

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 General Government Appropriations Committee

BILL: SB 1286

INTRODUCER: Senator Dean

SUBJECT: Pest Control Compact

DATE: April 16, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Leal</u>	<u>Poole</u>	<u>AG</u>	Favorable
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Favorable
3.	<u>Sumner</u>	<u>Maclure</u>	<u>JU</u>	Favorable
4.	<u>Blizzard</u>	<u>DeLoach</u>	<u>GA</u>	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill allows Florida, through the Department of Agriculture and Consumer Services, to remain a member of the Interstate Pest Control Compact (IPCC),¹ which the state has been a member of since 1995. In 2004, the IPCC amended its bylaws to give states six years to enact legislation mirroring the Pest Control Compact: Model Enabling Act. If a state fails to pass the enabling legislation within six years of September 26, 2004, that state rescinds all voting rights in the IPCC. The bill codifies the IPCC into the Florida Statutes.

The bill creates section 570.345, Florida Statutes.

II. Present Situation:

The IPCC was formed in 1968 with the assistance of the Council of State Governments. The IPCC serves as a means 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. Through contractual agreements, the compact allows individual states to contribute to plant pest control, suppression, or eradication beyond their state boundaries. The IPCC is organized to exclusively provide funding resources to states that may not have the necessary available capital to respond to a new

¹ A “compact” between states is a binding legal instrument that provides for formal cooperation between states. “Interstate compacts” require congressional consent. An “interstate compact” arises when two or more states enact essentially identical statutes that govern an area of mutual concern and define the compact, its purposes, and its policies. 72 Am. Jur. 2d *States, Etc.* s. 10 (2008).

pest outbreak that poses a threat to U.S. Agriculture. Currently there are 37 states that are members of the IPCC.²

In 2006, the IPCC adopted Articles of Association that clarified that the IPCC was organized exclusively for the charitable purpose of providing financial assistance to states who may not have the necessary resources to combat plant infestations that threaten a state's agricultural and natural resources. A Pest Control Insurance Fund has been established to hold the appropriations or assessments made by member states and any tax deductible gifts, grants, and donations from public and private interests willing to contribute to the fund.³

Florida has been a member of the IPCC since 1995. Florida was prompted by its status as a high-risk state for new pest outbreaks to join the IPCC. Multiple ports of entry, trade, and tourism, coupled with a mild climate and crop diversity, facilitate Florida's high-risk status for new pest infestation. Since 1995 Florida has been a beneficiary of the IPCC, drawing \$240,522 in funding for noxious weed and tomato virus control activities.⁴

Each member state of the compact has to pay a one-time assessment. Florida's total assessment of \$39,342 was paid in six-year installments and was paid in full in 2001. Therefore, Florida has no fees that are due as a member of the IPCC. Florida's assessment 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.

The IPCC bylaws were amended September 26, 2004. The amended bylaws require:

- Enactment of state legislation providing for the joinder of the state in the IPCC using the suggested state legislation of the Pest Control Compact: Model Enabling Act.
- Passage of the enabling legislation within six years of September 26, 2004. Failure to pass the enabling legislation will rescind all voting rights for that state.⁵

If Florida wishes to remain a voting member of the IPCC, it must pass legislation mirroring the Pest Control Compact: Model Enabling Act by September 26, 2010.

III. Effect of Proposed Changes:

The bill allows Florida, through the Department of Agriculture and Consumer Services, to remain a member of the Interstate Pest Control Compact (IPCC),⁶ which the state has been a

² Interstate Pest Control Compact, <http://pestcompact.org/>.

³ *Id.*

⁴ Memorandum from Richard Gaskalla, Division Director of the Florida Department of Agriculture and Consumer Services, September 27, 2007, *Background Information – Interstate Pest Control Compact Proposed Legislation 2008*.

⁵ Pest Control Insurance Fund, Bylaws, Adopted January 23, 1968 (last revised September 26, 2004).

⁶ A "compact" between states is a binding legal instrument that provides for formal cooperation between states. "Interstate compacts" require congressional consent. An "interstate compact" arises when two or more states enact essentially identical statutes that govern an area of mutual concern and define the compact, its purposes, and its policies. 72 Am. Jur. 2d *States, Etc.* s. 10 (2008).

member of since 1995. In 2004, the IPCC amended its bylaws to give states six years to enact legislation mirroring the Pest Control Compact: Model Enabling Act. If a state fails to pass the enabling legislation, within six years of September 26, 2004, that state rescinds all voting rights in the IPCC. The bill codifies the IPCC into the Florida Statutes.

Enactment of the Compact

The bill creates s. 570.345, F.S., and sets forth the following criteria for enacting the compact and 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 Compact Administrator for the State shall be the Commissioner of Agriculture.
- The Commissioner of Agriculture has authority to request assistance from the insurance fund.
- Any department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program must 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.
- As used in this compact, with reference to the state, the term “executive head” means the Governor.

