

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 327 Illegal Taking and Possession of Bears
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	9 Y, 0 N, As CS	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) State Affairs Committee	23 Y, 0 N	Melkun	Williamson

SUMMARY ANALYSIS

The Florida black bear (*Ursus americanus floridanus*) is one of 16 recognized subspecies of the American black bear (*Ursus americanus*). The Florida black bear historically roamed throughout the state, but now lives in several fragmented areas. Due to increased regulation, the bear population is growing. As the population of both humans and bears has expanded in the state, there has been an increase in human-bear conflicts.

As a component of the Florida Fish and Wildlife Conservation Commission's (FWC) overall bear management strategy, FWC has established a regulatory framework for bear hunting. Under this framework, FWC may designate specific periods, known as seasons, when bears may be hunted. The first and only bear hunt occurred in October 2015. Since 2015, FWC has not authorized a bear season. Although there is no penalty specific to the illegal taking of a bear, Florida law provides that a person who violates rules or orders of FWC relating to seasons or time periods for the taking of wildlife commits a Level Two violation. A person who commits a Level Two violation commits a second degree misdemeanor. Currently, the taking of a bear during the closed season is considered a Level Two violation.

The bill increases the penalties for taking a bear or possessing a freshly killed bear during the closed season by specifying that a person who commits such offenses commits a Level Three violation, rather than a Level Two, and forfeits any FWC license or permit issued for three years after the date of the violation. The bill further specifies that a person who commits a subsequent offense of such taking or possession is permanently ineligible for issuance of any FWC license or permit.

The bill also specifies that a person who possesses for sale or sells a bear taken during the closed season commits a Level Four violation. A person who commits a Level Four violation commits a third degree felony.

The bill may have an indeterminate but likely insignificant negative fiscal impact on FWC. There may be an indeterminate negative fiscal impact on the Department of Corrections if violators are convicted of a third degree felony and sentenced to prison. The bill may have an indeterminate positive fiscal impact on the Clerks of Court.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is one of 16 recognized subspecies of the American black bear (*Ursus americanus*) and is one of the three subspecies of black bear that can be found in the southeastern United States.¹ The Florida black bear historically roamed throughout the state, but now lives in several fragmented areas.² Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears in the 1970s.³ As a result of the population decline, the Florida Fish and Wildlife Conservation Commission (FWC) classified the Florida black bear as a threatened species in 1974.⁴

After more than 35 years of strict statewide protection and management, FWC conducted an evaluation and determined that the Florida black bear was no longer at high risk of extinction. As a result, the Florida black bear was removed from the state threatened species list in 2012.⁵

Population

Today, the Florida black bear population is comprised of seven distinct sub-populations within the state, including Apalachicola, Eglin, Osceola, Ocala/St. Johns, Chassahowitzka, Highland/Glades, and Big Cypress.⁶ During 2014 and 2015, FWC conducted a statewide population assessment for Florida black bears and found that bear populations increased substantially in certain sub-populations and increased by approximately 53 percent statewide.⁷ Although the Florida black bear population is growing and its occupied range is expanding, the populations still only occur in seven relatively disconnected sub-groups across the state.⁸

For management purposes, each sub-population is separated into a bear management unit (BMU). A BMU is a geographic location bounded by county or state borders containing one of the seven Florida black bear sub-populations.⁹ The goal of establishing BMUs is to provide a defined area within which FWC can have a community-focused effort to effectively manage and conserve Florida black bears.¹⁰ FWC manages each BMU to meet specific goals related to bear sub-population size, potential habitat, human-bear conflicts, and potential threats, such as vehicle-related mortality.¹¹

¹ The other two subspecies, *Ursus americanus americanus* and *Ursus americanus luteolus*, do not occur in Florida; FWC, *Florida Black Bear: FAQs*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/living/faqs/> (last visited Oct. 29, 2019); FWC, *Florida Black Bear Management Plan: Ursus americanus floridanus*, 5 (June 27, 2012), available at <https://myfwc.com/media/16090/bear-management-plan.pdf> (last visited Oct. 28, 2019) (herein “2012 Bear Management Plan”).

