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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/21  
 SPONSOR SRC \_\_\_\_\_ LAST UPDATED 02/12/21 HB \_\_\_\_\_  
 SHORT TITLE Environmental Rights, CA \_\_\_\_\_ SJR 3/SRCS \_\_\_\_\_  
 ANALYST Hanika-Ortiz \_\_\_\_\_

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED		\$314.8	\$314.8	\$636.0	Recurring	General Fund
SoS		\$150.0- \$200.0	\$0.0	\$150.0- \$200.0	Nonrecurring	General Fund
NMAG/Courts		Indeterminate	Indeterminate	Indeterminate	Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 New Mexico Environment Department (NMED)  
 Office of Natural Resources Trustee (ONRT)

### SUMMARY

#### Synopsis of SRC Committee Substitute

The Senate Rules Committee Substitute for Senate Joint Resolution 3 (SJR3/SRCS) proposes to refer to voters an amendment to Article 2 of the New Mexico Constitution that includes a right of the people of the state to "...a clean and healthy environment, including water, air, soil, flora, fauna, ecosystems and climate, and to the protection of the natural, cultural, scenic and healthful qualities of the environment." It also makes the state and its political subdivisions the trustee of the natural resources of New Mexico, required to "...conserve, protect and maintain these resources for the benefit of all New Mexicans, including present and future generations."

The committee substitute for SJR3 also amends Article 20 of the constitution by repealing Section 21 concerning the Legislature's duty to provide for the control of pollution and despoilment of natural resources, consistent with the use and development of these resources for maximum benefit of the people.

If passed, the substitute legislation would be submitted to the voters for their approval or rejection at the next general election or at any special election that may be called for this purpose.

## **FISCAL IMPLICATIONS**

Residents may be able to sue the state for not upholding its environmental protection responsibilities. If so, NMAG would likely require resources to represent the state because the proposed constitutional amendment makes the state as a whole trustee of natural resources.

Until the responsibilities of trustee are defined, and the relationship to the Office of the Natural Resources Trustee made clearer, the office said it cannot estimate the potential fiscal or operational impact at this time.

If ratified by the voters, NMED noted it would need funding for salary and benefits for two attorneys to respond to claims or resolve issues arising from conflicting actions and authorities.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State 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 them 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-\$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

## **SIGNIFICANT ISSUES**

Because the substitute legislation creates a constitutional right to a clean and healthy environment, agencies suggested it may allow individuals to assert causes of action currently unavailable under existing environmental laws. According to NMED, the reviewing court would need to compare each cause of action with existing environmental regulations, inviting the court to determine the best environmental management action. NMED would need to participate in these court actions and defend ongoing enforcement actions, permits, or other regulatory activities.

Agencies responding to the original bill said it created potentially conflicting trusteeships among the state as a whole, all of its agencies, and political subdivisions, without delineating the geographic or subject matter scope of authority of the various entities. For the SJR3, the NMAG and NMED said the bill still creates a trustee obligation for the state and its political subdivisions; however, NMAG reports the potential conflicting trusteeships had been lessened because the substitute for SJR3 no longer grants each agency of the state that trusteeship authority, in addition to that granted to the state as a whole. cautioned that the possibility of tension still exists between the state and its political subdivisions and among various political subdivisions. The absence of a grant of legislative authority creates uncertainty as to how the state would exercise its trusteeship authority and allocate it among the agencies.

The substitute for SJR3 also repeals Section 21 of Article 20 to 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.

## **PERFORMANCE IMPLICATIONS**

The Office of the Natural Resources Trustee noted it was unclear how the substitute for SJR3 aligns with the New Mexico Natural Resources Trustee Act. Both the substitute and the act, Chapter 75, Article 7, NMSA 1978, contain language directing the state to act as “trustee of natural resources.”

- The New Mexico Natural Resources Trustee Act reads: “The natural resources trustee shall act on behalf of the public as trustee of natural resources.”
- SJR3 reads: “The state, including its political subdivisions, shall serve as trustee of the natural resources of New Mexico ...”

Under the Natural Resources Trustee Act, ONRT explained its responsibilities are limited to pursuing natural resource damage claims under federal environmental protection laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Federal Water Pollution Control Act, and the Oil Pollution Act. By statute, the office protects and represents the state's interest under those federal laws by seeking damages for injury to, destruction of, or loss of resources. The role of ONRT is largely reactive with the responsibility to pursue claims following the release of hazardous substances or oil into the environment.

## **ALTERNATIVES**

NMAG suggested a role for the Legislature in securing the rights created by the amendment could be preserved by amending rather than repealing Section 21 of Article XX of the New Mexico Constitution, or if that section is repealed, by granting the Legislature specified authority in the new section. Potential conflict between the state, its agencies, and political subdivisions could be reduced by allocating or providing a means of allocating trust responsibilities.

AHO/sb/rl