

STORAGE NAME: h2145.wrm

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 2145 (formerly PCB WRM 99-01a)

RELATING TO: Fish & Wildlife Conservation Commission

SPONSOR(S): Committee on Water & Resource Management

COMPANION BILL(S): SB 864 (s) by Senate Natural Resources

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0

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I. SUMMARY:

HB 2145 addresses the requirements of Constitution Revision #5 approved by a 72-percent to 28-percent margin of Florida voters during the November 3, 1998 General Election. It abolishes the Game & Fresh Water Fish Commission and the Marine Fisheries Commission, and transfers their responsibilities to the Fish and Wildlife Conservation Commission (FWCC) effective July 1, 1999.

The bill also moves certain divisions, bureaus, and offices from the Florida Department of Environmental Protection to the FWCC and to the Department of Agriculture and Consumer Services (DACs). FTE's, fund balances, equipment and rules associated with these divisions, bureaus, and offices of DEP also are transferred to the FWCC and to DACs.

HB 2145 has a substantial fiscal impact that can not be accurately determined at this time. Fiscal estimates indicate that the FWCC will have an FY 1999-2000 budget of more than \$150 million and employ more than 1,700 FTEs. The bill directs the FWCC to reduce its operating budget by 10 percent over a two-year period.

HB 2145 takes effect on July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Agency Background:

The **Florida Game & Fresh Water Fish Commission (GFC)** was created in 1974 when voters passed Article IV, Section 9 to the Florida Constitution. The GFC consists of five commissioners appointed by the Governor and confirmed by the Florida Senate, and an executive director serving at the pleasure of the board.

The GFC exercises the regulatory and executive powers of the state over wild animal life, including non-marine endangered species, and freshwater aquatic life. The Legislature sets all fees for the taking of wild animal life and fresh water aquatic life, and also sets penalties for the violation of GFC regulations. For FY 1998-1999, the GFC has a budget of \$87,468,601, and 990 FTE's.

The GFC's rulemaking authority with regard to wild animal life and fresh water aquatic life is generally derived from its constitutional authority. The GFC uses the Uniform Rules of Procedure, which are similar to chapter 120, Florida Statutes, the Administrative Procedures Act (APA). Rules promulgated by the GFC under its constitutional authority can not be challenged through the APA's administrative hearing process, but can be challenged in circuit court. Rules promulgated by the GFC under its statutory authority are fully subject to the APA.

The Florida **Marine Fisheries Commission (MFC)** was created by the Legislature in 1983. The MFC consists of seven commissioners appointed by the Governor and confirmed by the Florida Senate, and an executive director employed by the commission. For FY 1998-1999, the MFC has a budget of \$829,652, and 10 FTE's.

The MFC has full rulemaking authority over marine life with the exception of endangered species. All rules of the MFC are subject to the approval of the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Fund. MFC rulemaking authority includes, but is not limited to, such items as gear specifications, prohibited gear, bag limits, size limits, and protected species. MFC rulemaking authority does not extend to endangered species (currently regulated by DEP), certain marine aquaculture products (currently regulated by DACS), and regulation of fishing gear in residential, manmade saltwater canals (currently under the authority of the Legislature). Current rules of the MFC can be challenged under the APA.

Finally, two divisions within the **Department of Environmental Protection (DEP)** have responsibility for marine research and law enforcement.

DEP's Division of Marine Resources (DMR) is responsible for managing, preserving and protecting Florida's coastal and marine resources, including saltwater plants and animals, fish and shellfish, endangered and threatened species, critical marine habitat and coastal uplands. The division's major duties are coastal and marine resource management and marine resource regulation. Management activities include research and monitoring of saltwater species and habitat, and management of state upland and submerged lands. The division is also responsible for protecting manatees, right whales, and marine turtles. The division contains four bureaus and one office.

As an agency of the state, the DMR is subject to the APA when promulgating rules in the performance of its duties. For FY 1998-1999, the DMR, including all bureaus and offices, has a budget of \$43,093,084 and 399 FTE's.

Specifically within DMR:

- o The Bureau of Marine Resources & Regulation promotes responsible use and enhancement of marine resources through coordinated management activities that protect consumers and the environment. The bureau coordinates three sections: the Aquaculture and Shellfish Development Section, Shellfish Environmental Assessment Section, and Processing Plant Inspection Section. For FY 1998-1999, the Bureau of Marine Resources & Regulation has a budget of \$3,211,834, 41 FTE's, and 5 OPS staff.

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- o The Florida Marine Research Institute provides scientific data and guidance in the protection, conservation, and management of Florida's marine and coastal resources through effective research and technical knowledge. For FY 1998-1999, the FMRI has a budget of \$17,912,209, 211.5 FTE's, and 153 OPS staff.
- o The Office of Fisheries Management and Assistance Services administers and coordinates programs related to commercial saltwater fishing. It also responds to public requests for information on saltwater fishing licenses and regulations, and provides technical assistance and funding to local governments and non-profit organizations for the development and monitoring of marine artificial fishing reefs. For FY 1998-1999, the Office of Fisheries Management and Assistance Services has a budget of \$1,808,412, 25 FTE's, and 1 OPS staff.
- o The Bureau of Protected Species Management promulgates boat speed zone rules for manatee protection; works with local governments to develop manatee protection strategies; reviews environmental permits and provides technical assistance to DEP staff on habitat regulatory actions; implements recovery tasks for manatees, right whales, and marine turtles; and handles education outreach efforts. For FY 1998-1999, the Bureau of Protected Species Management has a budget of \$2,293,041, 19 FTE's, and 11 OPS staff.
- o Office of the DMR Director provides policy guidance on marine resource issues; represents Florida on federal and state commissions and advisory councils; reviews natural resources damage settlements and special use requests for approval; and handles budget management and grant coordination. For FY 1998-1999, the Office of the Director has a budget of \$7,369,760, 16.5 FTE's, and 2 OPS staff.
- o The Bureau of Coastal and Aquatic Managed Areas' mission is to protect, conserve and manage Florida's coastal and aquatic ecosystems through environmental education, scientific research, environmental monitoring, and partnerships. The bureau manages the state's buffer preserves, aquatic preserves, national estuarine research reserves, and co-manages the Florida Keys National Marine Sanctuary. For FY 1998-1999, the Bureau of Coastal and Aquatic Managed Areas has a budget of \$10,422,838, 86 FTE's, and 73 OPS staff.

DEP's Division of Law Enforcement provides extensive support for DEP including enforcement of saltwater fisheries rules and regulations, marine mammal protection and enforcement, seafood quality control and enforcement, enforcement of boating safety regulations, patrol of Florida's marine waters and state parks, and responding to emergency situations. Within the division, enforcement officers are divided into three main categories: Uniform Patrol (which contains the Marine Patrol officers), Boating Safety, and the Park Patrol. The division contains three bureaus and two offices. As an agency of the state, the division is subject to the APA, when promulgating rules in the performance of its duties. For FY 1998-1999, the total division budget is \$48,853,352 with 616.5 FTE's.

Specifically within the division:

- o The Bureau of Environmental Law Enforcement is the primary entity for enforcing marine resource and boating safety laws. Activities include fisheries enforcement, environmental crimes, responding to emergency incidents, enforcement services within the state park system, and boating safety. For FY 1998-1999, the Bureau has a budget of \$28,014,358, and 492 FTE's assigned as follows:

- Park Patrol - 77 FTE (Sworn)
 - Uniform Patrol - 85 FTE (Sworn)
 - Boating Safety - 179 FTE (Sworn)
 - Inspections - 39 FTE (Sworn)
 - Aviation - 10 FTE (Sworn)
 - Investigations - 26 FTE (Sworn)
 - Non-Sworn Uniform Patrol & Boating Safety Duty Officers - 40 FTE
 - Support Staff - 36 FTE (whole Bureau)

- o The Bureau of Administrative Support is responsible for the functions of budget management, grants management, data management, and personnel management. For FY 1998-1999, the Bureau of Administrative Support has 16 FTE's, no sworn enforcement positions, and a budget of \$ 7,574,593.
- o The Bureau of Operational Support is responsible for division operations including aircraft, recruitment and outreach, coast and park watch programs, maintenance, and training. For FY 1998-1999, the Bureau of Operational Support has 42.5 FTE's, including 8 sworn enforcement positions, and a budget of \$ 4,494,232.
- o The Bureau of Emergency Response handles emergency incidents such as oil spills, and hazardous material leaks on land or in the water, that present an imminent hazard or threat to public health or safety, or to the environment. For FY 1998-1999, the Bureau of Emergency Response has a budget of \$4,769,008 and 28 FTE's, of which none are sworn enforcement positions.
- o The Office of Enforcement Planning & Policy Coordination provides division-wide planning and coordination in boating safety education, fisheries enforcement, rule development, waterway permitting, accreditation, and problem-solving initiatives. The FY 1998-1999, the Office of Enforcement Planning & Policy Coordination has a budget of \$650,907 and 10 FTE's, of which four FTE's are sworn enforcement positions.
- o Offices of the Division Director and Assistant Director provide overall policy and enforcement philosophy for the division, and coordinate legislative and legal issues, internal investigations and professional compliance reviews. For FY 1998-1999, the Division Director and Assistant Director have 10 FTE's and a budget of \$ 2,148,913.
- o The Office of Environmental Investigations provides criminal environmental enforcement and investigations to protect the state's air, drinking water and natural resources. For fiscal year 1998-1999, the Office of Investigations has 22 FTE's and a budget of \$1,201,341.

Passage of Constitution Revision #5

Adopted by the voters in the November 3, 1998, General Elections, Revision #5 to the Florida Constitution amends Article IV, Section 9 to require that seven commissioners be appointed to the newly created Fish & Wildlife Conservation Commission (FWCC). The commissioners are to be appointed by the Governor and confirmed by the Senate, and will serve staggered 5-year terms. As amended, Article IV, Section 9 requires that the FWCC exercise the regulatory and executive powers of the state over wild animal life, freshwater aquatic life, and marine life.

Article IV, Section 9, as amended, also requires the Legislature to set all license fees for the taking of wild animal life, freshwater aquatic life, and marine life, and to set the penalties for violation of FWCC rules governing the same. The FWCC is required to establish an "adequate due process" procedure to exercise its regulatory and executive duties. The Legislature is empowered to enact general laws in aid of the FWCC, but is specifically prohibited from enacting special laws or general laws of local application with regard to hunting and fishing.

