**BEFORE THE**
**COMMISSION ON STATE MANDATES**
**STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Civil Code Sections 18 15, 18 16, 1834, 1834.4, 1845, 1846, 1847, and 2080;
Food and Agricultural Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, and 32003;
Penal Code Sections 597.1 and 599d; and
Business and Professions Code Section 4855,

As Added or Amended by Statutes of 1978, Chapter 13 14; and Statutes of 1998, Chapter *752;* and

California Code of Regulations, Title 16, Division 20, Article 4, Section 203 1 (Renumbered 2032.3 on May 25, 2000); and

Filed on December 22, 1998;

By the County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno, and Southeast Area Animal Control Authority, Claimants.

NO. CSM 98-TC-11

*Animal Adoption*

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on January 25, 2001)

## STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on February 2, 2001.

Paula Higashi, Executive Director

**BEFORE THE**
**COMMISSION ON STATE MANDATES**
**STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847, and 2080;
Food and Agricultural Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, and 32003;
Penal Code Sections 597.1 and 599d; and
Business and Professions Code Section 4855,

As Added or Amended by Statutes of 1978, Chapter 1314; and Statutes of 1998, Chapter 752; and

California Code of Regulations, Title 16, Division 20, Article 4, Section 2031 (Renumbered 2032.3 on May 25, 2000); and

Filed on December 22, 1998;

By the County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno, and Southeast Area Animal Control Authority, Claimants.

NO. CSM 98-TC-11

*Animal Adoption*

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on January 25, 2001)

## STATEMENT OF DECISION

On October 26, 2000, and November 30, 2000, the Commission on State Mandates (Commission) heard this test claim during regularly scheduled hearings.

At the October 26, 2000 hearing, Mr. Leonard Kaye appeared for the County of Los Angeles. Dr. Dennis Davis, Animal Care and Control Department, Lancaster Shelter, and Mr. Robert Ballenger, Senior Manager, Animal Care and Control Department, appeared as witnesses for the County of Los Angeles. Mr. Allan Burdick and Ms. Pam Stone appeared for the City of Lindsay and County of Tulare. Lt. Ramon Figueroa, Department of Public Safety, appeared as a witness for the City of Lindsay. Ms. Pat Claerbout appeared for the Southeast Area Animal Control Authority. Ms. Meg Halloran, Deputy Attorney General, and Mr. James Apps appeared for the Department of Finance.

At the October 26, 2000 hearing, the Commission received public testimony from the following persons: Mr. Richard Ward, State Humane Association of California; Ms. Dolores Keyes, Coastal Animal Services Authority; Mr. Greg Foss, County of Mendocino; Ms. Lois Newman, The Cat and Dog Rescue Association of California; Ms. Patricia Wilcox, California Animal Control Directors Association; Ms. Kate Neiswender, on behalf of Senator Tom Hayden, author of SB 1785; Dr. Dena Mangiamele and Mr. John Humphrey, County of San Diego; Ms. Virginia Handley , The Fund for Animals; Mr. Mike Ross, Contra Costa County; Ms. Teri Barnato, Association of Veterinarians for Animal Rights; and Mr. Howard J. Davies, Mariposa County Sheriff's Department. In addition, a statement prepared by Ms. Taimie L. Bryant was read into the record by Ms. Kate Neiswender.

At the November 30, 2000, hearing, Mr. Leonard Kaye and Mr. Robert Ballenger appeared for the County of Los Angeles. Mr. Allan Burdick and Ms. Pam Stone appeared for the City of Lindsay and the County of Tulare. Mr. Hiren Patel, Deputy Attorney General, and Mr. James Apps appeared for the Department of Finance.

At the hearings, oral'and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 and following, and related case law.

The Commission, by a vote of 5 to 2, partially approved this test claim.

## BACKGROUND

Test Claim Legislation

In 1998, the Legislature enacted Senate Bill 1785 (Stray Animals) in an attempt to end the euthanasia of adoptable and treatable stray animals by the year 2010. The test claim legislation expressly identifies the state policy that "no adoptable animal should be euthanized if it can be adopted into a suitable home" and that "no treatable animal should be euthanized. "[1] Thus, the test claim legislation provides, in part, that:

- The required holding period for stray animals is increased from three days, to four to six business days as specified.' Stray animals shall be held for owner redemption during the first three days of the holding period. If the owner has not redeemed the stray animal within the first three days, the animal shall be available for redemption or adoption during the remainder of the holding period;
- The stray animal shall be released to a nonprofit animal rescue or adoption organization if requested by the organization prior to the scheduled euthanization of that animal. In addition to the required spay or neuter deposit, the pound or shelter has the authority to assess a fee, not to exceed the standard adoption fee, for animals released;

[1] See, Civil Code section 1834.4; Food and Agriculture Code section 17005; and Penal Code section 599d.

[2] The stray animals subject to this legislation include dogs, cats, rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, and tortoises legally allowed as personal property.

- Shelter personnel are required to verify the temperament of an apparent feral cat by using a "standardized protocol" to determine if the cat is truly feral, or simply a frightened or difficult tame cat. If the cat is determined to be tame, then the cat is required to be held for the entire holding period. If the cat is truly feral, the cat may be euthanized or relinquished to a nonprofit animal adoption organization after the first three days of the holding period;
- Animals that are relinquished to a pound or shelter by the purported owner shall be held for two full business days, not including the day of impoundment. The animal shall be available for owner redemption on the first day, and shall be available for owner redemption or adoption on the second day. After the second required day, the animal may be held longer, euthanized, or relinquished to a nonprofit animal adoption organization;
- Public entities and private entities that contract with a public entity have the "mandatory duty' to maintain lost and found lists and other information to aid owners of lost pets;
- All public pounds and private shelters shall keep and maintain accurate records for three years on each animal taken up, medically treated, and impounded; and
- Impounded animals shall receive "necessary and prompt veterinary care."

On October 2, 2000, the claimants amended their test claim to include Business and Professions Code section 4855, enacted in 1978, and section 2032.3 of the regulations issued by the California Veterinary Medical Board. These provisions require all veterinarians to keep a written record of all animals receiving veterinary services for a minimum of three years.

History

In 1981, the Board of Control approved a test claim filed by the County of Fresno on legislation requiring a 72-hour holding period prior to the euthanasia of stray cats *(Detention of Stray Cats,* SB 90-3948).[3] The Parameters and Guidelines adopted by the Board of Control authorized reimbursement for the one-time costs of building modification; feeding, water and litter receptacles; and additional cages. The Parameters and Guidelines also authorized reimbursement for ongoing personnel activities, and the purchase of food, litter and cleaning supplies. Except for the County of Los Angeles, all cities and counties were eligible for reimbursement. The County of Los Angeles sponsored the "stray cat" legislation and, thus, was not entitled to reimbursement under the former Revenue and Taxation Code. In 1982, the Board of Control adopted a statewide cost estimate. However, the Legislature elected not to fund the mandate in 1984.[4]

Claimants' Position

The claimants contend that the test claim legislation constitutes a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimants are requesting reimbursement for the initial costs to obtain

[3] Food and Agriculture Code section 31752, as added by Statutes of 1980, Chapter 1060.

[4] Statutes of 1984, Chapter 268.

new and additional facilities, to develop new policies and procedures, and to develop new protocols such as the one required for feral cats. The claimants are also requesting continuing costs to maintain records; provide veterinary services; provide services to animals, other than dogs and cats; and costs resulting from the increased holding period.

On October 2, 2000, the claimants filed a response to the Draft Staff Analysis clarifying that they are seeking reimbursement for the following activities: construction of cat housing; construction of isolation/treatment facilities; construction of additional kennel buildings; extra kennel staffing; lost and found staffing; additional medical personnel; medical equipment and supplies; emergency treatment costs; and additional administrative costs. The County of Los Angeles estimates their initial costs to implement the program at $5,762,662.

Department of Finance Position

The Department contends that the test claim should be denied. The Department argues that the test claim legislation imposes animal control activities on both public and private sector entities. Therefore, although the test claim legislation may result in additional costs to local agencies, those costs are not reimbursable because they are not unique to local government. The Department further states the duty imposed on local agencies to accept and care for lost or abandoned animals is not a new duty and, thus, does not constitute a new program or higher level of service. Finally, the Department contends that no reimbursement is required since there are no costs mandated by the state pursuant to Government Code section 17556, subdivisions (d) and (e).

Position of Interested Party, City of Fortuna

The City of Fortuna contends that the test claim legislation constitutes a reimbursable state mandated program by increasing the length of time animals can be held before they are euthanized, by adding new requirements related to adoption services, and by adding new requirements related to veterinary care. The City contends that the test claim legislation increased the cost of its animal control program by 284 percent.

Position of Interested Party, County of Mariposa

Howard Davies, assistant sheriff of Mariposa County, testified that the test claim legislation has resulted in increased costs in the form of housing animals, building a new facility, and increased staffing. He further testified that the four to six business-day holding period required by the test claim legislation essentially forces agencies to hold animals for six or seven days, when taking weekends into account.

Position of Interested Parties, Counties of San Diego, Fresno, and Mendocino

The Counties of San Diego, Fresno, Mendocino, and Contra Costa contend that the test claim legislation constitutes a reimbursable state mandated program. Both counties filed comments on the Draft Staff Analysis. The Counties of San Diego and Contra Costa contend that local agencies are required by the test claim legislation to provide "new" veterinary care services. The County of San Diego further contends that local agencies are required to perform new activities related to the seizure of animals. The County of Fresno filed comments, and Greg

Foss of the County of Mendocino provided testimony, clarifying the list of offsetting savings to be included in the parameters and guidelines.

Position of Interested Person, Senator Tom Havden, Author of SB 1785

Kate Neiswender, staff to Senator Tom Hayden, testified that the test claim legislation does not impose a reimbursable state mandated program. The test claim legislation seeks to increase adoptions and reduce the rate, and costs, of killing animals. If all of the pieces of the test claim legislation are fully implemented, there is a net effect of no new costs.

