

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7013	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Agriculture & Natural Resources Subcommittee; Combee and others	118 Y's	0 N's
COMPANION BILLS:	CS/SB 1282	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 7013 passed the House on February 3, 2016, and subsequently passed the Senate on March 4, 2016. The bill relocates and amends provisions imposing penalties for violations of recreational fish and wildlife laws and regulations to achieve consistency between the penalties and statutes, make the penalties meaningful, encourage compliance, and deter offenses. Specifically, the bill:

- Increases the fine for illegally taking game while trespassing from \$250 to \$500 per violation and adds all fish and wildlife to the list of species covered by the fine;
- Offers violators of recreational fishing and hunting licensing the new option of purchasing the respective license rather than paying the cost of the license in addition to the penalty, but not receiving the license;
- Increases the fine for repeat offenders for any noncriminal infraction within 3 years from \$100 to \$250;
- Reduces the penalty from a second degree misdemeanor to a noncriminal infraction for violations of rules or orders of the Florida Fish and Wildlife Conservation Commission (FWC) requiring reporting by people who hold alligator hunting licenses or requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program;
- Decreases the penalty for failure to file required alligator hunting reports from a second degree misdemeanor offense to a noncriminal infraction;
- Makes penalties for wildlife management areas on U.S. forests consistent with those of all other wildlife management areas;
- Increases the penalty for the sale, barter, or trade of tarpon from a second degree misdemeanor to a first degree misdemeanor to make it consistent with the penalty for rules that prohibit the sale of saltwater species;
- Deletes language prohibiting the altering or changing of a license or permit from the statutory section that prohibits the transfer of a license or permit or possession of a transferred license or permit. Instead, such actions will be treated as forging or counterfeiting a license or permit, punishable as a third degree felony; and
- Specifies that knowing possession of any marine turtle species, hatchling, or any parts of the species without authorization from FWC or from the federal government under the Endangered Species Act is a third degree felony.

It also authorizes, rather than requires, FWC to retain an administrative fee when collecting donations for Southeastern Guide Dogs, Inc.

The bill may have an insignificant positive fiscal impact on the FWC, an insignificant negative fiscal impact on the Clerks of Court, and an indeterminate fiscal impact on the private sector.

The bill was approved by the Governor on March 24, 2016, ch. 2016-107, L.O.F., and will become effective on July 1, 2016.

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

STORAGE NAME: h7013z1.ANRS

DATE: March 28, 2016

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Florida Constitution provides that the Florida Fish and Wildlife Conservation Commission (FWC) must exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.¹ However, the Florida Constitution specifically provides that all licensing fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission must be prescribed by general law.²

Section 379.401, F.S., provides a four-tiered penalty structure for violations of FWC's recreational hunting, fishing, and trapping regulations.

Level 1 Violations

Individuals who violate the following commit a Level 1 violation:

- FWC 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 FWC.
- FWC 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 FWC.
- 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 FWC.
- FWC rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., relating to recreational license requirements to hunt, fish, and trap.
- Section 379.3581, F.S., relating to hunter safety course requirements.
- Section 379.3003, F.S., relating to deer hunting clothing requirements.³

Section 379.401, F.S., provides the following penalties for Level 1 violations:

Level 1 Violation	Type of Infraction	Civil Penalty
1 st offense for failure to possess the required license or permit under s. 379.354, F.S. ⁴	Noncriminal	\$50 plus the cost of the license or permit
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 ⁵	Noncriminal	\$100 plus the cost of the license or permit
1 st offense not involving s. 379.354, F.S., license or permit requirements ⁶	Noncriminal	\$50
2 nd offense not involving s. 379.354, F.S., license or permit ⁷ requirements within 36 months of 1 st offense	Noncriminal	\$100

¹ Section 9, Art. IV, Fla. Const.

² Id.

³ Section 379.401(1)(a), F.S.

⁴ Section 379.401(1)(c)1., F.S.

⁵ Section 379.401(1)(c)2., F.S.

⁶ Section 379.401(1)(d)1., F.S.

⁷ Section 379.401(1)(d)2., F.S.

Level 2 Violations

Individuals who violate the following commit a Level 2 violation:

- FWC rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- FWC rules or orders relating to the feeding of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- FWC rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- FWC rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- FWC rules or orders relating to the use of dogs for the taking of wildlife.
- FWC rules or orders prohibiting the unlawful use of finfish traps.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., relating to the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., relating to the obstruction of waterways with net gear.
- Section 379.413, F.S., relating to the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., relating to 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., relating to the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., relating to 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., relating to the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., relating to the intentional harassment of hunters, fishers, or trappers.
- Chapter 379, F.S, violations which are not otherwise classified.
- FWC rules or orders which are not otherwise classified.⁸

Section 379.401, F.S., provides the following penalties for Level 2 violations:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ⁹	2 nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2 nd offense within 3 years of previous Level 2 violation (or higher) ¹⁰	1 st Degree Misdemeanor	Min. \$250; Max. \$1000 or Max. 1 year	None
3 rd offense within 5 years of two previous Level 2 violations (or higher) ¹¹	1 st Degree Misdemeanor	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of license for 1 year
4 th offense within 10 years of three previous Level 2 violations (or higher) ¹²	1 st Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of license for 3 years

⁸ Section 379.401(2)(a), F.S.

⁹ Section 379.401(2)(b)1., F.S.

¹⁰ Section 379.401(2)(b)2., F.S.

¹¹ Section 379.401(2)(b)3., F.S.

¹² Section 379.401(2)(b)4., F.S.

Level 3 Violations

Individuals who violate the following commit a Level 3 violation:

- FWC rules or orders prohibiting the sale of saltwater fish.
- FWC rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(4), F.S., relating to the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., relating to the importation of freshwater fish.
- Section 379.354(17), F.S., relating to the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., relating to the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., relating to the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., relating to the possession and transportation of commercial quantities of freshwater game fish.¹³

Section 379.401, F.S., provides the following penalties for Level 3 violations:

Level 3 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ¹⁴	1 st Degree Misdemeanor	Max. \$1000 or Max. 1 year	None
2 nd offense within 10 years of previous Level 3 violation (or higher) ¹⁵	1 st Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Maximum suspension of license for 3 years
Fishing, hunting, or trapping with a suspended license ¹⁶	1 st Degree Misdemeanor	Mandatory \$1000 or Max. 1 year	May not acquire license for 5 years

Level 4 Violations

Individuals who violate the following commit a Level 4 violation:

- Section 379.365(2)(c), F.S., relating to criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., relating to criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., relating to the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., relating to the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., relating to 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., relating to the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., relating to the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., relating to the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.¹⁷

¹³ Section 379.401(3)(a), F.S.

¹⁴ Section 379.401(3)(b)1., F.S.

¹⁵ Section 379.401(3)(b)2., F.S.

¹⁶ Section 379.401(3)(b)3., F.S.

¹⁷ Section 379.401(4)(a), F.S.

Section 379.401, F.S., provides the following penalties for Level 4 violations:

Level 4 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ¹⁸	3 rd Degree Felony	Max. \$5000 or Max. 5 years	None

Miscellaneous Penalties

In addition to the current four-tier penalty structure, there are a number of statutes in ch. 379, F.S., that have their own penalties that apply to recreational activities and that do not fit into the four tiered structure. For example:

- Section 379.2223, F.S., provides that any person violating any rule or regulation relating to the control and management of state game lands commits a second degree misdemeanor;
- Section 379.2257, F.S., provides that any person violating any rule or regulation relating to control of wildlife within U.S. Forest Service lands commits a second degree misdemeanor;
- Section 379.29, F.S., provides that any person, firm, or corporation violating any provisions relating to contaminating fresh waters in quantities sufficient to injure, stupefy, or kill fish commits a second degree misdemeanor for the first offense, and for the second and subsequent offense, commits a first degree misdemeanor;
- Section 379.3511, F.S., provides that any person who willfully violates any provisions related to the regulation of subagents for the sale of hunting, fishing, and trapping licenses and permits commits a second degree misdemeanor;
- Section 379.411, F.S., provides that any person who is found guilty of killing or wounding any species designated as endangered, threatened, or of special concern, commits a third degree felony; and
- Section 379.4115, F.S., provides that any person convicted of unlawfully killing a Florida or wild panther commits a third degree felony.

Subsection 379.401(5), F.S., provides a “catch all” provision making violations of ch. 379, F.S., except as provided elsewhere in the chapter, second degree misdemeanors for first offenses, and first degree misdemeanors for second or subsequent offenses. Thus, the first offense carries a maximum civil penalty of \$500¹⁹ or maximum 60 days in jail.²⁰ The second or subsequent offense carries a maximum fine of \$1,000²¹ or maximum 1 year in jail.²² The statute does not provide an expiration time after which a first offense is not considered for purposes of accruing a second or subsequent offense. Similarly, s. 379.401(2)(a)11, F.S., provides that all prohibitions in ch. 379, F.S., which are not otherwise classified, are Level 2 violations.

Taking Game or Fur-Bearing Animals While Trespassing Penalties

Present Situation

In addition to other penalties in ch. 379, F.S., any person who violates the provisions of ch. 379, F.S., by illegally killing, taking, possessing, or selling game or fur-bearing animals in or out of season while trespassing or committing burglary must pay a \$250 fine plus court costs and restitution.²³

Effect of the Bill

¹⁸ Section 379.401(4)(b), F.S.

¹⁹ Section 775.083(1)(e), F.S.

²⁰ Section 775.082(4)(b), F.S.

²¹ Section 775.083(1)(d), F.S.

²² Section 775.082(4)(a), F.S.

²³ Section 379.403, F.S.

The bill repeals s. 379.403, F.S., and creates a new s. 379.401(5), F.S., to incorporate the additional trespassing and burglary penalty into the larger four tiered recreational penalty section. The bill increases the penalty from \$250 to \$500. Further, the bill expands the list of species affected to include fish and wildlife, rather than just fur-bearing animals.

Hunting or Fishing without a License

Present Situation

Individuals who wish to hunt or fish recreationally in Florida must obtain the appropriate license and permit, unless exempted by s. 379.353(2), F.S.²⁴ Individuals who violate the hunting and fishing license and permit requirements in s. 379.354(1) through (15), F.S., commit a Level 1 violation.²⁵ Persons convicted of this must pay a \$50 fine, plus the cost of the appropriate license and permit, for the first offense. Persons who commit a second offence within 36 months of the first offense must pay a \$100 fine, plus the cost of the appropriate license and permit.²⁶

From 2012 to 2014, FWC officers issued 9,435 citations for hunting or fishing without a license.²⁷

Effect of the Bill

The bill amends s. 379.401(1)(c)1. and 2., F.S., to offer violators of recreational fishing and hunting license provisions, except for a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), F.S.,²⁸ the option to purchase the appropriate license or permit in addition to the fine rather than just paying the cost of the license or permit. Thus, these individuals will possess the appropriate license and permit in the future. The bill also amends s. 379.401(1)(f), F.S., to provide a method to provide proof of compliance with the penalty.

The bill creates s. 379.354(18), F.S., to provide a cross reference that, unless otherwise provided by law, violations of the hunting and fishing license and permit requirements are a Level 1 violation. This is consistent with s. 379.401(1)(a)5., F.S.

Repeat Offense of a Level 1 Violation

Present Situation

Currently, individuals who commit a Level 1 violation within 36 months of a previous Level 1 violation must pay a \$100 fine.²⁹

Effect of the Bill

The bill amends s. 379.401(1)(c)2. and (d)2., F.S., to increase the penalty for a repeat Level 1 violation from \$100 to \$250.

²⁴ Section 379.354, F.S.

²⁵ Section 379.401(1)(a)5., F.S.

²⁶ Section 379.401(1)(c)1. and 2., F.S.

²⁷ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

²⁸ Section 379.354(6), F.S., pertains to pier licenses, s. 379.354(7), F.S., pertains to vessel licenses, and s. 379.354(8)(f) and (h), F.S., pertains to special use permits for limited entry permits and permits for recreational hunting on lands leased from FWC by nongovernmental owners.

