

LFC Requester: _____

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(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: 2/7/25 *Check all that apply:*
Bill Number: HJR 11 Original Correction
 Amendment Substitute

Sponsor: Cates, Romero, Chandler, Roybal-Cabellero **Agency Name and Code** OSA - 308
Short Title: CHANGE ANTI-DONATION CLAUSE, CA **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$2,005.86	Recurring	General Fund – OSA Operations
	????	Recurring	General Fund – DFA Grants to Non-profits

(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	\$2,005.86	\$2,005.86	\$2,005.86	\$6,017.58	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Joint Resolution 11 (HJR 11) proposes to repeal the Anti-Donation Clause (Article 9, Section 14 of the State Constitution), and the constitutional provisions prohibiting charitable, educational, and benevolent appropriations to a person or entity not under full control of the state (Article 4, Section 31.). HJR 11 replaces these provisions with language allowing the state, a county, school district, or municipality to make donations of public funds to private persons or entities if the donation is used to accomplish a public purpose. HJR 11 tries to tie the constitutional provision to legislation governing public purpose donations.

FISCAL IMPLICATIONS

The Office of the State Auditor opposes this joint resolution and its companion bill House Bill 290 (HB290). If HJR 11 and HB 290 were to pass into law, a little known provision of the Audit Act would trigger and potentially greatly expand the scope of the Office of the State Auditor's work (see significant issues).

To try and estimate the cost to OSA operations is extremely challenging but is likely to be significant. No state government entity keeps a count of all non-profit entities in the state. According to one website, CauseIQ.com (<https://www.causeiq.com/directory/new-mexico-state/>) there are 11,883 nonprofit organizations in New Mexico. To try and construct a number, the OSA used that information on counts and compared it to the last program to audit private organizations that was placed upon the OSA (without adequate resources provided to the office) – the Conservatorship program. In FY22, the conservatorship program reviewed 1,309 cases. If just 25% of all non-profit organizations were to be awarded grants for which the OSA had to perform audits, workpaper reviews, audit reviews, oversee and negotiate financial audit contracting and completions and other work, then we estimate 2,950 additional entities would need to have an audit or agreed-upon procedure enacted, or 225% of the current conservatorship program.

OSA currently estimates the cost of the 5.6 FTE dedicated to the conservatorship program to cost OSA \$711,862.97 yearly in recurring personnel services and benefits costs for which we had to absorb out of our budget. Using this as a point of comparison, the OSA conservatively estimates a new non-profit audit division to cost \$1,604,682.70 in personnel services and benefits alone. Adding in other contractual, other financing and other categories at a total of 25% of the personnel services and benefits estimate we figure that a conservative (erring low) estimate of potential impacts to the OSA is \$2,005,853.38 in recurring General Fund costs. The true amount of financial impact is not able to be known without knowing the true scope of the size of non-profits in the state, the amount of grants given or the materiality (amounts) of the grants. True costs could be much, much higher if the size and scope of non-profits were to increase above 11,883. OSA cannot absorb this size of cost in its budget as an unfunded mandate.

The OSA was given one time funding of 1.5 FTE at passage of the new Conservatorship program and has had to absorb the cost of the program from existing budget and staff – largely Financial Audit Division staff. This has limited our ability to meet audit review performance metrics, constrains the audits we can do to build up the Audit Fund and be less reliant on the general fund for operations, and otherwise oversee state finances. OSA has deep concerns that HJR 11 and HB 290 will create new, unfunded mandates.

Whereas neither HJR 11 nor its companion bill, HB 290 carry an appropriation, it is unable to be determined how much funding would be made available to private persons for grants for public persons. It could be significant if it is left open-ended and the state creates incentives to start non-profit organizations on the taxpayer's behalf.

