

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: SB 1322

INTRODUCER: Senator Norman

SUBJECT: Local Requirements for Dangerous Dogs

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Jenkins</u>	<u>Roberts</u>	<u>GO</u>	Favorable
3.	<u>Sadberry</u>	<u>Sadberry</u>	<u>BJA</u>	Pre-meeting
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes a provision that exempts local ordinances adopted before October 1, 1990 from the prohibition on ordinances that are specific to breed.

This bill amends section 767.14 of the Florida Statutes.

II. Present Situation:

Chapter 767, F.S., outlines the state’s “Damage by Dogs” provisions. In 1990, the State of Florida enacted a dangerous dog law.¹ The Legislature found that “dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of the owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements on the owners of dangerous dogs.”²

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; or

¹ Ch. 90-180, L.O.F.

² Section 767.10, F.S.

- 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.³

Enforcement of the dangerous dog law relies on a formal complaint to trigger an investigation by an animal control authority. Pending the outcome of the investigation, the dog must be confined by its owner or impounded with an animal control authority and may not be relocated or have its ownership transferred. A dog cannot 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.⁴

After the investigation, the animal control authority makes 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. 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.⁵

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 with the animal control authority and renew the certificate 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, 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. 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.⁶

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

- 3rd degree felony (punishable under s. 775.082, s. 775.083, or s. 775.084, F.S.), if the dog has previously been declared “dangerous” and it attacks and causes severe injury to or death of any human.⁷
- 1st degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), if the dog has previously been declared “dangerous” and it attacks or bites a person or domestic animal without provocation.

³ Section 767.11(1), F.S.

⁴ Section 767.12(1)(a), F.S.

⁵ Section 767.12(1)(c)(d), F.S.

⁶ Section 767.12(2-7), F.S.

⁷ Section 767.13, F.S.

- 2nd degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), 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.

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 of the animal control authority’s intent to destroy. During such time, the owner may request a hearing, and the 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. 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.⁸

Local governments are authorized to place further restrictions and additional requirements on owners of dangerous dogs. However, no local regulation may be breed-specific, or lessen the provisions of chapter 767 unless the regulation was adopted prior to October 1, 1990.⁹ Florida is one of twelve states that prohibit local governments from enacting breed specific ordinances.¹⁰ A handful of communities were grandfathered in with an exception to this provision including Miami-Dade County.

In *State v. Peters*, the 3rd District Court of Appeals upheld the City of North Miami’s ordinance that required owners of pit bull-type dogs to post a surety bond (or provide other proof of financial responsibility) and confine the dogs indoors or in a locked pen.¹¹ The City of North Miami defined “Pit Bull Dog” with reference to the descriptions given by the American Kennel Club (AKC) and the United Kennel Club (UKC). The court held that:

- the ordinance did not deny equal protection to dog owners;
- the ordinance did not deny due process;
- the ordinance was not unconstitutionally vague in its definition of pit bull; and
- the determination of whether a dog was pit bull within the meaning of the ordinance was a matter of evidence not constitutional law.¹²

A similar Dade County ordinance also survived a challenge on vagueness grounds in a federal district court.¹³

The Senate Committee on Community Affairs Interim Report 2009-102¹⁴ reviewed the law on breed specific ordinances and surveyed local governments. The report concluded that while little evidence exists to support claims that one breed is more predisposed to aggressive behavior than others, studies do provide evidence that certain breeds are more likely to cause severe injury than

⁸ Section 767.13(5), F.S.

⁹ Section 767.14, F.S.

¹⁰ Pit Bull Awareness: Breed Specific Legislation; Nov. 28, 2007.

¹¹ 534 So. 2d 760 (Fla. 3d DCA 1988).

¹² *Id.*

¹³ *American Dog Owners Association, Inc. v. Dade County*, 728 F. Supp. 1533 (S.D. Fla. 1989).

¹⁴ Florida Senate Committee on Community Affairs, [Review of the Viability of City or County Pre-emption of Banning Certain Dog Breeds by Ordinance](http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-102ca.pdf), Interim Report 2009-102, available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-102ca.pdf.

others. The courts have consistently upheld these breed specific laws due to the rational relationship state and local governments have in preserving public safety and welfare. The issue of dangerous dogs varies greatly in different areas of this state – rural, semi-rural, and suburban. Within these local governments, human and dog populations vary greatly and can create possible unique areas of concern.

III. Effect of Proposed Changes:

Section 1 removes a provision that exempts local ordinances adopted before October 1, 1990 from the prohibition on ordinances that are specific to breed.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Veterinarians in localities that have breed-specific ordinances could potentially see an increase in business since previously prohibited breeds will become legal to own.

C. Government Sector Impact:

Any local government that has a breed specific ordinance or one that lessens state restrictions governing dangerous dogs will be preempted. In localities that require dog licenses and that have breed-specific prohibitions, there could potentially be an increase in dog license purchases resulting in an increase in revenue, although the scale of that increase is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
