

New Mexico's Green Amendment Protecting Environmental Rights Information Sheet

The New Mexico Green Amendment 2023 Anticipated Language:

SECTION 1. It is proposed to amend Article 2 of the constitution of New Mexico by adding a new section to read:

- A. The people of the state shall be entitled to clean and healthy air, water, soil and environment; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare. The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal membership status, socioeconomics, or geography.*
- B. The state, counties and municipalities shall serve as trustee of the natural resources of New Mexico and shall conserve, protect and maintain these resources for the benefit of all the people, including present and future generations.*
- C. The provisions of this section are self-executing. Monetary damages shall not be awarded for a violation of this section. This section is enforceable against the state, counties and municipalities.*

SECTION 2. It is proposed to amend Article 20 of the constitution of New Mexico by repealing Section 21.

Passage of a New Mexico Green Amendment will allow the people of New Mexico to proactively protect our environment, communities and state economy. Our state constitution provides the overarching legal structure, principles and obligations to which all state government action must conform. A New Mexico Green Amendment will ensure that every government official in our state will work to advance proactive environmental protection at every level of the decisionmaking process. A New Mexico Green Amendment will help ensure that existing environmental laws and regulations are implemented to their full potential; will provide a basis for advancing new needed protections (e.g. through legislation, regulation or government action); and will provide a basis to secure protective government action when a gap in the law is identified.

BIPOC communities in New Mexico continue to be disproportionately targeted and impacted by environmental pollution and degradation.

<https://nmpoliticalreport.com/2020/09/10/congressional-panel-examines-environmental-justice-issues-in-new-mexico/> **Creating an overarching constitutional right to be equitably protected is essential to establish true and enforceable environmental justice.** The NM Green Amendment will ensure all communities – regardless of race, ethnicity, tribal membership status, socioeconomics or geography – have the same rights to clean, safe and healthy environments and will create a constitutional duty on all government officials to protect natural resources and environmental rights equitably.

The NM Green Amendment will place the rights to a clean and healthy environment legally on par with other fundamental rights such as private property rights, free speech, and religious freedom. When two rights are implicated by government action – such as property and environment – government must work to balance and protect both sets of rights.

When there are critical issues of environmental concern not addressed by existing law, the NM Green Amendment can be utilized to fill these gaps in protection until such time as the law catches up and addresses the areas of concern. PFAS was allowed to contaminate drinking water and environments across New Mexico for decades because there were no laws or regulations that empowered government to provide needed protections. A Green Amendment can help fill environmental protection gaps.

The New Mexico Green Amendment will strengthen existing law as a tool for environmental protection as well as provide a foundation for passage and implementation of strengthened protections. Constitutional environmental rights and natural resource trustee obligations can highlight needed community and environmental protection legislation such as empowering state action to protect communities from high level nuclear waste disposal by Holtec.

Throughout the legislative, regulatory, permitting and decisionmaking process at all levels of government, the NM Green Amendment will ensure NM government officials take steps to protect the state's natural resources for present and future generations. Generational protection and trustee obligations ensure a more informed and holistic approach to environmental action.

The trustee obligation will provide clear and understandable fiduciary obligations and for how government officials must fulfill their constitutional obligation. For example, as trustee of the state's natural resources government officials must demonstrate they have acted with prudence and undertaken informed decisionmaking when taking action -- including assessment and consideration of cumulative impacts, existing conditions, relevant science, and environmental justice impacts.

The New Mexico Green Amendment specifically provides for equitable remedies – e.g. voiding unconstitutional permitting, rolling back unconstitutional regulatory provisions, preventing enforcement of an obligation that will cause a violation) as opposed to money damage payouts.

The NM Green Amendment will strengthen the healthy economic growth that avoids the costs of environmental harm including illness, cleanup costs, flooding, toxic tort lawsuits, drought & declining property values by ensuring government actions avoid environmental degradation rather than responding to it after-the-fact.

The NM Green Amendment will strengthen environmental protections beyond Article XX Section 21 by explicitly recognizing an independent enforceable right of the people to a clean and healthy environment; mandating a focus on preventing environmental pollution and degradation rather than a focus on control of harm; elevating environmental rights to the constitution's bill of rights which brings additional legal strength for environmental protection and environmental justice; mandating consideration and protection of natural resources for the benefit of future generations; and ensuring informed government decisionmaking is a constitutional pre-requisite to taking action that could infringe upon environmental rights.

It is the right of the people of New Mexico to determine if they want the right to a clean, safe and healthy environment added to the state constitution. The constitution is the People's document. It should be left to them to determine whether or not to amend it. A vote of the legislature will not in and of itself amend the constitution, it will mean the people can vote in November on whether we want to amend our constitution.