

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL#: HB 399 w/CS
SPONSOR(S): Ryan
TIED BILLS:

Marine Turtles

IDEN./SIM. BILLS: SB 174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	<u>11 Y, 0 N</u>	<u>MCKINNON</u>	<u>LOTSPEICH</u>
2) <u>Natural Resources</u>	<u>18 Y, 0 N w/CS</u>	<u>MCKINNON</u>	<u>LOTSPEICH</u>
3) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N w/CS</u>	<u>MAYNARD</u>	<u>DELAPAZ</u>
4) <u>Agriculture & Environment Apps. (Sub)</u>	<u></u>	<u>Sneed</u>	<u>Dixon</u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 399 w/CS requires the following:

- Provides that an additional penalty of \$100 be imposed against any person who takes, harvests, or possesses the eggs of certain marine turtle species.
- Provides for the additional penalty to be assessed for each egg involved in the violation.
- Provides that it is a third degree felony to solicit or conspire to violate the Marine Turtle Protection Act.
- Provides a first degree misdemeanor for any person who possesses 11 or fewer eggs for a first offense.
- Provides a third degree felony for any person who possesses 11 or fewer eggs for a second offense.
Provides a third degree felony for any person who possesses 11 or fewer eggs with intent to sell.

HB 399 w/CS also amends section s. 921.0022, F.S., to provide for the offense levels for the newly-created felony offenses. The bill makes a second or subsequent possession of 11 or fewer marine turtle eggs as well as an initial first time possession of marine turtle eggs with intent to sell, offer for sale, or transfer a Level 2 offense. The bills also makes the offense as "unlawfully tak[ing], disturb[ing], mutilat[ing], destroy[ing], caus[ing] to be destroyed, transfer[ing], selling, offer[ing] to sell, molests, or harass[ing] any marine turtle species, or the eggs, or the nest of any marine turtle species specified a Level 3 offense. In addition, the bill will have an insignificant fiscal impact to the Marine Resources Conservation Trust Fund from the collection of penalties for poached sea turtle eggs.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: April 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Provides for additional criminal and monetary penalties for marine sea turtle egg poaching.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Six species of sea turtles are federally protected under the Federal Endangered Species Act of 1973 (ESA): the Atlantic green, Atlantic hawksbill, Kemp's ridley, Leatherback, Atlantic loggerhead, and olive ridley sea turtles. The Florida Endangered and Threatened Species Act of 1977 (FETSA) s. 372.012, F.S., established Florida's policy to conserve and wisely manage its resources, especially endangered and threatened species. With this authority, Fish and Wildlife Conservation Commission (FWCC) listed the Atlantic green, leatherback, Atlantic hawksbill, and Kemp's ridley sea turtles as endangered. The Atlantic loggerhead sea turtle was listed as threatened.¹

In 1995, the Florida Legislature passed the Marine Turtle Protection Act (MTPA) s. 370.12, F.S., giving FWCC the authority to enforce regulations protecting the green, leatherback, hawksbill, Kemp's ridley, and loggerhead sea turtles. FWCC was instructed to implement its responsibilities under the United States Fish and Wildlife Service (USFWS) recovery plans for the five species of sea turtles. The MTPA states that no person may take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest, or harass any marine turtle or its nest or eggs at any time. "Take" is defined as an act which kills or injures sea turtles, including significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.¹

Section 372.0725, F.S., provides for a 3rd degree felony for those who **intentionally destroy** eggs or nests of endangered or threatened species except as provided by rules of the Commission. However, those who are found to **possess** an endangered or threatened marine turtle eggs are subject only to misdemeanor penalties, as outlined in s. 370.021, F.S., as described below:

- For a 1st conviction for violation of any provision of ch. 370, F.S.: by imprisonment of not more than 60 days, fine of not less than \$100 nor more than \$500, or both fine and imprisonment.
- For a 2nd or subsequent conviction for violation of ch. 370, F.S., within 12 months: by imprisonment of not more than 6 months, fine of not less than \$250 nor more than \$1,000, or both fine and imprisonment.
- For taking, harvesting, or possession of Atlantic loggerhead turtle, [Atlantic green turtle, leatherback turtle, Atlantic hawksbill turtle, Atlantic ridley turtle (marine turtle eggs)]: additional penalty of \$100 for "each unit of marine life or part thereof."

