

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 460 (Fifth Edition)

SHORT TITLE: Commercial Dog Breeder Regulation.

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES	\$6,200	\$7,250	\$9,750	\$12,250	\$14,250
Agriculture	\$4,338	\$5,338	\$7,888	\$10,388	\$12,388
Fines & Forfeitures	\$1,862	\$1,862	\$1,862	\$1,862	\$1,862
EXPENDITURES	\$3,435	\$2,142	\$3,508	\$4,570	\$5,936
Agriculture	\$3,435	\$2,142	\$3,508	\$4,570	\$5,936
Corrections			No Fiscal Impact Anticipated		
Judicial Branch			Indeterminate Fiscal Impact		
POSITIONS (cumulative):	0	0	0	0	0
DACS	0	0	0	0	0
Fines & Forfeitures	0	0	0	0	0
Judicial Branch	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Agriculture & Consumer Services (DACs), Animal Welfare Section					
Department of Corrections					
EFFECTIVE DATE: May 1, 2010					

BILL SUMMARY:

S.B. 460, Commercial Dog Breeder Regulation, amends the Animal Welfare Act (G.S. 19A-20). The bill defines a commercial breeder as any person who owns or maintains 15 or more intact female dogs of breeding age and 30 or more puppies primarily for the purpose of sales, and a commercial breeding operation as a physical location or facility at which a commercial breeder breeds or maintains intact female dogs of breeding age and puppies. S.B. 460 excludes kennels or establishments operated for the purpose of boarding or training, hunting, sporting, herding, show, or working dogs.

S.B. 460 requires the Board of Agriculture to establish standards for the care of animals at commercial breeding operations, including provisions for adequate daily exercise, adequate veterinary care, appropriate housing and record keeping. The most recent version of the bill

removes the provision that states that the standards applicable to animal shelters also apply to commercial breeding facilities unless otherwise established.

The bill also requires commercial dog breeders to register as a commercial breeder with the Director of the Animal Welfare Service (AWS) within the Department of Agriculture and Consumer Services (DACS) before commencing operations. Failure to register is a Class 2 misdemeanor; any subsequent failure to register would be a Class 1 misdemeanor. Commercial dog breeders register as of May 1, 2010. The most recent version of the bill removes the requirement to maintain an online consumer protection registry of commercial breeding facilities.

S.B. 460 establishes penalties (fines of at least \$50 per animal per day up to a total of \$1,000, Class 3 misdemeanor) for failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care or otherwise meet the standards of care for their animals. Failure to meet established standards would also allow for the immediate termination of the commercial breeder's registration.

BACKGROUND

In 1966, the U.S. Congress passed the Animal Welfare Act (USAWA), which outlines specific minimum standards of care for dogs (and other animals) bred for commercial resale. Under the USAWA, certain large-scale commercial breeders are required to be licensed and regularly inspected by the United States Department of Agriculture. Only "wholesale" facilities that breed animals for resale – for example, to pet stores – are subject to the USAWA; operations that sell directly to the public are not required to adhere to USAWA or any federal humane care standards.

AWS estimates that there are at least 200 commercial breeders operating in North Carolina; of these, 79 are known to have more than 15 intact female dogs. AWS stresses the fact that this is most likely a very conservative estimate of the actual number of commercial dog breeders; since the industry is unregulated, it is essentially hidden, making an accurate estimate of the number of breeders, at best, an educated guess.

While regulation may cause some commercial breeders to shut down, AWS expects the number of known breeders to grow to 240 within five years. This growth is due to three main factors:

- Increased attention to the industry by DACS will uncover additional breeders;
- Inspected facilities will inform on their non-regulated competitors; and
- Increased public awareness of commercial dog breeding standards will increase the number of public complaints about commercial breeding facilities.

