



NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**A.4777
S.5423**

**M. of A. Englebright
Senator Serrano**

AN ACT to amend the environmental conservation law, in relation to municipalities regulating the use of traps

THE BILL IS APPROVED

This bill proposes amending section 11-1111 of the New York State Environmental Conservation Law (“ECL”) permit each county in the state to enact local laws or ordinances to restrict, limit or prohibit trapping within is municipal limits.

Many communities have expressed the need for legislative action, following a 1990 Appellate Division Decision, which held that, a Suffolk County Local Law restricting the use and sale of steel leg-hold traps within Suffolk County, was preempted by State Law. (*State v. County of Suffolk*, 165 AD2d 869 [2d Dept. 1990]). The Court Further stated that the ECL provides that “county legislative bodies shall not...exercise powers...to provide for the protection...of wildlife...within the county, or to prescribe or enforce collection of penalties for the violation thereof” (ECL 11-01111).

The adoption of this bill would provide counties the authority to enact local legislation appropriate to each county.

Many traps pose an inherent danger to children, companion animals and non-target wildlife, including endangered species. In particular, domestic animals are often caught in body traps or leg hold traps, frequently resulting in painful death or injury.¹ Numerous instances have been reported of animals, primarily cats, being caught in leg-hold traps for days before being discovered, often with fatal injuries.² Dogs are frequently reported being caught in Conibear

¹ http://www.bancrueltraps.com/b_nontarget_chart.php.

² It should be noted that the American Veterinary Medical Association (“AVMA”) considers the steel-jaw leg-hold trap to be inhumane (*American Veterinary Medical Association, position statement*, JAVMA, Vol 203, NO. 3, August 1, 1993); See also http://www.avma.org/issues/policy/animal_welfare/trapping.asp (cited at http://www.bancrueltraps.com/a_about.php. See also: http://www.avma.org/press/releases/080520_trapping.asp. Specifically, the AVMA more recently states that trapping, if and when necessary is better done with a newer type

traps while being walked by owners who are unable to remove the trap and helplessly watch their pet suffer a gruesome death. (Conibear traps are body-gripping traps designed to kill. The traps are intended to strike at the back of the neck or behind the shoulders, and generally kill an animal over approximately one to two minutes.)³ In many communities, such instances spark a groundswell of public support in favor of restricting or banning trapping. However, in light of the *State v. County of Suffolk* ruling and subsequent Appellate Division decisions, municipalities have struggled to reconcile their citizens' demands for trapping bans and/or restrictions with current state law.

For example, in 2003, after the death of a local dog caught in a "snapping trap," which had been set to kill beavers on privately owned land, over 100 signatures were gathered from residents in support of a ban on the use of certain types of traps in New Paltz.⁴ The proposed resolution did not prohibit trapping but restricted the types of traps that could be used, prohibiting "spring type traps with jaws and similar devices with the potential to maim or dismember an animal." (*Id.*) However, the Village Board members tabled the proposed resolution after the Town Attorney advised them of an Appeals Court decision overturning a similar measure in another town. (*Id.*) At a subsequent public hearing on the issue, residents urged village trustees to approve the resolution for the purpose of creating a court challenge; however, the mayor spoke against such an action, noting that the expense of such a lawsuit could force the village to take money from other projects. (*Id.*) Finally, in September of 2004, the Village Board unanimously approved a local law barring lethal traps on any village-owned property, prohibiting traps being placed within 300 feet of any building within the village, and requiring signs to be posted around property where lethal traps are laid.⁵ The law also required anyone wishing to use deadly traps in the village to notify the village's environmental commission. (*Id.*) When citizens criticized the law as insufficiently restrictive, noting that the 300 foot buffer zone would not protect beaver ponds within the village, including the site where the dog was killed, the mayor replied that a wider buffer zone would open the village up to lawsuits and that the board had done everything in its power to make the law as restrictive as possible. "Nobody up here thinks we need to trap beavers," said West. "It's a question of tactics, not end goals."

Public frustration with current state law on trapping gained further publicity in 2005 after the death of the dog, Zephyr, a mixed breed dog who had been rescued from a Hurricane in the Bahamas in 2004. While being walked by his owner in a Sag Harbor park, Zephyr's head was caught in a spring loaded grab trap. Zephyr's owner was unable to free him from the trap's metal jaws, and the 75 pound rescue dog choked to death within two minutes.⁶ Days after Zephyr's death, officials from Suffolk County towns, including Oyster Bay, Riverhead and

of leg-hold trap. These newer traps are padded with plastic and do not completely close on the animal's leg, thus minimizing serious injuries and amputations occurring in non-target animals caught in the traps.

³ http://en.wikipedia.org/wiki/Animal_trapping.

⁴ "Animal trapping an on hold" New Paltz Daily Freeman. September 13, 2003. <http://www.dailyfreeman.com/articles/2003/09/13/regional%20news/10158991.txt>

⁵ "Trustees restrict trapping in village." *Daily Freeman*, September 2, 2004. <http://www.dailyfreeman.com/articles/2004/09/02/regional%20news/12831449.txt>

⁶ *Newsday*, Oct. 14, 1986, at 21; See also, "Going Double-Barreled Against Inhumane Traps – Outraged by Canine-Killing Steel Animal Traps, Cooper Takes Action" January 25, 2006 http://www.legislatorcooper.com/pressrelease_214.html.

Southhold, stated that they believed that the individual towns in the County need the right to legislate as to this issue based on their local needs.⁷ A bill proposing adoption of this same amendment to section 11-111 was previously introduced in 2005.⁸

Recently, contentions over trapping regulations, have arisen in the town of Woodstock, where the Woodstock Environmental Commission (“WEC”) held a meeting on April 22, 2009 to determine its position as to whether leg-hold traps should be prohibited on parcels of area land owned by the New York City Department of Environmental Protection that are potentially to be opened for public use.^{9 10}

Despite public support for prohibitions on trapping in many counties, the current law makes it difficult or impossible for municipalities to enact restrictions appropriate to the needs of their population. Many affected counties seek to restrict trapping in order to safely maintain their wilderness areas for the use of the general public. Moreover, as the population density of many counties continues to grow, public safety concerns surrounding trapping similarly increase; however, the Department of Environmental Conservation has declined to necessary action to prohibit trapping.¹¹

Given that, substantial differences in population, local culture, and public opinion exist from one county to another the appropriateness of trapping or restrictions thereon should be a local decision. This bill would appropriately grant municipalities the power to determine what type of trapping, if any, should be permitted in each county.

June 2009

⁷ http://www.nycbar.org/pdf/report/NYS_trapping_report.pdf.

⁸ A. 1835, S.2142. The bill was read once in the house and then referred to the Committee on Environmental Conservation.

⁹ (“All or nothing – Trapping hits a snag in DEP quest to open its land,” Brian Hollander, *Woodstock Times*, April 30, 2009 <http://www.ulsterpublishing.com/index.cfm?fuseaction=article&articleID=484429>).

¹⁰ The DEP parcels have been opened to public use in nearby towns, where trapping is permitted. The town of Woodstock does not allow trapping on its lands, and, issues with illegal trapping in the area have been reported, including the death of a dog in a body trap in 2007. Following the WEC meeting, the commission voted to forward a recommendation to the Woodstock Town Board that such trap not be permitted on DEP parcels opened for public use. (*Id.*)

¹¹ http://www.nycbar.org/pdf/report/NYS_trapping_report.pdf.