

HB 7159

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1 A bill to be entitled

2 An act relating to citrus disease management; amending s.
3 581.184, F.S; requiring the Department of Agriculture and
4 Consumer Services to implement a citrus health plan for
5 certain purposes; eliminating the authority of the
6 department to remove and destroy certain citrus trees;
7 deleting definitions and provisions relating to immediate
8 final orders, notice to property owners, rulemaking
9 authority, and the posting of certain orders, to conform;
10 requiring certain law enforcement officers to maintain
11 order under certain circumstances involving the citrus
12 canker disease management process; creating s. 581.1843,
13 F.S.; making it unlawful to propagate certain citrus
14 nursery stock on or after January 1, 2007, at sites and
15 under certain conditions not approved by the department;
16 providing exceptions; providing rulemaking authority;
17 specifying regulation of certain varieties of citrus
18 plants; providing exceptions; requiring the department to
19 establish certain regulated areas around commercial citrus
20 nurseries; providing exceptions; providing for notice to
21 property owners by immediate final order prior to removal
22 of certain citrus trees; providing an appeal process for
23 an immediate final order; providing for preemption to the
24 state to regulate the removal and destruction of certain
25 citrus plants; requiring the department to relocate
26 certain trees to certain locations; amending s. 581.1845,
27 F.S.; requiring certain compensation claims to be filed by
28 December 31, 2007; providing for the expiration of

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 compensation claims not filed prior to January 1, 2008;
 30 amending ss. 120.80, 348.0008, 933.02, and 933.40, F.S.;
 31 deleting provisions and cross-references, to conform;
 32 providing appropriations; providing an effective date.

33
 34 Be It Enacted by the Legislature of the State of Florida:

35
 36 Section 1. Section 581.184, Florida Statutes, is amended
 37 to read:

38 581.184 Adoption of rules; citrus disease management
 39 ~~canker eradication; voluntary destruction agreements.~~--

40 (1) The department shall adopt by rule, pursuant to ss.
 41 120.536(1) and 120.54, and implement a comprehensive citrus
 42 health plan to minimize the impact of exotic citrus pests and
 43 diseases to citrus production and to allow for the orderly
 44 marketing of citrus fruit in other states and countries. ~~As used~~
 45 ~~in this section, the term:~~

46 ~~(a) "Infected or infested" means citrus trees harboring~~
 47 ~~the citrus canker bacteria and exhibiting visible symptoms of~~
 48 ~~the disease.~~

49 ~~(b) "Exposed to infection" means citrus trees located~~
 50 ~~within 1,900 feet of an infected tree.~~

51 ~~(2)(a) The department shall remove and destroy all~~
 52 ~~infected citrus trees and all citrus trees exposed to infection.~~
 53 ~~The department may destroy, by chipping, trees removed pursuant~~
 54 ~~to this section. Notice of the removal of such trees, by~~
 55 ~~immediate final order, shall be provided to the owner of the~~
 56 ~~property on which such trees are located. An immediate final~~

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57 ~~order issued by the department pursuant to this section shall~~
58 ~~notify the property owner that the citrus trees that are the~~
59 ~~subject of the immediate final order will be removed and~~
60 ~~destroyed unless the property owner, no later than 10 days after~~
61 ~~delivery of the immediate final order pursuant to subsection~~
62 ~~(3), requests and obtains a stay of the immediate final order~~
63 ~~from the district court of appeal with jurisdiction to review~~
64 ~~such requests. The property owner shall not be required to seek~~
65 ~~a stay of the immediate final order by the department prior to~~
66 ~~seeking the stay from the district court of appeal.~~

67 (2) ~~(b)~~ Regulation of the removal or destruction of citrus
68 trees pursuant to this section is hereby preempted to the state.
69 No county, municipal, or other local ordinance or other
70 regulation that would otherwise impose requirements,
71 restrictions, or conditions upon the department or its
72 contractors with respect to the removal or destruction of citrus
73 trees pursuant to this section shall be enforceable against the
74 department or its contractors.

