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Green Amendment Step-by-Step Guide

Provided by:



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GREEN AMENDMENT

Check List, Model Language & Guide



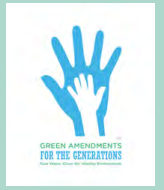
*Essential Elements & Step-by-Step Guide
For Drafting an Effective Environmental
Rights Amendment -- aka --*

A GREEN AMENDMENT



GREEN AMENDMENTS
FOR THE GENERATIONS
Pure Water. Clean Air. Healthy Environments.

Where We Stand With Green Amendments Nationwide



Every state across our nation needs a Green Amendment ... a constitutional provision that recognizes and protects each person's right to pure water, clean air, a stable climate, and a healthy environment as an inalienable right on par with other fundamental rights like the rights to free speech, freedom of religion and private property rights.

When the people are ready, and the time is right, the United States also needs a Green Amendment added to our federal constitution. A 3/4 majority of states are needed to add an amendment to the Federal Constitution. By starting with a Green Amendment in every state Constitution, we create the awareness, foundation and grassroots mobilization necessary to give the federal movement more power when the moment is right to pursue our Federal Green Amendment effort.

Three states currently have Green Amendments as defined by the **Green Amendment For The Generations** movement: Pennsylvania, Montana, and New York. While other states talk about the environment in their constitutions, they do not protect the right to a clean, safe and healthy environment as an inalienable, indefeasible, fundamental right giving it the highest level of legal and constitutional recognition and protection; instead they talk about them as good "policy" or entirely defined by the state legislature. Some state constitutions don't mention environmental protection at all; just as our federal constitution ignores environmental rights and protection.

This checklist and step-by-step model language guide will help you create a true Green Amendment for your State ensuring an effective constitutional environmental entitlement for all people and generations. For further assistance in crafting the perfect Green Amendment for your state email GAFTG@ForTheGenerations.org or phone 267 428 3425. Green Amendments For The Generations would be proud to partner with you to advance this most powerful constitutional protection for our communities and environment.

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Checklist of the Essential Criteria for a Green Amendment:

✓ The provision must be placed in the Declaration of Rights/Bill of Rights section of the constitution and make clear that the rights enumerated are reserved rights that are inherent and inalienable and belong to the people. This placement and language ensures your environmental rights are entitled to the same highest constitutional and legal protections afforded other fundamental rights.

✓ The provision should clearly be grounded in response to environmental degradation that has occurred in the state. Clear legislative history about the origins of the amendment will help guide future legislative efforts and judicial interpretation.

✓ The provision should mention specific environmental values to be protected such as pure water, clean air, ecologically healthy habitats, stable climate, healthy environment, etc.

✓ The provision should include a broad holistic perspective on the values of protecting a healthy environment.

✓ The provision must be self-executing so it does not require passage of laws in order for it to take effect and for the environmental rights of the people to be vindicated.

✓ The provision should identify environmental rights as being rights of every individual, not just collective rights of the state as a whole. This helps to ensure that all people, regardless of race, ethnicity or income, have the same rights that must be protected equitably.



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- ✓ The provision should be generational in focus. The language should explicitly acknowledge that the environmental rights enumerated and natural resources of the state belong to both present and future generations.
- ✓ The provision should recognize the government's public trust duties, broadly defining the body of the trust to include natural resources and environmental values and not simply publicly-owned land, navigational waters, and/or tideland resources.
- ✓ The provision should ensure equitable protection of all people regardless of race, ethnicity, socioeconomics or generation. Declaration of Rights/Bill of Rights placement, trustee language, and, ideally, a specific statement of the obligation to equitably protect environmental rights and natural resources help ensure this critical environmental justice value of the provision.
- ✓ The language should specifically use the word "trustee" to solidify the relationship between the government and the citizenry – the government is not the proprietor of the environment, but is the trustee with an obligation to protect the environment and natural resources for the benefit of the people, who are the beneficiaries of the trust. Using trustee language implicates well-understood trustee duties such as loyalty, prudence, impartiality, and providing the necessity for an accounting of the trust. Trust language is also important for ensuring environmental justice and generational protection.
- ✓ The responsibilities to protect the environmental rights, values, and natural resources, including trustee obligations, should clearly apply to all branches and all levels of government (municipal, county, state).





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 The provision should serve as a limitation on government action or inaction that would otherwise infringe on these rights.

