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DATE: March 1, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 1819
RELATING TO: Guide dogs and Service Animals
SPONSOR(S): Representative(s) Kottkamp

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Council substitute for HB 1819 pertains to guide dogs and service animals. The council substitute extends the right of the disabled to be accompanied in public facilities by specially trained guide dogs to persons who have epilepsy or other such seizure disorders. The council substitute also creates three new criminal offenses that involve interfering with, injuring or killing a guide dog or service animal. Further, the council substitute requires any person who is convicted of such an offenses to make full restitution for all damages, including replacement and/or training expenses for the guide dog and user, and any veterinary or other medical expenses incurred by the animal or user as a result of such offenses.

Please see Section V. "Comments" for concerns regarding this council substitute.

The bill provides an effective date of July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Council substitute for HB 1819 creates three new criminal penalties.

B. PRESENT SITUATION:

Epilepsy and Dog Guides or Service Dogs under Florida Law

Epilepsy is defined in Florida law as "a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons."¹ According to the Florida Department of Health, an estimated 1 percent of the state's population has epilepsy.²

In s. 385.207, F.S., the Legislature recognizes epilepsy as "a developmental disability and a handicapping condition." The statute expresses the Legislature's intent that "persons with epilepsy are entitled to the protection and benefits available to all persons through the equal and nondiscriminatory application and implementation of statutes, rules, programs, and services."

Section 413.08, F.S., provides that a "physically disabled person" has a statutory right to be accompanied in public facilities by a dog guide or service dog that is specially trained for that purpose. Historically, a person with epilepsy has been considered a "physically disabled person" under s. 413.08, F.S., as demonstrated by a 1973 opinion of the Florida Attorney General, which concluded that epilepsy is a physical disability under s. 413.08(3), F.S., for purposes of prohibiting certain employment discrimination on the basis of a disability.³

Today, the statute defines the term "physically disabled person" to mean a person who has a "physical impairment that substantially limits one or more major life activities" (s. 413.08(6)(a), F.S.). Although the phrase "physical impairment" is not further defined in Florida law, because the term closely tracks the language of the federal ADA, epilepsy would most likely be included within the phrase "physical impairment" under state law. Accordingly, an individual with epilepsy would appear to have a statutory right to be accompanied in public facilities by a dog guide or service dog under current state law if the individual's epileptic syndrome substantially limits one or more major life activities.

¹ ss. 393.063(19) and 400.960(10), F.S.

² Florida Dep't of Health, Epilepsy: Frequently Asked Questions, at <http://www.doh.state.fl.us/family/epilepsy/FAQ.html#Q1>

³ Op. Att'y Gen. Fla. 73-317 (1973)

Seizure-Response and Seizure-Alert Dogs

According to the Epilepsy Foundation, there are two types of service dogs that are trained to respond to or warn of an impending seizure in someone who has epilepsy: “seizure-response dogs” respond to a person who is having a seizure; “seizure-alert dogs” appear to know when a seizure is going to occur.⁴

A seizure-response dog might be trained to bark when a child has a seizure so that family members know when a seizure is occurring, or might lie next to the person having a seizure to keep him or her from harm. According to the Epilepsy Foundation, a group of British scientists reported in the *European Journal of Epilepsy Seizure* that they were able to train some dogs to warn of seizures. After training, the dogs were sometimes able to give warning as much as 15 to 45 minutes before the actual seizure occurred.⁵

Criminal and Civil Liability for Acts of Animals or Acts Against Animals

Section 828.02, F.S., defines the word “animal” to include “every living dumb creature.” Under current law, it is a misdemeanor of the first degree to unnecessarily torment, mutilate or kill an animal.⁶ It is a felony of the third-degree to intentionally commit an act that results in the cruel death or in excessive pain or suffering of an animal.⁷

Section 843.19(2), F.S., establishes that it is a third-degree felony to knowingly and willfully, without lawful cause or justification, inflict bodily harm, permanent disability, or death upon a police dog, fire dog, SAR dog, or police horse.⁸

There is no statute that specifically defines a “guide dog” or “service animal,” nor that establishes offenses and penalties associated with harming or harassing guide dogs or service animals (whether by humans or animals). However, the terms (including the term “dog guide”) are used frequently in s. 413.08, F.S. which pertains to the rights of physically disabled persons and the use of guide dogs.

