

LFC Requester:

Felix Chavez

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/04/2025

Check all that apply:

Bill Number: HJR11

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Kathleen Cates  
Rep. Andrea Romero  
Rep. Christine Chandler  
Rep. Patricia Roybal Caballero

Agency Name and Code Number: 305 – New Mexico  
Department of Justice

Short Title: CHANGE  
ANTI-DONATION  
CLAUSE, CA

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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)

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

Section 1: House Joint Resolution 11 (“HJR11”) proposes the repeal and replacement of the Article IX Section 14 of the Constitution of New Mexico, also known as the “anti-donation” clause with the following language:

Neither the state nor any county, school district or municipality shall indirectly or directly lend or pledge its credit in the aid of or make a donation of public funds to a private person or private entity; provided that a donation to a private person or private entity may be made if the donation is used to accomplish a public purpose. As used in this subsection, "public purpose" means for the benefit of the public health, safety or welfare.

The provisions of this section are not self-executing. Before public funds are donated to a private person or a private entity, implementing legislation shall be enacted by a majority vote of the members elected to each house of the legislature."

Section 2: HJR11 proposes to amend Article 4 of the Constitution of New Mexico by repealing Section 31.

Section 3: HJR11 requires that the amendment proposed shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

Article IX, Section 14 of the New Mexico Constitution (the “anti-donation clause”) has been amended several times. Most recently, the 2022 Regular Session of the Legislature voted to add an exception to the anti-donation clause to authorize the legislature to appropriate state funds through a majority vote in each chamber for infrastructure that provides “essential services.” Such amendment was added in Article IX Section 14 (H) after a majority vote by the people.

The proposed repeal and replacement of HJR11 would broaden Article IX Section 14 by allowing for the donation of public funds or pledging of state debt or credit if a “public purpose” is accomplished. Such “public purpose” would mean the benefit of public health, safety, or welfare. However, because the provisions of the constitutional amendment are not self-executing, companion implementing legislation would be required. In this case, that companion legislation appears to be HB290 which proposes the “Vibrant Communities Act.”

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 department of finance and administration (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 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 is 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.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

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

This Bill is a companion to HB290. HB290 creates a “Vibrant Communities Program” through which the state can fund eligible private entities (specifically nonprofits designated as 501(c)(3) or 501(c)(12) organizations) perform “public purpose projects.”

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

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

Status Quo

#### **AMENDMENTS**

N/A