

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 627 Animal Control

SPONSOR(S): Local Government Affairs Subcommittee; Agriculture & Natural Resources Subcommittee; Sullivan and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Gregory	Blalock
2) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
3) State Affairs Committee	18 Y, 0 N	Gregory	Camechis

SUMMARY ANALYSIS

Disposition of At Large or Stray Livestock

“Livestock” includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals. Law enforcement officers of a county or an animal control center who find livestock running at large or stray must confine, hold, and impound the livestock. After the livestock is impounded, the sheriff must attempt to notify the owner advising of the location of the livestock, the amount due for impounding, and that the livestock will be sold if not redeemed. If the livestock is not redeemed, the sheriff must put the livestock up for sale or auction. The sheriff must also determine and collect the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals.

The bill:

- Authorizes sheriffs and county animal control centers to offer for adoption or humanely dispose of impounded livestock, excluding cattle, as an alternative to the sale or auction of the livestock;
- Requires county animal control centers, in addition to sheriffs, to determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals; and
- Authorizes county animal control centers to collect payment in the same manner as sheriffs for impounding expenses when the livestock owner redeems the impounded livestock.

Municipal Animal Control Officers

Counties and societies or associations for the prevention of cruelty to children or animals (societies/associations) may appoint agents to investigate violations of certain animal cruelty laws and other laws protecting children and animals. The bill grants municipalities with certified animal control officers the same powers as counties and societies/associations.

Local Animal Control or Cruelty Ordinances Civil Citation Procedures

Counties and municipalities may adopt ordinances related to animal control and cruelty. To enforce such ordinances, counties and municipalities are specifically authorized to follow certain procedures established in statute. It is not clear whether additional, more flexible procedures authorized in statute for municipal code enforcement apply to the animal control and cruelty ordinances. The bill authorizes counties and municipalities to use these other code enforcement procedures afforded in statute to enforce animal control and cruelty ordinances.

The bill appears to have an indeterminate positive fiscal impact on counties. (See Fiscal Impacts section below).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Disposition of At Large or Stray Livestock

Present Situation

“Livestock” includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.¹ Owners who intentionally, willfully, carelessly, or negligently allow their livestock to run at large or stray upon public roads can be held liable for injury and property damage caused by the animal.² These owners can also be charged with a second degree misdemeanor, which may be penalized by a term of imprisonment not exceeding 60 days and/or a fine of \$500.³

Sheriffs, their deputies or designees, other law enforcement officers of the county, the county animal control center, and state highway patrol officers (impounders) who find livestock running at large or stray must confine, hold, and impound the livestock.⁴ After the livestock is impounded, the sheriff must notify the owner, or publish notice if the owner is not known, advising of the location of the livestock, the amount due for impounding, and that the livestock will be sold if not redeemed within three days.⁵ If the livestock is not redeemed within three days, the sheriff must publish notice that the livestock will be sold in not less than five days and not more than ten days.⁶

An impounder is required to provide feed and water for the impounded animals at least twice a day and ensure that milk cows and milk goats are milked twice a day. An impounder also must employ persons necessary to protect, feed, care for, and keep the impounded animals. The impounder is entitled to the fees for the feed and care.⁷

The sheriff must determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals.⁸ Damages caused in the pursuit, capture, handling, or care of the livestock are the sole responsibility of the sheriff or law enforcement agency.⁹ The owner of the impounded animal may redeem the animal at any time before the animal is sold by paying the fees determined by the sheriff. If there is a dispute regarding the fees, the owner must give a bond with sufficient sureties to the sheriff, not to exceed the value of the livestock, and then institute a suit to adjudicate the damages in court.¹⁰

The sheriff must report the sale or other disposal to the clerk of the circuit court. This report must include a description of the sold or disposed of livestock, the name of the person who bought the livestock, and the sale price.¹¹ The sheriff must give the clerk of the circuit court the proceeds gained from the sale of the impounded livestock.¹² The clerk must then pay all costs associated with impounding, serving notice, care and feeding, advertising, and disposing of the impounded animal.¹³

¹ S. 588.13(1), F.S.

² S. 588.15, F.S.

³ S. 588.24, F.S.

⁴ S. 588.16, F.S.

⁵ S. 588.17(1), (2), F.S.

⁶ S. 588.17(3), F.S.

⁷ S. 588.22, F.S.

⁸ S. 588.18, F.S.

⁹ *Id.*

¹⁰ S. 588.23 F.S.

¹¹ S. 588.20(1), F.S.

¹² S. 588.20(2), F.S.

¹³ S. 588.20(3), F.S.

