

# *Advocacy Update*

Vol. 2, #34– June 2003

---

A Member Service of the California Biomedical Research Association

---



## **Federal Issues**

### **NIH FY 2004 BUDGET**

The Bush administration proposed a 2 % increase for NIH, bringing the budget to \$27.9 billion, an increase of \$549 million. The budget proposes converting approximately \$1.4 billion from FY 2003 appropriations for facilities construction and anthrax vaccine procurement in order to increase research programs in FY 2004. The increase for research grants would be \$1.9 billion or 7.5%. In FY 2004, over 80 % of the funds appropriated to NIH will go to extramural research with 9-10 % of the budget dedicated to intramural programs. Three percent will provide for research management and support. Research!America and the Campaign for Medical Research are orchestrating a letter to the House in advance of its floor consideration of the NIH funding bill. It is anticipated that the bill may go to the House floor as soon as Wednesday, July 9. CBRA has supported this increase.

### **HHS RESTRICTIONS ON PRAIRIE DOGS AND AFRICAN RODENTS**

In an effort to prevent further spread of the monkey pox virus, the U.S. Department of Health and Human Services (HHS) Secretary Tommy G. Thompson announced an immediate embargo on the importation of all rodents from Africa due to the potential that these rodents can spread monkey pox virus infection to other animal species and to humans. In addition, the Secretary also announced a ban within the United States on the distribution, sale, and transport of prairie dogs and six specific African rodent species implicated in the current monkey pox outbreak. The action, issued in accordance with regulations provided under the Public Health Service Act, will remain in effect until further notice. The full text of the HHS press release is below. It is also available online at <http://www.hhs.gov/news/press/2003pres/20030611a.html>.

### **USDA FY 2004 FUNDING**

The FY 2004 budget for the USDA proposes approximately \$15 million for Animal Welfare activities with \$8 million of that in new user fees for animal welfare inspections. USDA will conduct a program evaluation of the Animal Welfare Program as part of the budget formulation process.

### **USDA REQUEST FOR INFORMATION ON CHANGES TO MEDICAL RECORDS**

Many organizations responded to the USDA's request for comment on a proposed rule on medical records for animals, Docket No. 97-033-1. I understand the USDA has received approximately 3,000 total comments. If you missed the June 10 deadline but would still like to submit comments, USDA has the discretion to accept them.

## *State Legislation and Regulatory Issues - California*

### **AB 588 POUND SEIZURE**

Introduced by Paul Koretz (D-42) of West Hollywood to prohibit the release of animals from pounds or shelters for research, teaching, or biologic purposes. Koretz amended his bill March 25, to prohibit transfer of any dog or cat, alive or DEAD by an animal shelter to an animal research or biological supply facility for ANY purpose *except* “sterilization surgeries, surgeries that are of benefit to the animal, or medically necessary procedures performed on shelter animals by veterinarians, veterinary students, or veterinary technicians, for the purpose of educational instruction or community benefit.” Violation would be a criminal infraction punishable by fine not exceeding \$500.00. Scheduled for hearing by the Assembly Judiciary Committee on Tuesday, April 22, AB 588 was pulled from the agenda. Our feeling was that Assemblyman Paul Koretz felt he might not have the votes on the committee to win. The bill was tentatively rescheduled for May 6th and pulled again. Since the bill was not heard by May 9th, it can't be heard again until January 2004.

**TRANSGENIC FISH AND DEPARTMENT OF FISH & GAME**The Department of Fish and Game and the Fish and Game Commission have decided to add transgenic fish to the to restricted species list, thereby requiring a special permit for permission to possession and use transgenic fish. This was decided at the Fish and Games Commission's February 7<sup>th</sup> meeting. The regulations went into affect on May 14th. That started a 120 day grace period to obtain these permits. All facilities that currently have transgenic fish for research purposes now must have a restricted species permit specifically listing such species. Facilities will need to renew and/or amend their restricted species permits to include frogs, fish, and any other transgenic aquatic species. In addition, any facility planning on adding transgenic aquatic species, including fish, will need such a permit *before* obtaining these species.

