

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 632

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government and Senator Simon

SUBJECT: Taking of Bears

DATE: February 8, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3.	<u>Carroll</u>	<u>Yeatman</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 632 may be cited as the “Self Defense Act.” The bill provides that a person is not subject to any administrative, civil, or criminal penalty for taking a bear with lethal force if the person:

- Reasonably believed that his or her action was necessary to avoid an imminent threat of death or serious bodily injury to himself or herself or to another, an imminent threat of death or serious bodily injury to a pet, or substantial damage to a dwelling;
- Did not intentionally or recklessly place himself or herself or a pet in a situation in which he or she would be likely to need to use lethal force; and
- Notified the Fish and Wildlife Conservation Commission (FWC) within 24 hours after using lethal force to take the bear.

The bill provides that any bear taken under this section must be disposed of by FWC. A person who takes a bear under this section may not possess, sell, or dispose of the bear or its parts. The bill directs FWC to adopt rules to implement this section.

The bill has no fiscal impact on state resources or expenditures.

II. Present Situation:

Florida Fish and Wildlife Conservation Commission

The Florida Constitution grants FWC the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life, and marine life.¹

The Legislature is constitutionally prohibited from adopting statutes in conflict with rules adopted by FWC to execute its authority. However, all licensing fees for taking wild animal life, freshwater aquatic life, and marine life and all penalties for violating FWC's regulations are prescribed in statute. The Legislature may also enact laws to aid FWC that are consistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting and fishing.²

Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is the only bear that lives in Florida.³ The Florida black bear is a subspecies of the American black bear (*U. americanus*) that historically ranged throughout Florida, southern Georgia, and southern Alabama.⁴ Loss of habitat, persecution, and unregulated hunting prior to the mid-20th century caused a severe reduction in the Florida black bear population and range, with an estimated 300-500 bears remaining in the 1970s.⁵ As a result of the population decline, FWC classified the Florida black bear as a threatened species in 1974.⁶ 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 facing a high risk of extinction and removed the Florida black bear from the state threatened list in 2012.⁷

Florida black bears are an ecologically significant species. They are recognized as an umbrella species, because conserving large areas of diverse habitat for bears also conserves habitat for many other species under the "umbrella" of bear conservation.⁸ Florida black bears have been an instrumental species in conserving natural habitats and the presence of bears has been cited as justification for land protection efforts in this state. Florida black bears also have a significant impact on plant distribution through seed dispersal and they play an important ecological role as scavengers.⁹

¹ FLA. CONST. art. IV, s. 9.

² *Id.*

³ FWC, *Bear Facts*, <https://myfwc.com/wildlifehabitats/wildlife/bear/facts/> (last visited Jan. 4, 2024).

⁴ FWC, *Florida Black Bear Management Plan* (2019), 1, available at <https://myfwc.com/media/21923/2019-florida-black-bear-management-plan.pdf>.

⁵ *Id.* at 16-17; FWC, *Black Bear Research*, <https://myfwc.com/research/wildlife/terrestrial-mammals/bear/> (last visited Jan. 5, 2024).

⁶ FWC, *Black Bear Research*.

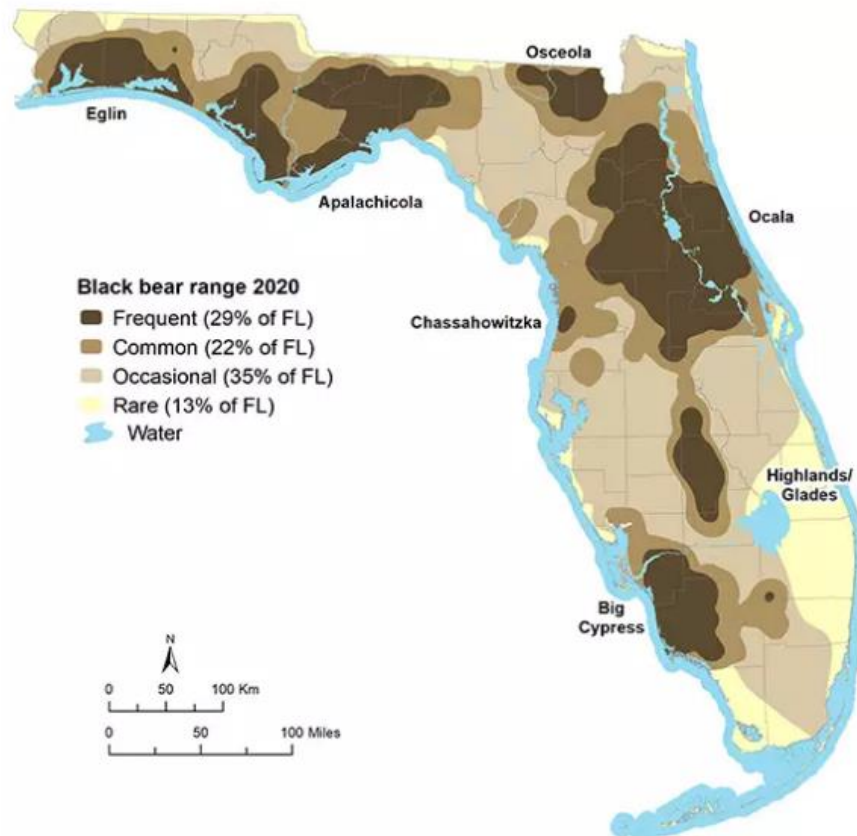
⁷ FWC, *Florida Black Bear Management Plan* at 25.