Any remaining proceeds must then be paid to the impounded animal's owner.¹⁴ If the owner cannot be found, the proceeds must go to the county.¹⁵

Effect of Proposed Changes

The bill creates a new subsection (4) of s. 588.17, F.S., to allow impounded livestock, excluding cattle, to be adopted or humanely disposed of¹⁶ as an alternative to selling, auctioning, or otherwise disposing of the livestock. This grants sheriffs and county animal control centers more options to adequately deal with impounded livestock when sale or auction is not feasible, and to control the quality of placement of the animals. Sheriffs and county animal control centers must carry out the following procedures if impounded livestock are offered for adoption or humanely disposed of:

- The sheriffs and county animal control centers must provide written notice to the owner, if known, advising of the location of the livestock, the amount due by reason of impounding, and that unless the livestock is redeemed within a timeframe to be established by the impounder, not less than three days, the livestock will be offered for adoption or disposed of humanely.
- If the owner is unknown or cannot be located, the sheriffs and county animal control centers must notify the owner by publishing a notice on the designated impounder's website. If the livestock is not redeemed within a timeframe to be established by the impounder, not less than three days, the livestock will be offered for adoption or disposed of humanely.

The bill also makes conforming changes in subsection (1) through (3) of s. 588.17, F.S.

The bill amends s. 588.18, F.S., authorizing county animal control centers, in addition to sheriffs, to determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals. This provision allows county animal control centers to directly perform this task without requiring them to work through the local sheriff. The provision also makes county animal control centers responsible for damages done in pursuit, capture, handling, or care of the livestock.

The bill amends s. 588.23, F.S., to allow county animal control centers to receive payment in the same manner as sheriffs for impounding expenses when the livestock owner redeems the impounded livestock. Further, the bill allows county animal control centers to receive sureties in the same manner as sheriffs when there is a dispute over the fee. This provision will allow county animal control centers to directly collect fees related to the care and disposition of impounded livestock without requiring them to work through the local sheriff.

Municipal Animals Control Officers

Present Situation

"Cruelty" to animals includes every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief.¹⁷ The penalties for cruelty to animals are:

- Prison time not to exceed 1 year and/or up to a \$5000 fine for a person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner;¹⁸
- Prison time not to exceed 5 years and/or up to a \$10,000 for a person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done:¹⁹

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ "Humane disposal" is not defined by the bill, but the term is used several times in ch. 828, F.S.

¹⁷ Section 828.02, F.S.

¹⁸ S. 828.12(1), F.S.

¹⁹ S. 828.12(2), F.S.

- There is a minimum mandatory fine of \$2,500 if the person is found to have knowingly and intentionally tortured or tormented the animal;²⁰ and
- Persons convicted of a second or subsequent violation must pay a minimum mandatory fine of \$5000 and serve a minimum of six months in prison. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence;²¹
- Prison time not to exceed 5 years and/or up to a \$5000 fine for person who intentionally trips, fells, ropes, or lassos the legs of a horse for the purpose of entertainment.²²

An “animal control officer” is any person employed or appointed by a county or municipality who is authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations.²³ An animal control officer is not authorized to bear arms or make arrests, but may, with appropriate training, carry a device to chemically subdue and tranquilize an animal.²⁴ County animal control officers must, and municipally employed animal control officers may, complete a 40-hour minimum standards training course approved by the Florida Animal Control Association to be certified.²⁵ This course must include training for animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.²⁶

Counties and societies for the prevention of cruelty to children or animals (societies/associations) are authorized to appoint agents for investigation of violations of chapter 828, F.S., and other laws for the purpose of protecting children and animals and preventing cruelty to children or animals.²⁷ Appointments by a society/association must be approved by the mayor of the municipality.²⁸ If the society/association operates outside of a municipality, appointment must be approved by a local judge.²⁹

These agents may:

- Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location; or
- Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner’s expense without removal of the animal from its present location.³⁰

After an animal is taken or the owner is ordered to provide care for the animal, the agent must file a petition with the county court and the court must hold a hearing to determine if the owner is able to provide adequately for the animal and is fit to have custody of the animal.³¹ The agent must provide the owner, if known and residing in the county where the animal was taken, with notice of the hearing at least three days before the hearing.³² If the court determines that the owner of the animal is unfit or unable to adequately provide for the animal the court may require:

- The owner no longer have custody of the animal;³³
- The animal be sold;³⁴
- The animal be remanded to certain organizations,³⁵

²⁰ S. 828.12(2)(a), F.S.

²¹ S. 828.12(2)(b), F.S.

²² S. 828.12(5), F.S.

²³ S. 828.27(1)(b), F.S.

²⁴ *Id.*

²⁵ S. 828.27(4)(a)1, F.S. Animal control officers authorized before January 1, 1990, are not required to complete the minimum standards course. S. 828.27(4)(a)2., F.S.

²⁶ *Id.*

²⁷ Section 828.03(1), F.S.

²⁸ Section 828.03(2), F.S.

²⁹ *Id.*

³⁰ S. 828.073(2), F.S.

³¹ *Id.*

³² S. 828.073(3), F.S.

³³ S. 828.073(4)(a)1.a, F.S.

³⁴ *Id.*

- The animal be destroyed;³⁶
- The owner to pay for care of the animal during the agent's possession of the animal;³⁷ and
- The owner loses custody of other animals not seized by the agent.³⁸

Current law does not appear to give municipalities the authority to seize animals in cruelty cases or petition for custody.

