

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 1282 (389224)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: February 24, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Favorable
2.	Betta	DeLoach	AGG	Recommend: Fav/CS
3.	Betta	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1282 revises statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Additionally, the bill:

- Offers violators of recreational hunting, freshwater fishing, and saltwater fishing the option of purchasing the respective license or permit rather than paying the cost of such license or permit without actually receiving it in addition to a civil penalty.
- Expands the scope of the civil penalty for illegally killing, taking, possessing, or selling game or fur-bearing animals, while committing burglary or trespassing to include illegally killing, taking, possessing, or selling all fish and wildlife.
- Clarifies that a person possessing certain marine turtle species, hatchlings, or the nests of such marine turtle species commits a third degree felony.
- Clarifies that spearfishing is authorized by the Fish and Wildlife Conservation Commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

By changing the penalties and allowing the violator an option to obtain a permit or license to bring the individual into compliance with law, the bill has an estimated negative fiscal impact of \$85,456 to the Clerks of the Circuit Court and a positive fiscal impact of \$50,806 to the FWC.

II. Present Situation:

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).¹ The constitution grants the FWC both the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.² The FWC additionally has regulatory and executive powers with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission are required to be prescribed by general law.³

Certain regulatory functions from three separate agencies, the Game and Freshwater Fish Commission, the Marine Fisheries Commission, and the Department of Environmental Protection, were combined to create the FWC.⁴ Beginning in 2005, FWC staff began reviewing all recreational wildlife, freshwater fishing, and saltwater fishing penalties, with the goal of proposing a four-level penalty structure to the Legislature which would provide consistency.⁵ In 2006, the Legislature adopted the recommended structure, which provided four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.⁶

In 2008, ch. 370, F.S., relating to the state's marine fisheries, and ch. 372, F.S., relating to the state's wildlife and freshwater fisheries statutes, were consolidated into ch. 379, F.S.⁷ The four-level penalty structure was retained, but revised to bring in the majority of FWC's recreational hunting, freshwater fishing, and saltwater fishing violations into one section. Section 379.401, F.S., provides a listing of penalties and violations by level.⁸

Level One Violations

A person commits a Level One violation if he or she violates any of the following provisions:

- Rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
- Rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the FWC.
- Rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
- Rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.

¹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 2 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).

² Section 9, Art. IV, Fla. Const.

³ *Id.*

⁴ FWC at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Section 379.401, F.S.

- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.⁹

The penalties for Level One violations are as follows:

Level One violation	Type of Infraction	Civil Penalty
1 st offense for failure to possess the required license or permit under s. 379.354, F.S.	Noncriminal ¹⁰	\$50 plus the cost of the license or permit ¹¹
2 nd offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1 st offense.	Noncriminal ¹²	\$100 plus the cost of the license or permit ¹³
1 st offense not involving s. 379.354, F.S., license or permit requirements.	Noncriminal ¹⁴	\$50 ¹⁵
2 nd offense not involving s. 379.354, F.S., license or permit ¹⁶ requirements within 36 months of 1 st offense.	Noncriminal ¹⁷	\$100 ¹⁸

Level Two Violations

A person commits a Level Two violation if he or she violates any of the following provisions:

- Rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders relating to the feeding of saltwater fish.
- Rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- Rules or orders relating to the use of dogs for the taking of wildlife.
- Rules or orders which are not otherwise classified.
- Rules or orders prohibiting the unlawful use of finfish traps.
- All prohibitions of ch. 379, F.S., which are not otherwise classified.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., prohibiting the obstruction of waterways with net gear.

⁹ Section 379.401(1)(a), F.S.

¹⁰ Section 379.401(1)(b), F.S.

¹¹ Section 379.401(1)(c)1., F.S.

¹² Section 379.401(1)(b), F.S.

¹³ Section 379.401(1)(c)2., F.S.

¹⁴ Section 379.401(1)(b), F.S.

¹⁵ Section 379.401(1)(d)1., F.S.

¹⁶ Section 379.401(1)(d)2., F.S.

