



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 439 (Substitute S-1 as passed by the Senate)
Senate Bill 440 (as passed by the Senate)
Sponsor: Senator Goeff Hansen
Committee: Regulatory Reform

Date Completed: 2-12-18

RATIONALE

Over the past decade, the Michigan wine and grape industry has turned into a multibillion-dollar business. In 1985, the Grape and Wine Industry Council was created to provide the Michigan grape and wine industry with support through research, education, information regarding the sale and treatment of wine grapes and wines, surveys, analyses, promotions, and financial aid. The Council is funded through nonretail liquor license fees. Although breweries, distilleries, and cideries are among those that pay fees, and also belong to a growing industry in Michigan, they have no representation on the Council. It has been suggested that the Council's name, membership, and activities be changed to accommodate the State's craft beverage industry.

CONTENT

Senate Bill 439 (S-1) would amend Section 303 of the Michigan Liquor Control Code to codify and expand provisions of Executive Reorganization Order 2014-2 regarding the Grape and Wine Industry Council. Specifically, the bill would do the following:

- **Rename the Grape and Wine Industry Council as the Michigan Craft Beverage Council.**
- **Decrease the membership of the Council and revise the term limits of its members.**
- **Require the Council to provide for research on hops, barley, beer, and spirits.**
- **Require the Council to provide the brewing and distilling industries with information relative to proper methods of handling and selling hops, barley, beer, and spirits.**
- **Require the Council to provide for the promotion of the sale of hops, barley, beer, and spirits for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.**
- **Require the Council to develop and administer financial aid programs to hops and barley growers, to encourage increased planting in Michigan of desirable hops and barley varieties.**
- **Require the Council to annually review and record recommendations that would enhance the marketing and promotion of Michigan fruits used in winemaking, wine, hops, barley, beer, hard cider, and spirits.**
- **Require the Council to spend at least 50% of its annual budget on certain research and developing and administering certain financial aid programs.**
- **Prohibit the Council from engaging in lobbying.**

The bill states that Section 303 would not prevent the Council from establishing a commodity committee under the Agriculture Commodities Marketing Act.

Senate Bill 440 would amend the Michigan Liquor Control Code to require money deposited by the Michigan Liquor Control Commission with the State Treasurer to be credited to the Michigan Craft Beverage Council, in addition to the Revolving Fund and the General Fund.

Each bill would take effect 90 days after it was enacted. The bills are tie-barred.

Senate Bill 439 (S-1)

Council Name & Composition

Executive Reorganization Order 2014-2 abolished the former Grape and Wine Industry Council and created a new Council with the same title. The bill would rename the Council as the Michigan Craft Beverage Council and amend language in the Code to reflect that change.

Under the Executive Order, the Council consists of the following members:

- Three wine makers, appointed by the Governor.
- A wine grape grower, appointed by the Governor.
- The chief executive officer of the Michigan Economic Development Corporation, or his or her designee.
- The Director of the Michigan Department of Agriculture and Rural Development (MDARD), or his or her designee, who serves as chairperson of the Council.
- A staff member of Michigan State University appointed by, and serving at the pleasure of, the dean of the College of Agriculture and Natural Resources.
- The chairperson of the Michigan Liquor Control Commission (MLCC), or his or her designee, as an ex officio member.
- A person who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines, or a person who operates a restaurant that holds a class C license and serves Michigan wines, appointed by the Governor.
- A beer and wine wholesaler who markets Michigan wine, appointed by the Governor.
- Two members of the public, appointed by the Governor.

Under the bill, the MDARD Director or his or her designee would be a nonvoting member of the Council. In addition, the Council would consist of the following voting members, whose principal place of business was located in Michigan, and who would be appointed by the Governor:

- An individual who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines or beer, or his or her designee.
- An individual who operates a restaurant that holds a class C license and serves Michigan wines, beer, or spirits, or his or her designee.
- Two wine makers, or the designees of those wine makers.
- A wine maker that manufactures wine made from fruit other than grapes, or a designee.
- A large brewer, or a designee.
- Either a micro brewer or an individual who holds a brewpub license, or the designee of the micro brewer or the individual.
- A small distiller, or a designee.
- A distiller that manufactures more than 60,000 gallons of spirits per year or the distiller's designee, or an authorized distribution agent.

