

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1205 Fumigation
SPONSOR(S): Magar
TIED BILLS: **IDEN./SIM. BILLS:** SB 1498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Lolley	Massengale
3) State Affairs Committee	14 Y, 0 N	Gregory	Camechis

SUMMARY ANALYSIS

Individuals who perform fumigation must be licensed by the Department of Agriculture and Consumer Services (DACS) and follow the safety procedures set forth in rule. In addition, each brand of pesticide that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered with DACS.

The bill updates DACS' rulemaking authority relating to safety procedures for fumigation to:

- Require that fumigators notify DACS where the fumigation will be performed at least 24 hours in advance of any general fumigation, rather than notify a DACS inspector;
- Authorize DACS to specify circumstances when notification of less than 24 hours in advance is allowed, rather than only during an authentic and verifiable emergency; and
- Authorize DACS to require safety procedures for the clearance of residential structures before reoccupation after fumigation.

Further, the bill updates DACS' rulemaking authority to allow DACS to place conditions on fumigant registration including:

- Requiring registrants to train distributors and end users in safety measures, proper use, safe storage, and the management of fumigant materials;
- Obtaining continuing education program approval for stewardship training programs;
- Conducting quality assurance reviews;
- Reporting to DACS probation and stop-sale notifications issued to end users. DACS must notify other sulfuryl fluoride registrants of the reported probation or stop-sale notice; and
- Assisting DACS upon its request with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

The bill appears to have an insignificant negative fiscal impact on DACS, which can be absorbed within existing resources. The bill may have an insignificant negative fiscal impact on licensees who apply fumigants and on individuals who register fumigants. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A “fumigant” is a chemical which, at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism.¹ “Fumigation” is the use, within an enclosed space or in or under a structure or tarpaulins, of a fumigant in concentrations that may be hazardous to human beings.² The Department of Agriculture and Consumer Services (DACS) regulates fumigation and registering fumigants.

Fumigation Requirements

Individuals who perform fumigation must obtain a special identification card from DACS or be a certified fumigation operator.³ At least 24 hours before performing general fumigation, a fumigator must notify the DACS inspector having jurisdiction over the location to be fumigated via DACS’ website or facsimile.⁴ This requirement may be waived during a verifiable emergency when notification is not possible.⁵

A fumigator must follow the instructions on the fumigant’s label, possess any keys or access devices to gain entry into the structure, possess a self-contained breathing apparatus, and possess and maintain two clearance devices.⁶ The structure or enclosed space to be fumigated may not be occupied during fumigation.⁷ The fumigator must inspect the structure or enclosed space to make sure no persons remain.⁸ Further, the structure or enclosed space must be made as gas-tight as possible.⁹ Prior to application of the fumigant, the fumigators must affix and conspicuously post warning signs that meet standards adopted by DACS.¹⁰

After fumigation, the structure must be aerated.¹¹ The aeration process includes a minimum one-hour active aeration and a minimum five-hour passive aeration.¹² An active aeration requires the doors and windows of the structure to be opened and fans used to allow the fumigant to dissipate.¹³ The passive aeration occurs after the active aeration and requires the structure to be re-secured.¹⁴ Currently, fumigators are not required to provide DACS with the initiation time of the aeration process.¹⁵ Once aeration is complete, the certified operator in charge must personally inspect the structure or enclosed space to assure the space has been safely ventilated as required by the fumigant’s label.¹⁶ The space must be inspected with suitable gas-detecting equipment or devices required by the fumigant’s label to assure the structure is safe for human entry and occupancy.¹⁷ Currently, licensees are required to maintain evidence of device calibration, but are not required to provide these records to DACS unless

¹ Section 482.021(9), F.S.

² Section 482.021(10), F.S.

³ Section 482.151(1), F.S.; Rule 5E-14.108(1), F.A.C.

⁴ Section 482.051(4), F.S.; Rule 5E-14.110(1), F.A.C.

⁵ Section 482.051(4), F.S.; Rule 5E-14.110(2), F.A.C.

⁶ Rule 5E-14.108, F.A.C.

⁷ Rule 5E-14.111(2), F.A.C.

⁸ Rule 5E-14.111(4), F.A.C.

⁹ Rule 5E-14.111(7), F.A.C.

¹⁰ Rules 5E-14.112(1) through (6), F.A.C.

¹¹ DACS, Agency Analysis of 2016 House Bill 1205, p. 1 (January 15, 2016).

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Rule 5E-14.113(1), F.A.C.

