

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 Environment and Natural Resources

BILL: SB 1044

INTRODUCER: Senator Martin

SUBJECT: Photographic Evidence of Illegally Taken Wildlife, Freshwater Fish, and Saltwater Fish

DATE: March 17, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1044 allows the admission of a digital copy of a photograph of illegally taken wildlife, saltwater fish, or freshwater fish as competent evidence of such property in a prosecution for any statutory or Florida Fish and Wildlife Conservation Commission rule violation.

The bill requires the digital copy to be included in the written report of the investigating law enforcement officer, along with a written description of the wildlife or fish alleged to have been illegally taken, the name of the violator, the location where the alleged illegal taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer.

If the written report does not contain an oath of the investigating officer, the digital copy must be authenticated in court to be admissible as evidence to the same extent as the wildlife or fish shown in the picture.

The bill provides that the original photograph must be presented if requested by a defendant or the court, but the original photograph does not need to bear a written description of the information the bill requires to be included in the written report.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.¹ FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida

¹ FLA. CONST. art. IV, s. 9.

Senate.² Under Article IV, Section 9 of the Florida Constitution, FWC has the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

Illegally Taken Fish and Wildlife

The definition of take includes taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife, freshwater fish, or saltwater fish, or their nests or eggs, by any means, whether or not such actions result in obtaining possession of such wildlife, fish, or their nests or eggs.³

All wildlife and fish that have been seized under statute or FWC rules must be forfeited to the investigating law enforcement agency upon either conviction of the offender or in accordance with a court order.⁴ The law enforcement agency may:

- Retain the wildlife or fish for the agency's official use;
- Transfer it to another unit of state or local government for official use;
- Donate it to a charitable organization;
- Sell it at a public sale; or
- Destroy it if none of the other options is practicable or if the wildlife or fish is unwholesome or otherwise not of appreciable value.⁵

All illegally possessed live wildlife and fish that are properly documented as evidence may be returned to the habitat unharmed. Any unclaimed wildlife or fish must be retained by the investigating law enforcement agency and disposed of as stated in the paragraph above.⁶

In any prosecution for a statutory or FWC rule violation, a photograph of illegally taken wildlife, freshwater fish, or saltwater fish may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such wildlife or fish were introduced as evidence.⁷ The photograph must bear in writing:

- A description of the wildlife, freshwater fish, or saltwater fish alleged to have been illegally taken;
- The name of the violator;
- The location where the alleged illegal taking occurred;
- The name of the investigating law enforcement officer;
- The date the photograph was taken; and
- The name of the photographer.⁸

² *Id.*; see also s. 379.102(1), F.S.

³ Section 379.101(38), F.S.; FWC, *Taking Game*, <https://myfwc.com/hunting/regulations/taking-game/> (last visited Mar. 12, 2023).

⁴ Section 379.338(1), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 379.3381, F.S.

⁸ *Id.*

The writing shall be made under oath by the investigating law enforcement officer and the photograph must be identified by the signature of the photographer.⁹ Authentication or identification of evidence is required as a condition precedent to its admissibility.¹⁰ This is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 379.3381, F.S., to allow the admission of a digital copy of a photograph of illegally taken wildlife, freshwater fish, or saltwater fish as competent evidence of such property in a prosecution for any statutory or Florida Fish and Wildlife Conservation Commission rule violation.

The digital copy must be included in the written report of the investigating law enforcement officer and the report must include a written description of the wildlife, saltwater fish, or freshwater fish alleged to have been illegally taken, the name of the violator, the location where the alleged illegal taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer.

The bill provides that if the written report does not contain an oath of the investigating officer, the digital copy of the photograph contained in the report is admissible as evidence to the same extent as the wildlife, freshwater fish, or saltwater fish pictured therein if the digital copy is authenticated in court.

Further, the bill provides that the original photograph must be presented if requested by a defendant or the court, but the original photograph does not need to bear a written description of the information the bill requires to be included in the written report to be admissible as evidence. The original photograph may be presented in either digital or printed form.

The bill makes technical and conforming changes.

Section 2 reenacts subsection (1) of s. 379.338, F.S., relating to the confiscation and disposition of illegally taken wildlife, freshwater fish, and saltwater fish, to incorporate the amendment made by this bill to the photographic evidence of illegally taken wildlife or fish requirements in a reference thereto.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ *Id.*

¹⁰ Section 90.901, F.S.

¹¹ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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 substantially amends section 379.3381 of the Florida Statutes.

This bill reenacts section 379.338(1) of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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