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CHAMBER ACTION

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|---------------|---|--------------|
| <u>Senate</u> | . | <u>House</u> |
| Comm: RE      | . |              |
| 4/9/2008      | . |              |
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|               | . |              |

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1 The Committee on Agriculture (Diaz de la Portilla) recommended  
 2 the following **amendment to amendment (510656)**:

**Senate Amendment (with title amendment)**

Between line(s) 99 and 100

insert:

Section 5. Subsection (5) is added to section 581.091, Florida Statutes, to read:

581.091 Noxious weeds and infected plants or regulated articles; sale or distribution; receipt; information to department; withholding information.--

(5) (a) Notwithstanding any other provision of state law or rule, a person may obtain a special permit from the department to plant Casuarina cunninghamiana as a windbreak for a commercial citrus grove provided the plants are produced in an authorized registered nursery and certified by the department as being

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18 vegetatively propagated from male plants. A "commercial citrus  
19 grove" means a contiguous planting of 100 or more citrus trees  
20 where citrus fruit is produced for sale.

21 (b) For a 5-year period, special permits authorizing a  
22 person to plant Casuarina cunninghamiana shall be issued only as  
23 part of a pilot program for fresh fruit groves in areas of Indian  
24 River, St. Lucie, and Martin Counties where citrus canker is  
25 determined by the department to be widespread. The pilot program  
26 shall be reevaluated annually, and a comprehensive review shall  
27 be conducted in 2013. The purpose of the annual and 5-year review  
28 is to determine if the use of Casuarina cunninghamiana as an  
29 agricultural pest and disease windbreak poses any adverse  
30 environmental consequences. At the end of the 5-year pilot  
31 program, if the Noxious Weed and Invasive Plant Review Committee,  
32 created by the department, the Department of Environmental  
33 Protection, in consultation with a representative of the citrus  
34 industry who has a Casuarina cunninghamiana windbreak determines  
35 that the potential is low for adverse environmental impacts from  
36 planting Casuarina cunninghamiana as windbreaks, the department  
37 may by rule allow the use of Casuarina cunninghamiana windbreaks  
38 for commercial citrus groves in other areas of the state. If it  
39 is determined at the end of the 5-year pilot program that  
40 additional time is needed to further evaluate Casuarina  
41 cunninghamiana, the department shall remain the lead agency.

42 (c) Each application for a special permit shall be  
43 accompanied by a fee in an amount determined by the department by  
44 rule, not to exceed \$500. A special permit shall be required for  
45 each noncontiguous commercial citrus grove and shall be renewed  
46 every 5 years. The property owner is responsible for maintaining  
47 and producing for inspection the original nursery invoice with



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48 certification documentation. If ownership of the property is  
49 transferred, the seller must notify the department and provide to  
50 the buyer a copy of the special permit and copies of all invoices  
51 and certification documentation before the closing of the sale.

52 (d) Each application shall include a baseline survey of all  
53 lands within 500 feet of the proposed Casuarina cunninghamiana  
54 windbreak showing the location and identification to species of  
55 all existing Casuarina spp.

56 (e) Nurseries authorized to produce Casuarina  
57 cunninghamiana must obtain a special permit from the department  
58 certifying that the plants have been vegetatively propagated from  
59 sexually mature male source trees currently grown in the state.  
60 The importation of Casuarina cunninghamiana from any area outside  
61 the state to be used as a propagation source tree is prohibited.  
62 Each male source tree must be registered by the department as  
63 being a horticulturally true-to-type male plant and be labeled  
64 with a source tree registration number. Each nursery application  
65 for a special permit shall be accompanied by a fee in an amount  
66 determined by the department by rule, not to exceed \$200. Special  
67 permits shall be renewed annually. The department shall set the  
68 amount of an annual fee by rule, which may not exceed \$50, for  
69 each Casuarina cunninghamiana registered as a source tree.  
70 Nurseries may sell Casuarina cunninghamiana only to a person who  
71 has a special permit as specified in paragraphs (a) and (b). The  
72 source tree registration numbers of the parent plants must be  
73 documented on each invoice or other certification documentation  
74 provided to the buyer.