² FWC, *Black Bears Appearance*, available at <http://myfwc.com/wildlifehabitats/managed/bear/facts/appearance/> (last visited Oct. 28, 2019).

³ FWC, *Black Bear Research*, available at <http://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited Oct. 28, 2019).

⁴ *Id.*

⁵ 2012 Bear Management Plan at 26-27.

⁶ *Id.* at xvii.

⁷ FWC, *Florida Black Bear: Numbers*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited Oct. 29, 2019).

⁸ FWC, *Florida Black Bear: Black Bear Research*, available at <https://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited Oct. 29, 2019).

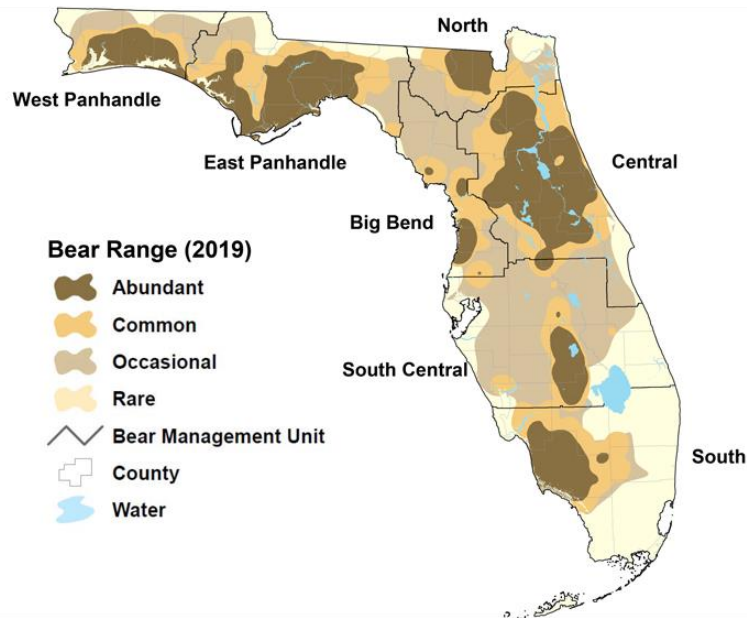
⁹ FWC, *Florida Black Bear: BMU*, available at <http://myfwc.com/wildlifehabitats/managed/bear/bmu/> (last visited Oct. 29, 2019).

¹⁰ *Id.*

¹¹ 2012 Bear Management Plan at vi.

Habitat

Florida black bears range from the northeast to the southwest of the state.¹² Updated ranges are important for managing and predicting human-bear conflicts, determining potential areas to provide linkage between sub-populations, employing conservation plans, implementing public outreach, and monitoring listing criteria.¹³ Some of the sub-populations are small and are impacted by habitat fragmentation, which restricts movement and genetic interchange among sub-populations.¹⁴



The Florida black bear is adaptable and inhabits a variety of forested habitats, but thrives in habitats that provide an annual supply of seasonally available foods, secluded areas for denning, and some degree of protection from humans.¹⁵ The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.¹⁶ Self-sustaining and secure sub-populations of bears are typically found within large contiguous forested tracts that contain understories of mast¹⁷ or berry-producing shrubs or trees.¹⁸

Human-bear Conflicts

As the population of both humans and bears has expanded in the state, there has been an increase in human-bear conflicts, particularly in residential areas, where bears often search for food.¹⁹ Between 2009 and 2018, FWC euthanized an average of 38 bears annually due to public safety risks.²⁰ FWC found that a majority of the mortalities were associated with bears seeking out unsecured garbage or other human-provided food sources.²¹ In 2018, FWC received 5,496 calls relating to bears, of which 39 percent were considered core complaints.²²

¹² FWC, *Florida Black Bear: Distribution Map*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/living/distribution-map/> (last visited Oct. 29, 2019).

