



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

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**Bill:** S.B. 331 of the 131st G.A.

**Date:** December 7, 2016

**Status:** As Passed by the House

**Sponsor:** Sen. Peterson

**Local Impact Statement Procedure Required:** No

**Contents:** Requires the Department of Agriculture to license and regulate pet stores, provides additional appropriations for this purpose, and makes other various changes

### State Fiscal Highlights

- **Pet store licensing.** The bill requires the Department of Agriculture (AGR) to license and regulate pet stores. The bill appropriates approximately \$1.0 million in FY 2017 to GRF appropriation item 700427, High Volume Breeder Kennel Control, to cover an additional eight employees assigned to this program.
- **Pet Store License Fund.** The bill creates the Pet Store License Fund which will receive money from the license fee and civil penalties. The annual license fee is \$500.
- **High Volume Breeder Kennel Control License Fund.** The bill eliminates the requirements that money may only be released from the High Volume Breeder Kennel Control License Fund (Fund 5MR0) with Controlling Board approval and that the Director of AGR request the release of not more than \$2.5 million per biennium.

### Local Fiscal Highlights

- **Micro wireless compensation to local governments on public way.** The bill allows local governments to charge micro wireless facility operators for their use of municipally owned land. The bill limits attachment compensation which may reduce local revenue from what municipal corporations could otherwise negotiate.
- **Political subdivisions' authority to set minimum wages.** The bill prohibits political subdivisions from establishing a minimum wage rate that is different from the rate required by state law. This would forestall a political subdivision from instituting a minimum wage higher than the current amount of \$8.10 per hour. The amount will rise to \$8.15 per hour in 2017.

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## Detailed Fiscal Analysis

### Statewide pet store licensure – Department of Agriculture

The bill requires the Department of Agriculture (AGR) to regulate pet stores statewide. As part of this requirement, the bill identifies the sources from which stores may obtain dogs for sale. These sources are: (1) animal rescues for dogs, (2) animal shelters for dogs, (3) humane societies, (4) dog retailers, and (5) qualified breeders. Additionally, the bill sets certain conditions for pet stores when selling, delivering, bartering, auctioning, brokering, giving away, or transferring dogs. This will involve additional regulatory costs, including hiring additional personnel to run the pet store licensing program.

#### Pet store licensing expenditures and revenues

AGR will incur new regulatory costs to operate the pet store licensing program. In particular, the Department estimates that it may need to hire eight employees to enforce the bill's requirements. The needed staff would include five inspectors, two license examiners, and one program administrator. To cover this increased cost, the bill appropriates approximately \$1.0 million in FY 2017 to GRF appropriation item 700427, High Volume Breeder Kennel Control. Also, some portion of the regulatory cost for the pet store licensing program will be partially offset by license fee revenue. The license fee is \$500 and is to be paid annually. License fee revenue will be deposited into the Pet Store License Fund which the bill creates.

Much of the cost of the new pet store regulatory program will depend on the number of pet stores operating in the state. According to an April 2016 industry report published by IBISWorld, a forecasting and market analytics firm, there were 13,730 pet stores across the states in 2012. Ohio was estimated to have 3.9% of this number, which comes to around 530 pet stores. Based on information from the Department of Taxation, AGR estimates that there are currently between 300 and 500 pet stores in Ohio. Given the estimated number of pet stores, licensing fee revenue could range from \$150,000 to \$265,000 each year.

#### Penalties for noncompliance

The bill allows AGR to impose civil fines on owners, managers, or employees of a pet store if they violate the bill's requirements when displaying, selling, delivering, bartering, auctioning, brokering, giving away, or transferring dogs. The civil penalties include up to \$500 for a first violation, up to \$2,500 for a second violation, and up to \$10,000 for a third or subsequent violation. These civil penalties are to be deposited into the Pet Store License Fund. A failure to comply with these requirements is also classified as a criminal penalty, specifically a misdemeanor of the fourth degree that carries a maximum fine of \$250 and up to 30 days in jail. Court cost and fine revenue would offset some of any additional expense created for local criminal courts to adjudicate these matters when they occur. For any new misdemeanor cases, the state

receives court costs totaling \$29. Of that amount, \$20 is deposited into the Indigent Defense Support Fund (Fund 5DY0) and \$9 is deposited into the Victims of Crime/Reparations Fund (Fund 4020).