The Legislature is granted authority over the FWCC's planning, budgeting, personnel management, and purchase powers, and is required to appropriate revenues to the FWCC from license fees for the taking of wild animal life/fresh water aquatic life for the management, protection and conservation of that life. The Legislature also is required to appropriate revenues derived from license fees relating to marine life for the management, protection and conservation of marine life as provided by law.

Revision #5 creates Section 22 to Article XII of the Florida Constitution. This new section provides that the initial members of the FWCC shall be the existing members of the GFC and the MFC who are serving terms on those commissions on the effective date of the amendment, July 1, 1999. The members may serve the remainder of their respective terms. New appointments to the FWCC may not be made until fewer than seven of the initial commission members remain.

Section 22 also provides that the jurisdiction of the MFC existing on March 1, 1998, be transferred to the FWCC effective July 1, 1999, and prohibits the expansion of that jurisdiction except by general law. The rules of the GFC and the MFC in effect on July 1, 1999, shall become rules of the FWCC until superseded or amended. Finally, effective July 1, 1999, the GFC and the MFC are abolished.

B. EFFECT OF PROPOSED CHANGES:

HB 2145 would:

- Create the Fish and Wildlife Conservation Commission (FWCC), and provide a mission, purpose and responsibilities for the Commission.
- Establish administrative units within the FWCC.
- Transfer the following bureaus and offices from DEP's Division of Marine Resources to the FWCC:
 - Florida Marine Research Institute (FMRI)
 - Office of Fisheries Management and Assistance Services
 - Bureau of Protected Species Management
- Establish the FMRI as a separate budget entity within the FWCC and assign it to the Office of the Executive Director for administrative purposes.
- Transfer the following bureau from DEP's Division of Marine Resources to the Florida Department of Agriculture and Consumer Services:
 - Bureau of Marine Resource Regulation & Development
- Transfer the following bureaus from the DEP's Division of Law Enforcement to the FWCC:
 - Bureau of Administrative Services
 - Bureau of Operational Support
 - Bureau of Environmental Law Enforcement
 - Office of Enforcement Planning and Policy Coordination
- Create an Office of Environmental Law Enforcement assigned to DEP's Office of the Secretary, and rename the Division of Marine Resources as the Division of Resource Assessment and Management.
- Provide trust funded revenue sources, primarily fishing license revenues and boating safety revenues, to the FWCC.
- Require the FWCC to implement an adequate due process system for developing and implementing rules under its constitutional authority, and require it to follow the APA when developing and implementing rules under its statutory authority.
- Provide that comments submitted by the FWCC on permits, licenses, or authorizations must be made within a specified period of time, and must be based on credible, factual scientific data. Comments provided by the Commission are not binding on a permitting agency. In any action where the Commission may be joined as a party, the Commission must bear only the actual cost of defending the validity of its scientific data.
- Prohibit DEP and the FWCC from creating new divisions, bureaus, or offices within either entity without prior legislative authorization.
- Require the FWCC to implement budget reductions of 5 percent in FY 2000-2001 and 5 percent in FY 2001-2002.
- Provide for a working group to develop a recommended plan for the transfer or joint use of existing facilities between the DEP, the FWCC, and where appropriate, the DACS.
- Provide for the appointment by the Governor of an appropriate staff member to assist the FWCC and the DEP in implementing adjustments to the operating budgets of either agency, as necessary. No adjustments may be made without consultation with appropriate substantive and fiscal committee staffs of the House and Senate.

- Abolish the GFC and the MFC, effective July 1, 1999.
- Provide DEP with law enforcement authority.
- Provide for the transfer of certain gas tax revenues to the FWCC.
- Provides that fees for certain speciality license plates be deposited with trust funds at the FWCC.
- Transfer rulemaking authority for marine life from the MFC to the FWCC.
- Transfer authority for the issuance of special activity licenses from DEP to the FWCC and DACS.
- Transfer authority for the regulation of marine mammals from DEP to the FWCC.
- Transfer authority for certain endangered and threatened species from the GFC to the FWCC.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. HB 2145 specifies that the FWCC will have to follow the Chapter 120, Florida Statutes, Administrative Procedures Act, when any party's substantial interests will be affected by an activity proposed to be conducted by the FWCC in the performance of its statutory duties or responsibilities.

HB 2145 also specifies that the FWCC will implement a system of adequate due process to be accorded to any party, as defined in s. 120.52, Florida Statutes, when substantial interests will be affected by an activity proposed to be conducted by the FWCC in the performance of its constitutional duties or responsibilities.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Governor is given the responsibility of creating a working group to develop a recommended plan addressing the transfer or joint use of existing facilities between the DEP and the FWCC, and where appropriate, the DACS.

The Governor must also assign an appropriate staff person from the Office of Planning & Budgeting to assist the FWCC and the DEP with implementing any necessary adjustments to the operating budgets of the FWCC and the DEP.

Also, the FWCC and DEP are directed to develop and adopt an operating agreement and an annual work plan to accomplish responsibilities shared between the agencies. The FWCC is directed to respond to calls from DEP for emergency assistance.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The responsibilities, costs, and powers of the MFC, the GFC, and certain entities within DEP's Division of Law Enforcement and Division of Marine Resources are transferred to the FWCC.

