

By the Committee on Agriculture; and Senator Haridopolos

575-06675-08

20082624c1

1 A bill to be entitled

2 An act relating to the protection of commercial citrus
3 groves; amending s. 581.091, F.S.; providing for use of
4 Casuarina cunninghamiana as a windbreak for commercial
5 citrus groves under a 5-year pilot project conducted
6 within specified counties; defining the term "commercial
7 citrus grove"; providing for the Department of Agriculture
8 and Consumer Services to issue permits authorizing a
9 person to plant or a nursery to produce Casuarina
10 cunninghamiana; providing for permit fees; specifying
11 conditions under which authorized Casuarina cunninghamiana
12 must be destroyed; providing that use as a windbreak does
13 not preclude research or the release of agents to control
14 Casuarina spp.; providing that the use of Casuarina
15 cunninghamiana for windbreaks does not interfere with or
16 restrict efforts to manage or control noxious weeds or
17 invasive plants; prohibiting any other agency or local
18 government from removing Casuarina cunninghamiana planted
19 as a windbreak under a special permit; requiring the
20 removal of Casuarina cunninghamiana pursuant to a final
21 order of the department under certain conditions;
22 requiring that the permitholder pay the costs of removal;
23 providing for a lien against the property of a
24 permitholder for failure to pay such costs; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (5) is added to section 581.091,

575-06675-08

20082624c1

30 Florida Statutes, to read:

31 581.091 Noxious weeds and infected plants or regulated
32 articles; sale or distribution; receipt; information to
33 department; withholding information.--

34 (5) (a) Notwithstanding any other provision of state law or
35 rule, a person may obtain a special permit from the department to
36 plant Casuarina cunninghamiana as a windbreak for a commercial
37 citrus grove if the plants are produced in an authorized
38 registered nursery and certified by the department as being
39 vegetatively propagated from male plants. As used in this
40 subsection, the term "commercial citrus grove" means a contiguous
41 planting of 100 or more citrus trees where citrus fruit is
42 produced for sale.

43 (b) For a 5-year period special permits authorizing a
44 person to plant Casuarina cunninghamiana shall be issued only as
45 part of a pilot program for fresh fruit groves in areas of Indian
46 River, St. Lucie, and Martin Counties where citrus canker is
47 determined by the department to be widespread. The pilot program
48 shall be reevaluated annually, and a comprehensive review shall
49 be conducted in 2013. The purpose of the annual and 5-year review
50 is to determine if the use of Casuarina cunninghamiana as an
51 agricultural pest and disease windbreak poses any adverse
52 environmental consequences. At the end of the 5-year pilot
53 program, if the Noxious Weed and Invasive Plant Review Committee,
54 created by the department and the Department of Environmental
55 Protection, in consultation with a representative of the citrus
56 industry who has a Casuarina cunninghamiana windbreak, determines
57 that the potential is low for adverse environmental impacts from
58 planting Casuarina cunninghamiana as windbreaks, the department

575-06675-08

20082624c1

59 may by rule allow the use of Casuarina cunninghamiana windbreaks
60 for commercial citrus groves in other areas of the state. If it
61 is determined at the end of the 5-year pilot program that
62 additional time is needed to further evaluate Casuarina
63 cunninghamiana, the department shall remain the lead agency.

64 (c) Each application for a special permit shall be
65 accompanied by a fee in an amount determined by the department by
66 rule, not to exceed \$500. A special permit shall be required for
67 each noncontiguous commercial citrus grove and shall be renewed
68 every 5 years. The property owner is responsible for maintaining
69 and producing for inspection the original nursery invoice with
70 certification documentation. If ownership of the property is
71 transferred, the seller must notify the department and provide to
72 the buyer a copy of the special permit and copies of all invoices
73 and certification documentation before the closing of the sale.

74 (d) Each application shall include a baseline survey of all
75 lands within 500 feet of the proposed Casuarina cunninghamiana
76 windbreak showing the location and identification to species of
77 all existing Casuarina spp.

