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FISCAL IMPACT REPORT

SPONSOR Ferrary, Lujan, Sedillo **ORIGINAL DATE**
Lopez, Chasey, Pope **LAST UPDATED** 1/21/22 **HJR** 2
SHORT TITLE Environmental Rights, CA **SB** _____
ANALYST J. Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY22 | FY23 | FY24 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|------|------|----------------------|------------------------------|------------------|
| Total | 125.0-150.0 | | | | Nonrecurring | SoS Budget |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SJR2 Environmental Rights, CA

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

New Mexico Environment Department (NMED)

Energy, Minerals & Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

The Environmental Rights Constitutional Amendment (HJR2) adds a new provision to the New Mexico Constitution Article 2, Bill of Rights, which provides that the “people of the state have an inherent and inalienable right to a clean and healthy environment, including [all aspects of the environment] and to the protection of the natural, cultural, scenic, and healthful qualities of the environment.”

HJR2 repeals the existing Pollution Control provision of New Mexico Constitution Article 20, Section 21. This eliminates the current provision delegating control of air, water, and other natural resources (pollution control) to the legislature.

The new section is explicitly self-executing, meaning that it does not require legislative implementation and enforcement. Nor does it allow for money damages.

If approved by the Legislature, New Mexico Constitution Article 19, Section 1, requires that the contemplated amendment be published by the Secretary of State (SoS), as noted in Fiscal

Implications, and be ratified by a voting majority either at the next regular election held after that Legislature’s adjournment or at a special election held at least six months after adjournment.

FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the SoS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The 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 \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

NMED noted that “HJR2 may require significant resources to resolve legal uncertainty in its language.”

EMNRD noted the resources required to defend litigation arising from the confusion and conflict resulting from the enactment of HJR2.

SIGNIFICANT ISSUES

HJR2 prioritizes the protection of environmental and other natural, cultural, scenic and healthful qualities by including this provision in the state’s bill of rights. Although the state constitution currently provides for pollution control, it is deemed to be “of fundamental importance to the public interest...”, rather than a fundamental right.

NMAG noted that the repeal of New Mexico Constitution Article 20, Section 21 without a replacement delegating pollution control authority to the legislature could preclude future environmental acts or amendments to existing statutes such as the Environmental Improvement Act, Air Quality Control Act, Hazardous Waste Act and others. This repeal could also result in legal challenges due to a lack of constitutional authority for existing legislation. The repeal would likely revert pollution control protection to the common law and the courts under the holding in *Sanders-Reed v. Martinez*, 2015-NMCA-063. The self-executing nature of the proposed amendment could lead to an absence of legislation, citing *Bounds v. State*, N.M. Ct. App. 2010, 149 N.M. 484, 495 [citation omitted]; a private cause of action; no legislative definitions of key terms; and more judicial uncertainty. NMAG also noted that Subsection C could create a conflict between overlapping trustee responsibilities of the state and its political subdivisions as to existing legislation and regulation of natural resources.

NMED noted that the repeal of New Mexico Constitution Article 20, Section 21 would remove legislative power over pollution control. NMED also noted that the inclusion of environmental rights within the constitution would create a trusteeship within each political subdivision of the state, thereby causing confusion between the new constitutional provisions and existing environmental laws.

PERFORMANCE IMPLICATIONS

NMAG reported that by making the state a trustee of its natural resources, HJR 2 could impose additional NMAG legal representation requirements regarding the state and its agencies.

NMED indicated that the need to expend significant legal resources to resolve the confusion and conflict created by HJR2 would require additional monetary appropriations.

ADMINISTRATIVE IMPLICATIONS

The SoS would be affected by the administrative and fiscal implications of publishing notice and conducting the election required to amend the constitution.

Responding agencies did not note any administrative implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SJR2 Environmental Rights, CA

ALTERNATIVES

As noted by NMAG, New Mexico Constitution Article 20, Section 21 could be amended to include legislative authority for the new section, rather than repealing the existing section.

EMNRD recommends that New Mexico adopt a provision similar to the Montana Constitution which ensures the right of a “clean and healthful environment”, while leaving administration and enforcement to the state legislature, rather than making it self-executing.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

POSSIBLE QUESTIONS

Should environmental and other qualities specified in HJR 2 be elevated from the level of a public interest to that of a constitutional right?

Should the current delegation of pollution control to the Legislature under New Mexico Constitution Article 20, Section 21 be repealed or should it be amended to delegate legislative control over the new section?

JT