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## A Proposal for Revision of the Florida Constitution: Environmental Rights for Florida Citizens

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## A PROPOSAL FOR REVISION OF THE FLORIDA CONSTITUTION: ENVIRONMENTAL RIGHTS FOR FLORIDA CITIZENS

Although concern for the environment is not a product of the last decade, it has gained widespread popular attention and has become a major subject of both federal and state legislation only in the past ten to fifteen years. The late 1960's and early 1970's brought with them such federal legislation as the National Environmental Policy Act.<sup>1</sup> Many state legislatures followed suit and enacted statutes similarly designed to protect the environment.<sup>2</sup>

However, the effort to provide legal protection for the environment has not focused solely on statutory protection. Increased interest in preserving the environment has encouraged attempts to provide constitutional protection—to place the maintenance of the environment at the very foundation of the legal structure. While interest on the federal level has been slight,<sup>3</sup> several states have incorporated environmental provisions into their constitutions.<sup>4</sup>

There are significant advantages to the inclusion of environmental provisions in a state constitution as opposed to statutory treatment. The primary distinction between a constitution and a statute or ordinance is that a constitution includes the very fundamentals of government—it is the organic document of a state. Inclusion of environmental protection in a state constitution places protection of the environment at the highest level of state authority.<sup>5</sup>

Also, the amendment process for constitutional provisions is somewhat more difficult than is the repeal or amendment of statutes.<sup>6</sup> Constitutional amendments must ultimately be approved by the Florida

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1. 42 U.S.C. §§ 4321-4361 (1970).

2. *E.g.*, FLA. STAT. ch. 380 (1975 & Supp. 1976), held unconstitutional in part, *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st Dist. Ct. App. 1977; FLA. STAT. § 403.412 (1975)).

3. Frye, *Environmental Provisions in State Constitutions*, 5 ENV'T L. REP. 50028 & nn.2 & 3 (1975); Howard, *State Constitutions and the Environment*, 58 VA. L. REV. 193, 194 (1972).

4. These provisions include a wide range of approaches—from piecemeal provisions dealing with a particular resource to broad statements directed toward the maintenance of the environment as a whole. This note is concerned solely with provisions of the latter type. These can be found at: ALAS. CONST. art. VIII; FLA. CONST. art. II, § 7; GA. CONST. art. III, § 8; HAWAII CONST. art. X, § 1; ILL. CONST. art. XI; LA. CONST. art. IX, § 1; MASS. CONST. amend. art. 49; MICH. CONST. art. 4, § 52; MONT. CONST. art. IX, § 1; N.M. CONST. art. XX, § 21; N.Y. CONST. art. XIV, § 4; N.C. CONST. art. XIV, § 5; PA. CONST. art. I, § 27; R.I. CONST. amend. 37; TEX. CONST. art. 16, § 59(a); VA. CONST. art. XI, § 1.

5. Grad, *The State Constitution: Its Function and Form for Our Time*, 54 VA. L. REV. 928, 946 (1968).

6. *Id.*; Howard, *supra* note 3, at 196-97.

citizenry while statutory amendments are subject only to approval by the legislature and Governor.<sup>7</sup> Consequently, amendment of a constitutional provision is generally less common than is amendment of a statute.<sup>8</sup>

Florida became one of the states with a broad environmental provision when it adopted its 1968 constitution.<sup>9</sup> Article II, section 7, states, "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise."<sup>10</sup>

Article II, section 7, however, offers little substantive protection for the environment. While the mandatory "shall" of the Florida provision may impose a moral obligation on Florida's legislature, such an obligation is virtually unenforceable.<sup>11</sup>

An attempt to obtain enforcement through the judiciary is likely to fail on a separation of powers theory. The courts are a coordinate branch of government and thus are not authorized to compel the legislature to exercise a purely legislative prerogative.<sup>12</sup> Consequently, the present environmental provision in the Florida Constitution does not force the legislature to enact protective legislation. It merely encourages such protection.

Nor does article II, section 7, grant power to the legislature. The state government, unlike its federal counterpart, is a government of plenary powers, limited only by the state and federal constitutions. While the United States Constitution represents a grant of power to the federal government, state constitutions are documents of limitation.<sup>13</sup> Unless forbidden to legislate in the area by the federal constitution, the state legislature already has the authority, without a constitutional grant or directive, to enact any legislation.<sup>14</sup> Therefore, pro-

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7. Compare FLA. CONST. art. III, §§ 6-9 with FLA. CONST. art. XI.

8. Grad, *supra* note 5, at 946.

9. FLA. CONST. art. II, § 7. The 1968 revision was the first revision of the Florida Constitution since 1885.

10. Article II of the Florida Constitution is entitled "General Provisions." The commentary for article II, § 7, stated that "[t]his section is an entirely new provision which was added by the legislature and did not appear in the proposal submitted by the Constitutional Revision Commission." Commentary appended to FLA. CONST. art. II, § 7, in 25A FLA. STAT. ANN. 530 (West 1970).

11. Sometimes the constitution in terms requires the legislature to enact laws on a particular subject, and here it is obvious that the requirement has only a moral force: the legislature ought to obey it; but the right intended to be given is only assured when the legislation is voluntarily enacted.

12. T. COOLEY, CONSTITUTIONAL LIMITATIONS 165 (8th ed. 1927).

13. Brewer v. Gray, 86 So. 2d 799 (Fla. 1956).

14. Peters v. Meeks, 163 So. 2d 753 (Fla. 1964); Grad, *supra* note 5, at 966.

15. State v. Miller, 313 So. 2d 656, 658 (Fla. 1975).

visions such as article II, section 7, which purport to grant power to the legislature, actually grant no power not already possessed by the legislature.