Position of Interested Person, Taimie L. Bryant, Ph.D., J.D.

Ms. Bryant is a Professor of Law at UCLA Law School. She assisted in the design and drafting of the test claim legislation at the request of Senator Tom Hayden. She teaches a course entitled "Animals and the Law," which has been offered at UCLA each academic year since 1995. She is also the faculty sponsor for the UCLA Animal Welfare Association.

Ms. Bryant contends that this test claim should be denied. Ms. Bryant argues that the test claim legislation applies to both public and private entities and, thus, is not unique to local government pursuant to the court's holding in *County of Los Angeles v. State of California*.[5] She further contends that the test claim legislation authorizes local agencies to assess fees sufficient to pay for the mandated program and that the legislation "has no net negative financial impact on local government." Therefore, Ms. Bryant contends that no reimbursement is required since there are no costs mandated by the state pursuant to Government Code section 17556, subdivisions (d) and (e).

Position of Other Interested Persons

Virginia Handley of the Fund for Animals, Inc., contends that the test claim legislation constitutes a reimbursable state-mandated program. Ms. Handley filed comments on the Draft Staff Analysis supporting reimbursement for the entire holding period, for owner relinquished animals, and for increased veterinary care.

Lois Newman, founder and president of The Cat and Dog Rescue, states that the test claim legislation is cost-effective. Ms. Newman contends that the claimants' argument that the costs resulting from the test claim legislation are substantial is without merit. She further argues that some local agencies decided to expend monies for capital improvements before the test claim legislation was enacted and, thus, there is no proof that the test claim legislation resulted in costs mandated by the state.

The San Francisco Society for the Prevention of Cruelty to Animals (SPCA) states that it entered into a partnership called the "Adoption Pact" with the San Francisco Animal Care and Control Department in 1994. Several provisions and incentives provided in the Adoption Pact were written into the test claim legislation. The San Francisco SPCA contends that the test claim legislation is cost-effective and can be accomplished on a revenue-neutral or revenue-positive basis without expenditures for new facilities or increased space.

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[5] ***County of Los Angeles v. State*** of ***California*** (1987) 43 Cal.3d 46.

B. Robert Timone, Executive Director for the Haven Humane Society, states that the test claim legislation imposes a reimbursable state mandated program by increasing civil and criminal liability, by severely increasing mandatory shelter retention time for stray and owner released animals, and by subjecting animal sheltering agencies to open-ended veterinary medical expenses. The Haven Humane Society has contracted with the City of Redding for 15 years and can no longer provide animal care services as a result of the test claim legislation.

Jeffrey E. Zinder filed comments on behalf of Animal Issues Movement (a Los Angeles/Orange County nonprofit organization) and United Activists for Animal Rights (a Riverside County nonprofit organization) contending that the test claim legislation constitutes a reimbursable state mandated program. Mr. Zinder filed comments on the Draft Staff Analysis contending that veterinary care and care and treatment for owner-relinquished animals are reimbursable activities.[6]

Richard Ward of the State Humane Association of California contends that the test claim legislation constitutes a reimbursable state mandated program and supports the positions of the County of San Diego, Mr. Jeffrey Zinder,' and the claimants.

Dolores Keyes of the Coastal Animal Services Authority, a small shelter providing animal care services for the cities of Dana Pointe and San Clemente, testified that she has seen a definite fiscal impact that includes higher veterinarian costs, higher staffing costs, and new in-house services as a result of the test claim legislation.

Patricia Wilcox of the California Animal Control Directors Association testified that the test claim legislation has resulted in increased costs for medical care for lost, stray, abandoned, and relinquished animals.

Teri Barnato of the Association of Veterinarians for Animal Rights testified that veterinary care is not a new activity imposed by the test claim legislation since prior law required care and treatment for stray and abandoned animals.. She testified that many shelters have increased their veterinary care, not because of the test claim legislation, but as a result of public pressure.

## FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

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[6] The comments filed by Yvonne Hunter of the League of California Cities and the comments filed by the Animal Care and Control Department of the City and County of San Francisco are helpful in providing background information. However, these comments do not address the issue before the Commission as to whether the test claim legislation imposes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6, of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[7]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

The Commission also addresses a fourth issue raised by the claimants and interested party, County of San Diego, pertaining to seized 'animals under Penal Code section 597.1:

- Do the activities imposed by Penal Code section 597.1, relating to the seizure of animals, constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

These issues are addressed below.

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." The California Supreme Court, in *the* case of *County of Los Angeles v. State of California'*, defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[9]

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[7] Article XIII B, section 6 of the California Constitution; County of *Los Angeles v. State of California, supra, 43* Cal.3d at *56; Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d *51, 66; Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

[8] *County of Los Angeles, supra, 43* Cal.3d 46, 56.

[9] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at 537.

The Commission analyzes this issue in two parts. The first part addresses Senate Bill 1785, the stray animal legislation. The second part addresses the provisions added to the test claim by the claimants' test claim amendment; namely, Business and Professions Code section 4855 and section 2032.3 of the California Veterinary Medical Board's regulations.

Senate Bill 1785 – Stray Animals

Both the Department of Finance and Ms. Bryant contend that the test claim legislation on stray animals is not subject to article XIII B, section 6 of the California Constitution because the animal control activities required by the test claim legislation are not unique to local government. With the exception of posting lost and found lists, it is their position that the test claim activities are imposed on both public and private shelters.

The claimants disagree and contend that the test claim legislation is subject to article XIII B, section 6 of the California Constitution. The claimants argue that the Legislature has imposed a duty on local government to provide animal services in the state pursuant to Penal Code sections 597f and 597.1, Food and Agriculture Code section 31105, and Health and Safety Code section 121690, subdivision (e). Private animal shelters do not have similar duties and can refuse to accept a stray animal. Therefore, the claimants contend that the test claim legislation is unique to local government. The claimants also argue that the test claim legislation provides a service to the public and, thus, the test claim legislation qualifies as a program under article XIII B, section 6 of the California Constitution.

For the reasons stated below, the Commission finds that the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The purpose of the test claim legislation is to carry out the "state policy" that no adoptable animal should be euthanized if it can be adopted into a suitable home and that no treatable animal should be euthanized.[10] In this respect, the test claim legislation does impose duties on both public and private animal shelters. In Section 1 of the test claim legislation, the Legislature declared that "public and private shelters and humane organizations share a common purpose in saving animals' lives" and that "public and private shelters and humane organizations should work together to end euthanasia of adoptable and treatable animals." Thus, the test claim legislation requires both public and private shelters to perform the following activities:

- keep stray animals for a longer holding period;
- provide the animal with necessary and prompt veterinary care, adequate nutrition, water, and shelter, and make reasonable attempts to notify the owner if the animal has identification;
- release the stray animal to an animal rescue and adoption organization upon request prior to the euthanization of the animal;
- determine whether an apparently feral cat is truly feral; and

[10] Civil Code section 1834.4; Penal Code section 599d; and Food and Agriculture Code section 17005.

- keep and maintain accurate records on each animal for three years. [11]

Although the test claim legislation applies to both public and private shelters, existing law, which was not amended or repealed by the test claim legislation, does *not* require private shelters to accept stray or abandoned animals. Instead, the act of accepting and caring for stray animals is within the discretion of the private shelter. Thus, the Commission finds that the requirements imposed by the test claim legislation apply to private shelters only if the private shelter decides to accept the stray or abandoned animal, and that existing law cannot be ignored.

For example, Civil Code section 1816, subdivision (a), provides that a private entity with whom a stray animal is deposited "is bound to take charge of it, *if able to do so.*"

The Department of Finance contends that Civil Code section 1816, subdivision (a), is not relevant to this analysis. Instead, the Department contends that it is subdivision (b) of section 18 16 that applies and requires both public and private shelters to accept stray animals. That section states the following: *"A public agency or shelter* with whom a thing is deposited in the manner described in Section 1513 is bound to take charge of it, as provided in Section 597.1 of the Penal Code." (Emphasis added.) The Department argues that the phrase "a public agency or shelter" means *both* public and private shelters. The Department supports its position with Senate and Assembly floor analyses that state that the test claim legislation applies to both private and public shelters. [12]

The Commission disagrees with the Department of Finance's argument. When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way. Moreover, the intent must be gathered from the whole of a statute, rather than from isolated parts or words, in order to make sense of the entire statutory scheme. [13]

There is no evidence that the Legislature intended the phrase "a public agency or shelter" in Civil Code section 1816, subdivision (b), to include private shelters. Such a reading ignores the plain language of Civil Code section 1816, subdivision (a), which does address private shelters by the express reference to a "private entity. " In subdivision (a), the Legislature expressly stated that private entities are only required to take charge of stray animals "if able to do so."

Moreover, other statutes enacted as part of Senate Bill 1785 specifically include the word "private" when referring to private shelters. [14] Thus, had the Legislature intended to apply

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[11] Ms. Lois Newman of The Cat and Dog Rescue Association submitted a survey revealing the number of private animal shelters operating in California. There are 187 private shelters and 246 public shelters.

[12] Department of Finance's response to Draft Staff Analysis.

[13] *City of Merced v. State of California* (1984) 153 Cal.App.3d *777; Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132.

[14] See Section 1, subdivision (a)(l) and (2), and subdivision (e), of Statutes of 1998, Chapter 752 (Legislature's Findings and Declarations); Food and Agriculture Code section 32001 (Lost and Found Lists); and Food and Agriculture Code section 32003 (Maintaining Records).

Civil Code section 1816, subdivision (b), to private shelters, they would have included the word "private" in subdivision (b).

Finally, the Senate Floor Analysis of Senate Bill 1785, dated August 27, 1998, specifically recognizes that the duties imposed by the test claim legislation are mandatory duties for public entities and only those private entities which contract with the public entity to perform *their* required governmental duties. [15]

Accordingly, the Commission finds that Civil Code section 1816, subdivision (a), supports the conclusion that private animal shelters are not required to perform the activities imposed by the test claim legislation since the act of accepting and caring for stray animals is within the discretion of the private shelter.

