

LFC Requester:

Davidson

**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 Jan 19, 2024

Bill No: SJR 8

Sponsor: Sedillo Lopez
Short Title: Environmental Rights, CA

Agency Name and Code NMED-667
Number: _____
Person Writing Zachary Ogaz
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SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$140.0 - \$1,000.0	\$860.0	\$2,860.0	Recurring	NMED Operating budget

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to: Similar to 2022 House Joint Resolution 2 (HJR2) and nearly identical to 2021 Senate Joint Resolution 3 (SJR3); and nearly identical to House Joint Resolution 4 (HJR4).

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Synopsis: Senate Joint Resolution 8 (SJR8) proposes to amend Article 2 of the New Mexico Constitution to include recognition of environmental rights held by the people of the State of New Mexico, to have the right to clean and healthy air, water, soil, native eco-systems and environments, and safe climate. The State, counties and municipalities would serve as trustees of

the natural resources to protect for the benefit of the people of New Mexico, and would place a duty on the State, counties, and municipalities to ensure the prevention of “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.”

FISCAL IMPLICATIONS

SJR8 may require significant resources to resolve legal uncertainty in its language and to ensure NMED is properly enforcing its authority. If passed, the New Mexico Environment Department (NMED) would need to dedicate at least 1.0 full-time equivalent (FTE) attorney, (approximately \$140,000 in salary and benefits), in fiscal year 2025 (FY25) to initially research and resolve uncertainties about its authority, and to determine the extent of NMED’s status as a trustee for environmental right. Depending on that assessment, NMED may need additional attorneys and paralegals in the remainder of FY25 and FY26 to ensure proper enforcement measures are being taken. In addition, NMED’s bureaus would incur other costs, in the form of education, internal training, coordination with the Environmental Protection Agency, and hearing costs. Without additional FTEs, NMED may not be able to effectively enforce the additional environmental and public health protections required by SJR8. This proposition must be fully funded in the agency’s base operating budget and continue into future years.

SIGNIFICANT ISSUES

If SJR8 passes and the electorate approves the amendment would create a trustee obligation and impose duties on the state, counties, and municipalities. Creating a trusteeship and placing duties on these government bodies to ensure the protection of the environment could cause confusion regarding how these government bodies and their new roles mesh with existing environmental laws, permits and regulators. While individuals may be able to assert causes of action currently unavailable, the reviewing courts would be invited to determine new courses for alternative environmental management actions that could short-circuit existing statutory and regulatory schemes. For example, Sections 74-1-1 through 74-1-10 NMSA 1978, the “Environmental Improvement Act,” Section 74-2 NMSA 1978, the “Air Quality Control Act,” Section 74-4, the “Hazardous Waste Act,” Section 74-6, the “Water Quality Act,” Section 74-9, the “Solid Waste Act,” and, the “New Mexico Natural Resources Trustee Act,” NMSA 1978, Sections 75-7-1 et seq. This could require NMED to track complaints in civil courts statewide to determine whether intervention would be necessary to protect its own authority and regulatory schemes.

There may also be issues with the “self-executing” language in Section C, and whether or not this language precludes further judicial inquiry. Amendments in other states using similar language were invalidated for separation of powers issues. (Robinson Twp. V. Commonwealth of Penn., 83 A.3d 901 (Pa. 2013) and (Robinson Twp. V. Commonwealth of Penn., 96 A.3d 1104 (Pa. Cmmw. 2014).

PERFORMANCE IMPLICATIONS

NMED will need to expend significant legal resources to resolve the confusion arising from conflicting actions and authorities. In order to provide the important and necessary actions NMED must be able to take in order to protect public health and the environment, including maintaining robust enforcement programs to hold polluters accountable and ensure a level playing field for regulated entities across the state, there must a corresponding increase in NMED FTEs.

ADMINISTRATIVE IMPLICATIONS

NMED may need to promulgate new rules or amend existing rules to conform to any new or changed requirements resulting from SJR8.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Nearly identical to 2021 SJR3; identical to 2022 HJR2; similar to 2023 HJR4

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without SJR8, environmental protection and public health will continue as currently structured with the Constitutional charge to the legislature in Article 20, Section 21 to “provide for control of pollution and control of despoilment of the air, water and other natural resources of this state.” Legislative authority to enact and amend statutes for pollution control will continue, as will enforcement and implementation of those statutes by state agencies, boards and commissions, including NMED.

AMENDMENTS

None identified.