



SB151/HB82 Constitutional Amendment – Environmental Rights

The *Maryland Constitutional Amendment for Environmental Human Rights* would guarantee that every person has the “fundamental and inalienable right to healthful environment” including the right to clean air, water, land, a stable climate, and the preservation, protection, and enhancement of ecological, scenic, and historic values of the environment.

The state is trustee of the air, land, water, living and historic resources of the state, which shall be protected, preserved, and enhanced for the benefit of all the people of this state, including future generations.

- **The Need for a Fundamental Constitutional Right** - The Strongest Protection Provided by a State
 - In 1973, Maryland’s General Assembly passed the Maryland Environmental Policy Act, establishing and recognizing that every Marylander has the “fundamental and inalienable right to a healthful environment.” Regrettably, that right has yet to become a reality in our state.
 - Without that right, communities of color and low income suffer disproportionate concentrations of pollution and environmental degradation.
 - In a state with siloed laws and lagging compliance, a constitutional right would act as a true guardrail to prevent the most egregious forms of harmful state action now and for future generations.
 - A constitutional right, as opposed to a regular law, would ensure that environmental protection is the highest obligation of the government, and not just an aspirational goal that could be amended at any point in time.
- **A Healthier Place to Live** - Less Pollution Means Better Health
 - As a constitutional guardian of our natural resources, Maryland state officials would be: (a) constitutionally obligated to protect the environment and its impact on the health of Marylanders, and (b) legally prevented from permitting egregious harm to public natural resources that would violate the constitutional right.
 - Every person deserves the fundamental right to a healthy and healthful environment.
- **A Backstop for Better Decision Making** – A Smarter Way Forward
 - This right would require state decision-makers to (a) consider the full extent of harm resulting from any given proposal and (b) consider whether a proposed project increases existing degradation - considering both individual and cumulative impacts of harm.
 - An Environmental Human Rights amendment would provide backing for new laws that better protect the environment and the health of Marylanders.



Frequently Asked Questions

Why is a constitutional amendment needed now?

We need an equitable foundation for our rights to a healthful environment. First, contemporary society provides us with a host of environmental challenges, too many for our state legislature to be able to reasonably handle in its short 90-day sessions. This amendment provides a safety net capturing a broad array of issues, preventing, and correcting environmental degradation, both now and in the future.

Second, none of the environmental laws and policies we have passed are currently secure. None are grounded in anything beyond themselves and legislators' good will. Which means that if a future administration or legislature wants to reverse those laws, they can. We need to ground these laws and policies in fundamental rights, which this amendment would do.

What will a constitutional amendment do?

It will offer the strongest, broadest, and most durable legal tools for environmental protection for government entities as well as individuals, especially those communities disproportionately burdened by environmental degradation.

Equity is an important issue for this session. How will this amendment address equity for black and brown communities?

By assuring that “every person” has a right to a healthful environment, this amendment enables those who suffer from anthropogenic environmental degradation, or who are threatened with harm by proposed actions to the environment around them, to challenge those actions as people whose rights have been violated. Without this amendment, individuals who suffer harm appear as supplicants before the law “requesting that somehow the public interest be interpreted to protect the environmental values from which [they] benefit.”¹ This amendment enables them to stand before the law as claimants to their right to a healthful environment.

What states have environmental rights amendments, or Green Amendments, currently?

Only Pennsylvania and Montana have constitutional language and court rulings that fulfill the definition of an environmental rights amendment. Illinois, Hawaii, and Massachusetts have substantive environmental rights outside the Declaration of Rights language in their state constitutions. In addition to Maryland, environmental rights amendments are being advanced in New York, New Jersey and West Virginia with proposals anticipated in other states.

¹ “The Public Trust Doctrine, Environmental Rights and the Future of Private Property,” David Takacs, UCHastings College of Law, UC Hastings Scholarship Repository. 2008



Is the Maryland environmental rights amendment the same as the Pennsylvania amendment?

Our amendment is unique to Maryland in one major respect: Ours is based on the right articulated in the 1973 Maryland Environmental Policy Act which boldly states: “Each person has the fundamental and inalienable right to a healthful environment.” The amendment assures that the state can now implement the full expectation expressed in MEPA almost 50 years ago.

The trustee provisions are similar to Pennsylvania. The state is trustee of Maryland’s natural resources. The trustee clauses establish an assumed authority and implementing standard that does not currently exist in Maryland’s Constitution or clearly in Maryland statutory law.

How are terms like ‘clean air’ and ‘clean water’ defined? Aren’t these terms too broad for a constitutional provision?

Broad language in a constitution’s Declaration of Rights/Bill of Rights is characteristic of all state and the federal constitutions. The purpose of the Declaration of Rights/Bill of Rights is to identify those rights that “the people” reserve unto themselves as being protected from government infringement. The terms ‘clean air’, ‘clean water’ are no less clear than the language in other Declaration of Rights/Bill of Rights provisions, e.g. “right to a speedy ... trial”, “excessive bail shall not be required”, “people have the right freely to assemble” -- all of these on their face are quite 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.

