

CHAMBER ACTION

1 The State Resources Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to agriculture; amending s. 193.461, F.S.;
7 revising criteria for agricultural lands taken out of
8 production by any state or federal eradication or
9 quarantine program; amending s. 581.184, F.S.; requiring
10 the Department of Agriculture and Consumer Services to
11 implement a citrus health plan for certain purposes;
12 eliminating the authority of the department to remove and
13 destroy certain citrus trees; deleting definitions and
14 provisions relating to immediate final orders, notice to
15 property owners, rulemaking authority, and the posting of
16 certain orders, to conform; requiring certain law
17 enforcement officers to maintain order under certain
18 circumstances involving the citrus canker disease
19 management process; creating s. 581.1843, F.S.; making it
20 unlawful to propagate certain citrus nursery stock on or
21 after January 1, 2007, at sites and under certain
22 conditions not approved by the department; providing
23 exceptions; providing rulemaking authority; specifying

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24 regulation of certain varieties of citrus plants;
 25 providing exceptions; requiring the department to
 26 establish certain regulated areas around commercial citrus
 27 nurseries; providing exceptions; providing for notice to
 28 property owners by immediate final order prior to removal
 29 of certain citrus trees; providing an appeal process for
 30 an immediate final order; providing for preemption to the
 31 state to regulate the removal and destruction of certain
 32 citrus plants; requiring the department to relocate
 33 certain trees to certain locations; amending s. 581.1845,
 34 F.S.; requiring certain compensation claims to be filed by
 35 December 31, 2007; providing for the expiration of
 36 compensation claims not filed prior to January 1, 2008;
 37 providing for payment of claims by specified funding;
 38 providing for future repeal; amending ss. 120.80,
 39 348.0008, 933.02, and 933.40, F.S.; deleting provisions
 40 and cross-references, to conform; providing an effective
 41 date.

42
 43 Be It Enacted by the Legislature of the State of Florida:

44
 45 Section 1. Subsection (7) of section 193.461, Florida
 46 Statutes, is amended to read:

47 193.461 Agricultural lands; classification and assessment;
 48 mandated eradication or quarantine program.--

49 (7) Lands classified for assessment purposes as
 50 agricultural lands which are taken out of production by any
 51 state or federal eradication or quarantine program shall

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52 | continue to be classified as agricultural lands for the duration
 53 | of such program or successor programs. Lands under these
 54 | programs which are converted to fallow, or otherwise nonincome-
 55 | producing uses shall continue to be classified as agricultural
 56 | lands and shall be assessed at a de minimis value of no more
 57 | than \$50 per acre, on a single year assessment methodology;
 58 | however, lands converted to other income-producing agricultural
 59 | uses permissible under such programs shall be assessed pursuant
 60 | to this section. Land under a mandated eradication or quarantine
 61 | program which is diverted from an agricultural to a
 62 | nonagricultural use shall be assessed under the provisions of s.
 63 | 193.011.

64 | Section 2. Section 581.184, Florida Statutes, is amended
 65 | to read:

66 | 581.184 Adoption of rules; citrus disease management
 67 | ~~canker eradication; voluntary destruction agreements~~. --

68 | (1) The department shall adopt by rule, pursuant to ss.
 69 | 120.536(1) and 120.54, and implement a comprehensive citrus
 70 | health plan to minimize the impact of exotic citrus pests and
 71 | diseases to citrus production and to allow for the orderly
 72 | marketing of citrus fruit in other states and countries. ~~As used~~
 73 | ~~in this section, the term:~~

74 | ~~(a) "Infected or infested" means citrus trees harboring~~
 75 | ~~the citrus canker bacteria and exhibiting visible symptoms of~~
 76 | ~~the disease.~~

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

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79 ~~(2)(a) The department shall remove and destroy all~~
80 ~~infected citrus trees and all citrus trees exposed to infection.~~
81 ~~The department may destroy, by chipping, trees removed pursuant~~
82 ~~to this section. Notice of the removal of such trees, by~~
83 ~~immediate final order, shall be provided to the owner of the~~
84 ~~property on which such trees are located. An immediate final~~
85 ~~order issued by the department pursuant to this section shall~~
86 ~~notify the property owner that the citrus trees that are the~~
87 ~~subject of the immediate final order will be removed and~~
88 ~~destroyed unless the property owner, no later than 10 days after~~
89 ~~delivery of the immediate final order pursuant to subsection~~
90 ~~(3), requests and obtains a stay of the immediate final order~~
91 ~~from the district court of appeal with jurisdiction to review~~
92 ~~such requests. The property owner shall not be required to seek~~
93 ~~a stay of the immediate final order by the department prior to~~
94 ~~seeking the stay from the district court of appeal.~~

95 (2)(b) Regulation of the removal or destruction of citrus
96 trees pursuant to this section is hereby preempted to the state.
97 No county, municipal, or other local ordinance or other
98 regulation that would otherwise impose requirements,
99 restrictions, or conditions upon the department or its
100 contractors with respect to the removal or destruction of citrus
101 trees pursuant to this section shall be enforceable against the
102 department or its contractors.

