

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The council substitute authorizes the regulation by FWC of additional reptiles and establishes new penalties and fines.

Promote Personal Responsibility – The council substitute 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.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Statutes

Current statutes regulate the keeping, possession, exhibition, and transportation of poisonous or venomous reptiles. Current law requires a permit or license issued by FWC in order keep, possess or exhibit such reptiles and the current annual fee is \$100. For those exhibiting such reptiles, a \$1,000 bond is required to indemnify and save harmless all persons from injury or damage.

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 FWC. According to the FWC, there have been a total of less than 500 permits issued. Currently, FWC reports that there are over 300 entities licensed to possess poisonous or venomous reptiles.

Section 372.87, F.S., authorizes the FWC to issue a license or permit for the keeping, possessing, or exhibiting of poisonous or venomous reptiles. The FWC 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 FWC may revoke the permit for any violation of provisions in ss. 372.86 – 372.91, F.S., or any rule pertaining to such sections (keeping, possession, exhibition, and transportation).

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 to say 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 FWC.

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 FWC, who shall determine that the reptiles are securely, properly, and safely penned. If not, the FWC 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 FWC. 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., states: "It is unlawful to import for sale or use, or to release within this state, any species of the animal kingdom not indigenous to Florida without having obtained a permit to do so from the Fish and Wildlife Conservation Commission". The FWC is authorized to issue or deny such a permit "upon the completion of studies of the species made by it (FWC) to determine any detrimental effect the species might have on the ecology of the state." Persons in violation of this section commit a Level 3 violation under s. 372.83, 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, CWTAG was abandoned and subsequently re-constituted in 2005. The CWTAG is comprised of 11 members and according to the FWC, "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 routinely discussed issue at CWTAG meetings is the regulation of venomous and poisonous reptiles. In past meetings, the CWTAG discussed the permitting of persons owning such reptiles as a means to identify and track venomous reptiles and the need for defining "venomous reptiles." The term "venomous" is not currently defined in statute or in FWC regulations. FWC 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 FWC consider the toxicity of the venom, the behavior of the reptile/snake, or whether or not the reptile/snake is rear-fanged? What if the reptile is "venom-void", which are reptiles which have been surgically altered to remove venom glands or to alter the reptile's venom delivery system? 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. In a more recent meeting, the CWTAG held a discussion on "giant reptiles" (e. g., Burmese/Indian python, Amethystine python, Reticulated python, African Rock python, and the Anaconda). The CWTAG discussed previously proposed legislation (HB 1459, 2006 Session) regarding the regulation of reptiles and made the following recommendations to the FWC:

- A new FWC 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 FWC.
- 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 FWC rule to include all animals in the families Elapidae, Crotalidae, Viperidae, and Hydrophilidae; all animals in the Genus Heloderma; all animals 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 FWC adopt these standards and best management practices.

Captive Wildlife Regulations and Classifications

Sections 372.921 and 372.922, F.S., establish the requirements for the possession, exhibition, and sale of wildlife for both commercial and personal use and provide FWC rulemaking authority to implement these provisions of law. The intent of these requirements is to provide humane treatment and sanitary surroundings for wild animals kept in captivity, as well as to establish the fee structure for required permits. Wildlife classifications start with those animals that are the most dangerous and are not suited for personal possession (class I), to those animals that are potentially dangerous and can be held for personal use with proper permitting (class II). Class III wildlife is all other wildlife not listed by FWC rules for which a permit is not required. Currently, there are no bond requirements for exhibiting Class I Wildlife to the public.

Chapter 68A-6.002, F.A.C., provides the categories of Captive Wildlife. Class I Wildlife are Chimpanzees (genus Pan), Gorillas (genus Gorilla), Gibbons (genus Hylobates), Drills and Mandrills (genus Mandrillus), Orangutans (genus Pongo), Baboons (genus Papaio), Siamangs (genus Symphalangus), Gelada baboons (genus Theropithecus), Snow leopards (Panthera uncia), Leopards (Panthera pardus), Jaguars (Panthera onca), Tigers (Panthera tigris), Lions (Panthera leo), Bears (family Ursidae), Rhinoceros (family Rhinocerotidae), Elephants (family Elephantidae), Hippopotamuses (family Hippopotamidae), Cape buffalos (Syncerus caffer caffer), Crocodiles (except

dwarf and Congo) (family Crocodylidae), Gavials (family Gavialidae), Black caimans (*Melanosuchus niger*), and Komodo dragons (*Varanus komodoensis*).