Included in the regulatory language are provisions for an expedited permitting process for those research facilities that are already listed on the Department of F & G's bona-fide research facilities list or currently hold a Restricted Species Permit with the Department. The Department of F & G is working on moving all facilities into compliance as quickly and as painlessly as possible. Contacts at the Department of F & G are Ed Pert and Jim Hopelain. Facilities not labeled a Bona Fide Scientific Institution with Department of F & G or currently holding a Restricted Species Permit will not be eligible for this expedited process and will need to arrange for a visit, a review, or an inspection to even be considered for a permit.

CBRA has a step-by-step outline of the process and DRAFT language that will be necessary for the amended permits. Please contact us if you need any assistance. For background on this topic, please see *Advocacy Update*, Volume 2, #1, September 2002; CBRA Legislative Update, February 10, 2003; CBRA News Blast, Feb. 14, 2003; CBRA Legislative Update, March 11, 2003; *Advocacy Update*, Vol. 2, #3; *Advocacy Update*, Vol. 2, #2 . CBRA Legislative Update - Transgenic Fish May 22, 2003.

### **Potential Legislation that Could Affect Vets**

Senator Sheila Kuehl is looking into offering legislation to eliminate the “owner exemption” from the veterinary practice act. She is gathering information about how that would impact various interest groups. I believe this would impact researchers, RVTs who are currently able to perform diagnosis & surgery in those setting would no longer be able to do it if all exemptions were lifted, as well farmers, dog-breeders, cat-fanciers, etc. Removing the owner exemption would have less impact on research if California had an institutional exemption (as many other states do), but since it doesn't, this could become a sticky issue. Senator Kuehl is working with the California Veterinary Medical Association to pull together a meeting of all interested parties to discuss the ramifications of this. The staff person for Senator Kuehl that is leading the discussions is a third year vet student at Davis on sabbatical. If such legislation is introduced, it will not be until next session.

### **SB 765 – REVENUE BONDS: MEDICAL RESEARCH FACILITIES**

This bill would state the intent of the Legislature to enact legislation that would authorize the issuance of state lease revenue bonds for the creation of medical research facilities. Currently awaiting amendments and assignments to the policy committee.

### ***State Legislation and Regulatory Issues - Nevada***

The 72nd Session of the Nevada Legislature began on February 3, 2003 and adjourned on June 3, 2003. One special session, the 19<sup>th</sup>, adjourned in June, and a second, the 20<sup>th</sup>, is currently in session. There are no bills affecting biomedical research in consideration.

## *Of Possible Interest to Members*

### ***International***

#### **ANIMAL ACTIVIST GROUP LOBBIES TO INCORPORATE ANIMAL WELFARE IN EU CONSTITUTION**

The group, Animals' Constitution, has been active in its efforts to include animal welfare in two articles of the proposed European Constitution, whose draft should be complete by September of this year. The European Convention will present the draft to the intergovernmental conference of the European Union (EU). Three areas of interest to Animals' Constitution include animal transport, the killing of newborn calves, and the policies governing the control of hoof-and-mouth disease.

### ***National***

#### **SOCIAL SECURITY NUMBER MISUSE**

"The Social Security Number Misuse Prevention Act" (S. 228) - introduced by Sen. Diane Feinstein (D-CA) on January 28, 2003 - would prohibit obtaining, displaying, selling or purchasing a person's social security number (SSN), without the individual's consent or with the intent to locate or harm said person - unless those social security numbers are needed for public health, national security or law enforcement purposes. This issue is of interest to the biomedical research community since the animal extremist group Stop Huntingdon Animal Cruelty (SHAC) has posted social security numbers to target and harass administrators, scientists, employees, and company executives affiliated with Huntingdon Life Sciences (HLS). The bill has been placed on the Senate Legislative Calendar under General Orders, and currently has two cosponsors.