Moreover, Civil Code section 2080 states that "any person who finds a thing lost [including a stray animal] is *not* bound to take charge of it, unless the person is otherwise required to do so by contract or law. " In this regard, the Department of Finance and Ms. Bryant contend that many private shelters have the legal obligation to take in stray animals because their mission statements and by-laws require them to take in strays. However, there is *no state law* requiring private shelters to accept and care for an animal. Thus, only if the private shelter decides to accept and care for an animal, or enter into a contract with a local agency to perform such services, is the private shelter required to perform the activities imposed by the test claim legislation.

Public shelters, on the other hand, have a pre-existing legal duty to accept and care for stray animals. Food and Agriculture Code section 3 1105 requires the county board of supervisors to take up and impound stray dogs. That section states the following:

> The board of supervisors *shall* provide for both of the following:

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[15] The Commission notes that the Senate Floor Analysis, analyzing the same version of the bill, changed for the August 30, 1998 hearing. The August 30, 1998 analysis did not contain the paragraph recognizing that the duties imposed by the test claim legislation are mandatory duties for public entities and those private entities that contract with the public entity. The vote on the bill by the Senate occurred on August 30, 1998.

The Commission notes, however, that the Senate Floor Analysis dated August 28, 1998 is consistent with Corporations Code section 14503, which provides that the governing body of a local agency may contract with private humane societies and societies for the prevention of cruelty to animals to provide animal care or protection services. In this regard, the private entity's jurisdiction is limited to the jurisdiction of the local agency. Corporations Code section 14503 states the following:

> The governing body of a local agency, by ordinance, may authorize employees of public pounds, societies for the prevention of cruelty to animals, and humane societies, who have qualified as humane officers pursuant to Section 14502, and which societies or pounds have contracted with such local agency to provide animal care or protection services, to issue notices to appear in court
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> , . . . for violations of state or local animal control laws. Those employees shall not be authorized to take any person into custody even though the person to whom the notice is delivered does not give his or her written promise to appear in court. The authority of these employees is to be limited to the jurisdiction of the local agency authorizing the employees.

(a) The taking up and impounding of all dogs which are found running at large in violation of any provision of this division.

(b) The killing in some humane manner or other disposition of any dog which is impounded. (Emphasis added.)[16]

Health and Safety Code section 121690, subdivision (e), also requires counties and cities to maintain a pound system. That section states the following:

(e) It *shall be the duty* of the governing body of each city, city and county, or county to maintain or provide for the maintenance of a pound system and a rabies control program for the purpose of carrying out and enforcing this section. (Emphasis added.)[17]

The test claim legislation, in Civil Code section 1816, subdivision (b), furthers this duty by stating that public agencies or shelters with whom a thing is deposited is "bound to take charge of it, as provided in Section 597.1 of the Penal Code." Since 1991, Penal Code section 597.1 has required peace officers and animal control officers employed by local agencies to take possession of any stray or abandoned animal, and provide care and treatment for the animal.[18] Penal Code section 597.1 states in relevant part the following:

Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner.

Although the above provision includes privately employed humane society officers, the law does *not* require humane societies and/or societies for the prevention of cruelty to animals to hire humane society officers. Rather, these private entities have the choice to hire such employees.[19] Accordingly, the requirement in Penal Code section 597.1, to take possession of any stray or abandoned animal, imposes a state-mandated duty on local governmental agencies only.

Therefore, unlike private animal shelters, local agencies have no choice but to perform the activities required by the test claim legislation. Accordingly, the Commission finds that the

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[16] Added by Statutes of 1967, Chapter 15.

[17] Added by Statutes of 1995, Chapter 415 (derived from Statutes of 1957, Chapter 1781).

[18] Added by Statutes of 1991, Chapter 4.

[19] Corporations Code section 14502. Pursuant to the provisions of Corporations Code section 14502, if the private entity decides to hire a humane society officer, the entity must first file an application with the court for the appointment of the prospective employee as a humane society officer. If the individual meets the requirements, then the individual will be appointed a humane society officer and possess limited peace officer powers to prevent the perpetration of any act of cruelty upon an animal. Corporations Code section 14502, subdivision (n), further states that "[a] humane society or a society for the prevention of cruelty to animals shall notify the sheriff of the county in which the society is incorporated, prior to appointing a humane officer, of the *society's intent* to enforce laws for the prevention of cruelty to animals."

test claim legislation does impose unique requirements on local agencies to implement the state's policy to end euthanasia of adoptable and treatable animals.

The Comrnission further finds that the test claim legislation satisfies the second test that triggers the applicability of article XIII B, section 6 in that it constitutes a program that carries out the governmental function of providing a service to the public. As indicated above, only local agencies are mandated by the state to accept and care for stray and abandoned animals. The courts have held that the licensing and regulation of the manner in which animals are kept and controlled are within the legitimate sphere of governmental police power.[20] In this respect, the Legislature recognized in Section 1 of the test claim legislation that "taking in of animals is important for public health and safety, to aid in the return of the animal to its owner, and to prevent inhumane conditions for lost or free roaming animals. " Although Ms. Bryant urges the Commission to deny this test claim, she acknowledges that "collection of stray animals has been deemed a legitimate and necessary function of government as opposed to a duty to be placed on private citizens. "

Based on the foregoing, the Commission finds that Senate Bill 1785 (Stray Animals) constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Sections Added bv the Claimants' Test Claim Amendment

On October 2, 2000, the claimants amended their test claim to add Business and Professions Code section 4855 and section 2032.3 of the Veterinary Medical Board's regulations. These provisions require all veterinarians to keep a written record of all animals receiving veterinary services for a minimum of three years.

For the reasons stated below, the Commission finds that these provisions do *not* constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

In order for a statute or an executive order to constitute a "program" subject to article XIII B, section 6 of the California Constitution, the statute or executive order must be unique to local government or carry out the governmental function of providing a service to the public. Neither, test is satisfied here.

Business and Professions Code section 4855 states the following:

> *A veterinarian subject to the provisions of this chapter* shall, as required by regulation of the [Veterinary Medical Board], keep a written record of all animals receiving veterinary services, and provide a summary of that record to the owner of animals receiving veterinary services, when requested. The minimum amount of information which shall be included in written records and summaries shall be established by the board. The minimum duration of time for which a licensed premise shall retain the written record or a complete copy of the written record shall be determined by the board. (Emphasis added.)

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[20] *Simpson* v. *City* of *Los Angeles* (1953) 40 Cal.2d 271, 278 (where the California Supreme Court stated that "it is well settled that the licensing of dogs and the regulation of the manner in which they shall be kept and controlled are within the legitimate sphere of the police power, and that statutes and ordinances may provide for impounding dogs and for their destruction or other disposition.")

In response to Business and Professions Code section 4855, the Veterinary Medical Board issued section 2032.3 of its regulations. That regulation provides in pertinent part the following:

> (a) *Every veterinarian* performing any act requiring a license pursuant to the provisions of Chapter 11, Division 2, of the [Business and Professions Code], upon any animal or group of animals shall prepare a legible, written or computer generated record concerning the animal or animals. . . . (Emphasis added.)

Based on the express language of these provisions, the Commission finds that the record keeping requirements imposed by Business and Professions Code section 4855 and the regulation issued by the Veterinary Medical Board apply to *all* veterinarians licensed in this state. Thus, these provisions are not unique to local government. Nor does the activity to keep records constitute a peculiarly governmental function since the activity is imposed on *all* veterinarians.

Therefore, the Commission finds that Business and Professions Code section 4855 and section 2032.3 of the Veterinary Medical Board's regulations do not constitute a "program" and, thus, are not subject to article XIII B, section 6 of the California Constitution.

Accordingly, the remainder of this analysis addresses only those provisions enacted as part of Senate Bill 1785 (Stray Animals).

**Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect irnmediately before the enactment of the test claim legislation.

Holding Period for Dogs and Cats

Food and Agriculture Code sections 31108 and 31752 describe the required holding period for impounded dogs and cats. Those sections provide that an impounded dog or cat shall be held for six business days, not including the day of impoundment. The six-day holding period can be reduced to four business days if the local agency complies with one of the following provisions:

- If the pound or shelter has made the dog or cat available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day, the holding period shall be four business days, not including the day of impoundment.
- If the pound or shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their dog or cat by appointment at a mutually agreeable time when the pound or shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.

These test claim statutes further require, that prior to euthanizing an impounded dog or cat for any reason other than irremediable suffering, the impounded dog or cat shall be released to a nonprofit animal rescue or adoption organization, if requested by the organization, before the scheduled euthanization of the impounded animal. In addition to any spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for the animals released.

The holding period and adoption requirements described above do not apply to animals that are irremediably suffering from a serious illness or severe injury and newborn animals that need maternal care and have been impounded without their mothers. Such animals may be euthanized without being held for owner redemption or adoption.[21]

Before the test claim legislation was enacted, public shelters were required to hold impounded dogs and cats for 72 hours from the time of capture. The 72-hour holding period did not apply to cats that were severely injured, seriously ill, or to newborn cats unable to feed themselves.[22]

In addition, there was no requirement under prior law to release impounded animals to nonprofit animal rescue or adoption organizations, upon request of the organization, prior to euthanizing the animal.

Accordingly, the Commission finds that Food and Agriculture Code sections 31108 and 31752 impose a new program or higher level of service by:

- Requiring local agencies to provide care and maintenance during the increased holding period for impounded dogs and cats. The increased holding period shall be measured by calculating the difference between three days from the day of capture, and six business days from the day after impoundment, or four business days from the day after impoundment requiring local agencies to either:

  (1) Make the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

  (2) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establish a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed;[23] and by

- Requiring the release of the animal to a nonprofit animal rescue or adoption organization upon request by the organization prior to euthanasia.

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[21] Food and Agriculture Code section 17006.