²⁹ Section 379.401(1)(c)2. and (d)2., F.S.

Alligator License Hunting, Tagging, and Reporting Requirement Penalties

Present Situation

Individuals who wish to hunt alligators must obtain an alligator trapping license or alligator trapping agent's license.³⁰ FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.³¹ Once an alligator is killed, the trapper must attach a CITES tag 6 inches from tip of the alligator's tail.³² All unused CITES tags must be returned to FWC within 14 days (for recreational licensees) or 15 days (for alligator management programs) after the expiration of the alligator harvest permit.³³ Failure to return a CITES tag may be grounds to deny future alligator harvest permits.³⁴

Further, within 24 hours of harvesting an alligator and prior to transfer of the carcass, the trapper must submit a harvest report form to FWC.³⁵ On the form, the trapper must indicate the CITES tag number, the harvest date, the location of the harvest, the size of the alligator, the disposition of the carcass, the sex, and the meat yield.³⁶ The alligator processor must fill out the same form upon receipt of the alligator carcass.³⁷ The processor must report its facility number, the disposition of the carcass, the sex of the alligator, and the meat yield.³⁸ The processor must maintain this information for one year.³⁹

Other reporting requirements also apply to individuals who handle alligators. Hide dealers must keep records and make an annual report to FWC about the number of hides bought and who bought the hides.⁴⁰ Individuals permitted to operate captive wildlife exhibits with alligators must complete and sign the Captive Alligator and Egg Transportation/Transfer Document before the transport of live untagged alligators.⁴¹ Individuals who operate alligator farms must keep inventory records of alligators and alligator eggs and document their transfer.⁴² Individuals who collect alligator eggs and hatchlings must tag and report the collection.⁴³

It appears unclear whether failing to possess an alligator trapper license or alligator trapping agent's license, failing to comply with the tagging requirements, and failing to file a report relating to alligator licensees or alligator reporting requirements are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9., F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- A second degree misdemeanor under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

³⁰ Section 379.3751(1), F.S.

³¹ Rule 68A-25.042(2)(d), F.A.C.; CITES is an international agreement between governments to regulate the trade of wild animal and plant species. Convention on International Trade in Endangered Species, *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (last visited October 7, 2015).

³² Section 379.3752(1), F.S.; rule 68A-25.042(3)(h), F.A.C.

³³ Rules 68A-25.032(5) and 68A-25.042(3)(k), F.A.C.

³⁴ *Id.*

³⁵ Rules 68A-25.032(2)(g) and 68A-25.042(3)(i), F.A.C.

³⁶ FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at http://myfwc.com/media/310137/Alligator_1001at.pdf (last visited October 7, 2015).

³⁷ Rule 68A-25.042(5)(a)1., F.A.C.

³⁸ FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at http://myfwc.com/media/310137/Alligator_1001at.pdf (last visited October 7, 2015).

³⁹ Rule 68A-25.042(5)(a)2., F.A.C.

⁴⁰ Rule 68A-24.004(2)(a), F.A.C.

⁴¹ Rule 68A-25.002(1)(b), F.A.C.

⁴² Rule 68A-25.004(3), F.A.C.

⁴³ Rule 68A-25.031(1)(b) and (2)(b), F.A.C.

From 2012 to 2014, FWC officers issued 22 citations for violations of alligator trapping license requirement.⁴⁴ From 2012 to 2014, FWC officers did not issue any citations for violations of alligator tagging requirements.⁴⁵

Effect of the Bill

The bill adds s. 379.401(1)(a)5., F.S., to decrease the penalty for violating FWC rules or orders requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program from a Level 2 violation to a Level 1 violation. Violating rules or orders of the commission requiring the return of unused CITES tags issued under an alligator program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program will remain a Level 2 violation because the bill adds s. 379.401(2)(a)12., F.S.

The bill amends s. 379.401(1)(a)1., F.S., to decrease the penalty for violating rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who holds an any alligator trapping license or permit from a Level 2 violation to a Level 1 violation. Violating FWC rules or orders that require the maintenance of records relating to alligators will be a Level 2 violation because the bill adds s. 379.401(2)(a)11., F.S.

Lastly, the bill creates ss. 379.401(2)(a)29. and 30., 379.3751(5), and 379.3752(3), F.S., to provide cross references that violations of the requirements to possess an alligator trapping license (or alligator trapping agent's license) or to place a CITES tag on a harvested alligator are Level 2 violations.

Wildlife Management Areas on U.S. Forest Service Land

Present Situation

Section 379.2257, F.S., authorizes FWC to enter into cooperative agreements with the U.S. Forest Service (USFS) for the development of game, bird, fish, reptile, or fur-bearing animal management and demonstration projects in the National Forests in Florida.⁴⁶ With the cooperation of the USFS, FWC may make, adopt, promulgate, amend, and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the National Forests.⁴⁷ These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.⁴⁸

Individuals who violate these rules commit a second degree misdemeanor.⁴⁹ Violators face a maximum civil penalty of \$500 or a maximum 60 days in jail.⁵⁰ These penalties are inconsistent with violations in other wildlife management areas. For example, violations of FWC 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 commission are Level 1 violations.⁵¹ Whereas, violations of FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission are a Level 2 violation.⁵²

⁴⁴ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 20 (October 23, 2015).

⁴⁵ *Id.*

⁴⁶ Section 379.2257(1), F.S.

⁴⁷ Section 379.2257(2), F.S.

⁴⁸ *See* chapters 68A-15 and 68A-17, F.A.C.

⁴⁹ Section 379.2257(3), F.S.

⁵⁰ Sections 775.082 and 775.083, F.S.

⁵¹ Section 379.401(1)(a)2., F.S.

⁵² Section 379.401(2)(a)3., F.S.