Findings

The bill sets forth the following reasons for the state to participate in the IPCC:

- Approximately \$137 billion is annually lost from the depredation of pests, which is certain to continue, if not increase, without the compact.
- Each state may be affected differently by a particular species of pest; however, all states share an inability to adequately protect themselves from pests.
- The migratory character of pest infestations makes it necessary for states to complement each other’s activities when faced with infestations.
- The insurance fund will provide an equitable means of financing cooperative pest-eradication and control programs.

Definitions

The bill defines the following terms as used in this compact: “state,” “requesting state,” “responding state,” “pest,” “insurance fund,” “governing board,” and “executive committee.”

Pest Control Insurance Fund

The bill establishes a Pest Control Insurance Fund for the purpose of financing other than normal pest-control operations. The insurance fund will contain money appropriated to it by the party states. All appropriations made to the insurance fund are unconditional and may not be restricted,

by the appropriating state for use in control of a particular pest. Donations and grants made to the insurance fund may be conditional or unconditional.

Internal Operations of the Pest Control Insurance Fund

The bill provides that the Pest Control Insurance Fund shall be administered by a governing board and executive committee. Each member of the governing board is entitled to one vote. Action of the governing board may only be taken at a meeting where a majority of the members are present. The bill provides guidelines for the election of officers from among the members of the governing board. The governing board may also appoint an executive director whose duties and pay are set by the governing board.

The insurance fund may borrow or contract for services from any state, agency, corporation, or person. The insurance fund may accept, for any of its purposes and functions under this compact, any donations of money, equipment, supplies, materials, and services, conditional or otherwise, from any state government or other entity. All such donations, gifts, or services borrowed must be reported in the annual report of the insurance fund.

The governing board must adopt bylaws and is granted the authority to amend and rescind the bylaws. The bylaws must be published and furnished to the appropriate agency or officer in each party state. In addition, the insurance fund must provide an annual report to the Governor and Legislature on its activities for the preceding year.

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 or her state. In addition, the compact administrator will also represent his or her state on the governing board of the insurance fund.

The United States may have a maximum of three representatives on the governing board of the insurance fund. However, no representative of the United States shall have a vote on the governing board or executive committee.

The governing board will meet once a year for the purpose of determining the policies and procedures of the insurance fund. Additional meetings of the governing board may be held at the call of the chair, the executive committee, or a majority of the membership of the governing board. While the governing board is meeting, it shall 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 for an executive committee that is composed of the chairperson of the governing board and four additional members of the governing board who represent one of four geographic groupings of the party states. The governing board is responsible for making the

geographic groupings. In addition, if there is representation of the United States on the governing board, 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. At least four members of the committee must be present and vote in favor of an action in order for the action to be valid. Necessary expenses incurred in attending a meeting by the members of the executive committee shall be paid for by the insurance fund.

Assistance and Reimbursement

The bill requires that each party state pledge to control all pests within its borders, to the best of its ability. Each party state must maintain pest control and eradication at a level that would be reasonable for its protection in the absence of the compact. In addition, the state must meet emergency outbreaks to the same extent that it would have without the compact.

A party state threatened by a pest not within its own borders, but within the borders of another party state, may request money from the governing board to eradicate and control the pest. In order to obtain money from the insurance fund, a state must make a written request, following six criteria outlined in the compact.

The governing board or executive committee must give due notice of any meeting at which an application for assistance from the insurance fund shall be considered. The requesting state, and any other party state, is entitled to be represented and to present evidence and argument at such a 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.

A requesting state dissatisfied with a determination by the executive committee can ask for a review within 20 days, and that review will be taken up at the next meeting of the governing board.

Responding states that are required to undertake or increase measures pursuant to the compact may receive moneys from the insurance fund at the time expenses are incurred or later as a reimbursement. Prior to authorizing the release of any moneys from the insurance fund, the governing board will ascertain the extent of available assistance from the federal government and will request additional federal assistance and participation. The insurance fund may negotiate and execute a memorandum of understanding defining assistance or participation between and among the insurance fund, cooperating federal agencies, states, and any other entities concerned.

Advisory and Technical Committees

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 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 executive committee or governing board.

Relations and Nonparty Jurisdiction

A party state may make an 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 a 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. In addition, the governing board may enter into any agreements 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 available 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 five or more states. Thereafter, the compact becomes effective to any other state upon its enactment by the state. A party state may withdraw from the compact by enacting a statute repealing the compact, 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 July 1, 2009.

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, s. 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.⁷ The purpose of this constitutional provision “is to permit Congress to protect the sovereignty of the United States against dilution by concerted action among the states. States that are parties to a compact assume, by accepting it and acting under it, the conditions that Congress, acting under the Constitution, has attached.”⁸

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.

⁷ 72 Am. Jur. 2d *States, Etc.* s. 10 (2008).

⁸ *Id.*

B. Private Sector Impact:

Having IPCC membership and opportunities for agricultural pest control funding on specific projects reduces negative pest and disease impacts to the private sector.

C. Government Sector Impact:

IPCC membership provides the opportunity for extramural funding to address exotic pest or disease outbreaks of regional concern. IPCC funding could lessen the impact on local government under circumstances where local agricultural pest control is needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.