

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 941 Authorization of Restriction Concerning Dogs

**SPONSOR(S):** Busatta Cabrera and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 942

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	18 Y, 0 N	Burgess	Darden
2) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Larkin	Anstead
3) State Affairs Committee	16 Y, 0 N	Burgess	Williamson

### SUMMARY ANALYSIS

Public housing authorities (PHAs) are created at municipal, county, and regional levels, but may not transact any business or exercise statutory powers until such time as the local governing body declares by resolution that there is a need for a housing authority to function in its jurisdiction. Among other powers, PHAs may administer fair housing ordinances and other ordinances as adopted by municipalities, counties, or other authorities contracting for administrative services.

PHAs must submit annual plans to the United States Department of Housing and Urban Development, which includes a statement of their policies and rules regarding ownership of pets in public housing. PHAs may impose reasonable requirements on residents of public housing regarding pet ownership, including prohibitions against types of animals that are classified as dangerous and individual animals based on certain factors including size and weight. Currently, the policies of some PHAs prohibit pets based on the breed, behavior, or training of the pet. However, some regulations based on breed do not depend on a finding that the pet is vicious or dangerous. Additionally, the definition of "dangerous dog" under Florida law is not uniformly applied in all PHA policies.

Local governments may adopt ordinances addressing safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no regulations may be breed specific. Ordinances adopted prior to October 1, 1990, are exempt from these statutory requirements.

The bill provides that it does not limit the authority of PHAs to adopt policies imposing restrictions or additional requirements on owners of dogs deemed dangerous or to develop procedures or criteria to aid in the implementation of these policies. The bill expands the general restriction on local governments from adopting breed-specific regulations to include a prohibition on regulations based on size or weight of the dog, and provides that these same restrictions apply to PHAs. The bill also removes the current exception that allowed local ordinances adopted prior to October 1, 1990, to regulate based on breed, bringing such ordinances under the current requirements of the statute.

This bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Public Housing Authorities

###### *Creation*

Public housing authorities (PHA) are created at municipal, county,<sup>1</sup> and regional levels.<sup>2</sup> PHAs may not transact any business or exercise statutory powers until such time as the governing body of a municipality or county declares by resolution that there is a need for a housing authority to function in its jurisdiction. This determination may be made by the governing body of the municipality or county on its own motion or upon the filing of a petition signed by 25 residents of the jurisdiction asserting that there exists a need for such an authority and requesting that the governing body so declare.<sup>3</sup> The governing body may adopt a resolution if it finds that:

- Insanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
- There is a shortage of safe or sanitary dwelling accommodations available in the city or county to persons of low incomes at rentals they can afford.<sup>4</sup>

Upon notification of the adoption of a resolution, the mayor of the city or the Governor appoints the commissioners of the PHA for the city or county, respectively.<sup>5</sup>

If the governing body of two or more contiguous counties each declares by resolution that there is a need for one PHA to exercise powers and other functions for all such counties, a regional housing authority is created and any PHAs created for each individual county cease to exist, except for the purpose of winding up their respective affairs and executing a deed to the regional housing authority. The governing body of a county may not adopt a resolution of this kind if its current county PHA has any outstanding obligations, unless:

- All obligees of such county PHA and parties to the contracts, bonds, notes, or other obligations of such authority agree to substitute the regional housing authority in lieu of the county PHA on all such contracts, bonds, notes, or other obligations; and
- The commissioners of each county PHA adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of the county PHA to the regional housing authority.<sup>6</sup>

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<sup>1</sup> A county housing authority operates in all areas of the county except those portions that lie within the territorial boundaries of any city (defined as any city or town having a population of more than 2,500 according to the last state or federal census). Ss. 421.27(3) and 421.03(2), F.S.

<sup>2</sup> Ss. 421.04, 421.27, and 421.28, F.S.; A regional housing authority shall operate in all counties for which the regional housing authority was created except the portions of the counties that lie within the territorial boundaries of cities. Ss. 421.29(1) and 421.03(2), F.S.

<sup>3</sup> Ss. 421.04(1) and 421.27(1), F.S.

<sup>4</sup> S. 421.04(2), F.S.; In determining whether dwelling accommodations are unsafe or insanitary the governing body may take into consideration the following: the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants, the size and arrangements of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes. S. 421.04(2)(b), F.S.

<sup>5</sup> S. 421.27(2), F.S.

<sup>6</sup> S. 421.28(1), F.S.