⁸ *Id.* at 8.

⁹ *Id.*

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.¹⁰ 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.¹¹ 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.¹² The current state-wide population estimate is 4,050 Florida black bears.¹³



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.¹⁴ 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.¹⁵ FWC manages each BMU to meet specific goals related to bear

¹⁰ *Id.* at xix.

¹¹ FWC, *Bears by the Numbers*, <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited Jan. 5, 2024).

¹² FWC, *Black Bear Research*.

¹³ FWC, *Bear Facts*.

¹⁴ FWC, *Bear Management Units*, <https://myfwc.com/wildlifehabitats/wildlife/bear/bear-management-units/> (last visited Jan. 5, 2024).

¹⁵ *Id.*

sub-population size, potential habitat, human-bear conflicts, and potential threats, such as vehicle-related mortality.¹⁶

Florida black bears range from the northeast to the southwest of the state.¹⁷ Some of the sub-populations are small and are impacted by habitat fragmentation, which restricts movement and genetic interchange among sub-populations.¹⁸

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.¹⁹ The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.²⁰ Self-sustaining and secure sub-populations of bears are typically found within large, contiguous forested tracts that contain understories of mast²¹ or berry-producing shrubs or trees.²²

Human-Bear Conflicts

As the populations of both humans and bears have expanded in the state, there has been an increase in human-bear conflicts, particularly in residential areas, where bears often search for food.²³ Between 2009 and 2018, FWC euthanized an average of 38 bears annually due to public safety risks.²⁴ FWC found that a majority of the mortalities were associated with bears seeking out unsecured garbage or other human-provided food sources.²⁵ In 2022, FWC received 5,907 calls relating to bears,²⁶ of which 36 percent were considered core complaints.²⁷

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

¹⁶ FWC, *Florida Black Bear Management Plan* at 28-29.

¹⁷ FWC, *Current Florida Black Bear Range*, <https://myfwc.com/research/wildlife/terrestrial-mammals/bear/current/> (last visited Jan. 5, 2024).

¹⁸ FWC, *Florida Black Bear Management Plan* at 45-46; FWC, *Current Florida Black Bear Range*, <https://myfwc.com/research/wildlife/terrestrial-mammals/bear/current/> (last visited Jan. 5, 2024) (Map: black bear range 2020).

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ 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. *Id.* at xvii.

²² *Id.* at 8.

²³ *Id.* at 29.

²⁴ *Id.* at 21.

²⁵ *Id.*

²⁶ FWC, *Bears by the Numbers*.

²⁷ “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 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. FWC, *Bear Management Plan* at xvi.

that are not already occupied by other bears.²⁸ Additionally, FWC found that 70 percent of relocated bears do not remain in the area to which they are moved, and over half repeat conflict behavior even after they are moved. 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.²⁹

In 2015, FWC adopted a statewide resolution highlighting the importance of securing attractants.³⁰ That same year, the Legislature increased the penalties for feeding wildlife, with enhanced penalties for repeatedly feeding bears and certain other wildlife.³¹ Specifically, the law provided 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.³²

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.³³ The notification serves as a formal reminder that the person's actions could be in violation of the law.³⁴

Taking of Bears

Through its constitutional authority to regulate wildlife, FWC has adopted rules to regulate the taking³⁵ of bears. Generally, under FWC rule, a person is prohibited from taking, possessing, injuring, shooting, or selling a black bear or its parts or attempting to engage in such conduct.³⁶ Such conduct is authorized in certain limited circumstances when FWC issues a permit granting such authorization. Pursuant to its rules, FWC may issue a permit authorizing the intentional take of a bear when it determines such authorization furthers scientific or conservation purposes which will benefit the survival potential of the species or reduce property damage caused by bears.³⁷

The rules specifically state that activities that are eligible for a permit include the collection of scientific data needed for conservation or management of the species, as well as taking bears that are causing property damage when non-lethal options cannot provide practical resolution to the damage, and FWC cannot capture the bear.³⁸ Members of the public may use non-lethal means to

²⁸ *Id.* at 55.

²⁹ *Id.*

³⁰ See FWC, *Resolution*, available at <https://myfwc.com/media/7072/11b-blackbearresolution.pdf>.

³¹ Chapter 2015-161, s. 12, Laws of Fla.

³² Section 379.412, F.S.

³³ Chapter 68A-4.001, F.A.C.

³⁴ Dr. Thomas Easton, 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>.

³⁵ "Take" is defined as 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.

³⁶ Rule 68A-4.009(1), F.A.C.

³⁷ Rule 68A-4.009(2), F.A.C.

³⁸ Rule 68A-4.009(2)(a)-(b), F.A.C.

scare away bears that may be in a person’s yard or rifling through trash. Black bears are not considered nuisance animals that can be taken by a property owner.³⁹

Under current law, the defense of necessity is the only applicable defense to an illegal take or attempted take of a Florida black bear. The defense of necessity is limited to the following circumstances:

- The defendant reasonably believed that his or her action was necessary to avoid an imminent threat of death or serious bodily injury to himself or herself or others;
- The defendant did not intentionally or recklessly place himself or herself in a situation in which it would be probable that he or she would be forced to choose the criminal conduct;
- There existed no other adequate means to avoid the threatened harm except the criminal conduct;
- The harm sought to be avoided was more egregious than the criminal conduct perpetrated to avoid it; and
- The defendant ceased the criminal conduct as soon as the necessity or apparent necessity for it ended.⁴⁰

Bear hunting in Florida was first regulated in 1936 and continued through 1994 in certain parts of the state. The most recent bear hunt occurred in October 2015, during which FWC authorized bear hunting in four of the seven BMUs.⁴¹ 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.⁴² The table below depicts the harvest objectives and actual harvest numbers.⁴³

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. The hunt was spread across 26 counties and 78 percent of bears were taken on private lands. The East Panhandle and Central BMUs were closed beginning October 25, 2015, while the North and South BMUs were closed beginning October 26, 2015.⁴⁴

³⁹ Rule 68A-9.010(1)(b)1., F.A.C.

⁴⁰ Jess Melkun, FWC, *Bears* (email on file with the Senate Committee on Environment and Natural Resources); *McCoy v. State*, 928 So. 2d 503, 506 (Fla. 4th DCA 2006).

⁴¹ FWC, *2015 Florida Black Bear Hunt Summary Report*, 1, available at <https://myfwc.com/media/13669/2015-florida-black-bear-hunt-report.pdf>.

⁴² *Id.* at 2.

⁴³ *Id.* at 3.

⁴⁴ *Id.*

According to FWC, hunting is used as a tool to meet wildlife population objectives, such as slowing population growth rates, rather than to resolve human-bear conflicts, which are better managed by securing items that attract bears.⁴⁵

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the “Self Defense Act.”

Section 2 creates s. 379.40411, F.S., to provide that a person is not subject to any administrative, civil, or criminal penalty for taking a bear with lethal force if:

- The person reasonably believed that his or her action was necessary to avoid an imminent threat of death or serious bodily injury to himself or herself or to another, an imminent threat of death or serious bodily injury to a pet, or substantial damage to a dwelling as defined in s. 776.013(5), F.S., relating to home protection;⁴⁶
- The person did not intentionally or recklessly place himself or herself or a pet in a situation in which he or she would be likely to need to use lethal force; and
- The person notified the Fish and Wildlife Conservation Commission (FWC) within 24 hours after using lethal force to take the bear.

The bill provides that any bear taken under this section must be disposed of by FWC. A person who takes a bear under this section may not possess, sell, or dispose of the bear or its parts. The bill directs FWC to adopt rules to implement this section.

Section 3 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁴⁵ FWC, *Florida Black Bear General Hunting FAQs*, <https://myfwc.com/wildlifehabitats/wildlife/bear/plan-faqs/hunting-faqs/> (last visited Jan. 5, 2024).

⁴⁶ “Dwelling” is defined as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night. Section 776.013(5), F.S.

E. **Other Constitutional Issues:**

Article IV, s. 9 of the Florida Constitution establishes the Fish and Wildlife Conservation Commission (FWC) and grants FWC the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life. The bill may implicate this provision because it specifies that the take of a bear is justified under certain circumstances.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

None.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 379.40411 of the Florida Statutes.

IX. **Additional Information:**

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

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

CS/CS by Fiscal Policy on February 8, 2024:

The committee substitute provides that a person is not subject to any administrative, civil, or criminal penalty for taking a bear with lethal force if:

- The person reasonably believed that his or her action was necessary to avoid an imminent threat of death or serious bodily injury to himself or herself or to another, an imminent threat of death or serious bodily injury to a pet, or substantial damage to a dwelling;
- The person did not intentionally or recklessly place himself or herself or a pet in a situation in which he or she would be likely to need to use lethal force; and

- The person notified the Fish and Wildlife Conservation Commission within 24 hours after using lethal force to take the bear.

The committee substitute removes the provision allowing the use of lethal force to take a bear without a permit or other required authorization if a person reasonably believes that using such force is necessary to protect his or her private property or to prevent imminent death or great bodily harm to himself or herself or another on his or her private property.

CS by Appropriation Committee on Agriculture, Environment, and General Government on January 26, 2024:

The committee substitute:

- Provides that the use of lethal force to take a bear without a permit or other required authorization is justified if a person reasonably believes that using such force is necessary to protect himself or herself on his or her private property or to prevent imminent death or great bodily harm to himself or herself or another on his or her private property.
- Removes the provisions that luring a bear with food or attractant or provoking a bear to incite an attack are not applicable to the authorization to take a bear.

B. Amendments:

None.