[22] Food and Agriculture Code sections 31108 (as added by Statutes of 1967, Chapter 15) and 31752 (as added by Statutes of 1980, Chapter 1060)

[23] The claimants and several commentators contend that as a result of the increased holding period, the cost of veterinary care has increased. The Commission can consider the argument, that veterinary care during the increased holding period is reimbursable, at the parameters and guidelines phase.

Holding Period for Other Animals

Food and Agriculture Code section 31753 imposes the same holding period and adoption requirements for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property, as is required for dogs and cats. Thus, section 31753 provides that the holding period for these other animals is six business days, not including the day of impoundment. The six-day holding period can be reduced to four business days if the local agency complies with one of the following provisions:

- If the pound or shelter has made the other animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day, the holding period shall be four business days, not including the day of impoundment.
- If the pound or shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the pound or shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.

Ms. Bryant contends that Food and Agriculture Code section 31753 does not constitute a new program or higher level of service. Ms. Bryant contends that before the enactment of the test claim legislation, Penal Code sections 597f and 597.1 required peace officers, humane society officers, and animal control officers to take possession of any abandoned or neglected animal and care for the animal until the owner redeems the animal. Under these provisions, the animal control officer is required to perform a "due search" for the owner prior to euthanizing the animal. Thus, she argues that a holding period is legally implied from the requirement that owners be given a chance to redeem their animals.

Ms. Bryant further argues that the holding period established under prior law is equivalent to a "reasonable" period that allows the owner to redeem the animal. In this respect, Ms. Bryant argues that a five-day holding period has been deemed reasonable and, thus, required under prior law. In support of her position, Ms. Bryant cites a federal regulation, governing the sale of shelter animals to research labs, that deems five days the minimum necessary to provide owners a reasonable chance to reclaim their pets. She also cites California's vicious dog law, Food and Agriculture Code section 3 1621, which provides that an owner must receive five days notice to contest the "vicious dog" designation in order to reclaim the dog. Finally, Ms. Bryant states that the Humane Society of the United States promotes five days as the minimum reasonable holding period. Accordingly, Ms. Bryant contends that the test claim requirement to hold other animals for four days constitutes a lower level of service.

Government Code section 17565 states that "if a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate, " The Commission finds that Government Code section 17565 applies here.

Before the enactment of the test claim legislation, Penal Code sections 597f and 597.1 required animal control officers to take possession and provide care and treatment to any stray or abandoned animal until the animal was deemed to be in suitable condition to be returned to the

owner. If the owner could not be found after a due search, the animal control officer could have the animal euthanized or placed in a suitable home. Thus, the Commission agrees that Penal Code sections 597f and 597.1 apply to the animals specified in the test claim statute and that some holding period is implied in these sections.

However, there was *no prior state* or *federal law* mandating local agencies to hold these specified animals for any time period. Rather, the appropriate time period was left up to the discretion of the local agency. With the enactment of Food and Agriculture Code section 31753, the state is now requiring local agencies, for the first time, to hold these animals for four days. Therefore, the Commission finds that the four or six day holding period is new.

Accordingly, the Commission finds that Food and Agriculture Code sections 31753 imposes a new program or higher level of service by:

- Requiring local agencies to provide care and maintenance during the increased holding period for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property. The increased holding period shall be measured by calculating the difference between three days from the day of capture, and six business days from the day after impoundment, or four business days from the day after impoundment requiring local agencies to either:

  (1) Make the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

  (2) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establish a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed; and by

- Requiring the release of the animal to a nonprofit animal rescue or adoption organization upon request by the organization prior to euthanasia.

Feral Cats

The test claim legislation added section 3 1752.5 to the Food and Agriculture Code to address feral cats. Feral cats are defined as cats without owner identification whose usual and consistent temperament is extreme fear and resistance to contact with people. A feral cat is totally unsocialized to people.

Food and Agriculture Code section 31752.5, subdivision (c), states the following:

> Notwithstanding Section 31752 (establishing the holding period for stray cats), if any apparently feral cat has not been reclaimed by its owner or caretaker within the first three days of the required holding period, shelter personnel qualified to verify the temperament of the animal *shall verify whether it is feral or tame by using a standardizedprotocol.* If the cat is determined to be docile or a frightened or difficult tame cat, the cat shall be held for the entire required holding period specified in Section 31752. If the cat is determined to be truly feral, the cat *may* be euthanized or relinquished to a nonprofit . , . .animal adoption organization that agrees to the spaying or neutering of the cat

> if it has not already been spayed or neutered. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for the animal released. (Emphasis added. )

The claimants contend that section 3 1752.5 constitutes a new program or higher level of service by establishing holding periods for feral cats and by requiring local agencies to verity whether a cat is feral or tame by using a "newly developed or obtained" standardized protocol. The claimants state the following:

> The mandatory holding periods for feral cats are completely new. There is no prior law on the subject. The 'standard adoption fee[s]' for feral cats shall not be exceeded. In addition, local government must now 'verify whether it is feral or tame by using a standardized protocol' in order to determine the correct holding period. Therefore, the costs of obtaining or developing such a protocol as well [as] its administration would be reimbursable 'costs mandated by the state' as claimed herein.
>
> Regarding holding periods for feral cats, the clock starts to run after (not including) '. . . the day of impoundment. ' Under prior law, there were no holding periods for feral cats. Now holding periods are established, mandated, and defined in terms of a number of 'business days', considerably longer than the same number of calendar days. Therefore, Chapter 752/98 explicitly increases mandatory holding periods for feral cats and related costs upon local government.

The Commission disagrees with the claimants' statement that holding periods for feral cats are completely new and that there was no prior law on the subject. Before the enactment of the test claim legislation, Food and Agriculture Code section 31752 required a 72-hour holding period from the time of capture for *all* impounded stray cats, except cats that were severely injured, seriously ill, or newborn cats unable to feed themselves. That section stated the following:

> No *stray cat* which has been impounded by a public pound, society for the prevention of cruelty to animals shelter, or humane shelter shall be killed before 72 hours have elapsed from the time of the capture of the stray cat.
>
> This section shall not apply to cats which are severely injured or seriously ill, or to newborn cats unable to feed themselves. (Emphasis added.)

Thus, the 72-hour holding period established under prior law applied to both feral and tame cats.

The Commission finds that the only new requirement imposed by Food and Agriculture Code section 31752.5 is the requirement to verify within the first three days of the holding period whether the cat is feral or tame by using a standardized protocol. If the cat is determined to be tame, the same holding period established by Food and Agriculture Code section 31752, as amended by the test claim legislation and described in the section above, applies; i.e., four or six business days.

Accordingly, the Commission finds that Food and Agriculture Code section 3 1752.5 constitutes a new program or higher level of service by requiring local agencies to verify, within the first three days of the holding period, whether a cat is feral or tame by using a standardized protocol.

Owner Relinquished Animals

The test claim legislation added Food and Agriculture Code section 31754 to address animals relinquished by their owners, That section provides in relevant part the following:

> [A]ny animal relinquished by the purported owner that is of a species impounded by pounds or shelters shall be held for two full business days, not including the day of impoundment. The animal shall be available for owner redemption for the first day, not including the day of impoundment, and shall be available for owner redemption and adoption for the second day. After the second required day, the animal may be held longer, killed, or relinquished to a nonprofit . . . . animal adoption organization under the same conditions and circumstances provided for stray dogs and cats. . . .

Section 3 1754 became operative on July 1, 1999, and sunsets on July 1, 2001.

On July 1, 2001, Food and Agriculture Code section 3 1754 will provide, with the exception stated below, that any animal relinquished by the purported owner that is of a species impounded by pounds or shelters shall be held for the same holding periods, and with the same requirements of care, applicable to stray dogs and cats in sections 31108 and 31752 of the Food and Agriculture Code.[24] However, the period for owner redemption shall be one day, not including the day of impoundment, and the period for owner redemption or adoption shall be the remainder of the holding period.

The holding period described above does not apply to relinquished animals that are irremediably suffering from a serious illness or severe injury, or newborn animals that need maternal care and have been impounded without their mothers.

Ms. Bryant contends that neither prior law, nor Food and Agriculture Code section 31754, require local agencies to take in owner-relinquished animals. Thus, she argues that taking in such animals is within the discretion of the local agency and that the holding periods established by section 31754 only apply if the local agency chooses to accept owner-relinquished animals.

The claimants contend that section 31754 imposes mandatory duties on the local agency to accept owner-relinquished pets since, in reality, owners relinquish their animals on the streets

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[24] The Commission notes that section 31754 requires the same holding periods for owner-relinquished animals as the holding period for stray dogs and cats. The statute correctly refers to section 31108 for the holding period for stray dogs. But, the statute references section 31755, which is not the statute relating to stray cats. The statute relating to stray cats is section 31752. Accordingly, the Commission finds that there is a typographical error in section 31754 and that the Legislature intended to refer to section 31752 instead of 31755.

if the agency will not accept the animal. At that point, the animal will be deemed a stray or an abandoned animal and, thus, require the agency to take possession of the animal.[25]

The Commission agrees with Ms. Bryant. At the time the test claim legislation was enacted, local agencies were not required to accept owner-relinquished animals. They were simply required to take possession of stray or abandoned animals.[26]

The test claim legislation did not change existing law. Rather, based on the plain language of the test claim legislation and existing law, taking possession of owner-relinquished animals, and caring and maintaining the owner-relinquished animal during the required holding period, is within the discretion of the local agency.

Accordingly, the Commission finds that Food and Agriculture Code section 31754 does not constitute a new program or higher level of service since there are no state mandated duties imposed on local agencies.

