HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 197 Pest Control Call Centers
SPONSOR(S): Kendrick
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Agribusiness	7 Y, 0 N	Kaiser	Reese
2) Environment & Natural Resources Council		Kaiser / Smith	Dixon / Hamby
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 197 allows the establishment of out-of-state call centers for the sale and solicitation of pest control services from Florida customers. The Department of Agriculture and Consumer Services (department) is authorized to issue a permit for establishment of such call centers, which may be operated within or outside the state. The bill instructs the department to establish a fee, not to exceed $250, for the issuance or renewal of the permit.

The department is given authority to assess a late renewal charge of $50, in addition to the renewal fee, for permits that are renewed more than 30 days after the anniversary renewal date. If a permit is not timely renewed, it will expire 60 calendar days after the anniversary renewal date and may be reinstated only upon application and payment of the issuance fee and the late renewal fee. An application for a permit, or the renewal of a permit, may be denied based on certain criteria.

The bill appears to have a minimal fiscal impact to state government. The effective date of this legislation is upon becoming law.

HB 197 has one strike-all amendment traveling with the bill. For an explanation of this amendment, please refer to Section IV. (Amendments/Council Substitute Changes).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill authorizes the establishment of out-of-state call centers but does not give the Department of Agriculture and Consumer Services the authority to enforce any violations of Chapter 482, F.S., made by employees of the call centers.

B. EFFECT OF PROPOSED CHANGES:

Many nationally-franchised pest control companies, such as Orkin and Terminex, incorporate telephone call centers in their business plans. These call centers generally handle incoming calls for a particular region. The services provided by the call center include termite claims, handling of complaints, and public relations, in addition to regular pest control and termite customer service. According to a press release by Rollins, Inc., the parent company of Orkin Pest Control, the Rollins Customer Care Center (RCCC) in Atlanta handled just under 1.2 million calls in 2004, and averaged about 23 percent more in 2005.[1]

Telephone call centers are an integral part of many businesses, playing an important economic role. For example, it is estimated that telephone call centers handle more than 70% of all business interactions and that they employ more than 3.5 million people, or 2.5% of the workforce, in the U.S.[2] In a study conducted by Columbia University,[3] it was found "*…In a large, best-practice call center, many hundreds of agents can cater to many thousands of phone callers per hour; agent utilization levels can average between 90% to 95%; no customer encounters a busy signal and, in fact, about half of the customers are answered immediately; the waiting time of those delayed is measured in seconds, and the fraction that abandon while waiting varies from the negligible to a mere 1-2%.*"

Florida law currently prohibits the operation of a call center that serves more than one business location for the purpose of solicitation of pest control business. While the prohibition is not explicit, a combination of current requirements in the law[4] has the effect of making the operation of such a call center illegal. Additionally, a current rule[5] issued to implement Chapter 482, F.S., requires that each phone used in the sales and solicitation of pest control terminate in a licensed business location.

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Persons seeking a call center permit, or the renewal of a permit, who were directors, officers, owners or general partners of a pest control business that went out of business or was sold in the past five years that failed to reimburse the prorated value of the customer's remaining contract or arrange for another company to assume the existing contract may be denied a permit by the department.

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[1] http://www.bizjournals.com/atlanta/stories/2005/11/21/daily10.html
[2] Uchitelle, 2002; Call Center Statistics
[3] www.columbia.edu/~ww2040
[4] Section 482.091, F.S.
[5] Chapter 5E-14.142(3)(B), FAC

Persons providing call center service are exempt from requirements relating to employee identification cards.

C. SECTION DIRECTORY:

Section 1: Creating s. 482.072, F.S.; authorizing the Department of Agriculture and Consumer Services (DACS) to issue a permit to operate a telephone call center within or outside the state; requiring application for permit; requiring annual renewal; requiring fee for issuance and renewal of permit; providing for a late fee; providing for automatic expiration; providing grounds for non-renewal; and, providing exemption for pest control identification cards for call center personnel meeting certain requirements.

Section 2: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 08-09) Amount	(FY 09-10) Amount	(FY 10-11) Amount
1. Revenues:			
Recurring	$2,500*	$2,500	$2,500
Non-recurring	-	-	-
2. Expenditures:			
Recurring	70.90**	70.90	70.90
Non-recurring	-	-	-

*Based on a new fee of $250 for each call center permit and assuming 10 companies apply for and renew these permits.

**Based on unit cost for license issuance for FY 06-07 of $7.09.

NOTE: The cost for investigations is not included. Due to the inability of the Department of Agriculture and Consumer Services to enforce the provisions of Chapter 482, F.S., for call center employees, no inspection or complaint investigative costs are anticipated. Unit cost for inspections/investigations for FY 06-07 was $610.69.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An exemption from requirements to comply with certain provisions of Chapter 482, F.S., would provide pest control companies, using centralized call centers, with a competitive advantage in their sales and solicitation activities. If the bill is enacted, centralized call center staff, employed by qualified pest control businesses, would be exempt from attending the initial 40 hour training classes, as well as continuing education training, that are currently required for employees who conduct sales and solicitation for pest control.

