

27n6

**(Base) Agency:** DATCP - Nursery Regs & Licensing

**Recommendations:**

*Porter 1*

**Paper No. 215:** Alternative 2(b)&(c)

**Comments:** DATCP needs to do more inspections and that's going to cost money. FB makes a case for Alternative 2(b)&(c) in paragraphs 8 and 9.

Alternative 2(a) would probably be ok as well, but it's unclear why DATCP wants less authority. Is it easier to do what the big industries want when you can blame the legislature for not giving you enough tools to do the job right?!

prepared by: Barry

*Duff Motion - exempt out non-profits  
Albers*



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 4, 1999

Joint Committee on Finance

Paper #215

### **Nursery Regulations and Licensing (DATCP)**

[LFB 1999-01 Budget Summary: Page 98, #12]

#### **CURRENT LAW**

The Department of Agriculture, Trade and Consumer Protection is given broad powers for plant protection and pest control, including the power to inspect plants for pests at any time, impose quarantines and prohibit the movement of plants. If a case is contested, DATCP is required to hold a public hearing within 30 days of the notice. As part of the Department's plant protection activities, DATCP is required to inspect all nurseries and nursery dealer distribution sites. The Department also issues nursery grower and dealer licenses, which expire on March 31 of each year. Dealer license fees are \$25 per business location with a \$30 surcharge and nursery grower fees range from \$30 to \$150 or more based on annual sales and number of sown acres. These fees include a nursery dealer surcharge of \$30 and a surcharge of \$20 to \$90 or more depending on gross sales and acreage for gypsy moth eradication. Christmas tree growers and dealers pay no licensing fee or surcharge. License fees for nurseries annually generate approximately \$46,900 for the general fund and \$67,500 PR for gypsy moth eradication. DATCP maintains reciprocal agreements with other states for licensing and certification of nursery stock and nursery dealers.

The Department also requires nursery growers and dealers to label every lot of nursery stock for delivery with the licensee's name, address and certification that the nursery stock is from an officially inspected source. However, nursery stock sold and delivered at a place of business where the license certificate is posted is exempted from the labeling requirement. It is unlawful for growers and dealers to accept uncertified shipments, and the carrier of any uncertified shipment is required to report and hold such shipments.

## GOVERNOR

Decrease GPR by \$36,400 and 0.75 staff annually and create a new, annual SEG appropriation from the forestry account of the conservation fund of \$75,000 in 1999-00 and \$81,000 in 2000-01 for 1.75 positions for plant protection, including nursery regulation and control of plant pests. Provide \$114,600 PR in 1999-00 and \$127,600 PR in 2000-01 in a new, continuing appropriation for nursery regulation and plant pest detection and control. Revenue would come from revamped nursery dealer and grower (including Christmas tree grower) license fees.

Repeal a PR continuing appropriation for gypsy moth eradication that was funded by a nursery grower surcharge of \$20 to \$90 or more depending on gross sales and acreage and a nursery dealer surcharge of \$30. Transfer base authority of \$74,600 and 1.0 position annually to the newly created PR appropriation. Transfer any unencumbered balance in the repealed PR appropriation to the newly created PR appropriation.

*License Fees.* Dealers and growers that sell less than \$250 annually in nursery stock would not be required to obtain licenses. A temporary permit costing \$5 would also be established to allow nonprofit organizations to sell nursery stock for no more than one week. Such organizations would not be required to hold an annual license. In addition to the fees listed in the table, an assessment equal to the license fee would be charged to all dealers and growers who in the prior year operated without a license.