78 (e) Nurseries authorized to produce Casuarina
79 cunninghamiana must obtain a special permit from the department
80 certifying that the plants have been vegetatively propagated from
81 sexually mature male source trees currently grown in the state.
82 The importation of Casuarina cunninghamiana from any area outside
83 the state to be used as a propagation source tree is prohibited.
84 Each male source tree must be registered by the department as
85 being a horticulturally true-to-type male plant and be labeled
86 with a source tree registration number. Each nursery application
87 for a special permit shall be accompanied by a fee in an amount

575-06675-08

20082624c1

88 determined by the department by rule, not to exceed \$200. Special
89 permits shall be renewed annually. The department shall set the
90 amount of an annual fee by rule, which may not exceed \$50, for
91 each Casuarina cunninghamiana registered as a source tree.
92 Nurseries may sell Casuarina cunninghamiana only to a person who
93 has a special permit as specified in paragraphs (a) and (b). The
94 source tree registration numbers of the parent plants must be
95 documented on each invoice or other certification documentation
96 provided to the buyer.

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

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

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

103 3. The department determines that the Casuarina
104 cunninghamiana on the site has become invasive. The department's
105 determination shall be based on, but need not limited to, the
106 recommendation of the Noxious Weed and Invasive Plant Review
107 Committee and the Department of Environmental Protection, in
108 consultation with a representative of the citrus industry who has
109 a Casuarina cunninghamiana windbreak.

110
111 If the owner or person in charge refuses or neglects to comply
112 with this paragraph, the director or his or her authorized
113 representative may, under authority of the department, proceed to
114 destroy the plants. The expense of the destruction shall be
115 assessed, collected, and enforced against the owner by the
116 department. If the owner does not pay the assessed cost, the

575-06675-08

20082624c1

117 department may record a lien against the property.

118 (g) The use of Casuarina cunninghamiana for windbreaks does
119 not preclude the department from issuing permits for the research
120 or release of biological control agents to control Casuarina spp.
121 in accordance with s. 581.083.

122 (h) The use of Casuarina cunninghamiana for windbreaks may
123 not restrict or interfere with any other agency or local
124 government effort to manage or control noxious weeds or invasive
125 plants, including Casuarina cunninghamiana, and another agency
126 or local government may not remove any Casuarina cunninghamiana
127 planted as a windbreak under a special permit issued by the
128 department.

129 (i) The department shall develop and implement a
130 monitoring protocol to determine the invasiveness of Casuarina
131 cunninghamiana. The monitoring protocol shall, at a minimum,
132 require:

133 1. Inspection of the planting site by department
134 inspectors within 30 days following initial planting or any
135 subsequent planting of Casuarina cunninghamiana to ensure the
136 criteria of the special permit have been met.

137 2. Annual site inspections of planting sites and all lands
138 within 500 feet of the planted windbreak by department
139 inspectors who have been trained to identify Casuarina spp. and
140 to make determinations of whether Casuarina cunninghamiana has
141 spread beyond the permitted windbreak location.

142 3. The removal of any new seedlings found within 500 feet
143 of the planted windbreak, which shall be identified to the
144 species level and evaluated to determine if hybridization has
145 occurred.

575-06675-08

20082624c1

146 4. The department to submit an annual report and a final
147 5-year evaluation identifying any adverse effects resulting from
148 the planting of Casuarina cunninghamiana for windbreaks and
149 documenting all inspections and the results of those inspections
150 to the Noxious Weed and Invasive Plant Review Committee, the
151 Department of Environmental Protection, and a designated
152 representative of the citrus industry who has a Casuarina
153 cunninghamiana windbreak.

154 (j) If the department determines that female flowers or
155 cones have been produced on any Casuarina cunninghamiana that
156 have been planted under a special permit issued by the
157 department, the property owner shall destroy the trees. The
158 department shall notify the property owner of the timeframe and
159 method of destruction.

160 (k) If at any time the department determines that
161 hybridization has occurred during the pilot program between
162 Casuarina cunninghamiana planted as a windbreak and other
163 Casuarina spp., the department shall expeditiously initiate
164 research to determine the invasiveness of the hybrid. The
165 information obtained from this research shall be evaluated by
166 the Noxious Weed and Invasive Plant Review Committee, the
167 Department of Environmental Protection, and a designated
168 representative of the citrus industry who has a Casuarina
169 cunninghamiana windbreak. If the department determines that the
170 hybrids have a high potential to become invasive based on, but
171 not limited to, the recommendation of the Noxious Weed and
172 Invasive Plant Review Committee, the Department of Environmental
173 Protection, and a designated representative of the citrus
174 industry who has a Casuarina cunninghamiana windbreak, this

575-06675-08

20082624c1

175 pilot program shall be permanently suspended.

