

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2484

SPONSOR: Senator Alexander

SUBJECT: Citrus Canker

DATE: March 17, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates, within Chapter 933, F.S., pertaining to search warrants in general, a special type of search warrant called an "agriculture warrant." Such warrants can only be issued upon an application supported by an affidavit establishing probable cause. A finding of probable cause can be based upon a showing that the subject property is within a quarantine area or that there is a fair probability of the presence or exposure of a plant or animal pest on the property. A single application can suffice for multiple warrants which can be signed electronically as well as manually and can be served and executed by employees of the Department of Agriculture and Consumer Services (DACS). Notice prior to the issuance of a search warrant is not required and any hearing can be held ex parte. The warrant must then be served on an occupant over the age of 18 or posted on the subject property. The agriculture warrant is effective for 60 days and can be extended or renewed. A warrant cannot be used to search an occupied dwelling or an automobile and certain limits have been placed on when a warrant can be served. A refusal to permit the execution of the warrant can result in a charge of a second degree misdemeanor.

The bill provides that DACS does not have to comply with certain provisions of the Administrative Procedures Act in carrying out its canker eradication program. It specifies that removed trees may be destroyed by chipping and it prohibits local governments from regulating regarding citrus canker.

This bill substantially amends the following sections of the Florida Statutes: 120.80 and 581.184; it creates s. 933.40 of the Florida Statutes.

II. Present Situation:

Presently all search warrants are issued pursuant to Chapter 933, F.S., and DACS must follow the same procedures more commonly associated with criminal law enforcement to obtain search warrants for use in its canker eradication program. For a period of time, DACS had been successful in getting search warrants issued for 60 days but that time period was reduced to the statutorily-permitted, 10-day period several years ago when opponents of the eradication program brought this to the attention of an issuing judge in south Florida. The eradication program requires that DACS provide the property owner with an Immediate Final Order (IFO) informing them that the department proposes to destroy infected or exposed trees, the distance from the subject property to the infected tree, and of the homeowner's right to file a protest with the respective district court of appeal within ten days. During this time period, the 10-day search warrant would lapse and necessitate DACS having to go back multiple times on one property before access could be gained, resulting in both delays and inefficiencies in the pursuit of the eradication program. Also there is a requirement that the judge issuing the search warrant conduct a court proceeding after reasonable notice to the property owner prior to the issuance of such search warrant. There has been extensive litigation by homeowners and local governments challenging various aspects of the canker eradication program, including the procedures being followed to obtain search warrants. On February 12, 2004, the Florida Supreme Court issued its opinion in the case of John M. Haire, et al., vs Florida Department of Agriculture and Consumer Services, 29 FlaL. Weekly S67, in which it held that the Citrus Canker Law is constitutional and that certain restrictions imposed by the trial court on the issuance of search warrants were improper (the Petitioners in this case have requested a rehearing and the opinion is not final until that request is disposed of). The effect of the opinion regarding search warrants was that a single warrant application could cover multiple properties and that a warrant could be signed by the use of an electronic signature.

DACS must comply with the Administrative Procedures Act in rulemaking and addressing challenges of rules regarding its canker eradication program. Also the statutes do not specify the manner of destroying trees that have been removed.

III. Effect of Proposed Changes:

Section 1. Amends s. 120.80, F.S., so that the provisions of the Administrative Procedures Act regarding rulemaking or challenges to rules do not apply to DACS in its pursuit of the citrus canker eradication program.

Section 2. Creates s. 933.40, F.S., which establishes an "agriculture warrant" as a separate classification of search and inspection warrants, with the following provisions:

- An agriculture warrant is an order, signed by any judge or committing magistrate having jurisdiction where search is to be made, authorizing department employees to take actions with respect to any plant pest or animal pest identified in the warrant, including but not limited to conducting inspections, setting traps, examining records, testing, dipping, disinfecting, treating, identifying, quarantining, taking samples and measurements, and seizing or destroying property and such other acts as may be authorized in Chapters 581

and 585, F.S. Definitions are also set forth for animal pest, department, electronic signature, parcel number, plant pest, and Section.

- An application for an agriculture warrant must describe the property and the type of pest subject to the warrant.
- An agriculture warrant will be issued only on probable cause, which may be established by one or more of the following findings:
 - The property is located within a quarantine area as established by the department.
 - The affidavit shows that there is a fair probability that the subject property contains a plant pest, is located in an area suspected of infestation or exposure to infestation with a plant pest, is located in a Section or adjacent Section where citrus canker has been diagnosed, contains animals affected or exposed to animal pests, or contains property that is liable to convey an animal pest.
- A single application is sufficient for multiple agriculture warrants for properties located within the same county.
- Agriculture warrants may be signed manually, by stamp, or electronic signature and served and executed by employees of the department with assistance from third parties supervised by department employees.
- Notice to the property owner or occupant is not required at the time of application, but a copy of the warrant must be delivered to a person who is 18 or older and living on the subject property at the time of execution of the warrant or must be posted on the subject property.
- Applications for an agriculture warrant can be heard ex parte.
- An agriculture warrant is effective for 60 days and may be executed multiple times and may be renewed.
- An agriculture warrant cannot be served after 7 p.m. or before 7 a.m. or on a legal holiday. Further it cannot authorize entry into an occupied dwelling or automobile nor can the warrant be issued in blank.
- It is a second degree misdemeanor to willfully refuse to permit execution of an agriculture warrant.
- A person executing an agriculture warrant cannot act as a confidential informer, testify as a witness, or execute an affidavit in support of a criminal search warrant.
- There is no intention to limit powers to conduct inspections with or without warrants as authorized by general law.

Section 3. Amends s. 581.184, F.S., to allow removed trees to be destroyed by chipping. It also reserves to the state the power to remove and destroy citrus trees under the state's citrus canker eradication program. The requirement that an immediate final order giving notice of the removal of citrus trees be provided to the property owner is removed from the statutes.

Section 4. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.