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A bill to be entitled
 An act relating to citrus canker; amending s. 120.80, F.S.; excluding certain statements and actions by the Department of Agriculture and Consumer Services from application of certain rules; creating s. 933.40, F.S.; providing definitions; providing for issuance of agriculture warrants for certain purposes under certain circumstances; requiring probable cause; providing criteria procedures for issuing such warrants; providing certain guidelines and limitations on required notice; providing for ex parte hearing for certain warrant applications; providing a time limit on the effectiveness of certain warrants; providing a criminal penalty for refusal to permit execution of a warrant; prohibiting certain persons from giving certain information as a confidential informant under certain circumstances; providing construction; amending s. 581.184, F.S.; authorizing the destruction of certain trees; providing a notice requirement to certain property owners; preempting regulation of tree removal and destruction to the state; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (2) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.--
 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--

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29 (c) The provisions of ss. 120.54 and 120.56 shall not
 30 apply to any statement or action by the department in
 31 furtherance of its duties pursuant to s. 581.184(2).

32 Section 2. Section 933.40, Florida Statutes, is created to
 33 read:

34 933.40 Agriculture warrants.--

35 (1) As used in this section:

36 (a) "Agriculture warrant" means an order in writing, in
 37 the name of the people, signed by a person competent to issue
 38 search warrants pursuant to s. 933.01, authorizing department
 39 employees to exercise any duty or power granted by chapter 581
 40 or chapter 585 with respect to any plant pest or animal pest
 41 identified in the warrant, including, but not limited to,
 42 conducting inspections, setting traps, examining records,
 43 testing, dipping, disinfecting, treating, identifying,
 44 quarantining, taking samples and measurements, and seizing or
 45 destroying property.

46 (b) "Animal pest" means any biological or chemical residue
 47 as defined in s. 585.01(4), pathogenic organism or virulent
 48 organism as defined in s. 585.01(15), or any transmissible,
 49 communicable, contagious, or infectious disease as described in
 50 s. 585.01(18).

51 (c) "Department" means the Department of Agriculture and
 52 Consumer Services.

53 (d) "Electronic signature" means any letters, characters,
 54 symbols, or process manifested by electronic or similar means
 55 and attached to or logically associated with a record and
 56 executed or adopted by a person with the intent to sign the
 57 record.

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58 (e) "Parcel number" means the distinct parcel
 59 identification number assigned to a parcel of property by the
 60 property appraiser for the county in which the property is
 61 located.

62 (f) "Plant pest" means any plant pest, noxious weed, or
 63 arthropod declared a nuisance by the department pursuant to s.
 64 581.031(6), or any plant infected or exposed to infection as
 65 defined in s. 581.184(1).

66 (g) When capitalized, "Section" has the meaning ascribed
 67 in 43 U.S.C. s. 751.

68 (2) An agriculture warrant shall be issued only upon
 69 application supported by affidavit and shall describe the street
 70 address and city or the parcel number and county of each
 71 property to be subject to the warrant and each type of plant
 72 pest or animal pest which will be the subject of the warrant.

73 (3) An agriculture warrant shall be issued only upon
 74 probable cause. For the issuance of one or more agriculture
 75 warrants, any of the following findings is sufficient to support
 76 a determination of probable cause:

77 (a) The property to be subject to the agriculture warrant
 78 is located within an area subject to a quarantine which has been
 79 established by the department with respect to the plant pest or
 80 animal pest that is the subject of the warrant; or

81 (b) Under all of the circumstances set forth in the
 82 affidavit, there is a fair probability the property subject to
 83 the agriculture warrant:

- 84 1. Contains a plant pest;
- 85 2. Is located in an area which may reasonably be suspected
 86 of being infested or infected with a plant pest due to its

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87 proximity to a known infestation, or if it is reasonably exposed
 88 to infestation;

89 3. Is located in a Section in which the department has
 90 diagnosed the presence of one or more plants infected with
 91 citrus canker as defined in s. 581.184(1)(a) or is located in a
 92 Section adjacent thereto;

93 4. Contains animals affected with any animal pest or which
 94 have been exposed to and are liable to spread the animal pest;
 95 or

96 5. Contains any other property that is liable to convey an
 97 animal pest.

98 (4) A single warrant application shall be sufficient for
 99 the issuance of multiple agriculture warrants if the application
 100 for the warrants describes the street address and city or the
 101 parcel number and county of each property subject to an
 102 agriculture warrant and all such properties are located within
 103 the same county.

104 (5) Agriculture warrants may be signed by any person
 105 competent to issue search warrants under s. 933.01, either
 106 manually, by signature stamp, or by electronic signature. The
 107 judge or magistrate, upon examination of the application and
 108 proofs submitted, if satisfied that probable cause exists for
 109 the issuing of one or more agriculture warrants, shall issue
 110 such agriculture warrants with his or her signature and office
 111 affixed thereto. Such agriculture warrants may be served and
 112 executed by employees of the department, with the assistance of
 113 third parties supervised by department employees, and shall
 114 authorize department employees with such assistance to undertake
 115 all actions authorized by the warrant.

