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## LEGISLATIVE HISTORY

### A LEGISLATIVE HISTORY OF ARTICLE I, SECTION 27 OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

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\*\* Reference and Government Documents Librarian, Widener University, Commonwealth Law School. In compiling this legislative history, a number of individuals have been helpful with providing assistance in locating resources. We would especially like to acknowledge Mary Sanders, Archives/Media Assistant, at Susquehanna University which houses the Franklin L. Kury Papers; Heather Deppen Hillard, Assistant Archivist, Pennsylvania House of Representatives House Archives; Kevin Spangenberg, Librarian, State Library of Pennsylvania; and Jonathan R. Stayer, Supervisor of Reference Services at the Pennsylvania State Archives. Special thanks to Stephanie Engerer, Reference/Electronic Services Librarian at Widener University School of Law, for providing technical expertise.

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## I. INTRODUCTION

The Pennsylvania Supreme Court's landmark decision in *Robinson Township v. Commonwealth*,<sup>a</sup> has prompted enormous interest in the history and text of Article I, Section 27 of the Pennsylvania Constitution. This legislative history<sup>b</sup> is a response to that interest.<sup>c</sup>

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<sup>a</sup> 803 A.3d 901 (Pa. 2013). There is a growing body of scholarship on this case. See, e.g., John C. Dernbach & Mark Prokopchak, *Recognition of Environmental Rights for Pennsylvania Citizens: A Tribute to Chief Justice Castille*, 53 DUQ. L. REV. 335 (2015) (explaining how scholarly opinion by Chief Justice Castille was based on the text, purpose, and history of Article I, Section 27); Richard Rinaldi, *Dormant for Decades, the Environmental Rights Amendment of Pennsylvania's Constitution Recently Received a Spark of Life from Robinson Township v. Commonwealth*, 24 WIDENER L.J. 435 (2015) (providing an in-depth analysis of the landmark plurality opinion).

As this note indicates, lower case letters are being used instead of numerals for certain footnotes. This legislative history includes an article with numerical footnotes. The footnotes have the same numbers here as in the original article. See Robert Broughton, *Analysis of HB 958, the Proposed Pennsylvania Environmental Rights Amendment*, reprinted in PA. LEGISLATIVE JOURNAL—HOUSE 2272 (Apr. 14, 1970) at *infra* p. 217. To avoid renumbering those footnotes, and creating confusion, we use lower case letters instead of numerals for footnotes throughout the rest of this legislative history.

<sup>b</sup> A companion legislative history, containing copies of all the original source documents, is also available. John C. Dernbach & Edmund J.

Amendments to the state constitution must be approved by each house of the General Assembly in two successive legislative sessions, and then approved by a majority of voters in a public referendum.<sup>d</sup> Article I, Section 27 was agreed to in the 1969-1970 and 1971-1972 sessions of the General Assembly, and approved by the state's voters on May 18, 1971. We have attempted to put in one place all of the bills and other documents that represent its passage through this process. More than forty years after its adoption, many of these documents are relatively hard to find. We hope that this legislative history will make it easier for the public, the bar, and others to see what was done, and why.

This legislative history is organized in three parts. Part II contains the documents relating to its passage during the 1969-1970 legislative session. Representative Franklin L. Kury introduced House Bill 958, an amendment to Article 1 of the Constitution, providing for the preservation and restoration of

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Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Showing Sources Documents* (2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2474660](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474660).

The present legislative history shows all text from these documents relevant to the passage of Article I, Section 27. Many of the source documents contain material relevant to other bills and subjects; that material is excluded from this legislative history. Although this is a complete legislative history, we altered certain fonts and spacing to enhance readability.

<sup>e</sup> Other resources include FRANKLIN L. KURY, CLEAN POLITICS, CLEAN STREAMS: A LEGISLATIVE AUTOBIOGRAPHY AND REFLECTIONS, chs. 7-8 (2011); JOHN C. DERNBACH, NATURAL RESOURCES AND THE PUBLIC ESTATE, IN THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES (Ken Gormley et al. eds., 2004); John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When It Protects the Environment: Part I—An Interpretative Framework for Article I, Section 27*, 103 DICK. L. REV. 693 (1999); John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When It Protects the Environment: Part II—Environmental Rights and Public Trust*, 104 DICK. L. REV. 97 (1999); Franklin L. Kury, *The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested*, 1 VILL. ENVTL. L.J. 123 (1991); FRANKLIN L. KURY, NATURAL RESOURCES AND THE PUBLIC ESTATE: A BIOGRAPHY OF ARTICLE I, SECTION 27 OF THE PENNSYLVANIA CONSTITUTION (1985); PA. HOUSE OF REPS. BIPARTISAN MANAGEMENT COMMITTEE, ORAL HISTORY PROJECT, INTERVIEW WITH THE HONORABLE FRANKLIN L. KURY (D) (former State Representative), 108th District of Pa. (May 17, 2006), available at <http://www.pahouse.us/bmc/archives/transcripts/Kury.pdf>.

<sup>d</sup> PA. CONST. Art. XI, Section 1.

Pennsylvania's natural resources, on April 21, 1969. To pass each house, a bill must be considered by that house on three separate days.<sup>e</sup> H.B. 958 was referred to the Committee on Conservation, where it was amended. As amended, the House passed the bill on first consideration on May 5, 1969, and on second consideration on May 27, 1969. The House approved H.B. 958 on third consideration on June 2, 1969, by a vote of 190 to 0, with 12 members not voting.

H.B. 958 was subsequently introduced in the Senate on June 3, 1969, and referred to the Committee on Constitutional Changes and Federal Relations. The Committee amended the bill a second time. H.B. 958 was agreed to for the first time on March 10, 1970, and agreed to for the second time on March 11, 1970. On March 17, on third consideration, the Senate approved H.B. 958 by a vote of 39 to 0. The Pennsylvania House concurred with the Senate amendments on April 14, 1970, by a vote of 188 to 0, with 14 not voting. At this time, Rep. Kury made additional remarks, and included in the House Journal an article by Professor Robert Broughton of Duquesne University School of Law, which was subsequently published in the Pennsylvania Bar Association Quarterly.<sup>f</sup>

Part III contains the documents relating to its passage in the 1971-1972 session. In compliance with Pennsylvania's constitutional amendment process, Representative Kury reintroduced the bill, designated in this session as House Bill 31, on January 6, 1971. The bill was referred to the Committee on Rules, from which it was reported on January 26, 1971. The House passed the bill on first consideration on February 1, 1971, and on second consideration on February 2, 1971. On February 3, 1971, the House approved House Bill 31 by a vote of 199 to 0, with 3 not voting.

H.B. 31 was presented for concurrence in the Senate on February 8, 1971, and referred to the Committee on Rules. The bill was approved for the first time on February 8, 1971, and for the second time on February 9, 1971. On February 15, 1971, H.B. 31 passed the Senate by a vote of 45 to 0. The bill was

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<sup>e</sup> PA. CONST. Art. III, Section 4.

<sup>f</sup> Robert Broughton, *Analysis of HB 958, the Proposed Pennsylvania Environmental Declaration of Rights*, 41 PA. B. ASS'N Q. 421 (1969-1970).

returned to the House, where it was signed by the Speaker of the House on February 15, 1971, for presentation to the Governor.

Part IV contains documents relating to the referendum and subsequent adoption of Article I, Section 27. Representative Kury prepared and distributed a set of questions and answers prior to the referendum. On May 18, 1971, Pennsylvania's voters approved Article I, Section 27 by a margin of 1,021,342 to 259,979.<sup>8</sup> On July 23, 1971, Governor Milton Shapp signed a proclamation that Article I, Section 27 had been adopted as part of the Pennsylvania Constitution.

In the years ahead, lawyers, clients, and courts will continue to grapple with the meaning and scope of Article I, Section 27. However else this legislative history contributes to the unfolding of that process, two conclusions seem clear. First, Article I, Section 27 deserves the same consideration as constitutional law as any other provision of the Pennsylvania Constitution. Second, its text matters. The text, after all, is what the General Assembly approved twice and the voters approved by an overwhelming margin.

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<sup>8</sup> PA. DEP'T OF STATE, RESOLUTIONS TO BE VOTED ON AT THE PRIMARY ELECTION (May 18, 1971), *reproduced at infra* p. 274. For the vote count results by county see *infra* chart at pp. 275-80.

**II. FIRST LEGISLATIVE SESSION (1969-1970)*****A. House*****1. House Bill 958<sup>h</sup>**

Printer's No. 1105

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

No. 958 Session of 1969

INTRODUCED BY MESSRS. KURY, LAUDADIO,  
BENNETT, IRVIS, WARGO, FINEMAN,  
SHELHAMER, STEELE, TAYLOR, HETRICK,  
FRYER, ECKENSBERGER, PITTENGER,  
MANDERINO, SHUPNIK, FISCHER, M.E.  
MILLER, BERSON, RENWICK, W.W. WILT,  
GEKAS, KAHLE, HALVERSON, R.W. WILT,  
DWYER, WISE, MEHOLCHICK, KAUFMAN,  
BACHMAN AND O'PAKE, APRIL 21, 1969

REFERRED TO COMMITTEE ON CONSERVATION,  
APRIL 21, 1969

**A JOINT RESOLUTION**

Proposing an amendment to article one of the  
Constitution of the Commonwealth of Pennsylvania  
providing for the preservation and restoration of our  
natural resources.

The General Assembly of the Commonwealth of  
Pennsylvania hereby resolves as follows:

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<sup>h</sup> H.B. 958, Printer's No. 1105 (Apr. 21, 1969).

Beginning with this footnote, the lower case letter footnotes for each heading show the source of the text contained below the heading. If that text runs for more than one page in the original document, we preface the material for the second and succeeding pages with the new page number in square brackets, like this: [new page number]. For bills, for example, we indicate the beginning of the second page with [2].

1 Section 1. The following amendment to the Constitution of the  
2 Commonwealth of Pennsylvania is proposed in accordance with the  
3 provisions of the eleventh article thereof:

4 That article one of the Constitution of the Commonwealth of Penn-  
5 sylvania be amended by adding at the end thereof, a new section to read:

6 Section 27. Natural Resources and the Public Estate.—The people  
7 have a right to clean air, pure water, and to the preservation of the  
8 natural scenic, historic and esthetic values of the environment. Penn-  
9 sylvania's natural resources, including the air, waters, fish, wildlife, and  
10 the public lands and property of the Commonwealth, are the common  
[2]  
1 property of all the people, including generations yet to come. As trustee  
2 of these resources, the Commonwealth shall preserve and maintain them  
3 in their natural state for the benefit of all the people.

## 2. Remarks by Representative Kury<sup>i</sup>

### PERMISSION TO ADDRESS HOUSE

Mr. KURY requested and obtained unanimous consent to address the House.

Mr. KURY. Mr. Speaker, I rise to introduce a natural resource conservation amendment to Pennsylvania's declaration of rights.

I do so because I believe that the protection of the air we breathe, the water we drink, the esthetic qualities of our environment, has now become as vital to the good [486] life—indeed, to life itself—as the protection of those fundamental political rights, freedom of speech, freedom of the press, freedom of religion, of peaceful assembly and of privacy.

The original version of Pennsylvania's present Declaration of Rights, which is found in article I of the state constitution, was enacted at a time when the preservation of freedom in man's political environment

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<sup>i</sup> PA. LEGISLATIVE JOURNAL-HOUSE 485-86 (Apr. 21, 1969) (statement of Rep. Franklin Kury).

was in doubt. At that time, the population of the nation was so small and the natural resources so apparently inexhaustible, that the future of the physical environment was taken for granted.

The passage of two centuries has drastically altered this situation. Our political rights are embedded in our governmental framework. But our physical environment has been depleted and damaged to the point where there is a serious question as to how long mankind can biologically exist on this planet. The situation is so serious that mankind is now considered one of the "endangered species." In fact, creation of an "earth national park" has already been suggested.

We must, therefore, ask ourselves whether we can insure a physical climate that will not merely allow man to exist on the earth, but also whether it can be maintained in a natural state that is compatible with man's highest aspirations as a social creature.

Preservation of our natural resources and environment is of fundamental importance. In fact, if mankind does not solve the challenge of saving his environment, all of the other great world problems we face may well become moot. We take great pride in our Federal and State Bill of Rights, but the fundamental political rights they preserve will not mean much if mankind dies from its own putrefaction. Freedom of speech will be meaningless if we suffocate in polluted air.

The situation here in Pennsylvania is serious. Millions of vehicles clog the roads and highways, spewing their exhaust into the air. Too little has been done to stop this pollution. Yet, clean air is vital to our existence.

While our State does have a maze of laws dealing with various aspects of our environment and natural resources, the fact is that we lack an over-all governmental framework in which to carry on the fight for conservation. We

need a state government policy that is clearly stated and beyond question, one that will firmly guide the legislature, the executive and the courts alike.

Consequently, we are today introducing a natural resource and environmental values amendment to the state constitution that includes the following requirements:

1. It would establish once and for all time to come that the people of Pennsylvania have a right to clean air, pure water, and the natural, scenic, historic and esthetic values of their environment. These are fundamental rights which should not be abridged.

2. It would establish that the air, waters, fish, wildlife, and the natural, scenic, historic and esthetic values of the environment of Pennsylvania, belong to all the people of this Commonwealth, including the generations yet to come.

3. It would establish that it is the duty of the government of the Commonwealth of Pennsylvania to serve as a trustee for these natural resources so that future generations will receive them fully preserved.

4. It would require our existing resources to be maintained so that their protection can be provided.

Mr. Speaker, the importance and need for such a constitutional amendment has been recognized elsewhere. Less than a month ago the legislature of New York approved a conservation bill of rights that makes it New York state policy to protect scenic beauty and natural resources. That proposal will be given to the voters of New York for approval this fall.

Last year a natural resource conservation bill of rights for the Federal Constitution was introduced by Representative Ottinger and others of both political parties.

Pennsylvania should not delay. We should act now to preserve the public estate for the generations yet to come, to establish a "new conservation" for Pennsylvania.

In the words of Stewart Udall:

"We have already learned—or should have by now—that posterity will honor us more for the roads and dams we do not build in areas having irreplaceable scenic and recreational values than for those we do. These new insights should cause us to slacken, and ultimately cease, the constant subtraction from our common estate. Beauty and order should frame everyday life. The poet craves them, religion celebrates them, and the latent naturalist and artist in every man thrives in their presence. The essence of the new conservation then will reside in the vision and diligence we bring to our deepening sense of stewardship over the real capital of the Nation."

"The real capital" of the Nation and of our State is its God-given natural resources. The conservation amendment we offer today will, I believe, establish a proper sense of stewardship over that "real capital" here in Pennsylvania. It will provide a firm governmental foundation on which we can act to assure our survival on our small corner of this planet.

In that spirit the bill is offered.

In that spirit we call on every member of this legislature who believes in the cause of conservation to join in enacting this bill.

In that spirit we call on the conservation-minded organizations of Pennsylvania to lend their weight to this cause.

In that spirit we call on every citizen of Pennsylvania to join in supporting this effort now, while there is yet time in which to act.

### 3. Referral to Conservation Committee<sup>j</sup>

By Messrs. KURY, LAUDADIO, BENNETT, IRVIS, WARGO, FINEMAN, SHELHAMER, STEELE, TAYLOR, HETRICK, FRYER, ECKENSBERGER, PITTENGER, MANDERINO, SHUPNIK, FISCHER, M.E. MILLER, BERSON, BENWICK, W.W. WILT, GEKAS, KAHLE, HALVERSON, R.W. WILT, DWYER, WISE, MEHOLCHICK, KAUFMAN, BACHMAN and O'PAKE **HOUSE BILL No. 958**

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Referred to Committee on Conservation.

### 4. Report from Conservation Committee<sup>k</sup>

BILL REPORTED AS AMENDED

HOUSE BILL No. 958

By Mr. Nolan

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Reported from Committee on Conservation.

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<sup>j</sup> PA. LEGISLATIVE JOURNAL-HOUSE 499 (Apr. 21, 1969).

<sup>k</sup> PA. LEGISLATIVE JOURNAL-HOUSE 556 (Apr. 29, 1969).

**5. House Bill 958 as Amended<sup>1</sup>***Prior Printer's No. 1105*

Printer's No. 1307

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

No.

958

Session of 1969

INTRODUCED BY MESSRS. KURY, LAUDADIO,  
BENNETT, IRVIS, WARGO, FINEMAN,  
SHELHAMER, STEELE, TAYLOR, HETRICK,  
FRYER, ECKENSBERGER, PITTENGER,  
MANDERINO, SHUPNIK, FISCHER, M.E. MILLER,  
BERSON, RENWICK, W.W. WILT, GEKAS,  
KAHLE, HALVERSON, R.W. WILT, DWYER,  
WISE, MEHOLCHICK, KAUFMAN, BACHMAN  
AND O'PAKE, APRIL 21, 1969

AS REPORTED FROM COMMITTEE ON  
CONSERVATION, HOUSE OF  
REPRESENTATIVES, AS AMENDED, APRIL 29,  
1969

**A JOINT RESOLUTION**

Proposing an amendment to article one of the  
Constitution of the Commonwealth of Pennsylvania  
providing for the preservation and restoration of our  
natural resources.

