

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 1581  
Conservation Commission  
**SPONSOR(S):** Kendrick  
**TIED BILLS:**

Elimination of Constitutional Authority of Fish and Wildlife

**IDEN./SIM. BILLS:**

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Environmental Regulation Committee	_____	Perkins	Kliner
2) Ethics & Elections Committee	_____	_____	_____
3) State Resources Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

On November 3, 1998, Revision 5 to the Florida Constitution amended Article IV, Section 9 and created Article XII, Section 23 (1998 Revision) for the purpose of creating the Florida Fish and Wildlife Conservation Commission (FWCC) and consolidating the regulation of wild animal life, freshwater aquatic life, and marine life in one agency. In doing so, the Game Commission and Marine Commission were abolished and the jurisdiction of both entities was transferred to the FWCC.

The bill provides for the repeal of Section 9 of Article IV and Section 23 of Article XII of the State Constitution to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006.

The fiscal impact of the bill is indeterminate because the proposed repeal is subject to the electors of Florida for approval or rejection at the general election to be held in November 2006. If the repeal is approved at the general election, the FWCC would no longer have the authority to regulate wild animal life, fresh water aquatic life, and marine life that was provided under the constitution and the Legislature would determine by law the new authority.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill provides for the repeal of Section 9 of Article IV and Section 23 of Article XII of the State Constitution to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006. If the repeal is approved at the general election, the FWCC would no longer have the authority to regulate wild animal life, fresh water aquatic life, and marine life that was provided under the constitution and the Legislature would determine by law the new authority.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Prior to 1999, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three governmental entities:

- 1) The Florida Game and Fresh Water Fish Commission (Game Commission), a constitutional entity with exclusive regulatory and executive authority over wild animal life and freshwater aquatic life;
- 2) The Marine Fisheries Commission (Marine Commission), a statutory entity placed within the Department of Environmental Protection (DEP) with limited jurisdiction over the management of marine life; and
- 3) The DEP, a statutory agency with authority over some aspects of marine life and full authority over marine law enforcement.

On November 3, 1998, Revision 5 to the Florida Constitution amended Article IV, Section 9 and created Article XII, Section 23 (1998 Revision) for the purpose of creating the FWCC. The move consolidated the regulation of wild animal life, freshwater aquatic life, and marine life in one agency. In doing so, the Game Commission and Marine Commission were abolished and the jurisdiction of both entities was transferred to the FWCC.

The text of the 1998 Revision, as it currently appears in Article IV, Section 9 and Article XII, Section 23, Florida. Constitution, reads as follows:

##### **SECTION 9. Fish and wildlife conservation commission.—**

There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

*History.—Am. C.S. for H.J.R. 637, 1973; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 5, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.*

**[1]SECTION 23. Fish and wildlife conservation commission.—**

(a) The initial members of the commission shall be the members of the game and fresh water fish commission and the marine fisheries commission who are serving on those commissions on the effective date of this amendment, who may serve the remainder of their respective terms. New appointments to the commission shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than seven members remaining.

(b) The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law. All rules of the marine fisheries commission and game and fresh water fish commission in effect on the effective date of this amendment shall become rules of the fish and wildlife conservation commission until superseded or amended by the commission.

(c) On the effective date of this amendment, the marine fisheries commission and game and fresh water fish commission shall be abolished.

(d) This amendment shall take effect July 1, 1999.

*History.—Proposed by Constitution Revision Commission, Revision No. 5, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.*

*[1]Note.—This section, originally designated section 22 by Revision No. 5 of the Constitution Revision Commission, 1998, was redesignated section 23 by the editors in order to avoid confusion with section 22 as created in H.J.R. 969, 1997.*

FWCC is comprised of seven Commissioners appointed by the Governor and confirmed by the Senate. For FY 2004-2005, the FWCC has 1,867 agency employees and a total budget of approximately \$222 million.

**Effect of Proposed Change**

The bill provides for the repeal of Section 9 of Article IV and Section 23 of Article XII of the State Constitution to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006.

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

**ELIMINATION OF CONSTITUTIONAL AUTHORITY OF FISH AND WILDLIFE  
CONSERVATION COMMISSION; REGULATION PURSUANT TO LAW**

*Proposes the repeal of Section 9 of Article IV and Section 23 of Article XII of the State Constitution to eliminate the constitutional authority of the Fish and Wildlife Conservation Commission, which would leave the regulation of wild animal life, fresh water aquatic life, and marine life that was provided under such authority to be determined by the Legislature by law.*

If the repeal is approved at the general election, the FWCC would no longer have the authority to regulate wild animal life, fresh water aquatic life, and marine life that was provided under the constitution and the Legislature would determine by law the new authority.

**C. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures: Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections estimates that the cost of compliance would be approximately \$37,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
2. Other: See "Present Situation" in "EFFECT OF PROPOSED CHANGES" above.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**FWCC Comments:**

Since the Florida Constitution was amended in 1942 to create the Game and Fresh Water Fish Commission (GFC), there have been numerous unsuccessful efforts to remove GFC from the Constitution or enact constitutional amendments or statutes which would have circumvented or limited GFC's authority over wildlife. The following is chronological list of some these actions:

- 1942 GFC was established in the Florida Constitution, as a result of a 1941 Legislative Joint Resolution to amend the state Constitution. The voters approved the constitutional amendment by a substantial margin creating a 5-member commission to exercise the state's authority over birds, game, freshwater fish, reptiles and amphibians.
- 1947 The Florida Legislature passed bills to elect commissioners, to exempt commercial fishing interests from GFC regulation and to abolish GFC completely. The Supreme Court found all these bills to be unconstitutional. See, e.g., State Ex Rel Griffin v. Sullivan, 30 So.2d 919 (Fla 1947); Beck v. GFC, 33 So.2d 594(Fla. 1947); Price v. City of St. Petersburg, 29 So.2d 753(Fla. 1947)

- 1949 The Legislature passed bills to limit GFC's power. The Florida Supreme Court found these laws to be unconstitutional.
- 1951 Florida Senate proposed a bill to place GFC under the Cabinet. The bill was defeated.
- 1952 The Governor proposed placing GFC under a Department of Interior, but this effort failed.
- 1957 The Legislature proposed a bill to amend the Constitution to place all hunting and fishing license revenues into the general revenue fund. The bill failed.
- 1959 The Legislature passed a Joint Resolution to amend the Constitution to require that GFC's budget be approved by the budget commission and the Legislature. The voters over-whelmingly defeated this proposed constitutional amendment.
- 1968 The Constitutional Revision Commission retained the GFC intact.
- 1974 The Florida voters passed an amendment to the Florida Constitution that maintained the basic constitutional authority of GFC to manage and regulate the fish and wildlife resources of Florida.
- 1977 The Florida Legislature enacted a law to transfer GFC to the Department of Natural Resources (DNR) so that DNR could control the executive powers of GFC in the area of budgeting. The Florida Supreme Court invalidated this statute. DNR v. GFC, 342 So.2d 495 (Fla. 1977).
- 1998 Constitutional Revision Commission (CRC) proposed Revision 5, an amendment to the Constitution to unify the regulation of wildlife, freshwater fish and marine fish under a Fish and Wildlife Conservation Commission modeled after GFC. The amendment passed by 72% approval. The Legislature subsequently delegated to the Commission the authority to protect manatees, sea turtles and whales. See, Chapter 99-245, section 45, Laws of Florida.

It was the intent of the CRC to create the Commission to unify regulation of freshwater aquatic life, animal life and marine fish under a constitutional agency modeled after GFC.

Clay Henderson, CRC sponsor of the revision creating the Commission, stated in a Statement of Intent:

This section requires that the new commission will continue, like the Game Commission, to be a separate independent agency. "The Commission shall not be a subunit of any other agency and shall have its own staff which includes management, research and enforcement." While this is new language, it is not a change in the current reality of the Game Commission.

See, Journal of the 1997-98 CRC, June 16, 1997.

The CRC-approved ballot summary for CRC Revision 5, General Election Ballot, November 3, 1998 clearly states to the voters that the new Commission is to be, like the old GFC, an independent constitutional agency:

“Creates the FWCC granting it regulatory and executive powers of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission; removes legislature’s exclusive authority to regulate marine life and grants certain powers to new Commission.”

Additional information on the CRC regarding Revision 5 is available in journals and transcripts of the 1997-1998 CRC meetings.

FWCC reports that the primary effect of this bill would be to abolish the Commission as a constitutional agency. This action would nullify the intent of the 1998 CRC to create an independent constitutional agency to regulate freshwater aquatic life, animal life and marine fish. To ensure continuity of the conservation and protection of Florida's fish and wildlife resources, as a practical matter for the short term, all rules presently adopted under the Commission's constitutional authority would need to be enacted into law by the Legislature or by rule of a statutorily created agency.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**