There may, in fact, be some danger in constitutional provisions like that of Florida. In order to give state constitutional grants of power some effect, courts have applied the maxim *expressio unis est exclusio alterius*—the expression of one is the exclusion of another.<sup>15</sup> Under this rule of construction, a negative implication would arise when authorization is given for legislation on specific topics already within the scope of the legislature's power. Areas not specifically mentioned would be excluded from the lawmaking power of the legislature. If a negative implication were drawn from article II, section 7, legislative enactments in the field of natural resources and scenic beauty could be restricted to laws "for the abatement of air and water pollution and of excessive and unnecessary noise." While, air, water, and noise pollution may be the most publicized environmental threats, they by no means represent an exhaustive list.<sup>16</sup>

However, Florida's present constitutional provision has not been completely ineffective. Specifically pursuant to article II, section 7, the legislature has enacted the Florida Environmental Land and Water Management Act of 1972<sup>17</sup> and the Florida Motor Vehicle Noise Pre-

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15. *E.g.*, *Interlachen Lake Estates, Inc. v. Snyder*, 304 So. 2d 433, 434 (Fla. 1973) (list of property classes in FLA. CONST. art. VII, § 4, for which separate standards of tax valuation may be established, is an exclusive list). See Grad, *supra* note 5, at 966.

16. For example, article II, § 7, as it is currently written, makes no express provision for consideration for Florida's forest and wildlife resources. Nor are historic and aesthetic resources recognized in the provision.

17. FLA. STAT. ch. 380 (1975 & Supp. 1976), held *unconstitutional in part*, *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st Dist. Ct. App. 1977). FLA. STAT. § 380.021 (1975) states:

It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in s. 7, Art. II of the State Constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary adequately to plan for and guide growth and development within this state. In order to accomplish these purposes, it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

The Local Government Comprehensive Planning Act of 1975 is specifically intended to further the purposes of chapter 380. FLA. STAT. § 163.3161(2) (1975). For a brief discussion of the act, see text accompanying notes 71-77 *infra*.

vention and Control Act of 1974.<sup>18</sup> Florida courts have, though infrequently, cited the provision as lending strength to a pro-environmental argument.<sup>19</sup> But the provision has not provided an independent basis on which environmental protection could be advocated in court. In particular, it fails to recognize any right of Florida citizens to a clean and healthful environment.

Environmental provisions in the constitutions of other states have, for the most part, provided no greater substantive protection than has Florida's article II, section 7. The majority of these provisions are policy statements and offer no independent basis on which environmental threats may be judicially challenged.<sup>20</sup> There are exceptions, however. In five states, citizens have constitutionally protected rights to a decent environment: Illinois,<sup>21</sup> Massachusetts,<sup>22</sup> Pennsylvania,<sup>23</sup>

18. FLA. STAT. §§ 403.415-4153 (1975 & Supp. 1976). FLA. STAT. § 403.415(2)(a) (Supp. 1976) states:

The intent of the legislature is to implement the state constitutional mandate of s. 7, Art. II of the State Constitution to improve the quality of life in the state by limiting the noise of new motor vehicles sold in the state and the noise of motor vehicles used on the highways of the state.

19. Two notable examples are *Seadade Indus., Inc. v. Florida Power & Light Co.*, 245 So. 2d 209 (Fla. 1971), and *Askew v. Game & Fresh Water Fish Comm'n*, 336 So. 2d 556 (Fla. 1976). In *Seadade*, the Supreme Court of Florida stated that, in condemnation proceedings by public utilities, the need for public works must be balanced against the policy stated in article II, § 7. 245 So. 2d at 214. The court found that the balance in the case weighed in favor of the utility company.

In *Askew*, the Florida Supreme Court considered an apparent conflict among several statutes which allowed the Department of Natural Resources to introduce an exotic fish into Florida waters for the purpose of controlling aquatic weeds, and article IV, § 9, of the constitution which established the Game and Fresh Water Fish Commission as the regulatory agency with authority over fresh water aquatic life. The court found that the statutes in question were necessary for full implementation of article II, § 7. Therefore, since the constitutional provisions should be interpreted to complement rather than contradict one another, the statutes were not unconstitutional. 336 So. 2d at 560.

20. While the Michigan environmental provision seems to grant no greater substantive rights than Florida's, at least one Michigan court has interpreted the provision as constitutional recognition of a public trust over the state's natural resources. *MacMullan v. Babcock*, 196 N.W.2d 489, 497 (Mich. 1972).

21. ILL. CONST. art. XI states:

§ 1. *Public Policy—Legislative Responsibility*

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

§ 2. *Rights of Individuals*

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

22. MASS. CONST. amend, art 49 states:

The people shall have the right to clean air and water, freedom from excessive

Rhode Island,<sup>24</sup> and Texas.<sup>25</sup> The courts of three of these states—Massachusetts, Rhode Island, and Texas—have not had occasion to apply their environmental rights provisions, but a look at the court treatment of the Illinois and Pennsylvania provisions indicates some of the benefits and various weaknesses in the particular provisions enacted by those states.

Illinois' environmental provision has three major elements: (1) a

and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

23. PA. CONST. art. I, § 27 states:

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

24. R.I. CONST. amend. 37, § 1, states:

Article I, § 17 of the state constitution is hereby amended by striking out this said section as it now appears and inserting in place thereof the following new section:

"§ 17. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state; and they shall be secure in their rights to use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state."

