
Sunrise Analysis: Regulation of Large-Scale Dog Breeders and Facilities

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 11-02
October 2011



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

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Dogs by the Numbers

No. of large-scale breeders:
unknown, est. 12 - 30

Dog population increase:
approx. 14,000 annually

Annual puppy imports:
1,200 FY 2010; 400 FY 2011

Recommendations

Responses

Previous Audits

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Sunrise Analysis: Regulation of Large-Scale Dog Breeders and Facilities

Report No. 11-02, October 2011

Proposed Regulation of Dog Breeder Business Is Problematic, Better Options Are Available

A lack of reliable information

In early 2011, the problem of large-scale commercial dog breeders in Hawai'i came to light when a puppy mill was shut down for its allegedly cruel treatment of 153 dogs. Hawai'i is one of 22 states that lack any regulation of dog breeders.

Our analysis of Senate Bill No. 1522, Senate Draft 2, House Draft 1 is not a typical sunrise review because the main purpose of the bill is to ensure that dogs are treated humanely, rather than to protect consumers from risks posed by an unregulated profession or vocation. Nevertheless, we proceeded to address the Legislature's request under the sunrise criteria of the *Hawai'i Regulatory Licensing Reform Act*, Chapter 26H, Hawai'i Revised Statutes.

As proposed, the bill requires the Department of Commerce and Consumer Affairs (DCCA) to issue licenses to large-scale dog breeders based on a qualifying inspection and to enforce the requirements for humane dog breeding. We found the bill problematic for several reasons. First, there is no reliable information on the magnitude of the problem of unscrupulous breeders in Hawai'i. Both the Better Business Bureau and the DCCA report only a handful of complaints in the past few years. Proponents of the bill could not provide information that satisfies the sunrise criteria and our own research showed the potential harm to the public by dog breeders is at best anecdotal.

Secondly, without reliable data on the numbers and size of large-scale dog breeders, the cost of enforcement is unknown. Assuming 30 breeders (one to 20 on O'ahu and ten on the Big Island) and DCCA's lowest cost estimate of \$40,000 to \$50,000 per year to administer a licensure program, a breeder license would need to be at least \$1,300 for the program to be self-sufficient. Of the 28 states that regulate dog breeders, or kennels and dealers, Wisconsin charges the highest fee in the nation (\$1,000). Also, flaws in the proposed regulation do not provide for breeder accountability and consumer protection. By focusing on large-scale breeders in-state, the bill fails to address hobby breeders and puppies imported from overseas.

Alternatives to protect dogs are available

The Legislature asked us to assess a county-based regulatory program akin to the liquor commission model for enforcement. County officials familiar with animal control doubted that costs could be covered with licensing fees due to the low number of large-scale dog breeders. We could not fully assess the merits of other laws used by states to protect dogs from breeder abuse without reliable data and given the uncertainties of costs. There are, however, alternative models available for the Legislature to consider that may address the loopholes and hard-to-enforce provisions in the proposed regulation. For example, the American Veterinary Medical Association (AVMA) has crafted a science-based model law. The AVMA's model allows breeders the flexibility to create appropriate housing for the particular breed of dog that they are raising. The Hawai'i Veterinary Medical Association favors Oklahoma's independent Board of Commercial Dog Breeders with authority to adopt rules and discipline licensees. Another alternative adopted by 18 states is popularly known as a puppy lemon law. These laws protect purchasers of puppies by requiring sellers to reimburse buyers for the purchase price and cost of veterinary services within a specified period of time.

Overall, the department agreed with the findings of the report and our recommendation to the Legislature to address flaws in the proposed regulation and consider alternatives to licensing to achieve the goal of protecting dogs.

Sunrise Analysis: Regulation of Large-Scale Dog Breeders and Facilities

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Conducted by

The Auditor
State of Hawai'i
and
Mr. Urs C. Bauder,
Consultant

Submitted by

THE AUDITOR
STATE OF HAWAI'I

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Foreword

This “sunrise” report analyzes the proposed regulation of large-scale dog breeders in Senate Bill No. 1522, Senate Draft 2, House Draft 1 of the 2011 legislative session. This report was prepared in response to Senate Concurrent Resolution No. 111, Senate Draft 1, in which the Legislature requested an assessment of a county-level option for regulating dog breeders. The *Hawai‘i Regulatory Licensing Reform Act*, Chapter 26H, Hawai‘i Revised Statutes, requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations.

The analysis was performed by consultant Mr. Urs C. Bauder and presents our findings and recommendations on whether the proposed regulation is consistent with the policies in the licensing reform law and its probable effect.

We wish to express our appreciation to the Department of Commerce and Consumer Affairs and other organizations and individuals that we contacted in the course of our evaluation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This report on the proposed regulation of large-scale dog breeders responds to the “sunrise” provision of the *Hawai‘i Regulatory Licensing Reform Act*, Chapter 26H, Hawai‘i Revised Statutes (HRS). Section 26H-6, HRS, requires bills seeking to regulate a previously unregulated profession or vocation to be referred to the Auditor for analysis. The Auditor must assess whether the proposed regulation is necessary to protect the health, safety, and welfare of consumers and is consistent with other regulatory policy provisions of Section 26H-2, HRS. In addition, the Auditor must examine the probable effects of the proposed regulation and assess alternative forms of regulation.

In Senate Concurrent Resolution No. 111, Senate Draft 1, the 2011 Legislature asked the Auditor to analyze Senate Bill No. 1522, Senate Draft 2, House Draft 1 (S.B. No. 1522, S.D. 2, H.D. 1), relating to dogs. The bill would require the Department of Commerce and Consumer Affairs (DCCA) to issue licenses to large-scale dog breeders upon satisfactory completion of a qualifying inspection and to enforce the requirements for humane dog breeding. The Legislature requested that the Auditor consider alternatives to a state-based system including the use of the existing county-based enforcement system for animal cruelty laws.

Background on Regulation of Large-Scale Dog Breeders

The commercial dog breeding industry can be traced to the post-World War II era, when difficult conditions prompted farmers to look for alternative ways to make money. Some used chicken or rabbit housing to raise dogs. This practice continues with some breeders who seek profits without regard to the health and welfare of their animals and who keep dogs confined to cages, sometimes stacked on top of one another, sometimes multiple dogs to a cage. When combined with a lack of sanitation, food and water, these cruel and inhumane conditions can result in diseased and parasite-infested puppies that are offered for sale to unsuspecting consumers. Critics refer to these operations as puppy mills. Nationally, the number of puppies bred and sold each year from such establishments is estimated at two to four million, according to the Humane Society of the United States.

Raising dogs in confined spaces without exercise and socialization can result in behavioral problems. Unethical dog breeders often ignore basic animal husbandry principles and breed related animals indiscriminately. This produces inbred offspring with genetic impairments, causing

deformities and defects that usually surface when the animal matures. Public outcry about the cruel and inhumane treatment and lobbying by animal protection groups, such as the Humane Society of the United States, prompted the federal government and most states to issue some regulations covering dog breeding. While large-scale commercial dog breeding can be and is conducted ethically, humanely, and in concert with proper animal husbandry principles, critics cite dog overpopulation in opposing such operations. Media coverage of dogs being kept in squalid conditions, in some cases over 100, have led to public outcries, prompting some states to limit the number of breeding animals that can be kept by a breeder.

Large-scale dog breeding in Hawai‘i

Currently, there is no reliable information on the magnitude of the problem of unscrupulous large-scale commercial dog breeders in Hawai‘i. Estimates of the number of breeders that would require licensing under S.B. No. 1522, S.D. 2, H.D. 1, range from two to 20 on O‘ahu. Ten more such operations are suspected on the Big Island. There are no suspected large-scale breeders on Maui and Kaua‘i. Most operations meeting the criteria of large breeders are thought not to meet the standards of care proposed in the bill. The Humane Societies on Maui and Kaua‘i find that most problems with inhumane breeding come from so-called “backyard breeders” who would not meet the size criteria of S.B. No. 1522, S.D. 2, H.D. 1.