The General Assembly of the Commonwealth of  
Pennsylvania hereby resolves as follows:

- 1 Section 1. The following amendment to the Constitution of the
- 2 Commonwealth of Pennsylvania is proposed in accordance with the
- 3 provisions of the eleventh article thereof:
- 4 That article one of the Constitution of the Commonwealth of Penn-

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<sup>1</sup> H.B. 958, Printer's No. 1307 (Apr. 21, 1969).

5 sylvania be amended by adding at the end thereof, a new section to read:

6 Section 27. Natural Resources and the Public Estate.--The people

7 have a right to clean air, pure water, and to the preservation of the

8 natural scenic, historic and esthetic values of the environment. Penn-

9 sylvania's natural resources, including the air, waters, fish, wildlife, and

10 the public lands and property of the Commonwealth, are the common

[2]

1 property of all the people, including generations yet to come. As trustee

2 of these resources, the Commonwealth shall preserve and maintain them

3 in their natural state for the benefit of all the people.

## 6. First Consideration<sup>m</sup>

Agreeable to order,

The House proceeded to first consideration of House bill No. 958, printer's No. 1307, entitled:

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Said bill was considered the first time and agreed to.

## 7. Second Consideration<sup>n</sup>

Agreeable to order,

The House proceeded to second consideration of House bill No. 958, printer's No. 1307, entitled:

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of

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<sup>m</sup> PA. LEGISLATIVE JOURNAL-HOUSE 593 (May 5, 1969).

<sup>n</sup> PA. LEGISLATIVE JOURNAL-HOUSE 676 (May 27, 1969).

Pennsylvania providing for the preservation and restoration of our natural resources.

And said bill having been considered the second time and agreed to,

Ordered, to be transcribed for third consideration.

### **8. Third Consideration and Passage<sup>o</sup>**

Agreeable to order,

The House proceeded to third consideration of House bill No. 958, printer's No. 1307, entitled:

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

On the question,

Will the House agree to the bill on third consideration?

The SPEAKER. The Chair recognizes the gentleman from Northumberland, Mr. Kury.

Mr. KURY. Mr. Speaker, the hour grows late and I just want to make one very brief comment and offer some material for the record.

I would like to call the attention of the House to this bill. I believe it is a bill of some importance because today we are voting to give constitutional protection to our natural resources and physical environment.

If this amendment becomes part of our constitution, as I hope it will, it will only be the second amendment in 132 years to our constitution's declaration of rights. But it

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<sup>o</sup> PA. LEGISLATIVE JOURNAL-HOUSE 721-25 (June 2, 1969).

may become one of the most important amendments that we shall ever add to our constitution.

As all of you know from reading the newspapers and news media, in our Nation, our State, the whole world, there is a serious danger of whether man will be able to survive on this planet. The increasing pressures of technological advances and the growing population on a diminishing supply of natural resources is outstripping our ability to cope with it. I do not think this amendment which we are offering today is the ultimate answer to the problem, but I do believe it is a sound, firm basis upon which this legislature, the courts and the executive can act to make Pennsylvania's environment not only fit for human habitation biologically, but also a wholesome environment suited for the achievement of man's highest aspirations as a society.

Mr. Speaker, I will just say in conclusion that when our constitution was originally drafted, the great issue at that time was preserving man's political rights against the encroachment of dictatorial government. Our natural resources were so great, our population so small and our technology so underdeveloped that the future of our environment and resources were taken for granted. Now this situation has been altered. Our political rights are strongly protected by vigilant courts and an alert press, but population and technology have run amok through our environment and resources.

It is well accepted that the good society, a society of free men in a free world, requires an appropriate political environment and physical environment. The political environment we have achieved; the physical environment we must yet save. Therefore, let us pass this bill and give constitutional protection to the greatest wealth Pennsylvania has, its natural resources.

I offer the balance of the statement for insertion in the record, Mr. Speaker:

The SPEAKER. The Chair thanks the gentleman.

Mr. KURY presented the following statement for the Legislative Journal:

There are too few times when a legislator has an opportunity to vote on a measure with genuine historical significance.

Today, we have such an opportunity.

[722] Today, we are voting on House Bill 958—a bill to give constitutional protection to our natural resources and physical environment.

The bill, an amendment to our state constitution, would amend our declaration of rights, to provide that every citizen has a right to clean air, pure water, and the natural, scenic, historic and esthetic qualities of our environment. The proposal further declares that the natural resources of Pennsylvania belong to all the people and that the state government, as trustee of our natural resources, must protect them for the benefit of everyone, including unborn generations.

If this amendment is enacted, as I hope it will, it will be only the second amendment to our constitution's Declaration of Rights in 132 years. But it may become one of the most important amendments ever added to our constitution.

Our world, our Nation, our State, are in real danger of becoming unfit for human habitation. The increasing pressures of technological advances and the growing population on a diminished supply of natural resources is outstripping our ability to cope with it. Every week sees new editorials and cries of alarm from around the nation. The creation of an "earth national park" has been suggested. We must act firmly and we must act now.

Enactment of H.B. 958 can be an important step in our fight to save our environment, for several reasons. First, the amendment gives clear recognition to the critical nature of the problem by establishing basic rights to a wholesome environment.

Secondly, the amendment declares and places the responsibility for preserving Pennsylvania's environment where the responsibility basically belongs—on state government. The amendment declares that the state government is the trustee of our natural resources, not only for those alive now, but for generations yet to come.

Thirdly, the amendment provides a firm, clear policy statement for the guidance of all those branches of government and private parties alike. Considering Pennsylvania's shameful history of a state government too often controlled by the plunderers of our natural resources, this amendment is long overdue. If only it had been enacted a century ago—how different the face of Pennsylvania would look today!

Most important this amendment will shift the burden of proof in future disputes from those who object to pollution or environmental impairment to those who would pollute or impair. Those who propose to disturb the environment or impair natural resources would in effect have to prove in advance that the proposed action is in the public interest. This will mean that the public interest in natural resources and the environment will be fully weighed against the interests of those who would detract from or diminish them before—not after—action is taken.

This amendment is certainly not the final answer in our great struggle to save the environment. But it does provide a sound, firm foundation upon which our legislature, the courts and the executive can act to make Pennsylvania's environment not only fit for human

habitation, but also a wholesome environment suited for the achievement of man's highest aspirations as a society.

Mr. Speaker, when our constitution was originally drafted the great issue was preserving man's political rights against the encroachment of dictatorial government. Our natural resources were so great, our population so small, and our technology so underdeveloped that the future of our environment and resources were taken for granted. Now—that situation has been altered. Our political rights are strongly protected by vigilant courts and an alert press. But population and technology have run amok through our environment and resources.

It is well accepted that the good society, a society of free men in a free world, requires an appropriate political environment and physical environment. The political environment we have achieved. The physical environment we must yet save. Therefore, let us pass this bill and give constitutional protection to the greatest wealth Pennsylvania has—its natural resources.

The SPEAKER. The Chair recognizes the gentleman from Lycoming, Mr. Wise.

Mr. WISE. Mr. Speaker, I ask permission of the House to include two printed matters in the record. The first is an article from the Philadelphia Bulletin of May 25, 1969, by Gary Brooten, entitled, "The Right to Freedom from Pollution."

The second article is from the New York Times of April 7, 1969, by Israel Shenker, entitled, "Man's Extinction Held Real Peril."

I simply would like permission to submit these for the record and ask everyone to vote "aye" on this important bill.

The SPEAKER. Without objection, the material will be spread upon the record.

Mr. WISE presented the following articles for the Legislative Journal:

THE RIGHT TO FREEDOM FROM  
POLLUTION

By GARY BROOTEN  
Of The Bulletin Staff

A brash idea that could revolutionize the strategy of American conservationism is beginning to make itself felt in the fight against environmental blight.

The idea is that pollution and other environmental disturbances, far from being matters of mere prettiness or of minor health risks, are issues of fundamental human rights.

This view was voiced on April 21 in Pennsylvania's House of Representatives by Rep. Franklin L. Kury, Democrat of Northumberland, who urged that such a right be added as the second amendment in 132 years to the Declaration of Rights leading off Pennsylvania's constitution.

For a Good Life

"I believe," Kury said, "that the protection of the air we breathe, the water we drink, the esthetic qualities of our environment, has now become as vital to the good life—indeed, to life itself—as the protection of the fundamental political rights, freedom of speech, freedom of the press, freedom of religion, of peaceful assembly and of privacy."

His speech, as Kury himself noted, was not simply an isolated local expression.

Partly as a result of discussion at an ill-starred state constitutional convention in New York in [723] 1966, and even more as a result of the legal activism of a swinging young conservation group called the Environmental Defense Fund, the notion that people have a basic right to a clean environment has progressed rapidly in the last two years.

So far, it has attained no formal legal or judicial status. Its principal visible effect has been to persuade a few administrative agencies to be more careful in their use of chemical insecticides. Some older conservation groups have shied away from the concept's more militant expression.

Many of the idea's backers find it exciting, on the other hand, for its radical practical implications. If a basic "right to a clean environment" became recognized, it might well shift the burden of proof in future environmental disputes from those who object to pollution to those who pollute. Anyone who proposed to pollute or otherwise disturb the environment, in the name of "progress" or economic necessity, would have to prove ahead of time that the proposed action was, indeed, in the public interest.

The right could be recognized in one of two ways. The quickest would be by court decisions—preferably by the U. S. Supreme Court—acknowledging a constitutional right of Americans to the cleanest possible environment. The other way would be a constitutional amendment to make the right explicit.

The first approach is the strategy of the Environmental Defense Fund (EDF), a Long Island-based group of scientists and lawyers with an ambitious program of legal actions.

EDF grew out of a 1966 suit to block a Long Island mosquito-control program using the pesticide DDT. It was filed by Victor J. Yannacone, Jr., a Patchogue, L.I., lawyer partly at the instigation of his conservationist wife, Carol.

The effort failed, but it brought Yannacone together with Dr. Charles F. Wurster, Jr., a Philadelphia-born chemist and biologist at New York University's Stony Brook campus, leading authority on environmental effects of pesticides, and with ecology-minded scientists at the federal government's Brookhaven National Laboratory, also on Long Island.

#### Organization Set Up

They put an organization together, with Yannacone in charge and Wurster, eventually at the head of its scientific advisory panel.

Currently the two are up to their necks in an effort by conservationists to have the use of DDT banned, in effect, in Wisconsin, under that state's water pollution laws.

EDF has lawsuits pending in federal courts, however, which Yannacone hopes will lead to an eventual ruling on the constitutional issue by the Supreme Court.

As Yannacone sees that issue, the people's right to a clean environment rests in the fourth (due process) and 15th (equal protection of laws) amendments to the Constitution, and perhaps more importantly in the ninth.

That amendment states, in full: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Privacy is one of the "others," recognized by the Supreme Court in its 1965 decision overturning Connecticut's birth control law. Yannacone thinks a similar decision could establish the right to clean environment.

The key suit, filed in U. S. District Court in Butte, Montana, asserts that the people of the United States have a right to use and enjoy the environment around Missoula, Montana, "without diminution and degradation resulting from the emission of noxious sulfur compounds" by a paper pulp mill on Missoula's outskirts. The argument invokes all three of the key amendments.

Yannacone, 33, has not won a clearcut success for the EDF in court yet. Judges have tended to be cautious, ruling that the issues are matters for legislative action.

Robert Jasperson, counsel for a California group active in conservation suits, believes the constitutional arguments will fail. "You just can't stretch the Constitution that far," he said, adding that it may be possible to achieve much of the desired effect indirectly by the judicious use of conventional damage suits against polluters.

The alternative approach—constitutional amendment—is well along already in New York, where voters will decide in November on a conservation "bill of rights" written by the unsuccessful constitutional convention to protect the state's natural resources.

Last summer, and again on Jan. 3, seven Democrats and four Republicans in the U. S. House of Representatives introduced a similar proposal to amend the U. S. Constitution.

Authored by New York Democrat Richard L. Ottinger, the resolution to propose a "conservation bill of rights" as the 26th amendment also carries the names of three Pennsylvania Congressmen—Reps. Joshua Eilberg (D-Phila.), John H. Dent (D-Westmoreland) and John P. Saylor (R-Cambria).

Its key clause declares that "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."

Other sections require the federal government to make periodic inventory of the nation's "natural, scenic, esthetic and historic resources," to "provide for their protection as a matter of national purpose" and to hold public hearings well in advance of any federal activity that would affect those resources.

The resolution is now in the judiciary committee.

Kury's proposed Pennsylvania conservation bill of rights is briefer and simpler. Under the names of 22 Democrats (including the entire House Democratic leadership) and eight Republicans, it proposes to add the following words to the first article of the state constitution:

"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. [724] Pennsylvania's natural resources, including the air, waters, fish, wildlife, are the common property of all the people, including generations yet to come.

"As trustee of these resources, the Commonwealth shall preserve and maintain them for the benefit of all the people."

Kury's bill also included the phrase "in their natural state" in the last sentence. It was deleted by the conservation committee, which acted on the measure and made a favorable report to the floor within eight days. The bill was passed and sent to the State Senate last week.

#### Serious Effort

Though lacking the theatrical capacity for controversy of Yannacone and the EDF, the backers of these measures claim to be serious about the principles.

They acknowledge that there are numerous laws on the books for the control of pollution and other environmental disturbances, but point out that there is no underlying basic principle in the written law to unify these statutes.

"We need a government policy," sums up Kury, "that is clearly stated and beyond question, one that will firmly guide the legislature, the executive and the courts alike."

#### MAN'S EXTINCTION HELD REAL PERIL CHANGE IN POLITICAL STRUCTURE CALLED VITAL BY PROFESSOR

By ISRAEL SHENKER  
Special to The New York Times

STANFORD, Calif.—"Man may be skeptical about following the flight of the dodo into extinction, but the evidence points increasingly to just such a pursuit," said Prof. Richard A. Falk of Princeton University, who is directing research on a project devoted to world order in the 1990's.

"The planet and mankind are in grave danger of irreversible catastrophe if the political structure that now prevails is not drastically changed during the next few decades," he said in an interview here.

"We live in a high-risk environment," he said, "and the trends that create the present level of risk continue to increase the danger and to reduce the possibilities of creatively controlling it."

Professor Falk is Milbank Professor of International Law at Princeton, and research director for the North American team instituted by the World Law Fund, a private foundation in New York.

This North American group began work in 1967. The chairman of its sponsoring and policy review committee is C. Douglas Dillon, former Secretary of the Treasury.

Other members of the committee are former Secretary of Defense Robert S. McNamara, now president of the World Bank; George W. Ball, former Under Secretary of State; Dr. Harvey G. Cox, professor at the Harvard School of Theology; Lieut. Gen. James M. Gavin, United States Army, retired; and the Rev. Theodore M. Hesburgh, president of the University of Notre Dame.

The World Law Fund has set up similar committees and research teams in Latin America, Western Europe, India, Japan, the Soviet Union and Africa, in an effort to de-Americanize the search for a non-utopian model for the world of the 1990's.

Said Professor Falk: "There are four interconnected threads to the planet: wars of mass destruction, overpopulation, pollution, and the depletion of resources.

"They have a cumulative effect. A problem in one area renders it more difficult to solve the problems in any other area. All these problems are caused by the discretion vested in national government, and in some instances in individual choice. The basis of all four problems is the inadequacy of the sovereign states to manage the affairs of mankind in the 20th century."

He pursued: "John Maynard Keynes long ago spoke of the paradox of aggregation—that the definition of rational self-interest is different for the individual than for the community. If one's car is polluting the atmosphere, the addition to the general pollution is so infinitesimal that there is no rational incentive to forbear from driving, or to spend money on anti-pollution filter.

"This same logic applies to corporate behavior in the pursuit of profits and to nations seeking wealth, power and prestige.

"Appeals to conscience have very little prospect of success. The only hopeful prospect is some kind of central framework of control to define community interests and to impose them on a global basis. This kind of solution is essentially political and moral rather than technical."

The next stop, he says, "is to make people angry at what is happening to their environment, and the prospect for themselves and their children as a consequence of allowing so much public policy to be determined by the selfish interests of

individuals, corporations, nations, and even regions of the world."

He added, "I think the kind of community reaction that occurred in Santa Barbara recently, as a consequence of the oil slick, is the sort of thing that is going to happen more frequently and more drastically in the years ahead. When it is understood that these occurrences are not isolated disorders but threads in the pattern of disaster, then a more coherent response will begin to emerge.

"The essence of the problem is to find a new formula for relating man to his environment."

Professor Falk is spending a year as a Fellow here at the Center for Advanced Study in the Behavioral Sciences, using part of his time to write a book called "The Endangered Planet."

He sees a hopeful rise in what he calls "transnational consciousness" and warns that those intent on preserving the more prevalent parochial consciousness will fight back.

He predicts that "a movement toward a new system of world order will be a serious part of the political life of the community when people are willing to go to jail on its behalf and are put there by those who fear the challenge."

[725] "The outcome of this confrontation," he said, "will shape the future of planetary history—in fact, determine whether the planet is to have a future in history. Only a fool or prophet would attempt to predict the exact form of the struggle or its eventual resolution, but only a prisoner of existing political moods would deny that the struggle is necessary."

On the question,  
Will the House agree to the bill on third consideration?  
It was agreed to.

And said bill having been considered on three different  
days and agreed to,

On the question,  
Shall the bill pass finally?

