Environmental Provisions in State Constitutions

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I. INTRODUCTION

In recent years, the United States has finally awakened to the fact that its environmental assets are being rapidly and irreparably depleted due to lack of care and foresight, and that this destruction of our environment could ultimately result in our own collective demise. Many citizens consider the problem serious enough to merit constitutional recognition and have been pressing for such reform at both the state and federal levels. The federal government's attitude towards granting such recognition can hardly be described as enthusiastic. The White House has made no recommendations in this direction. The Congress, with several notable exceptions, such as Senator Gaylord Nelson[2] and Representative Richard Ottinger[3], has taken no action in this area. The federal courts have almost unanimously rejected all arguments that the 5th, 9th or 14th Amendments might be construed to contain a right to a decent environment.[4] Furthermore, the Supreme Court's holding in *Zahn v. International Paper Co.*[5] (that diversity suits cannot be maintained under Fed. R. Civ. P. 23(b) (3) on behalf of unnamed plaintiffs whose claims do not meet the jurisdictional amount requirements even though those of named plaintiffs do) will make it extremely difficult for environmental class action suits to be brought in federal courts.

However, efforts to incorporate environmental provisions into state constitutions have met with considerable success. This is due at least in part to the tremendous rise of interest in state constitutional reform within the last twenty-five years.[6] Since 1950, state constitu-

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1. This Article does not deal at all with environmental legislation, whether or not in response to constitutional provisions, and mentions environmental case law only where the courts interpret a relevant constitutional provision.

For the purposes of this article, the word "state" includes territories which now have, or once had, constitutions, *e.g.*, Guam (Proposed Constitution), and Puerto Rico.

2. Sen. Nelson, in S. J. Res. 169, 91st Cong., 2d Sess. (1970), proposed the following amendment to the United States Constitution: "Each person has the inalienable right to a decent environment. The United States and every State shall guarantee this right."

3. Rep. Ottinger, in H.R.J. Res. 1321, 90th Cong., 2d Sess. (1968), introduced this proposed amendment to the United States Constitution:

> SECTION 1. The right of the people to clean air, pure water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment shall not be abridged.
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> SEC. 2. The Congress shall, within three years after the enactment of this article, and within every subsequent term of ten years or lesser term as the Congress may determine, and in such manner as they shall by law direct, cause to be made an inventory of the natural, scenic, esthetic and historic resources of the United States with their state of preservation, and to provide for their protection as a matter of national purpose.
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> SEC. 3. No Federal or State agency, body, or authority shall be authorized to exercise the power of condemnation, nor undertake any public work, issue any permit, license, or concession, make any rule, execute any management policy, or other official act which adversely affects the people's heritage of natural resources and natural beauty, on the lands and waters now or hereafter placed in public ownership without first giving reasonable notice to the public and holding a public hearing thereon.
>
> SEC. 4. This article shall take effect on the first day of the first month following its ratification.

4. *See, e.g.*, Tanner v. Armco Steel Corp., 340 F.Supp. 532 (S.D. Texas 1972); Environmental Defense Fund, Inc. v. Corps of Engineers of United States Army, 325 F. Supp. 728 (E.D. Ark. 1970), *reaff.* 341 F.Supp. 1211 (E.D. Ark. 1972), *dismissed*, 342 F.Supp. 1121 (E.D. Ark. 1972); United States v. 247.37 Acres of Land, 1 ELR 20513, 3 ERC 1098 (S.D. Ohio 1971).

5. 414 U.S. 291, (1973).

6. In the twenty-five years preceding 1945, no state adopted a new constitution. Howard, *State Constitutions and the Environment*, 58 Va. L. Rev. 193, 196 (1972) [hereinafter cited as *Howard*]. J. Cornelius, *Constitution Making In Illinois, 1818-1970*, at 138 (1972). *See generally* A. Sturm, *Thirty Years of State Constitution-Making: 1938-1968* at Ch. 1 (1970) [hereinafter cited as *A. Sturm, Thirty Years*]. However, Virginia and New York revised their constitutions extensively in 1928 and 1938 respectively. *Id.*, v.

Since 1945, ten states have done so: Alaska, on April 24, 1956; Connecticut, on December 14, 1965; Hawaii, on November 7, 1950; Illinois, on December 15, 1970; Louisiana, on April 20, 1974; Michigan, on April 1, 1963; Missouri, on February 27, 1945; Montana, on June 6, 1972; New Jersey, on November 3, 1947; Puerto Rico, on March 3, 1952. *A. Sturm, Thirty Years*, 56-60; A. Sturm, *Trends in State Constitution Making 1966-1972*, 107-08 (1973) [hereinafter cited as *A. Sturm, Trends*]. Sturm, *States Take Action on Constitutions*, 63 Nat. Civ. Rev. 83 (1974); Morgan, *A New Constitution for Louisiana*, 63 Nat. Civ. Rev. 343 (1974); Sturm, *State Constitutional Developments during 1974*, 64 Nat. Civ. Rev. 21 (Jan. 1975).

While only nine constitutional conventions were held from 1925 through 1950, twenty-nine met from 1951 through 1974.

tions have received more official attention than in any similar period in the nation's history, excepting possibly the Civil War and Reconstruction,[7] and one of the most prevalent subjects of constitutional reform has been the environment. In fact, a survey on substantive changes in state constitutions from 1966 through 1972 found that a higher percentage of proposed amendments concerning the state functions of conservation and protection of the environment were passed than of proposals in any other area surveyed.[8] Second place went to amendments to the Bills of Rights,[9] several of which declared a right to a healthful environment.[10] The fact that brevity is a feature common to all new state constitutions[11] places these facts in an even more startling perspective. The noticeable trend towards ridding these documents of unnecessary subject matter is in striking contrast with the *inclusion* of one new subject — the environment — in all new or revised constitutions.[12] The frequent inclusion of this heretofore largely neglected subject is an unusual development on the state constitutional scene; while it is a result of increased interest in constitutional reform, it is also an anomalous exception to the current tendency to excise material from constitutions.

This article is a survey and discussion of the various state constitutional provisions dealing with the environment. It is designed to serve as a tool both for reformers and drafters of state constitutions in determining the substance and wording of provisions most responsive to their state's needs. Furthermore, this article may enable the attorney to gauge the practicability of bringing under state constitutional provisions environmental lawsuits to which the federal forums are closed.

II. THREE VARIETIES OF ENVIRONMENTAL PROVISIONS

The three varieties of environmental provisions in state constitutions are those declaring a right to a decent

A. Sturm, Thirty Years, at 55; *A. Sturm, Trends* at 107-08; Sturm, *States Take Action on Constitutions,* 63 Nat. Civ. Rev. 83 (1974); Sturm, *State Constitutional Developments during 1974,* 64 Nat. Civ. Rev. 21, 22 (Jan. 1975). *See also* Public Affairs Research Council of Louisiana, *A Procedure For Revising Louisiana's Constitution* 48-51 (1969). Though only three constitutional commissions were in operation during the period 1950-54, this number increased to eleven in 1955-59, to nineteen in 1960-64, and to thirty-one in 1965-69. *A. Sturm, Thirty Years,* at 93, 109. In fact, from 1950 through 1972, only five states "called no constitutional conventions, created no constitutional commissions, or took no other major official action" to modernize their constitutions. *A. Sturm, Trends,* at 2. And from 1966 through 1972, only Vermont did not alter its constitution in some way, being prevented from doing so by a ten-year constitutional prohibition. *Id.,* at 2-3. Of the grand total of 8947 amendments of state-wide applicability submitted to the states' voters through 1974, 4693 were introduced from 1950 through 1974; and of the total 5655 adopted, 3267 were approved in the same twenty-five year period. (The above four figures include changes in the Delaware Constitution which are proposed and adopted by the legislature rather than the people.) *A. Sturm, Thirty Years,* at 91; *A. Sturm, Trends,* at 106; Sturm, *States Take Action on Constitutions,* 63 Nat. Civ. Rev. 83, 84 (1974); Sturm, *State Constitutional Developments during 1974,* 64 Nat. Civ. Rev. 21,21 (Jan. 1975).

Why so much recent revision of state constitutions? Two reasons more frequently given are the older constitutions' lack of adaptability either to the Supreme Court's reapportionment decisions of the early 1960's, or to the urban crisis. Concerning the former reason, see, *e.g.,* Baker v. Carr, 369 U.S. 186 (1962), and Reynolds v. Sims, 377 U.S. 533 (1964); J. Cornelius, *Constitution Making in Illinois, 1818-1970,* at 139 (1972); Public Affairs Research Council of Louisiana, *A Procedure for Revising Louisiana's Constitution,* 6 (1969); Smith, *Federalism and Constitutions: Awakening the States,* 63 Nat. Civ. Rev. 10, 13 (1974). Concerning the latter reason, see J. Cornelius, *Constitution Making In Illinois, 1818-1970,* at 138 (1972); Public Affairs Research Council of Louisiana, *A Procedure for Revising Louisiana's Constitution 6 (1969).*

Other reasons mentioned include population growth and mobility, technological developments, and the adoption of forward-looking constitutions by the two newest states, Alaska and Hawaii. *See A. Sturm, Trends,* at 4; J. Cornelius, *Constitution Making in Illinois, 1818-1970,* at 139 (1972). Michigan revised its constitution due to its financial crisis. Public Affairs Research Council of Louisiana, *A Procedure for Revising Louisiana's Constitution,* 6 (1969).