103 ~~(3) Any immediate final order issued by the department~~
104 ~~pursuant to this section.~~

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

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

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

113 ~~(a) The physical location of the infected tree which has~~
114 ~~necessitated removal and destruction of the property owner's~~
115 ~~tree.~~

116 ~~(b) The diagnostic report that resulted in the~~
117 ~~determination that the infected tree is infected with the citrus~~
118 ~~eanker.~~

119 ~~(3)(5) The department shall is directed to adopt rules,~~
120 ~~pursuant to ss. 120.536(1) and 120.54, regarding the conditions~~
121 ~~under which citrus plants, other than those that are infected or~~
122 ~~exposed to infection, can be grown, moved, and planted in this~~
123 ~~state as may be necessary for the eradication, control, or~~
124 ~~prevention of the dissemination of citrus diseases eanker. Such~~
125 ~~rules shall be in effect for any period during which, in the~~
126 ~~judgment of the Commissioner of Agriculture, there is the threat~~
127 ~~of the spread of citrus diseases eanker disease in the state.~~
128 ~~Such rules may provide for the conduct of any activity regulated~~
129 ~~by such rules subject to an agreement by persons wishing to~~
130 ~~engage in such activity to voluntarily destroy, at their own~~
131 ~~expense, citrus plants declared by the department to be~~
132 ~~imminently dangerous by reason of being infected or infested~~

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133 ~~with citrus canker or exposed to infection and likely to~~
134 ~~communicate same. The terms of such agreement may also require~~
135 ~~the destruction of healthy plants under specified conditions.~~
136 ~~Any such destruction shall be done after reasonable notice in a~~
137 ~~manner pursuant to and under conditions set forth in the~~
138 ~~agreement. Such agreements may include releases and waivers of~~
139 ~~liability and may require the agreement of other persons.~~

140 (4)~~(6)~~ The department shall develop by rule, pursuant to
141 ss. 120.536(1) and 120.54, a statewide program of
142 decontamination to prevent and limit the spread of citrus canker
143 disease. Such program shall address the application of
144 decontamination procedures and practices to all citrus plants
145 and plant products, vehicles, equipment, machinery, tools,
146 objects, and persons who could in any way spread or aid in the
147 spreading of citrus canker in this state. In order to prevent
148 contamination of soil and water, such rules shall be developed
149 in consultation with the Department of Environmental Protection.
150 The department may develop compliance and other agreements which
151 it determines can aid in the carrying out of the purposes of
152 this section, and enter into such agreements with any person or
153 entity.

154 (5)~~(7)~~ Owners or ~~and/or~~ operators of nonproduction
155 vehicles and equipment shall follow the department guidelines
156 for citrus canker decontamination effective June 15, 2000. ~~The~~
157 ~~department shall publish the guidelines in the Florida~~
158 ~~Administrative Weekly and on the department Internet website.~~
159 ~~The guidelines shall be posted no later than May 15, 2000.~~

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160 ~~(6)-(8)~~ Notwithstanding any provision of law, the
161 Department of Environmental Protection is not authorized to
162 institute proceedings against any person under the provisions of
163 s. 376.307(5) to recover any costs or damages associated with
164 contamination of soil or water, or the evaluation, assessment,
165 or remediation of contamination of soil or water, including
166 sampling, analysis, and restoration of soil or potable water
167 supplies, where the contamination of soil or water is determined
168 to be the result of a program of decontamination to prevent and
169 limit the spread of citrus canker disease pursuant to rules
170 developed under this section. This subsection does not limit
171 regulatory authority under a federally delegated or approved
172 program.