¹³ *Id.*

¹⁴ 2012 Bear Management Plan at 15.

¹⁵ 2012 Bear Management Plan at 8.

¹⁶ *Id.*

¹⁷ The term “mast” is a general term for edible fruit when eaten by wildlife. Hard mast includes acorn, hickory, pecan, and other nuts while soft mast includes fleshy berries such as palmetto berries, blueberries, and grapes. 2012 Bear Management Plan at xvi.

¹⁸ 2012 Bear Management Plan at 8.

¹⁹ 2012 Bear Management Plan at 29.

²⁰ FWC, *Florida Black Bear Management Plan: Ursus americanus floridanus*, 21 (Oct. 8, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited Oct. 29, 2019) (herein “2019 Draft Bear Management Plan”).

²¹ *Id.*

²² “Core complaint” refers to a subset of all the bear-related calls received by FWC that are classified as complaints. Core complaints consist of the following categories: apiary, in building/tent/vehicle, in crops, in feed, in feeder, in garbage, in open garage, in screened porch/patio, property damage, threatened/attacked/killed animal, and threatened/attacked/killed human. Categories of calls related to human-bear interactions that are not classified as core complaints include: animal threatened/attacked/killed bear, dead bear, general

Bears in close proximity to humans create a range of issues from perceived threats (e.g., seeing a bear on the edge of the forest) to potential threats to public safety (i.e., food conditioned and habituated bears). FWC has attempted to capture and relocate bears; however, this practice was ineffective as there are few remote places where relocated bears will not encounter humans and that are not already occupied by other bears.²³ Additionally, FWC found that 70 percent of relocated bears do not remain in the area to which they were moved and over half repeat conflict behavior even after they are moved.²⁴ As a result, FWC's policies place an emphasis on the public's personal responsibility for eliminating attractants and thereby reducing or eliminating conflicts with bears.²⁵

Communities within occupied bear range that commit to learning to coexist with bears, knowing when and how to report bear activity, and securing potential food sources are referred to as BearWise Communities.²⁶ There are an estimated 19 communities throughout North America that have successfully reduced human-bear conflicts by adopting BearWise practices, including several Florida communities.²⁷ Since 2007, a total of \$2.1 million of funding through the BearWise program has been provided to local governments in Florida, over \$1.4 million of which was provided with support from the Legislature and the Fish and Wildlife Foundation of Florida.²⁸

Additionally, in 2015, FWC passed a statewide resolution highlighting the importance of securing attractants.²⁹ That same year, the Legislature increased the penalties for feeding bears.³⁰ Section 379.412, F.S., provides enhanced penalties for:

- Feeding wildlife with food or garbage;
- Attracting or enticing wildlife with food or garbage; or
- Allowing the placement of food or garbage in a manner that attracts or entices wildlife.

FWC also updated its bear feeding rule to allow law enforcement officers to issue notifications to people who have been in contact with FWC regarding securing their garbage or other attractants and have failed to do so.³¹ The notification serves as a formal reminder that the person's actions could be in violation of the law.³²

Hunting as a Management Tool

As a component of FWC's overall bear management strategy, FWC has established a regulatory framework for bear hunting. Under this framework, FWC may designate specific periods, known as seasons, when bears may be hunted. The first and only bear hunt occurred in October 2015, during which FWC authorized four of the seven BMUs to be opened to bear hunting.³³ Each BMU had an established harvest objective, which was based on taking 20 percent of the estimated BMU population and subtracting the annual known mortality.³⁴ The table below depicts the harvest objectives and the actual harvest numbers.³⁵

question, harvest/hunt, human threatened bear, illegal activity, in area, in hog trap, in tree, in unscreened porch/patio, in yard, misidentified, research, sick/injured bear, unintentionally approached human, and other. 2019 Draft Bear Management Plan at xvi, 54.