Repeal current dealer license fees of \$25 per business location with a \$30 surcharge and nursery grower fees of \$30 to \$150 or more based on annual sales and number of sown acres. Rather, create the following fees, including new fees for Christmas tree growers that would be expected to generate an additional \$59,600 annually:

<u>Nursery Dealer License Fees</u>		<u>Nursery Grower License Fees</u>		
<u>Annual Purchases of Nursery Stock</u>	<u>Proposed Dealer Fees</u>	<u>Annual Sales of Nursery Stock</u>	<u>Proposed Grower Fees (non-Christmas Tree Sales)</u>	<u>Proposed Grower Fees (Christmas Tree Sales)</u>
\$250-\$5,000	\$30	\$250-\$5,000	\$40	\$20
\$5,000-\$20,000	50	\$5,000-\$20,000	75	55
\$20,000-\$100,000	100	\$20,000-\$100,000	125	90
\$100,000-\$200,000	150	\$100,000-\$200,000	200	150
\$200,000-\$500,000	200	\$200,000-\$500,000	350	250
\$500,000-\$2,000,000	300	\$500,000-\$2,000,000	600	450
Over \$2,000,000	400	Over \$2,000,000	1,200	900

*Requirements for Nursery Growers and Dealers.* Licensing fees and requirements would be changed, including the annual license expiration, which would move from March 31 to February 20. Include bulbs in the definition of nursery stock. Clarify that license fees would be

based on sales in the applicants' prior fiscal year. The applicant would determine the fiscal year and would base first-year fees of a new operation on predicted sales. Clarify that grower and dealer records must include the type and quantity of nursery stock shipped to other nursery growers and dealers, along with the address of the recipient. Specify that all required records be retained for at least three years.

*Dealer Requirements.* Specify that a dealer license is nontransferable and clarify that the applicant's name and address and the address of each of their selling locations must appear on the license application. Also, require dealers to notify DATCP of the address of any new selling location, prior to beginning such sales. Further, clarify that records must include the type and quantity of nursery stock received along with the address of the shipper. As drafted, the bill expands the definition of a nursery dealer to include all people selling for a dealer. Under current law, employees of a dealer are specifically excluded in the definition and therefore, do not have to pay a license fee. Administration officials indicate this change was not intended.

*Grower Requirements.* Clarify that the applicant's name and address and the address of each of their operating and selling locations must appear on the application. Also, require growers to write to DATCP the address of any new operating and selling locations prior to beginning operation. Remove the requirement that growers keep records of all nursery stock shipments received. (Wisconsin dealers would continue to record all shipments sent.)

*Labeling Requirements.* Require nursery growers and dealers, rather than the carrier, to report nursery stock shipments that are not fully labeled to DATCP. As drafted, the bill would prohibit shipping improperly labeled nursery stock only to nursery dealers (not growers) and prohibit nursery dealers from accepting improperly labeled nursery stock. Administration officials indicate the Governor intended to prohibit shipping improperly labeled nursery stock to both nursery dealers and growers and to prohibit both nursery dealers and growers from accepting improperly labeled nursery stock (as under current law). The bill would repeal the current law exemption from labeling of nursery stock sold and delivered at a place of business where the license certificate is posted.

*Department Powers.* Allow, rather than require, DATCP to inspect nursery and distribution sites. Allow the Department to order a grower or dealer to refrain from importing certain weeds or pests. Allow DATCP to order a grower or dealer to destroy or recall nursery stock. Require DATCP to hold an informal hearing, rather than a public hearing of a contested case, within 10 days, unless the person requesting the hearing consents to a later date. If a disputed matter is not resolved at the informal hearing, the grower or dealer may demand a contested case hearing.

## **DISCUSSION POINTS**

### **Background**

1. As shown in Table 1, There are 750 nursery growers and 830 nursery dealers

licensed in the state. In addition, the Wisconsin Christmas Tree Producers Association estimates there are 800 Christmas tree growers with 60,000 acres of Christmas trees.

