

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 709 Reptiles
SPONSOR(S): General Government Policy Council, Natural Resources Appropriations Committee; Williams
TIED BILLS: IDEN./SIM. BILLS: SB 318

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Policy Council, Natural Resources Appropriations Committee, and General Government Policy Council.

SUMMARY ANALYSIS

The bill bans the possession of certain types of reptiles, including any kind of reptile designated as a reptile of concern (ROC) by the Florida Fish and Wildlife Conservation Commission (FWCC).

The bill provides an exception for any person, party, firm, association, or corporation who currently licensed or licensed prior to July 1, 2010, to continue to possess the reptile for the remainder of its life.

This bill requires authorization by the FWCC for any person, party, firm, corporation, or association to sell any wild animal life designated by FWCC rule as a conditional or prohibited species, Class I or Class II wildlife, ROC or venomous reptile, in the state, including a sale with delivery made in this state, regardless of the origin of the sale or the location of the initial transaction.

This bill establishes a minimum mandatory fine of \$100 for 2nd degree misdemeanor (Level Two) violations of the ROC and venomous reptile law and FWCC rules or orders pertaining to species that are designated conditional and prohibited.

In addition, this bill establishes civil penalties for those who have been convicted of violations dealing with illegal importation of wildlife, ROCs and venomous reptiles, and the licensing requirements for commercial and personal use.

The bill requires FWCC to annually report to the Legislature which species are listed as reptiles of concern, conditional, and prohibited.

The bill also requires FWCC, by December 31, 2010, to evaluate adding additional species, such as iguanas, to the list of reptiles of concern.

The bill appears to have an indeterminate fiscal impact on the State Game Trust Fund.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The FWCC has been working with the U.S. Fish and Wildlife Service, Everglades National Park, South Florida Water Management District and other partners on issues concerning Burmese pythons since 2006. In 2007 the Legislature enacted CS/SB 2766, which authorized the FWCC to adopt rules for keeping or selling reptiles of concern (ROC). The FWCC adopted rules 68A-6.007, 68A-6.0071 and 68A-6.0072, Florida Administrative Code (FAC), in January 2008. The rules provide the following: an applicant must be 18 years of age; maintain specific caging requirements and notification of escapes; must use micro-chipping identification and maintain accurate records. FWCC records for 2008 show a majority of ROC that are purchased from major reptile dealers in Florida are sent out of state, where FWCC has no jurisdiction.<sup>1</sup>

Rule 68A-6.007, F.A.C., lists the following reptiles, including their taxonomic successors, subspecies or hybrids thereof, as reptiles of concern (ROC):

- (a) Indian or Burmese python (*Python molurus*)
- (b) Reticulated python (*Python reticulatus*)
- (c) African rock python (*Python sebae*)
- (d) Amethystine or Scrub python (*Morelia spp.*) (all species exceeding 12 feet in length upon maturity)
- (e) Green anacondas (*Eunectes murinus*); and the
- (f) Nile monitor (*Varanus niloticus*)

Section 379.373(1), F.S., requires a \$100 annual fee for a license or permit issued by the FWCC for the capturing, keeping, possessing or exhibiting of venomous reptiles. Section 379.373(3), F.S., provides that once a permit or license has been issued, the FWCC has the authority to inspect businesses or persons holding licenses or permits to ensure those reptiles are being caged in a secure, safe, and proper manner, and to ensure human safety. If not, the FWCC will notify the permit holder or licensee and request the

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<sup>1</sup> FWCC power point presentation to General Government Policy Council, 2/3/10, (on file)

necessary corrections. Failure of the permit holder or licensee to correct the deficiencies within 30 days of written notice shall be grounds for revocation of the permit or license. Section 379.374, F.S., further provides that no person, party, firm, or corporation shall exhibit venomous reptiles to the public without first posting a bond in the amount of \$10,000 made payable to the FWCC. It also requires financial responsibility in the amount of \$10,000 or a comprehensive general liability insurance policy in the amount of \$2,000,000, with \$2,000,000 per occurrence for anyone exhibiting Class I wildlife.