Concern about constitutional inflexibility and obsolescence caused the Commission on Intergovernmental Relations and such organizations as the National Municipal League, the Council of State Governments, and the United States Chamber of Commerce to turn their efforts toward state constitutional reform. J. Cornelius, *Constitution Making in Illinois, 1818-1970,* at 138-39 (1972). In 1967, the Committee for Economic Development urged most states to "hold constitutional conventions, at the earliest possible date, in order to draft completely new documents." *Id.* at 139. Most states took the advice seriously, with a quarter either extensively revising or completely rewriting their constitutions, and at least two-thirds taking major steps toward such revision. *Sturm, Trends,* at 88.

However, the feverish pace of constitutional revision may be slackening somewhat, for in 1974 the number of proposed amendments (294) was only 65 percent of the total two years earlier (455). Sturm, *State Constitutional Developments during 1974,* 64 Nat. Civ. Rev. 21, (Jan. 1975).

7. *A. Sturm, Thirty Years, supra* n. 6, at v, 1. During that period, eleven confederate states had to rewrite their constitutions in order to gain readmittance to the Union; many new states also entered the Nation at this time.

8. *A. Sturm, Trends, supra* n. 6, at 43, 82. Eleven of twelve proposed amendments were adopted (91.7 percent).

9. *Id.* Forty-seven out of fifty-two were adopted (90.4 percent).

10. Pa. Const., art. 1, §27; R. I. Const., art. 1, §17.

11. All constitutions written between 1949 and 1969 contain less than 20,000 words, and most contain less than 15,000. The average length of today's state constitutions is about 30,000 words. Louisiana's recently repealed constitution contained over 250,000 words. *A. Sturm, Thirty Years, supra* n. 6, at 14-15.

12. *A. Sturm, Trends, supra* n. 6, at 82; *Howard, supra* n. 6, at 197; Morgan, *A New Constitution for Louisiana,* 63 Nat. Civ. Rev. 343, 344 (1974).

environment, those stating that the development, maintenance and preservation of a decent environment is a public policy, and those creating the financial means to promote a decent environment.

A. The Right to a Decent Environment

The most potentially wide-ranging but least frequently used of the three varieties of environmental provisions is the declaration of an actual right to a decent environment. As of the date of publication of this article, such a declaration is found in only five state constitutions - those of Illinois,[13] Massachusetts,[14] Pennsylvania,[15] Rhode Island, [16] and Texas.[17] In addition, Guam has included such a right in its proposed constitution.[18] Though similar declarations were rejected by constitution-drafting bodies in Arkansas[19] and Virginia,[20] only one section creating an environmental right has been rejected outright by the voters, and its failure may be attributable to its inclusion in an unpopular proposed constitution which the voters could only reject or ratify as a whole.[21]

Although all of these provisions declare a right to a decent environment, only two are found in a Bill of Rights.[22] The others are included under general,[23] conservational,[24] or environmental[25] articles. The placing of these sections outside of the Bill of Rights may appear to have the advantage of combining a statement of right, a legislative mandate, and the financial means to promote a decent environment all in the same article, thus suggesting a concrete constitutional plan for environmental protection. However, this reasoning is not supported by an examination of the constitutions which include this right in their Bills of Rights — Pennsylvania[26] and Rhode Island.[27] Both states follow their declarations of this right with a mandate to their state or legislature respectively to conserve and maintain the environment.[28] Furthermore, the inclusion of this right in Pennsylvania's Bill of Rights supplemented two separate sections allowing for the financing of conservational, recreational, and historical projects,[29] and of conservation and reclamation of land and water resources from pollution;[30] none of the separate articles containing the right to a decent environment include any such financial means for promoting that right.

Constitutional provisions concerning environmental rights vary not only in their location but also in their detail. At one end of the spectrum, the Texas Constitution states:

> [t]he 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 over-flowed 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. . . .[31]

At the other extreme, the Illinois Constitution briefly declares a "right to a healthful environment."[32] The practical advantages and disadvantages of detail and brevity are yet to be determined, since few courts have construed these provisions. While an abundance of detail may leave no doubt in a court's mind as to what *is* definitely covered by the right, it may also result in the erroneous assumption that the list is exhaustive.[33] This

13. Ill. Const., art. 11, §2.

14. Mass. Const., Amend. art. 49.

15. Pa. Const., art. 1, §27.

16. R. I. Const., art. 1, §17.

17. Texas Const., art. 16, §59(a).

18. Guam Prop. Const., §5 (v) (1969-70) (but see *infra*, n. 36). *See also* Washington (State) Environmental Council's proposed environmental rights amendment to the state constitution, found in Platt, *Toward Constitutional Recognition of the Environment*, 56 A.B.A.J. 1061,1062 (1970). In addition, Louisiana's new constitution declares a more limited right "to preserve, foster, and promote [the people's] respective historic, linguistic, and cultural origins." La. Const., art. 12, §4.

19. Arkansas Constitutional Revision Study Commission, *Revising the Arkansas Constitution* 43 (1968) (contains an "alternate proposal" entitled "Conservation of Natural Resources," a possible addition to the proposed Bill of Rights).

20. *Howard, supra* n. 6, at 207.

21. N. D. Prop. Const., art. 11, §5 (rej. 1972) as found in *North Dakota Constitutional Convention, 1971-1972 Interim Report* 9 (1972). The constitution was overwhelmingly defeated on April 28, 1972, by a vote of 64,312 to 107,249. *A. Sturm, Trends, supra* n. 6, at 108.

22. Pa. Const., art. 1, §27; R. I. Const., art. 1, §17. Guam's Proposed Constitution also includes such a right in its Bill of Rights, §5 (v) (but see *infra*, n. 36).

23. Texas Const., art. 16, §59 (a); *see also* N. D. Prop. Const. art. 11, §5 (rej. 1972), *supra* n. 21.

24. Mass. Const., Amend. art. 49.

25. Ill. Const., art. 11, §2.

26. Pa. Const., art. 1, §27.

27. R. I. Const., art. 1, §17.

28. Guam's Proposed Constitution contains a legislative mandate in addition to, though separate from, the right included in the Bill of Rights. Guam Prop. Const. §29(c) (1969-70) (but see *infra*, n. 36).

29. Pa. Const., art. 8, §15.

30. Pa. Const., art. 8, §16.

31. Texas Const., art. 16, §59(a).

32. Ill. Const., art. 11, §2.

33. For a discussion of the problems accompanying the courts' application of the rule of *expressio unius est exclusio alterius*, and the ways in which constitutional provisions may

problem has been overcome in two ways — the use of generality, and the addition of a "nonexclusive" clause at the end of the list. The former was used in Illinois,[34] and to a lesser extent in Rhode Island[35] and in the Guam Proposed Constitution.[36]

Of the constitutions containing detailed declarations of rights to a decent environment,[37] only Massachusetts has avoided the *expressio unius est exclusio alterius*[38] pitfall by ending its list with the nonexclusion clause — "and other natural resources."[39] To protect the effectiveness of the right to a decent environment, one or the other of these two safeguards should be used.[40]

The declarations of this right also vary concerning the question of to whom it belongs. Most provisions declare that the right belongs to "the people,"[41] but two accord it to "each person."[42] This seemingly insignificant distinction represents two very different approaches to the important question of standing. Those sections which grant the right to "the people" are placing the enforcement of that right in the hands of the government, exercising its police power on behalf of "the people." The grant of standing solely to the government[43] is based largely on the theory that the environment is a public trust of the state for the benefit of its citizens. Pennsylvania, in its declaration of a right to a decent environment, explicitly acknowledges this to be the underlying theory,[44] and this same concept serves as a basis for similar declarations in other constitutions and constitutional proposals.[45]

On the other hand, the constitutions granting the right to a decent environment to "each person" also give all "persons" standing to enforce their right. When the 1969 Illinois Constitutional Convention agreed to allow such citizens' suits under Article 11, §2 of its proposed constitution, it was concerned about a possible flood of nuisance suits, especially since the article allowed private actions against not only the government but also other individuals.[46] It therefore added a final clause making individuals' enforcement of this right "subject to reasonable limitation and regulation as the General Assembly may provide by law."[47] The kind of regulation envisioned by the article's authors has been described as follows:

> . . . The Committee conceives that a reasonable exercise of this power 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 pollutors would have to be filed, with judicial review provisions; the creation of a special court, such as traffic court,

be drafted to avoid these problems, see text accompanying notes 93-104, *infra*.

34. Ill. Const., art. 11, §2 ("right to a healthful environment"); *see also* N. D. Prop. Const., art. 11, §5 (rej. 1972), *supra* n. 21.

35. R.I. Const., art. 1, §17 (rights to the use and enjoyment of the natural resources"). *See also* Arkansas Constitutional Revision Study Commission, *Revising the Arkansas Constitution,* 43 (1968), containing an "alternate proposal", entitled "Conservation of Natural Resources," as a possible addition to the Proposed Bill of Rights; this proposal would guarantee the right "to enjoy the outdoors."

36. Guam Prop. Const., §5 (v) (1969-70) ("right . . . to a natural environment unspoiled by man-made emissions or other pollutants").

The effort to replace the Guam Organic Act, 48 U.S.C. §1421 *et seq.* (1970), (the de facto constitution) with the Guam Proposed Constitution has been abandoned, so that the potential relevance and effect of the document is virtually nil. Telephone conversation between author and George Eustaquio, Administrative Assistant to Guam Congressional Delegate Won Pat, Sept. 3, 1974.

37. Texas Const., art. 16, §59(a); *see* text accompanying n. 31 *supra*. Pa. Const. art. 1, §27 ("right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment"); Mass. Const., Amend. art. 49 ("right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment"); *see also* Arkansas' environmental amendment proposal, *supra* n. 19 (almost verbatim the same as Mass. Const., Amend. art. 49).

38. Roughly translated, this means the inclusion of one item implies the exclusion of any other not mentioned. This doctrine is followed in statutory construction, and often applied incorrectly in constitutional interpretation. *See* text accompanying notes 93-104 *infra*.