25. TEX. CONST. art. 16, § 59(a), states:

The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

policy statement and legislative directive not unlike Florida's, (2) a right to a healthful environment enforceable by individuals, and (3) a corresponding duty of both the state and individuals to provide and maintain the environment.<sup>26</sup> While the duty provision is included in the Illinois policy statement section, it could be interpreted as the basis for an environmental suit for breach of a constitutional duty; however, the Illinois duty clause is still untested.<sup>27</sup>

The rights provision has been tested. Illinois courts appear willing to apply article XI of the Illinois Constitution if substantiating facts are available. For instance, in *Scattering Fork Drainage District v. Ogilvie*,<sup>28</sup> the court dismissed a complaint seeking an injunction against construction along an Illinois river. Nevertheless, the court stressed the absence of supporting facts rather than a general unwillingness to apply Illinois' environmental provision.<sup>29</sup> Similarly, in *Parsons v. Walker*,<sup>30</sup> in which citizens sought to enjoin university trustees from agreeing to the construction of a reservoir, an Illinois court recognized that individuals have standing to bring suit under article XI. The case is particularly significant since the problem of establishing standing has long vexed environmental advocates.<sup>31</sup>

Under the common law in most states, environmental suits are often based on a nuisance theory. Individuals wishing to bring a suit to prevent environmental harm or to seek compensation for such harm must show that they have suffered a special injury—that the damage to their interest is in some way distinct and separate from the damage to the interests of the public in general.<sup>32</sup> The *Parsons* court found that article XI removed the special injury requirement.<sup>33</sup>

Illinois courts have also applied article XI of the Illinois Constitution to bar the defense of estoppel. In *Tri-County Landfill Co. v. Illinois Pollution Control Board*,<sup>34</sup> the court disallowed the defense of estoppel by a landfill company charged with violation of an Illinois environmental statute even though the landfills in question were authorized by the Pollution Control Board's predecessor. The court

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26. See note 21 *supra*. For a brief discussion of the potential impact of a duty clause, see Frye, *supra* note 3, at 50033.

27. For a good discussion of this interpretation of ILL. CONST. art. XI, see Howard, *supra* note 3, at 202.

28. 311 N.E.2d 203 (Ill. App. Ct. 1974).

29. *Id.* at 210.

30. 328 N.E.2d 920 (Ill. App. Ct. 1975).

31. See, e.g., *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9 (Fla. 1974).

32. I V. YANNAcone & B. COHEN, ENVIRONMENTAL RIGHTS & REMEDIES 81 (1971). The special injury rule is applied by Florida courts. See text accompanying notes 55-60 *infra*.

33. 328 N.E.2d at 927.

34. 353 N.E.2d 316 (Ill. App. Ct. 1976).

found estoppel inapplicable since the defense would deny the petitioners their constitutional right to a healthful environment.<sup>35</sup>

Although article XI grants the right to "each person" and specifically provides for citizen enforcement of environmental rights, Illinois courts have not yet considered the merits of such citizen suits.<sup>36</sup> In fact, the Illinois Constitutional Convention apparently feared that article XI would encourage a flood of such suits.<sup>37</sup> Thus, the phrase "subject to such reasonable limitation and regulation as the General Assembly may provide by law" was added to the environmental right section to allow control of the number of environmental suits reaching the courts. It was expected that the legislature's regulations

would include a law which required the individual to file any environmental claims with the Attorney General and that only if he did *not* act could the individual file suits; a law creating an administrative agency in which all claims against polluters would have to be filed, with judicial review provisions; the creation of a special court, such as a traffic court, which would handle all pollution suits; or a law requiring that all pollution suits be brought by the Attorney General with the individual's right to intervene.<sup>38</sup>

Still, the limitations placed on citizen participation must be reasonable and, presumably, the citizen enforcement provision would allow individual citizens to bring suits if the government fails to do so.<sup>39</sup>

In contrast, Pennsylvania's environmental rights provision, article I, section 27, grants the rights to "the people" and refers to the state as trustee of the environment. Such language does not support individual enforcement of the right; rather, the state is granted standing to bring suits under a public trust theory.<sup>40</sup>

The public trust doctrine has long been a basis for environmental suits.<sup>41</sup> The doctrine stands for the precept that the thing held in trust is owned by all in common, rather than by any individual or group of individuals.<sup>42</sup> The state holds the trust property as trustee

35. *Id.* at 322.

36. *Parsons* is a possible exception. The *Parsons* suit was brought by citizens. The Illinois court dismissed counts I-VIII, the article XI causes of action, on the basis that the suit was premature. 328 N.E.2d at 924-25. Count IX was held to state a cause of action, but rested on non-article XI grounds. *Id.* at 926-27.

37. Frye, *supra* note 3, at 50031-32.

38. Constitutional commentary accompanying ILL. CONST. art. II, § 2, quoted in Frye, *supra* note 3, at 50031-32.

39. Frye, *supra* note 3, at 50031-32.

40. *Commonwealth v. National Gettysburg Battle Tower, Inc.*, 311 A.2d 588, 592 (Pa. 1973); Frye, *supra* note 3, at 50031.

41. *I V. YANNAKONE & B. COHEN*, *supra* note 32, at 11-44.

42. *Geer v. Connecticut*, 161 U.S. 519, 526 (1896).



for the benefit of the people. The people may assert the public trust doctrine to ensure that the state protects and maintains the common property for the common good.<sup>43</sup> While the Pennsylvania environmental provision does not create an entirely new basis for environmental suits, it does strengthen and ensure the application of the public trust doctrine. The constitutional public trust is less subject to statutory or judicial restriction than if it were merely a common law trust.

Although Pennsylvania's provision does not appear to be self-executing on its face, that state's courts have held that it is. If an article is self-executing, it may be enforced without further legislation. It requires no further definition by the legislature.<sup>44</sup> In *Commonwealth v. National Gettysburg Battle Tower, Inc.*,<sup>45</sup> a Pennsylvania court reasoned that article I, section 27, is a declaration of an inalterably established right, requiring no more definition by the legislature than do provisions declaring freedoms of speech or religion. Further, the court reasoned that the concepts of clean air and water and natural, scenic, historic, and esthetic values are less vague than terms found in other self-executing provisions.<sup>46</sup>

However, the Pennsylvania courts have impeded enforcement of the trust by other means. In *Payne v. Kassab*,<sup>47</sup> the court stated that it would be

difficult to imagine any activity in the vicinity [of an historic town common] . . . that would not offend the interpretation of Article I, Section 27 which plaintiffs urge on us. We hold that Section 27 was intended to allow the normal development of property in the Commonwealth, while at the same time constitutionally affixing a public trust concept to the management of public natural resources of Pennsylvania. The result of our holding is a controlled development of resources rather than no development.<sup>48</sup>

43. 1 V. YANNAcone & B. COHEN, *supra* note 32, at 11-15.