**TABLE 1**

**Wisconsin Nursery Growers and Dealers**

<u>Year</u>	<u>Licensed Growers</u>	<u>Inspected Growers</u>	<u>Licensed Dealers</u>	<u>Inspected Dealers</u>
1994	722	482	821	116
1995	745	432	824	187
1996	742	396	825	33
1997	750	477	830	19
1998	750	560	830	52

2. While the number of nursery growers and dealers has remained fairly steady over the past five years, the Department indicates that more inspections are needed to counter increased numbers of plant pests. Federal regulations, such as a quarantine on the movement of products from 18 eastern Wisconsin counties due to gypsy moth infestations, have also increased Department workload. Further, when a pest is found at a nursery, inspectors generally visit that site more than once to ensure that infested stock is held or treated. These inspections take away time that may otherwise be spent performing annual grower and dealer inspections. To the extent that increased inspections should aid in discovering and mitigating plant pests, more inspections would enhance the quality of nursery stock sold in the state and slow the spread of plant pests.

3. In 1998-99, the Department has 2.75 GPR-funded positions that inspect nurseries and funds three limited-term employes (approximately 1.0 FTE) with program revenues to inspect nurseries during peak periods. The Governor's recommendation would add 1.0 SEG inspector and replace a 0.75 GPR position with funds from the forestry account of the conservation fund. The primary source of revenue deposited in the forestry account of the conservation fund is the forestry mill tax, a state tax on property of 0.2 mill (20 cents per \$1,000 of property value). Nursery inspectors inspect nurseries for various diseases and pests, including gypsy moth. These inspectors are currently based in Madison, except for a half-time nursery inspector in Stevens Point. DATCP plans to base the new nursery inspector in Madison.

4. A workload analysis prepared by DATCP allocates 5,670 hours to nursery grower inspections and 1,340 hours (19%) to various Christmas tree grower inspections. However as shown in Table 2, nursery growers would provide \$68,900 and Christmas tree growers would provide \$46,400 (40%) in program revenues under the Governor's proposal.

TABLE 2

Nursery Grower License Fees

<u>Annual Sales of Nursery Stock</u>	<u>Number of Growers*</u>	<u>Non- Christmas Tree Fees</u>	<u>Nursery Grower Revenue</u>	<u>Christmas Tree Fees</u>	<u>Christmas Tree Grower Revenue</u>
\$250-\$5,000	438	\$40	\$17,520	\$20	\$8,760
\$5,000-\$20,000	102	75	7,650	55	5,610
\$20,000-\$100,000	84	125	10,500	90	7,560
\$100,000-\$200,000	38	200	7,600	150	5,700
\$200,000-\$500,000	32	350	11,200	250	8,000
\$500,000-\$2,000,000	18	600	10,800	450	8,100
Over \$2,000,000	<u>3</u>	1,200	<u>3,600</u>	900	<u>2,700</u>
Totals	715		\$68,870		\$46,430

\* Based on survey results from 715 of 750 licensed nursery growers. Christmas tree growers are estimated according to the same distribution of nursery growers by fee category with the same total number of 715.

5. In the past, Christmas tree growers have not had to pay license fees or been required to obtain a license. In 1997, 3,300 acres of Christmas trees were inspected and certified for shipment out-of-state. In 1997-98, for the first time, these out-of-state shippers who needed certifications paid an inspection fee of \$1.50/acre plus state staff travel costs for total program revenue of \$9,500. Certification will also be required for all Christmas tree growers in the gypsy moth quarantined areas to ship trees outside the quarantined area.

6. Some would argue that a portion of nursery grower and dealer fees historically has been used for Christmas tree grower inspections, since Christmas tree growers have not previously paid significant fees. Therefore, providing fees to cover the cost of inspecting Christmas tree growers while requesting lower fees than needed to inspect nursery growers may be justifiable.

