

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The proposed constitutional amendment does not appear to implicate any of the House Principles; however, if the constitutional amendment passes the Legislature will begin to create an umbrella agency to oversee issues relating to natural resources, including fish and wildlife. Depending on how the Legislature structures the agency, this measure may decrease public employment by possibly eliminating duplicative services or combining certain disciplines relating to natural resource conservation and management.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, two governmental entities exercise primary supervision over matters pertaining to Florida's natural resources.¹

- The Department of Environmental Protection (DEP) is an executive agency overseen by a governor-appointed Secretary. The DEP is primarily responsible for managing and regulating activities that impact Florida's land, air and water quality.
- The Florida Fish and Wildlife Conservation Commission (FWC) is a constitutionally-created body managed by a Commission of seven members that are appointed by the Governor and confirmed by the Florida Senate to five-year terms. The FWC is responsible for managing and regulating activities that impact Florida's marine and freshwater animals and terrestrial wildlife.

Both agencies perform functions relating to land management, construction permitting, pollution control, and law enforcement. In addition, both FWC and DEP have land acquisition programs and each develops recreational trails.

Short History of Conservation in Florida

Between 1845 and 1889 the enforcement responsibility for fishing and conservation fell to each of the individual counties, towns or municipalities. The Florida Fish Commission was established in 1889, and Fish Wardens were appointed by state commissioners to enforce Florida fish laws. Between 1905 and 1913 enforcement was returned to the individual counties. During that time, Fish and Game Wardens were authorized for appointment for each county, enforced ordinances relating to fish, oyster and game, and were compensated by the county government.

In 1913, the first state wildlife conservation agency, Game and Fish, was created. That same year a revised game law established state ownership of wild birds and game and set up small county and state resident hunting license fees. The 1915 Legislature abolished the State Department of Game and Fish, and gave ownership of game and birds to the county in which that wildlife was found, and authorized employment of county game wardens by county commissions. A portion of these laws were held to be unconstitutional and the 1917 Legislature corrected itself, giving ownership of game, birds and fish back to the state.²

¹ The Department of Agriculture and Consumer Services, which is administered by an elected Cabinet officer oversees the state's agricultural resources.

² Florida Game and Freshwater Commission. Florida Wildlife, V. 47 Number 6 50th Anniversary Edition. Tallahassee, FL: Florida Game and Freshwater Commission, Nov-Dec. 1993. p. 8

The 1925 Legislature established a State Department of Game and Fresh Water Fish, making Florida the 46th state to create a state conservation agency. The 1927 rewrite of the statute provided for an appointment of a Wildlife Conservation Commission, made up of one person from each congressional district and one at-large member who would advise and assist the Commission. The newly organized agency had the power to acquire lands as well, which assisted the agency to create breeding grounds through the selective closing of private lands.³

In 1933 the Legislature abolished the State Department of game and Fish and assigned its duties to a new State Board of Conservation, a body that absorbed the Shell Fish Commission and the Geology Board. The State Board of Conservation lasted for two years. In 1935 the Legislature reorganized the State Board of Conservation into two departments: the State Conservation Department and the State Department of Game and Fresh Water Fish. In 1937 the Legislature allowed the Commission to establish cooperative agreements with the U.S. Forest Service and the State Forest and Park Service to promote conservation on lands administered by these agencies. The Legislature continued to pass game and fish laws, some opposed by the Commission. In 1937 and 1939, there were two failed attempts to amend the state constitution to establish as a constitutional body, an independent Game and Fish Commission.⁴

In 1942 Florida voters approved a constitutional amendment to create a Commission of five members who would serve without pay. This Commission could only be abolished by constitutional amendment. It was empowered to set bag limits, fix open and closed seasons on a statewide, regional or local basis, and to regulate the manner and method of taking, transporting, stocking and otherwise using birds, game, freshwater fish, reptiles and amphibians.

In 1952 Florida Governor Fuller Warren proposed a new Department of the Interior made up of the Game and Fresh Water Fish Commission and the State Board of Conservation. In 1953, newly elected Governor Daniel McCarty decided to merge the Game and Fresh Water Fish Commission with the State Board of Conservation to form a Department of Interior headed by an elected cabinet official.⁵ This was a continuation of the work Governor McCarty's predecessor Governor Fuller Warren started in 1952, when the members of the Legislature felt that the Commission was "superior" to the Senate and House because its regulations had the power of law without legislative approval or the governor's signature.⁶ However, the work that Governor Warren had started and Governor McCarty was continuing never came to pass due to Governor McCarty's death less than nine months after taking office prevented implementation of this plan.⁷

In 1968 the Legislature provided for a new Department of Natural Resources (DNR), which took over many conservation functions and projects throughout the state, and which worked closely with the Commission. The Department of Environmental Regulation (DER) was created in 1975. While DNR primarily concentrated on issues relating to the acquisition and management of state lands (submerged lands and uplands) and reported to the Cabinet, the DER had the regulatory authority to control the discharge of pollutants to the environment and the destruction of wetlands by dredging and filling and reported to the Governor.⁸ In 1993 the Department of Environmental Protection (DEP) was established from the merger of the Departments of Natural Resources and Environmental Regulation.

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 FWC. 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 FWC.

³ Ibid. pp 10, 11

⁴ Ibid. p. 15

⁵ Ibid. p. 28

⁶ Ibid. p. 22

⁷ Ibid. p. 28

⁸ Ibid. pp 22, 23

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 DEP with limited jurisdiction over the management of marine life.
- 3) The DEP, a statutory agency with authority over some aspects of marine life and full authority over marine law enforcement.

C. SECTION DIRECTORY:

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources. Upon voter approval it would leave the regulation of fish and wildlife, natural resources, and the scenic beauty of the state to be determined by the Legislature. The constitutional amendment language would read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE IV, SECTIONS 4 AND 9;
ARTICLE XII, SECTIONS 23 AND 26

DIRECTOR OF THE INTERIOR, DEPARTMENT OF THE INTERIOR CREATED; FISH AND WILDLIFE CONSERVATION COMMISSION ABOLISHED.-- Proposing an amendment of the State Constitution to create a Cabinet-level Department of the Interior to exercise the regulatory and executive powers of the state regarding all matters, except as otherwise provided by law, relating to fish and wildlife, natural resources, and the scenic beauty of the state; and for the creation of the Commissioner of the Interior, a Cabinet officer selected by statewide election to oversee all matters relating to the department and to serve with the Governor and other Cabinet officers as the State Board of Administration, as Trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, and as the agency head of the Department of Law Enforcement; and to remove the constitutional mandate of the Fish and Wildlife Conservation Commission previously charged with overseeing matters relating to fish and wildlife; and to preserve the prohibition of any special law or general law of local application relating to hunting and fishing; and to provide an effective date of July 1, 2009, for the creation of the Department of the Interior and an effective date of January 6, 2009 for the creation of the Cabinet office of Commissioner of the Interior, with the office to be filled at the 2008 general election to an initial term of 2 years, with subsequent 4-year terms.

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 \$50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This joint resolution proposes a constitutional amendment which, if approved by the voters, would create an agency with certain responsibilities to be established by general law. As such, the fiscal impact of the creation of the Department of the Interior is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.⁹ The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election or on such other date as may be specified in the amendment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the United States, 26 States have chosen to place the state's game and fish regulation and environmental regulation within a subdivision of an "umbrella" agency:

Alabama, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (Cabinet level agency), Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New

⁹ See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Wisconsin, and West Virginia.

There are 20 states where game and fish regulation are within a stand alone agency:

Alaska, Arizona, Colorado, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Virginia, Vermont, Washington, and Wyoming.

Four states have game and fish agencies that are constitutionally created:

Arkansas, California, Florida, and Oklahoma.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None