Currently, an authorization is required to import non-native wildlife. There is no fee associated with this authorization. In addition, a license is required to possess wildlife for personal use or commercial purposes. The license fee to possess wildlife for personal use, venomous reptiles, ROCs or any wildlife for commercial purposes varies from \$50 to \$250 depending on the type and/or numbers of wildlife possessed.

Section 379.4015, F.S. provides penalty enhancements, minimum mandatory fines for violations, and mandatory license suspensions/revocations. Penalties range between a non-criminal infraction, second degree misdemeanor, first degree misdemeanor, and third degree felony – depending on the level of severity. Most penalties, however, fall into the second degree misdemeanor (Level Two) category and there are increased penalties for repeat offenders:

Section 379.4015(2), F.S.:

(b) A person who commits any offense classified as a Level Two violation and who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

(c) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 3-year period of any previous conviction of a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. with a minimum mandatory fine of \$250.

(d) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 5-year period of any two previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., with a minimum mandatory fine of \$500 and a suspension of all licenses issued under this chapter related to captive wildlife for 1 year.

(e) A person who commits any offense classified as a Level Two violation within a 10-year period of any three previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., with a minimum mandatory fine of \$750 and a suspension of all licenses issued under this chapter related to captive wildlife for 3 years.

With regard to the safekeeping of snakes, s. 379.305, F.S., provides for a Level Three violation (equivalent to a misdemeanor of the first degree; this violation carries a fine not to exceed \$1000 and/or up to one year in jail) for a person who knowingly releases a nonnative venomous reptile or ROC to the wild or through gross negligence allows it to escape. If the person is convicted of a second Level Three violation within a ten-year period, the person is subject to a misdemeanor of the first degree with a minimum fine of a \$750 and permanent revocation of all licenses or permits to possess captive wildlife.

Licensing regulations for ROC have been in place since January 2008 and as of December 2009, the FWCC has issued 398 licenses for possession and exhibition of the ROCs. Through December 2009, the FWCC has conducted 480 ROC related inspections, issued 98 citations for non compliance, 132 warnings and seized 73 ROC animals that were not registered with the FWCC.<sup>2</sup>

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

In December 2009, the FWCC issued Executive Order 09-21<sup>3</sup> which established 24/7 amnesty days where current ROC owners are allowed to surrender ROCs to qualified or licensed persons without any consequences. The FWCC will take up this Executive Order to implement a permanent amnesty program at their April meeting.<sup>4</sup>

Beginning January 2010, the FWCC issued permits for taking ROCs on state-managed lands in South Florida. These permits will expire December 31, 2010. In addition, the FWCC has authorized the taking of ROCs by hunters during most hunting seasons. The FWCC is contemplating extending the length of the hunting season until April, 2011. In the most recent hunt, 13 permittees captured 17 pythons. The FWCC estimates approximately 380 pythons have been harvested from state wildlife management preserves and approximately 1,300 pythons have been harvested from the federal lands adjacent to the state lands.<sup>5</sup>

There are several bills pending in the U.S. Congress to limit or prohibit the importation of the python into the United States. Senate Bill 373 by Senator Nelson and HR 2811 by Congressman Meek identifies certain species and prohibits those species from being imported into the United States and shipped across state borders. Two other bills, HR 669 by Congresswoman Bordallo requires risk assessments of nonnative species and HR 3215 by Congressman Rooney allows hunting pythons in Everglades National Park.

The U.S. Fish and Wildlife Service have recently begun rulemaking that would add the nine constrictor species in Senator Nelson's bill to the "injurious wildlife" list.<sup>6</sup> "Injurious wildlife" are mammals, birds, amphibians, reptiles, fish, crustaceans, mollusks and their offspring or gametes that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife or wildlife resources of the United States.<sup>7</sup> Any species on the "injurious wildlife" list is prohibited from being imported into the United States and is prohibited from interstate commerce.

