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**House  
Legislative  
Analysis  
Section**

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House Bill 4880 (Substitute H-3)

First Analysis (10-18-89) Mich. State Law Library

Sponsor: Rep. Roland G. Niederstadt

Committee: Agriculture

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### **THE APPARENT PROBLEM:**

Marketing in the agriculture industry has become increasingly competitive, with competition for Michigan agricultural products coming both from other states and from other nations. As consumers become increasingly sophisticated, the opportunity exists to effectively market high quality agricultural products and services produced in Michigan. The Seal of Quality Act, Public Act 70 of 1961, established a program under which producers of agricultural products grown, packed, or processed in the state could distinguish their products on the market by means of a "Michigan seal of quality." However, the program never got off the ground and remained essentially a "paper program." In order to take advantage of consumer sophistication and to promote Michigan agricultural products, legislation has been introduced to update and improve the marketing of quality Michigan agricultural products and services.

### **THE CONTENT OF THE BILL:**

The bill would rewrite the Seal of Quality Act (Public Act 70 of 1961), renaming it the "Michigan Premium Act," giving major responsibility for implementing the act to the director of the Department of Agriculture (instead of the Agriculture Commission), and allowing participation in the program by businesses and services related to the food and agricultural industry (in addition to food and agricultural commodity producers).

Eligibility. Under the present law, only agricultural products grown, packed, and processed in the state are eligible for the Michigan seal of quality. The bill would expand the proposed Michigan premium designation to include not only food or agricultural commodities grown, grown and packed, or grown and processed in the state, but also a business or service in the state that is connected with the food or agricultural industry. That is, not only could food and agricultural products have a Michigan premium seal, but related businesses (such as retailers) and services (such as truckers and handlers) also could be included in the Michigan premium program.

The process. Presently, in order to initiate the process of obtaining a seal of quality for an agricultural product, a "commodity group of producers" must ask the Commission of Agriculture to set quality and grade standards for their product, saying that such standards are "essential to the successful marketing of the products." Within ten days, the Agriculture Commission must hold a public hearing on the request and then decide whether setting quality standards would be necessary for successful marketing of the product. The bill would replace the language referring to the setting of standards as being "essential to the successful marketing of the products," substituting instead language referring to whether or not setting standards would "enhance" the successful marketing of a product. The bill would provide two ways of initiating this process: by written request from someone representing a group of

producers, or directly by the director of the MDA. A public hearing would still have to be held, and within 30 days after the hearing the director would have to make his or her decision as to whether the setting of standards would enhance the successful marketing of the product (whether this referred to a food or agricultural commodity or to a related business or service).

Under the present law, if the commission agrees that setting such standards is essential to the successful marketing of the product, and proceeds to set standards, any products meeting these standards are then entitled to use a "Michigan seal of quality" emblem. The bill would give decision-making power to the director of the MDA, who then also could (after adopting standards) enter into agreements with producers which approved (and established conditions for) the use of the Michigan premium seal or designation.

Implementing the program. Presently, the Agriculture Commission is responsible for a number of activities, including:

- establishing, designing, and adopting an emblem;
- designating and authorizing products on which it can be used;
- promulgating quality and grade standards and promulgating rules for inspecting products bearing the seal;
- entering into agreements for grading products bearing the seal; and
- enforcing the act and promulgating any necessary orders, rules, or regulations.

The bill would, with minor changes, transfer these responsibilities to the director of the MDA. For example, the director would be required to design and adopt an emblem, to designate the products on which it could be used, and adopt standards. (Note: the bill would define standards to exclude federal standards and to include standards of premium quality applicable not, only to products, but also to the handling of products and to quality control procedures and programs). The director also would be required to promulgate rules and to do a number of things in order to protect the integrity of the Michigan premium seal and the program, including:

- registering and protecting the seal and the term "Michigan premium program;"
- investigating complaints and carrying out any other investigations and inspections necessary to implement the bill;
- cooperating with other governmental agencies and entering into other agreements to investigate, inspect, grade, test, or sample products; and
- setting conditions for the use, suspension, or revocation of the Michigan premium seal.

The director also would be allowed to appoint advisory committees and to enter into contracts for services (including market research, advertising, program

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development, and publication, grading, or inspection services).

**Grading products.** As in present law, if grading of a product were required, the grading would have to be supervised by competently trained inspectors (either approved by the MDA or from the federal Department of Agriculture).

**Inspections.** The bill would retain (with minor changes) existing provisions for access by the director of the MDA to inspect products bearing a seal. The director (or inspectors employed by the director) would have free access ("at reasonable hours") to inspect any place ("structure, or conveyance"), and could open any container, with "seal of quality" products. After paying the market price, the inspector could sample the product and issue a certificate (or report) of inspection giving the time and place of the inspection and the condition and quality of the product. In addition, inspectors would have free access to all records regarding compliance or non-compliance with the standards.

The bill would strike existing language saying that inspection certificates (and all federal certificates relative to the condition of quality of the products) is prima facie evidence in all courts of the facts stated on the certificate.

**Conditions of participation.** As at present, a person authorized to use the Michigan premium seal could decide voluntarily whether or not to use the seal, but compliance with rules and regulations adopted or promulgated under the bill would be mandatory once someone decided to participate in the program. The bill also would specifically prohibit the use of the Michigan premium seal without prior written approval.

**Penalties.** Under present law, anyone who sells a product bearing the Michigan seal of quality which does not, in fact, meet the required quality standards, is guilty of a misdemeanor punishable by a fine of up to \$25 and up to 90 days in jail. The director of the MDA also may seize and dispose of any products bearing the seal but not meeting the required standards promulgated by the commission.

The bill would retain the misdemeanor provisions (with some changes), and would continue to allow the director to seize (or embargo) products represented with the seal but failing to conform to the rules and standards promulgated under the bill.

The bill would retain the misdemeanor penalty for producers who didn't meet the standards they had agreed to, but would strike the possibility of a jail term and instead institute mandatory minimum and maximum fines (\$100 minimum, \$1,000 maximum). Anyone who failed to comply with the suspension or revocation of their use of the Michigan premium seal also would be guilty of a misdemeanor and subject to the same maximum and minimum fine, as well as responsible for the costs of investigation or prosecution.

The bill also would specifically prohibit the sale of products identified with the Michigan premium seal if the product didn't meet the standards or was not approved for the Michigan premium program, and would specifically require compliance when the director ordered someone to stop using the Michigan premium seal. Alleged violators could enter into a consent agreement for a civil fine of not less than \$100 nor more than \$500 instead of further administrative action; otherwise the director would be

required to hold a hearing in accordance with the Administrative Procedures Act.

**Interstate commerce.** The bill, like present law, would specify that the program could not be used as a barrier to interstate commerce nor to substitute for mandatory federal grades and standards.

**Repeals.** The bill would repeal three sections of the existing act that:

- allows the Agriculture Commission to adopt and amend fees for services rendered under the act (including labels bearing the seal of quality, grading and supervision of grading products);
- require the commission to establish "commodity commissions" (which are to "disseminate information relative to the purposes of this act" and to report to the Agriculture Commission about the functioning of the act); and
- allows the director of the MDA to cooperate with other state or federal agencies and with non-governmental organizations ("in market and food investigations, grading, packing, handling, storing and merchandising of products").

MCL 289.631 et al.

## **FISCAL IMPLICATIONS:**

According to the Department of Agriculture, money for the program has already been allocated in this year's budget, so there are no new fiscal implications for the state. (11-17-89)

## **ARGUMENTS:**

### **For:**

Reportedly, over 80 percent of Michigan consumers believe that Michigan products are superior to out-of-state products, and over 70 percent would prefer to buy Michigan products rather than products imported into the state. Nevertheless nearly one-half of Michigan consumers also don't know how to identify Michigan products, making it extremely difficult for those who wish to buy Michigan products to do so with any consistency.

Although the Michigan seal of quality program was designed (according to MDA literature) both to promote even higher standards of quality among Michigan commodity and industry groups and to stimulate sales of Michigan food and agriculture products and services, the program never "took off." The bill, by implementing a high-profile quality assurance program, would financially benefit the food and agricultural industry (including processing companies, retailers, and restaurants), as well as improve the standards of quality for those participating in the program, thereby benefiting consumers. In a similar program in Maine, for example, the wild blueberry industry was able to increase the price of wild blueberries from 49 cents a pint to an astounding \$3.25 a pint. When the Maine wild blueberry industry began participating in the Maine Quality Program, berries were selling for 49 cents a pint. Within eighteen months after setting standards under the program, the price for wild blueberries had gone up to \$2.69 a pint, and this year the season opened at \$1.99 a pint and closed at \$3.25 a pint.

### **Against:**

While the purpose of the bill may be desirable, the rules process will make it virtually unworkable. The possibility exists that hundreds of food and agricultural products (not

to mention related businesses and services) conceivably could apply for the Michigan premium program. If each of these products had to go through the rules promulgation process to set standards, the Joint Committee on Administrative Rules could spend all of its time just on Michigan premium program rules.

**Response:** It may be possible, by amending the Administrative Procedures Act, to retain the desirable parts of the rules promulgation process without requiring the lengthy process for rules such as, for example, the designation of temperature at which a certain kind of potato must be stored. Reportedly, other legislation may be amended to address this problem.

**POSITIONS:**

The Department of Agriculture supports the bill. (10-11-89)

The Michigan Farm Bureau supports the concept of the bill, but has concerns about the administrative rules provisions. (10-11-89)