

By Senator Alexander

17-1636A-04

See HB

1 A bill to be entitled

2 An act relating to citrus canker; amending s.

3 120.80, F.S.; excluding certain statements and

4 actions by the Department of Agriculture and

5 Consumer Services from application of certain

6 rules; creating s. 933.40, F.S.; providing

7 definitions; providing for issuance of

8 agriculture warrants for certain purposes under

9 certain circumstances; requiring probable

10 cause; providing criteria procedures for

11 issuing such warrants; providing certain

12 guidelines and limitations on required notice;

13 providing for ex parte hearing for certain

14 warrant applications; providing a time limit on

15 the effectiveness of certain warrants;

16 providing a criminal penalty for refusal to

17 permit execution of a warrant; prohibiting

18 certain persons from giving certain information

19 as a confidential informant under certain

20 circumstances; providing construction; amending

21 s. 581.184, F.S.; authorizing the destruction

22 of certain trees; providing a notice

23 requirement to certain property owners;

24 preempting regulation of tree removal and

25 destruction to the state; providing an

26 effective date.

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

30 Section 1. Paragraph (c) is added to subsection (2) of

31 section 120.80, Florida Statutes, to read:

1 120.80 Exceptions and special requirements;
2 agencies.--

3 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--

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

7 Section 2. Section 933.40, Florida Statutes, is
8 created to read:

9 933.40 Agriculture warrants.--

10 (1) As used in this section:

11 (a) "Agriculture warrant" means an order in writing,
12 in the name of the people, signed by a person competent to
13 issue search warrants pursuant to s. 933.01, authorizing
14 department employees to exercise any duty or power granted by
15 chapter 581 or chapter 585 with respect to any plant pest or
16 animal pest identified in the warrant, including, but not
17 limited to, conducting inspections, setting traps, examining
18 records, testing, dipping, disinfecting, treating,
19 identifying, quarantining, taking samples and measurements,
20 and seizing or destroying property.

21 (b) "Animal pest" means any biological or chemical
22 residue as defined in s. 585.01(4), pathogenic organism or
23 virulent organism as defined in s. 585.01(15), or any
24 transmissible, communicable, contagious, or infectious disease
25 as described in s. 585.01(18).

26 (c) "Department" means the Department of Agriculture
27 and Consumer Services.

28 (d) "Electronic signature" means any letters,
29 characters, symbols, or process manifested by electronic or
30 similar means and attached to or logically associated with a
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1 record and executed or adopted by a person with the intent to
2 sign the record.

3 (e) "Parcel number" means the distinct parcel
4 identification number assigned to a parcel of property by the
5 property appraiser for the county in which the property is
6 located.

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

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

13 (2) An agriculture warrant shall be issued only upon
14 application supported by affidavit and shall describe the
15 street address and city or the parcel number and county of
16 each property to be subject to the warrant and each type of
17 plant pest or animal pest which will be the subject of the
18 warrant.

19 (3) An agriculture warrant shall be issued only upon
20 probable cause. In determining the existence of probable cause
21 for the issuance of one or more agriculture warrants, one or
22 more of the following findings may be sufficient to support a
23 determination of probable cause:

24 (a) The property to be subject to the agriculture
25 warrant is located within an area subject to a quarantine
26 which has been established by the department with respect to
27 the plant pest or animal pest that is the subject of the
28 warrant; or

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

- 1 1. Contains a plant pest;
2 2. Is located in an area which may reasonably be
3 suspected of being infested or infected with a plant pest due
4 to its proximity to a known infestation, or if it is
5 reasonably exposed to infestation;
6 3. Is located in a Section in which the department has
7 diagnosed the presence of one or more plants infected with
8 citrus canker as defined in s. 581.184(1)(a) or is located in
9 a Section adjacent thereto;
10 4. Contains animals affected with any animal pest or
11 which have been exposed to and are liable to spread the animal
12 pest; or
13 5. Contains any other property that is liable to
14 convey an animal pest.
15 (4) A single warrant application shall be sufficient
16 for the issuance of multiple agriculture warrants if the
17 application for the warrants describes the street address and
18 city or the parcel number and county of each property subject
19 to an agriculture warrant and all such properties are located
20 within the same county.
21 (5) Agriculture warrants may be signed by any person
22 competent to issue search warrants under s. 933.01, either
23 manually, by signature stamp, or by electronic signature. The
24 judge or magistrate, upon examination of the application and
25 proofs submitted, if satisfied that probable cause exists for
26 the issuing of one or more agriculture warrants, shall issue
27 such agriculture warrants with his or her signature and office
28 affixed thereto. Such agriculture warrants may be served and
29 executed by employees of the department, with the assistance
30 of third parties supervised by department employees, and shall
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1 authorize department employees with such assistance to
2 undertake all actions authorized by the warrant.