Would the amendment prevent legislators from making legislative compromises or exceptions?

No right guaranteed in the constitution is absolute - not freedom of assembly or speech or religion or even due process. Extenuating circumstances can limit that right. So too this right.

The legislature still has the authority, power and necessity to pass laws that define and implement this right. This amendment rather guides the legislature in the crafting of environmental bills that flesh out, define and fulfill the application of this right.

How will a constitutional amendment be used?

In many ways - it will protect both against those environmental degradations we can identify and anticipate and those we can't. For example, it will require the government to take into



consideration the effects of climate change before approving broad highway and other large development projects; it will guide local governments in proper zoning policies; it will require government to assess the full, long-term impact of pipeline installation and power plant construction; it will allow us to fight against future pollutants and degradations that have yet to be created or recognized; it would prevent any one neighborhood from being over-burdened with a cluster of polluting sources.

What will passing a constitutional amendment cost the state of Maryland?

University of Maryland's Environmental Law Clinic researched four other states that have had environmental rights language in their constitutions for over 40 years. None of them ever had a floodgate of litigation due to this amendment. None had to expend additional public resources responding to such litigation. There is no reason to believe Maryland will be different.

The real question is, what will not passing such an amendment cost the state of Maryland. While it is difficult to put a precise price tag on the current and future costs of climate change and other environmental ills (such as air pollution, heat island effect, water pollution, environmental refugees and the potential for civil unrest that might follow), experts agree that we will spend much more money responding to the destruction and devastation of climate change and negative health impacts of pollution than we will by investing in preventing them. And preventative investment contributes to and spurs a growing, adaptive economy.

How will a constitutional environmental rights amendment help communities meet standing requirements when seeking environmental redress?

Currently, Maryland has a patchwork of environmental standing laws that only provide standing in limited situation. For instance, the Maryland Court of Appeals has found that the Maryland Environmental Standing Act does not “expressly include judicial review of an administrative proceeding,” so the public has no judicial recourse for a state or local permitting decision that could have significant impacts on their water, air, or environment. Creating a constitutional right to healthful environments will support standing when there is a claim that the government has acted in a way that will infringe on constitutional environmental rights – e.g., have contaminated the water or air in dangerous ways that harm human health for surrounding communities -- even if there is no specific regulation or law that would otherwise allow impacted individuals or communities to bring a legal challenge to the specific government action taken. Yet as the Pennsylvania Supreme Court ruled regarding their environmental rights amendment, the amendment *does not* open the doors to litigants who cannot show (i) injury-in-fact, (ii) causation and (iii) redressability.

In addition, it needs to be noted that this amendment does not give individuals a right to sue other private actors. This amendment is designed to constrain government from acting or allowing others to act in a way that violates an individual's right to a healthful environment.



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.

Will the amendment stop residential or commercial property development?

As well-explained by the Pennsylvania Commonwealth Court when speaking about development proposals in the context of that state's Green Amendment: The Environmental Rights Amendment was not intended to "deprive persons of the use of their property or to derail development leading to an increase in the general welfare, convenience, and prosperity of the people." *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 83 A.3d 901, 954 (2013). It does, however, require that economic development not take place at the expense of an "unreasonable degradation of the environment." *Id.* (emphasis added). Furthermore, with respect to the environment, "the state's plenary police power ... must be exercised in a manner that promotes sustainable property use and economic development." *Id.* (*Feudale v. Aqua Pennsylvania, Inc.*, 122 A.3d 462 (Pa. Commw. Ct. 2015)).

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

How is a constitutional amendment better than legislation?

Constitutional rights cannot be waived or displaced by acts of the legislature. Constitutions provide the overarching legal structure, principles, and obligations to which all branches of government must conform. Therefore, a constitutional amendment will ensure environmental protection is considered throughout the decision-making process when harm can best be addressed and prevented. It will ensure environmental rights are given the same protection as

other rights. This amendment provides the foundation for communities to seek environmental protections when their rights have been infringed upon by government action, inaction, or activities.

Maryland has a robust system of environmental laws, why do we need something more?

Despite Maryland's existing environmental protection laws, we face significant environmental problems, including, but not limited to, contaminated drinking water, communities living next to



highly contaminated sites that are harming human health and reducing property values, and air pollution causing asthma attacks in children and harming the health of Maryland communities. Not only do our state laws allow significant harms on a case by case basis, but they are allowing cumulative impacts to go unconsidered and unaddressed. Communities of color and low income communities continue to be unfairly targeted for heavy polluting industry. Most Maryland environmental laws adopt the review, permitting and management approach rather than a focus on prevention first. And gaps in the law are allowing harmful pollution and environmental degradation to advance unaddressed. As we see in other areas of law, such as civil rights, these deficiencies can best be addressed by the overarching protections provided by the state constitution's Declaration of Rights.