### **Proposed Changes**

The effect of HB 709 is to ban, rather than regulate, as is current law, the possession of ROCs in Florida. The bill amends s. 379.372, F.S., to prohibit persons, parties, firms, associations and corporations from keeping, possessing, importing into the state, selling, bartering, trading or breeding any of the following reptiles for personal use or for sale for personal use: Burmese or Indian python, reticulated python, Northern African python, Southern African python, Amethystine or scrub python, Green anaconda, Nile monitor or any other reptile designated as a conditional or prohibited species by the FWCC.

The bill also provides an exemption for a person, party, firm, association, or corporation possessing a license or permit before July 1, 2010, to keep the reptile for the duration of the reptile's life. If a person, party, firm, association, or corporation holds a permit issued before July 1, 2010, to legally possess reptiles, and the reptile(s) remains alive following the death or dissolution of the licensee, the reptile(s) may be legally transferred to another entity holding a permit authorizing possession of the reptile(s) for the remainder of the life of the reptile(s). If the FWCC designates a species of reptile as a conditional or prohibited species after July 1, 2010, the commission may authorize the personal possession of that newly designated species by those licensed to possess that species of reptile before the effective date of the species' designation by the FWCC as a conditional or prohibited species. The personal possession of those reptile(s) will not be a violation if the personal possession was authorized by the FWCC. The bill also provides an exemption to traveling wildlife exhibitors licensed or registered under the U.S. Animal Welfare

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<sup>3</sup> FWCC (Florida Fish and Wildlife Conservation Commission) News Release, December 10, 2009, on file with the House Policy Council.

<sup>4</sup> Email from FWCC, February 24, 2010, on file with the House Policy Council.

<sup>5</sup> FWCC (Florida Fish and Wildlife Conservation Commission) News Release, December 10, 2009, on file with the House Policy Council.

<sup>6</sup> U.S. Fish and Wildlife press release, January 20, 2010, on file with the House Policy Council.

<sup>7</sup> See the *Lacey Act* (18 U.S.C. 42; 50 CFR 16).

Act, and to zoological facilities that are licensed by the FWCC or are exempted from the licensure requirement.

The bill amends section 379.231, F.S., to clarify terminology by using the terms "native" and "non native" authorization from the FWCC for the import for sale or use, or release within the state of any non-native animals. The violation provision of this section is moved from s. 379.401 into s. 379.4015.

The bill amends section 379.3761, F.S., to provide that no person, party, firm, association, or corporation may sell any wild animal life designated by FWCC rule as a conditional or prohibited species, Class I or Class II wildlife, ROC or venomous reptile, in the state, including a sale with delivery made in this state, regardless of the origin of the sale or the location of the initial transaction, unless authorized by the FWCC.

The bill amends section 379.401, F.S., to revise Level Three violations. The Level Three violation pertaining to s. 379.231, F.S., prohibiting the importation of nonindigenous species is stricken. This Level Three violation is moved to s. 379.4015, F.S., which includes nonnative and captive wildlife penalties.

The bill amends section 379.4015, F.S., to revise nonnative and captive wildlife penalties by providing a minimum mandatory fine and surrendering of wildlife for Level Two violations relating to ROCs, conditional or prohibited species. This section is also amended to provide a civil penalty of not more than \$5,000 for each animal and not more than \$10,000 per each assessment for each animal, pursuant to provisions of ss. 379.231, 379.372, 379.3761 or 379.3762, F.S., unless mitigated as authorized. Proceeds of all civil penalties collected must be deposited into the State Game Trust Fund and shall be used for management, administration, auditing, and research purposes.

By January 1 of each year, the FWCC must submit a report listing each species identified by the FWCC as a conditional or prohibited species or a ROC to the President of the Senate and the Speaker of the House of Representatives.

By December 31, 2010, the FWCC must evaluate adding additional species, such as iguanas, to the list of reptiles of concern.

## B. SECTION DIRECTORY:

Section 1. Amends s. 379.231, F.S., revising provisions relating to the sale, use, or release of nonnative wildlife.

Section 2. Amends s. 379.372, F.S., prohibiting any person from keeping, possessing, importing, selling, bartering, trading, or breeding certain specified reptile species, including reptiles designated as conditional or prohibited species by the Fish and Wildlife Conservation Commission; providing certain exceptions applicable to reptiles for which the owner holds a permit or license issued before or after specified dates; providing an exemption for specified exhibitors and zoological facilities.

