

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 479 Animal Control

**SPONSOR(S):** Health & Human Services Quality Subcommittee; O'Toole and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Poche	Calamas
2) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
3) Rulemaking & Regulation Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

Animal control services in Florida are administered by county and municipal government agencies and by humane societies registered to do business with the Secretary of State. One of the services provided by the agencies and societies is euthanasia of sick, injured and abandoned animals. These facilities are required by law and rule to obtain a permit that allows the purchase, possession and use of euthanasia drugs. Currently, the only acceptable methods of euthanizing domestic animals in the state are injections of sodium pentobarbital or a sodium pentobarbital derivative, or adding sodium pentobarbital or a derivative in solution or powder form to food.

House Bill 479 expands the list of drugs that can be used to euthanize domestic animals and adds certain drugs that may be used to immobilize domestic animals. The bill allows agencies and societies to obtain drugs for the purpose of chemical immobilization using the same permit for obtaining drugs for euthanasia. The bill allows the Board of Pharmacy, at the request of the Board of Veterinary Medicine, to expand the list of drugs that may be used to euthanize or immobilize domestic animals in the future if findings support the addition of drugs to the list for humane and lawful treatment of animals. The bill limits the possession and use of these drugs to animal control officers and employees or agents of animal control agencies and humane societies while operating within the scope of their employment or official duties.

The bill clarifies that the Department of Health is responsible for issuing the permit, by removing an outdated reference to the Department of Business and Professional Regulation being responsible for issuing the permit. The bill provides the Department of Health and the Board of Pharmacy with the authority to deny a permit, or fine, place on probation, or otherwise discipline an applicant or permittee for failure to maintain certain standards or violation of statutes. The bill allows the Department of Health to immediately suspend a permit through emergency order upon a determination that a permittee poses a threat to public health, safety and welfare.

The bill eliminates food-based delivery of euthanasia drugs as an acceptable method of euthanization. The bill permits euthanasia by intracardial injection only upon a dog or cat which is unconscious and exhibits no corneal reflex.

Lastly, the bill requires an animal control officer, a wildlife officer, and an animal disease diagnostic laboratory to report to the Department of Health knowledge of any animal bite, diagnosis or suspicion of a group of animals having similar disease, or any symptom or syndrome that may pose a threat to humans.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0479c.ANRS

DATE: 1/17/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Animal Control in Florida

Animal control agencies operated by a humane society or by a city, county or other political subdivision are generally responsible for enforcing state, county and local animal control laws and regulations in Florida. Animal control officers employed or appointed by a county or municipality are authorized to investigate violations of animal control laws or regulations.<sup>1</sup> The governing body of a county or municipality is authorized to enact animal control ordinances.<sup>2</sup>

##### Euthanasia of Domestic Animals in Florida

Euthanasia is the act or practice of killing or permitting the death of sick or injured animals in a relatively painless way for reasons of mercy.<sup>3</sup> Approximately 5 million to 7 million companion animals enter animal shelters nationwide every year, and approximately 3 million to 4 million are euthanized.<sup>4</sup> There are various means of euthanasia employed throughout the United States, some of which are considered humane<sup>5</sup> and some of which are considered inhumane.<sup>6</sup> In Florida, the only approved drugs for use in euthanasia of domestic animals are sodium pentobarbital<sup>7</sup> or a sodium pentobarbital derivative. Euthanasia drugs are to be delivered by the following methods, in order of preference:

- Intravenous injection by hypodermic needle;
- Intraperitoneal injection by hypodermic needle;
- Intracardial injection by hypodermic needle; or
- Solution or powder added to food.<sup>8</sup>

County or municipal animal control agencies or humane agencies registered with the Secretary of State are regulated under county and municipal ordinances related to animal control and, in part, by chapter 828, F.S. In order for an animal control agency or humane agency to provide euthanasia services, the agency must obtain a permit from the Department of Health (DOH) to purchase, possess, and use the euthanasia drugs approved by statute. Current law states that the Department of Business and Professional Regulation (DBPR) is responsible for receiving the application for, and issuing, the permit.<sup>9</sup> The law was enacted at a time when health care professional boards were administratively housed under DPBR. However, due to reorganization of DBPR and the DOH, DOH and the Board of Pharmacy have primary responsibility for evaluating applications for the permit, issuing the permit, and taking disciplinary actions against holders of the permit for violations of law and rule.

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<sup>1</sup> S. 828.27, F.S.

