

STORAGE NAME: h1017.ag.doc

DATE: March 21, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS (CCC)
ANALYSIS**

BILL #: HB 1017

RELATING TO: Dangerous dogs

SPONSOR(S): Representative(s) Baxley

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC)
- (2) JUDICIAL OVERSIGHT (SGC)
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

HB 1017 revises and streamlines the dangerous dog classification process, as well as the hearing process, making it more equitable to all involved. The bill provides for evidentiary hearings in county courts or administrative hearings, as determined by the local governing body. The current administrative hearing process appears flawed for numerous reasons. It places county staff, witnesses, and others in potentially violent situations without the protection of the court's Bailiff Department. In addition, both animal owners and victims prefer to be heard by a judge who can present the appearance of neutrality sought by both parties. And lastly, court hearings allow for more due process rights, such as subpoenas and discovery, therefore reducing the number of appeals, and allowing closure to the victims.

This legislation also clarifies the type of proceedings taking place in county court. Current statute refers to "appeals," however, county courts do not have appellate jurisdiction.

In conclusion, the bill stipulates if the owner fails to pay the required boarding costs and fees during the hearing or appeal process, said action constitutes abandonment of the animal and allows the authority to destroy the animal in an expeditious and humane way. This provision is consistent with section 705.19, F.S.

HB 1017 has no fiscal impact on state or local government and shall take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Animal control authorities (authorities) are entities acting alone or with local governments to enforce local animal control ordinances or laws of the state. Most counties and municipalities have established authorities, but some counties in Florida do not. In some counties without an authority, there is an animal control director or officer in charge of animal control issues. In those areas without a director or officer, the sheriff carries out the duties of the authority.

Prior to 1990, animal control was generally regulated on a local basis, as the Florida Statutes did not specifically provide for regulating dangerous dogs. However, in 1990, the Legislature passed HB 1345 which provided a procedure for certain dogs to be classified as dangerous and required that such dogs be registered. The bill also established requirements for control and confinement of dangerous dogs, as well as an appeals procedure.

Chapter 767, F.S., relates to damage by dogs. Owners of dogs are liable for any damage done by their dogs to a person or any animal as defined in s. 585.01, F.S. Owners are liable for damages suffered by persons bitten regardless of the former viciousness of the dog or the owner's knowledge of viciousness. This includes liability arising from bites both on or in a public place or in a private place, including property of the owner of the dog. In determining liability, contributory negligence can be shown to reduce the owner's liability. In addition, the owner is not liable if, at the time of such injury, a prominently displayed "BAD DOG" sign was present. The waiver of liability does not apply if the injury occurred to a person under six years of age.

As defined by Florida statute, a dangerous dog is any dog according to records of the appropriate authority that:

- Has aggressively bitten, attacked, endangered, or severely injured a human being on private or public property;
- Has severely injured or killed a domestic animal while off the owner's property;
- Has been used primarily or in part for dog fighting or has been trained for dog fighting; or
- When unprovoked, chased or approached a person on the street or other public place in a menacing fashion or apparent attitude of attack (such actions must be attested to).

Section 767.12, F.S., requires authorities to investigate reported incidents involving dogs that may be dangerous. During the time of investigation, dogs are impounded with the authorities or securely confined by the owner pending the outcome. After an investigation, the authority makes an initial determination regarding whether there is sufficient cause to classify the dog as dangerous. If so, the owner is afforded a hearing before final determination of the dog's status. The owner has seven

days to request a hearing with the authority. If the dog is classified as dangerous after the hearing, the owner may file a written request for a hearing in the county court to appeal the classification within 10 days after receipt of a written determination of the dangerous dog classification. Pending resolution of the appeal, the dog must be confined in a securely fenced or enclosed area.

An owner has 14 days to obtain a certificate of registration, for which a fee may be imposed, after a dog has been classified as dangerous. This certificate must be renewed annually and can only be issued to persons at least 18 years of age who have presented evidence of the following:

- Current rabies vaccination;
- Confinement of the dog in a proper enclosure with warning signs at all points of entry; and
- Permanent identification, such as a tattoo, on the dog.

If a dog is classified as dangerous, the owner must immediately notify the authority when the dog:

- Is loose or unconfined;
- Has bitten a human or attacked an animal
- Has been sold, given away or dies; or
- Is moved to a new location.

