

STORAGE NAME: h0575s1.cp

DATE: April 9, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 575

RELATING TO: Inhumane treatment of exotic animals

SPONSOR(S): Representative Silver

STATUTE(S) AFFECTED: Section 372.66, Florida Statutes

COMPANION BILL(S):

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

(1) CRIME AND PUNISHMENT YEAS 5 NAYS 4

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill would make it a third degree felony to kill or wound an exotic mammal that is restrained or released in the presence of a hunter, or in an enclosure of 3,500 acres or less. The bill also includes exceptions for research, food production, and euthanasia. Present law makes it a second degree misdemeanor to commit the same kind of acts on a commercial hunting preserve, except that the minimum acreage may be as little as 100 acres, compared to a minimum 3,500 acres as required by this bill. This bill would require all existing hunting preserves, which allow the hunting of exotic game, to increase their size to 3,500 acres, or stop the hunting of exotic game.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Cruelty to Animals

Section 828.12, F.S., makes it a third degree felony for a person to “commit[s] an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering.” This section would not necessarily apply to “canned hunts” where an animal is confined or tied.

The Fresh Water Game and Fish Commission, [“the commission”], has promulgated a complex regulatory scheme which addresses the possession, and taking of wildlife in Florida. Wildlife means all wild or non-domestic birds, mammals, fur-bearing animals, reptiles and amphibians. The commission also regulates the possession of wildlife as pets, requiring permits for various animals and caging requirements.

Regulations of Private Hunting Preserves

A hunting preserve is private property where the releasing and taking of captive-raised native and non-native game animals for a fee is permitted. The Game and Fish Commission has a regulatory scheme dealing with the operation of private hunting preserves {Rule 39-12.010}. The following regulations are some of the limitations that have been placed on the way that animals may be hunted on these private hunting preserves:

A hunting preserve must be fenced in, posted, and more than one mile from a wildlife management area or refuge;

Only game birds and game mammals of the following families may be taken on a hunting preserve: Cervidae (elk, deer, etc.), Suidae (hog), Bovidae (buffalo, antelope, goat, and sheep).

Game mammals taken on hunting preserves shall not be boxed or caged.

Cervidae (deer family) shall be free-roaming on not less than 200 acres, with a minimum of 100 acres covered with woody vegetation. Hunting with unleashed dogs is prohibited.

Bovidae shall be free-roaming on not less than 200 acres. Hunting with unleashed dogs is prohibited.

Suidae (hogs) shall be free-roaming on not less than 100 acres. For hunting with dogs, the area shall have a minimum of 300 acres.

Game mammals kept in small enclosures shall not be hunted on the same day of release.

No operator shall possess for hunting... tame game mammal. For the purposes of this section, “tame game mammal” shall be defined as one that does not

exhibit the flight characteristics (wariness) normal for the species when found in the wild.

Game mammals shall not be taken by non-owners or non-lessees within 50 yards of a supplemental feeding station.

The first violation of these regulations promulgated by the Freshwater Game and Fish Commission is a second degree misdemeanor; a second violation is a first degree misdemeanor. Section 372.83(2), F.S. defines private hunting preserves as an area designated and licensed by an individual or concern on which artificially propagated game is taken.

The Commission's position is that "canned hunts" have not been allowed since 1983 when a regulation was passed prohibiting the taking of animals that were tied, staked, or confined in small enclosures. The 1983 rule was replaced by the regulations mentioned above to further tighten restrictions against "canned hunts."

B. EFFECT OF PROPOSED CHANGES:

This bill would make it a third degree felony to kill or wound an exotic mammal that is restrained or released in the presence of a hunter, or in an enclosure of 3,500 acres or less. The bill also includes exceptions for research, food production, and euthanasia. Present law makes it a second degree misdemeanor to commit the same kind of acts on a commercial hunting preserve, except that the minimum acreage may be as little as 100 acres, compared to a minimum 3,500 acres required by this bill. This bill would require all existing hunting preserves, which allow the hunting of exotic game, to increase their size to 3,500 acres, or stop the hunting of exotic game.

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?

No.

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

No.

(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?

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:

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?

Not applicable.

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?

Yes, private land of less than 3,500 acres may not be used as a hunting preserve under this bill.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

This bill would require all existing hunting preserves, which allow the hunting of exotic game, to increase their size to 3,500 acres. Some if not all of these preserves would either go out of business, or have to stop the hunting of exotic mammals.

The Criminal Justice Estimating Conference has not analyzed this bill, however, it is anticipated that this bill would have no impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill relates to criminal prosecutions and is therefore exempt from the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

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

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The meaning of "exotic mammals" is not clear. Exotic means foreign or non-native, but the question of foreign to who would arise. Exotic could mean foreign to a particular county, to the State of Florida or to the country. The bill also makes it illegal to kill exotic mammals for: enjoyment, gain, amusement, sport or the collection of a trophy or contest prize. This additional element would make the case harder to prove. A "hunter" could say that the taking was only for food or some other non-qualifying reason.

While regulations of private hunting preserves address the some of the concerns raised by this bill, it is not clear that other land may not be used for canned hunts. The Freshwater Fish and Game Commission's position is that "canned hunts" would be prohibited by their regulations outside of hunting preserves as well. For example, It is illegal to import for sale or release non-native animals into the wild without a permit. Section 372.265, F.S. The Commission only allows permits for narrow limited purposes. The possession for sale or the purchase or sale of birds, [or] game mammals... is unlawful with certain exceptions.

In Florida, all private game preserves are less than 3,500 acres. This bill would require the preserves to either expand to 3,500 acres or to stop allowing the taking of exotic mammals.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

J. Willis Renuart

J. Willis Renuart