

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 281

**Introduced by Assembly Member De Leon
(Coauthor: Assembly Member Conway)**

February 12, 2009

An act to add Article 2 (commencing with Section 5911) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, De Leon. Citrus disease prevention: California Citrus Disease Prevention Committee.

Existing law generally provides for the eradication of pests that threaten this state's agriculture. Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of an inspection program, as provided.

This bill would create in the Department of Food and Agriculture the California Citrus Disease Prevention Committee, which would consist of 17 members (14 producers in the citrus *fruit* industry, 2 citrus nursery operators, and ~~4~~ *one* public member) to be appointed by the Secretary of Food and Agriculture, as specified. The bill would set out the powers and duties of the committee, including, among others, the authority to conduct, and contract with others to conduct, informational programs

to educate residential owners of citrus *fruit* on the prevention ~~and eradication~~ of diseases or vectors specific to citrus and programs for surveying, detecting, *and* analyzing, ~~and eradication~~ of citrus diseases. The bill would provide for a monthly assessment, as provided and for specified related purposes, to be paid by producers, as defined, and remitted to the department and deposited into the Department of Food and Agriculture Fund. ~~The bill would authorize and require the secretary to take certain actions in detecting, quarantining, and eradicating the disease Huanglongbing.~~ The bill would provide for a referendum voting procedure regarding the continued operation of these provisions.

Because this bill would impose assessment requirements on producers and handlers of citrus *fruit*, the violation of which would be a misdemeanor under other provisions of existing law, this bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 5911) is
2 added to Chapter 9 of Part 1 of Division 4 of the Food and
3 Agricultural Code, to read:

4
5 Article 2. Citrus Disease Prevention
6

7 5911. (a) The Legislature hereby finds and declares that the
8 citrus killing diseases, Huanglongbing, citrus leprosis, citrus
9 variegated chlorosis, and citrus canker, and the associated vectors
10 present a clear and present danger to California's citrus industry,
11 as well as to other commodities and plant life.

12 (b) This article is intended to establish an industry funded
13 program to assist with the ~~eradication~~ *control* of diseases and
14 vectors specific to citrus when found in California.

1 (c) This article is not intended to create new mandates or
2 circumvent state and federal authority on other agricultural
3 commodities.

4 (d) This article is not intended to establish a precedent, or to
5 supersede, or to reduce or in any way alter government funding
6 of the effort to combat citrus diseases and other pests in this state.

7 (e) The prevention and management of citrus diseases is affected
8 with the public interest. The provisions of this article are enacted
9 for the protection of the industry and in the exercise of the police
10 power of the state for the purpose of protecting the health, peace,
11 safety, and general welfare of the people of this state.

12 5912. Unless the context otherwise requires, the following
13 definitions shall govern the construction of this article:

14 (a) “Carton” means a unit equivalent to 40 pounds of *citrus*
15 fruit.

16 (b) “Citrus” means “citrous” and any plants of the genera *Citrus*,
17 *Fortunella*, *Poncirus*, and all hybrids having one or more of such
18 as parents.

19 (c) “Citrus disease” includes any infectious, transmissible, or
20 contagious disease or vector infesting citrus trees.

21 (d) “Committee” means the California Citrus Disease Prevention
22 Committee.

23 (e) “Department” means the Department of Food and
24 Agriculture.

25 (f) “Districts,” except as otherwise provided in Section 5913,
26 consist of the following geographical areas:

27 (1) District 1 consists of all growing areas in San Bernardino
28 County and all other areas to the south, west, and east of San
29 Bernardino County that are not included in any other district.

30 (2) District 2 consists of all growing areas in the Counties of
31 Monterey, San Luis Obispo, Santa Barbara, and Ventura.

32 (3) District 3 consists of all growing areas in Kern County.

33 (4) District 4 consists of all growing areas in Tulare County.

34 (5) District 5 consists of all growing areas in Fresno County
35 and all other areas to the north that are not included in any other
36 district.

37 (g) “Handler” means a person or entity who receives citrus *fruit*
38 from a producer and who prepares the citrus *fruit* for fresh market.

39 (h) “Marketing season” begins October 1 of each year and ends
40 September 30 of the next year.

1 (i) “Person” means a producer, handler, or any other entity that
2 holds title to citrus *fruit* subject to assessment.