Effect of Proposed Changes

Reptile of Concern

The council substitute broadens FWC's ability to regulate a variety of reptiles with an emphasis on those held for personal use. According to Dictionary.com reptiles are defined as any cold-blooded vertebrate of the class Reptilia, comprising the turtles, snakes, lizards, crocodylians, amphisbaenians, and tuatara. The council substitute amends s.372.86, F.S., and requires the FWC to establish a list of reptiles of concern, including venomous, nonvenomous, native, non-native, or other reptiles for which the capture, keeping, possession, transportation, or exhibition is to be regulated due to the reptile's nature, habits, status, or potential impact on humans or the environment. The council substitute requires a person, firm or corporation wanting to capture, keep, possess, or exhibit a reptile of concern to obtain a license/permit from FWC. The council substitute authorizes the FWC to issue licenses or permits for the capturing, keeping, possessing, or exhibiting of reptiles of concern upon payment of a \$100 fee and assurance that the provisions regulating reptiles of concern are to be followed. FWC is authorized to reduce the fee for reptiles of concern, if it determines there is general compliance and such compliance allows the costs of administering the program to be covered at a reduced fee. The fees collected are to be deposited into the State Game Trust Fund to be used to implement, administer, enforce and educate the public regarding ss.372.68-372.92, F.S.

The council substitute makes it unlawful for any person or business entity to hold or otherwise possess a listed reptile of concern in an unauthorized manner (not approved by FWC as safe, secure and proper). Captive reptiles of concern are subject to inspection by the FWC and for those not safely penned, the FWC will report in writing the situation to the person or business entity owning reptiles. Failure to correct the situation within 30 days of written notice is grounds for revocation of the permit/license.

The council substitute provides the FWC authority to adopt rules regarding the transportation of venomous reptiles and reptiles of concern.

The council substitute amends the current bonding requirements for exhibiting venomous reptiles to the public by expanding it to include Class I wildlife (animals classified as the most dangerous and not suited for personal possession). The council substitute raises the required bond amount from \$1,000 to \$10,000 and substitutes the FWC in place of the Governor as the payee.

The council substitute repeals ss. 372.89 (Possessing, exhibiting poisonous or venomous reptile; license required), 372.90 (Transportation), 372.901 (Who may open cages, pits, or other containers housing poisonous or venomous reptiles), 372.91 (Inspection), F.S., and renumbers s. 372.911 (Rewards), F.S., as s. 372.0715, F.S.

The council substitute amends s. 372.92, F.S., and establishes a penalty (Level 3) for releasing a reptile of concern into the wild whether knowingly or through gross negligence.

Captive Wildlife Penalty Framework

The council substitute substantially rewords s. 372.935, F.S., relating to captive wildlife penalties, aligning these penalties with the penalties established for violating recreational hunting and fishing regulations. The council substitute establishes a framework which provides four levels of classifying violations based upon the seriousness of the violation along with escalating penalties for each level of violation.

A *Level 1* violation constitutes a non-criminal 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 has been proven beyond a reasonable doubt. A person found to have committed an infraction may appeal that finding to circuit court.

Level 1 violations are violations of:

- FWC rules or orders requiring free permits or other authorizations to possess captive wildlife.
- FWC rules or orders relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.
- FWC rules or orders 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 for the first offense. 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 within certain time periods are subject to increasing amounts of fines and license suspensions.

Level 2 violations are violations of:

- FWC 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 with the exception of those infractions categorized as Level 1 penalties.
- FWC rules or orders relating to captive wildlife with the exception of those infractions categorized as Level 1 or Level 3 penalties.
- FWC 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 of venomous reptiles and reptiles of concern.
- S. 372.87, F.S., relating to licensing for venomous reptiles and reptiles of concern.
- S. 372.88, F.S., relating to bonding requirements for exhibiting venomous reptiles.
- S.372.92, F.S., relating to the escape of venomous reptiles and reptiles of concern.
- 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.

