

Senate Bill No. 2484

An act relating to citrus canker; amending s. 120.80, F.S.; excluding certain statements and actions by the Department of Agriculture and Consumer Services from application of certain rules; creating s. 933.40, F.S.; providing definitions; providing for issuance of agriculture warrants for certain purposes under certain circumstances; requiring probable cause; providing criteria and procedures for issuing such warrants; providing certain guidelines and limitations on required notice; providing for ex parte hearing for certain warrant applications; providing a time limit on the effectiveness of certain warrants; providing a criminal penalty for refusal to permit execution of a warrant; prohibiting certain persons from giving certain information as a confidential informant under certain circumstances; providing construction; amending s. 581.184, F.S.; authorizing the destruction of certain trees; providing a notice requirement to certain property owners; preempting regulation of tree removal and destruction to the state; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (2) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.—

(c) The provisions of ss. 120.54 and 120.56 shall not apply to any statement or action by the department in furtherance of its duties pursuant to s. 581.184(2).

Section 2. Section 933.40, Florida Statutes, is created to read:

933.40 Agriculture warrants.—

(1) As used in this section:

(a) “Agriculture warrant” means an order in writing, in the name of the people, signed by a person competent to issue search warrants pursuant to s. 933.01, authorizing department employees to exercise any duty or power granted by chapter 581 or chapter 585 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.

(b) “Animal pest” means any biological or chemical residue as defined in s. 585.01(4), pathogenic organism or virulent organism as defined in s.

585.01(15), or any transmissible, communicable, contagious, or infectious disease as described in s. 585.01(18).

(c) "Department" means the Department of Agriculture and Consumer Services.

(d) "Electronic signature" means any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(e) "Parcel number" means the distinct parcel identification number assigned to a parcel of property by the property appraiser for the county in which the property is located.

(f) "Plant pest" means any plant pest, noxious weed, or arthropod declared a nuisance by the department pursuant to s. 581.031(6), or any plant infected or exposed to infection as defined in s. 581.184(1).

(g) When capitalized, "Section" has the meaning ascribed in 43 U.S.C. s. 751.

(2) An agriculture warrant shall be issued only upon application supported by affidavit and shall describe the street address and city or the parcel number and county of each property to be subject to the warrant and each type of plant pest or animal pest which will be the subject of the warrant.

(3) An agriculture warrant shall be issued only upon probable cause. In determining the existence of probable cause for the issuance of one or more agriculture warrants, one or more of the following findings may be sufficient to support a determination of probable cause:

(a) The property to be subject to the agriculture warrant is located within an area subject to a quarantine which has been established by the department with respect to the plant pest or animal pest that is the subject of the warrant; or

(b) Under all of the circumstances set forth in the affidavit, there is a fair probability the property subject to the agriculture warrant:

1. Contains a plant pest;

2. Is located in an area which may reasonably be suspected of being infested or infected with a plant pest due to its proximity to a known infestation, or if it is reasonably exposed to infestation;

3. Is located in a Section in which the department has diagnosed the presence of one or more plants infected with citrus canker as defined in s. 581.184(1)(a) or is located in a Section adjacent thereto;

4. Contains animals affected with any animal pest or which have been exposed to and are liable to spread the animal pest; or

5. Contains any other property that is liable to convey an animal pest.

(4) A single warrant application shall be sufficient for the issuance of multiple agriculture warrants if the application for the warrants describes the street address and city or the parcel number and county of each property subject to an agriculture warrant and all such properties are located within the same county.

(5) Agriculture warrants may be signed by any person competent to issue search warrants under s. 933.01, either manually, by signature stamp, or by electronic signature. The judge or magistrate, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of one or more agriculture warrants, shall issue such agriculture warrants with his or her signature and office affixed thereto. Such agriculture warrants may be served and executed by employees of the department, with the assistance of third parties supervised by department employees, and shall authorize department employees with such assistance to undertake all actions authorized by the warrant.

(6) Prior notice to the owner or occupant of the property to be subject to the agriculture warrant, or to any other person, of the application for agriculture warrants shall not be required as a condition for the issuance of warrants under this section. At the time of execution of the agriculture warrant, a copy, including any applicable renewal or extension thereof under subsection (8), shall be delivered to a person 18 years of age or older who is occupying or living on the property subject to the warrant or shall be attached to a conspicuous place on that property.

(7) The department shall be entitled to an ex parte hearing forthwith on an application for an agriculture warrant.

(8) An agriculture warrant shall be effective for 60 days and shall authorize multiple executions of the warrant prior to its expiration. An agriculture warrant may be extended or renewed by the judge or magistrate who signed and issued the original warrant upon satisfaction of such official that probable cause continues to exist for the reissuance of the warrant. Such warrant must be returned to the issuing official prior to the expiration date specified in the warrant or within the extended or renewed time.

(9) An agriculture warrant shall not:

(a) Be executed between 7 p.m. of any day and 7 a.m. of the succeeding day, or on any legal holiday;

(b) Authorize the entry into or inspection of the interior of any occupied dwelling or any automobile; or

(c) Be issued in blank.

(10) Any person who willfully refuses to permit execution of any agriculture warrant commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(11) A person executing an agriculture warrant pursuant to this section shall not give information as a confidential informer, testify as a witness, or execute an affidavit as a predicate for the issuance of a criminal search warrant or for probable cause to search any dwelling or other building without a criminal search warrant.

(12) Nothing in this section shall be construed to restrict the powers granted by general law to an agency of the state, or to a unit of local government acting on behalf of such agency pursuant to a contract with the agency, to conduct inspections with or without warrant as authorized by general law.

Section 3. Subsections (2) and (4) of section 581.184, Florida Statutes, are amended to read:

581.184 Adoption of rules; citrus canker eradication; voluntary destruction agreements.—

(2)(a) The department shall remove and destroy all infected citrus trees and all citrus trees exposed to infection. The department may destroy by chipping trees removed pursuant to this section. Notice of the removal of such trees, by immediate final order, ~~shall~~ may be provided to the owner of the property on which such trees are located. An immediate final order issued by the department pursuant to this section shall notify the property owner that the citrus trees that are the subject of the immediate final order will be removed and destroyed unless the property owner, no later than 10 days after delivery of the immediate final order pursuant to subsection (3), requests and obtains a stay of the immediate final order from the district court of appeal with jurisdiction to review such requests. The property owner shall not be required to seek a stay of the immediate final order by the department prior to seeking the stay from the district court of appeal.

(b) Regulation of the removal or destruction of citrus trees pursuant to this section is hereby preempted to the state. No county, municipal, or other local ordinance or other regulation that would otherwise impose requirements, restrictions, or conditions upon the department or its contractors with respect to the removal or destruction of citrus trees pursuant to this section shall be enforceable against the department or its contractors. Notwithstanding the provisions of paragraph (a), and for the 2003-2004 fiscal year only, notice of the removal of infected citrus trees and citrus trees exposed to infection, by immediate final order, shall be provided to the owner of the property on which such trees are located. This paragraph expires July 1, 2004.

(4) Simultaneously with the delivery of an immediate final order, the department shall also provide the following information to a property owner:

(a) The physical location of the infected tree which has necessitated removal and destruction of the property owner's tree.

(b) The diagnostic report that resulted in the determination that the infected tree is infected with the citrus canker.

(c) ~~The distance between the infected citrus tree and a property owner's exposed citrus trees.~~

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor May 12, 2004.

Filed in Office Secretary of State May 12, 2004.