

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2058

SPONSOR: Judiciary Committee, Agriculture and Consumer Services Committee and Senator Sebesta

SUBJECT: Animal Control

DATE: April 18, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute revises various provisions of animal control law as follows:

- Streamlines the dangerous dog classification process,
- Sets forth the circumstances under which an animal control authority can euthanize a properly confiscated and quarantined dog and authorizes reimbursement from the owner
- Removes language adopted in 1990 that permitted local ordinances regulating breed specific dogs to remain valid if adopted prior to October 1, 1990,
- Broadens the authority of the Board of Pharmacy to approve in rules a wide range of drugs for animal control to include veterinary legend drugs and controlled substances as recommended by the Board of Veterinary Medicine,
- Expands the list of entities that can obtain permits to use the veterinary legend drugs and updates the name of the permitting agency from the Department of Business and Professional Regulation (DBPR) to the Department of Health where the Board of Pharmacy is located,
- Revises euthanasia procedures and authorizes chemical immobilization procedures and makes those procedures applicable for all animals, not just cats and dogs,
- Sets forth certification and continuing education requirements for persons performing euthanasia and chemical immobilization procedure,
- Requires investigative agents, appointed after July 1, 2001, to meet certain training and continuing education requirements,
- Authorizes municipal law enforcement officers and agents to perform the same duties as their county counterparts, and
- Authorizes animal control officers to carry legal firearms other than handguns in those areas where the local governing authority approves and sets forth certain training and education requirements that an animal control officer must meet to carry a legal firearm other than a handgun.

This bill substantially amends the following sections of the Florida Statutes: 767.012, 767.13, 767.14, 828.03, 828.055, 828.058, 828.073.

## II. Present Situation:

### Dangerous Dog Classification

Chapter 90-180, L.O.F., imposed uniform requirements for the owners of dangerous dogs, provided procedures for certain dogs to be classified as dangerous, established requirements for control and confinement of dangerous dogs, and provided for the imposition of fines and penalties for violations of this act. *See also* ss. 767.10-767.15, F.S. A “dangerous dog” is defined as a dog that:

- Has aggressively bitten, attacked, or endangered, or has inflicted severe injury 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;
- Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or
- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

An animal control authority is required to investigate reported incidents involving a suspected dangerous dog. Pending the investigation, the dog must be confined by its owner and may not be relocated or have its ownership transferred. A dog can not be declared dangerous if the threat, injury or damage was sustained by a person who was unlawfully on the property, harassing the dog or its owner, or if the dog was protecting a human from an unjustified attack.

After the investigation, the animal control authority is to make an initial determination as to whether there is sufficient cause to classify the dog as dangerous. The owner must have an opportunity for a hearing prior to a final determination. The local governing body establishes the hearing procedures. After the hearing, if the dog is classified as a dangerous dog, the animal control authority must provide written notice to the owner, and the owner may appeal the classification to the county court. The President of the Florida Animal Control Association (FACA) testified that these procedures have caused confusion and raised jurisdiction questions about the role of the county court to hear appeals.

Within 14 days after the classification as a dangerous dog by the animal control authority or the classification is upheld by the county court on appeal, the owner must register the dog and renew the certificate annually. Vaccination, enclosure, warning sign and identification requirements must then be followed, along with notice requirements if the dog is loose, bites or attacks a person or another animal, or 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

this section is a noncriminal infraction, punishable by a fine, not to exceed \$500. Exemptions are provided for: hunting dogs, when engaged in any legal hunt or training procedure; dogs engaged in training or exhibiting in legal sports, such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials; and dogs used for law enforcement work.

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

- 3d degree felony (punishable under s. 775.082, s.775.083, or 775.084), if the dog has previously been declared “dangerous” and it attacks and causes severe injury to or death of any human.
- 2d degree misdemeanor (punishable under s. 775.082 or s. 775.083), 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.
- 1<sup>st</sup> degree misdemeanor (punishable under s. 775.082 or s. 775.083), if the dog has previously been declared “dangerous” and it attacks or bites a person or domestic animal without provocation.

Under these criminal scenarios, the dog must be confiscated, placed in quarantine, if necessary, or impounded for 10 business days after the owner is given written notification, during which time the owner may request a hearing. A dog may not be destroyed while an appeal is pending. However, the owner must pay for all boarding costs and other fees to maintain the dog during any appeal process. An owner is not guilty of a crime if a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner is not guilty of any crime under this section.

