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CONTROLLED ATMOSPHERE STORAGE STANDARDS

House Bill 5143 as passed by the House Second Analysis (2-25-00)

Sponsor: Rep. Ron Jelinek
**Committee: Agriculture and Resource
Management**

THE APPARENT PROBLEM:

In order for Michigan fruits and vegetables to be marketed successfully domestically and internationally, certain standards for storage of these agricultural products in “controlled atmosphere storage” are needed in law. According to the Department of Agriculture, although the act is designed to be used for any and all fruits or vegetables, currently apples are the only commodity that is licensed and advertised as using controlled atmosphere storage. At the request of the department, legislation has been introduced to place certain standards for controlled atmosphere storage for apples into statute.

THE CONTENT OF THE BILL:

The bill would amend Public Act 228 of 1959, which provides for promotion of the development of the Michigan fruit and vegetable industry, to define certain terms, revise some of the standards and procedures for licensing of controlled atmosphere (CA) storage, and add civil penalties (in addition to the existing criminal penalties) for violating the act’s requirements.

Definitions. The act currently defines “atmosphere storage” and “modified atmosphere storage” (“or similar terms referring to a method of storage of fruits and vegetables”) to mean “the storage of fruits or vegetables that have been kept in an approved sealed storage room or in an approved sealed storage building, or in a sealed storage space within the room or building, under controlled conditions of time in days, oxygen content, carbon dioxide content, and temperature as established by regulation of the director of agriculture.” The act also allows the term “controlled atmosphere” (which the act does not define) to be referred to by the initials “CA” (“or similar terms or abbreviations”).

The bill would keep the current definition, substituting “controlled atmosphere storage” for “atmosphere storage” (and deleting reference to “modified atmosphere storage” and to “similar terms referring to a method of storage of fruits and vegetables”), and would add a single definition for the terms “sealed storage room,” “sealed storage space,” and “sealed storage building.” Each of these terms would mean a sealed storage space in which a controlled atmosphere was maintained, inferred, advertised, or represented as having a controlled atmosphere.

Misrepresentation of storage conditions. Currently, the act prohibits persons, firms, associations, or corporations from representing fruits or vegetables for sale as having been “exposed to controlled atmosphere or modified atmosphere” unless the fruits or vegetables have been stored in compliance with the act’s provisions and rules.

The bill would prohibit “a person or any other legal entity” from doing this. More specifically, the bill would prohibit selling, labeling, describing, advertising, offering, exposing, exchanging, or transporting fruits or vegetables for sale – when they were represented as having been held under controlled atmosphere storage conditions as specified in the act – unless the fruits or vegetables had been stored in compliance with the provisions of the act and rules promulgated under the act.

Licenses. The act currently prohibits a person, firm, association or corporation from operating “any sealed type storage” for fruits or vegetables “where controlled atmosphere is used” without first obtaining a license from the director of the Department of Agriculture. Application fees are \$25 per room, and no license can be issued under the act unless the director (or his

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authorized agent) has inspected the storage facilities and found them to be in compliance with the act and regulations promulgated under the act. Each license expires on November 1 of the year after issue and must be renewed annually unless revoked or suspended.

Under the bill, “a person or other legal entity” would be prohibited from using controlled atmosphere storage without first obtaining a license for each sealed storage room. A person or legal entity desiring to maintain a licensed sealed storage room would be required to notify the director of the Department of Agriculture within 5 days after the date of sealing. The application fee would be increased to \$35 a year, the expiration date would be changed to November 15, and the bill would allow (instead of require) licenses to be renewed annually unless they had been revoked or suspended.

Inspection and sealing requirements. In order to qualify for controlled atmosphere storage, the room would have to be sealed on or before November 15 of the storage year. (November 15 would be the new expiration date for licenses under the act.)

A department representative would have to place an official seal on the door (of a controlled atmosphere storage room) at the time of inspection (presumably, the inspection required before a license was issued). An operator would be prohibited from breaking the seal or entering the storage room during the days required for the storage period, except when the atmospheric conditions had been interrupted. If interruptions in the atmospheric conditions occurred, the operator would be required to notify the department within 48 hours. Storage rooms whose atmospheric conditions were interrupted could be resealed by an authorized representative of the department.

Facility requirements. The bill would specify that a sealed storage room, space, or building that was used as a controlled atmosphere storage facility for fruits or vegetables would have to be constructed of materials that would allow for the establishment and maintenance of the required levels of carbon dioxide, oxygen, and temperature that would be acceptable to the director of the Department of Agriculture. The room, space or building would be required to have a properly installed and maintained Fahrenheit thermometer, and an approved gas analyzer for the measurement of carbon dioxide and oxygen gases would have to be readily accessible to all sealed rooms or units.

Oxygen levels for apple storage. Within 14 days after a storage room for apples were sealed, the oxygen within the room would have to be at 5 percent or lower.

During a storage period (which could range from 45 days for certain kinds of apples to 60 days for others), however, the bill would allow the oxygen level to exceed 5 percent for up to 10 days (240 hours).

Minimum storage periods for apples. Generally, apples would have to be stored in a continuously sealed storage room (with not more than 5 percent oxygen) for at least 60 days. However, if the “atmospheric conditions” (not defined in the bill, but presumably referring to oxygen levels) were interrupted, the length of storage for “all fruit” (apparently not just apples) would have to be increased to 70 days.

However, an exception would be made for Gala and Jonagold apple varieties. These apple varieties could be removed from storage after a minimum of 45 days, though if the atmospheric conditions had been interrupted, the storage period would have to be increased to a minimum of 55 days.

Temperature requirements for apples. The air temperature of a sealed storage room could not exceed 35 degrees Fahrenheit for Jonathan, Rome Beauty, Delicious (all), and Stayman varieties of apples, and could not exceed 41 degrees for all other varieties for the interruption period.

Records. Currently, the act requires that a record, on a form approved by the director of the Department of Agriculture, be kept at “a convenient location adjacent to the storage room, storage space or storage building” from the day that the room, space, or building is sealed to the day the room, space, or building is opened. The record is subject to review by the director or his or her authorized agents “at any time for a period of at least [one] year from the date of sealing.”

The bill would require anyone storing fruits or vegetables in a sealed storage room to keep a daily record (at the currently specified “convenient” location and from the day of sealing to the day of opening). The daily records would have to indicate the atmospheric conditions in each sealed storage space from the date of sealing until the date the space was opened, the date and time of the recording, the temperature in degrees Fahrenheit, and the percentages of carbon dioxide and of oxygen. The daily records would be (as currently) subject to review by the director “at any time for a period of at least [one] year from the date of sealing. The bill also would require that the daily records be made available for inspection at the request of the director.

Rules promulgation. Instead of requiring the director of the Department of Agriculture to “make reasonable rules and regulations in accordance with the provisions of Public Act 88 of 1943,” the bill would allow the director or his or her designated agents to promulgate rules under the Administrative Procedures Act.

License actions. Currently, the director of the Department of Agriculture can “withhold and refuse to issue” a license for a controlled atmosphere storage room, space, or building that is not operated (or is not “prepared to be operated”) in accordance with the act’s requirements. The director also can bring an action to revoke any license issued under the act in the circuit court of the county where the license was issued.

In addition to any other penalties or sanctions provided by law, the bill would allow the director to deny, suspend, or revoke a license after notice and opportunity for a hearing under the Administrative Procedures Act.

Civil penalties. The bill would add new provisions allowing the director of the Department of Agriculture to issue a warning or impose an administrative fine of up to \$1,000 for each violation, and to bring an action to enjoin the violation or threatened violation in the county in which the violation had occurred or was about to occur.

After notice and opportunity for a hearing, if the director found that a person had violated any provision of the act, he or she could impose an administrative fine. If a person failed to pay the fine, the director would have to inform the attorney general and the attorney general would be required to bring an action in the appropriate court to attempt to recover the fine. If the director found that a person or firm had violated the act despite the exercise of due care, he or she could issue a warning instead of a fine.

Any civil penalties or recovery of any economic benefits associated with a violation of the act would have to be paid to the state treasury and credited to the department for enforcement of the act.

Criminal penalties. Currently, violations of the act are misdemeanors. The bill would specify that violations of the act’s provisions would be misdemeanors punishable by a fine of at least \$200 but not more than \$5,000 or by imprisonment for up to 90 days.

Repealers. The bill would repeal the section (Section 7) of the act that provides for registration numbers and permits for controlled atmosphere storage units and the section (Section 8) that sets forth labeling requirements.

MCL 286.371 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in an increase in state revenue and no costs to the state. In fiscal year 1998-99, the revenue generated by license fees under the act came to \$6,150. The proposed \$10 increase in the license fee would generate an estimated additional \$2,460 in state revenue earmarked for administration of the act. The bill also could result in additional state revenue associated with the proposed authorization for the director of the department of Agriculture to impose administrative fines for violations under the act. (2-15-00)

ARGUMENTS:

For:

The bill would provide a level playing field for the domestic and international marketing of Michigan fruit, particularly Michigan apples. Reportedly, other states and countries have laws specifying the conditions under which controlled atmospheric storage must be done, and have certain shipping certification requirements that Michigan producers cannot meet under current law.

Response:

The bill has a couple of technical discrepancies that might be cleared up. For example, the bill appears to contain a redundant requirement in one of the proposed new sections (Section 4a) that operators of licensed sealed storage rooms make their daily records for the sealed storage rooms available for inspection to the director of the Department of Agriculture, upon request, when this requirement already appears (in a slightly different form) in Section 3 of the existing act.

In addition, new requirements for the length of storage in proposed Section 4a appear, first of all, apply only to apples, and not to vegetables, though the act reportedly is intended to apply to both fruit and vegetables. Secondly, however, although “all fruit” is mentioned in a provision that would require longer storage when “atmospheric conditions” (oxygen levels

and perhaps temperature) had been interrupted, the provisions regarding oxygen and temperature requirements appear to apply explicitly just to apples, and not in fact to “all fruit.”

Response:

According to the Department of Agriculture, although the act is designed to apply to all fruit and vegetables, controlled storage in fact currently is used only for apples. So the temperature and oxygen level requirements at this point need apply only specifically to apples.

POSITIONS:

The Department of Agriculture supports the bill. (2-15-00)

The Michigan Apple Shippers Association supports the bill. (2-15-00)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.