The bill would define "large brewer" as a brewer that produces in total at least 60,000, but not more than 1.0 million barrels of beer per year. In determining the barrel threshold, all brands and labels of a brewer, whether brewed in or outside the State, would have to be combined and all facilities for the production of beer that were owned or controlled by the same person would be treated as a single facility.

(A class C license authorizes the retail sale of beer, wine, mixed spirit drink, and spirits for on-premises consumption. A specially designated merchant license authorizes the retail sale of beer or wine, or both, for off-premises consumption. An authorized distribution agent is a person authorized by the MLCC to store spirits owned by a supplier or the MLCC, deliver spirits sold by the Commission to retail licenses, or perform functions needed for those activities.)

All of the following would apply to a designee of a member appointed to the Council:

- The designee's principal place of business would have to be located in Michigan.
- The designee could not be a lobbyist or a lobbyist agent, as those terms are defined in the lobbyist registration law.
- During the member's term, he or she could designate only one individual as a designee.

Council Term Limits

Under Executive Order 2014-2, four members were to serve from May 10, 2014, until February 1, 2016, and three members served from May 10, 2014, until February 1, 2017.

All terms beginning after January 1, 2016, are for three years. A member may not serve for more than two consecutive terms, but must continue to serve until a qualified successor has been appointed. A vacancy on the board must be filled in the same manner as the original appointment.

Under the bill, voting members of the Council appointed by the Governor would serve for terms of three years or until a successor was appointed, whichever was later, except that of the voting members first appointed, three would serve for one year, three would serve for two years, and three would serve for three years. The term limits and manner in which vacancies would have to be filled would remain the same.

Council Requirements

Under the Executive Order, the Council is given certain responsibilities as outlined in the Code. The Council is required to do the following:

- Provide for research on wine grapes and wines, including methods of planting, growing, controlling insects and diseases, charting microclimates and locations for growing desirable varieties of wine grapes, marketing, processing, distribution, advertising, sales production, and product development.
- Provide the wine industry, including growers, wineries, distributors, and retailers, with information relative to proper methods of handling and selling wine grapes and wines.
- Provide for market surveys and analyses for the purposes of expanding existing markets and creating new and larger markets for wine grapes and wines.
- Provide for the promotion of the sale of Michigan wine grapes and wines for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.
- Develop and administer financial aid programs to wine grape growers to encourage the increased planting in Michigan of desirable grape varieties in microclimates determined to provide the best conditions for producing quality wines.

The bill would replace all references to "wine grapes" with "fruits used in winemaking".

In addition to the currently prescribed requirements, the bill would require the Council to do the following:

- Provide for research on hops, barley, beer, and spirits, including methods of planting, growing, controlling insects and diseases, marketing, processing, distribution, advertising, sales production, and product development.
- Provide the brewing and distilling industries, including growers, brewers, distillers, distributors, and retailers, with information relative to proper methods of handling and selling hops, barley, beer, and spirits.
- Provide for market surveys and analyses for purposes of expanding existing markets and creating new and larger markets for hops, barley, beer and spirits (in addition to fruits used in winemaking and wines).