Local governments are authorized to place further restrictions and additional requirements relating to dangerous dogs. However, no local regulation may be breed-specific, or lessen the provisions of the chapter unless adopted prior to October 1, 1990.

### **Euthanasia and Drugs**

Chapter 828, F.S., authorizes sodium pentobarbital, a sodium pentobarbital derivative, or other agent the BVM approves for use in euthanasia of cats and dogs and humane substances for tranquilizing them. The Department of Business and Professional Regulation issue the permits for these drugs. FACA, which represents 175 animal control shelters throughout the state, reports that legend drugs are an integral part of stray animal control programs that are necessary to an effective rabies program directed by the Department of Health. Legend drugs have been approved for use by the Board of Veterinary Medicine but it is difficult for animal control shelters to obtain the required legend drugs. FACA asserts that the statute should be changed to place responsibility with the permittee and remove control over daily use of legend drugs from the veterinarians. Certification and training is required for persons euthanizing and tranquilizing dogs and cats. These requirements do not apply to chemical immobilization and to animals other than cats and dogs.

County law enforcement officers or agents are authorized to take certain actions regarding animals found in distress. This same authority is not extended to their municipal counterparts. Presently an animal control officer is not authorized to bear firearms in the performance of his or her duties.

### III. Effect of Proposed Changes:

**Section 1** amends s. 767.12, F.S., relating to the process for classifying dogs as dangerous, as follows:

- Eliminates a dog owner's right to a prior hearing and authorizes the animal control authority to make an initial determination as to whether sufficient cause exists to classify the dog as dangerous after reviewing data collected during a dangerous dog investigation. The authority may also make a final determination declaring the dog dangerous.
- Changes one of the ways to notify the owner of the sufficient-cause finding from registered to certified mail.
- Provides that the dog owner may file a request for an evidentiary hearing in county court or a request for an administrative hearing, as determined by local ordinance, within 7 calendar days after receiving notice of the sufficient-cause finding.
- Clarifies that, if requested, a hearing shall be held within 21 calendar days, or as soon thereafter as practical, but no sooner than five days after receipt of the owner's request.
- Provides that, if no hearing is requested within the 7 day period, the dog shall automatically be declared dangerous.
- Provides that the animal control authority, after notifying the dog owner of a finding of sufficient-cause but before final resolution of the matter, may not impose restrictions on the dog except for confinement, impoundment, or prohibition of relocation or transfer.
- Requires the dog owner to obtain a certificate of registration for the dog within 14 days of being classified as dangerous by the animal control authority or within 14 days of a sufficient-cause finding being upheld.
- Eliminates the right of local governments to establish hearing procedures or appeal procedures to handle these matters but does authorize them to impose more stringent requirements.
- Adds new requirement subjecting owners whose dogs are similarly classified as dangerous dogs and brought from out-of-state to the same registration restrictions under Florida's law.

**Section 2** amends s. 767.13, F.S., relating to attacks or bites by dangerous dogs. An animal control authority may euthanize an animal and obtain reimbursement from the owner when the owner does not pay required boarding costs in those circumstances where an animal has been legitimately confiscated and quarantined because it has committed acts which would subject the

owner to criminal charges. However, it limits the right to destroy the dog pending a hearing or appeal.

**Section 3** amends s. 767.14, F.S., to eliminate the provision that permits local governments to have dangerous dog regulations that are specific to a certain breed if the ordinance was adopted prior to October 1, 1990.

**Section 4** amends s. 828.055, F.S., relating to drugs used for euthanasia of animals, as follows:

- Expands the application of this section to all animals and to chemical immobilization.
- Deletes limiting reference to sodium pentobarbital and sodium pentobarbital with lidocaine and expands the list of drugs from legend drugs (veterinary legend drugs are defined in Chapter 499, F.S.), including controlled substances listed in Chapter 893, F.S., as recommended by the BVM to the Board of Pharmacy.
- Adds “state agencies with animal related duties” and humane societies with government contracts for animal control as entities that can acquire and use permitted legend drugs for the same purposes as county or municipal animal control agencies.
- Allows humane societies without government contracts for animal control to acquire and use permitted legend drugs only for the purpose of tranquilizing or sedating and euthanizing injured, sick, abandoned, or otherwise unclaimed animals that are in their lawful possession.
- Replaces the DBPR with the Department of Health as the agency to handle applications for permits to acquire and use legend drugs.