Operating a puppy mill can be very lucrative, especially when bitches are bred without rest periods. A puppy mill in Waimanalo, shut down for its allegedly cruel treatment of dogs in February 2011, consisted of 153 dogs. Within two months, 79 puppies were produced from that population. Based on Hawaiian Humane Society estimates, an operation of that size could sell dogs worth \$40,000 to \$50,000 a month.

There are an estimated 174,000 dogs on O‘ahu. Annual net additions to that population are about 8 percent or 14,000 dogs. Prices paid for puppies from large-scale breeders typically range from \$500 - \$1,500. Assuming an average price of \$1,000 each, if large-scale breeders produce half of the additions, the industry could be worth more than \$7 million a year. To the extent that puppies are sold individually or at swap meets, concerns have been raised that many sellers fail to report the income for tax purposes under Hawai‘i’s general excise tax law.

A significant portion of puppies sold in Hawai‘i may come from overseas. Dogs from rabies-free Australia, New Zealand, and the United Kingdom are exempt from time-consuming quarantine requirements that can delay delivery by six months. This is important to resellers, because

puppies lose their “cute” effect on prospective buyers once they are about six months old. Australia and New Zealand are attractive sources of puppies for resale as a result.

The federal Animal Welfare Act regulates commercial dog breeders

Congress enacted the Animal Welfare Act (AWA) in 1966, requiring commercial dog breeders and brokers to be licensed if they sell more than 25 dogs a year, gross more than \$500 per year, or own more than four breeding females. However, the law exempts breeders who sell directly to the public. Administered by the U. S. Department of Agriculture (USDA), the AWA provides for minimum standards, including for humane handling, care, and treatment, as well as exercise. Penalties of up to \$10,000 can be imposed for each violation. A \$5,000 penalty applies to interfering with a person on official duty under the act.

Retailers are exempt from licensing under federal law. In Hawai‘i, this allowed the operator of a puppy mill in Waimanalo, which attracted much press attention for its cruelty in early 2011, to avoid federal licensing by purchasing a pet store.

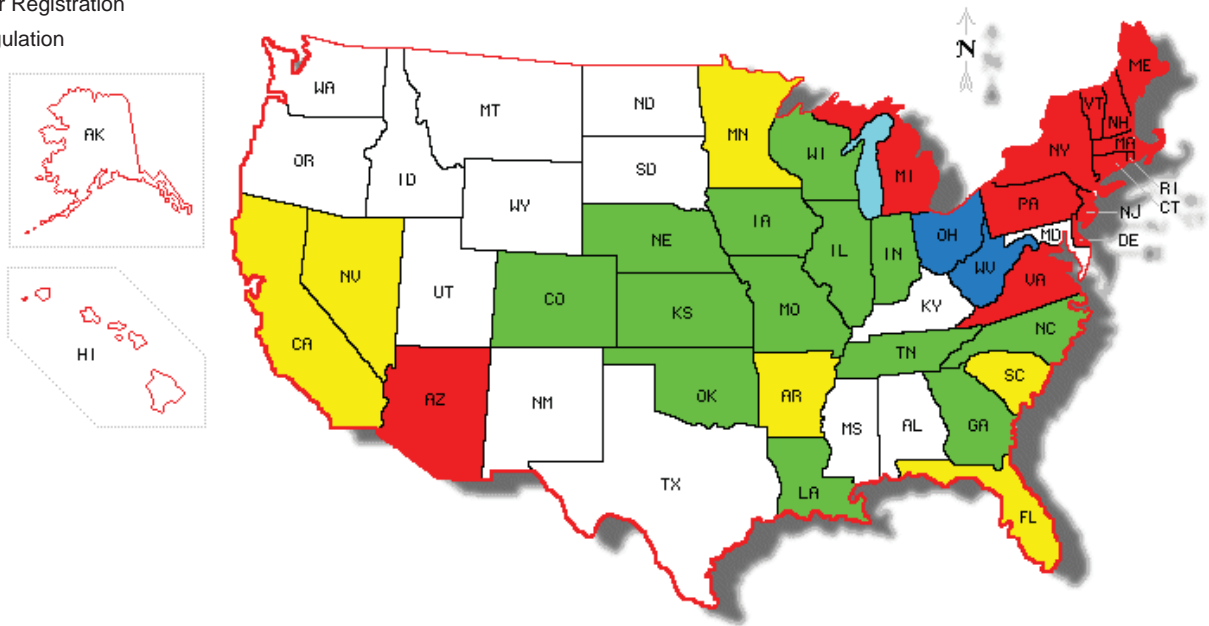
The provisions relating to dog breeders are administered by the USDA’s Animal and Plant Health Inspection Service (APHIS). Critics of APHIS point to a lack of enforcement. The U.S. Inspector General issued a scathing report on APHIS’s failure to sanction large-scale breeders on the mainland that kept dogs in abominable conditions. Only one inspector is assigned to oversee Hawai‘i, Guam, and the Western Pacific and this position is scheduled to be eliminated.

Dog breeder regulation in other states

Hawai‘i is among 22 states that do not regulate dog breeders, as shown in Exhibit 1.1. Of these, at least three states enacted alternatives to licensure, such as enabling enforcement personnel to conduct inspections. Twenty-four states license dog breeders and two states (Michigan and Rhode Island) license dealers and kennels only and two (Ohio and West Virginia) require registration only. In most licensing states, the laws provide for inspections and spell out minimum requirements for the accommodation and care of dogs. Eighteen states seek to protect purchasers of dogs through a puppy lemon law. In at least 15 of the 24 licensing states, the agriculture department is the overseeing agency for breeder licensing. Three states impose limits of 50 adult dogs a breeder can hold, a fourth places that limit at 75. Licensing fees range from zero to \$1,000 per year with one state also charging a licensing initiation fee as shown in Exhibit 1.2.

Exhibit 1.1
Map Showing Regulation of Breeders by State

- Breeder License
- License & Lemon Law
- Puppy Lemon Laws
- Breeder Registration
- No Regulation



Source: Office of the Auditor

Exhibit 1.2 Fees Charged by States With Breeder and Related Licensing

	Initial Fee \$	Single Fee \$	Minimum \$	Maximum \$
AZ		75	75	75
CO			0	350
CT			50	100
DE			21	101
GA			25	200
IL		25	25	25
IN			200	500
IA		175	175	175
KS			75	405
LA			15	30
ME		75	75	75
MA			10	50
MI			10	25
MO			100	500
NE	125		125	250
NH			200	200
NJ			10	25
NY		100	100	100
NC		50	50	50
OH		10	10	10
OK			75	600
PA			75	750
RI		100	100	100
TN			0	125
VT		10	10	10
VA			0	50
WV		10	10	10
WI			250	1,000
		Average	\$72	\$210
		Range	\$0	\$1,000

Source: Humane Society of the United States

Senate Bill No. 1522, S.D. 2, H.D. 1 is largely modeled after Missouri's Proposition B, a dog breeder law adopted by a 51 percent majority of voters in November 2010. This law has many of the same provisions as the proposed regulation, including:

- a limit of 50 breeding dogs owned;
- constant and unfettered access to an outdoor area;
- a ban on breeding a dog more than twice in 18 months;

- requiring enclosure sizes of 12 to 30 square feet, depending on dog size; and
- at least one veterinary exam per year.

In 2011, however, before Proposition B became law, the Missouri Legislature amended many of its provisions. For example, the Legislature deleted the 50 dog ownership limit but allowed licensing fees of up to \$2,500 per year to raise the funds needed for enforcement. In addition, amendments removed most detailed operational requirements such as exercise and space requirements and the breeding cycle limit from the law thus making them subject to rules or veterinarian recommendations as appropriate for the breed and condition of a dog. According to news reports, the amendments were a compromise that had support from state-based agricultural and animal welfare groups but were opposed by national groups that helped finance the popular ballot measure.

