

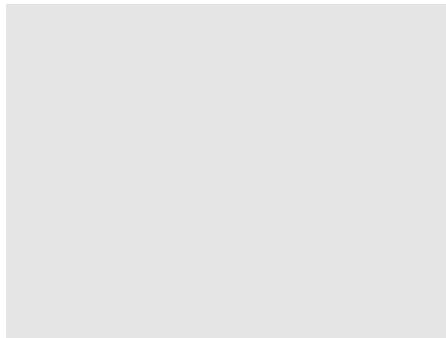
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Lawmakers propose major overhaul to New Mexico's anti-donation law

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Nov 28, 2024



Jerry Ortiz y Pino

New Mexico's anti-donation law is rooted an issue that predates statehood, harking back to when the Land of Enchantment was a territory.

At the time, concerns ran high about the potential for the government to fund the economic interests of the burgeoning and dominant railroad industry, state Rep. Kathleen Cates, a Rio Rancho Democrat, told fellow lawmakers earlier this month.

It was commonplace, she noted, for states in the Western U.S to have such a law on the books, "to ensure that our government, our taxes weren't going to the railroads."

The provision, known as the anti-donation clause in the New Mexico Constitution, prevents state and local government entities, including the Legislature, from giving donations to nonprofits and other private organizations and individuals as a precaution against corruption. While the more than century-old provision continues to serve a critical purpose, Cates and other lawmakers believe needs an overhaul.

“It was a very good idea back then. But through the years and the complexities, the states have all adjusted their anti-donation clause. We are the only one that has stayed with our antiquated amendment to our constitution,” Cates said.

She and outgoing state Sen. Jerry Ortiz y Pino, D-Albuquerque, presented a proposal to amend the article of the constitution that includes the anti-donation clause to the legislative Courts, Corrections and Justice Committee on Nov. 13.

Cates and Ortiz y Pino argued the existing provision prevents or complicates a number of initiatives the Legislature would like to undertake, particularly in the capital outlay process.

“It’s restricting how public monies can be used to help people in this state,” Ortiz y Pino said. “The whole point of this is to make it easier for New Mexico to help the people of the state who have needs.”

In the past, the anti-donation clause has hindered a number of state and local government initiatives, even leading the city of Santa Fe to stop funding the popular Hometown Heroes banner program, which honors local military veterans, over concerns the use of the money would violate the state law.

Under the proposed broadening of the law, the state government would be able to “use public funds for a public purpose” and “invest in public and private partnerships,” meaning it could make donations or fund nonprofits for specific projects and initiatives that meet required criteria.

The proposed amendment wouldn’t be the first change to the law. There have been several amendments and multiple exemptions to the anti-donation clause over the years, and since 1912 there have been about 30 judicial opinions applying the clause, according to a New Mexico Finance Authority Oversight Committee record from 2022.

A bill that would be paired with a resolution proposing a constitutional amendment — which requires voter approval — outlines guardrails for the changes.

“The enabling legislation spells out a procedure by which nonprofits would apply,” Ortiz y Pino said in an interview. “Their proposals would be vetted by a committee, and then the committee would then make recommendations to the Legislature for which ones should be funded.”

Currently, the state can have service contracts with nonprofit organizations and private companies, Ortiz y Pino said, but under the proposed changes, the state or a local government could send money directly to private entities for projects that serve a public purpose — for instance, to purchase vehicles or to fix a leaky roof on a homeless shelter. This would cut down on the administrative burden at the local level, he said.

To work around the anti-donation clause, local governments must now act as fiscal agents for nonprofits.

Lawmakers on the Courts, Corrections and Justice Committee stressed the importance of having strong provisions meant to guard against corruption if the Legislature wants to meaningfully change the anti-donation clause.

“I’ve struggled with this bill because I think I probably have the most nonprofits of any legislative district in the state here in Santa Fe,” said Senate Majority Leader Peter Wirth, a Santa Fe Democrat. “... Every nonprofit is set up, and they think they can do it best. If I’ve got 400 lined up in front of my office, how in the world do I determine what makes sense and how I should allocate?”

Wirth said, “The guardrails are super important,” adding he is “very open” to the proposal and will “look carefully at the enabling statute.”

The constitutional amendment would have to be put to a statewide vote. Unless a special election is called, the next opportunity will be the November 2026 general election.

During the Nov. 13 meeting, Ortiz y Pino provided an example of how the anti-donation clause has been a hindrance, citing services for women and families affected by domestic violence. Most counties and cities don’t have a specific department to address domestic violence and rely on nonprofits, he said, which are funded through a contract.

But if the facility for that nonprofit needs plumbing changes or a new electrical system or a new roof, the city or county would have to take ownership of the facility in order for state funding to go directly to the project.

“And that’s the dilemma,” Ortiz y Pino said. “And it’s not just legislative money. Local government money can’t go to it, either.”

The enabling legislation for the move would be called the Vibrant Communities Act. It outlines the application process for requesting public funds, the review process for vetting requests and making recommendations to the Legislature, and the agreement for the use of funds and ownership of assets, according to the presentation.

The measure was developed with input from legislators, local governments, nonprofit leaders and the Department of Finance and Administration, according to the presentation.

Sen. Moe Maestas, D-Albuquerque, expressed his support.

“It just drives me crazy when in committee somebody says, ‘This violates the anti-donation clause’ and the entire room just gets deflated and we just kind of move on to the next bill,” Maestas said, adding he believes the proposed change to the law would allow the state to provide government services more efficiently through nonprofits.

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Reporter