**Section 5** amends s. 828.058, F.S., by revising euthanasia procedures and adding procedures for the chemical immobilization of animals as follows:

- Makes provisions applicable to all animals, not just cats and dogs.
- Directs that only agents recommended to the Board of Pharmacy by the BVM can be used:
  1. To euthanize an animal without limitation to sodium pentobarbital and a derivative.
  2. To immobilize animals to facilitate capture and control.
- Prohibits public or private agencies, animal shelters, or other facilities that are operated for the collection and care of stray, neglected, abandoned or unwanted animals from using neuromuscular blocking agents for any purpose.
- Deletes an outdated requirement that persons performing euthanasia at the time the act was passed had to obtain certification by October 1, 1994.
- Establishes the following chemical immobilization procedures:
  1. Can be performed only by veterinarian, certified veterinary technician, employee of a state agency with animal related responsibilities, animal control personnel, or personnel from a humane society that is registered with the Secretary of State and has a government contract for animal control.
  2. Requires all persons performing chemical immobilization, except veterinarians and certified veterinary technicians, to complete 16-hour certification course approved by the BVM.
  3. Prohibits leaving an animal unattended between the time of chemical immobilization and return to sternal recumbency (the term “sternal recumbency” is not defined).

**Section 6** amends s. 828.03, F.S., to add a requirement that agents appointed after July 1, 2001 to investigate violations of the act must complete a 40 hour minimum standards training course required by s. 828.27(4)(a)1, F.S. All such agents that utilize devices to chemically immobilize an animal must complete the training required by s. 828.27(1)(b) and meet the continuing education requirements contained in s. 828.27 (4)(a)3.

**Section 7** amends s. 828.073, F.S., to allow municipal law enforcement officers and agents to perform the same functions relating to animals found in distress as can be performed by their county counterparts.

**Section 8** amends regulations regarding local animal control and cruelty ordinances contained in s. 828.27, F.S., as follows:

- Directs that chemical immobilization training shall be in accordance with s. 828.058(4), F.S.
- Sets forth criteria and training that an animal control officer must meet in order to carry a legal firearm other than an handgun.
- Doubles the requirement for continuing education from 4 to 8 hours for certified county-employed animal control officers.

**Section 9** provides that the act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **IV. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

This bill should help to clarify what the responsibilities and rights of an owner are relative to a dog that is suspected of being a dangerous dog.

##### **C. Government Sector Impact:**

This bill streamlines the dangerous dog classification to permit the animal control authority to make the initial determination without a hearing or other prior notice but subject to a

subsequent formal evidentiary or administrative hearing should an owner request such a hearing.

At the local government level, the bill would eliminate time being spent to enforce any specific breed ordinances as they would no longer be valid.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

- The dangerous dog classification process is amended by to allow the animal control authority to make an initial determination of a dangerous dog classification after an investigation but without holding a hearing as previously required (although a formal judicial or administrative hearing may be held later upon the request of the owner). However, as revised, some clarification may be needed to distinguish between the sufficient cause determination and the final determination of dangerous dog for purposes of knowing when to petition for an evidentiary hearing in county court or to request an administrative hearing before the animal control authority, and when the appellate process begins. This is necessary to ensure that the due process rights of the owner are protected through reasonable notice and opportunity to be heard before being totally deprived of his or her dog.
- The list of entities that may obtain permits to administer drugs for purposes of euthanasia and chemical immobilization is expanded to include “state agencies with animal related responsibilities.” It is uncertain what agencies this would entail.
- Under existing law, an animal control officer is not authorized to carry a firearm or to make an arrest, but may carry devices that can chemically subdue or tranquilize an animal. *See* s. 828.27, F.S. However, the bill amends this section to provide that in those locations where the local governing authority authorizes, such officer may carry a legal firearm other than a handgun and for the limited purpose of killing an injured or diseased domestic animal under s. 828.05, F.S. In addition, “legal firearm” is undefined and may be construed broadly to permit an animal control officer to use any weapon (other than a handgun) including a rifle, shotgun, spearfish gun, crossbow or bow and arrow to kill a domestic animal.

**VII. Amendments:**

None.