Furthermore, the governing body of each of the two or more contiguous counties must declare by resolution that:

- Insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe and sanitary dwelling accommodations available in such county to persons of low income at rentals they can afford; and
- A regional housing authority would be a more efficient or economical administrative unit than the PHA of such county to carry out the purposes of this Housing Authorities Law in such county.<sup>7</sup>

### *Powers of PHAs*

PHAs are authorized to administer fair housing ordinances and other ordinances adopted by municipalities, counties, or other authorities contracting for administrative services.<sup>8</sup>

### *PHA Agency Plans*

PHAs must submit annual plans to the United States Department of Housing and Urban Development (HUD) for approval. These plans must include a statement of the PHA's policies and rules regarding ownership of pets in public housing.<sup>9</sup>

PHAs may impose reasonable requirements on residents of public housing regarding pet ownership, which may include prohibitions against types of animals that are classified as dangerous<sup>10</sup> and individual animals based on certain factors, such as the size and weight of the animal.

Currently, some PHAs include provisions in their policies prohibiting pets based on breed, behavior, or training of the pet.<sup>11</sup> However, some regulations based on breed do not depend on a finding that the pet is vicious or dangerous. Additionally, the definition of "dangerous dog" under Florida law is not uniformly applied in all PHA policies.<sup>12</sup>

## Dangerous Dogs

### *Local Restrictions*

Local governments may adopt ordinances to address safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no regulations may be breed specific.<sup>13</sup> Ordinances adopted prior to October 1, 1990, are exempt from these statutory requirements.<sup>14</sup>

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<sup>7</sup> S. 421.28(3), F.S.; No governing body shall adopt a resolution of this kind unless a public hearing has first been held. S. 421.29(7), F.S.

<sup>8</sup> S. 421.08(6), F.S.

<sup>9</sup> 42 U.S.C.A. s.1437c-1; See also 24 C.F.R. s. 903.7(n) (The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. s. 1437z-3)).

<sup>10</sup> Classifications must comply with state and local law. 24 C.F.R. s. 960.707(b)(3).

<sup>11</sup> See e.g., Tampa Housing Authority, <https://www.thafl.com/Departments/Real-Estate-Development/library/PHA-PLAN.pdf> (last visited Mar. 8, 2023) (forbidding "Pets of a known vicious or dangerous disposition, i.e. Pit bulls, Doberman pinchers"); St. Petersburg Housing Authority, [https://www.stpeteha.org/plugins/show\\_image.php?id=1912](https://www.stpeteha.org/plugins/show_image.php?id=1912) (last visited Mar. 8, 2023) (prohibiting "any animal deemed to be potentially harmful to the health or safety of others, including attack or fight trained dogs . . . certain breeds may be prohibited at the discretion of [St. Petersburg Housing Authority]"); Key West Housing Authority, [https://www.kwha.org/egov/documents/1614973714\\_73249.pdf](https://www.kwha.org/egov/documents/1614973714_73249.pdf), Chapter 10: Pet Policy, p. 3 (last visited Mar. 8, 2023) (prohibiting "vicious or intimidating pets. Dog breeds including pitbull, rottweiler, Doberman, are considered vicious or intimidating breeds").

<sup>12</sup> See S. 767.11(1), F.S.

<sup>13</sup> A local government may only enact additional restrictions or requirements on the owners of dogs who have already been declared "dangerous" as defined in s. 767.11, F.S. This section does not authorize or prohibit additional restrictions or requirements on owners of dogs who have not been declared "dangerous." *Hoesch v. Broward County*, 53 So. 3d 1177 (Fla. 4th DCA 2011).

<sup>14</sup> S. 767.14, F.S.; Because of the 1990 grandfather provision, Miami-Dade County and the City of Sunrise are local governments in Florida with breed specific ordinances currently in effect. Miami-Dade County Ord. No. 89-22, § 2, 4-4-89; City of Sunrise Ord. No. 251-A, § 2(4-17), 5-2-89. Miami-Dade's ordinance provides that pit bull dogs are banned from purchase, from being brought into Miami-Dade County, or otherwise acquired and regulated due to unique history, nature and characteristics which require special regulation. Miami-Dade County Ord. No. 89-22, § 2, 4-4-89.