If a dog classified as dangerous is sold or given away, the former owner must give the authority information regarding the new owner. The new owner must agree to comply with all statutory and local provisions relating to dangerous dogs, even if the dog is being moved to another jurisdiction within the state. It is the responsibility of the new owner to notify the authority that a dangerous dog is now in his jurisdiction.

When outside its enclosure, a dangerous dog must be muzzled, restrained by a substantial chain or leash, and under the control of a competent person. When being transported, the dog must be securely restrained in the vehicle.

Hunting dogs are exempt from the provisions of s. 767.12, F.S., while engaged in any legal hunt or training exercise. However, at all other times, hunting dogs are subject to s. 767.12, F.S. Dogs classified as dangerous may not be used for hunting purposes. Section 767.12, F.S., does not apply to law enforcement dogs.

A violation of any provision relating to the certification, confinement, or unlawful acts relating to dangerous dogs, may result in a non-criminal infraction and a fine of up to \$500.

The classification of a dog as dangerous is serious as it may mean life or death for the dog if the dog ever attacks again. If a dog classified as dangerous bites a person or domestic animal without provocation, the dog is immediately confiscated and placed in quarantine or impounded. The dog is held for 10 business days from notification of its owner, and then destroyed. Within the 10-day window, the owner may request a hearing. If an appeal is filed, the dog may not be destroyed pending the appeal. In addition, the owner is guilty of a misdemeanor of the first degree and is liable for boarding costs and fees arising from holding the dog during the appeal procedure. A similar scenario occurs when a dog that has not been classified as dangerous, attacks and causes severe injury or death of any human. A dog, not classified as dangerous, will not be destroyed if it causes harm to a domestic animal. However, the attack may lead to the classification as a dangerous dog.

Local governments are authorized to adopt additional ordinances or restrictions relating to dangerous dogs pursuant to s. 767.014, F.S. These restrictions may not lessen the provisions of Chapter 767, F.S. and may not be breed specific. The breed specific restriction does not apply to any ordinance adopted prior to October 1, 1990.

C. EFFECT OF PROPOSED CHANGES:

HB 1017 revises and streamlines the dangerous dog classification process, as well as the hearing process. It revises current statutes providing a hearing to challenge a finding of sufficient cause may be an evidentiary hearing in county court or an administrative hearing. It permits an animal control authority (authority) to declare a dog dangerous as defined in Chapter 767, F.S. The bill provides that once the authority has made a determination of sufficient cause, the dog's owner be notified by certified mail. The owner may file a request for an evidentiary hearing in county court or an administrative hearing to challenge the finding of sufficient cause within 7 calendar days of receipt of notification. The appropriate local governing body shall designate whether such hearings will be evidentiary hearings held in county court or administrative hearings. If the owner fails to file a request within the 7-day window, the animal is deemed to be a dangerous dog.

The bill requires the owner to confine the dog in a securely fenced or enclosed area once he/she receives the findings of sufficient cause. Other than requiring proper enclosure, impounding the animal, and prohibiting relocation or transfer of ownership of the animal, the authority may not impose any additional requirements upon the animal or its owner until the dog has been classified as dangerous. The bill does not require an owner to obtain a certificate of registration until the hearing and/or appeal process is completed and the dangerous dog classification has been upheld.

In addition, once a dog is classified as dangerous, the legislation allows counties to impose more stringent requirements upon the owner. Upon locating from another state to this state, the bill requires an owner of an animal classified as dangerous in another jurisdiction to comply with this act and applicable local ordinances, as well as notifying the appropriate authority of the relocation of the animal.

And lastly, the bill provides that an owner of a dangerous dog that attacks or bites a person or a domestic animal without provocation, an owner of a dog that has not previously been declared dangerous that attacks and causes severe injury to or death of a human, or an owner of a dangerous dog that attacks and causes severe injury to or death of a human may request an evidentiary hearing in county court or an administrative hearing. If an owner fails to pay the required boarding costs and fees during the hearing or appeal process, said action shall constitute abandonment of the animal and allows the authority to destroy the animal in an expeditious and humane manner.

D. SECTION-BY-SECTION ANALYSIS:

See Section C. (Effect of Proposed Changes).

III. 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:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Florida Animal Control Association

The Florida Animal Control Association supports this legislation in hopes it will provide expedient resolution to dangerous dog proceedings throughout the state.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS (CCC):

Prepared by:

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