Effect of the Bill

The bill amends s. 379.2257, F.S., to indicate that penalties for violations of rules or regulations for wildlife management areas on USFS lands will be penalized under s. 379.401, F.S. Thus, the penalties for these areas will be consistent for all lands. This change will increase the penalty for repeat offenders of wildlife management area, wildlife and environmental area, and fish management area rules on USFS lands. According to FWC, USFS indicated it preferred to eliminate the inconsistency.⁵³

Sale, Barter, or Trade of Tarpon Penalties

Present Situation

Tarpon are a popular sport fish found throughout Florida's coastal environment. In June 2013, FWC approved a series of changes to the tarpon tag rules.⁵⁴ Previously individuals could harvest two tarpon per day.⁵⁵ The rule amendments restricted tarpon to a catch-and-release only fishery.⁵⁶ FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.⁵⁷

Section 379.357, F.S., provides that individuals may only harvest tarpon when in pursuit of an International Game Fish Association record.⁵⁸ Further, individuals may not possess or harvest a tarpon without first purchasing a tarpon tag and securely attaching the tag through the lower jaw of the tarpon.⁵⁹ A person may not use more than one tarpon tag during a single license year.⁶⁰

Individual may not take, kill, or possess any tarpon unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.⁶¹ Individuals who violate this prohibition commit a Level 2 violation.⁶² Further, individuals may not sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase, or purchase any tarpon.⁶³ Violations of any FWC rules or orders prohibiting the sale of saltwater fish, including tarpon, are Level 3 violations.⁶⁴

From 2012 to 2014, FWC officers issued two citations for violations of tarpon regulations.⁶⁵

Effect of the Bill

The bill amends s. 379.357(5), F.S., and adds s. 379.401(3)(a)6., F.S., to increase the penalty for the sale, transfer, or purchase of tarpon from a Level 2 violation to a Level 3 violation. This will make the penalty consistent with the penalty for violations prohibiting the sale of all saltwater fish.

The bill amends s. 379.357(4), F.S., and creates s. 379.401(2)(a)23., F.S., so that the unauthorized take, kill, or possession of tarpon remains a Level 2 violation.

⁵³ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 9 (October 23, 2015).

⁵⁴ 39 Fla. Admin. R. 94 (May 14, 2013).

⁵⁵ Rule 68B-32.004, F.A.C. (2005).

⁵⁶ Rule 68B-32.001, F.A.C.

⁵⁷ Rule 68B-32.004(2), F.A.C.

⁵⁸ Rule 68B-32.009(1)(a), F.A.C.

⁵⁹ Rule 68B-32.009(1)(b), F.A.C.

⁶⁰ Rule 68B-32.009(1)(c), F.A.C.

⁶¹ Section 379.357(3), F.S.

⁶² Section 379.357(4), F.S.

⁶³ Section 379.357(5), F.S.

⁶⁴ Section 379.401(3)(a)1., F.S.

⁶⁵ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

“Changing” or “Altering” a License Penalties

Present Situation

Individuals may not “alter” or “change” in any manner, or loan or transfer to another, unless otherwise provided, any license or permit issued by FWC.⁶⁶ It is unclear whether violators of this provision are:

- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

Whereas, individuals who make, forge, counterfeit, or reproduce a license or permit issued by FWC or knowingly possess such a license commit a Level 4 violation.⁶⁷ Level 4 violations are third degree felonies which are consistent with the penalty for counterfeiting and forgery in the criminal statutes.⁶⁸

From 2012 to 2014, FWC officers did not issue any citations altering or changing a license or permit.⁶⁹

Effect of the Bill

The bill amends s. 379.3502, F.S., to remove the reference to “altering” or “changing” a license because “altering” or “changing” a license may be charged as forging or counterfeiting a license.

The bill also clarifies that loaning, transferring, or using a borrowed or transferred license or permit without permission is a Level 2 violation by amending s. 379.3502, F.S., and adding s. 379.401(2)(a)20., F.S.

Sale, Purchase, Harvest, or Attempted Harvest of any Saltwater Product Penalties & Stone Crab and Spiny Lobster Trap Tags Penalties

Present Situation

Individuals or corporations who wish to commercially sell, purchase, or harvest saltwater products must obtain the appropriate license.⁷⁰ Individuals must obtain a stone trap tag to use a stone crab trap.⁷¹ Further, individuals must obtain a spiny lobster certificate and trap tag to use a spiny lobster trap.⁷² Violators of these regulations commit a Level 2 violation.⁷³ However, such violations are commercial activities that are punishable under s. 379.407, F.S.

Further, individuals who steal stone crab and spiny lobster trap contents and gear commit Level 2 violations.⁷⁴

Effect of the Bill

The bill removes ss. 379.365(2)(a)2. and 379.401(2)(a)13., F.S., and amends s. 379.401(2)(a)16. and 18., F.S., to remove these commercial violations from the recreation penalty statute. Thus, violations of the requirements to obtain a saltwater products license, stone crab trap tags, and spiny lobster

⁶⁶ Section 379.3502, F.S.

⁶⁷ Sections 379.354(16) and 379.401(4)(a)5., F.S.

⁶⁸ Sections 831.01 and 831.02, F.S.

⁶⁹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 11 (October 23, 2015).

⁷⁰ Section 379.361, F.S.

⁷¹ Section 379.365(2)(a), F.S.

⁷² Section 379.3671(2)(c), F.S.

⁷³ Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

⁷⁴ Sections 379.401(2)(a)16. and 18., F.S.

certificate and trap tags will now be punishable under the commercial fishing penalty statute, s. 379.407, F.S.

Theft of stone crab and spiny lobster trap contents and gear will remain Level 2 violations under the new s. 379.401(2)(a)26. and 28., F.S.

Authorized Spearfishing

Present Situation

Subsection 379.2425(2), F.S., prohibits spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys. However, rule 68B-20.003, F.A.C., allows spearfishing in these areas if authorized in other marine fisheries rules.⁷⁵

In addition, it appears unclear whether violating spearfishing regulations are:

- Level 2 violations under the catch all provision of s. 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 38 citations for spearfishing where prohibited.⁷⁶

Effect of the Bill

The bill amends s. 379.2425(2), F.S., to allow spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys when authorized by rule.

