

# AMENDING THE ANTI-DONATION CLAUSE

## ARTICLE IX, SECTION 14

- Repeal the current Anti-Donation Clause
- Replace it with public funds must be used for a public purpose
- Legislature maintains control through the power of appropriation
- Enabling legislation provides checks and balances

# REPEALING ARTICLE IV, SECTION 31

- The proposed constitutional amendment includes repealing Article IV, Section 31
- Section 31 limits appropriations to entities “under the absolute control of the state” which complicates working with charitable nonprofits in service of our communities
- Section 31 places a burden on local governments to own buildings and assets for nonprofits

# GOALS

- To make it easier for New Mexico to help New Mexicans
- To make it possible for the state to invest in public/private partnerships, baby bonds, or to provide disaster relief
- To make it easier for government and nonprofits to work together in service of our communities
- To make it easier for cooperatives to access public funds and increase their ability to grow food

# PERSPECTIVE

- 44 other states have anti-donation or anti-gift clauses (NMFA 08292022 Item 7 Oversight Anti-Donation Farris)
- Only New Mexico interprets it in a way that complicates government functioning
- Other states have through statute or judicial ruling made their anti-donation or anti-gift clause workable (LCS Anti-Donation Research 2024)

# IN NEW MEXICO

- Government provides capital outlay funds to charitable nonprofits to enhance/expand their capacity to serve communities
- The process is complicated, costly, and slow
- To work around the Anti-Donation Clause and Article IV, Section 31, local governments must act as fiscal agents for nonprofits
- Not all local governments have the capacity to act as fiscal agents
- The Anti-Donation Clause prevents or complicates a number of initiatives that government would like to undertake

# ENABLING LEGISLATION: VIBRANT COMMUNITIES ACT

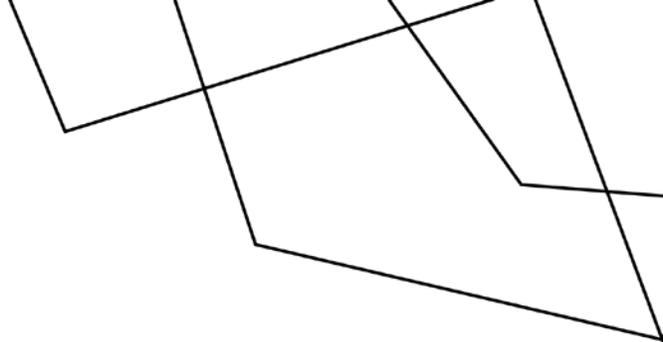
- Provides the guardrails by
  - Defining eligible entities:
    - 501(C)(3) charitable nonprofits and 501(C)(12) cooperatives
  - Outlining:
    - The application process for requesting public funds
    - The review process for vetting requests and making recommendations to the legislature
    - The agreement for the use of funds and ownership of assets

# ENABLING LEGISLATION

- Enabling legislation only goes into effect if the constitutional amendment is passed
- The draft was developed with input from
  - Legislators
  - Local governments: counties and COGs
  - Department of Finance and Administration
  - Legislative Council Services
  - Nonprofit leaders

# OTHER CONSIDERATIONS

- The constitutional amendment must be put to the vote by the general electorate; unless a special election is called, the next opportunity will be November 2026
- Anticipated FIR budget impacts:
  - Cost of the ballot measure
  - Cost of additional staff for DFA



# DISCUSSION