Agreeable to the provisions of the constitution, the  
yeas and nays were taken and were as follows:

## YEAS—190

Alexander	Gekas	Manbeck	Saloom
Allen, F.M.	Gelfand	Manderino	Savitt
Allen, W.W.	George	Martino	Scanlon
Anderson, J.H.	Gillette	McAneny	Schmitt
Appleton	Gleeson	McClatchy	Seltzer
Bachman	Gola	McCurdy	Semanoff
Bair	Good	McGraw	Shelhamer
Barber	Goodman	McMonagle	Shelton
Bellomini	Greenfield	Mebus	Sherman
Beloff	Gring	Meholchick	Shuman
Bennett	Gross	Melton	Shupnik
Beren	Halverson	Mifflin	Silverman
Berkes	Hamilton, J.H.	Miller, M.E.	Slack
Bittle	Hamilton, R.K.	Miller, P.W.	Smith
Bixler	Harrier	Moore	Snare
Blair	Haudenshield	Moscip	Spencer
Bonetto	Hayes	Mullen	Staufffer
Bossert	Headlee	Murphy	Steckel
Burkardt	Hepford	Murtha	Steele
Bush	Hetrick	Musto	Stemmler
Butera	Hill	Needham	Stone
Caputo	Holman	Nicholson	Taylor
Claypoole	Homer	Nitrauer	Tavoun
Comer	Hopkins	Nolan	Thomas
Coppolino	Horner	Novak	Tiberi
Crawford	Hutchinson	O'Brien, B.	Torak
Crowley	Irviss	O'Brien, F.	Valicenti
Davis, D.	Johnson, G.	O'Connell	Walsh
Davis, R.	Johnson, J.	O'Donnell	Wansacz
DeMedio	Johsnon, T.	O'Pake	Wargo
Dininni	Kahle	Pancoast	Weidner
Donaldson	Kaufman	Parker	Westerberg
Dorsey	Kelly	Pezak	Wilson
Dwyer	Kennedy	Pievsky	Wilt, R.E.
Eckensberger	Kernaghan	Piper	Wilt, R.W.
Englehart	Kester	Pittenger	Wilt, W.W.
Eshback	Kistler	Polaski	Wise
Fenrich	Kolter	Prendergast	Wojdak
Fischer	Kowalshyn	Quiles	Worley
Foor	Kury	Renwick	WorriLOW
Fox	LaMarca	Reynolds	Yahner
Frank	Laudadio	Rieger	Yohn
Fryer	Lawson	Ritter	Zearfoss
Fulmer	Lee	Ruane	Zimmerman
Gallagher	Lehr	Ruggiero	Zord
Gallen	Lutty	Rush	
Geesey	Lynch, Francis	Ryan	Fineman,
Geisler	Malady	Rybak	Speaker

NAYS—0  
NOT VOTING—12

Anderson, S.A.  
Berson  
Brunner

Dager  
DeJoseph  
Fee

Lynch, Frank  
Perry  
Renninger

Sullivan  
Vann  
Wright

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative.

Ordered, That the clerk present the same to the Senate for concurrence.

*B. Senate*

**1. Presentation and Referral to Constitutional Changes and Federal Relations Committee<sup>p</sup>**

HOUSE MESSAGES

HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives, being introduced, presented for concurrence . . . .

He also presented for concurrence HB 958, which was referred to the Committee on Constitutional Changes and Federal Relations.

**2. Report from Constitutional Changes and Federal Relations Committee<sup>q</sup>**

REPORTS FROM COMMITTEE

MR. MCGREGOR, from the Committee on Constitutional Changes and Federal Relations, reported, as committed . . . as amended, HB 958.

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<sup>p</sup> PA. LEGISLATIVE JOURNAL-SENATE 358 (June 3, 1969).

<sup>q</sup> PA. LEGISLATIVE JOURNAL-SENATE 1038 (Mar. 10, 1970).

**3. House Bill 958 as Further Amended<sup>f</sup>**

SENATE AMENDED

Prior Printer's Nos. 1105,1307      Printer's No. 1307

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

No.                      958                      Session of 1969

INTRODUCED BY MESSRS. KURY, LAUDADIO,  
BENNETT, IRVIS, WARGO, FINEMAN,  
SHELHAMER, STEELE, TAYLOR, HETRICK,  
FRYER, ECKENSBERGER, PITTENGER,  
MANDERINO, SHUPNIK, FISCHER, M.E.  
MILLER, BERSON, RENWICK, W.W. WILT,  
GEKAS, KAHLE, HALVERSON, R.W. WILT,  
DWYER, WISE, MEHOLCHICK, KAUFMAN,  
BACHMAN AND O'PAKE, APRIL 21, 1969

SENATOR MCGREGOR, CONSTITUTIONAL  
CHANGES AND FEDERAL RELATIONS, IN  
SENATE, AS AMENDED, MARCH 10, 1970

**A JOINT RESOLUTION**

- 1    Proposing an amendment to article one of the Constitution of the
- 2        Commonwealth of Pennsylvania providing for the preservation
- 3        and restoration of our natural resources.
- 4        The General Assembly of the Commonwealth of Pennsylvania
- 5    hereby resolves as follows:
- 6        Section 1. The following amendment to the Constitution of
- 7    the Commonwealth of Pennsylvania is proposed in accordance with
- 8    the provisions of the eleventh article thereof:

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<sup>f</sup> H.B. 958, Printer's No. 2860 (Mar. 10, 1970).

9 That article one of the Constitution of the Commonwealth of  
 10 Pennsylvania be amended by adding at the end thereof, a new  
 11 section to read:

12 Section 27. Natural Resources and the Public Estate. --The  
 13 people have a right to clean air, pure water, and to the  
 14 preservation of the natural, scenic, historic and esthetic  
 15 values of the new environment. Pennsylvania's PUBLIC natural  
 16 resources, including the air, waters, fish, wildlife, and the  
 [2]  
 1 public lands and property of the Commonwealth, are the common  
 2 property of all the people, including generations yet to come.  
 3 As trustee of these resources, the Commonwealth shall ~~preserve~~  
 4 CONSERVE and maintain them for the benefit of all the people.

#### 4. First Consideration<sup>s</sup>

##### BILLS ON FIRST CONSIDERATION

Mr. STROUP. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from Committees for the first time at today's Session.

Mr. CONFAIR. Mr. President, I second the motion.  
 The motion was agreed to.  
 The bills were as follows:

HB 958 . . . . And said bills having been considered for the first time,  
 Ordered, To be laid aside for second consideration.

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<sup>s</sup> PA. LEGISLATIVE JOURNAL-SENATE 1043 (Mar. 10, 1970).

**5. Second Consideration<sup>t</sup>**

SECOND CONSIDERATION CALENDAR  
AMENDMENT TO THE CONSTITUTION ON  
SECOND CONSIDERATION

HB 958 (Pr. No. 2860) – Considered the second time  
and agreed to,

Ordered, To be transcribed for a third consideration.

**6. Third Consideration and Passage<sup>u</sup>**

AMENDMENTS TO THE CONSTITUTION ON  
THIRD CONSIDERATION AND FINAL PASSAGE

HB 958 (Pr. No. 2860) – Considered the third time and  
agreed to,

And the amendments made thereto having been printed  
as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the  
provisions of the Constitution and were as follows, viz:

YEAS—39

Arlene,	Frame,	Lentz,	Snyder,
Beers,	Gerhart,	Mahady,	Stroup,
Bell,	Hankins,	Manbeck,	Tilghman,
Byrne,	Hawbaker,	Mazzei,	Van Sant,
Coppersmith,	Hill,	Murray,	Wade,
Davis,	Holl,	Noszka,	Ware,
Dengler,	Kalman,	Oesterling,	Willard,
Ewing,	Keller,	Piasecki,	Wood,
Fleming, R.D.,	Kline,	Reibman,	Zemprelli,
Fleming, W.E.,	Lamb,	Sesler,	

NAYS—0

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<sup>t</sup> PA. LEGISLATIVE JOURNAL-SENATE 1075 (Mar. 16, 1970).

<sup>u</sup> PA. LEGISLATIVE JOURNAL-SENATE 1081-82 (Mar. 17, 1970).

A constitutional majority of all the Senators having [1082] voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

## 7. Signed in Senate<sup>v</sup>

### BILLS SIGNED

The President pro tempore (Robert D. Fleming) in the presence of the Senate signed the following bills:

. . . HB 958.

### *C. Return to House*

## 1. Amended Bill Returned for Concurrence<sup>w</sup>

### SENATE MESSAGE

### AMENDED HOUSE BILLS RETURNED FOR CONCURRENCE

The clerk of the Senate being introduced, returned bills from the House of Representatives numbered and entitled as follows:

HOUSE BILL No. 958

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania, providing for the preservation and restoration of our natural resources.

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<sup>v</sup> PA. LEGISLATIVE JOURNAL-SENATE 1108 (Apr. 14, 1970).

<sup>w</sup> PA. LEGISLATIVE JOURNAL-HOUSE 2245 (Apr. 13, 1970).

**2. Remarks and House Concurrence<sup>x</sup>**

## SPECIAL ORDER OF BUSINESS

CONCURRENCE IN SENATE AMENDMENTS TO  
HOUSE BILL No. 958

The SPEAKER. The Chair recognizes the majority leader.

Mr. IRVIS. Mr. Speaker, I ask unanimous consent of the House of Representatives to call up House bill No. 958, printer's No. 2860, as special order of business number one.

The SPEAKER. The majority leader calls up, as a special order of business, House bill No. 958, printer's No. 2860, on the matter of concurrence in Senate amendments. The Chair hears no objection.

The clerk will read the following extract from the Journal of the Senate.

## SENATE MESSAGE

AMENDED HOUSE BILL RETURNED FOR  
CONCURRENCE

The clerk of the Senate being introduced, returned bill from the House of Representatives numbered and entitled as follows:

## HOUSE BILL No. 958

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

With the information that the Senate has passed the same with amendments in which the concurrence of the House of Representatives is requested.

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<sup>x</sup> PA. LEGISLATIVE JOURNAL-HOUSE 2271-82 (Apr. 14, 1970) (numbered footnotes in original).

The SPEAKER. The clerk will read the amendments.

The clerk read the following amendments:

Amend Section 1, page 1, line 15, by inserting after "Pennsylvania's" the word "public"; line 16, by striking out after "resources" all the remainder of said line; page 2, line 1, by striking out at the beginning of the line "public lands and property of the Commonwealth,"; line 3, by striking out after "shall" the word "preserve" and inserting in lieu thereof "conserve"

On the question,

Will the House concur in the amendments made by the Senate?

The SPEAKER. The Chair recognizes the gentleman from Northumberland, Mr. Kury.

Mr. KURY. Mr. Speaker, before making the motion, I ask unanimous consent to insert in the record a brief statement of my own, together with an excellent legal analysis of this bill, which has been made by Professor Robert Broughton of Duquesne University Law School.

The SPEAKER. The Chair hears no objection. The gentleman may send his remarks to the desk for insertion in the record.

Mr. KURY presented the following statement on House bill No. 958, printer's No. 2860, for the Legislative Journal:

The passage of House Bill 958, P.N. 28[60], by the General Assembly will be an historical occasion.

This bill is a great step forward in assuring for ourselves and our posterity a natural environment of quality, rather than relegating ourselves to extinction or a mere survival level of existence.

The first sentence of this constitutional amendment grants to the people a clearly enforceable constitutional right to: (1) clean air and pure waters, and (2) preservation of the natural scenic, historic and esthetic values of the environment.

In addition, the second and third sentences of the amendment spell out the common property right of all the people, including generations yet to come, in Pennsylvania's public natural resources. As trustee of these resources, the Commonwealth, through all agencies and branches of its government, is required to conserve and maintain them for the benefit of all the people. This trusteeship applies to resources owned by the Commonwealth and also to those resources not owned by the [2272] Commonwealth, which involve a public interest. This latter group of resources, i.e, air, waters, fish and wildlife, were explicitly enumerated in House Bill 958, printer's No. 1307 originally passed by the House. The adjustment in the language of this portion of the bill made by the Senate prior to its referral back to the House will avoid any possible restrictive interpretation based on a theory that the enumeration of these four items, (air, waters, fish and wildlife) in the bill should be interpreted as an indication of legislative intent to limit the trusteeship of the Commonwealth to only these four categories of resources in cases where such resources are not owned by the Commonwealth. The bill as we will vote on it today, affirms the trusteeship of the Commonwealth over resources owned by the Commonwealth and also affirms the trusteeship of the Commonwealth over resources like air, waters, fish and wildlife and also all those not owned by the Commonwealth but which, nevertheless, involve a public interest.

ANALYSIS OF HB 958, THE PROPOSED  
PENNSYLVANIA ENVIRONMENTAL  
DECLARATION OF RIGHTS

## Robert Broughton\*

The Pennsylvania Legislature has under consideration a bill (HB 958) which would amend Article I of the State Constitution to provide for the preservation and restoration of our natural resources. If it is adopted, the Bill would expand the base for citizens' legal action to protect our environment against air, water, and land pollution.

The Bill as originally drafted, and as first passed by the House would have added the following language to the Declaration of Rights in Article I of the Constitution of Pennsylvania:

"Section 27. Natural Resources and the Public Estate.—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 natural resources, including the air, waters, fish, wildlife, and the public lands and property of the Commonwealth, are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall preserve and maintain them for the benefit of all the people."

This Bill passed the House, 190-0, in June of 1969, and in the Senate, was sent to the Senate Committee on Constitutional Changes. There it was amended. In the form in which it passed the Senate, HB 958 adds the following language to the Constitution, in lieu of what is quoted above:

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\* Associate Professor of Law, Duquesne University Law School; B.A., Haverford College, 1956; J.D., Harvard Law School, 1959. The author gratefully acknowledges the benefit from conversations and critical comment on some of his theories from Professor Ronald R. Davenport.

"Section 27: Natural Resources and the Public Estate.—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."

The amendments to HB 958 will be discussed below, in connection with the discussion of the specific legal effects of the proposed constitutional amendment.

This Bill is one of the most important pieces of Pennsylvania legislation so far presented in the fight to save the environment. As with any proposed constitutional amendment, it will have to be passed by the legislature twice—the second time in the 1971-72 legislative session—and submitted to the electorate in a statewide referendum, before becoming effective.<sup>1</sup>

As Franklin L. Kury, Representative from the 108th Legislative District, and the chief sponsor of HB 958 has said in a statement to the House of Delegates of the Pennsylvania Bar Association:

"When our original constitutions were drafted in the 18th Century the issue was preserving man's political environment, not his natural environment. Our natural resources then were so great, our population so small and our technology so undeveloped that the future of the environment and our natural resources was

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<sup>1</sup> Constitution of Pennsylvania, Article XI, Section 1.

taken for granted. Because our political environment was imperiled our Constitution makers added Bills of Rights to our federal and state Constitutions. No mention was made of protecting our natural environment because there was no need to; the future of our natural resources was taken for granted.

Now that situation has altered. Our political environment is strongly protected by vigilant courts and an alert press, but population and technology have run amok through our environment and natural resources. If we are to save our natural environment we must therefore give it the same Constitutional protection we give to our political environment."<sup>2</sup>

As citizens interested in environmental quality, we may be pleased to see a statement of policy with which we agree placed in the Constitution of Pennsylvania. We could hardly get very excited about it, however, if it is only to be a statement of policy: Will it, as hoped, give citizens a weapon which may be used in the courts, in litigation, to protect and enhance the quality of our environment?

I think it will in many areas; and in those cases where the proposed amendment would not, itself, create a legal right, it is possible that it can be used as a basis for building or expanding common law rights, and as a basis for giving added effectiveness to political force applied in favor of environmental quality.

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<sup>2</sup> Franklin L. Kury, Statement given to the House of Delegates, Pennsylvania Bar Association, January, 1970.

The proposed Amendment, for purposes of analyzing its effects, can be viewed almost as two separate bills—albeit there is considerable interaction between them, and the legal doctrines invoked by each should tend mutually to support [2273] and reinforce the other because of their inclusion in a single amendment.

The first sentence creates (or affirms) a positive constitutional right in individual citizens. The second and third sentences impose the public trust doctrine upon the "public natural resources" of Pennsylvania.

The public trust doctrine, which may be a part of the common law already, but which, if so, has not been clearly enunciated in Pennsylvania,<sup>3</sup> relates to the rights and duties of government in public property. It is the role of government that is in question: As a holder of property, or of public servitudes (such as navigation rights, or more remotely, the right to prevent public nuisances), is the government simply a corporate property owner, a proprietor, dealing with property rights as any other proprietor, or is it a trustee, with the duty to manage, use, and/or consume the property of the public solely for the benefit of the public. As Clyde O. Martz, former Assistant Attorney General in charge of the Natural Resources

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<sup>3</sup> Pennsylvania, along with many other states does recognize an interest of the public in charitable trusts, an interest which makes the Attorney General, representing the public *parens patriae*, an implicit party to any such charitable trust. *Attorney General v. Governors of Foundling Hospital*, 30 Eng. Rep. 514 (Ch. 1793); 4 *Scott on Trusts* § 391; *Abel v. Girard Trust Co.*, 365 Pa. 34, 73 A. 2d 582 (1962). Despite strong hints, and strong analogies, the law certainly cannot be said to be clear in Pennsylvania as to the applicability of the public trust doctrine in the Commonwealth.

