

**LFC Requester:** \_\_\_\_\_

**AGENCY BILL ANALYSIS**

**SECTION I: GENERAL INFORMATION**

*Check all that apply:*  
**Original**      x   **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_  
                          \_\_\_\_\_                            \_\_\_\_\_

**Date**   1/22/2025    
**Bill No:**   HJR3    
                          \_\_\_\_\_

**Sponsor:**   Sen. Sedillo Lopez    
**Short**          CA – Environmental Rights    
**Title:** \_\_\_\_\_

**Agency Name and Code**          EMNRD 521    
**Number:** \_\_\_\_\_  
**Person Writing**          Samantha Kao    
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**Duplicates/Conflicts with/Companion to/Relates to:**

**Duplicates/Relates to Appropriation in the General Appropriation Act:**

*N/A*

**SECTION III: NARRATIVE**

**BILL SUMMARY**

HJR3 proposes an amendment to Article 2 of the New Mexico Constitution to add a new section that recognizes the rights of New Mexicans to “clean and health air, water, soil, and environments; healthy native flora, fauna, and ecosystems; a safe climate; and the preservation of the natural, cultural, and healthful qualities of the environment.” The amendment further directs the state to protect these rights for all New Mexicans, regardless of “race, ethnicity, Tribal affiliation, gender, socioeconomics, or geography. Additionally, HJR3 makes the state, counties and municipalities trustees of New Mexico’s natural resources and directs them to conserve, protect and maintain them for present and future generations. Finally, HJR3 makes the provisions self-executing, precludes monetary damages, and this provision is enforceable against the state and its municipalities.

If HJR3 passes, the constitutional amendment will be voted on by New Mexico voters during the next general election or at any special election prior.

**FISCAL IMPLICATIONS**

HJR3, if passed and adopted by the voters, would create an ability for citizens to sue the state for not upholding the environmental protection responsibilities identified in the measure, given that the rights identified in the proposed amendment are self-effectuating, as drafted, and require no additional legislative action unlike Article 20, Section 21, which is a directive for the state legislature.

While the amendment precludes monetary damages, it increases the likelihood that the state will be the subject of citizen suits. As written, plaintiffs pursuing actions under this provision would be more likely to seek relief by declaring specific actions taken by the state to be unconstitutional and to obtain a judicial reversal of the challenged actions or other equitable remedies, rather than seeking monetary relief.

**SIGNIFICANT ISSUES**

HJR4 has issues with unclear implementation; there is little guidance for how to balance the environmental rights guaranteed to New Mexicans with other competing interests such as economic growth and diversification, private property rights, or regulatory duties of state agencies.

For example, a party might try to challenge a permit issued by EMNRD’s Forestry Division that authorizes a private party to engage in forest thinning activities for wildfire control, even if that permit was otherwise issued in compliance with the Forest Conservation Act. Such a cause of action would not otherwise be available under existing laws. Similarly, constitutional provisions, like the one proposed in HJR3, have been used to challenge legislative acts. For example, in Pennsylvania oil and gas legislation was invalidated because it did not meet the legislature’s obligation under that state’s constitutional environmental rights amendment.

EMNRD is also concerned that this amendment, if passed, would negatively impact renewable energy and transmission development in the state. While renewable energy and transmission have net positive effects on climate, air quality, etc., those projects can and do have localized impacts in the areas where they are constructed. Impacts within the scope of the amendment could be used by project opponents to stop or delay those projects, or at a minimum create enough litigation related uncertainty to make projects financially impracticable.

We're currently seeing local opposition to relatively innocuous battery storage projects (key to the buildout of renewable energy infrastructure) emerge around affluent New Mexico communities. This amendment could add a legal dimension to that opposition that could prove fatal to the development of grid modernization and renewable energy development efforts in all but the poorest of New Mexican communities, many of which are already considered "over-burdened" due to their proximity to the state's existing energy infrastructure.

Under the Forestry scenario outlined above, any reviewing court would need to compare the agency action under existing law (as authorized by the legislature) against the broad constitutional provision, putting the court in the position of substituting its own policy judgment for that of the legislature in order to determine the constitutional sufficiency of the course of action. EMNRD would have to participate in those lawsuits to defend its decisions in any number of ongoing enforcement, permit, or other regulatory actions. This engagement would require resources on both the legal and programmatic sides of the agencies, even if monetary damages are not available. Because those cases would be in court, they would automatically become first priority, draining agency resources from other compliance, enforcement, and programmatic efforts. An analogue for this drain is the ongoing *Atencio v. NM* lawsuit, which has yet to proceed to summary judgment or discovery phases and has already cost New Mexico taxpayers amounts that have already grown into the hundreds of thousands of dollars.

## **PERFORMANCE IMPLICATIONS**

*See above.*

## **ADMINISTRATIVE IMPLICATIONS**

*See above*

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

HJR3 has a Senate companion, SJR4

HJR3 does not include a provision repealing Article 20, Section 21. Leaving Section 21 in place would create two different sections of the state constitution providing misaligned authority and standards governing the state's constitutional obligations with regards to environmental protection. Article 20, Section 21 directs the legislature to "provide for the control of pollution and control of despoilment of the air, water other natural resources of the state, consistent with the use and development of these resources for the maximum benefit of the people." The proposed language would create an alternate constitutional requirement where people are individually entitled to "clean and healthy air, water, soil and environments; a stable climate; and self-sustaining ecosystems."

Depending on individual determinations of the adequacy of legislative actions, these two provisions may act in direct conflict to each other, with Article 20, Section 21 allowing an action as being an allowable balance between controlling pollution and developing resources, but the

proposed language creating a right of action to assert the individual entitlement. The task would fall to the courts to create a test to determine which constitutional section should prevail under different fact patterns.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

If HJR3 is not enacted, the constitution would not be changed, and state agencies would continue to protect the environment as directed by the legislature through the statutory programs they currently administer.

## **AMENDMENTS**