44. 1 T. COOLEY, *supra* note 11, at 165-72; Howard, *supra* note 3, at 207-09.

45. 302 A.2d 886 (Pa. Commw. Ct.), *aff'd*, 311 A.2d 588 (Pa. 1973).

46. 302 A.2d at 892. While the Pennsylvania Supreme Court affirmed this decision, there was disagreement over the issue of self-execution. The writer of the majority opinion asserted that the provision was not self-executing; he was joined by one other justice. Only two other justices expressed views on self-execution, and they reached the opposite conclusion. 311 A.2d 588 (Pa. 1973). Pennsylvania courts have adopted the conclusion of the lower court—that article I, § 27, is self-executing. *Community College v. Fox*, 342 A.2d 468, 474 (Pa. Commw. Ct. 1974); *Payne v. Kassab*, 312 A.2d 86, 94 & n.2 (Pa. Commw. Ct. 1973).

47. 312 A.2d 86 (Pa. Commw. Ct. 1973).

48. *Id.* at 94.

The *Payne* court delineated a three part test to determine whether the environmental danger outweighs the benefits of development: (1) Are all relevant statutes and regulations complied with? (2) Are reasonable efforts made to minimize the environmental harm and does the record reflect these efforts? (3) Does the threatened environmental harm so outweigh the social benefits that proceeding further would be an abuse of discretion?<sup>49</sup> If these considerations show that the requisite procedures were not followed or the social benefits do not outweigh the environmental threat, article I, section 27, requires a halt to the threatening activity.

Clearly, the judicial applications of the Pennsylvania and Illinois provisions provide three major benefits. First, the provisions themselves provide a basis on which suits may be brought; second, their inclusion in the state constitutions promises some permanency for an environmentally protective attitude; third, the provisions include recognition of citizens' rights to a decent environment.

Revision of Florida's current environmental provision could yield benefits, if not greater than those felt in Illinois and Pennsylvania, at least equal to them. The principle of environmental rights would be elevated to a more permanent and fundamental level. The protections currently offered by statutory provisions could be expanded by a constitutional provision.

The major state statutory protections for the entire environment available to Florida citizens are the Environmental Protection Act of 1971 (EPA),<sup>50</sup> the Florida Environmental Land and Water Management Act of 1972 (Land Management Act),<sup>51</sup> its corollary, the Local Government Comprehensive Planning Act of 1975 (Local Planning Act),<sup>52</sup> and the Florida Administrative Procedure Act (APA).<sup>53</sup> EPA states that "[t]he Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief" to compel enforcement of environmental

49. *Id.* The court concluded that the benefits of widening a street through the River Common outweighed the harmful effects, which included encroachment of a half acre of land, removal of trees and elimination of a pedestrian walk. More far-reaching considerations were required by Pennsylvania's Environmental Hearing Board in *Community College v. Fox*, 342 A.2d 468 (Pa. Commw. Ct. 1975).

For a good discussion of the *Gettysburg Tower-Payne-Community College* line of cases, see Pearson & Hutton, *Land Use in Pennsylvania: Any Change Since the Environmental Rights Amendment?*, 14 DUQ. L. REV. 165, 185-203 (1975-76).

50. FLA. STAT. § 403.412 (1975).

51. *Id.* ch. 380 (1975 & Supp. 1976), held unconstitutional in part, *Cross Key Waters v. Askew*, 351 So. 2d 1062 (Fla. 1st Dist. Ct. App. 1977).

52. FLA. STAT. §§ 163.3161-.3211 (1975 & Supp. 1976).

53. *Id.* ch. 120.

laws and regulations and enjoin their violation.<sup>54</sup> Neither the statute itself nor court treatment of the statute clarifies whether citizens bringing suit must show a special injury. As discussed earlier, under the special injury rule a person has standing to sue only if he can show some private injury which is separate and independent from any injury to the interests of the public at large.<sup>55</sup>

Only one case specifically dealing with the applicability of the special injury rule has been reported. The Second District Court of Appeal, in *Save Our Bay, Inc. v. Hillsborough County Pollution Control Commission*,<sup>56</sup> held that the plaintiff organization was not required to show special injury.<sup>57</sup> But the court relied on an earlier Second District case, *United States Steel Co. v. Save Sand Key*,<sup>58</sup> in reaching this conclusion. Subsequently, the Florida Supreme Court reversed *Save Sand Key* and specifically declared that Florida law requires special injury.<sup>59</sup> However, *Save Sand Key* was a public nuisance case. Arguably, the decision only indicates the supreme court's unwillingness to dispense with the special injury rule for public nuisance cases; *Save Sand Key* may not be binding precedent for EPA actions. Thus it is unsettled whether special injury is required for citizen standing under EPA.<sup>60</sup>

To this uncertainty are added several definite shortcomings of EPA. First, EPA has no provision for the recompense of injury already incurred. The only remedy available under the Act is injunctive relief.<sup>61</sup> Second, the EPA complainant may be required to post bond.<sup>62</sup> While the bond requirement rests in the court's discretion, the exercise of the discretion hinges on the complainant's ability to pay costs and attorney's fees if the respondent prevails.<sup>63</sup> This solvency requirement

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54. *Id.* § 403.412(2)(a) (1975).