¹⁷ Section 379.401(1)(b), F.S.

¹⁸ Section 379.401(1)(d)2., F.S.

- Section 379.413, F.S., prohibiting the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., prohibiting the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.¹⁹

The penalties for Level Two violations are as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense	2 nd Degree Misdemeanor ²⁰	Max. \$500 or Max. 60 days	None
2 nd offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ²¹	Min. \$250; Max. \$1000 or Max. one year	None
3 rd offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ²²	Min. \$500; Max. \$1000 or Max. one year	Max. suspension of license for one year
4 th offense within ten years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ²³	Min. \$750; Max. \$1000 or Max. one year	Max. suspension of license for three years

Level Three Violations

A person commits a Level Three violation if he or she violates any of the following provisions:

- Rules or orders prohibiting the sale of saltwater fish.
- Rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(2), F.S., establishing major violations.
- Section 379.407(4), F.S., prohibiting the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., prohibiting the importation of freshwater fish.
- Section 379.354(17), F.S., prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., prohibiting the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., prohibiting the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.²⁴

¹⁹ Section 379.401(2)(a), F.S.

²⁰ Section 379.401(2)(b)1., F.S.

²¹ Section 379.401(2)(b)2., F.S.

²² Section 379.401(2)(b)3., F.S.

²³ Section 379.401(2)(b)4., F.S.

²⁴ Section 379.401(3)(a), F.S.

The penalties for Level Three violations are as follows:

Level Three violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense	1 st Degree Misdemeanor ²⁵	Max. \$1000/ Max. one year	None
2 nd offense within ten years of previous Level Three violation (or higher)	1 st Degree Misdemeanor ²⁶	Min. \$750; Max. \$1000/ Max. one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1000 ²⁷ / Max. one year	May not acquire license or permit for five years

Level Four Violations

A person commits a Level Four violation if he or she violates any of the following provisions:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., prohibiting the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.²⁸

The penalties for Level Four violations are as follows:

Level Four violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ²⁹	3 rd Degree Felony	Max. \$5000/ Max. five years	None

Section 379.401(4)(b), F.S., only references ss. 775.082 and 775.083, F.S., in relation to the punishment available for third degree felonies. Section 775.084, F.S., relating to enhanced penalties for habitual felony offenders or habitual violent felony offenders, is not included.

Section 379.401(5), F.S., provides an additional “catch-all” provision that makes violations of ch. 379, F.S., except as provided elsewhere, for a first offense, a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or up to a \$500

²⁵ Section 379.401(3)(b)1., F.S.

²⁶ Section 379.401(3)(b)2., F.S.

²⁷ Section 379.401(3)(b)3., F.S.

²⁸ Section 379.401(4)(a), F.S.

²⁹ Section 379.401(4)(b), F.S.

fine. For second or subsequent violations, the person commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or up to a \$1,000 fine.³⁰

Section 379.401(6), F.S., authorizes the court to order the suspension or forfeiture of any license or permit issued under ch. 379, F.S., to a person who is found guilty of committing a violation of the chapter.

In 2014, the FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were “fair, appropriate, meaningful, and consistent.”³¹ The FWC staff discovered, that while the revision in 2008 consolidated a majority of the penalties into the four-level structure, there are statutes relating to recreational activities which have penalties outside of the structure.³²

These penalty violations include:

- Section 379.2223, F.S., relating to the control and management of state game lands, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.2257, F.S., relating to cooperative agreements with the U.S. Forest Service.
- Section 379.29, F.S., relating to contaminating fresh waters, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.3511, F.S., relating to the appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.411, F.S., relating to the killing or wounding of any species designated as endangered, threatened, or of special concern, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Section 379.4115, F.S., relating to the Florida or wild panther, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

In addition to statutes that have penalties outside of the four-level structure, there are statutes within ch. 379, F.S., which do not have specified penalties. Section 379.401(2)(a)11 and (5), F.S., both address penalties for prohibitions or violations that are not covered in ch. 379, F.S.

