

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Albritton offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 222 and 223, insert:

5 Section 7. Subsection (4) of section 581.083, Florida
6 Statutes, is amended to read:

7 581.083 Introduction or release of plant pests, noxious
8 weeds, or organisms affecting plant life; cultivation of
9 nonnative plants; special permit and security required.—

10 (4) A person may not cultivate a nonnative plant, algae,
11 or blue-green algae, including a genetically engineered plant,
12 algae, or blue-green algae ~~or a plant that has been introduced,~~
13 ~~for purposes of fuel production or purposes other than~~
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
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17 issuing such special permits. A permit is not required to
18 cultivate any plant or group of plants that, based on experience
19 or research data, does not pose a threat to becoming an invasive
20 species and is commonly grown in the state for the purpose of
21 human food consumption, commercial feed, feedstuff, forage for
22 livestock, nursery stock, or silviculture. The department may
23 adopt rules exempting additional plants or groups of plants from
24 the permitting requirements of this section if the department,
25 after consultation with the Institute of Food and Agricultural
26 Sciences at the University of Florida, determines that based on
27 experience or research data, the nonnative plant, algae, or
28 blue-green algae does not pose a threat to becoming an invasive
29 species or a pest to plants or native fauna under normal growing
30 conditions in the state ~~Such a permit shall not be required if~~
31 ~~the department determines, in conjunction with the Institute of~~
32 ~~Food and Agricultural Sciences at the University of Florida,~~
33 ~~that the plant is not invasive and subsequently exempts the~~
34 ~~plant by rule.~~

35 (a)1. Each application for a special permit must be
36 accompanied by a fee as described in subsection (2) and proof
37 that the applicant has obtained, on a form approved by the
38 department, ~~a bond in the form approved by the department and~~
39 ~~issued by a surety company admitted to do business in this state~~
40 ~~or a certificate of deposit, or other type of security adopted~~
41 by rule of the department which provides a financial assurance
42 of cost recovery for the removal of a planting. The application
43 must include, on a form provided by the department, the name of
44 the applicant and the applicant's address or the address of the
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45 applicant's principal place of business; a statement completely
46 identifying the nonnative plant to be cultivated; and a
47 statement of the estimated cost of removing and destroying the
48 plant that is the subject of the special permit and the basis
49 for calculating or determining that estimate. If the applicant
50 is a corporation, partnership, or other business entity, the
51 applicant must also provide in the application the name and
52 address of each officer, partner, or managing agent. The
53 applicant shall notify the department within 10 business days of
54 any change of address or change in the principal place of
55 business. The department shall mail all notices to the
56 applicant's last known address.

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

65 (b) Upon obtaining a permit, the permitholder may annually
66 cultivate and maintain the nonnative plants as authorized by the
67 special permit. If the permitholder ceases to maintain or
68 cultivate the plants authorized by the special permit, if the
69 permit expires, or if the permitholder ceases to abide by the
70 conditions of the special permit, the permitholder shall
71 immediately remove and destroy the plants that are subject to
72 the permit, if any remain. The permitholder shall notify the
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73 department of the removal and destruction of the plants within
74 10 days after such event.

75 (c) If the department:

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

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

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

85 4. Receives a notice of cancellation of the surety bond,
86
87 the department may issue an immediate final order, which shall
88 be immediately appealable or enjoinable as provided by chapter
89 120, directing the permitholder to immediately remove and
90 destroy the plants authorized to be cultivated under the special
91 permit. A copy of the immediate final order must ~~shall~~ be mailed
92 to the permitholder and to the surety company or financial
93 institution that has provided security for the special permit,
94 if applicable.

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

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

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

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157 plants cultivated under the issued special permit. The bond or
158 certificate of deposit assignment or agreement must be upon a
159 form prescribed or approved by the department and must be
160 conditioned to secure the faithful accounting for and payment of
161 all costs and expenses incurred by the department for removing
162 and destroying all plants cultivated under the special permit.
163 The bond or certificate of deposit assignment or agreement must
164 include terms binding the instrument to the Commissioner of
165 Agriculture. Such certificate of deposit shall be presented with
166 an assignment of the permitholder's rights in the certificate in
167 favor of the Commissioner of Agriculture on a form prescribed by
168 the department and with a letter from the issuing institution
169 acknowledging that the assignment has been properly recorded on
170 the books of the issuing institution and will be honored by the
171 issuing institution. Such assignment is irrevocable while a
172 special permit is in effect and for an additional period of 6
173 months after termination of the special permit if operations to
174 remove and destroy the permitted plants are not continuing and
175 if the department's invoice remains unpaid by the permitholder
176 under the issued immediate final order. If operations to remove
177 and destroy the plants are pending, the assignment remains in
178 effect until all plants are removed and destroyed and the
179 department's invoice has been paid. The bond or certificate of
180 deposit may be released by the assignee of the surety company or
181 financial institution to the permitholder, or to the
182 permitholder's successors, assignee, or heirs, if operations to
183 remove and destroy the permitted plants are not pending and no
184 invoice remains unpaid at the conclusion of 6 months after the
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185 last effective date of the special permit. The department may
186 not accept a certificate of deposit that contains any provision
187 that would give to any person any prior rights or claim on the
188 proceeds or principal of such certificate of deposit. The
189 department shall determine by rule whether an annual bond or
190 certificate of deposit will be required. The amount of such bond
191 or certificate of deposit shall be increased, upon order of the
192 department, at any time if the department finds such increase to
193 be warranted by the cultivating operations of the permitholder.
194 In the same manner, the amount of such bond or certificate of
195 deposit may be adjusted downward or removed ~~decreased~~ when a
196 decrease in the cultivating operations of the permitholder
197 occurs or when research or practical field knowledge and
198 observations indicate a low risk of invasiveness by the
199 nonnative species warrants such decrease. Factors that may be
200 considered for change include multiple years or cycles of
201 successful large-scale contained cultivation; no observation of
202 plant, algae, or blue-green algae escape from managed areas; or
203 science-based evidence that established or approved adjusted
204 cultivation practices provide a similar level of containment of
205 the nonnative plant, algae, or blue-green algae. This paragraph
206 applies to any bond or certificate of deposit, regardless of the
207 anniversary date of its issuance, expiration, or renewal.

208 (f) In order to carry out the purposes of this subsection,
209 the department or its agents may require from any permitholder
210 verified statements of the cultivated acreage subject to the
211 special permit and may review the permitholder's business or
212 cultivation records at her or his place of business during

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213 normal business hours in order to determine the acreage
214 cultivated. The failure of a permitholder to furnish such
215 statement, to make such records available, or to make and
216 deliver a new or additional bond or certificate of deposit is
217 cause for suspension of the special permit. If the department
218 finds such failure to be willful, the special permit may be
219 revoked.

220

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

223 Between lines 26 and 27, insert:
224 amending s. 581.083, F.S.; prohibiting the cultivation
225 of certain algae in plantings greater in size than 2
226 contiguous acres; providing exceptions; providing
227 certain exemptions from special permitting
228 requirements; revising bonding requirements for the
229 special permits;