



626356

LEGISLATIVE ACTION

Senate	.	House
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Floor: WD/3R	.	
03/06/2012 10:16 AM	.	
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Senator Hays moved the following:

Senate Amendment (with title amendment)

Between lines 184 and 185
insert:

Section 5. Subsection (4) of section 581.083, Florida Statutes, is amended to read:

581.083 Introduction or release of plant pests, noxious weeds, or organisms affecting plant life; cultivation of nonnative plants; special permit and security required.—

(4) A person may not cultivate a nonnative plant, algae, or blue-green algae, including a genetically engineered plant, algae, or blue-green algae ~~or a plant that has been introduced, for purposes of fuel production or purposes other than~~



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14 ~~agriculture~~ in plantings greater in size than 2 contiguous
15 acres, except under a special permit issued by the department
16 through the division, which is the sole agency responsible for
17 issuing such special permits. A person is not required to obtain
18 a permit in order to cultivate any plant or group of plants if,
19 based on experience or research data, the plant does not pose a
20 threat to becoming an invasive species and is commonly grown in
21 the state for the purpose of human food consumption, commercial
22 feed, feedstuff, forage for livestock, nursery stock, or
23 silviculture. The department may adopt rules exempting
24 additional plants or groups of plants from the permitting
25 requirements of this section if the department, after
26 consultation with the Institute of Food and Agricultural
27 Sciences at the University of Florida, determines that, based on
28 experience or research data, the nonnative plant, algae, or
29 blue-green algae does not pose a threat to becoming an invasive
30 species or a pest to plants or native fauna under normal growing
31 conditions in the state. ~~Such a permit shall not be required if~~
32 ~~the department determines, in conjunction with the Institute of~~
33 ~~Food and Agricultural Sciences at the University of Florida,~~
34 ~~that the plant is not invasive and subsequently exempts the~~
35 ~~plant by rule.~~

36 (a)1. Each application for a special permit must be
37 accompanied by a fee as described in subsection (2) and proof
38 that the applicant has obtained, on a form approved by the
39 department, a bond in the form approved by the department and
40 issued by a surety company admitted to do business in this state
41 or a certificate of deposit, or other type of security adopted
42 by rule of the department, which provides a financial assurance



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43 of cost recovery for the removal of a planting. The application
44 must include, on a form provided by the department, the name of
45 the applicant and the applicant's address or the address of the
46 applicant's principal place of business; a statement completely
47 identifying the nonnative plant to be cultivated; and a
48 statement of the estimated cost of removing and destroying the
49 plant that is the subject of the special permit and the basis
50 for calculating or determining that estimate. If the applicant
51 is a corporation, partnership, or other business entity, the
52 applicant must also provide in the application the name and
53 address of each officer, partner, or managing agent. The
54 applicant shall notify the department within 10 business days
55 after ~~of~~ any change of address or change in the principal place
56 of business. The department shall mail all notices to the
57 applicant's last known address.

58 2. As used in this subsection, the term "certificate of
59 deposit" means a certificate of deposit at any recognized
60 financial institution doing business in the United States. The
61 department may not accept a certificate of deposit in connection
62 with the issuance of a special permit unless the issuing
63 institution is properly insured by the Federal Deposit Insurance
64 Corporation or the Federal Savings and Loan Insurance
65 Corporation.

66 (b) Upon obtaining a permit, the permit holder may annually
67 cultivate and maintain the nonnative plants as authorized by the
68 special permit. If the permit holder ceases to maintain or
69 cultivate the plants authorized by the special permit, if the
70 permit expires, or if the permit holder ceases to abide by the
71 conditions of the special permit, the permit holder shall



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72 immediately remove and destroy the plants that are subject to
73 the permit, if any remain. The permitholder shall notify the
74 department of the removal and destruction of the plants within
75 10 days after such event.

76 (c) If the department:

77 1. Determines that the permitholder is no longer
78 maintaining or cultivating the plants subject to the special
79 permit and has not removed and destroyed the plants authorized
80 by the special permit;

81 2. Determines that the continued maintenance or cultivation
82 of the plants presents an imminent danger to public health,
83 safety, or welfare;

84 3. Determines that the permitholder has exceeded the
85 conditions of the authorized special permit; or

86 4. Receives a notice of cancellation of the surety bond,
87

88 the department may issue an immediate final order, which is
89 ~~shall be~~ immediately appealable or enjoinable as provided by
90 chapter 120, directing the permitholder to immediately remove
91 and destroy the plants authorized to be cultivated under the
92 special permit. A copy of the immediate final order shall be
93 mailed to the permitholder and to the surety company or
94 financial institution that has provided security for the special
95 permit, if applicable.

96 (d) If, upon issuance by the department of an immediate
97 final order to the permitholder, the permitholder fails to
98 remove and destroy the plants subject to the special permit
99 within 60 days after issuance of the order, or such shorter
100 period as is designated in the order as public health, safety,



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101 or welfare requires, the department may enter the cultivated
102 acreage and remove and destroy the plants that are the subject
103 of the special permit. If the permitholder makes a written
104 request to the department for an extension of time to remove and
105 destroy the plants that demonstrates specific facts showing why
106 the plants could not reasonably be removed and destroyed in the
107 applicable timeframe, the department may extend the time for
108 removing and destroying plants subject to a special permit. The
109 reasonable costs and expenses incurred by the department for
110 removing and destroying plants subject to a special permit shall
111 be reimbursed to the department by the permitholder within 21
112 days after the date the permitholder and the surety company or
113 financial institution are served a copy of the department's
114 invoice for the costs and expenses incurred by the department to
115 remove and destroy the cultivated plants, along with a notice of
116 administrative rights, unless the permitholder or the surety
117 company or financial institution object to the reasonableness of
118 the invoice. In the event of an objection, the permitholder or
119 surety company or financial institution is entitled to an
120 administrative proceeding as provided by chapter 120. Upon entry
121 of a final order determining the reasonableness of the incurred
122 costs and expenses, the permitholder has ~~shall have~~ 15 days
123 following service of the final order to reimburse the
124 department. Failure of the permitholder to timely reimburse the
125 department for the incurred costs and expenses entitles the
126 department to reimbursement from the applicable bond or
127 certificate of deposit.

