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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**57th Legislature, 1st Session, 2025**

<b>Bill Number</b>	<u>HJR11</u>	<b>Sponsor</b>	<u>Cates/Romero, A./Chandler/Caballero</u>
<b>Tracking Number</b>	<u>.229937.2</u>	<b>Committee Referrals</b>	<u>HGEIC/HJC</u>
<b>Short Title</b>	<u>Change Anti-Donation Clause, CA</u>		
<b>Analyst</b>	<u>Estupiñan</u>	<b>Original Date</b>	<u>2/15/2025</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

House Joint Resolution 11 (HJR11) proposes to repeal and replaces Article IX, Section 14 of the New Mexico Constitution, commonly known as the Anti-Donation Clause. The proposed amendment would maintain the core of the clause, which prohibits the state, counties, school districts, and municipalities from directly or indirectly lending or pledging their credit or donating public funds to a private person or private entity. The amendment provides one exception: a donation may be made to a private person or entity if the donation is used to accomplish a public purpose which is defined as an action for the benefit of the public health, safety or welfare. The amendment further provides that these provisions are not self-executing and before the donation of public funds to a private person or private entity, the Legislature must enact implementing legislation by a majority vote of both chambers.

As this is a constitutional amendment, its adoption is subject to voter approval at the next general election or special election prior to the date of the next general election.

**FISCAL IMPACT**

Joint resolutions do not carry appropriations.

Section 1-16-4 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. Again, the publishing cost will vary based on the length of the ballot question. For reference, the SOS published three constitutional amendments and three bond questions for approximately \$404 thousand in 2022.

Both the State Ethics Commission (SEC) and the Office of the State Auditor (OSA) note there may be considerable administrative burden and resulting fiscal impacts on their agencies.

## **SUBSTANTIVE ISSUES**

The SEC notes the anti-donation clause prohibits public officials from making credit pledges and other subsidies of private enterprises that may expose the public to loss or liability. Since the adoption of the Anti-Donation Clause, voters have approved eight exceptions to the general prohibition against donations to private individuals. New Mexico courts and federal courts sitting in New Mexico have interpreted the Anti-Donation Clause and its exceptions, identifying several categories of common law exceptions to both the credit and gift clauses of Article IX, Section 14, including for transfers of public money:

- Under contract;
- Between public bodies;
- To pay just compensation, and
- As it applies to the credit clause, to provide for revenue bond lease financing of capital projects that benefit private entities.

The SEC notes HJR11 would remove the prohibition on gifts, so long as a donation is tied to public health, safety or welfare. The Legislature could permit the donation of funds to a broad range of private people and entities. While the Anti-Donation Clause already permits donations of public funds for individuals who are sick and indigent, or in danger of becoming so, the SEC notes HJR11 does not narrow what might constitute “public health” or the additional categories of “safety or welfare.”

The SEC notes HJR11 does not contain guidelines or safeguards on what should be included in enabling legislation that would protect public funds. For example, the Anti-Donation Clause currently provides an exception for affordable housing so long as the Legislature enacts enabling legislation and then outlines specifically what must be included in that enabling legislation. HJR11 does not contain similar language.

## **ADMINISTRATIVE IMPLICATIONS**

The SEC has jurisdiction to investigate and adjudicate complaints alleging violations of Article IX, Section 14, to enforce Article IX, Section 14 through civil actions, and to educate and issue advisory opinions regarding Article IX, Section 14. Revisions to Article IX, Section 14 may affect the Commission’s workload relating to enforcement and education concerning Article IX, Section 14.

## **OTHER SIGNIFICANT ISSUES**

The SEC notes HJR11 could lead to large transfers of public funds by state agencies and local public bodies to private business, organizations and individuals, outside of a contract between a public body and a private person, and outside of state law providing for accountability and oversight.

The OSA notes the revision of the Anti-Donation Clause could increase the number of publicly funded charitable organizations requiring an audit and could consequently increase the

administrative burden on the agency in terms of overseeing, performing, and reviewing annual financial statements.

**SOURCES OF INFORMATION**

- LESC Files
- State Ethics Commission (SEC)
- Office of the State Auditor (OSA)

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