### **High Volume Breeder Kennel Control License Fund**

The Commercial Dog Breeders Program under AGR requires the license and inspection of high volume dog breeders. The program is funded by the GRF and annual fees that are paid by high volume breeders and dog retailers and deposited into the High Volume Breeder Kennel Control License Fund (Fund 5MR0). Under current law, money may only be released from Fund 5MR0 with Controlling Board approval and with a limit of not more than \$2.5 million per biennium. The bill eliminates both of these requirements, thus removing the cap on expenditures from Fund 5MR0. This also provides additional flexibility to fund the Commercial Dog Breeders Program. Fund 5MR0 revenue was approximately \$206,000 in FY 2015.

### **Micro wireless facilities**

The bill declares that it is the public policy of Ohio to "expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state." In doing so, the bill amends the statute governing wireless communications facilities deployed within the public right-of-way. The bill defines wireless facility as "an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service."

### **Timeframe for review**

The bill gives municipalities 90 days to grant or deny consent to an entity that requests permission to deploy a micro wireless facility or an associated wireless support structure. The bill permits a municipality to charge a fee for submitting such a request, but limits the fee to the lesser of \$250 or the amount the municipality charges for a building permit for any other type of commercial development. If a municipal corporation fails to approve the request within the required time period, the request is deemed granted.

The time period aspect is analogous – though not as stringent – as rules adopted by the Federal Communications Commission (FCC) under the Spectrum Act, which requires local governments to reply to siting requests by wireless communications providers within a shorter 60-day period. Presumably, the bill would apply to siting process decisions not governed by the FCC, but LSC is unclear if any such circumstances will occur.

### **Application review process**

The bill includes prohibitions about the sort of information municipalities can seek from entities requesting permission to deploy a micro wireless facility. The approach is congruent with the FCC order, which declared, "State and local governments may only require applicants to provide documentation that is reasonably related to determining whether the request meets the requirements of the provision. We

find that this restriction is appropriate in light of the limited scope of review applicable to such requests and that it will facilitate timely approval of covered requests. At the same time, under this standard, State or local governments have considerable flexibility in determining precisely what information or documentation to require."

### **Compensation to local governments for siting on public way**

The bill's fiscal effect on local governments is concentrated on charges and fees paid by micro wireless facility operators for their use of municipally owned property. Any municipal corporation charges levied on operators for its attachments must be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or \$200 per attachment per year. Municipal corporations must permit an attachment to their structures if a micro wireless facility operator does so for the purpose of providing wireless service.

The bill's prescriptive nature for attachment compensation may reduce what municipal corporations could otherwise negotiate while still remaining in compliance with FCC regulations. LSC cannot reliably estimate the local revenue loss associated with this opportunity cost.

### **Prohibiting a political subdivision from establishing minimum wage different than under state law**

The bill prohibits political subdivisions from establishing minimum wage rates that are different from the rate required by the Minimum Fair Wage Standards Law and the Ohio Constitution. This would forestall attempts by a political subdivision to increase the minimum wage above what is established in state law. The state minimum wage rate is currently \$8.10 per hour and is scheduled to increase to \$8.15 per hour in 2017.