Local ordinances, at the county and municipal level, prohibit animals from running at large, which is generally defined as off their owners’ property without being under some sort of control, ranging from voice control to leash control. Violations of the animals at large ordinance result in civil monetary penalties. Many local governments have adopted ordinances governing the designation of and keeping of dangerous dogs, which is also addressed in ss. 767.10-767.15, F.S.

Dog owners are liable for damage done by their dogs to any person or domestic animal or livestock.⁹ Livestock owners are liable for any damage done by their livestock if it is permitted to run at large.¹⁰

⁴ Questions and Answers about Seizure Dogs, EpilepsyUSA, at <http://www.epilepsyfoundation.org/epusa/seizuredogs.html>

⁵ <http://www.epilepsyfoundation.org/epusa/aboutseizuredogs.html>

⁶ s. 828.12(1), F.S.

⁷ s. 828.12(2), F.S.

⁸ s. 843.19(1)(a) defines “police dog” and “police horse” as any dog or horse that that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;

s. 843.19(1)(b) defines “fire dog” as any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires;

s. 843.19(1)(c) defines “SAR dog” as any search and rescue dog that is owned, or the service of which is utilized, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

⁹ s. 767.01, F.S., s. 767.04, F.S.

¹⁰ s. 588.15, F.S.

C. EFFECT OF PROPOSED CHANGES:

Epilepsy and Dog Guides or Service Dogs under Florida Law

Council substitute for HB 1819 extends the right of the disabled to be accompanied in public facilities by specially trained service dogs to persons afflicted with epilepsy or other such seizure disorders. When exercising this right, the service dog must be capable of being properly identified as being from a recognized school for service dogs, including, but not limited to, seizure-alert and seizure-response dogs. The council substitute prohibits a public facility from imposing an extra charge for a seizure-alert or seizure-response dog. Further, the council substitute establishes that a person who is subject to epilepsy or other such seizure disorders is liable for any damage done by his or her service dog to the premises of a public facility.

The council substitute extends the criminal penalties under current law to enforce the right of a person who is subject to epilepsy or other such seizure disorders to be accompanied by a service dog in a public facility. Under the council substitute, any person, firm, or corporation who denies or interferes with admittance to, or enjoyment of, the right of a person who is subject to epilepsy or other such seizure disorders to be accompanied by a service dog in public facilities is subject to criminal prosecution as a misdemeanor of the second degree. The maximum penalty for each violation is 60 days in jail and a \$500 fine.

In effect, the council substitute would extend the right of a physically disabled person to be accompanied by a service dog to a person who is subject to epilepsy or other such seizure disorders, but who is not considered a "physically disabled person" under current law because his or her epileptic syndrome does not substantially limit one or more major life activities. Another practical effect of the council substitute is that, by specifying epilepsy and other such seizure disorders in the clear language of the statute, the statute would cease to be subject to interpretation as to what extent epilepsy is included within the term "physically disabled person."

The council substitute extends to the trainer of a seizure-alert or seizure-response dog the right granted under current law for the trainer of a dog guide or service dog for disabled persons to be accompanied by the dog while engaged in such training. The council substitute also establishes the trainer's liability for damage done by a dog to a public facility. Further, the criminal penalties (misdemeanor of the second degree) also apply when a public facility denies or interferes with admittance to a trainer accompanied by a seizure-alert or seizure-response dog while engaged in such training.

In addition to the substantive provisions of the council substitute, the council substitute also makes technical changes throughout s. 413.08, F.S.

Cruelty to Guide Dogs or Service Animals

Council substitute for HB 1819 defines the term "guide dog" as "a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons." The council substitute defines the term "service animal" as "an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability."

