SENATE, No. 687

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator DIANE B. ALLEN

District 7 (Burlington)

Co-Sponsored by:

Senators Gordon, Pou, Stack, Cunningham, Gill and Weinberg

SYNOPSIS

Requires use of bear-resistant containers, dumpsters, or food boxes in certain areas located in black bear habitat under certain circumstances, including garbage collection, and prohibits certain actions that would result in feeding of black bears.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/6/2014)

AN ACT concerning black bears, amending and supplementing P.L.2002, c.97, amending P.L.1997, c.424, and supplementing P.L.1983, c.324 (C.13:1L-1 et seq.), P.L.1947, c.177 (C.26:1A-1 et seq.), and Titles 45 and 46 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

- 1. Section 1 of P.L.2002, c.97 (C.23:2A-14) is amended to read as follows:
 - 1. a. No person shall, for any purpose:
- (1) feed, give, place, expose, deposit, distribute or scatter any edible material , lure, or attractant [with the intention of] in a manner that will result in feeding, attracting or enticing a black bear when black bear are known to frequent the area; or
- (2) store pet food, garbage or other bear attractants in a manner that will result in bear feedings when black bear are known to frequent the area.
- b. Subsection a. of this section shall not apply [in the case of an unintentional feeding of a black bear. "Unintentional feeding "means using or placing any material for a purpose other than to attract or entice black bears but which results in the attraction or enticement of a black bear, and shall include but need not be limited to the use and placement of bait for deer in accordance with section 1 of P.L.1997, c.424 (C.23:4-24.4) and the State Fish and Game Code 1 to agricultural operations.
- c. (1) If any person violates subsection a. of this section, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the court may proceed in the action in a summary manner.
- (2) Any person who violates the provisions of subsection a. of this section shall be liable to a civil penalty of not less than \$50, nor more than \$1,000, for each offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested pursuant to paragraph (1) of this subsection. [Civil] Suit may be brought by the State or a municipality. When suit is brought by the State, penalties recovered for violations hereof shall be remitted as provided in R.S.23:10-19. When suit is brought by a municipality, penalties recovered for violations hereof shall be remitted to the municipal treasurer. The Superior Court and municipal court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

[No person shall be assessed a civil penalty pursuant to this paragraph unless the person has first been issued a prior written warning for a violation of subsection a. of this section.]

- (3) The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.
- d. The provisions of this section shall be enforced by all municipal police officers, the State Police, and law enforcement officers with the Division of Fish and Wildlife and the Division of Parks and Forestry in the Department of Environmental Protection.
- e. Nothing in this section shall be construed to restrict in any way the attraction, capture, or taking of black bears by or at the direction of the Division of Fish and Wildlife for [management or] research or individual bear control purposes.

(cf: P.L.2002, c.97, s.1)

- 2. (New section) a. Notwithstanding the provisions of any other law, rule, or regulation to the contrary, no person shall store food waste or other bear-attracting refuse outdoors on public or private property in any municipality identified as being located in habitat occupied by bears pursuant to subsection b. of this section, whether at curbside for collection or elsewhere for any other purpose, unless the food waste or other bear attracting refuse is stored in a bear-resistant container or bear-resistant dumpster.
 - b. The Commissioner of Environmental Protection shall:
- (1) adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purpose of this section, including but not limited to, rules and regulations that set forth appropriate standards and specifications for bear-resistant containers and bear-resistant dumpsters required pursuant to subsection a. of this section; and
- (2) compile, make public, and update annually a list of all municipalities located in black bear habitat for purposes of this section, and provide written notice of the requirements of this section and all rules and regulations promulgated hereunder to each municipality at least 90 days prior to listing the municipality as located in black bear habitat.
- c. Any person who violates the provisions of this section shall be subject to the penalty and enforcement provisions of section 1 of P.L.2002, c.97 (C.23:2A-14), provided, however, all penalties collected pursuant to violations of this section shall be remitted to the treasurer of the municipality in which the violation occurred.

