

LFC Requester:

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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SECTION I: GENERAL INFORMATION

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

Check all that apply:

Date Prepared: 2/8/2025

Bill Number: H290-341

Original ☒ Correction ☐

Amendment ☐ Substitute ☐

Agency Name

and Code

DFA-341

Number:

Sponsor: Rep. Romero

Short VIBRANT COMMUNITIES

Title: ACT

Person Writing George Hypolite

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicates expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicates revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$3,014.30	\$3,014.30	\$3,014.30	\$9,042	R	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HJR 11
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 290 (HB290) aims to create the Vibrant Communities Program, which will provide public assistance to qualifying entities for the completion of public purpose projects, contingent upon the passage of HJR11 and subsequent legislative appropriations. HB290 will provide financial support to nonprofit organizations that deliver services and facilities to the public.

- **Key Sections of the Bill:**
 - The legislature acknowledges the essential contributions of nonprofit organizations in providing services that the state cannot afford.
 - It recognizes the tangible benefits these organizations offer to the state and its residents.
- **Creation of the Vibrant Communities Program:**
 - Establishes the program within the Department of Finance and Administration.
 - The Department of Finance and Administration (DFA) is tasked with creating rules to ensure the protection of public funds and administering the program as per legislative appropriations.
- **Preliminary Applications and Legislative Recommendations:**
 - DFA will be required to solicit preliminary applications from qualifying entities for public assistance annually.
 - Applications must include details about the public purpose, expected outcomes, benchmarks, population served, involved parties, requested assistance, conflict-of-interest statements, and other necessary information.
 - By April 30 each year, DFA must review applications and provide a list of proposed projects to the legislature and governor.
- **Approval and Terms:**
 - The legislature will appropriate funds for specific projects.
 - DFA will enter into contracts with qualifying entities, ensuring compliance with state, local, and federal laws.
 - Contracts will include terms for compliance, reporting, financial plans, and other necessary protections for public funds.
- **Project Completion and Termination:**
 - Upon completion of a project, the qualifying entity must notify the department 60 days prior and ensure all contracts and obligations are satisfied.
- **Reporting:**
 - DFA must submit an annual report detailing the public assistance

provided, the status of projects, services being provided, and any recommended changes to the act.

- **Contingent Effective Date:**

- The act will become effective upon certification by the secretary of state that the New Mexico Constitution has been amended to allow donations of public funds to private entities for public purposes.

FISCAL IMPLICATIONS

- HB290 will significantly impact the administrative operations of the Department of Finance and Administration, specifically its Infrastructure Planning and Development Division, Administrative Service Division, Financial Control Division, and Board of Finance.
 - HB290 may have an additional fiscal impact depending on the specific appropriations made by the legislature and the number and scope of projects approved.
- **Administrative Costs:** DFA will incur costs related to administering the program, including soliciting applications, reviewing and approving projects, entering into contracts, ensuring compliance, and providing financial oversight for the expenditure of state funds.
 - **New Division:** Due to the potential volume of applications and review requirements, managing required activities under HB290 will take upwards of 15,296 work hours per year. Therefore, DFA anticipates requesting the legislature grant authority to create a new division within DFA with 8 total FTEs (1 Director, 1 Deputy Director, and 6 staff).
 - DFA will also require an Inspector General (IG) or internal auditor because of the complexity of matching state fiscal practices with non-profit fiscal practices to ensure the state's audits or bond ratings are not negatively affected.
 - Other costs will include \$500,000 for contractual services and \$100,000 for initial SHARE discovery and development. Once discovery is completed, the SHARE development amount may increase.
 - Until DFA can secure the required new division and staffing, DFA anticipates the following impacts on its current divisions:
 - ASD: DFA estimates its Administrative Services Division will require 100 additional work hours per year at a cost of \$6,500 (100 x \$65 per hour) for payment processing and procurement oversight.
 - IPDD: DFA estimates its Infrastructure Planning and Development Division will need to develop program policies and lead the efforts, in collaboration with legal, to establish and review program criteria. IPDD

will require 1,912 work hours at a cost of \$150,260 (1 new FTE) to help develop the criteria and oversee the process that will determine eligibility and project readiness.

- FCD: DFA estimates its Financial Control Division will require an additional 200 work hours per year, totaling \$664,206 (200 hrs. x 3,321.03 cost per hr.), for oversight duties related to employee payroll, auditing and approval of purchases and procurement, and additional accounting and auditing work required to prepare the state ACFR.
- BOF: The State Board of Finance (BOF) will need to establish a new pre-issuance review process for capital project review to determine whether nonprofit projects do/do not meet federal IRS tax requirements for the issuance of tax-exempt bonds.
 - Further, BOF will need to revise its post-issuance compliance policy and implement a thorough post-issuance process to ensure that nonprofit projects continue to comply with IRS tax regulations for the life of the asset (possibly decades). This will require extensive staff hours to review the status of projects, including private use regularly, spending down, asset disposition, and continued use of the asset for a “governmental purpose.” This process would be in addition to the process employed by IPDD and/or the new division.
 - BOF anticipates 3,824 additional work hours at a cost of \$201,260 (2 new FTEs) to implement these administrative requirements.
- **Reporting and Oversight:** The requirement for annual reporting to the governor, legislature, and legislative finance committee will involve additional administrative efforts and costs to compile and present the necessary information.
 - DFA anticipates that setting up a system to collect and provide reports for projects will take roughly 60 hours and cost the state \$250,000.
 - DFA anticipates setting up a risk assessment module to transmit assigned risks to entities and projects, which the legislature will use to appropriate funds under HB290. DFA anticipates system development costs of \$250,000.
- **Legal and Compliance Costs:** Ensuring compliance with the terms of the contracts, including potential legal remedies in case of breaches, will also have associated costs.
 - DFA anticipates additional legal and compliance reviews of non-profit entities, proposed projects, and use/dispositions of acquired tangible personal property and real property will take approximately 4,780 work hours per year.
 - DFA anticipates a fully burdened cost for legal services to range between \$150 and \$475 per hour. As a result, DFA anticipates additional legal and compliance costs associated with HB290 of \$1,492,077 (\$312.15 x 4,780 work hours).

- DFA's base budget does not include any of the estimated administrative costs for implementation of HB290. HB290 does not make any administrative appropriations to cover these estimated costs.

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 and HB290 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 and HB290, 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.
- If enacted, HB290 could reduce funding for local entities and state agencies for many current programs and services for New Mexicans.

PERFORMANCE IMPLICATIONS

- **Public Purpose Monitoring:** Due to the broad definition of public purpose proposed by HB290, depending upon the types of projects proposed and funded, DFA anticipates 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 was achieved, how would DFA ensure the project complies with HJR11's proposed changes to Article IX Section 14?
 - HB290 does not identify or provide any process for evaluation of public benefit from a public purpose project or set a minimum public benefit a project must meet to qualify for HJR11's proposed exemption to Article IX Section 14.
 - It is also likely that there will be broad discrepancies across communities in the state regarding initiatives that benefit the public.

ADMINISTRATIVE IMPLICATIONS

- Overall, HB290's administrative implications involve significant responsibilities for the DFA in terms of program management, application processing, contract administration, compliance monitoring, financial oversight, and reporting.
 - These tasks will require adequate staffing, resources, and coordination to ensure the effective implementation and management of the Vibrant Communities Program.
- Here are the key administrative responsibilities and implications:
 - **Program Creation and Management:**

- DFA is tasked with creating and managing the Vibrant Communities Program.
 - This includes developing and promulgating rules necessary to implement the provisions of the Vibrant Communities Act and ensure the protection of public funds.
- **Application Process:**
 - DFA must annually solicit preliminary applications from qualifying entities seeking public assistance for public-purpose projects.
 - DFA will need to design and provide application forms and determine the necessary information required from applicants.
- **Review and Recommendation:**
 - DFA is responsible for reviewing and vetting preliminary applications by April 30 each year.
 - This will require a significant amount of resources in DFA to be diverted to review applications during the legislative session and bill signing period.
 - DFA must compile a list of proposed public purpose projects that comply with the application process and requirements and provide this list to the legislature and governor.
- **Contract Management:**
 - Upon legislative appropriation and authorization, the DFA will enter into contracts with qualifying entities to provide public assistance.
 - DFA must ensure that contracts include all necessary terms to protect public funds, including compliance with applicable laws, reporting requirements, financial plans, and security measures.
- **Monitoring and Compliance:**
 - The DFA must monitor the progress of public purpose projects and ensure that qualifying entities comply with the terms of their contracts.
 - This includes ongoing reporting on the projects' progress and outcomes and ensuring compliance with the Governmental Conduct Act and the Audit Act. Additional significant engagement of bond and, particularly, tax counsel will be required on a project-by-project basis when tax-exempt bonds are used to finance projects to ensure continued compliance with IRS tax regulations.
- **Legal and Financial Oversight:**

- The DFA may need to pursue legal remedies in the event of a breach of contract by a qualifying entity.
 - DFA must also manage financial aspects, such as ensuring the proper issuance of public assistance, repayment of debts, and maintaining liens or reversionary interests in property as applicable.
- **Reporting:**
 - DFA is required to submit an annual report to the governor, legislature, and legislative finance committee.
 - The report must detail the total amount of public assistance provided, the status of public purpose projects, the types of services being provided, and any recommended changes to the Vibrant Communities Act.
- **Coordination with Other Entities:**
 - DFA may need to enter into agreements with other state agencies and local governments as necessary to facilitate the implementation of the program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- **Public-Purpose Definition:**
 - Both HJR11 and HB290’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.
 - According to 26 U.S.C. § 141, a bond is considered a private activity bond if more than 10 percent of the proceeds are used for private business use or if more than 10 percent of the payment of the principal or interest is secured by or derived from private business use.
 - Private business use is defined as use in a trade or business carried on by any person other than a governmental unit, and government use is defined as any use other than private business use.
 - Additionally, 26 C.F.R. § 1.148–1 provides that amounts previously invested in eligible tax-exempt bonds can be used for expenditures for a governmental purpose if the issuer has no other available amounts for such purpose.
 - These regulations have been interpreted to mean a “valid governmental purpose” is an expenditure necessary for the functioning of government where no other funds are available, that does not contemplate a 10 percent private business use or is not secured by or derived from 10 percent of funds from private business use.

- HJR11 and HB290’s definition of “public purpose” is defined as for the benefit of the public health, safety, or welfare. However, under federal law, “valid governmental purpose” in the expenditure of tax-exempt bonds is an expenditure necessary for the functioning of government, where the government has no other funds available for the purpose, and any private business use does not exceed 10 percent of the proceeds from the bonds.
 - Therefore, under HJR11 and HB290, an expenditure of tax-exempt bond proceeds may meet the definition of public purpose by a demonstrated benefit to the public health, safety, or welfare of New Mexicans.
 - Yet, a public purpose expenditure to a non-profit entity may contemplate a private business use or be secured by or derived from a private business use exceeding (individually or collectively) 10 percent of tax-exempt bond proceeds and/or not be necessary for the functioning of government.
 - HB290 does not address how “public purposes” creating eligibility for funding under the Vibrant Communities Program will 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.
 - HB290 does not identify or provide any scheme to govern the sale, disposal, lease, or other disposition of tangible personal or real property purchased using an appropriation under the Vibrant Communities Program.

TECHNICAL ISSUES

- DFA will need to develop a new module for SHARE to accommodate the administrative functions noted above.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

- Without the passage of HB290, governmental 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.