

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Sterilization of Dogs and Cats

SPONSOR(S): Randolph

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Thompson	Reese
2) Military & Local Affairs Policy Committee			
3) Public Safety & Domestic Security Policy Committee			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

Currently, Florida law<sup>1</sup> states that it is the policy of the state to encourage every feasible means of reducing the number of unneeded and unwanted puppies and kittens. The law requires animal shelters and animal-control agencies to spay and neuter all dogs and cats sold or released for adoption. Certain exceptions are allowed. Failure to comply with the sterilization requirements is a noncriminal violation, punishable by a fine, forfeiture, or other civil penalty.

HB 451 requires the owner of every dog and cat within the state to have such animals sterilized by a licensed veterinarian within 30 days after the animal reaches 4 months of age or 30 days after the owner takes custody of the animal, whichever occurs later. The bill makes technical changes to current statutory requirements for the sterilization of dogs and cats, conforming current law to the proposed changes.

The bill exempts the following:

- Dogs or cats that a licensed veterinarian has certified sterilization would endanger their health;
- Greyhound racing dogs;

The bill authorizes the governing body of a city or county to enact ordinances that require the licensure of the following animals that shall be exempt from sterilization:

- Show animals;
- Dogs or cats used in competitions;
- Guide dogs or service animals;
- Animals used in law enforcement, military or rescue activities; and
- Animals for which the owner has a valid breeding permit.

The bill grants the Department of Agriculture and Consumer Services rulemaking authority relating to the approval of breed registration organizations.

HB 451 may have a significant negative fiscal impact on the private sector (See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT section for details).

This bill's effective date is January 1, 2010.

<sup>1</sup> s. 823.15, F.S.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Pet overpopulation has become an increasing threat to public health and safety within certain areas in the United States. Unsterilized animals result in high numbers of unwanted pets, overcrowding at animal care centers and high rates of euthanasia.

Sterilization<sup>2</sup> of a female dog or cat is called spaying. This procedure is usually performed around six months of age and involves removing both ovaries and the uterus. For a male, sterilization is called castrating or neutering. This procedure is also performed around six months of age and involves removing both testicles. Many shelters and rescue organizations are successfully spaying and neutering pets as young as eight weeks old to help prevent pet overpopulation.

In six years, according to The Humane Society of the United States, one female dog and her offspring can give birth to hundreds of puppies, and, in seven years, one cat and her young can produce hundreds of kittens. High reproduction rates lead to millions of such animals being euthanized in shelters nationwide each year.<sup>3</sup> The procedure of spaying and neutering pets has statistically reduced the number of unwanted puppies and kittens that would have ultimately been euthanized.

Some studies show that dogs and cats that are spayed or neutered tend to have fewer health problems and are less likely to roam far from home seeking a mate. Additionally, sterilized dogs have been known to be less aggressive. Statistically, unaltered dogs are two times more likely to bite than sterilized animals and unsterilized dogs account for 95 percent of all fatal maulings.<sup>4</sup> On the other hand, studies have shown that dogs that undergo spaying or neutering procedures – surgical or hormonal – are at increased risks for certain cancers, thyroid disorder, incontinence and some of the same behavior issues, such as aggression, that sterilization is said to prevent.<sup>5</sup>

According to the American Kennel Club and Cat Fanciers' Association, dog and cat overpopulation is a complex problem that goes beyond reproductive status to multiple aspects of owner irresponsibility. Community-based solutions such as education, subsidized sterilization clinics, and cooperative

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<sup>2</sup> animalhumanesociety.org

<sup>3</sup> The Humane Society of the United States ; humanesociety.org

<sup>4</sup> *Id.*

<sup>5</sup> The American College of Theriogenologists and The Society for Theriogenology; Basis for Position on Mandatory Spay-Neuter in the Canine and Feline.

veterinarian efforts are examples of control programs that have been initiated to mitigate pet overpopulation.

## Present Situation

### Local Ordinances

As of February 26, 2008, a Los Angeles County, California, ordinance<sup>6</sup> requires that all cats and dogs in Los Angeles County be sterilized and microchipped unless their owner has purchased an unaltered animal permit. In order to breed such animals, the owner must purchase a breeder's license. All breeding activity is monitored by the Los Angeles Department of Animal Care and Control and anyone found in violation is fined \$500 and charged with a misdemeanor.

