



Good Questions & Helpful Answers For People Who Are Asking & Answering

If the Delaware Green Amendment were to pass who would have the right to invoke it & who would they be able to invoke it against?

The DE Green Amendment can be used by individuals, organizations and/or communities to challenge government action that causes violation of protected environmental rights or fails to fulfill the government's constitutional obligation to serve as trustee protecting the state's natural resources.

The DE Green Amendment could also be used by local government & by state government to defend constitutionally sound government decisions, actions & authority to protect the environment if challenged.

The DE Green Amendment can be cited by the Attorney General, the legislature, regulatory agencies & other government officials/bodies as the foundation for protective actions carrying out their constitutional obligation to protect the state's natural resources & environmental rights.

How does Delaware's Green Amendment compare to Pennsylvania's Green Amendment?

The Delaware Green Amendment closely parallels the elements in the language found in Article 1 Section 27 of Pennsylvania's constitution. Both amendments are located in the state's bill of rights, are self-executing, recognize & protect individual rights to a clean & healthy environment, ensure a trustee obligation for government to protect the state's natural resources for present & future generations.

Will the Delaware Green Amendment cause frivolous lawsuits?

Zero Green Amendment lawsuits in PA, MT or NY have been dismissed as frivolous.

Attorneys are subject to ethical standards & oversight that prohibit frivolous litigation & can result in sanctions or other ramifications if filed. The ramifications for one's license & business can be serious.

Filing frivolous claims that get dismissed impacts an attorney's reputation & credibility - this is another reason why attorneys are not inclined to file frivolous claims.

We do not see Delaware attorneys misusing their expertise to overwhelm the state courts with frivolous claims regarding other fundamental constitutional rights, there is no reason to expect that we would see it with constitutional environmental rights.

For More Information:

www.DEGreenAmendment.org

www.boostdelaware.org

Have the Green Amendments in PA, MT and/or NY overwhelmed the state's courts or governments with legal challenges, costs & work?

No. In these 3 Green Amendment state's, on average, there are less than 10 cases a year that make it into the courts. There are some additional cases filed at the administrative level, that get handled at this earlier stage. Every case filed, whether won or lost, has involved serious issues of community concern worthy of court consideration.

Why is it important that a Green Amendment be self-executing?

Are all Green Amendments in existence or proposed self-executing?

DNREC has referenced that PA doesn't have self-executing language in their amendment.

The self-executing nature of a Green Amendment ensures there is a role for every branch of government to help secure the environmental rights & protections promised including the legislature, local government, governor's office, attorney general's office, all state regulatory agencies, & when appropriate, the judicial system. While legislative action plays a critical role in helping to define & implement the constitutional entitlements & obligations, the language of the amendment is not solely defined by the legislature, recognizing that there will always be situations that legislation cannot anticipate, & situations where, as applied, the cumulative impacts or site specific conditions that result in significant harm when legislation is applied strictly as written.

It is incorrect to suggest that Pennsylvania's amendment was not & is not self-executing. While Pennsylvania's Green Amendment does not include a specific statement of its self-executing nature, it has been determined by the Pennsylvania Supreme Court to be self-executing as is the case with other bill of rights fundamental rights in the state. By including explicit language, Delaware's Green Amendment will avoid unnecessary litigation & the expenditure of government resources to respond to legal challenges questioning the self-executing nature or intent of the amendment language.

Note: while early Pennsylvania cases improperly interpreted the Pennsylvania amendment as not being self-executing, this improper interpretation was overturned in 2013 by the Pennsylvania Supreme Court & the self-executing nature of the amendment has been repeatedly confirmed ever since.

How long does the State have to act before it becomes a violation of the Delaware Green Amendment?

As with other fundamental rights in the bill of rights section of the state constitution, when government action or inaction causes a violation of the rights & obligations in the amendment, the opportunity for judicial intervention arises.

Will the Delaware Green Amendment cause violations of others' Property rights? If so, how can this be remedied?

As with other fundamental rights, when more than one constitutional entitlement is implicated, the government will want to demonstrate they have undertaken appropriate action in an effort to protect all constitutional entitlements & obligations involved; & that they have appropriately balanced all involved rights & obligations. Bill of Rights placement supports this interpretation.

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