

**ASSEMBLY CONCURRENT
RESOLUTION No. 259**

**STATE OF NEW JERSEY
217th LEGISLATURE**

INTRODUCED DECEMBER 4, 2017

Sponsored by:
Assemblyman TIM EUSTACE
District 38 (Bergen and Passaic)

SYNOPSIS

Proposes constitutional amendment to make State trustee of public natural resources and guarantee to the people other environmental rights.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** proposing to amend Article I of the
2 New Jersey Constitution by adding a new paragraph.

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4 **BE IT RESOLVED** *by the General Assembly of the State of New*
5 *Jersey (the Senate concurring):*

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7 1. The following proposed amendment to the Constitution of the
8 State of New Jersey is agreed to:

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10 **PROPOSED AMENDMENT**

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12 Amend Article I by adding a new paragraph 24 to read as
13 follows:

14 24. (a) Every person has a right to a clean and healthy
15 environment, including pure water, clean air, and ecologically
16 healthy habitats, and to the preservation of the natural, scenic,
17 historic, and esthetic qualities of the environment. The State shall
18 not infringe upon these rights, by action or inaction.

19 (b) The State's public natural resources, among them its waters,
20 air, flora, fauna, climate, and public lands, are the common property
21 of all the people, including both present and future generations.
22 The State shall serve as trustee of these resources, and shall
23 conserve and maintain them for the benefit of all people.

24 (c) This paragraph and the rights stated herein are (1) self-
25 executing, and (2) shall be in addition to any rights conferred by the
26 public trust doctrine or common law.

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28 2. When this proposed amendment to the Constitution is finally
29 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
30 shall be submitted to the people at the next general election
31 occurring more than three months after the final agreement and
32 shall be published at least once in at least one newspaper of each
33 county designated by the President of the Senate, the Speaker of the
34 General Assembly and the Secretary of State, not less than three
35 months prior to the general election.

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37 3. This proposed amendment to the Constitution shall be
38 submitted to the people at that election in the following manner and
39 form:

40 There shall be printed on each official ballot to be used at the
41 general election, the following:

42 a. In every municipality in which voting machines are not used,
43 a legend which shall immediately precede the question as follows:

44 If you favor the proposition printed below make a cross (X), plus
45 (+), or check (✓) in the square opposite the word "Yes." If you are
46 opposed thereto make a cross (X), plus (+) or check (✓) in the
47 square opposite the word "No."

48 b. In every municipality the following question:

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	YES	<p>CONSTITUTIONAL AMENDMENT TO ENSURE THE PEOPLE'S ENVIRONMENTAL RIGHTS</p> <p>Do you approve amending the Constitution to grant every person the right to a clean and healthy environment? The amendment would also require the State to protect public natural resources.</p>
	NO	<p>INTERPRETIVE STATEMENT</p> <p>This amendment provides that every person has a constitutional right to a clean environment. This includes the right to clean air, pure water, and healthy habitats. The amendment would require the State to preserve public natural resources. The State would also be required to prevent others from destroying or damaging public natural resources.</p>

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SCHEDULE

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This constitutional amendment shall become part of the Constitution on March 1 next following the general election at which it is approved by the voters.

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STATEMENT

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This proposed constitutional amendment would prevent the State from infringing on the right to a clean environment, and would make the State the trustee of all public natural resources.

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This proposed constitutional amendment would guarantee two separate rights in the people of the State. The first right is the right of citizens to the preservation of certain values of the environment. Specifically, this clause requires the State to consider the effect of any proposed action on pure water, clean air, and ecologically healthy habitats, and on the preservation of the natural, scenic, historic, and esthetic qualities of the environment, before taking action. The State may rely on agency determinations for the interpretation of "clean air" and "pure water," and other technical benchmarks; however, following agency interpretation does not automatically guarantee constitutional compliance if the agency interpretation and implementation fall below reasonable standards. This clause does not call for an end to all new economic development, or the sacrifice of other fundamental values like constitutionally-protected property rights. Rather, it preserves

1 environmental values, and states that governmental action cannot
2 take place without a reasonable effort to address the environmental
3 effects of development.

4 The second right to be guaranteed by this proposed constitutional
5 amendment is the common ownership of the people, including
6 future generations, of New Jersey's public natural resources, with
7 the State serving as trustee of those resources. This second clause
8 applies to a narrower category of "public natural resources" than the
9 first clause of the amendment and includes the waters, air, flora,
10 fauna, climate, and public lands of the State. The term "public
11 natural resources" is not exclusively defined and is amenable to
12 change over time to conform to the development of new legal and
13 societal concerns. The term is flexible and may capture the full
14 array of resources implicating the public interest.

15 The State would serve as trustee of these public natural
16 resources, with the people as named beneficiaries of the trust.
17 "Trust" is used as a term of art to carry specific legal implications.
18 This trust is more than a statement of government power to use
19 public property for public purposes; it is an affirmation of the duty
20 of the State to protect the people's common environmental heritage.
21 The State may only surrender that right of protection in rare cases
22 when the abandonment of that right is consistent with the purposes
23 of preserving the trust. The explicit terms of the trust require the
24 State to conserve and maintain the principal of the trust (i.e., the
25 public natural resources) and impose a duty to prevent and remedy
26 the degradation, diminution, or depletion of the public natural
27 resources. The State has an obligation to carry out these trust
28 responsibilities, whether through direct action, or through
29 restraining private parties from acting.

30 As with the first right guaranteed by this proposed amendment,
31 the duties to conserve and maintain are tempered by legitimate
32 development tending to improve upon the lot of the citizenry, with
33 the goal of promoting sustainable development. This amendment
34 does not prohibit *de minimis* damage to the environment that does
35 not impact the health of public natural resources. The beneficiaries
36 of the trust are all the people of New Jersey, including generations
37 yet to come. The State, as trustee, has the obligation to deal
38 impartially with all beneficiaries, and must balance the interests of
39 present and future beneficiaries. This implicates equitable access
40 and distribution of public natural resources and reinforces the cross-
41 generational dimension of the conservation imperative. Future
42 beneficiaries are entitled to equal access and distribution of the
43 resources, thus the State may not manage public resources in a
44 manner that would deprive future generations of the same uses
45 available to present generations. This recognizes the practical
46 reality that environmental changes, while at times incremental, have
47 a compounding effect and develop over generations. This proposed
48 amendment offers protection equally against actions with

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1 immediate severe impact on public natural resources and against
2 actions with insignificant present consequences that are actually or
3 likely to have significant or irreversible effects when compounded
4 over the long term.

5 The amendment is self-executing, and therefore does not require
6 affirmative legislative action to take effect. The rights in this
7 proposed amendment are in addition to any rights available under
8 the public trust doctrine and common law. This constitutional
9 amendment seeks to broaden the types of lawsuits that citizens may
10 bring against the State (and any of its political subdivisions when
11 they are acting) in order to enforce environmental values.

12 This proposed constitutional amendment is based in part on
13 Pennsylvania's environmental rights amendment (Article I, Section
14 27 of the Pennsylvania Constitution).