

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2484

SPONSOR: Senator Alexander

SUBJECT: Citrus Canker

DATE: April 2, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill creates, within ch. 933, F.S., pertaining to search warrants in general, a special type of search warrant called an “agriculture warrant.” Such warrants can only be issued upon an application supported by an affidavit establishing probable cause. A finding of probable cause can be based upon a showing that the subject property is within a quarantine area or that there is a fair probability of the presence or exposure of a plant or animal pest on the property. A single application can suffice for multiple warrants which can be signed electronically as well as manually and can be served and executed by employees of the Department of Agriculture and Consumer Services (DACS). Notice prior to the issuance of a search warrant is not required and any hearing can be held ex parte. The warrant must then be served on an occupant over the age of 18 or posted on the subject property. The agriculture warrant is effective for 60 days and can be extended or renewed. A warrant cannot be used to search an occupied dwelling or an automobile and certain limits have been placed on the time when a warrant can be served. A refusal to permit the execution of the warrant can result in a charge of a second degree misdemeanor.

The bill provides that DACS does not have to comply with certain provisions of the Administrative Procedures Act in carrying out its canker eradication program. It specifies that removed trees may be destroyed by chipping and it prohibits local governments from regulating the removal or destruction of citrus trees.

This bill substantially amends the following sections of the Florida Statutes: 120.80 and 581.184; it creates s. 933.40 of the Florida Statutes.

## II. Present Situation:

Presently all search warrants are issued under to ch. 933, F.S., and the Department of Agriculture and Consumer Services (DACS) must follow the same procedures more commonly associated with criminal law enforcement to obtain search warrants for use in its canker eradication program. According to DACS, the agency previously was able to have search warrants issued for 60 days which is longer than the 10-day time period authorized under s. 933.05, F.S. According to DACS, the warrants issued for 60 days were no longer issued after opponents of the eradication program convinced the issuing judge that the 60-day warrants were not permitted by law. The eradication program requires that DACS provide the property owner with an Immediate Final Order informing the owner that DACS proposes to destroy infected or exposed trees, the distance from the subject property to the infected tree, and of the homeowner's right to file a protest with the respective district court of appeal within ten days.<sup>1</sup> During this time period, the 10-day search warrant would lapse and necessitate DACS having to go back multiple times on one property before access could be gained, resulting in both delays and inefficiencies in the pursuit of the eradication program. Also there is a requirement that the judge issuing the search warrant conduct a court proceeding after reasonable notice to the property owner prior to the issuance of such search warrant.

There has been extensive litigation by homeowners and local governments challenging various aspects of the canker eradication program, including the procedures being followed to obtain search warrants. On February 12, 2004, the Florida Supreme Court issued its opinion in the case of *Haire v. Florida Department of Agriculture and Consumer Services*, 29 Fla. L. Weekly S67 (Fla. 2004), in which it held that the Citrus Canker Law is constitutional and that certain restrictions imposed by the trial court on the issuance of search warrants were improper (the Petitioners in this case have requested a rehearing and the opinion is not final until the Court acts upon the request). The effect of the opinion regarding search warrants was that a single warrant application could cover multiple properties and that a warrant could be signed by the use of an electronic signature.

DACS must comply with the Administrative Procedures Act in rulemaking and addressing challenges of rules regarding its canker eradication program. Also, the statutes do not specify the manner of destroying trees that have been removed.

## III. Effect of Proposed Changes:

For the most part, this bill appears designed to codify and ratify the procedures followed by the Department of Agriculture and Consumer Services (DACS) under the citrus canker eradication program should the courts find the program not in compliance with law. The Florida Supreme Court, however, in a non-final opinion in *Haire v. Florida Department of Agriculture and Consumer Services*, 29 Fla. L. Weekly S67, has upheld DACS procedures under the program.

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<sup>1</sup> Section 581.184(2)(a), F.S.

## **Administrative Procedures Act**

The bill provides that rulemaking and rule challenge procedures of the Administrative Procedures Act (APA) do not apply to rules adopted by the DACS regarding the removal and disposal of exposed and infected citrus trees. DACS has existing exemptions under the APA. One exemption provides that certain marketing orders are not rules. Another exemption provides that hearings conducted under ch. 601, F.S., need not be conducted by a judge from the Division of Administrative Hearings. The *Haire* opinion described above did not involve a rule challenge.

## **Agricultural Warrants**

The bill creates s. 933.40, F.S., which establishes an “agriculture warrant” as a separate classification of search and inspection warrants, with the following provisions:

- An agriculture warrant is an order, signed by any judge or committing magistrate having jurisdiction where search is to be made, authorizing department employees to take actions with respect to any plant pest or animal pest identified in the warrant, including but not limited to conducting inspections, setting traps, examining records, testing, dipping, disinfecting, treating, identifying, quarantining, taking samples and measurements, and seizing or destroying property and such other acts as may be authorized in chs. 581 and 585, F.S. Definitions are also set forth for animal pest, department, electronic signature, parcel number, plant pest, and section.
- An application for an agriculture warrant must describe the property and the type of pest subject to the warrant.
- An agriculture warrant will be issued only on probable cause, which may be established by one or more of the following findings:
  - The property is located within a quarantine area as established by the department.
  - The affidavit shows that there is a fair probability that the subject property contains a plant pest, is located in an area suspected of infestation or exposure to infestation with a plant pest, is located in a Section or adjacent Section where citrus canker has been diagnosed, contains animals affected or exposed to animal pests, or contains property that is liable to convey an animal pest.
- A single application is sufficient for multiple agriculture warrants for properties located within the same county.
- Agriculture warrants may be signed manually, by stamp, or electronic signature and served and executed by employees of the department with assistance from third parties supervised by department employees.
- Notice to the property owner or occupant is not required at the time of application, but a copy of the warrant must be delivered to a person who is 18 or older and living on the subject property at the time of execution of the warrant or must be posted on the subject property.
- Applications for an agriculture warrant can be heard *ex parte*.
- An agriculture warrant is effective for 60 days and may be executed multiple times and may be renewed.

- An agriculture warrant cannot be served after 7 p.m. or before 7 a.m. or on a legal holiday. Further it cannot authorize entry into an occupied dwelling or automobile nor can the warrant be issued in blank.
- It is a second degree misdemeanor to willfully refuse to permit execution of an agriculture warrant.
- A person executing an agriculture warrant cannot act as a confidential informer, testify as a witness, or execute an affidavit in support of a criminal search warrant.
- There is no intention to limit powers to conduct inspections with or without warrants as authorized by general law.

### **Citrus Canker Eradication Program**

The bill authorizes DACS destroy removed infected or exposed trees by chipping. It also reserves to the state the power to remove and destroy citrus trees under the state's citrus canker eradication program. The requirement that an immediate final order giving notice of the removal of citrus trees be provided to the property owner is removed from the statutes.

### **Effective Date**

The bill provides that it takes 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.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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