<sup>2</sup> S. 828.27(2), F.S.

<sup>3</sup> See [www.merriam-webster.com/dictionary/euthanasia](http://www.merriam-webster.com/dictionary/euthanasia) (last viewed November 29, 2011).

<sup>4</sup> See American Society for the Prevention of Cruelty to Animals, *Pet Statistics*, at [www.aspc.org/about-us/faq/pet-statistics.aspx](http://www.aspc.org/about-us/faq/pet-statistics.aspx) (last viewed November 29, 2011).

<sup>5</sup> See American Veterinary Medical Association Guidelines on Euthanasia, June 2007, Appendix 2, pages 30-31 (for example, use of barbiturate drugs, carbon dioxide, carbon monoxide, inhalant anesthetics, penetrating captive bolt, and potassium chloride).

<sup>6</sup> See *id.* at Appendix 4, pages 35-36 (for example, air embolism, burning, chloroform, cyanide, decompression, drowning, and exsanguinations).

<sup>7</sup> Sodium pentobarbital is a barbiturate that is used as a sedative, hypnotic and antispasmodic. When administered in high doses for purposes of euthanasia, sodium pentobarbital causes unconsciousness, followed rapidly by respiratory and cardiac arrest resulting in death.

<sup>8</sup> S. 828.058(1), F.S.

<sup>9</sup> S. 828.055(2), F.S.

The Board of Pharmacy, within the Department of Health, has adopted rules to govern the issuance of permits to county or municipal animal control agencies or humane agencies registered with the Secretary of State to purchase, possess, and use sodium pentobarbital and sodium pentobarbital with lidocaine to euthanize sick, injured or abandoned domestic animals.<sup>10</sup> Currently, there are 105 active animal control shelter permits with Board of Pharmacy.<sup>11</sup> The initial cost of the permit is \$50.00 and is renewable biennially.<sup>12</sup> DBPR currently issues exemption letters to fewer than 20 entities which authorize the entities to possess immobilizers without violating s. 499.03, F.S., which imposes criminal sanctions for the unauthorized possession of habit-forming, toxic, harmful, or new drugs.<sup>13</sup> DBPR does not charge a fee for issuing the exemption letter.<sup>14</sup>

Euthanasia can only be performed by a licensed veterinarian or an employee or agent of an agency, animal shelter or other facility operated for the collection and care of stray, neglected, abandoned, or unwanted animals if the employee or agent has completed an euthanasia technician certification course.<sup>15</sup> However, any law enforcement officer, veterinarian, officer or agent of a municipal or county animal control unit, or officer or agent of any society or association for the prevention of cruelty to animals may destroy a sick or injured animal by shooting the animal or injecting it with a barbiturate drug if the officer or agent finds the animal so injured or sick as to appear useless and suffering, and the officer or agent reasonably believes the animal is imminently near death or cannot be cured, and a reasonable attempt is made to locate the owner of the animal or a veterinarian for consultation regarding destruction of the animal.<sup>16</sup>

### Chemical Immobilization of Animals

Chemical immobilization is the anesthesia of wild, free-ranging, feral animals or animals that are fractious or unaccustomed to human contact.<sup>17</sup> Chemical immobilization can be given with restraint of the animal (intravenous, intraperitoneal or intracardial delivery of the drug) or without restraint of the animal (compressed air delivery systems, modified firearms, or blow darts). Chemical immobilization should be considered an action of last resort when all other means of restraining an animal are insufficient.<sup>18</sup> The danger posed to the animal and the community must outweigh the risk posed to the animal's life by the drugs used to immobilize it before it is used.<sup>19</sup>

Three major types of drugs used to immobilize animals are opioids, arylcyclohexamines, and neuroleptics. Opioids cause loss of consciousness and alleviate the perception of pain.<sup>20</sup> They are highly potent and effective in relatively small doses.<sup>21</sup> As a result, there is a wide margin of safety in using opioids because the effects can be immediately reversed.<sup>22</sup> Common opioids used in animal immobilization are carfentanil, etorphine, sufentanil, fentanyl, and butorphanol.<sup>23</sup> Arylcyclohexamines produce altered states of consciousness by dissociating mental state from stimulation created by the environment.<sup>24</sup> An animal under the influence of arylcyclohexamines cannot walk but retains many vital functions and reflexes, such

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<sup>10</sup> S. 828.055(1), F.S.; see also Chapter 64B16-29, F.A.C.