Section 379.401(2)(a)11., F.S., states:

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

11. All prohibitions in this chapter which are not otherwise classified.³³

Section 379.401(5), F.S., states:

(5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

³⁰ Section 379.401(5), F.S.

³¹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 7 (Oct. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

³² *Id.*

³³ Section 379.401(2)(a)11., F.S.

(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.³⁴

III. Effect of Proposed Changes:

This bill revises various statutes within ch. 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Revisions to Clarify Penalties without Changing the Penalty

Level Two Violations

In ch. 379, F.S., there are multiple sections that do not have a specified penalty. Therefore, the penalty defaults to either a Level Two violation pursuant to s. 379.401(2)(a)11., F.S., or to a second or first degree misdemeanor pursuant to s. 379.401(5), F.S. The bill amends the following sections that do not have specified penalties to clarify that the violations of such sections are Level Two violations:

- Section 379.2425, F.S., relating to spearfishing.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting the loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

Level Four Violations

In ch. 379, F.S., there are sections that have penalties for violations specified as third degree felonies. The bill amends the following sections to state that the penalties for the violation of the following statutes are Level Four violations, which are punishable as third degree felonies:

- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs.
- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

³⁴ Section 379.401(5), F.S.

Section 379.354, F.S., relating to Recreational Licenses and Permits

In s. 379.354, F.S., there are only specified violations for subsections (16) and (17). Therefore, violations of the rest of the section should be Level Two violations by default pursuant to s. 379.401(2)(a)11 or second or first degree misdemeanors pursuant to s. 379.401(5). However, there is a cross-reference in s. 379.401, F.S., which lists violations of subsections (1) through (15) of s. 379.354, F.S., as Level One violations. The bill amends s. 379.354, F.S., to clarify that a person who violates such section, unless otherwise provided, commits a Level One violation under s. 379.401, F.S.

Section 379.365, F.S., relating to Stone Crab Regulations

Any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags under current law commits a Level Two violation. Because violations relating to the conservation of marine resources are provided in s. 379.407, F.S., the bill removes the Level Two violation. Therefore, any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags is subject to the following penalties:

- Upon a first conviction; imprisonment for a period of not more than 60 days, a fine of not less than \$100 nor more than \$500, or both the fine and imprisonment.
- On a second or subsequent conviction within 12 months; imprisonment for not more than six months, a fine of not less than \$250 nor more than \$1,000, or both the fine and imprisonment.³⁵

Increases or Decreases to Penalties

In ch. 379, F.S., there are sections that have penalties for violations specified as second degree misdemeanors. The penalties for second degree misdemeanors are equivalent to Level Two violations, except that the penalties for repeat offenders are increased for Level Two violations. The bill amends the following sections to change the penalties from second degree misdemeanors to Level Two violations:

- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

Section 379.2223, F.S., provides that the penalty for violating rules necessary for the protection, control, operation, management, or development of lands or waters owned, leased, or otherwise assigned to the FWC for fish and wildlife management purposes is a second degree misdemeanor. The bill amends this section and provides that a person who violates or fails to comply with such rules is subject to penalties as provided in s. 379.401, F.S.

Section 379.2257, F.S., provides that the penalty for violations of rules on areas under a cooperative agreement with the United States Forest Service is a second degree misdemeanor. The bill amends this section to be consistent with the penalties on all other wildlife management areas and provides that a person who violates such rules is subject to penalties as provided in s. 379.401, F.S.

³⁵ Section 379.407(1), F.S.

The bill amends s. 379.357, F.S., to increase the penalty for the illegal sale of tarpon from a Level Two violation to a Level Three violation. This brings consistency with the penalties for violation of rules or orders prohibiting the sale of saltwater species. Additionally, the bill clarifies that the illegal taking, killing, or possessing of tarpon is a Level Two violation.

Section 379.401, F.S., relating to Penalties and Violations

The bill substantially amends s. 379.401, F.S. to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure.

