

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

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

Proposal #: P 91

Relating to: GENERAL PROVISIONS, Natural resources and scenic beauty

Introducer(s): Commissioner Thurlow-Lippisch

Article/Section affected: Article X

Date: December 6, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	DR	

I. SUMMARY:

This proposal would prohibit oil drilling for exploration and extraction in specified coastal waters. Florida law defines “coastal waters” as waters of the Atlantic Ocean or the Gulf of Mexico with the jurisdiction of the state.¹ The term "coastline" as used in Article X, section 16(3), Florida Constitution, means the line where, at low water, the shore along the Florida coast comes in direct contact with the open sea.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Prior to the 1930s, there was little need to establish states' boundaries in the open sea. It was taken as a routine matter that a state owned title to the submerged lands beneath the open sea and waters of the Great Lakes to the boundary of the state, and held these lands in trust for the people of the state with the authority to regulate such matters as fishing .² The discovery of oil beneath submerged lands intensified interest in establishing states' boundaries and in determining ownership of submerged lands, and, thus, the oil within those boundaries. The question was a significant one because the United States claimed all the minerals beneath the submerged lands.³ In 1947 the United States Supreme Court ruled that, as against California, the United States possessed paramount rights in the submerged lands of the Pacific Ocean seaward of the low-

¹ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0373/Sections/0373.019.html

² *Illinois Central Railroad Company v. State of Illinois*, 146 U.S. 387 (1892).

³ *United States v. State of California*, 332 U.S. 19, 22-25 (1947).

water mark on the coast of California.⁴ Subsequent to this decision, the Court found similarly against Louisiana and Texas.⁵

Congress reacted to these decisions by enacting the Submerged Lands Act of 1953.⁶ Congress defined "coast line" to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters[.]"⁷ Congress then definitively confirmed title to the submerged lands and the natural resources beneath such submerged lands to the states⁸ and relinquished all right, title and interest the United States had in these submerged lands.⁹ Finally, Congress defined the seaward boundary of the coastal states as "a line three geographic miles¹⁰ distant from its coast line . . ."¹¹ Congress allowed any state to extend its seaward boundary beyond the three geographic miles if it had proof of such a boundary.

Article X, section 16 of the Florida Constitution establishes the following definitions:

"A. 'Coastline' is the low water line that meets the shore along the coast of Florida which is in direct contact with the open sea. A coastline can never begin in open water; a coastline, in plain terms, is where the water meets the land.

B. 'Florida waters' are those waters in the Atlantic Ocean out to three (3) geographic miles from the coastline and in the Gulf of Mexico out to three (3) marine leagues, or 9 geographic miles, or approximately 10.376 statute miles, from the coastline.

C. 'Nearshore and inshore waters' are those State waters within one (1) geographic mile of the coastline in the Atlantic Ocean and three (3) geographic miles of the coastline in the Gulf of Mexico."

Currently, it is the policy of the state to conserve and protect its natural resources and scenic beauty. It requires that adequate provision must be made by law for the abatement of air and water pollution and of excessive and unnecessary noise, and the conservation and protection of natural resources.¹² The Florida Geological Survey within the Department of Environmental

⁴ Id.

⁵ *United States v. State of Louisiana*, 339 U.S. 699 (1950); *United States v. State of Texas*, 339 U.S. 707 (1950).

⁶ 43 U.S.C. s. 1301, *et.seq*

⁷ Id. s. 1301 (c)

⁸ Id. s. 1301 (a)

⁹ Id. s. 1301 (b)

¹⁰ The term "geographic" mile is often used interchangeably with "nautical" mile. However, a "geographic" mile is slightly longer. A "geographic" mile is the length of one minute of the arc of the equator, or 6,087.08 feet. *American Practical Navigator*, Nathaniel Broditch LL.D. (1981), p. 812. A "nautical" mile is 6,076.11549 feet. Id. at 116. A "statute" or "English" mile (used on land) is 5,280 feet. Thus, a "geographic" or "nautical" mile is 1.15 "statute" or "English" miles.

¹¹ Three geographic miles had long been the recognized seaward boundary of the United States. *See, e.g., Cunard Steamship Company v. Mellon*, 262 U.S. 100, 122-123 (1923). Codification of 43 U.S.C. s. 1312 was the first congressional recognition of this accepted legal fact.

¹² Art. II, § 7(a), Fla. Const.

Protection is vested with the power to issue permits for oil drilling and exploration.¹³ The EPA Region 4 and the state jointly administer underground injection control programs.

In 2006, Congress approved a federal moratorium that bans drilling along almost all of the eastern Gulf of Mexico, an area which extends 125 miles off Florida's west coast.¹⁴ This moratorium also contains a well-control rule that was adopted in the aftermath of the Deepwater Horizon disaster.¹⁵ An executive order signed by the President of the United States in April calls for these regulations to be reconsidered.¹⁶

Proponents of the moratorium cite concerns ranging from national security to environmental problems to economic development,¹⁷ noting that the Eastern Gulf is the largest training ground for the United States military in the world.¹⁸

Currently, there is a statutory ban¹⁹ on oil drilling on any submerged land within any bay or estuary, within one mile seaward of the coastline of the state. This statute also bans permits for drilling within one mile of any state, local, or federal park, or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

B. EFFECT OF PROPOSED CHANGES:

The proposed change prohibits oil drilling for exploration or extraction in and beneath all state waters between the mean high tide line and the outermost boundaries of the state. This prohibition does not apply to the transportation of oil and gas products produced outside those waters. Protection of environmentally sensitive areas and pollution prevention are legitimate concerns within the state's police power.²⁰

C. FISCAL IMPACT:

Per the Department of Environmental Protection, no impact anticipated.

¹³ § 377.242, Fla. Stat. (2014).

¹⁴ <http://www.heraldtribune.com/opinion/20170815/editorial-oppose-oil-drilling-off-florida-coast>

¹⁵ Id.

¹⁶ <https://www.whitehouse.gov/the-press-office/2017/04/28/presidential-executive-order-implementing-america-first-offshore-energy>

¹⁷ <http://www.pnj.com/story/news/2017/12/01/offshore-drilling-not-fit-florida-guestview/905826001/>

¹⁸ Id.

¹⁹ F.S. 377.242

²⁰ Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981).

III. Additional Information:

A. Statement of Changes:
None.

B. Amendments:
None.

C. Technical Deficiencies:
None.

D. Related Issues:
None.