

LFC Requester:

Austin Davidson

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

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

**Date Prepared:** January 29, 2025

*Check all that apply:*

**Bill Number:** HJR 3

Original  Correction   
Amendment  Substitute

**Sponsor:** Rep. Joanne J. Ferrary  
Rep. Patricia Roybal Cabellero  
Rep. Joseph Franklin Hernandez  
Sen. Antonette Sedillo Lopez

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

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RIGHTS, CA

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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 revenue 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 Nonrecurr ing</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

HJR 3 proposes to amend the bill of rights at Article 2 of the New Mexico Constitution, if approved by voters, by adding a new section to include rights 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.” It would further provide that “The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal affiliation, gender, socioeconomics or geography.”

The new constitutional provisions would include a section stating that they are self-executing, that money damages are not available for violation, and that the section is enforceable against the state, counties, and municipalities.

The proposed amendment be submitted to a vote by the people at the next general election or a special election prior to that date.

**FISCAL IMPLICATIONS**

N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

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 HJR 3, the amendment authorizes legislation. An argument could be made that it does not, by pointing to the contrasting language of Article XX Section 21. However, in light of the legislature’s plenary

policy powers, such an argument would not be likely to succeed. Note that in December 2024, the Montana Supreme Court affirmed a lower court decision holding that a state statute precluding analysis of greenhouse gas emissions in environmental reviews violated that state’s constitutional right to a clean and healthy environment. *Held v. Montana*, 2024 MT 312. Montana’s constitution guarantees all persons the right to a “clean and healthful environment at Article II, Section 3, and mandates that the legislature shall provide for administration and enforcement of the duty to maintain a clean and healthy environment at Article IX, Section 1.

New Mexico courts have held that “[a] constitutional provision may be said to be self-executing when it takes immediate effect and ancillary legislation is not necessary to the enjoyment of the right given, or the enforcement of the duty imposed. In short, if a constitutional provision is complete in itself, it executes itself.” *Bounds v. State* (N.M. Ct. App. 2010) 149 N.M. 484, 495 (citing *Lanigan v. Town of Gallup*, 17 N.M. 627, 633 (1913)). Paragraph C of the proposed constitutional section would make further inquiry about self-execution unnecessary by expressly making the section self-executing. In combination with Section A, establishing in “the people” rights to a clean environment, this would appear to create a private cause of action to secure these rights. Because money damages would not be recoverable, the amendment would only authorize actions for injunctive relief. The amendments may support lawsuits seeking to compel legislative action at the state and local levels. Terms such as “clean,” “healthy” and “safe” are not defined and would likely be subject to judicial interpretation.

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 judicially resolved.

## **PERFORMANCE IMPLICATIONS**

None for NMDOJ.

## **ADMINISTRATIVE IMPLICATIONS**

None for NMDOJ.

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

SJR 4 is a duplicate.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

By providing that the constitutional provisions are enforceable against the state, counties, and municipalities, paragraph C contemplates that private persons are precluded from bringing claims against private entities.

## **ALTERNATIVES**

N/A

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

Status Quo.

**AMENDMENTS**

N/A