3 (j) “Producer” means any person in this state who is a grower
4 of citrus *fruit*, but does not include a citrus nursery.

5 (k) “Secretary” means the Secretary of Food and Agriculture.

6 5913. (a) There is hereby created in the department the
7 California Citrus Disease Prevention Committee.

8 (b) The committee shall be composed of 17 members. Fourteen
9 producer representatives shall be appointed by the secretary from
10 nominations received from each district. District representation
11 shall be determined by the secretary on a proportional basis equal
12 to the production history of each district for the previous two years.
13 *The secretary shall also strive to appoint producers representing*
14 *the different varieties of citrus fruit produced in California,*
15 *including, but not limited to, oranges, lemons, and grapefruit.*

16 (c) One member shall be a public member, appointed by the
17 secretary from the nominees recommended by the committee.

18 (d) Two members shall be citrus nursery operators, one
19 representing northern California, defined as counties in the San
20 Joaquin Valley and north but not including counties on the coast
21 who shall be represented by a southern California designee; and
22 one representing southern California, appointed by the secretary
23 from the nominees recommended by the committee.

24 (e) (1) The initial members of the committee shall be appointed
25 within 30 days of the enactment of this article. The members shall
26 serve staggered terms. The terms of the members of the committee
27 shall expire as follows:

28 (A) Two members on September 30, 2010.

29 (B) Five members on September 30, 2011.

30 (C) Five members on September 30, 2012.

31 (D) Five members on September 30, 2013.

32 (2) The members of the committee shall allocate the initial terms
33 among themselves by lot or other method.

34 (f) Appointments to the committee shall be for terms of five
35 years. Vacancies shall be immediately filled by the secretary based
36 on recommendations from the committee for the unexpired portion
37 of the terms in which they occur.

38 (g) The secretary and other appropriate individuals, as
39 determined by the committee, shall be nonvoting *ex officio*
40 members of the committee.

1 (h) Committee members may be compensated for reasonable
2 expenses actually incurred in the performance of their duties, as
3 determined by the committee and concurred in by the secretary.

4 (i) The committee shall meet at the request of the secretary, the
5 committee chairperson, or upon the request of three committee
6 members.

7 (j) The committee shall appoint a chairperson, one or more vice
8 chairpersons, and any other officers it deems necessary.

9 (k) The Legislature finds and declares that persons appointed
10 to the committee are intended to represent and further the interests
11 of the citrus industry, and that this representation and furtherance
12 is intended to serve the public interest. Accordingly, the Legislature
13 finds that, with respect to persons who are appointed to the
14 committee, the citrus industry is tantamount to, and constitutes,
15 the public generally within the meaning of Section 87103 of the
16 Government Code.

17 5914. (a) The powers and duties of the committee are limited
18 to activities involving the producers of citrus *fruit* and residential
19 owners of citrus *fruit*.

20 (b) The committee may do all of the following:

21 (1) Conduct, and contract with others to conduct, either or both
22 of the following:

23 (A) Informational programs to educate residential owners of
24 citrus *fruit* on the prevention and eradication of diseases or vectors
25 specific to citrus.

26 (B) Programs for the surveying, detecting, ~~analyzing, and~~
27 ~~eradication and analyzing~~ of diseases specific to citrus involving
28 producers of citrus *fruit* and residential owners of citrus *fruit*.

29 (2) Take by grant, purchase, gift, devise, lease, or otherwise and
30 hold, use and enjoy, and lease, or otherwise dispose of, real and
31 personal property of every kind and description necessary to the
32 full and convenient exercise of the committee's powers.

33 (3) Cause fees to be levied, as provided in Section ~~5919~~ 5918,
34 to pay any obligation of the committee and to accomplish the
35 purposes of the committee in the manner provided in this article.

36 (4) Make contracts, and employ, except as otherwise provided
37 in this article, all persons, firms, and corporations necessary to
38 carry out the purposes and the powers of the committee, and at
39 any salary, wage, or other compensation as the committee shall
40 determine.

1 (5) Perform any and all acts either necessary or proper to fully
2 and completely carry out the purposes for which the committee
3 was organized.

4 (6) Recommend to the secretary the adoption of regulations
5 consistent with the powers and duties of the committee.

6 (c) The committee shall not engage in any activity deemed by
7 the secretary to be contradictory to any eradication program or
8 quarantine implemented to address citrus diseases or related
9 vectors.

