



Legislative Fiscal Bureau

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October 28, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 250 and Senate Bill 208: Regulation of Persons Selling Dogs or Operating Animal Shelters

Assembly Bill 250 and Senate Bill 208 are companion bills that would require the Department of Agriculture, Trade and Consumer Protection (DATCP) to license persons operating certain animal shelters, animal control facilities and dog breeding facilities, or operating as dog breeders or dog dealers. DATCP would be required to inspect the premises of any license applicants prior to issuing a license, and perform subsequent inspections at least biennially thereafter. The bill would also establish health and care standards for dogs kept and sold by licensees, as well as requirements for documentation of a dog's health to be provided to purchasers.

The Assembly Committee on Consumer Protection adopted Assembly Substitute Amendment 1 to AB 250, as amended by Assembly Amendment 1, and recommended passage of the bill on October 21 by a vote of 9 Ayes, 0 Noes. The Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection adopted Senate Substitute Amendment 1, as amended by Senate Amendment 1, and recommended passage of the bill on October 14 by a vote of 5 Ayes, 0 Noes. The two bills, as recommended for passage, are identical and are referred to as "the bill" in the following sections.

CURRENT LAW

Under Chapter 95 of the statutes and several administrative rules, DATCP currently administers programs pertaining to the health of domesticated livestock, the inspection of livestock in interstate transport, the registration of livestock premises and the licensing of certain enterprises involved in commercial animal sales. With the exception of provisions under the rabies control program of Chapter 95, DATCP's animal health responsibilities generally do not extend to dogs or facilities that house them. However, the statutes contain provisions for: (a) the appointment,

certification and duties of humane officers (Chapter 173); (b) the licensing of dogs and disposition of cases of damage done by dogs (Chapter 174); and (c) prohibitions against animal cruelty (Chapter 951). Although DATCP is required to conduct training and certification of humane officers, these chapters are generally administered and enforced by political subdivisions and local law enforcement agencies.

Under the federal Animal Welfare Act and amendments, the U.S. Department of Agriculture (USDA) licenses non-livestock animal dealers, exhibitors and operators of auction sales. Federal regulations exclude from licensing requirements most retail outlets, animal shows, organized animal competitions such as state and county fairs, and hobby breeders with three or fewer breeding females. This generally limits federal regulation, as it concerns dog breeders and dealers, to large sellers such as wholesalers and auctions. DATCP indicates USDA currently regulates 72 facilities in Wisconsin.

SUMMARY OF BILL

Substitute Amendment 1

Licensing Requirements. The bill would require any of the following to secure a license that would be issued by DATCP: (a) an animal shelter, defined as a facility sheltering at least 25 dogs in a year that promotes the welfare, protection and humane treatment of animals and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group; (b) an animal control facility, defined as a facility for the care of animals operated under a contract with a local unit of government; (c) a dog breeder, provided the person sells 25 or more dogs in a year that the person bred and raised, except if the 25 or more dogs sold come from no more than three litters; (d) a dog breeding facility, defined as a place at which dogs are bred and raised, and which sells 25 or more dogs in a year, except if the 25 or more dogs sold are from no more than three litters; (e) a dog dealer, which is a person other than an out-of-state dog dealer who sells, distributes or trades, or offers for sale, distribution or trade, 25 or more dogs in a year that the person has not bred and raised, or a person who operates an auction at which 50 or more dogs are sold or offered for sale in a year; and (f) out-of-state dog dealers, which are persons who are not Wisconsin residents who in a year bring 25 or more dogs into the state to sell.

Effective on the first day of the 18th month after publication of the act, the bill would require any person required to be licensed to obtain a license for each premises at which the person operates. Out-of-state dog dealers would be required to obtain one license. The following three entities would not require a license: (a) licensed veterinarians; (b) an individual providing foster care to a dog in his or her residence, and doing so at the request of a person operating a licensed animal shelter; (c) a person conducting a one-time kennel liquidation, provided that: (1) the individual sells no more than 30 dogs; (2) the individual makes all the dogs initially for sale at the same time; (3) the individual sells only dogs he or she owns; (4) the individual does not intend to engage in activities in the subsequent year for which a license would be required; (5) the individual was not licensed during the previous year; and (6) the individual notifies DATCP at least 30 days

prior to the sale.

License Fees. The bill would establish annual license fees based on the number of dogs offered for sale in a year. Table 1 shows the license fees required of an entity at the time of application. Licenses for out-of-state dog dealers would be 150% of the fee for in-state dealers.

TABLE 1

License Fees under AB 250/SB 208

<u>Dogs Offered for Sale</u>	<u>Resident License Fee</u>	<u>Nonresident License Fee</u>
25 to 49	\$250	\$375
50 to 99	500	750
100 to 249	750	1,125
250 or more	1,000	1,500

Animal shelters and animal control facilities would be required to pay license fees of \$125. Additionally, DATCP would be provided administrative rule-making authority to set fees higher than those enumerated in the bill, should it be necessary to cover administrative costs of the program. Revenues would be deposited to an existing DATCP appropriation for dog licensing and rabies control programming, and these revenues would support 6.0 program revenue (PR) positions for DATCP that would be authorized. The bill would require DATCP to issue or deny a license within 30 days of the application being completed and all fees being submitted.

Inspections. Under the bill, DATCP would be required to inspect the premises of any in-state license applicant prior to issuing a license, as well as conduct inspections of licensed facilities biennially thereafter. For out-of-state dog dealers, the person would be required to provide copies of both any license required by the state in which that person operates and any required federal licenses. DATCP would be authorized to enter and inspect the premises during normal business hours, and would be authorized to charge a fee for reinspections of premises at which violations were previously found. Reinspection charges would be \$150, unless DATCP were to set a different fee level by administrative rule.

License Issuance, Suspension and Revocation. DATCP would be authorized to deny, refuse to renew, or revoke a license if an applicant or licensee: (a) is found unqualified or improperly equipped to conduct the activities that would be licensed; (b) has violated applicable laws, orders or regulations; or (c) has misrepresented or intentionally omitted material facts during the application process. DATCP would be authorized to issue licenses with relevant conditions placed on the issuance, with the license being void should the licensee fail to complete conditions in any time period specified.

DATCP would be authorized to suspend a license with written notice but without a prior

notice or hearing, provided that the Department found: (a) any condition on the premises imminently threatening the health, safety or welfare of any animal on the premises; or (b) evidence that the licensee committed an act of animal cruelty, or such an act was committed on the premises. In a written notice of suspension, DATCP would be required to state the reasons for suspension and the conditions for reinstatement, as well as describe the applicant or licensee's right to appeal as described below. Also, the Department would be required to specify a date after which a reinspection would take place, but DATCP would be authorized to conduct the reinspection without further notice. DATCP could reinstate a license on a date it found appropriate, provided that conditions at the premises warranted reinstatement.

A licensee receiving a notice of suspension would be entitled to request a hearing to contest the suspension. Any appeals would be required in writing and within 10 days of receiving the suspension notice. Appeals would be governed by applicable procedures in Chapter 227 of the statutes and DATCP administrative rules.

Animal Health and Welfare. Any licensee under the bill would be required to provide sufficient food and water to maintain the health of dogs they keep. If fresh water was not always available, the licensee would be required to provide it daily in sufficient quantity to maintain the health of dogs on the premises. Licensees would also be required to provide: (a) sufficient daily access to exercise, as determined by DATCP; and (b) necessary and standard veterinary care in a timely manner. Each dog would have to be observed daily to monitor the animals' health and temperament. All facilities would need to have adequate lighting, ventilation and proper temperatures maintained for the type or breed of dog housed. Also, the bill would prohibit a licensee from transferring or selling a puppy until it is seven weeks old.

The bill would require any enclosures used to house a dog to be of an appropriate size for the dog based on the dog's size and age, as well as based on the number of other dogs in the enclosure and the length of time the dogs are enclosed. The bill would leave the determination of an appropriate size, as well as what constitutes an excessive amount of time spent enclosed, to DATCP under the rule-making process, consistent with the general statutory guidelines. Enclosures would be required to be kept in clean and sanitary conditions, and would also be required to be structurally sound so as to prevent injury. Wire flooring would be required to be coated or of sufficient gauge to ensure it would not injure the dog, and DATCP would also promulgate rules specifying appropriate usage of wire flooring. Under the bill, dogs kept outdoors must be breeds or types that are typically kept outdoors, provided that individual dogs are acclimated to the outdoors and that the licensee has provided adequate shelter from sun and inclement weather.

Records. Licensees would be required to keep records of all dogs that come into their possession. Records must describe: (a) the dog's breed or type, sex, color and distinctive markings, and date of birth or approximate age; (b) the dog's official USDA tag number, or tattoo, or microchip information, if any; (c) a statement that the dog was born in the licensee's possession, or a statement of the name and address of the person last in custody of the dog, with that person's USDA license number or state of residence, if not registered with the USDA; (d) the date of the

dog's acquisition, if not born in the licensee's possession; (e) the date and method of a dog's disposition; and (f) any other information required by DATCP.

Upon sale, licensees would be required to provide the following records to purchasers: (a) a certificate of veterinary inspection (CVI), attesting that a veterinarian has examined the dog and found no signs of infectious or contagious diseases as of the examination; and (b) a copy of all vaccination records for the dog, showing the date each vaccine was administered and the name of the administrator. If a dog to be sold at auction is not spayed or neutered, a seller must provide written proof that the dog tested negative for brucellosis within the previous 30 days with the use of a DATCP-approved test. Brucellosis is a disease that impairs birthing and fertility.

Temporary Dog Markets. The bill would define a temporary dog market as a place at which persons sell dogs, and may sell other items, from booths or spaces rented from, or provided at no cost by, the operator of the establishment. These would commonly be events such as flea markets. However, temporary dog markets would not include dog trials, which are organized competitions sanctioned or recognized by dog organizations that involve sporting breeds.

To sell dogs at a temporary market, a seller would be required to provide to the market operator: (a) his or her name and address; (b) a license number, if required to be licensed by DATCP under the bill; (c) a description of each dog being offered for sale, including the dog's breed or type, sex, color and distinctive markings, and date of birth or approximate age; (d) for each dog, a statement that the dog was born in the seller's possession, or a statement of the name and address of the person from whom the dog was acquired; and (e) documentation showing that the person complied with the rabies vaccination requirements under s. 95.21 of the statutes, and with any other applicable provisions relating to the import of dogs into Wisconsin.

To host dog sellers at a temporary market, under the bill a market operator must: (a) register with DATCP; (b) take reasonable steps to ensure each seller met all requirements listed above; (c) obtain, review and keep, for at least five years, copies of all information provided by each seller, and provide the information to DATCP for inspection and copying upon the Department's request; and (d) employ or contract with a licensed veterinarian to examine the dogs offered for sale at the market, as well as examine sellers' records listed above, for each day the dogs are offered for sale, provided that the dogs are to be sold for two or more consecutive days.

DATCP would be authorized to inspect temporary dog markets and the information provided by sellers as listed above at any time during normal business hours.

Reporting Mistreatment. If the Department had reasonable grounds to suspect mistreatment, DATCP would report information supporting its belief that mistreatment occurred in violation of Chapter 951 of the statutes to the local humane officer or law enforcement agency with jurisdiction.

Rules. The bill would establish an advisory committee to consult with the Department on the promulgation of any administrative rules necessary to implement the bill. The advisory group

would consist of up to 12 members, including one of each from the following 11 groups: (a) persons selling dogs at retail; (b) dog breeders that sell large dogs and that sell fewer than 50 dogs per year; (c) dog breeders that sell small dogs and that sell fewer than 50 dogs per year; (d) dog breeders that sell large dogs and that sell 50 or more dogs per year; (e) dog breeders that sell small dogs and that sell 50 or more dogs per year; (f) sporting associations whose primary activities involve dogs; (g) humane societies providing shelter to fewer than 500 dogs per year; (h) humane societies providing shelter to 500 or more dogs per year; (i) veterinarians; (j) animal control facilities; and (k) breed rescue groups. For the member representing veterinary groups, the member is to be selected from nominations submitted by the Wisconsin Veterinary Medical Association. Other members would be selected from nominations made by one or more groups representing the category. The advisory committee, once convened, would not expire until one year after necessary rules are promulgated. The committee would also recommend amendments to the rules.

Penalties. A person operating without a required license would be subject to a fine of up to \$10,000 and imprisonment of up to nine months. For a person who violates a provision of the bill or a rule promulgated under the bill aside from unlicensed operation, the person would be subject to a forfeiture of up to \$1,000 for a first offense, and not less than \$200 nor more than \$2,000 for a second or subsequent offense within five years. The bill specifies that each animal that is the subject of a violation constitutes a separate offense. In addition to any penalties imposed, a court may order a violator to pay expenses for the care of dogs that are removed from his or her possession due to mistreatment.

Temporary Licenses. The bill would authorize DATCP to issue temporary licenses to applicants up to the 1st day of the 30th month beginning after the general effective date of the bill. Issuance of a temporary license would not require an initial inspection of the premises by DATCP. The temporary license would remain in effect pending DATCP's decision on an application, including the completion of the initial inspection. The 30-day limit on DATCP to issue or deny a license would not apply for instances in which a temporary permit is issued.

Amendment 1

Amendment 1 to Substitute Amendment 1 would clarify that requirements pertaining to brucellosis documentation apply only to licensees under the bill.

FISCAL EFFECT

The bill would provide DATCP with 6.0 PR positions under a continuing appropriation that currently receives deposits of certain dog license revenues required under Chapter 174 of the statutes, as well as other fees. In the fiscal note submitted for the bill, DATCP estimated that these positions would have ongoing costs of \$510,600. DATCP reports that 3.0 positions would be field inspectors responsible for initial and biennial inspections, as well as inspections following complaints and confirmed violations. One position would be a compliance specialist, which would have primary duties of leading investigation and enforcement activities. One position would be a

license/permit program associate, responsible for administrative duties of licensing, facilities documentation, and assignment of inspections subsequent to complaints. Another 1.0 position would be for a program coordinator to manage program activities and act as a liaison with the dog-breeding industry. The costs of each position are shown in Table 2. Supplies costs include: (a) costs for standard office equipment and supplies; (b) rent costs for in-house staff and travel costs for field staff, including the use of state fleet vehicles; (c) specialized training for field inspectors; (d) information technology equipment, some of which are one-time expenditures; (e) charge-backs for services provided by other state agencies; and (f) amortized costs for development of a database of licensees.

TABLE 2

Proposed Positions under AB 250/SB 208

<u>Position Title</u>	<u>Total Salary & Fringe</u>	<u>Total Supplies</u>	<u>Total Cost</u>
Field Inspector (3.0)	\$155,400	\$93,500	\$248,900
Compliance Specialist (1.0)	60,600	31,200	91,800
Program Associate (1.0)	46,100	14,400	60,500
Program Coordinator (1.0)	<u>93,500</u>	<u>15,900</u>	<u>109,400</u>
Total	\$355,600	\$155,000	\$510,600

TABLE 3

Estimated Revenues under AB 250/SB 208

<u>Operation/Service</u>	<u>Fee Amount</u>	<u>Estimated Number</u>	<u>Estimated Revenues</u>
Sale of 25 to 49 dogs	\$250	405	\$101,250
Sale of 50 to 99 dogs	500	170	85,000
Sale of 100 to 249 dogs	750	150	112,500
Sale of 250 or more dogs	1,000	130	130,000
Animal Shelters/ Control Facilities	125	<u>145</u>	<u>18,125</u>
In-State Facilities Subtotal		1,000	\$446,875
Certificates of Veterinary Inspection (CVI)	0.60	73,250	\$43,950
Facilities Reinspections	150	75	11,250
Out-of-State Facilities	Various	17	<u>12,610</u>
Total			\$514,685

Table 3 shows the estimated revenues under the program that would be created by the bill. Under these revenue estimates, the program would be expected to have revenues approximately equal related staffing and expenditures. However, it is difficult to estimate the number of operations that would require licenses under the bill, given the limited knowledge of the number of breeders and dealers in Wisconsin, as well as the size of breeding and selling operations. DATCP reports that the estimates used in the bill's fiscal note use figures from Pennsylvania, which categorizes breeders and dealers similarly to the manner proposed in the bill. DATCP reports that due to Pennsylvania having approximately twice the population of Wisconsin, estimated operations within each category represent half of the number in each category in Pennsylvania. It is possible that the institution of a licensing and fee system may cause some operations to close or to leave the state. DATCP reports other states have experienced initial declines in the number of operations that would be subject to licensing requirements. However, DATCP also reports some states, such as Colorado, have reported increases in licenses issued shortly after licensing began. DATCP indicates this appears to be the result of operators' familiarity with the regulatory system, as well as consumer preference to do business with licensed operations. DATCP reports that the estimates used for the fiscal note were assumed to be a long-term sustainable figure, as they are based on Pennsylvania's stable figures.