#### **RESTORATION OF FREEDOM OF INFORMATION ACT**

S. 609, the "Restoration of Freedom of Information Act of 2000" - introduced by Senator Patrick Leahy (D-VT) on March 12, 2003 - would narrow the public information disclosure exemptions recently enacted as part of the legislation establishing the new Department of Homeland Security. The homeland security exemptions were aimed at protecting "critical infrastructure information" (information related to bridges, dams, ports, nuclear power plants, or chemical plants) from public disclosure. However, newspaper and magazine organizations, community right-to-know advocates, civil liberty groups, and others have expressed concern that the homeland security legislation went too far in shielding certain types of information from release under FOIA. S. 609 would also clarify that state and local FOIA laws were not preempted. This legislation does not directly affect Department of Agriculture (USDA) Animal Care (AC) FOIA release policies governing the use of animals in research. The bill has been referred to the Senate Judiciary Committee and has four cosponsors.

## **CLONING AND STEM CELL BILLS**

Four bills pertaining to therapeutic cloning and stem cell research are pending in the 108th Congress. **S. 245** and **H.R. 234** (companion bills introduced by Sen. Sam Brownback (R-KS) and Rep. Dave Weldon (R-FL) respectively) would ban both human cloning as well as therapeutic cloning, also known as somatic cell nuclear transfer (SCNT). Further, scientists who perform SCNT, as well as patients who receive treatments derived from SCNT research could be imprisoned under this legislation. H.R. 234, with 102 cosponsors, has been passed by the House, but - as was the case last year when similar bills were considered - the outcome of the Senate version is uncertain. S. 245 was referred to the Senate Committee on Health, Education, Labor, and Pensions and has 27 cosponsors.

**S. 303** and **H.R. 801**, companion legislation introduced by Sen. Orrin Hatch (R-UT) and Rep. James Greenwood (R-PA), would also prohibit human cloning, but would allow scientists to conduct therapeutic cloning for purposes of medical research. Research would be subject to strict oversight from an ethics board and scientists would be liable for large financial penalties if they violate the research guidelines. S. 303, with seven cosponsors, was referred to the Senate Judiciary Committee, while H.R. 801, which has been referred to the House Energy and Commerce Subcommittee on Health, has nine cosponsors.

## **SUPREME COURT RULES PROTESTORS NOT SUBJECT TO RICO LAWS**

By a vote of 8-1, the Supreme Court has ruled that anti-abortion protestors who closed down abortion clinics across the country over the past 20 years through such tactics as human blockades and sit-ins could not be sued under the Racketeering-Influenced and Corrupt Organizations Act (RICO). The Court held that the protestors did not commit extortion (one of the predicate acts required for a RICO violation) under the technical legal definition contained in the federal Hobbs Act. This decision is important to researchers since it is likely to hamper FBI efforts to prosecute animal extremists who threaten or commit actual violence against biomedical research institutions. The Hobbs Act has been one of the primary legal weapons used by the FBI against violent animal rights protestors. The anti-abortion protestors were supported by the People for the Ethical Treatment of Animals (PETA), which filed an amicus brief to the Supreme Court, stating that its protestors had also been sued under RICO for their actions outside a fur shop. The lone dissent came from Justice John Paul Stevens, who wrote separately that he considered the Court's decision a "dramatic retreat" from the position federal courts have maintained throughout the history of the federal extortion law and that "the principal beneficiaries" of this decision "will certainly be the class of professional criminals whose conduct persuaded Congress that the public needed federal protection from extortion."

**State**

**SB 245 - FISH**

Introduced by Senator Sher February 14, 2003. Existing law provides that provisions in the Fish and Game Code relating to aquaculture do not permit ocean ranching, as defined. A violation of the code is a crime under existing law. This bill would delete that provision and, instead, make it unlawful to spawn, incubate, or cultivate any finfish in the ocean waters of the state, *except as specified*. By changing the definition of an existing crime this bill would impose a state-mandated local program. Failed in Assembly Committee on July 1, 2003.

**AB 395 - CAT DECLAW**

Authored by Paul Koretz (D-42) of West Hollywood and amending the veterinary practice law in the Business and Professions Code to prohibit veterinarians from surgically declawing all types of cats. It is in the Assembly Committee on Business and Professions.