39. Mass. Const. Amend., art. 49.

40. For reasons why generality is the more preferable safeguard, see text accompanying notes 98-100 *infra*.

41. Pa. Const., art. 1, §27; R.I. Const., art. 1, §17; Mass. Const., Amend. art. 49; Texas Const., art 16, §59(a) ("public right"). *See also* La. Const., art. 12, §4; Guam Prop. Const., §5 (v) (1969-70) (but see *supra,* n. 36); Arkansas' proposal for environmental section to Bill of Rights, *supra* n. 19; Washington (State) Environmental Council's proposed environmental rights amendment, *supra* n. 18.

42. Ill. Const., art. 11, §2; N. D. Prop. Const., art. 11, §5 (rej. 1972), *supra* n. 21.

43. No provisions in the state constitutions listed in n. 41 *supra* allow a citizen to sue on the basis of his environmental rights. *But cf.* Payne v. Kassab, 11 Pa. Cmwlth. 14, 35, 312 A.2d 86, 97 (1973), *affd.* ___ Pa. Cmwlth. ___, 323 A.2d 407 (1974) (declaring that individual plaintiffs have standing "as part of the public" to sue under a Pennsylvania statute and Pa. Const., art. 1, §27).

44. Pa. Const., art. 1, §27 ("As trustee of these [natural] resources, the Commonwealth shall conserve and maintain them for the benefit of all the people").

45. *See* sources cited n. 41 *supra*.

46. Ill. Const., art. 11, §2 was the first state constitutional provision to allow citizens' suits based on an environmental right. J. Cornelius, *Constitution Making in Illinois, 1818-1970,* at 157 (1972).

47. The 1971-72 North Dakota Constitutional Convention must have had similar reservations, for it used the Illinois Constitution's language verbatim in its declaration of environmental rights. N. D. Prop. Const., art. 11, §5 (rej. 1972), *supra* n. 21. *See also* N. Y. Const., art. 14, §5.

> 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.
>
> The Committee decided not to specify what it thought were the appropriate limits of legislative limitation and regulation. Rather, it selected the word 'reasonable' so as to allow for flexibility and adjustment in the future. The power, of course, could not be exercised so as to effectively deprive the individual of his standing.[48]

The delegates generally concluded that such a condition precedent would "not only insure against the clogging of the dockets but would also result in a significant improvement in administrative enforcement."[49] Thus, the phrasing "each person" seems preferable because it enables citizens to bring environmental actions upon the refusal of the government to do so.

Unfortunately, most courts have failed to seize what few opportunities have been available to enforce this right. The most blatant instance of this was the Pennsylvania Supreme Court's refusal, in *Commonwealth v. National Gettysburg Battlefield Tower,* to enforce the right on the ground that it was not self-executing.[50] Pennsylvania based its suit to enjoin the construction of an observation tower near the Gettysburg battlefield on the state's recent constitutional amendment providing the people with the right "to preservation of the . . . scenic, historic and esthetic values of the environment" and declaring that the state as "trustee of these resources . . . shall conserve and maintain them"[51] The Pennsylvania Supreme Court held, however, that "before the environmental protection amendment can be made effective, supplemental legislation will be required to define the values which the amendment seeks to protect and to establish procedures by which the use of private property can be fairly regulated to protect those values."[52] Several lower Pennsylvania courts have similarly refused enforcement, in *Bruhin v. Commonwealth,* because the court could "find no authority, either statutory or judical, which would permit [it] to hold that the Secretary of the Department of Environmental Resources has the primary responsibility" of enforcing the environmental provision in Pennsylvania's Bill of Rights,[53] and in *Flowers v. Northampton Bucks County Municipal Authority,* because the plaintiff never stated who the enforcer of the right should be.[54]

Illinois courts have also refused to enforce such rights, though not on the same grounds as those used in Pennsylvania. Because the court could decide *City of Waukegan v. Environmental Protection Agency*[55] on other grounds, it refused to consider the constitutional issue of environmental rights in ruling on the Pollution Control Board's fining of a city for improper refuse disposal. In another Illinois case, *City of Pana v. Crowe,*[56] the court refused to apply that state's environmental article[57] to uphold an injunction against a peaceful strike by public employees in the water, sewer, street, and police departments, since the article was too general "to override the clear and direct expression of the Anti-Injunction Act."[58] However, the recent case of *Scattering Fork Drainage District in the County of Douglas v. Ogilvie* suggests that the judiciary might enforce the article if enough facts substantiating a claim of irreparable harm to the environment were presented.[59]

One final point concerning the right to a decent environment is that three state constitutions declare a corresponding *duty* for "each person" to provide, maintain, and preserve a healthful environment.[60] This is a novel idea which, like so many others in the area of environmental rights under constitutions, has yet to be tested in

48. Constitutional Commentary accompanying Ill. Const., art. 11, §2.

49. McCracken, *Articles XI and XIII - Environment and General Provisions,* 52 Chi. Bar Rec. 116, 118 (1970).

50. 454 Pa. 193, 311 A.2d 588, 5 E.R.C. 1949 (1973). *But see* Payne v. Kassab, 11 Pa. Cmwlth. 14, 35, 312 A.2d 86, 97 (1973), *affd.* __ Pa. Cmwlth. __, 323 A.2d 407 (1974) (declaring that "Article I Section 27 ... is a self-executing provision"); Bucks County Bd. of Commissioners v. Commonwealth, Public Utility Commission, 11 Pa. Cmwlth. 487 __, 313 A.2d 185, 191 (1973) (also declaring the provision self-executing); Bruhin v. Commonwealth, __ Pa. Cmwlth. __, __, 320 A.2d 907, 911 (1974) (same); Comment, *An Analysis of Pennsylvania's New Environmental Rights Amendment and the Gettysburg Tower Case,* 78 Dick. L. Rev. 331 et seq. (1973) (arguing for the self-executing nature of the provision).

51. Pa. Const., art. 1, §27.

52. 454 Pa. at ____, 311 A.2d at 595, 5 E.R.C. at 1954.

53. __ Pa. Cmwlth. __, __, 320 A.2d 907, 911 (1974).

54. 57 D. & C.2d 274 (Bucks Co., Pa. 1972) (a citizens' suit to enjoin the Municipal Authority from erecting two one-million gallon water tanks and facilities, and from drilling wells). *But see* In re S & F Builders, Inc., 60 D. & C.2d 115 (no court given, Pa. 1972) (applying art. I, §27, to deny builders' request for permission to alter the course of a stream, the court declaring the test to be whether the social or economic benefits to the public outweigh the environmental harm). *But cf.* Commonwealth v. Barnes and Tucker Co., 455 Pa. 392, 319 A. 2d 871, 882 (1974) (referring to, though not relying upon, art. I, §27, in its holding that the public interest in clean streams is sufficient to allow the state to enjoin as a nuisance the discharge of acid mine drainage).

55. 11 Ill. App. 3d 189, 296 N.E.2d 102 (1973), *rev'd* on other grounds, 57 Ill. 2d 170, 311 N.E. 2d 146 (1974). The constitutional issue here was properly avoided, but the case is illustrative of the courts' tendency to refuse enforcement of environmental rights for whatever reason.

56. 13 Ill. App.3d 90, 299 N.E.2d 770 (1973).

57. Ill. Const., art. 11.

58. 13 Ill. App.3d 90, 93, 299 N.E.2d 770, 772 (1973).

59. 19 Ill. App. 3d 386, __ , 311 N.E.2d 203, 209-11 (1974). The court rejected an individual plaintiff's allegation that the Embarass River was environmentally unique on the ground that the conclusion was not substantiated with facts.

60. Ill. Const., art. 11, §1; Texas Const., art. 16, §59(a); N. D. Prop. Const., art. 11, §5 (rej. 1972), *supra* n. 21. *See also* Mont. Const., art. 9, §1(1), which declares the duty without the corresponding right.

the courts. Illinois's duty clause[61] dovetails nicely with its standing clause,[62] in that the latter gets the plaintiff into court and the former gives him a constitutional basis for his suit — breach of a constitutional duty. But since none of the other states having a constitutional duty concerning the environment[63] have Illinois's standing clause,[64] individuals in those states cannot utilize the duty clause as a basis for a cause of action. However, such a duty clause should allow the states, through their attorneys general, to sue the offender for breach of a constitutional obligation.

B. Statements of Public Policy

By far the most popular means of granting constitutional recognition to the environmental problem is the use of a public policy statement. Alaska,[65] Florida,[66] Georgia,[67] Illinois,[68] Louisiana,[69] Massachusetts,[70] New York,[71] North Carolina,[72] Puerto Rico,[73] and Virginia[74] refer explicitly to an environmental public policy.[75] Other states instead declare that it is in the "general welfare" to alleviate certain environmental problems.[76] Still others indicate their policy by a mandate to the state[77] or legislature[78] to maintain, preserve and improve the environment, or by words of like import. Where certain environmental problems do not appear important enough to warrant such a mandate, state constitutions may instead issue directives to the legislatures "allowing" them to pass acts in furtherance of environmental goals.[79] Delaware placed its public policy statement in its proposed constitution's preamble, thus raising environmental protection to the same level as "life, liberty and the pursuit of happiness," and making this policy a goal of the *entire* constitution; unfortunately the proposed Delaware Constitution failed to win approval and is now dead.[80] States often use a combination of these devices.

State constitutions not only declare their policies in diverse ways, but also refer to a myriad of subjects within the larger topic of the environment. The chart in the appendix shows both how constitutional sections relate to most of these policy subjects and the main ways in which they state such policy.

Examination of this chart reveals that of the twenty-

61. Ill. Const., art. 11, §1.

62. Ill. Const., art 11, §2. For discussion of Illinois' standing clause, see text accompanying notes 46-49 *supra.*

63. Texas Const., art. 16, §59(a); Mont. Const., art 9, §1(1).

64. N. D. Prop. Const., art. 11, §5 (rej. 1972) *supra* n. 21, had such a clause, but the constitution was defeated at the polls.

65. Alaska Const., art. 8, §1.

66. Fla. Const., art. 2, §7.

67. Ga. Const., art. 16 (only re slum clearance).

68. Ill. Const., art. 11, §1.

69. La. Const., art. 9, §§1,2; La. Const., art. 6, §17(1) ("public purpose"). *See also* La. Const. of 1921, art. 6, §19.3 ("public purpose") (repealed 1974), now given statutory effect under La. Const., art. 14, §16(A)3.

70. Mass. Const. Amend. arts. 49, 51 (latter refers to "public use"). *See also* Mass. Const. Amend. art. 49 (1918, repealed 1971) (refers to "public uses").

71. N. Y. Const., art. 14, §§3, 4.

72. N. C. Const., art. 14, §5.

73. P. R. Const., art. 6, §19.

74. Va. Const., art. 11, §1.

75. *See also* Ala. Prop. Const., art. 13, §13.02 (1973); Ark. Prop. Const., art. 11, §12 (rej. 1970) [rejection largely due to fear of higher taxes, 60 Nat. Civ. Rev. 88 (1971), but environmental article was also subject to attack, Merriweather, *The Proposed Arkansas Constitution of 1970,* 50 Neb. L. Rev. 600, 615 (1971)]; Cal. Prop. Const. art. 10, §1 (1971) as found in California Constitution Revision Commission, *Proposed Revision of the California Constitution* (1971); Guam Prop. Const., §29(c) (1969-70) (but see *supra* n. 36); N.D. Prop. Const. art. 11, §5 (rej. 1972), *supra* n. 21.

76. Alaska Const., art. 8, §7; Cal. Const., art. 14, §3; Cal. Prop. Const., art. 10, §2 (1971) (same as Cal. Const., art. 14, §3) as found in California Constitution Revision Commission, *Proposed Revision of the California Constitution* (1971); Cal. Const., art. 28, §1 (1966, repealed 1974); Mich. Const., art. 4, §52; N.M. Const., art. 20, §21. *See also* Ky. Prop. Const., art. 11, §2, Para. 1. (rej. 1967) as found in Legislative Research Commission, *Proposed Revision of the Constitution of the Commonwealth of Kentucky (Informational Bulletin No. 48)* 20 (1966).

77. Pa. Const., art. 1, §27; Mont. Const., art. 9, §1(1).

78. Alaska Const., art. 8, §§2,6; Fla. Const., art. 2 §7; Hawaii Const., art. 10, §1; Ill. Const., art. 11, §1; La. Const., art. 9, §1; Mich. Const., art. 4, §52; Mont. Const., art. 9; N. M. Const., art. 20, §21; N.Y. Const., art. 14, §4; Ore. Const., art. 11-H, §6; Pa. Const., art. 1, §27; R. I. Const., art. 1, §17; Texas Const., art. 16, §59(a); Utah Const., art. 18, §1. *See also* Ala. Prop. Const., art. 13, §13.02 (1973), as found in [Alabama] Constitutional Commission, *Proposed Constitution of Alabama* 140-41 (1973); Ark. Prop. Const., art. 11, §12 (rej. 1970); Cal. Prop. Const., art. 10, §1 (1971) *supra* n. 75; Guam Prop. Const., §29(c) (1969-70) (but see *supra* n. 36); Ky. Prop. Const., art. 11, §2, Para. 1 (rej. 1967), *supra* n. 76; Cal. Const., art. 28 (1966, repealed 1974); La. Const. of 1921 (repealed 1974) art. 6, §19.3 (given statutory status by La. Const., art. 14, §16(A)3); N.D. Prop. Const., art. 11, §5 (rej. 1972), *supra* n. 21.

79. Alaska Const., art. 8, §§5,7; Cal. Const., art. 14, §3; Cal. Const., art. 16, §14; Ga. Const., art. 2, §1, Para. 4; Ga. Const., art. 16; Hawaii Const., art. 8, §§4, 5; Ill. Const., art. 11, §2; Kan. Const., art. 11, §9(2); La. Const., art. 6, §17(1); Mass. Const. Amend., art. 49; Mo. Const., art. 3, §37(b); N.Y. Const., art. 14, §3; N.Y. Const., art. 18, §1; N. C. Const., art. 14, §5; Ohio Const., art. 2, §36; Pa. Const., art. 8, §§15, 16; S.C. Const., art. 14, §5; Tenn. Const., art. 11, §13; Va. Const., art. 11, §2. *See also* Cal. Prop. Const., art. 10, §1 (1971), *supra* n. 75; Mass. Const., Amend. art. 49 (1918, repealed 1971).

80. Del. Prop. Const. Preamble (1972, died in legislature 1974): "to secure for ourselves and our posterity the right to life, liberty and the pursuit of happiness, and preservation of our natural resources and aesthetic values of our environment." The proposed constitution died due to the General Assembly's failure to approve it for the second time before November 5, 1974. Sturm, *State Constitutional Developments during 1974,* 64 Nat. Civ. Rev. 21, 26 (Jan. 1975).

nine states (including Puerto Rico and Guam) covered, twenty had sections concerning water resources, fourteen concerning the air, twelve on natural beauty, and seven each on noise and land. The most critical elements to life — water and air — take first and second place respectively. The other major areas of pollution — noise and land[81] — rank only fourth and fifth, probably because they simply do not pose so serious a problem, in either kind or quantity, as air or water pollution. Natural beauty, in third place, ranks deceptively low, since if related minor subjects such as wildlife and plants, esthetic value, swamplands, forests, wilderness, etc. were added, it would lead the list.

In addition to these major areas, constitutions also refer to such numerous and varied minor subjects as animate and inanimate natural objects,[82] topography,[83] subjective values,[84] and social ideals.[85] This diversity suggests that constitutional sections on the environment can and eventually will pervade as many aspects of man's life as does the environment itself. Environmental laws have not merely been used against their usual targets of pollution,[86] highway construction,[87] and atomic energy plants,[88] but have also recently been applied to such seemingly unrelated areas as the construction of prisons in residential areas.[89] There is no reason to believe that state constitutional sections on the environment, whether statements of policy or of right, will be used any less broadly when they are finally discovered by lawyers and judges.[90]

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81. *E.g.*, slag heaps, junk yards, billboards along highways.

82. Fish, minerals, soil, wildlife and plants.

83. Beaches, estuaries, forests, openlands, parks, public lands, recreational areas, submerged lands, swamplands, wetlands, wilderness.

84. Places and objects of archeological, cultural, ecological, esthetic, geological, historical, scenic and scientific value.

There surprisingly appears to be no relation between the subject matter dealt with and the states' geographical location, topography (see note 83 *supra*) or degree of industrialization. Even the generalization that tourist-oriented states often have strong policy statements concerning the environment (*see, e.g.;* Cal. Const., art. 14, §3; Fla. Const., art. 2, §7; Hawaii Const., art. 10, §1; P. R. Const., art. 6, §19. *See also* Cal. Prop. Const., art. 10, §1 (1971) (same as Cal. Const., art. 14, §3), *supra* note 75),becomes largely meaningless when similar declarations are found in the constitutions of non-tourist-oriented states (*see, e.g.*, Ill. Const., art. 11, §1; Kan. Const., art. 11, §9; Ohio Const., art. 2, §36; Pa. Const., art. 1, §27; R. I. Const. art. 1, §17. *See also* Ala. Prop. Const., art. 13, §13.02 (1973); Del. Prop. Const., Preamble (1972, died in legislature 1974)).

85. Physical good order, slum clearance, sightliness.

86. *See, e.g.*, Getty Oil Co. (Eastern Operations) v. Ruckelshaus, 342 F.Supp. 1006 (D.Del.), *remanded with directions,* 467 F.2d 349 (3rd Cir. 1972), *cert, denied,* 409 U. S. 349 (1973); United States v. Bishop Processing Co., 287 F.Supp. 624 (D. Md. 1968), *cert. denied,* 394 U. S. 904 (1970).

87. *See, e.g.*, Citizens of Overton Park v. Volpe, 401 U.S. 402; River v. Richmond Metropolitan Authority, 359 F. Supp. 611 (E.D. Va.) *aff'd per curiam,* 481 F.2d 1280 (4th Cir. 1973); Pennsylvania Environmental Council, Inc. v. Bartlett, 315 F.Supp. 238 (M.D. Pa. 1970), *aff'd* 454 F.2d 613 (3rd Cir. 1971).

88. *See, e.g.*, Scientists' Institute for Pub. Info., Inc. v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973); Calvert Cliffs Coord. Comm. v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971); New Hampshire v. Atomic Energy Commission, 406 F.2d 170 (1st Cir.), *cert. denied,* 395 U.S. 962 (1969).

89. Ely v. Velde, 451 F.2d 1130 (4th Cir. 1971); Hanly v. Mitchell, 460 F.2d 640 (2d Cir.), *cert. denied,* 409 U. S. 990 (1972); Hanley v. Kleindienst, 471 F.2d 823 (2d Cir. 1972), *cert. denied,* 412 U. S. 908 (1973); *cf.* P. R. Const., art. 6, §19, which juxtaposes the public policy of conserving historic or artistic buildings and natural resources with the public policy of regulation of penal institutions.

