

20082222e1

1 A bill to be entitled
2 An act relating to citrus; amending s. 581.091, F.S.;
3 providing conditions for use of *Casuarina cunninghamiana*
4 as a windbreak for commercial citrus groves; defining the
5 term "commercial citrus grove"; providing for permitting
6 and permit fees; providing for destruction of *Casuarina*
7 *cunninghamiana*; specifying responsibility and liability
8 for removal and destruction of such trees; providing that
9 use as a windbreak does not preclude research or release
10 of agents to control *Casuarina spp.*; providing that the
11 use of *Casuarina cunninghamiana* for windbreaks does not
12 interfere with or restrict efforts to manage or control
13 noxious weeds or invasive plants; prohibiting any other
14 agency or local government from removing *Casuarina*
15 *cunninghamiana* planted as a windbreak under special
16 permit; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsection (5) is added to section 581.091,
21 Florida Statutes, to read:

22 581.091 Noxious weeds and infected plants or regulated
23 articles; sale or distribution; receipt; information to
24 department; withholding information.--

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

20082222e1

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

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

54 (c) Each application for a special permit shall be
55 accompanied by a fee in an amount determined by the department,
56 by rule, not to exceed \$500. A special permit shall be required
57 for each noncontiguous commercial citrus grove and shall be
58 renewed every 5 years. The property owner is responsible for

20082222e1

59 maintaining and producing for inspection the original nursery
60 invoice with certification documentation. If ownership of the
61 property is transferred, the seller must notify the department
62 and provide the buyer with a copy of the special permit and
63 copies of all invoices and certification documentation prior to
64 the closing of the sale.

65 (d) Each application shall include a baseline survey of all
66 lands within 500 feet of the proposed *Casuarina cunninghamiana*
67 windbreak showing the location and identification to species of
68 all existing *Casuarina spp.*

69 (e) Nurseries authorized to produce *Casuarina*
70 *cunninghamiana* must obtain a special permit from the department
71 certifying that the plants have been vegetatively propagated from
72 sexually mature male source trees currently grown in the state.
73 The importation of *Casuarina cunninghamiana* from any area outside
74 the state to be used as a propagation source tree is prohibited.
75 Each male source tree must be registered by the department as
76 being a horticulturally true to type male plant and be labeled
77 with a source tree registration number. Each nursery application
78 for a special permit shall be accompanied by a fee in an amount
79 determined by the department, by rule, not to exceed \$200.
80 Special permits shall be renewed annually. The department shall,
81 by rule, set the amount of an annual fee, not to exceed \$50, for
82 each *Casuarina cunninghamiana* registered as a source tree.
83 Nurseries may only sell *Casuarina cunninghamiana* to a person with
84 a special permit as specified in paragraphs (a) and (b). The
85 source tree registration numbers of the parent plants must be
86 documented on each invoice or other certification documentation
87 provided to the buyer.

20082222e1

88 (f) All *Casuarina cunninghamiana* must be destroyed by the
89 property owner within 6 months after:

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

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

94 3. The department determines that the *Casuarina*
95 *cunninghamiana* on the site has become invasive. This
96 determination shall be based on, but not limited to, the
97 recommendation of the Noxious Weed and Invasive Plant Review
98 Committee and the Department of Environmental Protection and in
99 consultation with a representative of the citrus industry who has
100 a *Casuarina cunninghamiana* windbreak.

101
102 If the owner or person in charge refuses or neglects to comply,
103 the director or her or his authorized representative may, under
104 authority of the department, proceed to destroy the plants. The
105 expense of the destruction shall be assessed, collected, and
106 enforced against the owner by the department. If the owner does
107 not pay the assessed cost, the department may record a lien
108 against the property.

109 (g) The use of *Casuarina cunninghamiana* for windbreaks
110 shall not preclude the department from issuing permits for the
111 research or release of biological control agents to control
112 *Casuarina spp.* in accordance with s. 581.083.

113 (h) The use of *Casuarina cunninghamiana* for windbreaks
114 shall not restrict or interfere with any other agency or local
115 government effort to manage or control noxious weeds or invasive
116 plants, including *Casuarina cunninghamiana*, nor shall any other

20082222e1

117 agency or local government remove any *Casuarina cunninghamiana*
118 planted as a windbreak under special permit issued by the
119 department.

120 (i) The department shall develop and implement a
121 monitoring protocol to determine invasiveness of *Casuarina*
122 *cunninghamiana*. The monitoring protocol shall at a minimum,
123 require:

124 1. Inspection of the planting site by department
125 inspectors within 30 days following initial planting or any
126 subsequent planting of *Casuarina cunninghamiana* to ensure the
127 criteria of the special permit have been met.

128 2. Annual site inspections of planting sites and all lands
129 within 500 feet of the planted windbreak by department
130 inspectors who have been trained to identify *Casuarina spp.* and
131 to make determinations of whether *Casuarina cunninghamiana* has
132 spread beyond the permitted windbreak location.

133 3. Any new seedlings found within 500 feet of the planted
134 windbreak to be removed, identified to the species level, and
135 evaluated to determine if hybridization has occurred.

136 4. The department to submit an annual report and a final 5-
137 year evaluation identifying any adverse effects resulting from
138 the planting of *Casuarina cunninghamiana* for windbreaks and
139 documenting all inspections and the results of those inspections
140 to the Noxious Weed and Invasive Plant Review Committee, the
141 Department of Environmental Protection, and a designated
142 representative of the citrus industry who has a *Casuarina*
143 *cunninghamiana* windbreak.