Section 3. Amends s. 379.374, F.S., providing bonding requirements for the possession of certain wildlife.

Section 4. Amends s. 379.3761, F.S., revising provisions relating to the exhibition and sale of wildlife, prohibiting the sale of specified wild animal life in the state unless authorized by the commission; clarifying provisions relating to exhibition licensing.

Section 5. Amends s. 379.401, F.S., deleting a reference to conform to changes made by the act.

Section 6. Amends s. 379.4015, F.S., revising captive wildlife penalties to include wild animal life designated as conditional and prohibited species; providing civil penalties for violations relating to import, capture, possession, sale, use, exhibition, transport, or release of wildlife, including venomous reptiles, reptiles of concern, conditional reptiles, prohibited reptiles, and wild animal life designated as conditional and prohibited species; providing limitations; providing for penalty mitigation under certain conditions; requiring proceeds to be deposited into the State Game Trust Fund and used for specified purposes; requiring the commission to submit a specified annual report to the Legislature.

Section 7. Directs the commission to evaluate the addition of species to the list of reptiles of concern.

Section 8. Amends s. 379.101, F.S., revising terminology..

Section 9. Amends s. 379.244(2), F.S., revising terminology.

Section 10. Amends s. 379.26, F.S., revising terminology.

Section 11. Amends s. 379.304 (1), F.S., revising terminology.

Section 12. Amends s. 379.361(4), F.S., revising terminology.

Section 13. Amends s. 379.363 (1), F.S., revising terminology.

Section 14. Amends s. 379.3762(1), F.S., revising terminology.

Section 15: Provides a July 1, 2010 effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There are currently 398 permits for ROCs in Florida, which generate \$39,800 per year (\$100 per license or permit). These funds are deposited into the State Game Trust Fund and used to offset the costs to administer the program and enforce ROC regulations. The exception in the bill allows permit holders to continue to keep the ROCs until these reptiles die. If the bill were to pass, the annual fee to the State Game Trust Fund would be reduced by \$100 per year for each of the ROCs that die until the revenue source no longer exists. Based on species life expectancy, FWCC estimates the renewal revenue would end in fifteen years.

The State Game Trust Fund will also receive an indeterminate amount of violation/penalty fees. FWCCC estimates that these revenues could be a minimum of \$276,000 and a maximum of \$1,380,000 based on the number of citations issued (276) between January 2009 and January 2010. This range could increase substantially if the FWCC were to access the violator increased fines according to criteria established in subparagraphs 1-5 of s. 379.4015 (6), F.S.

#### 2. Expenditures:

The FWCC will continue to process permit renewals and inspections of the holders of the ROCs until the ROCs die or are surrendered. The cost would continue to be paid from the State Game Trust Fund.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

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

Reptile dealers may experience a negative fiscal impact due to reduced demand or sales of specimens to individuals. Groups impacted by the bill include the reptile industry, hobbyists, reptile dealers,

hobbyist support industries (food, caging, bedding, heating, etc.), and other persons interested in the regulation of reptiles.

Any person who possesses Class I wildlife will have to obtain a bond in the sum of \$10,000, for any liability which may occur in the exhibition of the animal. The Class I owner may opt to maintain comprehensive general liability insurance with a minimum limit of \$2 million per occurrence instead of obtaining the bond. The Class I wildlife owner will have to comply with these provisions if they possess them for any purpose. This will affect Class I wildlife owners who do not already have this coverage.

The bill sets a minimum mandatory fine of \$100 and surrender of wildlife for those committing a Level Two violation involving conditional and prohibited species. The fiscal impact of this fine is indeterminate.

The bill also provides for levying civil penalties for certain statutory violations. Penalty amounts may not exceed \$5,000 per animal. The total civil penalty may not exceed \$10,000 per assessment for each animal. This fiscal impact is also indeterminate.