DATCP issues certificates of veterinary inspection (CVIs) for veterinarians to complete and provide to the parties to a sale. Under current law, the Department collects \$5.60 for CVIs used in interstate transport and \$0.60 for CVIs used in intrastate transport. CVIs issued under the bill would be for intrastate use, and DATCP indicates a new CVI may be created for dogs sold by licensees.

Under the bill, dog breeders, dealers, animal control facilities and animal shelters would be subject to licensing requirements beginning the first day of the 18th month beginning after the bill's effective date. This would, therefore, make licenses required for operation near the end of the 2009-11 biennium. However, if the bill were to be enacted after the first of the year, it should be noted that revenues in the current biennium, if any, may be negligible.

It should also be noted that the PR continuing appropriation to which the revenues would accrue had a June 30, 2009, balance of \$39,500. As a continuing appropriation, the Department may spend all monies received under the appropriation with the approval of the Department of Administration (DOA). In 2008-09, the appropriation had revenues of \$117,500, which consisted of: (a) \$84,700 from the 5% of dog-license revenues payable to the state under Chapter 174 for humane officer programming and rabies control; (b) \$20,100 from sales of dog tags; and (c) \$12,700 from providing training services and certification to humane officers. (Minimum dog license fees under the statutes are currently: (a) \$3 for neutered males and spayed females; (b) \$8 for unneutered males and unspayed females; and (c) for persons owning more than one dog wishing to register multiple animals under one license, \$35 for not more than 12 dogs, with \$3 payable for each dog more than 12.) This appropriation currently supports 1.0 position, who is the state humane officer. The state humane officer is a veterinarian responsible for reviewing and approving local governments' rabies control programs, providing training and certification for local humane officers, providing general rabies education, conducting investigations, administering animal

quarantines, and other program maintenance.

DATCP reports that account revenues are primarily dependent on the state's share of minimum dog license fees, which are set statutorily. Although local units of government are authorized to increase dog license fees to cover their costs of implementing dog licensing and control programs, the proportion payable to the state has remained unchanged since 1991.

The account condition under current law is shown in the attachment, with annual estimated expenditures in 2009-11 assumed to be relatively constant with expenditure levels of the last three fiscal years. As shown in the attachment, expenditures from this account have exceeded revenues for each of the last four years by an average of \$34,000 annually. Under these assumptions, the account would be projected to be in deficit if no other actions are taken to reduce expenditures or increase fee revenues. Further, the attachment reflects minimum amounts expected to be lapsed to the general fund under provisions of 2009 Act 28 relating to mandatory employee furloughs, rollbacks of general wage adjustments and across-the-board reductions. Actual amounts may be higher based on additional agency lapse requirements.

As shown in Table 3, DATCP anticipates approximately 1,000 operations being required to obtain licenses under the bill. However, DATCP reports it is difficult to estimate at what rate prospective licensees would submit applications as the deadline for licensure approaches. The rule-making process, which would take place in consultation with the advisory council established under the bill, would likely take one year or longer to complete. DATCP reports it intends to begin rule-making using existing staff. Until rules take effect, license applications are unlikely to be received. However, it is possible that some operators may seek a license as soon as rules are in effect, as licensure may allow these businesses to market themselves as state-licensed. Additionally, the time between rule promulgation and the effective date of licensure requirements will likely be six months or less. In this case, it is likely that the Department will require inspectors and a licensing program associate to begin processing applications shortly after completion of the rules. As such, the Department expects to hire additional staff as dictated by projected work demands and subject to the condition of the PR appropriation.

