

1 HB679
2 144636-1
3 By Representative Greeson (N & P) (Constitutional Amendment)
4 RFD: Local Legislation
5 First Read: 30-APR-13

2
3
4
5
6
7
8 SYNOPSIS: This bill would propose a local
9 constitutional amendment to the Constitution of
10 Alabama of 1901, applicable to those areas of
11 DeKalb County outside the corporate limits of any
12 municipality; would establish a procedure by which
13 a dog can be declared dangerous and be humanely
14 destroyed; would provide that a dog found to be
15 dangerous, but which has not caused serious
16 physical injury to a person, could be returned to
17 the owner if certain registration requirements are
18 met and the dog is securely enclosed; would provide
19 immunity for county officers and employees; and
20 would provide for penalties.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To propose an amendment to the Constitution of
27 Alabama of 1901, relating to DeKalb County; to establish a

1 procedure by which a dog within those areas of DeKalb County
2 outside the corporate limits of any municipality can be
3 declared dangerous and be humanely destroyed or a dog found to
4 be dangerous, but which has not caused serious physical injury
5 to a person, can be returned to the owner if certain
6 registration requirements are met and the dog is securely
7 enclosed; to provide for penalties; and to provide immunity
8 for county officers and employees.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. The following amendment to the
11 Constitution of Alabama of 1901, is proposed and shall become
12 valid as a part of the Constitution when all requirements of
13 this act are fulfilled:

14 PROPOSED AMENDMENT

15 Section 1. The people of the State of Alabama find
16 and declare that: Certain dogs are an increasingly serious and
17 widespread threat to the safety and welfare of citizens of
18 this state by virtue of their unprovoked attacks on, and
19 associated injury to, individuals; these attacks are in part
20 attributable to the failure of owners to confine and properly
21 train and control these dogs; existing laws inadequately
22 address this problem; and it is therefore appropriate and
23 necessary to impose requirements on the owners of dangerous
24 dogs.

25 Section 2. The provisions of this constitutional
26 amendment are applicable to those areas of DeKalb County
27 outside the corporate limits of any municipality.

1 Section 3. The following words shall have the
2 following meanings:

3 (1) ANIMAL CONTROL OFFICER. Any person employed by
4 DeKalb County who performs animal control functions.

5 (2) ATTACK. Aggressive physical contact initiated by
6 a dog.

7 (3) BITTEN. Seized with the teeth of a dog so that
8 the skin of the person seized has been gripped or has been
9 wounded or pierced.

10 (4) DANGEROUS DOG. A dog, regardless of its breed,
11 that has bitten, attacked, or caused physical injury to a
12 human being, without provocation, or has repeatedly bitten or
13 caused physical injury to humans, except a dog used by law
14 enforcement officials for legitimate law enforcement purposes,
15 a certified guide dog for the blind, a hearing dog for the
16 deaf, or a service dog for the disabled.

17 (5) DOG. All members of the canine family including
18 dog hybrids.

19 (6) IMPOUNDED. Taken into the custody of law
20 enforcement, the county pound, or an animal control authority
21 or provider of animal control services in DeKalb County.

22 (7) OWNER. A person, firm, corporation, or
23 organization having a right of property in a dog, or who keeps
24 or harbors a dog, or who has a dog in his or her care or acts
25 as the custodian of a dog, or who permits a dog to remain on
26 or about any premises occupied by him or her.

1 (8) PHYSICAL INJURY. An injury as defined in Section
2 13A-1-2(12), Code of Alabama 1975.

3 (9) PROPER ENCLOSURE OF A DANGEROUS DOG. An
4 enclosure for the confinement of a dog that has been declared
5 dangerous which is suitable to prevent the entry of the
6 general public and:

7 a. Is capable of being locked with a key or
8 combination lock when the dog is within the structure.

9 b. Has secure sides and a secure top attached at all
10 sides. All four sides of the fence or pen must be sunk at
11 least two feet into the ground or the fence or pen must be
12 built over a concrete pad to prevent the animal from digging
13 out.

14 c. Provides adequate ventilation and protection from
15 the elements.

16 d. Exhibits a sign conspicuously posted upon the pen
17 or the structure containing the following: "Dangerous Dog - No
18 Trespassing."

19 e. The enclosure shall be constructed to allow the
20 dog to stand normally and without restriction and shall be not
21 less than four times the length of the dog and two times the
22 width of the dog.

23 (10) SERIOUS PHYSICAL INJURY. An injury as defined
24 in Section 13A-1-2(14), Code of Alabama 1975.

25 Section 4. (a) An animal control officer or law
26 enforcement officer shall investigate any incident involving
27 any dog reported to be dangerous.

1 (b) If a dog that is unowned and has been reported
2 to be dangerous bites a person, the dog may be quarantined and
3 destroyed pursuant to Section 3-7A-9(b), Code of Alabama 1975.
4 For the purposes of this subsection, "bites" means the same as
5 "has been exposed" as defined in Section 3-7A-1(5), Code of
6 Alabama 1975.