10 5915. (a) Upon receipt of a recommendation from the
11 committee for the adoption of regulations, the secretary shall do
12 one of the following within 30 working days:

13 (1) Initiate the rulemaking process to adopt the recommendation
14 of the committee.

15 (2) Decline to initiate the rulemaking process and provide the
16 committee with a written statement of reasons for the decision.

17 (3) Request the committee to provide additional information
18 regarding the recommended regulations.

19 (b) All regulations adopted pursuant to this article shall be
20 adopted in compliance with the Administrative Procedure Act
21 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
22 Division 3 of Title 2 of the Government Code), and may be
23 subsequently repealed or amended as provided for in that act.

24 5916. No member or agent of the committee shall be personally
25 liable for the actions of the committee or the department. No
26 member or agent of the committee is responsible individually in
27 any way to any other person for errors in judgment, mistakes, or
28 other acts, by either commission or omission, as a principal, agent,
29 or employee except for his or her own individual acts of dishonesty
30 or crime. No member or agent of the committee is responsible
31 individually for an act or omission of any other member or agent
32 of the committee or the department. Liability is several and not
33 joint, and no member or agent of the committee is liable for the
34 default of any other member or agent of the committee or the
35 department.

36 5917. The committee shall reimburse the secretary for all
37 expenditures incurred by the secretary in carrying out his or her
38 duties and responsibilities pursuant to this article.

39 ~~5918. (a) The disease Huanglongbing is not native to the State~~
40 ~~of California and has no known cure. The Legislature hereby~~

1 declares the introduction of this serious citrus disease would be
2 detrimental to the state, causing irreparable damage to the
3 agricultural industry and the environment.

4 (b) The secretary may adopt quarantine or other regulations
5 which prohibit the importation of Huanglongbing.

6 (c) The secretary shall conduct an ongoing survey and detection
7 program for Huanglongbing. Whenever and wherever
8 Huanglongbing is discovered, the secretary shall immediately
9 investigate the feasibility of eradication. If eradication is feasible,
10 the secretary shall perform the eradication in cooperation with
11 federal, city, county, and other state agencies taking those steps
12 and actions the secretary deems necessary.

13 (d) The department, with the cooperation of the University of
14 California, the United States Department of Agriculture, or other
15 agencies, may develop and implement biological control methods
16 to eradicate or control Huanglongbing in any area of the state, and
17 may conduct studies for those purposes.

18 5919.

19 5918. (a) During the first marketing season, beginning
20 February 1, 2010, and ending September 30, 2010, the monthly
21 assessment to be paid by producers shall be one cent (\$0.01) per
22 carton. Thereafter, in addition to any other assessments, fees, or
23 charges that may be required pursuant to this code, producers shall
24 pay a monthly assessment established by the committee that shall
25 not exceed seven cents (\$0.07) per carton. The assessment shall
26 be:

27 (1) Based on the number of ~~40-pound~~ 40-pound carton
28 equivalents produced.

29 (2) Used to purchase equipment for detecting citrus diseases,
30 testing citrus trees, fruit, and vectors, ~~eradicating and controlling~~
31 citrus diseases, and *for* contracting with labs to conduct citrus
32 disease testing.

33 (3) Collected from the producer by the first handler. If a
34 producer prepares the citrus *fruit* for market, the producer shall be
35 deemed the handler.

36 (4) Remitted to the department by the first handler, along with
37 an assessment form, at the end of each month during the marketing
38 season.

39 (5) Deposited in the Department of Food and Agriculture Fund
40 or, upon the recommendation of the committee, deposited in

1 accordance with Section 227 or Article 2.5 (commencing with
2 Section 230) of Chapter 2 of Part 1 of Division 1.

3 (b) The committee may recommend to the secretary an
4 assessment less than the amount specified in subdivision (a) or no
5 assessment if no disease prevention program is necessary or if
6 there is sufficient reserve to operate the program.

7 ~~5920.~~

8 5919. (a) Upon establishment of a disease prevention program,
9 any handler who does not file the required monthly assessment
10 form and assessments by the 10th day of the month following the
11 month for which the assessment is payable shall pay a penalty of
12 10 percent of the assessment owed and, in addition, 1 ½ percent
13 interest per month on the unpaid balance.