<sup>11</sup> HB 479 Bill Analysis, Economic Statement and Fiscal Note, Department of Health, at page 6, November 30, 2011 (on file with the Health and Human Services Quality subcommittee).

<sup>12</sup> Rule 64B16-29.002(1)(a) and (b), F.A.C.

<sup>13</sup> S. 499.03(1), F.S.

<sup>14</sup> 2012 Legislative Analysis Form for HB 479, Office of Legislative Affairs, Department of Business and Professional Regulation, dated December 2, 2011, page 4 (on file with the Health and Human Services Quality subcommittee).

<sup>15</sup> S. 828.058(4)(a), F.S.

<sup>16</sup> S. 828.05(3), F.S.

<sup>17</sup> See Chemical Immobilization presentation, Auburn University School of Forestry and Wildlife Services, slide 2 available at <https://fp.auburn.edu/sfws/ditchkoff/Course%20Pages/6291/Chemical%20Immobilization.ppt> (hard copy on file with Health and Human Services Quality subcommittee)

<sup>18</sup> See *id.* at slide 4.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at slide 26.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at slide 27.

<sup>24</sup> See *id.* at slide 28.

as blinking, swallowing and motion other than walking.<sup>25</sup> Common arylcyclohexamines include ketamine<sup>26</sup>, tiletamine<sup>27</sup>, and phencyclidine.<sup>28</sup> It is important to note that the affect of arylcyclohexamines is not reversible and must be used in conjunction with neuroleptics to achieve sufficient and safe immobilization.<sup>29</sup> Neuroleptics are tranquilizers, producing calmness and relaxation.<sup>30</sup> Neuroleptics do not cause loss of consciousness or alleviate pain perception.<sup>31</sup> These drugs are used in conjunction with opioids and arylcyclohexamines.<sup>32</sup> Common neuroleptics include diazepam<sup>33</sup> and xylazine.<sup>34</sup>

### Disease Reporting

Section 381.0031, F.S., requires certain medical providers, any hospital licensed under chapter 395, and any laboratory licensed under chapter 483 to report to the DOH the diagnosis or suspicion of a disease of public health importance.<sup>35</sup> The DOH is required to periodically issue a list of infectious and noninfectious diseases which it determines to be a threat to public health and therefore of public health importance.<sup>36</sup> The current list of diseases or conditions to be reported includes, but is not limited to,<sup>37</sup>:

Acquired Immune Deficiency Syndrome (AIDS)	Amebic Encephalitis
Botulism	Chlamydia
Cholera	Diphtheria
Gonorrhea	Hepatitis A, B, C, D, E and G
Human Immunodeficiency Virus (HIV)	Influenza
Lyme disease	Meningitis
Mumps	Plague
Rabies	Smallpox
Syphilis	Tuberculosis
Typhoid fever	Viral hemorrhagic fevers
West Nile virus	Yellow fever

The diseases or conditions listed in the rule must be reported by telephone, facsimile, electronic data transfer, or other confidential means of communication to the County Health Department having jurisdiction for the area in which the disease or condition is found and within the time period specified by rule.<sup>38</sup> Additional rules provide for written reports to be issued by practitioners, laboratories, medical facilities, and other persons following the initial reporting of a disease or condition of public health significance.<sup>39</sup>

The following persons are required to report suspected rabies exposure to humans, as well as conditions that are diagnosed or suspected in animals, pursuant to subsection 64D-3.039(2), F.A.C.<sup>40</sup>:

<sup>25</sup> See *id.*

<sup>26</sup> Also known by the street name "Special K".

<sup>27</sup> Also marketed under the brand name Telazol®.

<sup>28</sup> Also known as the street drug "PCP".

<sup>29</sup> See *supra* at FN 11, slide 29.

<sup>30</sup> See *id.* at slide 30.

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> Marketed as Valium®; provides a calming effect with muscle relaxation.

<sup>34</sup> Marketed under the brand names Rompun® and Tolazine®; also called cervizine and anased; effects are immediately and completely reversible.

<sup>35</sup> S. 381.0031(1), F.S.

<sup>36</sup> S. 381.0031(2), F.S.

<sup>37</sup> The complete list of diseases or conditions to be reported is codified at Rule 64D-3.029(3), F.A.C.

<sup>38</sup> Rule 64D-3.029(1), F.A.C.; the time period for reporting varies according to the severity of the threat to public health posed by the identified disease or condition.