90. Only a handful of cases contain holdings based on broad interpretations of constitutional statements of environmental policy or right. One such case is Environmental Defense Fund v. East Bay, 5 E.R.C. 1295 (Alameda Co. Super. Ct. Calif. 1973), in which the judge gave this reading to Cal. Const., art. 14, §3:

> We know today that wild rivers are an irreplaceable resource. As our everyday life becomes more urban, we have become increasingly conscious of the great need to protect and enhance our physical environment, including our rivers and our shrinking wilderness areas . . . . I have no great difficulty in saying that what is "reasonable" under Article XIV, Section 3 is not fixed and that today a determination of reasonableness should properly include when appropriate under the facts, environmental factors such as the recreational, fish and wildlife uses of a river.

Id. at 1304.

In State v. Diamond Motors, Inc., 50 Hawaii 33, 429 P.2d 825 (1967), the court read broadly Hawaii Const., art. 8, §5:

> Appellants argue that this constitutional provision has no application to this case because the offending sign is located in an industrial area. We do not agree. The natural beauty of the Hawaiian Islands is not confined to mountain areas and beaches. The term "sightliness and physical good order" does not refer only to junk yards, slaughter houses, sanitation, cleanliness, or incongruous business activities in residential areas, as appellants argue.

Id., at 38.

In Erickson v. Queen Valley Ranch Co., 22 Cal. App. 3d 578, 99 Cal. Rptr. 446 (3rd Dist. 1971), the court interpreted Cal. Const. art. 14, §3 as follows:

> Article XIV, section 3, of the California Constitution declares the state's policy to achieve maximum beneficial use of water and prevention of waste, unreasonable use and unreasonable method of use. The constitutional policy applies to every water right and every method of diversion. (*Peabody* v. *City of Vallejo,* 2 Cal.2d 351, 367 [40 P.2d 486]; 1 Rogers & Nichols, *op. cit.*, p. 499.) It imposes upon trial courts an affirmative duty to fashion a decree which will simultaneously protect the paramount right of the established appropriator and prevent waste. (*City of Lodi* v. *East Bay Mun. Utility Dist.*, 7 Cal.2d 316, 339-340 [60 P.2d 439].)
>
> The findings and decree in this case fail to ac-

Policy statements vary in detail from North Carolina's[91] to Illinois's,[92] but it is impossible, due to the paucity of cases, to tell whether the courts react more favorably to a brief or lengthy section. However, a

complish the second of these objectives. By holding that transmission losses amounting to five-sixths of the flow are reasonable and consistent with local custom, the court effectually placed the seal of judicial approval on what appears to be an inefficient and wasteful means of transmission. Such a holding is not in conformity with the demands of article XIV, section 3.

See also State v. Martin, 105 Ohio App. 469, 473, 152 N.E.2d 898, 6 0.0.2d 214 (Ct. App. Stark Co. 1957), *aff'd,* 168 Ohio 37, 151 N.E.2d 26, 5 0.0.2d 293 (1958), holding constitutional under Ohio Const. art. 2, §36, a state requirement that all well-drillers file well logs with the state upon completion of drilling, to aid state in preventing water contamination; Salasnek Fisheries, Inc. v. Cashner, 9 Ohio App. 2d 233, 234-35, 224 N.E.2d 162, 38 0.0.2d 259 (Ct. App. Miami Co. 1967), interpreting Ohio Const., art. 2, §36, as authorizing the state to ban importation of fish under a certain size, in pursuance of its duty to protect wildlife; Opinion to the Senate, 87 R. I. 37, 137 A.2d 525 (1958), advising the legislature that under R. I. Const., art. 1, §27, it had the power to prohibit commercial fishermen from taking striped bass from state waters; Matter of Helms v. Diamond, 76 Misc.2d 253, 256, 349 N.Y.S.2d 917 (Sup. Ct. Schenectady Co. 1973), relying partially on N.Y. Const., art. 14, §1, in refusing to issue preliminary injunction against a prohibition by the New York Commissioner of Environmental Conservation against the operation of seaplanes on seven hundred bodies of water within the New York forest preserve.

Other courts have applied environmental provisions narrowly, such as People ex rel. Director of Conservation v. Babcock, 38 Mich. App. 336, 196 N.W.2d 489 (1972) (applying but not expanding Mich. Const., art. 4, §52), or have refused to read such provisions broadly by declaring them inapplicable to the facts of a case, *e.g.,* Kane v. Kreiter, 195 N.E.2d 829, 25 0.0.2d 295, 93 Ohio Abs. 17 (Ct. Com. Pl. Tuscawaras Co., Ohio 1963) (refusing to apply Ohio Const., art. 2, §36).

Several courts have recognized a provision's applicability to the facts of a case, but have felt constrained to strike a balance between the state's environmental interests and its need for fuel or electricity. *See* Bucks County Board of Commissioners v. Commonwealth, Public Utility Commission, 11 Pa. Cmwlth. 487, 323 A.2d 185 (1973) (on Dec. 12, 1973, in the depths of that winter's energy crisis, the Commonwealth Court rejected the argument that Pa. Const., art. 1, §27, proscribes *all* harm to the environment, and affirmed a lower court decision that, where great pains were taken to minimize the injury to the natural environment and places of historic interest, the construction of a petroleum pipeline through much of the state was constitutional); and Seadade Industries, Inc. v. Florida Power & Light Co., 245 So.2d 209 (Fla. 1971) (the court balanced the public interests in the environment with those in electricity, allowing a public utility, prior to state appproval of its project, to condemn and use property in a way detrimental to the environment if it could "demonstrate a reasonable probability of obtaining [state] approval, and . . . that the condemnation [and use] will not result in irreparable harm should the approvals be denied," *id.* at 215, but that environmentalists could prevent such action by "strong and convincing evidence," *id.* at 214; the area was in urgent need of a new power plant, and condemnation and use of the property was environmentally safer than any other alternative then available).

Still other courts refused to apply the provisions at all. For instance, in Michigan State Highway Commission v. Vanderkloot, 392 Mich. 159, 220 N.W.2d 416, 424-32 (1974), Vanderkloot challenged the Commission's condemnation of his land having "increasingly rare or even unique ecological characteristics," 220 N.W.2d at 432 n. 5, on the ground (among others) that the Highway Condemnation Act was unconstitutional in that it "fails to provide for the protection of the natural resources of the state . . . as required under Article IV, Section 52 of the Michigan Constitution of 1963." *Id.* at 424. The Court rejected this argument, holding that the provision "*does* create a mandatory legislative duty to act to protect Michigan's natural resources, but ... that the legislature has in fact acted pursuant to that duty in the EPA [Michigan's Environmental Protection Act], which impacts, *inter alia,* the Highway Condemnation Act." *Id.* at 425. The Court later elaborated:

> The Legislature was not, and is not, under a duty to make *specific* inclusion of environmental protection provisions in *every* piece of relevant legislation. Legislation need not specifically refer to other legislation it affects to be read *in pari materia.* [Citations omitted.] The Legislature is only enjoined to enact legislation protecting natural resources from pollution, impairment and destruction. The responsive action of the Legislature can be in specific provisions in pertinent enactments or in the form of generally applicable legislation; in fact, the Legislature has acted in general legislation. Such legislation must be read in concert with the Highway Condemnation Act. There is nothing about the Highway Condemnation Act which requires special treatment by inclusion of specific environmental provisions in that Act.

Id. at 426-27.

See also Matter of Hamilton v. Diamond, 70 Misc. 2d 899, 335 N.Y.S.2d 103 (Sup. Ct. Albany Co. 1972), *aff'd,* 42 App. Div. 2d 465, 349 N.Y.S.2d 146 (3rd Dept. 1973) (refusing to apply N.Y. Const., art. 14, §4); Durant v. Board of Coop. Ed. Serv., 70 Misc. 2d 429, 334 N.Y.S.2d 670 (Sup. Ct. Westchester Co. 1972), *aff'd,* 341 N.Y.S.2d 844 (2d Dept. 1973) (refusing to apply N.Y. Const., art. 14, §4).

However, courts in most states simply have not spoken on the matter. *See* River v. Richmond Metropolitan Authority, 359 F. Supp. 611 (E.D.Va.), *aff'd per curiam,* 481 F.2d 1280 (4th Cir. 1973).

See also cases discussed in notes 50-59 and accompanying text *supra.*

91. N. C. Const., art. 14, §5:

> It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

92. Ill. Const., art. 11, §1:

> 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.

related problem already encountered in declarations of environmental rights[93] also arises in detailed policy statements — use by the courts of the maxim *expressio unius est exclusio alterius.* This doctrine has been applied erroneously to state constitutions because of a misconception that constitutional lists should be considered exhaustive, just like statutory lists.[94] Although state constitutions are restrictive rather than plenary documents,[95] many nevertheless contain enumerations of powers, either out of caution or to remind the legislatures of their responsibilities without intending to limit their scope of power. To apply *expressio unius* to such a constitutional list would prohibit the legislatures from exercising any powers not explicitly stated, thus violating the restrictive nature of state constitutions.[96] This misuse of *expressio unius* is understandable. Because many state constitutions contain statutory material, the proper subject for the doctrine.[97] As in the drafting of declarations of environmental rights, there are here two solutions to this problem — generality and the non-exclusion clause.

The Illinois Constitution's statement that the state's "public policy . . . is to provide and maintain a heathful environment for the benefit of this and future generations" is typical of the generality approach.[98] Such a statement not only allows courts great flexibility in applying the policy,[99] it also prevents the mistaken application of the *expressio unius* doctrine, and avoids the hazards of amendment-breeding amendments.[100]

The other solution, the non-exclusion clause, is now used in one form or another by at least thirteen states in their policy statements. The most popular form, used in ten, is to add "and other natural resources," or words to that effect, at the end of an enumeration.[101] Five states have used the word "including" to accomplish the same objective.[102] Of all the states, Kentucky, in its recently rejected proposed constitution, utilized the most explicit (and therefore preferable) form possible — "including but not limited to."[103] Whether generality or one of the possible forms of non-exclusion clauses constitutes the best solution to the *expressio unius* problem is still an open question, as few courts have passed on the matter. But considering the other advantages accompanying generality,[104] it should be preferred over the non-exclusion clauses.

Another problem associated with policy statements concerns self-executing provisions.[105] Such provisions do not require legislative implementation in order to become effective, the determination of this being either made by a court[106] or included in the statement itself.[107] While a provision's self-executing nature may prevent it from being negated by legislative inaction, this nature may also encourage the legislature to take an "out-of-sight out-of-mind" attitude toward the subject, and thus prevent full implementation of the provision through ancillary legislation.[108] The best way to avoid this problem is for the draftsman of the provision to include a clause to the effect that the procedure outlined therein

93. *See* text accompanying notes 31-40 *supra.*

94. For examples of such misapplication of this doctrine, see F.Grad, *The State Constitution: Its Function and Form for our Time* 42-43 (1968), reprinted from 54 Va. L. Rev. 928, 967-68 (1968).

95. F. Grad. *The State Constitution: Its Function and Form for our Time* 41 (1968), reprinted from 54 Va. L. Rev. 928, 966 (1968). For cases, see *Howard, supra* n. 6, at 201, n. 33. *Contra,* R. Dishman, *State Constitutions: The Shape of the Document* 1-24 (1968).

96. F. Grad, *The Drafting of State Constitutions: Working Papers for a Manual* II-32 (1967).

97. *Id.*

98. Ill. Const., art. 11, §1.

While it is a matter of degree where the line is drawn between general and specific statements of policy, some of the most general sections include Ill. Const., art. 11, §1; Mont. Const., art. 9, §1(1); N.M. Const., art. 20, §21; and Del. Prop. Const., Preamble (1972, died in legislature 1974).

99. The overdetailed 19th century state constitutions became so inflexible, due to their preoccupation with immediate short-range problems, that they soon became obsolete and unworkable. F. Grad, *The State Constitution: Its Function and Form for our Time* 4 (1968), reprinted from 54 Va. L. Rev. 928, 929 (1968).

100. Such amendments, due to either their rigid absoluteness or their excess of detail, require more and more amendments to keep them up to date. F. Grad, *The State Constitution: Its Function and Form for our Time* 34 (1968), reprinted from 54 Va. L. Rev. 928, 959 (1968).

101. Alaska Const., art. 8, §4; Hawaii Const., art. 10, §1; Mass. Const., Amend. art. 49; Mass. Const., Amend. art. 51 ("and other property of historical and antiquarian interest"); Mich Const., art. 4, §52; N. M. Const., art. 20, §21; N.Y. Const., art. 14, §3, Para. 2 ("or other state purposes"); N.Y. Const., art. 18, §1 ("and other facilities"); N.C. Const., art. 14, §5 ("and in every other way to preserve as part of the common heritage ..."); R.I. Const., art. 1, §17; Texas Const., art. 16, §59(a); Va. Const., art. 11, §1; Mass. Const., Amend. art. 49 (1918, repealed 1971). *See also* Wash. Const., art. 7, §11 ("other open space lands") (re tax, not public policy).

102. Alaska Const., art. 8, §§2,6; Ga. Const., art. 16; La. Const., art. 9, §1; Ohio Const., art. 2, §36; Texas Const., art. 16, §59(a). *See also* Cal. Const., art. 26 (re tax use determination); Idaho Const., art. 8, §3A (re bond issuance).

103. Ky. Prop. Const., art. 11, §2, Para. 1 (rej. 1967), *supra* n. 76. *See also* Idaho Const., art. 8, §A (re bond issuance).

104. *See* text accompanying notes 99-100 *supra.*

105. Although there is at present only one environmental provision declaring itself to be self-executing, Cal. Const., art. 14, §3, such clauses may well be used more often in the future. *See also* Cal. Prop. Const., art. 10, §2 (1971), *supra* n. 76.

106. *See* cases cited *supra* n. 50.

107. Cal. Const., art. 14, §3. *See also* Cal. Prop. Const., art. 10, §2 (1971), *supra* n. 75.

108. F. Grad, *The Drafting of State Constitutions: Working Papers for a Manual* II-15 (1967).

is not exclusive and that the legislature *shall* pursue the same goals by additional means.[109]

An additional problem arises as to who forces the legislature to implement the constitutional mandates or directions addressed to it.[110] While a constitutional mandate to the legislature might appear to compel it to act in a particular way, and to allow for judicial enforcement should the legislature fail to comply with the provision, such a requirement is in fact nothing more than a moral obligation placed upon the legislature by the people.[111] Courts will only enforce constitutional provisions not implemented by legislation if they are self-executing,[112] and a constitutional mandate that the legislature pass bills on a certain subject is *ipso facto not* self-executing. While the courts can "enforce the constitutional mandate by a negative remedy, such as striking down action taken in derogation of the constitutional duty,"[113] they are not at all interested in ordering recalcitrant legislatures to pass legislation; indeed such action would itself violate the constitutional doctrine of separation of powers.[114] One way around this problem is for the draftsman of the article to include a clause empowering the highest court in the state to implement the mandate should the legislature fail to do so.[115] In some states, the court could do this in response to citizens' suits;[116] in others, action by the state attorney general would be necessary;[117] or the court could implement the mandate *sua sponte*.[118]

If the constitutional provision is directory rather than mandatory, permitting rather than ordering the legislature to take certain action, then the provision is unenforceable. The reason for this is that state constitutions are limiting[119] rather than empowering[120] instruments. A state legislature "needs no affirmative grant of power to enact particular kinds of legislation."[121] Therefore, a directory provision allowing the legislature to act merely regives to that body a power it already possesses.[122] However, such a directive *can* have substantive meaning if it concerns not the granting but the withholding of power from the legislature. This can occur in two ways — the imposition on that body of a constitutional limitation, and the freeing of that body from a constitutional limitation.[123] While there appear to be no examples of the former in the environmental constitutional provisions, the latter has been used in at least three different ways. Such a directory provision was used seven times in amending the New York Constitution's "forever wild forest lands" provision to "allow" for construction of roads, ski trails, a refuse disposal area, and an airport runway.[124] It has also been used to relieve legislatures of the burdens of both expense- and time-limitations on their financial activities.[125]

C. Financing Environmental Projects[126]

Financial sections, the third variety of environmental provision, are found extensively in state constitutions, usually in the form of exemptions from expense- or time-limitations for legislative activities; tax exemptions on pollution-abatement devices; taxation structured to encourage preservation of natural resources and beauty; determinations of the uses to which tax money may be put; and the authorization of bond issues.

Examples of expense-exemptions are found in the New York constitutional section exempting from the state debt limitation[127] funds needed to build sewage disposal facilities,[128] and in the Nevada section exempting from the debt ceiling[129] legislatively authorized contracts to protect and preserve the state's natural resources.[130] Regarding time-limit exemptions, Virginia's Environmental Article exempts appropriations for joint

109. *Id.* II-46.

110. See chart in appendix, pp. 50040-50041 *infra.*

111. *Howard, supra* n. 6, at 199.

112. Commonwealth v. National Gettysburg Battlefield Tower, 454 Pa. 193, 311 A.2d 588, 5 E.R.C. 1949 (1973).

113. *Howard, supra* n. 6, at 199.

114. F. Grad, *The Drafting of State Constitutions: Working Papers for a Manual* II-19 (1967); A. Sturm, *Implementing a New Constitution: The Michigan Experience* 98-99 (1968) (concerning Mich. Const. art. 4, §52).

115. *Cf. Model State Const.* §4.04, empowering the highest court in the state to implement a legislative plan for reapportionment if the governor fails to do so. *See also infra,* n. 118.

116. Ill. Const., art. 11, §2.

117. This may be the most preferable of the proposed solutions, since it involves all three branches of government in the checks-and-balances scheme.

118. Such court action, if not triggered by a suit, would have to be *sua sponte.* If a constitution mandated the court to implement the legislative mandate, no one could enforce the judicial obligation, so that the latter would merely be a moral obligation on the court similar to that placed on the legislature.

119. F. Grad, *The State Constitution: Its Function and Form for our Time* 41 (1968) reprinted from 54 Va. L. Rev. 928, 966 (1968). For cases, see *Howard, supra* n. 6, at 201, n.33. *Contra,* R. Dishman, *State Constitutions: The Shape of the Document* 1-24 (1968).

120. *E.g.,* U. S. Const.

121. *Howard, supra* n. 6, at 201.

122. *Id.;* F. Grad, *The State Constitution: Its Function and Form for our Time* 41 (1968), reprinted from 54 Va. L. Rev. 928, 966 (1968).

123. *Howard, supra* n. 6, at 201.

