

Committee Substitute for Senate Bill No. 2222

An act relating to citrus; amending s. 581.091, F.S.; providing conditions for use of *Casuarina cunninghamiana* as a windbreak for commercial citrus groves; defining the term “commercial citrus grove”; providing for permitting and permit fees; providing for destruction of *Casuarina cunninghamiana*; specifying responsibility and liability for removal and destruction of such trees; providing that use as a windbreak does not preclude research or release of agents to control *Casuarina* spp.; providing that the use of *Casuarina cunninghamiana* for windbreaks does not interfere with or restrict efforts to manage or control noxious weeds or invasive plants; prohibiting any other agency or local government from removing *Casuarina cunninghamiana* planted as a windbreak under special permit; providing an effective date.

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

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

581.091 Noxious weeds and infected plants or regulated articles; sale or distribution; receipt; information to department; withholding information.—

(5)(a) Notwithstanding any other provision of state law or rule, a person may obtain a special permit from the department to plant *Casuarina cunninghamiana* as a windbreak for a commercial citrus grove provided the plants are produced in an authorized registered nursery and certified by the department as being vegetatively propagated from male plants. A “commercial citrus grove” means a contiguous planting of 100 or more citrus trees where citrus fruit is produced for sale.

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

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

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

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

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

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

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

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

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

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

(h) The use of Casuarina cunninghamiana for windbreaks shall not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or invasive plants, including Casuarina cunninghamiana, nor shall any other agency or local government remove any Casuarina cunninghamiana planted as a windbreak under special permit issued by the department.

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

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

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

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

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

(j) If the department determines that female flowers or cones have been produced on any Casuarina cunninghamiana that have been planted under a special permit issued by the department, the property owner shall be responsible for destroying the trees. The department shall notify the property owner of the timeframe and method of destruction.

(k) If at any time the department determines that hybridization has occurred during the pilot program between Casuarina cunninghamiana planted as a windbreak and other Casuarina spp., the department shall expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research shall be evaluated by the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a Casuarina cunninghamiana windbreak. If the department determines that the hybrids have a high potential to become invasive, based on,

but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a Casuarina cunninghamiana windbreak, this pilot program shall be permanently suspended.

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

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

2. If the department:

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

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

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

The department may issue an immediate final order, which shall be immediately appealable or enjoined as provided by chapter 120, directing the permitholder to immediately remove and destroy the Casuarina cunninghamiana authorized to be planted under the special permit. A copy of the immediate final order shall be mailed to the permitholder.

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

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

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

Approved by the Governor June 23, 2008.

Filed in Office Secretary of State June 23, 2008.