

**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: SB 1282

INTRODUCER: Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Pre-meeting</b>
2.			AGG	
3.			AP	

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**I. Summary:**

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 with 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.
- Defines the term “fish and wildlife” to mean “any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.”
- 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 all fish and wildlife.
- Clarifies that spearfishing is authorized by commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

**II. Present Situation:**

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).<sup>1</sup> 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.<sup>2</sup> The FWC additionally has regulatory and executive powers with respect to marine life, except that all

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

<sup>2</sup> Section 9, Art. IV, Fla. Const.

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

In 2008 chapter 370, F.S., relating to the state's marine fisheries, and chapter 372, F.S., relating to the state's wildlife and freshwater fisheries statutes, were consolidated into chapter 379, F.S.<sup>7</sup> 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.<sup>8</sup>

### **Level One Violations**

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

- Rules or orders of the commission 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 of the commission 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 commission.
- Rules or orders of the commission 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 of the commission 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.
- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.<sup>9</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> FWC at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 379.401, F.S.

<sup>9</sup> Section 379.401(1)(a), F.S.

The penalties for Level One violations are as follows:

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

**Level Two Violations**

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

- Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders of the commission relating to the feeding of saltwater fish.
- Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.
- Rules or orders of the commission relating to the use of dogs for the taking of wildlife.
- Rules or orders of the commission which are not otherwise classified.
- Rules or orders of the commission prohibiting the unlawful use of finfish traps.
- All prohibitions in this chapter 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.
- Section 379.413, F.S., prohibiting the unlawful taking of bonefish.

<sup>10</sup> Section 379.401(1)(b), F.S.

<sup>11</sup> Section 379.401(1)(c)1., F.S.

<sup>12</sup> Section 379.401(1)(b), F.S.

<sup>13</sup> Section 379.401(1)(c)2., F.S.

<sup>14</sup> Section 379.401(1)(b), F.S.

<sup>15</sup> Section 379.401(1)(d)1., F.S.

<sup>16</sup> Section 379.401(1)(d)2., F.S.

<sup>17</sup> Section 379.401(1)(b), F.S.

<sup>18</sup> Section 379.401(1)(d)2., F.S.

- 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.<sup>19</sup>

The penalties for Level Two violations are as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense	2 <sup>nd</sup> Degree Misdemeanor <sup>20</sup>	Max. \$500 or Max. 60 days	None
2 <sup>nd</sup> offense within 3 years of previous Level 2 violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>21</sup>	Min. \$250; Max. \$1000 or Max. 1 year	None
3 <sup>rd</sup> offense within 5 years of two previous Level 2 violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>22</sup>	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of license for 1 year
4 <sup>th</sup> offense within 10 years of three previous Level 2 violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>23</sup>	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of license for 3 years

### Level Three Violations

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

- Rules or orders of the commission prohibiting the sale of saltwater fish.
- Rules or orders of the commission 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.<sup>24</sup>

<sup>19</sup> Section 379.401(2)(a), F.S.

<sup>20</sup> Section 379.401(2)(b)1., F.S.

<sup>21</sup> Section 379.401(2)(b)2., F.S.

<sup>22</sup> Section 379.401(2)(b)3., F.S.

<sup>23</sup> Section 379.401(2)(b)4., F.S.

<sup>24</sup> 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 <sup>st</sup> offense	1 <sup>st</sup> Degree Misdemeanor <sup>25</sup>	Max. \$1000/ Max. 1 year	None
2 <sup>nd</sup> offense within 10 years of previous Level 3 violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>26</sup>	Min. \$750; Max. \$1000/ Max. 1 year	Suspension of license or permit for up to 3 years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 <sup>st</sup> Degree Misdemeanor	Mandatory \$1000 <sup>27</sup> / Max. 1 year	May not acquire license or permit for 5 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.<sup>28</sup>

The penalties for Level Four violations are as follows:

Level Four violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense <sup>29</sup>	3 <sup>rd</sup> Degree Felony	Max. \$5000/ Max. 5 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 chapter 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

<sup>25</sup> Section 379.401(3)(b)1., F.S.

<sup>26</sup> Section 379.401(3)(b)2., F.S.

<sup>27</sup> Section 379.401(3)(b)3., F.S.

<sup>28</sup> Section 379.401(4)(a), F.S.