Posting Lost and Found Lists

Food and Agriculture Code section 32001 provides the following:

> All public pounds, shelters operated by societies for the prevention of cruelty to animals, and humane shelters, that contract to perform public animal control services, shall provide the owners of lost animals and those who find lost animals with all of the following:
>
> (a) Ability to list the animals they have lost or found on 'Lost and Found' lists maintained by the pound or shelter.
>
> (b) Referrals to animals listed that may be the animals the owner or finders have lost or found.
>
> (c) The telephone numbers and addresses of other pounds and shelters in the same vicinity.
>
> (d) Advice as to means of publishing and disseminating information regarding lost animals.
>
> (e) The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.
>
> *The duties imposed by this section are mandatory duties for public entities for all purposes of the Government Code and for all private entities with which a public entity has contracted to perform those duties.* (Emphasis added.)

Before the enactment of the test claim legislation, the duty imposed by section 32001 to post lost and found lists was *not* mandatory. The last two sentences of former section 32001 stated the following:

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[25] Other commentators share the claimants' view (e.g., Virginia Handley, Jeffrey Zinder, and Richard Ward.)

[26] Food and Agriculture Code section 31105; Penal Code section 597.1.

> Notwithstanding Section 9, a violation of this section is not a misdemeanor. Furthermore, the duty imposed by this section is *nut a mandatory duty* for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code [entitled " Claims and Actions Against Public Entities and Public Employees"], and *no cause of action for damages is created'by this section against a public entity* or employee or against any other person. (Emphasis added.)

The above sentences were repealed with the enactment of the test claim legislation. Thus, the test claim legislation created a legal duty for local agencies to post the lost and found lists required by section 32001, and at the same time, established a cause of action for an agency's failure to comply.

Accordingly, the Commission finds that Food and Agriculture Code section 32001 imposes a new program or higher level of service by requiring local agencies to provide the owners of lost animals and those who find lost animals with all of the following:

- Ability to list the animals they have lost or found on "Lost and Found" lists maintained by the pound or shelter.
- Referrals to animals listed that may be the animals the owner or finders have lost or found.
- The telephone numbers and addresses of other pounds and shelters in the same vicinity.
- Advice as to means of publishing and disseminating information regarding lost animals.
- The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.

Records

The test claim legislation amended Penal Code section 597.1 and added section 32003 to the Food and Agriculture Code to address the maintenance of records.

Penal Code section 597.1, subdivision (d), provides that "[a]n animal control agency that takes possession of an animal pursuant to subdivision (c) [i.e., injured cats and dogs found without their owners and conveyed to a veterinarian to determine if the animal should be euthanized or treated] shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended. "

Food and Agriculture Code section 32003 requires the maintenance of records on each animal taken up, medically treated, or impounded. That section states the following:

> All public pounds and private shelters shall keep accurate records on each animal taken up, medically treated, or impounded. The records shall include all of the following information and any other information required by the California Veterinary Medical Board:

(a) The date the animal was taken up, medically treated, euthanized, or impounded.

(b) The circumstances under which the animal is taken up, medically treated, euthanized , or impounded.

(c) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.

(d) A description of any medical treatment provided to the animal and the name of the veterinarian of record.

(e) The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three years after the date the animal's impoundment ends.

The claimant contends that these sections impose new and increased duties. Ms. Bryant, on the other hand, contends that no new records are required. She states that the requirement to keep records was previously required by the Public Records Act and by other areas of California law. Thus, Ms. Bryant contends that Penal Code section 597.1, subdivision (d), and Food and Agriculture Code section 32003 do not impose a new program or higher level of service.

For the reasons described below, the Commission finds that Food and Agriculture Code section 32003 imposes a partial new program or higher level of service.

Before the enactment of the test claim legislation, Penal Code section 597.1, subdivision (d), and Penal Code section 597f, subdivision (c), required animal control agencies to keep records for public inspection indicating the whereabouts of an injured dog or cat conveyed to a veterinarian for a 72-hour period from the time of possession.

In addition, pursuant to the Business and Professions Code and regulations enacted by the California Veterinary Medical Board in 1979, existing law requires all veterinarians to keep a written record of all animals receiving veterinary services. The record shall contain the following information, if available: name, address and phone number of the owner; name and identity of the animal; age, sex and breed of the animal; dates of custody (with the veterinarian); short history of the animal's condition; diagnosis or condition at the beginning of custody; medication and treatment provided; progress and disposition of the case; and surgery log. Such records shall be maintained for a minimum of three years after the last visit.[27]

The Commission agrees 'that the test claim legislation imposes some of the same record-keeping responsibilities as existing law. For example, the Commission agrees that the requirements imposed by Penal Code section 597.1, subdivision (d), to keep records for three years on the whereabouts of the animal are not new. That section applies to injured cats and dogs that are conveyed to a veterinarian to determine whether the animal should be euthanized

[27] Business and Professions Code section 4855; California Code of Regulations, title 16, division 20, article 4, section 2032.3.

or treated. Although the test claim legislation increased the retention of the records from 72 hours to three years, existing regulations issued by the Veterinary Medical Board already require the maintenance of records describing the dates of custody, progress and disposition of the case for three years. Thus, the Commission finds that Penal Code section 597.1, subdivision (d), does not constitute a new program or higher level of service.

Similarly, the requirement imposed by Food and Agriculture Code section 32003 to maintain records for three years on animals receiving medical treatment by veterinarians is not new since the same requirement was previously imposed by the regulations issued by the Veterinary Medical Board.

However, the requirement imposed by Food and Agriculture Code section 32003 on local agencies to maintain records describing the "taking up" or "impoundment" of an animal is broader than the record keeping requirements imposed on veterinarians in prior law. Moreover, the requirement for local agencies to keep records regarding the euthanasia of an animal was not a requirement imposed in prior law. In this respect, the Commission disagrees with the arguments raised by Ms. Bryant and other commentators that euthanasia is a veterinary procedure and, thus, information regarding the euthanasia of an animal was required to be kept in the veterinarian's records.[28] The Commission finds that euthanasia is not a veterinary procedure since employees of animal control shelters who are *not* veterinarians or registered veterinary technicians are legally allowed to perform the procedure after eight hours of training. The training covers the following topics: history and reasons for euthanasia; humane animal restraint techniques; sodium pentobarbital injection methods and procedures; verification of death; safety training and stress management for personnel; and record keeping and regulation compliance for sodium pentobarbital .[29]

Accordingly, the Cornmission finds that Food and Agriculture Code section 32003 imposes new requirements on local agencies to maintain records for three years after the date the animal's impoundment ends on animals that are *not medically treated* by a veterinarian, but are either taken up, euthanized after the end of the holding period, or impounded. Such records shall include the following:

- The date the animal was taken up, euthanized, or impounded;
- The circumstances under which the animal is taken up, euthanized, or impounded;
- The names of the personnel who took up, euthanized, or impounded the animal; and
- The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party.

The Commission agrees that making these records available to the public complies with the Public Records Act, as argued by Ms. Bryant. "Public records" are defined as any writing containing information relating to the conduct of the public's business that is prepared, owned, used or retained by any state or local agency, regardless of the physical form or characteristic

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[28] Comments filed by Ms. Bryant and comments filed by Lois Newman of The Cat and Dog Rescue Association.

[29] See section 2039 of the Veterinary Medical Board's regulations.

of the writing. Local agencies are required under the Public Records Act to keep public records open for inspection at all times during the office hours of the local agency.[30] However, local agencies would not be compelled to make information on animals that do not receive veterinary services available to the public if the state had not created the requirement to maintain such records.

Accordingly, the Commission finds that the requirement to maintain records for three years on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the end of the holding period, or impounded constitutes a new program or higher level of service.

Veterinary Care

The claimants contend that the test claim legislation imposes a new program or higher level of service by requiring local agencies to provide veterinary care, which was not required under prior law. The claimants cite Civil Code section 1834.4, Penal Code section 599d, and Food and Agriculture Code section 17005, which expresses the state's policy that no adoptable animal should be euthanized and no treatable animal should be euthanized. All of these sections state the following:

> (a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affect the animal's health in the future.
>
> (b) It is the policy of the state that no treatable animal should be euthanized. A *treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts*. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia. (Emphasis added. )

The claimants contend that the italicized language quoted above "requires" local agencies to provide reasonable veterinary treatment services in order to make them adoptable.

The claimants also cite Civil Code section 1834, which was amended by the test claim legislation. That section provides that:

> A depositary of living animals *shall* provide the animals with *necessary and prompt veterinary care,* nutrition, and shelter, and treat them kindly. Any depositary that fails to perform these duties may be liable for civil damages as provided by law. (Emphasis added.)

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[30] Government Code section 6253.

Similarly, Civil Code section 1846 was amended by the test claim legislation to provide in part that "[a] gratuitous depositary of a living animal *shall provide the animal with necessary and prompt veterinary care.* " (Emphasis added.)

Ms. Bryant contends that veterinary care does not constitute a new program or higher level of service. She states the following:

> It is important to note that veterinary care is already mandated under Penal Code Sections 597f and 597.1, which require humane officers and animal control officers to 'take possession of [a] stray or abandoned animal and . . . **provide care and treatment** for the animal until the animal is deemed to be in suitable condition to be returned to the owner. ' (Penal Code Sec. 597.1(a)) Subsection (b) permits injured or sick animals other than cats or dogs to be killed or impounded and treated. Cats and dogs must be seen by a veterinarian before a determination is made to kill.
>
> Accordingly, the addition of the words 'prompt and necessary veterinary care' to Civil Code Section 1834 does not add to shelters' veterinary care responsibilities because of the pre-existing care provisions of Penal Code Section 597f and 597.1. (Emphasis in original.)

First, the Commission finds that the policy statements found in Civil Code section 1834.4, Penal Code section 599d, and Food and Agriculture Code section 17005 do not impose any requirements on local agencies. They simply describe the state's policy regarding euthanasia. The Commission acknowledges that the word "shall" is used in the sentence, which provides that "a treatable animal *shall* include any animal that is not adoptable but that could become adoptable with reasonable efforts. " However, that, sentence is merely defining "treatable animals. " It is not imposing the requirement to provide veterinary care for animals.

The issue of whether the requirement imposed by Civil Code sections 1834 and 1846 to provide necessary and prompt veterinary care constitutes a new program or higher level of service is more complicated, however.

