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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Serrato/Hernandez, JF.</u>	<b>LAST UPDATED</b> _____
Anti-Donation Clause Interim Committee	<b>ORIGINAL DATE</b> <u>02/21//2025</u>
<b>SHORT TITLE</b> <u>Work</u>	<b>BILL NUMBER</b> <u>House Memorial 27</u>
	<b>ANALYST</b> <u>Serna</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Legislative Council Services</b>	No fiscal impact	Up to \$390.0	No fiscal impact	Up to \$390.0	Nonrecurring	General Fund

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

Relates to House Bill 290, House Joint Resolution 11 and Senate Bill 357

### Sources of Information

LFC Files

Agency Analysis Received From  
 Office of the State Auditor  
 State Ethics Commission

Agency Analysis was Solicited but Not Received From  
 Department of Finance and Administration

## SUMMARY

### Synopsis of House Memorial 27

House Memorial 27 (HM27) directs the New Mexico Legislative Council to task an interim committee with developing legislative proposals for implementing a 2022 voter-approved exception to Article , Section 14, of the New Mexico Constitution, commonly known as the Anti-Donation Clause. The exception would allow the state to expend state funds or resources for essential residential services including internet, electricity, natural gas, water, and wastewater. The interim committee will determine the best methods for providing state assistance for these essential services while ensuring appropriate safeguards protecting public money and other public resources, with recommendations to be presented for the 2026 legislative session.

The interim committee will determine the most effective methods for providing state assistance for essential services throughout New Mexico by examining the following:

- Various structural options for administering assistance, including whether to establish a

bureau, department, or other entity type, and whether a single entity or multiple separate public entities would be most effective. The committee will also decide between starting with one essential service as a prototype or developing a comprehensive program covering all essential services simultaneously.

- Criteria determining which communities receive assistance, potentially based on poverty levels, the percentage of households without a particular utility service or some other condition. The committee will also consider whether local government matching funds should be required for projects.
- Accountability measures including whether legislative oversight should be conducted through an existing interim committee or through the establishment of a new interim committee.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

HM27 does not directly appropriate funding but instead directs the Legislative Council to task a committee with determining practical approaches for determining state funds to be used for essential services in anticipation of developing legislation.

HM27 will impact the operational budget of the New Mexico Legislative Council Services (LCS). According to LCS, implementing HM27 will require either the procurement of a professional contract consultant or hiring additional staff. Recent LCS professional service contracts demonstrate the potential financial impact. For instance, a 2023 contract for a focus group and study on legislative district staff cost \$391,600.

The State Ethics Commission, despite being responsible for enforcing the Anti-Donation Clause, anticipates no fiscal impact on their operations:

Under the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023) the Commission is tasked with enforcement of Article IX, Section 14. However, HM27 is not in and of itself enacting legislation nor does it otherwise impact the Anti Donation Clause directly or affect any other laws.

## SIGNIFICANT ISSUES

The State’s Ethics Commission confirms that HM27 is “not in and of itself enabling legislation for the most recent exception to the Anti-Donation Clause. However, without the enabling legislation that HM27 aims to propose for legislative consideration, the state will remain unable to spend funds under that exception.”

The Anti-Donation Clause was enacted to protect the public from imprudent pledges of credit and subsidies to private enterprises. Many New Mexico communities cannot access essential services due to prohibitive infrastructure costs, challenging geography, low population density, and income levels, making it economically unfeasible for utility providers to expand service networks without additional support.

The Office of the State Auditor (OSA) conducted a comparative analysis of anti-donation and

public money restrictions in Arizona, Texas, Oklahoma, Colorado, and Utah. The analysis revealed that Texas allows public funding of infrastructure improvements with voter approval, despite constitutional restrictions on public donations. Recently Texas voters approved propositions creating water and broadband infrastructure funds. In comparison to the other states studied, OSA’s analysis found that “New Mexico had the most detailed exceptions for public benefit programs.” The analysis suggests that as new publicly funded programs emerge, New Mexico will continue to address the state’s Anti-Donation clause limitations through voter approved exceptions.

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

HM27 relates to House Joint Resolution 11, which 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 voter approved exemptions to the Anti-Donation Clause.
- Replace voter approved exemptions with a broad exemption allowing public money donations to private persons or entities to accomplish a “public purpose”.
- Defines “public purpose” as something for the benefit of the public health, safety, or welfare.

HM27 relates to House Bill 290 (HB290), the enabling legislation for HJR11, otherwise known as the Vibrant Communities Act. If enacted HB290 will:

- Create the Vibrant Communities Program within the Department of Finance and Administration (DFA).
- Directs DFA to establish rules for the Vibrant Communities Program, ensuring the protection of public funds.
- Specify that public assistance is subject to legislative appropriation.

HM27 relates to Senate Bill 357, which establishes the Essential Services Development Act. If enacted SB357 will:

- Allow state support for infrastructure projects related to broadband, energy, water, and wastewater services, primarily in residential areas.
- Task DFA with overseeing projects, providing technical assistance, and setting project performance benchmarks and accountability measures.