- Provide for the promotion of the sale of hops, barley, beer, and spirits (in addition to Michigan fruits used in winemaking and wines) for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.
- Develop and administer financial aid programs to hops and barley growers to encourage increased planting in Michigan of desirable hops and barley varieties, respectively, in microclimates determined to provide the best conditions for producing quality beer.
- Prepare and approve an annual budget.
- Apply for and accept grants or contributions from the Federal government or any of its agencies, the State, or other public or private agencies to be used for any purposes of Section 303 and to do any and all things within the Council's express or implied powers necessary or desirable to secure that financial or other aid or cooperation in the carrying out of any of the purposes of the section.
- Annually review and record recommendations that would enhance the marketing and promotion of Michigan fruits used in winemaking, wine, hops, barley, beer, hard cider, and spirits, based on the information provided by the Michigan Economic Development Corporation (MEDC), and make the recommendations available upon request.
- Annually review and record recommendations concerning changes to the strategies adopted by the Council for marketing and promotion of Michigan fruits used in winemaking, wine, hops, barley, beer, hard cider, and spirits, based on the information provided by the MEDC, and make the recommendation available upon request.
- Invite the chief executive officer of the MEDC or his or her designee to attend at least one Council meeting annually to inform the Council about partnership activities and opportunities related to the marketing and promotion of Michigan fruits used in winemaking, wine, hops, barley, beer, hard cider, and spirits.
- Invite the Director of the Department of Licensing and Regulatory Affairs to attend at least one meeting annually to inform the Council about funding activities affecting the Council.
- Establish educational partnerships to benefit the beer, wine, and spirits industries.

Council Expenses

The Code permits the Council to employ personnel and incur expenses that are necessary to carry out the purposes of the Council under the Code. The expenses must be paid from fees credited to the Council from license and license renewal fees, other than retail and wholesale vendor licenses and renewals.

The bill would require the Council to spend at least 50% of its annual budget on providing for research on fruits used in winemaking and wines; providing for research on hops, barley, beer, and spirits; and developing and administering financial aid programs to growers of fruits used in winemaking and hops and barley growers to encourage increased planting in the State.

Lobbying

Under the bill, the Council could not engage in lobbying, as that term is defined under the lobbyist registration law. However, the bill would not prohibit the Council or a Council member or employee from providing technical information, as that term is defined in the lobbyist registration law, to the Legislature or MDARD, regardless of whether the Council, member, or employee was appearing before an officially convened legislative committee or Department hearing panel, if the technical information were related to the Council's duties under Section 303.

(The lobbyist registration law defines "lobbying" as communicating directly with an official of the State executive or legislative branch for the purpose of influencing legislative or administrative action. Lobbying does not include the provision of technical information by a person other than a lobbyist agent or an employee of a lobbyist agent when appearing before an officially convened legislative committee or executive department hearing panel. "Technical information" means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related.)

Senate Bill 440

The Michigan Liquor Control Code provides that all money deposited by the Michigan Liquor Control Commission with the State Treasurer must be credited to either of the following:

- The revolving fund for replenishing, maintaining, warehousing, and distributing liquor stock throughout the State and for the administration of the Code.
- The General Fund to be available for the purposes for which the General Fund is available.

Under the bill, money deposited by the Commission also would have to be credited to the Michigan Craft Beverage Council.

(The Code authorizes the Commission to maintain a revolving fund, which is called the Liquor Purchase Revolving Fund.)

MCL 436.1303 (S.B. 439)
436.1221 & 436.1543 (S.B. 440)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Michigan Grape and Wine Industry Council provides a forum for statewide collaboration in research, promotion, and professional development to meet the changing needs of a growing industry, and to stimulate economic development through value-added sustainable agriculture. The Council's "2017 Michigan Wine Economic Impact Study" found that the Michigan wine industry accounted for more than \$5.4 billion in total economic impact, and created nearly 28,000 jobs around the State. (The study defines "wine industry" as winegrape growing, wine and cider production, and the wholesaling, retailing, and direct to consumer sales of wine and cider in the State.)

While wine producers and grape growers represent an important component of Michigan's agricultural industry, the craft beer and distillery industries also play a significant role and help support the economy at the State and local levels. According to the Brewers Association, the State's craft beer and breweries industry had an economic impact of almost \$2.1 billion in 2016, which ranked ninth nationally. The American Craft Spirits Association reports that Michigan's active craft distillers increased by 47.2% from August 2016 to August 2017, the second-highest growth rate in the country.

