

LFC Requester: _____

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION
WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/05/2025 *Check all that apply:*
Bill Number: HJR11-341 Original Correction
 Amendment Substitute

Sponsor: Rep. Cates **Agency Name and Code** DFA-341
Short Title: CHANGE ANTI-DONATION **Number:** _____
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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)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Joint Resolution 11 (HJR 11) proposes significant amendments to the New Mexico Constitution. HJR 11 aims to provide flexibility for state and local governments to donate public funds to private entities for public purposes, contingent on legislative approval, and remove existing constitutional restrictions on such appropriations. The key points of the resolution are as follows:

- **Repeal and Replace Article 9, Section 14:**
 - Section 14 of Article 9, which currently restricts the state, counties, school districts, and municipalities from lending or pledging credit or making donations of public funds to private persons or entities, will be repealed.
 - A new Section 14 will be added, allowing such donations if they serve a public purpose, defined as benefiting public health, safety, or welfare.
 - The new provision requires that before any public funds are donated to private persons or entities, implementing legislation must be enacted by a majority vote in each house of the legislature.
- **Repeal Article 4, Section 31:**
 - Article 4, Section 31, which prohibits appropriations for charitable, educational, or other benevolent purposes to persons or entities not under the complete control of the state, will be repealed.
- **Submission to Voters:**
 - The proposed amendments will be submitted to the people of New Mexico for approval or rejection at the next general election or any special election called for this purpose.

FISCAL IMPLICATIONS

- HJR11 does not have any direct fiscal impacts. Any indirect fiscal impacts of HJR11 will depend on the passage of the constitutional amendment by voters and the passage of HB290.

SIGNIFICANT ISSUES

- Currently, the New Mexico Constitution Article XI Sections 14 and Article IV Section 31 public funds cannot be appropriated to private entities or donated to private entities

without an explicit exception.

- The inclusion of financing for non-government entities, including nonprofit organizations, may impact severance tax and general obligation bonds issued by the State Board of Finance.
- Utilizing tax-exempt bond proceeds to fund private organizations' projects creates risk for the state that the bonds' tax-exempt status may be forfeited. The state may unwittingly have its tax-exempt bond portfolio converted to private activity bonds.
 - To retain their bond's tax-exempt status, potential recipients must meet the requirements of Section 145 of the Internal Revenue Code; a governmental unit must own the property financed with tax-exempt bonds; and the Private Business Tests and the Private Loan Financing Test must not be met.
 - Potential recipients must ensure compliance with federal requirements for the project and useful life of the asset, including restrictions on private use, reimbursements, spend-down requirements, and monitoring to ensure that the items funded with such proceeds continually serve a “governmental purpose.”
 - If potential recipients or their activities fail to meet the standards above (at any time during the useful life of the asset), the tax-exempt status of the bonds will be forfeited.
 - A determination by the IRS that tax-exempt bonds previously issued are not eligible for tax-exempt treatment will have a dramatic negative effect on the state’s bonding programs and likely subject the state to litigation by holders of those bonds.
- Governmental Limitations of Liability and Indemnification:
 - Currently, Article IX Section 14 prohibits governmental entities from limiting the liability, providing insurance, or providing indemnification for private entities.
 - If passed and enacted, HJR 11 would remove this prohibition and allow governmental entities to provide private companies with limitations of liability, insurance, and/or indemnification for “public purposes.”
 - Based on the broad definition of public purpose in HJR 11, conceivably, public entities will be required to provide insurance, limitations of liability, and indemnification for potential recipients under HB290, not to mention contractors, vendors, and other entities performing public purpose projects on behalf of the state.
 - This change potentially represents an unprecedented change in the state's governmental entities’ liability profile.

PERFORMANCE IMPLICATIONS

- **Public Purpose Monitoring:** Due to the broad definition of public purpose proposed by HJR11, depending upon the types of projects proposed and funded, DFA anticipates governmental entities having difficulty evaluating the value of proposed public purposes and ensuring the public purpose of an approved project is effectuated.
 - While approved public projects may be well-intended and anticipated to accomplish a public purpose, they may ultimately not produce any benefit to the public. If no public benefit is achieved, how will governmental entities ensure the project complies with HJR11's proposed changes to Article IX Section 14?

ADMINISTRATIVE IMPLICATIONS

- Overall, HJR 11's administrative implications involve significant planning, coordination, and resource allocation to ensure that the new provisions are implemented effectively and transparently.
 - **Oversight and Regulation:**
 - The state, counties, school districts, and municipalities will need to establish oversight mechanisms to ensure that donations of public funds are used for the intended public purposes (public health, safety, or welfare). This could involve setting up new administrative bodies or expanding the roles of existing ones to monitor and evaluate the use of donated funds.
 - **Administrative Costs:**
 - Implementing the new provisions will likely incur administrative costs related to drafting and passing the necessary legislation, as well as ongoing costs for oversight and compliance. These costs could include staffing, training, and resources needed to manage the donation process and ensure accountability.
 - **Policy Development:**
 - Government entities will need to develop clear policies and guidelines to determine what constitutes a "public purpose" and how to evaluate and approve donation requests. This may involve consultations with legal, financial, and policy experts to ensure that the guidelines are robust and transparent.
 - **Reporting and Transparency:**
 - There will be a need for regular reporting and transparency measures to keep the public informed about the donations made and their impact. This could involve publishing reports, maintaining public records, and

providing updates to the legislature and the public.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- **Public-Purpose Definition:**

- Both HJR11's definitions of "public purpose" directly conflict with the federal government's definition of "valid governmental purpose" for the purpose of issuing tax-exempt bonds.
 - Any enacting legislation under HJR11 must address how "public purposes" create eligibility for funding and ensure compliance with the federal government's definition of valid governmental purpose for which tax-exempt bond proceeds may be used.

- **Disposal of Property:**

- Under federal tax regulations, a qualified entity must hold assets purchased with the proceeds of tax-free bonds. The same rules relating to the disposition of property must be applied to non-governmental entities receiving tax-exempt bond proceeds.
 - The sale or disposition of bond-financed property by private entities could violate Section 145(a) of the Internal Revenue Code.
 - Additionally, changes in federal use rules also would need to be imposed on private entities benefitting from tax-exempt bond proceeds.
- Currently, the sale, disposal, lease, or other disposition of tangible personal and real property by governmental entities is governed by NMSA 1978, §§ 13-6-1 to 13-6-8. Private entities are not included in this statutory scheme.

TECHNICAL ISSUES

N/A.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

- Government entities will still be allowed to fund public-purpose projects by non-profit entities. Governmental entities remain responsible for ensuring such projects meet an existing exemption to Article IX Section 14 or the governmental entity receives more

significant benefit than the private entity.

AMENDMENTS

N/A.