¹Butler, Katherine R. "Coastal Protection of Sea Turtles in Florida," Florida State University Journal of Land Use & Environmental Law (1998)

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Moreover, Florida law contains an Offense Severity Ranking Chart which ranks various felony offenses to provide a minimum sentence to be calculated in preparation of a sentencing score sheet. Because current law provides that violations of ch. 370, F.S., are misdemeanors, they are not included on the Offense Ranking Severity Chart.

Effects of Proposed Changes

HB 399 w/CS amends section s. 370.021, F.S., and does the following:

- Provides that an additional penalty of \$100 be imposed against any person who takes, harvests, or possesses the eggs of certain marine turtle species.
- Provides for the additional penalty \$100 to be assessed for each egg involved in the violation.
- Provides that it is a third degree felony to solicit or conspire to violate the Marine Turtle Protection Act.
- Provides a first degree misdemeanor for any person who possesses 11 or fewer eggs for a first offense.
- Provides a third degree felony for any person who possesses 11 or fewer eggs for a second offense.
- Provides a third degree felony for any person who possesses 11 or fewer eggs with intent to sell.

HB 399 w/CS also amends section s. 921.0022, F.S. to provide for the offense levels for the newly-created felony offenses. The Offense Severity Chart is used to determine the lowest permissible sentence for a particular offense. The ranking assigned a particular offense on the Ranking Chart is incorporated into the Sentence Scoresheet which is filled out by the prosecutor and used by the court. Usually defendants without a significant criminal history would not face a minimum prison sentence for any offense ranked 6 or below. The bill makes a second or subsequent possession of 11 or fewer marine turtle eggs as well as an initial first time possession of marine turtle eggs with intent to sell, offer for sale, or transfer a Level 2 offense. The bills also makes the offense as "unlawfully tak[ing], disturb[ing], mutilat[ing], destroy[ing], caus[ing] to be destroyed, transfer[ing], selling, offer[ing] to sell, molests, or harass[ing] any marine turtle species, or the eggs, or the nest of any marine turtle species specified a Level 3 offense. The offense levels indicated, in the absence of significant criminal history, would not result in a lowest permissible sentence requiring prison time.

C. SECTION DIRECTORY:

Section 1. Amends s. 370.12, F.S., to provide for additional monetary and criminal penalties relating to marine turtle eggs.

Section 2. Amends s. 777.04, F.S., to provide for criminal penalties.

Section 3. Amends s. 921.0022, F.S., to update the Offense Severity Ranking Chart code to reflect newly created felony offenses.

Section 4. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Insignificant.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Collection of these proposed penalties for poaching sea turtle eggs will have an insignificant fiscal impact on the Department of Agriculture and Consumer Services, Marine Resources Conservation Trust Fund. Additionally, according to the Criminal Justice Impact Conference Report dated March 14, 2003, the increases in offense levels proposed in this bill are expected to have an insignificant fiscal impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill was favorably reported by the Natural Resources Committee with a committee substitute on March 19, 2003, providing for the following penalty changes:

- A first degree misdemeanor for any person who possesses 11 or fewer eggs for a first offense;
- A third degree felony for any person who possesses 11 or fewer eggs for a second offense; and
- A third degree felony for any person who possesses 11 or fewer eggs with intent to sell.

On April 2, 2003 the bill was favorably voted with a committee substitute. The committee substitute adopted a strike-all amendment which made the following changes to the bill 1) The strike-all amendment corrected the scientific names of various species of turtle, some of which were incorrect in the original version of the bill. 2.)

The committee substitute changes the language of the newly-created offense of unlawfully possessing 12 or more eggs of any combination of species to designate the species of turtles listed in subparagraph b as the ones covered by the offense. Also, instead just describing the newly-created offense of intentionally engaging in activity which violated the act, the committee substitute avoids vagueness challenges by listing the activities which may constitute the offense as “unlawfully tak[ing], disturb[ing], mutilat[ing], destroy[ing], caus[ing] to be destroyed, transfer[ing], selling, offer[ing] to sell, molests, or harass[ing] any marine turtle species, or the eggs, or the nest of any marine turtle species specified in paragraph (b).” The corresponding change of the wording of this offense is also changed in the Offense Severity Ranking Chart. The committee substitute also changes the level of the offense of possession of 11 or fewer eggs with the intent to transfer, sell or offer for sale from a Level 3 to a Level 2 offense on the Offense Severity Ranking Chart. This will have the effect of lowering the minimum penalty for this offense.