

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2098 (Second Edition)

SHORT TITLE: Protection of Animals.

SPONSOR(S): Representatives Insko and Ross

| | FISCAL IMPACT | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------|--------------------------|------------------------------------------------------------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2006-07</u> | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> | <u>FY 2010-11</u> |
| GENERAL FUND | | | | | |
| | | | | | Fiscal impact possible, but assumed to be minimal. |
| Correction | | | | | See Assumptions and Methodology – p. 3. |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| Judicial | | | | | Possible fiscal impact. See “Assumptions and Methodology” – pp. 3 & 4. |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| TOTAL | | | | | Exact amount cannot be determined. |
| EXPENDITURES: | | | | | |
| ADDITIONAL PRISON BEDS* | | | | | Impact possible; none anticipated. |
| POSITIONS: (cumulative) | | | | | Impact possible; none anticipated. |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: | | | | | Department of Correction; Judicial Branch. |
| EFFECTIVE DATE: | | | | | December 1, 2006. |
| * <i>Fiscal impact assumptions do not differ from the first edition of this bill.</i> | | | | | |
| <i>This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i> | | | | | |

BILL SUMMARY: Rewrites G.S. 19A-3, which authorizes the court to allow a plaintiff to take possession of an animal when a complaint has been filed seeking an injunction relating to cruelty to an animal, to authorize the plaintiff (as custodian) to employ a veterinarian or other health provider to provide necessary medical care for the animal. The plaintiff as custodian must first consult with the defendant, or attempt to do so, but does not need the defendant's consent. However, the plaintiff as custodian may not have an animal euthanized without written consent of the defendant or a court order finding that the animal is suffering due to terminal illness or injury. In addition, the act authorizes the plaintiff as custodian to place an animal with a foster care provider who shall return the animal to the plaintiff on demand.

H.B. 2098 also rewrites G.S. 19A-4 to: 1) provide that if the plaintiff prevails, the court may include the costs of food, water, shelter, and care provided to the animal as part of the costs allowed to the plaintiff under G.S. 6-18; 2) authorize the court for good cause to enjoin the defendant from acquiring new animals or limit the number of animals the defendant may own or possess for a specified period of time; 3) provide that if a final judgment entitles the defendant to regain possession of the animal, the custodian shall take all necessary steps to retrieve and return the animal; and 4) require the court to consider and authorize the court to provide for custody and care of the animal until time to appeal expires or all appeals have been exhausted.

H.B. 2098 rewrites G.S. 19A-70, which provides for the care of dogs used illegally for fighting, to broaden the section to apply to any animal subjected to illegal treatment. It also clarifies that: 1) the hearing required in subsection (b) is to determine the need to care and provide for the animal during the litigation; 2) the court must consider the need to care and provide for the animal when setting the amount of funds the defendant must deposit under subsection (c); and, 3) the amount of the deposit to be refunded under subsection (e) is net of any draws on it pursuant to subsection (d).

The act also rewrites G.S. 14-362.2 to make clear that the prohibition against dog fighting includes the fighting of a dog with another dog, or with another animal – a Class H felony.

Source: Adapted from Bill Digest H.B. 2098 (05/17/0200)

ASSUMPTIONS AND METHODOLOGY:

General

H.B. 2098 clarifies that dog fighting and baiting includes the intentional fighting of a dog with another animal. It remains a Class H felony to instigate, promote, conduct, be employed at, provide a dog for, allow one's property to be used for, gamble on, or profit from a dog fighting or baiting exhibition.

Department of Correction

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

Though H.B. 2098 broadens the criminal penalty for Dog Fighting and Baiting, the clarification is not expected to increase convictions for the offense. However, the bill could potentially impact the number of convictions for Cockfighting (Class I felony, G.S. 14-362.1) and Animal Fights and Baiting (Class 2 Misdemeanor, G.S. 14-362.1). This associated impact cannot be determined, nor is an exact estimate available for the number of additional convictions that could result from this bill.

There were two Class H convictions for the offense of Dog Fighting and Baiting in 2004-05. In the same fiscal year, 35% of Class H convictions resulted in active sentencing, with an average estimated time served of 10 months. *Though unexpected, if three additional Class H convictions occur as a result of this bill, it would necessitate one additional prison bed the first year, two additional beds the second, and one additional position in the second year. Assuming this hypothetical and a medium custody level, the construction of additional prison beds could cost the State \$65,340 the first year, and \$141,134 the second year; operating costs could be \$26,680 for the first year, \$54,960 for the second year.*

Department of Correction – Division of Community Corrections

In 2004-05, most Class H convictions resulted in intermediate and active sentencing. *Though unexpected, if additional convictions occur and a similar sentencing practice is employed, additional costs for probation supervision could also be incurred.* Presently, general supervision from a probation officer costs the Division of Community Corrections \$1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly utilized intermediate sanction, costs \$12.95 per offender per day and is for an average of six months; electronic house arrest costs \$6.71. Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a \$30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time \$90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of a specific bill. Fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Several bill provisions enact new, or expand, existing civil procedures for court injunctions, petitions and other matters. Potentially, these provisions could result in an increased workload for district court judges, clerks, and district attorneys. Accordingly, *any associated costs to the court system as a result of this bill will depend on both the number of new complaints processed and the extent to which the aforementioned conditions cause an increase in court workload. There is no data to estimate either of these factors.*

Likewise, the expanded criminal provision for dog fighting and baiting *could potentially increase superior court workloads, primarily affecting superior court judges, clerks, and court reporters. However, there is no data to estimate the impact of this penalty expansion.* The AOC does not anticipate a large number of additional cases. Current cost estimates per single Class I felony trial and plea are \$6,028 and \$274, respectively.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division



DATE: June 14, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices