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Agricultural Commodities Promotion HB 298

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AGRICULTURE

Agricultural Commodities Promotion: Amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, Relating to Agricultural Commodities Promotion, so as to Create the Agricultural Commodity Commission for Georgia Grown Products; Provide for the Operation and Function of the Commodity Commission; Increase the Membership for the Agricultural Commodity Commission for Cotton; Exclude the Agricultural Commodity Commission for Georgia Grown Products from General Provisions Relating to Agricultural Commodities Promotion; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 2-8-10, -14 (amended);
-90, -91, -92, -93, -94, -95, -96, -97,
-98, -99, -100, -101, -102, -103,
-104, -105 (new)

BILL NUMBER: HB 298

ACT NUMBER: 21

GEORGIA LAWS: 2013 Ga. Laws 74

SUMMARY: The Act creates an Agricultural Commodity Commission for Georgia Grown Products and details the membership structure, operation, and function of the Commission. The Act also increases the number of members of the Agricultural Commodity Commission for Cotton.

EFFECTIVE DATE: July 1, 2013

History

In 1961, the Georgia General Assembly passed the Georgia Agricultural Commodities Promotion Act.¹ To implement article VII,

1. 1961 Ga. Laws 301 (codified at O.C.G.A. § 2-8-2 (2000)). Notably, the Georgia Agricultural Commodities Promotion Act was not the first attempt by Georgia lawmakers to create agricultural commodity commissions. See 1951 Ga. Laws 717. The Agricultural Commodities Authority Act of

section III, paragraph II(b) of the Georgia Constitution,² the Georgia Agricultural Commodities Promotion Act created agricultural commodity commissions to promote “the production, marketing, sale, use and utilization, processing, and improvement of agricultural products” of the state of Georgia.³ Each commodity commission is an instrumentality of the State of Georgia and must be reaffirmed every three years by a vote of the producers of that commodity.⁴ Upon approval by the producers, the commodity commission is “authorized to prepare, issue, administer, and enforce plans for promoting the sale of [such] agricultural commodity. . . .”⁵ The commission may also issue orders and amendments containing, among others, provisions for quality standards, provisions prohibiting unfair trade practices, and provisions establishing research studies and education programs.⁶ Implementation and enforcement of the marketing plans, orders, and amendments are funded through mandatory assessments of

1951 preceded the Act of 1961, until the Supreme Court of Georgia declared the Authority’s collection of assessments unconstitutional in 1959. *See Agric. Commodities Auth. v. Balkcom*, 215 Ga. 107, 109, 109 S.E.2d 276, 278 (1959) (finding the mandatory assessments of the Agricultural Commodities Authority unconstitutional, in that “the General Assembly is without constitutional authority to create an instrumentality of the State and clothe it with power to impose a tax on such commodity, a power which it does not itself possess. The State can never do indirectly that which it cannot lawfully do directly.”). Following the ruling in *Balkcom*, the General Assembly proposed and voters ratified an amendment to the Georgia Constitution, which gave the General Assembly the power to tax for “the promotion of the production, marketing, sale, use and utilization, processing and improvement of any one or all of the agricultural products . . . of this State.” 1960 Ga. Laws 1245, § 1, at 1246 (GA. CONST. of 1976, art. VII, § 2, para. 2). The Act of 1961 followed and explicitly referenced this new provision of the Georgia Constitution. 1961 Ga. Laws 301, § 2, at 302 (codified at O.C.G.A. § 2-8-2 (2000)). (“It is the intent and purpose of this chapter to implement Article VII, Section III, Paragraph II(b) of the Constitution of Georgia . . .”).

2. GA. CONST. art. VII, § 3, para. 2(b)(1–2) (“(b)(1) As authorized by law providing for the promotion of any one or more types of agricultural products, fees, assessments, and other charges collected on the sale or processing of agricultural products need not be paid into the general fund of the state treasury. The uniformity requirement of this article shall be satisfied by the application of the agricultural promotion program upon the affected products. (2) As used in this subparagraph, “agricultural products” includes, but is not limited to, registered livestock and livestock products, poultry and poultry products, timber and timber products, fish and seafood, and the products of the farms and forests of this state.”).

3. 1961 Ga. Laws 301, § 1, at 302 (codified at O.C.G.A. § 2-8-2 (2000)).

4. 2009 Ga. Laws 446, § 5, at 447; *see also* O.C.G.A. § 2-8-23(a)(1)–(6) (2000) (specifying the voting procedures to be followed for reaffirmation of a commodity commission wherein at least two-thirds of the commodity producers voting must vote favorably for the commission).

5. O.C.G.A. § 2-8-22(a)(3) (2000). The Commissioner of Agriculture, working with the commodities commission, has the power to “issue, administer, and enforce the provisions of marketing orders regulating producer marketing or the handling of agricultural commodities within th[e] state.” O.C.G.A. § 2-8-21(a) (2000).

6. O.C.G.A. § 2-8-22(a)(2), (4)–(6) (2000).

commodity producers.⁷ Because the Act of 1961 faced early constitutional challenges related to the levying of such mandatory assessments,⁸ it was repealed in 1969 and replaced with an act of the same name that changed the collection structure of the commodity commissions to eliminate any constitutional concerns.⁹ The Georgia General Assembly has since created fifteen commodities commissions, which are all administered by the Georgia Department of Agriculture.¹⁰ These include commissions for cotton, peanuts, pecans, peaches, tobacco, eggs, milk, and others.¹¹

In 2000, the Department of Agriculture created a brand to represent all agricultural products commercially produced in Georgia: Georgia Grown.¹² Similar to commodity commissions statutorily created by the Georgia General Assembly, which are designed to promote, research, and facilitate education of various Georgia agricultural products,¹³ the Georgia Grown program is

7. O.C.G.A. § 2-8-27(a) (2000) (“For the purpose of providing funds to defray the necessary expenses incurred by the Commissioner or the commission in the formulation, issuance, administration, and enforcement of each marketing order issued under this article, each such marketing order shall provide for the levying and collection of assessments in sufficient amounts to defray such expenses.”); *see also* O.C.G.A. § 2-8-28(a) (2000) (detailing the penalty for failure to pay any assessment levied by the commodity commission).

8. *See* *Campbell v. Farmer*, 223 Ga. 605, 157 S.E.2d 276 (1967). Even after the General Assembly amended the Georgia Constitution so that it had authority to levy assessments for the promotion of agricultural products, the Georgia Supreme Court invalidated the assessment portion of the Act of 1961. *Id.* at 606–07, 157 S.E.2d at 277. The Court held that, by authorizing the commissions to collect assessments for agricultural promotion, the Act of 1961 “attempts to delegate the power of the General Assembly to levy taxes . . . and for that reason is unconstitutional.” *Id.* at 607, 157 S.E.2d at 278.

9. 1969 Ga. Laws 763, § 7, at 769 (codified at O.C.G.A. § 2-8-17 (2000)) (distinguishing funds collected from commodity commissions and held in trust by the state from tax funds held as revenue by the State Treasury). “It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the Commissioner of such funds as trust funds of the affected entity without complying with the requirement applicable to funds collected for the use and benefit of the state.” *Id.*

10. O.C.G.A. § 2-8-13(a) (Supp. 2013); *Commodities Promotion*, GA. DEP’T OF AGRIC., <http://agr.georgia.gov/commodities-promotion.aspx> (last visited May 27, 2013).

11. O.C.G.A. § 2-8-13(a) (Supp. 2013). Prior to 2013, the last commission created was for ornamental plants. 2009 Ga. Laws 446, § 5, at 447.

12. Audio Recording of Senate Agriculture and Consumer Affairs Committee, Mar. 14, 2013 at 18 min., 29 sec. (remarks by Rep. Robert Dickey (R-140th)) (on file with the Georgia State University Law Review) [hereinafter Senate Recording]. In 1990, prior to the Georgia Grown program, the Department of Agriculture trademarked the promotional logo “Georgia. Always in Good Taste,” which certified the goods labeled with the logo were grown in Georgia. GEORGIA ALWAYS IN GOOD TASTE, Registration No. 1,643,134. Currently, the GEORGIA GROWN mark has not been filed or registered with the United States Patent and Trademark Office. *Trademarks Home*, THE UNITED STATES PATENT AND TRADEMARK OFFICE, <http://www.uspto.gov/trademarks> (last visited July 31, 2013).

