

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Ortiz y Pino **ORIGINAL DATE** 03/10/09  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Anti-Donation Exemption for Non-Profits **SJR** 5  
**ANALYST** Kehoe

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)

Department of Finance & Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 5 proposes to request voter approval to amend Article IX, Section 14 of the New Mexico Constitution (anti-donation clause).

### FISCAL IMPLICATIONS

There is no fiscal impact at this time. If Senate Joint Resolution 5 is ratified by the voters, non-profit organizations would be eligible to compete for capital outlay funding sources available in future years.

### SIGNIFICANT ISSUES

Senate Joint Resolution 5 proposes to add an exemption to the clause to allow the state, a county, or a municipality, for less than fair-market consideration, to provide real estate, improvements, equipment or money to non-profit organizations that provide essential health or human services to the public on behalf of a county or municipal entity. To qualify for the exemption, the essential health or human services must be provided under contract between the county or municipality and the non-profit organization. The contracts must include the following: 1)

identify how the land, improvements, equipment or money will be used; 2) identify the specific essential health or human services that will be provided; 3) provide that upon termination or expiration of the contract, the real estate, improvements, equipment or unexpended monies would be returned; and 4) be approved by the state board of finance or its successor agency as provided by law.

The Office of Attorney General notes the following regarding the proposed Resolution:

“1. Although the return requirement upon contract expiration or termination recognizes the very real importance of the public body regaining control over its assets, it may prove difficult when the nonprofit or other private entities provide funding for improvements on land that is provided by a public body, or publicly funded improvements are made or equipment installed permanently on privately owned land under this exception.

2. Contracts under this exemption would still be subject to the Procurement Code process, and could only have 4 year terms for professional services or 8 year terms for other services, which could end up limiting what could be provided, due to the return requirement on contract expiration or termination.

3. Although the exemption appears to allow for providing money prior to performance of services, such a practice would conflict with section 13-1-158 of the Procurement Code, which generally does not allow for such advance funding.

4. The phrase “essential health or human services” is not defined, and could lead to differences of opinion as to what qualifies.

5. Allowing for money or other assets of the state or counties or municipalities, including cash, to be provided to private non-profits without requiring receipt of fair-market consideration may not be in the best fiscal interest of the state, particularly in a year in which the state is facing a shortfall of revenue and increased demands for basic services to members of the public due to the deteriorating economy.”

## **PERFORMANCE IMPLICATIONS**

Requiring the State Board of Finance (BOF) to approve contracts, regardless of the value of the contract, may increase the workload of BOF. The Department of Finance and Administration indicates the BOF currently only approves real property dispositions in excess of \$25,000 or longer than five years (NMSA 1978, Section 13-6-2.1). The Department of Finance currently approves dispositions of property valued at more than \$5,000, but below the BOF threshold (NMSA 1978, Section 13-6-2D).

## **ALTERNATIVES**

The Office of Attorney General suggests “if an exemption for this proposed is desired, draft language of exemption more generally, like those contained in re-lettered E and F of Article IX, Section 14 for economic development and affordable housing, and require implementing legislation like those exemptions, wherein more details and procedures could be provided.

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

Non-profit organizations will continue to provide services for the value which equals or exceeds fair market value of the property provided.

LMK/svb