



# The Florida Senate

*Interim Project Report 2005-201*

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Committee on Agriculture

Senator Nancy Argenziano, Chair

## **INTERIM MANDATORY REVIEW, CITRUS CANKER EXPOSED TREES, SECTION 581.184(1)(b), FLORIDA STATUTES**

### **SUMMARY**

In September, 1995, citrus canker was discovered in a residential area near the Miami International Airport.

Subsequent to the finding of the disease, the Florida Department of Agriculture and Consumer Services (Department) and the United States Department of Agriculture (USDA) entered into a cooperative agreement to eradicate the disease from the state.

Under the eradication plan the citrus canker bacteria continued to spread, and citizens in the eradication zone began to request updated research on the issue. Research was conducted by Dr. Timothy Gottwald, a scientist with the USDA. Upon conclusion of the study, Dr. Gottwald found that 95% of the time, all of the bacteria falls within 1900 feet of an infected tree. It was determined that eradication could be achieved by, 1) removing infected citrus trees and those that are located within 1900 feet of infected trees, and 2) continuing to survey outside the 1900 feet to catch any of the disease that may fall outside the zone.

Based upon the scientific research of Dr. Gottwald, the definition of the term "exposed to infection" was more clearly written in statute by the Legislature in the 2002 Regular Session. It reads "exposed to infection means citrus trees located within 1,900 feet of an infected tree." Additionally, the legislature provided for a repeal of the definition, effective July 1, 2005, with a mandatory review by the Legislature prior to that date.

Citizens in the eradication zone challenged the constitutionality of the eradication program with filings in the state's courts. The holding of the Florida Supreme Court is clear and concise: "For the reasons expressed in this opinion, we hold that the Citrus Canker Law is constitutional."

The ruling by the Florida Supreme Court finds section 581.184(1)(b), F.S., to be constitutional and enforceable.

It is recommended that the Legislature affirmatively act to save the provision from an automatic repeal, which is scheduled to occur July 1, 2005. An effective method by which to accomplish this goal is by legislative passage of a bill to repeal section 4 of Chapter 2002-11, Laws of Florida, which would make null and void the automatic repeal of the definition of the term "exposed to infection."



Fruit Symptoms of Citrus Canker on sweet orange.



Typical Citrus Canker symptoms on leaves, stems and fruit of grapefruit.

## BACKGROUND

In September, 1995, citrus canker, caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri* was discovered in a residential area near the Miami International Airport. Initial surveys showed that an area of about 50 square miles contained many citrus canker infected trees.

Subsequent to the finding of the disease the Florida Department of Agriculture and Consumer Services (Department) and the United States Department of Agriculture (USDA) entered into a cooperative agreement to eradicate the disease from the state.

At the time, the Department, through contract arrangement with private companies, cut and removed infected trees as well as citrus trees exposed to the disease within 125 feet of an infected tree. This cutting zone was established based upon research which had been conducted in Argentina during the 1960's.

Under the eradication plan the citrus canker bacteria continued to spread, and citizens in the eradication zone began to request updated research on the issue. In order to reassess the eradication effort, the cutting of citrus trees exposed to the disease was stopped on March 1, 1998 while a research project was undertaken to determine if it was necessary to cut citrus trees exposed to the disease to eliminate citrus canker.

Research was conducted by Dr. Timothy Gottwald, a scientist with the USDA. He was assisted by scientists from the University of Florida and the Department. Upon conclusion of the study, Dr. Gottwald found that 95% of the time, all of the bacteria falls within 1900 feet of an infected tree. It was determined that eradication could be achieved by, 1) removing infected citrus trees and those that are located within 1900 feet of infected trees, and 2) continuing to survey outside the 1900 feet to catch any of the disease that may fall outside the zone.

The work of Dr. Gottwald was published in *Phytopathology*, a preeminent journal of plant pathologists. It was also peer reviewed by scientists from around the world prior to being accepted for publication.

