

## Animal Control Legislative Update

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During the 2015 legislative session, the North Carolina General Assembly made several important changes and additions to the laws that impact local government animal control work. Below are summaries of changes in several key areas:

- New limitations on the authority of local governments to adopt ordinances related to standards of care for farm animals,
- Changes to the State's program that provides financial support for local spay/neuter initiatives,
- A new State program to provide funding support to local government animal shelters,
- A new State program establishing an animal welfare hotline,
- A revision to the procedures that must be followed before selling unclaimed livestock at auction, and
- A revision to the animal cruelty laws related to pigeons.

### Local Authority to Regulate Standards of Care

#### [S.L. 2015-192](#) (H 553)

The legislature established a new restriction on local government authority to adopt ordinances that "regulate standards of care for farm animals." Two nearly identical new statutes – G.S. 153A-145.4 for counties and G.S. 160A-203.1 for municipalities – prohibit local ordinances that regulate "standards of care" for "farm animals." The term "standards of care" is defined in the new law to include:

- The construction, repair, or improvement of shelter or housing,
- Restrictions on the types of feed or medicines that may be administered, and
- Exercise and social interaction requirements.

The exclusive list of farm animals subject to this limitation is: cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, llamas, alpacas, lagomorphs, ratites, and poultry.

For counties, the restriction also applies to any ordinance governing poultry. For cities, however, the restriction applies only to "poultry flocks of greater than 20 birds." This variation allows municipalities to continue to adopt ordinances related to the "backyard chicken" trend. Also, because the new law is limited to ordinances governing "standards of care," it likely does not have any impact on the many municipal ordinances that prohibit roosters (or other types of farm animals) within the jurisdiction.

These new limitations went into effect on August 5, 2015

### **Intersection with animal cruelty laws**

Because the new law relates to “standards of care,” it overlaps with laws that govern cruelty or abuse of animals. For example, State and local officials often rely on cruelty or abuse laws when animals have been deprived of adequate food, water, or shelter, or are kept in unsanitary conditions. Local governments have long had specific authority to adopt ordinances governing the abuse of animals. G.S. [153A-127](#); G.S. [160A-182](#). They also often rely on their general police power as authority for ordinances focused on animal welfare issues. G.S. [153A-121](#); G.S. [160A-174](#). Some of these local cruelty ordinances define the term “animal” broadly enough to include the types of farm animals listed in the new legislation. With this new law in place, local animal control officials should not enforce those ordinances if the violation involves “standards of care” for farm animals. The new law does not preempt all local animal cruelty laws governing farm animals. Therefore, if a local government elects to revise its ordinance, it can tailor an exception that responds to this new, relatively narrow limitation related to standards of care.

It is important to note that this new law does not impact existing state law governing animal cruelty. State and local officials will still be able to pursue a civil cruelty action (G.S. Chapter 19A, [Article 1](#)) and enforce the criminal cruelty laws in some cases (G.S. Chapter 14, [Article 47](#)) to address animal care situations that rise to the level of cruelty. Both bodies of law have been used to address issues related to standards of care such as intentional starvation (e.g., *State v. Coble*, 163 N.C. App. 335 (2004)) and torment based on animals being kept in extremely unsanitary conditions (e.g., *State v. Mauer*, 202 N.C. App 546 (2010)).

The state cruelty laws, both criminal and civil, define the term “animal” broadly enough to encompass farm animals, but there are several important exceptions to the law that limit the overall scope. For example there are exceptions for lawful activities conducted for purposes of production of livestock, poultry, or aquatic species; and for the primary purpose of providing food for human or animal consumption. There is also an exception that applies to the physical alteration of livestock or poultry for the purpose of conforming with breed or show standards. While these exceptions certainly limit the scope of the state cruelty laws for farm animals, local governments may still be able to rely on them in some circumstances to address concerns related to standards of care. For example, if an owner or possessor of a farm animal “willfully and without justifiable excuse” abandons an animal, the person could be charged with a Class 2 misdemeanor (G.S. [14-361.1](#)).

### **Intersection with exotic and dangerous animal ordinances**

Many local governments have ordinances addressing exotic or dangerous animals. They rely on the general police power for authority as well as specific authority to “regulate, restrict, or prohibit the possession or harboring of animals which are dangerous to persons or property.” G.S. [153A-131](#); G.S. [160A-187](#). Some prohibit ownership while others allow ownership, subject to restrictions that may include requirements that could be considered “standards of care.” For example, an ordinance may address the housing requirements for the animals. The definitions of “exotic animals” in some of these ordinances may capture one or more of the “farm animals” identified in the new legislation, such as alpacas. Local governments should review their

definitions and policies to ensure that they reflect the new limitations on local authority. Unlike the cruelty laws discussed above, there is not a comprehensive body of state law addressing exotic animals to take into consideration.

## **Spay/Neuter Account**

### **S.L. 2015-241 (H 97; Sec. 13.7(a))**

The N.C. Department of Agriculture and Consumer Services (Department) operates a fund that provides “financial assistance to local governments offering low-income persons reduced-cost spay/neuter services for their dogs and cats...” ([Chapter 19A, Article 5](#)). This year’s budget bill included three revisions related to this program:

- **Low-income persons:** The law sets out eligibility criteria for a person to receive financial assistance from the spay/neuter account. Prior to this year, a person would qualify if he or she qualified for a program of public assistance (such as food and nutrition services, Work First, or Medicaid) or the annual household income was under 300% of the federal poverty guidelines. The revised law provides that an individual is eligible if the annual household income is lower than 100% of the [federal poverty guidelines](#), which amounts to \$11,770 for an individual or \$20,090 for a family of three.
- **Providers of services:** In order for a city or county to be reimbursed for a sterilization procedure from state’s account, low-income pet owners must have access to spay/neuter services in the city or county on a year-round basis. A local government can satisfy this requirement if it
  - operates a spay/neuter clinic,
  - has a contract with a veterinarian to provide reduced-cost procedures, or
  - provides vouchers or other discount opportunities spay or neuter procedures (either through a provider or for animals adopted from an animal shelter).The law also allowed for a local government to satisfy this requirement if it made arrangements with a “private organization” for a spay/neuter clinic. This particular provision was amended to provide that the clinic would need to be offered by a non-profit organization that contracts with a local veterinarian for the services.
- **Local veterinarians:** Counties are required to provide local veterinarians with an opportunity to participate in the program and submit proof to the state each year that it offered such an opportunity. The legislation adds a new definition of the term “local veterinarian” that encompasses licensed veterinarians practicing within the county. If no licensed veterinarian is practicing in the county, the term includes veterinarians practicing in any adjacent county.

Total annual funding for the program is approximately \$460,000. In the past, the Department was required to transfer \$250,000 from another division to support the program but this year’s budget allocates an additional \$250,000 in recurring funding specifically for the spay/neuter

account. Additional funding for the program comes from the sale of special license plates, contributions, and other available sources.

These changes went into effect on July 1, 2015.

### **Animal Shelter Support Fund** **[S.L. 2015-241](#) (H 97; Sec. 13.7(b))**

The budget bill creates and funds a new program in the Department that is focused on providing reimbursement to local governments for expenses they may incur as a result of either:

- The denial, suspension, or revocation of an animal shelter’s registration, or
- An unforeseen catastrophic disaster at an animal shelter.

Reimbursement may be requested for “direct operational costs,” which includes veterinary services, sanitation services and needs, animal sustenance and supplies, and temporary housing and sheltering. Local governments may not request reimbursement for administrative costs or capital expenditures for facilities and equipment.

A matching requirement applies when a local government requests reimbursement from the program. The amount of match required varies based on the county’s development tier designation.

| <b>Tier</b> | <b>State Fund</b> | <b>County Match</b> |
|-------------|-------------------|---------------------|
| Tier 1      | \$3               | \$1                 |
| Tier 2      | \$2               | \$1                 |
| Tier 3      | \$1               | \$1                 |

The legislature appropriated \$250,000 in recurring funding for the program, which may also be supplemented by contributions and grants.

These changes went into effect July 1, 2015. Once the program is in operation, local governments will need to submit reimbursement requests within 60 days of incurring the expense and the Department will need to make reimbursements within 30 days of receiving the request. Additional details related to eligibility and application requirements will be spelled out in regulations to be adopted by the Department.

### **Animal Welfare Hotline** **[S.L. 2015-286](#) (H 765)**

The Attorney General is required to establish a new system for receiving information and reports about animal welfare. The new system must allow for individuals to report allegations of cruelty or violations of the Animal Welfare Act by phone, by email, and online. Reporters are required to provide their name and contact information.

If an allegation relates to potential violations of the state’s criminal animal cruelty laws, the state is required to refer it to the “the appropriate animal control authority for the unit or units of local government” where the alleged violations occurred. In order to comply with this requirement, it seems likely that the state will need to create and maintain a database of contact information for every jurisdiction in the state that is doing animal cruelty work. Given the wide range of agencies and officials that are involved with this area of work, this will likely be a daunting task but it will also create a useful new resource for local governments.

If an allegation relates to potential violations of North Carolina’s Animal Welfare Act, Chapter 19A, Article 3, the Attorney General’s office is required to refer the report to the State’s Department of Agriculture and Consumer Services. That agency is charged with enforcing laws governing standards of care in animal shelters, boarding kennels, pet shops, and public auctions.

The title of this provision in the legislation refers to a new “court fee” to support animal cruelty investigations but no such fee is established in the new law. Rather, the law authorizes the state to use any available public or private funds to implement the requirement.

This provision goes into effect March 1, 2016.

## **Unclaimed Livestock**

### **[S.L. 2015-263](#) (S 513; Sec. 24)**

Local governments are often required to impound livestock. In some instances, the owner of the animal is not known or simply fails to claim the animal. Until this year, local governments were bound by a law that outlined a protracted and antiquated approach to selling those animals at auction. Compliance with the timeline would take months and the local government would be required to have a notice of sale “posted at the courthouse door and three or more public places in the township....” This law, G.S. 68-20, was amended this session to allow for a much more streamlined approach that relies heavily on the Sheriff’s office for implementation.

The new process is as follows:

- If the owner does not redeem the animal within three days of the notice required by law, the impounder must notify the Sheriff’s office.
- The Sheriff’s office posts a notice of sale on its website.
- Ten days after the notice of sale is posted, the impounder may sell the animal at public auction.

This new timeline went into effect on Sept 29, 2015.

## **Animal Cruelty – Pigeons**

### **[S.L. 2015-286](#) (H 765; Sec. 4.32)**

The legislation added language to the state’s civil and criminal animal cruelty laws that effectively creates a new exemption for pigeons. This issue has a fairly long and complicated history. The short version is as follows:

- Animals subject to the jurisdiction and regulation of the Wildlife Resources Commission (Commission) are exempt from the state’s civil and criminal cruelty laws.
- The Commission has adopted a regulation that identifies certain species of “wild birds” that are subject to the cruelty laws. 15A NCAC 10B .0121. Pigeons (*Columba livia*) are currently included on that list.
- The new legislation still allows the Commission to adopt this type of regulation identifying species of “wild birds” that are subject to the cruelty laws but it provides that pigeons may not be included on that list.
- Therefore, pigeons are now exempt from the cruelty laws.

This new law has implications for those areas of the state that may host “pigeon shoots” and similar events.

This provision went into effect on October 22, 2015.