



## Legislative Fiscal Bureau

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February 17, 2004

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 536: Pet Regulations

Assembly Bill 536 was introduced on September 25, 2003, and referred to the Assembly Committee on Agriculture. On January 8, 2004, the Committee adopted Assembly Amendments 1 and 3 by votes of 9 to 6 and Assembly Amendment 4 by a vote of 10 to 5. The committee recommended that the bill, as amended, be postponed indefinitely, on a vote of 9 to 6. On January 21, 2004, the bill was referred to the Joint Committee on Finance.

### **BACKGROUND**

2001 Act 16 (the 2001-03 budget act) included provisions for Department of Agriculture, Trade and Consumer Protection (DATCP) inspection and licensing requirements for animal shelters, kennels, pet dealers and pet breeders and required DATCP to establish license fees by rule, effective February 1, 2004.

Included in these responsibilities, were provisions that would have required DATCP to biennially license and inspect all pet dealers, pet breeders, animal shelters and kennels in the state. In order to fulfill these responsibilities, DATCP was granted authority to promulgate rules specifying minimum standards for animal shelter and kennel facilities and facilities at which pet dealers and pet breeders operate. In addition, DATCP was required to appoint an advisory committee represented by a variety of interests related to animals, in order to advise the Department on rules promulgated under the following provisions.

Further, DATCP's pet regulation program revenue (PR) appropriation was converted to a continuing appropriation. Funding for this expanded program was to come primarily from increased dog license fees, the revenues of which were to be deposited into DATCP's pet regulation appropriation. Further, DATCP was to promulgate fees for applicants for biennial licenses for pet

dealers, pet breeders, animal shelters and kennels. Before issuing an initial license, and at least once during each biennial licensing period thereafter, DATCP would have been required to inspect each licensed location. In addition, DATCP would have been allowed, at any reasonable time, to enter and inspect any facility at which a person was required to have a license.

To administer this program, the Legislature appropriated \$271,000 and 7.0 PR positions (5.0 animal health inspectors, 1.0 program assistant and 1.0 animal health consultant supervisor) in 2002-03. The Governor item-vetoed these positions in 2001 Act 16 and their corresponding spending authority, in addition to the dog license fee increases that were to provide the primary funding for the program. The Governor also item-vetoed the following two penalty provisions related to the pet facilities and regulation program: (a) provide that a person who operates without a required license may be fined not more than \$10,000 or imprisoned for not more than nine months, or both; and (b) for other violations of DATCP's pet facilities and regulations provisions or rules promulgated under these provisions, a person may be required to forfeit not more than \$1,000 for the first offense and between \$200 and \$2,000 for the second or any subsequent offense within five years. Due to the veto of the specific penalties provided by the Legislature, the penalty was set at the general forfeiture level provided in the statutes of not more than \$200. Thus, under 2001 Act 16, DATCP was required to license, regulate, and inspect pet facilities beginning February 1, 2004, but was not provided any additional funding or staff to administer the program.

The 2003-05 biennial budget, as passed by the Legislature, would have made the following changes to DATCP's pet regulation responsibilities: (1) eliminate all of DATCP's pet facility inspection and licensing responsibilities for pet dealers, animal shelters and kennels under current law and instead require the Department to solely license pet breeders; (2) allow (rather than require) DATCP to inspect pet breeders in instances where the Department has reason to suspect human or animal health violations exist, or when alerted to a potential health hazard or violation by a source outside the Department; and (3) redefine a pet breeder as one who sells at least 50 dogs or cats for resale as pets in a year, as opposed to 25, previously. However, the Governor used his item-veto authority in 2003 Act 33 to repeal the entire pet breeder, pet dealer, kennel and animal shelter statute, thereby eliminating DATCP's expanded pet regulation and animal shelter responsibilities that had been created under 2001 Act 16. The veto accomplished this repeal by deleting all modifications of the 2001 Act 16 provisions contained in the bill, except for one section, which would have repealed section 173.40 (1) (c) of the statutes. Instead, the Governor vetoed the "(1) (c)" from the bill, thereby deleting section 173.40 (the pet regulation provision) in its entirety.

In response to the requirement in 2001 Act 16, and prior to the Governor's 2003 veto of the pet regulation provision, DATCP convened an advisory council of 15 industry and animal interest representatives last biennium. This group began meeting in March, 2002, and discussed the possible requirements of the administrative rule the Department was required to promulgate to administer the pet regulation program, prior to its elimination in 2003 Act 33. The group finished its report in April, 2003, and DATCP was in the process of drafting the administrative rule for board consideration (which would have then gone to public hearing) when the program was eliminated.

## **SUMMARY OF BILL**

Assembly Bill 536, as introduced, would generally restore the pet facilities and regulation program as originally passed by the Legislature in the 2001-03 biennial budget. The bill would grant to DATCP the responsibilities to: (a) license and inspect all pet breeders, pet dealers, animal shelters and kennels biennially, and promulgate fees for applications for these licenses; and (b) promulgate rules that specify minimum standards for these pet facilities. The bill also would restore the penalties as originally passed by the Legislature in 2001. Further, under the bill, funding for the program would be provided primarily from an increase in dog license fees. In order to administer this expanded program, AB 536 would provide DATCP with 7.0 PR positions. The bill specifies that these provisions would become effective on February 1, 2004. The Assembly Committee on Agriculture adopted three amendments to AB 536, which are summarized below.

### **Assembly Amendment 1**

Assembly Amendment 1 would expand the definition of "pet dealer" from "a person who sells, or offers to sell at retail, exchanges or offers for adoption at least 25 animals, other than livestock, as pets in a year" to also include, in its list of animals, "reptiles, amphibians, and birds, other than farm-raised game birds". This change is expected to have a minimal effect on Department workload and on revenue raised from facility licenses.

### **Assembly Amendment 3**

Assembly Amendment 3 would make a number of changes to AB 536, including eliminating the dog license fee increases in AB 536, and replacing them with pet facility license fees to fund the program. As originally drafted, AB 536 would have: (a) increased the minimum dog license tax from \$3 to \$5.50 for a neutered male or spayed female and from \$8 to \$10.50 for an unneutered or unsprayed dog; (b) increased the multiple dog license tax from \$35 to \$45.50 for 12 or fewer dogs and increased from \$3 to \$5.50 the amount required for each dog in excess of 12; (c) required the county treasurer to pay to the state (to be deposited in DATCP's dog licenses, rabies control, and related services appropriation account) \$2 for each individual dog license issued, \$10 for each multiple dog license issued, and \$2 for each dog in excess of 12 for which a multiple dog license is issued, instead of 5% of the minimum dog license fee that is currently required to be remitted to DATCP; and (d) allowed the local tax collecting official to retain 75¢ (or a greater amount established by the county board), rather than 25¢, for each license issued as compensation for the service, provided the collecting official was not a full-time, salaried municipal employee. If the collecting official was a full-time, salaried municipal employee, this compensation would have been deposited into the treasury of the town, village, or city. Assembly Amendment 3 would eliminate these provisions (which has the effect of eliminating all dog licensing related provisions that were a part of AB 536) and replace them with pet facility license fees. These facility fees would consist of an annual license fee of \$75 for a person that seeks to operate an animal shelter, and an annual license fee of \$250 for any person that desires to operate as a pet dealer, pet breeder,

or to operate a kennel. The amendment would specify that these fees are nonrefundable if DATCP denies the license sought, and would eliminate the provision that requires DATCP to promulgate rules specifying fees for biennial licenses for pet facilities, but would allow DATCP, by administrative rule, to set lower annual license fees than those listed in the statutes. Further, the amendment reduces, by two, the number of positions authorized to DATCP for implementing and administering the program from 7.0 positions to 5.0 positions. Finally, Assembly Amendment 3 would change the bill's effective date from February 1, 2004, to October 1, 2004.

#### **Assembly Amendment 4**

Assembly Amendment 4 would add the requirement that DATCP review its pet facilities and regulations program at least every four years and report the results of this review to the standing committees of the Legislature with jurisdiction over agricultural matters.

#### **AB 536 As Amended**

AB 536, as amended, would provide the following resources and responsibilities to DATCP regarding pet regulations.

Prohibit a person from operating an animal shelter without a DATCP license for each separate location at which an animal shelter is operated, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Define an animal shelter as either: (a) a facility that is used to impound or harbor at least 25 seized, stray, abandoned, or unwanted dogs, cats or other animals in a year and that is operated by the state, a political subdivision or a veterinarian licensed by the Veterinary Examining Board; or (b) a facility that is operated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, that is used to shelter at least 25 animals in a year, and that is operated by a humane society, an animal welfare society or a nonprofit association.

Prohibit a person from operating a kennel without a DATCP license for each separate location at which a kennel is operated, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Define a kennel as a facility where dogs or cats are kept for 24 hours or more for boarding, training or similar purposes for compensation, except a kennel would not include an animal shelter or a facility owned or operated by a licensed veterinarian solely for the provision of veterinary care.

Prohibit a pet dealer (a person who sells, or offers to sell at retail, exchanges, or offers for adoption at least 25 reptiles, amphibians, birds, other than farm-raised game birds, or mammals, other than cattle, horses, swine, sheep, goats, deer, llamas and related species, including game species, as pets in a year) from operating without a DATCP license for each separate location at which they conduct such business, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Further, prohibit a pet breeder (one who sells at least 25 dogs or cats for resale as pets in a year, except a breeder does not include a pet

dealer) from operating without a DATCP license for each separate location at which they conduct such business, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection.

Allow DATCP to promulgate rules specifying minimum standards for animal shelter and kennel facilities and facilities at which pet dealers and pet breeders operate, and specifying any of the following for persons required to obtain an animal shelter, kennel, pet dealer or pet breeder license: (a) minimum requirements for humane care; (b) requirements relating to the transportation of animals; (c) grounds for license revocation; (d) grounds for DATCP to issue orders prohibiting the selling or moving of an animal; (e) minimum ages for the sale of animals; (f) re-inspection fees to be charged when a DATCP inspection reveals conditions that required correction and re-inspection; (g) requirements for record keeping; and (h) requirements relating to space and opportunity for exercise to be provided to animals.

Require that persons who wish to operate as an animal shelter, pay DATCP an annual license fee of \$75, and require persons who wish to operate as a pet dealer, pet breeder or kennel to pay DATCP an annual license fee of \$250, unless the Department sets lower fees by administrative rule. Deposit revenues from proposed pet dealer, pet breeder, animal shelter and kennel licenses into DATCP's pet regulation PR continuing appropriation. Before issuing an initial license, and at least once during each biennial licensing period thereafter, require DATCP to inspect each licensed location and allow DATCP, at any reasonable time, to enter and inspect any facility at which a person is required to have a license. Provide 5.0 PR positions, for the purpose of regulating pet facilities.

Establish penalties for persons required to obtain an animal shelter, kennel, pet dealer or pet breeder license. Provide that a person who operates without a required license may be fined not more than \$10,000 or imprisoned for not more than nine months, or both. For other violations of these provisions or rules promulgated under these provisions, a person may be required to forfeit not more than \$1,000 for the first offense and between \$200 and \$2,000 for the second or any subsequent offense within five years; if the violation involves the keeping of animals, each animal to which a violation occurred would constitute a separate violation.

## **FISCAL EFFECT**

In its fiscal note submitted for AB 536, DATCP estimated that the bill would entail ongoing costs of \$470,000 PR annually and require 7.5 PR positions (5.0 animal health inspectors, 1.0 animal health supervisor, 1.0 program assistant and 0.5 attorney).

Under the bill, as amended, DATCP would be provided 5.0 PR positions for pet facility responsibilities. Department officials indicate that if five staff are authorized, DATCP would likely hire 1.0 program coordinator, 3.0 animal health inspectors and 1.0 program assistant. Therefore, the total cost of the program can be estimated at \$249,800 PR annually beginning in 2004-05.

