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FISCAL IMPACT REPORT

BILL NUMBER: House Joint Resolution 3

SHORT TITLE: Environmental Rights, CA

SPONSOR: Reps. Ferrary/Royal Caballero and Sen. Sedillo Lopez/Hernandez, JF

LAST UPDATE: _____ **ORIGINAL DATE:** 1/28/2026 **ANALYST:** Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Constitutional Amendment	No fiscal impact	\$30 to \$50	\$30 to \$50	\$30 to \$50	Nonrecurring	General Fund
NMED Legal Costs	No fiscal impact	\$140-\$3,000	\$140-\$3,000	\$140-\$3,000	Recurring	General Fund
Corrective Actions	No fiscal impact	Up to \$1,600,000	Up to \$1,600,000	Up to \$1,600,000	Recurring and Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

New Mexico Environment Department

New Mexico Attorney General

Secretary of State

Energy, Minerals and Natural Resources Department

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 stable climate and thriving ecosystems; and the preservation of the natural, cultural, scenic and healthful qualities of the environment.

The state, counties and municipalities shall protect these rights equitably for all people, including future generations, and regardless of race, ethnicity, tribal affiliation, gender, socioeconomics or geography. Securing a more stable climate, including for future generations, is compelling state interest and shall be a high priority.

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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, who are 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 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. 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.

Analysis by the New Mexico Environment Department (NMED) contained 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” between \$1 to \$3 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 \$140 thousand a year, and numerous state agencies might need additional legal staff.

Analysis by The Energy, Minerals and Natural Resources Department (EMNRD) for a previous iteration of the bill expressed 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 currently subject to multiple lawsuits alleging failures to meet constitutional or statutory obligations, as referenced in agency analysis. These lawsuits call for similar types 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.

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 assign enforcement authority to a single agency, which could result in interagency disputes if one agency's policies or projects are viewed by another as violating the amendment. Resolving such disputes would entail administrative or legal costs and divert resources from other environmental protection efforts.

SIGNIFICANT ISSUES

The bill adds additional language not previously used in previous iterations, specifically by adding counties and municipalities on the list of entities responsible for protecting the rights of all people. The bill also adds “future generation” to the class of people who shall have the right to clean and healthy air, water, soil, etc. Finally, the bill also adds that the people protected by the new constitutional amendment would become the beneficiaries of this new “stable climate” created by state, counties, and municipalities.

The addition of this language and the expansion of these protections to not just present inhabitants of the state but its future generations has the potential to further expand the legal exposure the Legislature and state agencies could face. This expansion of obligation also raises the possibility of more expensive litigation, resulting in the state having to bolster its natural resource agency's legal teams and/or increasing its budget to contract out the litigation. Analysis by NMAG, which calls into question the clarity of the resolution and thus the ability of the Legislature to provide for what is outlined in the resolution, can be further applied to the additional language.

Another change from previous iterations that could create additional ambiguity regarding implementation is the shift from a “safe” climate to a “stable” climate. Prior analysis noted that ambiguity associated with the term “safe” climate would remain even with this change in terminology. Analysis by NMED also noted that the bill's creation of a trustee obligation for the state, counties, and municipalities could cause confusion regarding how natural resource agencies and their expanded roles would fit within existing environmental laws and regulatory frameworks. NMED further noted that the expanded ability of individuals or entities to initiate legal action against the state and other governmental entities could allow courts to revisit or alter existing environmental management actions, potentially undermining current statutory structures. NMED specifically identified potential impacts to the state's Water Quality, Solid Waste, Hazardous Waste, and Environmental Improvement Acts.

Paragraph A of the proposed constitutional amendment expands the rights language of the section it proposes to repeal by adding the words “have a right to.” However, it omits language that expressly authorizes the Legislature to provide for the control of pollution and the

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prevention of despoilment of air, water, and other natural resources.”

The New Mexico Attorney General (NMAG) (analyzing a previous iteration of the bill) raised 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’s prior analysis 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 pointed 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.”

NMAG analysis also notes the constitutional changes discussed in the bill are like already existing articles within the state’s constitution, though their analysis does note the proposed legislation is not duplicative but rather complementary to what the bill proposes. NMAG’s analysis notes what the potentially complementary existing clause, the Pollution Control Clause, already affords the state:

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.

NMAG’s analysis concludes that the Pollution Control Clause recognizes the current duty to protect the atmosphere and other natural resources, specifying this implementation to the Legislature. NMAG analysis note that, “By contrast, HJR 3 would enshrine a fundamental right

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to a clean and healthy environment in Article II of the Bill of Rights of the New Mexico Constitution. Furthermore, it would authorize a cause of action as a mechanism to enforce this right against the state, counties, and municipalities.”

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 analysis 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 buildup 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.

Prior EMNRD analysis 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.

CONFFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Joint Resolution 3 duplicates 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.