The Grape and Wine Industry Council, which has been a tremendous asset to the grape and wine industry over the years, receives some of its funding from renewal fees from brewers, small distillers, and brewpubs, none of which currently receives support from the Council. Brewers and distillers depend on productive harvests to produce quality products, and they should have a seat on the Council and receive the benefits of membership. The bill would provide fair and equal representation for the brewing and distilling industries whose members pay license fees, but are not represented on the Council. In addition, other fruit and agricultural industries that contribute to the creation of alcoholic beverages would be fairly represented. The bill would extend to those industries the support that is currently provided to the wine and grape industry, supplying the necessary tools to enhance Michigan's brewing and distilling industries. The craft beverage industry is a pivotal part of Michigan's economy and the bill would ensure that the Council had the ability to help lead the industry's growth in the future.

Additionally, the bill would help ensure financial accountability in the Council's work by requiring

half of the Council's budget to be designated both for grants for research on growing and planting, and for financial aid programs for growing desirable varieties of fruits, barley, and hops.

Opposing Argument

Regarding the requirement that half of the Council's budget be dedicated to research and financial aid programs, the Council has always had the discretion to decide how to spend its money. One of the rationales for giving a seat on the Council to individuals and entities who pay into it is that they should have a voice in deciding how the money is used.

Additionally, Michigan law requires that any money left in the Liquor Purchase Revolving Fund at the end of a fiscal year be deposited into the State General Fund. Allowing the Council to receive funding from the Revolving Fund would mean less money deposited into the General Fund.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 439 (S-1)

The bill would have a minimal fiscal impact on the Department of Agriculture and Rural Development, the Department in which appropriations for the Council are provided. Currently, the administration and activities of the Council are funded only by annual restricted revenue from nonretail liquor fees, obtained through the Michigan Liquor Control Commission. According to the most recent report of the Council, for FY 2015-16, \$772,457 in total restricted revenue was spent on the Council. That amount includes \$468,095 designated for administrative expenses to assist in achieving the objectives of the Council; \$116,510 for research and grower education; \$147,626 for promotion and consumer education; \$35,019 for industry support; and \$5,207 for Council expenses.

Without the identification of a new source of revenue or a greater amount of existing revenue, the bill would provide a revised Council with broader responsibilities, with a projected continuance of the current approximately \$750,000 in annual support. To potentially add to the Council's available budget, the bill would require the Council to apply for and accept grants and contributions from public or private entities. Regarding Council expenditures, the bill also would earmark at least 50% of its annual budget to research for fruits used for winemaking, research on hops, barley, beer and spirits, financial aid programs to growers of fruits used in winemaking, financial aid programs for hops growers, or financial aid programs for barley growers. The bill also would require the Council to prepare and approve an annual budget.

Senate Bill 440

The bill would have a neutral fiscal impact on the Michigan Liquor Control Commission within the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. Under the bill, the Liquor Purchase Revolving Fund (LPRF) could be used to support the activities of the Michigan Craft Beverage Council. The Council is currently supported by a statutory earmark of nonretail liquor license fees, which averages about \$700,000 to \$800,000 each year. Going forward, however, annual revenue available to the Council will be reduced by about \$170,000 as Public Act 434 of 2016 excluded wholesale license fees from supporting the Council. The bill would not change that earmark, but would allow the LPRF to be used to support the Council as well. The fiscal impact of the bill would be neutral as any additional financial support for the Council from the LPRF would require an appropriation from the Legislature.

The LPRF is the enterprise fund used by the Commission to buy and sell alcoholic spirits at

wholesale. The profits from those sales are credited to the State General Fund each year. In fiscal year 2015-16, the transfer to the State General Fund from the LPRF was about \$209.8 million.

Fiscal Analyst: Bruce Baker
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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.