

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/10/25 *Check all that apply:*  
**Bill Number:** HB 290 Original  Correction   
 Amendment  Substitute

**Sponsor:** Romero, Chandler, Roybal **Agency Name**  
Caballero **and Code** OSA - 308  
**Short Title:** VIBRANT COMMUNITIES **Number:** \_\_\_\_\_  
ACT **Person Writing** David Craig  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$2,005.86	\$2,005.86	\$2,005.86	\$6,017.58	Recurring	General Fund - OSA

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

House Bill 290 (HB 290) creates a new Vibrant Community Act (the Act) and Vibrant Community Program (the program) to be administered by the Department of Finance and Administration (DFA), to provide public funds by contract to privately owned, qualifying nonprofit organizations. The contracts will be for the completion of public purpose projects. DFA is to compile a list annually and awards are made subject to legislative appropriation and authorization. HB 290 creates an application process for the program that delineates deliverables, benchmarks, conflict of interest disclosures and descriptions of the project and those impacted. HB 290 sets up criteria DFA must use when awarding grants under the program and also creates minimum contractual requirements, including that qualifying nonprofit organizations are subject to the Audit Act. HB 290 is made contingent on passage and voter approval of a constitutional amendment changing or repealing “anti-donation clauses” in Article 9, Sec.14 and Article 4, Sec. 31 corresponding to a companion joint resolution HJR 11.

#### **FISCAL IMPLICATIONS**

The Office of the State Auditor opposes this bill and its companion bill House Joint Resolution 11 (HJR11). If HB 290 and HJR 11 were to pass into law, a little known provision of the Audit Act would trigger and potentially greatly expand the scope of the Office of the State Auditor’s work (see significant issues).

To try and estimate the cost to OSA operations is extremely challenging but is likely to be significant. No state government entity keeps a count of all non-profit entities in the state. According to one website, CauseIQ.com (<https://www.causeiq.com/directory/new-mexico-state/>) there are 11,883 nonprofit organizations in New Mexico. To try and construct a number, the OSA used that information on counts and compared it to the last program to audit private organizations that was placed upon the OSA (without adequate resources provided to the office) – the Conservatorship program. In FY22, the conservatorship program reviewed 1,309 cases. If just 25% of all non-profit organizations were to be awarded grants for which the OSA had to perform audits, workpaper reviews, audit reviews, oversee and negotiate financial audit contracting and completions and other work, then we estimate 2,950 additional entities would need to have an audit or agreed-upon procedure enacted, or 225% of the current conservatorship program.

OSA currently estimates the cost of the 5.6 FTE dedicated to the conservatorship program to cost OSA \$711,862.97 yearly in recurring personnel services and benefits costs for which we had to absorb out of our budget. Using this as a point of comparison, the OSA conservatively estimates a new non-profit audit division to cost \$1,604,682.70 in personnel services and benefits alone. Adding in other contractual, other financing and other categories at a total of 25% of the personnel services and benefits estimate we figure that a conservative (erring low) estimate of potential impacts to the OSA is \$2,005,853.38 in recurring General Fund costs. The true amount

of financial impact is not able to be known without knowing the true scope of the size of non-profits in the state, the amount of grants given or the materiality (amounts) of the grants. True costs could be much, much higher if the size and scope of non-profits were to increase above 11,883. The estimate of cost does not factor in additional fixed costs like additional office space that may be necessary to house the new staff. OSA cannot absorb this cost in its current budget as an unfunded mandate.

The OSA was given one time funding of 1.5 FTE at passage of the new Conservatorship program and has had to absorb the cost of the program from existing budget and staff – largely Financial Audit Division staff. This has limited our ability to meet audit review performance metrics, constrains the audits we can do to build up the Audit Fund and be less reliant on the general fund for operations, and otherwise oversee state finances. OSA has deep concerns that HB 290 and HJR 11 will create new, unfunded mandates on the OSA.

Whereas neither HB290 nor its companion bill HJR 11 carry an appropriation, it is unable to be determined how much finding would be made available to private persons for grants for public persons. It could be significant if it is left open-ended and the state creates incentives to start non-profit organizations on the taxpayer's behalf. If incentivized, the number of private, non-profit organizations could increase far above 11,833 estimated to currently be in existence.

## **SIGNIFICANT ISSUES**

Under the definition of agencies (see text below) in the Audit Act, charitable organizations receiving appropriations from the legislature are part of the purview of the Office of the State Auditor. This provision has never been triggered largely due to the anti-donation clause. However, if the anti-donation clause were to be repealed the increase in scope of publicly funded charitable organizations could further stress the limited existing resources of the OSA to oversee, perform and review annual financial audits. The OSA would need significant additional human resources to tackle the new mandate as discussed under fiscal implications.

