

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 1304

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Saunders

SUBJECT: Fish and Wildlife Conservation Commission

DATE: April 22, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	Fav/CS
2.			GA	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) repeals chapters 370 and 372, F.S., relating to the regulation of wild animal life, freshwater aquatic life, and marine life into one combined chapter.

The CS creates chapter 379, F.S, providing intent language and combining both chapters of existing law, renumbering them into the new chapter and conforming cross-references are provided.

The CS repeals obsolete provisions of law. Obsolete provisions include statutory provisions clearly under the purview of the Florida Fish and Wildlife Conservation Commission's (FWCC) constitutional authority and provisions that have expired pursuant to specified dates.

No fiscal impacts are anticipated as a result of this CS.

The CS provides an effective date of July 1, 2008.

II. Present Situation:

Background

In 1998, Florida voters amended the Florida Constitution by approving Revision 5¹, proposed by the Constitutional Revision Commission, which created the Florida Fish and Wildlife Conservation Commission (FWCC), and is presently found in Article IV, Section 9, and Article XII, Section 23 of the Florida Constitution.

Article IV, Section 9 of the Florida Constitution established and describes the Fish and Wildlife Conservation Commission and states:

“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.”

Article XII, SECTION 23² of the Florida Constitution provides additional instructions regarding the establishment of the “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.

¹ Proposed by Constitution Revision Commission, Revision No. 5, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

² 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.

(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.”

Prior to the adoption of the 1998 amendment, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three separate agencies: the Game and Freshwater Fish Commission, the Marine Fisheries Commission and the Department of Environmental Protection. The amendment abolished the Game and Fresh Water Fish Commission and the Marine Fisheries Commission.

The 1998 amendment consolidated the functions performed by the Marine Fisheries Commission and the Game and Freshwater Fish Commission into the FWCC, and granted the FWCC the executive and regulatory powers of the state over wild animal life and fresh water aquatic life. In addition, the FWCC was granted executive and regulatory powers over marine species. With respect to threatened or endangered marine species, the Florida Supreme Court has ruled that the Department of Environmental Protection and the FWCC share regulatory authority.³ The amendment authorizes the Legislature to:

- 1) Establish fees and penalties;
- 2) Adopt laws in aid of the FWCC; and
- 3) Appropriate funds.

Chapters 370 and 372, F.S., currently provide the statutory authority for the FWCC to carry out its regulatory responsibilities. Chapter 370, F.S., contains provisions regulating saltwater fisheries and marine life, while Chapter 372, F.S., contains provisions regulating wildlife and freshwater aquatic life. While numerous revisions have since taken place, many provisions in these two chapters have not been revised, since the FWCC was created in 1999, to consolidate functions performed by the Marine Fisheries Commission and the Game and Freshwater Fish Commission. Therefore, the provisions in these chapters often appear inconsistent and/or ambiguous.

Chapter Merger Intent and Goals

The main goal of this legislation was to consolidate Chapters 370 and 372, F.S., into one chapter that consistently and clearly addresses issues related to FWCC. In addition to consolidating

³ Caribbean Conservation Corporation, Inc. v. Florida Fish and Wildlife Conservation Commission, 838 So.2d 492, 501-502 (Fla. 2003). Wherein the Court found, "... we must also construe article XII, section 23, with article IV, section 9 When the two constitutional sections are read together, we conclude that the provisions gave to the FWCC regulatory and executive powers with respect to marine life, including the regulatory and executive powers of the Marine Commission in effect on March 1, 1998. However, whether this gave to the FWCC regulatory and executive powers over all marine life depends on whether regulatory and executive powers over some marine life remained with other agencies after the voters approved the revision 5 amendments. We find that such power did remain with the DEP regarding endangered and threatened species of marine life."

language, the draft legislation makes changes to ensure the statutory provisions are consistent with provisions of the Constitution related to the regulation of wild animal life, freshwater aquatic life, and marine life. Although it is well settled that the Constitution vests in the FWCC exclusive power of the state to regulate wild animal life and freshwater aquatic life, the extent of the FWCC's jurisdiction with respect to marine life is not as well-defined and appears to be less extensive. Therefore, a review of the constitutional delegation of authority was necessary in order to determine whether a statutory provision is within the Legislature's constitutional authority to enact. Lastly, the legislation repeals statutory provisions that appear to be outdated or unnecessary.

III. Effect of Proposed Changes:

The CS provides intent language that no substantive changes were intended by combining chapters 370 and 372, F.S. The intent language further provides that the combined chapter is not intended to expand any constitutional authority of the FWCC or grant any additional Legislative authority to the FWCC.

The CS combines chapters 370 and 372, F.S., into chapter 379 F.S., which is organized into eight parts:

Part I -“General Provisions” comprised of s. 379.101 through s. 379.237, F.S.

Part II -“Marine Life” comprised of s. 379.2401 through s. 379.2525, F.S.

Part III -“Fresh Water Aquatic Life” comprised of s. 379.28, F.S.

Part VI -“Wild Animal Life” comprised of s. 379.3001 through s. 379.3063, F.S.

Part V -“Law Enforcement” comprised of s. 379.33 through s. 379.343, F.S.

Part VI -“Licenses for Recreational Activities” comprised of s. 379.35 through s. 379.3582, F.S.

Part VII -“Licenses for Non-Recreational Activities” comprised of s. 379.36 through s. 379.377, F.S.

Part VIII -“Penalties” comprised of s. 379.401 through s. 379.414, F.S.

Conforming cross-reference revisions are provided.

Repealed Provisions

Section 370.081, F.S., “Illegal importation or possession of nonindigenous marine plants and animals; rules and regulations” (Bill Section 206):

This provision of statute governs the importation and possession of marine plants or marine animals, not indigenous to the state. The provision provides exceptions to the prohibition, as well as penalties for violations and rulemaking authority. Under chapter 120, F.S., FWCC has adopted chapter 68E-1, Florida Administrative Code (F.A.C.), “Permits for the collection and possession of indigenous saltwater animals for experimental, scientific, educational or exhibitional purposes. According to FWCC, the exemption provisions were added to statute for an entertainment park exhibition that never came to fruition and no permits have been issued. After repeal, Chapter 68-5, F.A.C., governs non-native species and specifically prohibits the importation, sale, or transport of any live specimen or eggs, with listed exceptions.

Section 370.0821, F.S., “St. Johns County; use of nets” (Bill Section 206):

This provision of statute provides a prohibition of any net other than a common recreational cast net in certain salt waters of St Johns County without a permit from the FWCC. The statute was adopted by the 1977 Legislature prior to the creation of FWCC. The Marine Fishery Commission had exclusive rulemaking authority regarding the regulation of gear and that authority was transferred to FWCC. Currently, the FWCC rule, chapter 68B-3.006 F.A.C., “St. Johns County, Use of Nets”, would continue to govern this activity. Since the Constitutional Amendment that provided the Net Limitation, the net license for St. Johns County has not been sought by fishers or sold by the agency.

Section 370.09, F.S., “Industrial hazards; oil deposits discharge prohibited” (Bill Section 206):

This provision of statute prohibits the discharge of oil into saltwaters of the state. Current provisions in chapter 403, F.S., provide the Department of Environment Protection authority to regulate air and water pollution on a statewide basis. Specifically, s. 403.061, F.S., states “Department; powers and duties.--The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it...” The provisions of chapter 403, F.S., will continue to govern the discharge of oil into the saltwater of the state.

Section 370.1105, F.S., “Saltwater finfish; fishing traps regulated” (Bill Section 206):

This provision of statute governs the types of traps authorized to take marine species in Florida waters and prohibits possession of any other type of trap or take or sale of any finfish taken by such other trap. FWCC has exclusive rulemaking authority regarding the regulation of gear. FWCC has adopted chapters 68B-4.020(1), 68B-14.005(1), and 68B-31.007(2), F.A.C., to replace subsection (1) of this statute relating to saltwater traps, and Rule 68B-4.020(2), F.A.C., to replace subsection (2) of the statute prohibiting use of any other type of trap to take finfish. The penalty provisions are covered in remaining penalty provisions of the bill.

Section 370.15, F.S., “Shrimp; regulation” (Bill Section 206):

This provision of statute establishes the state’s policy with respect to regulation of the shrimp fishery, establishes closures, both areal and seasonal, and regulates shrimp traps. The FWCC has authority to establish rules that regulate gear specifications; prohibited gear; bag limits; size limits; species that may not be sold; closed areas, except for public health purposes; quality control, except for oysters, clams, mussels, and crabs; seasons; and special considerations relating to eggbearing females. The FWCC has adopted chapter 68B-31.0157, F.A.C., which is a seasonal nighttime shrimp closure on the Atlantic Ocean; chapter 68B-31.007(2)(e), F.A.C., relating to shrimp traps; chapter 68B-31.018(9), F.A.C., relating to a shrimping closure in Santa Rosa Sound; chapter 68B-31.0136, F.A.C., closing a portion of Monroe County to shrimp harvest. The requirement that shrimp trawlers operate pursuant to a Saltwater Products License (SPL) can be eliminated without an FWCC replacement rule because s. 370.06, F.S., requires all commercial harvesters of saltwater products to have the SPL License. Paragraphs (5)(b) and (6)(b) of the statute are penalty provisions that are retained. The penalty provisions are covered in remaining penalty provisions of the bill.

Section 370.155, F.S., “Regulation of shrimp fishing in a designated area” (Bill Section 206):

This provision of statute establishes a closure to shrimping for a specified area in Gulf and Franklin Counties. It was invalidated in 1978 by Franklin County Court Judge Eldon McCloud and has not been enforced since. It is repealed without a replacement FWCC rule in place.

Section 372.001, F.S., Definitions (Bill Section 206):

This provision of statute provided definitions for Chapter 372, F.S. These definitions were included in s. 379.101, F.S.

Section 372.0225, F.S., Freshwater organisms (Bill Section 206):

This provision of statute charges the FWCC with the effective regulation of commercial freshwater fish production “to produce the optimum sustained yield consistent with the protection of the breeding stock,” but makes it clear that the FWCC is not to supersede or duplicate the Department of Agriculture and Consumer Services in the regulation of aquaculture. All functions covered by this statute are either covered by FWCC’s authority under Article IV, Section 9 of the Florida Constitution, or statutes governing aquaculture.

Section 372.107, F.S., “Federal Law Enforcement Trust Fund” (Bill Section 206):

The provision of statute creates the Federal Law Enforcement Trust Fund, which was repealed in 2005 (2005-17, L.O.F.)

Section 372.27, F.S., “Silver Springs and Rainbow Springs” (Bill Section 206):

This provision of statute closes Silver Springs and Rainbow Springs to fishing. The Department of Environmental Protection has rulemaking authority for state parks to prohibit fishing.

Section 372.667, F.S., Feeding or enticement of alligators or crocodiles unlawful; penalty” (Bill Section 206):

This provision of statute prohibits the feeding of alligators or crocodiles, with exception of those in protective captivity or FWCC employees or agents involved in relocation. These provisions are adequately covered by FWCC Rule 68A-25.001, F.A.C. The penalty provisions are covered in remaining penalty provisions of the bill.

Section 372.75, F.S., , “Use of explosives and other substances prohibited” is not included in the bill:

This provision of statute prohibits the use of explosives in fresh water that may injure fish. Current FWCC Rule 68A-23.002(5) and (7), F.A.C., prohibits the use of explosive substances for the taking of freshwater fish. The statute is unnecessary and the subject is within FWCC’s authority under Article IV, Section 9 of the Florida Constitution.

Section 372.85, F.S., “Contaminating fresh waters” (Bill Section 206):

This provision of statute prohibits the contamination of the freshwaters of the state. Current provisions in chapter 403, F.S., provide the Department of Environment Protection authority to regulate air and water pollution on a statewide basis. Specifically,

section 403.061, F.S., states “Department; powers and duties.--The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it...” The provision of chapter 403, F.S., will continue to govern the discharge of contaminants into the freshwaters of the state.

Section 372.98, F.S., “Possession of nutria; license; inspection; penalty for violation” (Bill Section 206):

This provision of statute prohibits the release of nutria in the state, sets a fee to possess nutria in captivity, requires secure housing of nutria pursuant to FWCC regulations, allows FWCC to inspect such facilities, and establishes a penalty. Current Class III captive wildlife rules in Rule Chapter 68A-6, F.A.C., adequately provide for the control of nutria. According to the FWCC, the \$25 permit authorized in subsection (2) has not been issued due to lack of demand.

Section 372.981, F.S., “Regulation of importation of caiman” (Bill Section 206):

This provision of statute directs the FWC to adopt rules to control the importation of caiman. Current Class III captive wildlife rules in Rule Chapter 68A-6, F.A.C., adequately provide for the control of caimans. The statute is unnecessary and the subject is within FWCC’s authority under Article IV, Section 9 of the Florida Constitution.

Section 372.993, F.S., “Land-based commercial and recreational fishing activities; legislative findings and purpose; definitions; legal protection; local ordinances; prohibited activity” (Bill Section 206):

This provision of statute duplicated in s. 370.1103, F.S., and remains in the CS as 379.2351, F.S., (CS Section 56).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The CS does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Environmental Preservation and Conservation Committee on April 22, 2008

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B. Amendments:

None.