55. See text accompanying notes 30-33 *supra*. At least one source argues that EPA's specific grant of standing would have no meaning if the special injury rule is applicable, since such limited standing already existed at common law. Note, *The Florida Environmental Protection Act of 1971: The Citizen's Role in Environmental Management*, 2 FLA. ST. U.L. REV. 736, 755 (1974). If the special injury rule is designed to avoid multiplicity of lawsuits, the specific application of the doctrines of res judicata and collateral estoppel to EPA suits should achieve the desired effect. FLA. STAT. § 403.412(4) (1975), specifically makes those doctrines applicable to EPA suits and mandates court orders "to avoid multiplicity of actions."

56. 285 So. 2d 447 (Fla. 2d Dist. Ct. App. 1973).

57. *Id.* at 449.

58. 281 So. 2d 572 (Fla. 2d Dist. Ct. App. 1973), *rev'd*, 303 So. 2d 9 (Fla. 1974).

59. 303 So. 2d 9 (Fla. 1974).

60. A corporation is considered a citizen for purposes of bringing a suit under the EPA. *Orange County Audubon Soc'y, Inc. v. Hold*, 276 So. 2d 542, 543 (Fla. 4th Dist. Ct. App. 1973).

61. See FLA. STAT. § 403.412(2)(a) (1975).

62. *Id.* § 403.412(2)(f).

63. *Id.*

may effectively restrict the number of individual citizens able to bring an EPA suit. On the other hand, such a bond may discourage a multiplicity of law suits. Third, a citizen may not bring an EPA suit if the offending party is in compliance with a valid government permit.<sup>64</sup> A valid permit supplies a solid defense—leaving the complaining citizen to challenge the validity of the permit or the legality of the permitting agency's actions.<sup>65</sup> Fourth, before a suit may be filed in court on the basis of EPA, the complainant must seek administrative relief.<sup>66</sup> Finally, only violation or nonenforcement of specific state laws, rules, or regulations warrants an EPA suit.<sup>67</sup> Actions which threaten the environment, but violate no existing environmental law, could not be challenged on the basis of EPA.

The Land Management Act<sup>68</sup> and the Local Planning Act<sup>69</sup> provide that regulations and ordinances protective of the environment shall be adopted by state and local governments. The former designates developments of regional impact which, because of their "character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."<sup>70</sup> In addition, the Land Management Act provides for the utilization of regional land planning agencies.<sup>71</sup>

64. *Id.* § 403.412(2)(e).

65. *Seadade Indus., Inc. v. Fla. Power & Light Co.*, 245 So. 2d 209 (Fla. 1971), may provide an effective means of challenging a permit's validity. The decision indicates that, unless environmental factors are balanced against other factors, the administrative agency's actions may be invalid. *Seadade* dealt with the actions of a condemnation board, but the decision's logic should carry over to other agencies.

66. FLA. STAT. § 403.412(2)(c) (1975). However, failure to first seek administrative remedies does not bar an action for a temporary restraining order when immediate and irreparable harm is threatened. *Id.*

67. *Id.* § 403.412(1)-(2).

68. *Id.* ch. 380 (1975 & Supp. 1976), held unconstitutional in part, *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st Dist. Ct. App. 1977).

69. FLA. STAT. §§ 163.3161-.3211 (1975 & Supp. 1976).

70. *Id.* § 380.06(1) (Supp. 1976).

71. *Id.* § 380.031(3) (1975).

The Act provides for the Florida Administration Commission to designate areas of critical state concern. *Id.* § 380.05 (Supp. 1976). However, the First District Court of Appeal in *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st Dist. Ct. App. 1977), found this provision an unconstitutional delegation of legislative authority. The legislature may reclaim regulatory powers from local governments and reassign them to the state. *Id.* at 1065. But it may not pass a vague law and then delegate to a state agency the authority to determine what the vague law means. *Id.* at 1068. The court of appeal stated that the statutory limitations on the Administration Commission's designation of areas of critical state concern were too vague. In essence, § 380.05 allowed the state agency to restructure Florida government. *Id.*

However, *Cross Key Waterways* suggests that, if proper statutory standards are established, the designation of critical areas could be valid. In fact, the court suggests its approval of § 380.06 which provides for the designation of developments of regional

The Local Planning Act requires municipal and county government to engage in comprehensive land use planning.<sup>72</sup> Environmental factors are among those elements which must be considered in framing a comprehensive plan.<sup>73</sup> Procedures for public participation in the planning process are determined by local planning agencies but must meet the minimum requirements set out in the statute.<sup>74</sup> These procedures require "broad dissemination" of proposals, opportunity for comment and public notice of proposed ordinances.<sup>75</sup>

While the procedures for public input into local planning will vary according to local ordinances, the Land Management Act is subject to the procedures established by Florida's APA.<sup>76</sup> APA requires that certain procedures be followed before a state agency adopts a rule or issues an order. The required procedures are designed to allow significant input from private citizens. Any "substantially affected person may seek an administrative determination" of any proposed rule's validity<sup>77</sup> and any person "having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule . . ." <sup>78</sup> In addition, parties whose substantial interests are determined by an agency may request an administrative hearing to review an agency order,<sup>79</sup> or issuance of a permit by an agency.<sup>80</sup>

By means of the APA, an environmentally concerned citizen may increase the probability that the spirit of the EPA and the Land Management Act will be followed. For instance, any person with a substantial interest may petition an appropriate agency to adopt a rule which would protect the environment. The agency must then

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impact. *Id.* at 1069 & n.16. While the guidelines for developments of regional impact designation are adopted by the Administration Commission, they are subject to the approval or disapproval of the legislature. FLA. STAT. § 380.10 (1975).

72. FLA. STAT. § 163.3167 (1975). Comprehensive plans must be adopted by July 1, 1979. *Id.*

73. *Id.* § 163.3177.

74. *Id.* § 163.3181 (Supp. 1976). Possibly, however, the argument could be made that the APA is also applicable to local planning agencies. See text accompanying note 94 *infra*.

75. *Id.*

76. *Id.* § 120.52(1)(b) (Supp. 1976). For a good summary of APA see Dore, *Rule-making Innovations Under the New Administrative Procedure Act*, 3 FLA. ST. U.L. REV. 97 (1975).