<sup>39</sup> Rule 64D-3.030, F.A.C. (notification by practitioners); Rule 64D-3.031, F.A.C. (notification by laboratories); Rule 64D-3.032, F.A.C. (notification by medical facilities); Rule 64D-3.033, F.A.C. (notification by others).

<sup>40</sup> The rule states "Any grouping or clustering of animals having similar disease, symptoms or syndromes that may indicate the presence of a threat to humans including those for biological agents associated with terrorism shall be reported."

- Animal control officers operating under s. 828.27, F.S.;
- Employees or agents of a public or private agency, animal shelter, or other facility that is operated for the collection and care of stray, neglected, abandoned, or unwanted animals;
- Animal disease laboratories licensed under s. 585.61, F.S.;
- Wildlife officers operating under s. 372.07, F.S.;
- Wildlife rehabilitators permitted by the Fish and Wildlife Conservation Commission; and
- Florida state park personnel operating under s. 258.007, F.S.<sup>41</sup>

## Effect of Proposed Changes

The bill expands the list of controlled substances and legend drugs that can be used for the purpose of euthanasia or immobilization to include:

- Tiletamine hydrochloride, alone or in combination with zolazepam (Telazol®)- both drugs are schedule III drugs in Florida; non-narcotic, non-barbiturate injectable anesthetic
- Xylazine (Rompun®)- a sedative that provides pain relief and muscle relaxation; not a controlled substance in Florida
- Ketamine- schedule III drug in Florida; anesthetic
- Acepromazine maleate (Atravet®)- not a controlled substance in Florida; a tranquilizer used for dogs, cats, and horses, also helps control seizures
- Acetylpromazine (Acezine 2)- not a controlled substance in Florida; used as a chemical restraint to quiet and calm frightened and aggressive animals
- Etorphine (Immobilon®)- Schedule I drug in Florida; used for immobilizing animals; resembles morphine by causing analgesia and catatonia, blocking conditional reflexes, and providing an anti-diuretic effect
- Yohimbine hydrochloride- not a controlled substance in Florida; used to reverse the effects of xylazine in dogs
- Atipamezole (Antisedan®)- not a controlled substance in Florida; reverses the sedative and analgesic effects of certain drugs in dogs

The bill will eliminate the need for an animal control agency or humane agency to obtain an exemption letter from DBPR in order to purchase, possess and use drugs for euthanasia and chemical immobilization listed in the bill.

The bill clarifies that the DOH is responsible for issuing a permit to an animal control agency or humane agency for the purpose of purchasing, possessing and using euthanasia and immobilizing drugs, not DBPR. Current law requires agencies to submit an application for the permit to DBPR. This is assumed to be an inadvertent provision that was not changed when health care professional boards were moved from DBPR to the DOH. In practice, DOH has been issuing the permits since the Board of Pharmacy was first housed within the department. The bill changes the current law to reflect the current permitting process.

The bill provides the DOH and the Board of Pharmacy with the power and rulemaking authority to deny a permit, or suspend, fine, or otherwise discipline an applicant for a permit or a permittee for failure to maintain certain standards or violation of certain statutes. For example, use of prescription drugs listed in the bill for a purpose other than the purposes allowed in the bill, failure to take reasonable precautions against theft, loss or diversion of the drugs listed in the bill, and failure to notice or report to the DOH a significant loss, theft, or inventory shortage are grounds upon which denial of an application for the permit, suspension, revocation, or refusal to renew a permit may be based. The bill gives the DOH the power to immediately suspend a permit by emergency order upon a determination that a permittee poses a threat to the public health, safety, or welfare.

The bill further limits acceptable methods of administering drugs for euthanasia to animals. First, an injection into the heart of a dog or cat by hypodermic needle is appropriate only if the dog or cat is unconscious with no corneal reflex. The corneal reflex is tested by pressing on the eye of the animal. If

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<sup>41</sup> Rule 64D-3.033(1), F.A.C.

the animal blinks or the eye moves, the animal is conscious and intracardial injection cannot be used. Second, the bill removes food-based delivery of euthanasia drugs as an acceptable method of euthanization.

