

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 11-10 Water Hyacinths

**SPONSOR(S):** Criminal Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol	Cunningham

### SUMMARY ANALYSIS

Section 861.04, F.S., makes it a second degree misdemeanor to place water hyacinths in any state streams or waters.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The proposed committee bill repeals s. 861.04, F.S.

The proposed committee bill is estimated to have no fiscal impact and is effective July 1, 2011.

# 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.<sup>1</sup> Permit applications are evaluated and issued on 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.<sup>2</sup>

Any person who violates the above provisions commits a misdemeanor of the second degree<sup>3,4</sup>.

DACS reported that since 2003 there have been six forced destructions of water hyacinths at businesses.<sup>5</sup>

Section 861.04, F.S., was created in 1899.<sup>6</sup> It makes it a second degree misdemeanor<sup>7</sup> 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 1971<sup>8</sup> 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.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

#### **The Effect of the Proposed Committee Bill**

The proposed committee 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.

### 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.

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<sup>1</sup> Section 369.25(2), F.S.

<sup>2</sup> Department of Agriculture and Consumer Services, Administrative Rule 5B-64.003.

<sup>3</sup> Punishable as provided in ss. 775.082 or 775.083, F.S.

<sup>4</sup> 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.

<sup>5</sup> E-mail from Wayne Dixon, Division of Plant Industry, Florida of Department of Agriculture and Consumer Services. March 16, 2011. (On file with Criminal Justice Subcommittee staff.)

<sup>6</sup> Section 1, ch. 4752, 1899; GS 3667; RGS 5610; CGL 7799.

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

<sup>8</sup> Section 1103, ch. 71-136, L.O.F.

Section 2. Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **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 proposed committee 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:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**