The council substitute creates three new criminal penalties associated with harassing guide dogs and service animals. The criminal penalties are as follows:

- second-degree misdemeanor: anyone who, with reckless disregard, interferes or permits a dog that he owns or is in the immediate control of, to interfere with the use of a guide dog or

service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the animal or its user;¹¹

- first-degree misdemeanor: anyone who, with reckless disregard, injures or kills, or permits a dog that he owns or is in immediate control of, to injure or kill, a guide dog or service animal;
- third-degree felony: any person who intentionally injures or kills, or permits a dog that he owns or is in immediate control of, to injure or kill a guide dog or service animal.

The council substitute also requires individuals who are convicted of the above offenses to make full restitution for all damages that arise out of, or are related to, the offense. The council substitute states that, for purposes of this section, restitution shall include:

- the value of the animal;
- replacement and training or retraining expenses for the animal and the user;
- veterinary and other medical and boarding expenses for the animal;
- medical expenses for the user; and
- lost wages or income incurred by the user during any period that the user is without the services of such animal.

Although the penalties for harming or killing a guide dog are similar to the penalties for harming or killing other animals, the council substitute specifically provides for the payment of restitution (including the costs for remedial training or replacement of the guide dog or service animal, and lost wages or income incurred by the handler) based on the violations.

Currently, there is no comparable statute that criminalizes “interfering” or “obstructing” any other animal, including the statutes that address police dogs, fire dogs, and search and rescue dogs.

The council substitute provides an effective date of July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Section 1

This section provides the short title, “Scanner’s Law,” named after a guide dog who was attacked.

Section 2

This section assigns criminal penalties for interfering with, injuring, or killing guide dogs or service animals. This section also provides for specific restitution to be paid by persons convicted of the newly created criminal penalties. Finally, this section offers definitions of “guide dog” and “service animal.”

Section 3

This section adds persons who suffer from epilepsy or other seizure disorders to the list of persons who are permitted to be accompanied by guide dogs or service animals in public facilities.

Section 4

This section provides an effective date of July 1, 2002.

¹¹ A subsequent offense would be punishable as a 1st degree misdemeanor.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference determined that HB 1819 would not have a significant impact upon the state prison system. The conference has yet to review the bill as a council substitute, although it is expected that the changes of the council substitute will not affect the fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The council substitute creates two new misdemeanor offenses. Consequently, there could be an increase in the number of people committed to county jails who have been convicted of the new misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This council substitute does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Although the terms "guide dog" and "service animal" are defined in the council substitute, it is not specifically stated or made clear as to how a person is to be able to recognize that a dog is a guide dog or an animal is a service animal.

According to the group "Guide Dog Users, Inc.," there have been an increasing number of attacks on guide dogs and their owners by dogs that roam free or unleashed. Consequently, it is a goal of Guide Dog Users, Inc., to create a penalty for owners of unleashed or unsupervised dogs that attack guide dogs or their owners.¹² However, it appears that CS/HB 1819, in its current state, may not achieve that objective. The council substitute requires the owner of the "attacking dog" (or person in "immediate control" of the attacking dog) to "permit" his or her dog to interfere with, injure or kill a guide dog or service animal. Such phrasing may not account for animals that are unleashed or roaming free because in such cases it could be argued that the owner was not in control of his dog, nor did he "permit" the attack to happen.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 1, 2002, the Council for Healthy Communities adopted four amendments to the original house bill. Those amendments have been incorporated into the council substitute. The first amendment, offered by the sponsor, added the short title of "Scanner's Law," to the bill (named after a guide dog who had been attacked). The second amendment, offered by the sponsor, clarified that restitution can be considered a penalty, in addition to any jail time or fines. The third amendment, offered by the sponsor, provided definitions of "guide dog" and "service animal." The fourth amendment, offered by Representative Heyman, amended s. 413.08, F.S., to extend the right of the disabled to be accompanied in public facilities by specially trained service dogs to persons who have epilepsy or other such seizure disorders.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Melinda Granlund

Trina Kramer

¹²Guide Dog Users, Inc., Legislative Handbook, "The Team, The Attack." December, 2001.

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AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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