

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill provides for additional regulations for persons keeping, possessing, and exhibiting certain reptiles with the intention of minimizing the extent to which persons intentionally or accidentally release certain reptiles into the wild.

Ensure lower taxes – The bill requires persons capturing, keeping, possessing, or exhibiting non-poisonous reptiles of concern to obtain a permit at an annual cost of \$100.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Statutes

Section 372.86, F.S., provides that no person, firm, or corporation shall keep, possess, or exhibit any poisonous or venomous reptile without obtaining a special permit or license from the Fish and Wildlife Conservation Commission (FWCC). According to the FWCC, there have been a total of less than 500 permits issued. Currently, FWCC reports that there are over 300 entities licensed to possess poisonous or venomous reptiles.

Section 372.87, F.S., authorizes the FWCC to issue a license or permit for the keeping, possessing, or exhibiting of poisonous or venomous reptiles. The FWCC is authorized to assess an annual fee of \$100 for the permit, which may be renewed on an annual basis upon the payment of the fee. The FWCC may revoke the permit for any violation of provisions in ss. 372.86 – 372.91, F.S., or any rule pertaining to such sections.

Section 372.88, F.S., requires that before a person, party, firm, or corporation can exhibit poisonous or venomous reptiles to the public, a “good and sufficient” bond in writing in the sum of \$1,000 must be provided and payable to the Governor and the Governor’s successors. The bond must be conditioned that the exhibitor will indemnify and save harmless all persons from injury or damage from the poisonous or venomous reptiles. The aggregate liability of the surety shall not exceed the sum of the bond amount.

Section 372.89, F.S., requires that any person, firm, or corporation licensed to keep, possess, or exhibit poisonous or venomous reptiles must provide safe, secure, and proper housing for the reptiles in cases, cages, pits, or enclosures. This section also makes it unlawful to keep, possess, or exhibit a poisonous or venomous reptile in any manner not approved as safe, secure, or proper by the FWCC.

Section 372.90, F.S., requires that poisonous or venomous reptiles may only be transported in a “stout closely woven cloth sack, tied or otherwise secured”, placed in a box made of “solid material in solid sheets” with air holes which must be screened. The boxes used for transportation of poisonous reptiles must be prominently labeled “Danger---Poisonous Snakes” or “Danger---Poisonous Reptiles.”

Section 372.901, F.S., provides that poisonous or venomous reptiles held in captivity must be subject to an inspection by an officer of the FWCC, who shall determine that the reptiles are securely, properly, and safely penned. If not, the FWCC officer must report the situation to the person or firm owning the reptiles. Should the person or firm fail to correct the situation within 30 days after receiving the written notice, the license or permit required to keep, possess, or exhibit the reptiles shall be revoked.

Section 372.91, F.S., provides that no person other than the person issued the license or permit to keep, possess, or exhibit the poisonous or venomous reptiles, or the person's authorized employee, may open any cage, pit, or other container holding the reptiles.

Section 372.912, F.S., provides that any person, firm, or corporation wanting to conduct an organized poisonous reptile hunt must comply with the provisions and requirements of ss. 372.86 - 372.91, F.S., and the event must be registered with the FWCC. If the event is conducted by a nonprofit organization registered with the Department of State, the licensing provisions in ss. 372.86, 372.87, and 372.88, F.S., are not required.

Section 372.265, F.S., provides that it is unlawful for sale or use, or to release within this state, "any species of the animal kingdom not indigenous to Florida without first obtaining a permit to do so" from the FWCC. The FWCC is authorized to issue or deny such a permit "upon the completion of studies of the species made by it (FWCC) to determine any detrimental effect the species might have on the ecology of the state." Persons in violation of this section can be found guilty of a first degree misdemeanor punishable pursuant to s. 775.145 or s. 775.083, F.S.

Captive Wildlife Technical Advisory Group

The Captive Wildlife Technical Advisory Group (CWTAG) was originally formed in 1994 for the purpose of reviewing Florida's exotic animal regulations. After several years of work, this group was abandoned and on July 15, 2005, the CWTAG was re-constituted. The CWTAG is comprised of 11 members and according to the FWCC, "represents all facets of the captive wildlife industry and wildlife rehabilitation." Members of the CWTAG also "represent experience in animal welfare, disease/bioterrorism, emergency response, and local government."

Although the CWTAG has a broad mission, a primary issue discussed at CWTAG meetings (six public meetings since July 2005) focused on the regulation of venomous and poisonous reptiles. For example, at the October meeting, the CWTAG discussed the permitting of persons owning such reptiles as well as means to identify and track venomous reptiles.

The CWTAG also discussed the need for defining "venomous reptiles" and that the term "venomous" is not currently defined in statute or in FWCC regulations. FWCC staff reported to the CWTAG that a number of issues have arisen in attempting to define "venomous reptiles." For example, what is the threshold where the venomous reptile regulations apply? Should the FWCC consider the toxicity of the venom, the behavior of the reptile/snake, or whether or not the reptile/snake is rear-fanged? What about the issue of "venom-void" reptiles, which are reptiles which have been surgically altered to remove venom glands or alter the reptile's venom delivery system?

At its September meeting, the CWTAG was provided a presentation on the National Reptile Improvement Plan (discussed below) along with a discussion on penalties for violations of the state's requirements for keeping, possessing, and exhibiting venomous reptiles.

At its December meeting, the CWTAG again discussed the need for a definition of "venomous reptiles." The CWTAG also held a discussion on "giant reptiles" (e. g., Burmese/Indian python, Amethystine python, Reticulated python, African Rock python, and the Anaconda). The CWTAG discussed proposed legislation (HB 1459) regarding the regulation of reptiles.

Also at its December meeting, the CWTAG made the following recommendations to the FWCC:

- That a new FWCC rule be adopted requiring a permanent identification marker be attached to each venomous reptile cage.
- As a condition of the issuance of a venomous reptile permit, the applicant must prepare and file a disaster and emergency plan with the FWCC.

- Each venomous reptile permit holder must be required to post on site, a “venomous bite protocol,” listing actions to be taken in the event of a reptile bite.
- In the short term, “venomous reptiles” should be defined by FWCC rule to include all animals in the families Elapidae, Crotalidae, Viperidae, and Hydrophilidae; all animals in the Genus Heloderma; all animals in the following Colubridae Genera – Rhabdophis, Dispholidus, Thelatornis, and Atracapsis, in addition to any reptile species determined to have the potential to cause serious human injury due to toxic effects of its venom or poison.
- In the long term, the term “venomous reptiles” should be changed to “reptiles subject to regulation.”

National Reptile Improvement Plan

Adopted by the Pet Industry Joint Advisory Council (PIJAC) in June 2003, the National Reptile Improvement Plan: Best Management Practices for the Reptile Trade (NRIP), provides standards and best practices designed to improve the practices of persons involved in the importation, sale, or captive breeding of reptilian and amphibian species.

The intent of the NRIP is to establish practices and standards designed to minimize the risk of international and interstate movement of reptiles causing harm to the reptiles, livestock, or the environment. Participation in the NRIP is voluntary, and is a self-regulated program that includes the adoption and implementation of best management practices, a quality assurance program, and independent verification of compliance through periodic inspections.

NRIP best management practices were developed through a consultative process with participation by representatives of the reptile industry, the reptile hobby community, reptile veterinarians, entomologists and the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services.

The NRIP defines “reptile” as any living specimens of the following taxonomic groups belonging to the class Reptilia:

- Snakes;
- Lizards;
- Turtles and Tortoises; and
- Crocodylians.

The NRIP defines the term “venomous animal” to mean any snake of the following type:

- Cobras, mambas, coral snakes, kraits, and relatives;
- Adders and vipers;
- Rattlesnakes, copperheads, and palm pit vipers;
- Mole vipers and burrowing asps;
- Sea snakes;
- Rear-fanged snakes;
- African vine or twig snakes;
- Mangrove and cat snakes; and
- Any lizard of the genus Heloderma.

The NRIP provides numerous and detailed standards and best management practices for the reptile trade. For example, under the section entitled Display and Sale at Public Events, some of the best management practices include:

- No venomous animal, including rear-fanged animal, should be sold to anyone under the age of 18 years of age.

- Sales of venomous animals should be in a separate room or location within the event site.
- All reptiles and amphibians that can cause harm should be kept in a secure container at all times.

As discussed above, the CWTAG has discussed the NRIP and has recommended that the FWCC adopt its standards and best management practices.

