

► ARGUMENTS FOR

1. The amendment would increase access to essential utility services.

Broadband internet, energy, water and wastewater services are essential utility services in today's world, and some communities in New Mexico still lack these basic services. The private sector on its own has been unwilling or unable to invest in utility service line build-outs in many, particularly rural, communities. Unless the current constitutional prohibition on the use of public funding is lifted to allow the state to address this problem, it may never be solved by the private sector. The proposed amendment would not only authorize direct state investment to ensure access to essential utility services by all New Mexicans, but would also allow for the possibility of the creation of public-private partnerships to provide access for these services.

2. May assist the state with leveraging federal funding.

The current anti-donation prohibition limits New Mexico's ability to compete with other states regarding rural development and to access federal funding for such development projects. As an example, the communities connected to Interstate 395 along the eastern side of the Sierra Nevada mountain range in California face very similar geologic and population density challenges as many of New Mexico's mountainous areas. However, California was able to implement a program called "Digital 395" that used state dollars to leverage a federal assistance program created in 2009 for private, nonprofit internet providers to develop internet infrastructure connecting those communities. Because of anti-donation clause prohibitions, New Mexico was not able to implement a similar program to leverage the 2009 federal broadband money. The proposed amendment may give New Mexico the best chance to leverage its share of federal dollars to achieve the broadest access to internet service throughout the state and to access federal funding for the provision of other essential household services.

3. May assist with ensuring that all New Mexicans have access to the internet.

Adoption of the proposed amendment could be particularly helpful with regard to building high-speed broadband internet infrastructure throughout the state. Now more than ever, access to high-speed internet is essential for distance learning, telemedicine and remote work. However, the Department of Information Technology, in its *State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment* published in June 2020, reported that "a conservative analysis of State, ISP, and federal data identifies an estimated 196,000 locations in New Mexico that are unserved by broadband, or 20 percent of the State's approximately 940,000 homes and businesses". This means that one-fifth of the state's residents are unable to continue with their studies through remote learning, to work remotely or to access needed health care, not to mention accessing myriad other public and private resources found online.

The proposed amendment would allow the state to invest in the broadband infrastructure that is needed for the full participation of all of New Mexico's residents in the modern world.

4. The contours of the implementing legislation would be vetted through the public legislative process.

Unlike a blanket "public benefit" exception that some states have applied to their anti-donation exemptions, adoption of the proposed amendment would be just the first step in a lengthy process to allow the use of public funds to provide access to essential household services. Similar to the exceptions that created the Local Economic Development Act and mortgage finance programs, both chambers of the legislature would need to pass implementing legislation for a utility assistance program to take effect. The proposed amendment also requires the implementing legislation to "include safeguards to protect public money and other public resources used for the purposes authorized", and a considerable amount of deliberation will go into developing them. Before the implementing legislation reaches the floor of each house, it will go through the committee process, where it will be debated by the members after ample opportunity for public comment and be subject to amendment throughout the process.

► ARGUMENTS AGAINST

1. The proposed amendment lacks clarity and leaves too much discretion for future legislatures in enacting the implementing legislation.

The proposed amendment lacks clarity and leaves the details of the exception to implementing legislation enacted by a future legislature. For example, it is not clear from the text of the amendment exactly what projects state funds will be allowed to be used for, as those specifics will be laid out in the implementing legislation. Further, while the proposed amendment specifically enumerates internet, energy, water and wastewater as essential services, it also includes "other similar services as provided by law". This broad provision will be subject to wide interpretation by the legislature enacting the implementing legislation or its execution. This language leaves the door open for the provision of public assistance to private entities for services not contemplated in the adoption of the amendment and could be changed based on the political winds of future legislatures.

2. Public money may not be adequately safeguarded.

The anti-donation prohibition serves a valuable purpose, and any proposed exception should be viewed with caution. The purpose of an anti-donation clause is to ensure that taxpayer money is not being used to support or subsidize private gains without the state receiving something of value in exchange for the transfer of money or property. However, this proposed amendment does not specify how the implementing legislation is to "safeguard public money" nor is there inclusion of a spending cap, so the actual fiscal implications for the state are unknown and could be far reaching. This lack of direction on specific requirements to safeguard public money could result in the legislature enacting implementing legislation that allows the use of state funds to provide a greater benefit to contractors and other businesses providing essential services rather than to the state residents who are in need of those services. Such effect would be contrary to the purpose of the anti-donation clause.

3. The growing exceptions to the anti-donation clause are swallowing the rule.

New Mexico's anti-donation clause is being whittled away. Since 1971, it has been amended six times to create exceptions, including carveouts to allow public funds to be used for the care and maintenance of sick and indigent persons; to stimulate job creation; to provide scholarship programs for certain veterans; to provide scholarship programs for aspiring health care providers; and to support the development of affordable housing. The growing number of exceptions are swallowing up the rule that prohibits state aid to private entities. Carving out

more and more exceptions creates confusion regarding what is allowed and what is prohibited, and it begs the question of whether even more exceptions should be carved out or if it is time to get rid of the anti-donation clause in its entirety.