

HOUSE JOINT RESOLUTION 1
55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

A JOINT RESOLUTION
PROPOSING TO AMEND ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW PUBLIC INVESTMENT TO PROVIDE ACCESS TO ESSENTIAL HOUSEHOLD SERVICES, INCLUDING INTERNET, ENERGY, WATER, WASTEWATER AND OTHER SIMILAR SERVICES AS PROVIDED BY LAW, UPON THE ENACTMENT OF GENERAL IMPLEMENTING LEGISLATION BY A MAJORITY VOTE OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE.

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

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

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

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

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

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

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

within areas of the state designated by law.

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

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

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

- (1) donating or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing;
- (2) donating or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing or the costs of conversion or renovation of buildings into affordable housing; or
- (3) providing or paying the costs of financing or infrastructure necessary to support affordable housing projects.

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

- (1) define "affordable housing";
- (2) establish eligibility criteria for the recipients of land, buildings and infrastructure;
- (3) contain provisions to ensure the successful completion of affordable housing projects supported by assistance authorized pursuant to Subsection E of this section;
- (4) require a county or municipality providing assistance pursuant to Subsection E of this section to give prior formal approval by ordinance for a specific affordable housing assistance grant and include in the ordinance the conditions of the grant;
- (5) require prior approval by law of an affordable housing assistance grant by the state; and

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

G. Nothing in this section prohibits the state from establishing a veterans' scholarship program, for military war veterans who are post-secondary students at educational institutions under the exclusive control of the state and who have exhausted all educational benefits offered by the United States department of defense or the United States department of veterans affairs, by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "military war veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for ten years or more and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of this country in support of any United States military campaign or armed conflict as defined by congress or by presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order.

H. Nothing in this section prohibits the state from expending state funds or resources for the purpose of providing essential services primarily for residential purposes if the assistance is granted pursuant to general implementing legislation approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall provide for accessibility to essential services primarily for residential purposes and include safeguards to protect public money and other public resources used for the purposes authorized in this subsection. As used in this subsection, "essential services" means infrastructure that allows internet, energy, water, wastewater or other similar services as provided by law.

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

► SUMMARY of Proposed Constitutional Amendment 2

Constitutional Amendment 2 would amend Article 9, Section 14 (commonly referred to as the "anti-donation clause") of the Constitution of New Mexico to allow the legislature to enact statutes that authorize the state to spend money to assist in the construction of utility lines or other infrastructure for energy, internet, water, wastewater and similar services for primarily residential purposes. If enacted, these statutes would be required to include provisions to safeguard public money and resources used for the utility line projects. Any provisions specifying the criteria, limitations or scope for such projects would be left to the implementing legislation.

► BACKGROUND AND INFORMATION

In response to the economic and political dominance of the railroad industry in the late 1800s, many states adopted an "anti-donation clause" or a "gift clause" in their constitutions to prohibit the use of state resources to aid private entities. In New Mexico, Article 9, Section 14 of the Constitution of New Mexico is the state's anti-donation clause. The anti-donation clause prohibits the state, a county, a school district or a municipality from directly or indirectly lending or pledging its credit or making any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad, unless a constitutional exception exists.

Over time, many states have found that anti-donation clause prohibitions against state assistance to any non-governmental entity were too restrictive, and those clauses have been amended or construed to give state legislatures more flexibility. Some states have fairly broad exceptions to their constitutional anti-donation or gift prohibitions that allow the state to provide public assistance to private entities if the expenditure is for a "public benefit" or a "public purpose". For example:

- Arizona's "gift prohibition" has been construed to allow state expenditures for the "public benefit" as long as it does not unreasonably subsidize a private entity;
- California's anti-donation prohibition has a broad exception for "public purposes" and specific exceptions for aid to orphans or physically disabled individuals; and
- Colorado's anti-donation clause has been interpreted as allowing state expenditures for a "public purpose".

While New Mexico does not have a broad public purpose or public benefit anti-donation clause exception, there are several specific exemptions in the Constitution of New Mexico that allow the

provision of public assistance to private entities, including:

- college tuition scholarships for qualified military veterans of the United States armed forces;
- public assistance to private businesses to foster job and economic development opportunities. The assistance must be provided pursuant to a local government ordinance that is enacted in compliance with an implementing statute, which is the Local Economic Development Act;
- public assistance for affordable housing projects. Like the assistance to private businesses, the assistance must be provided pursuant to an implementing statute, in this case the Mortgage Finance Authority Act;
- tuition loan assistance for health care providers who contract to provide health care service to the state; and
- for the care and maintenance of sick and indigent persons.

The proposed amendment would establish an additional exemption to the state's anti-donation clause and allow the state, pursuant to implementing legislation that includes safeguards to protect public money and other public resources, to provide state funds and other resources for the purpose of providing essential services primarily for residential purposes, including infrastructure for internet, energy, water, wastewater or other similar services.