The responsibilities, costs, and powers of the Bureau of Marine Resource Regulation & Development with the Division of Marine Resources at DEP are transferred to DACS.

- (2) what is the cost of such responsibility at the new level/agency?

Based on the current fiscal year budgets of the entities now performing these tasks, the cost of performing MFC, GFC, and certain DEP responsibilities transferred to the FWCC can be estimated at approximately \$150 million. This figure will be adjusted to accommodate the FY 1999-2000 budget requests of all affected agencies.

Based on the current fiscal year budget of the BMRRD, the cost of performing the responsibilities transferred from the BMRRD to DACS is approximately \$3.2 million. This figure will be adjusted to accommodate the FY 1999-2000 budget requests of affected agencies.

- (3) how is the new agency accountable to the people governed?

The FWCC is created pursuant to the passage of Revision #5 to the Florida Constitution last November. As a constitutional entity, the FWCC is subject to the provisions of Section 24, Article I, of the Florida Constitution, providing access to public records and meetings.

In performance of its constitutional duties, the FWCC is bound by provisions of Revision #5 requiring that rules of the GFC and the MFC in effect on July 1, 1999, will become rules of the FWCC until superseded or amended by the FWCC. Pursuant to Rule 39-2.009, F.A.C., the GFC adopted the Uniform Rules of Procedure, Chapter 28, F.A.C. as its procedural rules. Accordingly, until the FWCC establishes an "adequate due process", or amends its rules, the FWCC also will be subject to the Uniform Rules of Procedure when noticing public meeting, hearings, workshops, and development of rules.

In performance of statutory duties assigned by the Legislature, the FWCC is subject to the provisions of Chapter 119, Florida Statutes, governing public records, and Chapter 120, Florida Statutes, governing the development and implementation of rules.

Under Chapter 216, F.S., the FWCC also will be subject to performance-based budgeting measures.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The FWCC will be funded in part by saltwater fishing license and permit fees, and hunting and freshwater fishing license and permit fees.

In addition, the Bureau of Marine Resource Regulation and Development, which is being transferred to the DACS, is funded in part by saltwater products license fees, special activity licenses, the Apalachicola Bay Oyster Harvesting License, the wholesale and retail saltwater products dealers license, and the Apalachicola Bay Oyster Surcharge.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends sections 20.255, 206.606, 320.08058, 327.02, 327.25, 327.26, 327.28, 327.30, 327.35215, 327.395, 327.41, 327.43, 327.46, 327.48, 327.70, 327.71, 327.731, 327.74, 327.803, 327.804, 327.90, 328.01, 339.281, 370.025, 370.06, 370.0608, 370.063, 370.071, 370.12, 370.26, 372.072, 372.0725, 372.073, and 370.093, F. S. Creates section 20.331, F.S. Repeals sections 20.325, 370.026, and 370.027, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 20.331, F.S. Recognizes the Fish and Wildlife Conservation Commission as an entity equal to any department created under chapter 20, Florida Statutes, and establishes as a mission of the FWCC the management, protection, conservation, maintenance, improvement and extension of Florida's marine life, freshwater aquatic life, and wildlife resources.

Charges the FWCC with the responsibility of ensuring that these resources and their habitats are managed and conserved for optimum sustainability, and that the use and development of these resources is in the best interests of all of Florida's citizens. Also charges the FWCC with exercising the executive and regulatory authority of the state over marine life, freshwater aquatic life, and wild animal life in accordance with the provisions of Constitution Revision 5.

Provides that the head of the FWCC shall be the Commission whose members are appointed by the Governor and confirmed by the Senate.

Establishes administrative units within the FWCC including a Division of Law Enforcement, with a Bureau of Marine Enforcement; and a Division of Fisheries, with a Bureau of Marine Fisheries and a Bureau of Freshwater Fisheries.

Authorizes the FWCC to establish the same bureaus and offices as exist within the GFC, but prohibits the establishment of additional bureaus or offices by the FWCC without legislative authority. Establishes the Florida Marine Research Institute as an entity within the FWCC, and provides a mission statement for the Institute.

Authorizes the Commission to employ an Executive Director to be confirmed by the Senate at the legislative session immediately following employment. Also authorizes the Commission to assign to its divisions the powers, duties, responsibilities and functions as are necessary to fulfill their mission. Requires officers within the Division of Law Enforcement at the FWCC to assist in the enforcement of general environmental laws remaining under the responsibility of DEP.

Requires that the Commission implement a system of adequate due process procedures to be accorded to any party whose substantial interests will be affected by any action of the Commission. The Legislature encourages the Commission to incorporate the provisions of s. 120.54(3)(c) when adopting rules in the performance of its constitutional duties.

Requires that the provisions of chapter 120, Florida Statutes, shall be accorded to any party whose substantial interests will be affected by any action of the Commission in the performance of its statutory duties.

Provides that comments submitted by the Commission to a permitting agency on proposed permit, licenses, or authorizations must be received by the permitting agency within a specified time, and must be based on credible, factual scientific data. Comments provided by the Commission are not binding on the permitting agency. The Commission must bear only the actual cost of defending the validity of its scientific data when joined as a party in any action against a permitting agency.

Section 2: Transfers the GFC to the FWCC by a type two transfer.

Section 3: Transfers the MFC to the FWCC by a type two transfer.

Section 4: Transfers the Bureau of Environmental Law Enforcement, the Bureau of Administrative Support, the Bureau of Operational Support, and the Office of Enforcement Planning and Policy Coordination, within the Division of Law Enforcement at the DEP, and the positions assigned to those bureaus and offices as of February 1, 1999, to the FWCC by a type two transfer. Exceptions to the transfer include the administrative support positions and equipment necessary to support the Office of Environmental Investigations and the Bureau of Emergency Response remaining at DEP; all sworn Investigator I and Investigator II positions within the Division of Law Enforcement at DEP; all sworn positions assigned to the Florida Park Patrol as of February 1, 1999; and any sworn positions assigned to the Office of the Executive Director as of February 1, 1999.

Establishes the Legislature's intent that the sworn positions assigned to the Uniform Patrol, Inspections, and Boating Safety program components of the Division of Law Enforcement at DEP are assigned to the Bureau of Marine Enforcement. Provides that sworn positions assigned to the Aviation component of the Division of Law Enforcement at DEP are assigned to the Division of Law Enforcement at the FWCC. Provides that all boating safety responsibilities are transferred from DEP to the FWCC.

Section 5: Transfers the Office of Fisheries Management and Assistance Services (OFMAS), the Bureau of Protected Species Management (BPSM), and the Florida Marine Research Institute (FMRI), together with their assigned positions on February 1, 1999, to the FWCC by a type two transfer. Establishes as legislative intent the assignment of the OFMAS to the Bureau of Marine Fisheries, the assignment of the BPSM to the Office of Environmental Services (currently within the GFC) and the establishment of the FMRI as a separate budget entity assigned to the Office of the Executive Director of the FWCC for administrative purposes.

Section 6: Assigns the Office of Environmental Investigation and the Bureau of Emergency Response to the Office of Environmental Law Enforcement within the Office of the Secretary at DEP.

Section 7: Transfers the Bureau of Marine Resource Regulation and Development (BMRRD) within the Division of Marine Resources at DEP, and the positions assigned to the bureau effective February 1, 1999, to the Department of Agriculture and Consumer Services (DACS) by a type two transfer. Assigns the Processing Plant Inspection Section and the Shellfish Environmental Assessment Section of the BMRRD at DEP to the Division of Food Safety within DACS. Requires that water quality data collected by DACS be shared with the Division of Water Resource Management (formerly the Division of Water Facilities) at DEP.

Assigns the Aquaculture and Shellfish Development Section of the BMRRD at DEP to the Division of Marketing at DACS.

Section 8: Amends s. 20.255, F.S., 1998 Supplement, to create an Office of Environmental Law Enforcement and assigns it to the Office of the Secretary at DEP. Abolishes the Division of Law Enforcement at DEP. Renames the Division of Marine Resources as the Division of Resource Assessment and Management. Renames the Division of Water Facilities as the Division of Water Resource Management. Prohibits DEP from creating new divisions, bureaus, or offices without legislative authority. Provides DEP with law enforcement authority.

Section 9: Provides that all revenues from the sale of saltwater permits and licenses will be appropriated to the FWCC, except where otherwise specified in law.

Section 10: Provides that all revenues from the sale of permits and licenses for hunting and the taking of wildlife and freshwater aquatic life will be appropriated to the FWCC, except where otherwise specified in law.

Section 11: Directs the FWCC to cut operating expenses by 5 percent in fiscal year 2000-2001, and by an additional 5 percent in fiscal year 2001-2002, using as a base the appropriations received for fiscal year 1999-2000.

Section 12: Provides that the Executive Office of the Governor shall appoint a working group comprised of three representatives each from DEP and the FWCC to develop a recommended plan addressing the transfer or shared use of building, regional offices, and other facilities used or owned by DEP to conduct activities for which the FWCC will be responsible after July 1, 1999. The working group will include three representatives of DACS to assist in developing the portion of the recommended plan that addresses the transfer or shared use of facilities currently used by the Bureau of Marine Resource Regulation and Development at DEP.

Provides that the recommended plan is due to the Governor, the Senate President, and the House Speaker, on March 1, 2000. Directs the Executive Office of the Governor to consider the recommended plan when determining which facilities will be transferred between DEP, DACS, and the FWCC, and which facilities will be shared.

Section 13: Directs the Governor to appoint a staff member from his Office of Planning and Budgeting to assist with the implementation of budget adjustments. Provides that any adjustments to the operating budgets of the FWCC or the DEP necessary due to the implementation of this act must be made with consultation from the appropriate House and Senate substantive and fiscal committee staffs.

Section 14: Directs the executive director of the FWCC and the secretary of DEP to develop and adopt an operating agreement and an annual work plan to accomplish shared responsibilities. The operating plan must be completed no later than January 31, 2000. Until the operating plan is completed, the FWCC is directed to respond to DEP's request for emergency assistance. The work plan must be submitted to the Governor, the House Speaker, and the Senate President, by August 1, 1999. A memorandum of agreement must be developed between DEP and the FWCC detailing the responsibilities of the FMRI to DEP.

Section 15: Amends s. 206.606, F.S., 1998 Supplement, to provide that DEP will receive \$6.30 million in fuel tax revenues to be deposited into the Aquatic Plant Control Trust Fund to be used for aquatic plant management. Provides that the FWCC will receive \$2.50 million in fuel tax revenues to be used for recreational boating activities, and fresh water fisheries management and research.

