. When the constitution was amended in 1994 to create a student regent position at certain institutions, each of those institutions offered four-year degree programs. NNMC did not offer a four-year degree program until 2004. Since that time, the academic programs offered by NNMC have grown to include numerous bachelor's degrees in several areas of study. The academic and administrative structure of NNMC is analogous to those of the other six institutions that grant four-year degrees, and NNMC's board of regents should be structured similarly to include a student regent. The passage of this amendment would appropriately align the board membership of all four-year degree-granting institutions.

2. No conflict with current practice.

NNMC already embraces the concept of student involvement in the institution's governance. The NNMC board of regents currently includes two student regents who serve in an advisory capacity, which reveals the value placed by the college on the student body's voice. This amendment would simply extend the role of "student regent" at NNMC to allow for one student-regent vote on matters considered and decided by the board.

3. Equal representation.

The students at NNMC should have a vote on matters that affect their education and professional development; their voice on the board of regents is essential to ensuring that NNMC serves their interests and reflects their needs. Because students at NNMC are pursuing academic programs and four-year degrees in preparation for their careers, the decisions of NNMC's board of regents affect not only the students' education, but also their professional development. For these reasons, the NNMC board of regents should include a seat for a student regent to allow a student representative the opportunity to vote on issues that significantly affect the student body.

4. Unique perspective.

A student regent would provide the perspective of someone who is actually attending the college, is in touch with the issues and concerns of students and has insight into the demands and challenges of the college's courses and faculty.

Arguments Against

1. Duplicative and possibly conflicting representation.

Reserving a seat on the NNMC board of regents for a student member is unnecessary. NNMC's student body is already adequately represented through advisory student regents and through the Associated Students of Northern New Mexico College (ASNNMC), which is a body of representatives elected by the students that has widespread and diverse representation and that most accurately represents the student body on issues such as college administration and student activities. The members of the ASNNMC are accountable to their constituents and must represent their constituents' interests. This amendment would provide for an additional student representative who is appointed rather than elected by students. Because the student regent would be appointed by the governor, the student might not be independent and able to provide independent and nonpartisan representation.

2. Fairness.

Students are not the only group affected by the decisions made by the NNMC board of regents. This amendment would provide for a designated student regent on the board; however, NNMC staff, professors and students are all affected by the board's decisions. If this amendment is approved, the voice of students will be unfairly represented on the board of regents, which should include representatives of all groups that are affected by the board's decisions.

3. Inexperience and insufficient qualifications.

Boards of regents are called upon to make decisions on highly complex matters relating to an institution's administration, finance, curriculum and mission. A student regent might be too inexperienced or lack the qualifications to successfully fill the role of a board member.

4. Unnecessary and unwarranted change.

Changing the state's constitution should not be undertaken in the absence of compelling reasons. Requiring one member of a five-member board of regents to be a student will not materially impact the decision-making of the board as a whole, particularly when NNMC already has two student regents who serve as advisors to the board. As currently written, the constitution does not prohibit a student who is a qualified elector from serving on the board of regents, so there is no compelling reason to amend the constitution.

5. Inequality among state institutions.

The amendment is too limited in that it does not include all of the state institutions established by Article 12. If the amendment is approved, the New Mexico School for the Deaf, the New Mexico Military Institute and the New Mexico School for the Blind and Visually Impaired

would remain outside of the student-regent requirement. Failing to include all of these institutions results in inequality among student bodies.

SENATE JOINT RESOLUTION 16
51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

A JOINT RESOLUTION
PROPOSING AN AMENDMENT TO ARTICLE 6 OF THE CONSTITUTION OF NEW
MEXICO TO ALLOW THE LEGISLATURE TO SET THE DATE FOR FILING
DECLARATIONS OF CANDIDACY FOR JUDICIAL RETENTION ELECTIONS.

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

SECTION 1. It is proposed to amend Article 6, Section 34 of the constitution of New Mexico to read:

"The office of any justice or judge subject to the provisions of [~~Section 33 of~~] Article 6, Section 33 of this constitution becomes vacant on January 1 immediately following the general election at which the justice or judge is rejected by more than forty-three percent of those voting on the question of [~~his~~] retention or rejection or on January 1 immediately following the date [~~he~~] the justice or judge fails to file a declaration of candidacy for the retention of [~~his~~] the justice's or judge's office in the general election at which the justice or judge would be subject to retention or rejection by the electorate. Otherwise, the office becomes vacant upon the date of the death, resignation or removal by impeachment of the justice or judge. [~~The date for filing a declaration of candidacy for retention of office shall be the same as that for filing a declaration of candidacy in a primary 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 [~~bracketed material~~] = delete

► SUMMARY of Proposed Constitutional Amendment 3

Constitutional Amendment 3 would amend Article 6, Section 34 of the Constitution of New Mexico to remove the requirement that justices and judges who are seeking to remain in office file a declaration of candidacy on the same day as candidates in the primary election. If adopted, the date on which a justice or judge must file for a retention election will be determined by statute.