¹⁷ Rule 5E-14.113(2), F.A.C.

requested.¹⁸ Once the structure or enclosed space is safe for reentry and reoccupancy, the certified operator must certify his final personal inspection and monitoring examination and must conspicuously post the certification on all entrances.¹⁹

Pesticide Registration

Each brand of pesticide²⁰ that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered with DACS, and such registration must be renewed biennially.²¹ Applicants seeking to register a pesticide must submit:

- Product chemistry data demonstrating a pesticide's relative susceptibility to leaching into groundwater and its relative stability in groundwater;
- Toxicology data demonstrating human risk assessment and environmental risk assessment;
- Environmental fate data demonstrating chemical degradation, metabolic transformation, persistence (half-life), bioaccumulation potential, and mobility of the pesticide;
- Residue chemistry data that describes pesticide residues detected in or on applicable crops, processed foods, and animal feed; and
- Worker and applicator safety data demonstrating that use of the pesticide in accordance with the label does not pose any unreasonable risk to applicators or agricultural workers exposed to treated areas or commodities.²²

DACS may approve the pesticide registration, conditionally approve the product with limitations, or deny registration and state the basis for denial.²³

If DACS finds a pesticide is being offered or exposed for sale, used, or held in violation of its pesticide regulations, it may issue and enforce a stop-sale, stop-use, removal, or hold order.²⁴ This order may require the pesticide or device to be held at a designated place until the pesticide regulations are complied with and the pesticide or device is released, in writing, by DACS.²⁵

If a pesticide registered in the state is suspended or canceled to prevent harm to the public or the environment, the registrant must reclaim and provide reimbursement for that pesticide from any distributor, dealer, user, or other party possessing it in this state and provide for the proper removal or disposal of the pesticide within 90 days.²⁶

Office of Inspector General Review

On January 6, 2016, DACS' Office of Inspector General issued a report on structural fumigation regulations and processes.²⁷ The report makes several recommendations to improve public safety, including increasing aeration time, increasing reporting requirements, requiring proof that chemical detection devices are properly calibrated, requiring notice of aeration times, changing warning requirements, and adding notification requirements for alternative methods of termite control.²⁸

¹⁸ DACS, Agency Analysis of 2016 House Bill 1205, p. 1 (January 15, 2016).

¹⁹ Rule 5E-14.113(2), F.A.C.

²⁰ Section 487.021(49), F.S., defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

²¹ Section 487.041(1)(a), F.S.

²² Rule 5E-2.031(3), F.A.C.

²³ Rule 5E-2.031(6) and (7), F.A.C.

²⁴ Section 487.101(1), F.S.

²⁵ Id.

²⁶ Section 487.15, F.S.

²⁷ DACS, Review of the Division of Agricultural and Environmental Services, Structural Fumigation Regulation Regulations and Processes, available at http://media.wptv.com/image/Report.pdf?_ga=1.26570170.646122863.1452805180 (last visited January 14, 2016).

²⁸ Id. at 4 – 5.

Effect of the Proposed Bill

The bill amends s. 482.051, F.S., to update DACS' rulemaking authority relating to safety procedures for fumigation. Specifically, the bill:

- Requires fumigators to notify DACS of where a fumigation will be performed at least 24 hours in advance of any general fumigation, rather than notify a DACS inspector;
- Authorizes DACS to specify circumstances when notification of less than 24 hours in advance is allowed, rather than only during an authentic and verifiable emergency; and
- Authorizes DACS to require safety procedures for the clearance of residential structures before reoccupation after fumigation.

The bill amends s. 487.051, F.S., to update DACS' rulemaking authority to allow DACS to place conditions on fumigant registration. Specifically, the bill authorizes DACS to establish conditions for the registration or continued registration of fumigants, including:

- Requiring registrants to train distributors and end users in safety measures, proper use, safe storage, and the management of fumigant materials;
- Obtaining continuing education program approval for stewardship training programs;
- Conduct quality assurance reviews;
- Reporting to DACS probation and stop-sale notifications issued to end users. DACS must notify other sulfur fluoride registrants of the reported probation or stop-sale notice; and
- Assisting DACS, upon its request, with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

B. SECTION DIRECTORY:

Section 1. Amends s. 482.051, F.S., relating to general fumigation notification requirements.

Section 2. Amends s. 487.051, F.S., relating to establishing certain conditions for the registration or continued registration of fumigants.

Section 3. Providing an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department is authorized to revise rules, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the department by rule to require manufacturers to train distributors and end users in safety measures, to obtain continuing education and to conduct quality assurance reviews. Since

manufacturers already train distributors and users, they will continue to work with the department to fortify the training. This may have an insignificant negative fiscal impact on registrants and licensees who apply fumigants and on individuals who register fumigants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants additional rulemaking authority to DACS to regulate fumigation safety procedures and place conditions on the registration of fumigants. The bill will likely require DACS to revise its rules to conform to the changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.