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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sedillo Lopez/Pinto/Lopez</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/06/2024</u>
	<b>BILL</b> <u>Senate Joint</u>
<b>SHORT TITLE</b> <u>Environmental Rights, CA</u>	<b>NUMBER</b> <u>Resolution 8</u>
	<b>ANALYST</b> <u>Torres, J</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs	No fiscal impact	\$75.0 to \$85.0	No fiscal impact	\$75.0 to \$85.0	Nonrecurring	General Fund
Litigation Costs	No fiscal impact	\$250.0 to \$800.0	\$250.0 to \$800.0	\$500.0 to \$1,600.0	Recurring	General Fund

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

Relates to House Joint Resolution 4.

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Attorney General (NMAG)\*  
 Energy, Minerals and Natural Resources Department (EMNRD)  
 New Mexico Department of Game and Fish (DGF)\*  
 State Land Office (SLO)  
 Office of Natural Resources Trustee (ONRT)  
 New Mexico Environment Department (NMED)  
 Administrative Office of the Courts (AOC)

(\*Analysis provided for House Joint Resolution 4, which is a near duplicate of SJR8)

## SUMMARY

### Synopsis of Senate Joint Resolution 8

Senate Joint Resolution 8 (SJR8) proposes to amend Article 2 of the Constitution of New Mexico by adding the new section that reads in part:

The people of the state shall be entitled to clean and healthy air, water, soil, native ecosystems and environments, including a safe climate, 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 affiliation, gender, socioeconomics or geography.

The resolution would amend the constitution to hold state, counties and municipalities responsible as trustees for the state’s natural resources and to state that these entities will not allow, through action or inaction, for the degradation or diminution of the natural environment “that is avoidable, contributes to significant or widespread environmental harm or results in an unhealthy or unsustainable environment.”

The proposed constitutional amendment states the provisions would be expressly self-executing against the state, counties, and municipalities, meaning no additional legislation is required to effectuate enforcement of the imposed duty.

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or at a special election 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 \$75 thousand to \$85 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

The Energy, Minerals and Natural Resources Department (EMNRD) states that SJR8 will increase “the likelihood that the state will be the subject of citizen suits.” For example, a party may challenge a forest thinning permit for wildfire control that is otherwise in compliance with the Forest Conservation Act. This type of challenge is not available under existing law. By analogy, Pennsylvania courts invalidated that state’s oil and gas legislation when challenged under a similar Environmental Rights Amendment.<sup>1</sup>

EMNRD analysis on the similar HJR2 of 2022 indicated New Mexico could face a comparable situation if the Environmental Rights Amendment were passed. SJR8’s self-executing process would require that the courts substitute a judicial policy analysis for that of the Legislature. EMNRD states that the agency would then be put in the position of defending its enforcement, permitting and other regulatory actions. Multiple legal, programmatic, and other agency resources would be diverted towards litigation that would have otherwise been used for environmental protection and regulatory enforcement.

The Department of Game and Fish (DGF) also states that, although the amendment precludes monetary damages, “it increases the likelihood that the state will be the subject of citizen suits.” The state could encounter significant unknown costs associated with litigation stemming from its regulatory actions.

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<sup>1</sup> *Robinson Twp. v. Commonwealth of Penn.*, 83 A.3d 901 (Pa. 2013); *Robinson Twp. v. Commonwealth of Penn.*, 96 A.3d 1104 (Pa. Cmmw. 2014); *Robinson Twp. v. Commonwealth of Penn.*, 147 A.3d 536, 646 (Pa. 2016).

The State Land Office (SLO) states that passage of this bill could result in an undetermined increase in litigation-associated budget costs: “It is difficult to anticipate the types of lawsuits, damages, and leasing activities that would be impacted. There would be an undetermined negative impact if contemplated leasing opportunities are curtailed by the passage of SJR8.”

Other responding agencies state that SJR8 may result in increased citizen lawsuits and increased litigation, as well as significant undetermined and increased operational costs.