Additionally, if centralized call center employees are not required to have state issued identification cards, administrative action for misrepresentation, false or fraudulent claims, or advertising in a category for which they are not qualified (e.g., fumigation) would be more difficult or impractical, since there would be no state-issued credential to take action against.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (department) has concerns regarding this legislation. In particular, there is no recourse for administrative action against individuals employed by a permitted call center who commit a violation of Chapter 482, F.S., or Chapter 5E-14, FAC. The department also states a concern regarding persons providing call center service being exempt from the requirements of obtaining employee identification cards. Additionally, the department states that if call centers were located out-of-state, it would be impractical, or impossible, to conduct an investigation or issue an action against an individual.

The department and the industry have been working together regarding an agreeable resolution to the concerns stated by the department. They have recently agreed to conduct a pilot project over the next year whereby the department would travel to an out-of-state call center 3-4 times during the year and examine the records and other available data to ascertain that the call center is operating within the purview of Chapter 482, F.S. and Chapter 5E-14, FAC. Once data has been collected and analyzed, necessary statutory changes can be made during the next legislative session.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 23, 2008, the Committee on Agribusiness adopted a strike-all amendment to HB 197. The strike-all amendment codifies the Interstate Pest Control Compact (IPCC) into Florida statutes, which was necessary for Florida to maintain membership in the IPCC.

The IPCC was formed in 1968 with the assistance of the Council of State Governments and is comprised of 37 states, including Florida. 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. Member states pay an initial assessment of $2,000 base plus a percentage of the value of the state's agriculture and forestry crop values. Over the six year period of 1995-2001, Florida's payment totaled $39,342. Since becoming a member in 1995, Florida has received $240,522 in funding for noxious weed and tomato virus control activities.

The strike-all amendment provides for:

- The departments, agencies and officers of the state to cooperate with the Insurance Fund established by the IPCC;
- The bylaws, and any amendments to the bylaws, to be filed with the Commissioner of Agriculture;
- The Commissioner of Agriculture to be the compact administrator for the state;
- The Commissioner to have the authority to request assistance from the Insurance Fund;
- The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program to credit the appropriate account in the state treasury for the amount of any payments made to the state to defray the cost of such programs; and,
- The executive head being the Governor.

The strike-all amendment provides findings regarding the necessity of the IPCC and the importance of each state's participation. The amendment also provides definitions for terms used in relation to the IPCC. The amendment provides for the Insurance Fund to be administered by a Governing Board and Executive Committee. The members of the Governing Board are entitled to one vote of the board. Action of the Governing Board shall be taken only at a meeting where a majority of the members are present. The amendment 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 amendment 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 fix his/her duties and compensation. The Governing Board shall 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 shall be published and furnished to the appropriate agency or officer in each party state. Additionally, the Insurance Fund shall provide an annual report, which covers its activities for the preceding year, to the Governor and Legislature of each party state.

The amendment 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 amendment 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 shall have a vote on the Governing Board or the Executive Committee of the Governing Board. The Governing Board shall meet at least once a year for the purpose of determining policies and procedures regarding the Insurance Fund. Additional meetings of the Governing Board shall 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; however, 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. The Executive Committee shall 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 shall make such geographic groupings. One representative of the United States may meet with the Executive Committee. The chair of the Governing Board shall 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, shall be charged against the Insurance Fund.

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 amendment provides criteria for requesting states to submit in writing in order to receive expenditures from the Insurance Fund. 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 are entitled to be represented and 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 and justified, the Governing Board or Executive Committee shall authorize support of the program. All determinations of the Governing Board or Executive Committee with respect to an application shall be recorded in such manner as to show and preserve the votes of the individual members. The amendment 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 extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

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.

A party state may make application for assistance from the Insurance Fund with respect to a pest in a nonparty state. Such application shall 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 as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

The Insurance Fund shall submit to each party state a budget for the Insurance Fund for such period as required by the laws of that party state. The amendment provides criteria for the Insurance Fund to determine the amounts to be appropriated. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The amendment provides criteria for determining the moneys to be maintained in each account. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. The amendment 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 shall be open at any reasonable time for inspection by authorized officers of the party states and by any persons authorized by the Insurance Fund.

The compact shall become active when enacted by any five or more states. Thereafter, the compact shall become effective as 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 shall not take effect until 2 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. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

The amendment 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 shall not be affected thereby. If this compact is held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

While the Department of Agriculture and Consumer Services does not anticipate any expenditures associated with this legislation, the revenues/funding provided by the IPCC is indeterminate at this time.