

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 87 Taking of Bears  
**SPONSOR(S):** Shoaf and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

Article IV, section 9, of the Florida Constitution establishes the Florida 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 Florida black bear (*Ursus americanus floridanus*) is the only bear that lives in Florida. The Florida black bear historically roamed throughout the state, but now lives in several fragmented areas. Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears in the 1970s. As a result of the population decline, FWC classified the Florida black bear as a threatened species in 1974. 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.

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. Between 2009 and 2018, FWC euthanized an average of 38 bears annually due to public safety risks. FWC found that a majority of the mortalities were associated with bears seeking out unsecured garbage or other human-provided food sources. In 2022, FWC received 5,907 calls relating to bears, of which 36 percent were considered core complaints. 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).

The bill creates the "Self Defense Act," (act) which specifies that the use of lethal force to take a bear without a permit or authorization is justified if a person feels threatened and believes that using such force is necessary to protect himself or herself on his or her private property.

The bill specifies that the act does not apply if a person lures a bear with food or attractants for an illegal purpose, including training dogs to hunt bears, or provokes a bear to incite attack.

The bill specifies that a person who takes a bear pursuant to the act is not subject to any administrative, civil, or criminal penalties; must notify FWC within 24 hours after the taking; and may not possess, sell, or dispose of the taken bear or its parts. A bear taken under the act must be disposed of by FWC.

The bill does not appear to have a fiscal impact on the state.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Fish and Wildlife Conservation Commission

Article IV, section 9, of the Florida Constitution establishes the Florida 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.<sup>1</sup>

As a result of FWC's constitutional authority, the Legislature is constitutionally prohibited from adopting statutes in conflict with rules adopted by FWC to execute such authority.<sup>2</sup> However, the Constitution specifies that all licensing fees for taking wild animal life, freshwater aquatic life, and marine life as well as the penalties for violating FWC regulations must be prescribed by the Legislature.<sup>3</sup> In addition, the Legislature must provide for FWC's exercise of executive powers in the areas of planning, budgeting, personnel management, and purchasing.<sup>4</sup> The Legislature may also enact laws to aid FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting and fishing.<sup>5</sup>

##### Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is the only bear that lives in Florida.<sup>6</sup> The Florida black bear historically roamed throughout the state, but now lives in several fragmented areas.<sup>7</sup> Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears in the 1970s.<sup>8</sup> As a result of the population decline, FWC classified the Florida black bear as a threatened species in 1974.<sup>9</sup> 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.<sup>10</sup>

##### *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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>1</sup> Art. IV, s. 9, Fla. Const.

<sup>2</sup> Art. IV, s. 9, Fla. Const.

<sup>3</sup> Art. IV, s. 9, Fla. Const.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> FWC, *Florida Black Bear: FAQs*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/faqs/> (last visited Nov. 28, 2023).

<sup>7</sup> FWC, *Black Bears Appearance*, <http://myfwc.com/wildlifehabitats/managed/bear/facts/appearance/> (last visited Nov. 28, 2023).

<sup>8</sup> FWC, *Black Bear Research*, <http://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited Nov. 28, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> FWC, *Bear Management Plan* (2019), 25, available at <https://myfwc.com/media/21923/2019-florida-black-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>11</sup> *Id.* at xix.

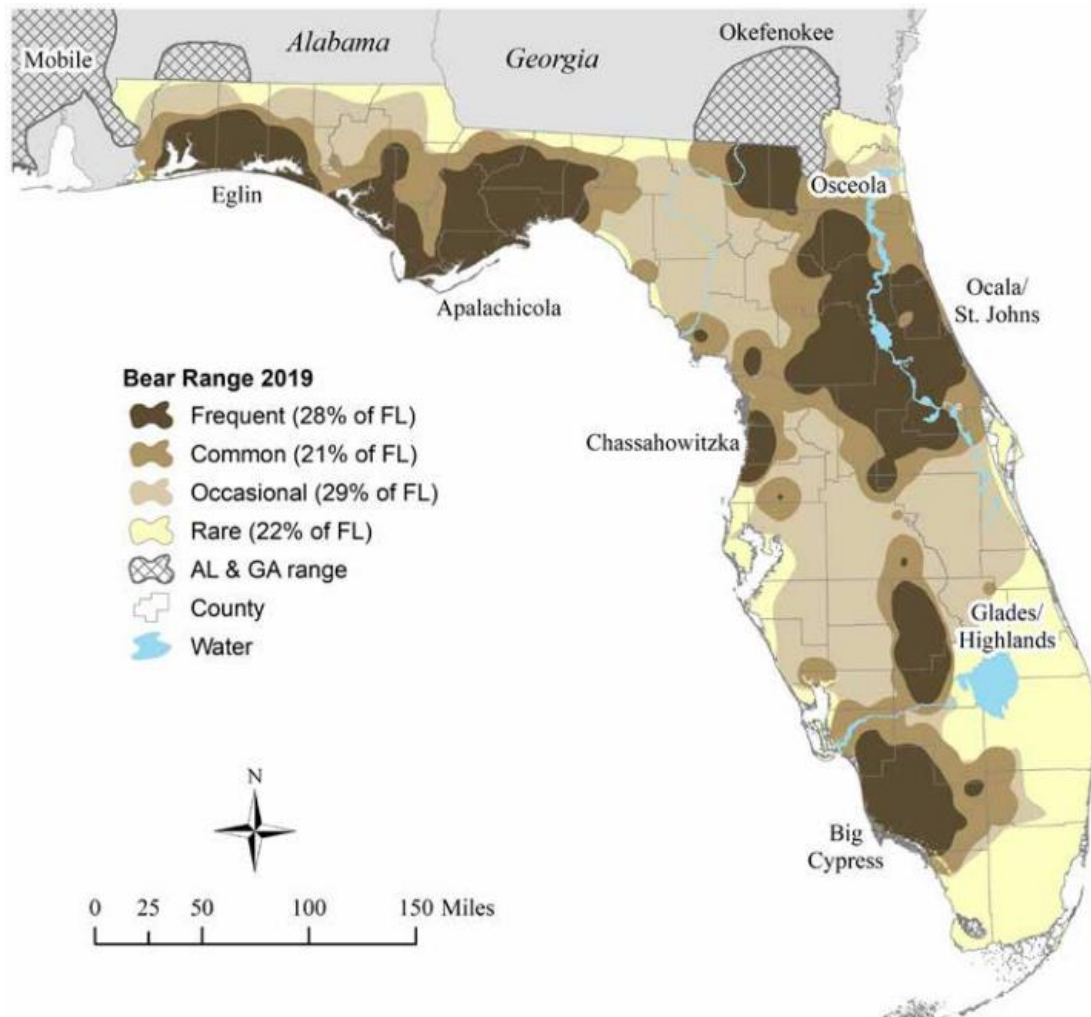
<sup>12</sup> FWC, *Florida Black Bear: Numbers*, <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited Nov. 28, 2023).

<sup>13</sup> FWC, *Florida Black Bear: Black Bear Research*, <https://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited Nov. 28, 2023).

black bear sub-populations.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

### Habitat

Florida black bears range from the northeast to the southwest of the state.<sup>17</sup> 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.<sup>18</sup> Some of the sub-populations are small and are impacted by habitat fragmentation, which restricts movement and genetic interchange among sub-populations.<sup>19</sup>



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.<sup>20</sup> The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.<sup>21</sup> Self-sustaining

<sup>14</sup> FWC, *Florida Black Bear: BMU*, <http://myfwc.com/wildlifehabitats/managed/bear/bmu/> (last visited Nov. 28, 2023).

<sup>15</sup> *Id.*

<sup>16</sup> FWC, *Bear Management Plan* (2019), 28-29, available at <https://myfwc.com/media/21923/2019-florida-black-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>17</sup> FWC, *Florida Black Bear: Distribution Map*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/distribution-map/> (last visited Nov. 28, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> FWC, *Bear Management Plan* (2019), 45-46, available at <https://myfwc.com/media/21923/2019-florida-black-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.*

and secure sub-populations of bears are typically found within large contiguous forested tracts that contain understories of mast<sup>22</sup> or berry-producing shrubs or trees.<sup>23</sup>