A recent fiscal audit<sup>7</sup> conducted regarding the Los Angeles ordinance shows that the city of Los Angeles has encountered problems with implementation and enforcement of the mandatory spay and neuter requirement. The audit found that, given the limited resources available as compared to the tremendous demand the ordinance created for spay and neuter services, the city was strategically unprepared.<sup>8</sup>

Albuquerque, New Mexico's HEART Ordinance requires all cats over the age of five months and dogs over the age of six months to be altered and surgically microchipped. Intact animal permits cost \$150 per year and may be revoked if an intact animal is impounded twice. A litter permit, good for six months, costs an additional \$150.<sup>9</sup>

Houston, Texas, passed a breeding and selling ordinance in 2006 that requires anyone selling unsterilized cats or dogs to purchase a \$100 annual permit. First time offenders receive a 30 day compliance warning, and citations can carry fines of \$50 to \$2000.<sup>10</sup>

Asheville, North Carolina, pet owners are required by law either to have their animals altered by the age of six months or to obtain an unaltered animal permit for each animal not spayed or neutered. The fertile animal permits cost \$100 per animal and help offset the cost of animal control services.<sup>11</sup>

Palm Beach County requires all owners of 6 month old dogs and cats to sterilize their pets unless the owner holds an unaltered license tag for each unaltered dog or cat or unless the dog or cat is otherwise exempt.<sup>12</sup> The law exempts the following animals:

- Dogs or cats registered in shows, sporting competitions, or other similar competitive events held by national or international clubs, associations, or registries;
- Medically unfit dogs and cats;
- Animals used for law enforcement purposes;
- Qualified guide dogs and service animals; and
- Animals used for breeding.

The Palm Beach County ordinance allows pet owners to opt out of the mandatory sterilization by registering the animal with the county and paying a \$75 fee. The owner also must sign a contract stating that he or she will not breed the animal. Breeders are required to obtain breeding permits and provide the county with information regarding the person buying the animal.<sup>13</sup>

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<sup>6</sup> Ord. No. 179615, Los Angeles, California, Municipal Code

<sup>7</sup> Performance Audit of the Department of Animal Services' Spay and Neuter Program; August 19, 2008; Laura N. Chick, City Controller

<sup>8</sup> *Id.*

<sup>9</sup> Ord. No. 18-2006; Humane and Ethical Animal Rules and Treatment (HEART) Ordinance

<sup>10</sup> Ord. No. 07-148, § 11, 1-31-07

<sup>11</sup> Ord. No. 06-06-24, Sec. 6-63

<sup>12</sup> Ord. No. 98-22, Ch. 4, Sec 4-28

<sup>13</sup> *Id.*

A similar ordinance in Volusia County also requires dogs and cats at least 6 months old to be sterilized, unless they are eligible for an exemption. The following animals are exempt:

- Dogs or cats registered in shows and competitions staged by organizations such as the American Kennel Club and the Cat Fanciers Association;
- Medically unfit dogs and cats;
- Animals used for law enforcement purposes;
- Qualified guide dogs and service animals;
- Animals used for breeding; and
- Dogs used for herding livestock or for hunting.

According to the ordinance, visitors to Volusia County are not required to spay or neuter their pets if they stay less than 30 days. Dogs or cats in an animal shelter also do not have to be sterilized. Owners of dogs or cats exempted from sterilization are required to obtain a county permit to keep an unaltered animal. There is no fee for the permit, and owners are required to have their dogs or cats surgically microchipped.<sup>14</sup>

### Florida Law

In 1980, the Legislature enacted section 823.15, F.S., stating that it is the policy of the state to encourage every feasible means of reducing the number of unneeded and unwanted puppies and kittens in the state. The law requires the sterilization of dogs and cats that are released from animal shelters or animal-control agencies.