Proposal to regulate large-scale dog breeders and facilities

Senate Bill No. 1522, S.D. 2, H.D. 1

Senate Bill No. 1522, S.D. 2, H.D. 1, proposes regulating large-scale dog breeders by the DCCA. Affected are commercial breeders that own 30 or more intact—meaning not spayed or neutered—dogs (20 or more if they are female breeding dogs) age six months or more, or sell 25 or more puppies per year.

The DCCA is authorized to set licensing requirements, adopt rules, and enforce the provisions of the bill. To this end, the department is empowered to issue subpoenas, administer oaths, and issue cease and desist orders to violators.

The bill spells out minimum standards to ensure humane breeding, including provisions for:

- rest between breeding cycles;
- veterinary care;
- exercise;
- food and water;
- housing and space; and
- unannounced inspections during business hours.

Civil penalties are imposed for operating as an unlicensed large-scale breeder of up to \$1,000 per day and misdemeanor criminal penalties in addition to civil penalties. Penalties of up to \$2,000 per animal are set for violations including:

- Conducting an operation or carrying out transactions without a license if required to have a license;
- Hindering or failing to comply with or cooperate with enforcement as authorized by S.B. No. 1522, S.D. 2, H.D. 1; or
- Owning or harboring more than 50 intact dogs on premises, thus meeting the criteria of a large-scale breeder.

Impetus for the proposed regulation

The proposed regulation is unusual in two ways: first, it regulates a commercial activity, rather than a recognized profession or vocation, and second, the initiative for regulation did not come from prospective licensees, as is normally the case.

The initiative for the large-scale dog breeder regulation comes primarily from the Humane Society of the United States' nationwide drive to protect dogs from irresponsible breeders. Since Hawai'i is one of 22 states that lack any regulation of dog breeders, it was, as one legislator put it, "time to catch up." The publicity surrounding the rescue of numerous dogs from a large and allegedly inhumanely operated puppy mill in Waimānalo, O'ahu added force to the argument to enact a breeder regulation law.

The Legislature received in excess of 1,000 testimonies, overwhelmingly favoring the adoption of S.B. No. 1522, S.D. 2, H.D. 1. At least two breeder representatives added their support. The primary focus of almost all of the testimony was to improve the care of dogs. Some voiced concerns primarily about the law not going far enough, contending that all breeders need to be subject to regulation to effectively achieve the goal of protecting dogs from unscrupulous breeders. Others preferred placing regulation under the state Department of Agriculture to ensure appropriate animal husbandry standards as a more effective way of stopping inhumane breeders. Some expressed concern that regulation would increase costs for responsible part-time breeders who already make no profit from breeding.

Objectives of the Analysis

1. Determine whether there is a reasonable need to regulate large-scale dog breeders and facilities to protect the health, safety, and welfare of Hawai'i's public.
2. Assess the probable effects of the regulation as proposed in Senate Bill No. 1522, Senate Draft 2, House Draft 1, relating to dogs.
3. Assess the appropriateness of alternative forms of regulation, including enforcement by county-based boards.
4. Make recommendations as appropriate

Scope and Methodology

We assessed the need to regulate large-scale dog breeders as proposed in S.B. No. 1522, S.D. 2, H.D. 1, in accordance with Section 26H-2, HRS, of the *Hawai'i Regulatory Licensing Reform Act*. We did this despite the fact that dog breeding is a business rather than a profession or vocation. The Legislature's stated policy is to regulate only if there is a need to protect consumers. Regulation is an exercise of the State's police power and should not be imposed or used lightly.

Regulatory policy in Hawai'i

Hawai'i's "sunrise" law requires the Auditor to assess new regulatory proposals that would subject unregulated professions and vocations to licensing or other regulatory controls against the regulation policies set forth in Section 26H-2, HRS. These policies clearly articulate that the primary purpose of such regulation is to protect consumers, stating that:

- The State should regulate only where it is reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the occupation;
- Evidence of abuses by practitioners of the occupation should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to consumers, unless the cost is exceeded by the potential danger to consumers;
- Regulation should be eliminated when it has no further benefit to consumers;

- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

We were also guided by *Questions a Legislator Should Ask*, a publication of the national Council on Licensure, Enforcement and Regulation (CLEAR) that states that the primary guiding principle for legislators is whether the unregulated occupation presents a clear and present danger to the public's health, safety, and welfare. If it does, regulation may be necessary; if not, regulation is unnecessary and wastes taxpayers' money.

In addition to the regulatory policies in Chapter 26H, HRS, and the guidance from CLEAR, we considered other criteria for this analysis, including whether or not:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- Any other alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate the occupation for the same reasons.

In assessing the need for regulation and the specific regulatory proposal, we placed the burden of proof on the proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We examined the regulatory proposal and assessed whether the proponents provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

Types of regulation

As part of our analysis, we assessed the appropriateness of the specific regulatory approach put forth in the proposed legislation and the appropriateness of regulatory alternatives. The three approaches commonly taken to occupational regulation are:

Licensing is the most restrictive form of occupational regulation and confers a legal right to practice to individuals who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes

members of the profession to establish and implement rules and standards of practice.

Certification restricts the use of certain titles (for example, social worker) to persons who meet certain qualifications, but it does not bar others from offering such services without using the title. Certification is sometimes called title protection. Government certification should be distinguished from professional certification, or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers.

Registration is used when the threat to the public's health, safety or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply requires practitioners to register their details onto the State roster so the State can keep track of practitioners. Registration can be mandatory or voluntary.

To accomplish our objectives, we reviewed literature on dog breeding regulation and practices, including any standards promulgated by relevant national bodies, and regulation in other states. We reviewed regulatory statutes in other states related to dog breeding and analyzed the various forms of regulation and their provisions.

We contacted appropriate personnel at the Humane Society of the United States, American Society for the Prevention of Cruelty to Animals, the American Kennel Club, the Hawaiian Humane Society on O'ahu and neighbor islands, the DCCA, the state Department of Agriculture and the four county governments in Hawai'i. We conducted interviews with staff of these agencies and local representatives of dog breeders, veterinarian groups, and animal welfare groups. We attempted to identify the costs and possible impacts of the proposed regulation.

Chapter 2

Proposed Regulation of Dog Breeder Business Is Problematic, Better Options Are Available

The Legislature’s policy for regulating certain professions and vocations in the *Hawai‘i Regulatory Licensing Reform Act*, Chapter 26H, Hawai‘i Revised Statutes (HRS), dictates that regulation should be imposed only when reasonably necessary to protect the health, safety, and welfare of the public. In our sunrise analysis of Senate Bill No. 1522, Senate Draft 2, House Draft 1, (S.B. No. 1522, S.D. 2, H.D. 1), we applied the criteria established by law and the guidelines set forth in Section 26H-2, HRS, which focus exclusively on protecting the public. We found insufficient data to support the need to regulate large-scale dog breeding operations and facilities to protect the public and prevent the cruel treatment of dogs. A lack of data prevented us from assessing the cost of licensure and its impact. In addition, we noted flaws in the proposed regulation, some of which should be addressed with input from a variety of stakeholders to achieve the bill’s purpose. As proposed, S.B. No. 1522, S.D. 2, H.D. 1 is problematic and should not be enacted.

At the request of legislators and due to the overwhelming support for preventing the cruel treatment of dogs by unscrupulous breeders, our analysis includes a discussion of some concepts, models, and alternatives we found may be worth considering in resolving the shortcomings of the proposed legislation. All stakeholders we interviewed acknowledged that their primary reason for supporting the bill is the protection of dogs. This concern was not weighed in our analysis and conclusion on the necessity of regulation.

