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FISCAL IMPACT REPORT

SPONSOR	Ferrary/Sedillo Lopez/ Roybal Caballero/Lujan	LAST UPDATED	
		ORIGINAL DATE	1/26/23
SHORT TITLE	Environmental Rights, CA	BILL NUMBER	House Joint Resolution 4
		ANALYST	Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Constitutional Amendment	No fiscal impact	No fiscal impact	\$150.0-\$200.0	\$150.0-\$200.0	Nonrecurring	General Fund
Agency Legal Costs	No fiscal impact	No fiscal impact	Indeterminate but substantial	Indeterminate but substantial	Recurring	NMED, EMNRD, NMAG operating budgets
Total						

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

Duplicates Senate Joint Resolution 6

Sources of Information

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Department of Environment (NMED)

Secretary of State’s Office (SOS)

Attorney General’s Office (NMAG)

SUMMARY

Synopsis of House Joint Resolution 4

House Joint Resolution 4 (HJR4) 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 be entitled to clean and healthy air, water, soil and environments; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare. The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal membership status, gender, socioeconomic status 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.”

HJR4 further proposes repealing Article 20, Section 21, of the New Mexico Constitution, which states:

“The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.”

Finally, HJR4 provides the amendment be put before the voters at the next general election (November 2024) or special election. The amendment would only be effective if passed by voters in the next genera

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 also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

The Secretary of State’s analysis includes an explanation stating, “The cost will vary on the length of the ballot question. However, as a reference, in 2022, the SOS published three constitutional amendments and three bond questions for approximately \$404,000.”

The Environment Department’s (NMED) analysis contains a breakdown of potential legal costs associated with resolving the conflicts with existing environmental regulations created by HJR4. The same legal uncertainty would impact several other state agencies' missions and regulatory authority. For example, the Energy, Minerals and Natural Resources Department’s analysis expresses concerns about the threats posed by repealing Section 21 of the New Mexico Constitution (see Significant Issues). While the EMNRD analysis did not include an estimation of the fiscal impact, the agency states that responding to court action would take priority over other compliance enforcement and programmatic efforts.

SIGNIFICANT ISSUES

Paragraph A of the proposed Constitutional Amendment expands the rights of the section it proposes to repeal by including the words “entitled to.” However, it omits the language that provides the Legislature with authority to “control of pollution and control of despoilment of the air, water and other natural resources.” While paragraph A specifies, “The state shall protect these rights equitably for all people,” this may subject existing statutes to legal challenges.

Sections 74-1-1 through 74-1-10 NMSA 1978, the “Environmental Improvement Act,” Section 74-2 NMSA 1978, the “Air Quality Control Act,” Section 74-4, the “Hazardous Waste Act,” Section 74-6, the “Water Quality Act,” and Section 74-9, the “Solid Waste Act,” derive some or all of their constitutional authority from the section HJR4 proposes to repeal.

In its analysis of the bill, the Attorney General’s Office expresses concerns about the inclusion of the words “self-executing” in paragraph C, which New Mexico courts have previously ruled precludes further judicial inquiry. This means that paragraph A's definitions for “clean” and “healthy” might be subjected to legal challenges or left to courts to decide on a case-by-case basis. Such a change would have ramifications for the entire regulatory regime, including the sections cited above. NMAG further explains:

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. In addition, by providing that the constitutional provisions are enforceable against the state, counties, and municipalities, paragraph C appears to preclude enforcement against private entities. Combined with the lack of legislative authority to define the environmental rights through regulation of private actors, this may lead to an unintended lack of regulation of industry.

In its analysis, the Energy, Minerals and Natural Resources Department (EMNRD) cites two cases where another state’s environmental rights amendment invalidated regulations on the oil and gas industry (*Robinson Twp. V. Commonwealth of Penn.*, 83 A.3d 901 (Pa. 2013) and (*Robinson Twp. V. Commonwealth of Penn.*, 96 A.3d 1104 (Pa. Cmmw. 2014)). EMNRD also expressed concerns about the proposed amendment’s potential use as a roadblock to clean energy projects being pursued as part of New Mexico’s renewable energy transition. Specifically, the legal uncertainty that could be created by the amendment, as written, might result in costly litigation that could impact the financial feasibility of certain energy projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR4 duplicates Senate Joint Resolution 6 with the exception of the use of one word; SJR uses “environment” where HJR4 uses “environments.”

ALTERNATIVES

NMAG proposed that amending, rather than repealing, Section 21 of the New Mexico Constitution might be an avenue for the Legislature to secure the same rights that HJR4 aims to create.

SS/al/hg