



Iowa Green Amendment Frequently Asked Questions & Answers

Proposed Iowa Green Amendment

Right to clean environment.

Every person has the right to a clean and healthy environment, including pure water, clean air, ecologically healthy habitats, and the preservation of the natural, scenic, historic, and aesthetic qualities of the environment. The state shall not infringe upon these rights by action or inaction. The state's public natural resources, including its soils, waters, air, flora, fauna, climate, and public lands, are the common property of the people, including both present and future generations. As trustee of these resources, the state shall conserve, maintain, and restore these resources for the health and benefit of all the people. This section and the rights stated herein are self-executing and shall be in addition to any rights conferred by the public trust doctrine or common law.

What is a Green Amendment?:

Green Amendments are self-executing provisions placed in the Constitution's Bill of Rights that recognize and protect the inalienable rights of all people, including future generations, to pure water, clean air, a stable climate and healthy environments. Green Amendments serve as a check on government authority, and make clear government's duties, as trustee, to protect the environment for the benefit of the beneficiaries, i.e. all the people, including future generations, regardless of race, ethnicity, religion or income.

What states have Green Amendments currently?

Only Pennsylvania, Montana and New York have constitutional language that fulfill the definition of a Green Amendment. Pennsylvania and Montana have state Supreme Court rulings that interpret and apply the constitutional language in keeping with the legal interpretation and application of other constitutional bill of rights/declaration of rights provisions. New York's Green Amendment was passed in November 2021, consequently case law has yet to develop in that state.

Why do we need a Green Amendment, when our state already has a well-developed set of environmental protection laws?

While Iowa has a well-developed systems of environmental protection laws, the state also has a significant number of urgent environmental problems: communities with unsafe drinking water or polluted air; communities forced to live next to highly toxic sites that are harming human health and reducing property values; fish so contaminated they are the subject of fish advisories; and ongoing environmental justice issues as communities of color continue to be disproportionately exposed to environmental pollution and degradation. It is clear there are gaps in the law. In addition, poor implementation and politically expedient rollbacks of protections are too commonplace. As we see in other areas of law, such as civil rights, that

the deficiencies can best be addressed by the overarching protections constitutional protection provides– i.e. a Green Amendment.

How are terms like ‘pure water’, ‘clean air’, ‘ecologically healthy habitats’, defined? Aren’t these terms too broad for a constitutional provision?

Broad language is characteristic of Iowa’s Bill of Rights. The terms ‘pure water’, ‘clean air’, ‘ecologically healthy habitats’, are no less clear than the language in other Bill of Rights provisions, e.g. “No law shall be passed to restrain or abridge the liberty of speech, or of the press;” “excessive bail shall not be required;” “cruel and unusual punishment shall not be inflicted;” “people have the right freely to assemble;” people have a right against “against unreasonable seizures and searches” -- all of these are broad, but have received definition through government action and judicial determinations.

It becomes government’s job to, in the first instance, seek to provide legislation, regulations, policies, and decision-making that respects and protects the rights. It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled. As in other areas of law, courts will give an appropriate level of deference to government experts, but when community members are able to bring forth sufficient evidence that presumption of deference can be overcome.

The inclusion of trust language in a Green Amendment helps to provide further legislative and judicial guidance that can help guide both its implementation and interpretation.

Why Must a Green Amendment be Placed in the Bill of Rights Section of the Constitution?

The rights described in the Bill of Rights are those rights that are recognized as natural and inalienable rights that are to be protected from government infringement.

Pure water, clean air, and healthy environments are essential for supporting healthy human lives – in terms of physical health, mental health, cultural health and economic health. Without an environment in which human life can thrive, a person is deprived of all other rights. Given that pure water, clean air, and healthy environments are essential for sustaining healthy human life, it is appropriate that these rights be placed in the Bill of Rights.

Placement in Bill of Rights/Declaration of Rights ensures that the right to pure water, clean air, a stable climate and healthy environments are legally recognized and protected on par with other fundamental rights, including property rights. This is particularly important in order to prevent the argument that environmental rights are of lesser legal importance than property rights, and it is essential for ensuring proper and equitable balancing of these rights in the eyes of legislators and the courts.

Why is a Green Amendment beneficial for environmental justice protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes clear that government decisions and actions must protect these rights *for all people* and that

government is not entitled to undermine, sacrifice, nor minimize the rights of one beneficiary community in order to enhance or protect the rights of another beneficiary community.

Including a trust obligation in a Green Amendment ensures that all government officials have a clear fiduciary duty to act with prudence, loyalty and impartiality for the benefit of all beneficiaries, including present and future generations. This ensures a duty of equitable treatment, and careful and informed decision-making. Given that the fiduciary obligation is owed to all beneficiaries it also prevents the government from justifying harms to one community in order to benefit another.

Will passage of a Green Amendment cause an onslaught of frivolous lawsuits?

Green Amendments do not support an onslaught of frivolous litigation. In Pennsylvania and Montana, where Green Amendments now exist, there has not been an onslaught of frivolous litigation relying on constitutional environmental rights. Rather, the lawsuits brought have been reasonable and helped to shape the understanding of the constitutional requirement.

Other meaningful tools already exist that prevent frivolous litigation in any context, including where there are Green Amendments. Attorneys are subject to ethical and legal standards that prohibit advancing frivolous litigation and can be enforced through a variety of sanctions from fines to implications for their law license in egregious situations. And attorneys who pursue frivolous legal actions will inevitably lose their cases which will anger the fee-paying clients and result in a bad reputation that will most certainly impact the attorneys' business and ability to attract clients. There are ethical considerations, the threat of sanctions, and the expectations of legal clients who are paying the bill that serve as a check on attorney misuse and frivolous lawsuits.

Will the Constitutional language force commercial, energy or economic development to grind to a halt?

A constitutional environmental right will encourage sustainable, environmentally protective, and innovative development, industry, and business growth. It will also provide a powerful incentive for government officials to render decisions and advance businesses in ways that accomplish economic and business objectives, while at the same time protecting water, air, soils, food, forests, wetlands, climate and other natural resources critical to sustaining healthy, safe and successful lives and economies.

Does a State Green Amendment mean that state government actions/activities/laws can never infringe on the constitutional environmental right?

No. As well-explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if "the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective." (*Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality*, 1999 MT 248 (1999).)