Summary of Findings

1. Proponents have failed to demonstrate a need for regulation as defined by sunrise law.
2. The proposed regulation is flawed.
3. Alternatives to protect dogs are available.

Proponents Failed To Demonstrate a Need for Regulation as Defined by Sunrise Law

In determining the need for consumer protection regulation, the burden of proof rests on those promoting regulation to show its necessity. To this end, documented evidence is needed to demonstrate the risk to public health, safety, and welfare from the activity to be regulated. For this analysis, we encountered two problems: first, a lack of data on the existence, numbers, and effect of large-scale dog breeders in Hawai‘i; and second, the main purpose of the proposed regulation is not consumer protection, but protection of dogs.

We found that data or information supporting the existence of a serious risk to public health, safety, and welfare is lacking. Even less evidence exists that allows tracing such risks to large-scale dog breeders. Uncertainty about the number, size, and impact of large-scale breeders in Hawai‘i hampered our attempts at estimating the impact of the proposed regulation and the resources needed to administer a licensing program.

Serious risk to public is unclear

Promoters were unable to provide documented evidence of serious harm to health, safety, and welfare to purchasers of dogs from large-scale dog breeders. This prevented us from generating a clear picture of the problem the legislation is supposed to solve. Health risks, while they exist, are rare and cannot be traced to the breeders that the proposed bill seeks to regulate. Assessing risk to public welfare is mostly anecdotal and suffers the same uncertainty. While purchasers certainly incur financial losses and suffer emotional distress when a pet is found to be defective, it is unclear that these meet a threshold of serious risk to welfare. Even if so, it is unclear that the risk is due to large-scale dog breeders. Consumer advocacy agencies report very few complaints, and a survey by the Hawaiian Humane Society, begun in response to our inquiries for data, provides anecdotal information that we were unable to relate to large-scale breeders.

Onus of proof is on proponents

As outlined in chapter 1, the Legislature’s policies and criteria for evaluating the merit of regulating a vocation or profession require that those seeking the measure provide the evidence supporting the case for engaging the policing powers of the State to regulate. This evidence must document that serious harm can result to the public if the individuals or businesses involved remain unregulated.

The Hawaiian Humane Society is the primary promoter of the proposed regulation and was instrumental in the drafting of S.B. No. 1522, S.D. 2, H.D. 1. Consequently, we requested data from the Hawaiian Humane Society that would show significant risks in the categories

outlined in Section 26H-2, HRS. We found that no such data had been compiled. A subsequent effort by the society to generate data on consumer problems and our own research did not succeed in establishing a clear risk to public health, safety, and welfare that can be traced to breeders defined as large-scale under the proposed regulation.

Data are anecdotal and complaints are few

We requested data on complaints about sales of dogs from two consumer advocacy agencies and the humane society. The Better Business Bureau reports between two and five complaints related to dogs per year for the past four years, 15 in total. The bureau noted that all but one complaint involved two pet stores and only six complaints in four years related to problems discovered after purchase. The remaining nine complaints involved breed registration documents, defective supplies, and rude employees. The Department of Commerce and Consumer Affairs' (DCCA) Office of Consumer Protection has received four complaints in total since 2001 and informed us that most recent complaints involve Internet sales in which buyers paid for but never received a dog. Veterinarians report varying numbers of diseased and deformed puppies, ranging from "a few" to up to 75 percent of dogs purchased from pet stores or swap meets.

The Hawaiian Humane Society responded to our inquiry on consumer complaints with an Internet survey requesting dog owners to share their experiences. As of July 2011, only 21 of over 900 respondents reported purchasing from a large-scale breeder. The largest category of sellers identified—pet stores, with over 200 respondents—could be assumed to be outlets for large-scale breeders. However, this assumption must be tempered by the hundreds of dogs imported each year for resale by pet stores. In addition, the majority of respondents (574) made their purchases over two years ago, making any inferences to the number and impact of large-scale breeders problematic.

The survey did provide insights into the amounts paid for dogs, showing concentrations in the \$350-or-less and \$500-to-\$1,500 price ranges. Twenty-nine percent (254 owners) reported having experienced problems with their dogs after purchase. As far as medical costs are concerned, outlays can be considerable, with almost a third exceeding \$2,000. However, whether such outlays are sufficient to jeopardize a family's welfare is questionable. In addition, no link can be established that identifies large-scale dog breeders as the source of these outlays. Purchases from "hobby-breeders" (189, or 21 percent) are almost as common as from pet stores. While inhumane breeding conditions are more likely to produce sick or defective puppies, it is not clear that the size of a breeding operation is the exclusive determinant of the quality of the breeder and its products. Consequently, we could not use the humane

society's survey to determine whether licensing large-scale dog breeders was reasonably necessary.

Transferable diseases cannot be tracked to large-scale breeders

Health and safety risks exist in the form of diseases, parasites, or fungi that can be transferred from dogs to people. We could find no data, however, that identified dogs from large-scale breeders as sources of such transmissions. In addition, according to veterinarians, such transfers are rare and often not reported.

DCCA, a professional and vocational regulatory agency, is ill-equipped to protect dogs

The DCCA's traditional function is supporting business, a role that is cooperative rather than adversarial. Its regulatory activities consist mainly of supporting professional and vocational groups in regulating themselves. The proposed regulation of large-scale dog breeders not only departs from that role but also requires staff with skill-sets the department does not currently have. Unlike most vocations or professions, dog breeding lacks any generally accepted standards, educational programs, or national organizations that set binding occupational behavior and educational standards. Lacking such standards, DCCA would have to acquire the expertise for developing and monitoring appropriate standards. Even if a significant portion of the enforcement activities can be obtained by contracting with the various county humane societies, the department sees a need for significant expenditures associated with regulating an unfamiliar business.

All stakeholders we interviewed acknowledged that the primary purpose of S.B. No. 1522, S.D. 2, H.D. 1, is to protect dogs. The Hawaiian Humane Society sees the main issue as one of access—the ability of its inspectors to enter breeders' properties without a warrant to ensure that dogs are housed and treated humanely. None of the persons we contacted could provide us with documented support for the need of regulation on the basis of consumer protection.

A lack of data clouds estimates for costs and licensing fees

An important step in regulating an economic activity is an assessment of the resources needed for its administration and enforcement. The absence of reliable information on large-scale breeders and the complexity of some of the provisions of S.B. No. 1522, S.D. 2, H.D.1, make such an assessment extremely difficult. Not surprisingly, the department is unable to provide even basic cost estimates that could be used to determine the licensing fees needed to cover the cost of regulation as required by law.

Cost of enforcement is unknown

We found that there is no reliable information on the numbers and size of large-scale dog breeders in Hawai‘i. We contacted the humane societies in all counties, whose best guesses of the number of large-scale breeders is about 20 on O‘ahu, perhaps ten on the Big Island, and none on Maui and Kaua‘i.

The DCCA estimates that handling the most basic routine administrative functions normally associated with licensing a vocation is about \$10,000 per year. However, this does not include contract administration if the enforcement function were to be contracted with the county humane societies, which currently administer the enforcement of animal control laws. In addition, it does not include the cost of administering the legal requirements of the regulation, including hearings and prosecutions (licensee violations are handled by DCCA, non-licensee violations are referred to the Department of the Attorney General).

Absent good estimates of the likely compliance levels, numbers of appeals to denied licenses, and enforcement against unlicensed operators, department estimates for such additional costs range from a very conservative \$30,000 per year to “significantly higher.” Another unknown is the amount county humane societies will charge if contracted to be the enforcement arm of the regulation. While the Hawaiian Humane Society on O‘ahu has indicated its willingness to perform this function at no extra cost to the State, other humane organizations’ ability to do the same is not clear. The O‘ahu humane society’s contract with the City and County of Honolulu reflects compensation of \$2.35 million for one year. We were given an estimate of \$10,000 to \$25,000 for the Big Island. However, this estimate was made without a clear picture of what resources would be needed.

The low number of large-scale breeders raises questions about funding

Section 26H-2(7), HRS, governing professional and vocational regulation, requires that all costs for administering the program be covered by fees charged to licensees. Based on the available information, the lowest available estimate for the cost of regulating large-scale dog breeders begins at \$40,000 to \$50,000 per year and could be significantly higher. Accordingly, annual license fees from an estimated 30 breeders would need to be at least \$1,300 to cover the cost of regulation. This would exceed the highest licensing fee charged in the nation, \$1,000 in Wisconsin for operations of 250 or more dogs.

The Proposed Regulations Are Flawed

Because of its cumbersome or hard to enforce provisions, questions have been raised about S.B. No. 1522, S.D. 2, H.D. 1's ability to protect dogs from cruel and inhumane breeders. Veterinarians and breeders find some provisions impractical or lacking flexibility to accommodate the vastly divergent needs of different dog breeds. In addition, the loopholes in the proposed regulations do not provide for comprehensive breeder accountability and consumer protection and fail to address the significant numbers of dogs that are imported from offshore breeders.

Some provisions are poorly defined or impractical

The DCCA's concerns about S.B. No. 1522, S.D. 2, H. D. 1, center primarily on its complexity, which increases the cost of enforcement. A primary example cited by the department is the definition of large-scale breeder. The bill defines a large-scale dog breeder as:

A person who: for compensation or profit, sells or offers for sale, exchange, or lease, via any means of communication including the Internet, newspaper, or telephone, twenty-five or more of the offspring of breeding female dogs in any one-year period and is engaged in the business of breeding intact female dogs: owns or harbors twenty or more intact female dogs over six months of age that are intended for breeding; or owns or harbors a total of thirty intact dogs over the age of six months that are intended for breeding on the premises.

According to the department, the threshold elements of determining whether a person or entity falls within the definition of large-scale dog breeder are too complicated. Since this is the definition that determines whether the proposed chapter applies, it should be easily and readily provable. For example, in parsing the definition, a large-scale dog breeder is a person who:

- for compensation or profit;
- sells or offers for sale, exchange or lease;
- via any means of communication including the Internet, newspaper or telephone;
- 25 or more of;
- the offspring of;
- breeding;
- female dogs;

- in any one-year period; and
- is engaged in the business of breeding intact female dogs.

Alternatively, a large-scale dog breeder is a person who:

- owns or harbors;
- 20 or more;
- intact female dogs;
- over six months of age;
- that are intended for breeding.

A third alternative defines a large-scale dog breeder as a person who:

- owns or harbors;
- a total of 30 intact dogs;
- over the age of six months;
- that are intended for breeding on the premises.

The department found such wording as “intended for breeding” particularly problematic, requiring a regulator to show the state of mind of a breeder to determine whether the criterion is met. Similar provisions in other states are less complex and better defined. Missouri, for example, defines a large operation as “having custody or ownership of ten female covered dogs (intact, older than six months) and selling any offspring for use as a pet.”

Similarly problematic is the proposed bill’s definition of “regular exercise,” which requires constant and unfettered access to an outdoor exercise area. Under this definition, it is illegal for a breeder to confine its dogs during the night, perhaps in consideration of neighbors. In addition, confining sick or injured dogs as well as puppies indoors may be necessary for the dogs’ health and safety but would not be allowed. However, federal rules for animal facilities and operating standards specifically prohibit keeping sick, infirm, aged, and young animals as well as those of unknown acclimatization status in outdoor areas.

Moreover, the proposed bill creates violations that apply to the public at large. Generally, regulatory agencies concern themselves only with licensee violations and cases of unlicensed operators. At least two of the

provisions fall outside this spectrum. Under prohibited acts, Section -10,(a) (6) and (9) of the proposed bill, it is unlawful for “any person or entity to impersonate any state or county official or inspector;” or “to alter or falsify a certificate of veterinary inspection or any other certificate of veterinary health.” Violators are subject to a \$2,000 fine per animal. The bill however does not establish or specify any state or county official or inspector, and the relationship of these offenses to animals is somewhat obscure. The department contends that these prohibitions need clarification as to the jurisdiction that should enforce them.

As proposed, S.B. No. 1522, S.D. 2, H.D. 1, limits large-scale breeders to owning or harboring 50 intact dogs. Breeders are concerned about this provision because each time a litter is born, a breeder owning close to 50 dogs risks a \$2,000 fine per animal when new litters cause the total number of dogs to exceed 50. According to the Humane Society of the United States, the limit of 50 is promoted because it represents a number of dogs that can be properly cared for by two people, such as a husband-and-wife team. Four states (Louisiana, Virginia, Oregon, and Washington) with similar limits to ownership, exempt dogs under the age of six to 24 months. The proposed bill does not.

Loopholes may affect effectiveness of regulation

The bill proposes to regulate a breeder only if the threshold for large-scale breeder is exceeded. Concerns have been raised by the president of the Hawaiian Kennel Club and a county official familiar with animal control laws on the Big Island that this threshold may be easily evaded by breeders who do not wish to risk being cited for violations or incur the cost of compliance. In addition, recordkeeping is an important tool in holding breeders accountable; however, S.B. No. 1522, S.D. 2, H.D.1, fails to establish a requirement for records. Moreover, the importation of puppies for sale as pets is a viable alternative to breeding them locally. Imported puppies would not be protected by S.B. No. 1522, S.D. 2, H.D. 1.

Most breeders will not be regulated

The vast majority of breeders in Hawai‘i are so-called “hobby breeders” that do not meet the threshold for dogs owned by large-scale breeders. Some breeders that are concerned about the reputation of their craft contend that irresponsible breeding is not confined to large operators and are concerned that the focus on large breeders will encourage irresponsible breeders to evade the thresholds set by S.B. No. 1522, S.D. 2, H.D. 1, continuing to breed sick and defective dogs. The Humane Society of the United States in a 2007 investigation in Virginia found numerous inhumane breeding operations existing in trailers, basements, and suburban backyards.

No recordkeeping requirements

Many dog breeder laws in other states require breeders to maintain detailed records on each animal; at least seven states require this information to be provided to buyers. Recordkeeping and disclosure requirements are seen as a means to hold breeders accountable, allow tracking of problem breeders, and encourage compliance with tax laws. Recordkeeping requirements are described as critical to the effectiveness of breeder regulation by national puppy-mill campaigners.

Imported dogs may come from less than reputable sources

Hawai'i is the only state exempt from a federal ban on importation of dogs less than six months old, if the dogs come from Australia, New Zealand, Guam, or the United Kingdom. Being free from rabies, these locations are also exempt from Hawai'i quarantine requirements, which typically take six months to comply with the procedures. In essence, all that is needed to import a dog from these countries are a veterinarian certificate and passing an inspection for visible parasites upon arrival. Almost all of the imported dogs are less than six months old and intended for resale. Hawai'i Department of Agriculture records show that hundreds of puppies enter Hawai'i each year (401 in FY2011 down from 1,288 in FY2010), primarily from Australia. In fact, in FY2010, one pet store accounted for over 800 puppies imported for resale. The Royal Society for the Prevention of Cruelty to Animals, an Australian organization that promotes animal welfare, and the various media report that Australia in particular has a reputation for problems with unscrupulous large-scale breeding operations. According to Australian news reports, puppy farm operations range from 80 dogs to anywhere up to 1000 dogs. The majority hold about 300 to 400 dogs. If S.B. No. 1522, S.D. 2, H.D. 1, succeeds in curtailing large-scale breeding operations, consumers and dogs may still lack the protection sought by the bill, because it does not address the import of puppies for resale from countries like Australia.

Stakeholder participation may strengthen the proposed regulation

We interviewed a range of stakeholders and found that some of their concerns about the proposed bill merit consideration. Not all breeders subject to the proposed regulation are unscrupulous operators. In fact, a Hilo police major who was in charge of enforcing the animal control contracts on the Big Island expressed concern that most applicants for licensure may well be breeders whose dogs are well-cared for and bred in accordance with good practice guidelines for their breed. Meanwhile, profit-oriented operations are more apt to operate illegally or take evasive measures to escape scrutiny and compliance requirements. Several breeders have come forward in favor of the proposed regulation, but have expressed concerns that it might be punitive to responsible breeders

because of requirements that are not appropriate, necessary, or practical for all breeds.

According to the president of the Hawai‘i Veterinary Medical Association, veterinarians see themselves as the representatives of science in an area that is often dominated by emotion. The American Veterinary Medical Association (AVMA) has played a leadership role in crafting a model law to provide a guide based on science and less on emotion. For example, the AVMA’s model law and rules provide for flexibility where breeders create unconventional housing that may not exactly meet standards. *The Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets* published by the American Veterinary Medical Association on April 9, 2010 can be found at: http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regulations.pdf.

Law enforcement officers are more focused on the practicality of collecting evidence of unlicensed operations. We learned that with resources stretched, if the law makes proving a case difficult, there is a high likelihood that prosecution will be unsuccessful. This creates a disincentive for police to assign resources to such cases. The DCCA echoes these fears, pointing out that complex and poorly defined provisions increase the cost of enforcement.

The Legislature should address the flaws in the proposed bill after considering alternative models in consultation with stakeholders such as enforcement officials, other oversight agencies, veterinarians and breeders. For example, public participation by dog and kennel owners was a cornerstone in the process of amending Pennsylvania’s Dog Law in 2008, when humane treatment of dogs by commercial breeders was practically nonexistent. At the time, Pennsylvania had earned the dubious distinction as the “puppy mill capital of the East.” The improved law there is considered by anti-puppy mill campaigners as one of the best and most comprehensive licensing statutes in the nation, incorporating elements of anti-cruelty laws specific to the commercial dog breeding context. These include: increasing the cage size to ensure dogs are reasonably comfortable, access to an exercise area, annual veterinary examinations, limiting the stacking of cages, establishing daily cleaning standards, creating reasonable temperature, lighting and ventilation standards, and requiring fire extinguishers.

Better Options To Protect Dogs Are Available

Concerned about the choice of using Hawai‘i’s consumer protection law as a vehicle for protecting dogs, legislators asked us to review the county liquor boards as a model for regulating large-scale dog breeders. Based on our analysis and input from stakeholders, we could

not recommend this option either. However, we found that Oklahoma's approach in establishing a commercial pet breeders board and a model law which includes rules for dog breeders promoted by the American Veterinary Medical Association, may be worth considering. Oklahoma's Commercial Pet Breeders Act is found at: http://www.tulsaworld.com/webextra/content/items/SB1712_int.pdf. Instead of creating detailed operational requirements in the statutes, it may be more appropriate to authorize the oversight and enforcement agency to administer properly adopted rules and regulations.

Liquor commission as a regulatory model

One alternative suggested to us is a regulatory body modeled after county liquor commissions. State law authorizes the counties to establish liquor commissions to regulate the manufacture, importation, and sale of liquor and to take action against persons without a license to do so. Counties are mandated to provide suitable quarters for meetings and business. The county mayors with the advice and consent of the county councils appoint and remove members of these commissions. Each county liquor commission has sole jurisdiction to control, supervise, and regulate the manufacture, importation, and sale of liquor in its county by investigation, enforcement, and education. The powers of the liquor commission include rulemaking in accordance with Chapter 91, HRS, and appointing an administrator, who can serve as an investigator and hire hearing officers, investigators, and clerical staff, to conduct its business.

The concept of using an agency similar to a county liquor commission to regulate dog breeders has appeal insofar as counties already administer animal control laws through contracts with the respective county humane societies. Some of the enforcement functions for breeder regulation, including inspections and licensing, can be expected to be similar to the animal control functions. Legislators who asked us to assess a county-based regulatory function expect that using this existing infrastructure would avoid duplication and incur significant cost savings. However, there are also concerns with this option.

County officials in charge of the animal control contracts uniformly deride the idea. Their foremost concern is the specter of an unfunded mandate and the likelihood that costs could not be covered with licensing fees due to the low number of licensees. Liquor commissions have large numbers of licensees that can cover the administrative costs, enforcement, and adjudicatory functions. Other concerns include conflicts with cross-jurisdictional licensing between the State and counties and the need for consistency in enforcement throughout the state. Finally, two counties, Maui and Kaua'i, do not know of any large-scale breeder and see no need for a county-based board.

Independent State Breeder Regulation Board

The Oklahoma Board of Commercial Pet Breeders may have potential for a workable solution to address DCCA's concerns about housing dog breeder licensure within the State's professional and vocational regulatory agency. Oklahoma's model places oversight in the hands of veterinarians. Initial reactions from members of Hawai'i's Board of Veterinary Medical Examiners and the Hawai'i Veterinary Medical Association indicate that the Oklahoma model is "worth looking into." A concern cited is the added workload to the veterinary board.

In 2010, the Oklahoma Legislature created the independent Board of Commercial Pet Breeders, a state agency authorized to adopt rules and discipline licensees. According to the Oklahoma attorney general, the board operates under the authority of, but is not subordinate to, the State Board of Veterinary Medical Examiners. The board appoints the executive director, authorized to hire personnel and serve as an *ex officio* member. The Commercial Pet Breeders Act sets up the statewide board to administer and enforce the act, and make disbursements to finance the agency's operations through a revolving fund from fees raised. However, the act also authorizes municipal authorities to further regulate breeders or pet sales by ordinance.

The Commercial Pet Breeder Board is authorized to:

- Adopt necessary rules, including those related to applications, renewals, revocation, investigations, qualifications of inspectors, minimum standards of animal care for the operation of commercial dog breeder facilities, and penalties for violations;
- Establish fees sufficient to cover the costs of enforcing and administering the regulation; and
- Contract with other agencies, including animal control agencies, to enforce the act.

The Commercial Pet Breeder Board has some features that may be suitable for Hawai'i to address some of the concerns with S.B. No. 1522, S.D. 2, H.D. 1. Positioned under the veterinary board but independent as to administration and funding, the breeder board is overseen by an expert group in animal welfare issues. For example, the state veterinarian and president of the state board of veterinary medical examiners serve as *ex officio* members. This independence may allow DCCA to maintain its non-adversarial role with its client groups, yet still allow for appropriate administrative support and expertise if necessary. The county humane societies could be contracted to take advantage of their enforcement expertise and infrastructure.

However, a major concern is funding. Due to the potentially low number of large-scale breeders in Hawai‘i, licensing fees may need to be substantial to cover the cost of administering and enforcing the regulation. Although the Oklahoma board members serve without compensation, it is empowered to employ staff, which needs to be compensated.

The Oklahoma law requiring licensure of pet breeding operations is currently the subject of a court challenge. A lawsuit alleges that the Oklahoma Constitution confines jurisdiction for all matters affecting animals to the state’s agriculture department exclusively, prohibits delegation of legislative authority to other public entities, requires every act to embrace only one subject, and prohibits certain special laws. According to the suit, these constitutional provisions were violated with the creation of the board under the authority of the Board of Veterinary Medical Examiners. While the case has not been resolved, we believe the objections raised do not apply to Hawai‘i. However, any legal or constitutional constraints would have to be considered before adopting any part of the Oklahoma model.

Detailed provisions are more suited to rules and regulations

Administrative rules and regulations promulgated by a regulatory oversight body have the same force and effect as provisions of a statute. Such rules are often the preferred mechanism for detailed standards and operational requirements, because they can more easily be corrected if found ineffective, unclear, difficult to enforce, or unreasonably burdensome. The Legislature is in session for only a part of the year, while boards usually meet more often.

