

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 Criminal Justice

BILL: CS/CS/SB 688

INTRODUCER: Criminal Justice Committee; Environment and Natural Resources Committee; and Senator Wright

SUBJECT: Illegal Taking and Possession of Bears

DATE: February 12, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|---------------|
| 1. | <u>Dyson</u> | <u>Rogers</u> | <u>EN</u> | <u>Fav/CS</u> |
| 2. | <u>Cellon</u> | <u>Jones</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 688 creates a section of law that increases the penalty for taking or possessing a freshly killed bear from a Level Two violation (a second-degree misdemeanor for the first offense) to a Level Three violation (a first-degree misdemeanor for the first offense). The bill makes a subsequent offense of such taking or possession permanently ineligible for any other permit or license issued by the Fish and Wildlife Conservation Commission.

The bill also makes the sale or attempted sale of a bear taken in violation of the section a Level Four violation (a third-degree felony).

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the Fish and Wildlife Conservation Commission to issue permits for certain activities that might be considered “taking or possessing” a black bear. The bill incorporates this exception to the general rules related to black bears by exempting a person who is acting under the authority rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The Florida Fish and Wildlife Conservation Commission suggests that there may be a nominal loss of revenue due to the loss in permit fees from violators who are no longer eligible to be issued a license by the Commission. The bill has a positive insignificant prison bed impact (an

increase of 10 or fewer prison beds) on the Department of Corrections. See Section IV Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the American black bear (*Ursus americanus*)¹ that has historically ranged throughout Florida, southern Georgia, and southern Alabama.² Once roaming across Florida, the Florida black bear is now mainly located in fragmented areas across the state covering about 49 percent of its historic range.³ Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears during the 1970s.⁴ The massive population decline led the Florida Fish and Wildlife Conservation Commission (FWC) to classify the Florida black bear as a threatened species in 1974.⁵

After more than 35 years of strict statewide protection and management, the FWC conducted an evaluation and determined that the Florida black bear was no longer at risk for extinction. In 2012 the Florida black bear was removed from the state threatened species list.⁶

Population

The Florida black bear population is comprised of seven distinct sub-populations. They are Apalachicola; Eglin; Osceola; Ocala/St. Johns; Chassahowitzka; Highland/Glades; and Big Cypress.⁷ During 2014-2015, the FWC conducted a statewide population assessment for Florida black bears and found that bear populations had increased substantially in certain sub-populations and increased by approximately 53 percent statewide.⁸ Even though the Florida black bear population is growing, the bears still only reside in the seven disconnected sub-groups across the state.⁹

¹ Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. 1 (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

² *Id.*

³ Florida Fish and Wildlife Conservation Commission, *The Florida Black Bear, Appearance*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/facts/appearance/> (last visited February 6, 2020).

⁴ Florida Fish and Wildlife Conservation Commission, *Black Bear Research*, available at <http://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited February 6, 2020).

⁵ *Id.*

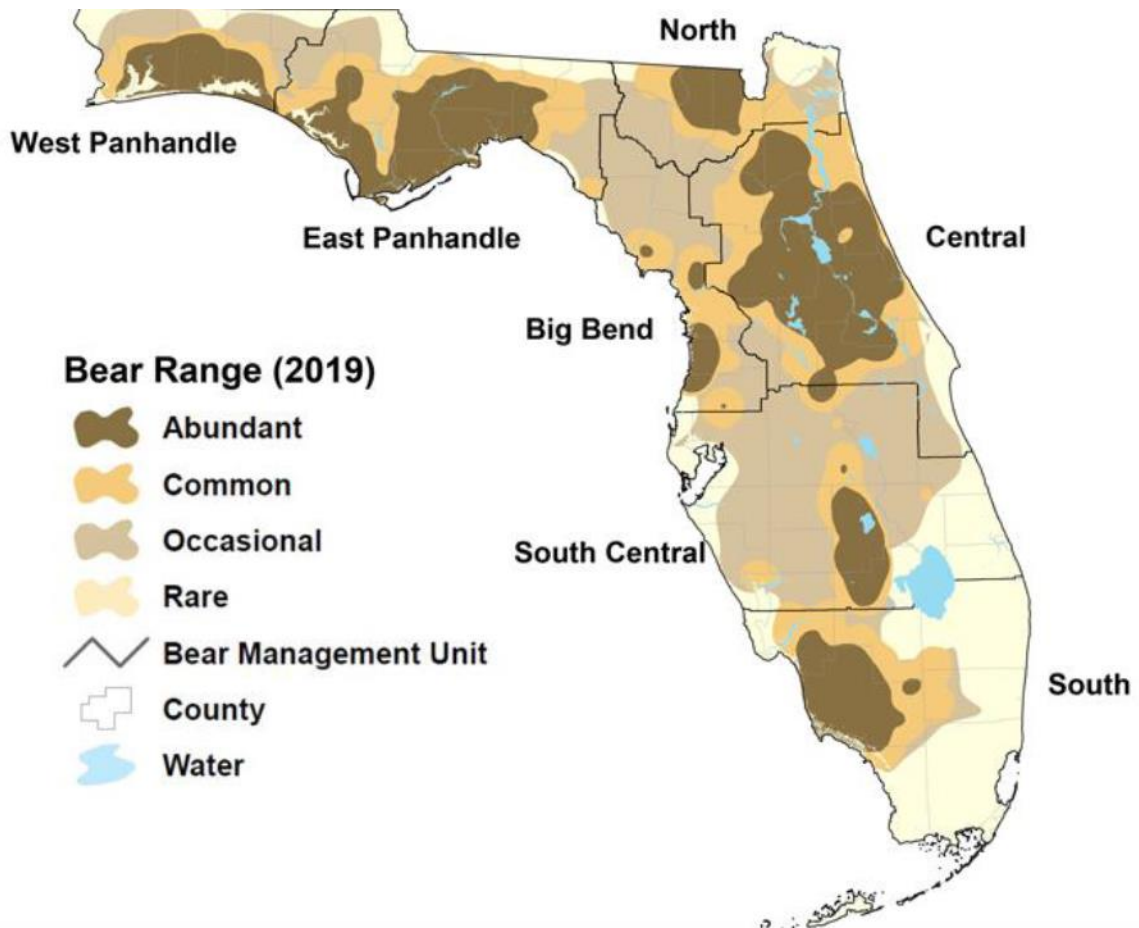
⁶ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pgs. 26-27 (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

⁷ Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. xix (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

⁸ Florida Fish and Wildlife Conservation Commission, *Florida Black Bear: Numbers*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited February 6, 2020).

⁹ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. vi (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

Each subpopulation is separated into a bear management unit (BMU). A BMU is a geographic location bounded by county and/or state borders with one of the seven Florida black bear subpopulations within it.¹⁰ The goal of a BMU is to provide a defined area within which the FWC can have a community-focused effort to effectively manage and conserve Florida black bears.¹¹ FWC estimates that the current population of the Florida black bear is over 4,000.¹² A map of the BMUs and Florida black bear habitats is shown below.¹³



Habitat

The Florida black bear is adaptable and inhabits a variety of forested habitats but thrives in areas that provide seasonally available foods, secluded areas for denning, and some degree of protection from humans.¹⁴ The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.¹⁵

¹⁰ Florida Fish and Wildlife Conservation Commission, *BMU*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/bmu/> (last visited February 6, 2020).

¹¹ *Id.*

¹² Florida Fish and Wildlife Conservation Commission, *Draft Florida Black Bear Management Plan*, (November 22 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

¹³ Florida Fish and Wildlife Conservation Commission, *Distribution Map*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/distribution-map/> (last visited February 6, 2020).

¹⁴ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. 8, (June 27, 2012), available at <https://myfwc.com/media/14741/bear-mapag.nagement-plan.pdf> (last visited February 6, 2020).

¹⁵ *Id.*

Hunting as a Management Tool

In 2015, the FWC authorized the first bear hunt, opening the East Panhandle, North, Central, and South BMUs to a limited hunt.¹⁶ In 2016, the FWC staff considered four options regarding the hunting of Florida black bears.¹⁷ These options included: using the same framework for the 2016 hunt as was used in 2015; authorizing a more conservative bear hunt utilizing input received from the public and stakeholders; postponing bear hunting in Florida; or prohibiting bear hunting in Florida for future years.¹⁸ The FWC ultimately decided to postpone the bear hunt for 2016 with the option to reopen discussion at a later date.¹⁹ Currently, there is no season where bear hunting is authorized in the state.

Penalties for Taking or Sale of Wildlife

The FWC has a four-tier system for penalties and violations which includes civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations the most serious.²⁰

Level Two Violations

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.²¹

¹⁶ Florida Fish and Wildlife Conservation Commission, *2015 Florida Black Bear Summary Report*, pg. 1, available at <https://myfwc.com/media/13669/2015-florida-black-bear-hunt-report.pdf> (last visited February 6, 2020).

¹⁷ Florida Fish and Wildlife Conservation Commission, *FWC to Consider Staff Recommendation for Florida Bear Hunt, Four Options on How to Move Forward* (June 10, 2016), available at https://myfwc.com/media/16630/fwc-to-consider-staff-recommendation-for-florida-bear-hunt-four-options-on-how-to-move-forward_061016.pdf (last visited February 6, 2020).

¹⁸ *Id.*

¹⁹ Florida Fish and Wildlife Conservation Commission, *FWC votes to postpone bear hunting in 2016* (June 22, 2016), available at https://myfwc.com/media/16632/fwc-votes-to-postpone-bear-hunting-in-2016_062216.pdf (last visited February 6, 2020).

²⁰ Section 379.401, F.S.

²¹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

| Level Two Violation | Degree of Offense | Fine or Incarceration | License Restrictions |
|---|--|---|---------------------------------------|
| First offense | 2 nd Degree Misdemeanor ²² | Max: \$500 or Max: 60 days | None |
| Second offense within three years of previous Level Two violation (or higher) | 1 st Degree Misdemeanor ²³ | Min: \$250; Max: \$1,000 Max: one year | None |
| Third offense within five years of two previous Level Two violations (or higher) | 1 st Degree Misdemeanor ²⁴ | Min: \$500; Max: \$1,000 Max: one year | Suspension of license for one year |
| Fourth offense within 10 years of three previous Level Two violations (or higher) | 1 st Degree Misdemeanor ²⁵ | Min: \$750; Max \$1,000 or Max: one year | Suspension of license for three years |

The taking of a bear during closed season is considered a Level Two violation.²⁶

Level Three Violations

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.²⁷

The penalties for a Level Three violation are as follows:

| Level Three Violation | Degree of Offense | Fine or Incarceration | License Restrictions |
|---|--|--|---|
| First offense | 1 st Degree Misdemeanor ²⁸ | Max: \$1,000 Max: one year | None |
| Second offense within 10 years of a previous Level Three violation (or higher) | 1 st Degree Misdemeanor ²⁹ | Min: \$750; Max: \$1,000 Max: one year | Suspension of license or permit for up to three years |
| Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S. | 1 st Degree Misdemeanor | Mandatory \$1,000 ³⁰ Max: one year | May not acquire license or permit for five years |

²² Section 379.401(2)(b)1., F.S.

²³ Section 379.401(2)(b)2., F.S.

²⁴ Section 379.401(2)(b)3., F.S.

²⁵ Section 379.401(2)(b)4., F.S.

²⁶ Section 379.401(2)(a)1., F.S.; 68A-4.009 F.A.C.

²⁷ Section 379.401(3), F.S.

²⁸ Section 379.401(3)(b)1., F.S.

²⁹ Section 379.401(3)(b)2., F.S.

³⁰ Section 379.401(3)(b)3., F.S.