The bill also creates ss. 379.2425(4), and 379.401(2)(a)16., F.S., to make violations of the spearfishing regulations a Level 2 violation.

Unlawful Use of Traps Penalties

Present Situation

FWC sets forth numerous regulations on the use of traps.⁷⁷ Individuals who violate FWC rules or orders prohibiting unlawful use of finfish traps commit a Level 2 violation. However, the statute does not indicate the penalty for the unlawful use of other traps. Thus, it appears unclear whether violating the trap regulations are:

- Level 2 violations under the catch all provision of s. 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

Effect of the Bill

⁷⁵ See rules 68B-20.003 and 68B-20.004, F.A.C.

⁷⁶ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 10 (October 23, 2015).

⁷⁷ See e.g., rule 68A-24.002, F.A.C. (relating to fur bearing animals); rule 68A-23.002, F.A.C. (relating to taking freshwater fish); and rule 68A-9.010 (relating to taking nuisance animals).

The bill amends s. 379.401(2)(a)10., F.S., to make violations of all trap regulations a Level 2 violation.

Enforcement of Commission Rules

Present Situation

Section 379.33, F.S., states, “[e]xcept as provided under s. 379.401, 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).” Section 379.401, F.S., contains most of the recreational fishing and hunting penalties while s. 379.407, F.S., contains the penalties for commercial saltwater fishing regulations. However, other penalties enforced by FWC are found in other statutes.⁷⁸ Thus, the statement in s. 379.33, F.S., is inaccurate and confusing.

Effect of the Bill

The bill amends s. 379.33, F.S., to remove the inaccurate statement.

Control and Management of State Game Lands Penalties

Present Situation

The Legislature authorized FWC to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or development of lands or waters owned by, leased by, or otherwise assigned to, FWC for fish or wildlife management purposes.⁷⁹

State game lands include Wildlife Management Areas (WMAs), Wildlife and Environmental Areas (WEAs), and Fish Management Areas (FMAs). FWC manages a WMA system in order to sustain the widest possible range of native wildlife in their natural habitats. These lands are more rugged than parks, with fewer developed amenities. The WMA system includes more than 5.8 million acres of land established as WMAs or WEAs.⁸⁰

Chapter 68A-15, F.A.C., establishes the rules for Florida’s WMAs, and ch. 68A-17, F.A.C., establishes the rules for Florida’s WEAs. These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.

Individuals who violate these rules commit a second degree misdemeanor,⁸¹ punishable by a maximum civil penalty of \$500⁸² or a maximum 60 days in jail.⁸³

Effect of the Bill

The bill amends s. 379.2223(2), F.S., to make violations of WMA and FMA rules subject to the penalties in the recreational penalties statute. Thus, the penalties in ss. 379.401(1)(a)2., 379.401(1)(a)3., and 379.401(2)(a)3., F.S., will apply to violations of WMA and FMA rules.

⁷⁸ See ch. 372, F.S., and s. 379.4015, F.S.

⁷⁹ Section 379.2223(1), F.S.

⁸⁰ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 8 (October 23, 2015).

⁸¹ Section 379.2223(2), F.S.

⁸² Section 775.083(1)(e), F.S.

⁸³ Section 775.082(4)(b), F.S.

Contamination of Freshwater Penalties

Present Situation

Individual, firms, and corporations may not cause any dyestuff, coal tar, oil, sawdust, poison, or deleterious substances to be thrown, run, or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish.⁸⁴ Violators of this prohibition commit a second degree misdemeanor for first offense, and first degree misdemeanor for the second or subsequent offense.⁸⁵ Thus, the first offense carries a maximum civil penalty of \$500⁸⁶ or maximum 60 days in jail.⁸⁷ The second or subsequent offense carries a maximum fine of \$1,000⁸⁸ or maximum 1 year in jail.⁸⁹

Effect of the Bill

The bill amends s. 379.29(2), F.S., and adds s. 379.401(2)(a)17., F.S., to make contaminating fresh water in a way that injures fish a Level 2 violation.

Use of Explosives or Other Substances Penalties

Present Situation

Individuals may not use explosives or other similar substances in freshwaters of the state to injure fish.⁹⁰ It appears unclear whether violating this provision is a:

- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

Effect of the Bill

The bill amends s. 379.295, F.S., and creates s. 379.401(2)(a)18., F.S., to make violations of the use of explosives prohibition a Level 2 violation.

Freshwater Fish Dealer's and Fur and Hide Dealer's License Penalties

Present Situation

An individual who wishes to engage in the business of taking for sale or selling any frogs or freshwater fish, including live bait, of any species or size, or importing any exotic or nonnative fish must obtain a freshwater fish dealer's license.⁹¹ Further, individuals who wish to engage in the business of a dealer or buyer in green or dried alligator hides or green or dried furs or purchase such hides or furs must obtain a fur and hide dealer's license.

It appears unclear whether violating of these license requirements are:

- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or

⁸⁴ Section 379.29(1), F.S.

⁸⁵ Section 379.29(2), F.S.

⁸⁶ Section 775.083(1)(e), F.S.

⁸⁷ Section 775.082(4)(b), F.S.

⁸⁸ Section 775.083(1)(d), F.S.

⁸⁹ Section 775.082(4)(a), F.S.

⁹⁰ Section 379.295, F.S.

⁹¹ Section 379.363(1), F.S.

- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 51 citations for violations of the freshwater fish dealer's license requirements.⁹² From 2012 to 2014, FWC officers did not issue any citations for violations of the fur and hide dealer's license requirements.⁹³

Effect of the Bill

The bill amends ss. 379.363 and 379.364, F.S., and creates ss. 379.401(1)(a)24. and 379.401(2)(a)25., F.S., to make violations of the freshwater fish dealer's and fur and hide dealer's license requirements a Level 2 violation.

