

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

ACA 16 (Bryan) – As Introduced January 25, 2024

Policy Committee: Natural Resources Vote: 8 - 3

Urgency: State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill amends the California Constitution to declare that the people shall have a right to clean air and water and a healthy environment.

FISCAL EFFECT:

- 1) One-time costs to the Secretary of State (SOS) in the range of \$740,000 to \$987,000 for printing and mailing costs to place this constitutional amendment on the ballot in a statewide election (General Fund.) It costs approximately \$123,359 per page and SOS anticipates this measure would require between six and eight pages.
- 2) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but likely significant amount to the courts to adjudicate lawsuits filed to enforce the rights established by this constitutional amendment. Actual costs will depend on the number of lawsuits filed and the amount of court time needed to adjudicate each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. If 10 suits are filed and each takes five days of court time to resolve, the resulting cost would be \$400,000 for courtroom operation. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The Governor's proposed fiscal year 2024-25 budget proposes \$83.1 million ongoing from the General Fund to backfill declining revenue to the Trial Court Trust Fund.
- 3) Costs of an unknown but potentially significant amount to the Department of Justice (DOJ). These costs would be borne by the Legal Services Revolving Fund but will be reimbursable through direct billings to client agencies. DOJ's Land Use and Conservation Section, Environment Section, and Natural Resources Law Section anticipate increased referrals from client agencies relating to enforcement and potential legal challenges arising from this constitutional amendment. Actual costs are unknown and would depend on several factors, including the number of lawsuits filed in response to this constitutional amendment and the number of referrals DOJ receives from client agencies.

According to the Legislative Analyst's Office, the General Fund faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

COMMENTS:

- 1) **Purpose.** According to the author:

California leads – here in the U.S. and across the globe. Still, the 40 million people who call our state home may be surprised to realize that we are one of the remaining states that does not have clear environmental rights articulated in our constitution. Without clear and enshrined constitutional rights, all of the hard-won progress we have made remains vulnerable to potential rollbacks. It also leaves California increasingly subject to worrisome changes in federal policy. If our state is to continue making equitable environmental progress, it is imperative that we join the growing list of states who have moved to enshrine environmental rights in their constitutions.

- 2) **Background.** Some states have begun to incorporate environmental rights amendments into their state constitutions. Known as “green amendments,” these proposals attempt to protect the right to clean air, clean water, and a healthy environment the way more traditional rights like religious freedom and free speech are protected. Pennsylvania, Montana, and New York have each adopted green amendments in their bills of rights. Several other states have introduced green amendments this year.

In a landmark decision in 2023, a Montana judge ruled that a state law prohibiting state agencies from considering potential climate impacts and greenhouse gas emissions when granting permits for new oil and gas projects violates its citizens’ constitutional right to a “clean and healthful environment.” According to the Pace University School of Law, plaintiffs have filed several green amendment lawsuits in New York, include one that claims that odors, fugitive emissions, and climate change impacts from the operation of the High Acres Landfill violates the environmental rights of nearby property owners and residents.

- 3) **Support and Opposition.** Writing in support, a large coalition of organizations contends:

ACA 16 recognizes the importance of a healthy environment, clean air and water for all California's. The constitutional amendment unequivocally uplifts the health and environmental rights to those living in environmental justice communities who are disproportionately people of color and low-income Californians. Additionally, this constitutional right ensures transformative environmental legislation passed does not suffer from institutional rollbacks.

The California Chamber of Commerce writes in opposition to this bill:

[ACA 16] lays the legal foundation to challenge virtually any state or local government infrastructure, energy, procurement proposal or housing project on the basis that any one of them threatens their new, and as yet undefined, general right...New affordable housing development projects could be delayed or stopped if air emissions associated with grading activities release air emissions or any wastewater discharge. The same is true for key transportation projects, such as High-Speed Rail, and for necessary clean energy development projects like solar farms, where any amount of project impact could be grounds to enjoin...Implementation of this measure will be

challenging at best. There is no widely accepted definition of “healthy environment”. The poorly defined definition will make enforcement of ACA 16 subjective and be left open to interpretation.

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