75 ~~(3) Any immediate final order issued by the department~~
76 ~~pursuant to this section:~~

77 ~~(a) May be delivered in person, by certified mail, or by~~
78 ~~attaching the order to a conspicuous place on the property on~~
79 ~~which a citrus tree to be removed is located.~~

80 ~~(b) Is not required to be adopted by the department as a~~
81 ~~rule.~~

82 ~~(4) Simultaneously with the delivery of an immediate final~~
83 ~~order, the department shall also provide the following~~
84 ~~information to a property owner:~~

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85 ~~(a) The physical location of the infected tree which has~~
86 ~~necessitated removal and destruction of the property owner's~~
87 ~~tree.~~

88 ~~(b) The diagnostic report that resulted in the~~
89 ~~determination that the infected tree is infected with the citrus~~
90 ~~canker.~~

91 (3)~~(5)~~ The department shall ~~is directed to~~ adopt rules,
92 pursuant to ss. 120.536(1) and 120.54, regarding the conditions
93 under which citrus plants, ~~other than those that are infected or~~
94 ~~exposed to infection,~~ can be grown, moved, and planted in this
95 state as may be necessary for the ~~eradication,~~ control, or
96 prevention of the dissemination of citrus diseases ~~canker~~. Such
97 rules shall be in effect for any period during which, in the
98 judgment of the Commissioner of Agriculture, there is the threat
99 of the spread of citrus diseases ~~canker disease~~ in the state.
100 ~~Such rules may provide for the conduct of any activity regulated~~
101 ~~by such rules subject to an agreement by persons wishing to~~
102 ~~engage in such activity to voluntarily destroy, at their own~~
103 ~~expense, citrus plants declared by the department to be~~
104 ~~imminently dangerous by reason of being infected or infested~~
105 ~~with citrus canker or exposed to infection and likely to~~
106 ~~communicate same. The terms of such agreement may also require~~
107 ~~the destruction of healthy plants under specified conditions.~~
108 ~~Any such destruction shall be done after reasonable notice in a~~
109 ~~manner pursuant to and under conditions set forth in the~~
110 ~~agreement. Such agreements may include releases and waivers of~~
111 ~~liability and may require the agreement of other persons.~~

112 (4)~~(6)~~ The department shall develop by rule, pursuant to
 113 ss. 120.536(1) and 120.54, a statewide program of
 114 decontamination to prevent and limit the spread of citrus canker
 115 disease. Such program shall address the application of
 116 decontamination procedures and practices to all citrus plants
 117 and plant products, vehicles, equipment, machinery, tools,
 118 objects, and persons who could in any way spread or aid in the
 119 spreading of citrus canker in this state. In order to prevent
 120 contamination of soil and water, such rules shall be developed
 121 in consultation with the Department of Environmental Protection.
 122 The department may develop compliance and other agreements which
 123 it determines can aid in the carrying out of the purposes of
 124 this section, and enter into such agreements with any person or
 125 entity.

126 (5)~~(7)~~ Owners or ~~and/or~~ operators of nonproduction
 127 vehicles and equipment shall follow the department guidelines
 128 for citrus canker decontamination effective June 15, 2000. ~~The~~
 129 ~~department shall publish the guidelines in the Florida~~
 130 ~~Administrative Weekly and on the department Internet website.~~
 131 ~~The guidelines shall be posted no later than May 15, 2000.~~

132 (6)~~(8)~~ Notwithstanding any provision of law, the
 133 Department of Environmental Protection is not authorized to
 134 institute proceedings against any person under the provisions of
 135 s. 376.307(5) to recover any costs or damages associated with
 136 contamination of soil or water, or the evaluation, assessment,
 137 or remediation of contamination of soil or water, including
 138 sampling, analysis, and restoration of soil or potable water
 139 supplies, where the contamination of soil or water is determined

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140 to be the result of a program of decontamination to prevent and
 141 limit the spread of citrus canker disease pursuant to rules
 142 developed under this section. This subsection does not limit
 143 regulatory authority under a federally delegated or approved
 144 program.

145 ~~(7)-(9)~~ Upon request of the department, the sheriff or
 146 chief law enforcement officer of each county in the state shall
 147 provide assistance in obtaining access to private property for
 148 the purpose of enforcing the provisions of this section. The
 149 sheriff or chief law enforcement officer shall be responsible
 150 for maintaining public order during the citrus disease
 151 management ~~eradication~~ process and protecting the safety of
 152 department employees, representatives, and agents charged with
 153 implementing and enforcing the provisions of this section. The
 154 department may reimburse the sheriff or chief law enforcement
 155 officer for the reasonable costs of implementing the provisions
 156 of this subsection.

157 ~~(10) Posting of an order on the property on which citrus~~
 158 ~~trees are to be cut pursuant to the citrus canker eradication~~
 159 ~~program shall meet the notice requirement of s. 120.569(1).~~

160 Section 2. Section 581.1843, Florida Statutes, is created
 161 to read:

162 581.1843 Citrus nursery stock propagation and production
 163 and the establishment of regulated areas around citrus
 164 nurseries.--

165 (1) As used in this section the term "commercial citrus
 166 grove" means a solid set planting of 40 or more citrus trees.

