

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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:

Original x **Amendment**
Correction **Substitute**

Date Prepared: 1/16/2024

Bill No: HJR 4

Sponsor: Rep. J. Ferrary

Short Title: Environmental Rights CA

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Taylor Bui, AAG

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

HJR 4 proposes to amend the bill of rights at Article 2 of the New Mexico Constitution by adding a new section to include rights to “to clean and healthy air, water, soil and environments; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare[,]” and would place the state, counties, and municipalities as trustees for the state’s natural resources.

Additionally, the amendment, if approved by voters, would require the state to protect those rights regardless of “race, ethnicity, tribal membership status, gender, socioeconomic status or geography” enforceable against the state, counties, and municipalities.

The new constitutional provisions would include a section stating that they are self-executing and that money damages are not available for violations.

The proposed amendment be submitted to a vote by the people at the next general election or a special election prior to that date.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

New Mexico courts have held that “[a] constitutional provision may be said to be self-executing when it takes immediate effect and ancillary legislation is not necessary to the enjoyment of the right given, or the enforcement of the duty imposed. In short, if a constitutional provision is complete in itself, it executes itself.” *Bounds v. State* (N.M. Ct. App. 2010) 149 N.M. 484, 495 (citing *Lanigan v. Town of Gallup*, 17 N.M. 627, 633 (1913)). Paragraph D of the proposed constitutional section would make further inquiry about self-execution unnecessary by expressly making the section self-executing. In combination with Section A, establishing in “the people” rights to a clean environment, this would appear to create a private cause of action to secure these rights. Because money damages would not be recoverable, the amendment would only

authorize actions for injunctive relief. The amendments may support lawsuits seeking to compel legislative action at the state and local levels. The terms “clean” and “healthy” are not defined and would likely be subject to judicial interpretation.

Paragraph B of the proposed new constitutional section creates 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.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The rights established by paragraph A of the proposed amendment are similar to, but more extensive than, the declaration contained in Section 21 of Article 20 of the NM Constitution.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

By providing that the constitutional provisions are enforceable against the state, counties, and municipalities, paragraph C appears to preclude enforcement against private entities.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Section 21 of Article 20 of the NM Constitution will continue to provide, “[t]he 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[.]” and that “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[.]” and otherwise leave the status quo unchanged.

Additional note, a lawsuit has been filed by private plaintiffs against the State of New Mexico, naming the Governor, NM Environment Department, Ene34rgy Minerals Natural Resources Department, the respective secretaries, the Environmental Improvement Board, and the Oil Conservation Commission advancing New Mexicans’ rights to a “healthful and beautiful environment” and alleging that the state has failed to protect those rights. *See Atencio, et. al v. State of New Mexico, et. al.* D-101-CV-2023-01038.

AMENDMENTS