► BACKGROUND AND INFORMATION Regarding Judicial Retention Elections and Deadlines for Declarations of Candidacy

Justices of the supreme court and judges of the court of appeals, district courts and metropolitan courts run only once in a partisan general election. After that, they run in uncontested retention elections held in November at the general election. The Constitution of New Mexico requires judges and justices wishing to remain in office to file their declarations of candidacy for retention on the same date that candidates for other offices must file for primary elections. This election procedure was adopted in 1988 as part of a larger change in how justices and judges are initially appointed and retained in office.

► ARGUMENTS FOR AND AGAINST Proposed Constitutional Amendment 3

Arguments For

1. Corrects an irregularity in this constitutional section.

The proposed amendment corrects an irregularity in the current constitutional provision governing the date on which a sitting judge or justice must indicate an intention to stand for a nonpartisan retention election. All such retention elections are held during the general election in November, and there is no primary election. Thus, there is not a good reason to have justices and judges adhere to the early date for declarations of candidacy that govern partisan primaries rather than the later date required for minor party or independent candidates.

2. Removes minutiae of filing dates from constitution.

Administrative provisions dictating the filing date for elections do not properly belong in the constitution; they are generally set by statute. The cumbersome process of amending the

constitution prohibits the legislature from changing election processes in an expeditious manner, if circumstances warrant, if filing dates are enshrined in the constitution. This is especially true in this case, where the date in the constitution has no relevant relationship to the office.

3. Removes a premature deadline for retirement announcements by sitting judges.

The current constitutional provision forces justices and judges to announce whether they will retire long before it is necessary to do so simply because partisan candidates in general elections are required to file for primary elections held in June. The nonpartisan retention elections are not held until November for justices and judges.

Arguments Against

1. Unnecessary change.

The present constitutional requirements for judicial elections in the state represent a wide-ranging reform of judicial selection that was crafted in 1988. There is no compelling reason to undo part of that reform at this juncture, when the 1988 reforms have operated successfully for a quarter of a century.

2. Weakens connection between electorate and judicial office.

The filing requirement as presently enshrined in the constitution — tied to the dates required for the vast majority of candidates — acts to remind a justice or judge that while a retention election differs in form from other elections, the election is directly tied to the voters and their aspirations for the judiciary, and it underscores that the judiciary derives its authority from the electorate.

3. Increases potential for politics to intrude on judicial elections.

Leaving the filing date for retention elections in the constitution prohibits the legislature from manipulating retention election filing dates for political or partisan advantage.

SENATE JOINT RESOLUTION 22
51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

A JOINT RESOLUTION
PROPOSING AN AMENDMENT TO ARTICLE 10, SECTION 10 OF THE
CONSTITUTION OF NEW MEXICO TO ALLOW CERTAIN COUNTIES TO BECOME
URBAN COUNTIES AND TO CLARIFY THE MAJORITY VOTE NEEDED TO ADOPT A
COUNTY CHARTER.

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

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

"A. A county that is less than one thousand five hundred square miles in area and has ~~[at the time of this amendment]~~ a population of three hundred thousand or more may become an urban county by the following procedure:

(1) the board of county commissioners shall ~~[by January 1, 2001]~~ appoint a charter commission consisting of not less than three persons to draft a proposed urban county charter;

(2) the proposed charter shall provide for the form and organization of the urban county government and shall designate those officers that shall be elected and those officers and employees that shall perform the duties assigned by law to county officers; and

(3) within one year after the appointment of the charter commission, the proposed charter shall be submitted to the qualified voters of the county and, if adopted by a majority of those ~~[voters]~~ voting, the county shall become an urban county. If, at the election or any subsequent election, the proposed charter is not adopted, then, after at least one year has elapsed after the election, pursuant to this section another charter commission may be appointed and another proposed charter may be submitted to the qualified voters for approval or disapproval.