### **Authority to regulate hours and other terms of private sector employment**

The bill also designates terms of employment such as hours, location of work, scheduling, and fringe benefits as matters resulting exclusively from a private employer's agreement with its employees unless otherwise governed by state or federal law. This would prohibit a political subdivision from regulating the terms of employment mentioned above. However, the bill specifies that this prohibition does not affect a political subdivision's ability under the Ohio Constitution, state law, or case law to adopt ordinances or resolutions limiting the hours an employer may operate. Finally, the bill expresses the legislative intent to exclusively regulate work hours and fringe benefits under an employer-employee relationship as a matter of statewide concern.

### **Sexual conduct with an animal**

The bill prohibits certain activities that pertain to sexual conduct with an animal. A violation of any of the bill's prohibitions is a second degree misdemeanor, which carries the possibility of a jail term of not more than 90 days, a maximum fine of \$750, or both.

Although not specifically prohibited under existing law, current practice indicates that this conduct has been successfully prosecuted using misdemeanor prohibitions against injuring, or cruelty to, animals.<sup>1</sup> It also appears that arrests for this conduct are relatively infrequent. This suggests that, in any given year, the bill is not likely to create a discernible increase in the number of persons arrested, prosecuted, and sanctioned for an animal cruelty violation. Thus, to the degree that violations of the bill's prohibition generate any tangible additional processing and sanctioning costs for a county or municipal criminal justice system, such costs will be negligible annually. Those costs could include some mix of investigative work by local law enforcement, prosecution, adjudication, indigent defense, jail time, and probation.

In the case of a person convicted of, or pleading guilty to, a misdemeanor, the court generally is authorized to impose a mix of state and local court costs, fees, and fines, and permitted to waive their imposition if the offender is determined to be indigent. The likely amounts to be generated annually for either the state or local treasuries will be negligible. This is because many offenders are either financially unable or unwilling to pay, and very few offenders will be arrested, charged, and convicted of violating any of the bill's prohibitions. The state revenues would be in the form of locally collected state court costs that are forwarded for deposit to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).<sup>2</sup> The bill also applies existing procedures and requirements to the seizure, impoundment, and disposition of the animal, and permits the court under certain specified circumstances to require the offender undergo a psychological evaluation or counseling. The court is required to order the offender to pay the costs of the evaluation or counseling. The bill is silent on payment of those costs if the offender is determined to be indigent. The costs for county and municipal authorities to comply with these duties and responsibilities will be negligible annually.

## **Animal fighting**

The bill adds to the types of activities associated with animal fighting that are criminal offenses and changes the penalty for some of those activities. Under current law, a person is prohibited from knowingly doing all of the following associated with animal fighting: (1) engaging in or being employed at cockfighting, bearbaiting, or pitting an animal against another, (2) receiving money for the admission of another to a place kept for such a purpose, and (3) using, training, or possessing any animal for seizing, detaining, or mistreating a domestic animal. A violation of these activities is a

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<sup>1</sup> R.C. 959.02 and 959.13, respectively.

<sup>2</sup> "State court costs" are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. The court is generally required to impose state court costs totaling \$29 for a misdemeanor. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020).

fourth degree misdemeanor which could include a jail term of not more than 30 days, a fine up to \$250, or both.

Under the bill, the prohibitions against (1) engaging in cockfighting or bearbaiting, or (2) pitting one animal against another and using, training, or possessing an animal for mistreating another animal would remain as fourth degree misdemeanors. Additionally, the bill would prohibit a person from knowingly doing any of the following: (1) being employed at cockfighting, bearbaiting, or pitting one animal against another, (2) betting on the results, (3) paying for admission to the event, (4) receiving anything of value in exchange for the admission of another person to the event, (5) using, possessing, or permitting or causing to be present any device or substance intended to enhance an animal's ability to fight, and (6) permitting or causing a minor to be present at the event if anyone present at or involved with the event is doing anything listed above. The bill makes a violation of these six prohibitions an unclassified felony with a fine up to \$10,000. These changes could lead to a minimal increase in caseloads handled by courts. While there could be an increase in administrative costs for local courts, the increase would at least be partially offset by fine revenue.