14 (b) Upon establishment of a disease prevention program, it shall
15 be unlawful for any handler to refuse to collect the assessments or
16 remit the assessments and the proper forms required by this article.

17 ~~5921.~~

18 5920. (a) Beginning in the 2016–17 marketing year, the
19 secretary shall hold one or more *public* hearings to determine
20 whether the operation of this article should be continued. The
21 secretary may waive referendum under this article if, following a
22 hearing, the secretary determines there is no substantial question
23 of opposition to doing so among affected assessment payers.
24 Thereafter, the secretary shall conduct the review process every
25 four years.

26 (b) As used in this section, “substantial question of opposition”
27 means opposition to the substance of the petition among currently
28 affected assessment payers, and is not intended to mean a particular
29 number of assessment payers.

30 ~~5922.~~

31 5921. (a) If the secretary finds after the hearing that a
32 substantial question exists among affected payers under this article
33 regarding whether the operation of this article should be continued,
34 the secretary shall submit the article for approval utilizing the
35 following voting procedures set forth in this section and Sections
36 ~~5923 to 5928~~ 5922 to 5927, inclusive.

37 (b) Within 90 days of the secretary determining the requirement
38 for referendum has been met, the secretary shall establish a list of
39 those persons eligible to vote on the continued implementation of
40 this article.

1 (c) Eligibility shall be limited to the persons who paid the
2 assessment on citrus *fruit* in the immediately preceding marketing
3 season.

4 (d) (1) In establishing the list, the secretary may require
5 handlers, producers, and others to submit the names, mailing
6 addresses, and assessment values of all producers who paid the
7 assessment on citrus *fruit* in the immediately preceding marketing
8 season.

9 (2) The information required by the secretary shall be filed either
10 with the monthly assessment form or no later than 30 days
11 following receipt of a written notice from the secretary requesting
12 the information.

13 (e) Any producer whose name does not appear on the secretary's
14 list may have his or her name added to the list by filing with the
15 secretary a signed statement identifying himself or herself as a
16 producer that paid an assessment during the most recent marketing
17 season.

18 ~~5923.~~

19 ~~5922.~~ For the purpose of voting in the referendum required in
20 ~~Section 5922~~ 5921, only a person required to pay the assessment
21 pursuant to ~~Section 5919~~ 5918 shall have the right to vote.

22 ~~5924.~~

23 5923. In determining whether this article shall become
24 inoperative, the secretary shall find that at least 40 percent of the
25 total number of persons from the list established by the secretary
26 participated in the referendum, and that either one of the following
27 occurred:

28 (a) Sixty-five percent or more of the persons who voted in the
29 referendum voted in favor of this article, and the persons who
30 voted paid a majority of the assessment dollars on citrus *fruit* in
31 the preceding marketing season that were paid by all the persons
32 who voted in the referendum.

33 (b) A majority of the persons who voted in the referendum voted
34 in favor of this article, and the persons who voted paid 65 percent
35 or more of the assessment dollars on citrus *fruit* in the preceding
36 marketing season that were paid by all the persons who voted in
37 the referendum.

38 ~~5925.~~

39 5924. In determining whether the referendum is approved by
40 producers pursuant to the provisions of this article, the secretary

1 shall consider the vote in favor of the referendum of any nonprofit
2 agricultural cooperative marketing association, which is authorized
3 by its members so to assent, as being the assent, approval, or favor
4 of the producers that are members of, or stockholders in, that
5 nonprofit agricultural cooperative marketing association.

6 ~~5926.~~

7 5925. The secretary shall establish a period in which to conduct
8 the referendum that shall not be less than 10 days nor more than
9 60 days in duration. The secretary may prescribe additional
10 procedures to conduct the referendum. If the initial period
11 established is less than 60 days, the secretary may extend the
12 period. However, the total referendum period may not exceed 60
13 days.

14 ~~5927.~~

15 5926. Nonreceipt of a ballot shall not invalidate a referendum.

16 ~~5928.~~

17 5927. (a) If the secretary finds that a favorable vote has not
18 been given as provided in this article, this article shall become
19 inoperative within one year of the referendum.

20 (b) If the secretary finds that a favorable vote has been given
21 as provided in this article, he or she shall certify and give notice
22 of the favorable vote to all persons whose names and addresses
23 may be on file with the secretary as provided in Section ~~5922~~ 5921.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.