B. An urban county may exercise all legislative powers and perform all governmental functions not expressly denied ~~[to municipalities, counties or urban counties]~~ by general law or charter and may exercise all powers granted to and shall be subject to all limitations ~~[granted to]~~ placed on municipalities by Article 9, Section 12 of the constitution of New Mexico. This grant of powers shall not include the power to enact private or civil laws except as incident to

Note: underscored material = new ~~bracketed material~~ = delete

the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a misdemeanor. No tax imposed by the governing body of an urban county, except a tax authorized by general law, shall become effective until approved by a majority vote in the urban county.

C. A charter of an urban county shall only be amended in accordance with the provisions of the charter.

D. If the charter of an urban county provides for a governing body composed of members elected by districts, a member representing a district shall be a resident and elected by the registered qualified electors of that district.

E. The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of urban counties.

F. The provisions of this section shall be self-executing."

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 [~~bracketed material~~] = delete

► SUMMARY of Proposed Constitutional Amendment 4

Constitutional Amendment 4 would allow Valencia and Curry counties to become urban counties if their populations ever reach 300,000. Those are the only two counties that meet the geographic size requirement but do not have the authority to become urban counties. The amendment would also clarify that a majority of the voters casting ballots on the question of adopting an urban county charter is required to approve a charter.

► BACKGROUND AND INFORMATION Regarding Home Rule Municipalities and Urban Counties

New Mexico's counties and municipalities may only adopt ordinances on topics specifically allowed by the Constitution of New Mexico or state law. Since 1970, municipalities have had the authority to become "home rule municipalities" with the power to control more of their own affairs through city charters that are approved by their voters. Those municipalities that have done so no longer need specific permission from the legislature to enact ordinances; their authority to do so is only limited by the federal and state constitutions, state law or their own charters.

Under an amendment adopted in 2000, Bernalillo County was granted the authority to seek the same home rule status by becoming what would be known as an "urban county". No other county was eligible or ever would be eligible to seek the same status because of the deadlines in the 2000 amendment. Bernalillo County appointed a commission that drafted a charter, but the charter was rejected by county voters in 2001. Bernalillo County may renew the process by appointing another charter commission at any time.

In addition to Bernalillo County, only Valencia, Curry and Los Alamos counties meet the geographic size requirement to become urban counties. Los Alamos already has a home rule charter, so only Valencia and Curry counties would be eligible to seek home rule status if this amendment is adopted and if the population in those counties ever reaches 300,000. If existing county boundaries are changed or new counties are created that result in a county meeting the size and population requirements, that county would be eligible to seek to become an urban county.

► ARGUMENTS FOR AND AGAINST Proposed Constitutional Amendment 4

Arguments For

1. Expands the number of counties eligible to acquire urban county status.

Currently, every county in New Mexico except Bernalillo County is barred from becoming an urban county. If this amendment is adopted, any county that is less than 1,500 square miles in area and that has a population of at least 300,000 residents would become eligible to acquire urban county status.

2. Promotes greater self-government and reduces dependency on the state legislature.

Adoption of this amendment would allow counties that achieve urban county eligibility to acquire the same "home rule" powers that many municipalities currently enjoy. An urban county would have greater autonomy to be responsive to issues that specifically relate to its individual circumstances. This self-governmental authority would allow for less dependency on the state legislature to provide laws and financial resources for those counties and permit counties to pursue their policymaking goals without the need to invest time and resources to sway the legislature.

3. Sets up a cautious approach to potentially improving local government.

This amendment creates an opportunity to change how a county government works, but not without the assurance that the electorate may first consider thoroughly whether to exploit that opportunity. It establishes a cautious, thoughtful approach for county officials and voters in an eligible county to decide how and whether to become an urban county. The appointment of a charter commission, drafting of a proposed charter and vote on whether to adopt the charter would spark public discourse about the merits and disadvantages of becoming an urban county.

4. Clarifies what constitutes a majority of voters.

This amendment clarifies that a proposed urban county charter would go into effect if approved by a majority of qualified voters of the county voting on the charter, not a majority of qualified voters of the county.

Arguments Against

1. Increases expenditure of public resources.

This amendment would create potential for a waste of resources and an increase in expenditures. If a board of county commissioners chose to pursue the process of becoming an urban county, public resources would be used to create a charter commission, draft a charter and hold an election. If voters later reject the proposed urban county charter, those expenses will not have achieved what the commission sought. If voters approve the urban county, the county would be required to expend resources to modify the county government to carry out the provisions of the urban county charter. In both instances, passage of this amendment would increase public spending.