A negative fiscal impact will likely be felt by wildlife dealers located outside the state of Florida. The bill provides for a license to sell wildlife in Florida where the delivery occurs in Florida regardless of origin of the sale or location of initial transaction. This would affect any sales of wildlife, specifically birds, mammals, reptiles and amphibians originating from persons or dealers outside the state of Florida.

The cost of the license varies depending upon the class of wildlife being sold. License costs are as follows: for 1 - 25 Class I and/or Class II - \$150 per year; for 26 or more Class I and/or Class II - \$250 per year; for any amount of Class III \$50 per year.

#### D. FISCAL COMMENTS:

FWCC indicates that there may be a possible license revenue reduction due to the bonding/insurance requirements for all Class I wildlife possessors. Some may not renew. There is also a possible license reduction due to loss of licensees possessing reptiles of concern for personal use. Current grandfathered licensees would only purchase licenses for the life of the grandfathered reptile.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

Article IV, Section 9 of the Florida Constitution creates the Florida Fish and Wildlife Conservation Commission and provides: the Commission "shall exercise the regulatory and executive powers of the state with respect to wild animal life..."<sup>8</sup> The Article further provides "the legislature may enact laws in aid of the Commission, not inconsistent with this section..."<sup>9</sup> The bill could have possible Constitutional issues in that the bill bans reptiles of concern from the state, which would be in conflict with the rules of the Commission. In *Whitehead v. Rogers*<sup>10</sup> the issue revolved around a rule promulgated by the Commission allowing a specific hunting period with set dates, including Sunday. The legislature had previously enacted a law banning the use of firearms on Sunday. The Court found that "While the discharge of firearms is a loud and noisy operation and not consistent with the quiet and peaceful observance of Sunday, the people by constitutional amendment placed in the hands of the Commission

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<sup>8</sup> See Article IV, Section 9, Florida Constitution.

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

<sup>10</sup> See *Whitehead v. Rogers*, 223, So.2<sup>nd</sup> 330 (Fla.1969).

the responsibility to fix hunting seasons, which necessarily includes Sundays unless specifically excluded.”<sup>11</sup> Sundays were not excluded from the Commission’s rule. Therefore, the constitutional authority of the Commission’s rules was upheld over statute by the Florida Supreme Court.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Natural Resources Appropriations Committee adopted a strike-all amendment to HB 709. The CS prohibits internet sales of certain prohibited wildlife, adds civil penalties to persons who are convicted of violations related to the importation of reptiles of concern, clarifies that bonds are required for the possession of certain wildlife, and clarifies terms and specific penalty language for captive wildlife. The CS also provides for an evaluation by the FWCC of a potential update or ban on reptiles of concern by a set date.

On March 25, 2010, the General Government Policy Council passed two amendments to CS/HB 709. The first amendment made numerous changes including:

- Changing “foreign” animals to “nonnative” animals for consistency purposes;
- Changing the designation from “reptile of concern” to “conditional or prohibited”;
- Adding the Northern and Southern African python to the conditional or prohibited list of reptiles and adds any other reptile designated as a conditional or prohibited species by the commission;
- Expanding the grandfather clause of owning a reptile on the conditional or prohibited list to include any person, party, firm, association, or corporation;
- Prohibiting any person, party, firm or association from keeping, possessing, importing, selling, bartering, trading or breeding certain species of reptiles;
- Allowing for the transfer of a reptile to another person (as long as they legally hold a permit) should the original owner of that reptile die. This person would then take possession of that reptile for the remainder of its life;
- Exempting zoological facilities that are licensed by the commission or exempted from the licensure requirement;
- Adding that no person, party, firm, association, or corporation may sell any wild animal life designated by commission rule as a conditional or prohibited species, Class I or Class II wildlife, reptile of concern or venomous reptile, in the state, including a sale with delivery made in this state, regardless of the origin of the sale or the location of the initial transaction, unless authorized by the commission;
- Revising civil penalty fines;
- Revising what the proceeds of all civil penalties collected would be used for in the State Game Trust Fund;
- Adding iguanas to the list of reptiles of concern for the commission to look at by December 31, 2010.

The second amendment expands the zoological facilities exemption to traveling wildlife exhibitors that are licensed or registered under the U.S. Animal Welfare Act.

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