Lastly, the bill requires an animal control officer, a wildlife officer, and an animal disease diagnostic laboratory to report knowledge of any animal bite, any diagnosis or suspicion of a grouping or clustering of animals having similar disease, or any symptom or syndrome that may indicate the presence of a threat to humans. This provision is consistent with Rule 64D-3.033, F.A.C., which currently requires animal control officers, animal disease laboratories, and wildlife officers to report suspected rabies exposure to humans and conditions that they diagnose or suspect in any grouping or clustering of animals having similar diseases, symptoms, or syndromes that may indicate the presence of a threat to humans, including those for biological agents associated with terrorism.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 381.0031, F.S., relating to report of diseases of public health significance to department;
- Section 2:** Amends s. 828.055, F.S., relating to sodium pentobarbital; permits for use in euthanasia of domestic animals;
- Section 3:** Amends s. 828.058, F.S., relating to euthanasia of dogs and cats;
- Section 4:** Provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

An increase in the number of permits filed by facilities seeking to purchase, possess and use the drugs authorized by the bill for chemical immobilization and euthanasia will result in the collection of additional permit fees. At a minimum, the entities which currently obtain exemption letters from DBPR to possess and use immobilizers are likely to apply for a permit from DOH to purchase, possess and use these drugs. According to DBPR, it issues fewer than 20 exemption letters for this purpose. Assuming 20 entities apply for a permit, at a cost of \$50 per permit, DOH will collect, at a minimum, \$1,000 in permit fees. It is possible that additional animal control agencies and humane agencies will apply for the permit, which will increase revenue collected from permit fees.

##### 2. Expenditures:

The increased number of permit applications will increase the workload of the Board of Pharmacy to review and certify applications. The increased number of permit applications will increase the workload of DOH to approve or deny permits. The Board of Pharmacy and DOH can handle the increased workload within existing resources. DOH also expects to incur non-recurring costs for rulemaking as required by the bill which current budget authority can absorb adequately.<sup>42</sup> DBPR expects an insignificant reduction in work load as a result of no longer issuing exemption letters to allow animal shelters to possess certain drugs without violating s. 499.03, F.S.<sup>43</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

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<sup>42</sup> See *supra* at FN 9, at page 4.

<sup>43</sup> See *supra* at FN 41.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in savings to certain animal control agencies. Without exemption letters allowing purchase and possession without the need to maintain a veterinarian on staff, animal control agencies were forced to contract with veterinarians in the community in order to obtain certain controlled substances for use in chemical immobilization.<sup>44</sup> Because private veterinarians were using their license to obtain the controlled substances for use by another party, the fees charged by private veterinarians were substantial, averaging between \$10,000 and \$30,000.<sup>45</sup> Smaller animal control agencies with smaller budgets could not afford to pay those fees. The bill allows all animal control agencies to use the same permit used to obtain drugs for euthanasia to obtain drugs for chemical immobilization without paying additional fees.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rulemaking authority to the Board of Pharmacy to implement the provisions of the proposed legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>44</sup> Veterinarians are authorized to prescribe, dispense, and administer drugs for animals within the practice of veterinary medicine under s. 474.202(9), F.S. In order to possess and distribute controlled substances, veterinarians are required to obtain a permit from the federal Drug Enforcement Administration using DEA Forms 224 or 224a, depending on whether it is an application for a new permit or renewal of an existing permit. Lastly, in order to possess controlled substances within the state, veterinarians must obtain a permit from the DBPR through the Drug, Device, and Cosmetics Division.

<sup>45</sup> Florida Animal Control Association, Scott Trebatoski, President, telephone conference with Health and Human Services Quality subcommittee staff, November 29, 2011.

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

On December 6, 2011, the Health and Human Services Quality Subcommittee adopted a strike-all amendment for House Bill 479. The strike-all amendment makes the following changes to the bill:

- Allows the Board of Pharmacy to add drugs to the list upon a formal, written recommendation from the Board of Veterinary Medicine, adopted at a public meeting, that the additional drugs are necessary for humane and lawful treatment of domestic animals.
- Clarifies that the DOH- not the DBPR –issues the permit for purchase, possession, and use of the euthanasia and immobilizing drugs listed in the bill.
- Allows the DOH or the Board of Pharmacy to deny a permit, or fine, place on probation or otherwise discipline an applicant or permittee upon a determination that the applicant or permittee has failed to abide by certain standards or violated statute.
- Provides the Board of Pharmacy with rulemaking authority to implement denial of a permit or other disciplinary action upon a finding that an applicant or permittee failed to abide by certain standards or violated statute.
- Provides the DOH with authority to issue an emergency order suspending a permit if there is a danger to the public health, safety and welfare.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.