144 (j) If the department determines that female flowers or
145 cones have been produced on any *Casuarina cunninghamiana* that

20082222e1

146 have been planted under a special permit issued by the
147 department, the property owner shall be responsible for
148 destroying the trees. The department shall notify the property
149 owner of the timeframe and method of destruction.

150 (k) If at any time the department determines that
151 hybridization has occurred during the pilot program between
152 *Casuarina cunninghamiana* planted as a windbreak and other
153 *Casuarina spp.*, the department shall expeditiously initiate
154 research to determine the invasiveness of the hybrid. The
155 information obtained from this research shall be evaluated by the
156 Noxious Weed and Invasive Plant Review Committee, the Department
157 of Environmental Protection, and a designated representative of
158 the citrus industry who has a *Casuarina cunninghamiana* windbreak.
159 If the department determines that the hybrids have a high
160 potential to become invasive, based on, but not limited to, the
161 recommendation of the Noxious Weed and Invasive Plant Review
162 Committee, the Department of Environmental Protection, and a
163 designated representative of the citrus industry who has a
164 *Casuarina cunninghamiana* windbreak, this pilot program shall be
165 permanently suspended.

166 (l) Each application for a special permit must be
167 accompanied by a fee as described in paragraph (c) and an
168 agreement that the property owner will abide by all permit
169 conditions including the removal of *Casuarina cunninghamiana* if
170 invasive populations or other adverse environmental factors are
171 determined to be present by the department as a result of the
172 use of *Casuarina cunninghamiana* as windbreaks. The application
173 must include, on a form provided by the department, the name of
174 the applicant and the applicant's address or the address of the

20082222e1

175 applicant's principal place of business; a statement of the
176 estimated cost of removing and destroying the *Casuarina*
177 *cunninghamiana* that is the subject of the special permit; and
178 the basis for calculating or determining that estimate. If the
179 applicant is a corporation, partnership, or other business
180 entity, the applicant must also provide in the application the
181 name and address of each officer, partner, or managing agent.
182 The applicant shall notify the department within 30 business
183 days of any change of address or change in the principal place
184 of business. The department shall mail all notices to the
185 applicant's last known address.

186 1. Upon obtaining a permit, the permitholder must annually
187 maintain the *Casuarina cunninghamiana* authorized by a special
188 permit as required in the permit. If the permitholder ceases to
189 maintain the *Casuarina cunninghamiana* as required by the special
190 permit, if the permit expires, or if the permitholder ceases to
191 abide by the conditions of the special permit, the permitholder
192 shall remove and destroy the *Casuarina cunninghamiana* in a
193 timely manner as specified in the permit.

194 2. If the department:

195 a. Determines that the permitholder is no longer
196 maintaining the *Casuarina cunninghamiana* subject to the special
197 permit and has not removed and destroyed the *Casuarina*
198 *cunninghamiana* authorized by the special permit;

199 b. Determines that the continued use of *Casuarina*
200 *cunninghamiana* as windbreaks presents an imminent danger to
201 public health, safety, or welfare; or

202 c. Determines that the permitholder has exceeded the
203 conditions of the authorized special permit;

20082222e1

204
205 The department may issue an immediate final order, which shall
206 be immediately appealable or enjoicable as provided by chapter
207 120, directing the permitholder to immediately remove and
208 destroy the *Casuarina cunninghamiana* authorized to be planted
209 under the special permit. A copy of the immediate final order
210 shall be mailed to the permitholder.

211 3. If, upon issuance by the department of an immediate
212 final order to the permitholder, the permitholder fails to
213 remove and destroy the *Casuarina cunninghamiana* subject to the
214 special permit within 60 days after issuance of the order, or
215 such shorter period as is designated in the order as public
216 health, safety, or welfare requires, the department may remove
217 and destroy the *Casuarina cunninghamiana* that are the subject of
218 the special permit. If the permitholder makes a written request
219 to the department for an extension of time to remove and destroy
220 the *Casuarina cunninghamiana* that demonstrates specific facts
221 showing why the *Casuarina cunninghamiana* could not reasonably be
222 removed and destroyed in the applicable timeframe, the
223 department may extend the time for removing and destroying
224 *Casuarina cunninghamiana* subject to a special permit. The
225 reasonable costs and expenses incurred by the department for
226 removing and destroying *Casuarina cunninghamiana* subject to a
227 special permit shall be paid out of the Citrus Inspection Trust
228 Fund and shall be reimbursed by the party to which the immediate
229 final order is issued. If the party to which the immediate final
230 order has been issued fails to reimburse the state within 60
231 days, the department may record a lien on the property. The lien
232 shall be enforced by the department.

20082222e1

233 4. In order to carry out the purposes of this paragraph,
234 the department or its agents may require a permitholder to
235 provide verified statements of the planted acreage subject to the
236 special permit and may review the permitholder's business or
237 planting records at her or his place of business during normal
238 business hours in order to determine the acreage planted. The
239 failure of a permitholder to furnish such statement or to make
240 such records available is cause for suspension of the special
241 permit. If the department finds such failure to be willful, the
242 special permit may be revoked.

243 Section 2. This act shall take effect July 1, 2008.