Division of the United States Department of Justice, has put it:

"Under the [proprietary] theory, government deals at arms length with its citizens, measuring its gains by the balance sheet profits and appreciation it realizes from its resources operations. Under the trust theory, it deals with its citizens as a fiduciary, measuring its successes by the benefits it bestows upon all its citizens in their utilization of natural resources under law."<sup>4</sup>

For a thorough exposition of the public trust doctrine one can do little better than refer to the recent (January, 1970) article by Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 Mich. L. Rev. 471 (1970).<sup>5</sup>

The second two sentences seem to rather clearly have the purpose of placing Pennsylvania among the jurisdictions which adhere to the public trust theory of public natural resource management, in contradistinction to the proprietary theory. As one novelty, future generations are included, in HB 958, among the

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<sup>4</sup> Martz, C., "The Role of Government in Public Resources Management," paper presented at the Rocky Mountain Mineral Law Institute, July 10, 1969, Vail, Colo., in Rocky Mountain Mineral Law Institute Proceedings (Mathew Bender, 1970) 2.

<sup>5</sup> Professor Sax puts some emphasis on the point that the public trust doctrine intrinsically requires that members of the public be allowed to assert rights as beneficiaries—that members of the public have standing to sue. Pennsylvania Law is unclear on this point, but is not especially favorable to public interest representation, otherwise than by the Attorney General. *Weigand v. Barnes Foundation*, 374 Pa. 149, 97 A. 2d 81 (1953). The questions relating to standing are discussed at length, below, footnotes 14 through 18, and 21 through 35, and accompanying text.

beneficiaries of the public trust. Since the public trust doctrine would implicitly preclude the wasting of resources, the explicit inclusion of future generations as part of the relevant public might be considered superfluous. Conceivably situations might arise, however, where property doctrines relating to waste, on the part of a trustee with respect to beneficiaries having something analogous to a future interest, might lead to a different conclusion than public trust doctrines applied where future generations are explicitly included as part of the public, as it were, present beneficiaries. Intuitively, as a teacher of property law and of natural resource law, and as a conservationist, I tend to think that explicit inclusion of future generations is the wiser of the two alternatives. At the moment of writing, however, I find it difficult to articulate why.

Since both of the significant<sup>6</sup> amendments to HB 958 were in the second two sentences, this seems a reasonable place to take them up.

The state Department of Forests and Waters suggested that the word "conserve" be substituted for "preserve" in the last sentence. Dr. Maurice K. Goddard, Secretary of Forests and Waters, was understandably worried that the courts might interpret the word "preserve" restrictively, to mean that if his department authorized trees to be

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<sup>6</sup> In the first sentence, a comma was added after the word "natural" clarifying the intent that "natural values" were intended to be a separate category, and that elements of Pennsylvania's scenic, historic, and esthetic values upon which man had impinged, were meant to be included. In view of the inclusion of "historic" in the list of values to be preserved, one guesses that the absence of a comma after "natural" in the original House version may have been a typographical error. This change is not here regarded as significant.

cut on Commonwealth land, or the Game Commission licensed hunters to harvest game, this would not be "preserving" them.<sup>7</sup> In the context of the intelligent management of replenishable resources, a strong argument could certainly be made that this interpretation would be wrong. Nevertheless, his concern seems reasonable enough—a more liberal, and I would argue, correct interpretation of the word "preserve" could not be guaranteed. Substituting the word "conserve" does not, I think, radically change, or weaken, the meaning of the Amendment; in fact, the change can be regarded as clarifying the intent of the original drafters. Furthermore, although the word "conserve" admittedly does not have as precise a meaning as "preserve", and although that meaning has changed over the last 10 years, "conserve" does have a meaning which largely en- [2274] compasses the values we associate with environmental quality.<sup>8</sup>

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<sup>7</sup> Letter, Maurice K. Goddard to Senator Jack E. McGregor, July 7, 1969.

<sup>8</sup> Dr. Goddard, as I understand him, also had suggested (in the same letter, see footnote 7, above) that the word "conservation" be substituted for the word "preservation" in the first sentence. What is being "preserved", in the first sentence, however, is "values". A right to the "preservation" of "values" would not lend itself to the kind of restrictive interpretation that Dr. Goddard, as one of the principal administrators of natural resource management for the Commonwealth is concerned about. Furthermore, I am not quite sure that the "conservation of . . . values" would have had a sufficiently precise meaning to make the amendment much more than merely a policy statement. (Especially since the "preservation" meaning of the word "conservation", might appear to have been excluded by the legislative history if the suggested change from "preservation" to "conservation" were made.) In any event, the Senate Committee on Constitutional Changes left the language of the first sentence largely as it was.

The largest change was in the second sentence. There, the entire list of natural resources typical of those to which the public trust doctrine should be applied was eliminated.

"Pennsylvania's natural resources, including the air, waters, fish, wildlife, and the public lands and property of the Commonwealth . . . "

has become

"Pennsylvania's public natural resources. . . "

What is the reason for this change, and what is its effect?

First, in conversations among lawyers, there was some disquietude about the list. One suggestion had been made to add the word "public" before "waters" and before "property". Certainly the amendment was not intended to apply to purely private property rights—among other things, it would have been in violation of the 5th and 14th Amendments to the United States Constitution as a taking of property without just compensation, if so interpreted.

A more serious problem was whether the list was meant to be exclusive. The introducing word, "including", would not ordinarily be so interpreted, but a list always presents some danger that a court may sometime use the list to limit, rather than expand, a basic concept.

The key to interpreting the change is to realize that the purpose of the second two sentences is to impose the public trust doctrine on public property, and on public rights similar to public property rights. The purpose is not to limit the development of property law to any specific set of objects.

Property Law is not a static thing, immutable since the Middle Ages. It grows, it changes. At one time, an advowson, a right to appoint a clerk to a church, was a real property right, inheritable by heirs, and the subject of real property actions. Today, an advowson is strictly an historical curiosity.<sup>9</sup>

In a list of "public natural resources" compiled 50 years ago, no one would have thought of including "air"; and "water" would only have been included because of the public interest in navigation. Now there are navigational interests in both air and water, and there is a recognized public interest in the purity (absence of pollution) of both air and water.

What are the possibilities for future change? The possibilities already visible on the horizon, as potential rights recognized as property rights, are esthetic quality,<sup>10</sup> quiet, and perhaps more distantly, ecological diversity. It may be decades, or even centuries before any of these are legally recognized as property rights, or they may never be so recognized.

The point of emphasizing the basic purpose of the second two sentences is that they were

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<sup>9</sup> The history is discussed in Holdsworth, *A History of English Law* (Methuen & Co., London, 1966), Vol. III, and in Simpson, A.W.B., *Introduction to the History of the Land Law* (Oxford Univ. Press, 1961), see especially Chapters 1 and 5.

<sup>10</sup> Esthetic quality has already been recognized as a property right, in a limited way, in the West Virginia Strip Mine Control Act. Under that act a permit to strip can be refused by the Director of the Department of Natural Resources if stripping would unreasonably and irreparably interfere with the property rights of others; included among such rights is the esthetic quality of the potentially damaged property.

distinctly not intended either to mandate such a development or to prevent it. Therefore the wording should be neutral with respect to such developments. The list as it stood was not totally neutral. As Senator Jack E. McGregor, Chairman of the Senate Committee on Constitutional Changes, noted in a telephone conversation with the author, one evening, there was nothing like esthetic quality, quiet, or ecological diversity on the list. Although "air" and "water" on the list implicitly refer to qualities of air and water, explicitly they appeared as physical resources. The list, even with the word "including" introducing it, might sometime be used to exclude natural resources unlike any of the items on the list.

Dropping the list, then, and substituting "public natural resources," should accomplish two things: (1) Resolve all doubt that the second two sentences were meant to apply only to public rights and not to purely private property rights. (2) Resolve all doubt as to whether the list was ever to be applied to exclude development of property law, and the kinds of rights included therein. The remaining question is whether, without the explanatory list, the phrase "public natural resources" is sufficiently definite to refer to anything in particular.

Implicit in the discussion above, and in the reasons for making the change, is the conclusion that the phrase "public natural resources" does refer to the general sorts of public rights of which the items formerly on the list were exemplary. And when one tries to analyze what might be included within the category "public natural resources," one is led to a similar conclusion. Governmentally owned property—land, game,

fish, trees, minerals, and governmentally owned waters—would certainly be included; otherwise one would have to assume the legislature meant nothing at all by the second two sentences of HB 958, a conclusion [2275] courts would certainly be hesitant to adopt. So also would public rights of navigation in air and navigable waters be included. To the extent that air and water diffuse through the community and are not subject to absolute private appropriation—to the extent that they are "public goods" in the sense that term is used in economics<sup>11</sup>—air and water would also be "public natural resources."

The sorts of things then, which would be included within the phrase "public natural resources" are the sorts of things which were, before the Senate amendments, on the list of typical natural resources. One must conclude, therefore, that the amendment is a clarifying amendment. It emphasizes that purely private property rights were not meant to be affected; and the amendment makes it clear that the Bill is intended not to affect the normal development of property law in the area to which it applies. Yet the second two sentences as amended are sufficient to accomplish their primary purpose—to constitutionally affirm that the public trust doctrine applies to the management of public natural resources in Pennsylvania.

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<sup>11</sup> See Samuelson, Paul, "The Pure Theory of Public Expenditure," 36 *Rev. of Economics and Statistics* 387 (1954), and the large body of economic literature which has grown up around this concept. A purely public good is one of which it can be said that its consumption by one person does not diminish it for other people. Clearly there are few purely public goods—a scenic view comes perhaps closest. But many goods, including air and water, are to some extent public goods, in that they are not ordinarily wholly appropriable by individuals.

The first sentence of HB 958, creating an affirmative right to certain aspects of environmental quality, is potentially the most far reaching and important part of the bill. It is also the most complex to analyze.

One can distinguish at least three different categories of governmental actions, and two categories of private actions, which we might expect language such as is contained in the first sentence of HB 958 to be relevant:

Acts by Government (state, municipal, or an authority):

- (1) Direct action which itself causes environmental harm (e.g., the Department of Highway's Sinnamahoning Creek decision).
- (2) Failure or refusal of government to act
  - (a) to correct environmental damage which has already taken place (e.g., failure to backfill strip mines on state lands); or
  - (b) to prevent environmental harm (e.g., failure to enforce air or water pollution control laws).
- (3) Governmental licensing of others to engage in acts which will harm the environment (e.g., the grant of a license to construct and operate an electric power plant, with the knowledge that the air pollution control equipment proposed for the electric power plant is inadequate).

Private Acts:

- (4) Acts by a private person or corporation subject to licensing or regulation by

government (e.g., location of an overhead electric transmission line through a scenic area).

- (5) Acts by a private person or corporation that is not directly subject to governmental licensing or control (e.g., strip mining, without land reclamation, of limestone, gravel or any mineral other than coal).

Now, there is no legal right to contest any of the types of acts listed, if a harm falls short of being a private nuisance.<sup>12</sup>

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<sup>12</sup> Public nuisance is not included, here, because as a practical matter only a public agency can bring a suit to enjoin a public nuisance. *Com. ex rel. Shumaker v. New York & Pennsylvania Company, Inc.*, 367 Pa. 40, 79 A. 2d 439 (1951); *Rhymer v. Fritz*, 206 Pa. 230 55 A. 959 (1903); *Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises*, 428 Pa. 350, 237 A. 2d 342 (1968). In the latter case, Justice Eagan analyzed the standing of private parties to seek injunctions against public nuisances, and concluded that private parties would have standing only if they "either in their property or their civil rights," are specially injured. 428 Pa. at 360. The injury must be of a different kind than that suffered by the public generally. Most of the cases, however, deal with a special injury to some property right. In *Freedman v. West Hazleton Boro*, 297 Pa. 58, 146 A. 564 (1929), the nuisance complained of was the discharge of sewage into an open ditch; the construction of the ditch was such that the sewage regularly overflowed onto plaintiff's land. In *Quinn v. American Spiral Spring & Manufacturing Company*, 293 Pa. 152, 141 A. 855, 61 A.L.R. 918 (1928), defendant operated an excessively noisy manufacturing plant, on property adjoining plaintiff's house; certain especially noisy pieces of machinery were located unnecessarily close to plaintiff's building. Either of these cases could have been brought as actions to abate private rather than public nuisance actions.

The "professional licensing cases" do not fit exactly, at first glance. In those cases a licensed member of a profession has been allowed to sue to enjoin the practice of the profession by one not licensed. See *Boggs v. Werner*,

And even if the harm is serious enough to be a private nuisance, the courts traditionally tend to [2276] favor "productive economic" interests over environmental or aesthetic interests.<sup>13</sup>

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372 Pa. 312, 94 A. 2d 50 (1953), and other cases cited by Justice Eagan, footnote 6, 428 Pa. at 359. Justice Eagan's rationalization of these cases is revealing

"The rationale allowing the injunction no doubt proceeds on the ground that the lawful practitioner's (or group of practitioners') property rights are being impinged upon by the unlawful practice." 428 Pa. at 359.

The reference to "civil" rights, 428 Pa. at 360 is intriguing in the present context. The reference seems to be based (see footnote 7, 428 Pa. at 369) on *Everett v. Harron*, 380 Pa. 123, 110 A. 2d 383 (1955), where several Negroes who had been denied admission to a public amusement park, in violation of §654 of the Penal Code of 1939, Act of June 24, 1939, P.L. 872, 18 P.S. §4654. See also *Lackey v. Sacoolas*, 411 Pa. 235, 191 A. 2d 395 (1963). These cases will be discussed below, footnotes 46-57 and accompanying text.

<sup>13</sup> For one example of this bias, see *Elliot Nursery Company v. Duquesne Light Company*, 281 Pa. 166 (1924), where, in balancing the burdens on the defendant and on the community which would result from the grant of an injunction against the benefits of such an injunction, the court practically ignored the effects on the environment, on human health, comfort, and happiness, of air pollution, and instead balanced the purely economic interests of the community in electricity against the purely economic interest of the plaintiff in operating a nursery. Two interesting sidelights of that opinion are noteworthy: (1) The court accepted at face value the assertions of defendant's engineers that the performance of the (Colfax) electric plant in reducing air pollution could not be improved, under then existing technology. 281 Pa. at 170-173. The burden of proof in suits such as this has traditionally been a stumbling block, since typically the defendant has control of the relevant technical information, whereas the plaintiff has the burden of proof on issues which depend on that technical information. (2) The court implied strongly that anyone who chooses to live in Pittsburgh has "assumed the risk" with respect to any injury from air pollution. (!) 281 Pa. at 173. See also *Alexander v. Wilkes-Barre Anthracite Coal*

The Amendment may or may not, in and of itself, create a right to challenge any of the described acts. To the extent that it does confer such a right, the legal basis for bases for that right may differ. Let us examine the legal techniques for invoking the protection of the proposed Amendment in each of the listed situations.

#### Direct Governmental Action

If a governmental agency were to take action which itself damaged the environment, then the right given by the Amendment would be violated, and the agency could be enjoined from continuing such action.<sup>14</sup> Only a person whose rights are actually affected would have standing to complain,<sup>15</sup> but in Pennsylvania a taxpayer can bring an action objecting to an illegal expenditure of public funds.<sup>16</sup> An expenditure which resulted in a violation of the constitutional rights of citizens would certainly be "illegal," in the context of a taxpayer's suit. Rule 2230 of the Pennsylvania Rules of Civil Procedure would allow a class action to be brought,<sup>17</sup> where the

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Company, 245 Pa. 28, 91 A. 213 (1914), where an injunction was refused on the ground that any benefit to the plaintiff from the grant of an injunction was outweighed by the burden which would fall on a large number of employees who would be thrown out of work thereby.

<sup>14</sup> Cf. *Rhoades v. School District of Abington Township*, 424 Pa. 202, 226 A. 2d 53 (1967) where action by a school district in violation of Article I, Section 3 of the Pennsylvania Constitution was enjoined. For a more general discussion of the broader aspects of enforcing constitutional rights, see Hill, "Constitutional Litigation," 69 *Col. L. Rev.* 1109 (1969).

<sup>15</sup> *Rhoades v. School District of Abington Township*, supra; *Turco Paint & Varnish Company v. Kalodner*, 320 Pa. 421, 184 *Atl.* 37 (1936).

<sup>16</sup> *Page v. King*, 285 Pa. 153, 131 *Atl.* 707 (1926); *Frame v. Felix*, 167 Pa. 47 (1895).

<sup>17</sup> Pennsylvania Rules of Court (Bisel Publishing

persons affected were so numerous that it would be impractical to bring them before the court; but all the members of the class, including the people bringing the action on behalf of the class, would have to be personally adversely affected by the act complained of.<sup>18</sup>

#### Governmental Inaction

The second and third categories, inaction by government, would probably remain legally inactionable. Suppose the legislature refuses to appropriate money or to enact regulatory legislation to improve, or repair, the environment. Failure of the legislature to appropriate money or enact legislation for any purpose (e.g. for education, as to which there is now a constitutional mandate)<sup>19</sup> is generally a political, and not a legal problem. That does not mean that the Amendment would be useless: There is evidence (take again, for example, education) that both the people and their legislators take constitutional mandates seriously.

There is also the fact that the Amendment would make more certain the authority of the legislature to enact legislation dealing with environmental problems.

Legal action would also probably be impossible to compel the enforcement of environmental quality control laws.<sup>20</sup> A district attorney who

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Company, Philadelphia, and West Publishing Company, St. Paul, 1966) 241-242. Adopted June 7, 1940.