Accordingly, the dog breeder laws in other states that we reviewed generally defer to the rulemakers for detailed requirements regarding operational issues such as housing and treatment of dogs. However, S.B. No. 1522, S.D. 2, H.D. 1, has been criticized for setting one-size-fits-all requirements that might not be appropriate or necessary given the significantly different needs and characteristics of over 150 dog breeds. For example, according to national campaigns against puppy mills, one of the most pressing provisions that should be in a dog breeder law is a prohibition of wire mesh cages and the stacking of dog enclosures. Senate Bill No. 1522, S. D. 2, H.D. 1, includes such prohibitions but goes significantly further in setting very specific standards for operating a breeding business. For example, minimum requirements are set for adequate rest between breeding cycles, regular exercise, and sufficient space, indoors and outdoors. Breeders and veterinarians agree that some of these standards exceed what is necessary or appropriate for some breeds and circumstances. For example, reproductive cycles differ from dog to dog and breed to breed and a limit of breeding to twice in 18

months is not consistent with best breeding practices in all cases. Even anti-puppy mill advocates allow that veterinarians should be permitted to approve exceptions.

The minimum requirement for a primary enclosure as proposed in S.B. No. 1522, S.D. 2, H.D. 1, is almost double that of federal requirements and those proposed by the American Veterinary Medical Association. Breeders criticized these minimum requirements for exceeding what is needed for some breeds. For example, the proposed bill provides that a dog measuring 25 inches from the tip of the nose to the base of the tail be given at least 12 square feet of space and at least one foot of head room. Federal requirements for the same size dog are 6.7 square feet of space and six inches of headroom. Other states defer such details to the rulemaking commission or board, sometimes providing that they must not be less than the federal standards. A provision identical to that in S.B. No. 1522, S.D. 2, H.D. 1, is the voter-approved Missouri breeder law, which was amended to “appropriate space depending on the species of the animal as specified in regulations by the Missouri department of agriculture. . . .” The AVMA model rules even suggest allowing for special approval of innovative enclosures which, while not precisely meeting standards, address a dog’s space and behavioral needs.

Like Hawai‘i, Missouri had a provision for “unfettered access to an outdoor area” in its breeders law. However, it was amended by Missouri’s Legislature, subjecting exercise requirements to veterinarian approval and rules and regulations. Similarly, the AVMA’s model law and regulations defer to the rules for specific descriptions of behavioral requirements. In addition, the Oklahoma breeder board law also delegates the creation of minimum standards to the regulatory board, provided that they meet federal Department of Agriculture standards. Alternatively, if operational details are to be set by law, exceptions allowing for practices to be consistent with breed standards or approved by a veterinarian provide some flexibility. This approach was used in the standards of care and confinement in Texas’s dog and cat breeder law.

Dog breeders contend that the limit of two breeding cycles every 18 months is arbitrary and not supported by scientific data. Veterinarians agree that there is no evidence that breeding dogs twice a year is harmful, contending that veterinarians are best qualified to determine a dog’s fitness to have a litter. A representative of a national anti-puppy mill campaign suggested that this provision is designed for prospective commercial breeders who consult the law to see “how much they can get away with” and acknowledged that it would be almost impossible to enforce. A similar provision in the breeder law amended by the Missouri legislature defers to the judgment of veterinarians as appropriate for a dog’s breed, age, and health.

Breeder accountability may be enhanced with focus on puppy sales

Puppy lemon laws require sellers to reimburse buyers for the purchase price and cost of veterinarian care if puppies are found to be diseased or deformed within a specified period. Eighteen states, as shown in Exhibit 1.1, have adopted puppy lemon laws. At least seven states with puppy lemon laws (Arkansas, California, Connecticut, Minnesota, New York, Rhode Island, and Vermont) also require certain disclosures by the seller, such as information on the dog, the breeder, the parentage of the dog, and veterinary medical records.

In addition, some suggest that breeder accountability could be achieved only if all breeders were required to have a breeder registration number with any sale or advertisement, similar to the way building contractor license numbers must be provided. Lowering the threshold for dog breeders requiring to be licensed would ease some of the concerns about funding and may make it harder to avoid being classified as large-scale. Alternatively, multi-tier regulation with large breeders required to be licensed while small breeders are subject to a lesser form of regulation, such as registration, might be considered. The State of Pennsylvania has adopted such an approach. We have not evaluated the merits or disadvantages of these alternatives but did note that readily identifiable breeder IDs can be used to trace complaints to specific breeders. Moreover, pet stores could be compelled to maintain records on every dog sold and make these available to government inspectors, thus facilitating tracking the sources of puppies. Also, requiring breeders to provide readily traceable identification may be a strong incentive to comply with Hawai‘i general excise tax and income tax laws.

Conclusion

We found little more than anecdotal evidence for a need to protect the public’s health, safety, and welfare from abusive activities of large-scale dog breeders. Consequently, our analysis shows that S.B. No. 1522, S.D. 2, H.D. 1, does not meet the criteria for regulation of these breeders through the State’s professional and vocational regulatory agency. We also found that the primary goal of the bill is to protect dogs rather than the public, and the DCCA is ill-equipped to administer regulation of animal breeders. In addition, financing is an unresolved issue due to the lack of information on the scale and extent of dog breeding in Hawai‘i. With estimates of the number of potential licensees ranging from less than ten to around 30, licensing fees to cover the cost of regulation may have to be the highest in the nation, even if the existing animal control infrastructure at the county level can be used. Furthermore, provisions in S.B. No. 1522, S.D. 2, H.D. 1, are flawed and unnecessarily complex, making it difficult and costly to enforce. Some requirements detailed in the bill can result in hardships to some breeders as they seek a one-size-fits-all solution to the widely diverse needs and characteristics of over 150 dog breeds.

There are better alternatives for protecting dogs. For instance, the state of Oklahoma created an independent board, which delegates oversight of dog breeders to veterinarians, experts in animal welfare issues. Another alternative is a puppy lemon law, which requires sellers to reimburse buyers of puppies for the purchase price and cost of veterinarian care if they are found to be diseased or deformed within a specified period of time. Eighteen states have adopted puppy lemon laws.

Recommendations

1. As proposed Senate Bill No. 1522, Senate Draft 2, House Draft 1 of the 2011 legislative session should not be enacted.
2. The Legislature should address flaws in the proposed regulation and consider alternatives to licensing by the Department of Commerce and Consumer Affairs to achieve the goal of protecting dogs. Improvements should be done in consultation with stakeholders, including enforcement officials, potential overseeing agencies, veterinarians, and breeders.
3. The Legislature should require the proponents of the large-scale dog breeder regulation to provide the number of likely licensees. Doing so will help determine if regulation can be paid for through licensing fees.

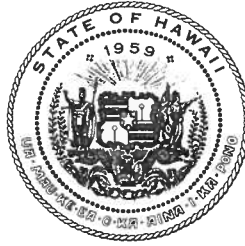
Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on October 7, 2011. A copy of the transmittal letter to the department is included as Attachment 1. The response of the department is included as Attachment 2.

Overall the department agreed with the findings of the report and recommendation to the Legislature to address flaws in the proposed regulation and consider alternatives to licensing to achieve the goal of protecting dogs. The department noted a change in the Oklahoma Commercial Pet Breeder law as an example of the difficulty in “crafting cost-effective regulation that effectively reconciles the state’s competing interests in protecting dogs while fostering and supporting businesses.” On page 15 of the draft report, we corrected the contract amount between the City and County of Honolulu and the Hawaiian Humane Society based on a review of the contract provided by the department.