The definition occurs in 12-6-2 A. NMSA 1978 which reads: "agency" means: any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and *charitable institutions* for which appropriations are made by the legislature [*emphasis added*].

## **PERFORMANCE IMPLICATIONS**

The OSA believes the provisions of HB 290 and HJR 11 create strong incentives for entities to incorporate as a non-profit instead of seeking public policy through government or incorporating as a private sector entity. If liquid and start-up capital is available via public funding the state may see many entities re-incorporating as non-profits. HB 290 requires qualifying entities to “demonstrate” they have a non-profit status to the Department of Finance and Administration (DFA). HB 290 creates the criteria by which DFA creates a list of proposed projects for the legislature and governor, by April 30 but specific criteria is limited to projects “that have demonstrated need within the community in which the proposed public purpose project would be located and the proposed safeguards to ensure the responsible use of public assistance. Though HB 290 indicates DFA makes a list of proposed projects available to the Governor and Legislature, it does not indicate how the Governor or Legislature approve the proposed project list or clarify if the proposed project list is solely informational in nature. HB 290 does envision

the Legislature appropriating money by specific purpose and amount per project. OSA assumes this would work similar to other direct legislative appropriations for capital outlay. DFA then contracts with qualifying entity to fund the project using the contractual provisions.

It is unclear why the state would redirect funds to private non-profits when there has not been a statewide study of whether current government operations are appropriately resourced. Many state agency budget requests indicate that adequate government resources have not been provided to state government. Whether or not these arguments are accurate, potentially not addressing the needs of current government to execute the laws already passed while simultaneously enriching private, non-profits creates a policy environment that disincentivizes government services.

It is unclear how DFA would create “proposed safeguards to ensure responsible use of public assistance.” Qualifying entities are private organizations for which DFA has no existing government oversight responsibilities and it can do little to safeguard the use of any public funds outside of the contract remedies. This will require DFA to strengthen and increase its contract law and contractual oversight capacities. The size and scope of the contracting apparatus this would take at DFA is unprecedented – perhaps similar to the old CYFD Pre-K contracts or private prison contracts at Corrections on a much larger scale.

It is possible that future Legislatures could replace HB 290 passes with new policies redirecting the flow of public dollars to private entities with priorities determined by future administrations/Legislatures. For example, future policy makers may argue that it is for the benefit of the public health, safety or welfare of the state to publicly finance privately owned extractive industries that need government subsidies. The repeal of the anti-donation clause would have the practical effect of allowing any future government policymakers and lawmakers to argue their niche private interest or private industry is for the benefit of the public health, safety or welfare of the state.

## **ADMINISTRATIVE IMPLICATIONS**

HB 290 creates a large new program within DFA with no funding or appropriation to the agency to create the resources necessary to run the program. The OSA alone would have a massive increase in its infrastructure and human resource needs to implement the provisions of HB 290. It is estimated the costs to DFA would be much greater as either a new program office or expansion of the existing local government division. It is unclear why this would be, perhaps DFA is to contract with a private, non-profit to run the program for DFA as a public purpose.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Is a companion bill to HJR 11.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

OSA compared the anti-donation or public money restrictions in the state constitutions of Arizona,

Texas, Oklahoma, Colorado, and Utah with the anti-donation clause in New Mexico. Among the commonalities were the following: all states prohibit the use of public funds for private benefit without clear public purpose, but exceptions are typically allowed for public purposes or specific programs. Many had restrictions on lending credit and restrictions on government making donations are prevalent. Notable differences include:

- Arizona and Colorado have specific provisions for investment and energy development through broader investment strategies like New Mexico's State Investment Council;
- Texas allows for infrastructure improvements with voter approval;
- Oklahoma and Utah emphasize restrictions on sectarian use of public funds;
- New Mexico has the most detailed exceptions for various public benefit programs.

If New Mexico is already an outlier in carve outs for public programs compared to neighbor states it is unclear why we would go further. In the opinion of OSA, the risk to future redirection of public dollars to private individuals outweighs the benefits of subsidizing new and existing nonprofit organizations.

The true scale of potential future redirection of public wealth from critical government services like education, public health or ensuring public safety to private entities is unknown. What starts as a well-intentioned bill to fund privately held nonprofit organizations could be used to fund private individuals or large corporations very quickly if political winds were to change.

## **ALTERNATIVES**

Keep the prohibitions of directing public funds directly to private persons in place in our state constitution and provide additional better carve-outs for public interests or create flow-through competitive grants through the agencies for public purposes.

Another option would be to explore repealing the charitable organizations section of the definition of agencies in the Audit Act, and remove requirements to have qualifying entities from being made applicable to the Audit Act in HB290 and have less government oversight of public money deferring to a future DFA contract arm for the necessary contract oversight.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The state will not enrich and fund private individuals, their causes and organizations with public funds allowing more funds to be directed to current government operations.

## **AMENDMENTS**