Level 3 violations are violations of:

- FWC rules or orders which require housing of wildlife in a safe manner when a violation results in an escape of Class I wildlife.
- FWC rules or orders related to captive wildlife when the violation results in serious bodily injury to another person.
- FWC rules or orders relating to the use of gasoline, other chemicals, or gaseous substances on wildlife.
- FWC rules or orders prohibiting the release of wildlife for which only conditional possession is allowed.
- FWC 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.

Level 4 violations are violations of:

- any Level 3 violation, after the permanent revocation of a license or permit.

All moneys received (fees and penalties) under this section shall be deposited into the State Game Trust Fund to be used to implement, administer, enforce, and educate the public regarding ss. 372.86-372.92.

The council substitute repeals ss. 372.89 (housing reptiles), 372.90 (transporting), 372.901 (inspection of reptiles), and 372.91, F.S., (possession of venomous reptiles). The earlier mentioned provisions of the council substitute address these requirements and remove any potential conflicts.

The council substitute renumbers s. 372.911, F.S., as s. 372.0715, F.S.

The council substitute provides a \$75,000 appropriation from the State Game Trust Fund to fund the initial costs of implementing the provisions of this act.

C. SECTION DIRECTORY:

Section 1: Amends s. 372.86, F.S., requiring a person, firm or corporation wanting to capture, keep, possess, or exhibit a reptile of concern to obtain a license/permit from FWC, and requiring the FWC to establish a list of reptiles of concern for which the capture, possession, transportation, or exhibition is to be regulated.

Section 2: Effective January 1, 2008, amends s. 372.87, F.S., authorizing FWC to issue license/permits for possession of reptiles of concern, and establishing the fee for such license/permits, and authorizing the use of such fees.

Section 3: Amends s. 372.88, F.S., increasing the bond requirements for reptiles of concern and Class I Wildlife.

Section 4: repeals ss. 372.89, 372.90, 372.901, and 372.91 F.S., obsolete sections covered by the remaining sections of the bill

Section 5: renumbers s. 372.911, F.S., as s.372.0715, F.S.

Section 6: Amends s. 372.901, F.S., establishing a penalty for releasing reptiles of concern into the wild.

Section 7: Amends s. 372.935, F.S., establishing a framework for captive wildlife penalties.

Section 8: provides a \$75,000 appropriation from the State Game Trust Fund to fund the initial costs of implementing the provisions of this act.

Section 9: provides an effective date, July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FWC estimates \$300,000 will be generated from a new license fee.

2. Expenditures:

FWC estimates \$300,000 for administrative and enforcement costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons or entities exhibiting Class I Wildlife currently have no bond requirement. The council substitute will impose a \$10,000 bond requirement on them, as well as raise the current \$1,000 bond requirement on those exhibiting venomous reptiles. Persons or entities possessing nonpoisonous 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 council substitute appropriates \$75,000 from the State Game Trust Fund for the fiscal year 2007-08 to fund the initial cost of implementing the provisions of this act. The FWC 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 council substitute will also have an indeterminate fiscal impact upon the FWC for the implementation of a regulated reptile reporting system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this council substitute does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, nor does it appear to reduce the authority that cities or counties have to raise revenues in the aggregate, nor does it appear to 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 FWC 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 council substitute appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The council substitute provides FWC rulemaking authority regarding the transportation of venomous reptiles and reptiles of concern. Section 372.90, F.S., established the requirements for transporting poisonous or venomous snakes which are repealed by this act

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 4, 2007, the Environment and Natural Resources Council considered and passed HB 1505 with one traveling amendment. The bill was reported favorably with council substitute. The traveling amendment removes the language in Section 8 providing a \$300,000 recurring appropriation from the State Game Trust Fund to implement the regulatory program for venomous reptiles and reptiles of concern and replaces it with a one-time \$75,000 appropriation from the State Game Trust Fund for the initial costs associated with regulating venomous reptiles or reptiles of concern.