

Anti-Donation Clause Brief

Goal

Make the anti-donation clause easier to understand. Maintain protections against fraud in financial decisions. Broaden the pool of fundable entities to increase New Mexico's capacity to address critical issues through the public, private, and social sectors.

Background

The anti-donation clause was intended to protect state funds and assets for the people of New Mexico. Too often, the anti-donation clause has been a barrier to state resources being put to use to help the people of New Mexico.

The anti-donation clause was included in New Mexico's founding constitution. The language dates back to the 1870s ("The Anti-Donation Clause," presentation to the NMFA Oversight Committee, August 30, 2022 by Jeremy Farris, Director of the State Ethics Commission).

Proposed Solutions

Modernize the anti-donation clause to make it workable, while maintaining safeguards for state assets.

- **Joint resolution to modernize Article IX, Section 14**
 - Clarify the language
 - Incorporate and expand the current exemptions
 - New exemptions for disaster relief and community well-being
 - Maintain safeguards for state assets
 - Repeal Article IV, Section 31
 - which prohibits state funds from being given to any non-governmental entity: "No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state..."

- **Enabling legislation: the Vibrant Communities Act**
 - Outlines the process for charitable nonprofits to access state funds
 - Project applications to be reviewed by the Vibrant Communities Council with recommendations for funding to be given to the legislature.

Implications and Consequences

The joint resolution will:

- Clarify that whenever there is contract with an exchange of value, it does not engage the anti-donation clause
- Bring scholarship programs and loans to students under one exemption
- Maintain LEDA, the Housing Authority Act and the new infrastructure exemption for essential household services
- Allow for funding to charitable nonprofits beyond care and maintenance of the sick and indigent to projects for community well-being
- Add an exemption for disaster relief assistance to individuals, business, and charitable organizations
- The repeal of Article IV, Section 31 will:
 - Eliminate some of the burden placed on local governments through the anti-donation clause and Article IV, Section 31
 - Make possible the option of funds to flow directly to charitable nonprofits when they are able to follow government guidelines (e.g., audit requirements, procurement guidelines, open meetings act)
 - Make possible the ownership-in-trust of assets paid for with state funds as long as the assets are used to serve communities

The Vibrant Communities Act will:

- Outline the process which was developed in conjunction with the Department of Finance and Administration, the Counties Association, the Council of Governments Association and nonprofit leaders
- Ensure communication with legislators, local governments and state agencies
- Specify the eventual disposal of assets should the charitable organization cease to exist or cease to serve a charitable purpose
- Create a Vibrant Communities Council to review and vet projects before presenting funding recommendations to the legislature
- Require at least one additional staff person for the Department of Finance and Administration