Ohio Legislative Service Commission

Maggie Wolniewicz

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 22 of the 129th G.A. **Date**: February 23, 2011

Status: As Reported by House Judiciary & Ethics **Sponsor**: Rep. Bubp

Local Impact Statement Procedure Required: No

Contents: Animal owners' liability

State Fiscal Highlights

STATE FUND	FY 2012 – FUTURE YEARS
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- The bill could result in a negligible annual decrease in revenues for the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020) as a result of the bill's introduction of a "recklessness" standard to the burden of proof. This elevated burden of proof may mean a slight reduction in the number of persons prosecuted and convicted of animal at large charges and subsequently required by the court to pay locally collected state court costs.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011 – FUTURE YEARS
Counties and Municipalities	
Revenues	Potential negligible annual loss in court costs and fines
Expenditures	Factors potentially increasing and decreasing criminal and civil justice system operating costs, with net minimal annual effect
Local Law Enforcement (counties, municipalities, and townships)	
Revenues	Potential annual gain from cost recoveries
Expenditures	Potential increase related to recoveries

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Revenues.** The bill's "recklessness" standard will likely result in some reduction in the number of persons being prosecuted and convicted of "animal at large" charges, resulting in some counties and municipalities losing, at most, a minimal amount in court cost and fine revenues annually.
- **Criminal cases.** Slightly fewer persons are likely to be charged with having animals at large, which saves county or municipal criminal justice systems moneys that might otherwise have been expended to prosecute, adjudicate, and sanction those persons. Given the relatively small number of these cases statewide, any savings is likely to be no more than minimal annually.
- **Civil cases.** The bill's requirement that a person be "negligent" in order to be liable for damages under the state's Fence Law could cause a mix of effects on local trial courts, including: (1) making it more difficult to prove negligence and therefore less likely for a potential plaintiff to file a civil action (an expenditure savings), or (2) requiring the court expend additional time and effort to determine if the defendant was negligent (an expenditure increase). The net annual fiscal effect will be minimal.
- **Law enforcement.** County, municipal, and township law enforcement entities may recover from the owner or keeper some or all of the expenses incurred in the taking and keeping of certain animals found running at large.

Detailed Fiscal Analysis

The bill: (1) expands owner liability for animals running at large to include llamas, alpacas, and bison, (2) states that recklessness is the required culpable mental state for a person to have violated the criminal prohibition against having animals at large, and (3) requires, in order to be liable for damages, the owner or keeper of any of the specified animals or livestock to have acted negligently.

Under current law, an owner or keeper of horses, mules, cattle, sheep, goats, swine, or geese can be held both criminally and civilly responsible for permitting an animal to run at large, with the mere running at large being prima facie evidence that a violation of the prohibition has occurred. Under the bill, a violation of the criminal prohibition remains a misdemeanor of the fourth degree, but now incorporates a more stringent burden of proof.

Criminal charge for animals running at large

The bill's changes to the circumstances that constitute a criminal violation of the prohibition against having certain animals at large may minimally reduce county and municipal criminal justice system expenditures and related local court costs and fines that might otherwise have been collected. There would also be a negligible annual loss in locally collected state court costs. These expenditure savings and revenue losses will result from the likelihood that fewer persons would be charged with or subsequently convicted of such a violation under the bill's stricter "recklessness" standard.

Under current law, according to data maintained by the state's Office of Criminal Justice Services, 35 incidents involving an animal running at large have been reported statewide between 2008 and 2010. This suggests that relatively few persons are currently being charged and convicted of an animal running at large violation statewide, and that the number of charges processed by any given county and municipal criminal justice system is likely to be extremely small. Adding a reckless standard would further reduce the number of criminal cases filed as the burden of proof is more difficult to meet.

A person found to have violated the criminal prohibition against having an animal running at large could be sentenced to a stay in jail of up to 30 days and required to pay state and local court costs and a local fine of up to $250. In these types of cases, the most likely sanction imposed by the court would be a fine and a waiving of any jail time, as: (1) the offense is nonviolent, and (2) many local jails are at or above their design capacity.

State court costs are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. For a misdemeanor, the court is generally required to impose state court costs totaling $29 for a misdemeanor. That $29 amount is forwarded to the state treasury and credited as follows: $20 to the Indigent Defense

Support Fund (Fund 5DYO) and $9 to the Victims of Crime/Reparations Fund (Fund 4020).

Civil liability for damages

Animals at large

The requirement that a person be found to have acted negligently before being held liable for personal and property damages caused by certain animals running at large is not expected to have a noticeable fiscal effect on common pleas, municipal, or county courts with jurisdiction over such matters, as the bill specifies that the mere running at large of a specified animal is prima facie evidence in a civil action that the owner or keeper acted negligently. With this being said, it is unlikely that the court would experience an increase in the amount of time or effort expended to determine whether a defendant was negligent. To the extent that additional time and effort were expended, the net effect for any given court is not likely to exceed minimal annually.

Livestock fence law

The bill amends the state's Fence Law to require that a person be found to have acted negligently in permitting livestock to run at large before being held liable for damages. This change may have a minimal annual fiscal effect on the common pleas, municipal, or county court with jurisdiction over such matters. As the term "negligent" is not defined, the bill may produce offsetting effects on any given court by: (1) reducing the number of civil actions filed if certain plaintiffs believe it may be difficult to prove the defendant was negligent, or (2) increasing the time and effort that a court must expend in order to determine if the defendant was negligent. From the court's perspective, the former saves time and money while the later costs time and money. The net effect for any given court, either an annual expenditure increase or decrease, is not expected to exceed minimal.

Local law enforcement cost recovery

The bill provides that county, municipal, and township law enforcement entities taking and keeping bison, llamas, and alpacas found running at large may recover from the owner or keeper certain expenses incurred in the taking and keeping of those animals. It is likely that local law enforcement entities generally respond to these incidents now, but current law does explicitly provide for the owner or keepers liability for these expenses. The degree to which the amounts recovered from an owner or keeper will offset the expenses incurred is uncertain.