²³ 2019 Draft Bear Management Plan at 55.

²⁴ *Id.*

²⁵ *Id.*

²⁶ FWC, *Florida Black Bear: BearWise*, available at <http://myfwc.com/wildlifehabitats/managed/bear/wise/> (last visited Oct. 29, 2019).

²⁷ FWC, *Florida Black Bear: BearWise*, available at <http://myfwc.com/wildlifehabitats/managed/bear/wise/> (last visited Oct. 29, 2019); FWC, *Pioneers*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/wise/pioneers/> (last visited Oct. 29, 2019).

²⁸ FWC, *Florida Black Bear: BearWise*, available at <http://myfwc.com/wildlifehabitats/managed/bear/wise/> (last visited Oct. 29, 2019); ch. 2019-115, Laws of Fla.

²⁹ See <https://myfwc.com/media/7072/11b-blackbearresolution.pdf>, for the entire FWC black bear resolution.

³⁰ Chapter 2015-161, s. 12, Laws of Fla.

³¹ Chapter 68A-4.001, F.A.C.

³² Dr. Thomas Eason, Director, Division of Habitat and Species Conservation, FWC, *Black Bear Program Update*, slide 23 (April 2017), available at <https://myfwc.com/media/18754/3b-bearplanupdate.pdf> (last visited Oct. 29, 2019).

³³ FWC, *2015 Florida Black Bear Hunt Summary Report*, 1, available at <https://myfwc.com/media/13669/2015-florida-black-bear-hunt-report.pdf> (last visited Oct. 29, 2019).

³⁴ *Id.* at 2.

³⁵ *Id.* at 3.

Bear Management Unit	Population Estimate (Estimate Year)	20% of Population Estimate	Known Mortality (3 Year Average)	Harvest Objective	Actual Harvest
East Panhandle	600 ('02)	120	80	40	114
North	550 ('14)	110	10	100	25
Central	1,300 ('14)	260	160	100	143
South	700 ('02)	140	20	80	22
TOTALS	3,150	630	270	320	304

The hunt was authorized to begin October 24, 2015, and FWC had the ability to close the season using a daily cut-off mechanism both within each BMU and statewide.³⁶ The hunt was spread across 26 counties, and 78 percent of bears were taken on private lands.³⁷ The East Panhandle and Central BMUs were closed beginning October 25, 2015, while the North and South BMUs were closed beginning October 26, 2015.³⁸

Penalties for Taking or Sale of Wildlife

Section 379.401, F.S., provides a four-tiered penalty structure for violations of FWC's recreational hunting, fishing, and trapping regulations. Pursuant to s. 379.401, F.S., a person commits a Level Two violation if he or she violates rules or orders of FWC relating to seasons or periods for the taking³⁹ of wildlife, freshwater fish, or saltwater fish.⁴⁰ A person who commits a Level Two violation, but who has not been convicted of a Level Two or higher violation within the past three years, commits a second degree misdemeanor.⁴¹ A person commits a first degree misdemeanor⁴² if he or she commits:

- A second Level Two violation within three years after a previous conviction for a Level Two or higher violation;⁴³
- A third Level Two violation within five years after two previous convictions for a Level Two or higher violation;⁴⁴ or
- A fourth Level Two violation within 10 years after three previous convictions for a Level Two or higher violation.⁴⁵

Currently, the taking of a bear during closed season is considered a Level Two violation.

A person commits a Level Three violation if he or she violates certain provisions related to the taking, importation, possession, or sale of specific types of wildlife or fish, such as the illegal taking of deer and wild turkey.⁴⁶ In addition, the taking of game, freshwater fish, or saltwater fish while a required license is

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ The term "take" means taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater or saltwater fish, or their nests or eggs, by any means, whether or not such actions result in obtaining possession of such wildlife or freshwater or saltwater fish or their nests or eggs. Section 379.101(38), F.S.

⁴⁰ Section 379.401(2)(a)1., F.S.