Florida law defines a “dangerous dog” as any dog that, according to the records of the appropriate authority.<sup>15</sup>

- Has aggressively bitten, attacked, or endangered or inflicted severe injury<sup>16</sup> on a human being on public or private property;
- Has more than once severely injured or killed a domestic animal while off the owner’s property; or
- Has, when unprovoked,<sup>17</sup> chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.<sup>18</sup>

### *Process for Classifying Dogs as Dangerous*

An animal control officer<sup>19</sup> is typically the person who investigates an incident involving a dog. In areas unserved by an animal control authority,<sup>20</sup> the sheriff assumes the duties required of an animal control officer.<sup>21</sup>

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.<sup>22</sup> An animal that is the subject of a dangerous dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held.<sup>23</sup> A dog being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.<sup>24</sup>

The animal control authority may not declare a dog as dangerous if:

- The injured person was unlawfully on the property or if lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner or a family member; or
- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.<sup>25</sup>

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous and if sufficient cause is found, provide the owner an opportunity for a hearing before making a final determination regarding the classification or penalty.<sup>26</sup> The animal control authority must provide written notice of sufficient cause and proposed penalty to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has seven calendar days from receiving the notice to file a written request for a hearing. If the owner requests a hearing, the hearing officer must hold the hearing as soon as possible, but no

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<sup>15</sup> Local governments may not alter the statutory definition of “dangerous dog.” See *Hoesch*, 53 So. 3d at 1180-1181.

<sup>16</sup> “Severe injury” is defined as any physical injury resulting in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. S. 767.11(3), F.S.

<sup>17</sup> “Unprovoked” is defined as a victim who conducted himself or herself peacefully and lawfully was bitten or chased in a menacing fashion or attacked by a dog. S. 767.11(2), F.S.

<sup>18</sup> S. 767.11(1), F.S.

<sup>19</sup> “Animal control officer” means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve seizure and impoundment of any animal. See s. 767.11(6), F.S.

<sup>20</sup> “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control law of the city, county, or state. See s. 767.11(5), F.S.

<sup>21</sup> S. 767.11(5) and (6), F.S.

<sup>22</sup> S. 767.12(1), F.S.

<sup>23</sup> S. 767.12(1)(a), F.S.

<sup>24</sup> S. 767.12(1)(b), F.S.

<sup>25</sup> S. 767.12(2)(a-b), F.S.

<sup>26</sup> S. 767.12(3), F.S.

later than 21 calendar days and no sooner than five days after receiving the request for hearing.<sup>27</sup> If a hearing is not timely requested, the authority's determination becomes final.

Within 14 days after the classification as a dangerous dog by the animal control authority, the owner must register the dog with the animal control authority and renew the certification annually. Vaccination, enclosure, warning sign, and identification requirements must then be followed. The owner must immediately notify the animal control authority if the dog is loose, if the dog bites or attacks a person or another animal, or if there is any other change in status. A dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Any violation of these requirements is a noncriminal infraction punishable by a fine not to exceed \$500.<sup>28</sup>

In addition to civil penalties, the owner of a dangerous dog can be charged with the following criminal violations:

- First degree misdemeanor if the dog has previously been declared "dangerous" and it attacks or bites a person or domestic animal without provocation.<sup>29</sup>
- Second degree misdemeanor if the dog has not previously been declared "dangerous" but causes severe injury to or death of any human and the owner had prior knowledge of, but recklessly disregarded, the dog's dangerous propensities.<sup>30</sup>
- Third degree felony if the dog has previously been declared "dangerous" and it attacks and causes severe injury to or death of any human.<sup>31</sup>

### **Effect of Proposed Changes**

The bill adds size and weight to the prohibited dog characteristics which a local government may not use to regulate dogs in its jurisdiction, and places the same restrictions on PHAs. The bill removes the exemption for local ordinances adopted prior to October 1, 1990, requiring those ordinances to comply with these statutory restrictions.

The bill provides that it does not limit the authority of PHAs to adopt policies to impose restrictions or additional requirements on owners of dogs as long as such policies are not specific to breed, weight, or size, or to develop procedures and criteria to aid in the implementation of these policies.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 767.14, F.S., concerning the authorization of additional local restrictions related to dangerous dogs.

Section 2: Provides an effective date of October 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

None.

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

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<sup>27</sup> S. 767.12(3), F.S.

<sup>28</sup> S. 767.12(7), F.S.

<sup>29</sup> S. 676.13(1), F.S.

<sup>30</sup> S. 767.136(1), F.S.

<sup>31</sup> S. 767.13(2), F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.