3 (6) Prior notice to the owner or occupant of the
4 property to be subject to the agriculture warrant, or to any
5 other person, of the application for agriculture warrants
6 shall not be required as a condition for the issuance of
7 warrants under this section. At the time of execution of the
8 agriculture warrant, a copy, including any applicable renewal
9 or extension thereof under subsection (8), shall be delivered
10 to a person 18 years of age or older who is occupying or
11 living on the property subject to the warrant or shall be
12 attached to a conspicuous place on that property.

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

16 (8) An agriculture warrant shall be effective for 60
17 days and shall authorize multiple executions of the warrant
18 prior to its expiration. An agriculture warrant may be
19 extended or renewed by the judge or magistrate who signed and
20 issued the original warrant upon satisfaction of such official
21 that probable cause continues to exist for the reissuance of
22 the warrant. Such warrant must be returned to the issuing
23 official prior to the expiration date specified in the warrant
24 or within the extended or renewed time.

25 (9) An agriculture warrant shall not:

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

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

30 (c) Be issued in blank.

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1 (10) Any person who willfully refuses to permit
2 execution of any agriculture warrant commits a misdemeanor of
3 the second degree, punishable as provided in s. 775.082 or s.
4 775.083.

5 (11) A person executing an agriculture warrant
6 pursuant to this section shall not give information as a
7 confidential informer, testify as a witness, or execute an
8 affidavit as a predicate for the issuance of a criminal search
9 warrant or for probable cause to search any dwelling or other
10 building without a criminal search warrant.

11 (12) Nothing in this section shall be construed to
12 restrict the powers granted by general law to an agency of the
13 state, or to a unit of local government acting on behalf of
14 such agency pursuant to a contract with the agency, to conduct
15 inspections with or without warrant as authorized by general
16 law.

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

19 581.184 Adoption of rules; citrus canker eradication;
20 voluntary destruction agreements.--

21 (2)(a) The department shall remove and destroy all
22 infected citrus trees and all citrus trees exposed to
23 infection. The department may destroy by chipping trees
24 removed pursuant to this section.Notice of the removal of
25 such trees, by immediate final order, shall ~~may~~ be provided to
26 the owner of the property on which such trees are located. An
27 immediate final order issued by the department pursuant to
28 this section shall notify the property owner that the citrus
29 trees that are the subject of the immediate final order will
30 be removed and destroyed unless the property owner, no later
31 than 10 days after delivery of the immediate final order

1 pursuant to subsection (3), requests and obtains a stay of the
2 immediate final order from the district court of appeal with
3 jurisdiction to review such requests. The property owner shall
4 not be required to seek a stay of the immediate final order by
5 the department prior to seeking the stay from the district
6 court of appeal.

7 (b) Regulation of the removal or destruction of citrus
8 trees pursuant to this section is hereby preempted to the
9 state. No county, municipal, or other local ordinance or other
10 regulation that would otherwise impose requirements,
11 restrictions, or conditions upon the department or its
12 contractors with respect to the removal or destruction of
13 citrus trees pursuant to this section shall be enforceable
14 against the department or its contractors.~~Notwithstanding the~~
15 ~~provisions of paragraph (a), and for the 2003-2004 fiscal year~~
16 ~~only, notice of the removal of infected citrus trees and~~
17 ~~citrus trees exposed to infection, by immediate final order,~~
18 ~~shall be provided to the owner of the property on which such~~
19 ~~trees are located. This paragraph expires July 1, 2004.~~

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

23 (a) The physical location of the infected tree which
24 has necessitated removal and destruction of the property
25 owner's tree.

26 (b) The diagnostic report that resulted in the
27 determination that the infected tree is infected with the
28 citrus canker.

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

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