<sup>29</sup> 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.<sup>30</sup>

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

In 2014, FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were “fair, appropriate, meaningful, and consistent.”<sup>31</sup> 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.<sup>32</sup> For example, the penalty for violating:

- 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 chapter 379, F.S., which do not have specified penalties. Sections 379.401(2)(a)11. and 379.401(5), F.S., both address penalties for prohibitions or violations that are not covered in chapter 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.<sup>33</sup>

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

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

(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.

<sup>30</sup> Section 379.401(5), F.S.

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

<sup>32</sup> *Id.*

<sup>33</sup> Section 379.401(2)(a)11., F.S.

(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.<sup>34</sup>

### III. Effect of Proposed Changes:

SB 1282 revises various 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.

#### Revisions to Clarify Penalties Without Changing the Penalty

##### *Level Two Violations*

In chapter 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 chapter 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.

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<sup>34</sup> 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., that 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, by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 nor more than \$500, or by both such fine and imprisonment.
- On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 nor more than \$1,000, or by both such fine and imprisonment.<sup>35</sup>

**Increases or Decreases to Penalties**

In chapter 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 by, or leased by, 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.

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<sup>35</sup> 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 to bring 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 of the commission relating to the filing of reports and other documents required by persons holding alligator licenses and permits and for violating rules or orders of the commission 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 to the list of Level One violations.

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. Rather than paying the cost of the license or permit as part of the civil penalty, under the alternative option a person would be able to purchase the license or permit. Proof of purchase of the license or permit would be required to be submitted 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 of the commission 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) and (b), F.S., to remove the reference to paragraph (2)(a) which prohibits 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 subsection (2) of s. 379.407, F.S., are Level Three violations and adds the penalty for violating subsection (4) of s. 379.357, 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, but moves the language to s. 379.401, F.S., with the following changes, the bill:

- Adds violations pertaining to orders of the commission 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 game<sup>36</sup> or fur-bearing animals<sup>37</sup> to all fish and wildlife.

As the term “fish and wildlife” is not defined in chapter 379, F.S., the bill amends s. 379.101, F.S., to define the term “fish and wildlife” to mean “any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.” This definition has the same meaning as in Florida’s Endangered and Threatened Species Act.<sup>38</sup>

### ***Violations of the Chapter***

The bill removes subsection (5) of s. 379.401, 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 chapter 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 commission rule or order.<sup>39</sup>

<sup>36</sup> 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.”

<sup>37</sup> 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.”

<sup>38</sup> Section 379.2291, F.S.

<sup>39</sup> 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 commission rules may also be punished under s. 379.4015, F.S., or chapter 327, F.S., for example.<sup>40</sup>

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 chapter 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 commission 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.<sup>41</sup> 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 amends sections 379.3004, 379.337, 589.19, and 810.09, F.S., to conform cross-references.

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.

<sup>40</sup> FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 18 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>41</sup> Section 379.359, F.S.

**B. Private Sector Impact:**

As the penalties for some violations are increased or decreased under the bill, the bill may have an indeterminate fiscal impact on individuals who violate chapter 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:**

If 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, there may be a negative fiscal impact on the Clerks of the Circuit Court. Based on FWC's estimation, the collective impact is \$85,456 annually.<sup>42</sup>

In turn, there may be a positive fiscal impact on 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.<sup>43</sup> FWC has estimated the bill would increase funds collected by \$50,806 annually.<sup>44</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Sections 379.2223 and 379.2257, F.S., are both amended to specify that violators are subject to penalties as provided in s. 379.401, F.S. However, as there is no reference to these sections within s. 379.401, F.S., the penalty for either section is not clear. Additionally, s. 379.3503, F.S., was revised to clarify and remove this type of reference.

The bill removes the reference to s. 379.3671(2)(c), F.S., from the list of Level Two violations in s. 379.401, F.S. However, the bill does not remove the cross-reference to s. 379.401, F.S., within s. 379.3671(2)(c), F.S., that provides "except as otherwise provided, any person who violates this paragraph commits a Level Two violation under s. 379.401."<sup>45</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 379.101, 379.2223, 379.2257, 379.2425, 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, 379.4115, 379.3004, 379.337, 589.19, and 810.09.

<sup>42</sup> FWC at 20.

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Id.*

<sup>45</sup> Section 379.3671(2)(c)10., F.S.

This bill repeals section 379.403 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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