The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1638

INTRODUCER: Agriculture Committee

SUBJECT: Pest Control Compact

DATE: April 15, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Robinson	Poole	AG	**Favorable**
2.	McKay	Wilson	GO	**Favorable**
3.	Sumner	Maclure	JU	**Favorable**
4.			GA	
5.				
6.				

I. Summary:

This bill codifies the Interstate Pest Control Compact (IPCC) into Florida statutes.[1] The IPCC amended its bylaws in 2004 to give states six years to enact state legislation using the suggested state legislation of the Pest Control Compact. The bylaws also provide that failure to pass enabling legislation rescinds all voting rights for that state. The IPCC provides funding resources to states that may not have the necessary available capital to respond to a new pest outbreak posing a threat to agriculture. The bill language provides for the enactment of the compact. It also establishes the Pest Control Insurance Fund (Fund) and sets for the criteria for the structure and administration of the Fund.

This bill creates section 570.345, Florida Statutes.

II. Present Situation:

The Interstate Pest Control Compact (IPCC) was formed in 1968 with the assistance of the Council of State Governments. The IPCC "serves to remedy funding restraints, bridge the jurisdictional gaps between federal and state governments and more adequately address the realities of dynamic plant pest infestations or outbreaks." There are currently 37 states that are

[1] "An interstate compact is a multi-state agreement made with congressional consent which arises when two or more states enact essentially identical statutes governing an area of mutual state concern that transcends lines." *Constitutional Limitations – Interstate Compacts*, 1A Sutherland Statutory Construction s. 32:5 (6^{th} ed.).

members of the compact.[2] Florida became a member in 1995 and has received $240,522 in funding from the IPCC Insurance Fund for noxious weed and tomato virus control activities.[3]

Florida's membership in 1995 was prompted by its status as a high-risk state for new pest outbreaks. Florida's multiple ports of entry, trade, and tourism, coupled with a mild climate and crop diversity, facilitate Florida's high-risk status. Florida's assessment of $39,342 was paid in six-year installments and was paid in full in 2001. The $39,342 amount was determined based on the value of Florida's crop and forest products, excluding animal and animal products. This was calculated using the following formula: One-tenth ($100,000) of the total base fund of $1,000,000 was assigned equally to each state ($2,000 per state) and the remainder of the base ($900,000) is proportioned to each state on the basis of the value of its crop and forest products. Florida has benefited by compact membership by drawing $240,522 in federal funding to combat noxious weed and tomato virus introductions.

III. Effect of Proposed Changes:

The Interstate Pest Control Compact (IPCC) bylaws were amended in September 26, 2004, requiring that in order for states to be party to the compact, they must:

- Provide payment of funds to the Pest Control Insurance Fund. Installment payments of the initial assessment can be made over a period not to exceed six years; and
- Enact state legislation, within six years of September 26, 2004, using the suggested state legislation of the Pest Control Compact. Failure to pass enabling legislation rescinds all voting rights for that state.[4]

By adopting the act, the IPCC states that it will be able to remedy funding restraints, bridge jurisdictional gaps that exist in federal and state governments, and assist with addressing the changing dynamics of plant pest incursions into various regions of the United States, including Florida.[5]

Enactment of Compact

The bill sets forth the following criteria for membership in the IPCC:

- Departments, agencies, and officers of the state may cooperate with the Insurance Fund established by the IPCC;
- Bylaws, and any amendments to the bylaws, must be filed with the Commissioner of Agriculture;
- The Commissioner of Agriculture shall be the compact administrator for the state;
- The Commissioner has the authority to request assistance from the Insurance Fund;
- Departments, agencies, or officers expending or becoming liable for an expenditure on account of a control or eradication program must credit the appropriate account in the

[2] Interstate Pest Control Compact, http://pestcompact.org/.
[3] Memorandum from Richard Gaskall, Division Director of the Florida Department of Agriculture and Consumer Services, September 27, 2007, *Background Information – Interstate Pest Control Compact Proposed Legislation 2008*.
[4] Pest Control Insurance Fund, Bylaws, Adopted January 23, 1968 (last revised September 26, 2004).
[5] *Supra* note 2.

state treasury for the amount of any payments made to the state to defray the cost of such programs; and,
- As used in the compact, with reference to the state, the term “executive head” means the Governor.

Findings

The bill sets forth the following reasons for the necessity and importance for a state to participate in the IPCC:

- There is an annual loss of approximately $137 billion from the depredations of pests and it is certain to continue, if not increase.
- The varying climatic, geographic, and economic factors may affects each state differently but all states share the inability to protect themselves fully.
- The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another to complement each other’s activities when faced with infestations.
- The insurance fund will provide individual states financial support for pest-control programs which will benefit them and provide an equitable means of financing cooperative pest-eradication and control programs.

Insurance Fund

The bill states that Insurance Fund is established to finance other than normal pest-control operations that states may face.

The Insurance Fund must be administered by a Governing Board and Executive Committee. The members of the Governing Board are entitled to one vote on the board. Action of the Governing Board must be taken only at a meeting where a majority of the members are present. The bill provides for the Insurance Fund to have a seal to serve as an official symbol and to be used as the Governing Board sees fit.

The bill provides criteria regarding the election of officers from among the members of the Governing Board. The Governing Board may also appoint an executive director and set his/her duties and compensation.

Governing Board

The bill provides that the Governing Board must provide personnel policies and programs of the Insurance Fund in its bylaws. The Insurance Fund may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

The Insurance Fund may accept, for any of its purposes and functions under this compact, any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, use and dispose of the same. All such donations, gifts, or grants accepted by the Governing Board or services borrowed must be reported in the annual report of the Insurance Fund.

