

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 w/CS Citrus canker
SPONSOR(S): Troutman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	15 Y, 0 N w/CS	Kaiser	Reese
2) Agriculture & Environmental Appropriations			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

The life of a search warrant in south Florida is only 10 days. This does not provide the Department of Agriculture and Consumer Services (department) with enough time to search for citrus canker, serve the immediate final order (IFO) and wait out the ten-day appeal period before removing the infected or exposed trees. Hence, the department is forced to reapply for new search warrants for tree removal once the ten-day appeal period has elapsed. This extra step is creating serious delays in the eradication process resulting in the additional spread of the disease as well as extending the time it will take to declare eradication in south Florida.

HB 1005 creates agricultural search warrants, which are valid for 60 days. As with regular search warrants, the agricultural warrant will be issued only upon application supported by affidavit and will describe the exact location (street address and city or parcel number and county) of each property subject to the warrant and each type of plant or animal pest subject to the warrant. The agricultural warrant may only be issued upon probable cause.

The bill further states that a single warrant application is sufficient for the issuance of multiple agriculture warrants as long as the application describes the location of each property and all properties are located within the same county. In addition, the bill provides that prior notice to the property owners shall not be required as a condition for the issuance of agricultural warrants.

Additionally, the proposed legislation preempts regulation of the removal or destruction of citrus trees pursuant to s. 581.184, F.S., to the state.

This legislation has no fiscal impact on state or local governments and has an effective date of upon becoming law.

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

STORAGE NAME: h1005a.ag.doc
DATE: March 10, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Administrative Procedures

The bill releases the department from provisions of administrative procedures regarding rulemaking or challenges to rules in connection with citrus tree removal, thus preventing delays through administrative hearings.

Agricultural Warrants

Currently, there are only two options, regarding search warrants, available to the Department of Agriculture and Consumer Services (department): an inspection warrant, which is valid for 14 days, and a search warrant, which is valid for 10 days.

Neither of these provides the department with enough time to search for citrus canker, serve the immediate final order (IFO) and wait out the ten-day appeal period before removing the infected or exposed trees. Hence, the department is forced to reapply for new search warrants for tree removal once the ten-day appeal period has elapsed. This extra step is creating serious delays in the eradication process resulting in the additional spread of the disease as well as extending the time it will take to declare eradication in south Florida.

HB 1005 creates agricultural search warrants, which are valid for 60 days. As with regular search warrants, the agricultural warrant will be issued only upon application supported by affidavit and will describe the exact location (street address and city or parcel number and county) of each property subject to the warrant and each type of plant or animal pest subject to the warrant. The agricultural warrant may only be issued upon probable cause, with probable cause including:

- The property subject to the warrant is located within an area subject to a quarantine established by the department due to the plant or animal pest which is the subject of the warrant.
- Due to the circumstances of the affidavit, there is a fair probability the property subject to the warrant contains a plant pest and/or is located in an area which may reasonably be suspected of being infested or infected with a plant pest due to its proximity to a known infestation, or is reasonably exposed to infestation.
- The property subject to the warrant is located in an area where the department has diagnosed the presence of one or more plants infected with citrus canker or is located in an area adjacent thereto.
- The property subject to the warrant contains animals affected with any animal pest or which have been exposed to and are liable to spread the animal pest or contains any other property that is liable to convey an animal pest.

The bill further states that a single warrant application is sufficient for the issuance of multiple agriculture warrants as long as the application describes the location of the each property and all

properties are located within the same county. The proposed legislation provides for agricultural warrants to be served and executed by employees of the department, with the assistance of third parties supervised by department employees.

In addition, the bill provides that prior notice to the property owners shall not be required as a condition for the issuance of agricultural warrants. The bill entitles the department to an ex parte hearing on an application for an agricultural warrant. The agricultural warrant is effective for 60 days and may be extended or renewed upon satisfaction of the judge that probable cause continues to exist.

The bill states that an agricultural warrant shall not:

- Be executed between 7 p.m. of any day and 7 a.m. of the succeeding day, or any legal holiday (which includes Sundays);
- Authorize the entry into or inspection of the interior of any occupied dwelling or any automobile; or
- Be issued in blank.

The bill provides any person who willfully refuses to permit execution of an agricultural warrant commits a misdemeanor of the second degree, punishable by a prison term of not more than 60 days or a fine of \$500.¹

The bill further provides a person executing an agricultural warrant pursuant to s. 933.40, F.S., can not give information as a confidential informer or testify as a witness. In addition, the bill states that nothing in s. 933.40, F.S., shall restrict the powers granted by general law to a unit of state or local government.

Citrus Canker Eradication

The bill authorizes the department to destroy citrus trees infected with citrus canker by chipping. Previously, the department had statutory authority to remove and destroy all infected and exposed citrus trees but a preferred method was not stated. In addition, it requires the department to provide notice to the property owner by immediate final order. Although the department has been performing this function through proviso language in the general appropriations bill, this will codify it in statute.

Furthermore, the bill preempts regulation of the removal or destruction of citrus trees pursuant to s. 581.184, F.S., to the state. And lastly, the department is no longer required to provide information in the immediate final order regarding the distance between the infected citrus tree and an exposed tree.

C. SECTION DIRECTORY:

Section 1: Amending s. 120.8, F.S.; releasing the department from provisions of administrative procedures regarding rulemaking or challenges to rules in connection with citrus tree removal.

Section 2: Creating s. 933.40, F.S.; defining terms used in connection with agricultural warrants; providing for issuance of agricultural warrants; providing what constitutes probable cause; providing procedures for agricultural warrant application; providing guidelines for issuing agricultural warrants; providing a criminal penalty for refusing to permit an agricultural warrant to be executed; prohibiting persons executing agricultural warrants from providing confidential information; and providing for execution of duties by state/local government.

Section 3: Amending s. 581.184, F.S.; authorizing the department to destroy trees through chipping; providing for notice to property owners; and, preempting removal of citrus trees to the state.

Section 4: Providing an effective date of upon becoming law.

¹ See s. 775.082 and 775.083, F.S.

II. 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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill does preempt to the state the regulation of the removal and destruction of citrus trees pursuant to s. 581.184, F.S. The bill further states, "...no county, municipal, or other local ordinance or other regulation that would otherwise impose requirements, restrictions, or conditions upon the department or its contractors with respect to the removal or destruction of citrus trees pursuant to s. 581,184, F.S., shall be enforceable against the department or its contractors."

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2004, the Committee on Agriculture adopted an amendment to HB 1005 that states the findings to support a determination of probable cause **may be** sufficient to support the issuance of an agricultural warrant. Previously, the bill had read the findings **are** sufficient to support the issuance of an agricultural warrant.