173 ~~(7)-(9)~~ Upon request of the department, the sheriff or
174 chief law enforcement officer of each county in the state shall
175 provide assistance in obtaining access to private property for
176 the purpose of enforcing the provisions of this section. The
177 sheriff or chief law enforcement officer shall be responsible
178 for maintaining public order during the citrus disease
179 management ~~eradication~~ process and protecting the safety of
180 department employees, representatives, and agents charged with
181 implementing and enforcing the provisions of this section. The
182 department may reimburse the sheriff or chief law enforcement
183 officer for the reasonable costs of implementing the provisions
184 of this subsection.

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

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188 Section 3. Section 581.1843, Florida Statutes, is created
189 to read:

190 581.1843 Citrus nursery stock propagation and production
191 and the establishment of regulated areas around citrus
192 nurseries.--

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

195 (2) Effective January 1, 2007, it is unlawful for any
196 person to propagate for sale or movement any citrus nursery
197 stock that was not propagated or grown on a site and within a
198 protective structure approved by the department and that is not
199 at least 1 mile away from commercial citrus groves. A citrus
200 nursery registered with the department prior to April 1, 2006,
201 shall not be required to comply with the 1-mile setback from
202 commercial citrus groves while continuously operating at the
203 same location for which it was registered. However, the nursery
204 shall be required to propagate citrus within a protective
205 structure approved by the department. Effective January 1, 2008,
206 it shall be unlawful to distribute any citrus nursery stock that
207 was not produced in a protective structure approved by the
208 department.

209 (3) The department shall adopt rules pursuant to ss.
210 120.536(1) and 120.54 that set forth the conditions under which
211 citrus nursery stock can be propagated, grown, sold, or moved
212 and the specifications for the approved site and protective
213 structure.

214 (4) Under the provisions of this chapter, the department
215 shall adopt rules that are consistent with scientific findings

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216 and recommendations of the Citrus Budwood Technical Advisory
217 Committee to regulate all genera of the Rutaceous subfamilies
218 Aurantioideae, Rutoideae, and Toddalioideae that pose a threat
219 of introducing or spreading a citrus plant pest.

220 (5) The department shall establish regulated areas around
221 the perimeter of commercial citrus nurseries that were
222 established on sites after April 1, 2006, not to exceed a radius
223 of 1 mile. The planting of citrus in an established regulated
224 area is prohibited. The planting of citrus within a 1-mile
225 radius of commercial citrus nurseries that were established on
226 sites prior to April 1, 2006, must be approved by the
227 department. Citrus plants planted within a regulated area prior
228 to the establishment of the regulated area may remain in the
229 regulated area unless the department determines the citrus
230 plants to be infected or infested with citrus canker or citrus
231 greening. The department shall require the removal of infected
232 or infested citrus, nonapproved planted citrus, and citrus that
233 has sprouted by natural means in regulated areas. The property
234 owner shall be responsible for the removal of citrus planted
235 without proper approval. Notice of the removal of citrus trees,
236 by immediate final order of the department, shall be provided to
237 the owner of the property on which the trees are located. An
238 immediate final order issued by the department under this
239 section shall notify the property owner that the citrus trees,
240 which are the subject of the immediate final order, must be
241 removed and destroyed unless the property owner, no later than
242 10 days after delivery of the immediate final order, requests
243 and obtains a stay of the immediate final order from the

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244 district court of appeal with jurisdiction to review such
245 requests. The property owner shall not be required to seek a
246 stay from the department of the immediate final order prior to
247 seeking a stay from the district court of appeal.

248 (6) Regulation of the removal or destruction of citrus
249 plants under this section is preempted to the state. No county,
250 municipal, or other local ordinance or other regulation that
251 would otherwise impose requirements, restrictions, or conditions
252 upon the department or its contractors with respect to the
253 removal or destruction of citrus trees under this section shall
254 be enforceable against the department or its contractors.

255 (7) The department shall relocate foundation source trees
256 maintained by the Division of Plant Industry from various
257 locations, including those in Dundee and Winter Haven, to
258 protective structures at the Division of Forestry nursery in
259 Chiefland or to other protective sites located a minimum of 10
260 miles from any commercial citrus grove. The department is
261 authorized to expend existing funds from its Contracts and
262 Grants Trust Fund for this purpose.

263 Section 4. Subsection (1) of section 581.1845, Florida
264 Statutes, is amended, and subsections (6) and (7) are added to
265 that section, to read:

266 581.1845 Citrus canker eradication; compensation to
267 homeowners whose trees have been removed.--

268 (1) The Department of Agriculture and Consumer Services
269 shall provide compensation to eligible homeowners whose citrus
270 trees have been removed under a citrus canker eradication
271 program. Funds to pay this compensation may be derived from both

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272 state and federal matching sources and shall be specifically
 273 appropriated by law. Eligible homeowners shall be compensated
 274 subject to the availability of ~~appropriated~~ funds specifically
 275 appropriated in fiscal year 2006-2007 or prior fiscal years for
 276 that purpose.

