

STORAGE NAME: h0387s1.wrm

DATE: March 6, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Water and Resource Management
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 387

RELATING TO: Wildlife

SPONSOR(S): Representative Feeney

STATUTE(S) AFFECTED: Sections 372.7015, 372.7016 and 810.09, Florida Statutes (F.S.)

COMPANION BILL(S): SB 1652 (s)

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

- (1) WATER AND RESOURCE MANAGEMENT 11 Yeas 0 Nays
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 387 creates the "Voluntary Authorized Hunter Identification Program" (program). The purpose of the program is to help private landowners and law enforcement officers better control trespassing and illegal or unauthorized hunting on private land. As the name implies, landowners may voluntarily enroll in the program. Any person hunting on an enrolled landowner's private property must present to authorities written permission from the landowner within 72 hours or face trespass penalties.

In addition, CS/HB 387 provides that shooting across or over private land without authorization to intentionally kill, take, possess, or sell game, fur-bearing animals, or livestock will constitute trespass, punishable as a third-degree felony.

The bill also imposes a fine of \$250 per violation for illegally killing, taking, possessing or selling wildlife or game. This fine is in addition to any other fines or penalties that are currently applied to the illegal killing, taking, possession, or selling of wildlife or game. The violator also would be responsible for paying any associated court costs and restitution.

The fine must be deposited into the State Game Trust Fund of the Game and Fresh Water Fish Commission (GFC). Agency staff say the fine will have an indeterminate impact on revenues.

CS/HB 387 takes effect October 1, 1997.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Game and Freshwater Fish Commission (GFC) may exercise the powers, duties, and authority granted by s.9, Art. IV of the Constitution of Florida by the adoption of rules, regulations, and orders in accordance with Chapter 120, F.S. In addition, Chapter 372, F.S., regulates killing, taking, possessing, and selling of wildlife and game.

Chapter 810, F.S., sets forth trespass laws. Persons intentionally entering private posted lands without permission are guilty of simple trespass, which is a first-degree misdemeanor, punishable by imprisonment not exceeding one year. However, if trespass offenders are armed, then the charge is armed trespass which carries a third-degree felony penalty punishable by imprisonment not exceeding 5 years.

If private landowners are able to report persons trespassing on their property, law enforcement officers have some evidence that the alleged offender is on the property without the permission of the landowner. However, without such assistance, law enforcement officers on routine patrol have no immediate way of knowing if persons on private land are there with permission from the landowner. Often this results in law enforcement officers having to locate the landowner to find out if the person is legally on the property or arrest someone who actually has permission from the landowner to be on the property. These types of situations create confusion and inefficient use of time and money for the officers and landowners.

Some private landowners, such as cattle owners or other ranchers, express concerns that many trespassers are hunting on their lands. As a result, their commercial animals are often killed along with any targeted game or wildlife. Private landowners contend that a judge, when faced with a lesser penalty and a harsher one, usually chooses the lesser penalty. Representatives from the cattle industry believe that imposing lesser penalties encourages repeat offenders and fails to deter unauthorized hunting on their private lands.

The State Attorney's Office in Orlando has said that due to the sentencing guidelines in Chapter 921, F.S., state attorneys are reluctant to impose the maximum penalty for armed trespass. Generally, armed trespass offenders will receive a lesser penalty such as probation, community service, fines, or a combination thereof.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 387 creates the "Voluntary Authorized Hunter Identification Program" (program) to address the problem of trespassers hunting on private land versus persons legitimately hunting on private land. The program is voluntary for landowners and is designed to help law enforcement officers and landowners better control trespassing and illegal or unauthorized hunting.

To enroll, landowners must annually notify, by letter, their respective sheriff's office and area supervisor of the GFC that they want to participate in the program. Those enrolling in the program also must provide a description of their land that they want in the program by township, range, section, or other geographical description.