7 (c) If there is probable cause to believe that an
8 owned dog is dangerous and has caused serious physical injury
9 to a human being, a law enforcement officer or animal control
10 officer shall impound the dog pending disposition of a
11 petition to declare the dog to be dangerous. DeKalb County may
12 impound the dog at the county pound as described in Section
13 3-7A-7, Code of Alabama 1975, or may enter into an agreement
14 with an animal shelter or licensed veterinarian to secure and
15 impound dangerous dogs pursuant to this section. The owner of
16 a dangerous dog shall be liable to DeKalb County for the costs
17 and expenses incurred in impounding, feeding, and providing
18 veterinary care or treatment for the dog.

19 (d) The district attorney, county attorney, or the
20 designee of either, shall be authorized to file a petition in
21 the district court to declare a dog that caused physical
22 injury to a human being in DeKalb County to be dangerous. The
23 owner of the dog shall be served with a copy of the petition.

24 (e) A dog that is the subject of a dangerous dog
25 investigation may not be relocated and ownership shall not be
26 transferred pending the outcome of the investigation and

1 hearing to determine whether to declare the dog to be
2 dangerous.

3 (f) The court hearing shall be held as soon as
4 practicable. At the hearing, the district attorney, county
5 attorney, or the designee of either, shall present evidence
6 that the dog is dangerous and whether the dog caused serious
7 physical injury to a human being.

8 (1) If the court determines that the dog is
9 dangerous and has caused serious physical injury or death to a
10 human being, the court shall order the dog to be humanely
11 euthanized by a licensed veterinarian or an authorized animal
12 control official.

13 (2) If the court determines that the dog is
14 dangerous, but has not caused serious physical injury or death
15 to a human being or other animal, the court shall issue orders
16 authorized by this section.

17 (g) The pleading and practice in all cases to
18 petition the court to declare a dog to be dangerous under this
19 section shall be in accordance with the Alabama Rules of Civil
20 Procedure unless otherwise specified by this amendment. The
21 court may tax all costs of the proceedings including
22 attorney's fees and expert witness fees to the owner of the
23 dog.

24 Section 5. (a) A dog may not be declared dangerous
25 in any of the following circumstances:

26 (1) When an injury or damage was sustained by a
27 person who at the time of the injury or damage was committing

1 a willful trespass or other tort upon premises occupied by the
2 owner or custodian of the dog with the intent to commit a
3 crime or was committing a crime; was teasing, tormenting,
4 abusing, or assaulting the dog; or who can be shown to have
5 repeatedly, in the past, provoked, tormented, abused, or
6 assaulted the dog.

7 (2) When the dog was protecting or defending a
8 person within the immediate vicinity of the dog from an
9 unjustified attack or assault.

10 (3) When the dog was responding to pain or injury or
11 protecting itself, its kennel, or its offspring.

12 (4) When a person or domestic animal was disturbing
13 the natural functions of the dog such as sleeping or eating.

14 (b) Neither growling nor barking, or both, shall
15 alone constitute grounds upon which to find a dog to be
16 dangerous.

17 Section 6. (a) If a court determines that a dog is
18 dangerous, but does not order that the dog be destroyed
19 because evidence was insufficient to determine that the dog
20 caused serious physical injury, in addition to any other
21 requirements imposed by the court, within 30 days of the
22 issuance of the order declaring the dog to be dangerous, the
23 owner of the dog shall register the dog with the DeKalb County
24 Animal Control Center. All certificates of registration
25 required to be obtained under this section shall only be
26 issued to persons 18 years of age or older who present
27 evidence of the following:

1 (1) A current certificate of rabies vaccination of
2 the dog.

3 (2) A current photograph of the dog.

4 (3) That the dog will be confined to a proper
5 enclosure when the dog is outdoors and unattended.

6 (4) That the dog has been neutered or spayed, unless
7 medically not needed.

8 (5) That the dog has been permanently identified by
9 tattooing or injecting an identification microchip using
10 standard veterinary procedures and practices, and the name,
11 address, and phone number of the veterinarian performing the
12 identification procedure.

13 (6) A policy of insurance, such as homeowner's, or a
14 surety bond in the amount of not less than one hundred
15 thousand dollars (\$100,000) covering the medical or veterinary
16 costs, or both, resulting from any future dangerous actions of
17 the dog.

18 (7) If the owner of the dangerous dog is not the
19 owner of the property where the dog is kept, the owner of the
20 dog must obtain from the property owner written permission for
21 the dangerous dog to be kept on the property.

22 (8) A notarized affidavit from the owner of the
23 dangerous dog stating that the dog will be under the control
24 of a person 18 years of age or older when the dog is not in a
25 proper enclosure or inside a building and that the dog will
26 not be allowed outside the property of its owner except in

1 emergencies or for normal or necessary medical or
2 health-related treatment.

