



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1043 (as introduced 2-9-06)
Sponsor: Senator Gerald Van Woerkom
Committee: Agriculture, Forestry and Tourism

Date Completed: 6-14-06

CONTENT

The bill would amend Public Act 72 of 1945 (which deals with insect pests and plant diseases) to do the following:

- Prohibit a person from maintaining plants or other things infected or infested with a plant pest; plants that could become infected with a plant pest; or that are host plants for pests, as designated by the Michigan Department of Agriculture (MDA).**
- Require the MDA to examine plants supposed to be infected within five days after the matter came to the MDA's attention.**
- Require the MDA, when the owner of property containing infected or infested plants could not be found, to post public notices in the area within five days (rather than 15 days before the trees must be cut, as the Act requires).**
- Require the owner to pay the cost of any abatement performed by the MDA because the owner had failed to carry out the MDA's abatement order.**
- Require an owner carrying out an abatement order to consult with a certified crop advisor and to have the abatement certified for three years after abating a pest.**
- Allow a property owner to appeal a decision of the MDA within five days, rather than 10.**
- Require the MDA to hold administrative hearings on any appeals.**

The bill also would repeal Public Act 86 of 1929 (which deals with cherry pests).

Public Nuisances

Under Public Act 72 of 1945, the following are considered to be public nuisances and it is unlawful to maintain them: any and all neglected or abandoned trees, vines, shrubs, plants, or parts of those things that may constitute a menace to the horticulture or agriculture of the surrounding area because they may contain injurious or destructive insect pests or plant diseases, or that are host plants of or provide a favorable and likely harbor for such pests or diseases.

The bill, instead, would prohibit a person from maintaining a public nuisance. All of the following would be considered a public nuisance:

- Any premises, article, conveyance, plant, or other thing that was infected or infested with a plant pest, or where any plant pest was found, including any abandoned or neglected plant, orchard, or crop.**

- Any plant that could become infected or infested with and serve to spread a plant pest in the State, as determined by an order of the MDA.
- Any host plant designated by an order from the MDA Director. Such an order could be limited to a certain geographic area.

"Host plant" would mean any plant infected or infested with a plant pest. "Plant" would mean any tree, shrub, vine, plant, crop, or fruit.

"Plant pest" would mean an organism or disease injurious to plants, including insects, mites, snails, nematodes, fungi, viruses, bacteria, mycoplasma-like organisms, weeds, plants, or parasitic plants.

Examination of Plants

The Act requires the MDA Director, whenever it comes to his or her attention that any of the dangerous insects or infectious diseases exist or are supposed to exist within the State, to proceed without delay to examine the trees, shrubs, vines, plants, or fruits that may be infested or infected, and all others as advisable.

Under the bill, whenever it came to the attention of the MDA that any plant pest existed within the State, the Director would have to take this action within five business days.

If, upon examination, a plant pest were found to exist, the MDA would have to designate the plants as a public nuisance (rather than placing a distinguishing mark on the plants, as presently required).

Notice to Owners & Public

Under the Act, upon finding a plant pest, the MDA must send written notice to the owner or his or her agent with recommendations. Under the bill, the MDA would have to include recommendations for abatement of the public nuisance within five days after receipt of the notice.

The Act provides that, if the owner cannot be found, the MDA must give general notice to every owner, possessor, or occupier of land and to every person having charge of land containing fruit trees that are neglected, abandoned, or semiabandoned, to cut or destroy such plants. The bill would extend that requirement to any plants that were neglected, abandoned, or semiabandoned, and would require notice to abate the plant pest or cut or destroy the plants.

The Act requires four notices of a certain size to be posted in conspicuous places in the area, including at least one on the property in question. The notices must be posted within 15 days before the date upon which the trees must be cut. The bill would require the notices to be posted within five days after the MDA determined that the owner or his or her agents could not be found.

In addition, under the Act, a copy of the notice must be mailed to every owner, possessor or occupier of the land, as well as to every person or persons, firm or corporation financially interested in the property, or having charge of any land in the State containing neglected or abandoned trees, whose post office address is known. The bill instead would require the MDA to send notice to every owner, possessor, or occupier of the land and to every person having charge of the land.

Appeals

Under the Act, an owner who refuses to accept the opinion of the inspector on the nature of the pest or the remedy to be employed may appeal to the MDA Director by serving a written notice of the appeal within 10 days. Under the bill, the notice of the appeal would have to be filed within five days.

Under the Act, the MDA Director must investigate the matter as soon as is practicable and order the proper treatment. Under the bill, the Director also would have to hold an administrative hearing. The Director would have to order abatement if applicable, rather than the proper treatment. As provided under the Act, the order of the Director would be final.

Abatement of Pests

Under the Act, if an owner or person in charge of the trees, shrubs, vines, or plant infested with a destructive insect or dangerously contagious disease refuses or neglects to carry out the MDA's orders within the period stated on the notice, the MDA must employ aid as necessary to carry out the orders. Under the bill, the owner or person would have 21 days to carry out the orders before the MDA would have to act.

In such a case, the MDA Director would have to charge the owner for the cost of abating the nuisance. If the owner failed to pay the charge within 30 days, the Director would have to certify the amount of the charge, plus 10% per annum interest accruing to that charge, to the local assessing officer, who would have to assess that amount against the property where the abatement took place. The Director also could collect the charge by any means authorized by law.

If the owner chose to abate the plant pest, he or she would have to consult with and have the abatement verified by a certified crop advisor for at least three years after the abatement.

The Act authorizes the MDA to enter any premises in the State to examine plants for the presence of destructive insects or diseases, and, if any are found, to take the necessary steps to exterminate them. The bill would retain those provisions, but the MDA would be authorized to order the abatement of pests, rather than exterminate them.

The Act permits the MDA, upon discovery of a pest that has not become distributed widely throughout the State, if it is considered necessary to prevent the spread and dissemination of the pest, to cause any tree, shrub, vine, or plant likely to be attacked by the pest, within 3,000 feet of the plant pest, to be treated with approved remedies, or if that is not feasible, to be destroyed. The bill would remove the requirement that such action be considered necessary to prevent the spread of the pest.

The Act requires the owner to be compensated for the actual value of any plants destroyed under that provision. The actual value is to be determined by three parties: one selected by the owner, one selected by the MDA, and one selected by the other two parties selected. Under the bill, the third party would be selected by both the MDA and the owner.

Rules

The Act permits the MDA Director to promulgate rules under the Act and to establish quarantines as he or she deems necessary for the proper enforcement of the Act. The bill would remove the provision allowing the Director to establish quarantines.

Penalties

The Act prescribes civil and criminal penalties for a person who violates a rule promulgated under the Act. The bill specifies that the remedies under the Act would be independent and cumulative. The use of one remedy by a person would not bar the use of other lawful remedies.

Repeal

The bill would repeal Public Act 86 of 1929, which required the MDA to adopt control measure to protect the cherry crops of the State from cherry fruit flies and other cherry pests that might become established in the State. The MDA Director is required to adopt, issue, and enforce rules for the control of the specified pests, and is authorized to prohibit and prevent the movement within the State of cherries or other material that could carry the pests.

MCL 286.251-286.260

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the offenses involving maintaining plants infected or infested with a pest, that could become infected, or that are host plants for pests. To the extent that the bill would increase the number of misdemeanor and felony convictions or increase incarceration time, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

The bill would have minimal fiscal impact on the Department of Agriculture. The bill would increase the level of abatement costs owed by a land owner to the Department by the addition of a 10% interest charge against those costs not repaid within 30 days.

Fiscal Analyst: Bruce Baker
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.