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BILL



ANALYSIS

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Senate Bill 440 (as enacted)
House Bill 4667 (as enacted)
Sponsor: Senator Goeff Hansen (S.B. 440)
Representative Brandt Iden (H.B. 4667)
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

PUBLIC ACT 155 of 2018**PUBLIC ACT 154 of 2018**

Date Completed: 3-13-19

CONTENT

House Bill 4667 amended 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 does the following:

- Renames the Grape and Wine Industry Council as the Michigan Craft Beverage Council.
- Decreases the membership of the Council and revises the term limits of its members.
- Requires the Council to direct the Department of Agriculture and Rural Development (MDARD) to award grants for research into fruits used in winemaking and wines, hops, barley, beer, and spirits.
- Requires the Council to direct MDARD to award grants for certain projects, including those that provide information on the proper methods of handling and selling fruits used in winemaking and wines, hops, barley, beer, spirits, and mixed spirits; those that provide for the promotion of Michigan agricultural products used in the production of alcoholic beverages; and those that develop and administer financial aid programs to growers of fruits used in winemaking, and hops and barley growers.
- Requires the Council to apply for and accept grants and contributions from public and private entities.
- Allows the Council to accept money from any source for the purpose of carrying out the Council's responsibilities, and require the money to be forwarded to the State Treasurer for deposit.
- Requires the Council to prepare an annual budget.
- Prohibits the Council from engaging in lobbying.

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

Senate Bill 440 amended the Michigan Liquor Control Code to do the following:

- Create the "Michigan Craft Beverage Council Fund".
- Require the State Treasurer to direct investment of the Fund, and credit to it interest and earnings those investments.

-- Require that money in the former Grape and Wine Industry Council be transferred to the Michigan Craft Beverage Council Fund.

The bills took effect on October 1, 2018.

House Bill 4667

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. House Bill 4667 renamed the Council as the Michigan Craft Beverage Council and amended language in the Code to reflect that change.

Under the Executive Reorganization Order, the Council consisted of the following members:

- Three wine makers, appointed by the Governor.
- A wine grape grower, appointed by the Governor.
- The chief executive officer (CEO) of the Michigan Economic Development Corporation (MEDC), or his or her designee.
- The Director of the Michigan Department of Agriculture and Rural Development, or his or her designee, who served as chairperson of the Council.
- A staff member of Michigan State University appointed by, and who served 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 operated a retail food establishment that held a specially designated merchant license and sold Michigan wines, or a person who operated a restaurant that held a class C license and served Michigan wines, appointed by the Governor.
- A beer and wine wholesaler who marketed 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 is a nonvoting member of the Council. In addition, the Council consists of the following voting members, appointed by the Governor:

- A representative of retail food establishments that hold a specially designated merchant license and sell Michigan wines or beer.
- A representative of restaurants that hold a class C license and serve Michigan wines, beer, or spirits.
- Two representatives of wine makers.
- A representative of wine makers that primarily manufacture cider.
- A representative of large brewers.
- Either a representative of micro brewers or a representative of brewpub license holders.
- A representative of small distillers.
- A representative of distillers that manufacture more than 60,000 gallons of spirits per year.

The bill defines "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, must be combined and all facilities for the production of beer that are owned or controlled by the same person are treated as a single facility.

"Cider" means an alcoholic beverage made from the fermentation of juice from primarily apples or pears, or both, which contains at least one-half of 1% and not more than 8.5% of

alcohol by volume. Cider may be still or carbonated and may contain other fruits, spices, botanicals, or other flavors.

(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.)

The following apply to a member of the Council appointed by the Governor:

- The member's principal place of business must be located in Michigan.
- The member may not be a lobbyist or a lobbyist agent, as those terms are defined in the lobbyist registration law.

Council Term Limits

Under Executive Reorganization 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.

Formerly, all terms beginning after January 1, 2016, were for three years. A member could not serve for more than two consecutive terms, but had to continue serving until a qualified successor was appointed.

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

Council Requirements

Under the Executive Reorganization Order, the Council was given certain responsibilities as outlined in the Code. The Council was required to do all of 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, instead, requires the Council, subject to an appropriation, to direct MDARD to award grants; require the Council to apply for grants; and specifies other responsibilities of the Council, as described below.

First, subject to an appropriation, the Council must direct MDARD to award grants for the research into both of the following:

- Fruits used in winemaking and wines, including methods of planting, growing, controlling insects and diseases, charting microclimates and locations for growing desirable varieties of fruits used in winemaking, marketing, processing, distribution, advertising, sales production, and product development.
- Hops, barley, beer, and spirits, including methods of planting, growing, controlling insects and diseases, marketing, processing, distribution, advertising, sales production, and product development.

Also, subject to an appropriation, the Council must direct MDARD to award grants for projects that do one of more of the following:

- Provide the wine industry, including growers, wineries, distributors, and retailers, with information relative to proper methods of handling and selling fruits used in winemaking and wines.
- 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, spirits, and mixed spirits.
- Provide for market surveys and analyses for purposes of expanding existing markets and creating new and larger markets for Michigan agricultural products such as fruits, hops, and barley that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.
- Provide for the promotion of Michigan agricultural products such as fruits, hops, and barley that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks 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 growers of fruits used in winemaking to encourage the increased planting in Michigan of desirable fruit varieties in microclimates determined to provide the best conditions for producing quality wines.
- 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.
- Establish educational partnerships to benefit the beer, wine, cider, spirits, and mixed spirit drink industries.

Additionally, the Council must do the following:

- 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.
- Invite the CEO 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 agricultural products such as fruits, hops, and barley that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.
- Invite the LARA Director to attend at least one meeting annually to inform the Council about funding activities affecting the Council.
- Prepare and approve an annual budget.

The Department of Agriculture and Rural Development must administer the grants awarded.

Based on the information provided to the Council by the CEO of the MEDC and the LARA Director, the Council may do either or both of the following:

- Take actions that will enhance the marketing and promotion of Michigan agricultural products such as fruits, hops, and barley that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.
- Annually review and adopt strategies for marketing and promotion of Michigan agricultural products, such as fruits, hops, and barley that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

Council Expenses & Record-Keeping

The Code authorizes the Council to employ personnel and incur expenses that are necessary to carry out its responsibilities under the Code.

Previously, the expenses had to 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 deleted this requirement.

The Code also requires the Council to maintain accurate books and records, and requires all money received by the Council to be used to implement and enforce the Council's responsibilities. Under the bill, the Council also may accept money from any source for the purpose of carrying out its responsibilities. All money received by the Council must be forwarded to the State Treasurer for deposit into the Michigan Craft Beverage Council Fund (which Senate Bill 440 creates).

Lobbying

Under the bill, the Council may not engage in lobbying, as that term is defined under the lobbyist registration Act. However, the bill does 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 is appearing before an officially convened legislative committee or Department hearing panel, if the technical information is related to the Council's duties under Section 303.

(The lobbyist registration Act 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

Michigan Craft Beverage Fund

The bill creates the Michigan Craft Beverage Council Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer also must direct the investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of a fiscal year must remain in the Fund and may not lapse to the General Fund.

Money from the Michigan Craft Beverage Council Fund must be spent annually, upon appropriation, for the following:

- Not more than \$80,000 may be used by the Department of Agriculture and Rural Development to administer the Michigan Craft Beverage Council grants program.

- At least 50% of the money spent after the expenditure for administration of the grants program, must be used for grants researching fruits used in winemaking and wines, and hops, barley, beer, and spirits.
- For grants for certain projects relating to the growth of Michigan's craft beverage industry.
- For the Michigan Craft Beverage Council to carry out its responsibilities under the Code.

If the Council receives money from the Federal or State government, a Federal agency, or other public or private agencies, it may be spent for the purposes and subject to the conditions for which it was received.

Previously, under the Code, all liquor license and license renewal fees, other than retail and wholesale vendor fees, had to be credited to the Grape and Wine Industry Council. The bill refers to the Michigan Craft Beverage Council Fund, instead of the Grape and Wine Industry Council.

Additionally, the Code specified that money credited to the Grape and Wine Industry Council may not revert to the General Fund at the close of a fiscal year, but had to remain in the account to which it was credited to be used by the Michigan Craft Beverage Council. The bill deleted this provision. Instead, any money in the former Grape and Wine Industry Council account is transferred to the Michigan Craft Beverage Council Fund.

Liquor Purchase Revolving Fund

The Code allows the Michigan Liquor Control Commission to maintain a revolving fund (called the Liquor Purchase Revolving Fund). From time to time, money must be transferred from the revolving fund to the General Fund. The revolving fund must be used for replenishing, maintaining, warehousing, and distributing liquor stock through the State, and for administration of the Code.

Previously, the Code required all money deposited by the MLCC with the State Treasurer to be credited to the revolving fund for expenditures or transfers authorized by the Code or credited to the General Fund to be available for the purposes for which the General Fund is available. The bill, instead, requires all money deposited by the MLCC with the State Treasurer to be credited to the revolving fund for expenditures or transfers authorized by the Code.

MCL 436.1221 et al. (S.B. 440)
436.1303 (H.B. 4667)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 4667

The bill will have a minimal fiscal impact on the Michigan Department of Agriculture and Rural Development. The Michigan Craft Beverage Council is tasked with undertaking additional activities and responsibilities. The bill also requires that the Council approve an annual budget, and apply for grants and monetary contributions.

Current funding for the Council consists of restricted revenue from liquor license fees, excluding retail, renewal and wholesale vendor license fees. Appropriations to the Council total \$927,000 for FY 2017-18. This funding consists of \$877,900 from nonretail liquor fees, \$45,400 from private industry funding, and \$3,700 from the General Fund. The additional activities assigned to the Council are funded from current resources if additional funding are not acquired.

House Bill 440

The bill will have no fiscal impact on State or local government. The Michigan Craft Beverage Council currently receives approximately \$530,000 to \$630,000 per year from nonretail liquor license fees. The bill allows money from the Liquor Purchase Revolving Fund to be used to support the Council's activities, but creates no additional funding requirements or appropriations.

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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.