

## CREATE MICHIGAN EQUINE PROMOTION ACT AND MICHIGAN EQUINE COMMISSION

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**House Bill 5239 as introduced**  
**Sponsor: Rep. Hank Vaupel**  
**Committee: Agriculture**  
**Revised 1-24-20**

### SUMMARY:

House Bill 5239 would create a new act, the Michigan Equine Promotion Act, which would create an 11-member Michigan Equine Commission within the Department of Agriculture and Rural Development (MDARD). The bill states that the commission's purposes could include promoting Michigan's horse industry, providing educational materials about the horse industry, helping to develop beneficial horse industry practices, and promoting research related to the new act. The bill would take effect 90 days after its enactment.

#### Commission members and meetings

Members of the commission would be appointed by the governor from nominees submitted by Michigan equine organizations. Members could serve up to two three-year terms. The commission would include the following members:

- One member from each of the following horse industry segments:
  - Horse show and competition.
  - Horse racing.
  - Trail riding.
  - Equine education.
- One licensed equine veterinarian.
- One member representing the horse feed industry or a horse-related business not represented above.
- Five members representing different breeds or segments of the horse industry.

The director of MDARD could serve on the commission as a nonvoting ex officio member. The director would oversee the commission, coordinate its administrative activities, and promulgate rules to implement the new act.

The commission would elect officers annually from among its members. The commission would have to meet at least twice annually and could also meet at the call of the chair or by request of four or more members. Members would be reimbursed for actual expenses and receive a per diem payment of up to \$70 while attending commission meetings or fulfilling other commission responsibilities.

Commission meetings would have to be held in compliance with the Open Meetings Act. Documents prepared or possessed by the commission would be subject to the Freedom of Information Act (FOIA), except for information that would disclose specific assessments imposed on specific persons under the act or the names and addresses of horse owners.

### Commission duties

The commission would have to do all of the following:

- Develop an equine promotion program.
- Develop and maintain a list of Michigan horse owners directly affected by the commission's activities.
- Prepare an annual report for the governor and director of MDARD that includes a full description of the commission's activities, including a detailed and audited financial statement. Any person directly affected by the new act, as determined by the commission, could have access to the report.
- Promulgate rules governing the receipt and refunding of assessments under the act.

### Assessments

The commission would have to impose the following assessments:

- \$5 for each ton of horse feed sold in Michigan by a licensed feed manufacturer.
- \$3 for each Coggins test (a test for equine infectious anemia) administered in Michigan.

The assessments would have to be collected by feed manufacturers and veterinarians, respectively, and remitted to the commission at least quarterly. A person collecting and remitting the assessments would have to keep accurate records and file an annual report. For two years after first remitting the assessments to the commission, a person collecting and remitting them could offset the costs of doing so by withholding 1.5% of the assessments collected. A person who did not remit the assessments by the due date specified by the commission would be subject to a 1% interest charge on the total amount due for each month the remittance remained outstanding.

A person who paid an assessment could obtain from the commission a refund of the assessment by providing a receipt for the horse feed or Coggins test for which the assessment was paid.

The commission could file a complaint with the director of MDARD for any failure to collect or remit an assessment. After the director investigated the case and provided notice and additional opportunity to remit any amount due, the director could file an action in court to collect the owed amount.

The commission could not use more than 33% of assessments received for administrative expenses.

### Referendum and commission termination

After its first five full calendar years of operation, the commission would have to conduct a referendum on whether it should be renewed. The commission also would have to conduct a referendum on whether it should be terminated upon receiving a petition signed by 2,500 of the horse owners directly affected by the commission's activities. In either case, if more than half of the horse owners directly affected by the commission that pay more than half of the assessments voted to terminate the commission, the commission would be terminated. Upon its termination, the commission would distribute its unexpended money to a horse entity or entities that it determined appropriate.

### Noncompliance or violation

The director of MDARD could institute an action to enforce compliance with the act, rules promulgated under the act, or a program or marketing plan adopted under the act. The director could seek a court injunction without having to show that no other remedy existed.

Except as provided in the paragraph below, an individual who violated the act would be guilty of a misdemeanor punishable by a fine of up to \$1,000 per day of violation.