Section 16: Amends s. 320.08058, F.S., 1998 Supplement, to provide that fees from the sale of the manatee license plate will be deposited into the Save the Manatee Trust Fund at the FWCC to be used for specified purposes.

Section 17: Amends s. 320.08058, F.S., 1998 Supplement, to provide that fees from the sale of the sea turtle license plate will be deposited into the Marine Resources Conservation Trust Fund at the FWCC to be used for specified purposes.

Section 18: Amends s. 327.02, F.S., 1998 Supplement, to define "Commission" as the Fish and Wildlife Conservation Commission.

Section 19: Amends s. 327.25, to provide that antique vessel registration numbers shall be permanently attached to each side of the forward half of a vessel. Provides that the Department of Highway Safety and Motor Vehicles will issue marine turtle stickers.

Section 20: Amends s. 327.26, F.S., to provide that the FWCC shall prepare stickers or emblems signifying support for the Save the Manatee Trust Fund.

Section 21: Amends s. 327.28, F.S., to provide that saltwater products license revenues shall be deposited in the Marine Resources Conservation Trust Fund in the FWCC to be used for marine law enforcement, marine research and statistics development. No more than 25 percent of the revenues shall be transferred to the Florida Saltwater Products Promotion Trust Fund within DACS for marketing and extension services.

Section 22: Amends s. 327.30, F.S., to provide that authority over vessel collisions, accidents, and casualties is transferred from the GFC to the FWCC.

Section 23: Amends s. 327.35215, F.S., 1998 Supplement, to provide that funds collected for failure to submit to approved chemical tests for controlled substances, shall be deposited into the Marine Resources Conservation Trust Fund and the State Game Trust Fund.

Section 24: Amends s. 327.395, F.S., to provide that boater safety identification cards will be issued by the FWCC instead of DEP. Authorizes the commission to adopt rules under chapter 120, F.S., to implementing the boating safety program.

Section 25: Amends s. 327.41, F.S., to provide that the FWCC, instead of DEP, shall adopt rules pursuant to chapter 120, F.S., to adopt rules and regulations governing uniform waterway regulatory markers.

Section 26: Amends s. 327.43, F.S., to provide that the FWCC, instead of DEP, is directed to mark a navigation channel within Silver Glen Run and Silver Glen Springs, located on the western shore of Lake George on the St. Johns River.

Section 27: Amends s. 327.46, F.S., to transfer authority from DEP to the FWCC for the establishment of restricted areas on the waters of the state. The FWCC is granted authority to adopt rules pursuant to chapter 120, F.S., to provide for restricted areas.

Section 28: Amends s. 327.48, F.S. to provide that persons directing the holding of a regatta, tournament, or marine parade or exhibition shall notify the FWCC at least 15 days prior to the event so appropriate safety and navigation arrangements may be made.

Section 29: Amends s. 327.70, F.S., to provide that the FWCC shall enforce the provisions of chapter 327 and chapter 328, Florida Statutes.

Section 30: Amends s. 327.71, F.S., to provide that the FWCC provide temporary exemptions from the provisions of chapter 327, Florida Statutes, in certain circumstances.

Section 31: Amends s. 327.731, F.S., 1998 Supplement, to provide that persons violating the provisions of chapter 327, Florida Statutes, will enroll in, attend, and successfully complete a boating safety course established by the FWCC. Provides that the FWCC may adopt rules pursuant to chapter 120, Florida Statutes, providing for waivers from attending class in certain circumstances.

Section 32: Amends s. 327.74, F.S., to provide that the FWCC will prepare and supply uniform boating citations for distribution to other state law enforcement agencies.

Section 33: Amends s. 327.803 to create the Boating Advisory Council within the FWCC. One representative from the FWCC shall serve as chair of the council. One representative each from DEP, the United States Coast Guard Auxiliary, the United States Power Squadron, and the inland navigation districts will sit on the Council.

Section 34: Amends s. 327.804, F.S., to provide that the FWCC will compile statistics on boating accidents and boating violations.

Section 35: Amends s. 327.90, F.S., to authorize the FWCC to accept any application authorized in chapter 327, Florida Statutes, by electronic or telephonic means.

Section 36: Amends s. 328.01, F.S. to provide that a certificate of inspection from the FWCC and a notarized statement of the builder or its equivalent is acceptable to the DHSMV in making application for initial title of a homemade vessel.

Section 37: Amends s. 339.281, F.S., to provide that damage to transportation facilities caused by vessels shall be reported to the nearest FWCC officer.

Section 38: Amends s. 370.025, F.S., 1998 Supplement, to provide the FWCC with full rulemaking authority over marine life with specific exceptions.

Section 39: Repeals s. 370.027, F.S..

Section 40: Amends s. 370.06, F.S., 1998 Supplement, to provide that the authority to issue special activity licenses is transferred to the FWCC and, in certain circumstances, to DACS. Provides that revenues from the Apalachicola Bay Oyster Harvesting License will be deposited into the General Inspections Fund at DACS to be used for specified purposes.

Section 41: Amends s. 370.0608, F.S., 1998 Supplement, to provide that saltwater fishing license revenues shall be deposited into the Marine Resources Conservation Trust Fund for specified purposes of the FWCC.

