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SFA

BILL ANALYSIS

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Senate Bill 1025 (Substitute S-1)
Sponsor: Senator Joel D. Gougeon
Committee: Farming, Agribusiness, and Food Systems

Date Completed: 5-13-98

CONTENT

The bill would create the “Michigan Food Processing Act” to provide that a fruit, vegetable, dairy product, and grain processing operation could not be found to be a public or private nuisance if it conformed to “generally accepted fruit, vegetable, dairy product, and grain processing practices” or met other specified conditions. The bill also would provide for the Department of Agriculture to investigate all nuisance complaints; permit the Agriculture Director to order a complainant who brought more than three unverified complaints within three years against the same operation to pay the costs for investigating a subsequent complaint; and, permit a defendant processing plant that prevailed in a nuisance action to recover from the plaintiff court costs and attorney fees. In addition, the bill specifies that it would not affect the application of State and Federal statutes, including but not limited to the County Zoning Act, the Township Zoning Act, and the City and Village Zoning Act.

Processing Operations

A processing operation (the operation and management of a business engaged in processing) could not be found to be a public or private nuisance if the operation conformed to generally accepted fruit, vegetable, dairy product, and grain processing practices as determined by the Michigan Agriculture Commission. The Commission annually would have to review and revise, as determined necessary, the generally accepted fruit, vegetable, dairy product, and grain processing practices.

A processing operation that conformed with this provision could not be found to be a public or private nuisance as a result of any of the following: a change in ownership or size; temporary cessation or interruption of processing; adoption of new technology; or a change in the type of fruit, vegetable, dairy, or grain product being processed.

In addition, a processing operation could not be found to be a public or private nuisance if the operation existed before a change in the use or occupancy of land within one mile of the boundaries of the land upon which the processing operation was located and if, before that change in use or occupancy of land, the processing operation would not have been found to be a nuisance.

(“Generally accepted fruit, vegetable, dairy product, and grain processing practices” would mean those practices as defined by the Agriculture Commission. The Commission would have to give due consideration to available Agriculture Department information and written recommendations from the Michigan State University College of Agriculture and Natural Resources Extension and the Agricultural Experiment Station in cooperation with the U.S. Department of Agriculture, the State Department of Environmental Quality, and other professional and industry organizations.

“Processing” would mean the commercial processing or handling of fruit, vegetable, dairy, and grain products for human consumption including, but not limited to, the following: the generation of noise, odors, waste water, dust, fumes, and other associated conditions; the operation of machinery and equipment necessary for a processing operation including, but not limited to, irrigation and drainage systems and pumps and the movement of vehicles, machinery, equipment, and fruit and vegetable products, dairy products, and grain products and associated inputs necessary for fruit and vegetable products, dairy products, and grain operations on the roadway as authorized by the Michigan Vehicle Code; the management, storage, transport, utilization, and application of fruit, vegetable, dairy products, and grain processing by-products; the conversion from one processing operation activity to another processing operation activity; or, the employment and use of labor engaged in a processing operation. “Dairy product” would mean products related to the dairy industry including, but not limited to, fluid milk, egg nog, cheese, cottage cheese, yogurt, sour cream, whipped cream, butter, infant formula, whey and whey products, condensed milk, nonfat dry milk powder, ice cream, sherbet, and water ices. “Grain” would mean wheat, rye, barley, oats, and their by-products. “Fruit and vegetable product” would mean those plant items used by human beings for human consumption including, but not limited to, field crops, root crops, berries, herbs, fruits, vegetables, flowers, seeds, grasses, tree products, mushrooms, and other similar products, or any other fruit and vegetable product processed for human consumption as determined by the Agriculture Commission.)

Investigating Complaints

The Agriculture Commission would have to request the Director of the Department of Agriculture or his or her designee to investigate all nuisance complaints under the bill involving a processing operation. The Commission and Director could enter into a memorandum of understanding with the Department of Environmental Quality. The investigation and resolution of nuisance complaints would have to be conducted pursuant to this memorandum.

If the Director of the Agriculture Department, or his or her designee, found upon investigation that the person responsible for the processing operation was using generally accepted fruit, vegetable, dairy product, and grain processing practices, the Director or designee would have to give written notice of this finding to that person and the complainant. If the Director or designee identified the source or potential sources of the problem caused by the use of other than generally accepted fruit, vegetable, dairy product, and grain processing practices, the Director or designee would have to advise the person responsible for the processing operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted fruit, vegetable, dairy product, and grain processing practices. The Director or designee would have to determine if those changes were implemented and would have to give the responsible person and the complainant written notice of this determination.

A complainant who brought more than three unverified nuisance complaints against the same processing operation within three years could be ordered by the Director to pay the Agriculture Department the full costs of investigating any fourth or subsequent unverified nuisance complaint against the same processing operation. (“Unverified nuisance complaint” would mean a nuisance complaint in which the Agriculture Director or the Director’s designee determined that the processing operation was using generally accepted fruit, vegetable, dairy product, and grain processing practices.)

Nuisance Action Costs

In any nuisance action in which a processing operation was alleged to be a nuisance, if the defendant operation prevailed, the operation could recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the operation in connection with the defense of the action, together with reasonable and actual attorney fees.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate fiscal impact, depending upon the agreed-upon role of the Department of Agriculture and the number of nuisance complaints against food processors.

The Department of Environmental Quality (DEQ) is the lead agency on State environmental issues. The Department of Agriculture and the DEQ have a memorandum of understanding on how agricultural nuisance complaints are handled with food production activities. This bill would expand agricultural nuisance protection to food processors, but also specifies that it would not affect the application of State statutes. To clarify the amount of additional activity required by the Department of Agriculture, compared with current DEQ regulatory actions, a similar memorandum of understanding would need to be developed pertaining to food processors.

Fiscal Analyst: G. Cutler

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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.