- 1 3. Section 1 of P.L.1997, c.424 (C.23:4-24.4) is amended to 2 read as follows:
- 1. a. Notwithstanding the provisions of section 1 and section 2 of P.L.1970, c.180 (C.23:4-24.2 and C.23:4-24.3), and except as
- 5 otherwise provided pursuant to subsection c. of this section, a
- 6 person may: (1) use bait to attract, entice, or lure a deer; and (2)
- 7 kill, destroy, injure, shoot, shoot at, take, wound, or attempt to take,
- 8 kill, or wound, a deer, or have in possession or control any firearm
- 9 or other weapon of any kind for such purposes, within any distance
- 10 of a <u>lawfully</u> baited area. A person may be elevated in a standing
- 11 tree or in a structure of any kind when using a <u>lawfully</u> baited area
- for hunting deer, and the baited area may be within any distance of
- 13 the standing tree or structure.
 - b. For the purposes of this section, "baited area" means the presence of placed, exposed, deposited, distributed, or scattered agricultural products, salt, or other edible lure whatsoever capable of attracting, enticing, or luring deer.
- 18 <u>c. Notwithstanding any provision of subsection a. of this</u>
- 19 section, no person shall use bait in a municipality identified as
- 20 being located in black bear habitat pursuant to section 2 of
- 21 P.L., c. (C.) (pending before the Legislature as this bill)
- 22 <u>to attract, entice, or lure a deer for any purpose.</u>
- 23 (cf: P.L.1999, c.231, s.1)

2425

26

27

28

29

30

3132

33

34

35

3637

38

39

40

41

42

14

15 16

17

- 4. (New section) a. As used in this section, "State camping facility" means any facility owned or operated by the State as a camping facility, including family campsites and group campsites, but excluding primitive campsites and wilderness campsites.
- b. At each State camping facility identified as being located in habitat occupied by black bears pursuant to subsection c. of this section, the department shall provide and maintain:
- (1) bear-resistant dumpsters in a number sufficient to receive all output of food waste and other bear-attracting refuse that is not otherwise stored and disposed of through alternative means that prevent the attraction of black bears with equal or greater efficacy; and
- (2) bear-resistant food boxes in a number sufficient to store all food in the State camping facility that is not otherwise secured through alternative means that prevent the attraction of black bears with equal or greater efficacy.
- c. The Commissioner of Environmental Protection shall, for purposes of subsection b. of this section, compile and make public a list of all State camping facilities located in black bear habitat.

- 5. (New section) a. As used in this section:
- "Local government unit" means a municipality, county or otherpolitical subdivision of the State, or any agency thereof.

"Public campground" means a plot of ground, owned privately or by a local government unit, upon which two or more campsites are located, established, or maintained for occupancy by camping units of the general public as temporary living quarters, for children or adults, or both, for a total of 15 days or more in any calendar year, for recreation, education, or vacation purposes, excluding however, any public wilderness campground, "proprietary campground facility" as defined in section 1 of P.L.1993, c.258 (C.45:22A-49), and "State camping facility" as defined in section 4 of P.L., c. (C.) (pending before the Legislature as this bill).

"Public wilderness campground" means a public campground, or portion of a public campground, with no permanent structures or facilities, that is intended only for occasional use as an overnight tent camping site.

- b. The owner or operator of a public campground identified as being located in habitat occupied by black bears pursuant to subsection c. of this section shall provide and maintain:
- (1) bear-resistant dumpsters in a number sufficient to receive all output of food waste and other bear-attracting refuse that is not otherwise stored and disposed of through alternative means, as approved by the Department of Environmental Protection, that prevent the attraction of black bears with equal or greater efficacy; and
- (2) bear-resistant food boxes in a number sufficient to store all food in the public campground that is not otherwise secured through alternative means, as approved by the Department of Environmental Protection, that prevent the attraction of black bears with equal or greater efficacy.
- c. The Public Health Council, pursuant to the procedures set forth in section 7 of P.L.1947, c.177 (C.26:1A-7), and in consultation with the Commissioner of Environmental Protection, shall:
- (1) adopt amendments to the State Sanitary Code to effectuate the purpose of this section, including rules and regulations that set forth appropriate standards and specifications for bear-resistant dumpsters and bear-resistant food boxes, and alternatives thereto, required at public campgrounds;
- (2) compile, make public, and update annually a list of all public campgrounds located in black bear habitat for purposes of subsection b. of this section; and
- (3) provide written notice of the requirements of this section and all rules and regulations promulgated hereunder to the owner or operator of a public campground at least 90 days prior to listing that public campground as located in black bear habitat.