Effect of Proposed Changes

The bill amends s. 828.073, F.S., to grant municipalities with certified animal control officers the same powers as counties and societies/associations. This also makes conforming changes in s. 828.073, F.S.

Local Animal Control or Cruelty Ordinances Civil Citation Procedures

Present Situation

Section 828.27(2), F.S., authorizes counties and municipalities to adopt ordinances related to animal control and cruelty. The statute sets forth what must be in the ordinance and the procedure to assess and collect fines. These ordinances may not conflict with chapter 828, F.S.³⁹ It is not clear whether the more flexible procedures authorized in chapter 162, F.S., for municipal code enforcement apply to the animal control and cruelty ordinances.

Chapter 162, F.S., authorizes counties and municipalities to enforce their codes through local code enforcement boards that employ code inspectors to notify individuals of violations and can order the violations be corrected.⁴⁰ Code enforcement boards may hold hearings, impose enforcement fees and fines, and file liens on property.⁴¹ Counties and municipalities may also employ code enforcement officers who may issue citations not to exceed \$500⁴² or require the appearance of an individual before the county court regarding a violation.⁴³ It is unclear whether these procedures apply to the animal cruelty statutes in chapter 828, F.S.

Section 828.27(4)(b), F.S., authorizes counties and municipalities to impose and collect a surcharge of \$5 associated with each violation of an ordinance relating to animal control or cruelty. The counties and municipalities must use the surcharge to pay the costs of training for animal control officers.⁴⁴ Counties may also use this surcharge to fund animal shelter operations until July 1, 2014.⁴⁵

Effect of Proposed Changes

The bill repeals s. 828.27(4)(b)2., F.S., which allowed counties to use the surcharge for violation of an ordinance relating to animal control or cruelty to fund animal shelter operations until July 1, 2014.⁴⁶

³⁵ S. 828.073(4)(a)1.b, F.S.

³⁶ *Id.*

³⁷ S. 828.073(4)(a)2, F.S.

³⁸ S. 828.073(4)(a)3, F.S.

³⁹ S. 828.27(7), F.S.

⁴⁰ S. 162.06, F.S.

⁴¹ *Id.*; s. 162.09, F.S.

⁴² See s. 162.21(5)(b), F.S. (establishing maximum civil penalty for citation).

⁴³ S. 162.21(3)(a), F.S.

⁴⁴ S. 828.27(4)(b)1, F.S.

⁴⁵ S. 828.27(4)(b)2, F.S.

⁴⁶ The provision allowing the surcharge to fund animal shelter operations expired July 1, 2014.

The bill adds subsection (8) to s. 828.27, F.S., to clarify that counties and municipalities are not limited to using only the procedures set forth in s. 828.27, F.S., to enforce animal control and cruelty ordinances, but may also use other enforcement means. This includes the procedures set forth in chapter 162, F.S. Counties and municipalities will be allowed to utilize tools such as local code enforcement boards and special magistrates in an effort to maximize collections related to animal cruelty ordinances.⁴⁷

B. SECTION DIRECTORY:

- Section 1. Amends s. 588.17, F.S., relating to disposition of impounded livestock.
- Section 2. Amends s. 588.18, F.S., relating to fees allowed for impounding livestock.
- Section 3. Amends s. 588.23, F.S., relating to the rights of owners of impounded livestock.
- Section 4. Amends s. 828.073, F.S., relating to procedures for animals found in distress.
- Section 5. Amends s. 828.27, F.S., relating to local animal control or cruelty ordinances.
- Section 6. Provides an effective date of July 1, 2015.

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:
None.
- 2. Expenditures:

Impounded Livestock

The bill will likely have an indeterminate positive fiscal impact on counties. County animal control centers will be able to set and collect fees related to impounded livestock. The county animal control centers will no longer have to work through the sheriff to be reimbursed for impounding livestock. This will likely be a more efficient collection procedure by not requiring the sheriff to expend resources to help the county animal control centers.

Municipal Animal Control Officers

The bill will likely have an indeterminate positive fiscal impact on municipalities. Municipalities with certified animal control officers will be able to exercise many powers related to animal control and cruelty ordinances now held by counties. Municipalities no longer would have to work with counties to enforce animal control and cruelty ordinances. This will likely be a more efficient enforcement procedure by not requiring the counties to expend resources to help the animal control officers.

⁴⁷ See s. 161.03, F.S.
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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative economic impact on individuals who allow their livestock, excluding cattle, to stray or violate animal control and cruelty ordinances. County animal control centers and municipalities will now be able to more efficiently collect fees and enforce ordinances. This may lead to more collection of livestock impoundment fees and enforcement of animal control and cruelty ordinances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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 neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment made the following revisions to the bill:

- Removed references to “designated impounders” and replaced them with references to “county animal control centers;”
- Excluded cattle from being adopted or humanely disposed of as an alternative to auction;
- Removed references to “officer’s designee;”
- Made conforming changes to the changes above.

On March 25, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies the bill does not provide new or additional powers to local humane societies or other non-governmental entities, but instead applies to county and municipal animal control agencies.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee and Local Government Affairs Subcommittee.