167 (2) Effective January 1, 2007, it is unlawful for any

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168 person to propagate for sale or movement any citrus nursery
169 stock that was not propagated or grown on a site and within a
170 protective structure approved by the department and that is not
171 at least 1 mile away from commercial citrus groves. A citrus
172 nursery registered with the department prior to April 1, 2006,
173 shall not be required to comply with the 1-mile setback from
174 commercial citrus groves while continuously operating at the
175 same location for which it was registered. However, the nursery
176 shall be required to propagate citrus within a protective
177 structure approved by the department. Effective January 1, 2008,
178 it shall be unlawful to distribute any citrus nursery stock that
179 was not produced in a protective structure approved by the
180 department.

181 (3) The department shall adopt rules pursuant to ss.
182 120.536(1) and 120.54 that set forth the conditions under which
183 citrus nursery stock can be propagated, grown, sold, or moved
184 and the specifications for the approved site and protective
185 structure.

186 (4) Under the provisions of this chapter, the department
187 shall adopt rules that are consistent with scientific findings
188 and recommendations of the Citrus Budwood Technical Advisory
189 Committee to regulate all genera of the Rutaceous subfamilies
190 Aurantioideae, Rutoideae, and Toddalioideae that pose a threat
191 of introducing or spreading a citrus plant pest.

192 (5) The department shall establish regulated areas around
193 the perimeter of commercial citrus nurseries that were
194 established on sites after April 1, 2006, not to exceed a radius
195 of 1 mile. The planting of citrus in an established regulated

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196 area is prohibited. The planting of citrus within a 1-mile
197 radius of commercial citrus nurseries that were established on
198 sites prior to April 1, 2006, must be approved by the
199 department. Citrus plants planted within a regulated area prior
200 to the establishment of the regulated area may remain in the
201 regulated area unless the department determines the citrus
202 plants to be infected or infested with citrus canker or citrus
203 greening. The department shall require the removal of infected
204 or infested citrus, nonapproved planted citrus, and citrus that
205 has sprouted by natural means in regulated areas. The property
206 owner shall be responsible for the removal of citrus planted
207 without proper approval. Notice of the removal of citrus trees,
208 by immediate final order of the department, shall be provided to
209 the owner of the property on which the trees are located. An
210 immediate final order issued by the department under this
211 section shall notify the property owner that the citrus trees,
212 which are the subject of the immediate final order, must be
213 removed and destroyed unless the property owner, no later than
214 10 days after delivery of the immediate final order, requests
215 and obtains a stay of the immediate final order from the
216 district court of appeal with jurisdiction to review such
217 requests. The property owner shall not be required to seek a
218 stay from the department of the immediate final order prior to
219 seeking a stay from the district court of appeal.

220 (6) Regulation of the removal or destruction of citrus
221 plants under this section is preempted to the state. No county,
222 municipal, or other local ordinance or other regulation that
223 would otherwise impose requirements, restrictions, or conditions

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224 upon the department or its contractors with respect to the
 225 removal or destruction of citrus trees under this section shall
 226 be enforceable against the department or its contractors.

227 (7) The department shall relocate foundation source trees
 228 maintained by the Division of Plant Industry from various
 229 locations, including those in Dundee and Winter Haven, to
 230 protective structures at the Division of Forestry nursery in
 231 Chiefland or to other protective sites located a minimum of 10
 232 miles from any commercial citrus grove. The department is
 233 authorized to expend existing funds from its Contracts and
 234 Grants Trust Fund for this purpose.

235 Section 3. Subsection (6) is added to section 581.1845,
 236 Florida Statutes, to read:

237 581.1845 Citrus canker eradication; compensation to
 238 homeowners whose trees have been removed.--

239 (6) Any claim for compensation under this section or under
 240 the Shade Dade or Shade Florida programs must be filed with the
 241 department no later than December 31, 2007. Effective January 1,
 242 2008, all unfiled claims shall expire.