2. The contours defining the powers of an urban county are unclear.

Passage of this amendment could lead to confusion about an urban county's powers. Several existing statutes explicitly address the powers of home rule municipalities, but those statutes were written before an "urban county" was contemplated and that term brought into use. It is unclear whether existing home rule statutes pertaining to municipalities would be interpreted as applicable to urban counties.

3. May result in duplication and confusion.

By allowing a county to become an urban county, with similar powers to a home rule municipality within that county, the proposed amendment may lead to duplication of services and offices, which could then result in confusion about which entity is responsible for certain services. Duplication of services could also raise costs to the recipients of those services in both the county and the city. The only county in the state that currently has home rule power is Los Alamos County. It has that power because it is also, technically, a municipality and there is no confusion because no other governments exist in Los Alamos.

4. Amendment would not immediately affect counties.

Currently, Bernalillo County is the only county in the state that satisfies the size and population requirements necessary for a county to attempt to become an urban county. The provisions of the constitution do not currently prevent Bernalillo County from subsequent attempts to become an urban county. Until another county meets the size and population requirements, this amendment will not have any effect.

HOUSE JOINT RESOLUTION 16
51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS BY INCREASING THE DUTY OF CARE, REMOVING THE RESTRICTIONS ON THE TYPE OF INVESTMENT THAT MAY BE MADE AND INCREASING THE THRESHOLD AMOUNT FOR ADDITIONAL DISTRIBUTIONS.

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 Article 12, Section 2 of this ~~[article]~~ constitution 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]~~ invest and manage the fund in accordance with the Uniform Prudent Investor Act.

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;

Note: underscored material = new ~~[bracketed material]~~ = delete

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

(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 five 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)] ten billion dollars (\$10,000,000,000):~~

(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.

Note: underscored material = new [~~bracketed material~~] = delete

► SUMMARY of Proposed Constitutional Amendment 5

Constitutional Amendment 5 would:

- 1) allow more than 15 percent of the Land Grant Permanent Fund to be invested in international securities;
- 2) change the investment standard for the fund from the Prudent Man standard to that in the Uniform Prudent Investor Act (UPIA), which is the standard used by the State Investment Council for managing other funds; and
- 3) raise the reserve required to be maintained in the fund from \$5.8 billion to \$10 billion to continue the yearly distributions of 5.5 percent through fiscal year 2016.

► BACKGROUND AND INFORMATION Regarding the Land Grant Permanent Fund and Investment of the Fund

Over the past 25 years, the annual return on investment of the Land Grant Permanent Fund has been 8.65 percent, which is below the median return of 8.84 percent for public plans of \$1 billion or greater. The Constitution of New Mexico requires that five percent of the fund be distributed each year to New Mexico's state colleges and other beneficiaries. The actual amount distributed changes each year based on the average value of the fund over the previous five years. Pursuant to an amendment adopted in 2003, the present distribution from the fund is 5.5 percent, with the extra one-half percent distribution for educational reforms; however, this increased distribution is set to expire at the end of fiscal year 2016.

What the Land Grant Permanent Fund Is

Prior to statehood, Congress reserved lands in New Mexico for the support of common schools, for state higher educational institutions and for other public infrastructure purposes. Specifically, the statehood Enabling Act of 1910 and the subsequent constitution and statutes of New Mexico establish that:

- 1) these lands are held in trust for the benefit of education and other public purposes and are managed by the commissioner of public lands through the State Land Office;
- 2) the proceeds from the sale of these lands or from oil and mineral production agreements, or other land use licenses and fees, are placed in various trust funds; and
- 3) these various trust funds are collectively designated as the Land Grant Permanent Fund and are managed by the state investment officer at the direction of the State Investment Council.

Investments and Distributions from the Land Grant Permanent Fund

The Constitution of New Mexico restricts certain investments from the Land Grant Permanent Fund; limits the distribution of money from the Land Grant Permanent Fund; and establishes the standard of care required of the State Investment Council with regard to investing the Land Grant Permanent Fund.

Standard of Care for Investments

The current language of Subsection C of Section 7 of Article 12 of the Constitution of New Mexico mirrors a standard developed from court decisions dating from a 1830 Massachusetts case, *Harvard College v. Amory*, regarding the standard of care that an investment firm owes to its clients, often referred to as the Prudent Man standard.