77. FLA. STAT. § 120.54(4)(a) (Supp. 1976).

78. *Id.* § 120.54(5).

79. *Id.* § 120.57. The statute distinguishes between a rule and an order. Section 120.52(14) defines "rule" as "each agency statement of general applicability that implements, interprets, or prescribes law . . . . The term also includes the amendment or repeal of a rule." Section 120.52(9) defines "order" as "a final agency decision which does not have the effect of a rule . . . , whether affirmative, negative, injunctive, or declaratory in form."

80. *Id.* § 120.60.

institute rulemaking proceedings or deny the petition with a written explanation.<sup>81</sup> The decision not to institute rulemaking proceedings is final agency action<sup>82</sup> and may be reviewed as a matter of right in a district court of appeal.<sup>83</sup> Alternatively, a party whose substantial interests are determined by an agency may request an administrative hearing.<sup>84</sup> A party is a person whose substantial interests are affected and who is either specifically named in the proceeding or is entitled by law or allowed by the agency to participate in the proceedings.<sup>85</sup> Parties adversely affected by the outcome of the proceedings<sup>86</sup> are entitled to review by a district court of appeal.<sup>87</sup> The APA also provides for declaratory statements by an agency as to the applicability of any statute, rule, or order.<sup>88</sup>

APA allows any person substantially affected by an agency action to challenge that action administratively.<sup>89</sup> A Florida district court of appeal, in *City of Key West v. Askew*,<sup>90</sup> distinguished the "substantially affected" requirement from the special injury rule. Citing former section 120.52(9)(c),<sup>91</sup> the court found that, unless an agency authorizes limited participation by rule, individuals requesting participation may not be refused full participation. Each such individual, therefore, would have full standing as a party, be authorized to request hearings and, if adversely affected by the hearing, seek judicial review. Where agencies have not provided for limited

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81. *Id.* § 120.54(5).

82. *Id.* § 120.52(2).

83. *Id.* § 120.68(1).

84. *Id.* § 120.57.

85. *Id.* § 120.52(10).

86. "Agency action" is defined as "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order." *Id.* § 120.52(2).

87. *Id.* § 120.68. Where specifically provided by law, review shall be by the supreme court. *Id.* § 120.68(2).

88. *Id.* § 120.565.

89. FLA. STAT. § 120.52(10) (Supp. 1976) provides that any person "who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party" is a party. Therefore, substantially affected persons who participate in agency proceedings are treated as parties and may request a hearing under § 120.57.

90. 324 So. 2d 655 (Fla. 1st Dist. Ct. App. 1976). The City of Key West, a labor union, and 300 named individuals and businesses had standing to challenge the rule designating Monroe County an area of critical state concern under chapter 380, Florida Statutes.

91. Subsequent revision of chapter 120 has included a renumbering of § 120.52. The provision, now numbered as § 120.52(10)(c), provides that the definition of party also includes "[a]ny other person . . . allowed by the agency to intervene or participate in the proceeding as a party. An agency may, by rule, authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties."

participation, APA offers citizens a means to challenge agency action threatening the environment or to force agency action to prevent environmental harm.

Such broad-based citizen standing is not guaranteed, however.<sup>92</sup> While agencies have not promulgated rules restricting participation, they may do so in the future. The presence of a constitutional right to a clean and healthful environment would ensure standing under section 120.52(10)(b)<sup>93</sup>—to “[a]ny other person who, as a matter of constitutional right, . . . is entitled to participate . . . .”

In addition, it is not entirely clear whether APA applies to local planning agencies. Although the Local Planning Act indicates that the procedures for public participation are to be determined by local agencies, the APA specifically states that “agency” includes “each commission, regional planning agency, board, district, and authority including, but not limited to those described in chapters 160, 163, 298, 373, 380 and 582.”<sup>94</sup> Both statutes have been recently amended. In fact, the minimum procedures outlined in the Local Planning Act were first adopted in 1976.<sup>95</sup> The particular provision of the APA including chapter 163 was adopted in 1974,<sup>96</sup> before the Local Planning Act was enacted.<sup>97</sup> Since the language in the APA is not entirely clear, it is arguable that the APA applies only to those sections of chapter 163 in effect when the APA was drafted and became law. Consequently, the specific language of the Land Planning Act would prevail.

A further consideration is that Florida courts require a complainant to first exhaust administrative remedies before taking his complaint to court.<sup>98</sup> This requirement prevents a flood of suits and

92. An example of the broad-based standing currently available is that provided by the Florida Department of Environmental Regulation which gives an opportunity to be heard to all affected parties and the public in general. FLA. ADMIN. CODE § 17-1.06(2).

93. (Supp. 1976).

94. FLA. STAT. § 120.52(1) (Supp. 1976) defines an agency as:

(a) The governor in the exercise of all executive powers other than those derived from the Constitution.

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including but not limited to those described in chapters 160, 163, 298, 373, 380 and 582.

(c) Each other unit of government in the state, including counties and municipalities to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

95. Act of June 16, 1976, ch. 76-155 § 3, 1976 Fla. Laws 275.

96. Act of June 25, 1974, ch. 74-310, § 1, 1974 Fla. Laws 953.

97. Act of June 30, 1975, ch. 75-258, 1975 Fla. Laws 811.

98. *Ace Delivery Serv. v. Boyd*, 100 So. 2d 417 (Fla. 1958); *City of Coral Gables v. Sakolsky*, 215 So. 2d 329, 334-35 (3d Dist. Ct. App. 1968). *Cf. School Board v. Hauser*,

allows state agencies to administer the day-to-day regulation of the environment since the administrative review process can be time consuming. However, it is not clear how effective the APA would be in situations requiring immediate action.<sup>99</sup>

The APA does provide immediate relief when an agency finds an immediate danger to the public health, safety, or welfare.<sup>100</sup> The resulting emergency rule remains in effect for no longer than ninety days and is not renewable.<sup>101</sup> The emergency rule provision, however, may not be a sufficient solution when it is a state agency's own action which is the threat.