The Governing Board has the authority to adopt bylaws as well as the power to amend and rescind said bylaws. The bylaws must be published and furnished to the appropriate agency or officer in each party state. Additionally, the Insurance Fund must provide an annual report, which covers its activities for the preceding year, to the Governor and Legislature of each party state.

Compact Administration

The bill provides for a compact administrator in each party state to be selected to assist in the coordination of activities pursuant to the compact in his/her state. The compact administrator will also represent his/her state on the Governing Board of the Insurance Fund.

The bill provides for the United States to have no more than three representatives on the Governing Board of the Insurance Fund; however, no such representative of the United States will have a vote on the Governing Board or on the Executive Committee of the Governing Board.

The Governing Board must meet at least once a year for the purpose of determining policies and procedures regarding the Insurance Fund. Additional meetings of the Governing Board will be held at the call of the chair, the Executive Committee, or a majority of the membership of the Governing Board. If the Governing Board is meeting, it may pass upon applications for assistance from the Insurance Fund and authorize disbursements. When the Governing Board is not in session, the Executive Committee has full authority to act in place of the Governing Board in passing upon such applications.

Executive Committee

The bill provides that the Executive Committee will be composed of the chairperson of the Governing Board and four additional members of the Governing Board, chosen by it so that there will be one member representing each of four geographic groupings of party states.

The Governing Board must make such geographic groupings. One representative of the United States may meet with the Executive Committee. The chair of the Governing Board must be the chair of the Executive Committee. For an action of the Executive Committee to be binding, at least four members of the committee must be present and vote in favor of said action. Necessary expenses of the five members of the Executive Committee incurred in attending meetings of such committee, when not held in conjunction with the Governing Board, must be charged against the Insurance Fund.

Assistance and Reimbursement

The bill requires that each party state pledges to other party states that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. Party states may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more other party states in an effort to eradicate or control an infestation of pests. The Governing Board or Executive Committee must give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. The requesting state, and any other party state, is entitled to be represented and to present evidence and argument at such meeting. After reviewing information submitted by the requesting state and determining that an expenditure of funds is within the purposes of the compact, the Governing Board or Executive Committee must authorize support of the program. All determinations of the Governing Board or Executive Committee with respect to an application must be recorded in such manner as to show and preserve the votes of the individual members.

The bill provides criteria for a requesting state dissatisfied with a determination of the Executive Committee to be entitled to a review of the facts at the next meeting of the Governing Board.

Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund either at the time such state incurs expenditures on account of such measures or as reimbursement for expenses incurred and chargeable to the Insurance Fund.

The Insurance Fund may ascertain the extent and nature of any timely assistance or participation available from the Federal Government and request the appropriate agency or agencies for such assistance and participation prior to authorizing the expenditure of funds from the Insurance Fund. The Insurance Fund may negotiate and execute a memorandum of understanding defining the degree of participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Advisory and Technical Committees

The bill provides that the Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by the Governing Board or the Executive Committee.

Relations and Nonparty Jurisdiction

A party state may make application for assistance from the Insurance Fund with respect to a pest in a nonparty state. Such application must be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state. A nonparty state is entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee sees fit. A nonparty state is not entitled to review of any determination made by the Executive Committee.

The Governing Board or Executive Committee may authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions that it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state, and may enter into such agreement with nonparty states and other jurisdictions or entities to protect the interests of the Insurance Fund.

Finance

The Insurance Fund must submit to each party state a budget for the Insurance Fund for such period as required by the laws of that party state. The bill provides criteria for the Insurance Fund to determine the amounts to be appropriated. The financial assets of the Insurance Fund must be maintained in two accounts to be designated respectively as the “operating account” and the “claims account.”

The bill provides criteria for determining the moneys to be maintained in each account. The Insurance Fund may not pledge the credit of any party state. The Insurance Fund must keep accurate accounts of all receipts and disbursements, which are subject to the audit and accounting procedures established under its bylaws. The bill calls for the Insurance Fund to be audited annually by a certified or licensed public accountant, and for the report of the audit to be included in and become part of the annual report of the Insurance Fund. The accounts of the Insurance Fund must be open at any reasonable time for inspection by authorized officers of the party states and by any persons authorized by the Insurance Fund.

Entry Into Force and Withdrawal

The compact becomes active when enacted by any five or more states. Thereafter, the compact becomes effective to any other state upon its enactment. A party state may withdraw from the compact by enacting a statute repealing the same, but such withdrawal must not take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. A withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Construction and Severability

The bill provides a severability clause whereas if any part of the compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of the compact will not be affected.

Effective Date

The bill provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I Section 10 of the United States Constitution provides in part that a state may not enter a compact with another state without the consent of Congress. By being a party to a compact a state assumes the conditions that Congress has attached.[6]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Florida's IPCC membership assessment has been paid in full. The IPCC could further assess member states if the Insurance Fund falls below established standards. Since the establishment of the Insurance Fund in 1968, there have been no such assessments of member states.

B. Private Sector Impact:

There would be a favorable impact due to the funding source that would be available to assist in pest outbreaks. The impact from quarantines and/or crop loss would be reduced for Florida's agricultural producers.

C. Government Sector Impact:

There will be a favorable impact for remaining a member in good standing within the IPCC due to the funding resource option the IPCC provides for future new pest and disease outbreaks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[6] 72 Am. Jur. 2d *I. States B. Compacts, Cooperation and Reciprocity Among States* s. 10 (2008).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.