

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply: Date 1/30/24
Original Amendment _____ Bill No: HJR 2
Correction Substitute _____

Sponsor: Reps. McQueen and Harper/Sens. Moores and Ortiz y Pino Agency Name and Code GOV-356
Short Eliminate Pocket Veto Number: _____
Title: _____ Person Writing Kyle Duffy
Phone: 505-476-2210 Email Kyle.Duffy@exec.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	NFI	NFI	NFI
NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
NFI	NFI	NFI	NFI	NFI
NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Joint Resolution 2 proposes a constitutional amendment to amend Article IV, Section 22 of the Constitution to: (1) change references to the Governor to gender neutral format and make minor stylistic changes, (2) strip the Governor of her pocket veto authority, and (3) force the Governor to provide an explanation for each veto.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

House Joint Resolution 2 is an attempt to disrupt the balance of power between the branches of New Mexico’s government by proposing an amendment that would reverse the language in Article 4 Section 22 of the New Mexico Constitution creating the power of the “pocket veto,” which has been in place for over 100 years.¹

House Joint Resolution 2 infringes upon the governor’s veto power by removing the Governor’s discretion to sign, formally veto, or pocket veto a bill presented in the last three days of the legislative session and requiring the Governor to provide a written explanation for every veto. This is ill advised, as there may be number of reasons for a governor to choose to pocket veto a bill rather than formally veto it. For example, the pocket veto allows the Governor to disapprove of legislation based on unforeseen issues without being compelled to publicly disclose sensitive information in a veto message.

The pocket veto also serves the vital purpose of ensuring that the Governor has a suitable opportunity to consider the bills presented to him or her in the final days of a session—many of which are lengthy and complex. Under the current system, the Legislature is encouraged to only pass that legislation it believes merits the Governor’s careful consideration because it understands that passing too much legislation may result in some bills not becoming law simply for lack of time for meaningful consideration. Without the pocket veto, the Legislature could abuse the system by passing massive amounts of legislation in the last three days of a session (as

¹ Notably, the constitutions in many states have similar pocket veto powers. See John Haughey, *State-By-State Guide to Gubernatorial Veto Types*, Connectivity (Nov. 14, 2016), <https://info.cq.com/resources/state-by-state-guide-to-gubernatorial-veto-types/>. So does the President of the United States. See U.S. Const. Art. I, Sec. 7.

is usual), knowing the governor cannot meaningfully review every bill to determine whether it should become law while simultaneously taking care that the existing laws be faithfully executed.

Aside from the pitfalls mentioned above, it should be noted that House Joint Resolution 2 will not likely bring about any meaningful transparency, as there are no enforceable standards for the explanation. Thus, the explanation could be simple as “the Governor disapproves of the bill” or “the Governor vetoed the bill according to her conscience.” Accordingly, the proposed amendment would simply create an unnecessary burden and cost² with no corresponding benefit. It is also worth noting that the Legislature already has the power to force the Governor to provide a reason for vetoing a bill by passing the legislation prior to the last three days of a session. *See* N.M. Const. Art. IV, Section 22.

Significantly, there is no similar requirement for each legislator to provide written explanations for every vote against a bill.³ Nor need there be, as legislators held accountable by their constituents with requests from the press for an explanation for a vote against a bill. The Governor is similarly held accountable by New Mexicans with statements regarding positions on bills communicated to the press. Therefore, the explanation provision in House Joint Resolution 2 is merely an attempt to create an extra step in the veto process for the Governor.

The hypocrisy of House Joint Resolution 2 is plain. If the Legislature was serious about promoting transparency in the legislative process, it would impose an identical requirement on themselves to explain their votes. The fact that this is not proposed in House Joint Resolution strongly indicates that this is merely an attempt to attack and weaken a coordinate branch of government. The Legislature should take care not to abuse the constitutional amendment process if it wishes to maintain legitimacy in the eyes of the voters and maintain the carefully calculated system of checks and balances envisioned by the framers of our constitution.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

Elimination of the pocket veto authority and explanation of veto provision of the bill will create significant burden to the Governor’s office each year, as the majority of bills that are passed in the last three days of the legislation and require substantial time and resources to analyze as-is.

² 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. It is also likely that vague reasons given by the Governor may be subject to costly litigation to determine their adequacy—further burdening our court system and costing taxpayer dollars.

³ Indeed, legislators retain constitutional protection from such questioning under Article IV, Section 13 of the New Mexico constitution. The purpose of such protection “is to insure that the legislative function may be performed independently without fear of outside interference.” *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731 (1980). This same reasoning applies to the Governor’s power of the pocket veto: eliminating it will intrude on the Governor’s discretion to publicize his or her reasoning for a veto.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Governor will continue to have pocket veto authority and the discretion on whether to provide explanations for his or her vetoes—as has been the case since the beginning of statehood and as is the case in many other states.

AMENDMENTS

N/A