Before the enactment of the test claim legislation, Penal Code section 597.1 contained a provision requiring local agencies to provide "care and treatment" for the animal until the animal is in a suitable condition to be returned to the owner. The Commission agrees that care and treatment can include necessary veterinary treatment. But, the provisions of Penal Code section 597.1 became operative *only if* the governing body of the local agency determined that it would operate under section 597.1. Penal Code section 597.1 stated in relevant part the following:

> (a) . . . . Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide *care and treatment* for the animal until the animal is deemed to be in suitable condition to be returned to the owner. . . .
>
> (1) This section *shall be operative* in a public agency or a humane society under the jurisdiction of the public agency, or both, *only if* the governing body of that public agency, by ordinance or resolution, determines that this section shall be

operative in the public agency or the humane society and that Section 597f shall not be operative. (Emphasis added.)[31]

Thus, the Commission finds that local agencies were not required to comply with the provisions of Penal Code section 597.1 before the enactment of the test claim legislation.

Before the test claim legislation was enacted, existing law, through Penal Code section 597f, also required local agencies to "care" for abandoned animals until the animal is redeemed by the owner. Penal Code section 597f further required local agencies to convey all injured dogs and cats to a veterinarian for treatment or euthanization. Local agencies had the option of providing "suitable care" for abandoned animals, other than cats and dogs, until the animal is deemed to be in a suitable condition to be delivered to the owner. Penal Code section 597f states in relevant part the following:

> (a) . . . . And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and ***care*** for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid. Every sick, disabled, infirm, or crippled animal, except a dog or cat, which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefore, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, *and* ***may provide suitable care*** *for the animal until it is deemed to be in a suitable condition to be delivered to the owner,* and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.
>
> (b) It *shall* be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be *conveyed all* ***injured cats and dogs*** *found without their owners in a public place directly to a veterinarian* known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be imrnediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment. . . . (Emphasis added.)

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[31] The Commission notes that the test claim legislation deleted subdivision (1) from Penal Code section 597.1 to codify the court's decision ***in*** *Carrera* v. *Bertaini* (1976) 63 Cal.App.3d 721. There, the court held that making optional the provisions on post-seizure hearings in Penal Code section 597.1 was unconstitutional. Thus, with the deletion of subdivision (l), post-seizure hearings are now required.

Based on the language of section 597f, the Commission finds that local agencies had a pre-existing duty to obtain necessary veterinary care for injured cats and dogs. Thus, the Commission finds that providing "necessary and prompt veterinary care" for injured cats and dogs given emergency treatment, as required by Civil Code sections 1834 and 1846, does *not* constitute a new program or higher level of service.

However, the Commission finds that the requirement to provide "prompt and necessary veterinary care" for abandoned animals, other than injured cats and dogs given emergency treatment, is new. The Commission acknowledges that Penal Code section 597f requires local agencies to provide "care" to other animals. The word "care" is not defined by the Legisiature. Nevertheless, for the reasons stated below, the Commission finds that the word "care" in section 597f does *not* include veterinary treatment.

The courts have determined that if a statute on a particular subject contains a particular word or provision, and another statute concerning the same or related subject omits that word or provision, then a different intention is indicated.[32]

Penal Code section 597f requires local agencies to "care" for the animal until it is redeemed by the owner. That section was originally added by the Legislature in 1905, and was last amended in 1989. In 1991, the Legislature added Penal Code section 597.1. That section provides that local agencies shall provide "care *and treatment"* for the animal until it is redeemed by the owner. As indicated above, "care and treatment" can include veterinary care and treatment. However, since the Legislature did *not* use the word "treatment" in Penal Code section 597f like it did in Penal Code section 597.1, the Commission finds that the Legislature did not intend Penal Code section 597f to require local agencies to treat or provide "prompt and necessary veterinary care" to these other abandoned animals.

Accordingly, the Commission finds that providing prompt and necessary veterinary care for abandoned animals, other than injured cats and dogs given emergency treatment, as required by Civil Code sections 1834 and 1846, is new and, thus, imposes a new program or higher level of service.[33]

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[32] Volume 58, Cal. Jur., sections 127 and 172; *Kaiser Steel* Corp. v. County of *Solano* (1979) 90 Cal.App.3d *662.*

[33] Interested party, County of San Diego, contends that the test claim legislation constitutes a new program or higher level of service by "providing veterinary care for stray or abandoned animals found and delivered by any person (other than a peace officer, humane society officer, or animal control officer) to a public animal shelter, that are ultimately euthanized. " The County of San Diego contends that Penal Code sections 597f and 597.1, when read in context, only apply when animals are seized by specified officers in the field and do not apply when other individuals find such animals.

The Commission disagrees with this interpretation, Penal Code section 597f, subdivision (a), states that "it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner. . . ." While section 597f does apply to seized animals, it does not limit the requirement to care for the animal to only those animals that are seized by an officer. The duty to care for the animal is imposed on the "animal regulation department of a public agency" once the animal comes into their possession.

Construction of New Buildings

Finally, the claimants' are requesting reimbursement for the construction of cat housing, isolation/treatment facilities, and additional kennel buildings in order to comply with the test claim legislation. The Department of Finance and other commentators contend that this request is suspect.

The Commission notes that the test claim legislation does *not* expressly require or mandate local agencies to construct new buildings. However, the Commission's regulations allow reimbursement for the most reasonable methods of complying with the activities determined by the Commission to constitute reimbursable state mandated activities under article XIII B, section 6 of the California Constitution.[34] Therefore, in order for the claimants to be entitled to reimbursement for construction of new buildings, the claimants will have to show at the parameters and guidelines phase that construction of new buildings occurred as a direct result of the mandated activities and was the most reasonable method of complying with the mandated activities.

**Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

As indicated above, the Commission finds that the test claim legislation constitutes a new program or higher level of service for the following activities:

- Providing care and maintenance for impounded dogs and cats for the increased holding period established by the test claim legislation (measured by calculating the difference between three days from the day of capture, and four business days from the day after impoundment, as specified in the third bullet below, or six business days from the day after impoundment);
- Providing care and maintenance for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property during the increased holding period established by the test claim legislation (measured by calculating the difference between three days from the day of capture, and four business days from the day after impoundment, as specified in the third bullet below, or six business days from the day after impoundment);
- For impounded dogs, cats, and other specified animals that are held for four business days after the day of impoundment, either;

  (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

  (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed;

[34] Title 2, California Code of Regulations, section 1183.1, subdivision (a)(4).

- Requiring the release of the impounded animal to a nonprofit animal rescue or adoption organization upon request prior to the euthanization of the animal;
- Verifying whether a cat is feral or tame by using a standardized protocol;
- Posting lost and found lists;
- Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded; and
- Providing prompt and necessary veterinary care for abandoned animals, other than injured cats and dogs that receive emergency treatment.

The Commission continues its inquiry to determine if these activities impose "costs mandated by the state."

Increased Holding Periods/ Release to Nonprofit Rescue or Adoption Organization/ Veterinary Care for Animals Other Than Cats and Dogs

The claimants contend that the longer holding periods established by the test claim legislation for impounded and owner-relinquished animals, and the veterinary care result in increased costs mandated by the state. The claimant acknowledges that, in addition to a spay or neuter deposit, the test claim legislation authorizes the local agency to assess a fee, not to exceed the standard adoption fee, for animals released to an adoption organization. However, the claimants argue that the fee authority is not sufficient to cover the "substantial new costs. "

Both the Department of Finance and Ms. Bryant, citing Governrnent Code section 17556, subdivisions (d) and (e), contend that the test claim legislation does not impose "costs mandated by the state" since the legislation authorizes local agencies to assess fees sufficient to pay for the mandated program and that the legislation has no net negative financial impact on local government. Ms. Bryant states the test claim legislation includes a number of cost saving measures such as (a) turning over shelter animals to qualified nonprofit animal rescue and adoption groups, which saves the costs of killing and carcass disposal and brings in adoption revenues paid by the nonprofit groups; (b) waiting before automatically killing owner-relinquished pets so that they can be reunited with their real owner or adopted by a new owner or nonprofit group - - thereby bringing in revenues and saving the expense of killing and disposing of the bodies; (c) providing for lost/found listings and other information to aid owners of lost pets, which obviates the need for many animals to enter the shelters at all; (d) enabling shelters to collect freely offered rewards for the return of lost pets; and (e) creating more legal avenues for dealing with anti-cruelty statute enforcement. The Department of Finance and Ms. Bryant further contend that the costs of impoundment must be passed on to the owners under the existing authority of Penal Code sections 597f and 597.1 and Government Code section 25802.

Government Code section 17514 defines "costs mandated by the state" as *any increased cost* a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

Government Code section 17556 lists seven exceptions to reimbursement, two of which are pertinent here. That section states that the Commission shall not find "costs mandated by the state" if the Commission finds that:

- The local agency has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service (Gov. Code, § 17556, subd. (d)); or
- The statute provides for offsetting savings to local agencies which result in no net costs to the local agencies, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate (Gov. Code, § 17556, subd. (e)).

Government Code section 17556, subdivisions (d) and (e), are analyzed below.

**Fee Authority – Government Code Section 17556, Subdivision (d).** Government Code section 17556, subdivision (d), provides that there shall be no costs mandated by the state if the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program.

In the present case, local agencies do have the authority, under certain circumstances, to assess fees upon the owner of an impounded animal for the care and maintenance of the animal. For example, pursuant to Civil Code section 2080, any public agency that takes possession of an animal has the authority to charge the owner, *if known,* a reasonable charge for saving and taking care of the animal.