False Statement on License, Permit, or Application Penalties

Present Situation

Individuals who swear or affirm to a false statement on an application for a license or permit violates ch. 379, F.S.⁹⁴ Such statement also make the license or permit void.⁹⁵

Likewise, individuals who knowingly and willfully enter false information on, or allow or cause false information to be entered on or shown upon any license or permit in order to avoid prosecution or to assist another to avoid prosecution, or for any other wrongful purpose must be punished under s. 379.401, F.S.⁹⁶

It is unclear whether violations of these provisions are:

- Level 2 violations under the catch all provisions of s. 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of s. 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued three citations for making false statements on an application for a license or permit.⁹⁷ From 2012 to 2014, FWC officers issued two citations for entering false information on, or allowing or causing false information to be entered on or shown upon any license or permit.⁹⁸

Effect of the Bill

The bill amends ss. 379.3503 and 379.3504, F.S., and creates s. 379.401(2)(a)20. and 21., F.S., to make false statements in an application for a license or permit or entering false information on licenses or permits Level 2 violations.

⁹² FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 18 (October 23, 2015).

⁹³ *Id.* at 19.

⁹⁴ Section 379.3503, F.S.

⁹⁵ *Id.*

⁹⁶ Section 379.3504, F.S.

⁹⁷ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 12 (October 23, 2015).

⁹⁸ *Id.*

License Subagent Penalties

Present Situation

The Legislature authorized FWC to appoint subagents to act on the behalf of FWC to sell hunting, fishing, and trapping licenses and permits.⁹⁹ FWC may prohibit subagents from selling certain types of licenses and permits.¹⁰⁰ Further, only individuals appointed by FWC may handle licenses or permits for a fee or compensation of any kind.¹⁰¹

As of July 2015, FWC has contracted with 883 bonded subagents to sell hunting, fishing, and trapping licenses and permits.¹⁰² The subagents include 215 Florida tax collectors offices, as well retail stores, sporting goods stores, hardware stores, bait and tackle establishments, and others.¹⁰³

Individuals who violate the subagent regulations and rules commit a second degree misdemeanor.¹⁰⁴ Thus, violators face a maximum civil penalty of \$500¹⁰⁵ or a maximum 60 days in jail.¹⁰⁶

From 2012 to 2014, FWC officers did not issue any citations for violations of the subagent licensing requirements.¹⁰⁷

Effect of the Bill

The bill repeals s. 379.3511(1)(d), F.S., creates s. 379.3511(4), F.S., and adds s. 379.401(2)(a)22., F.S., to make violations of the subagent regulations and rules a Level 2 violation.

Illegal Killing, Possessing, or Capturing of Alligators or Other Crocodilia or Eggs Penalties

Present Situation

Individuals may not intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the FWC. Subsection 379.409(1), F.S., makes a violation of this prohibition a third degree felony. Subparagraph 379.401(4)(a), F.S., makes a violation of this provision a Level 4 violation. Both carry a maximum fine of \$5,000¹⁰⁸ or a maximum jail time of 5 years for the first offense.¹⁰⁹ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹¹⁰

From 2012 to 2014, FWC officers issued 32 citations for intentionally killing, injuring, possessing, or capturing, or attempting to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian.¹¹¹

Effect of the Bill

⁹⁹ Section 379.3511, F.S.

¹⁰⁰ Section 379.3511(1)(b), F.S.

¹⁰¹ Section 379.3511(1)(c), F.S.

¹⁰² FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

¹⁰³ Id.

¹⁰⁴ Section 379.3511(1)(d), F.S.

¹⁰⁵ Section 775.083(1)(e), F.S.

¹⁰⁶ Section 775.082(4)(b), F.S.

¹⁰⁷ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

¹⁰⁸ Section 775.083, F.S.

¹⁰⁹ Section 775.082, F.S.

¹¹⁰ Section 379.409(1), F.S.

¹¹¹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

The bill amends s. 379.409(1), F.S., and creates s. 379.409(4), F.S., to clarify that violations of this prohibition are a Level 4 violation.

Intentional Killing or Wounding Species Designated as Endangered, Threatened, or of Special Concern Penalties

Present Situation

Individuals may not intentionally kill or wound any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife without authorization from FWC.¹¹² Violators of this prohibition face a third degree felony.¹¹³ Third degree felonies carry a maximum fine of \$5,000¹¹⁴ or a maximum jail time of 5 years.¹¹⁵ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹¹⁶

From 2012 to 2014, FWC officers issued 12 citations for intentionally killing or wounding any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or intentionally destroying the eggs or nest of any such fish or wildlife.¹¹⁷

Effect of the Bill

The bill amends s. 379.411, F.S., and creates s. 379.401(4)(a)9., F.S., to make violations of this prohibition a Level 4 violation.

Killing Florida or Wild Panther Penalties

Present Situation

Individuals may not kill any Florida panther or wild panther.¹¹⁸ Violators of this prohibition face a third degree felony.¹¹⁹ Third degree felonies carry a maximum fine of \$5,000¹²⁰ or a maximum jail time of 5 years for the first offense.¹²¹ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹²²

From 2012 to 2014, FWC officers did not issue any citations for killing any Florida panther or wild panther.¹²³

Effect of the Bill

The bill amends s. 379.4115, F.S., and creates s. 379.401(4)(a)10., F.S., to make violations of this prohibition a Level 4 violation.

Knowing Possession of a Marine Turtle

¹¹² Section 379.411, F.S.

¹¹³ Id.

¹¹⁴ Section 775.083, F.S.

¹¹⁵ Section 775.082, F.S.

¹¹⁶ Section 379.411, F.S.

¹¹⁷ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

¹¹⁸ Section 379.4115, F.S.

¹¹⁹ Id.

¹²⁰ Section 775.083, F.S.

¹²¹ Section 775.082, F.S.

¹²² Section 379.4115(3), F.S.