Level One Violations

The bill adds the penalties for violating rules or orders relating to the filing of reports and other documents required by persons holding alligator licenses and permits to the list of Level One violations. Also added to the list of Level One violations are the penalties for violating rules or orders requiring the return of unused Convention on International Trade in Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

Under current law, the civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354, F.S., is \$50 plus the cost of the license or permit. If the person has previously committed the same Level One violation within the preceding 36 months, the civil penalty is \$100 plus the cost of the license or permit. The bill provides an alternative for people who violate the license and permit requirements of s. 379.354, F.S., except violations of subsection (6) relating to pier licenses, subsection (7) relating to vessel licenses, paragraph (8)(f) relating to special use permits for limited entry hunting and fishing activities, or paragraph (8)(h) relating to recreational user permits. A person would be able to purchase the license or permit rather than paying the cost of the license or permit as part of the civil penalty. The bill requires submission of the proof of purchase of the license or permit with the civil penalty. Additionally, the bill increases the civil penalty for any person who has previously committed the same Level One violation within the preceding 36 months from \$100 to \$250.

Level Two Violations

The bill adds the following references to the list of Level Two violations (these were Level Two violations by default or were revised to Level Two violations):

- Rules or orders requiring the maintenance of records relating to alligators.
- Return of unused CITES tags issued under alligator programs other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Section 379.2425, F.S., relating to spearfishing.
- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.

- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

The bill removes ss. 379.33 and 379.407(7), F.S., from the list of Level Two violations. Section 379.33, F.S., was amended to remove the penalty provided in the section because it was an inaccurate statement. This section no longer contains a Level Two violation and, consequently, its cross-reference is removed from the list of penalties. Section 379.407(7), F.S., provides penalties for the unlicensed sale, purchase, or harvest relating to commercial saltwater fishing activities. As s. 379.401, F.S., provides penalties related to recreational activities, the bill removes the cross-reference to s. 379.407(7), F.S., from the section.

The bill amends the following references already on the Level Two list:

- Rules or orders of the commission prohibiting the unlawful use of finfish traps, to reference any traps, unless otherwise provided.
- Section 379.2421, F.S., for consistency.
- Section 379.357, F.S., to clarify that only a violation of subsection (3) of that section, prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag, is a Level Two violation.
- Section 379.365(2)(a), F.S., to remove the provision prohibiting the possession or use of stone crab traps without trap tags.
- Section 379.3671(2)(c), F.S., to remove the reference prohibiting the possession or use of spiny lobster traps without trap tags or certificates.
- All prohibitions in this chapter which are not otherwise classified, to include all requirements in this chapter which are not otherwise classified.

Level Three Violations

The bill clarifies that not all violations within s. 379.407(2), F.S., are Level Three violations and adds the penalty for violating s. 379.357(4), F.S., which prohibits the sale, transfer, or purchase of tarpon.

Level Four Violations

The bill amends the following references already on the Level Four list to clarify that there are other penalties within those provisions that are not Level Four violations:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

The bill adds the following sections to the list of Level Four violations (these were third degree felonies):

- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

The bill amends the penalty for a Level Four violation to include s. 775.084, F.S., relating to penalties for habitual felony offenders.

Illegal Activities While Committing Burglary or Trespass

The bill repeals s. 379.403, F.S., relating to the taking of game or fur-bearing animals while committing burglary or trespass, and moves the language to s. 379.401, F.S., with the following changes:

- Adds violations pertaining to orders which prohibit the killing, taking, possessing or selling of fish and wildlife.
- Increases the penalty from a \$250 fine to a \$500 fine.
- Expands the scope from game³⁶ or fur-bearing animals³⁷ to all fish and wildlife.

Violations of the Chapter

The bill removes s. 379.401(5), F.S., which provides an additional catch-all provision. However, s. 379.401(2)(a)13., F.S., retains the catchall that provides that all requirements or prohibitions in ch. 379, F.S., which are not otherwise classified are Level Two violations.