However, it should also be noted that the Department could use the temporary-license authority under the bill to schedule mandatory initial inspections in a manner appropriate to the staff available. Temporary licenses would not require an initial inspection. Further, as the Department develops rules in consultation with the breeding industry and advisory council, it is possible the Department will learn more about the number of facilities required to be licensed. This may be instructive as to how many additional staff would be required for ongoing program obligations.

TABLE 4

Estimated Annual Workload by Position

<u>Activity</u>	<u>Occurrences</u>	<u>Hours per Occurrence</u>	<u>Annual Hours</u>	<u>Equivalent Positions</u>
Field Inspector				
Inspection - Routine	500	10	5,000	
Compliance Actions	50	30	1,500	
Inspection - Initial	45	10	450	
Reinspections	75	6	450	
Inspections - Complaints	85	10	850	
Industry Education	---	250	<u>250</u>	
Subtotal			8,500	4.08
Licensing Program Associate				
License Coordination	---	500	500	
Database/Record Maintenance	---	400	400	
Education and Outreach	---	400	400	
Tracking Inspections	---	300	300	
Reinspections Billing	---	150	<u>150</u>	
Subtotal			1,750	0.84
Program Coordinator				
Coordinate Compliance Actions	---	800	800	
Industry Liaison	---	350	350	
Complaint Response	---	350	350	
Program Organization/Evaluation	---	300	300	
Education and Outreach	---	200	<u>200</u>	
Subtotal			2,000	0.96
Total			12,250	5.90

Table 4 shows estimated activities performed by the staff that would be authorized under the bill to implement the program. Equivalent positions are based on a full-time position working 2,080 hours annually. In estimating hours for initial, routine and complaint inspection, DATCP reports it used estimates from the USDA under the federal inspection program for operations that breed dogs and sell at wholesale. DATCP reports that while USDA averages 12 hours in these activities, USDA generally inspects larger facilities than DATCP expects to handle, and federal inspectors also estimate more hours associated with administrative duties and travel. Compliance actions of inspectors include time associated with notices and procedures for license denials, suspensions and revocations. Such actions may prompt administrative hearings, as well.

It is expected that staff workload would be higher at the program's outset, given the requirement that all facilities be inspected prior to licensure but only biennially thereafter (approximately 500 facilities annually). Also, DATCP reports that the program's early stages will

likely involve educational outreach to the industry to explain requirements under the statutes and rules. This may result in multiple visits to sites at the outset of the licensing program for purposes of education, inspection, or reinspection pursuant to violations that may be found. However, educational and compliance efforts would likely decline as licensees become familiar with program provisions in the future, with inspections primarily consisting of routine biennial inspections, complaint-initiated inspections and compliance-oriented reinspections of facilities with substantial or multiple violations.

Given the uncertainty over the number and size of facilities to be regulated under the bill and associated revenues, it is possible that adjustments may be necessary in the future to align available revenues and program workload. Although the Department reports staff will be hired conditioned on available resources in the continuing appropriation, the bill would authorize DATCP to increase license and reinspection fees by administrative rule to cover program costs. Further, because the appropriation receiving the fee revenues is continuing, DATCP would be authorized to expend all monies received from the increased revenues, subject to DOA approval. Conversely, an annual appropriation limits expenditures to the amount listed in the state appropriations schedule in Chapter 20 of the statutes, unless the Legislature approves additional expenditure authority. If additional legislative oversight of this appropriation was sought, the appropriation could be converted to an annual appropriation.

Prepared by: Paul Ferguson

ATTACHMENT

Dog Licensing and Regulation Account Condition - Current Law

	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	Estimated <u>2009-10</u>	Estimated <u>2010-11</u>
Opening Balance	\$176,800					
Revenues	103,200	\$149,200	\$109,900	\$67,600	\$39,500	-\$1,800
Expenditures	130,800	106,600	104,800	117,500	100,000	100,000
Lapses/Transfers	<u>0</u>	144,700	147,100	145,600	126,000	137,000
Closing Balance	\$149,200	<u>1,200</u>	<u>0</u>	<u>0</u>	<u>15,300</u>	<u>15,300</u>
		\$109,900	\$67,600	\$39,500	-\$1,800	-\$54,100
Annual Surplus/ (Deficit)	(\$27,600)	(\$38,100)	(\$42,300)	(\$28,100)	(\$41,300)	(\$52,300)