Specifically, the law provides that public or private animal shelters or animal-control agencies operated by a humane society or by a county, city, or other incorporated political subdivision are required to provide sterilization by a licensed veterinarian to all dogs and cats sold or released for adoption.<sup>15</sup> Otherwise, written agreements that extend the time for sterilization, are allowed. These agreements guarantee that sterilization will be performed within 30 days or prior to sexual maturity of the animal. Refundable deposits are required for such alternative agreements. Also, upon the request of a licensed veterinarian, the shelter or animal control agency is allowed to extend the time limit within which the animal is required to be sterilized.

Failure to comply with the sterilization requirements, pursuant to s. 823.15, F.S., is a noncriminal violation, punishable by a fine, forfeiture, or other civil penalty. The deposits of noncompliant owners are forfeited to the shelter or animal-control agency with whom the agreement was made. Any legal fees or court costs used for the enforcement are the responsibility of the adoptor.

Section 828.27, F.S., relating to local animal control and cruelty, authorizes county and municipal governments to enact animal control and cruelty ordinances identical to Chapter 828, F.S. The law specifically prohibits such local ordinances from conflicting with state law.<sup>16</sup>

This section defines "animal-control officer" as a person who is employed or appointed by a county or municipality and who is authorized to investigate and issue citations for civil infractions relating to animal control or cruelty.<sup>17</sup> Also, pursuant to this section, "ordinance" is defined as a local law relating to animal control or cruelty.<sup>18</sup>

A violation of this section is a civil infraction punishable by a maximum \$500 fine plus applicable administrative fees and court costs. To pay the costs of training for animal control officers, local governments are authorized to impose a surcharge of up to \$5 for each violation of animal control and cruelty ordinances and to use the proceeds accordingly.

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<sup>14</sup> Ord. No. 2008-13, Article 2, Sec. 14-58

<sup>15</sup> s. 823.15(2)(a), F.S.

<sup>16</sup> s. 828.27(7)

<sup>17</sup> s. 828.27(b)

<sup>18</sup> s. 828.27(g)

## Proposed Changes

HB 451 provides legislative findings that pet overpopulation is a preventable problem, which causes the euthanization of many dogs and cats. The bill finds that spay and neuter procedures reduce the overpopulation of unwanted pets, reduce aggression, reduce health risks, and weaken undesirable instincts such as roaming and urinating to mark territory.

The bill creates s. 828.35, F.S., requiring the owner of every dog and cat within the state to have such animals sterilized by a licensed veterinarian within 30 days after the animal reaches 4 months of age or 30 days after the owner takes custody of the animal, whichever occurs later.

The bill exempts dogs or cats if a licensed veterinarian has certified in writing that sterilization would endanger their health. Greyhound racing dogs that are currently racing also are exempt. The bill authorizes the governing body of a county or city to enact ordinances requiring licensure of the following animals that shall be exempt:

- Show animals registered with a breeding organization approved by the Division of Animal Industry of the Department of Agriculture and Consumer Services (DOACS);
- Dogs or cats used in competitions;
- Guide dogs or service animals;
- Animals used in law enforcement, military or rescue activities; and
- Animals for which the owner has a valid breeding permit issued by the local government.

The bill grants DOACS rulemaking authority pursuant to ss. 120.536(1) and 120.54, F.S., to administer breed registration organizations. This may require DOACS to maintain a list of approved breed registry organizations. According to DOACS, the criteria for designating such a list may be subject to debate due to the number of purebred registry organizations that require different registration criteria. Disputes of this type may expose DOACS to legal challenges.

The bill provides for the following violations and penalties, effective July 1, 2010:

- A first offense results in a civil infraction, punishable as provided in s. 828.27, F.S., except the minimum penalty is \$100 including applicable administrative fees and court costs;
- A second offense results in a civil infraction, punishable as provided in s. 828.27, F.S., except the minimum penalty is \$250 including applicable administrative fees and court costs;
- A third subsequent offense results in a second degree misdemeanor, punishable by a maximum fine of \$500 and a maximum imprisonment of 60 days<sup>19</sup> including applicable administrative fees and court costs.