Similarly, Penal Code sections 597f and 597.1 also allow local agencies to pass on the costs of caring for abandoned or seized animals to their owners by providing that "the cost of caring for the animal shall be a lien on the animal until the charges are paid. "

Moreover, Penal Code section 597f allows the cost of hospital and emergency veterinary services provided for impounded animals to be passed on to the owner, if known.[35]

The fee authority granted under the foregoing authorities applies only if the owner is known, Thus, local agencies have the authority to assess a fee to care and provide treatment for animals relinquished by their owners pursuant to Food and Agriculture Code section 31754. Local agencies also have the authority to assess a fee for the care and treatment of impounded animals that are ultimately redeemed by their owners. Under such circumstances, the Commission finds that the fee authority is sufficient to cover the increased costs to care,

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[35] Penal Code section 597f also allows the cost of such veterinary services to be *partially* paid pursuant to Food and Agriculture Code section 30652, which provides the following: "All fees for the issuance of dog license tags and all fines collected pursuant to this division shall be paid into the county, city, or city and county treasury, as the case may be, and shall be used: (a) First, to pay fees for the issuance of dog license tags; (b) Second, to pay fees, salaries, costs, expenses, or any or all of them for the enforcement of this division and all ordinances which are made pursuant to this division; (c) Third, to pay damages to owners of livestock which are killed by dogs; (d) Fourth, to pay costs of *any hospitalization or emergency care of animals pursuant to Section 597f of the Penal Code.* (Emphasis added.) The monies collected for licenses and fmes can be identified as an offset in the Parameters and Guidelines.

maintain, and provide necessary veterinary treatment for the animal during the required holding period since the "cost of caring" for the animal can be passed on to the owner.

Accordingly, pursuant to Government Code section 17556, subdivision (d), the Commission finds that there are no costs mandated by the state for the care, maintenance and necessary veterinary treatment of animals relinquished by their owners or redeemed by their owners during the required holding period.

The Commission further finds that there are no costs mandated by the state under Government Code section 17556, subdivision (d), for the care, maintenance, and treatment of impounded animals that are ultimately adopted by a new owner; for the care, maintenance, and treatment of impounded animals that are requested by a nonprofit animal rescue or adoption organization; or for the administrative activities associated with releasing the animal to such organizations.

The test claim legislation gives local agencies the authority to assess a standard adoption fee, in addition to any spay or neuter deposit, upon nonprofit animal rescue or adoption organizations that request the impounded animal prior to the scheduled euthanization of the animal.[36]

The claimant contends that the "standard adoption fee" is not sufficient to cover the costs for animals adopted or released to nonprofit animal rescue or adoption organizations. However, based on the evidence presented to date, the Commission finds that local agencies are not prohibited by statute from including in their "standard adoption fee" the costs associated with caring for and treating impounded animals that are ultimately adopted by a new owner or released to nonprofit animal rescue or adoption organizations, and the associated administrative costs. Rather, local agencies are only prohibited from charging nonprofit animal rescue or adoption organizations a higher fee than the amount charged to individuals seeking to adopt an animal.

However, the fees recovered by local agencies under the foregoing authorities do not reimburse local agencies for the care and maintenance of stray or abandoned animals, or the veterinary treatment of stray or abandoned animals (other than cats and dogs) during the holding period required by the test claim legislation when:

- The owner is unknown;
- The animal is not adopted or redeemed; or
- The animal is not released to a nonprofit animal rescue or adoption organization.

Thus, the fee authority is not sufficient to cover the increased costs for care, maintenance, and treatment during the required holding period for those animals that are ultimately euthanized. Under such circumstances, the Commission finds that that Government Code section 17556, subdivision (d), does not apply to deny this claim. Rather, local agencies may incur increased costs mandated by the state to care for these animals during the required holding period.

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[36] See Food and Agriculture Code sections 31108 (dogs), 317.52 (cats), 31752.5 (feral cats), 31753 (other animals), and 3 1754 (owner-relinquished animals).

**Offsetting Savings or Additional Revenue – Government Code Section 17556, Subdivision (e).** Government Code section 17556, subdivision (e), states that the Commission shall not find costs mandated by the state if:

- The *test claim statute* provides for offsetting savings to local agencies which result in no net costs to the local agencies, or
- The *test claim statute* includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

As indicated above, the Department of Finance and Ms. Bryant contend that Government Code section 17556, subdivision (e), applies to this claim since the legislation has no net negative financial impact on local government and includes a number of cost saving measures,

Additionally, the San Francisco SPCA contends that the test claim legislation is cost-effective and can be accomplished on a revenue-neutral or revenue-positive basis without expenditures for new facilities or increased space.

The Commission agrees that one of the purposes of the test claim legislation was to reduce the cost of euthanasia. The Legislature expressly declared in Section 1 of the test claim legislation that the "redemption of owned pets and adoption of lost or stray adoptable animals is preferable to incurring social and economic costs of euthanasia." To reduce the rate of killing, the Legislature made it easier for owners to redeem their pets by establishing longer holding periods, mandatory record-keeping, and lost and found lists.

In this respect, both the Department of Finance and Ms. Bryant describe a hypothetical situation showing the projected cost savings to a local agency when complying with the test claim legislation. The Commission recognizes that if complying with the test claim legislation really does result in cost savings, then local agencies will not be filing claims for reimbursement with the State Controller's Office. Government Code section 17514 only authorizes reimbursement by the state for the *increased* costs in complying with the mandate. The Commission notes that the claimants and several other commentators have filed declarations stating that local agencies have incurred increased costs as a result of the test claim legislation,

But, with regard to the legal issue of whether Government Code section 17556, subdivision (e), applies to this test claim, the only provision *in the test claim legislation* that provides for offsetting savings for the care and maintenance of the animal during the required holding period is the authorization to accept advertised rewards or rewards freely offered by the owner of the animal.[37] Rewards are not offered in every case, however. In addition, the rewards do not reimburse local agencies for the care and maintenance of a stray or abandoned animal when the owner cannot be found.

Thus, the Commission finds that there is no evidence that the test claim legislation provides for offsetting savings that result in *no* net costs to local agencies.

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[37] Civil Code section 1845.

Moreover, the test claim legislation does not include additional revenue specifically intended to fund the costs of the mandate.

Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to this claim.

Feral Cats, Lost and Found Lists, Maintaining Records

The Commission finds that none of the exceptions to reimbursement in Government Code section 17556 apply to deny this test claim with respect to the activities listed below. In this regard, the Commission finds that local agencies may incur increased costs mandated by the state pursuant to Government Code section 17514:

- For impounded dogs, cats, and other specified animals that are held for four business days after the day of impoundment, to either:

  (1) Make the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

  (2) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establish a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);

- To verify whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);

- To post lost and found lists (Food & Agr. Code, § 32001); and

- To maintain records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003).

**Issue 4: Do the activities imposed by Penal Code section 597.1, relating to the seizure of animals, constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?**

At the hearing on October 26, 2000, interested party, the County of San Diego, testified that the activities required by Penal Code section 597.1, relating to the seizure of animals, constitutes a reimbursable state mandated program. The claimants did not request reimbursement for such activities.

However, on November 9, 2000, the claimants submitted a "Review of Transcript and Proposed Recommendation" requesting that the Commission's decision incorporate the County of San Diego request. Specifically, the claimants are requesting that the Commission find that the activities listed below constitute reimbursable state mandated activities, and that the Commission adopt the following language in the statement of decision:

> For dogs, cats and other animals seized pursuant to Penal Code Section [PC] 597.1:

A. Conducting pre-seizure hearings [PC 597.1 (g)] ,

B. Conducting post-seizure hearings [PC 597.1(f)], in those cases where it is determined the seizure was justified,

C. Providing care, maintenance, and required veterinary treatment, except for emergency treatment of injured dogs and cats, during the new segment of the 14 day holding period, if not paid for by the animals' owner or on the owner's behalf [PC 597.1(h)], or, if required veterinary care is not provided by the owner and the animal is deemed to be abandoned [PC 597.1(i)].

For the reasons stated below, the Commission disagrees with the claimants and interested parties, and finds that the activities listed above do not constitute reimbursable state mandated activities pursuant to article XIII B, section 6 of the California Constitution and Government Code
section 175 14.

Pre-Seizure and Post-Seizure Hearings

Before the test claim legislation was enacted, Penal Code section 597.1 made it a misdemeanor to permit an animal to be in any building, street, or lot without proper care and attention. In cases where the local agency determined that prompt action was required to protect the health and safety of the animal or others, the local agency was authorized to immediately seize the animal. Under such circumstances, subdivision (f) required that the local agency provide the owner, if known, with the opportunity for a post-seizure hearing before the commencement of the criminal proceeding to determine the validity of the seizure.

In cases where the immediate seizure was not justified, the local agency was required by subdivision (g) to provide the owner, if known, with the opportunity of a pre-seizure hearing. In such cases, the owner was required to produce the animal at the time of the hearing, unless the owner made arrangements with the local agency to view the animal, or unless the owner could provide verification that the animal was euthanized. The purpose of the hearing was to determine if the animal should be seized for care and treatment.

Although, in prior law, subdivisions (f) and (g) contained language requiring agencies to conduct pre-seizure and post-seizure hearings, the provisions of Penal Code section 597.1, including subdivisions (f) and (g), became operative *only if* the governing body of the local agency determined that it would operate under section 597.1. Former Penal Code section 597.1, subdivision (l), stated the following:

> (1) This section shall be operative in a public agency or a humane society under the jurisdiction of the public agency, or both, only if the governing body of that public agency, by ordinance or resolution, determines that this section shall be operative in the public agency or the humane society and that Section 597f shall not be operative.

Thus, before the test claim legislation was enacted, adherence to Penal Code section 597.1 was optional.

The test claim legislation deleted subdivision (1). With the deletion of subdivision (1), pre-seizure and post-seizure hearings are now required.

Nevertheless, for the reasons provided below, the Cornmission finds the requirement to conduct either a pre-seizure or post-seizure hearing does *not* constitute a new program or higher level of service, and does not impose costs mandated by the state.