¹²³ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

Present Situation

Five species of marine turtles (sea turtles) spend a portion of their lives in Florida's waters and nest on Florida's beaches.¹²⁴ The federal government lists these turtles as endangered or threatened¹²⁵ and these species receive special protections under the federal Endangered Species Act.¹²⁶

In order to implement the state's responsibilities under the U.S. Fish and Wildlife Service's species recovery plans, the Legislature passed the Marine Turtle Protection Act.¹²⁷ Except as authorized under the act or under the Endangered Species Act, a person, firm, or corporation may not:

- Knowingly possess the eggs of any marine turtle species; or
- Knowingly take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any marine turtles or the eggs or nest of any marine turtles.¹²⁸

Section 379.2431, F.S., provides the following penalties for violation of the Marine Turtle Protection Act:

Sea Turtle Violations ¹²⁹	Type of Infraction	Civil Penalty or Jail Time
1st offense for possession of 11 or fewer sea turtle eggs	1st Degree Misdemeanor	Max. \$1000 and Max. 1 year
2nd and subsequent offense for possession of 11 or fewer sea turtle eggs	3rd Degree Felony	Max. \$5000 or Max. 5 years
1st offense for possession of more than 11 sea turtle eggs	3rd Degree Felony	Max. \$5000 or Max. 5 years
Illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle species, or the eggs or nest	3rd Degree Felony	Max. \$5000 or Max. 5 years
Soliciting or conspiring to commit a violation of the Marine Turtle Protection Act	3rd Degree Felony	Max. \$5000 or Max. 5 years
Additional penalty for each egg associated with the above violations		\$100 per egg

The Marine Turtle Protection Act does not specify that possession of a sea turtle or part thereof is a violation. However, the federal Endangered Species Act does make it unlawful to possess an endangered or threatened species without authorization.¹³⁰ Violators of this prohibition face a \$50,000 criminal penalty or up to one year in jail or a \$25,000 civil penalty.

FWC's rules relating to endangered or threatened species prohibit possession of endangered and threatened species.¹³¹ A violation of a FWC rule that is not otherwise categorized is a Level 2 violation.¹³² The first offense of a Level 2 violation is a second degree misdemeanor.¹³³

Effect of the Bill

¹²⁴ These species are the Loggerhead, Green Turtle, Leatherback, Kemps Ridley, and Hawksbill. FWC, *Species of Sea Turtles Found in Florida*, <http://myfwc.com/research/wildlife/sea-turtles/fl-sea-turtles/species/> (last visited February 26, 2016). See also Section 379.2431(1)(b), F.S.

¹²⁵ U.S. Fish and Wildlife Service, *Listed Animals*, http://ecos.fws.gov/tess_public/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&fcrithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals (last visited February 26, 2016).

¹²⁶ 16 U.S.C. § 1531 et seq.

¹²⁷ Section 379.2431(1)(b), F.S.

¹²⁸ Section 379.2431(1)(d), F.S.

¹²⁹ Section 379.2431(1)(e), F.S.

¹³⁰ 16 U.S.C. § 1538(a)(1)(D); 50 C.F.R. § 17.31(a).

¹³¹ Rule 68A-27.003(1)(a), F.A.C.

¹³² Section 379.401(2)(a)9, F.S.

¹³³ Section 379.401(2)(b)1., F.S. A second degree misdemeanor is punishable by a maximum fine of \$500 or a maximum 60 days in jail.

The bill specifies that possession of a sea turtle, hatchling, or part thereof without authorization from FWC or from the federal government under the Endangered Species Act is a third degree felony. The bill also specifies that illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtle hatchlings, or parts thereof, is a third degree felony. Third degree felonies carry a maximum fine of \$5,000¹³⁴ or a maximum jail time of 5 years.¹³⁵ These penalties are consistent with the penalties for the intentional killing or wounding of species designated as endangered, threatened, or of special concern.¹³⁶

The bill also authorizes FWC to adopt rules to permit the possession of marine turtle hatchlings and parts thereof, specifically including nests and eggs.

Repeat Offense of a Level 4 Violation

Present Situation

Currently, an individual who commits a Level 4 violation commits a third degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹³⁷ Thus, such individual is subject to a maximum fine of \$5000¹³⁸ or a maximum jail term of 5 years.¹³⁹ Section 379.401, F.S., does not provide for increased penalties for repeat offenders. However, specific sections provide for enhanced penalties for Level Four violations if the individual is a habitual felony offender or a habitual violent felony offender.¹⁴⁰

A “habitual felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;
- The felony for which the defendant is to be sentenced was committed:
 - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
 - Within 5 years of the date of the conviction of the defendant’s last prior felony or other qualified offense, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation relating to the purchase or the possession of a controlled substance;
- The defendant has not received a pardon for any felony or other qualified offense used in the habitual felony offender determination; and
- A conviction of a felony or other qualified offense used in the habitual felony determination has not been set aside in any post-conviction proceeding.¹⁴¹

A habitual felony offender may face a penalty not to exceed 10 years in prison.¹⁴²

¹³⁴ Section 775.083, F.S.

¹³⁵ Section 775.082, F.S.

¹³⁶ Section 379.411, F.S.

¹³⁷ Section 379.401(4)(b), F.S.

¹³⁸ Section 775.083, F.S.

¹³⁹ Section 775.082, F.S.

¹⁴⁰ See s. 379.409(1), F.S. (illegal killing, possessing, or capturing of alligators or other crocodilian or eggs), s. 379.411, F.S. (intentional killing or wounding species designated as endangered, threatened, or of special concern), and s. 379.4115(3), F.S. (killing Florida or wild panther).

¹⁴¹ Section 775.084(1)(a), F.S.

¹⁴² Section 77.084(4)(a)3., F.S.

A “habitual violent felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aggravated assault with a deadly weapon;
 - Murder;
 - Manslaughter;
 - Aggravated manslaughter of an elderly person or disabled adult;
 - Aggravated manslaughter of a child;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary;
 - Aggravated battery; or
 - Aggravated stalking;
- The felony for which the defendant is to be sentenced was committed:
 - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
 - Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
- The defendant has not received a pardon on the ground of innocence for any crime used in the habitual violent felony offender determination; and
- A conviction of a crime used in the habitual violent felony offender determination has not been set aside in any post-conviction proceeding.¹⁴³

A habitual violent felony offender may face a penalty not to exceed 10 years in prison and may not be eligible for release for 5 years.¹⁴⁴

Effect of the Bill

The bill amends s. 379.401(4)(b), F.S., to authorize penalties for all Level 4 violations to increase if the court determines the individual is a habitual felony offender or a habitual violent felony offender. This is consistent with the current penalties for:

- Illegally killing, possessing, or capturing of alligators or other crocodilia or eggs;¹⁴⁵
- Intentionally killing or wounding species designated as endangered, threatened, or of special concern;¹⁴⁶ and
- Killing Florida or wild panther.¹⁴⁷

¹⁴³ Section 775.084(1)(b), F.S.