7. The Department requested fees of nearly twice what the Governor has recommended. In 1997-98, nursery growers and dealers paid approximately \$114,000 in license fees and surcharges. Under the bill, they would pay total annual fees of \$128,000, for an increase of 12% while Christmas tree growers would pay \$46,000. The fee restructuring appears to comparatively assess nursery growers with larger sales volumes more than it does those with lesser sales figures. However, in some cases, the recommended fees assessed nursery growers with large sales volumes are one-third to one-half the actual cost per inspection while fees assessed smaller sales volume operations cover over two-thirds the cost of such inspections. The Wisconsin Nursery Association supported the higher fees originally requested by DATCP in order to increase inspection staff.

8. The Committee may wish to raise nursery grower fees to more closely reflect the cost of inspection and lower the cost-benefit disparity between nursery and Christmas tree growers. These fees could be set consistent with the Department's budget proposal submitted to the Governor and supported by the Wisconsin Nursery Association. While increased fees could potentially hurt the competitive position of nursery growers who sell out of state, growers can not sell outside of state unless they are inspected. Under the bill, Wisconsin nursery grower and dealer fees would be generally one-half to two-thirds the fees in Minnesota. Minnesota does not license Christmas tree growers.

**TABLE 3**

**Alternate Annual Nursery Grower Fees**

<u>Annual Sales of Nursery Stock</u>	<u>Bill Fees</u>	<u>Bill Revenue</u>	<u>DATCP Fees</u>	<u>DATCP Revenue</u>
\$250-\$5,000	\$40	\$17,520	\$55	\$24,090
\$5,000-\$20,000	75	7,650	100	10,200
\$20,000-\$100,000	125	10,500	200	16,800
\$100,000-\$200,000	200	7,600	400	15,200
\$200,000-\$500,000	350	11,200	600	19,200
\$500,000-\$2,000,000	600	10,800	1,200	21,600
Over \$2,000,000	1,200	<u>3,600</u>	2,400	<u>7,200</u>
Totals		\$68,870		\$114,290

9. If the Committee chose to implement nursery grower fees as originally requested by DATCP, revenues would be sufficient to fund an additional nursery inspector position. Alternatively, the increased fees could be used to switch the funding for 1.0 GPR inspector to PR, maintaining the same level of inspection provided under the bill.

**Technical Changes and Modifications**

10. As drafted, the bill expands the definition of a nursery dealer to include all people selling for a dealer. This could require all employees of a nursery dealer to obtain a license and pay the license fee. Administration officials indicate this change was not intended. These persons are not currently required to be licensed. (All revenue estimates are based on this provision being corrected.)

11. As drafted, the bill would prohibit shipping improperly labeled nursery stock only to nursery dealers (not growers) and prohibit nursery dealers from accepting improperly labeled nursery stock. It would also require that shipments to nursery dealers (rather than to both dealers and growers), be labeled with the name and address of the person selling or distributing the shipment. Administration officials indicate the Governor intended to prohibit shipping improperly labeled nursery stock to both nursery dealers and growers, to prohibit both nursery dealers and

growers from accepting improperly labeled nursery stock and to require shipments to dealers and growers be labeled with the name and address of the person selling or distributing the shipment.

12. The bill would also allow DATCP to order a grower or dealer to destroy or recall nursery stock. However, the Department would prefer to only have the authority to recall nursery stock shipped from one nursery to another, rather than the broader authority to recall any nursery stock sold in the state, including that sold to consumers. Some may argue that allowing the Department to recall nursery stock sold to consumers could potentially protect consumers from plant pests and diseases.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation, technically corrected as follows: (a) that employes of nursery dealers are exempt from nursery dealer license and fee requirements; (b) that shipping improperly labeled nursery stock to nursery dealers and growers is prohibited; (c) that nursery dealers and growers are prohibited from accepting improperly labeled nursery stock; (d) that a shipment of nursery stock must be labeled with the name and address of the person selling or distributing the shipment to the nursery dealer or grower.

<u>Alternative 1</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Base)	-\$93,800	\$213,000	\$0	\$119,200
[Change to Bill]	\$0	\$0	\$0	\$0]
1999-01 FUNDING (Change to Base)	-\$72,800	\$93,000	\$156,000	\$176,200
[Change to Bill]	\$0	\$0	\$0	\$0]
2000-01 POSITIONS (Change to Base)	- 0.75	0.00	1.75	1.00
[Change to Bill]	0.00	0.00	0.00	0.00]

2. Modify the Governor's recommendation to:

a. Specify that the Department only has the authority to recall nursery stock shipped from a nursery dealer or grower to another nursery dealer or grower.

b. Modify the fees for nursery growers as follows and provide \$32,500 in 1999-2000 and \$43,300 in 2000-01 for 1.0 nursery inspector from PR.

<u>Annual Sales of Nursery Stock</u>	<u>Nursery Grower Fees</u>
\$250 - \$5,000	\$55
\$5,000 - \$20,000	100
\$20,000 - \$100,000	200
\$100,000 - \$200,000	400
\$200,000 - \$500,000	600
\$500,000 - \$2,000,000	1,200
Over \$2,000,000	2,400



<u>Alternative 2(b)</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Base)	- \$93,800	\$303,800	\$0	\$210,000
[Change to Bill]	\$0	\$90,800	\$0	\$90,800]
1999-01 FUNDING (Change to Base)	- \$72,800	\$168,800	\$156,000	\$252,000
[Change to Bill]	\$0	\$75,800	\$0	\$75,800]
2000-01 POSITIONS (Change to Base)	- 0.75	1.00	1.75	2.00
[Change to Bill]	0.00	1.00	0.00	1.00]

c. Modify the fees for nursery growers as shown in 2(b) and replace \$32,500 GPR in 1999-2000 and \$43,300 GPR in 2000-01 for 1.0 nursery inspector with PR.

<u>Alternative 2(c)</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Base)	- \$93,800	\$258,400	\$0	\$164,600
[Change to Bill]	\$0	\$45,400	\$0	\$45,400]
1999-01 FUNDING (Change to Base)	- \$148,600	\$168,800	\$156,000	\$176,200
[Change to Bill]	- \$75,800	\$75,800	\$0	\$0]
2000-01 POSITIONS (Change to Base)	- 1.75	1.00	1.75	2.00
[Change to Bill]	- 1.00	1.00	0.00	0.00]

3. Maintain current law.

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Base)	\$0	\$0	\$0	\$0
[Change to Bill]	\$93,800	-\$213,000	\$0	-\$119,200]
1999-01 FUNDING (Change to Base)	\$0	\$0	\$0	\$0
[Change to Bill]	\$72,800	-\$93,000	-\$156,000	-\$176,200]
2000-01 POSITIONS (Change to Base)	0.00	0.00	0.00	0.00
[Change to Bill]	0.75	0.00	- 1.75	- 1.00]

MO# ALT 1

BURKE	Y	<u>N</u>	A
DECKER	Y	<u>N</u>	A
JAUCH	Y	<u>N</u>	A
MOORE	Y	<u>N</u>	A
SHIBILSKI	Y	<u>N</u>	A
PLACHE	Y	<u>N</u>	A
COWLES	<u>Y</u>	<u>N</u>	A
PANZER	<u>Y</u>	<u>N</u>	A
GARD	<u>Y</u>	<u>N</u>	A
PORTER	<u>Y</u>	<u>N</u>	A
KAUFERT	<u>Y</u>	<u>N</u>	A
ALBERS	<u>Y</u>	<u>N</u>	A
DUFF	<u>Y</u>	<u>N</u>	A
WARD	<u>Y</u>	<u>N</u>	A
HUBER	<u>Y</u>	<u>N</u>	A
RILEY	<u>Y</u>	<u>N</u>	A

Prepared by:

