

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Reptiles

SPONSOR(S): Williams

TIED BILLS: IDEN./SIM. BILLS: SB 318

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	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Policy Council	17 Y, 0 N	Varn	Ciccone
2)	Natural Resources Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

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SUMMARY ANALYSIS

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. The bill prohibits any person, firm, or corporation from keeping, possessing, importing into the state, selling, bartering, trading, or breeding these reptiles.

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.

The bill appears to have a minimal negative effect 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

<sup>1</sup> FWC power point presentation to General Government Policy Council on 2/3/2010, on file with the House Policy Council.

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.

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 up to one year in jail) for a person who knowingly releases a nonnative venomous reptile or ROC to the wild or 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 have been in place less than two years and as of December 2009, the FWC has issued 398 licenses for the legal confinement or sale 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 species that were not registered with the FWC.<sup>2</sup>

In December 2009, the FWC issued Executive Order 09-21<sup>3</sup> which established 24/7 amnesty days where current ROC licensees 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 hunting ROCs on state-managed lands in South Florida. These permits will expire December 31, 2010. 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 2188 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 has 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, firms, and corporations from keeping, possessing,

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

<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).

importing into the state, selling, bartering, trading or breeding any of the following reptiles: 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 currently have a license or permit 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.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 379.372, F.S., banning the possession of any kind for reptiles of concern (ROC) or any other reptile designated as a ROC by the FWC from Florida. The bill also provides an exemption for persons currently holding authorized permits.

Section 2: 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.

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.

**D. FISCAL COMMENTS:**

### 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 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:

The impact on zoos and research facilities is unknown because the bill does not address zoos and research facilities. FWC is of the opinion the bill does not apply to zoos and research facilities, and may suggest an amendment to the bill adding language specifically excluding zoos and research facilities to clarify this issue.<sup>12</sup>

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

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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).

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

<sup>12</sup> February 17, 2010 email from FWC on file with the House Policy Council.