⁴¹ A second degree misdemeanor is punishable by a maximum fine of \$500 or a maximum 60 days imprisonment. Sections 379.401(2)(b)1., 775.083(1)(e), and 775.082(4)(b), F.S.

⁴² A first degree misdemeanor is punishable by a maximum fine of \$1,000 and a maximum one year imprisonment. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴³ A second Level Two violation within the specified period is punishable by a minimum fine of \$250. Section 379.401(2)(b)2., F.S.

⁴⁴ A third Level Two violation within the specified period is punishable by a minimum fine of \$500 and suspension of any FWC recreational license or permit issued for one year. Section 379.401(2)(b)3., F.S.

⁴⁵ A fourth Level Two violation within the specified period is punishable by a minimum fine of \$750 and suspension of any FWC recreational license or permit issued for three years. Section 379.401(2)(b)4., F.S.

⁴⁶ Section 379.401(3)(a), F.S.

suspended or revoked constitutes a Level Three violation.⁴⁷ A person who commits a Level Three violation commits a first degree misdemeanor.⁴⁸ A person who commits a second Level Three violation within 10 years after a previous conviction for a Level Three or higher violation also commits a first degree misdemeanor.⁴⁹

A person commits a Level Four violation if he or she violates certain prohibitions related to specific species of wildlife or fish, such as the sale of illegally-taken deer or wild turkey.⁵⁰ A person who commits a Level Four violation commits a third degree felony.⁵¹

Effect of the Bill

The bill increases the penalties associated with the illegal taking, possession, and sale of bears and conforms such penalties with those related to the illegal taking, possession, and sale of deer. Specifically, the bill increases the penalties for taking a bear or possessing a freshly killed bear during the closed season by specifying that a person who commits such offenses commits a Level Three violation, rather than a Level Two violation, and forfeits any FWC license or permit issued for three years after the date of violation. The bill further specifies that a person who commits a subsequent offense of such taking or possession is permanently ineligible for issuance of any FWC license or permit.

The bill specifies that a person who possesses for sale or sells a bear taken during the closed season commits a Level Four violation, rather than a Level Three violation.

The bill also makes conforming changes to insert cross-references for the increased penalties related to the illegal taking, possession, and sale of bears

B. SECTION DIRECTORY:

- Section 1. Amends s. 379.401, F.S., providing that a person commits specified violations for the illegal taking, possession, and sale of bears.
- Section 2. Creates s. 379.4041, F.S., providing penalties for the taking, possession, and sale of bears during closed season.
- Section 3. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate but likely insignificant negative fiscal impact on revenues to FWC from violators being ineligible for future licenses.

2. Expenditures:

There may be an indeterminate negative fiscal impact on the Department of Corrections if violators are convicted of a third degree felony and sentenced to prison.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁴⁷ Section 379.401(3)(a)5., F.S.

⁴⁸ Section 379.401(3)(b)1., F.S.

⁴⁹ Section 379.401(3)(b)3., F.S. A second Level Three violation within the specified period is punishable by a minimum fine of \$750 and suspension of any FWC recreational license or permit for the remainder of the period for which the license or permit was issued, up to three years.

⁵⁰ Section 379.401(4), F.S.

⁵¹ A third degree felony is punishable by a maximum fine of \$5,000 and a maximum five years imprisonment. Sections 775.082(3)(e) and 775.083(1)(c), F.S. A habitual offender may receive a punishment of up to ten years imprisonment. Section 775.084(4)(a)3., F.S.

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the Clerks of Court because the bill increases the penalties collected by the Clerks of Court for certain violations related to taking or possessing bears.⁵²

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate but likely insignificant negative fiscal impact on revenues to retailers who sell FWC licenses or permits from violators being ineligible for future licenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 13, 2019, the Agriculture & Natural Resources Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment inserted cross-references for the penalties created in the bill in s. 379.401, F.S.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

⁵² See ss. 142.01 and 379.2203, F.S.