

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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	13 Y, 1 N, As CS	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> authorizes county and municipal governments to enact animal control and cruelty ordinances. 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.

The bill amends s. 828.27, F.S., to establish the following provisions:

- Allows a county or municipality to provide a reduced civil penalty (not to exceed 25 percent of the civil penalty normally imposed) for violations of ordinances related to animal control or cruelty.
- Requires the reduced civil penalty to be imposed upon civil infractions that involve a dog or cat with intact sexual organs and the owner of the animal must have the animal spayed or neutered.
- Requires the governing body of a county or municipality to impose and collect a \$5 surcharge upon each civil penalty imposed for each violation of an ordinance related to animal control or cruelty.
- Requires that at least 75 percent of the proceeds from the required \$5 surcharge to be used for subsidizing the costs of spaying or neutering dogs and cats whose owners voluntarily submit their animals for sterilization and whose owners are not charged more for the spaying or neutering than the costs of sterilization less the subsidy paid from the surcharges.
- Directs the remaining proceeds to pay the costs of training for animal control officers and costs of administering the ordinance.

The bill appears to have fiscal impacts on local governments and the private sector (see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for details).

This bill's effective date is July 1, 2009.

<sup>1</sup> s. 828.27, 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

The bill amends s. 828.27, F.S., to allow a county or municipality to provide a reduced civil penalty (not to exceed 25 percent of the civil penalty normally imposed) for violations of ordinances related to animal control or cruelty. The reduced civil penalty must be granted for civil infractions that involve a dog or cat with intact sexual organs and the person who has committed the civil infraction must be the owner of the animal and have the animal spayed or neutered.

The bill requires the governing body of a county or municipality to impose and collect a \$5 surcharge upon each civil penalty imposed for violations of an ordinance related to animal control or cruelty.

The bill provides for the allocation of at least 75 percent of the proceeds from the required \$5 surcharge to be used for subsidizing the costs of spaying or neutering dogs and cats whose owners voluntarily submit their animals for sterilization and whose owners are not charged more for the spaying or neutering than the costs of sterilization less the subsidy paid from the surcharges. The bill directs the remaining proceeds to pay the costs of training for animal control officers and other costs of administering the ordinance.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 828.27, F.S.; requiring a county or municipality enacting an ordinance relating to animal control or cruelty to reduce the civil penalty for violations of such ordinance under certain circumstances, requiring the county or municipality to impose a \$5 surcharge on civil penalties for violations of animal control or cruelty ordinances, providing for the allocation of the proceeds of the surcharge.

**Section 2.** Provides an effective date of July 1, 2009.

## 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:

The bill allows the governing body of a county or municipality to enact ordinances related to animal control or cruelty that would allow reduced civil penalties for violations if the person who has committed the civil infraction is the owner of the animal and has the animal spayed or neutered. Depending on how many violators will fit these criteria, this provision may reduce existing local revenues.

The bill requires the governing body of a county or municipality to impose and collect a \$5 surcharge upon each civil penalty imposed for each violation of an ordinance related to animal control or cruelty. Depending on how many animal control or cruelty violations may occur, this requirement may increase local revenues.

The bill reduces the percentage of proceeds used to pay the costs of training for local animal control officers and administering local animal control or cruelty ordinances. To maintain the

current level of training provided for animal control officers and to administer such ordinances, this provision may require local governments to increase or create new local taxes.

2. Expenditures:

The bill reduces the percentage of proceeds used to pay the costs of training for local animal control officers and administering local animal control or cruelty ordinances. To maintain the current level of training provided for animal control officers and to administer such ordinances, this provision may require local governments to alter or increase local spending.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows for a reduced civil penalty for an owner of a dog or cat in violation of ordinances related to animal control or cruelty if the owner has the animal spayed or neutered. This provision may reduce the financial burden for owners in violation of such ordinances. However, because it is impossible to forecast how many violators will agree to have their animal spayed or neutered, the fiscal impact on the private sector is unknown.

The bill requires the governing body of a county or municipality to impose and collect a \$5 surcharge from an owner of a dog or cat in each violation of ordinances related to animal control or cruelty. Depending on how many violations may occur, this requirement may have a negative fiscal impact on the private sector.

The bill reduces the percentage of proceeds used to pay the costs of training for local animal control officers and administering local animal control or cruelty ordinances. To maintain the current level of training provided for animal control officers and to administer such ordinances, this provision may require local governments to increase or create new local taxes. This would have an indeterminate negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires local governments to impose and collect a \$5 surcharge and reduces the amount of proceeds that local governments currently use to pay the costs of training for animal control officers; however, an exemption applies. According to current Florida law,<sup>19</sup> a noncriminal violation does not include a violation of a municipal or county ordinance. Consequently, noncriminal violations are not able to repeal or change the penalty for a violation of any municipal or county ordinance.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the bill, at least 75 percent of the proceeds from the \$5 surcharge “shall be used for subsidizing the costs of spaying or neutering dogs and cats whose owners voluntarily submit their animals for sterilization **and whose owners are not charged more for the spaying or neutering**

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<sup>19</sup> s. 775.08, F.S.

**than the costs of sterilization less the subsidy paid from the surcharges.”** The criteria in bold in the above sentence is unclear and may create statutory speculation.

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

On March 24, 2009, the Agriculture and Natural Resources Policy Committee adopted one strike-all amendment to this bill. The strike-all amendment provides for the following:

- Allows a county or municipality to provide a reduced civil penalty (not to exceed 25 percent of the civil penalty normally imposed) for violations of ordinances related to animal control or cruelty.
- Requires the reduced civil penalty to be imposed upon civil infractions that involve a dog or cat with intact sexual organs and the owner of the animal must have the animal spayed or neutered.
- Requires the governing body of a county or municipality to impose and collect a \$5 surcharge upon each civil penalty imposed for each violation of an ordinance related to animal control or cruelty.
- Requires that at least 75 percent of the proceeds from the required \$5 surcharge to be used for subsidizing the costs of spaying or neutering dogs and cats whose owners voluntarily submit their animals for sterilization and whose owners are not charged more for the spaying or neutering than the costs of sterilization less the subsidy paid from the surcharges.
- Directs the remaining proceeds to pay the costs of training for animal control officers and costs of administering the ordinance.