A member of the commission who intentionally violated the requirement that the commission comply with the Open Meetings Act would be subject to the penalties prescribed in the Open Meetings Act. If the commission arbitrarily and capriciously violated the requirement that it comply with FOIA, the commission would be subject to the penalties prescribed in FOIA. (See “Fiscal Impacts Related to Potential Fines,” below, for a description of the penalties prescribed by those acts.)

## **FISCAL IMPACT:**

### Fiscal Impacts Related to MDARD Costs and Revenue

The bill’s creation of a new Michigan Equine Commission within MDARD would impose additional administrative costs on the department. Those costs cannot be readily estimated at this time.

Some provisions of the bill establish new authority and responsibility specifically for the MDARD director, the director’s designee, or the department generally. MDARD representatives have indicated that passage of the bill would result in a substantial impact to department and would involve several department functions. Additional specific department responsibilities under the bill include supervision of commission activities; receiving, investigating, and taking action on persons who failed to collect or submit assessments; ensuring that the commission is self-supporting; coordinating administrative activities between the department and the commission; and working with other states and the federal government “to effectuate the provisions and intent of this act.”

Other provisions establish authority and responsibility for the new commission. Commission responsibilities include holding public meetings at least twice a year; establishing a process for applying for, receiving, and accepting grants and contributions; development of an equine promotion program; development of a list of equine owners; and preparation of an annual report. The bill also gives the commission authority to promulgate administrative rules “necessary of the exercise of its powers and performance of its duties.” While the bill gives the responsibility and authority for these activities to the commission, in practice, these activities would be performed by MDARD staff—either current staff redirected to work on commission activities or newly hired staff. As one example: the development and submission of administrative rules is a department function that would be carried out the department’s Director of the Office of Legal Affairs.

The bill does establish a funding mechanism through various assessments, specifically a \$5 assessment for each ton of horse feed sold in Michigan by a licensed feed manufacturer and a \$3 assessment for each Coggins test administered in Michigan. The amount of revenue that could be generated from these assessments has not been estimated at this time. The bill indicates that “money, assets, or other items of value collected or received under this act,” including money collected from assessments, “are not state money.”

If assessment revenue is not sufficient to support department activities under the bill, state general fund support could be used to cover department costs. If additional funding is not provided, the department could reallocate current appropriated department resources to support commission activities.

Note that 2016 PA 271, a 2016 amendment to the Horse Racing Law of 1995, established a Horse Racing Commission. That commission was created within MDARD to establish procedures governing the operation and promotion of horse racing in this state and to make recommendations to the legislature regarding horse racing. The Horse Racing Commission has met twice: January 20, 2017, and March 6, 2017.<sup>1</sup>

#### Fiscal Impacts Related to Potential Fines

With regard to potential fines, the bill would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of individuals ordered to pay fines, on the section of the bill the person is found to have violated, and on the amount of fines assigned. The following are possible scenarios under the bill:

- 1) Except as provided below, an individual who violated the bill would be guilty of a misdemeanor punishable by a fine of up to \$1,000 per day for each day that the individual was in violation. The fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.
- 2) For a violation of section 5(4) of the bill (requiring commission business to be conducted in accordance with the Open Meetings Act):
  - a) An individual who violated for the first time would be guilty of a misdemeanor and would be ordered to pay a fine of up to \$1,000.
  - b) An individual who violated for a second time would be guilty of a misdemeanor and could be ordered to pay a fine of up to \$2,000, could be sentenced to jail for a term of up to one year, or could be ordered to pay a fine and go to jail.

Under these scenarios, new misdemeanor convictions resulting in imprisonment would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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<sup>1</sup> See [https://www.michigan.gov/mdard/0,4610,7-125-1572\\_2885\\_79303---,00.html](https://www.michigan.gov/mdard/0,4610,7-125-1572_2885_79303---,00.html)

- 3) For a violation of section 5(5) of the bill (regarding compliance with the Freedom of Information Act), an individual who violated would be ordered to pay a fine in the range of \$500 to \$7,500, depending on the violation. The fine revenue would increase funding for the state, as fine revenue under this subsection would be deposited in the General Fund of the state treasury.

Local court systems would be impacted depending on how provisions of the bill affected court caseloads and related administrative costs.

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