**AB 732 - PIG**

Introduced by Assembly Member Hancock February 19, 2003. Existing law generally prohibits cruelty to animals. Existing law also provides that any person who subjects an animal to unnecessary cruelty or deprives it of necessary food, drink, or shelter is guilty of a crime punishable by imprisonment in a county jail or in the state prison, by a fine not exceeding \$20,000, or by both imprisonment and fine. This bill would provide that any person who confines or tethers a pig during pregnancy so that the pig is unable to turn around freely is guilty of a crime punishable by imprisonment in a county jail for a period of one year, a fine of up to \$1,000, or by both imprisonment and fine. This bill would also provide that any person who raises a calf in conditions under which it is tethered, unable to turn around freely, lie down with its legs and neck outstretched, and free to groom itself is guilty of a crime punishable by imprisonment in a county jail for a period of one year, a fine of up to \$1,000, or by both imprisonment and fine. Because this bill would create new crimes, it would impose a state-mandated local program. Scheduled for Agriculture Committee and hearing canceled at the request of the author.

**SB 225 CIVIL LIABILITY: PET DEATH**

Introduced by Senator Vincent February 13, 2003. An act to add Section 3341.5 to the Civil Code, relating to civil liability. Existing law punishes as a felony, the malicious and intentional wounding or killing of an animal. Existing law also provides that a person whose dog or other animal kills, worries, or wounds specified livestock is liable in a civil action to the owner of the livestock for damages and court costs. This bill would, except as specified, provide that any person who causes the intentional or negligent death of another person's pet, or the owner of another animal that causes the death of another person's pet, is liable in a civil action for up to \$4,000 in non-economic damages. Hearing canceled at the request of the author.

### **AB 267 – HUMAN CLONING**

Introduced on February 11, 2003 by Assemblyman Mullin. This bill would delete the prohibition against cloning a human being. It would also change the definition of “human reproductive cloning” to include the transfer of the nucleus of a human cell from any source into a human or nonhuman egg cell which has had the nucleus removed. Referred to Assembly Committee on Health where it was scheduled to be heard May 6, 2003. Hearing canceled at the request of the author.

### **AB 926 – LOW-LEVEL WASTE**

Bill would authorize the State Director of Health Services, with the approval of the Director of General Services, to lease specified property to construct, operate, and close a low-level radioactive waste disposal facility, consistent with the compact, in a specified location in the County of San Bernardino. Failed passage from the Assembly Environmental Safety Committee.

### **SB 133 – HUMAN CLONING**

Introduced on February 5, 2003 by Senator Battin. Existing law prohibits a person from cloning a human being or engaging in human reproductive cloning, as defined, and from purchasing or selling an ovum, zygote, embryo, or fetus for the purpose of cloning a human being. This bill would delete the prohibition against engaging in human reproductive cloning. Changes the definition of “clone a human being” to mean engaging in human asexual reproduction, accomplished by introducing nuclear material from one or more human somatic cells into a fertilized or unfertilized oocyte, which has had its nuclear material removed or inactivated, so as to produce a living organism that is genetically identical to an existing human organism. Referred to Senate Committees on Health and Human Services and Judiciary. Failed passage in committee on April 23.

### **SB 322 – STEM CELL RESEARCH**

Introduced February 19, 2003 by Senator Ortiz. Would require the State Department of Health Services to establish the Stem Cell Institutional Review Board, to be comprised of members selected by the department, to review and approve proposals for stem cell research projects. Existing law states the policy of the state that research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells from any source, including somatic cell nuclear transplantation, shall be permitted and that full consideration of the ethical and medical implications of this research be given, and that research involving the derivation and use of these cells shall be reviewed by an approved institutional review board. Referred to Senate Committee on Health and Human Services.

## **SB 771 – HUMAN CELLS, STEM CELL RESEARCH**

Introduced February 21, 2003 by Senator Ortiz Would require the State Department of Health Services to establish and administer a stem cell research program, which would serve a repository of embryos donated for research. Creates the Stem Cell Research Fund. Would require on and after January 1, 2005, a physician or surgeon, prior to providing assisted egg cell production, to provide to his or her patient a standardized written summary of health and consumer issues relating to egg cell donation. “Egg cell donor” or “oocyte donor” means an individual who voluntarily gives her egg cells to another woman for the purpose of conception or gives her egg cells to another person for the purpose of research or development of medical therapies. “Oocyte” means an egg cell. Referred to Senate Committee on Health and Human Services.

