

CONSTITUTIONAL AMENDMENT FULL TEXT

Ballot Title: Right to Clean and Healthy Waters

Ballot Summary: This amendment creates a fundamental right to clean and healthy waters. The amendment may be used to sue State executive agencies for harm or threatened harm to Florida's waters, which include aquatic ecosystems. This amendment defines terms, identifies affected constitutional provisions in Article IV governing the executive branch, provides for civil action enforcement, allows attorney's and expert witness fees to prevailing plaintiffs, and provides equitable remedies including restoration of waters.

Article and Section Being Created or Amended: Article I, Section 28

Full Text of the Proposed Amendment: SECTION 28. Right to Clean and Healthy Waters.—

(a) PURPOSE. Waters sustain all forms of life. Clean and healthy waters protect and promote substantial interests, including human health, safety and welfare, native fish and wildlife, conservation of natural resources, outdoor recreation, aesthetic values, business opportunities, property values, and economic interests throughout the State. Although considerable attention has been given to protect and conserve waters in the State, including Article II, Section 7 of this Constitution and a comprehensive body of State environmental laws and regulations, such attention has not corrected the continuing decline in the condition of waters in the State. The poor condition of many important waters throughout the State has led the people of Florida, in their inherent political power, to create this fundamental right to clean and healthy waters. State executive agencies are instrumental to the effort to protect Florida waters from harm and threatened harm. Consequently, to promote the interests of Florida's people, businesses, organizations, communities, and economies in clean and healthy waters, this Section provides for equitable remedies against the actions or inactions of State executive agencies that harm or threaten harm to Florida waters, with the goal of clean and healthy waters and the aspiration that waters in the State will one day flourish.

(b) DECLARATION OF RIGHT. The people have the inherent political power pursuant to Article I, Section 1 of this Constitution to create the fundamental right to clean and healthy waters. The people hereby declare this fundamental right, which is infeasible.

(c) HARM PROHIBITED. It shall be unlawful, and considered a violation of the right to clean and healthy waters, for a State executive agency, as defined herein, to harm or threaten to harm Florida waters by action or inaction, including by regulation, rule, policy, plan, standard, permit, practice including management practice, activity, agreement, memorandum of understanding, order, or by inaction that permits harm or threatened harm about which the State executive agency knew or should have known.

(d) ENFORCEMENT

(1) A person, as defined herein, may bring a civil action for injunctive or declaratory relief in a court of competent jurisdiction against a State executive agency for violating this Section. Exhaustion of administrative remedies and notification time periods shall not be required. A plaintiff is not required to allege special or direct injury to state a claim.

(2) Any violation under this Section will be considered de novo. Due to the fundamental nature of this right, to avoid liability where a violation is shown, a State executive agency shall be required to demonstrate that its action or inaction, as described in subsection (c), was necessary to promote a compelling government interest and was narrowly tailored to advance that interest. Where a party's action or inaction is found to be a substantial factor in a violation of this Section, that party shall be liable for the violation and shall not avoid liability on the basis that the action or inaction of another party or nonparty has also contributed to the violation.

Initiative Information

Date Approved 04/22/2022

Serial Number 22-02

Sponsor Name: FloridaRighttoCleanWater.org

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(3) A prevailing plaintiff shall be entitled to appropriate declaratory relief and to such equitable relief as may be appropriate to remedy the violation including, without limitation, injunctive relief to restore waters to the condition that existed prior to the proven violation. In addition, a prevailing plaintiff shall be entitled to reasonable attorney's and expert witness fees.

(e) DEFINITIONS. For purposes of this Section, the following words and terms shall have the stated meanings:

(1) "Clean and healthy waters" are waters free from harm, or threat of harm, that occurs after the effective date of this Section. Indicators of clean and healthy waters include water quality safe for native fish and wildlife and human recreation, and regarding drinking water sources, safe for human consumption; sufficient habitats, water filtration, and element cycling to support thriving populations and diverse communities of native fish and wildlife; natural flow regimes, to include recharging ground or underground water; and other ecological processes and functions to be intact.

(2) "Harm" means the introduction of pathogens, contaminants, or toxins into waters or the disruption of natural hydrological or ecological processes or functions of waters. This term includes but is not limited to such chemical, biological, or physical stressors to waters that contribute to unnatural water levels or nutrient loads; that remove, fragment, or degrade habitat of native fish or wildlife; that disturb vegetation or soil near the edge of waters; that introduce exotic or invasive species; that obstruct or divert natural flow; that overexploit native species; and that negatively affect the health of humans or of native fish or wildlife.

(3) "Person" means any individual, partnership, joint venture, corporation; any group of the foregoing to include nonprofit organizations; any tribal entity; or any government entity.

(4) "State executive agencies" shall mean the following governmental entities and officers: The Governor; the Cabinet and members of the Cabinet; each State executive officer and State executive department, and each State executive departmental unit described in Section 20.04, Florida Statutes; the Fish and Wildlife Conservation Commission; each water management district; and each officer and governmental entity of the executive branch having statewide jurisdiction or jurisdiction in more than one county.

(5) "Waters" refers to the aquatic ecosystems of aquifers, bays, creeks, estuaries, estuarine systems, lagoons, lakes, rivers, riverine systems, springs, streams, wetlands, intracoastal and coastal waters within the boundaries of the State of Florida and shall include the natural tributaries and artificial waterways which impact these water bodies. This term shall include fresh, brackish, saline, tidal, surface, ground and underground water associated with these water bodies.

(f) OTHER CONSTITUTIONAL PROVISIONS. This Section affects constitutional provisions of the executive branch: Article IV, Section 1 (Governor); Article IV, Section 4 (Cabinet); Article IV, Section 6 (Executive departments); Article IV, Section 9 (Fish and Wildlife Conservation Commission).

(g) SELF-EXECUTING. Implementing legislation is not required to enforce this Section. This Section is remedial and shall be given a liberal construction to fully effectuate its purpose.

(h) EFFECTIVE DATE. This Section shall become effective immediately upon approval by the electors of Florida.

(i) SEVERABILITY. If any part of this Section, or the application of this Section to any person or circumstance, is held invalid, the remainder of this Section, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this Section are severable.

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