

STORAGE NAME: h1539a.ccc.doc
DATE: February 26, 2002

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: HB 1539
RELATING TO: Citrus Canker
SPONSOR(S): Committee on Agriculture & Consumer Affairs; Representative Spratt & Others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE AND CONSUMER AFFAIRS (CCC) YEAS 6 NAYS 1
 - (2) FISCAL RESPONSIBILITY COUNCIL YEAS 21 NAYS 3
 - (3) COUNCIL ON COMPETITIVE COMMERCE YEAS 10 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

HB 1539 authorizes the Department of Agriculture and Consumer Services (Department) to obtain a search warrant for a property that is being held or possessed in violation of a citrus canker quarantine or for property to be inspected, treated, seized, or destroyed due to citrus canker infection or exposure. The bill provides for the search warrant to cover an area in size up to and including the full extent of the county in which the warrant is issued. The bill provides for a court proceeding prior to issuance of said warrant upon reasonable notice for the purpose of receiving and hearing objections to the issuance of said warrant. The warrant may be served by employees of the Department or its authorized contractors.

In addition, the bill redefines "exposed to infection". This definition will be repealed effective July 1, 2005. The bill provides for the Department to remove and destroy all infected or exposed citrus trees, providing notice of removal to property owners by means of an Immediate Final Order (IFO). The bill also provides requirements for the IFO, as well as information to be provided to the property owners.

This legislation is not expected to fiscally impact state government. The legislation's effective date is upon becoming law unless otherwise specified.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: The Department of Agriculture and Consumer Services (Department) is authorized to obtain a search warrant for the purpose of inspecting, treating, seizing or destroying citrus trees infected or exposed to citrus canker.

B. PRESENT SITUATION:

The definition of "exposed to infection", currently in statute, mentions an exposed tree's proximity to an infected citrus tree but does not specify the exact distance between the two.

The current practice of the Department of Agriculture and Consumer Services (Department) regarding the citrus canker eradication program is to notify residents of a neighborhood by leaving flyers at each house prior to the survey. The flyers notify residents that Department personnel, with identifying credentials, will be in the area in the next few weeks to survey citrus trees for signs of citrus canker.

If, during the survey process, a residence is identified as having an infected or exposed tree, the owner or person in charge of said property is notified by means of an Immediate Final Order (IFO). The IFO describes in detail the steps, and timeframe, to be taken by the Department in removing the infected/exposed tree. The IFO also provides a pathology report for the infected tree (if the tree on the property is an exposed tree, a pathology report for the infected tree causing the exposure is included), as well as the necessary forms and information for filing an appeal and a motion to stay. Section 581.181, F.S., grants the Department the authority for this action.

Previously, when citrus canker was first detected in Dade and Broward Counties, the Department developed a plan to create a canker host free buffer area to prevent the disease from spreading into Palm Beach County. This plan was never implemented and the canker has since spread into Palm Beach County.

Currently, the Department is given authority through s. 581.031 (15)(a), F.S., to survey and inspect plants or plant products that may be capable of disseminating or carrying plant pests, noxious weeds, or arthropods. This section of the statutes also authorizes the Department to "...enter into or upon any place" to carry out said surveys or inspections.

C. EFFECT OF PROPOSED CHANGES:

HB 1539 redefines "exposed to infection" to include any citrus tree located within 1900 feet of an infected tree. This definition will be repealed effective July 1, 2005. The bill provides for the Department to remove and destroy all infected or exposed citrus trees, providing notice of removal to property owners by means of an Immediate Final Order (IFO). The IFO notifies property owners that the citrus trees that are the subject of the IFO will be removed and destroyed unless the property owner, no later than 10 days after delivery of the IFO, requests and obtains a stay of the IFO from the district court of appeal with jurisdiction to review such requests. In addition, the bill provides for the method of delivery of the IFO, as well as other information to be provided to the property owner.

The bill deletes language referencing a citrus canker host free buffer area and a compensation plan for trees removed from the buffer area. The implementation of the buffer area is no longer feasible. The bill authorizes the chief law enforcement officer of each county, upon request of the Department, to assist in obtaining access to private property for the purpose of inspecting, treating, seizing, or destroying citrus trees infected or exposed to citrus canker.

HB 1539 authorizes the Department to obtain a search warrant for a property that is being held or possessed in violation of a citrus canker quarantine or for property to be inspected, treated, seized, or destroyed due to citrus canker infection or exposure. The bill provides for the search warrant to cover an area in size up to and including the full extent of the county in which the warrant is issued. The bill provides for a court proceeding prior to issuance of said warrant upon reasonable notice for the purpose of receiving and hearing objections to the issuance of said warrant. The warrant may be served by employees of the Department or its authorized contractors. The warrant may be made returnable at any time up to 6 months from the date of issuance.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 581.184, F.S., revising the definition of "exposed to infection"; authorizing the Department of Agriculture and Consumer Services (Department) to remove all infected and exposed citrus trees; providing for notice to owner by means of an Immediate Final Order (IFO); providing contents of IFO; providing for method of delivery of IFO; repealing the Department's authority to create a buffer zone; and, providing for the sheriff or chief law enforcement officer in county to provide assistance to the Department when requested.

Section 2: Amends s. 933.02, F.S., revising criteria for which search warrants may be issued.

Section 3: Amends s. 933.07, F.S., authorizing the Department to obtain a warrant for an area in size up to and including the full extent of the county in which the warrant is issued; providing that the person issuing said warrant shall conduct a court proceeding to be held prior to issuance of said warrant upon reasonable notice and shall receive, hear, and determine any objections to the issuance of the warrant; allowing warrant to be served by employees of the Department or its authorized contractors; and, allowing warrant to be returnable at any time up to six months from the date of issuance.

Section 4: Provides for repeal of the definition for "exposed to infection," effective July 1, 2005.

Section 5: Provides an effective date of upon becoming law, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

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B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any state entity.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE AND CONSUMER AFFAIRS (CCC):

Prepared by:

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