SIGNIFICANT ISSUES

Under the definition of agencies (see below) we audit under the Audit Act, charitable organizations receiving appropriations from the legislature are part of the purview of the Office of the State Auditor. This provision has never been triggered due largely to the anti-donation clause. However, if the anti-donation clause were to be repealed the increase in scope of publicly funded charitable organizations could further stress the limited existing resources of the OSA to oversee, perform and review annual financial audits. The OSA would need significant additional human resources to tackle the new mandate as discussed under fiscal implications.

The definition occurs in 12-6-2 A. NMSA 1978 which reads: "agency" means: any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and *charitable institutions* for which appropriations are made by the legislature [*emphasis added*].

PERFORMANCE IMPLICATIONS

OSA compared the anti-donation or public money restrictions in the state constitutions of Arizona, Texas, Oklahoma, Colorado, and Utah with the anti-donation clause in New Mexico. Among the commonalities were the following: all states prohibit the use of public funds for private benefit without clear public purpose, but exceptions are typically allowed for public purposes or specific programs. Many had restrictions on lending credit and making donations are prevalent. Notable differences include:

- Arizona and Colorado have specific provisions for investment and energy development through broader investment strategies like New Mexico's State Investment Council;
- Texas allows for infrastructure improvements with voter approval;
- Oklahoma and Utah emphasize restrictions on sectarian use of public funds;
- New Mexico already has the most detailed exceptions for various public benefit programs.

If New Mexico is already an outlier in carve outs for public programs compared to neighbor states it is unclear why we would go further. In the opinion of OSA, the risk to future redirection of public dollars to private individuals outweighs the benefits of subsidizing new and existing nonprofit organizations.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The OSA believes the provisions of HJR 11 and HB 290 create strong incentives for entities to incorporate as a non-profit instead of seeking public policy through government or incorporating as a private entity. If liquid and start-up capital is available via public funding we could see many entities re-incorporating as non-profits. HJR 11 itself does not define who would be screening all of these, but its companion bill HB 290 requires qualifying entities to “demonstrate” they have a non-profit status to the Department of Finance and Administration (DFA) and presumably it would be up to DFA to determine how to implement the vague qualifying language in HJR 11 of being for a public purpose – meaning for the benefit of the public health, safety or welfare.

Determining the criteria seems very subjective and the companion bill, HB 290 does little to clarify the criteria making an appeal to DFA’s judgement on “demonstrated need in the community” and “proposed safeguards to ensure responsible use of public assistance.” In practice, these are private organizations for which DFA has no existing oversight responsibilities and it can do little to safeguard the use of any public funds outside of the contract remedies discussed in the companion bill HB 290 causing DFA to really increase its contract law capacities. The size and scope of the contracting apparatus this would take at DFA is unprecedented – perhaps similar to the old CYFD Pre-K contracts or private prison contracts at Corrections on a much larger scale. This all assumes that HB 290 passes, remains in place and isn’t replaced by new legislation redirecting the flow of public dollars to private entities with new programs by future administrations/Legislatures.

It is worth noting that HJR11 does indicate that the constitutional amendment is not self-executing – that “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.” However, there is nothing to prevent future policymakers to repeal and replace the provisions of HB 290 with legislation that argues that it is for the benefit of the public health, safety or welfare of the state to public finance private extractive industries that need government subsidies or any other private interest that can make an argument that their private industry is for the benefit of the public health, safety or welfare of the state.

The true scale of potential future redirection of public wealth from critical government services like education, public health or ensuring public safety to private entities is unknown. What starts as a well-intentioned bill to fund private nonprofit organizations could be used to fund private individuals or large corporations very quickly if political winds were to change.

ALTERNATIVES

Keep the prohibitions of directing public funds directly to private persons in place in our state constitution and provide additional better carve-outs for public interests or create flow-through competitive grants through the agencies for public purposes.

Another option would be to explore repealing the charitable organizations section of the definition of agencies in the Audit Act and have less government oversight of public money deferring to a future DFA contract arm.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The state will not enrich and fund private individuals and their causes with public funds.

AMENDMENTS