

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

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3 Section 1. Section 581.083, Florida Statutes, is
4 amended to read:

5 581.083 Introduction or release of plant pests,
6 noxious weeds, or organisms affecting plant life; cultivation
7 of naturalized plants; special permit and security required.--

8 (1) The introduction into or release within this state
9 of any plant pest, noxious weed, genetically engineered plant
10 or plant pest, or any other organism which may directly or
11 indirectly affect the plant life of this state as an injurious
12 pest, parasite, or predator of other organisms, or any
13 arthropod, is prohibited, except under special permit issued
14 by the department through the division, which shall be the
15 sole issuing agency for such special permits.

16 (2) Each application for a special permit shall be
17 accompanied by a fee in an amount determined by the
18 department, through its rulemaking authority, not to exceed
19 \$50. The department may waive this fee by rule for
20 governmental agencies.

21 (3) Except for research projects approved by the
22 department, no permit for any organism shall be issued unless
23 the department has determined that the parasite, predator, or
24 biological control agent is specific to a target organism or
25 plant and not likely to become a pest of plants or other
26 beneficial organisms. The department may rely on findings of
27 the Department of Environmental Protection, the United States
28 Department of Agriculture, and other agencies in making any
29 determination about organisms used for biological control.

30 (4) A person may not cultivate a naturalized plant,
31 including a genetically engineered plant that reproduces

1 spontaneously outside of cultivation and outside of its native
2 range, for purposes of fuel production or purposes other than
3 agriculture in plantings greater in size than 2 contiguous
4 acres, except under a special permit issued by the department
5 through the division, which is the sole agency responsible for
6 issuing such special permits.

7 (a) Each application for a special permit must be
8 accompanied by a fee as described in subsection (2). The
9 application must also include, on a form provided by the
10 department, the name of the applicant and the applicant's
11 address or the address of the applicant's principal place of
12 business, a statement completely identifying the naturalized
13 plant to be cultivated, and a statement of the estimated cost
14 of removing or destroying the plant that is the subject of the
15 special permit and the basis for calculating or determining
16 that estimate. If the applicant is a corporation, partnership,
17 or other business entity, the applicant must also provide in
18 the application the name and address of each officer, partner,
19 or managing agent. The applicant shall notify the department
20 within 10 business days of any change of address or change in
21 the principal place of business. The department shall mail all
22 notices to the applicant's last known address.

23 (b) Upon obtaining a permit, the applicant may
24 annually cultivate and maintain the naturalized plants as
25 authorized by the special permit. If the applicant ceases to
26 maintain or cultivate the plants authorized by the special
27 permit, if the permit expires, or if the applicant ceases to
28 abide by the conditions of the special permit, the applicant
29 shall immediately remove and destroy the plants that are
30 subject to the permit, if any remain. The applicant shall
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1 notify the department of the removal and destruction of the
2 plants within 10 days after such event.

3 (c) If the department:

4 1. Determines that the applicant is no longer
5 maintaining or cultivating the plants subject to the special
6 permit and has not removed or destroyed the plants authorized
7 by the special permit;

8 2. Determines that the continued maintenance or
9 cultivation of the plants presents an imminent danger to
10 public health, safety, and welfare;

11 3. Determines that the applicant has exceeded the
12 conditions of the authorized special permit; or

13 4. Receives a notice of cancellation of the surety
14 bond or certificate of deposit;

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16 the department may issue an immediate final order, which shall
17 be immediately enjoined and appealed as provided by chapter
18 120, directing the applicant to immediately remove and destroy
19 the plants authorized to be cultivated under the special
20 permit. A copy of the immediate final order shall be mailed to
21 the applicant and to the surety company or financial
22 institution that has provided security for the special permit,
23 if applicable.

24 (d) If, upon issuance by the department of an
25 immediate final order to the applicant, the applicant fails to
26 remove and destroy the plants subject to the special permit
27 within 60 days after issuance of the order, or such shorter
28 period as is designated in the order as the public health,
29 safety, and welfare requires, the department may enter the
30 cultivated acreage and remove and destroy the plants that are
31 the subject of the special permit. If the applicant makes a

1 written request to the department for an extension of time to
2 remove or destroy the plants which demonstrates specific facts
3 showing why the plants could not reasonably be removed or
4 destroyed in the applicable timeframe, the department may
5 extend the time for removing or destroying the plants subject
6 to the permit. The reasonable costs and expenses incurred by
7 the department for removing and destroying the plants subject
8 to the special permit shall be reimbursed to the department by
9 the applicant within 21 days after the date the applicant and
10 surety are served a copy of the department's invoice for the
11 costs and expenses incurred by the department to remove or
12 destroy the cultivated plants, along with a notice of
13 administrative rights, unless the applicant and surety object
14 to the reasonableness of the invoice. In the event of an
15 objection, the applicant or surety is entitled to an
16 administrative proceeding as provided by chapter 120. Upon
17 entry of a final order determining the reasonableness of the
18 incurred costs and expenses, the applicant shall have 15 days
19 following service of the final order to reimburse the
20 department. Failure of the applicant to timely reimburse the
21 department for the incurred costs and expenses entitles the
22 department to reimbursement from the applicable security bond
23 or certificate of deposit.

24 (e) Each applicant shall maintain for each separate
25 growing location a bond in the form approved by the department
26 and issued by a surety company admitted to do business in this
27 state or a certificate of deposit, in an amount determined by
28 the department, but not less than 150 percent of the estimated
29 cost of removing or destroying the cultivated plants. The bond
30 or certificate of deposit may not exceed \$5,000 per acre,
31 unless a higher amount is determined by the department to be

1 necessary to protect the public health, safety, and welfare,
2 or unless an exemption is granted by the department based on
3 conditions specified in the application which would preclude
4 the department from incurring the cost of removing or
5 destroying the cultivated plants and prevent injury to the
6 public health, safety, and welfare. The aggregate liability of
7 the surety to all persons for all breaches of the conditions
8 of the bond required in this subsection may not exceed the
9 amount of the bond. The original surety bond required by this
10 subsection shall be filed with the department. A surety
11 corporation shall give the department 30 days' written notice
12 of cancellation by certified mail in order to cancel a bond.
13 Cancellation of a bond or certificate of deposit does not
14 relieve a surety company or financial institution of liability
15 for paying to the department all costs incurred or to be
16 incurred for removing or destroying the permitted plants
17 covered by an immediate final order authorized under paragraph
18 (c). The surety bond or certificate of deposit must be
19 provided or assigned in the exact name in which the applicant
20 applies for the special permit. The penal sum of the surety
21 bond or certificate of deposit to be furnished to the
22 department by an applicant for the special permit in the
23 amount specified in this paragraph must guarantee the payment
24 of the costs incurred or to be incurred by the department for
25 removing or destroying the plants cultivated under the issued
26 special permit. As used in this paragraph, the term
27 "certificate of deposit" means a certificate of deposit at any
28 recognized financial institution doing business in the United
29 States. The department may not accept a certificate of deposit
30 in connection with the issuance of a special permit unless the
31 issuing institution is properly insured by the Federal Deposit

1 Insurance Corporation or the Federal Savings and Loan
2 Insurance Corporation. The bond or certificate of deposit
3 assignment or agreement must be upon a form prescribed or
4 approved by the department and must be conditioned to secure
5 the faithful accounting for and payment of all costs incurred
6 by the department for removing or destroying all plants
7 cultivated under the special permit. The bond or certificate
8 of deposit assignment or agreement must include terms binding
9 the instrument to the Commissioner of Agriculture of the State
10 of Florida. Such certificate of deposit shall be presented
11 with an assignment of the applicant's rights in the
12 certificate in favor of the Commissioner of Agriculture of the
13 State of Florida on a form prescribed by the department and a
14 letter from the issuing institution acknowledging that the
15 assignment has been properly recorded on the books of the
16 issuing institution and will be honored by the issuing
17 institution. Such assignment is irrevocable while the special
18 permit is in effect and for an additional period of 6 months
19 after termination of the special permit if operations to
20 remove or destroy the permitted plants are not continuing and
21 if the department's invoice remains unpaid by the applicant
22 under the issued immediate final order. If operations to
23 remove or destroy the plants are pending, the assignment
24 remains in effect until all plants are removed or destroyed
25 and the department's invoice has been paid. The certificate of
26 deposit may be released by the assignee to the applicant, or
27 to the applicant's successors, assignee, or heirs, if
28 operations to remove or destroy the permitted plants are not
29 pending and no invoice remains unpaid at the conclusion of 6
30 months after the last effective date of the applicant's
31 permit. The department may not accept a certificate of deposit

1 that contains any provision that would give to any person any
2 prior rights or claim on the proceeds or principal of such
3 certificate of deposit. The department shall determine by rule
4 whether an annual bond or certificate of deposit will be
5 required. The amount of such bond or certificate of deposit
6 shall be increased, upon order of the department, at any time
7 if the department finds such increase to be warranted by the
8 cultivating operations of the special permittee. In the same
9 manner, the amount of such bond or certificate of deposit may
10 be decreased when a decrease in the cultivating operations
11 warrants such decrease. This paragraph applies to any bond or
12 certificate of deposit, regardless of the anniversary date of
13 its issuance, expiration, or renewal.

14 (f) In order to carry out the purposes of this
15 subsection, the department or its agents may require from any
16 applicant verified statements of the cultivated acreage
17 subject to the special permit and may review the applicant's
18 business or cultivation records at her or his place of
19 business during normal business hours in order to determine
20 the acreage cultivated. The failure of a special permittee to
21 furnish such statement, to make such records available, or to
22 make and deliver a new or additional bond or certificate of
23 deposit is cause for suspension of the special permit. If the
24 department finds such failure to be willful, the special
25 permit may be revoked.

26 Section 2. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Prohibits the cultivation of a naturalized plant for purposes of fuel production, or purposes other than agriculture, in plantings larger than 2 contiguous acres, except under a special permit issued by the Department of Agriculture and Consumer Services. Provides for an application fee of not more than \$50. Requires that the applicant maintain security through a bond or certificate of deposit in an amount of not less than 150 percent of the estimated cost of removing or destroying the plants. Authorizes the department to order that the plants be destroyed if there is a danger to public health, safety, and welfare or if the applicant exceeds the conditions of the special permit. Authorizes the department to review cultivation records to determine compliance with the act. (See bill for details.)

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