

LFC Requester:

Cally Carswell

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/10/2025

Check all that apply:

Bill Number: HB290

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Romero; Rep.
Christine Chandler; Rep.
Patricia Roybal Caballero.

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Analysis: Blaine N. Moffatt

Short Title: VIBRANT COMMUNITIES
ACT

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB290 establishes a state program to provide public funds to qualifying nonprofit organizations for projects that serve a public purpose, such as improving public health, safety, or welfare.

Section 1: The Short Title is “Vibrant Communities Act.”

Section 2: The legislative findings acknowledge the important role of nonprofits and explain how funding them provides the state with a tangible benefit.

Section 3: The definitions section defines the terminology of the statute.

Section 4: Creates the “Vibrant Communities Program” and requires funding to be appropriated by the legislature.

Section 5: Creates the application process for the “Vibrant Communities Program,” which requires applicants to provide a project description, expected outcomes and benchmarks, the populations served, the amount of funding requested, and conflict of interest disclosures. Finally, it requires the department to review applications and create a list of recommendations to the governor.

Section 6: Allows the legislature to approve funding for specific projects on a need-based basis.

Section 7: Requires nonprofits to notify the department 60 days prior to project completion.

Section 8: Requires the department to submit a report detailing the public assistance provided for the previous fiscal year to the governor, legislature, and legislative finance council.

Section 9: This is a contingent effective date clause and only activates this act if the Anti-Donation Clause is amended.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The Anti-Donation Clause will have to be amended so that this act will become effective, presumably via HRJ11.

Notably, Subsection I of Section 3 defines a “qualifying entity” that is eligible to receive public funds for “public purpose projects” as “an organization that has demonstrated to the department that it has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) or Section 501(c)(12) of the United States Internal Revenue Code of 1986, as amended or renumbered, in the conduct of functions described in Section 501(c)(3) or Section 501(c)(12).” According to IRS Publication 557, an organization “organized and operated exclusively” for religious purposes may qualify for a 501(c)(3) exemption. Thus, under HB290 the legislature could give support to a religious organization potentially raising separation of church and state questions under the First Amendment of the U.S. Constitution or Section 11 of Article II of the New Mexico Constitution.

Considering the integral relationship between HRJ11 and HB290, the significant issues for HJR11 is provided below as well. From HJR11 analysis:

Article IX, Section 14 of the New Mexico Constitution (the “anti-donation clause”) has been amended several times. Most recently, the 2022 Regular Session of the Legislature voted 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.” Such amendment was added in Article IX Section 14 (H) after a majority vote by the people.

The proposed repeal and replacement of HJR11 would broaden Article IX Section 14 by allowing for the donation of public funds or pledging of state debt or credit if a “public purpose” is accomplished. Such “public purpose” would mean the benefit of public health, safety, or welfare. However, because the provisions of the constitutional amendment are not self-executing, companion implementing legislation would be required. In this case, that companion legislation appears to be HB290 which proposes the “Vibrant Communities Act.”

As currently written, unless there is an applicable exception, the anti-donation clause limits donations to the exchange of goods, which means that such funds are tied to a set exchange of goods or services for the appropriations or funds of the State. Accordingly, the anti-donation clause currently does not prohibit all donations of public funds. The specific exceptions currently carved out would likely be classified as “public purposes” under HJR11’s proposed language. Under the current law, government agencies may still (i) expend appropriated funds on service contracts with nonprofits; and (ii) expend capital outlay appropriation for government buildings and lease those structures to nonprofits on favorable terms.

As proposed, HJR11, in concert with HB290, would eliminate this current legal framework and instead permit the transfer of public funds to private nonprofits so long as the transfers comply with the “Vibrant Communities Program” established by HB290. HB290 provides for an administrative program run by the department of finance and administration (DFA) with “public purpose projects” funded by the legislature.

Although HB290 attempts to centralize government donations under DFA and the legislature, the impact of this framework on other political subdivisions of the state, such as counties and municipalities is unclear. HB290 is silent as to requests for donations from private entities that are made directly to political subdivisions; meaning there is neither an express authorization nor an express prohibition applicable to such direct requests.

This has implications for municipalities and counties because of the Home Rule Amendment (Section 6 of Article X of the New Mexico Constitution). For non-home-rule counties and cities, this silence would likely operate as a prohibition, because non-home-rule counties and cities typically require an express grant of authority from the legislature to act. In contrast, home-rule counties and cities would presumably be able to receive such requests and make donations because their authority exists unless prohibited by the legislature.

Home-rule counties and municipalities receiving donation requests would be in the position of having to interpret the broad meaning of the terms “public purpose” and “public health, safety, or welfare.” It is very likely that there would be pressure to include the activities of some groups and exclude others. For example, a frequent request that tests the current anti-donation clause is the free use of public facilities. Under a new HJR11/HB290 framework, would a boy’s little league baseball organization meet the definition of a public purpose because it promotes public health, safety, or welfare? What about the girl and boy scouts? What about a religious based drug rehabilitation group? The possibilities abound and without more legislative guidance, home-rule counties and cities would likely make different determinations of “public purpose” based on local preferences requiring the courts to be called upon to delineate what is and what is not a public purpose.

For the state, HRJ11 could put pressure on ethics and disclosure laws in New Mexico. Unconstrained subsidies could pressure state laws limiting gifts, quid pro quo, conflicts of interest, and require financial disclosures. Few laws exist at the local level to combat these issues. Additionally, there could be risks of governments subsidizing nonprofits at scale. Subsidies to nonprofits (for land, capital expenses, operating expenses) could allow government bodies use nonprofits to bypass the state laws regarding disclosure, procurement, and conflicts of interest.

Lastly, HJR11 would propose repealing Section 31 of Article IV of the New Mexico Constitution, subject to a vote of the people as in the previous section. This repeal would be required for the “Vibrant Communities Program” proposed by HB290, because Section 31 of Article IV requires the Legislature to appropriate to entities “under the absolute control of the state.” The state Supreme Court has ruled in *Moses v. Ruszkowski*, 2019-NMSC-003, that Section 31 of Article IV imposes limits on the Legislature’s authority to appropriate money. The amendment would remove those limits permitting the distribution of funds to private entities contemplated by HB290. This potentially opens a new avenue for fraud and corruption.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This Bill is a companion to House Joint Resolution 11 (HJR11). HJR11 sends an amendment to the Anti-Donation Clause to the voters of New Mexico for approval. This amendment creates an exception to the Anti-Donation Clause and allows the state to allocate money to private nonprofit organizations that comply with HB290.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A