 The provision should include both affirmative duties to protect the environment and prohibitory duties (i.e., governmental actors have an obligation to refrain from legislative enactments, executive action, permitting or otherwise encouraging the degradation, diminution, or depletion of public natural resources that would occur through direct government action or indirectly, because of the government's failure to restrain the actions of others or its authorization of damaging activities that rise to a constitutional level).

 The provision should be drafted so that it is on equal footing with other political rights such as property rights and freedom of speech. Placing environmental rights protections in the Declaration of Rights/Bill of Rights section of a Constitution helps achieve this goal.

 The provision should necessitate a pre-action analysis to ensure actions taken and decisions made do not infringe upon environmental rights.

 The provision should be written in such a way that the court can use the plain language of the provision for its interpretation and application – this means clear language that can be easily interpreted and applied without reference to other rules of statutory construction.

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Model Green Amendment Language Step-By-Step Options & Guidance Based on Experience

Every state is unique. It is important the Green Amendment language put forth serves the unique characteristics, environmental needs, and leading voices of your state.

Below can serve as a guide and starting place for your state's proposal. But we recommend working with Green Amendments For The Generations to identify language that will best serve your state's goals and needs, to learn from experiences we have gained in other states, to discuss how to bring the amendment language in to accord with other provisions in your state constitution, and to address any questions or concerns you may have as your proposed amendment language is being developed, proposed and advanced.

To discuss the best option for your state and to address your questions and concerns, contact Green Amendments For The Generations at GAFTG@ForTheGenerations.org or phone us at 267-428-3425 to set up a time to meet.

Step-By-Step for Building Your Green Amendment Proposal

Select language from each of the following steps to ensure the strongest Green Amendment language possible.

Within the suggested text in each of the steps feel free to add, remove, mix and match, or modify included terms and/or concepts. Footnotes provide some additional options for consideration. Footnotes also provide explanation in some cases helpful for understanding the intent and/or comments regarding the term/language provided.



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Note: There are many ways to develop, include and/or incorporate various elements – below are key building blocks and suggested ways to include them. But through conversation and collaboration with Green Amendments For The Generations we can help you develop the length, quality, and focus that will best serve your unique state.

Step 1:

Bill of Rights/Declaration of Rights Placement.

Identify the Article that includes your state’s Bill of Rights/Declaration of Rights. The amendment **MUST** be located in your state constitution’s Bill of Rights/Declaration of Rights to ensure the legal interpretation and constitutional standing necessary to ensure your environmental rights are given the same highest protection as other fundamental rights.

Step 2:

Generational Protection

Plan to include language that ensures protections for present and future generations. You will see several options incorporated into below. Be sure that somewhere within your provision generational protection is provided.

Step 3:

Environmental Justice and Equitable Protection.

Plan to include language that ensures equitable protection for all communities in order to strengthen the environmental justice benefits of the amendment. You will see several options incorporated into below. Be sure that somewhere within your provision environmental justice protection is provided.



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Step 4:

Provide a Statement of Individual Environmental Rights.

Different options include the following:

- All people have[1] a right to a clean and healthy environment, including pure[2] water, clean air, healthy soils[3], balanced ecosystems[4], a stable[6] climate[22], high quality groundwater[25], diverse and abundant native flora and fauna, freedom from excessive and unnecessary noise, and to the preservation of the natural, cultural[7], scenic, recreational, and healthful[8] qualities[9] of the environment.[10]
- All people have[1] a self-executing[11] right to a clean and healthy environment, including pure[2] water, high quality groundwater[25], clean air, healthy soils[3], resilient ecosystems[5], and a stable[6] climate[22], and to the preservation of the natural, cultural[7], scenic, recreational, and healthful[8], qualities[9] of the environment.[10]
- The people of Name-Your-State have an inherent and inalienable right to a clean and healthy environment, including water, groundwater[25], air, soil, flora, fauna, ecosystems[12] and climate[22], and to the preservation of the natural, cultural[7], scenic and healthful[8] qualities[9] of the environment.
- The people of the state[1] have the natural, inherent and inalienable right to a clean and healthy environment, including water, air, soil, native flora, native fauna, ecosystems[12], and environmental life support system[23], and to the protection of the natural, cultural[7], scenic, recreational, and healthful[8] qualities[9] of the environment.
- The people of the state have a right to clean and healthy air, water, soil and environments; a stable[6] climate[22] and self-sustaining[4] ecosystems, for the benefit of public health, safety and general welfare.