3 (b) If the owner fails to provide a proper enclosure
4 for the dangerous dog or fails to provide a certification of
5 dangerous dog registration to the court within 30 days of the
6 issuance of the court's declaration that the dog is dangerous,
7 the dog shall be humanely euthanized.

8 (c) The owner of the dangerous dog shall pay an
9 annual fee to register the dog pursuant to the provisions of
10 this amendment. The amount of the dangerous dog registration
11 fee shall be established by the DeKalb County Commission. The
12 payment of the dangerous dog registration fee shall be in
13 addition to any regular dog licensing fee required by DeKalb
14 County.

15 (d) An animal control officer or law enforcement
16 officer may make whatever inquiry is deemed necessary to
17 ensure compliance with this amendment and any court order
18 issued pursuant to this amendment.

19 (e) Prior to a dangerous dog being sold or given
20 away, the owner shall advise the new prospective owner in
21 writing that the dog has been declared to be dangerous by a
22 court and shall provide the DeKalb County Animal Control
23 Center the name, address, and telephone number of the new
24 owner. The new owner shall comply with all of the requirements
25 of this amendment.

26 Section 7. The owner of a dog which has been
27 declared to be dangerous by a court may petition the district

1 court to remove the dangerous dog designation 18 months after
2 the judicial declaration was issued. A copy of the petition
3 shall be served upon the district attorney or county attorney.
4 The court may remove the dangerous dog designation and
5 eliminate any requirements of this amendment if the owner of
6 the dog has not violated this amendment and any orders of the
7 court, and if the court is satisfied from the evidence that
8 the dog is no longer dangerous.

9 Section 8. (a) If a dog that has previously been
10 declared by a court to be dangerous when unprovoked, and shall
11 cause serious physical injury or kill a human being, the owner
12 of the dog shall be guilty of a Class C felony.

13 (b) If a dog that has not been declared by a court
14 to be dangerous attacks and causes serious physical injury or
15 death to any human being, and the owner of the dog had prior
16 knowledge of the dangerous propensities of the dog, yet
17 demonstrated a reckless disregard of the propensities under
18 the circumstances, the owner of the dog shall be guilty of a
19 Class A misdemeanor.

20 (c) In addition to any fines imposed by the court, a
21 person guilty of violating subsection (a) or (b) shall pay all
22 expenses, including, but not limited to, shelter, food,
23 veterinary expenses for boarding and veterinary expenses
24 necessitated by impoundment of the dog, medical expenses
25 incurred by a victim from an attack by the dog, and other
26 expenses required for the destruction of the dog.

1 (d) An owner of a dog declared to be dangerous by a
2 court who does not contain the dog in a proper enclosure shall
3 be guilty of a Class C misdemeanor.

4 (e) An owner of a dog declared to be dangerous by a
5 court who has been adjudicated guilty of subsection (d) and
6 subsequently fails to contain the dangerous dog in a proper
7 enclosure shall be guilty of a Class B misdemeanor.

8 Section 9. Nothing in this amendment shall be
9 construed to repeal other criminal laws. Whenever conduct
10 proscribed by any provision of this amendment is also
11 proscribed by any other provision of law, the provision which
12 carries the more serious penalty shall be applied.

13 Section 10. (a) Nothing in this amendment shall be
14 construed to restrict or negate the requirements of the rabies
15 control law contained in Sections 3-7A-1 to 3-7A-16,
16 inclusive, Code of Alabama 1975.

17 (b) Nothing in this amendment is designed to
18 abrogate any civil remedies available under statutory or
19 common law.

20 Section 11. Any person who knowingly makes a false
21 report to a law enforcement officer or an animal control
22 officer that a dog is dangerous is guilty of a Class C
23 misdemeanor.

24 Section 12. DeKalb County, its district attorney and
25 its county attorney and any of its, or their, employees or
26 agents, and the individual issuing the dangerous dog
27 certificate or registration shall be immune from any and all

1 liability for any actions taken or for any failure to act
2 pursuant to this amendment.

3 Section 13. The DeKalb County Commission shall
4 establish the date on which these provisions shall become
5 effective.

6 Section 2. An election upon the proposed amendment
7 shall be held in accordance with Amendment 555 to the
8 Constitution of Alabama of 1901, now appearing as Section
9 284.01 of the Official Recompilation of the Constitution of
10 Alabama of 1901, as amended, and the election laws of this
11 state.

12 Section 3. The appropriate election official shall
13 assign a ballot number for the proposed constitutional
14 amendment on the election ballot and shall set forth the
15 following description of the substance or subject matter of
16 the proposed constitutional amendment:

17 "Relating to DeKalb County, proposing an amendment
18 to the Constitution of Alabama of 1901, for those areas of
19 DeKalb County outside the corporate limits of any
20 municipality, to establish a procedure by which a dog can be
21 declared dangerous and humanely destroyed or returned to the
22 owner if certain requirements are met and the dog is securely
23 enclosed, to provide immunity for county officers and
24 employees, and to provide for penalties.

25 "Proposed by Act _____."

26 This description shall be followed by the following
27 language:

1

"Yes () No ()."