

HJR 195 -- POWERS OF THE CONSERVATION COMMISSION

SPONSOR: Overcast

Upon voter approval, this constitutional amendment modifies the authority of the Missouri Conservation Commission and the Department of Conservation. The resolution requires all rules and regulations promulgated by the Conservation Commission to be subject to any requirement for executive agencies in general law.

Nothing in this section shall be construed to limit the authority of the Conservation Commission or the Department of Conservation to seize wildlife incident to lawful enforcement. Seizure of wildlife by the Department does not constitute forfeiture. Wildlife is not forfeited without an order entered by a court of competent jurisdiction. Payment of a citation, fine, or administrative penalty to the Department can not be required as a condition for the return of seized wildlife unless forfeiture is expressly ordered by a court.

Wildlife may be retained by the Department for a reasonable period necessary to photograph, tag, sample, or otherwise document an alleged violation. If wildlife is retained beyond 72 hours after seizure, judicial authorization is required and must be sought as specified in the resolution.

Seized wildlife must be returned to the owner pending final disposition unless a court finds, by clear and convincing evidence, that the seizure meets certain requirements. The burden of proof rests with the Department.

At the time of seizure, the Commission or Department agent or employee must provide the owner with written notice containing certain information. Failure to provide the notice creates a rebuttable presumption that continued retention is unlawful.

An owner may file a verified petition with a request for an expedited judicial hearing in a court of competent jurisdiction. The court must set the case for hearing no later than five business days after filing of the petition unless good cause is shown for a delay. The Department of Conservation bears the burden of proof at the hearing.

If the court finds retention of wildlife by the Department is unlawful, the court must order immediate return of the wildlife to the owner or the payment of monetary compensation equivalent value if the return is impossible.

No Commission or Department agent may enter protected private land for purposes of investigation, surveillance, enforcement, or evidence gathering without a warrant or voluntary consent of the property owner, except a Commission or Department agent may enter protected private land without a warrant when responding to a circumstance involving immediate threat to public safety, destruction of material evidence, or the active commission of a violent or felony wildlife-related offense or engaging in non-investigatory activities expressly authorized by law as specified in the resolution. The Open Fields Doctrine does not authorize warrantless entry onto protected private land for wildlife enforcement purposes under the Constitution of Missouri. Evidence obtained in violation of these requirements will be inadmissible in any criminal, civil, or administrative wildlife enforcement proceeding.

Nothing in this resolution should be construed to decriminalize poaching or illegal taking of wildlife, diminish the Constitutional authority of the Commission to conserve and regulate wildlife resources, or create a private cause of action beyond the remedies expressly provided under the law.