DATCP estimates it would be responsible for inspecting and regulating over 1,300 pet dealers, breeders, kennels, animal shelters and animal rescue facilities. This includes inspecting every facility during the initial registration, and once per biennium thereafter. In its budget request from the 2003-05 biennial budget (which had the same inspection requirements for DATCP as under the bill), the Department estimated that inspecting the 1,300 facilities would take approximately 10,300 inspector hours, which consisted of initial four hour inspections at each of the 1,300 facilities (5,200 hours), six hour re-inspections at half of the facilities (3,900 hours), and an additional 1,200 hours spent on the process of license revocation, license denials and complaint follow-ups. Due to the creation of a new program, and the unfamiliarity with the program that pet dealers, breeders, kennels and animal shelters are expected to have, the Department anticipates many of its initial inspections would be primarily educational visits, with second inspections serving as more formal inspections. As a result, DATCP estimates it would need to make a number of second, and in some cases third, inspections. In addition, the Department also anticipates additional workload resulting from hearings that would occur in response to the denial of applications for licensure. However, following the initial round of inspections faced by DATCP in the program's first year or so, DATCP would generally only need to inspect each facility once per biennium (650 facilities annually). The Department argues that this decrease in routine inspections would be offset by increased public complaints of pet facility problems and the Department's responsibility to remedy these problems. But, it can also be argued that re-inspections would likely be greatly reduced in future biennia, as the facilities licensed in the prior biennia would be familiar with the program's rules and regulations. In addition, should DATCP need additional staff for its pet facilities responsibilities, it may request them through the Joint Finance s. 16.505 passive review procedure, or as part of a budget request at a later date.

In 2002-03, DATCP collected \$80,400 from dog license fees (5% of local revenues), which goes to support 1.0 PR veterinarian and related costs for the Department's dog license and rabies control program. This program supports the state humane officer, who is responsible for reviewing and approving local governments' rabies programs; providing yearly humane officer training; providing general rabies education; conducting investigations and administering quarantines; certifying humane officers; and other program maintenance. An additional \$16,600 from tag fees and training fees also were deposited into this account for total revenues of \$97,000 in 2002-03. The account had a July 1, 2003, balance of \$168,000. Table 1 shows the fund condition of DATCP's pet regulation account under current law. The general fund lapse amount shown in 2004-05 reflects the amount assessed by DATCP to the appropriation to meet the requirements of 2003 Act 33.

**TABLE 1**

**Pet Regulation PR Account (Current Law)**

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$133,000	\$168,000	\$144,200
Revenue	97,000	99,400	99,400
General Fund Lapse	0	0	-15,200
Expenditures	<u>-62,000</u>	<u>-123,200</u>	<u>-125,900</u>
Closing Balance	\$168,000	\$144,200	\$102,500

Under the bill, as amended, animal shelters would be required to pay DATCP an annual license fee of \$75, while pet dealers, pet breeders and kennels would be required to pay DATCP an annual license fee of \$250, unless the Department were to set lower fees by rule. As shown in Table 2, these licensing fees, would yield annual revenues of up to \$288,500 (which would be deposited into DATCP's pet regulation PR appropriation), provided that no pet facilities would cease operation in response to the regulations or license fee levels. DATCP officials believe these fee levels will have little effect on the number of pet facilities in operation. However, if there were to be, for example, a ten percent reduction in the number of pet facilities, annual revenue would be expected to be \$259,700 (with expenditures of approximately \$250,000). Should revenues under the bill be greater than necessary to fund the program, DATCP could promulgate lower fees through administrative rule.

As a continuing appropriation, all monies received by DATCP's pet regulation appropriation may be spent with the Department of Administration's approval. As a result, no additional funding needs to be approved for DATCP from this appropriation. An annual appropriation has the effect of limiting expenditures from the appropriation to the amount listed in Chapter 20 of the statutes, unless legislative approval for additional expenditures were to be granted. If additional legislative oversight of expenditures was sought, the appropriation could be converted to an annual appropriation.

**TABLE 2**

**Estimated Pet Facility Licensing Fees**

<u>Type</u>	<u>Current Facilities</u>	<u>Annual Fee</u>	<u>Annual Revenue</u>
Pet Breeder	472	\$250	\$118,000
Pet Dealer	190	250	47,500
Kennel	427	250	106,800
Animal Shelter	<u>216</u>	75	<u>16,200</u>
Total	1,305*		\$288,500*

\*Maximum expected revenues, assuming all current facilities seek licenses under the bill.

Table 3 shows DATCP's pet regulation appropriation account condition, under AB 536, as amended. To the extent that some current pet facilities may choose to cease operations, rather than become licensed under the bill, program revenues and the associated account balance would decline.

**TABLE 3**

**Estimated Pet Regulation PR Account (AB 536, as Amended)**

	<u>Actual 2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$133,000	\$168,000	\$144,200
Revenue	97,000	99,400	387,900
General Fund Lapse			-15,200
Expenditures	<u>-62,000</u>	<u>-123,200</u>	<u>-375,700</u>
Closing Balance	\$168,000	\$144,200	\$141,200

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