Effect of Proposed Changes

The bill requires the Fish and Wildlife Conservation Commission (FWCC) to establish a list of venomous, native or non-native, or other reptiles for which the capture, possession, transportation, or exhibition is regulated. The FWCC is also required to adopt rules to implement the provisions of ss. 372.86 - 372.91, F.S., relating to reptiles of concern.

The bill replaces in ss. 372.86 – 372.92, F.S., the phrase “poisonous or venomous” with the term “reptiles of concern” to expand the category of reptiles for which a permit from FWCC is required to “capture, keep, possess, or exhibit” to include non-poisonous and non-venomous reptiles.

The bill provides for an annual permit at a cost of \$100 per permit for persons who possess a non-poisonous regulated reptile.

The bill requires the FWCC to establish a reporting system for reptiles of concern, and collect, at minimum, information on:

- The capture, purchase or other acquisition;
- The possession;
- The sale, gift, or other transfer; and
- The death, destruction, or other disposition of a reptile of concern.

The bill provides that any person who knowingly releases a reptile of concern to the wild or through gross negligence allows one to escape, commits a third degree felony. The bill also establishes a framework which provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

Captive Wildlife Penalty framework

The bill creates s. 372.935, F.S., relating to captive wildlife penalties. This section establishes a framework which provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

A Level 1 violation constitutes noncriminal infraction punishable by the imposition of a civil penalty of \$50 for the first conviction and \$250 for each subsequent conviction; an additional civil penalty, in the amount of the license fee required, shall be assessed for failing to have a required permit or license.

Any person who willfully refuses to post bond or accept and sign a citation is guilty of a second degree misdemeanor. Any person who fails to pay the civil penalty within 30 days or fails to appear is guilty of a second degree misdemeanor.

Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty. The court, after a hearing, shall determine whether an infraction has been committed. The court may impose a civil penalty (not less than \$50 for first conviction or \$250 for a subsequent conviction) or more than \$500 if the commission of the infraction as been proven beyond a reasonable doubt. A person found to have committed an infraction may appeal that finding to circuit court.

Included in the list of Level 1 violations are violations of:

- FWCC rules or orders of the requiring free permits or other authorizations to possess captive wildlife.
- FWCC rules or orders of the relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.
- FWCC rules or orders of the requiring permits to possess captive wildlife that a fee is charged for, when the person being charged was issued the permit and the permit has expired less than 1 year prior to the violation.

A Level 2 violation constitutes a second degree misdemeanor. A first conviction is punishable under s. 775.082, F.S. (relating to sentencing), or s. 775.083, F.S. (relating to fines). Persons convicted of subsequent Level 2 violations are subject to increasing amounts of fines and license suspensions.

Included in the list of Level 2 violations are violations of:

- FWCC rules or orders that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife unless stated in subsection (1).
- FWCC rules or orders relating to captive wildlife not specified in subsection (1) or (3).
- FWCC rules or orders which require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.
- S. 372.86, F.S., relating to possessing or exhibiting reptiles.
- S. 372.87, F.S., relating to licensing or reptiles.
- S. 372.88, F.S., relating to bonding requirements for exhibits.
- S. 372.89, F.S., relating to housing requirements.
- S. 372.90, F.S., relating to transportation.
- S. 372.901, F.S., relating to inspection.
- S. 372.91, F.S., relating to limitation of access to reptiles.
- S. 372.921, F.S., relating to exhibition or sale of wildlife.
- S. 372.922, F.S., relating to personal possession of wildlife.

A Level 3 violation constitutes a first degree misdemeanor punishable under s. 775.082 or s. 775.083, F.S. if they have not been previously convicted within the past 10 years. A level 3 violation within the past 10 years is a first degree misdemeanor with a minimum mandatory fine of \$750 and a suspension of all licenses issued under this chapter relating to captive wildlife for 3 years.

Included in the list of Level 3 violations are violations of:

- FWCC rules or orders which require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.
- FWCC rules or orders related to captive wildlife when the violation results in serious bodily injury to another person.
- FWCC rules or orders relating to the use of gasoline, other chemicals, or gaseous substances on wildlife.
- FWCC rules or orders prohibiting the release of wildlife for which only conditional possession is allowed.
- FWCC rules or orders prohibiting knowingly entering false information on an application for a license or permit to possess captive wildlife.
- S. 372.265, F.S., relating to illegal importation or introduction of foreign wildlife.