Level Four Violations

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.³¹

The penalties for Level Four Violations are as follows:

| Level Four Violation | Degree of Offense | Fine or Incarceration | License Restrictions |
|-----------------------------|-------------------------------|---------------------------------|-----------------------------|
| First offense ³² | 3 rd Degree Felony | Max: \$5,000 Max: Five Years | None |

FWC Rule Promoting Bear Conservation, Human-Bear Coexistence

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking or possessing” a black bear.

The rule provides that the FWC will issue permits authorizing intentional take of bears when it determines such authorization furthers scientific or conservation purposes which will benefit the survival potential of the species or to reduce property damage caused by bears. Activities that are eligible for a permit include:

- Collection of scientific data needed for conservation or management of the species;
- Taking bears that are causing property damage when no non-lethal options can provide practical resolution to the damage, and the FWC is unable to capture the bear.³³

The FWC authorizes members of the public to take a bear in an attempt to scare a bear away from people using methods considered non-lethal, in situations and by methods as authorized by the FWC staff.³⁴ The FWC will provide technical assistance to land owners and comments to permitting agencies in order to minimize and avoid potential negative human-bear interactions or impacts of land modifications on the conservation and management of black bears. The FWC will base its comments and recommendations on the goals and objectives of the approved Florida Black Bear Management Plan.³⁵

³¹ Section 379.401(4)(a), F.S.

³² Section 379.401(4)(b), F.S.

³³ Rule 68A-4.009 (2) F.A.C.

³⁴ Rule 68A-4.009 (3) F.A.C., see Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22, 2019), available at <https://myfwc.com/wildlifehabitats/wildlife/bear/living/scare/> (last visited February 11, 2020).

³⁵ Rule 68A-4.009 (4) F.A.C., see Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 11, 2020).

III. Effect of Proposed Changes:

The bill adds the prohibited taking and possession of bears to the list of Level Three violations, which are first degree misdemeanor offenses punishable by up to a year in the county jail and a \$1,000 fine.³⁶ It also adds the prohibited sale of an illegally-taken bear to the list of Level Four violations which are third degree felony offenses punishable by up to 5 years incarceration and a \$5,000 fine.³⁷

The bill creates s. 379.4041, F.S., which increases the penalty for taking or possessing a freshly killed bear during the closed season. Under the bill, a person who commits such offenses commits a Level Three violation and forfeits any FWC license or permit for three years from the violation date. A person who commits a subsequent offense of taking a bear or possessing a freshly killed bear is permanently ineligible for issuance of any FWC license or permit.

The bill also states that any person who possesses for sale or sells a bear taken during the closed season commits a Level Four violation.

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking” a black bear. The bill incorporates this exception to the general rules related to “taking” black bears by exempting a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The bill provides an effective date of July 1, 2020.

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.

E. Other Constitutional Issues:

None identified.

³⁶ Sections 775.082 and 775.083, F.S.

³⁷ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a nominal loss in permit fees from violators who are no longer eligible to be issued a license.³⁸

The Criminal Justice Impact Conference considered this bill on February 10, 2020, and determined that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds) on the Department of Corrections.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 379.4041 of the Florida Statutes.

This bill substantially amends section 379.401 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 Criminal Justice on February 11, 2020:**

Exempts a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill. (Rule 68A-4.009 F.A.C. allows the FWC to issue permits for activities that might be considered to be “taking” a black bear.)

³⁸ Florida Fish and Wildlife Conservation Commission, 2020 Agency Bill Analysis, October 15, 2019, (on file with the Senate Criminal Justice Committee).

³⁹ Office of Economic and Demographic Research, Criminal Justice Impact Conference Adopted Estimate, CS/SB 688 – Illegal Taking, Possession, and Sale of Bears February 10, 2020 (on file with the Senate Criminal Justice Committee).

CS by Environment and Natural Resources on February 3, 2020:

Changes the bill to add the prohibited taking and possession of bears to the list of Level Three violations and the prohibited sale of an illegally-taken bear to the list of Level Four violations.

B. Amendments:

None.