The bill makes technical changes to current statutory requirements for the sterilization of dogs and cats conforming current law to the proposed changes. The bill revises the current definitions of “animal control officer” and “ordinance” to include sterilization as one of the possible infractions that such officers are authorized to investigate. The bill adds sterilization to the types of local ordinances for which violations and penalties are enforceable. Similarly, the bill adds sterilization to the types of violations for which a county or municipality is authorized to collect a \$5 surcharge.

### B. SECTION DIRECTORY:

**Section 1.** Creates s. 823.35, F.S.; requiring the sterilization of dogs and cats by a certain time, providing exceptions, authorizing a county or municipality to enact ordinances requiring the licensure of dogs and cats that are not sterilized, requiring the Department of Agriculture and Consumer Services to adopt rules for the approval of breed registration organizations, providing penalties.

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<sup>19</sup> ss. 775.082 and 775.083

**Section 2.** Amends s. 823.15, F.S.; conforming the requirements for the sterilization of dogs and cats in animal shelters and animal control agencies to the changes made by the act, deleting a provision extending the time for sterilization.

**Section 3.** Amends s. 828.27, F.S.; revising definitions of “animal control officer” and “ordinance,” authorizing counties and municipalities to enforce violations of sterilization provisions, authorizing a county or municipality to collect a \$5 surcharge for civil penalties.

**Section 4.** Provides an effective date of January 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

I. Recurring – General Revenue	(FY 09-10) Amount / FTE	(FY 10-11) Amount / FTE	(FY 11-12) Amount / FTE
a. 1 FTE Senior Clerk (PG-11 Class Code 0004)	\$35,495	\$35,495	\$35,495
b. Expenses			
1 Support Staff Pkg. @ \$8,397	\$ 5,426	\$ 5,426	\$ 5,426
c. HR Services	<u>\$ 401</u>	<u>\$ 401</u>	<u>\$ 401</u>
Total Recurring	\$41,322	\$41,322	\$41,322
II. Non-Recurring – General Revenue			
a. OCO Package			
1 OCO package @ \$1,000	\$ 1,000		
b. 1 Support Staff pkg.	\$ 2,971		
c. Preparation, Workshop, and Rule Publication costs	<u>\$ 3,000</u>		
Total Non-Recurring	<u>\$ 6,971</u>		
<u>Total Recurring &amp; Non-Recurring</u>	<u>\$48,293</u>	<u>\$41,322</u>	<u>\$41,322</u>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The enforcement of violations is likely to result in the assessment of penalties and court costs. However, because it is impossible to forecast how many violations may occur, the fiscal impact on local government is unknown.

2. Expenditures:

County and municipal governments may incur increased expenses for the administration, investigation, and inspection of potential local ordinances relating to the sterilization requirements.

However, it is unknown how many new ordinances may be enacted from county to county, thus the fiscal impact on local governments is unknown.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to the Department of Agriculture and Consumer Services (DOACS), it is estimated that there are approximately 10 million dogs and cats in the state. The bill requires every owner of a dog and cat within the state to have their animals sterilized by a licensed veterinarian within a certain amount of time. Exemptions require documented proof and licensure by the owner of the animal.

The cost for state-wide sterilization to owners of dogs and cats that are not exempted and the potential permitting fees and licenses that could be developed by county and municipal ordinances will likely result in a significant negative fiscal impact on the private sector.

Violations range from a minimum civil infraction, punishable by a \$100 fine, to a maximum second degree misdemeanor, punishable by up to a \$500 fine and 60 days in jail.<sup>20</sup> All violations include applicable administrative fees and court costs. Enforcement may result in the assessment of penalties and court costs. However, because it is impossible to forecast how many violations might occur, the fiscal impact from related penalties is unknown.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

The bill authorizes DACS to adopt rules relating to the approval of breed registration organizations.

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

According to DOACS, the criteria for designating an approved list of established breed registration organizations in order to qualify for exemption will be subject to debate. There are many purebred registry organizations with longstanding pedigree requirements that require very little criteria for registration. This provision may expose DOACS to legal challenges disputing the criteria used to approve or disapprove established breed registry organizations. Costs of legal counsel for such challenges are unknown but could be considerable.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>20</sup> ss. 775.082 and 775.083