In 1976, the California Court of Appeal determined, in *the* case of *Can-era v. Bertaini,*[38] that pre-seizure and post-seizure hearings are constitutionally required pursuant to Fourteenth Amendment, Due Process Clause, of the United States Constitution. In *Carrera,* the petitioner's farm animals were seized and impounded for running at large and the owner was charged with cruelty and neglect. The seizure immediately resulted in petitioner incurring several hundred dollars in fees and costs that had to be paid before she could get possession of her animals. Petitioner was not given the opportunity under either a pre-seizure or post-seizure hearing to determine if the seizure was valid. Instead, by the time she was able to institute a lawsuit and obtain a court hearing, six weeks after the seizure, the fees increased to over *$2,500*. The court found that the county's procedures violated the Due Process Clause and recognized that where the government takes a person's property, the Due Process Clause requires some form of notice and hearing. The court stated the following:

> As a matter of basic fairness, to avoid the incurrence of unnecessary expenses. appellant was entitled to a hearing *before* her animals were seized or, if the circumstances justified a seizure without notice and a hearing, she was entitled to a *prompt hearing after* the animals were seized. Manifestly, the hearing in the superior court six weeks after the seizure cannot be said to satisfy appellant's due process rights.[39] (Emphasis added.)

Since pre-seizure and post-seizure hearings were *previously required* by the United States Constitution, these same activities imposed by Penal Code section 597.1 do not constitute a new program or higher level of service.

Moreover, the requirement to conduct pre-seizure and post-seizure hearings does not impose costs mandated by the state. Government Code section 17556, subdivision (b), provides that the Commission shall not find costs mandated by the state when "the statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts, " The Commission finds that Government Code section 17556, subdivision (b), applies here since before the enactment of the test claim legislation, the court in *Carrera* declared that existing law, through the Due Process Clause of the United States Constitution, required local agencies to conduct pre-seizure and post-seizure hearings when animals are seized. Moreover, bill analyses of the test claim legislation reveal that the amendment to Penal Code section 597.1 was intended to codify the court's decision in *Carrera*.

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[38] *Carrera v. Bertaini* (1976) 63 Cal.App.3d 721.

[39] *Id.* at 729.

Accordingly, the Commission finds that the requirement imposed by Penal Code section 597.1 to conduct pre-seizure and post-seizure hearings does not constitute a reimbursable state mandated activity pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

Holding Period for Seized Animals

The claimants and interested parties also request reimbursement for the following activities as a result of the 14-day holding period for seized animals:

> Providing care, maintenance, and required veterinary treatment, except for emergency treatment of injured dogs and cats, during the new segment of the 14 day holding period, if not paid for by the animals' owner or on the owner's behalf [PC 597.1(h)], or, if required veterinary care is not provided by the owner and the animal is deemed to be abandoned [PC 597.1(i)].

The Commission disagrees with the claimants' request.

Penal Code section 597.1, subdivisions (h), provides that if an animal is properly seized, the owner shall be personally liable to the local agency for the cost of the seizure and care of the animal. The owner has 14 days after the animal was seized to pay the charges and redeem the animal. The charges constitute a lien on the animal. If the owner does not pay the charges permitted under section 597.1, then the animal shall be deemed an abandoned animal and may be disposed of by the local agency.

Penal Code section 597.1, subdivision (i), further provides that if the seized animal requires veterinary care and the local agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal is deemed abandoned and may be disposed of by the local agency.

The 14-day holding period does *not* apply if it has been determined #at the seized animal incurred severe injuries, is incurably crippled, or is afflicted with a serious contagious disease and the owner does not immediately authorize treatment of the animal at the expense of the owner. In such cases, the seized animal may be euthanized without regard to the holding period. (Pen. Code, § 597.1, subd. (i).)

Furthermore, the Commission finds that the 14-day holding period does *nut* apply when the owner is truly unknown. Under such circumstances, the animal may be euthanized if sick or injured without regard to the 14-day holding period, or is deemed an abandoned or stray anirnal requiring the local agency to comply with the four or six day holding period established for dogs, cats, and other animals in Food and Agriculture Code sections 3 1108, 31752, and 31753. For example, Penal Code section 597.1, subdivision (b), provides that "every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found." Subdivision (b) further provides that the local agency has the duty to cause the animal to be euthanized or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. Moreover, subdivision (c) requires that all injured dogs and cats be conveyed to a veterinarian. If the owner does not redeem the injured

dog or cat "within the locally prescribed waiting period," the veterinarian may euthanize the animal.

When the 14-day holding period does apply, the Commission agrees that it constitutes a new program or higher level of service. Before the enactment of the test claim legislation, Penal Code section 597f required local agencies to take possession of animals that were abandoned, neglected, unfit for labor, or cruelly treated, and care for the animal until it is redeemed by the owner.

The Commission finds that prior law established in Penal Code section 597f implies *some* holding period for seized animals to allow the owner to redeem the animal after payment of expenses. However, there was *no prior state* or *federal law* mandating local agencies to hold seized animals for any specified time period. With the enactment of the test claim legislation, which deleted subdivision (1) of section 597.1 making its provisions mandatory, the state is now requiring local agencies, for the first time, to hold seized animals for 14 days before the animal may be disposed of by the local agency.

Thus, the Commission finds that providing care and maintenance for seized animals during the 14-day holding period constitutes a new program or higher level of service.

The Commission also finds the providing treatment for seized animals during the 14-day holding period, constitutes a new program or higher level of service. Penal Code section 597.1, subdivision (a), states. that "any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care *and treatment* for the animal until it is deemed in suitable condition to be returned to the owner. " Subdivisions (f) and (g) of section 597.1 also require that the due process notice given to owners of seized animals contain a statement that the owner is liable for the cost of caring for *and treating* the seized animal. Thus, necessary treatment is required during this time period.

But, the Commission finds that there are *no* costs mandated by the state associated with the 14-day holding period.

Government Code section 17556, subdivision (d), provides that the Commission shall not find costs mandated by the state when the local agency has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

The Commission finds that Government Code section 17556, subdivision (d), applies here. Penal Code section 597.1 authorizes the local agency to pass on the costs of the seizure and care, including veterinary care, of the animal to the owner when the seizure is upheld at the due process hearing. The charges become a lien on the animal until paid. If the owner pays all costs associated with the seizure of the animal, then the owner can redeem the animal and the local agency's costs are fully recovered. (Pen. Code, § 597.1, subd. (a).) Under such circumstances, there are no costs mandated by the state.

Even in situations where the owner abandons the seized animal, and fails or refuses to pay the costs of the seizure and care during the 14-day holding period, the local agency still has the authority to recover their costs in full from the owner. Under such circumstances, the owner becomes personally liable for the charges. For example, subdivisions (f) and (g) of section 597.1 provide that the owner's failure to request or attend the due process hearing "shall result

in liability" for the cost of caring for and treating any animal properly seized. Moreover, once the owner is found guilty of a misdemeanor under section 597.1, the costs of caring for and treating the animal become restitution to be paid by the owner to the local agency. Thus, even if the owner abandons the animal, liability for the costs of care and treatment during the 14-day holding period follow the owner and are collectible by the local agency.

The Commission further finds that Government Code section 17556, subdivision (d), applies to deny reimbursement for the costs incurred as a result of the 14-day holding period when the local agency is not able to collect the full amount of the charges from the owner. In *Santa Margarita Water District v. Kathleen Connell, as State Controller*[40] the court rejected the interpretation that authority to levy fees sufficient to cover costs under Government Code section 17556, subdivision (d), turns on economic feasibility. Rather, the court held that the plain language of subdivision (d) precludes reimbursement where the local agency has the authority, the right or the power to levy fees sufficient to cover the costs of the state-mandated program. The court stated the following:

> The Districts in effect ask us to construe 'authority, ' as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability' in the statute rather than "authority" .[41]

Accordingly, the Commission finds that the 14-day holding period established under Penal Code
section 597.1 does not constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

**CONCLUSION**

The Commission concludes that the test claim legislation imposes a partial reimbursable state mandated program on local agencies pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the *increased costs* in performing the following activities:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture, and four business days from the day after impoundment, as specified below in 3(a) and 3(b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);

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[40] (1997) 59 Cal.App.4th 382.

[41] *Id*. pg. 401

2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3(a) and 3(b), or six business days from the day after irnpoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);

3. For impounded dogs, cats, and other specified animals that are held for four business days after the day of impoundment, either:

   (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or

   (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);

4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);

5. Posting lost and found lists (Food & Agr. Code, § 32001);

6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and

7. Providing "necessary and prompt veterinary care" for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).

The Commission also concludes that all other statutes included in the test claim legislation that are not listed above do not impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14.

The Commission further concludes that several statutes outside the test claim legislation that provide local agencies with revenues to offset the costs of the mandated program should be included in the Parameters and Guidelines as offsetting savings to the extent they are collected and received by the local agency. For' example, local agencies have the authority to attribute part of the fees collected from owners for dog license tags and fines to pay salaries, costs, and expenses for the enforcement of animal control and emergency care of impounded animals. (Food & Agr. Code, § 30652; Pen. Code, § 597f.) Local agencies also have the authority to use a portion of the unclaimed spay and neuter deposits and fines collected for not complying with spay and neuter requirements to the administrative costs incurred by a local agency. (Food & Agr. Code, §§ 30520 et seq., and 31751 et seq.)[42] Finally, local agencies have the

[42] The Commission recognizes that as of January 1, 2000, dogs and cats are required to be spayed or neutered before they are adopted or released. (Food & Ag. Code, §§ 30503 and 31751.3.) Thus, local agencies stopped collecting spay/neuter deposits for cats and dogs as of January 1, 2000. (See comments from County of Fresno.) The reimbursement period for this test claim will begin January 1, 1999. Accordingly, the Commission concludes

authority to use the fines imposed and collected from owners of impounded animals to pay for the expenses of operation and maintenance of the public pound and for the compensation of the poundkeeper. (Gov. Code, § 25802.)

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that the spay/neuter deposits collected by local agencies for cats and dogs from January 1, 1999 to January 1, 2000, be identified as an offset.