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116 (6) Prior notice to the owner or occupant of the property
 117 to be subject to the agriculture warrant, or to any other
 118 person, of the application for agriculture warrants shall not be
 119 required as a condition for the issuance of warrants under this
 120 section. At the time of execution of the agriculture warrant, a
 121 copy, including any applicable renewal or extension thereof
 122 under subsection (8), shall be delivered to a person 18 years of
 123 age or older who is occupying or living on the property subject
 124 to the warrant or shall be attached to a conspicuous place on
 125 that property.

126 (7) The department shall be entitled to an ex parte
 127 hearing forthwith on an application for an agriculture warrant.

128 (8) An agriculture warrant shall be effective for 60 days
 129 and shall authorize multiple executions of the warrant prior to
 130 its expiration. An agriculture warrant may be extended or
 131 renewed by the judge or magistrate who signed and issued the
 132 original warrant upon satisfaction of such official that
 133 probable cause continues to exist for the reissuance of the
 134 warrant. Such warrant must be returned to the issuing official
 135 prior to the expiration date specified in the warrant or within
 136 the extended or renewed time.

137 (9) An agriculture warrant shall not:

138 (a) Be executed between 7 p.m. of any day and 7 a.m. of
 139 the succeeding day, or on any legal holiday;

140 (b) Authorize the entry into or inspection of the interior
 141 of any occupied dwelling or any automobile; or

142 (c) Be issued in blank.

143 (10) Any person who willfully refuses to permit execution
 144 of any agriculture warrant commits a misdemeanor of the second

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145 degree, punishable as provided in s. 775.082 or s. 775.083.

146 (11) A person executing an agriculture warrant pursuant to
 147 this section shall not give information as a confidential
 148 informer, testify as a witness, or execute an affidavit as a
 149 predicate for the issuance of a criminal search warrant or for
 150 probable cause to search any dwelling or other building without
 151 a criminal search warrant.

152 (12) Nothing in this section shall be construed to
 153 restrict the powers granted by general law to an agency of the
 154 state, or to a unit of local government acting on behalf of such
 155 agency pursuant to a contract with the agency, to conduct
 156 inspections with or without warrant as authorized by general
 157 law.

158 Section 3. Subsections (2) and (4) of section 581.184,
 159 Florida Statutes, are amended to read:

160 581.184 Adoption of rules; citrus canker eradication;
 161 voluntary destruction agreements.--

162 (2)(a) The department shall remove and destroy all
 163 infected citrus trees and all citrus trees exposed to infection.
 164 The department may destroy by chipping trees removed pursuant to
 165 this section. Notice of the removal of such trees, by immediate
 166 final order, shall ~~may~~ be provided to the owner of the property
 167 on which such trees are located. An immediate final order issued
 168 by the department pursuant to this section shall notify the
 169 property owner that the citrus trees that are the subject of the
 170 immediate final order will be removed and destroyed unless the
 171 property owner, no later than 10 days after delivery of the
 172 immediate final order pursuant to subsection (3), requests and
 173 obtains a stay of the immediate final order from the district

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174 court of appeal with jurisdiction to review such requests. The
 175 property owner shall not be required to seek a stay of the
 176 immediate final order by the department prior to seeking the
 177 stay from the district court of appeal.

178 (b) Regulation of the removal or destruction of citrus
 179 trees pursuant to this section is hereby preempted to the state.
 180 No county, municipal, or other local ordinance or other
 181 regulation that would otherwise impose requirements,
 182 restrictions, or conditions upon the department or its
 183 contractors with respect to the removal or destruction of citrus
 184 trees pursuant to this section shall be enforceable against the
 185 department or its contractors. ~~Notwithstanding the provisions of~~
 186 ~~paragraph (a), and for the 2003-2004 fiscal year only, notice of~~
 187 ~~the removal of infected citrus trees and citrus trees exposed to~~
 188 ~~infection, by immediate final order, shall be provided to the~~
 189 ~~owner of the property on which such trees are located. This~~
 190 ~~paragraph expires July 1, 2004.~~

191 (4) Simultaneously with the delivery of an immediate final
 192 order, the department shall also provide the following
 193 information to a property owner:

194 (a) The physical location of the infected tree which has
 195 necessitated removal and destruction of the property owner's
 196 tree.

197 (b) The diagnostic report that resulted in the
 198 determination that the infected tree is infected with the citrus
 199 canker.

200 ~~(c) The distance between the infected citrus tree and a~~
 201 ~~property owner's exposed citrus trees.~~

202 Section 4. This act shall take effect upon becoming a law.