¹⁴⁴ Section 775.084(4)(b)3., F.S.

¹⁴⁵ Section 379.409(1), F.S.

¹⁴⁶ Section 379.411, F.S.

¹⁴⁷ Section 379.4115(3), F.S.

Catch All Chapter Violation Penalties

Present Situation

Subparagraph 379.401(2)(a)11., F.S., makes violations of ch. 379, F.S., Level 2 violations. Whereas, s. 379.401(5), F.S., makes violations of ch. 379, F.S., a second degree misdemeanor for the first offense and a first degree misdemeanor for the second and subsequent offenses.

Effect of the Bill

The bill removes s. 379.401(5), F.S., to eliminate this inconsistency. Thus, the catch all penalty for violations of ch. 379, F.S., will be a Level 2 violation under s. 379.401(2)(a)13., F.S.

Southeastern Guide Dogs, Inc.

Present Situation

Individuals purchasing a license or permit from FWC may voluntarily check a box on their application to authorize an additional \$2 fee.¹⁴⁸ FWC must retain \$0.90 to cover administrative costs.¹⁴⁹ Southeastern Guide Dogs, Inc., must use the money they receive to breed, raise, and train guide dogs for the blind, specifically for the “Paws for Patriots” program, which includes in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.¹⁵⁰

Southeastern Guide Dogs, Inc., a 501(c)(3) nonprofit organization, formed in 1982. The organization places more than 100 trained dogs each year into careers benefitting people with visual impairments and veterans. The organization provides all services free of charge and receives no government funding. The Paws for Patriots Program matches guide dogs, service dogs, facility therapy dogs, and emotional support dogs with active duty soldiers and retired servicemen and women who have one of the needs these dogs can help meet.¹⁵¹

When s. 379.359, F.S., passed, FWC contracted with a third-party vendor to operate a system that issues recreational licenses. As part of that contract, the vendor charged FWC \$0.90 to process each individual voluntary contribution made to Southeastern Guide Dogs, Inc. In practice, FWC retained \$0.90 of each contribution made to cover this processing fee, and forwarded \$1.10 to Southeastern Guide Dogs, Inc.¹⁵²

In October 2012, FWC contracted with a new company to process recreational licenses. Under the new contract, the new vendor does not charge FWC any fees to process the contributions to Southeastern Guide Dogs, Inc. Thus, FWC stopped retaining any fees from the contributions and began sending the entirety of each contribution (\$2.00) to Southeastern Guide Dogs, Inc.¹⁵³

In 2015, the Department of Financial Services (DFS) contacted FWC staff and advised that because the statutes says that \$0.90 “shall” be retained from each voluntary contribution made under s. 379.359, F.S., FWC was not permitted to send the entirety of the contributions to Southeastern Guide Dogs, Inc. DFS temporarily authorized the agency to continue sending the entire contributions to Southeastern Guide Dogs, Inc., with an agreement that FWC will seek a legislative change that would eliminate the requirement that FWC retain the \$0.90 fee.¹⁵⁴

¹⁴⁸ Section 379.359, F.S.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Southeastern Guide Dogs, *About Us*, <http://www.guidedogs.org/about/about-us/> (last visited October 8, 2015).

¹⁵² FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

¹⁵³ Id.

¹⁵⁴ FWC, *2016 Legislative Proposal, Southeastern Guide Dogs, Inc. Donation Fee*, p. 2 (October 5, 2015).

Effect of the Bill

The bill amends s. 379.359, F.S., to eliminate the requirement that FWC retain the administrative fee. Instead, FWC may retain the fee at its discretion.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant positive fiscal impact on FWC because it provides violators who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license. Currently, the Clerks of Courts collect these fines.¹⁵⁵ Now the money will be deposited in the Dedicated License Trust Fund,¹⁵⁶ the Lifetime Fish and Wildlife Trust Fund,¹⁵⁷ the State Game Trust Fund,¹⁵⁸ or the Marine Resources Conservation Trust Fund¹⁵⁹ if the individual chooses to purchase the appropriate license and permit. Based on FWC's estimation, if every violator chooses to purchase a license, the bill would increase funds collected by FWC by \$50,806.¹⁶⁰

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an insignificant negative fiscal impact on the Clerks of Court. The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license, thereby reducing the fines that may be collected by the Clerks of Courts.¹⁶¹ However, the bill also increases the penalties collected by the Clerks of Court for certain violations. Based on FWC's estimation, if every judge imposes the maximum penalty and every violator chooses to purchase a license, the bill would reduce funds deposited with the Clerks of Court by approximately \$85,456.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the individuals who violate the provisions of ch. 379, F.S. Depending on the specific violation, the bill may increase or decrease the penalty.

¹⁵⁵ Sections 142.01(1)(a) and 379.2203(1), F.S.

¹⁵⁶ Section 379.203, F.S.

¹⁵⁷ Section 379.207, F.S.

¹⁵⁸ Section 379.211, F.S.

¹⁵⁹ Section 379.2201, F.S.

¹⁶⁰ FWC, *Recreational Penalties Fiscal Impact*, p. 3 (October 23, 2015).

¹⁶¹ Sections 142.01(1)(a) and 379.2203(1), F.S.

In addition, the bill may create a positive impact on Southern Guide Dogs, Inc., by amending s. 379.359, F.S., to authorize FWC to transfer all of the \$2 contribution to the non-profit rather than requiring FWC to retain \$.90 for administrative costs.

D. FISCAL COMMENTS:

None.