



## West Virginia Legislator FAQs

### What is West Virginia's Environmental Rights Amendment?

West Virginia's Environmental Rights Amendment is an amendment to the West Virginia Constitution's Bill of Rights. It was first introduced in the 2019 legislative session as House Joint Resolution 25 with 31 co-sponsors, and it is being carried over into the 2020 session. It reads as follows:

"The people have a right to clean air, pure water, and the preservation of the natural, scenic, historic, and esthetic values of the environment. West Virginia's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the State shall conserve and maintain them for the benefit of all the people."

### What are Environmental Rights Amendments?

Environmental Rights Amendments are self-executing provisions placed in the Bill of Rights section of a constitution that recognize and protect the inalienable rights of all people, including future generations, to pure water, clean air, a stable climate and healthy environments. Environmental Rights Amendments of this kind 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: the people of the state, including future generations.

### What states currently have Environmental Rights Amendments?

Pennsylvania and Montana have Environmental Rights Amendments. Similar amendments have been proposed in state legislatures in several other states, including New York, New Jersey and Maryland. According to the founder of the organization Green Amendments For The Generations which is focused on advancing environmental rights amendments of this kind, provisions are also being considered in New Mexico, Arizona and Maine, among other states.

### Why does West Virginia need an Environmental Rights Amendment when it already has a well-developed set of environmental protection laws?

Despite West Virginia's existing environmental protection laws, we face significant environmental problems, including contaminated drinking water, communities 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 West Virginia communities. 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 bill of rights.

### **Why must the Environmental Rights Amendment be placed in the Bill of Rights section of the Constitution?**

The rights described in the Bill of Rights section are those that are recognized as natural and unalienable rights that are to be protected from government infringement. Clean air, pure water, and a healthy environment are essential for supporting healthy human lives – including physical health, mental health, and economic health. Without an environment in which human life can thrive, a person is deprived of all other rights.

### **How will the Environmental Rights Amendment affect government decision-making?**

It provides broad guidance that ensures government decision-making considers environmental impacts early in the process when prevention of pollution, degradation and environmental harm is most possible, and provides a backstop that can be used by community, public, government and business interests to provide a check on government authority that overreaches and fails to protect environmental rights.

### **Will the Environmental Rights Amendment force commercial, energy, or economic development to grind to a halt?**

No. Instead, it 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 reference to “scenic,” “esthetic,” and “historic” qualities of the environment have a significant impact on the construction industry?**

Looking to Pennsylvania and Montana as a guide, we do not see a significant focus on the amendment affecting the construction industry; scenic and historic properties already have state and federal statutory protection. These terms should be viewed in context, with a focus on the environmental ramifications of government decision-making (including legislation and permitting) that rises to the level of a constitutional violation. It is a high bar to demonstrate a constitutional violation and this language would not prevent the construction or destruction of buildings absent a significant environmental impact. Therefore, it is unlikely that this amendment could be successfully used to challenge construction projects in the absence of the project at issue having serious and significant environmental consequences.

### **What is the process for passing West Virginia's Environmental Rights Amendment?**

Amendment through legislation of the state constitution requires approval by two-thirds of each of the legislative houses of the state and an approval by majority vote of the people of the state.