The program works by requiring persons hunting on private land enrolled in the program to have readily available at all times written authorization from the landowners or their authorized representative. The authorization can be in the form of a letter, card, or other written instrument. Such authorization must contain information that includes, but is not limited to:

- (1) the name of the landowner;
- (2) the name and signature of the person granting the authorization;
- (3) a geographical description of the land enrolled in the program; and
- (4) expiration date of the authorization

Persons hunting on private lands enrolled in the program have 72 hours following a request by law enforcement officers or landowners or their representatives to produce the required written authorization to hunt. Failure to do so results in an automatic armed trespass violation pursuant to s. 810.09(2)(c), F.S., and is punishable as a third-degree felony pursuant to Chapter 775, F.S. The maximum penalty is five years in prison and a \$5,000 fine. CS/HB 387 allows the introduction of evidence to rebut or contradict charges of trespass.

In addition, the bill provides that unauthorized shooting of a "potentially lethal projectile" across or over private land to intentionally kill, take, possess or sell game, fur-bearing animals, or livestock will constitute trespass punishable as a third degree felony. Unlike similar existing statutory provisions that prohibit illegal shooting from certain locations such as a private or public road, it does not matter with this provision where the shooter is standing. The bill also provides a definition for "potentially lethal projectile."

Finally, the bill imposes a fine of \$250 per violation for the illegal killing or taking of wildlife and game, plus court costs and any restitution ordered by the court. Fines are to be deposited into the GFC's State Game Trust Fund. This fine would be in addition to any other fines or penalties that are currently applied to the illegal killing, taking, possessing, or selling game and wildlife.

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?

Not applicable.

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

On a voluntary basis, landowners may choose to participate in the listing and identification of persons granted permission to hunt on their lands.

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

Not applicable.

- 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?

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 372.7015, F.S., imposing an additional penalty of \$250 per violation, plus court costs and any restitution ordered by the court, for the illegal killing, taking, possessing, or selling of wildlife and game. Requires that the fines collected be remitted to the State Game Trust Fund of the Game and Fresh Water Fish Commission.

Section 2. Creates s.372.7016, F.S., establishes the "Voluntary Authorized Hunter Identification Program" (program). Requires certain information from landowners who want to enroll in the program. Requires landowners who enroll in the program to provide a means for identifying authorized hunters based on other provisions of this section. Requires any person hunting on private land enrolled in the program to have readily available written authorization from the landowner or the landowner's authorized representative to hunt on such land upon demand by law enforcement officer, owner, or authorized agent of the owner. Provides that failure to present written authorization within 72 hours shall constitute armed trespass, punishable as a third degree felony. Defines the terms "hunting" and "written authorization" for purposes of this section. Provides that such evidence may be contradicted or rebutted by other evidence.

Section 3. Amends s. 810.09, F.S., prohibiting endangering or intentionally killing or taking of certain animals by unauthorized shooting of a "potentially lethal projectile" across or over private land. Provides that such an act constitutes trespass which is a third degree felony. Defines "potential lethal projectile" for the purposes of this section.

Section 4. Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

GFC staff say the fiscal impact of CS/HB 387 is indeterminate because judges increasingly withhold adjudication based on required community service and other alternate forms of punishment. In such cases, no additional fines would be levied.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A. 2.

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:

Individuals illegally killing, taking, possessing, or selling wildlife or game, and adjudicated guilty would have to pay the additional fine of \$250 plus court costs and any other fines and restitution ordered by the judge per violation.

2. Direct Private Sector Benefits:

Private landowners participating in the Voluntary Authorized Hunter Identification Program may experience better protection of their livestock and property.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 387 does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue.

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

The bill does not reduce that percentage of state tax shared with counties and municipalities

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 5, 1997, HB 387 was heard in committee. A strike-everything-after-the-enacting clause amendment was offered and adopted, and the bill approved as a committee substitute. The changes reflected in the committee substitute are mostly clarifying and technical, including:

- References to endangered species are deleted.
- "Possessing and taking" of wildlife or game is added.
- Wording now includes persons who violate the criminal provisions of Chapter 372.7015, F.S., "or the rules adopted pursuant to this chapter."
- Clarifies that court costs and any restitution ordered by the court is in addition to the \$250 fine.
- Allows introduction of evidence to rebut or contradict charges of trespass.

VII. SIGNATURES:

COMMITTEE ON Water Resource Management:

Prepared by:

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