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## FISCAL IMPACT REPORT

SPONSOR Grubestic DATE TYPED 3/1/05 HB \_\_\_\_\_  
 SHORT TITLE Dangerous Dog Act SB 432/aSJC  
 ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

Duplicates HB 400  
 Conflicts with SB 188

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)  
 Corrections Department (CD)  
 Department of Health (DOH)  
 Department of Public Safety (DPS)  
 Regulation & Licensing Department (RLD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment clarifies the definition of a “proper enclosure” to exclude the need for a chain or restraint on an animal that is already confined. The amendment also requires that a dangerous dog be under complete control at all times including while being transported in a vehicle. The amendment adds a new section requiring the State to prove an owner knew an animal was dangerous and the animal had previously been found by a court to be dangerous, to prosecute under State law.

#### Synopsis of Original Bill

Senate Bill 432 enacts the dangerous dog act, defines a dangerous dog, authorizes the seizure and destruction of dangerous dogs by local animal control authorities, imposes registration and handling requirements on the owners of dangerous dogs, and provides for penalties for violations of

the dangerous dog act.

The bill defines a “dangerous dog” as one that has “caused serious injury to a person or domestic animal.”

The owner of a dog that causes injury or death to a domestic animal is guilty of a fourth degree felony. If a dangerous dog causes serious injury or death to a human being the owner is guilty of a third degree felony.

### Significant Issues

Recent attacks by dogs on children and others in New Mexico have been highlighted in the media. Some members of the public have advocated for a ban on certain breeds of dogs that they consider dangerous. This bill is more generic, defining a dangerous dog based on its behavior and putting the responsibility for keeping a dangerous dog on the owner.

This bill also places the responsibility on local animal control authorities for enforcing the provisions of the bill; including issuing a certificate of registration, ensuring compliance with all the provisions required to obtain a certificate of registration, seizure and confinement of suspect dangerous animals until a court hearing decides whether a dog is classified as dangerous, and collecting fees connected with the dangerous dog act.

Care should be taken to assure this bill does not conflict or create confusion with existing statutes and regulations concerning vicious dogs and rabies quarantine following a bite exposure. Many local animal control authorities are required by ordinance to immediately seize a dog and place it in quarantine for 10 days in order to determine that it did not have rabies at the time it bit a person. This bill will require them to obtain a warrant from a court before they could quarantine the animal, this could result in a missed opportunity to quarantine the animal and lead to a person unnecessarily having to take numerous doses of rabies vaccine.

The AGO has raised the following:

- There are issues related to the enforcement of the provisions of the bill, and with due process considerations involving the destruction of a person’s property. If, for example, an animal control officer impounds a dog, but the owner will not admit the dog is dangerous and the owner fails to file a petition in district court within 14 days for a determination, the animal may be summarily destroyed. Destruction of a person’s property, in this case a dog, could withstand scrutiny only if based on whether the dog was dangerous or not.
- The bill establishes certain criteria that an owner must comply with if he possesses a dangerous dog. These include vaccinations, sterilization, implanted microchip, and enrollment in a socialization and behavior program. These requirements could be difficult to enforce and it might be difficult to verify compliance.
- The bill defines a “potentially dangerous dog” as a dog that a person could reasonably assume poses a threat based on certain behaviors, such as acting aggressive in a fenced yard and appearing to be able to jump over the fence. This arguably vague definition is open to interpretation and could be difficult to enforce.

- The bill refers to the impoundment of a dog in several places, but the language is silent with regard to who will be responsible for the basic needs of an impounded dog, including feeding and walking the animal, attending to medication administration if necessary, and special dietary considerations. If the bill authorizes impounding, the responsibility in carrying that out should be specified.

### **FISCAL IMPLICATIONS**

According to this bill, when an animal control authority obtains a warrant to seize a dog that is considered to be dangerous or potentially dangerous, they are responsible for impounding the dog pending the disposition of the case. The owner of the dog has 14 days from the seizure to bring a petition to the court and if the court finds the dog to be dangerous, 30 days to comply with the registration and handling requirements. If the court hearing is delayed, this is also added time that the animal will be impounded. The local animal control authority could wind up keeping the dog impounded for 44 days or longer. The responsibility for the cost of this impoundment, including feeding, housing, and potential medical care would be the responsibility of the local government. Many local animal shelters are already extremely crowded and the added burden of keeping a dangerous dog for this long could be problematic.

The burden of law enforcement will also fall heavily on local municipalities and counties. An animal rights expert has provided information indicating that the city of Albuquerque is requesting more than \$500 thousand for new officers, equipment and training to enforce their new dangerous dog ordinance. This does not include more kennel space.

### **ADMINISTRATIVE IMPLICATIONS**

The enforcement requirements in this bill will affect local governments who may not have sufficient staffing to carry out all of the responsibilities.

The AOC states that the judiciary will need additional resources in order to comply with this bill.

The CD states that they can absorb the additional burden as they anticipate a very minimal number of convictions and incarcerations.

### **CONFLICTS/ DUPLICATION**

SB 432 duplicates HB 400.

SB 432 has a definition of a dangerous dog and a procedure for the seizure of dangerous dogs in this bill are in conflict with definition and procedure for seizing dogs in SB 188, Pit Bull Breeding Act.

### **TECHNICAL ISSUES**

DOH notes that on page 2 of this bill, Section 2. B., line 4 and Section 2. D. (1) lines 11-12 and (2) lines 13-14 the words “domestic animal” is used. This may benefit from clarification and definition in Section 2, as to whether it includes livestock such as horses, poultry and cattle or only refers to other pets such as dogs and cats.

## **OTHER SUBSTANTIVE ISSUES**

DPS feels it is important to consider including the New Mexico State Police as having the authority to enforce this statute in areas not served by an animal control authority. Some areas have only State Police Officers as principle law enforcement agents. In matters of emergency this authority would facilitate situations with dangerous dogs.

## **POSSIBLE QUESTIONS**

The DPS asks if this statute governs animals classified as hybrid wolfs? Many of these animals exist in our state. Does the bill address these animals?

The AOC raised the following:

Several of the behaviors that may cause a dog to be classified as a “potentially dangerous dog” are highly subjective and could lead to uneven application of the Act. Must an animal control authority witness these behaviors or merely be informed of them?

What will determine if an animal control authority orders immediate impoundment or humane destruction if an owner fails to abide by the conditions for registration, confinement or handling?

DW/yr