### ***California Local***

#### **Pet “Guardian vs. Ownership”**

In Defense of Animals (IDA) has organized what it calls the “They are not out property, we are not their owners” campaign. Elliot Katz, a veterinarian and the founder of the Mill Valley based organization, In Defense of Animals, is the creator of this proposed change. It has been the ultimate goal of IDA to have this terminology adopted by all States throughout the U.S. This campaign has already succeeded in San Francisco, Berkeley and West Hollywood. In addition to the above, there are four other cities that recognize animal guardianship: Boulder, CO; Sherwood, AR; Menomonee Falls, WI; and Amherst, MA; and one state, Rhode Island.

This change will mean that residents who apply for pet licenses will be referred to as “guardians” rather than “owners”. Other changes will include referring to “guardians”, not “owners” at meetings and animal shelters. If these cities adopt this change, it will apply to city ordinances as well. While it is merely semantics now, it potentially can become the proverbially “slippery slope”, where the legal impact of guardianship is eventually applied to pet owners in much the same way an adult is the legal guardian of a minor. Making owners “guardians” would be the first step in raising pets’ legal status, and could lead to courts viewing animals as something more akin to humans than property.

As a follow-up, fearful of possible legal consequences, the Menomonee Falls, Wisconsin Village Board is considering a change from the term “guardian” to “guardian/owner.” The *Milwaukee Journal Sentinel* reports that an attorney for the Village Board, Michael Morse, has expressed concern that since animals are property under common law and “guardian” is a legal term that applies to people, someone may apply those legal consequences to pets. Mr. Morse will redraft the ordinance to include both terms, and resubmit it for another vote before the board.

### ***Other States – Legislative Overview***

**Animal Cruelty** - The Governor of **Kentucky** has signed SB 24, which creates as a new felony the crime of torturing a dog or a cat. The Kentucky statute on animal cruelty exempts acts that are authorized by law from the animal cruelty statutes, but research is not specifically mentioned. In **New Jersey**, AB 3074/SB 2154 would increase both civil and criminal penalties for cruelty to animals; and AB 3339 would create a right of action for any person who owns a companion animal that has been subject to an act of cruelty. New Jersey exempts research from its animal cruelty statute when the research institution is subject to federal requirements such as the Animal Welfare Act or the *Public Health Service Policy on the Humane Care and Use of Laboratory Animals*.

**Cloning/Stem Cells** - **Arkansas** Gov. Mike Huckabee has signed into law legislation that prohibits the cloning of humans for any purpose, including medical research. It apparently was fashioned after the federal legislation authored by Sen. Sam Brownback (R-KS). The **Illinois** House has passed HB 3589, which would encourage stem cell research, and in **New York**, the Assembly has passed AB 6249 that aims to foster biomedical research and clarifies the differences between human stem cell research, which would be allowed, and reproductive cloning, which would be banned.

**Education** - **Massachusetts** has introduced legislation (HB 1252) that would establish guidelines to dissection in science classes in public schools.

**Product Safety** - The **New York** Senate has introduced SB 2902, which would prohibit manufacturers from using traditional animal test methods where an appropriate alternative test method has been scientifically validated and recommended by the Inter-Agency Coordinating Committee for the Validation of Alternative Methods (ICCVAM) and adopted by the federal agency responsible. **New York** AB 779 would add a new section to the public health law to prohibit cosmetic manufacturers and cosmetic ingredient suppliers from conducting any test that involves the placing of a cosmetic, or cosmetic ingredient produced solely for use in cosmetics, in an animal's eye or on an animal's skin to measure its irritancy effects.

**Research/Facility Protection** - The **New York** Senate has introduced SB 2996, a companion bill to HB 4884 that would recognize animal and eco-terrorism as forms of domestic terrorism. The Governor of **Oklahoma** has signed SB 833, which will modify the existing statute on research facility protection by reducing the penalty upon conviction from a felony to a misdemeanor, reducing the possible jail time from a maximum of seven years to one year, and mandating that the term be served in the county jail, as opposed to the state penitentiary.