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Step 5:

Include an Explicit Statement of Protection from Government Infringement.



Different options include:

- The state[14] shall take no action that would infringe upon these rights.
- The state[14] shall not infringe upon these rights through direct state action, or inaction, or through the action of others.
- The state[14] shall not infringe upon these rights.
- The state, including each branch, agency, and political subdivision[15], shall not infringe upon these rights.
- The state[14] shall take no action that would cause the unreasonable degradation, diminution, or depletion of the environment, through direct state action, or inaction, or through the action of others[13].

Step 6:

Include an Explicit Statement Regarding Environmental Equity & Justice.

Different options include:

- The state shall protect these rights equitably for all people regardless of race, ethnicity, socioeconomics[16], gender or geography.
- The state[14] may not infringe upon these rights and shall protect these rights equitably for all people regardless of race, ethnicity, tribal membership status, socioeconomics[16], gender or geography.

Including “trust” language (as suggested in Step 7), creates legal obligations that ensure equitable protection of natural resources and environmental rights. A combination of explicit equitable protection and trust language provides additional clarity regarding environmental justice obligations and best ensures enforcement of environmental justice obligations:

- The state shall equitably protect these rights for all people regardless of their race, ethnicity, gender, geography, or wealth, and shall act with prudence, loyalty, impartiality, and equitable treatment of all beneficiaries in fulfilling its trustee obligations.

Step 7:

Create an Obligation on the State & All Government Officials in the State to Serve as Trustee of the State's Natural Resources.

Different options include:

- The state's[17] natural resources[18] are the common property of all the people, including both present and future generations. The state, including each branch, agency, and political subdivision[15], shall serve as trustee of these resources. The state shall conserve, protect, and maintain these resources for the benefit of all the people.
- The state[14] shall serve as trustee of the natural resources of the state, among them[19] its waters[25], air, native flora, native fauna[20], soils[21], and climate[22]. The state[14] shall conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.
- The state, including each branch, agency, and political subdivision[15], shall serve as trustee of the state's natural resources[18]. The state[24] shall conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.



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Step 8:

Provide an Explicit Statement Regarding the Self-Executing Nature of the Amendment and Clarity that These Rights are On Par with Other Fundamental Rights.

Ensuring the amendment is self-executing is a non-negotiable essential. The best way to ensure this is through an explicit statement. If you do not explicitly mention this legal quality then it will be important to ensure that court decisions confirm this is a legal quality associated with the Bill of Rights/Declaration of Rights placement.

Different options include:

- This provision and the rights stated herein are self-executing.
- The rights stated in this section are inherent, inalienable, and infeasible and are among those rights reserved to the people and are on par with other protected inalienable rights. This provision and the rights stated herein are self-executing.
- The rights enumerated in this section are among those rights reserved to the people and are self-executing.

Another approach is to place this language in the first paragraph in this way:

- All people have an inherent, inalienable, infeasible and self-executing right to a clean and healthy environment, including pure water, clean air, healthy ecosystems, and a stable[6] climate, and to the preservation of the natural, scenic, and healthful[8] qualities[9] of the environment.



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Step 9:

Ensuring Pre-Existing Language Does Not Undermine.

If language already exists in the constitution regarding the environment or environmental rights that fail to meet the Green Amendment criteria, the proposed amendment should acknowledge and address that language in a way that ensures it cannot be used to weaken or undermine the proposed Green Amendment.

(ote: only Pennsylvania, Montana, and New York currently have Green Amendments, so if you are not in one of these three states and find pre-existing language, then you are in this situation and need to ensure clarifying language.

Different options include:

- Article X Section Y shall be interpreted and applied consistent with the rights and responsibilities recognized herein, and shall not impede the full exercise or enforcement of the inalienable rights hereby reserved to all the people.
- Article X Section Y is repealed.



To fully understand why Green Amendments are needed in our nation, where they exist, how to get them and how they work, Order Your Copy of The Green Amendment Book and read the stories that make the case.

bit.ly/GAtheBook

Notes offering additional explanation, information, or word or phrase options:



[1] Other options include: Each person has; Every person has; All persons have. Note: this language, along with Bill of Rights/Declaration of Rights placement, ensures that the rights enumerated in this amendment explicitly include and apply to, but are not limited to, Native people, tribal members, people of all races, religions, ethnicities and gender identities.

[2] Other option: clean. Note, “pure” is the term used in Pennsylvania’s Green Amendment.