243 Section 4. Paragraph (c) of subsection (2) of section
 244 120.80, Florida Statutes, is amended to read:

245 120.80 Exceptions and special requirements; agencies.--

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

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

250 Section 5. Subsection (2) of section 348.0008, Florida
 251 Statutes, is amended to read:

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252 348.0008 Acquisition of lands and property.--

253 (2) An authority and its authorized agents, contractors,
 254 and employees are authorized to enter upon any lands, waters,
 255 and premises, upon giving reasonable notice to the landowner,
 256 for the purpose of making surveys, soundings, drillings,
 257 appraisals, environmental assessments including phase I and
 258 phase II environmental surveys, archaeological assessments, and
 259 such other examinations as are necessary for the acquisition of
 260 private or public property and property rights, including rights
 261 of access, air, view, and light, by gift, devise, purchase, or
 262 condemnation by eminent domain proceedings or as are necessary
 263 for the authority to perform its duties and functions; and any
 264 such entry shall not be deemed a trespass or an entry that would
 265 constitute a taking in an eminent domain proceeding. An
 266 expressway authority shall make reimbursement for any actual
 267 damage to such lands, water, and premises as a result of such
 268 activities. Any entry authorized by this subsection shall be in
 269 compliance with the premises protections and landowner liability
 270 provisions contained in s. ss. 472.029 and 581.184.

271 Section 6. Section 933.02, Florida Statutes, is amended to
 272 read:

273 933.02 Grounds for issuance of search warrant.--Upon
 274 proper affidavits being made, a search warrant may be issued
 275 under the provisions of this chapter upon any of the following
 276 grounds:

277 (1) When the property shall have been stolen or embezzled
 278 in violation of law;

279 (2) When any property shall have been used:

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- 280 (a) As a means to commit any crime;i~~r~~
- 281 (b) In connection with gambling, gambling implements and
- 282 appliances;i~~r~~ or
- 283 (c) In violation of s. 847.011 or other laws in reference
- 284 to obscene prints and literature;
- 285 (3) When any property constitutes evidence relevant to
- 286 proving that a felony has been committed;
- 287 (4) When any property is being held or possessed:
- 288 (a) In violation of any of the laws prohibiting the
- 289 manufacture, sale, and transportation of intoxicating liquors;i~~r~~
- 290 ~~or~~
- 291 (b) In violation of the fish and game laws;i~~r~~ ~~or~~
- 292 (c) In violation of the laws relative to food and drug;i~~r~~
- 293 or
- 294 (d) In violation of the laws relative to citrus disease a
- 295 ~~quarantine for citrus canker pursuant to ss. s. 581.184 and~~
- 296 581.1845, ~~or~~
- 297 ~~(e) Which may be inspected, treated, seized, or destroyed~~
- 298 ~~pursuant to s. 581.184; or~~
- 299 (5) When the laws in relation to cruelty to animals, as
- 300 provided in chapter 828, have been or are violated in any
- 301 particular building or place.

302
 303 This section also applies to any papers or documents used as a
 304 means of or in aid of the commission of any offense against the
 305 laws of the state.

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306 Section 7. Paragraph (f) of subsection (1) and paragraph
 307 (b) of subsection (3) of section 933.40, Florida Statutes, are
 308 amended to read:

309 933.40 Agriculture warrants.--

310 (1) As used in this section:

311 (f) "Plant pest" means any plant pest, noxious weed, or
 312 arthropod declared a nuisance by the department pursuant to s.
 313 581.031(6), ~~or any plant infected or exposed to infection as~~
 314 ~~defined in s. 581.184(1).~~

315 (3) An agriculture warrant shall be issued only upon
 316 probable cause. In determining the existence of probable cause
 317 for the issuance of one or more agriculture warrants, one or
 318 more of the following findings may be sufficient to support a
 319 determination of probable cause:

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

- 323 1. Contains a plant pest;
- 324 2. Is located in an area which may reasonably be suspected
 325 of being infested or infected with a plant pest due to its
 326 proximity to a known infestation, or if it is reasonably exposed
 327 to infestation;

328 ~~3. Is located in a Section in which the department has~~
 329 ~~diagnosed the presence of one or more plants infected with~~
 330 ~~citrus canker as defined in s. 581.184(1)(a) or is located in a~~
 331 ~~Section adjacent thereto;~~

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332 ~~3.4.~~ Contains animals affected with any animal pest or
 333 which have been exposed to and are liable to spread the animal
 334 pest; or

335 ~~4.5.~~ Contains any other property that is liable to convey
 336 an animal pest.

337 Section 8. The sum of \$10,220,920 is appropriated from the
 338 Agricultural Emergency Eradication Trust Fund to the Department
 339 of Agriculture and Consumer Services, and the sum of \$16,706,310
 340 is appropriated from the Contracts and Grants Trust Fund to the
 341 Department of Agriculture and Consumer Services, for the 2006-
 342 2007 fiscal year to implement the provisions of ss. 581.184,
 343 581.1843, and 581.1845, Florida Statutes, as amended by this
 344 act.

345 Section 9. This act shall take effect upon becoming a law.