13. O.C.G.A. § 2-8-2 (2000).

designed to promote Georgia's locally grown products and "aid [Georgia's] agricultural economies by bringing together producers, processors, suppliers, distributors, retailers, agritourism and consumers in one powerful, statewide community."¹⁴ This marketing and economic development program underwent substantial redevelopment in early 2012, as the Department of Agriculture under Commissioner Gary Black sought to provide a "fresher look and better plan" to grow the Georgia Grown program.¹⁵ With a new logo and a renewed purpose, the Georgia Grown program gained more than 300 members from January 2012 to September 2012.¹⁶ As of April 30, 2013, there were 617 total members—216 paying and 401 non-paying members.¹⁷

To continue this growth and to raise more funding to accomplish the program's marketing and economic development goals, the Commissioner of Agriculture, along with members of the Georgia Grown program, sought to transform the Georgia Grown program into a statutorily-authorized agricultural commodity commission for locally grown Georgia products.¹⁸ Thus, with the Commissioner of Agriculture's support, Representative Robert Dickey (R-140th) introduced House Bill (HB) 298 during the 2013 Georgia General Assembly Session.¹⁹

Bill Tracking of HB 298

Consideration and Passage by the House

Representatives Robert Dickey (R-140th), Buddy Harden (R-148th), Sam Watson (R-172nd), Bubber Epps (R-144th), Jason Shaw (R-176th), and Rick Jasperse (R-11th) sponsored HB 298.²⁰ The

14. *About the Program*, GA. GROWN, <http://georgiagrown.com/news/about-the-program> (last visited May 27, 2013).

15. *An Update on Your Georgia Grown Program*, GA. GROWN, Sept. 18, 2013, <http://georgiagrown.com/news/an-update-on-your-georgia-grown-program>.

16. *Id.*

17. Email from Sydne Smith, Director of Policy, Georgia Department of Agriculture, to Author (May 28, 2013, 08:48 EST) (on file with the Georgia State University Law Review).

18. See Telephone Interview with Rep. Robert Dickey (R-140th) (May 23, 2013) [hereinafter Dickey Interview].

19. HB 298, as introduced, 2013 Ga. Gen. Assem.

20. *Id.*; Georgia General Assembly, HB 298, Bill Tracking, <http://www.legis.ga.gov/legislation/en->

House read the bill for the first time on February 12, 2013.²¹ The House read the bill for the second time on February 13, 2013.²² Speaker of the House David Ralston (R-7th) assigned it to the House Committee on Agriculture and Consumer Affairs, which initially favorably reported the bill on February 20, 2013 with no changes.²³ After going to the Rules Committee, though, Representative Dickey offered several changes to the bill, as recommended by the Rules Committee.²⁴ The bill was recommitted on February 22, 2013 to the House Committee on Agriculture and Consumer Affairs.²⁵ The House Committee on Agriculture and Consumer Affairs then approved these changes and favorably reported a Committee substitute on February 27, 2013.²⁶

Differing only slightly from the bill as introduced, the Committee substitute contained three substantive changes: first, it added the Georgia forestry industry to the bill;²⁷ second, it increased the membership of the commission from three to five additional members;²⁸ and third, it increased the membership of the Agricultural Commodity Commission for Cotton from five to seven additional members per the request of the Commissioner of Agriculture, Gary Black.²⁹ To include the forestry industry, which had been inadvertently omitted from the first version of the bill,³⁰ the Committee substitute added “silvicultural” products to the definition of Georgia grown products and “milling” as a type of agricultural

US/Display/20132014/HB/298.

21. State of Georgia Final Composite Status Sheet, HB 298, May 9, 2013.

22. *Id.*

23. Video Recording of House Agriculture and Consumer Affairs Committee, Feb. 20, 2013 at 19 min., 20 sec., (remarks by Rep. Buddy Harden (R-148th)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives87.aspx> [hereinafter House Video, Feb. 20, 2013].

24. Video Recording of House Agriculture and Consumer Affairs Committee, Feb. 27, 2013 at 14 min., 38 sec., (remarks by Rep. Robert Dickey (R-140th)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives87.aspx> [hereinafter House Video, Feb. 27, 2013].

25. State of Georgia Final Composite Status Sheet, HB 298, May 9, 2013.

26. House Video, Feb. 27, 2013, *supra* note 24, at 17 min., 58 sec., (remarks by Rep. Tom McCall (R-33rd)).

27. *Id.* at 14 min., 38 sec. (remarks by Rep. Robert Dickey (R-140th)); HB 298 (HCS), § 1, p. 1–2, ln. 24, 31, 2013 Ga. Gen. Assem.

28. HB 298 (HCS), § 1, p. 2, ln. 51, 2013 Ga. Gen. Assem.

29. House Video, Feb. 27, 2013, *supra* note 24, at 14 min., 38 sec. (remarks by Rep. Robert Dickey (R-140th)); HB 298 (HCS), § 3, p. 9, ln. 289–98, 2013 Ga. Gen. Assem.