[3] Other option: good soil. Including reference to “soil” is beneficial for addressing soil contamination but also the preservation of soils for agriculture and from erosion.

[4] Other options: healthy ecosystems, unimpaired ecosystems, intact ecosystems, diverse ecosystems, functioning ecosystems, stable ecosystems, resilient ecosystems, ecologically healthy ecosystems; healthy habitats; ecologically healthy habitats.

[5] Other options: balanced ecosystems, unimpaired ecosystems, intact ecosystems, diverse ecosystems, functioning ecosystems, stable ecosystems, healthy ecosystems, ecologically healthy ecosystems; healthy habitats; ecologically healthy habitats.

[6] Other options: livable, safe

[7] The goal with this term is to ensure recognition and protection of the values of clean and healthy environments for indigenous communities and cultures. Consider qualifying by saying Indigenous cultural values for extra clarity if this is your intended goal. Other states are interpreting cultural values to include other unique communities and cultures within their state.

[8] This term can be interpreted as specifically valuing the human health (physical and mental) benefits of clean water, clean air, stable climate, healthy ecosystems, and healthy environments.

[9] Other option: values

[10] An alternative framing to this whole paragraph: The people of the state have the natural, inherent and inalienable right to a clean and healthy environment, including water, air, soil, native flora, native fauna, ecosystems and climate, and to the protection of the natural, cultural, scenic and healthful qualities of the environment.

[11] Self-executing whether explicitly stated or because of Bill of Rights/Declaration of Rights placement is non-negotiable. More discussion and options can be found in Step 8.

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[12] Other option: habitats.

[13] Note, some do not like the qualifier “unreasonable” and therefore have not opted for this approach, but this terminology can be found in court cases regarding Pennsylvania’s Green Amendment and in the complimentary constitutional language found in Montana’s constitution that helps to frame and define that state’s Green Amendment entitlements.

[14] To ensure clarity that the obligation applies to all levels of government, could add “the state, including each branch, agency, and political subdivision”. But if you do so in one section you must do so in all sections, otherwise there is a risk that a court may interpret that wherever only the term “state” is used, there was an explicit intent to just refer to state level officials and exclude local government in that instance.

[15] If you offer clarity that the state includes all levels of government by explicitly adding these terms, then you must ensure that every place where you refer to the "state" that you offer this same additional clarification, otherwise there is a risk that a court may interpret that wherever only the term “state” is used, the intent was to make that distinction and to just refer to state level officials in that instance.

[16] Other option: wealth

[17] Could mention the specific state name - e.g., “Vermont’s” rather than the general term of “the state’s”

[18] Some states say “public natural resources”, if choose this option it is important to offer the definition language and/or explicit discussion in legislative history that makes clear the term is intended to include all natural resources, not just those on publicly owned lands; in addition if you wanted to offer more detail could add “among them, but not limited to, its waters, air, native flora, native fauna, and climate”; putting "climate" in this list is another way to explicitly acknowledge climate if it is not included in the first clause listing individual rights (i.e. rights to pure water, clean air, stable climate, and healthy ecosystems”)



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[19] In legislative history will want to be clear this is not the complete list; or could add the following additional text “but not limited to”.

[20] Other option could be to say “wildlife, aquatic life, plant life”

[21] Including reference to “soil” is beneficial for addressing soil contamination but also the preservation of soils for agriculture and from erosion.

[22] Another potential term is “environmental life support system”; although to ensure absolute clarity that this term is intended to include a stable/livable/healthy climate it may be better to use both “climate” and “environmental life support system”.

[23] To ensure absolute clarity that this term is intended to include a stable/livable/healthy climate it may be wise to use both “climate” and “environmental life support system”.

[24] In this instance, because the previous sentence defines “state” as including all political subdivisions, it is not necessary to repeat that additional clarification here.

[25] In some states it will be important to specifically mention "groundwater" if existing legislation or case law suggests that groundwater is only protected as a water or waterway of the state if explicitly given such protection.



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Green Amendments For The Generations is dedicated to ensuring every person and community across the United States is able to experience the health, quality of life, education, joy, and economic prosperity provided by a clean, safe and healthy environment; to help end environmental racism and embolden environmental justice; and to help ensure that nature itself is able to thrive, by constitutionally empowering all people - through education, grassroots organizing, expert support and diverse leadership engagement - to secure and enforce their inalienable human right to pure water, clean air, a stable climate, healthy ecosystems, and a healthy environment.

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