124. N. Y. Const., art. 14, §1.

125. *See* text accompanying notes 127-132 *infra.*

126. *See* chart in appendix, pp. 50040-50041 *infra.*

127. N. Y. Const., art. 8, §5.

128. N. Y. Const., art. 8, §5(E).

129. Nev. Const., art. 9, §3.

130. *Id.*

environmental undertakings between Virginia and other governments (federal or state)[131] from the constitutional limitation that no funds may be spent more than two and one-half years after the end of the legislative session during which the expenditures were authorized.[132]

Non-legislative exemptions have also been used to advantage. Tax exemptions for individuals and corporations have been utilized to encourage private promotion of a decent environment.[133] One variety of this incentive is the exemption of anti-pollution devices from *ad valorem* taxes. Georgia has such a section in its constitution, stating that "[t]he General Assembly shall have the authority to provide for the exemption from any and all taxation any facilities which shall be installed or constructed for the primary purpose of eliminating or reducing air or water pollution."[134] Texas proposed a similar amendment to its constitution, which in addition required that the device be "made to comply with or exceed air or water quality standards established by law."[135] The basic rationale behind such exemptions is that individuals and companies which comply with anti-pollution statutes by installing pollution-abatement devices at great expense "should not be further penalized by higher ad valorem tax assessments."[136]

Another financial means to promote a decent environment is found in constitutional sections allowing legislatures to enact such methods of tax assessment as will best serve this end. The most popular subject of such preferential tax treatment is forestland. Massachusetts allows its legislature "to prescribe for wild and forest land such methods of taxation as will develop and conserve the forest resources of the commonwealth."[137] California exempts from taxation entirely its immature forest trees.[138] And Ohio permits its legislature to exempt from taxation all areas devoted exclusively to forestry.[139]

Another common use of the tax preference is to permit, or require, property with agricultural, recreational, scenic, historic, or architectural value, or which contains wetlands, swamplands, forests, openlands, or wildlife to be taxed at its "current use" value rather than its higher fair market value.[140]

State constitutions also affect the manner in which tax money may be used as a means to improve and preserve the environment. While the three financial means previously considered are directory concerning the legislature, this one is mandatory. However, the requirements leave the legislatures with varying degrees of flexibility. The mandatory section of Georgia's constitution is so flexible as to approach being directory; the advancement of historical, recreational and natural resources is one of twelve broad subjects to which the expenditure of tax revenue must be limited.[141] The Georgia legislature could probably ignore this one subject completely and yet not violate the constitutional provision. Typical of the middle of this spectrum is a section of the Oklahoma Constitution, declaring that revenues from certain sources shall be spent "for the control, management, restoration, conservation and regulation of the bird, fish, game, and wildlife resources of the State, ... for the administration of laws pertaining thereto, *and for no other purpose.*"[142] While these funds may be spent in various ways, they all must further the protection of wildlife. Article 26 of the California Constitution requires the legislature, when it makes any expenditures whatsoever from motor vehicle revenues, to mitigate with funds from gasoline taxes the environmental hazards accompanying streets, highways, mass transit, and related public facilities,[143] and to use funds from taxes on use and operation of motor vehicles to reduce the air and noise pollution caused by motor vehicles.[144]

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131. Va. Const., art. 11, §2.

132. Va. Const., art. 10, §7. *See also Howard, supra* n. 6, at 201.

133. Such tax incentives often need constitutional authority because state constitutions usually require "equality in the assessment and taxation of real property." *Howard, supra* n. 6, at 204.

134. Ga. Const., art. 7, §1, Para. 4.

135. Texas Prop. Amend. No. 6 of 1968 (rej. 1968), to Texas Const., art. 8, §1, as found in Texas Legislative Council, *An Analysis of Constitutional Amendments for Election — November 5, 1968,* at App. xi (1968).

136. Texas Legislative Council, *An Analysis of Constitutional Amendments for Election — November 5, 1968,* at 23 (1968).

137. Mass. Const., Amend. art. 41.

138. Cal. Const., art. 13, §3j; *cf.* Cal. Const., art. 28 (1966, repealed 1974) (assessment practices had to permit "continued availability of open space lands for" . . . "the use and enjoyment of natural resources and scenic beauty").

139. Ohio Const., art. 2, §36. Three other provisions - La. Const., art. 7, §18c; Maine Const., art. 9, §8, Para. 1; Wash. Const., art. 7, §11a - also concern forest preservation, but rather than allowing exemptions such as those of California and Ohio, they permit reductions in the basis on which *ad valorem* taxes are paid; *see* text accompanying n. 140 *infra.*

140. La. Const., art. 7, §18c; Maine Const., art. 9, §8; Wash. Const., art. 7, §11a.

California allows such an *ad valorem* tax break only when the taxed property has been restricted to such favored uses by law. Cal. Const., art. 13, §8; *see also* Cal. Const., art. 28 (1966, repealed 1974), and Associated Home Builders etc., Inc. v. City of Walnut Creek, 4 C.3d 633, 484 P.2d 606, 94 Cal. Rptr. 630, *dismissed for want of substantial federal question,* 404 U.S. 878 (1971) (upholding art. 28, and speaking favorably of open space conservation).

141. Ga. Const., art. 7, §2, Para. 1, cl.8.

142. Okla. Const., art. 26, §4 (emphasis added). *See also* Oklahoma Wildlife Federation v. Nigh, 513 P.2d 310 (Okla. 1972) (declaring unconstitutional an Oklahoma statute which contradicted Okla. Const., art. 26, §4).

143. Cal. Const., art. 26, §1.

144. Cal. Const., art. 26, §2. *See also* Mont. Const., art. 9, §2

Though taxes have been used in various and original ways to promote a decent environment, the most popular financial means to this end is the authorization of bond issues for environmental purposes. Of all the subjects covered by such provisions, pollution seems to be the favorite. Of the four major kinds of pollution control, only noise is not a specified object of a bond issue.[145] Additional subjects of bond authorization include sewage,[146] reservoirs,[147] park and recreational uses,[148] reclamation of land and water resources,[149] historical preservation,[150] and slum clearance.[151]

III. CONCLUSION

Due to both the seriousness of the environmental problem and the federal inaction on the constitutional level, it is up to the states to fill this constitutional void. The present disillusionment of citizens with the federal government, due to Watergate and its related scandals, has increased still further the burden on the states to be responsive to both the people and the needs of the times.[152] But no government can respond adequately with an obsolete constitution, or even a recent constitution which cannot deal effectively with a major long-range problem such as the environment.

There are innumerable ways of introducing this subject into state constitutions, as this article has indicated, and no one of them is universally applicable. Since the states themselves are different, the ways they handle their environmental problems must also vary. But one thing is certain: the environment is too important to human existence for it to be given any less than the highest legal status possible — that of constitutional recognition. Let the states continue to blaze this trail if the federal government will not.

(ordering the legislature to establish a $100,000,000 "resource indemnity fund" "to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose" and which "shall forever remain inviolate"). However, at least one constitutional law scholar, Prof. Jefferson B. Fordham, has grave misgivings about limitations on permissible tax uses:

> There are to be found in a number of state constitutions provisions dedicating particular revenues to particular purposes. Especially noteworthy, at this time, are constitutional dedications of gasoline and motor vehicle license tax revenues to highway — and, in some instances, airport — purposes. Simply from the standpoint of fiscal decision-making, such a commitment denies the legislature the discretion to allocate revenues both with a broad overview and with sensitivity to developing needs. It is extremely bad constitutionalism; it is, moreover, a conspicuously objectionable example of dedication. It favors the private automobile willy-nilly with all the enormous public outlay it takes for operating surfaces for motor vehicles and all the ecological and other problems generated in the use of trucks and automobiles. It seems plain enough that public revenue should be left open to appropriation by the legislature to serve the public interest broadly perceived, to the best advantage. Highways are but one component of the social circulatory system; other elements, such as mass transit, must be considered in the planning and achieving of a sound, balanced system.

S. Gove (ed.), *State Constitutional Revision: The Illinois Opportunity* 13 (1970).

145. Cal. Const. art. 16, §14 (pollution in general); Idaho Const. art. 8, §3A (to fund "facilities designed for environmental pollution control"); Mo. Const., art. 3, §37(b) (water pollution); Ore. Const., art. 11-H, §1 (air, water and land pollution); Pa. Const., art. 8, §16 (water pollution). *See also* Proposed Amendment to Wis. Const., art. 8, §10 (deposited with Secretary of State Aug. 5, 1966; published Aug. 13, 1966; defeated at polls) (air and water pollution), as found in [Wisconsin] Legislative Reference Bureau, *Constitutional Amendment Proposals, Successful and Unsuccessful, 1961 to 1965 Wisconsin Legislatures* 26 (1966). The citizens of North Carolina last year rejected a proposed amendment authorizing issuance of revenue bonds to finance pollution control facilities. Sturm, *State Constitutional Developments during 1974,* 64 Nat. Civ. Rev. 21, 30 (Jan. 1975).

146. N. Y. Const., art. 8, §5(E); Pa. Const., art. 8, §16.

147. Ohio Const., art. 8, §2(f); Pa. Const., art. 8, §15; *cf.* Ala. Const., Amend. 257 (bond to support water management districts in their many functions).