Additionally, provision is made for a stay of an agency decision, either by the agency itself or by the reviewing court, *i.e.*, the district court of appeal.<sup>102</sup> Filing of a petition for review does not automatically stay an agency decision. With an exception not here relevant, the granting of a stay would be discretionary with the agency or the district court of appeal.

Section 120.73, Florida Statutes,<sup>103</sup> preserves the right to proceed in circuit court "in lieu of an administrative hearing" and to seek a declaratory judgment in circuit court. That provision has been given a restrictive reading.

In a recent opinion, *Department of General Services v. Willis*,<sup>104</sup> the First District Court of Appeal held that a circuit court does not have jurisdiction, under normal circumstances, to enjoin administrative action. The court emphasized that, while a circuit court retains its authority to enjoin administrative action, an injunction is an extraordinary writ, appropriate only when normal legal avenues are inadequate.<sup>105</sup> Since APA provides an alternative remedy, the need for the extraordinary writ of injunction is lessened.<sup>106</sup>

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293 So. 2d 681, 683 (Fla. 1974) (teacher who was not rehired must exhaust administrative remedies before bringing a declaratory judgment action). *But see* City of Miami Beach v. Jonathan Corp., 238 So. 2d 516, 518 (3d Dist. Ct. App. 1970) (administrative remedies need not be exhausted if it is clear that any further action or appeal would be unnecessary or useless).

99. For instance, if a citizen petitions an agency to promulgate a rule the agency has 30 days in which to initiate rulemaking proceedings. FLA. STAT. § 120.54(4) (Supp. 1976). After the agency drafts a proposed rule, it cannot take action to finalize the rule before giving 21 days notice. *Id.* § 120.54(1)(b).

While the judicial system may not proceed with any greater speed, a citizen may seek a temporary restraining order or an injunction if harm is imminent.

100. *Id.* § 120.54(9).

101. *Id.* § 120.54(9)(c).

102. *Id.* § 120.68(3).

103. (1975).

104. 344 So. 2d 580 (Fla. 1st Dist. Ct. App. 1977).

105. *Id.* at 589-90.

106. *Id.* at 590.



However, the *Willis* court suggested two circumstances in which injunctive relief could be appropriate: (1) where "agency errors may be so egregious or devastating that the promised administrative remedy is too little or too late,"<sup>107</sup> and (2) where an agency rule is facially unconstitutional.<sup>108</sup> In view of the latter suggestion, the existence of a constitutional right to a decent environment could make injunctive relief available when an agency sought to enforce a rule violating the environmental right.

The *Willis* court did not deal with stays granted by an agency. The statute provides that an agency may be petitioned to grant a stay. The denial of that stay would permit an interlocutory petition for review to be presented directly to a district court of appeal.<sup>109</sup>

Under present law, such immediate danger might be forestalled by suit for abatement of a public nuisance under section 60.05, Florida Statutes.<sup>110</sup> This provision permits a citizen of a county to sue in the name of the state to enjoin a public nuisance. A public nuisance is defined in section 823.05 Florida Statutes,<sup>111</sup> as "any building, booth, tent, or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people . . . ." The special injury requirement is effectively removed if the citizen sues in the state's behalf rather than his own.<sup>112</sup> Section 60.05 suits, unlike actions under APA, may be brought against municipalities. Unlike actions under EPA "a given activity can constitute a judicially abatable nuisance notwithstanding full compliance with either legislative mandate or administrative rule."<sup>113</sup> However, the definition of public nuisance is not broad enough to allow a suit under section 60.05 to enjoin agency action or inaction. In addition, the only remedy available is an injunction; no compensation is available for damages already incurred.<sup>114</sup>

Damages are available, however, under the Florida Air and Water Pollution Control Act.<sup>115</sup> This Act allows the Department of Environmental Regulation to seek civil damages of up to \$5,000 for each day of violation with the Act.<sup>116</sup> Violations include "causing pollution so as

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107. *Id.*

108. *Id.*

109. FLA. STAT. § 120.68(1) (Supp. 1976).

110. (1975).

111. (1975).

112. *National Container Corp. v. Stockton*, 189 So. 4, 13 (Fla. 1939); *Gardner v. Sailboat Key, Inc.*, 295 So. 2d 658, 660 (Fla. 3d Dist. Ct. App. 1974).

113. *Shevin v. Tampa Elec. Co.*, 291 So. 2d 45 (Fla. 2d Dist. Ct. App. 1974). *See also Gardner v. Sailboat Key, Inc.*, 295 So. 2d 658 (Fla. 3d Dist. Ct. App. 1974).

114. FLA. STAT. § 60.05(1) (1975).

115. *Id.* §§ 403.011-4152 (1975 & Supp. 1976).

116. *Id.* § 403.121(1)(b) (1975).

to harm or injure human health or welfare, animal, plant, or aquatic life or property."<sup>117</sup> The Act does not provide for damages in actions brought by private individuals, however.

Clearly, the protections offered by section 60.05, the EPA, the Land Management Act, the Local Planning Act, and the APA can be fairly effective. But their effectiveness could be expanded if Florida were to adopt a constitutional provision recognizing a right to a decent environment. As mentioned earlier, constitutional provisions generally offer more permanence than do statutory provisions. While the present environmental statutes offer significant protections, they could be repealed during any legislative session. A constitutional provision offering environmental protection could not be repealed or amended without approval by Florida's citizens. The existence of such a constitutional provision, therefore, would offer an assurance that the present level of statutory protection would not decline.

