

LFC Requester:

**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

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

Check all that apply:  
**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** 2/17/25  
**Bill No:** HJR 2

**Sponsor:** Rep. McQueen /Sen. Cervantes  
**Short**    Eliminate Pocket Vetoes, CA  
**Title:** \_\_\_\_\_

**Agency Name and Code**    GOV-356  
**Number:** \_\_\_\_\_  
**Person Writing**    Kyle Duffy  
**Phone:** 505-476-2210    **Email** Kyle.Duffy@exec.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	NFI	NFI
NFI	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	NFI	NFI	35-50	NFI	Indeterminate	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis of original bill: House Joint Resolution 2 proposes a constitutional amendment to amend Article IV, Section 22 of the Constitution to: (1) change references to the Governor to gender neutral format and make minor stylistic changes, (2) strip the Governor of her pocket veto authority, and (3) force the Governor to provide an explanation for each veto.

Synopsis of House Judiciary Committee (HJC) amendment: The HJC amendment changes the title and strikes the word “an” prior to “explanation” and replaces it with “a substantive” so that the governor shall include a “substantive explanation” for a veto.

#### **FISCAL IMPLICATIONS**

Indeterminate.

#### **SIGNIFICANT ISSUES**

House Joint Resolution 2 is an attempt to disrupt the balance of power between the branches of New Mexico’s government by proposing an amendment that would reverse the language in Article 4 Section 22 of the New Mexico Constitution creating the power of the “pocket veto,” which has been in place for over 100 years, and which is bestowed upon many other governors and the President.<sup>1</sup> House Joint Resolution 2 infringes upon the Governor’s veto power by removing the Governor’s discretion to sign, formally veto, or pocket veto a bill presented in the last three days of the legislative session and requiring the Governor to provide a written explanation for every veto. This is ill advised, as there may be number of reasons for a governor to choose to pocket veto a bill rather than formally veto it. For example, the pocket veto allows the Governor to disapprove of legislation based on unforeseen issues without being compelled to publicly disclose sensitive information in a veto message.

The pocket veto also serves the vital purpose of ensuring that the Governor has a suitable opportunity to consider the bills presented to him or her in the final days of a session—many of which are lengthy and complex. Under the current system, the Legislature is encouraged to only pass that legislation it believes merits the Governor’s careful consideration because it understands that passing too much legislation may result in some bills not becoming law simply

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<sup>1</sup> See John Haughey, *State-By-State Guide to Gubernatorial Veto Types*, Connectivity (Nov. 14, 2016), <https://info.cq.com/resources/state-by-state-guide-to-gubernatorial-veto-types/>. So does the President of the United States. See U.S. Const. Art. I, Sec. 7.

for lack of time for meaningful consideration. Without the pocket veto, the Legislature could abuse the system by passing massive amounts of legislation in the last three days of a session (as is usual), knowing the governor cannot meaningfully review every bill to determine whether it should become law while simultaneously taking care that the laws be faithfully executed.

Significantly, there is no similar requirement for each legislator to provide written explanations for every vote against a bill.<sup>2</sup> Nor need there be, as legislators are held accountable by their constituents with requests from the press for an explanation for a vote against a bill. The Governor is similarly held accountable by New Mexicans with statements regarding positions on bills communicated to the press. Further, this amendment is wholly unnecessary because the Legislature already has the power to force the Governor to provide a reason for vetoing a bill by passing the legislation prior to the last three days of a session—triggering her duty to sign the legislation or return it to the Legislature with her objections. *See* N.M. Const. Art. IV, Section 22. Therefore, there is no real need for House Joint Resolution 2.

Aside from the issues mentioned above, it should be noted that House Joint Resolution 2 will not bring about any meaningful transparency, as there are no enforceable standards for the “substantive explanation.” The word “substantive” is generally defined as “having substance: involving matters of major or practical importance to all concerned.”<sup>3</sup> Thus, the explanation could be simple as “the Governor vetoed the bill because it is against the public interest” or “the Governor vetoed the bill according to her conscience.” After all, such explanations still convey an explanation of practical importance. *See Romer v. Colorado Gen. Assembly*, 840 P.2d 1081, 1084 (Colo. 1992) (“[T]he statements ‘it’s unfair,’ or ‘it’s against the public interest’ would undoubtedly pass constitutional scrutiny as ‘objections.’”).

House Joint Resolution 2 will also lead to costly legal challenges to explanations given by the Governor—further burdening our court system, blurring separation of powers, and costing taxpayer dollars. Without an express definition of “substantive” and no other analogous constitutional provision in the country, there is no telling how courts will resolve these challenges—unlike other litigation that simply challenges whether a governor provided an explanation *at all*. As the Colorado Supreme Court has recognized: “To disallow a veto for the complete absence of reasons is to establish an objective standard—one with which meddlesome courts cannot tamper. To disallow a veto because the Governor's reasons are not ‘sufficient’ establishes a subjective standard that invites limitless mischief.” *Romer*, 840 P.2d at 1084 (cleaned up). It is also unclear what the consequences would be if a court determined that the Governor failed to provide a sufficiently “substantive” explanation: Would the veto be void? Would the Governor be forced to provide a “better” explanation? House Joint Resolution 2 does not provide any answers—injecting unnecessary uncertainty to the legislative process.

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<sup>2</sup> Indeed, legislators retain constitutional protection from such questioning under Article IV, Section 13 of the New Mexico constitution. The purpose of such protection “is to insure that the legislative function may be performed independently without fear of outside interference.” *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731 (1980). This same reasoning applies to the Governor’s power of the pocket veto: eliminating it will intrude on the Governor’s discretion to publicize his or her reasoning for a veto.

<sup>3</sup> *Substantive*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/substantive> (last visited Feb. 17, 2025).

In sum, the proposed amendment would simply create an unnecessary burden and cost<sup>4</sup> with no corresponding benefit.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

Elimination of the pocket veto authority and explanation of veto provision of the bill will create significant burden to the Governor's office each year, as the majority of bills that are passed in the last three days of the legislation and require substantial time and resources to analyze as-is.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

If the Legislature wishes to truly promote transparency in the legislative process, House Joint Resolution 2 should be amended to impose an identical requirement on legislators to explain their votes. The fact that this is not currently proposed suggests that this is merely an attempt to attack and weaken a coordinate branch of government. The Legislature should take care not to abuse the constitutional amendment process if it wishes to maintain legitimacy in the eyes of the voters and maintain the carefully calculated system of checks and balances envisioned by the framers of our constitution.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Governor will continue to have pocket veto authority and the discretion on whether to provide explanations for his or her vetoes—as has been the case since the beginning of statehood and as is the case in many other states.

## **AMENDMENTS**

N/A

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<sup>4</sup> In addition to the litigation costs mentioned above, the estimated cost per constitutional amendment is \$35 to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.