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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sedillo Lopez/Pope/Pinto/Ferrary/Lujan</u>	<b>LAST UPDATED</b> <u>03/14/23</u> <b>ORIGINAL DATE</b> <u>01/26/23</u>
<b>SHORT TITLE</b> <u>Environmental Rights, CA</u>	<b>BILL NUMBER</b> <u>Senate Joint Resolution 6</u>
<b>ANALYST</b> <u>Sanchez/J. Torres</u>	

### 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
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Duplicates House Joint Resolution 4

### 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 Senate Joint Resolution 6

Senate Joint Resolution 6 (SJR6) 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.

SJR6 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, SJR6 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 general election.

## **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 explains, "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 SJR6. The same legal uncertainty would impact other state agencies' missions and regulatory authority. For example, the Energy, Minerals and Natural Resources Department's (EMNRD) 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 estimate the fiscal impact, the agency states that responding to court action would take priority over other compliance enforcement and programmatic efforts.

## **SIGNIFICANT ISSUES**

SJR6 proposes amending Article 2 of the New Mexico Constitution to include recognition of environmental rights held by the people. It proposes to repeal Article 20, Section 21 of the New Mexico Constitution, which requires the Legislature to "provide for control of pollution and control of despoilment of the air, water, and other natural resources." According to the analysis from the Department of Environment:

If SJR6 passes and the electorate approves the amendment, two issues will arise. First, the repeal of Article 20, Section 21, would remove legislative powers associated with the regulation of pollution within New Mexico, calling into question the environmental statutes previously passed by the Legislature, including the legislature’s ability to amend them. This would require NMED to defend or change its regulations and enforcement authority under current laws. Second, the amendment to Article 2 would create a trustee obligation in the state, counties, and municipalities. Creating a trusteeship in each of these governments will cause confusion relating to environmental protection and how such trusteeships mesh with existing environmental laws, permits, and regulations.

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 SJR6 proposes to repeal.

However, an argument could be made Article 20, Section 21, can be repealed without putting existing environmental law at risk. Article 4 authorizes the Legislature to pass laws, environmental or otherwise.

Analysis from the Office of the Attorney General (NMAG) pointed out that “the meaning of the terms “clean” and “healthy” will need to be established by legislation, administrative rules, and precedent.” NMAG’s analysis also explained:

Paragraph B of the proposed new constitutional section creates 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 resolved through a preemption analysis.

NMAG’s analysis also stated: “By providing that the constitutional provisions are enforceable against the state, counties, and municipalities, paragraph C appears to preclude enforcement against private entities.”

Analysis from 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 pursuing clean energy projects as part of New Mexico’s renewable energy transition. EMNRD’s analysis stated that, as written, the legal uncertainty the amendment could create might result in costly litigation that could impact the financial feasibility of certain energy projects. Notably, the sponsors of SJR6 dispute the weight of this case law.

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

SJR6 duplicates House Joint Resolution 4 except for the use of one word; SJR uses “environment,” whereas HJR4 uses “environments.”