In view of the ineffectiveness of Florida's present constitutional provision regarding the environment and the potential benefits of a provision granting enforceable rights, the following revision is proposed:

The people of the State, of both the present and future generations, have the right to a healthful environment. As trustee for the people, the State shall protect the environment and enforce the right of the people in it. Any citizen may enforce the right on behalf of the State, or upon refusal of the State to enforce the right recognized in this provision, any citizen may bring an action against the State for breach of trust. Any damages awarded in a suit for the enforcement of this right shall be deposited in a trust fund held by the State expressly designated for correction of damage done to the environment of the State.<sup>118</sup>

Using the term "[t]he people of the State," the proposal above recognizes that the right to protection and preservation of the environment is a right held in common by all people in the State. No one person's right of enjoyment or use takes precedence over the common good of all—including future generations. Conflicting interests have to be resolved with regard to the interests of the public as a whole, but, as specifically provided, the interests of as yet unborn members of the public must also be considered.<sup>119</sup> In essence, this is a

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117. *Id.* § 403.161(1)(a).

118. This proposal is primarily patterned after the present constitutional provisions of Illinois and Pennsylvania. *See* notes 21 & 23 *supra*.

119. Consequently, balancing similar to that in *Seadade* would not be completely discarded. Rather, greater weight would be given to both the environmental right of

restatement of the public trust doctrine. But a constitutionally guaranteed right to a clean environment elevates the trust doctrine to a principle of organic law.

The scope of the right is purposely general. While the meaning of "a healthful environment" is not perfectly clear, such language allows interpreting courts to give the provision a wide scope. Future revisions of this phrase are unlikely since all future environmental threats may be combatted on the grounds of maintaining "a healthful environment."<sup>120</sup>

Each citizen holds an equitable interest in the environment under the proposed revision. The provision removes the special injury requirement, making it possible for each citizen to enforce the public interest. Similarly the present APA allows citizens to seek enforcement of agency actions. Two methods are provided for citizen enforcement of the right: (1) an action on behalf of the State, such as that now available under sections 60.05 and 120.69, Florida Statutes, or (2) an action against the State for failure to fulfill its duties as trustee.

The State could violate the trust by acting as a direct polluter itself or by failing to adequately regulate private polluters. Citizen suits on the individual's own behalf are not included since it is the interest of the general public, rather than the individual citizen, for which protection is sought. But the ability to bring enforcement actions on behalf of the State or breach of trust actions against the State allows the concerned citizen an opportunity to assert his or her equitable interest and ensure that the duties of the State are fully performed.<sup>121</sup> Again, this enforcement provision does not vary greatly from the enforcement available through the statutes discussed above.<sup>122</sup>

The express reference to money damages allows the State and private citizens to seek recompense for damages already done. This provision is not dissimilar to that now available through the Pollution Control Act.<sup>123</sup> While the injunction will continue to provide a major means of preventing harm, money damages allows the court to correct previous damage. In addition, the threat of money damages may encourage potential polluters to exercise greater care in their treatment of the environment. The trust fund established in the Pollu-

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the present generation and that of future generations. See *In re S&F Builders, Inc.*, 60 Pa. D&C 2d 115, 133-34 (Pa. Env. Hearing Bd. 1972) (builders required to show that the social or economic benefits of altering a stream channel outweighed the environmental harm to present and future generations).

120. For a discussion of the advantages offered by such general terms, see Frye, *supra* note 3, at 50036.

121. See *1 V. YANNAKONE & B. COHEN*, *supra* note 32, at 34.

122. In particular see text accompanying notes 50-92 *supra*.

123. See text accompanying notes 113-115 *supra*.

tion Control Act could serve as the fund mentioned in the proposed provision.<sup>124</sup>

Once damages are paid into the designated trust, the defendant will presumably have available the defense of *res judicata*. The EPA and APA provide similar bars.<sup>125</sup> Subsequent suits based on the same set of facts will probably be barred.<sup>126</sup> Additionally, many private citizens will be discouraged from bringing suits since damages are payable not directly to them, but, rather, to a Stateheld trust.

However, the provision for money damages, as well as the other provisions of the proposal, is not intended to supersede existing environmental statutes and regulations. Rather, the proposed revision should supplement present environmental protections. Citizens may still sue polluters for recompense of private injury, but public environmental interests would gain additional protection.

The proposal also allows more immediate access to the courts for failure of the State to perform its duties with respect to the environment.<sup>127</sup> While the administrative process will still be operative and APA will still offer a major means of public input into the making of decisions, the government's violation of its environmental trust duties will warrant citizen suits for breach of these duties. The proposal may also ensure that a broad group of citizens retain the necessary standing to participate in the administrative process.

The protections currently available for Florida's environment would be both reinforced and enhanced by adoption of the proposed provision. Such a provision is not an entirely new idea—several states have already enacted such constitutional provisions. The provision's protections are not dissimilar from that currently available through statutes. However, constitutional recognition of a right to a healthful environment would place that right among the fundamental precepts of the State of Florida. The means to enforce that right would also be given major import. Long term protection of the environment would be ensured by the relative permanence of a constitutional provision. Protections would emphasize not only immediate needs but also the

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124. FLA. STAT. § 403.165(2) (1975).

125. *Id.* §§ 403.412(4), 120.69(1) & (3).

126. The doctrine of *res judicata* is that valid judgments are conclusive as to: (1) the facts litigated, (2) the parties and their privies in all other actions. *See Cole v. First Development Corp. of America*, 399 So. 2d 1130 (Fla. 2d Dist. Ct. App. 1976). Florida citizens suing under the proposed revision should be considered in privity with one another—their common interest in the environment is joint and inseparable. Therefore, one Florida citizen would be barred from bringing additional suits under the revision based on a set of facts which were litigated in an earlier suit.

127. The proposal is thus consistent with the policy of access to courts set out in the constitution. *See FLA. CONST.* art. I, § 21.

environmental rights of future generations. Reparations for environmental damages would make repair of damage already done more possible. Legal protection of the environment would advance significantly.

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