75 (f) All Casuarina cunninghamiana must be destroyed by the  
76 property owner within 6 months after:



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77       1. The property owner takes permanent action to no longer  
78 use the site for commercial citrus production;

79       2. The site has not been used for commercial citrus  
80 production for a period of 5 years; or

81       3. The department determines that the Casuarina  
82 cunninghamiana on the site has become invasive. The department's  
83 determination shall be based on, but need not limited to, the  
84 recommendation of the Noxious Weed and Invasive Plant Review  
85 Committee, created by the department, and the Department of  
86 Environmental Protection and in consultation with a  
87 representative of the citrus industry who has a Casuarina  
88 cunninghamiana windbreak.

89  
90 If the owner or person in charge refuses or neglects to comply,  
91 the director or his or her authorized representative may, under  
92 authority of the department, proceed to destroy the plants. The  
93 expense of the destruction shall be assessed, collected, and  
94 enforced against the owner by the department. If the owner does  
95 not pay the assessed cost, the department may record a lien  
96 against the property.

97       (g) The use of Casuarina cunninghamiana for windbreaks does  
98 not preclude the department from issuing permits for the research  
99 or release of biological control agents to control Casuarina sp.  
100 in accordance with s. 581.083.

101       (h) The use of Casuarina cunninghamiana for windbreaks may  
102 not restrict or interfere with any other agency or local  
103 government effort to manage or control noxious weeds or invasive  
104 plants, including Casuarina cunninghamiana, and another agency  
105 or local government may not remove any Casuarina cunninghamiana



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106 planted as a windbreak under a special permit issued by the  
107 department.

108 (i) The department shall develop and implement a  
109 monitoring protocol to determine the invasiveness of Casuarina  
110 cunninghamiana. The monitoring protocol shall, at a minimum,  
111 require:

112 1. Inspection of the planting site by department  
113 inspectors within 30 days following initial planting or any  
114 subsequent planting of Casuarina cunninghamiana to ensure the  
115 criteria of the special permit have been met.

116 2. Annual site inspections of planting sites and all lands  
117 within 500 feet of the planted windbreak by department  
118 inspectors who have been trained to identify Casuarina spp. and  
119 to make determinations of whether Casuarina cunninghamiana has  
120 spread beyond the permitted windbreak location.

121 3. The removal of any new seedlings found within 500 feet  
122 of the planted windbreak which shall be identified to the  
123 species level and evaluated to determine if hybridization has  
124 occurred.

125 4. The department to submit an annual report and a final  
126 5-year evaluation identifying any adverse effects resulting from  
127 the planting of Casuarina cunninghamiana for windbreaks and  
128 documenting all inspections and the results of those inspections  
129 to the Noxious Weed and Invasive Plant Review Committee, the  
130 Department of Environmental Protection, and a designated  
131 representative of the citrus industry who has a Casuarina  
132 cunninghamiana windbreak.

133 (j) If the department determines that female flowers or  
134 cones have been produced on any Casuarina cunninghamiana that  
135 have been planted under a special permit issued by the



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136 department, the property owner shall destroy the trees. The  
137 department shall notify the property owner of the timeframe and  
138 method of destruction.

139 (k) If at any time the department determines that  
140 hybridization has occurred during the pilot program between  
141 Casuarina cunninghamiana planted as a windbreak and other  
142 Casuarina sp., the department shall expeditiously initiate  
143 research to determine the invasiveness of the hybrid. The  
144 information obtained from this research shall be evaluated by  
145 the Noxious Weed and Invasive Plant Review Committee, the  
146 Department of Environmental Protection, and a designated  
147 representative of the citrus industry who has a Casuarina  
148 cunninghamiana windbreak. If the department determines that the  
149 hybrids have a high potential to become invasive, based on, but  
150 not limited to, the recommendation of the Noxious Weed and  
151 Invasive Plant Review Committee, the Department of Environmental  
152 Protection, and a designated representative of the citrus  
153 industry who has a Casuarina cunninghamiana windbreak, this  
154 pilot program shall be permanently suspended.

155 (l) Each application for a special permit must be  
156 accompanied by a fee as described in paragraph (c) and an  
157 agreement that the property owner will abide by all permit  
158 conditions, including the removal of Casuarina cunninghamiana,  
159 if invasive populations or other adverse environmental factors  
160 are determined to be present by the department as a result of  
161 the use of Casuarina cunninghamiana as windbreaks. The  
162 application must include, on a form provided by the department,  
163 the name of the applicant, the applicant's address or the  
164 address of the applicant's principal place of business, a  
165 statement of the estimated cost of removing and destroying the

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166 Casuarina cunninghamiana that is the subject of the special  
167 permit, and the basis for calculating or determining that  
168 estimate. If the applicant is a corporation, partnership, or  
169 other business entity, the applicant must also provide in the  
170 application the name and address of each officer, partner, or  
171 managing agent. The applicant shall notify the department within  
172 30 business days after any change of address or change in the  
173 principal place of business. The department shall mail all  
174 notices to the applicant's last known address.

