

**ASSEMBLY CONCURRENT
RESOLUTION No. 72**

**STATE OF NEW JERSEY
220th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

Assemblywomen Jasey, Reynolds-Jackson, Carter, Assemblymen Giblin, Caputo, Assemblywoman Murphy, Assemblyman Karabinchak, Assemblywomen Sumter, Speight, Lopez, Chaparro, Tucker, Assemblyman Wimberly, Assemblywoman McKnight, Assemblymen Danielsen, Calabrese, Kennedy, Mejia, Assemblywoman Timberlake, Assemblyman Rooney, Assemblywomen Swain, Mosquera, Assemblymen Verrelli, Tully, Clifton, Moen, S.Kean, Freiman, Spearman, DePhillips, Assemblywoman Dunn, Assemblyman Stanley, Assemblywomen Park, Haider, Jimenez, Jaffer, Assemblyman Umba and Assemblywoman Matsikoudis

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 6/2/2022)

	YES	<p style="text-align: center;">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 style="text-align: center;">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 environmental values, and states that governmental action cannot

1 take place without a reasonable effort to address the environmental
2 effects of development.

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

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

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

1 actions with insignificant present consequences that are actually or
2 likely to have significant or irreversible effects when compounded
3 over the long term.

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

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