277 (6) Any claim for compensation under this section or under
 278 the Shade Dade or Shade Florida programs must be filed with the
 279 department no later than December 31, 2007. Effective January 1,
 280 2008, all unfiled claims shall expire.

281 (7) This section expires July 1, 2008.

282 Section 5. Paragraph (c) of subsection (2) of section
 283 120.80, Florida Statutes, is amended to read:

284 120.80 Exceptions and special requirements; agencies.--

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

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

289 Section 6. Subsection (2) of section 348.0008, Florida
 290 Statutes, is amended to read:

291 348.0008 Acquisition of lands and property.--

292 (2) An authority and its authorized agents, contractors,
 293 and employees are authorized to enter upon any lands, waters,
 294 and premises, upon giving reasonable notice to the landowner,
 295 for the purpose of making surveys, soundings, drillings,
 296 appraisals, environmental assessments including phase I and
 297 phase II environmental surveys, archaeological assessments, and
 298 such other examinations as are necessary for the acquisition of
 299 private or public property and property rights, including rights

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300 of access, air, view, and light, by gift, devise, purchase, or
 301 condemnation by eminent domain proceedings or as are necessary
 302 for the authority to perform its duties and functions; and any
 303 such entry shall not be deemed a trespass or an entry that would
 304 constitute a taking in an eminent domain proceeding. An
 305 expressway authority shall make reimbursement for any actual
 306 damage to such lands, water, and premises as a result of such
 307 activities. Any entry authorized by this subsection shall be in
 308 compliance with the premises protections and landowner liability
 309 provisions contained in s. ss. 472.029 and ~~581.184~~.

310 Section 7. Section 933.02, Florida Statutes, is amended to
 311 read:

312 933.02 Grounds for issuance of search warrant.--Upon
 313 proper affidavits being made, a search warrant may be issued
 314 under the provisions of this chapter upon any of the following
 315 grounds:

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

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

319 (a) As a means to commit any crime;;

320 (b) In connection with gambling, gambling implements and
 321 appliances;; or

322 (c) In violation of s. 847.011 or other laws in reference
 323 to obscene prints and literature;

324 (3) When any property constitutes evidence relevant to
 325 proving that a felony has been committed;

326 (4) When any property is being held or possessed:

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327 (a) In violation of any of the laws prohibiting the
328 manufacture, sale, and transportation of intoxicating liquors;i;~~r~~
329 ~~or~~

330 (b) In violation of the fish and game laws;i;~~or~~

331 (c) In violation of the laws relative to food and drug;i;~~r~~
332 or

333 (d) In violation of the laws relative to citrus disease a
334 ~~quarantine for citrus canker pursuant to ss. s. 581.184 and~~
335 581.1845, ~~or~~

336 ~~(e) Which may be inspected, treated, seized, or destroyed~~
337 ~~pursuant to s. 581.184; or~~

338 (5) When the laws in relation to cruelty to animals, as
339 provided in chapter 828, have been or are violated in any
340 particular building or place.

341
342 This section also applies to any papers or documents used as a
343 means of or in aid of the commission of any offense against the
344 laws of the state.

345 Section 8. Paragraph (f) of subsection (1) and paragraph
346 (b) of subsection (3) of section 933.40, Florida Statutes, are
347 amended to read:

348 933.40 Agriculture warrants.--

349 (1) As used in this section:

350 (f) "Plant pest" means any plant pest, noxious weed, or
351 arthropod declared a nuisance by the department pursuant to s.
352 581.031(6), ~~or any plant infected or exposed to infection as~~
353 ~~defined in s. 581.184(1).~~

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354 (3) An agriculture warrant shall be issued only upon
355 probable cause. In determining the existence of probable cause
356 for the issuance of one or more agriculture warrants, one or
357 more of the following findings may be sufficient to support a
358 determination of probable cause:

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

362 1. Contains a plant pest;

363 2. Is located in an area which may reasonably be suspected
364 of being infested or infected with a plant pest due to its
365 proximity to a known infestation, or if it is reasonably exposed
366 to infestation;

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

371 3.4. Contains animals affected with any animal pest or
372 which have been exposed to and are liable to spread the animal
373 pest; or

374 4.5. Contains any other property that is liable to convey
375 an animal pest.

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