

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Policy Council, 17 Y, 0 N, Varn, Ciccone. Row 2: Natural Resources Appropriations Committee, 12 Y, 0 N, As CS, Bellflower, Dixon. Rows 3-5 are empty.

SUMMARY ANALYSIS

Committee Substitute for House Bill 709 bans the possession of certain types of reptiles, including any kind of reptile designated as a reptile of concern by the Florida Fish and Wildlife Conservation Commission (FWC). The bill prohibits any person, party, firm, association, or corporation from keeping, possessing, importing into the state, selling, bartering, trading, or breeding these reptiles for personal use or for sale for personal use.

The bill provides an exception for persons who are currently licensed or acquire a license prior to July 1, 2010, to continue to possess the reptile for the remainder of its life. Those possessing anacondas, other than the green anaconda, must become licensed prior to October 1, 2010. This does not apply to zoological facilities that are licensed by the commission and accredited by certain associations.

This bill requires that for any person, party, firm, corporation, or association to sell any wildlife in the State of Florida, including sales made with a delivery in this state, regardless of the origin of the sale or the location of the initial transaction, be licensed by FWC.

This bill establishes a minimum mandatory fine of \$100 for 2nd degree misdemeanor (Level Two) violations of the reptile of concern and venomous reptile law and laws pertaining to species that are designated conditional and prohibited. These animals that are subject to the violation must also be surrendered to FWC.

In addition, this bill establishes civil penalties for those who have been convicted of violations dealing with illegal importation of wildlife, reptiles of concern and venomous reptiles, and the licensing requirements for commercial and personal use. This bill also expands the \$10,000 bond or \$2 million comprehensive general liability insurance requirement for those exhibiting Class I wildlife to anyone possessing Class I wildlife.

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

The bill also requires FWC to report to the Legislature by January 1, 2012 the need to further restrict the possession of reptiles of concern, including a ban.

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 Florida Fish and Wildlife Conservation Commission (FWC) 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 FWC to adopt rules for keeping or selling reptiles of concern (ROC). The FWC 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. FWC records for 2008 show a majority of ROC that are purchased from major reptile dealers in Florida are sent out of state, where FWC 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 FWC 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 FWC 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 FWC will notify the permit holder or licensee and request the 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 FWC. 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.

Presently, 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, reptiles of concern or any wildlife for commercial purposes varies from \$50 to \$250 depending on the type and/or numbers of wildlife possessed.

Florida Statutes include penalty enhancements, minimum mandatory fines for violations, and mandatory license suspensions/revocations. These are found in s. 379.4015, F.S. 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:

379.4015(2):

(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 FWC has issued 398 licenses for possession and exhibition of the ROCs. Through December 2009, the FWC 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 FWC.<sup>2</sup>

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

In December 2009, the FWC 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 FWC will take up this Executive Order to implement a permanent amnesty program at their April meeting.<sup>4</sup>

Beginning January 2010, the FWC issued permits for taking ROCs on state-managed lands in South Florida. These permits will expire December 31, 2010. In addition, the Commission has authorized the taking of ROCs by hunters during most hunting seasons. The FWC is contemplating extending the length of the hunting season until April, 2011. In the most recent hunt, 13 permittees captured 17 pythons. The FWC 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: Burmese or Indian python, reticulated python, African rock python, amethystine or scrub python, anaconda, Nile monitor or any other reptile designated as a ROC by the FWC.

The bill also provides an exemption for persons who have a license or permit before July 1, 2010 and are in possession of a ROC to keep it for the duration of the reptile's life. Additionally, the bill requires any person who possesses an anaconda, other than a green anaconda, to obtain a permit by October 1, 2010, to maintain possession for the rest of the reptile's life. The bill also provides an exemption to zoological facilities that are licensed by the commission and are accredited by the American Zoo and Aquarium Association, the American Association of Museums, and the Zoological Association of America.

Section 379.231, is amended to clarify authorization from the Florida Fish and Wildlife Conservation Commission (commission) for the import for sale or use, or release within the state of any non-native wildlife. The violation provision of this section is moved from s. 379.401 into s. 379.4015.

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

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

<sup>5</sup> FWC (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).

Section 379.3761, is amended to require authorization from the commission to sell wildlife in the state where delivery occurs in Florida regardless of the origin of the sale or initial transaction. It clarifies that the provision relative to licensing for exhibition does not apply to any municipal, county, state or other publically owned wildlife exhibit or traveling zoo, circus or exhibit licensed as provided in chapter 205.

Section 379.401, is amended to revise Level Three violations. The Level Three violation pertaining to s. 379.231, prohibiting the importation of nonindigenous species is stricken. This Level Three violation is moved to s. 379.4015 Nonnative and captive wildlife penalties.

Section 379.4015 is amended 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 \$10,000 per animal and not less than \$1,000 for criminal violation of any provisions of s. 379.231, s. 379.372, s. 379.3761 or s. 379.3762, unless mitigated as authorized.

Section 379.374, is amended to provide a bonding requirements for all possessors of Class I wildlife. It also directs the commission to evaluate the need to further restrict or ban the possession of certain species by January 1, 2012.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 379.231, F.S., revising provisions relating to the regulation of nonnative wild animals.

Section 2. Amends s. 379.372, F.S., prohibiting the personal possession and trade for personal possession for current reptiles of concern (ROC), all anacondas, or any new reptile designated as a ROC by the FWC from Florida. The bill also provides an exemption for persons currently holding authorized permits and specified zoological facilities.

Section 3. Amends s. 379.374 (2), F.S., providing bonding requirements for the possession of Class 1 wildlife.

Section 4. Amends s. 379.3761, F.S., revising provisions relating to the exhibition and sale of wildlife, including internet sales, and prohibits the sale of wildlife in Florida unless authorized by the FWCC. The bill also clarifies provisions for exhibition licensing.

Section 5. Amends s. 379.401, F.S., deleting the regulation of nonnative wildlife violations from the hunting and fishing license penalties section.

Section 6. Amends s. 379.4015, F.S., revising captive wildlife penalties to include conditional and prohibited species. The bill adds the regulation of nonnative wildlife violations. The bill establishes a minimum mandatory fine and immediate surrender of the animals that are the subject of specified 2nd degree misdemeanor violations. The bill also establishes civil penalties under certain conditions and that all proceeds from civil penalties shall be deposited into the State Game Trust Fund to be used for certain purposes. In addition, the bill requires the FWC to submit an annual report to the Legislature listing each species identified by the FWC as a conditional, prohibited, or ROC.

Section 7. Directs the FWC to evaluate the need for further restricting the possession of ROC, including the ban of the possession of those species by January 1, 2012.

Section 8. Amends s. 379.101, F.S., revising terminology in subsections 18, 25, and 34.

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

Section 10. Amends s. 379.26, F.S., revising terminology in subsections 1 and 5.

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 generates \$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, FWC estimates the renewal revenue would end in fifteen years.

The State Game Trust Fund will also receive an indeterminate amount of violation/penalty fees. FWCC 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 Commission 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 FWC 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 HB 709 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 will range from \$1,000 to \$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:

FWC 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 personal use reptile of concern 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 the responsibility to fix hunting seasons, which necessarily includes Sundays unless specifically

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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).

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 commission of a potential update or ban on reptiles of concern by a set date.

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