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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Cates/Romero, A/Chandler/Roybal Caballero	<b>LAST UPDATED</b>	2/16/2025
		<b>ORIGINAL DATE</b>	
<b>SHORT TITLE</b>	Change Anti-Donation Clause, CA	<b>BILL NUMBER</b>	House Joint Resolution 11
		<b>ANALYST</b>	Carswell

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Capital Outlay Appropriations to Local and Tribal Governments and Political Subdivisions	No fiscal impact	No fiscal impact	See Fiscal Implications	See Fiscal Implications	Recurring	Other state funds
Department of Finance and Administration	No fiscal impact	No fiscal impact	Up to \$1,500.0	Up to \$1,500.0	Recurring	General Fund
Office of the State Auditor	No fiscal impact	No fiscal impact	Up to \$1,000.0	Up to \$1,000.0	Recurring	General Fund
Secretary of State	No fiscal impact	No fiscal impact	\$35.0 to 50.0	\$35.0 to 50.0	Nonrecurring	General Fund
Total	No fiscal impact	No fiscal impact	Up to \$1,550.0	Up to \$1,550.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 290

### Sources of Information

LFC Files

Agency Analysis Received From  
New Mexico Attorney General 2(NMAG)  
Office of the State Auditor (OSA)  
State Ethics Commission (SEC)  
Higher Education Department (HED)

## SUMMARY

### Synopsis of House Joint Resolution 11

House Joint Resolution 11 (HJR11) proposes to repeal and replace Article 9, Section 14, of the New Mexico Constitution, commonly known as the Anti-Donation Clause. The replacement clause would eliminate the specific exemptions to the Anti-Donation Clause previously approved

by voters and replace them with a broad exemption allowing donations of public money to private persons or entities to accomplish a “public purpose.” Public purpose is defined as something for the benefit of the public health, safety, or welfare. Before a donation to a private person or entity can occur, implementing legislation must be enacted by the New Mexico Legislature.

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

## **FISCAL IMPLICATIONS**

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

Should this proposed constitutional amendment be approved by voters, it could create a significant new source of demand for capital outlay appropriations by removing an existing barrier to making capital appropriations directly to nonprofits for privately owned facilities. However, it would not impact revenues to the capital program, which are determined by annual severance tax revenues, sometimes supplemented by general funds at the Legislature’s discretion. The source of potential appropriations to private entities is likely to be the discretionary capital outlay funds individual legislators and the governor currently appropriate mostly to local and tribal governments and political subdivisions. Thus, any increase in capital appropriations to private entities resulting from the constitutional amendment would proportionally decrease capital appropriations to local and tribal governments and political subdivisions.

Capital appropriations are already made to benefit nonprofits operating out of publicly owned facilities through a public fiscal agent. While it is difficult to precisely identify the portion of current capital appropriations used in this manner, the Department of Finance and Administration (DFA) and LFC estimate it is no more than 5 percent of local capital appropriations, or up to \$26 million annually based on recent local capital spending. This fiscal analysis assumes voters would approve the constitutional amendment proposed by HJR11 and the change would result in, at most, a doubling of annual capital appropriations to nonprofits, resulting in a proportional decrease to local public entities that would otherwise receive those dollars. This analysis assumes the impact to the capital outlay program would begin in FY28, at the earliest.

The operating budget impacts to agencies impacted administratively by HJR11 and its enabling legislation are estimated based on analysis submitted by the agencies.

## SIGNIFICANT ISSUES

Analysis submitted by the New Mexico Attorney General (NMAG) explains the legal implications of HJR11 and its companion enabling legislation, House Bill 290 (HB290):

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 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 to 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.

The State Ethics Commissions adds that, if amended as proposed in HJR11, the gift clause of the constitution would “operate less as a constitutional constraint on subsidies of public funds to private organizations, and more as a general authorization for the Legislature to allow or require state agencies, counties, municipalities, and school districts to donate public funds or property” to private entities. Additionally, the Ethics Commission notes the broad exemption in HJR11 interferes with voters’ ability to approve each specific permissible category of exemption from the Anti-Donation Clause, as has occurred to date.

## **ADMINISTRATIVE IMPLICATIONS**

The Office of the State Auditor (OSA) states it opposes HJR11 and its enabling legislation, which it says would trigger a provision of the Audit Act that could significantly expand the scope of the Auditor’s work. Charitable organizations receiving state appropriations are included in the definition of agencies subject to the Audit Act, according to OSA, but the agency has not previously exercised authority over these entities due to the anti-donation clause.

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

HJR11 relates to HB290, which is the enabling legislation for the constitutional amendment proposed by HJR11.