<sup>18</sup> *Eisenhart v. Pennsylvania Milk Control Board*, 120 Pa. Super. 483, 190 A. 405 (1937); *Montgomery Township Citizens Association v. Montgomery Township School District*, 3 Adams 15 (1961).

<sup>19</sup> Constitution of Pennsylvania, Article X, Section 1.

<sup>20</sup> See *Skilton v. Miller*, 164 Ohio St, 163, 128 N.E. 2d 47 (1955), where the court refused to compel a police chief

refuses to prosecute particular classes of crimes, for example, can probably not be removed from office, so long as his refusal extends to only a limited number of crimes (e.g., adultery, which is commonly ignored).<sup>21</sup> The more important the unprosecuted crimes are considered to be, on the other hand, or the more numerous they are, the more likely he is to be replaced at the next election. Again the Amendment could prove to be very effective, politically, despite the absence of a specific legal remedy.

#### Administrative Agency Licensing Action

Suppose an electric company applied to the Public Utility Commission for a certificate of public convenience, to commence service in an area. Its specific request is to construct a power generating plant, transmission lines, and a distribution system.<sup>22</sup> Suppose the generating

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to enforce the Sunday Blue Laws. Pennsylvania does not, in any case, allow citizens to bring mandamus to vindicate the public interest. *Dorris v. Lloyd*, 375 Pa. 474, 100 A. 2d 294 (1953).

<sup>21</sup> In extreme cases, and on the request of the President Judge in a district having criminal jurisdiction, the Attorney General may appoint special attorneys to represent the Commonwealth in criminal cases; such "special attorneys" supersede the District Attorney of the relevant district, in such cases as they are authorized to act. §907, Administrative Code of 1929, Act of April 9, 1929, P.L. 177, 71 P.S. §297. This provision is not frequently invoked, but its use is not quite a rarity. A cynic might suspect that it could be invoked for political purposes, as much, and as often, as strictly by reason of the breakdown of law and order.

<sup>22</sup> Such acts by electric companies need to be approved by the Public Utility Commission, where service is being initiated, or expanded into a new area. §§201 and 202 of the Act of May 28, 1937, P.L. 1053, as amended, 66 P.S. §§1121 and 1122. See, e.g., *Harmony Electric Company v. Public Service Commission*, 78 Pa. Super. 271 (1922), *aff'd*, 275 Pa. 542, 119 Atl. 712 (1923); *Wallsburg Telephone Co-*

plant does not specify air pollution control equipment, and one of the proposed transmission lines would run adjacent to a public park or historic site.

Under existing law, the Public Utility Commission would probably permit affected people to intervene in the Commission proceeding, and present evidence against issuing the certificate unless and until the environmentally harmful aspects of the application were corrected.<sup>23</sup> Given the existence of state air pollution laws,<sup>24</sup> the Commission would probably require correction of that

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operative Association v Pennsylvania Public Utility Commission, 182 Pa. Super. 594, 128 A. 2d. 160 (1957).

Such acts must also be approved if the power of condemnation is to be exercised. Act of May 8, 1889, P.L. 136, as amended, 15 P.S. §3272, noted and compared with the similar statute granting the power of eminent domain to gas companies, Act of May 29, 1885, P.L. 29, §10, 15 P.S. §§2031 and 3549, in McConnell Appeal, 428, Pa. 270 (1968). See below, footnote 35, for discussion of the Public Utility Commission's authority.

We will here limit the discussion to the hypothetical situation where service is being initiated, and a certificate of public convenience is therefore required. As will be discussed below, gas companies need not get the approval of anyone before locating a pipe line. All that is required is that the decision to locate in a particular place be "not arbitrary and capricious." For a discussion of the relevant remedies, see Valley Forge Golf Club v. Upper Merion Township, 422 Pa. 227 (1966).

<sup>23</sup> Act of June 4, 1945, P.L. 1388, as amended, 71 P.S. §§1710.1-1710.51. See especially the definition of "party," 71 P.S. §1710.2. For a discussion see Ruben, "The Administrative Agency Law: Reform of Adjudicative Procedure and the Revised Model Act," 36 Temple L.Q. 388, 392 (1963).

<sup>24</sup> Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959 Sess.), as amended, 35 P.S. §4001-4015, and regulations of the Air Pollution Commission promulgated thereunder.

problem. The transmission line location, however, unless it was "arbitrary," would probably stand.<sup>25</sup>

Under the proposed amendment, the Commission would undoubtedly take the constitution seriously, and would make sure that the constitutional rights of Pennsylvania were protected, and act to insure that both problems we have hypothesized, were corrected.

Suppose it did not, however, and ignoring both problems, issued the certificate. To have standing to appeal a decision of an administrative agency to a court the appellant must be "aggrieved thereby [and have] a direct interest" in the adjudication.<sup>26</sup>

Some of the court pronouncements on what constitutes a "direct interest" are not encouraging. In professional licensing proceedings, professional associations have generally been held not to have the necessary direct interest in the outcome of any particular case.<sup>27</sup> In one case, court even went so far as to assert that, ". . . not

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<sup>25</sup> *Stitt v. Manufacturers Light and Heat Company*, Beav. (1968) (Docket No. 945 of 1967, in Equity), reversed on other grounds, 432 Pa. 493, 248 A. 2d 48 (1968). See also, for a more encouraging case, *Texas Eastern Transmission Corporation v. Wildlife Preserves, Inc.*, 48 N.J. 261, 225 A2d 130 (1966), a case in which the locating of a pipe line through a private wildlife preserve was held to be "arbitrary," and where the pipe line company was compelled to seek an alternative route.

<sup>26</sup> Section 45 of the Act of June 4, 1945, P.L. 1388, as amended, 71 P.S. §1710.45.

<sup>27</sup> *State Board of Funeral Directors v. Beaver County Funeral Directors Association*, 10 D. & C. 2d 704, 70 Dauph. 118 (1957); *State Board of Funeral Directors v. Foyer*, 37 D. & C. 2d 726 (1965); *Funeral Directors Association of Philadelphia and Vicinity v. State Board of Funeral Directors*, 42 D. & C. 2d 609 (1967).

only must a party desiring to appeal have a direct interest in the particular question litigated, but his interest must be immediate and pecuniary . . . "28 Truly, as Louis Jaffe remarked in 1960, Pennsylvania does not favor public actions.<sup>29</sup>

One may argue, with considerable force, that if an individual's constitutional rights are violated as a result of an administrative agency ruling, then that individual is not only aggrieved, but has a "direct interest in the adjudication," and thus has standing to appeal, even given the restrictive interpretation so far given to the language of the Pennsylvania Administrative Agency Law. Unfortunately this must remain an argument only: The effectiveness of the proposed amendment as a legal weapon would be made more certain if the legislature were to also amend the Pennsylvania Administrative Agency Law to make clear a legislative intent that any person with a legally recognizable interest in an administrative ruling, including associations or organizations representing the class or classes of persons whose interests were intended to be protected by the agency in question,<sup>30</sup> should have standing to

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<sup>28</sup> *Pennsylvania Commercial Drivers Conference v. Pennsylvania Milk Control Commission*, 360 Pa. 477, 483-484 (1948), citing *Lansdowne Borough Board of Adjustments Appeal*, 313 Pa. 523, 525 (1934).

<sup>29</sup> Paraphrased from Jaffe, "Standing in Private Actions," 75 *Harvard Law Review* 255, fn. 35, p. 266, fn. 124, p. 295 (1966).

<sup>30</sup> The so called "intent to protect" test has already been applied, in at least one Pennsylvania case; in *In Re Azarewitz*, 163 Pa. Super. 459, 62 A. 2d 78 (1948) the Pennsylvania liquor code prohibition against bars within 300 feet of a church was held to be for the protection of churches. A church was there given standing to appeal the award of a license, the court stating simply, 163 Pa. Super. At 461, that "the legislative intent is clear that a church has a direct interest to protect and be protected, and was given a

appeal administrative rulings to the courts. The federal courts have recognized the importance of allowing representation of the public interest by "those who by their activities and conduct have exhibited a special interest" and expertise in problems under consideration by administrative agencies.<sup>31</sup>

Significantly, in one recent case,<sup>32</sup> a Federal Communications Commission decision to award a

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status above and different from that of a remonstrant." Since the legislative intent was "clear," no further rationale was considered necessary.

This case would strengthen the argument for standing of any citizen claiming violation of the proposed constitutional amendment, even though in that case, having recognized standing in the plaintiff-church, the court limited its consideration of the issues to "narrow certiorari"—the jurisdiction of the Board and the "regularity" of its proceedings.

Associations, not themselves protected, but representing people who are within the intent of the statute to protect, have not been favored, either generally, in federal courts or other states, or in Pennsylvania. Jaffe, *Judicial Control of Administrative Action* (Boston, Little, Brown & Company, 1965) 537-543; *Funeral Directors Association of Philadelphia and Vicinity v. State Board of Funeral Directors*, 42 D. & C. 2d 609 (1967); *Pennsylvania Commercial Drivers Conference v. Pennsylvania Milk Control Commission*, 360 Pa. 477 (1948).

<sup>31</sup> *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 E. 2d 608, 616 (C.A. 2d, 1965). See also, *inter alia*, *Office of Communications of the United Church of Christ v. Federal Communications Commission*, 359 F. 2d 994 (C.A.D.C., 1966).

<sup>32</sup> *Office of Communication of the United Church of Christ v. Federal Communications Commission*, F.2d (C.A.D.C., No. 19, 409, June 20, 1969), a second appeal from a second decision by the FCC of a renewal license to a TV station. The first decision, see footnote 22, *supra*, was reversed on the grounds that a party which should, legally, have been granted standing was refused the opportunity to participate meaningfully in the decision making process. Significantly, perhaps, both *United Church of Christ*

station license renewal was reversed, on appeal by the United Church of Christ, which intervened as a representative of listeners in the area, arguably largely on the grounds that, in view of the station's persistent efforts to bring about the violation of the constitutional rights of Negro citizens, the renewal could not be held to satisfy the statutory requirement that it be "in the public interest."<sup>33</sup>

The writer must admit that he would favor a liberalization of the requirements of standing to question public actions on broad public interest grounds regardless of the passage of the proposed amendment giving citizens a constitutional right with respect to environmental quality. Where a public agency—whether it is the Public Utilities Commission or the Department of Highways—is supposed to act in the public interest, there should be some way of questioning whether it in fact has done so. As Judge (now Chief Justice) Burger said in the first United Church of Christ case:

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opinions were written by Circuit Judge, now Chief Justice Warren E. Burger. It would appear that the appointment of Chief Justice Burger to replace Chief Justice Earl Warren is likely to bring about strengthening, rather than a reversal of the particular trend in administrative law.

<sup>33</sup> For a further discussion of the trends in federal courts with respect to standing, see also, Raoul Berger "Standing to Sue in Public Actions: Is It A Constitutional Requirement?" 78 *Yale Law Journal* 816 (1969), and Mary G. Allen, Comment "The Congressional Intent to Protect Test: A Judicial Lowering of the Standing Barrier," 41 *University of Colorado Law Review* 96 (1969). For more case development, see *Nashville I-40 Steering Committee v. Ellington*, 387 F.2d 179 (C.A.G., 1967); *Road Review League of the Town of Bedford v. Boyd*, 270 F. Supp. 650 (D.C., S.D.N.Y., 1967); *D.C. Federation of Civic Associations, Inc. v. Airis*, 391 F.2d 478 (1968). All these are highway cases, mostly indicative of a growing public bitterness over what is conceived to be the arbitrariness and public unresponsiveness of highway administrators where environmental quality is at stake.

The theory that the [Federal Communications] Commission can always effectively represent the listener interests in a renewal proceeding without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it. The gradual expansion and evolution of concepts of standing in administrative law attests that experience rather than logic or fixed rules has been accepted as the guide.<sup>34</sup>

The contention that allowing such suits would tie up the machinery of state unduly does not stand up to close examination. On the federal level, and in New Jersey, where such suits are allowed, this has not happened.<sup>35</sup> The burdens of organizing, prosecuting, and paying for litigation are apparently heavy enough so that such suits are not undertaken unless the stakes for the public, and the concern of the public, are quite high.

#### Regulated Industry Action

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<sup>34</sup> 359 F.2d at 1003-1004.

<sup>35</sup> Louis L. Jaffe, in *Judicial Control of Administrative Action* (Boston, Little, Brown & Company, 1965) 482-483, discusses ways of avoiding some problems of lowering barriers of standing rules. He does note, *ibid.*, p. 525, that lowering barriers to standing "almost inevitably" does increase the number and scope of administrative hearings, and cites specifically, pp. 535-536, the experience of New Jersey in dealing with this increase. The size of the increase does not appear to present such grave problems, especially when contrasted with the benefits to the public.

Suppose a private but regulated corporation acts in a way so as to damage the environment. If it is acting simply on its own, say in deciding on location of a pipe line right of way, then it may be subject to reversal by the courts on appeal by an affected landowner, or perhaps by other persons whose rights under the proposed Amendment were violated, if the selection of the location is "arbitrary and capricious."<sup>36</sup>

Suppose the Public Utility Commission were to place certain limitations on the action of a private utility, where that action is subject to Public Utility Commission regulation, e.g., in the loca-  
[2279] tion of an electric power transmission line.<sup>37</sup> More specifically, suppose the Commission requires that electric wires be buried when the transmission line passes a scenic vista, or traverses an historical site; and the utility ignored the Commission's order. The Commission, of course, could then, as now, be asked to enforce its order. Suppose it did not,

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<sup>36</sup> McConnell Appeal, 428 Pa. 270 (1968), and see footnote 13, *supra*.

<sup>37</sup> Act of May 8, 1889, P.L. 136, as amended, 15 P.S. §3272. What this section actually requires the Public Utility Commission to find is that the service to be furnished by the company through the exercise of the power of eminent domain "is necessary or proper for the service, accommodation, convenience, or safety of the public." Several cases have held that route selection is a matter for the company, and that the selection may not be overruled unless it is arbitrary or capricious. *Stillwagon v. Pyle*, 390 Pa. 17, 133 A.2d 819 (1957); *Laird v. Pennsylvania Public Utility Commission*, 183 Pa. Super. 457, 133 A.2d 579 (1957); *Stone v. Pennsylvania Public Utility Commission*, 192 Pa. Super. 573, 162 A.2d 18 (1960).

Again, however, if legal or constitutional rights of citizens are violated by a particular route selection decision, that fact would seem to make out at least a *prima facie* case that the decision was "arbitrary or capricious."

however? The general rule of administrative law is that an administrative agency ruling does not create private rights—it is made "on behalf of the public," just as is a criminal statute, and its enforcement is a matter for the public agency and not for private action.<sup>38</sup> This rule is supported and strengthened in Pennsylvania by the rule, based on an 1806 statute, that if a statute provides a remedy for a particular problem, that remedy is exclusive, and prevents the application of any common law or general statutory remedies.<sup>39</sup> Since most laws creating administrative agencies do provide procedures for enforcement by the agency of its own orders, these statutory enforcement procedures will implicitly preclude enforcement by other means, including enforcement by private citizens' actions.<sup>40</sup>

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<sup>38</sup> *Amalgamated Utility Workers v. Consolidated Edison*, 309 U.S. 261 (1940); *Fafnis Beverage Company v. NLRB*, 339 F.2d 801 (2d Cir., 1964).

<sup>39</sup> Section 13, Act of March 21, 1806, P.L. 558; 4 Small's Laws 326, 46 P.S. §156; *Commonwealth v. Glen Alden Corporation* 418 Pa. 57, 210 A.2d 256 (1965). But see *Everett v. Harron*, 380 Pa. 123, 110 A.2d 383 (1955), for a contrary view.

<sup>40</sup> Act of March 21, 1806, *supra.*, *Commonwealth v. Glen Alden Corporation*, *supra.* See *Com. ex rel. Shumaker v. New York & Pennsylvania Company, Inc.*, 367 Pa. 40, 79 A.2d 439 (1951), for one way to word a statute (in that case the Pure Streams Act, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§691.1-732) so as almost to avoid the exclusive remedies problem: On the first appeal, the Pennsylvania Supreme Court decided that the wording of the statute preserved the right to bring a petition to enjoin water pollution as a public nuisance, and that the Dauphin County Court of Common Pleas had jurisdiction over the subject matter. After remand, the Dauphin County Court held that the particular parties plaintiff (representatives appointed by the District Attorneys of Butler and Clarion Counties, and the Allegheny County Sportsman's League) did not have standing to bring such a suit, since the persons

### Unregulated Private Action

Private actions by individuals or corporations not subjected to regulation by the state will not, immediately, be limited by the proposed amendment. Rights under the Bill of Rights of the United States Constitution, for example, or in the Declaration of Rights in Article I of the Pennsylvania Constitution, are generally held to restrict only state action. What constitutes "state action" may be stretched to include court enforcement of private contracts in violation of constitutionally guaranteed rights,<sup>41</sup> but the basis for court recognition and enforcement of the right is still protection against state, not private, action.

An exception to the "state action" limitation on constitutional rights is found where, to quote from *Ex parte Yarbrough*,<sup>42</sup>

"The function in which the party is engaged, or the right he is about to exercise, is dependent on the laws of the United States . . . [I]t is the duty of that government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the

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responsible for enforcement, by bringing actions to enjoin acts of pollution as nuisances, were listed in the statute, and this listing excluded the plaintiffs. *Com. ex rel. Shumaker v. New York & Pennsylvania Company*, 65 Dauph. 118 (1953), affirmed 378 Pa. 359 (1954).

<sup>41</sup> See, e.g., *Shelley v. Kramer*, 334 U.S. 1, 68 S. Ct. 836 (1948); Lewis, "The Meaning of State Action," 60 Col. L. Rev. 1083 (1960); Silard, "A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee," 66 Col. L. Rev. 855 (1966).

<sup>42</sup> 110 U.S. 651 (1884).

party concerned, but from the necessity of the government itself . . . "<sup>43</sup>

The exercise of such rights may be protected even from private interference. So far this reasoning seems to have been applied mainly to the "right" to inform the government of violations of law.<sup>44</sup> Under the second and third sentences of the proposed Amendment, however, the Commonwealth is given specific responsibilities, as "trustee" of the various natural resources of Pennsylvania, the "property of" the people. In its capacity as "trustee," it is probable that the Commonwealth would have rights to enforce the rights specified by the Amendment. It is doubtful whether a citizen could, through assertion of the duties of the Commonwealth as "trustee," tie the enforcement of the rights of citizens of a high quality environment closely enough to the necessities of government, to acquire standing to assert that the Amendment created rights against purely private action.<sup>45</sup>

This argument, of course, is limited in part by the fact that a number of the rights guaranteed by the Constitutions of Pennsylvania and the United States grew out of an extension of common law rights—the extension prohibiting the state from doing that which individual citizens could not legally do. An illegal search and seizure, for example, would quite clearly be a trespass, to person or property or both, if performed by a private citizen. A question under the proposed amendment is whether it might be used to initiate [2280] or speed the development of common law

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<sup>43</sup> 110 U.S. at 662.

<sup>44</sup> *In re Quarles and Butter*, 158 U.S. 532 (1895); *Edwards v. Habib*, 397 F.2d 687 (C.A.D.C., 1968).

<sup>45</sup> See *Weigand v. Barnes Foundation*, 374 Pa. 149, 97 A.2d 81 (1953).

rights between individual citizens. This would be reversing the direction in which such developments have historically most frequently taken place. But it does not seem unreasonable to think that the Amendment might spark such a development, especially where it could take place by enlarging the existing common law action of private nuisance, thus providing continuity with present law.

One rather startling line for such a potential expansion of nuisance doctrine is suggested by two relatively recent cases in Pennsylvania.<sup>46</sup> In these cases, rights were extended to individual Negro citizens to enjoin the exclusion of Negroes from places of public amusement, based on §694 of the Penal Code.<sup>47</sup> These cases appear to run counter to the general reluctance of earlier Pennsylvania courts to recognize private rights arising out of public nuisances,<sup>48</sup> and to the strict application of the "exclusive statutory remedies" statute of 1806.<sup>49</sup> The opinion of the court in *Everett v. Harron*,<sup>50</sup> bears quoting, because of its relevance in the present context.

"Does the statute confer upon persons against whom illegal discrimination is practiced a right of action to redress the grievance thereby suffered? The answer to this question must undoubtedly be in the affirmative. It will be noted that §654 begins by stating that "All persons within the

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<sup>46</sup> *Everett v. Harron*, 380 Pa. 123, 110 A.2d 383 (1955); *Lackey v. Sacoolas*, 411 Pa. 235, 191 A.2d 395 (1963).

<sup>47</sup> §654, Penal Code of 1939, Act of June 24, 1939, P.L. 872, 18 P.S. §4654.

<sup>48</sup> See discussion, footnote 3, *supra*.

<sup>49</sup> §13, Act of March 21, 1806, 4 Small's Laws 326, 46 P.S. §156. See footnotes 30 and 31, and accompanying text, *supra*.

<sup>50</sup> 380 Pa. 123, 110 A.2d 383 (1955).

jurisdiction of this Commonwealth shall be entitled to the full and equal accommodations . . . of any places of public accommodation, resort, or amusement, . . ." If, therefore, they are "entitled" to such privileges they are likewise entitled to enforce them, since wherever there is a right there is a remedy," 380 Pa. at 127.<sup>51</sup>

The court goes on to point out that the criminal remedy is not exclusive, both because the statute implicitly contemplates civil remedies, and because the statute imposes a specific duty on operators of amusement parks, for the benefit of others.

"Indeed, the section refers, in another connection, to "presumptive evidence in any civil or criminal action," thus indicating that civil relief was contemplated by the legislature. Nor does the fact that a criminal penalty is provided for in the enactment render such remedy exclusive or supersede the right of action for damages in a civil proceeding, it being generally held that where a statute imposes upon any person a specific duty for the benefit of others, if he neglects or refuses to perform such duty he is liable for any injury caused by such neglect or refusal if such injury is of the kind which the statute was intended to prevent." 380 Pa. at 127-128.<sup>52</sup>

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<sup>51</sup> 380 Pa. at 127.

<sup>52</sup> 380 Pa. at 127-128, citing cases for the last stated proposition. Most of the cases cited deal with extension of penal code sanctions to form a basis for the doctrine of negligence per se. The discussion in *Westervelt v. Dives*, 231 Pa. 548 (1911), is especially useful.

The court went on to affirm the decree of the lower court, granting an injunction, on two grounds: (1) To prevent a multiplicity of suits because of the probability that every Negro barred from the amusement park would seek damages.<sup>53</sup> (2) On grounds strikingly resembling the rationale in private nuisance cases, appearing to extend the doctrines and rationale of private nuisance to cover interferences with strictly personal rights. On this latter ground, the case is treated as a public nuisance case, in *Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises, Inc.*<sup>54</sup> Again, the court's opinion bears quoting

"In reading the decisions holding or stating that equity will protect only property rights, one is struck by the absence of any convincing reasons for such a sweeping generalization. We are by no means satisfied that property rights and personal rights are always as distinct and readily separable as much of the public discussion in recent years would have them. But in so far as the distinction exists we cannot believe that personal rights recognized by law are in general less important to the individual or less vital to society or less worthy of protection by the peculiar remedies equity can afford than are property rights. . . . We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction. In general, these conditions are,

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<sup>53</sup> 380 Pa. at 129, citing *Martin v. Baldy*, 249 Pa. 253, 94 A. 1091 (1915).

<sup>54</sup> 428 Pa. 350, 237 A. 2d 342 (1968). See footnote 3, *supra*, for discussion of this case.

that unless relief is granted a substantial right of the plaintiff will be impaired to a material degree; that the remedy at law is inadequate; and that injunctive relief can be applied with practical success and without imposing an impossible burden on the court or bringing its processes into disrepute." The court then cited a very large number of States which "have tended toward this view" and also a large number of legal writers who "support it." 380 Pa. at 131.<sup>55</sup>

Clearly, the proposed Amendment could be extremely effective in accomplishing its purpose, if the reasoning of *Everett v. Harron*<sup>56</sup> is applied to environmental problems as well as to civil rights problems. Clearly, also, *Everett v. Harron*<sup>57</sup> gives some pointers as to the proper phrasing of enabling legislation, to serve maximum effectiveness.

In one other modification of the law of nuisance, in particular, the Amendment could possibly spark an immediate change. In balancing [2281] the benefits from enjoining a nuisance against the burdens of having the acts complained of enjoined, courts now frequently exhibit a bias which automatically weights "productive economic" factors more heavily than factors having to do with human comfort, and especially aesthetics—with the quality of the environment.<sup>58</sup> This is a policy matter, and is properly within the

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<sup>55</sup> 380 Pa. at 131, quoting *Kenyon v. City of Chicopee*, 320 Mass. 528, 70 N.E. 2d 241, 244, 245 (1946).

<sup>56</sup> 380 Pa. 123, 110 A.2d 383 (1955).

<sup>57</sup> *Ibid.*

<sup>58</sup> *Elliot Nursery Company v. Duquesne Light Company*, 281 Pa. 166 (1924); *Alexander v. Wilkes-Barre Anthracite Coal Company*, 245 Pa. 28, 91 A. 213 (1914). See footnote 2, *supra*.

discretion of the court. A constitutionally expressed policy that an environment of high quality is something citizens have a right to, could easily result in changing the balance, the relative weights given these factors, immediately.

As with administrative rulings, and the enforcement of administrative rulings, of course, this process might be assisted and speeded up materially by legislative action.

### Conclusion

Now, as is noted above, there is no legal basis for action in any situation described, unless the environmental damage is serious enough to be a nuisance, or unless the legislature, acting on the basis of its general authority to enact laws to protect the health, safety, or welfare of the people, sees fit to provide a private remedy.

The proposed amendment would immediately create rights to prevent the government (state, local, or an authority) from taking positive action which unduly harms environmental quality, and it might give standing to affected citizens to appeal administrative agency rulings which had the same effect. It is somewhat more doubtful that it would create any right to compel governmental action, or to prevent action by private persons which damaged the environment. In these two areas, however, the proposed Amendment would probably help to strengthen existing political and legal remedies.

Most of these rights, and the remedies, it will be noted, are a consequence of the first sentence, which would create an affirmative civil right in citizens. The three sentences, taken together, would create a firmer legal basis than exists at

present for legislation dealing with the environment and for public action. But the most significant provision, from the point of view of a citizen interested in the quality of the environment, remains the first sentence.

We can feel justified, then, in believing that this proposed constitutional Amendment will do more than merely place a policy statement on the books to make us feel good. It will in many areas provide a positive weapon which can help to prevent further deterioration of the quality of our environment in Pennsylvania. If passed, it should effectively shift the balance of legal power, to give environmental quality (and the human race) at least an even chance in years to come.

The SPEAKER. The Chair recognizes the gentleman from Northumberland, Mr. Kury.

Mr. KURY. Mr. Speaker, as chief sponsor of this bill, it gives me a special sense of satisfaction for myself and for the many dedicated conservationists on both sides of the aisle who made this bill possible to move that this House do concur in the Senate amendments to the bill.

The SPEAKER. It has been moved by the gentleman from Northumberland, Mr. Kury, that the House concur in the amendments inserted by the Senate.

The Chair recognizes the gentleman from Blair, Mr. Wilt.

Mr. W. W. WILT. Mr. Speaker, I rise to support the gentleman's motion to concur in the Senate amendments to House bill No. 958, printer's No. 2860.

This is such a basic premise that one wonders why such a conservation bill of rights has not been enacted before now. Certainly, concern for such basic rights and

for the rational use of the environment to achieve the highest quality of living for mankind is not confined to one political party.

Pennsylvania's past record of bipartisan action on conservation matters is well known. So should be the support for this amendment to the constitution.

Mr. Speaker, I ask this House to unanimously support this amendment.

Thank you.

On the question recurring,

Will the House concur in the amendments made by the Senate?

Agreeable to the provisions of the constitution, the yeas and nays were taken and were as follows:

YEAS—188

Alexander	Geisler	Manderino	Scanlon
Allen, F.M.	Gekas	Martino	Schmitt
Allen, W.W.	Gelfand	McAneny	Seltzer
Anderson, J.H.	George	McClatchy	Semanoff
Anderson, S.A.	Gillette	McCurdy	Shelhamer
Appleton	Gleeson	McGraw	Shelton
Bachman	Good	McMonagle	Sherman
Bair	Goodman	Mebus	Shuman
Barber	Gring	Meholchick	Shupnik
Bellomini	Halverson	Melton	Slack
Beloff	Hamilton, J.H.	Mifflin	Smith
Bennett	Hamilton, R.K.	Miller, M.E.	Snare
Beren	Harrier	Miller, P.W.	Spencer
Berkes	Haudenshield	Moore	Stauffer
Berson	Hayes	Murphy	Steckel
Bittle	Headlee	Murtha	Steele
Bixler	Hepford	Musto	Stemmler
Blair	Hetrick	Needham	Sullivan
Bonetto	Hill	Nicholson	Taylor
Bossert	Holman	Nitrauer	Tayoun
Brunner	Homer	Nolan	Thomas
Bush	Hopkins	Novak	Tiberi
Butera	Horner	O'Brien, B.	Torak
Claypoole	Hovis	O'Brien, F.	Valicenti
Coppolino	Hutchinson	O'Connell	Vann
Crawford	Irvis	O'Donnell	Walsh
Crowley	Johnson, G.	O'Pake	Wansacz
Dager	Johnson, J.	Pancoast	Wargo
Davis, D.	Johnson, T.	Parker	Weidner
Davis, R.	Kahle	Pezak	Westerberg
DeMedio	Kaufman	Pievsky	Wilson
Dininni	Kelly	Piper	Wilt, R.E.
Donaldson	Kennedy	Pittenger	Wilt, R.W.
Dorsey	Kester	Prendergast	Wilt, W.W.

Dwyer	Kistler	Quiles	Wise
Eckensberger	Kolter	Renninger	Wojdak
Englehart	Kowalshyn	Renwick	Worley
Eshback	Kury	Reynolds	Worrilow
Fee	LaMarca	Rieger	Wright
Fenrich	Laudadio	Ritter	Yahner
Fischer	Lawson	Ruane	Yohn
Foor	Lee	Ruggiero	Zearfoss
Fox	Lehr	Rush	Zimmerman
Fryer	Lutty	Ryan	Zord
Fulmer	Lynch, Francis	Rybak	
[2282]			
Gallagher	Lynch, Frank	Saloom	Fineman,
Gallen	Malady	Savitt	Speaker
Geesey	Manbeck		

NAYS—0

NOT VOTING—14

Burkardt	Frank	Moscrip	Polaski
Caputo	Greenfield	Mullen	Silverman
Comer	Gross	Perry	Stone
DeJoseph	Kernaghan		

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative and the amendments were concurred in.

Ordered, That the clerk inform the Senate accordingly.

#### QUESTION OF PERSONAL PRIVILEGE

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Greenfield. For what purpose does the gentleman rise?

Mr. GREENFIELD. I rise to a question of personal privilege.

The SPEAKER. The gentleman will state it.

Mr., GREENFIELD. Mr. Speaker, I would like to be recorded as voting "aye" on Senate bill No. 958.

The SPEAKER. The gentleman's remarks will be spread upon the record.

**3. Signed in House<sup>y</sup>**

## HOUSE BILL SIGNED BY SPEAKER

Bill numbered and entitled as follows having been prepared for presentation to the Governor and the same being correct, the title was read as follows:

HOUSE BILL No. 958

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Whereupon,  
The SPEAKER, in the presence of the House, signed the same.

**4. Joint Resolution<sup>z</sup>**

970

LAWS OF PENNSYLVANIA,

No. 4

## A JOINT RESOLUTION

HB 958

Proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eleventh article thereof:

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<sup>y</sup> PA. LEGISLATIVE JOURNAL-HOUSE 2283 (Apr. 14, 1970).

<sup>z</sup> 1970 Pa. Laws (Joint Resolution 4) 970.

That article one of the Constitution of the Commonwealth of Pennsylvania be amended by adding at the end thereof, a new section to read:

*Section 27. Natural Resources and the Public Estate.—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.*

**III. SECOND LEGISLATIVE SESSION (1971)*****A. House*****1. House Bill 31<sup>aa</sup>**

Printer's No. 32

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

No. 31

Session of 1971

INTRODUCED BY MESSRS. KURY, LAUDADIO,  
 BENNETT, RENWICK, FINEMAN, IRVIS,  
 ENGLEHART, WISE, SHELHAMER, FEE, W.W.  
 WILT, STEELE, HETRICK, SCHMITT, SELTZER,  
 BEREN, MALADY, MANDERINO, GOODMAN,  
 DREIBELBIS, KLUNK, KLEPPER, HOVIS,  
 KENNEDY, BLAIR, STONE, BERSON,  
 NEEDHAM, WANSACZ, MEHOLCHICK, WARGO,  
 PEZAK, SHUPNICK, HALVERSON, RAPPAPORT,  
 BERKES, MRS. GILLETTE, MESSRS. KAUFMAN,  
 TAYLOR, SHANE, FOX, MEBUS, RYAN,  
 HEPFORD, ZEARFOSS, ALEXANDER, W.W.  
 ALLEN, F.M. ALLEN, MASTRANGELO,  
 MANBECK, BURKHARDT, H.S. PARKER,  
 KNEPPER, WELLS, CESSAR, BRAIG,  
 RUGGIERO, RYBAK, WILLIAMS, KOWALSHYN,  
 MYERS, ECKENSBERGER, BRUNNER, O'PAKE,  
 BELLOMINI, DOMBROWSKI, O'CONNELL,  
 ZELLER AND SMITH, JANUARY 6, 1971

**A JOINT RESOLUTION**

- 1 Proposing an amendment to article one of the Constitution of the
- 2 Commonwealth of Pennsylvania providing for the preservation
- 3 and restoration of our natural resources.
- 4 The General Assembly of the Commonwealth of Pennsylvania
- 5 hereby resolves as follows:

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<sup>aa</sup> H.B. 31, Printer's No. 32 (Jan. 6, 1971).

6 Section 1. The following amendment to the Constitution of  
 7 the Commonwealth of Pennsylvania is proposed in accordance with  
 8 the provisions of the eleventh article thereof:

9 That article one of the Constitution of the Commonwealth of  
 10 Pennsylvania be amended by adding a section to read:

11 Section 27. Natural Resources and the Public Estate.--The  
 12 people have a right to clean air, pure water, and to the  
 13 preservation of the natural, scenic, historic and esthetic  
 14 values of the environment. Pennsylvania's public natural  
 15 resources are the common property of all the people, including  
 [2]  
 1 generations yet to come. As trustee of these resources, the  
 2 Commonwealth shall conserve and maintain them for the benefit of  
 3 all the people.

## 2. Remarks of Representative Kury<sup>bb</sup>

### PERMISSION TO ADDRESS HOUSE

Mr. KURY requested and obtained unanimous consent to address the House.

Mr. KURY. Mr. Speaker, during the last session of the legislature, we passed in this House and the Senate a constitutional amendment dealing with the environment. This [20] is the so-called "Conservation Bill of Rights" for our state constitution.

Inasmuch as our constitutional amendment process requires that this bill be passed by a second session of the legislature before going to the voters, I am today reintroducing that bill.

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<sup>bb</sup> PA. LEGISLATIVE JOURNAL-HOUSE 19-20 (Jan. 6, 1971).

I am also asking unanimous consent to insert a statement in the record with regard to that bill, Mr. Speaker.

Mr. Speaker, in connection with the bill which I have just offered, I understand there are a number of members from both sides who have not yet signed their names to it but who would like to serve as sponsors of the bill.

Therefore, I ask that the bill be held on the table for the balance of today so that members who would like to sign as sponsors and have not done so will have the opportunity to do so.

The SPEAKER. The bill will be so held.

Mr. KURY presented the following statement for the Legislative Journal:

I am today reintroducing a constitutional amendment which will guarantee every citizen the right to clean air, pure water, and the natural, scenic, historic and esthetic qualities of our environment.

This "Conservation Bill of Rights" was just introduced during the 1969-70 session. As House bill No. 958, it was passed unanimously by both the House and the Senate.

The procedure for amending the Pennsylvania constitution requires the passage of a proposed amendment by two successive sessions of the legislature. If passed again during the current 1971-72 session, the amendment will be placed on the ballot for approval of the voters.

Our world, our nation, our state are in real danger of becoming unfit for human habitation. The increasing pressures of technological advances and the growing population on a diminished supply of natural resources is

out-stripping our ability to cope with environmental problems.

This amendment to the Pennsylvania Declaration of Rights places the responsibility for preserving Pennsylvania's environment where the responsibility belongs—on state government. The amendment declares that the state government is the trustee of our natural resources, not only for those alive now, but for generations yet to come.

This amendment is certainly not the final answer in our struggle to save the environment, but it does provide a firm foundation upon which our legislature, the courts and the executive can act to make Pennsylvania's environment not only fit for human habitation, but also a wholesome environment suited for the achievement of man's highest aspirations as a society.

The amendment has been endorsed by the Pennsylvania Bar Association, the State Federation of Sportsmen's Clubs and other environmentally-concerned organizations.

I am hopeful that this session of the legislature will give prompt approval to this amendment so that it can go before the voters of Pennsylvania at the earliest possible time.

### 3. Referral to Rules Committee<sup>cc</sup>

By Messrs. KURY, LAUDADIO, BENNETT,  
RENWICK, FINEMAN, IRVIS, ENGLEHART,  
WISE, SHELFHAMER, FEE, W.W. WILT, STEELE,  
HETRICK, SCHMITT, SELTZER, BEREN,  
MALADY, MANDERINO, GOODMAN,  
DREIBELBIS, KLUNK, KLEPPER, HOVIS,  
KENNEDY, BLAIR, STONE, BERSON,

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<sup>cc</sup> PA. LEGISLATIVE JOURNAL-HOUSE 29 (Jan. 7, 1971).

NEEDHAM, WANSACZ, MEHOLCHICK,  
WARGO, PEZAK, SHUPNIK, HALVERSON,  
RAPPAPORT, BERKES, Mrs. GILLETTE, Messrs.  
KAUFMAN, TAYLOR, SHANE, FOX, MEBUS,  
RYAN, HEPFORD, ZEARFOSS, ALEXANDER,  
W.W. ALLEN, F.M. ALLEN, MASTRANGELO,  
MANBECK, BURKARDT, H.S. PARKER,  
KNEPPER, WELLS, CESSAR, BRAIG, RUGGIERO,  
RYBAK, WILLIAMS, KOWALSHYN, MYERS,  
ECKENSBERGER, BRUNNER, O'PAKE,  
BELLOMINI, DOMBROWSKI, O'CONNELL,  
ZELLER and SMITH

HOUSE BILL No. 31

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Referred to Committee on Rules.

**4. Report from Rules Committee<sup>dd</sup>**

BILLS REPORTED AS AMENDED

HOUSE BILL No. 31

By Mr. LUTTY

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Reported from Committee on Rules.

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<sup>dd</sup> PA. LEGISLATIVE JOURNAL-HOUSE 65 (Jan. 26, 1971).

**5. House Bill 31 as Reported from Committee<sup>ec</sup>**

PRIOR PRINTER'S NO. 32          PRINTER'S NO. 54

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

No. 31

Session of 1971

INTRODUCED BY MESSRS. KURY, LAUDADIO,  
 BENNETT, RENWICK, FINEMAN, IRVIS,  
 ENGLEHART, WISE, SHELHAMER, FEE, W.W.  
 WILT, STEELE, HETRICK, SCHMITT, SELTZER,  
 BEREN, MALADY, MANDERINO, GOODMAN,  
 DREIBELBIS, KLUNK, KLEPPER, HOVIS,  
 KENNEDY, BLAIR, STONE, BERSON, NEEDHAM,  
 WANSACZ, MEHOLCHICK, WARGO, PEZAK,  
 SHUPNICK, HALVERSON, RAPPAPORT,  
 BERKES, MRS. GILLETTE, MESSRS. KAUFMAN,  
 TAYLOR, SHANE, FOX, MEBUS, RYAN,  
 HEPFORD, ZEARFOSS, ALEXANDER, W.W.  
 ALLEN, F.M. ALLEN, MASTRANGELO,  
 MANBECK, BURKARDT, H.S. PARKER,  
 KNEPPER, WELLS, CESSAR, BRAIG, RUGGIERO,  
 RYBAK, WILLIAMS, KOWALSHYN, MYERS,  
 ECKENSBERGER, BRUNNER, O'PAKE,  
 BELLOMINI, DOMBROWSKI, O'CONNELL,  
 ZELLER AND SMITH, JANUARY 6, 1971

AS REPORTED FROM COMMITTEE ON RULES,  
 HOUSE OF REPRESENTATIVES, AS AMENDED,  
 JANUARY 26, 1971

**A JOINT RESOLUTION**

- 1 Proposing an amendment to article one of the Constitution of the
- 2 Commonwealth of Pennsylvania providing for the preservation
- 3 and restoration of our natural resources.
- 4 The General Assembly of the Commonwealth of Pennsylvania
- 5 hereby resolves as follows:

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<sup>ec</sup> H.B. 31, Printer's No. 54 (Jan. 26, 1971).

6 Section 1. The following amendment to the Constitution of  
 7 the Commonwealth of Pennsylvania is proposed in accordance with  
 8 the provisions of the eleventh article thereof:

9 That article one of the Constitution of the Commonwealth of  
 10 Pennsylvania be amended by adding at the end thereof, a section  
 11 to read:

12 Section 27. Natural Resources and the Public Estate.--The  
 13 people have a right to clean air, pure water, and to the  
 [2]  
 1 preservation of the natural, scenic, historic and esthetic  
 2 values of the environment. Pennsylvania's public natural  
 3 resources are the common property of all the people, including  
 4 generations yet to come. As trustee of these resources, the  
 5 Commonwealth shall conserve and maintain them for the benefit of  
 6 all the people.

7 SECTION 2. THIS PROPOSED AMENDMENT SHALL BE SUBMITTED BY THE  
 8 SECRETARY OF THE COMMONWEALTH TO THE QUALIFIED ELECTORS OF THE  
 9 STATE, AT THE PRIMARY ELECTION NEXT HELD AFTER THE ADVERTISING  
 10 REQUIREMENTS OF ARTICLE ELEVEN, SECTION ONE OF THE CONSTITUTION  
 11 OF THE COMMONWEALTH OF PENNSYLVANIA HAVE BEEN SATISFIED.

## 6. First Consideration<sup>ff</sup>

### CALENDAR

#### BILLS ON FIRST CONSIDERATION

. . . .

Agreeable to order,

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<sup>ff</sup> PA. LEGISLATIVE JOURNAL-HOUSE 71 (Feb. 1, 1971).

The House proceeded to the first consideration of House bill No. 31, printer's No. 54, entitled:

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

Said bill was considered the first time and agreed to.

## 7. Second Consideration<sup>gg</sup>

### CALENDAR

#### BILLS ON SECOND CONSIDERATION

....

Agreeable to order,

The House proceeded to second consideration of House bill No. 31, printer's No. 54, entitled:

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

And said bill having been considered the second time and agreed to,

Ordered, to be transcribed for third consideration.

## 8. Third Consideration and Passage<sup>hh</sup>

### BILLS ON THIRD CONSIDERATION

....

Agreeable to order,

The House proceeded to third consideration of House bill No. 31, printer's No. 54, entitled:

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<sup>gg</sup> PA. LEGISLATIVE JOURNAL-HOUSE 86 (Feb. 2, 1971).

<sup>hh</sup> PA. LEGISLATIVE JOURNAL-HOUSE 96-97 (Feb. 3, 1971).

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

On the question,  
Will the House agree to the bill on third consideration?  
It was agreed to.

And said bill having been considered on three different days and agreed to,

On the question,  
Shall the bill pass finally?

Agreeable to the provisions of the constitution, the yeas and nays were taken and were as follows:

#### YEAS —199

Alexander	Gallen	Letterman	Savitt
Allen, F.M.	Geesey	Lutty	Scanlon
Allen, W.W.	Geisler	Lynch, Francis	Scheaffer
Anderson, J.H.	Gekas	Lynch, Frank	Schmitt
Anderson, S.A.	Gelfand	Malady	Schulze
Arthurs	Gillette	Manbeck	Scirica
Barber	Gleason	Manderino	Seltzer
Bellomini	Gleeson	Martino	Semanoff
Bennett	Good	Mastrangelo	Shane
Beren	Goodman	McClatchy	Shelhamer
Berkes	Greenfield	McCue	Shelton
Berson	Gring	McCurdy	Sherman
Bittle	Halverson	McGraw	Shuman
Bixler	Hamilton J.H.	McMonagle	Shupnik
Blair	Hamilton, R.K.	Mebus	Smith
Bonetto	Harrier	Meholchick	Spencer
Braig	Haskell	Melton	Steele
Brunner	Hayes, D.S.	Miller	Stemmler
Burkhardt	Hayes, S.E.	Moore	Stone
Butera	Hepford	Morris	Stout
Caputo	Hetrick	Moscrip	Sullivan
Cessar	Hill	Mullen, M.M.	Taylor
Comer	Homer	Mullen, M.P.	Thomas
Coppolino	Hopkins	Murtha	Toll
Coyne	Horn	Musto	Ustynoski
Crawford	Horner	Myers	Valicenti
Crowley	Hovis	Needham	Vann
Dager	Hutchinson	Novak	Walsh
Davis, D.M.	Irvis	O'Brien	Wansacz
Davis, E.B.	Johnson, G.H.	O'Connell	Wargo
Davis, R.O.	Johnson, J.J.	O'Pake	Weidner
DeMedio	Kahle	Pancoast	Wells
Dininni	Katz	Parker, B.L.	Westerberg
Dombrowski	Kaufman	Perry	Williams
Dorsey	Kelly, A.P.	Pievsky	Wilson
Doyle	Kelly, J.B.	Piper	Wilt, R.W.
Dreibelbis	Kennedy	Prendergast	Wilt, W.W.
Early	Kester	Rappaport	Wise
[97]			
Eckensberger	Kistler	Renninger	Wojdak
Englehart	Klepper	Renwick	Worrilow

Fawcett	Klunk	Reynolds	Wright
Fee	Knepper	Rieger	Yahner
Fenrich	Kolter	Ritter	Yohn
Fischer	Kowalyszyn	Rowe	Zearfoss
Foor	Kury	Ruane	Zeller
Foster	LaMarca	Ruggiero	Zimmerman
Fox	Laudadio	Rush	Zord
Frank	Lederer	Ryan	
Frankenburg	Lee	Rybak	Fineman,
Fryer	Lehr	Saloom	Speaker
Gallagher			

NAYS—0

NOT VOTING—3

O'Donnell

Parker, H.S.

Pezak

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative.

Ordered, That the clerk present the same to the Senate for concurrence.

### *B. Senate*

#### **1. Presentation of House Bill and Referral to Rules Committee<sup>ii</sup>**

##### HOUSE MESSAGES

##### HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives being introduced, presented for concurrence HB . . . 31 . . . , which were referred to the Committee on Rules.

#### **2. Report from Rules Committee<sup>ij</sup>**

Mr. GERHART, from the Committee on Rules, reported, as committed, HB . . . 31. . . .

<sup>ii</sup> PA. LEGISLATIVE JOURNAL-SENATE 90 (Feb. 8, 1971).

<sup>ij</sup> PA. LEGISLATIVE JOURNAL-SENATE 91 (Feb. 8, 1971).

**3. First Consideration<sup>kk</sup>**

## BILLS ON FIRST CONSIDERATION

Mr. LAMB. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from Committees for the first time at today's Session.

Mr. MURRAY. Mr. President, I second the motion.  
The motion was agreed to.

The bills were as follows: HB . . . 31 . . . .

And said bills having been considered for the first time,

Ordered, To be laid aside for second consideration.

**4. Second Consideration<sup>ll</sup>**

## CALENDAR

## SECOND CONSIDERATION CALENDAR

AMENDMENTS TO THE CONSTITUTION ON  
SECOND CONSIDERATION

. . . HB 31 (Pr. No. 54) . . .— Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

**5. Third Consideration and Passage<sup>mm</sup>**

HB 31 (Pr. No. 54)—Considered the third time and agreed to,

On the question,  
Shall the bill pass finally?

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<sup>kk</sup> PA. LEGISLATIVE JOURNAL-SENATE 92 (Feb. 8, 1971).

<sup>ll</sup> PA. LEGISLATIVE JOURNAL-SENATE 95 (Feb. 9, 1971).

<sup>mm</sup> PA. LEGISLATIVE JOURNAL-SENATE 101 (Feb. 15, 1971).

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

## YEAS—45

Ammerman.	Fleming, R.D..	Mahady.	Reibman.
Arlene.	Fleming, W.E..	Manbeck.	Rovner.
Bell,	Gerhart,	Mazzei,	Sesler,
Cianfrani.	Hawbaker.	McCreech.	Smith.
Confair.	Hess.	Mellow.	Snyder.
Coppersmith.	Hill.	Messinger.	Stapleton.
Davis.	Hobbs.	Murphy.	Stauffer.
Dengler.	Holl.	Murray.	Stroup.
Donolow.	Howard.	Nolan.	Tilghman.
Duffield.	Lamb.	Noszka.	Wade.
Dwyer.	Lentz.	Oesterling.	Wood.
Ewing,			

## NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

## 6. Bill Signed in Senate<sup>nn</sup>

The President (Lieutenant Governor Ernest P. Kline) in the presence of the Senate signed the following bills:

HB . . . 31 . . . .

### *C. Return to House*

#### 1. Announcement of Senate Concurrence<sup>oo</sup>

##### SENATE MESSAGE

##### HOUSE BILLS CONCURRED IN BY SENATE

The clerk of the Senate being introduced, returned bills from the House of Representatives numbered and entitled as follows:

. . .

<sup>nn</sup> PA. LEGISLATIVE JOURNAL-SENATE 102 (Feb. 15, 1971).

<sup>oo</sup> PA. LEGISLATIVE JOURNAL-HOUSE 233 (Feb. 15, 1971).

## HOUSE BILL No. 31

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

**2. Signed in House<sup>pp</sup>**

## HOUSE BILLS SIGNED BY SPEAKER

....

## HOUSE BILL No. 31

A Joint Resolution proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

**3. Joint Resolution 3<sup>qq</sup>**

SESSION OF 1971

769

No. 3

## A JOINT RESOLUTION

HB 31

Proposing an amendment to article one of the Constitution of the Commonwealth of Pennsylvania providing for the preservation and restoration of our natural resources.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is

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<sup>pp</sup> PA. LEGISLATIVE JOURNAL-HOUSE 234 (Feb. 15, 1971).

<sup>qq</sup> 1971 Pa. Laws (Joint Resolution 3) 769.

proposed in accordance with the provisions of the eleventh article thereof:

That article one of the Constitution of the Commonwealth of Pennsylvania be amended by adding at the end thereof, a new section to read:

***Section 27. Natural Resources and the Public Estate.—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.***

Section 2. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary election next held after the advertising requirements of article eleven, section one of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

(This Joint Resolution was passed for the first time at the Legislative Session of 1970 as Joint Resolution No. 4.)

**IV. FINAL ADOPTION*****A. Question and Answer Sheet on Joint Resolution<sup>17</sup>***

FRANKLIN L. KURY, MEMBER  
810 MARKET SQUARE  
SUNBURY, PENNSYLVANIA 17801



COMMITTEES  
BUSINESS AND COMMERCE  
CONSERVATION  
LOCAL GOVERNMENT

HOUSE OF REPRESENTATIVES  
Commonwealth of Pennsylvania  
HARRISBURG

**JOINT RESOLUTION 3**

SHALL ARTICLE 1 OF THE CONSTITUTION BE AMENDED BY ADDING A NEW SECTION GUARANTEEING THE PEOPLE'S RIGHT TO CLEAR AIR AND PURE WATER AND THE PRESERVATION AND CONSERVATION, BY THE COMMONWEALTH, OF THE STATE'S NATURAL RESOURCES FOR THE PEOPLE'S BENEFIT?

**YES? OR NO?**

Joint Resolution 3 is, I believe, an important piece of legislation for the benefit of Pennsylvanians. It should be passed at the May 18 Primary Election. However, voter apathy or confusion could easily defeat it, particularly since there are four other amendments to be voted on at the same time.

To promote full public understanding of Joint Resolution 3, I have prepared a Question and Answer sheet explaining it. Other background material is also enclosed. Please feel free to publish or reprint any of this material.

If you would like further information, please call or write me at 142 Market Street, Sunbury, Pennsylvania, 17801 (AC 717/286-5866) or Box 115, House of Representatives, Harrisburg, Pennsylvania, 17120 (AC 717/787-3528).

Your active support of Joint Resolution 3 can make a substantial contribution to its approval on May 18.

Sincerely,

Franklin L. Kury  
Chief Legislative Sponsor

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<sup>17</sup> REPRESENTATIVE FRANKLIN L. KURY, PA. HOUSE OF REPRESENTATIVES, JOINT RESOLUTION 3 (Question and Answer Sheet) (1971).

JOINT RESOLUTION 3

## May 18 Primary Election

Q. What is Joint Resolution 3?

A. This is one of the five referendum questions which will appear on the ballot for voter approval or rejection at the May 18 primary election. It deals with conservation and it will read: "Shall Article 1 of the Constitution be amended by adding a new section guaranteeing the people's right to clean air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit?"

Q. If approved, what will this resolution or amendment do?

A. Joint Resolution 3, as a Constitutional Amendment, would add a new section to our State Constitution's Declaration of Rights. The basic provision of the amendment would give the people of Pennsylvania a fundamental legal right to a decent environment. The amendment also establishes that the public natural resources of the Commonwealth belong to all the people, including future generations, and that the Commonwealth is to serve as Trustee of our natural resources for future generations.

Q. Will the amendment make any real difference in the fight to save the environment?

A. Yes, once Joint Resolution 3 is passed and the citizens have a legal right to a decent environment under the State Constitution, every governmental agency or private entity, which by its actions may have an adverse effect on the environment, must consider the people's rights before it acts. If the public's rights are not considered, the public could seek protection of its legal rights in the environment by an appropriate law suit. The Resolution would benefit all of the

people, and would go a long way toward tempering any individual, company, or governmental body which may have an adverse impact on our natural or historic assets.

[2]

In short, the amendment will incorporate three broad principles into our legal system:

1. The people have the right to a decent environment.
2. Our public natural resources belong to all the people, including future generations.
3. The State is the trustee of these natural resources for future generations.

Q. How do you read all of this into the short Resolution 3 stated on the ballot?

A. Because of space limitations of the ballot, the Secretary of State is required to condense the actual text into as brief a space as possible. The complete text of the Resolution, which was passed twice, and unanimously, by both Houses of the State Legislature, reads in its entirety: "Section 27. Natural Resources and the Public Estate.—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."

Q. Will there be any "teeth" in the law, if passed?

A. It will be up to the courts to apply the three broad principles to legal cases. However, having this law passed will strengthen substantially the legal weapons available to protect our environment from further destruction. In the words of Robert Broughton, Associate Professor of Law at Duquesne

University, the amendment "will, if passed, effectively change the balance of legal power and give environmental quality (and the human race) at least an even chance in the coming years."

Q. Is this bill supported by both Democrats and Republicans?

A. Yes, it has bi-partisan support. Joint Resolution 3 passed two successive sessions of the legislature with unanimous support by members of both parties. Both our Democratic [3] and Republican legislators apparently feel that we need this bill to protect our environment against air, water and land pollution, and because it will expand the base for citizens' legal action.

Q. What organizations are supporting this amendment?

A. Leading organizations are quite interested in seeing that Joint Resolution 3 is passed. Among them are: The Pennsylvania Bar Association, The Pennsylvania Federation of Sportsmen's Clubs, the Pennsylvania Environmental Council, and the League of Women Voters of Pennsylvania -- all known for their vigor in championing and protecting the rights of the individual. It should be noted that New York and Michigan have already enacted a similar amendment.

Q. Will Joint Resolution 3, if passed, benefit individual citizens personally?

A. Yes. At present individual citizen's legal rights in the environment are basically limited to protecting their property or person from actual or threatened damage. Joint Resolution 3 broadens these legal rights to include a legally protectable interest in the whole environment -- including the water we drink, the air we breathe, and the esthetics of the landscape.

Q. Will there be any cost involved?

A. No. Joint Resolution 3 will cost the taxpayer nothing. Resolution 3 will create no new state agency, bureau or commission. The amendment strengthens peoples' rights, it does not expand the government. It is a rare form of legislation. It will give, you won't.

Q. If passed by the electorate, how long will it take to make Resolution 3 law?

A. Resolution 3 becomes part of our State Constitution immediately. It will be an amendment to Pennsylvania's Declaration of Rights which is the State's version of the Federal Bill of Rights.

[4]

Q. Won't the right of eminent domain still exist?

A. Yes, however, it will have to be exercised in conformity with this amendment. A highway department or utility company could not take land without fully considering the public's right to a decent environment. Joint Resolution 3 should force a much more judicious use of eminent domain.

Q. Do most Pennsylvanians know about this resolution?

A. Not enough. This is why it is important to spread the word. It has been proved that when people see referendums on the ballot, if they do not understand the question as stated, they may automatically vote "no." In this instance a "no" vote would be a tragic mistake. This is why we are trying to make every Pennsylvanian aware that he is vitally needed at the May 18 Primary, and that he should vote "yes" on Joint Resolution 3 which deals with conservation of our state's natural resources.

***B. Results of Vote on Joint Resolution***<sup>ss</sup>

## PROPOSED CONSTITUTIONAL AMENDMENTS

TO BE VOTED ON AT  
THE PRIMARY ELECTION -- MAY 18, 1971

JOINT RESOLUTION 1

Shall Article I, Section 6 of the Constitution be amended to permit a verdict, in a civil case, to be rendered by no less than five-sixths of the jury?

JOINT RESOLUTION 2

Shall Article I of the Constitution be amended by adding a new section, prohibiting any denial or abridgement of rights because of an individual's sex?

JOINT RESOLUTION 3

Shall Article I of the Constitution be amended by adding a new section guaranteeing the people's right to clear air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit?

JOINT RESOLUTION 4

Shall Article III, Section 27 of the Constitution be amended to permit the salary or emoluments during the term of a county officer to be increased or decreased only in the event a change in county classification requires it?

JOINT RESOLUTION 5

Shall Article II, Section 6 of the Constitution be amended to permit any Senator or Representative to resign and to be appointed to a civil office during the time for which he was elected so long as the civil office was not created nor its emoluments increased during the time for which he was elected

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<sup>ss</sup> PA. DEP'T OF STATE, RESOLUTIONS TO BE VOTED ON AT THE PRIMARY ELECTION (May 18, 1971) (illustrating the vote count results by county) (chart reformatted to fit page and shading added to column relating to Environmental Rights Amendment (Joint Resolution 3)).

and to provide for immediate forfeiture of the elective office for any person holding an office other than one so permitted?

COUNTIES	PROPOSED AMENDMENT [JOINT RESOLUTION 1] Shall Article I, Section 6 of the Constitution be amended to permit a verdict, in a civil case, to be rendered by no less than five-sixths of the jury?		PROPOSED AMENDMENT [JOINT RESOLUTION 2] Shall Article I of the Constitution be amended by adding a new section, prohibiting any denial or abridgement of rights because of an individual's sex?		PROPOSED AMENDMENT [JOINT RESOLUTION 3] Shall Article I of the Constitution be amended by adding a new section guaranteeing the people's right to clean air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit?		PROPOSED AMENDMENT [JOINT RESOLUTION 4] Shall Article III, Section 27 of the Constitution be amended to permit the salary or emoluments during the term of the a county officer to be increased or decreased only in the event a change in county classification requires it?		PROPOSED AMENDMENT [JOINT RESOLUTION 5] Shall Article II, Section 6 of the Constitution be amended to permit any senator or Representative to resign and to be appointed to a civil office during the time for which he was elected so long as the civil office was not created nor its emoluments increased . . . ?	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Blair,	11,479	11,073	10,551	11,877	14,929	7,718	8,371	13,797	7,440	14,486
Berks,	17,259	8,282	16,812	8,642	21,488	4,547	14,002	11,098	11,708	13,231
Bedford,	2,837	2,377	2,846	2,430	3,758	1,582	2,286	2,795	1,861	3,309
Beaver,	25,464	15,648	23,678	16,910	33,784	9,766	14,707	25,271	12,289	25,729
Armstrong,	10,168	6,552	9,586	7,045	13,315	3,598	6,479	10,169	5,587	10,777
Allegheny,	144,677	54,360	139,449	59,978	166,741	33,559	55,695	139,587	52,560	142,223
Adams,	3,308	2,446	3,330	2,486	4,328	1,678	2,846	2,825	2,340	3,213q

May 18, 1971

Bradford,	6,203	4,683	6,336	4,638	8,476	2,623	5,514	5,250	4,683	5,855
Bucks,	18,662	7,423	17,785	8,800	22,707	4,049	15,174	10,795	13,190	12,703
Butler,	10,592	5,233	10,284	5,539	12,820	3,127	5,190	10,446	3,864	11,745
Cambria,	19,314	11,696	18,485	12,331	24,608	6,638	12,769	17,940	11,696	18,511
Cameron,	1,190	552	1,171	605	1,536	278	960	788	750	967
Carbon,	2,005	968	1,770	1,117	2,434	629	1,587	1,158	1,373	1,519
Centre,	7,680	3,803	7,673	3,820	9,575	1,993	6,791	4,551	5,810	5,328
Chester,	22,986	11,048	22,656	11,641	28,635	5,956	19,398	14,048	16,658	15,146
Clarion,	3,589	2,733	3,694	2,582	4,881	1,614	2,213	4,162	1,844	4,456
Clearfield,	6,115	4,853	5,581	5,277	8,052	3,005	6,420	6,533	3,582	6,947
Clinton,	4,534	2,994	4,260	3,275	6,438	1,219	4,063	3,364	3,441	3,892
Columbia,	6,696	4,597	6,007	5,052	8,757	2,565	5,500	5,311	4,479	6,273
Crawford,	5,404	2,753	5,431	2,690	6,645	1,585	3,803	4,099	3,367	4,494
Cumberland,	8,155	4,278	8,120	4,379	9,799	2,836	6,814	5,421	5,768	6,458

Dauphin,	10,335	5,081	10,331	5,472	12,622	3,362	8,312	6,821	7,516	7,916
Delaware,	32,423	10,371	29,558	13,112	36,564	6,417	24,371	16,313	21,072	19,398
Elk,	3,513	2,167	3,163	2,460	4,535	1,109	2,359	3,209	2,048	3,457
Erie,	23,322	12,808	23,416	12,664	31,284	6,249	17,471	17,762	16,777	17,901
Fayette,	7,537	5,161	7,434	5,202	8,986	3,915	3,280	8,973	3,035	9,087
*Forest,*										
Franklin,	5,747	4,056	5,577	4,054	7,605	2,382	5,048	4,519	4,262	5,243
Fulton,	570	918	567	805	844	642	521	900	441	966
Greene,	4,773	3,379	4,716	3,479	6,217	2,113	3,041	5,063	2,741	5,290
Huntingdon,	2,223	3,904	2,274	3,905	3,350	2,871	1,914	4,269	1,733	4,359
Indiana,	7,980	4,814	7,359	5,293	10,042	2,933	5,605	6,827	4,931	7,382
Jefferson,	6,759	4,080	6,469	4,258	8,842	2,325	4,340	6,228	3,613	6,929
Juniata,	1,290	974	1,279	956	1,774	541	1,229	993	974	1,214
Lackawanna,	18,546	9,393	13,036	14,504	21,522	6,178	11,759	15,552	8,788	17,015

Lancaster,	13,320	6,009	10,640	8,369	13,674	5,783	8,733	10,009	7,440	11,144
Lawrence,	9,001	5,543	8,851	5,602	11,524	3,131	5,783	8,433	4,247	9,828
Lebanon,	6,002	2,644	5,625	2,884	7,118	1,638	4,902	3,537	4,209	4,157
Lehigh,	13,895	5,113	12,171	6,830	16,321	3,044	10,802	7,658	8,470	9,783
Luzerne,	12,936	5,830	11,271	7,077	21,371	7,073	9,080	7,403	12,464	15,467
Lycoming,	11,158	8,200	11,052	8,280	15,382	4,354	9,377	9,750	7,271	11,614
McKean,	2,076	1,210	2,053	1,213	2,576	772	1,646	1,548	1,443	1,654
Mercer,	6,702	3,246	6,442	3,476	8,122	2,034	4,612	5,357	4,004	5,578
Mifflin,	2,652	1,979	2,732	2,058	3,625	1,253	2,387	2,326	1,933	2,658
Monroe,	2,776	1,937	2,913	1,789	3,401	1,387	2,367	2,222	1,822	2,623
Montgomery,	35,897	11,233	33,278	14,564	41,402	6,456	28,994	17,274	24,828	20,161
Montour,	2,142	1,410	1,962	1,577	3,063	678	1,862	1,659	1,542	1,933
Northampton,	6,852	4,037	6,726	4,007	10,497	2,779	5,656	4,799	6,681	5,839
Northumberland,	10,185	7,758	9,686	8,166	14,320	4,006	8,681	8,766	6,894	10,835

Perry,	1,993	1,568	1,952	1,580	2,630	990	1,761	1,713	1,403	2,005
Philadelphia,	115,386	52,574	105,855	59,596	133,251	33,929	92,946	66,549	73,889	94,474
Pike,	619	390	642	387	809	227	558	421	459	502
Potter,	2,100	1,401	2,010	1,388	2,551	884	1,237	2,066	1,065	2,155
Schuylkill,	18,107	8,519	15,916	9,396	21,895	4,439	14,699	11,584	12,559	12,194
Snyder,	2,559	2,051	2,433	2,134	3,584	1,185	2,266	2,289	1,780	2,653
Somerset,	6,567	5,369	6,412	5,536	8,917	3,133	4,827	7,009	4,023	7,517
Sullivan,	820	555	824	576	1,104	320	734	655	570	781
Susquehanna,	3,811	3,087	3,489	3,356	5,386	1,620	3,463	3,216	2,676	3,903
Tioga,	4,140	2,792	4,142	2,670	5,468	1,554	3,578	2,895	3,178	3,302
Union,	2,606	1,945	2,412	2,101	3,679	1,001	2,198	2,235	1,677	2,622
Venango,	4,708	2,865	4,979	2,526	6,409	1,272	3,186	4,203	2,683	4,636
Warren,	2,692,	1,338	2,735	1,332	3,302	794	2,227	1,748	2,073	1,815
Washington,	25,706	14,823	24,316	15,403	32,536	7,911	15,307	24,056	23,613	25,786

Wayne,	1,833	1,730	1,762	1,814	2,460	1,230	1,579	1,888	1,324	2,096
Westmoreland,	27,247	13,474	25,967	14,348	32,466	8,646	12,827	27,225	11,624	28,163
Wyoming,	2,489	1,706	2,399	1,893	3,442	1,060	2,145	1,999	1,641	2,203
York.	8,971	5,812	9,110	5,676	11,164	3,794	7,222	7,274	6,284	7,958
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
<b>TOTALS</b>	833,283	423,606	783,441	464,882	<b>1,021,342</b>	<b>259,979</b>	567,472	656,603	487,976	741,458

\*Forest County \*No election in Forest County on the proposed Constitutional Amendments due to Co. Board of Elect. err.

*C. Proclamation of Governor*<sup>tt</sup>

IN THE NAME AND BY THE AUTHORITY OF THE

Commonwealth of Pennsylvania

Governor's Office  
Harrisburg  
PROCLAMATION

## CONSTITUTIONAL AMENDMENT—ARTICLE I

WHEREAS, Joint Resolution No. 3 of the 1971 Session of the General Assembly of Pennsylvania proposed to amend Article I of the Constitution of Pennsylvania by adding a new section thereof guaranteeing the people's rights to clean air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit, the said new section to read as follows:

"Section 27. Natural Resources and the Public Estate.—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"; and

WHEREAS, The said Joint Resolution was passed by two successive General Assemblies of Pennsylvania; and

WHEREAS, The aforesaid proposed constitution amendment was submitted for approval by the qualified electors of the Commonwealth at an election held on May 18, 1971; and

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<sup>tt</sup> PA. GOVERNOR MILTON J. SHAPP, PROCLAMATION, CONSTITUTIONAL AMENDMENT—ARTICLE I (July 23, 1971).

WHEREAS, The Secretary of the Commonwealth has certified to me that the aforesaid proposed constitutional amendment was approved by the electorate on the aforesaid day;

NOW, THEREFORE, I, Milton J. Shapp, Governor of the Commonwealth of Pennsylvania, do proclaim and pronounce that the aforesaid constitutional amendment was adopted by a majority of the electors voting thereon on May 18, 1971.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this twenty-third day of July, in the year of our Lord one thousand nine hundred and seventy-one, and of the Commonwealth the one hundred and ninety-sixth.



BY THE GOVERNOR:

MILTON J. SHAPP  
GOVERNOR



Deputy Secretary of the Commonwealth