

HF1497 - 0 - Labeling and Advertising of Nursery Stock

Chief Author: **Kristin Pursell**
 Committee: **Agriculture Finance And Policy**
 Date Completed: **2/22/2023 9:41:00 AM**
 Agency: **Agriculture Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Agriculture Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Agriculture Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Chloe Burns **Date:** 2/22/2023 9:41:00 AM
Phone: 651-297-1423 **Email:** chloe.burns@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Agriculture Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Agriculture Fund						
Expenditures		-	40	40	40	40
Absorbed Costs		-	(40)	(40)	(40)	(40)
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Agriculture Fund						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

This bill amends Minnesota Statutes 2022, section 18H.14; prohibiting false labeling of certain pesticide-treated plants as pollinator friendly.

Assumptions

Current law states that a person selling at a retail or providing to an end user may not label or advertise identified plants as beneficial to pollinators if the identified plant has a concentration in its flowers greater than the no observed adverse effect level of a systemic insecticide. The no observed adverse effect level, is established by the United States Environmental Protection agency. This bill removes these provisions and requires the Minnesota Department of Agriculture (MDA) to test all plants, not just those with a flower.

Changing the language to a detectable level rather than a threshold amount puts more emphasis on the equipment and procedures being used for testing rather than the potential impacts to pollinators. This change would make enforcement of the statute difficult. For instance, if a more sensitive method becomes available the MDA would presumably need to adopt that method. This would make the regulatory requirement more difficult to meet for industry without necessarily incurring more risk for pollinators. With the potential for drift or other unintended application, it may be difficult for any grower to produce plants that have no detectable levels of pesticides if the equipment used to detect them is sufficiently sensitive.

In addition, the MDA currently only tests plants that are labeled as pollinator friendly and have sufficient flowers present to sample. The bill would change the requirement from only testing flowers to testing any part of a plant. This will likely result in increased samples being taken.

The United States nursery industry involves the movement of plants and labels throughout the nation. To our knowledge, no other state has a statute of this nature which can create challenges for Minnesota sellers to maintain compliance when receiving plants with labels developed by outstate growers for distribution to states across the US. The changes to the statute proposed in this bill will likely increase those challenges because it is likely that more plants would be tested and more plants are likely to fail the lower threshold for tolerance. Many times Minnesota sellers are not even aware the plants have been treated, prior to arriving in Minnesota.

When violations occur, the cost of testing can be passed on to the industry in the form of penalties. However, as described

above, the amended language may be difficult for sellers of nursery stock to fully comply with and penalties may be considered unfair.

The Commissioner of Agriculture may use up to \$20,000 each fiscal year from the nursery and phytosanitary account (M.S. 18H.17) and from the pesticide regulatory account (M.S. 18B.05) for the purpose of labeling and advertising of nursery stock (M.S. 18H.14(e)). Therefore, the potential cost to the MDA is capped at \$40,000 annually. Actual costs to the MDA were approximately \$16,200 in FY 2022. Expanding the language to include any plant part rather than just plants with flowers will likely result in additional testing costs with the MDA's third party laboratory contractor, potentially to the level of \$40,000 annually.

Expenditure and/or Revenue Formula

Under current law expenditures for third party lab testing are approximately \$16,500 annually.

Under the proposed changes in this bill expenditures for third party lab testing are anticipated to be \$40,000 annually.

Long-Term Fiscal Considerations

Costs are expected to continue into the future as advertising for pollinator-friendly plants is unlikely to be discontinued. The MDA's fund balance will decrease year over year with the anticipated increased in expenditures for lab costs. If the account is not able to sustain the cost of the increase the MDA may have to adjust fees or reduce inspections of retail plant sales.

Local Fiscal Impact

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Julie Sis

Phone: 651-201-6412

Date: 2/21/2023 2:02:15 PM

Email: julie.sis@state.mn.us