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## FISCAL IMPACT REPORT

<b>SPONSOR</b> Ferrary, Roybal Caballero, Hernandez, JF/ Sedillo Lopez	<b>LAST UPDATED</b> 2/2/2025	<b>ORIGINAL DATE</b> 1/27/2025
<b>SHORT TITLE</b> Environmental Rights, CA.	<b>BILL NUMBER</b> House Joint Resolution 3	
	<b>ANALYST</b> Davidson	

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Constitutional Amendment</b>	No fiscal impact	No fiscal impact	\$35.0-\$50.0	\$35.0-\$50.0	Nonrecurring	General Fund
<b>Agency Legal Costs</b>	No fiscal impact	No fiscal impact	\$150.0-\$2,000.0	\$150.0-\$2,000.0	Recurring	
<b>Corrective Actions</b>	No fiscal impact	No fiscal impact	Up to \$1,600,000.0	Up to \$1,600,000.0	Recurring and Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Joint Resolution 4.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
New Mexico Attorney General (NMAG)  
Energy, Minerals and Natural Resources Department (EMNRD)  
State Land Office (SLO)  
New Mexico Environment Department (NMED)  
Secretary of State (SOS)

#### Agency Analysis was Solicited but Not Received From

New Mexico Department of Game and Fish (DGF)

#### Agency Declined to Respond

Office of the State Engineer (OSE)

## SUMMARY

### Synopsis of House Joint Resolution 3

House Joint Resolution 3 (HJR3) proposes to amend Article 2 of the New Mexico Constitution to include a new section enumerating a set of environmental rights, stating:

“A. The people of the state shall have a right to clean and healthy air, water, soil and environments; healthy native flora, fauna and ecosystems; a safe climate; and the preservation of the natural, cultural, scenic and healthful qualities of the environment.

The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal affiliation, gender, socioeconomics or geography.

B. The state, counties and municipalities shall serve as trustees of the natural resources of New Mexico and shall conserve, protect and maintain these resources for the benefit of all the people, including present and future generations.

C. The provisions of this section are self-executing. Monetary damages shall not be awarded for a violation of this section. This section is enforceable against the state, counties and municipalities.”

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election be called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

## FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

The Environment Department’s (NMED) analysis contains a breakdown of potential legal costs associated with resolving the conflicts with existing environmental regulations created by HJR3. The department sets the cost of addressing “confusion arising from conflicting actions and authorities” at \$1 million. The same legal uncertainty would impact several other state agencies' missions and regulatory authority. A single additional attorney in any state agency would cost about \$150 thousand a year, and numerous state agencies might need additional legal staff.

The Energy, Minerals and Natural Resources Department’s (EMNRD) analysis expresses concerns about the legal exposure and complications that HJR3 could create. While EMNRD’s analysis did not include an estimation of the fiscal impact, the agency notes responding to court action would take priority over other compliance enforcement and programmatic efforts.

The state is involved in a number of analogous lawsuits that call for the type of reforms that could result from a successful lawsuit under the constitutional amendment proposed in HJR3, including the *Kevin S.* lawsuit over foster care and the *Hatten-Gonzales* lawsuit concerning the delivery of public assistance. Litigation in the *Martinez-Yazzie* lawsuit concerning the delivery of a sufficient education to all students in the public schools cost the state approximately \$500 thousand a year; public school reforms related to the lawsuit have increased spending by about \$1.6 billion a year.

Assuming a high likelihood that at least one agency would be involved in litigation, the bottom limit of the fiscal impact range for legal costs is set at the cost of one attorney, while the upper limit is based on NMED’s estimate of additional costs multiplied across the two departments

most responsible for environmental issues.

Successful lawsuits would result in additional corrective actions. Because it is possible these actions would be within the scope of the agency's existing responsibilities, the bottom limit is set at \$0 while the upper limit is set at the costs of *Martinez-Yazzie* reforms.

In analysis on the identical House Joint Resolution 3, the Municipal League notes the potential financial impact on local governments:

[E]nforcement action taken against the state, counties, and municipalities could occur through the New Mexico Civil Rights Act. Governmental entities, including local governments, could be exposed to significant, ongoing liability exposures without a clear way to address them. Securing insurance for this expanded liability could become more difficult and also significantly more expensive.

Although the bill indicates that monetary damages are not available and that the bill's provisions are self-executing, costs to local governments could be significant. If a court finds an alleged deficiency in local government permitting or infrastructure, for example, costs could be significant to address the alleged deficiency. Additionally, a judgment could affect public bodies around the state simultaneously, crowding the procurement space.

