

Lawmakers to consider Green Amendment to New Mexico Constitution

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The proposed Green Amendment that would make a clean and healthy environment a constitutional right for New Mexicans will be taken up in the legislative session with strong Democratic backing and virtually zero Republican support.

The partisan divide is no surprise to anyone familiar with the effort to make the state constitution a backstop for environmental protection.

Advocates say it would compel the state to enforce current laws and enable it to draw on constitutional authority when regulations don't adequately cover specific threats to the environment or public health.

Opponents say it could lead to government overreach that would hurt the state's industries — such as fossil fuel, agriculture, timber and mining — and the communities that depend on the jobs in those sectors.

The Green Amendment has 25 co-sponsors, all Democrats, compared with four who backed the proposal when it was introduced in the 2021 legislative session but failed to get a hearing in the Senate Judiciary Committee. It also has drawn the support of 40 organizations, including environmental, faith, Indigenous and community groups.

“It requires the state to do its job to protect the environment,” said state Sen. Antoinette Sedillo Lopez, D-Albuquerque, one of the co-sponsors.

If the state failed to enforce rules on, say, methane emissions or the contaminated water from fracking, the amendment would give citizens added leverage to demand the state improve its oversight, Sedillo Lopez said.

But Republican state Sen. Steve Neville of Farmington, whose district is part of the natural gas-rich San Juan Basin, called the amendment “a feel-good thing” that’s too vague and broad.

It could allow the state to take sweeping, arbitrary actions against anything it deems harmful to the environment, Neville said.

“It’s a bit scary, frankly,” Neville said. “It would leave it to the interpretation of maybe one judge to make a decision on some environmental issue that could basically destroy an industry ... destroy the economy of the state for that matter. It could be very, very devastating.”

Lawmakers will get to express their views about the proposal because it will be introduced.

As a proposed amendment, it doesn’t require the governor’s approval as regular bills do to be taken up in a 30-day legislative session. If it passes both chambers, it will go before voters in the November election, and not to the governor to sign or veto.

This time around, there will be House and Senate versions to double the chances of it passing, Sedillo Lopez said. That, combined with the growing support, makes it more likely to succeed, she added.

“I feel really optimistic because a lot of people are thinking how important it is to protect our beautiful but fragile environment,” Sedillo Lopez said.

Using the state constitution as armor

New Mexico would be the fourth state to adopt the Green Amendment, joining New York, Montana and Pennsylvania. A dozen other states are considering similar constitutional amendments.

The idea for this proposal came from Green Amendments for the Generations, a national organization that has introduced similar constitutional amendments in several states.

Maya van Rossum, the group's founder, wrote in an email the amendment would ensure protecting human health is a priority in New Mexico leaders' decision-making and won't be cast aside for politics or industry.

"It can't simply be an afterthought or the subject of unfulfilled rhetoric," van Rossum wrote.

The amendment would ensure the government considers and protects the rights of future generations to a healthy environment — including clean water and air — and a stable climate, she wrote.

It could be used when existing laws fall short, she wrote. For instance, if there's a gap in the law or if the law as written harms people or has a disproportionate impact on certain communities, van Rossum wrote, adding that such environmental injustice would become unconstitutional.

Sedillo Lopez said it also would embed in the state constitution a safeguard preventing a future governor from summarily undoing the climate protections and environmental regulations the Lujan Grisham administration is enacting. Such rollbacks would infringe on residents' constitutional rights, she argued.

This would avoid a repeat of former Republican Gov. Susana Martinez slashing environmental rules put in place by former Gov. Bill Richardson, a Democrat, Sedillo Lopez said.

“That I think is a very important aspect, so we don’t go backwards on the environment,” Sedillo Lopez said.

The Republican Party of New Mexico denounced the proposed amendment as a wasted effort.

“The governor and progressives at the Roundhouse have more pressing issues right now than modifying their green agenda,” Steve Pearce, the GOP’s state chairman, wrote in an email. “They should be focused on crime, jobs, the economy and COVID. These progressive Democrats continue to push green energy while they try to destroy our vital oil and gas industry.”

An environmental attorney thinks passing the amendment is worthwhile and would give residents a stronger voice within the legal system.

Under current laws, it’s difficult for a person being harmed by pollution to remedy it through the courts, said Charles de Saillan, staff attorney for the New Mexico Environmental Law Center.

“Most of the enforcement is done by the state agencies,” de Saillan said. “That’s the way that our laws are set up. The Green Amendment will, I think, enable individuals to deal with environmental issues more easily.”

Uncertain impacts

If enacted, the amendment is likely to be legally challenged when the state begins using it to regulate industry, de Saillan said. The courts then would decide how broadly it should be applied, he said.

Neville, the Republican lawmaker, said he also expects the courts would get involved. He worries that when judges try to interpret the amendment's broad language, they could hand down rulings that are arbitrary and harmful to the state's vital industries.

Oil and gas could get slammed, but so could ranching, industrial development and even a high-tech company looking to expand if a regulator claims it will consume too much water, Neville said.

Neville said he has seen other laws enacted with good intentions go awry.

"That's the whole scary thing about it is the unintended consequences," Neville said.

But van Rossum contends the amendment will benefit New Mexico's economy. Tourism, recreation, hunting, nature watching and other outdoor businesses depend on the state protecting the environment and landscapes, van Rossum wrote.

Beyond that, the amendment will ensure all industries operate in a way that doesn't harm their communities — which is something they should do anyway, she wrote.

Some farms have had to shut down because groundwater was contaminated with PFAS, she wrote.

PFAS is an abbreviation for perfluoroalkyl and polyfluoroalkyl substances. They can cause increased cholesterol, reproductive problems and cancer.

PFAS runoff from firefighting foam used during training at Cannon Air Force Base contaminated at least one dairy farm in Clovis.

"Had there been a New Mexico Green Amendment in place, it could have been used to prevent PFAS contamination in the first place," de Rossum wrote. "Or secure stronger and meaningful government action sooner to prevent these devastating consequences."