148. Ala. Const. Amend. 267; Ohio Const., art. 8, §2(f); Pa. Const., art. 8, §§15, 16.

149. Pa. Const., art. 8, §16.

150. Pa. Const., art. 8, §15.

151. N.Y. Const., art. 18, §4.

152. Smith, *Federalism and Constitutions: Awakening the States,* 63 Nat. Civ. Rev. 10, 14 (1974).

Appendix

How to read chart. All above citations mentioning only the state refer to constitutions now in effect (*e.g.*, N.Y. 14-4). All citations in which "Prop." follows the state refer to proposed constitutions or amendments (*e.g.*, Cal. Prop. 10-1; Guam Prop. §29(c); Ala. Prop. 13-13.02). If "(r)" follows "Prop.", the proposed amendment or constitution was rejected (*e.g.*, Ark. Prop. (r) 11-12; Del. Prop. (r) Preamble; Ky. Prop. (r) 11-2-1; N.D. Prop. (r) 11-5). Citations ending with "(rep.)" refer to recently repealed provisions or constitutions (*e.g.*, Cal. 28-1,2 (rep.); Mass. 49 (rep.); La. 6-19.3 (rep.)). In all citations except to Guam's Proposed Constitution, which has only sections, the first number is the article, the second is the section, the third is the paragraph, and the fourth is the clause (*e.g.*, Ga. 7-2-1-8). All Mass. citations are to "amendment articles." "Ark. Prop. Alt." refers to the alternate proposal cited in note 19 *supra*. Mandates to the state are included under "Other" rather than "Mandates to Legislature," under the "public policy" half of this chart. The chart does not include all provisions mentioned in this article, since some are so general as to defy categorization.

	public policy					financial means				
subject	statements of public policy	statements of general welfare	mandates to legislature	directives to legislature	other	*ad valorem* tax preference	debt	tax use determination	other	**constitutional right**
General Subjects										
air	La. 9-1 Mass. 49 Va. 11-1 Cal. Prop. 10-1	Ky. Prop. (r) 11-2-1	Fla. 2-7 La. 9-1 Mich. 4-52 N.M. 20-21 N.Y. 14-4 Rh. I. 1-17 Ala. Prop. 13-13.02 Cal. Prop. 10-1 Guam Prop. §29(c) Ky. Prop. (r) 11-2-1	Mass. 49 N.C. 14-5 Va. 11-2	Pa. 1-27	Ga. 7-1-4	Ore. 11H-1-1	Cal. 26		Mass. 49 Pa. 1-27
healthful environment	Ill. 11-1 La. 9-1	N.M. 20-21	Ill. 11-1 La. 9-1 Mont. 9-1(2,3),2 N.M. 20-21 Cal. Prop. 10-1		Mont. 9-1(1)					Ill. 11-2 N.D. Prop. (r) 11-5 Guam Prop. §5(v)
natural beauty	Fla. 2-7 Ala. Prop. 13-13.02 Ark. Prop. (r) 11-12 Cal. Prop. 10-1 Guam Prop. §29(c)	Alas. 8-7 Cal. 28-1 (rep.)	N.Y. 14-4 Ark. Prop. (r) 11-12 Cal. Prop. 10-1 Guam Prop. §29(c) La. 6-19.3 (rep.)	Alas. 8-7 Hawaii 8-5 Mass. 49 N.C. 14-5	Pa. 1-27	Cal. 28-1,2 (rep.) Me. 9-8-2				Pa. 1-27 Ark. Prop. Alt.
noise	Cal. Prop. 10-1		Fla. 2-7 N.Y. 14-4 Ala. Prop. 13-13.02 Cal. Prop. 10-1 Guam Prop. §29(c)	Mass. 49 N.C. 14-5				Cal. 26		Mass. 49
land and land reclamation	Alas. 8-1 N.C. 14-5 Va. 11-1 La. 6-19.3 (rep.)		Alas. 8-2,6 Hawaii 10-1 Mont. 9-2 Rh.I. 1-17 Texas 16-59(a)	Alas. 8-5 Va. 11-2	Alas. 8-6		Ohio 8-2f Ore. 11H-1-1		Mont. 9-2-2	Texas 16-59(a)
water	La. 9-1 Mass. 49 N.C. 14-5 Va. 11-1 Cal. Prop. 10-1 Mass. 49 (rep.)	Cal. 14-3 Cal. Prop. 10-2 Ky. Prop. (r) 11-2-1	Alas. 8-2 Fla. 2-7 Hawaii 10-1 La. 9-1 Mich. 4-52 N.M. 20-21 N.Y. 14-4 Rh.I. 1-17 Texas 16-59(a) Ala. Prop. 13-13.02 Ark. Prop. (r) 11-12 Cal. Prop. 10-1 Guam Prop. §29(c) Ky. Prop. (r) 11-2-1	Alas. 8-5 Cal. 14-3 Kan. 11-9 Mass. 49 N.C. 14-5 Ohio 2-36 Va. 11-2	Alas. 8-3 Pa. 1-27 La. 15-4(c)(rep.)	Ga. 7-1-4	Ala. amt. 257 Mo. 3-37(b) Ore. 11H-1-1			Mass. 49 Pa. 1-27 Texas 16-59(a)

subject	public policy: statements of public policy	public policy: statements of general welfare	public policy: mandates to legislature	public policy: directives to legislature	public policy: other	financial means: *ad valorem* tax preference	financial means: debt	financial means: tax use determination	financial means: other	constitutional right
Minor Subjects										
agricultural resources	Mass. 49 N.Y. 14-4 Guam Prop. §29(c) Mass. 49 (rep.)	Cal. 28-1 (rep.)	Hawaii 10-1 N.Y. 14-4 Guam Prop. §29(c)	Ohio 2-36 Mass. 49		Cal. 13-8 La. 7-18(c) Me. 9-8-1 Wash. 7-11(a)				Mass. 49
archeological value, of			Mont. 9-4							
beaches and shorelines			N.Y. 14-4 Guam Prop. §29(c)	N.C. 14-5						
cultural value, of	P.R. 6-19	Alas. 8-7	Mont. 9-4 Guam Prop. §29(c)	Alas. 8-7 Hawaii 8-5						La. 12-4
ecological value, of			N.Y. 14-4 Guam Prop. §29(c)							
esthetic value, of	La. 9-1 Cal. Prop. 10-1		La. 9-1 Cal. Prop. 10-1	Mass. 49	Pa. 1-27 Del. Prop. (r) Preamble					Mass. 49 Pa. 1-27
estuaries				N.C. 14-5						
fish			Hawaii 10-1	Alas. 8-5 Tenn. 11-13	Alas. 8-3, 4, 13			Okla. 26-4		
forests	Mass. 49 N.Y. 14-1 N.Y. 14-3-1 Mass. 49 (rep.)	Ky. Prop. (r) 11-2-1	Hawaii 10-1 Texas 16-59(a) Cal. Prop. 10-1	Mass. 49 N.Y. 14-3-2(a) Utah 18-1 Ohio 2-36	Alas. 8-4 N.Y. 14-1 N.C. 14-5	Cal. 13-3(j) La. 7-18(c) Me. 9-8-1 Mass. 41 Ohio 2-36 Wash. 7-11(a)				Mass. 49 Texas 16-59(a)
geological value, of			N.Y. 14-4 Guam Prop. §29(c)							
historical value, of	La. 6-17-1 La. 9-1 Mass. 51 P.R. 6-19 Va. 11-1 Cal. Prop. 10-1	Alas. 8-7	La. 9-1 Mont. 9-4 N.Y. 14-4 Cal. Prop. 10-1 Guam Prop. §29(c)	Alas. 8-7 Hawaii 8-5 La. 6-17-1 Mass. 49 N.C. 14-5 Va. 11-2	Pa. 1-27	Cal. 13-8 La. 7-18(c)		Ga. 7-2-1-8		La. 12-4 Mass. 49 Pa. 1-27
minerals	La. 9-2 Mass. 49 Mass. 49 (rep.)	Ky. Prop. (r) 11-2-1	Hawaii 10-1 La. 9-2 Rh.I. 1-17 Ky. Prop. (r) 11-2-1	Mass. 49	La. 9-4,5,6					Mass. 49
openlands		Cal. 28-1 (rep.)		N.C. 14-5	Alas. 8-4	Cal. 13-8 Me. 9-8-2 Wash. 7-11(b) Cal. 28-1,2 (rep.)				
parks	La. 6-19.3 (rep.)						Ala. amt. 267 Ohio 8-2f			
physical good order				Hawaii 8-5						
public lands	Va. 11-1 N.D. Prop. (r) 11-5		N.D. Prop. (r) 11-5					N.Y. 14-3-2		
recreation	Va. 11-1 La. 6-19.3 (rep.)	Alas. 8-7	Mont. 9-4 La. 6-19.3 (rep.)	Alas. 8-7 N.Y. 14-3-2(b) N.Y. 18-1 N.C. 14-5		Cal. 13-8 Me. 9-8-2 Wash. 7-11(b)	Ohio 8-2f	Ga. 7-2-1-8		
scenic value, of	Fla. 2-7 La. 9-1 N.Y. 14-4 Cal. Prop. 10-1 Guam Prop. §29(c) La. 6-19.3 (rep.)	Cal. 28-1 (rep.)	La. 9-1 Mont. 9-4 N.Y. 14-4 Cal. Prop. 10-1 La. 6-19.3 (rep.)	Mass. 49 N.C. 14-5	Pa. 1-27	Cal. 13-8 Me. 9-8-2 Wash. 7-11(b) Cal. 28-1, 2(rep.)				Mass. 49 Pa. 1-27
scientific value, of		Alas. 8-7	Mont. 9-4	Alas. 8-7						
sightliness	La. 6-19.3 (rep.)		La. 6-19.3 (rep.)	Hawaii 8-5						
slums and housing re-development	Ga. 16			Ga. 16 Hawaii 8-4 N.Y. 18-1 S.C. 14-5			N.Y. 18-4			
soil		Ky. Prop. (r) 11-2-1	Ky. Prop. (r) 11-2-1							
submerged lands			Alas. 8-6 Guam Prop. §29(c)	Ohio 2-36	Alas. 8-6					
swamplands				Ohio 2-36		La. 7-18(c)				
wetlands			N.Y. 14-4 Guam Prop. §29(c)	N.C. 14-5		La. 7-18(c)				
wilderness			N.Y. 14-4 Guam Prop. §29(c)							
wildlife and plants	N.Y. 14-3-1	Ky. Prop. (r) 11-2-1	Hawaii 10-1 Rh.I. 1-17 Ky. Prop. (r) 11-2-1	Alas. 8-5 N.Y. 14-3-1 N.Y. 14-3-2(a) Tenn. 11-13	Alas. 8-3,4,13	La. 7-18(c) Me. 9-8-3		Okla. 26-4		