Constitutional Amendment 5 would replace the Prudent Man standard with the requirements established by the UPIA. The UPIA was developed by the National Conference of Commissioners on Uniform State Laws to standardize and update trust investment guidelines to reflect changes in investment practices since the late 1960s. The UPIA was incorporated into New Mexico statute in 1995 and has been enacted by 40 other states. Aside from the Land Grant Permanent Fund, all other funds managed by New Mexico, such as the public employees retirement funds and the Water Trust Fund, are required by statute to use the UPIA standard.

Both the Prudent Man and UPIA standards are attempts to recognize industry best practices in striving for the sometimes conflicting goals of getting a high return on an investment and protecting the invested funds from loss. A major difference between the two standards is that, under the Prudent Man standard, each investment is analyzed separately. Conversely, the UPIA analyzes investments as components of a portfolio.

Investment Restrictions

Article 12, Section 7 of the Constitution of New Mexico requires that:

- 1) no more than 65 percent of the Land Grant Permanent Fund be invested in corporate stocks;
- 2) no more than 10 percent of the voting stock of a corporation be held;
- 3) all stocks be listed on a national stock exchange; and
- 4) no more than 15 percent of the Land Grant Permanent Fund be invested in international securities.

Constitutional Amendment 5 would remove the limitation on international investments. The 15 percent limitation has been interpreted to be a limitation on investment in stocks and bonds; however, whether it applies to investment companies with multifaceted corporate structures, such as limited holding companies, is an open question.

Distribution Limitation Based on the Value of the Fund

The Constitution of New Mexico allows for an increased (5.5 percent) distribution from the Land Grant Permanent Fund through fiscal year 2016; however, if the five-year average value of the Land Grant Permanent Fund falls below \$5.8 billion, distributions are limited to five percent of the five-year average. Constitutional Amendment 5 would increase the value requirement, and the increased distributions would be prohibited if the five-year average value of the Land Grant Permanent Fund falls below \$10 billion. The Land Grant Permanent Fund's balance at the end of April 2014 was approximately \$13.7 billion.

► ARGUMENTS FOR AND AGAINST Proposed Constitutional Amendment 5

Arguments For

1. Balances short-term risk and long-term gain.

The amendment would update investment standards to match best practices, placing an emphasis on diversifying investment of the Land Grant Permanent Fund. Diversification balances risks so that short-term swings in the market have less impact on an investment fund as a whole. Moreover, the newer standards would allow the State Investment Council to make some longer-term investments that are projected to give a high rate of return even if they are expected to have short-term fluctuations. This type of investment would help counterbalance inflation pressures on the Land Grant Permanent Fund.

2. Provides necessary portfolio diversification.

Removing the limitation on foreign investment provides a tool to the State Investment Council that has been promoted as necessary to diversify investment portfolios and to earn higher returns on the investments.

3. Foreign investment component reflects modern business market.

Since several large corporations operate and profit on a global basis, such as some soft drink manufacturers, fast food chains, computer hardware producers and financial service providers, arguably there is already a "foreign investment" component to many stocks listed on such domestic exchanges as the Dow Jones Industrial Average and the NASDAQ Stock Market.

4. Contains an additional safety measure.

Raising the minimum reserve requirement for additional disbursements from the Land Grant Permanent Fund to \$10 billion through fiscal year 2016 establishes a safety measure to insulate

the fund in the short term while the State Investment Council explores greater diversity for investments from the fund.

Arguments Against

1. Encourages risky investments.

Eliminating the 15 percent cap on foreign investments and adding the UPIA standard effectively encourages the State Investment Council to maximize returns at the risk of additional investment volatility. Such actions could jeopardize the value of the trust funds.

2. Foreign markets less stable than U.S. market.

Many U.S. investors are cautious about making significant investments in foreign markets due to concerns about volatile political situations, insecure financial structures or a lack of business diversification in many countries. Currently and historically, the U.S. financial market, despite the inevitable recessions and market corrections, is the most stable market in the world.

3. Might erode fund value.

As averaged over the past 25 years, the Land Grant Permanent Fund has earned an annual return on investment of 8.65 percent under current law — a more than respectable long-term rate of return. Changing the investment standards, and in particular removing the cap on foreign investments, could inject more volatility and risk and erode the value of the Land Grant Permanent Fund.



NEW MEXICO LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO