

LFC Requester:	Davidson, Austin
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

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 **Amendment** _____
Correction _____ **Substitute** _____

Date 1/22/24
Bill No: SJR 8

Sponsor: Sen. Antoinette Sedillo Lopez
Short Environmental Rights, CA
Title: _____

Agency Name and Code AOC 218
Number: _____
Person Writing Kathleen Sabo
Phone: 505-470-3214 **Email** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HJR 4, also proposing to amend Article 2 of the Constitution of New Mexico.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SJR 8 proposes to amend Article 2 of the Constitution of New Mexico to add a new section entitling the people of New Mexico to clean and healthy air, water, soil, native ecosystems and environments, including a safe climate, for the benefit of public health, safety and general welfare. The amendment requires the state to protect these rights equitably, regardless of race, ethnicity, tribal affiliation, gender, socioeconomics or geography.

The SJR 8 amendment requires the state, counties and municipalities to serve as trustees of the natural resources of New Mexico and to conserve, protect and maintain these resources for the benefit of all of the people, including present and future generations. The amendment prohibits these entities from allowing, through government action or inaction, the degradation, diminution or depletion of the natural environment that is avoidable, contributes to significant or widespread environmental harm or results in an unhealthy or unsustainable environment.

SJR 8 provides that the provisions of this new section are self-executing and that monetary damages shall not be awarded for a violation of this section, which is enforceable against the state, counties and municipalities.

SJR 8 requires the proposed amendment be submitted to voters for approval or rejection at the next general election or at any special election prior to that date.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and any challenges to the constitutionality of the amendment, as well as any litigation brought against the state, counties and municipalities for allowing harm to the natural environment. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) In recent legislative sessions, the following joint resolutions amending Article 2 of the

Constitution of NM in a manner similar to SJR 8 have been introduced: SJR 3 (2021); SJR 2 and HJR 2 (2022); and HJR 4 and SJR 6 (2023). (Many of these joint resolutions also amended Article 20 of the Constitution of NM by repealing Section 21, which SJR 8 does not.)

Throughout the FIRs for some of these joint resolutions, the following points have been made:

- That the meaning of the terms “clean” and “healthy” will need to be established by legislation, administrative rules, and precedent. (Office of the New Mexico Attorney General or NMAG)
- That Paragraph B of the amendment creates overlapping and potentially conflicting claims of trusteeship among the state and its political subdivisions, whose potential inconsistent positions would need to be resolved through a preemption analysis. (NMAG)
- That Paragraph C of the amendment providing for enforcement against the state counties and municipalities appears to preclude enforcement against private entities. (NMAG)
- That the proposed amendment could be used as a potential roadblock to pursuing clean energy projects as part of NM’s renewable energy transition, resulting in costly litigation that could impact the financial feasibility of certain energy projects. (Energy, Minerals and Natural Resources Department or EMNRD)
- That the amendment may allow individuals to assert causes of action currently unavailable under existing environmental laws.
- That it was unclear how the joint resolution and the NM Natural Resources Trustee Act, Chapter 75, Article 7 NMSA 1978 align, as both contain language directing the state to act as trustee of natural resources. (Office of the Natural Resources Trustee or ONRT)

See, in particular the FIR for 2023’s SJR 6 at

<https://www.nmlegis.gov/Sessions/23%20Regular/firs/SJR06.PDF> and the FIR for 2021’s SJR 3 at <https://www.nmlegis.gov/Sessions/21%20Regular/firs/SJR03.PDF> .

- 2) The American Bar Association has pointed out that Environmental Rights Amendments (ERAs) describing the rights of the people ensure that the government cannot infringe the people’s fundamental right to a clean environment and do not provide any cause of action for one private citizen against another citizen or corporation. “That is not to say that private industry will never have to deal with litigation related to ERAs. Where there is an intersection between a business, private citizens and the government, then the ERA may result in litigation that burdens private business.” See *Environmental rights amendments: misconceptions and application*, Todd Ommen, October 28, 2022 at https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/november-december-2022/environmental-rights-amendments/ . Ommen also points out that the industry argument that an ERA requires additional legislative or regulatory action is wrong...and, particularly in the face of SJR 8’s explicit statement that the provisions of the amendment are self-executing.

To be sure, defining what ‘clean’ or ‘healthful’ means in the absence of numbers and charts will require some work by agencies and the judiciary, and it will certainly lead to some uncertainty for industry. But that is what the people have asked for: protection of their environment even in the absence of specific statutes

and regulations. Uncertainty is one result, but it is not a reason to make the ERA a useless, albeit well-meaning, aspiration.

ERAs certainly will create some additional litigation, uncertainty, and burden on business and industry. But they are being enacted precisely to address the uncertainty and burden that currently falls on the people due to risks from unregulated exposures. This is the burden shift underlying and motivating the recent enactment of ERAs. For this reason alone, ERAs would appear to be justified. The question remains, will this be sufficient to curtail business and industry efforts to avoid or neuter them moving forward?

Ibid.

- 3) The National Caucus of Environmental Legislators (NCEL), identified state efforts in 2023 to pass so-called “Green Amendments.” See *Green Amendments in 2023: States Continue Efforts to Make a Healthy Environment a Legal Right*, March 27, 2023 at <https://www.ncelenviro.org/articles/green-amendments-in-2023-states-continue-efforts-to-make-a-healthy-environment-a-legal-right/> .
- 4) In August of 2023, the judge in *Held v. Montana*, No. CDV-2020-307 (1st Dist. Ct. Mont., Aug. 14, 2023) ruled that the state’s failure to consider climate change when approving fossil fuel projects was unconstitutional, given that language in the state constitution guarantees to residents “the right to a clean and healthful environment.” See *Judge Rules in Favor of Montana Youths in a Landmark Climate Case*, Gelles and Baker, August 14, 2023 at <https://www.nytimes.com/2023/08/14/us/montana-youth-climate-ruling.html> and *Big (Sky) climate win*, Jeff Neal, August 22, 2023 at <https://hls.harvard.edu/today/young-climate-activists-land-tentative-win-in-montana-constitutional-case/> and noting, in an interview with Harvard Law’s Richard Lazarus, that the impact of the ruling could be limited, as federal courts have mostly rejected the arguments made in *Held*. See the *Held* decision at <https://westernlaw.org/wp-content/uploads/2023/08/2023.08.14-Held-v.-Montana-victory-order.pdf> .

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HJR 4, also proposing to amend Article 2 of the Constitution of New Mexico.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS