

(H.J.R. 12)

CONSTITUTIONAL AMENDMENT E

JOINT RESOLUTION AMENDING THE UTAH CONSTITUTION

-STOCK AND BOND SUBSCRIPTIONS

2008 GENERAL SESSION

SENATE: 28-0-1

HOUSE: 71-0-4

BALLOT TITLE

YES

NO

Shall the Utah Constitution be amended to authorize the state to invest money in the newly issued stock or bonds of private companies if the money comes from the State School Fund or from land granted to the state by the federal government, as an exception to a general rule prohibiting those investments?

IMPARTIAL ANALYSIS

Constitutional Amendment E provides an exception to a general rule in the Utah Constitution prohibiting state and local governments from subscribing to the stock or bonds of a private company. The Amendment authorizes the State to subscribe to stock or bonds of a private company with money from the permanent State School Fund or with money from certain land granted to the state by the federal government.

Background and current provisions of the Utah Constitution

The original 1896 Utah Constitution contained a provision that prohibited state and local governments from subscribing to stock or bonds in aid of any private company. Subscribing to stock or bonds means to buy or to agree to buy stock or bonds of a company that is newly issuing stock or bonds. Buying stock of a private company is buying an ownership interest in the company. Buying the bonds of a private company is essentially lending the company money. The loan is evidenced by bond documents which set forth the interest that the company is obligated to pay on the borrowed amount and the date the company is required to repay the borrowed amount. The purposes of the provision prohibiting government from subscribing to stock or bonds generally include preventing government from using public resources to benefit a single private company and preventing government from risking its resources on a startup company.

The current Utah Constitution continues to prohibit state and local governments generally from subscribing to stock or bonds in aid of any private company. In 2005, however, the Utah Constitution was amended to provide an exception to the general prohibition. The 2005 amendment authorized the state or a public institution of higher education to acquire an ownership interest in a private business in exchange for rights to intellectual property developed by the state or a public institution of higher education.

Effect of Constitutional Amendment E

Constitutional Amendment E makes another exception to the general prohibition against state or local government subscribing to stock or bonds of a private company. The Amendment authorizes the state to subscribe to stock or bonds of a private company if the investment is made with money from either or both of two sources: (1) the State School Fund; and (2) lands granted to the state from the federal government.

The State School Fund is a permanent trust fund established by the Utah Constitution. The State School Fund receives money from the sale of certain school and federal lands, revenues from nonrenewable resources on state lands, revenues from the use of school trust lands, revenues appropriated by the Legislature, and other sources. The Utah Constitution requires the money in the fund to be safely invested and held by the state in perpetuity. Interest and dividends received from investing trust fund money are spent for the support of the public education system. Constitutional Amendment E allows the state to use money held in the State School Fund to subscribe to stock or bonds of private companies.

The other money that Constitutional Amendment E allows the state to use to subscribe to stock or bonds is money derived from certain land that the federal government gave the state in connection with the state achieving statehood. This land includes land to benefit higher education, land for the establishment of reservoirs for irrigation, land for the establishment of a school of mines and other schools, and land for the establishment of other state institutions.

IMPARTIAL ANALYSIS (continued)

Effective date

If approved by voters, Constitutional Amendment E takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment alone will not likely result in any increase or decrease in revenue or cost to state or local government. However, if the state subscribes to stock or bonds using money held in the State School Fund or money derived from federal land grants, as this Amendment authorizes, the amount of earnings from those monies may be affected. Whether the amount of earnings will increase or decrease and the amount of any increase or decrease will depend on: (1) the amount of money the state invests in subscribing to stock or bonds; and (2) the rate of return derived from subscribing to stock or bonds as compared to the rate of return derived from investments the state would otherwise have made with that money. An increase or decrease of 0.1% in the rate of return on the investment of State School Fund and federal land grants money, currently totaling approximately one billion dollars, would result in about a one-million dollar annual increase or decrease in the amount of money available for the support of public and higher education.

ARGUMENT IN FAVOR

This proposed amendment to the Utah Constitution will delete the archaic subscription to stock prohibition and allow a small portion of the permanent State School Fund, and other institutional trust funds derived from federal grants of land, to be invested in private equity and managed prudently. This prohibition was originally aimed at preventing the state legislature from incurring huge debts by pledging aid to railroad companies to attract rail lines. The subscription to stock prohibition now prevents the fund from being fully diversified. In order to operate effectively in today's financial markets, the State Treasurer must be able to diversify school and institutional trust fund portfolios in an appropriate manner, consistent with the prudent investor standard.

The school children of the state of Utah deserve to have their money invested as prudently and profitably as other private endowment funds. This proposed amendment will in no way affect the investment of the state's short-term funds needed for the operation of the daily business of government.

The benefit of this amendment is that the income derived from lands granted by the federal government to the state for the education of our children and for other state institutions could be invested to maximize income within the safety margins dictated by the prudent investor standard imposed by law upon the State Treasurer in the investment of these funds. Ultimately it should mean more funding for our schools.

This proposed amendment was supported by the Constitutional Revision Commission and passed unanimously by both houses of the legislature. It was supported by the Governor and on his must-pass list. It is supported by the State Treasurer and the Investment Advisory Committee which advises the State Treasurer on the investment of land grant trust funds. It was supported by the State Board of Education and the School Children's Trust staff. The Trust Lands Advisory Committee comprised of representatives of every major education group in the state, also unanimously supported this Constitutional change. There is no known opposition to this constitutional change.

-David Clark
House Majority Leader

-Ed Alter
State Treasurer

ARGUMENT AGAINST

No argument submitted.

COMPLETE TEXT CONSTITUTIONAL AMENDMENT E

Utah Constitution Sections Affected:

AMENDS:

ARTICLE VI, SECTION 29

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article VI, Section 29, to read:

Article VI, Section 29. [Lending public credit and subscribing to stock or bonds forbidden -- Exceptions.]

(1) Neither the State nor any county, city, town, school district, or other political subdivision of the State may lend its credit or, except as provided in ~~[Subsection]~~ Subsections (2) and (3), subscribe to stock or bonds in aid of any private individual or corporate enterprise or undertaking.

(2) Except as otherwise provided by statute, the State or a public institution of post-secondary education may acquire an equity interest in a private business entity as consideration for the sale, license, or other transfer to the private business entity of intellectual property developed in whole or in part by the State or the public institution of post-secondary education, and may hold or dispose of the equity interest.

(3) Except as limited by statute, the State may subscribe to stock or bonds with:

(a) funds in the permanent State School Fund established in Article X, Section 5; and

(b) funds derived from federal land grants designated in Sections 8 and 12 of the Enabling Act of the State.

Section 2. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2009.