ASSUMPTIONS AND METHODOLOGY:

Expected Revenue

There are two sources of revenue under S.B. 460 – registration revenue and fines. All commercial breeding facilities would be required to register with AWS in order to operate. Failure to register is a Class 2 misdemeanor. The license fee is \$50. Assuming all known commercial breeders register in 2010, DACS would receive \$3,950 in revenue in the first year. This revenue is expected to increase to \$12,000 per year by FY 2013-14 due to the expected increase in the number of regulated facilities.

S.B. 460 allows AWS to assess penalties on breeders who fail to provide adequate care for their animals. The failure to properly care for the animals (house, exercise, feed, water, provide veterinary care, etc) is a Class 3 misdemeanor; for this offense, the breeder could also be subject to a fine of not less than \$50 per animal per day. Pursuant to Article IX, Section 7(b) of the Constitution, the proceeds of all civil penalties that are collected due to S.B. 460 would be deposited in the Civil Penalty and Forfeiture Fund. The proceeds may be diminished only by the actual costs of collection. The DACS' administrative withholding rate is 17.25%.

AWS does not expect significant revenue from fines. The bill does not require the inspection of facilities, making fines for failure to comply with standards unlikely. Businesses recognize that failure to comply with the regulations puts their livelihood at risk and that there are substantial legal costs associated with a challenge to AWS regulation. Moreover, assessing fines on commercial dog breeders is different than the fines AWS assesses on shelters and pet stores; shelters and stores advertize their services and AWS is aware of their location and operations. On the other hand, many commercial dog breeders operate outside of the public eye.

Consequently, the Fiscal Research Division has used a conservative estimate of the expected revenue from fines, assuming that one commercial breeder with the minimum number of dogs required to qualify as a commercial breeder (15 females and 30 puppies) is assessed the minimum fine (\$50) for only one day. The expected fine revenue in this scenario is \$2,250. As noted, this should be considered a low revenue estimate scenario as it assumes the minimum for all components. However, in some years, if no breeders are found to be in violations, no fines may be assessed and no revenue generated.

Table 1: Expected Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Licenses					
Registered Breeders	79	100	150	200	240
Registration Revenue	\$ 3,950	\$ 5,000	\$ 7,500	\$ 10,000	\$ 12,000
Fines	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250
Total Revenue	\$ 6,200	\$ 7,250	\$ 9,750	\$ 12,250	\$ 14,250

Per G.S. 115C-457.2, the clear proceeds of the \$2,250 fine revenue will go to the Civil Penalty and Forfeiture Fund; DACS will retain its cost of collection based on its 17.25% administrative withholding rate. Table 2 shows the breakdown of the fine by recipient.

Table 2: Allocation of Fine Revenue

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
DACS	\$ 388	\$ 388	\$ 388	\$ 388	\$ 388
Civil Penalty & Forfeiture	\$ 1,862	\$ 1,862	\$ 1,862	\$ 1,862	\$ 1,862
Total Fine Revenue	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250	\$ 2,250

Expected Costs

Department of Agriculture and Consumer Services
Develop & Implement Standards

Housing situations at commercial dog breeding operations are sufficiently different from those in currently regulated facilities that AWS believes that new rules should be developed to accommodate the different goals of operation. Many states and the federal government have standards in place for breeding facilities that could serve as a model for North Carolina.

AWS anticipates that the development of standards will be controversial. The American Kennel Club and other organizations that promote ethical breeding are expected to object to regulating the commercial dog breeders. Assuming little controversy, new regulation could be implemented in approximately six months. However, because of the expected controversy, it could take a year or more to pass the rules.

There is a cost associated with developing standards. Existing staff time will be needed to develop the standards and travel expenses will be needed for public meetings. Developing commercial breeding standards will require approximately 189 hours from existing AWS staff, including a veterinarian, attorney, and paralegal. The total value of their time is \$8,830 in FY 2009-10 dollars. Table 3 outlines the duties these employees will perform.

Table 3: Cost to Develop Standards, FY 2009-10 Dollars

	Attorney		Veterinarian		Paralegal	
	Hours	Cost	Hours	Cost	Hours	Cost
Research & Draft Standards	80	\$3,855	80	\$3,845	0	\$ -
Prepare Rules	0	\$ -	0	\$ -	10	\$ 215
Conduct Public Hearing	3	\$ 145	3	\$ 144	0	\$ -
Review by Rules Review Commission	10	\$ 482	3	\$ 144	0	\$ -
Total Staff Hours & Cost	93	\$4,481	86	\$4,133	10	\$ 215

Staff costs have not been included in the total fiscal cost to the State. The task will occur only one time and be completed by existing staff. If new staff were required or the task were to be performed on an ongoing basis, these costs would be included in the fiscal impact.

AWS anticipates using the euthanasia public hearing process as a model. In this process, AWS published the rules in the NC Register, held one public meeting in conjunction with a Board of Agriculture meeting, sent the information to existing mailing lists, and placed the information on the department website. Assuming the public meeting was held in Raleigh, there would be no travel or subsistence costs associated with the meeting.

Finally, AWS will have costs associated with producing and educating breeders on the new standards. For the euthanasia rules, they scheduled ten public hearings to educate those directly affected by the rules. Assuming ten hearings would be needed, the total cost would be \$3,500 (FY 2009-10 dollars), including \$1,922 in staff time, \$ 1,234 in travel and subsistence, \$150 for web development, and \$100 for product production and printing. However, since existing staff would host the educational meetings, this cost has not been included in the fiscal impact of the bill. Additionally, the Fiscal Research Division believes that ten meetings are not needed. Table 4 provides detail on the costs to provide educational materials and ten meetings.

Table 4: Educational Materials & Meetings

	2009-10	2010-11	2011-12	2012-13	2013-14
Web development	\$ 150	\$ -	\$ -	\$ -	\$ -
Production & re/printing of materials	\$ 200	\$ -	\$ 104	\$ -	\$ 107
Educational meetings					
Total Mileage Reimbursement	\$ 1,025	\$ -	\$ -	\$ -	\$ -
Total Subsistence Reimbursement	\$ 209	\$ -	\$ -	\$ -	\$ -
Total Cost for Education	\$ 1,584	\$ -	\$ 104	\$ -	\$ 107

Registration of Commercial Breeders

AWS will have to develop a registration process for commercial dog breeders as well as process all registrations. They estimate that each registration will require one hour of administrative staff time. They will require a computer programmer to develop and “debug” the registration system. Existing staff will assume these responsibilities on a permanent basis; therefore, staff costs associated with registration have been included in the fiscal impact of S.B. 460. Supplies will also be needed. Table 5 provides detail on the expected costs to develop and implement the registration process. AWS indicated that they will need to replace the license/ registration printer in FY2010-11. Since this printer is currently owned by AWS and used for the printing of all registration and license documentation, Fiscal Research does not believe that the full cost of replacing this printer should be born by the commercial dog breeding section. The estimated 79 registrations that will be printed in FY 2009-10 are not the primary reason that the printer needs replacing; this cost has not been included in the fiscal impact of the bill.

Table 5: Expected Cost to Implement & Maintain Registration Process

	2009-10	2010-11	2011-12	2012-13	2013-14
Estimated number of facilities	79	100	150	200	240
Administrative Assistant	\$ 1,458	\$ 1,937	\$ 3,067	\$ 4,306	\$ 5,432
Computer Programmer	\$ 200				
Specialty license printer paper	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150
Postage for application notification	\$ 35	\$ 45	\$ 69	\$ 94	\$ 115
Printing costs	\$ 8	\$ 10	\$ 15	\$ 20	\$ 24
Total Costs for Registration	\$ 1,851	\$ 2,142	\$ 3,301	\$ 4,570	\$ 5,721

S.B. 460 will not require AWS to inspect commercial dog breeders; counties will have the sole responsibility to investigate violations related to commercial breeding operations and to take the appropriate enforcement actions authorized by law. It is expected that most investigations would come due to complaints about specific facilities. The cost to counties of inspecting commercial breeding facilities cannot be determined without detailed information on the cost of inspections in each county as well as an accurate estimate of the number of commercial breeding facilities in each county; this information is not available.

Table 6 summaries all expected expenditures for DACS due to S.B. 460.

Table 6: Expected Expenditures Associated with S.B. 460

	2009-10	2010-11	2011-12	2012-13	2013-14
Develop & Implement Rules	\$ -	\$ -	\$ -	\$ -	\$ -
Educational Outreach	\$ 1,584	\$ -	\$ 207	\$ -	\$ 215
Registration Costs	\$ 1,851	\$ 2,142	\$ 3,301	\$ 4,570	\$ 5,721
Consumer Protection Registry	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expected Cost	\$ 3,435	\$ 2,142	\$ 3,508	\$ 4,570	\$ 5,936

Department of Correction

Section 6 enacts G.S. 19A-29.3, making it a Class 3 misdemeanor for a commercial dog breeder to fail to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession.

Because the proposed Section 6 creates a new offense, the NC Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2007-08, 24% of Class 3 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 3 misdemeanor convictions was 3 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have significant impact on the prison population. The impact on local jail populations is not known.

As noted above, some portion of "commercial breeders" under the proposed law are already subject to licensure as "dealers." Under G.S. 19A-35, it is currently a Class 3 misdemeanor for any person subject to licensure to fail to adequately house, feed, and water animals in his possession or custody. Therefore, a portion of the potential offender pool for the new offense is already subject to prosecution for a Class 3 misdemeanor under G.S. 19A-35. AOC currently does not have a specific offense code for violations of G.S. 19A-35. The lack of AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

The new offense would also cover certain acts by "commercial breeders" which are currently covered by general animal cruelty laws. Animal cruelty offenses typically require a showing of intentional conduct. They are also classified more highly than the proposed Class 3 misdemeanor. (For example, under subsection (a) of G.S. 14-360, it is a Class 1 misdemeanor to intentionally, inter alia, deprive any animal of necessary sustenance.) The proposed offense would not appear to result in any prison impact vis-à-vis the acts that are covered by these more serious offenses.

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, Fiscal Research does not assume deterrent effects for any criminal penalty bill.

Judicial Branch

The Administrative Office of the Courts (AOC) has no data from which to determine the number of new Class 3 misdemeanor charges under this bill. Some individuals who would be considered "commercial breeders" under this bill already qualify as "dealers" under G.S. 19A-23. It is

currently a Class 2 misdemeanor to operate as a dealer without a license (G.S. 19A-34) and a Class 3 misdemeanor for any person subject to licensure to fail to adequately care for animals in his possession or custody. AOC does not know the number of defendants charged with these misdemeanors in the past, nor the additional number of people who would come under the new licensing requirements of this bill.

To the extent that this legislation broadens the number of people charged with Class 3 misdemeanors, there will be an impact on the court system. Because commercial breeders by definition are responsible for multiple dogs, it is possible that offenders charged under this bill would face multiple charges, which could add to the complexity of the cases and increase costs. In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

The new Class 3 misdemeanor offense would also cover some acts by commercial breeders that are already covered as higher-level misdemeanors under animal cruelty statutes. In 2008, there were 502 defendants charged with misdemeanor cruelty to animals (Class 1 misdemeanor), which includes intentionally depriving an animal of necessary sustenance, and 33 defendants were charged with abandonment of an animal (Class 2 misdemeanor). To the extent that commercial breeders are already charged at a higher offense level under existing statutes, the Class 3 misdemeanor in this bill would have no impact.

AOC provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

SOURCES OF DATA:

Department of Correction,
Administrative Office of the Courts,
Department of Agriculture and Consumer Services

TECHNICAL CONSIDERATIONS: None

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