Section 42: Amends s. 370.063, F.S., to provide that authority over special recreational crawfish licenses is transferred from DEP to the FWCC. Revenues from the licenses will be deposited into the Marine Resources Conservation Trust Fund to be used by the FWCC for specified purposes.

Section 43: Amends s. 370.071, F.S., to transfer the authority to regulate shellfish processors from DEP to DACS.

Section 44: Amends s. 370.12, F.S., 1998 Supplement, to transfer authority for the regulation of marine mammals from DEP to the FWCC. Provides the FWCC with rulemaking authority under chapter 120, F.S.

Section 45: Amends s. 370.26, F.S., 1998 Supplement, to provide that DACS will act as a clearinghouse for aquaculture applications and serve as a liaison between the FWCC, DEP, and the water management districts. Provides that aquaculture permitting duties for experimental technology will remain at DEP.

Section 46: Amends s. 372.072, F.S., to transfer authority for certain endangered and threatened species from the GFC to the FWCC.

Section 47: Amends 372.0725, F.S., to provide penalties for killing or wounding endangered or threatened species, or species of special concern, as designated by the FWCC.

Section 48: Amends s. 372.073, F.S., to transfer the Endangered and Threatened Species Reward Program from the GFC to the FWCC.

Section 49: Amends s. 370.093, F.S, to transfer authority governing the illegal use of nets from the MFC to the FWCC.

Section 50: Abolishes the GFC.

Section 51: Abolishes the MFC.

Section 52: Directs the Division of Statutory Revision in the Office of Legislative Services to prepare a reviser's bill for introduction at the 2000 Regular Session to make conforming changes to the Florida Statutes to reflect the passage of Revision #5 to the State Constitution in November, 1998.

Section 53: Provides a severability clause stating that provisions of the bill found to be invalid will not affect provisions found to be valid.

Section 54: Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

HB 2145 transfers 255.50 FTE's and \$21,983,652 from the Division of Marine Resources at DEP to the FWCC, based on the 1998-1999 current year's budget.

HB 2145 transfers 41 FTE's and \$3,211,834 from the Division of Marine Resources at DEP to the DACS, based on the 1998-1999 current year's budget.

HB 2145 transfers 483.5 FTE's and \$36,604,319 from the Division of Law Enforcement at DEP to the FWCC, based on the 1998-1999 current year's budget.

HB 2145 transfers 990 FTE's and \$87,468,601 from the GFC to the FWCC, based on the 1998-1999 current year's budget.

HB 2145 transfers 10 FTE's and \$829,652 from the MFC to the FWCC, based on the 1998-1999 current year's budget.

DMR - DEP / FUNDS TRANSFERRED TO FWCC BY SOURCE - FY 1998-1999

General Revenue	\$ 3,721,949
Coastal Protection TF	\$ 1,826,961
Ecosystem Management TF	\$ -0-
CARL TF	\$ -0-
LATF	\$ -0-
Marine Resources Conservation TF	\$ 9,746,078
Grants & Donations TF	\$ 2,340,144
Save the Manatee TF	\$ <u>4,348,520</u>
TOTAL	\$ 21,983,652

DLE-DEP / FUNDS TRANSFERRED TO FWCC BY SOURCE - FY 1998-1999

General Revenue	\$ 20,032,375
Coastal Protection TF	\$ 5,508,642
Water Quality Assurance TF	\$ -0-
Inland Protection TF	\$ -0-
Marine Resources Conservation TF	\$ 8,108,732
Grants & Donations TF	\$ <u>2,954,570</u>
TOTAL	\$ 36,604,319

BMRRD - DEP / FUNDS TRANSFERRED TO DACS BY SOURCE - FY 1998-1999

General Revenue	\$ 2,337,455
Marine Resources Conservation TF	\$ <u>874,379</u>

TOTAL \$ 3,211,834

GFC / FUNDS TRANSFERRED TO FWCC BY SOURCE - FY 1998-1999

General Revenue	\$ 29,987,073
FL Panther Research & Management TF	\$ 5,281,948
Land Acquisition TF	\$ 2,226,632
Preservation 2000 TF	\$ 8,700,000
Non-Game Wildlife TF	\$ 6,457,052
State Game TF	\$ 34,815,896

TOTAL \$ 87,468,601

MFC / FUNDS TRANSFERRED TO FWCC BY SOURCE - FY 1998-1999

Marine Resources Conservation TF	\$ 829,652
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TOTAL \$ 829,652

TOTAL OF ALL FUNDS TRANSFERRED \$ 150,098,058

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, but HB 2145 does require that the FWCC reduce its operating budget by 5 percent in FY 2000-2001, and by 5 percent in FY 2001-2002.

4. Total Revenues and Expenditures:

An estimated \$150 million will be transferred to the FWCC. DACS will see an increase in its budget of approximately \$3.2 million due to the transfer of the BMRRD.

DEP will see a decrease in its budget of approximately \$62 million, not including the interest earned on the MRCTF and the administrative fees retained by DEP in administering the MRCTF, if any.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Certain private interests who previously utilized the administrative hearing process to challenge marine fisheries rules will now have to challenge rules through the court system which may result in higher costs to the challenger.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. **FISCAL COMMENTS:**

Part of the difficulty in determining at this time a more accurate depiction of the new agency's budget, and the costs to the affected agencies, is how DEP, in particular, categorizes its revenues, expenditures and FTE's. In accordance with state laws on performance-based program budgeting (PB²), DEP develops its budget along program components, which do not match up with its organizational structure. While an excellent strategy for gauging an agency's effectiveness in achieving program goals, PB² offers special challenges to those seeking to reorganize or merge agencies along a traditional organizational structure. Yet, House staff has been making progress, with the agencies' assistance, in sorting out the FTE's and the funds affected by the proposed transfers. House and agency staff will continue work on the funding issues that remain unresolved.

In addition, it is worth noting that the Legislature is not required to appropriate marine license fees to the FWCC. All license fees relating to marine life and not just "taking" fees must be appropriated by the Legislature, and revenues appropriated by the Legislature for the management, protection and conservation of marine life shall be as provided by law, which may allow the Legislature to change the current percentage allocations, or appropriate revenues to other state agencies.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The mandates provision is not applicable to HB 2145 because the PCB does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

HB 2145 does not reduce the revenue-raising authority of counties or municipalities.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

HB 2145 does not reduce the state tax revenues shares with counties or municipalities.

V. COMMENTS:

Adequate Due Process

The FWCC is required to establish procedures ensuring "adequate due process" in the performance of its regulatory and executive functions pursuant to the provisions of Revision #5. The amendment does not establish what "adequate due process" is or what it should be. In meetings among legislative staff, the affected agencies, and public interest groups, some interests believe the Legislature should provide the FWCC with a definition of "adequate due process". Other interests believe that in providing a definition, the Legislature will overstep its authority and the courts will intervene. Still others raise the question of separation of powers.

Under the Administrative Procedures Act, Chapter 120, Florida Statutes, state agencies promulgating rules must provide adequate notice, an opportunity to participate and be heard, and an appeals process. The GFC's legal staff believes that the FWCC should adopt the Uniform Rules of Procedure, Chapter 28-101, F.A.C., which is similar in many respects to the APA. Likewise, GFC's legal staff believes notices of FWCC meetings, workshops, rule development and rulemaking should follow Chapter 120, Florida

Statutes, and that the FWCC should comply with Chapter 119, Florida Statutes, the Public Records Act, with respect to all records.

DEP's Division of Law Enforcement believes that "adequate due process" as exercised by the FWCC must contain adequate notice, an opportunity for affected parties to be heard, and rational decision-making by an impartial board. DEP's Division of Marine Resources and the MFC recommend that the FWCC follow a process similar to the APA in developing "adequate due process."

Among the interest groups, wildlife interests believe that the Legislature can not determine "adequate due process" on behalf of the FWCC. Sporting interests believe that Legislature can and should define "adequate due process" because no governmental entity should have unconditional authority or no accountability. Commercial fishing interests believe that "adequate due process" is the most important issue to be addressed by the FWCC and that the Legislature can not provide a definition, but can and must provide guidance in the development process. Regulated interests suggest a process similar to the APA with adequate presentation time for speakers, a consistency between the constitutional and statutory processes, and a process that is user-friendly.

Commission Appointments

Section 22, Article XII, Florida Constitution, provides that the initial members of the FWCC shall be the existing members of the GFC and the MFC serving on those commissions on July 1, 1999. The commissioners are allowed to serve the remainder of their terms but no new appointments to the FWCC can be made until fewer than seven of the initial commission members remain.

The MFC consists of seven commissioners appointed by the Governor and confirmed by the Senate. As of this date, Governor Bush has named three appointees who are awaiting confirmation by the Senate. The GFC consists of five Commissioners appointed by the Governor and confirmed by the Senate. As of this date, Governor Bush has named one appointee who is awaiting confirmation by the Senate.

Should all four appointments be confirmed during this year's general legislative session, no new appointments to the FWCC can be made until August, 2001, when the Commission will be reduced to 6 members due to attrition.

Duties of the MFC

General opinion seems to be that Revision #5 provides that the Legislature will lose its exclusive authority to regulate marine life due to provisions that transfer the jurisdiction of the MFC as set forth in statutes on March 1, 1998, to the FWCC. However, the FWCC will be limited only to the authority in effect at that time. More importantly, that authority can not be expanded unless authorized by general law.

Since the MFC did not have rulemaking authority over endangered species, certain marine aquaculture products, and the regulation of fishing gear in manmade saltwater canals on March 1, 1998, the FWCC will have no authority over those issues either unless the Legislature determines it should.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the meeting on March 30, 1999, the Committee on Water & Resource adopted 22 amendments, several of which were substantive in nature and provided for the following:

1. The retention of the Florida Park Patrol at DEP.
2. Clarification of rulemaking guidance and commenting authority for the FWCC.
3. Transfer of the Marine Resources Conservation Trust Fund and the Save the Manatee Trust Fund from DEP to the FWCC.
4. Transfer of responsibilities for issuing special activity licenses from DEP to the FWCC and DACS.
5. Clarification of the statutory duties of the FWCC with regard to endangered marine species as provided in chapter 370, and endangered and threatened species as provided in chapter 372.
6. Transfer of \$1.25 million in boating related funding from DEP to the FWCC.

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VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

Karon A. Molloy

Joyce Pugh