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FISCAL IMPACT REPORT

SPONSOR <u>Ortiz y Pino/Munoz/Johnson</u>	LAST UPDATED <u>2/18/2023</u>
	ORIGINAL DATE <u>2/14/2023</u>
SHORT TITLE <u>Anti-Donation Clause, CA</u>	BILL NUMBER <u>Senate Joint Resolution 9/aSRC</u>
	ANALYST <u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	No fiscal impact	No fiscal impact	\$150.0	\$150.0	Nonrecurring	General Fund
The State and its Institutions**	Indeterminate, but significant	Indeterminate, but significant	Indeterminate, but significant	Indeterminate, but significant	Recurring	General Fund
Counties and Municipalities**	Indeterminate, but significant	Indeterminate, but significant	Indeterminate, but significant	Indeterminate, but significant	Recurring	Local Government Funds

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

**Reflects potential impact if the proposed constitutional amendment were adopted by voters.

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 State Ethics Commission (SEC)
 Public Regulation Commission (PRC)
 Administrative Offices of the Courts (AOC)
 Economic Development Department (EDD)
 Secretary of State (SoS)
 Department of Information Technology (DoIT)

SUMMARY

Synopsis of SRC Amendment to Senate Joint Resolution 9

The Senate Rules Committee amendment to Senate Joint Resolution 9 strikes language that included Indian nations, tribes, and pueblos in the definition of a private or community enterprise that is excepted from the anti-donation clause; strikes language that included the obligations of certain individuals in the exceptions, and eliminated the redundant use of “eleemosynary” in the description of charitable organization.

Synopsis of Original Senate Joint Resolution 9

Senate Joint Resolution 9 (SJR9) proposes to amend Article 9 of the state Constitution by repealing and replacing Section 14, the “anti-donation clause,” to prohibit the state from lending or pledging its credit or making any donation, except (1) for the care and maintenance of sick or indigent persons, (2) to provide disaster relief, (3) to make payments to a class of individuals as part of a program that identifies eligibility criteria for receipt of funds and the obligations, if any, (4) to promote community well-being with grants to charitable organizations, (5) to establish scholarships and loans for postsecondary students, including loan forgiveness, (6) to create new job opportunities by providing land, buildings, or infrastructure to support businesses or through economic development, (7) to provide essential services and accessibility to essential services for residential purposes, or (8) to support affordable housing projects by donating, providing or paying a portion of land costs to build affordable housing or renovate buildings for affordable housing. SJR9 also repeals Article 4, Section 31, of the state constitution, which prohibits appropriations for charitable, educational, or other benevolent purposes, not under state control.

Before any assistance is provided, implementing legislation would be enacted by a majority vote of the members elected to each house of the Legislature, or of the governing body of a political subdivision of the state. The implementing legislation would include safeguards, eligibility criteria, due diligence, claw-backs, public audits, and benchmarks, would create jobs, and be approved by law or authorized by a legislatively approved council or political subdivision of the state.

If passed, the voters of the state would approve or reject it at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

If this joint resolution passes, the constitutional amendment might be decided by the voters in the next general election, which is in FY25, or by a special election prior to that time or other statewide election. In either case, under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, SoS is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SoS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

Should the constitution be amended, SJR9 could lead to large transfers of public funds—by both the state and local public bodies—to private organizations and individuals, outside and not subject to traditional rules of contract and government procurement that ordinarily constrain the transfer of public money to private entities.

EDD also notes expanding into noneconomic-based businesses, including charitable organizations for the broad purpose of “community well-being,” will have a negative long-term impact on the state of New Mexico’s income stream. Entities that are currently ineligible for state funds (corporations, nonprofits, etc.) would now be competing for the state’s often limited resources.

SIGNIFICANT ISSUES

NMAG states the anti-donation clause, Article 9, Section 14, of the New Mexico Constitution has been amended several times. Most recently, adoption of House Joint Resolution 1 of the 2022 regular session led to a vote of the people of the state on whether to add an exception to the anti-donation clause to authorize the Legislature to appropriate state funds through a majority vote in each chamber for infrastructure that provides essential services.

SRJ9 would also repeal Article 4, Section 31, of the state constitution, which currently states:

No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine.

NMAG noted the State Supreme Court has ruled in *Moses v. Ruszkowski*, 2019-NMSC-003 that Article 4, Section 31, imposes limits on the Legislature’s authority to appropriate money. The joint resolution would propose repealing Article 4, Section 31, subject to a vote of the people as in the previous section.

SEC raises concerns about two exceptions to the anti-donation clause created in SJR9 and the repeal of language controlling the use of public funds in Article IV, Section 31.

1. Article IX, Section 14 (the anti-donation clause). SEC advises two of SJR9’s exceptions, as originally drafted, are overly broad. First, Section 1(A)(3) permits the state to distribute funds for the purpose of “making payments to a class of individuals as part of a program that identifies the eligibility criteria for receipt of funds and the obligations, if any, of the class of individuals receiving the payments.” Second, Section 1(B)(6) would permit the state to distribute public money to charitable organizations to “promot[e] community well-being,” which is an undefined term in the proposed language. These two exceptions would allow the state, through enabling legislation, to offer grants to any private organization that satisfies the enabling legislation. The SRC amendment deletes “and the obligations, if any, of the class of individuals receiving the payments” but leaves intact all language on “community well-being.”

2. Article IV, Section 31. SEC also says the repeal of Article IV, Section 31, might have significant consequences for the accountability of public funds. Article IV, Section 31, prohibits the Legislature from making any appropriation “for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, *not under the absolute control of the state.*” (emphasis added). By repealing and replacing Article IX, Section 14, and repealing Article IV, Section 31, the Legislature could make an appropriation to a private entity without requiring the entity to abide by the terms of a contract with a public body. Furthermore, by repealing Article IV, Section 31, SJR9 might allow appropriations of public funds to private entities bypassing the reach of oversight agencies and the laws that govern control of such funds.

Finally, SJR9 appears to create a conflict Article XII, Section 3, which provides that “no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds ... for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.”

ADMINISTRATIVE IMPLICATIONS

SEC says it has the authority to administratively adjudicate and enforce Article IX, Section 14, of the New Mexico Constitution. A new anti-donation provision of the constitution is likely to generate many issues regarding the application of the new constitutional language, some of which are likely inappropriate for an administrative agency like SEC, and are only appropriate for a court.

ALTERNATIVES

SEC explains that some state constitutions impose constraints similar to those in the current Article IV, Section 31, but, where the appropriation is supported by a two-thirds vote, allow for appropriations for charitable, educational or other benevolent purposes to private organizations not in the absolute control of the state,. *See, e.g.,* Ala. Const., art. IV, § 73.

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