176 (1) Each application for a special permit must be
177 accompanied by a fee as described in paragraph (c) and an
178 agreement that the property owner will abide by all permit
179 conditions, including the removal of Casuarina cunninghamiana,
180 if invasive populations or other adverse environmental factors
181 are determined to be present by the department as a result of
182 the use of Casuarina cunninghamiana as a windbreak. The
183 application must include, on a form provided by the department,
184 the name of the applicant, the applicant's address or the
185 address of the applicant's principal place of business, a
186 statement of the estimated cost of removing and destroying the
187 Casuarina cunninghamiana that is the subject of the special
188 permit, and the basis for calculating or determining that
189 estimate. If the applicant is a corporation, partnership, or
190 other business entity, the applicant must also provide in the
191 application the name and address of each officer, partner, or
192 managing agent. The applicant shall notify the department within
193 30 business days after any change of address or change in the
194 principal place of business. The department shall mail all
195 notices to the applicant's last known address.

196 1. Upon obtaining a permit, the permit holder must annually
197 maintain the Casuarina cunninghamiana authorized by a special
198 permit as required in the permit. If the permit holder ceases to
199 maintain the Casuarina cunninghamiana as required by the special
200 permit, if the permit expires, or if the permit holder ceases to
201 abide by the conditions of the special permit, the permit holder
202 shall remove and destroy the Casuarina cunninghamiana in a
203 timely manner as specified in the permit.

575-06675-08

20082624c1

204 2. If the department determines that:

205 a. The permit holder is no longer maintaining the Casuarina
206 cunninghamiana subject to the special permit and has not removed
207 and destroyed the Casuarina cunninghamiana authorized by the
208 special permit;

209 b. The continued use of Casuarina cunninghamiana as
210 windbreaks presents an imminent danger to public health, safety,
211 or welfare; or

212 c. The permit holder has exceeded the conditions of the
213 authorized special permit,

214
215 the department may issue an immediate final order, which shall
216 be immediately appealed or enjoined as provided by chapter 120,
217 directing the permit holder to immediately remove and destroy the
218 Casuarina cunninghamiana authorized to be planted under the
219 special permit. A copy of the immediate final order shall be
220 mailed to the permit holder.

221 3. If, upon issuance by the department of an immediate
222 final order to the permit holder, the permit holder fails to
223 remove and destroy the Casuarina cunninghamiana authorized by
224 the special permit within 60 days after issuance of the order,
225 or a shorter period as public health, safety, or welfare
226 requires, the department may remove and destroy the Casuarina
227 cunninghamiana authorized by the special permit. If the
228 permit holder makes a written request to the department for an
229 extension of time to remove and destroy the Casuarina
230 cunninghamiana which demonstrates specific facts showing why the
231 Casuarina cunninghamiana could not be reasonably removed and
232 destroyed in the applicable timeframe, the department may extend

575-06675-08

20082624c1

233 the time for removing and destroying the Casuarina
234 cunninghamiana. The reasonable costs and expenses incurred by
235 the department for removing and destroying Casuarina
236 cunninghamiana shall be paid out of the Citrus Inspection Trust
237 Fund and shall be reimbursed by the party to whom the immediate
238 final order is issued. If the party to whom the immediate final
239 order has been issued fails to reimburse the state within 60
240 days, the department may record a lien on the property. The lien
241 shall be enforced under state law by the department.

242 4. In order to carry out the purposes of this subsection,
243 the department or its agents may require from any permitholder
244 verified statements of the planted acreage that is subject to
245 the special permit and may review the permitholder's business or
246 planting records at his or her place of business during normal
247 business hours in order to determine the acreage planted. The
248 failure of a permitholder to furnish such statement or to make
249 such records available is cause for suspension of the special
250 permit. If the department finds such failure to be willful, the
251 special permit may be revoked.

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