

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4107 Water Hyacinths

SPONSOR(S): Trujillo

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Krol	Cunningham
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 861.04, F.S., makes it a second degree misdemeanor to place water hyacinths in any state streams or waters. The statute has not been amended in a substantive way since its creation in 1899.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.

The bill repeals s. 861.04, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 369.25, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to establish, by rule, a list of aquatic plants that can only be possessed if a permit is obtained. Currently Administrative Rule 5B-64.011 lists water hyacinth as a "Class I Prohibited Aquatic Plant," which under no circumstances may a person possess, collect, transport, cultivate, and import except when a permit is obtained through DACS.

Section 369.25, F.S., further states that no permit shall be issued until DACS determines that the proposed activity poses no threat or danger to the waters, wildlife, natural resources, or environment of the state.¹ Permit applications are evaluated and issued using the following standards and criteria:

- The ability of native aquatic vegetation in wild collection sites in sovereignty lands to maintain self-sustaining growth.
- No adverse impacts upon fish and wildlife resources including endangered species, threatened species, non-game species, species of special concern, and their habitat.
- No impairment of the public's access to, or use of, the waterbody.
- No adverse cumulative impacts upon the natural resources or the environment of the state.²

Any person who violates the above provisions commits a misdemeanor of the second degree^{3,4}.

DACS reports that since 2003 there have been seven forced destructions of water hyacinths at businesses.⁵

Section 861.04, F.S., was created in 1899.⁶ The statute makes it a second degree misdemeanor⁷ for any person to willfully place or cause to be placed any water hyacinths in any of the territorial waters of the state whether navigable or nonnavigable.

Section 861.04, F.S., has not been amended in a substantive way since its creation. It was amended in 1971⁸ to update the associated penalty to a second degree misdemeanor from its original penalty of up to 90 days imprisonment or up to a \$200 fine.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.⁹

The Effect of the Bill

The bill repeals s. 861.04, F.S. Persons who place water hyacinths in any state streams or waters would likely still be able to be penalized pursuant to s. 369.25, F.S.

¹ Section 369.25(2), F.S.

² Department of Agriculture and Consumer Services, Administrative Rule 5B-64.003.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 369.25(5)(b), F.S., provides that all law enforcement officers of the state and its agencies with power to make arrests for violations of state law are responsible for enforcing the provisions of this section.

⁵ E-mail from Wayne Dixon, Division of Plant Industry, Florida Department of Agriculture and Consumer Services. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

⁶ Section 1, ch. 4752, 1899; GS 3667; RGS 5610; CGL 7799.

⁷ A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 1103, ch. 71-136, L.O.F.

⁹ E-mail from Lynn Dodson with the Florida Department of Law Enforcement. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

B. SECTION DIRECTORY:

Section 1. Repeals s. 861.04, F.S., relating to placing water hyacinths in any of the streams or waters of the state.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES