

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 949 Pest Control

SPONSOR(S): Rulemaking & Regulation Subcommittee; Agriculture & Natural Resources Subcommittee; Smith

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N, As CS	Miller	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (department) regulates pest control businesses in the state.

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not specifically address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving phone calls and soliciting business.

The bill authorizes the department to issue a license to operate a customer contact center for the sole purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee,¹ a biennial renewal fee,² and authorizes a late filing fee.³

The bill also establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents.⁴ The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

Lastly, the bill increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992, and expands the methods by which a pest control licensee may contact the department regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

The bill will generate \$21,000 in FY 2011-12, \$15,000 in FY 2012-13, and \$21,200 in FY 2013-14 from fees generated through the pest control customer contact centers and through the limited certification category for commercial wildlife management personnel. Expenditures associated with these programs are estimated to be \$16,957 in FY 2011-12, \$16,359 in FY 2012-13, and \$17,455 in FY 2013-14. The bill does not appear to have a fiscal impact on local governments.

¹ The biennial license fee must be at least \$600 and not more than \$1,000.

² The renewal fee must be at least \$600 and not more than \$1,000.

³ The late fee is \$150.

⁴ As defined in s. 482.021(23), F.S., rodents include rats, mice, squirrels, or flying squirrels or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0949c.RRS

DATE: 3/25/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Coverage

Current Situation

The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Effect of Proposed Changes

The bill increases:

- Bodily injury from \$100,000 to \$250,000 per person, \$300,000 to \$500,000 per occurrence; and,
- Property damage from \$50,000 to \$250,000 per occurrence, \$100,000 to \$500,000 in the aggregate.

For wood-destroying organism inspection licenses, the professional liability insurance limits are increased from \$50,000 to \$500,000 in the aggregate, \$25,000 to \$250,000 per occurrence, and the alternative of demonstrating equity or net worth is revised to increase the amount from \$100,000 to \$500,000.

Pest Control Customer Contact Centers

Current Situation

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers.

Florida law currently requires pest control businesses to register and obtain an annual license⁵ for each location. In addition to being licensed, a pest control business must have at least one certified operator in charge at each location to provide oversight and training for the identification card holders who perform the actual pesticide application.⁶ Currently, a customer contact center may not solicit business or receive calls from customers located in Florida without the requisite pest control licenses.⁷

Effect of Proposed Changes

The bill authorizes the Department of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee,⁸ a biennial renewal fee,⁹ and authorizes a late filing fee.¹⁰ The department is authorized to deny or refuse to renew a license if:

- The pest control business licensees for whom it solicits business are not owned in common by a person or business entity recognized by the state.
- The applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that has gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse

⁵ The license fee must be at least \$75 and not more than \$300.

⁶ The certification fee for a certified operator is \$150 and the fee for and identification card holder is \$10.

⁷ Under s. 501.604(27), F.S., a licensed operator or cardholder under Ch. 482, soliciting within the scope of the chapter, is exempt from the separate license requirements for a commercial telephone seller or telephone salesperson in the Florida Telemarketing Act, Ch. 501, Part IV, F.S.

⁸ The license fee must be at least \$600 and not more than \$1,000.

⁹ The renewal fee must be at least \$600 and not more than \$1,000.

¹⁰ The late fee is \$150.

the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.

- A person who solicits pest control services or provides customer service in a licensed customer contact center performs pest control services such as: the use or application of a device or application to prevent or control any pest in, on, or under a structure, lawn, or ornamental; the identification of or inspection for infestation in, on, or under a structure, lawn, or ornamental; the use of pesticides, poisons, or devices for preventing or controlling insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental; or performing any phase of fumigation.

The department is given rule-making authority for implementing provisions related to the recordkeeping and monitoring of pest control customer contact centers. The bill also provides criteria for disciplinary action against a pest control customer contact center or a pest control business licensee of the contact center.

Certification for Commercial Wildlife Management Personnel

Current Situation

For several years, the Florida Fish and Wildlife Conservation Commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years and the permitting was discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

Under current law, pest control is defined as the use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental. Pest is defined as an arthropod, wood-destroying organism, rodent (defined in statute to include: rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure), or other obnoxious or undesirable living plant or animal organism. Persons practicing pest control are required to be licensed under chapter 482, F.S.

Effect of Proposed Changes

The bill creates a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods to control commensal¹¹ "rodents", including rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, and also including bats, which may become a pest in, on, or under a structure. The bill does not require individuals who trap these animals by nonchemical means to obtain any license or certificate, but those who do choose to obtain the certification and who practice accepted pest control methods are immune from liability under the animal cruelty provisions. The bill does not conflict with or create an exemption from any Fish and Wildlife Conservation Commission rule, regulation, or order.

Certification does not allow: the use of pesticides or chemicals to control rodents; operation of a pest control business; or, supervision of an uncertified person using non-chemical methods to control rodents.

The bill authorizes the department to set fees for the program through the rule-making process.

Fumigation Notice

Current Situation

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide

¹¹ "Commensal" pests are species of wildlife which have adapted to and become partially dependent on the human-built environment for food, water, and sometimes shelter. Examples are Norwegian rats and field mice. "Commensal Rodents-Biology, Population Dynamics &IPM," p. 3, Curriculum for Pest Management Professionals, March, 2005, at <http://www.birc.org/Rodent%20Curriculum.pdf>.

notice by means of a telephone call and then follow up with a written confirmation providing the required information.

Effect of Proposed Changes

The bill allows a licensee to contact the department regarding the location where fumigation will be taking place by facsimile or another form of electronic communication, as well as by telephone.

B. SECTION DIRECTORY:

Section 1: Amends s. 482.051, F.S.; allows pest control operators to provide certain emergency notice to the Department of Agriculture and Consumer Services (department) by facsimile or other electronic means.

Section 2: Amends s. 482.071, F.S.; increases financial responsibility requirements on certificates of insurance for licensees.

Section 3: Creates s. 482.072, F.S.; authorizes the department to license pest control customer contact centers ; requires biennial renewal of license; establishes a license/renewal fee for pest control customer contact centers; establishes a grace period for renewal of license; establishes a late renewal charge; provides for expiration of license at time certain; provides for relicensure; provides for license expiration upon address change; establishes fee for relicensure; provides criteria for issuing pest control customer contact center license; provides criteria for denying and refusing to renew license; clarifies need for employee identification card; authorizes rule-making authority; and , provides criteria for discipline of pest control customer contact center licensee and/or pest control business licensee for misactions of employees.

Section 4: Creates s. 482.157, F.S.; establishes certification for individual commercial wildlife management personnel; prescribes methods of removal of wildlife; requires examination and fee for certification; requires proof of insurance by employer of person applying for certification; provides for annual recertification with fee; authorizes rule-making authority; provides for grace period for recertification; provides for late fee; and, provides criteria on certification.

Section 5: Amends s. 482.226, F.S.; increases limits for financial responsibility insurance coverage for persons with wood-destroying organism inspection licenses.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	2011-12	2012-13	2013-14
<u>Customer Contact Center</u>			
License*	\$ 6,000	-	\$ 6,000
<u>Limited Certification Wildlife</u>			
Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	-	7,500	7,500
	<u>\$ 21,000</u>	<u>\$15,000</u>	<u>\$ 21,000</u>

*Based on 10 licenses issued per year at \$600 each, renewing biennially.

**Based on 100 exams the first year, 50 the second and third years, at \$150 each.

***Based on 100 renewals at \$75 each.

2. Expenditures:			
Inspections*	\$ 15,860	\$ 15,860	\$ 15,860
License Issuance**	<u>1,097</u>	<u>499</u>	<u>1,595</u>
	<u>\$ 16,957</u>	<u>\$ 16,359</u>	<u>\$ 17,455</u>

*FY 09-10 unit cost per inspection, 20 inspections at \$793.

**FY 09-10 unit cost per license, 110 inspections at \$9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

3. Revenues:

None

4. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Pest control businesses that choose to obtain the pest control customer contact center license or the limited certification for commercial wildlife management personnel license will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Audubon of Florida has raised concerns regarding the legislation and, in particular, the current statutory definition of "rodents." The statutory definition of "rodents" includes bats, which are not members of the order Rodentia. Because many species of bats in Florida are on the endangered and/or protected list, the Fish and Wildlife Conservation Commission's (FWC) nuisance wildlife rule¹² does not allow the intentional taking of bats. The bill was amended in the Rulemaking & Regulation Subcommittee to clarify nothing in Chapter 482, F.S., could be construed as an exemption from the rules of the FWC.

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is authorized to adopt rules relating to the requirements and procedures for recordkeeping and monitoring pest control customer contact center operations. The grant of rulemaking authority appears to provide sufficient substantive guidance for the department to implement the statute.¹³

¹² Rule 68A-9.010 F.A.C.

¹³ S. 120.536(1), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Agriculture and Natural Resources Subcommittee adopted three technical amendments to HB 949. **Amendment 1** amended line 100 to read “business licensees for whom it solicits business is owned in common by a”. **Amendment 2** amended line 169 to read “(c) Supervision of an uncertified person using non-chemical methods to control rodents.” **Amendment 3** amended line 181 to read “no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000”.

On March 23, 2011, the Rulemaking and Regulation Subcommittee adopted three technical amendments to CS/HB 949. **Amendment 1**, added subsection (6) to s.482.157, clarifying Chapter 482, F.S., does not create any exemption from the rules, orders or regulations of the Florida Fish and Wildlife Conservation Commission. This amendment resolved an inconsistency noted in the original bill. **Amendment 2** removed glue boards as one of the approved nonchemical methods of controlling wildlife. **Amendment 3** clarified the limited certification for wildlife management authorized certificate holders to control commensal rodents.

The foregoing analysis of CS/CS/HB 949 incorporates the changes made by all amendments.