A Level 4 violation constitutes a felony of the third degree punishable under s. 775.082 or s. 775.083, F.S., with a permanent revocation of all licenses or permits to possess captive wildlife under this chapter.

Level 4 violations include violations of:

- S. 370.081, F.S., relating to the illegal importation and possession of nonindigenous marine plants and animals.

- S. 370.92, F.S., relating to release of reptiles of concern.
- FWCC rules or orders relating to the importation, possession, or release of fish and wildlife for which possession is prohibited.

C. SECTION DIRECTORY:

Section 1: Amends s. 372.86, F.S., to require the FWCC to establish a list of reptiles for which the capture, possession, transportation, or exhibition is regulated.

Section 2: Amends s. 372.87, F.S., to replace the terms “poisonous” and “venomous” with “reptiles of concern.”

Section 3: Amends s. 372.88, F.S., to make conforming change regarding reptiles of concern.

Section 4: Amends s. 372.89, F.S., to replace the terms “poisonous” and “venomous” with “reptiles of concern.”

Section 5: Amends s. 372.90, F.S., to require that reptiles of concern be transported in a specified manner.

Section 6: Amends s. 372.901, F.S., to require the FWCC to establish by rule a reporting system for regulated reptiles.

Section 7: Amends s. 372.91, F.S., to replace the terms “poisonous” and “venomous” with “reptiles of concern.”

Section 8: Renumbers s. 372.911, F.S., as s. 372.0715, F.S.

Section 9: Repeals s. 372.912, F.S.

Section 10: Amends s. 372.92, F.S., establishes penalties for violating requirements for regulating reptiles.

Section 11: Creates s. 372.935, F.S., establishes framework of captive wildlife penalties.

Section 12: Provides an appropriation.

Section 13: The bill takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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|--|----------------------------|----------------------------|----------------------------|
| 1. Revenues: | FY 06-07 | FY 07-08 | FY 08-09 |
| State Game Trust Fund (est. 3,000 additional entities requiring \$100 license) | <u>Amount</u> \$300,000 | <u>Amount</u> \$300,000 | <u>Amount</u> \$300,000 |
| 2. Expenditures: | | | |
| Workload-personnel (2 FTE) (salaries/expenses etc.) | \$91,276 | \$83,713 | \$85,526 |

| | | | |
|--|-------------------------------|-------------------------------|-------------------------------|
| Operations/Expenses (application review, inspections) | <u>\$208,274</u> \$300,000 | <u>\$216,287</u> \$300,000 | <u>\$214,474</u> \$300,000 |
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons or entities currently exhibiting non-poisonous reptiles currently have no bond requirement. The bill will impose a \$1,000 bond requirement on them. Persons or entities possessing non-poisonous reptiles of concern will now be required to have the same annual permit, at a cost of \$100 per permit, as those entities possessing poisonous or venomous reptiles.

D. FISCAL COMMENTS:

The bill appropriates \$300,000 from the State Game Trust Fund to implement the provisions of this act.

The FWCC estimates that new license fees will generate approximately \$300,000 and their expenditures associated with reviewing/processing applications and increased inspections would also equal \$300,000. The bill will also have an indeterminate fiscal impact upon the FWCC for the implementation of a regulated reptile reporting system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to exercise the regulatory and executive powers of the state with respect to fresh water aquatic life, marine life, and wild animal life. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill requires the FWCC to amend current rules related to the capture, possession, keeping, and exhibiting of poisonous and venomous reptiles to expand the list of reptiles of concern. The bill also requires FWCC to adopt rules for implementing a reporting system.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates penalties for persons who knowingly release a reptile of concern to the "wild" or who through "gross negligence" allows one to escape. The bill does not define the terms "wild" and "gross

negligence,” which could lead to vague and discretionary interpretations for FWCC enforcement officers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, the Agriculture and Environment Appropriations Committee adopted a strike all amendment which made the following changes to the bill:

- Recharacterizes poisonous or venomous reptiles and others, to reptiles of concern, and makes conforming changes.
- Provides for an annual permit at a cost of \$100 per permit for those possessing a reptile of concern.
- Creates a new structure for classifying captive wildlife penalties.
- Provides an appropriation.

This analysis is drawn to the strike all amendment.