128 (e) Each permitholder shall maintain for each separate
129 growing location a bond or a certificate of deposit in an amount



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130 determined by the department, but not more ~~less~~ than 150 percent
131 of the estimated cost of removing and destroying the cultivated
132 plants. The bond or certificate of deposit may not exceed \$5,000
133 per acre, unless a higher amount is determined by the department
134 to be necessary to protect the public health, safety, and
135 welfare or unless an exemption is granted by the department
136 based on conditions specified in the application which would
137 preclude the department from incurring the cost of removing and
138 destroying the cultivated plants and would prevent injury to the
139 public health, safety, and welfare. The aggregate liability of
140 the surety company or financial institution to all persons for
141 all breaches of the conditions of the bond or certificate of
142 deposit may not exceed the amount of the bond or certificate of
143 deposit. The original bond or certificate of deposit required by
144 this subsection shall be filed with the department. A surety
145 company shall give the department 30 days' written notice of
146 cancellation, by certified mail, in order to cancel a bond.
147 Cancellation of a bond does not relieve a surety company of
148 liability for paying to the department all costs and expenses
149 incurred or to be incurred for removing and destroying the
150 permitted plants covered by an immediate final order authorized
151 under paragraph (c). A bond or certificate of deposit must be
152 provided or assigned in the exact name in which an applicant
153 applies for a special permit. The penal sum of the bond or
154 certificate of deposit to be furnished to the department by a
155 permitholder in the amount specified in this paragraph must
156 guarantee payment of the costs and expenses incurred or to be
157 incurred by the department for removing and destroying the
158 plants cultivated under the issued special permit. The bond or



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159 certificate of deposit assignment or agreement must be upon a
160 form prescribed or approved by the department and must be
161 conditioned to secure the faithful accounting for and payment of
162 all costs and expenses incurred by the department for removing
163 and destroying all plants cultivated under the special permit.
164 The bond or certificate of deposit assignment or agreement must
165 include terms binding the instrument to the Commissioner of
166 Agriculture. Such certificate of deposit shall be presented with
167 an assignment of the permitholder's rights in the certificate in
168 favor of the Commissioner of Agriculture on a form prescribed by
169 the department and with a letter from the issuing institution
170 acknowledging that the assignment has been properly recorded on
171 the books of the issuing institution and will be honored by the
172 issuing institution. Such assignment is irrevocable while a
173 special permit is in effect and for an additional period of 6
174 months after termination of the special permit if operations to
175 remove and destroy the permitted plants are not continuing and
176 if the department's invoice remains unpaid by the permitholder
177 under the issued immediate final order. If operations to remove
178 and destroy the plants are pending, the assignment remains in
179 effect until all plants are removed and destroyed and the
180 department's invoice has been paid. The bond or certificate of
181 deposit may be released by the assignee of the surety company or
182 financial institution to the permitholder, or to the
183 permitholder's successors, assignee, or heirs, if operations to
184 remove and destroy the permitted plants are not pending and no
185 invoice remains unpaid at the conclusion of 6 months after the
186 last effective date of the special permit. The department may
187 not accept a certificate of deposit that contains any provision



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188 that would give to any person any prior rights or claim on the
189 proceeds or principal of such certificate of deposit. The
190 department shall determine by rule whether an annual bond or
191 certificate of deposit will be required. The amount of such bond
192 or certificate of deposit shall be increased, upon order of the
193 department, at any time if the department finds such increase to
194 be warranted by the cultivating operations of the permitholder.
195 In the same manner, the amount of such bond or certificate of
196 deposit may be adjusted downward or removed ~~decreased~~ when a
197 decrease in the cultivating operations of the permitholder
198 occurs or when research or practical field knowledge and
199 observations indicate a low risk of invasiveness by the
200 nonnative species warrants such decrease. Factors that may be
201 considered for change include multiple years or cycles of
202 successful large-scale contained cultivation; no observation of
203 plant, algae, or blue-green algae escape from managed areas; or
204 science-based evidence that established or approved adjusted
205 cultivation practices provide a similar level of containment of
206 the nonnative plant, algae, or blue-green algae. This paragraph
207 applies to any bond or certificate of deposit, regardless of the
208 anniversary date of its issuance, expiration, or renewal.

209 (f) In order to carry out the purposes of this subsection,
210 the department or its agents may require from any permitholder
211 verified statements of the cultivated acreage subject to the
212 special permit and may review the permitholder's business or
213 cultivation records at her or his place of business during
214 normal business hours in order to determine the acreage
215 cultivated. The failure of a permitholder to furnish such
216 statement, to make such records available, or to make and



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217 deliver a new or additional bond or certificate of deposit is
218 cause for suspension of the special permit. If the department
219 finds such failure to be willful, the special permit may be
220 revoked.

221

222 ===== T I T L E A M E N D M E N T =====

223 And the title is amended as follows:

224 Between lines 17 and 18

225 insert:

226 amending s. 581.083, F.S.; prohibiting the cultivation
227 of certain algae in plantings greater in size than 2
228 contiguous acres; providing exceptions; providing
229 certain exemptions from special permitting
230 requirements; revising bonding requirements for the
231 special permits;