### *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.<sup>24</sup> Between 2009 and 2018, FWC euthanized an average of 38 bears annually due to public safety risks.<sup>25</sup> FWC found that a majority of the mortalities were associated with bears seeking out unsecured garbage or other human-provided food sources.<sup>26</sup> In 2022, FWC received 5,907 calls relating to bears,<sup>27</sup> of which 36 percent were considered core complaints.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

In 2015, FWC adopted a statewide resolution highlighting the importance of securing attractants.<sup>32</sup> That same year, the Legislature increased the penalties for feeding wildlife, with enhanced penalties for repeatedly feeding bears and certain other wildlife.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> The notification serves as a formal reminder that the person's actions could be in violation of the law.<sup>36</sup>

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<sup>22</sup> 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. FWC, *Bear Management Plan* (2019), xvii, available at <https://myfwc.com/media/21923/2019-florida-black-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>23</sup> *Id.* at 8.

<sup>24</sup> *Id.* at 29.

<sup>25</sup> FWC, *Florida Black Bear Management Plan*, 21 (2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>26</sup> *Id.*

<sup>27</sup> FWC, *Bears by the Numbers*, <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited Nov. 28, 2023).

<sup>28</sup> "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, *Florida Black Bear Management Plan*, xvi (2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited Nov. 28, 2023).

<sup>29</sup> *Id.* at 55.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See FWC, *Resolution*, available at <https://myfwc.com/media/7072/11b-blackbearresolution.pdf> (last visited Nov. 28, 2023).

<sup>33</sup> Chapter 2015-161, s. 12, Laws of Fla.

<sup>34</sup> Section 379.412, F.S.

<sup>35</sup> Chapter 68A-4.001, F.A.C.

<sup>36</sup> 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 Nov. 28, 2023).

Through its constitutional authority to regulate wildlife, FWC has adopted rules to regulate the taking 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.<sup>37</sup> However, 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.<sup>38</sup> 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.<sup>39</sup> Members of the public may use non-lethal means to 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.<sup>40</sup>

### *Hunting as a Management Tool*

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 four of the seven BMUs to be opened to bear hunting.<sup>41</sup> 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.<sup>42</sup> The table below depicts the harvest objectives and the actual harvest numbers.<sup>43</sup>

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.<sup>44</sup> The hunt was spread across 26 counties, and 78 percent of bears were taken on private lands.<sup>45</sup> The East Panhandle and Central BMUs were closed beginning October 25, 2015, while the North and South BMUs were closed beginning October 26, 2015.<sup>46</sup>

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 in neighborhoods that attract bears.<sup>47</sup>

### **Effect of the Bill**

<sup>37</sup> Rule 68A-4.009(1), F.A.C.

<sup>38</sup> Rule 68A-4.009(2), F.A.C.

<sup>39</sup> Rule 68A-4.009(2)(a)-(b), F.A.C.

<sup>40</sup> Rule 68A-9.010(1)(b)1., F.A.C.

<sup>41</sup> 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 Nov. 28, 2023).

<sup>42</sup> *Id.* at 2.

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> FWC, *Florida Black Bear General Hunting FAQs*, <https://myfwc.com/wildlifehabitats/wildlife/bear/plan-faqs/hunting-faqs/> (last visited Nov. 28, 2023).

The bill creates the “Self Defense Act,” (act) which specifies that the use of lethal force to take a bear without a permit or authorization is justified if a person feels threatened and believes that using such force is necessary to protect himself or herself on his or her private property.

The bill specifies that the act does not apply if a person lures a bear with food or attractants for an illegal purpose, including training dogs to hunt bears, or provokes a bear to incite attack.

The bill specifies that a person who takes a bear pursuant to the act is not subject to any administrative, civil, or criminal penalties; must notify FWC within 24 hours after the taking; and may not possess, sell, or dispose of the taken bear or its parts. A bear taken under the act must be disposed of by FWC. The bill requires FWC to adopt rules to implement the act.

**B. SECTION DIRECTORY:**

Section 1. Creates the “Self Defense Act.”

Section 2. Creates s. 379.40411, F.S., related to the taking of bears.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

FWC Constitutional Authority

Article IV, section 9, of the Florida Constitution establishes 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.

**B. RULE-MAKING AUTHORITY:**

The bill requires FWC to adopt rules to implement the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.