STATE OF HAWAI'I
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

October 7, 2011

COPY

The Honorable Keali'i S. Lopez
Director
Department of Commerce and Consumer Affairs
King Kalākaua Building
335 Merchant Street
Honolulu, Hawai'i 96813

Dear Ms. Lopez:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Analysis: Regulation of Large-Scale Dog Breeders and Facilities*. We ask that you telephone us by Tuesday, October 11, 2011, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, October 17, 2011.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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OFFICE OF THE DIRECTOR
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KEALI'I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

October 18, 2011

RECEIVED

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for the opportunity to comment on the draft report, **Sunrise Analysis: Regulation of Large-Scale Dog Breeders and Facilities**.

We echo the concerns pointed out in the report regarding the flaws with the proposed form of regulation and concur that alternatives to licensing by the Department of Commerce and Consumer Affairs ("DCCA") should be considered to achieve the goal of protecting dogs.

We do have concerns about the language on page 15, paragraph 3 that states "According to DCCA's Regulated Industries Complaints Office, the O'ahu humane society's contract with the City and County of Honolulu reflects compensation of \$2.66 million for one year." The City and County of Honolulu's contract with the O'ahu Humane Society is a public document. We have attached an uncertified copy of the contract without attachments, showing a contract amount of \$2,358,125. The earlier reference to \$2.66 million relates to the O'ahu Humane Society's bid proposal. We recommend that the report make a direct reference to the value of the contract rather than attribute the contract amount to DCCA.

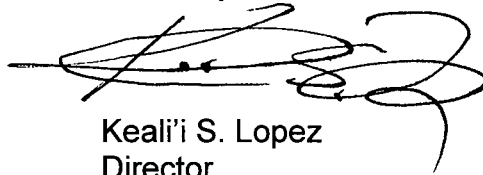
Although the report suggests that the Legislature consider alternatives to licensing by DCCA, the report favorably references the Oklahoma Commercial Pet Breeder Act as a viable model for regulation. In particular, the report on page 22 discusses a Commercial Pet Breeder Board and states that "...county humane societies could be contracted to take advantage of their enforcement expertise and

Ms. Marion M. Higa
October 18, 2011
Page 2

infrastructure.” DCCA notes, however, that the Oklahoma Commercial Pet Breeder law was and continues to be the subject of controversy, and that the law was revised earlier this year to explicitly preclude the Commercial Pet Breeder Board from hiring any humane society group to perform any inspection.¹ While nothing requires Hawaii to adopt a similar prohibition, the revisions to the Oklahoma law reflect the difficulty in crafting cost-effective regulation that effectively reconciles the state’s competing interests in protecting dogs while fostering and supporting businesses.

We appreciate the opportunity to provide our input on the draft report and hope that it will add to the evaluation process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keali'i S. Lopez', with a large, stylized flourish extending from the end of the signature.

Keali'i S. Lopez
Director

Attachment

c: Jo Ann Uchida, RICO
Celia Suzuki, PVL

¹ 59 Okl.St. Ann. Sec. 5014F. The Board shall not hire any humane society group or member of any humane society group to perform any inspection required by the Commercial Pet Breeders Act. (eff. May 2011)

CONTRACT NO. CT-CSD-0800592

THIS AGREEMENT is made and entered into this 4th day of Aug 2008, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation existing under and by virtue of the laws of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the CITY, and **HAWAIIAN HUMANE SOCIETY**, whose principal place of business is 2700 Waialae Avenue, Honolulu, Hawaii 96826, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

WHEREAS, the CITY desires to enter into an Agreement to Furnish, Manage, Operate and Maintain a Shelter for the Care and Control of Animals for the Customer Service Department, and

WHEREAS, the CITY issued a Request for Proposals (hereinafter RFP) on March 24, 2008, Addendum No. 1 on April 23, 2008, Addendum No. 2 on April 23, 2008, and Addendum No. 3 on May 13, 2008; and

WHEREAS, the CONTRACTOR submitted its proposal in response to the RFP, as amended, on May 28, 2008; and

WHEREAS, the Contractor was the only responsible offeror;

WHEREAS, the City entered into direct negotiations with the Hawaiian Humane Society in accordance with Section 3-122-59(4) of the Hawaii Administrative Rules ("HAR");

NOW, THEREFORE, in consideration of the above and the mutual promises and terms, conditions, and provisions contained herein, the CITY and the CONTRACTOR agree as follows:

- A. Incorporation by Reference; Precedence. The proposal submitted by the CONTRACTOR on May 29, 2008, is attached hereto as Attachment A and incorporated herein and made a part hereof.

RFP No. RFP-CSD-0800008, as amended, is attached hereto as Attachment B and incorporated herein and made a part hereof.

In event of any conflict between the provisions of Attachment A, B, and this Agreement, this Agreement shall govern. In event of any conflict between the

provisions of Attachments A and B, Attachment B shall govern over Attachment A.

- B. CONTRACTOR'S AFFIRMATIVE OBLIGATIONS. In addition to all of the Contractor's other duties, responsibilities, obligations, and liabilities under this Agreement, it is expressly understood and agreed that the Contractor shall have an affirmative obligation to furnish, manage, operate, and maintain a shelter for the care and control of animals, in accordance with the terms, conditions, and provisions of this Agreement.
- C. Contract Amount. The CITY agrees to pay the CONTRACTOR \$2,358,125.00, pursuant to the CONTRACTOR'S proposal.
- D. Payment Schedule. Payments shall be made quarterly beginning on the date of the Notice to Proceed.
- E. Effective Date. The effective date of this Agreement shall be for twelve months with an additional extension on a month-to-month or term basis, not to exceed a twelve month extension at a time, for an additional period or periods not to exceed a total of forty-eight months. Any extension shall be by mutual agreement and subject to the availability of funds.
- F. Commencement Date. The commencement date of this Agreement shall be the date specified in the Notice to Proceed to be issued by the Officer-in-Charge after execution of this Agreement.
- G. Complete Agreement. This Agreement, together with its attachments and those documents specifically incorporated herein by reference, represents the complete and fully integrated agreement and understanding between the parties, both oral and in writing, and terminates cancels and supersedes all prior to contemporaneous agreements, understandings, negotiations, discussions or representations, promises, agreements, understanding, warranties, guarantees, terms, conditions, provisions, covenants, or undertakings relating to this Agreement, written or oral, expressed or implied, that are not expressed in writing in this Agreement and its attachments or those documents specifically incorporated herein by reference.
- H. AMENDMENTS. This Agreement shall not be modified or varied except by an instrument in writing executed by both parties.
- I. COST OR PRICIONG DATA. By signing below, the Contractor hereby certified that, to the best of its knowledge and belief, cost or pricing data, as defined in section 3-122-122, Hawaii Administrative Rules ("HAR"), and submitted pursuant to section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Agreement, is accurate, complete, and current as of the date of this Agreement. This certification includes the cost or pricing data supporting any advance agreement(s) between the Contractor and the City which are part of the proposal.

From BFS - 74
(Mar. 1996)

Certificate

The attached contract for Care and Control of Animals furnish, manage, operate and maintain a Shelter for the

_____ (\$2,358,125.00)

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. CT-CSD-0800592

FUND General Fund (110)

ACCOUNT NO. 110/1526-09 (3049)

HONOLULU, HAWAII

AUG -4 2008

Mark C. [Signature]
Director of Budget & Fiscal Services *[Signature]*

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

CITY AND COUNTY OF HONOLULU

By *Mark B*
Director of Budget and Fiscal Services *sh* *sh*
AUG - 4 2008

HAWAIIAN HUMANE SOCIETY

By *[Signature]*
Its PRESIDENT + CEO
By _____
Its _____

RECOMMEND APPROVAL:

Hubert P. Meier
Director of Customer Service Department

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Deputy Corporation Counsel
State of Hawaii)
City and County of Honolulu) ss.

On this 9th day of July, 2008,
Day Month Year
before me personally appeared

PAMELA BURNS
Name of Signer

to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

[Signature]
Signature of Notary Public

My commission expires: August 29, 2008