6. (New section) a. As used in this section, "proprietary campground facility" means "proprietary campground facility" as defined in section 1 of P.L.1993, c.258 (C.45:22A-49).

- b. The association or corporation responsible for the administration of a proprietary campground facility identified as being located in habitat occupied by black bears pursuant to subsection c. of this section shall provide and maintain:
- (1) bear-resistant dumpsters in a number sufficient to receive all output of food waste and other bear-attracting refuse that is not otherwise stored and disposed of through alternative means, as approved by the Department of Environmental Protection, that prevent the attraction of black bears with equal or greater efficacy; and
- (2) bear-resistant food boxes in a number sufficient to store all food in the proprietary campground facility that is not otherwise secured through alternative means, as approved by the Department of Environmental Protection, that prevent the attraction of black bears with equal or greater efficacy.
- c. The Commissioner of Community Affairs, in consultation with the Commissioner of Environmental Protection, shall:
- (1) adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purpose of this section, including but not limited to, rules and regulations that set forth appropriate standards and specifications for bear-resistant dumpsters and bear-resistant food boxes, and alternatives thereto, required at proprietary campground facilities;
- (2) compile, make public, and update annually a list of all proprietary campground facilities located in black bear habitat for purposes of subsection b. of this section; and
- (3) provide written notice of the requirements of this section and all rules and regulations promulgated hereunder to the owner or operator of the association or corporation responsible for the administration of a proprietary campground facility at least 90 days prior to listing that proprietary campground facility as located in black bear habitat.
- d. (1) Any person who violates any provision of this section, or any rule or regulation adopted pursuant thereto, shall be fined not less than \$50, nor more than \$1,000, per violation.
- (2) The Commissioner of Community Affairs may levy and collect the penalties set forth in paragraph (1) of this subsection after affording the person alleged to be in violation of this section an opportunity to appear before the commissioner or the commissioner's designee and to be heard personally or through counsel on the alleged violations and a finding by the commissioner or the commissioner's designee that the person is guilty of the violation. When a penalty so levied by the commissioner has not

- been satisfied within 30 days of the levy, the penalty may be sued 1
- 2 for and recovered by and in the name of the commissioner or the
- 3 commissioner's designee in a summary proceeding pursuant to the
- 4 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
- 5 et seq.).
 - (3) The Department of Community Affairs may in the interest of justice compromise any civil penalty, if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.

10 11

12

13 14

15

16 17

18

20

21 22

23

24

25

26

27

28 29

30

31

32

33

34

35

36

46

47

6 7

8

- 7. (New section) a. As used in this section:
- "Closed community" means a residential condominium, cooperative, fee simple community, or horizontal property regime comprised of a community trust or other trust device, condominium association, homeowners' association, council of co-owners, corporation, or equivalent entity wherein the cost of maintaining roads and streets and providing essential services is paid for by an entity consisting exclusively of unit owners within the community, but shall not mean:
- 19
 - (1) an apartment building or garden apartment complex owned by an individual or entity that receives monthly rental payments from tenants who occupy the premises, or
 - (2) a "proprietary campground facility," as defined in section 1 of P.L.1993, c.258 (C.45:22A-49).
 - "Condominium" means the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).
 - "Cooperative" means the form of real property ownership provided for under "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et seq.).
 - "Fee simple community" means a private community which consists of individually owned lots or units and provides for common or shared elements or interests in real property.
 - "Horizontal property regime" means the form of real property ownership provided for under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.).
- 37 The association or equivalent entity responsible for the 38 administration of a closed community that is identified as being 39 located in habitat occupied by black bears pursuant to subsection c. of this section shall provide and maintain bear-resistant dumpsters 40 41 in a number sufficient to receive all output of the closed 42 community's food waste and other bear-attracting refuse that is not 43 otherwise stored and disposed of through alternative means, as 44 approved by the Department of Environmental Protection, that 45 prevent the attraction of black bears with equal or greater efficacy.
 - The Commissioner of Community Affairs, in consultation with the Commissioner of Environmental Protection, shall:

- (1) adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the purpose of this section, including but not limited to, 4 rules and regulations that set forth appropriate standards and specifications for bear-resistant dumpsters required at closed communities:
 - (2) compile and make public a list of all closed communities located in black bear habitat for purposes of subsection b. of this
 - (3) provide written notice of the requirements of this section and all rules and regulations promulgated hereunder to the association or equivalent entity responsible for the administration of a closed community at least 90 days prior to listing that closed community as located in black bear habitat.
 - d. (1) Any person who violates any provision of this section, or any rule or regulation adopted pursuant thereto, shall be fined not less than \$50, nor more than \$1,000, per violation.
 - (2) The Commissioner of Community Affairs may levy and collect the penalties set forth in paragraph (1) of this subsection after affording the person alleged to be in violation of this section an opportunity to appear before the commissioner or the commissioner's designee and to be heard personally or through counsel on the alleged violations and a finding by the commissioner or the commissioner's designee that the person is guilty of the violation. When a penalty so levied by the commissioner or the commissioner's designee has not been satisfied within 30 days of the levy, the penalty may be sued for and recovered by and in the name of the commissioner in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
 - (3) The Department of Community Affairs may in the interest of justice compromise any civil penalty, if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.
 - This act shall take effect immediately, except that section 2 and sections 4 through 7 shall take effect on the 180th day after the date of enactment, but the Commissioner of Community Affairs, the Commissioner of Environmental Protection, and the Public Health Council may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

42 43

1 2

3

5

6

7 8

9 10

11 12

13

14

15

16

17

18

19

20

21 22

23

24

25

26

27

28

29

30

31

32

33

34

35 36

37

38

39

40 41

STATEMENT

44 45 46

47

This bill would implement certain recommendations of the Fish and Game Council, as set forth in the 2010 Comprehensive Black

Bear Management Policy formulated pursuant to section 30 of 1 2

P.L.1948, c.448 (C.13:1B-28), and certain other measures related to

3 black bears, as recommended by conservationists. This bill is

4 intended to minimize the intrusion of black bears into human

5 habitat by reducing the number of black bear feedings that occur as

6

7

8

9

10

11 12

13 14

15

16 17

18

19

20

21 22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40 41

42

43

44

45

46

a result of misplaced or mismanaged food and other bear attractants.

Section 1 of P.L.2002, c.97 (C.23:2A-14) currently prohibits certain acts when undertaken with the intention of feeding, attracting, or enticing black bears. This bill would amend that statute to prohibit such acts when undertaken for any purpose, in a manner that will result in the feeding, attracting, or enticing of black bears when black bears are known to frequent the area, regardless of intent. Furthermore, current law provides an exemption from this prohibition for the use and placement of bait This bill would eliminate that exemption, and would prohibit baiting for deer in municipalities located in black bear Agricultural operations that result in bear feedings,

Furthermore, section 1 of P.L.2002, c.97 (C.23:2A-14) also provides for a civil penalty with a minimum fine of \$50 and a maximum fine of \$1,000 for a violation thereof, provided, however, the violator has first been issued a prior written warning. This bill would preserve the current penalty, but would eliminate the requirement that prior written warning be provided before the penalty is imposed.

however, would remain expressly exempt from the prohibition.

This bill would also prohibit any person from storing food waste or other bear-attracting refuse outdoors in any municipality located in habitat occupied by bears, whether at curbside for collection or elsewhere for any other purpose, unless the food waste or other bear attracting refuse is stored in a bear-resistant container or bearresistant dumpster.

In addition, this bill would impose a duty on public and private campgrounds and state camping facilities located in bear habitat to provide and maintain bear-resistant dumpsters and bear-resistant food boxes, or alternatives thereto approved by the Department of Environmental Protection (DEP), for the disposal and storage of food and other bear attractants.

The bill would also impose a duty on certain closed communities located in bear habitat to provide and maintain bear-resistant dumpsters, or alternatives thereto approved by the DEP, in a number sufficient to meet all of the community's output of food waste and other bear-attracting refuse. The term "closed community" is defined in the bill and includes residential condominiums, cooperatives, fee simple communities, or horizontal property regimes, but not apartment buildings or garden apartment complexes.

S687 LESNIAK, ALLEN

10

Finally, this bill establishes a civil penalty with a minimum fine of \$50 and a maximum fine of \$1,000 for a violation of any provision in the bill. Section 5 of this bill, pertaining to public campgrounds, would supplement P.L.1947, c.177 and be subject to the penalty provided for in section 10 thereof, which likewise carries a minimum fine of \$50 and a maximum fine of \$1,000.