Additional Changes

The bill amends s. 379.2425, F.S., to clarify that spearfishing is authorized under certain circumstances by FWC rule or order.³⁸

The bill amends s. 379.2431, F.S., to prohibit knowingly possessing any marine turtle or the eggs or nests of marine turtles and to prohibit knowingly possessing, taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle hatchling, or parts thereof. The bill provides that a person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in s. 379.2431, F.S., commits a felony of the third degree, punishable by a term of imprisonment of up to five years or a maximum fine of \$5,000 or additional penalties for violent or habitual felony offenders. The bill clarifies that a person, firm, or corporation may not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any hatchling, or parts thereof, of any marine turtle species unless authorized by FWC rule.

³⁶ The term “game” is defined by s. 379.101, F.S., to mean “deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves.”

³⁷ The term “fur-bearing animals” is defined by s. 379.101, F.S., to mean “muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum.”

³⁸ Rule 68B-20.003, F.A.C., authorizes spearfishing if provided in other marine fisheries rules.

The bill amends s. 379.33, F.S., to strike language relating to an inaccurate statement that states “except as provided under s. 379.401, F.S., any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” This statement is inaccurate because violators of FWC rules may also be punished under s. 379.4015, F.S., or ch. 327, F.S., for example.³⁹

The bill amends s. 379.3502, F.S., to remove language prohibiting a person from altering or changing in any manner any license or permit issued pursuant to ch. 379, F.S. The section covers illegally loaning or transferring a permit and not altering or changing a permit. Section 379.354(16), F.S., makes forging or counterfeiting permits a Level Four violation.

The bill amends s. 379.357, F.S., to clarify that the purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of FWC rule.

Individuals purchasing a license or permit from the FWC may voluntarily authorize an additional payment of \$2 with their application fee to be provided to the Southeastern Guide Dogs, Inc.⁴⁰ The bill amends s. 379.359, F.S., to authorize, rather than require, the FWC to retain \$0.90 of the fee. This enables the FWC to send the full amount to Southeastern Guide Dogs Inc., minus administrative costs.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 18 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).

⁴⁰ Section 379.359, F.S.

B. Private Sector Impact:

As the penalties for some violations are increased or decreased, PCS/SB 1282 may have an indeterminate fiscal impact on individuals who violate ch. 379, F.S.

Southeastern Guide Dogs, Inc. may receive an indeterminate positive fiscal impact if applicants for recreational hunting or fishing licenses choose to donate \$2 to the charity. Under the bill, the provision requiring FWC to retain \$0.90 is removed and, therefore, FWC may provide the charity with the full \$2, minus administrative costs.

C. Government Sector Impact:

The FWC estimates the net negative impact to the Clerks of the Circuit Court is \$85,456 annually. This represents all the changes to violations if the violators choose the alternative option provided under the bill and purchase a license or permit rather than paying the cost of such license or permit when cited for a violation.⁴¹

There is an estimated positive fiscal impact on the FWC if violators purchase the recreational licenses or permits. The proceeds from license or permit sales would go into different trust funds depending on the type of license or permit being acquired.⁴² The FWC has estimated the bill would increase funds collected by \$50,806 annually.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.2223, 379.2257, 379.2425, 379.2431, 379.29, 379.295, 379.33, 379.3502, 379.3503, 379.3504, 379.3511, 379.354, 379.357, 379.359, 379.363, 379.364, 379.365, 379.3751, 379.3752, 379.401, 379.409, 379.411, and 379.4115.

This bill repeals section 379.403 of the Florida Statutes.

⁴¹ FWC at 20.

⁴² *Id.* at 21.

⁴³ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS removes the definition of the term “fish and wildlife,” the cross-reference to the definition, and the sections that contained revisions to cross-references that were necessary as a result of adding the definition to s. 379.401, F.S.

The CS makes it a third degree felony to knowingly possess marine turtles or the eggs or nests of marine turtles. The CS clarifies the prohibition on knowingly taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing to include hatchlings or parts thereof.

- B. **Amendments:**

None.