Based upon the research of Dr. Gottwald, the Citrus Canker Technical Advisory Task Force, a body of regulatory individuals, scientists and citrus industry representatives, unanimously recommended that the Department adopt a policy to destroy trees within a

1900 foot radius of a diseased tree in order to eradicate citrus canker.

An International Scientific Research Symposium on citrus canker disease was held in June, 2000, in Fort Pierce, Florida. Scientists from around the world shared their research, and there was unanimous agreement that the only known method of eradication was removal of the infected and exposed citrus trees. While there are sprays which kill the citrus canker bacteria on clothes, shoes and equipment, the sprays are not effective in killing the disease throughout the tree. It was found that sprays may kill the citrus canker on a leaf surface but the citrus canker bacteria which is burrowed into the leaves reappears when the spray is dry.

Paragraph (a) of section 581.184(2), F.S., requires the Department to remove all infected citrus trees and all citrus trees exposed to infection.

Based upon the scientific research of Dr. Gottwald, the definition of the term "exposed to infection" was more clearly written in statute in the 2002 Regular Session of the Legislature. Earlier that term was defined by the rather vague statement "harboring the citrus canker bacteria due to their proximity to infected trees." The Legislature adopted the current and more specific definition, in Section 1, Chapter 2002-11, Laws of Florida, which reads "exposed to infection means citrus trees located within 1,900 feet of an infected tree." Additionally, the Legislature provided for a repeal of the definition, effective July 1, 2005, with a mandatory review by the Legislature prior to that date.

## METHODOLOGY

In order to conduct the mandatory review of section 581.184(1)(b), F.S., a study of the statutory history was made. The decisions of the state's courts were reviewed, including the decision from the circuit courts, the district courts of appeal, and the Florida Supreme Court. The Department provided information regarding the regulatory aspects of the citrus canker eradication program.

## FINDINGS

Section 581.184(1)(b), F.S., was incorporated into the Florida Statutes from Chapter 2002-11, Laws of Florida. The Chapter was signed into law by the Governor on Committee Substitute for Senate Bill 1926, a bill relating to Citrus Canker.

Prior to the bill being placed on the Governor's desk for consideration, it passed the Senate with a companion measure, House Bill 1539, being placed on the Special Order Calendar of the House, with Committee Substitute for Senate Bill 1926 being taken up by the House of Representatives in lieu of the House bill for legislative passage of the issue.

null and void the automatic repeal of the definition of the term "exposed to infection."

Citizens in the eradication zone challenged the constitutionality of the eradication program with filings in the state's courts. An order in the circuit court for the Seventeenth Judicial Circuit entered a temporary injunction against the Department declaring the whole of section 581.184, F.S., unconstitutional. The two cases pending before the trial court were consolidated for the purpose of appeal by the Department.

The Fourth District Court of Appeal addressed the issue of the constitutionality of section 581.184, F.S., both from a substantive and procedural due process examination. The Court wrote: "We hold that section 581.184, F.S., does not violate due process and is therefore constitutional."

The ruling by the Fourth District Court of Appeal was appealed to the Florida Supreme Court by citizens who had filed the original case. The holding of the Florida Supreme Court is clear and concise: "For the reasons expressed in this opinion, we hold that the Citrus Canker Law is constitutional."

The ruling by the Florida Supreme Court finds section 581.184(1)(b), F.S., to be constitutional and enforceable.

## RECOMMENDATIONS

Having been reviewed and recognizing that section 581.184(1)(b), F.S., as passed by the Legislature and signed into law by the Governor, provides a clear definition of the term "exposed to infection" for purposes of eradication of citrus canker disease from the state, and recognizing that the statutory provision has been upheld both from a substantive and procedural due process examination by the Florida Supreme Court, it is recommended that the Legislature affirmatively act to save the provision from an automatic repeal, which is scheduled to occur July 1, 2005.

An effective method by which to accomplish this goal is by legislative passage of a bill to repeal section 4 of Chapter 2002-11, Laws of Florida, which would make