Notably, local governments could turn to the state for financial assistance. HJR3 could have additional fiscal impact in other ways:

- The state might be responsible for compensating private entities with existing rights to fish, mine, harvest lumber, or similar activities for the "taking" of those rights.
- HJR3 does not vest enforcement or any other power in one agency, making it possible one agency might have a policy or project another agency views as violation. These interdepartmental conflicts would involve expense and take resources away from other environmental protection efforts.

## SIGNIFICANT ISSUES

Paragraph A of the proposed constitutional amendment expands the rights of the section it proposes to repeal by including the words "have a right to." However, it omits the language that provides the Legislature with authorization for the "control of pollution and control of despoilment of the air, water and other natural resources."

The New Mexico Attorney General (NMAG) raises concerns about the failure of the resolution to charge the Legislature with implementing statutes and suggests the lack of clarity could prompt legal challenges if the resolution is adopted by voters:

Unlike Section 21 of Article XX of the New Mexico Constitution, which declares the state's "beautiful and healthful environment" to be of fundamental importance, the proposed amendment does not charge the Legislature with providing for implementing statutes. This calls into question whether, in calling on "the state" to protect the rights provided in HJR3, the amendment authorizes legislation. An argument could be made that it does not.

Although those challenges would be unlikely to be successful, NMAG posits, "explicit

delegation of implementation authority to the Legislature might provide more clarity.” It notes a recent Montana Supreme Court decision found a statute that precluded the analysis of greenhouse gas emissions in environmental reviews violated the state’s constitutional right to clean and healthy environment because the constitution explicitly states the Montana Legislature shall provide for the administration and enforcement of a clean and healthy environment.

NMAG raises additional concerns about provisions in the resolution that would make it “self-executing,” which New Mexico courts have held precludes the necessity of ancillary legislation. In combination with provisions establishing the right of “the people” to a clean environment, the proposal appears “to create a private cause of action to secure these rights.” Because terms such as “clean,” “healthy,” and “safe” are not defined, courts would be left to decide the meanings on a case-by-case basis. Such a change would have ramifications for the entire state regulatory regime. In analysis of near duplicate legislation from 2024, NMAG explains: “To the extent the constitutional amendment results in the courts becoming the primary forum for issues of environmental protection, the bar on monetary damages could leave plaintiffs without a remedy that is currently available.”

NMAG analysis also points to issues with HJR3 and it potentially creating “overlapping and potentially conflicting claims of trusteeship among the state and its political subdivisions. To the extent the state and its political subdivisions were to take inconsistent positions with regard to the application of the joint resolution, such conflicts would need to be judicially resolved.”

Finally, NMAG raises concerns that the proposal, by specifying constitutional provisions are enforceable against state and local governments, “contemplates that private persons are precluded from bring claims against private entities.”

Agency analysis from EMNRD notes possible issues with implementation of HJR3, highlighting that its provisions offer limited signposts for how to balance the newly enumerated environmental rights of all New Mexicans with the “competing interests such as economic growth and diversification, private property rights, or regulatory duties of state agencies.” The agency poses an example of the legal issues that HJR3 could create, noting how a routine permit for the Forestry Division’s forest-thinning actions could be paused with a legal challenge created by HJR3. EMNRD also points to the current *Atencio v. New Mexico* lawsuit as a possible analogue for the potential legal issues that HJR3 could create.

EMNRD also questions whether HJR3 has the potential to stall renewable energy transition initiatives. EMNRD notes that opponents to construction of renewable energy sites could use HJR3 as a method to stop or delay projects and possibly create substantial legal issues to ground the projects in an adjudicative quagmire:

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.

EMNRD further raises concerns that the proposal creates “misaligned authority” by failing to repeal existing constitutional language in Article XX, Section 21, calling for the “the protection

of the state's beautiful and healthful environment” and for the Legislature “to provide for control of pollution and control of despoilment of the air, water and other natural resources of this state.” The department notes this conflict creates additional likelihood of litigation.

Multiple agencies note the potential diversion of significant funds and personnel to extended litigation brought on by HJR3 would have the potential to negatively impact agency efforts to protect the environment.

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

House Joint Resolution 3 duplicates Senate Joint Resolution 4 and HJR3 also closely resembles House Joint Resolution 4 from the 2024 legislative session, with HJR3 changing “entitled to” to “have a right” and removing the repeal of Article XX, Section 21, from the bill.

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