Currently Montana, New York, and Pennsylvania have established constitutional rights to a healthy environment via “green amendments.” Information received from the Pace University School of Law indicates that there are no specific costs as to increased litigation resulting from the amendments in New York or Pennsylvania. As noted herein, Montana’s green amendment follows the legislative enactment and enforcement structure included within New Mexico’s Article 20, Section 21.

The pending case of *Atencio v. State of New Mexico* seeks judicial clarification of the New Mexico Constitution’s Article 20, Section 21. EMNRD estimates that its increased litigation costs stemming from *Atencio* will range from \$250 thousand to \$800 thousand.

## **SIGNIFICANT ISSUES**

SLO reports when making leasing decisions, it balances the goals of revenue generation with the responsibility of protecting managed lands in perpetuity. SLO states: “Responsible leasing activities can and should occur in a manner that protects the state’s air, water, and soil.” It suggests, as an alternative, SJR8 could include language providing for enforcement, in addition to the “self-executing” language, to clarify legislative authority in that regard.

NMAG reports that SJR8 “creates overlapping and potentially conflicting claims of trusteeship among the state and its political subdivisions.” Inconsistent positions would “need to be judicially resolved.” “By providing that the constitutional provisions are enforceable against the state, counties and municipalities, paragraph C appears to preclude enforcement against private entities.”

DGF states SJR8 may conflict with the existing pollution control amendment [Article 20, Section 21]. That amendment authorizes legislative oversight, while SJR8 creates an alternate constitutional requirement that entitles individuals to a clean environment. The pollution control amendment allows for a balance between controlling pollution and developing resources. By authorizing individual entitlement, “the task would fall to the courts to create a test to determine which constitutional section should prevail under different fact patterns.”

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

SJR8 is substantively the same as House Joint Resolution 4.

## **OTHER SUBSTANTIVE ISSUES**

SLO notes SJR8 may conflict with a judicial determination of the issues presented in *Atencio*.

Unlike prior versions, SJR8 does not provide for the repeal of the existing environmental protection provision under Article 20, Section 21.<sup>2</sup> The 1971 amendment is not self-executing. Instead, enforcement authority is delegated to the Legislature. That amendment is included within a miscellaneous section of the New Mexico Constitution. It is not elevated to the level of a fundamental right. Because it authorizes legislative enforcement, general rules of statutory construction are applied.<sup>3</sup> Courts are not required to employ the type of strict scrutiny required when construing a self-executing fundamental right, such as that proposed in SJR8.<sup>4</sup>

## ALTERNATIVES

EMNRD’s analysis on 2022’s HJR2 referenced an alternate approach taken in the Montana State Constitution. Under Montana’s Article II, Section 3, all persons are deemed to have an inalienable right to a “clean and healthful environment.” Montana’s Article IX, Section 1, states:

- (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
- (2) The legislature shall provide for the administration and enforcement of this duty.
- (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Although a “clean and healthful environment” is deemed to be a fundamental right, as in SJR8, the Montana Constitution delegates enforcement responsibility to their state legislature. The legislative enactment and enforcement process would essentially replicate that set forth New Mexico’s Article 20, Section 21.

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<sup>2</sup> “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.”

<sup>3</sup> “Statutory construction is the process of determining what a particular statute means so that a court may apply it accurately; also known as statutory interpretation.” [https://www.law.cornell.edu/wex/statutory\\_construction](https://www.law.cornell.edu/wex/statutory_construction).

<sup>4</sup> “This is the highest level of scrutiny applied by courts to government actions or laws.... This high level of scrutiny is also applied whenever a “fundamental right” is being threatened by a law.... Strict scrutiny requires the government to prove that: there is a compelling state interest behind the challenged policy, and the law or regulation is narrowly tailored to achieve its result. <https://www.findlaw.com/legalblogs/law-and-life/challenging-laws-3-levels-of-scrutiny-explained>.