175 1. Upon obtaining a permit, the permit holder must annually  
176 maintain the Casuarina cunninghamiana authorized by a special  
177 permit as required in the permit. If the permit holder ceases to  
178 maintain the Casuarina cunninghamiana as required by the special  
179 permit, if the permit expires, or if the permit holder ceases to  
180 abide by the conditions of the special permit, the permit holder  
181 shall remove and destroy the Casuarina cunninghamiana in a  
182 timely manner as specified in the permit.

183 2. If the department determines that:

184 a. The permit holder is no longer maintaining the Casuarina  
185 cunninghamiana subject to the special permit and has not removed  
186 and destroyed the Casuarina cunninghamiana authorized by the  
187 special permit;

188 b. The continued use of Casuarina cunninghamiana as  
189 windbreaks presents an imminent danger to public health, safety,  
190 or welfare; or

191 c. The permit holder has exceeded the conditions of the  
192 authorized special permit,

193  
194 the department may issue an immediate final order, which shall  
195 be immediately appealable or enjoined as provided by chapter



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196 120, directing the permitholder to immediately remove and  
197 destroy the Casuarina cunninghamiana authorized to be planted  
198 under the special permit. A copy of the immediate final order  
199 shall be mailed to the permitholder.

200 3. If, upon issuance by the department of an immediate  
201 final order to the permitholder, the permitholder fails to  
202 remove and destroy the Casuarina cunninghamiana subject to the  
203 special permit within 60 days after issuance of the order, or a  
204 shorter period as public health, safety, or welfare requires,  
205 the department may remove and destroy the Casuarina  
206 cunninghamiana that are the subject of the special permit. If  
207 the permitholder makes a written request to the department for  
208 an extension of time to remove and destroy the Casuarina  
209 cunninghamiana which demonstrates specific facts showing why the  
210 Casuarina cunninghamiana could not be reasonably removed and  
211 destroyed in the applicable timeframe, the department may extend  
212 the time for removing and destroying Casuarina cunninghamiana  
213 subject to a special permit. The reasonable costs and expenses  
214 incurred by the department for removing and destroying Casuarina  
215 cunninghamiana, subject to a special permit, shall be paid out  
216 of the Citrus Inspection Trust Fund and shall be reimbursed by  
217 the party to whom the immediate final order is issued. If the  
218 party to whom the immediate final order has been issued fails to  
219 reimburse the state within 60 days, the department may record a  
220 lien on the property. The lien shall be enforced under state law  
221 by the department.

222 4. In order to carry out the purposes of this subsection,  
223 the department or its agents may require from any permitholder,  
224 verified statements of the planted acreage subject to the  
225 special permit and may review the permitholder's business or





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226 planting records at his or her place of business during normal  
 227 business hours in order to determine the acreage planted. The  
 228 failure of a permitholder to furnish such statement or to make  
 229 such records available is cause for suspension of the special  
 230 permit. If the department finds such failure to be willful, the  
 231 special permit may be revoked.

232  
 233 ===== T I T L E A M E N D M E N T =====

234 And the title is amended as follows:

235       On line(s) 149, after the first semicolon,  
 236 insert:

237  
 238       amending s. 581.091, F.S.; providing conditions for use of  
 239 Casuarina cunninghamiana as a windbreak for commercial  
 240 citrus groves; providing for permitting and permit fees;  
 241 providing for destruction of Casuarina cunninghamiana;  
 242 providing that use as a windbreak does not preclude  
 243 research or release of agents to control Casuarina sp.;

244       providing that the use of Casuarina cunninghamiana for  
 245 windbreaks does not interfere with or restrict efforts to  
 246 manage or control noxious weeds or invasive plants;  
 247       prohibiting any other agency or local government from  
 248 removing Casuarina cunninghamiana planted as a windbreak  
 249 under special permit; requiring the removal of Casuarina  
 250 cunninghamiana under certain conditions; requiring that  
 251 the permitholder pay the costs of removal; providing for a  
 252 lien against the property of a permitholder for failure to  
 253 pay such costs;