MO# 2b,c

1 BURKE	<u>Y</u>	<u>N</u>	A
2 DECKER	<u>Y</u>	<u>N</u>	A
JAUCH	<u>Y</u>	<u>N</u>	A
MOORE	<u>Y</u>	<u>N</u>	A
SHIBILSKI	<u>Y</u>	<u>N</u>	A
PLACHE	<u>Y</u>	<u>N</u>	A
COWLES	<u>Y</u>	<u>N</u>	A
PANZER	<u>Y</u>	<u>N</u>	A
GARD	<u>Y</u>	<u>N</u>	A
PORTER	<u>Y</u>	<u>N</u>	A
KAUFERT	<u>Y</u>	<u>N</u>	A
ALBERS	<u>Y</u>	<u>N</u>	A
DUFF	<u>Y</u>	<u>N</u>	A
WARD	<u>Y</u>	<u>N</u>	A
HUBER	<u>Y</u>	<u>N</u>	A
RILEY	<u>Y</u>	<u>N</u>	A

AYE 8 NO 8 ABS     

AYE 14 NO 0 ABS 0

AGRICULTURE, TRADE AND CONSUMER PROTECTION

Temporary Permits for Short-term Nonprofit Nursery Dealers  
[Paper #215]

Motion:

Move to exempt a nonprofit organization that sells nursery stock for a period of not more than seven consecutive days for the benefit of a nonprofit organization, and persons growing nursery stock for such a sale, from nursery dealer and grower licensing and permit requirements.

Note:

The motion removes the \$5 permit and fee recommended by the Governor for a nonprofit organization that sells nursery stock for no longer than seven consecutive days.

MO# 214

BURKE	<input checked="" type="radio"/>	N	A
DECKER	<input checked="" type="radio"/>	N	A
JAUCH	<input checked="" type="radio"/>	N	A
MOORE	<input checked="" type="radio"/>	N	A
SHIBILSKI	<input checked="" type="radio"/>	N	A
PLACHE	<input checked="" type="radio"/>	N	A
COWLES	<input checked="" type="radio"/>	N	A
PANZER	<input checked="" type="radio"/>	N	A
GARD	<input checked="" type="radio"/>	N	A
PORTER	<input checked="" type="radio"/>	N	A
KAUFERT	<input checked="" type="radio"/>	N	A
ALBERS	<input checked="" type="radio"/>	N	A
DUFF	<input checked="" type="radio"/>	N	A
WARD	<input checked="" type="radio"/>	N	A
HUBER	<input checked="" type="radio"/>	N	A
RILEY	<input checked="" type="radio"/>	N	A

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

AGRICULTURE, TRADE AND CONSUMER PROTECTION

Exclusion of Christmas Tree Growers from State Nursery Regulations  
[Paper #215]

Motion:

Move to exclude Christmas trees from the definition of nursery stock, eliminate the surcharge for Christmas tree growers operating without a license and allow DATCP to inspect Christmas tree growers and dealers.

Further, exclude those growers receiving over 50% of their nursery and Christmas tree revenues from Christmas trees from requirements to obtain a nursery grower license. Exclude those growers receiving over 50% of their nursery and Christmas tree revenues from nursery stock from requirements to obtain a Christmas tree grower license. Base license fees on total sales of all nursery stock and Christmas trees.

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Note:

The motion specifies that Christmas tree growers are not subject to the same requirements, including recording, reporting and labeling, as nursery growers and removes the surcharge for Christmas tree growers operating without a license.

MO# \_\_\_\_\_

BURKE	Y	<del>N</del>	A
DECKER	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
MOORE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
PLACHE	<del>Y</del>	N	A
COWLES	<del>Y</del>	N	A
PANZER	<del>Y</del>	N	A
GARD	<del>Y</del>	N	A
PORTER	<del>Y</del>	N	A
KAUFERT	<del>Y</del>	N	A
ALBERS	<del>Y</del>	N	A
DUFF	<del>Y</del>	N	A
WARD	<del>Y</del>	N	A
HUBER	<del>Y</del>	N	A
RILEY	<del>Y</del>	N	A

AYE 15 NO 1 ABS \_\_\_\_\_