30. See Dickey Interview, *supra* note 18; House Video, Feb. 27, 2013, *supra* note 24, at 14 min., 38 sec. (remarks by Rep. Robert Dickey (R-140th)).

processing.³¹ Because the Georgia Grown Products Commission will bring together many different types of producers and growers, the substitute also increased the number of commission members from three to five additional members.³² The House read the Committee substitute as amended on March 1, 2013.³³ The House adopted the Committee substitute by a vote of 161 to 1.³⁴

Consideration and Passage by the Senate

Senator John Wilkinson (R-50th) sponsored HB 298 in the Senate.³⁵ The bill was first read on March 4, 2013.³⁶ Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Agriculture and Consumer Affairs Committee.³⁷ The Senate Committee on Agriculture and Consumer Affairs favorably reported the bill on March 14, 2013.³⁸ The bill was read a second time in the Senate on March 20, 2013, and a third time on March 25, 2013.³⁹ Also on March 25, 2013, the Senate passed the bill by a vote of 49 to 0.⁴⁰ The bill was sent to the Governor on April 1, 2013 and signed into law on April 18, 2013.⁴¹

31. HB 298 (HCS), § 1, p. 1–2, ln. 24, 31, 2013 Ga. Gen. Assem.

32. HB 298 (HCS), § 1, p. 2, ln. 51, 2013 Ga. Gen. Assem.; House Video, Feb. 27, 2013, *supra* note 24, at 14 min., 38 sec. (remarks by Rep. Robert Dickey (R-140th)).

33. Video Recording of House Floor Debate, Mar. 1, 2013 at 1 hr., 18 min., 52 sec. (remarks by Rep. Robert Dickey (R-140th)), <http://www.gpb.org/lawmakers/2013/day-27> [hereinafter House Floor Debate]; State of Georgia Final Composite Status Sheet, HB 298, May 9, 2013.

34. Georgia House of Representatives Voting Record, HB 298 (Mar. 1, 2013). Rep. Charles Gregory (R-34th), the only representative to vote against the bill, did so because

[c]reating an Agricultural Commodity Commission for Georgia Grown Products is not within the scope of the proper role of government. The ONLY legitimate role of government is to protect the life, liberty, and property of individuals. The marketing and research of commodities should be left to the free-market; there is no legitimate reason for the State to be involved.

E-mail from Charles Gregory, Representative, Georgia House of Representatives to Author (May 28, 2013, 05:04 EST) (on file with the Georgia State University Law Review).

35. Senate Recording, *supra* note 12, at 28 min., 10 sec. (remarks by Sen. John Wilkinson (R-50th)).

36. State of Georgia Final Composite Status Sheet, HB 298, May 9, 2013.

37. *Id.*

38. *Id.*

39. *Id.*

40. Georgia Senate Voting Record, HB 298 (Mar. 25, 2013).

41. Georgia General Assembly, HB 298, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/298>.

The Act

The Act amends Title 2 of the Official Code of Georgia Annotated, relating to agricultural commodities promotion, for the purpose of creating the Agricultural Commodity Commission for Georgia Grown Products.⁴²

Section 1 of the Act provides for the operation and function of the commission.⁴³ It amends Chapter 8 of Title 2 by creating a new article, Article 4, which adds new Code sections, 2-8-90 through 2-8-105.⁴⁴ Code sections 92 and 93 establish the creation of the Agricultural Commodity Commission and further define its composition.⁴⁵ Code section 2-8-93 provides that the commission shall be composed of the Commissioner of Agriculture, the president of the Georgia Farm Bureau, and elected members of both the House and Senate Agriculture and Consumer Affairs Committees, who are either a producer or processor, as well as additional members who will be appointed by the aforementioned members.⁴⁶

Moreover, section 1 of the Act defines the commission's authority.⁴⁷ Code section 2-8-95 authorizes the commission "to accept donations, gifts, grants, and other funds or property and to use the same for commission purposes."⁴⁸ Given the authority granted to the commission, code section 2-8-96 protects members of the commission from suit by making them immune from liability in the same manner as state officers and employees under the Georgia Tort Claims Act.⁴⁹ In carrying out its purpose, the commission may then "issue, administer, and enforce the provisions of marketing orders."⁵⁰ Code section 2-8-98 further provides that the marketing orders may only include provisions for: (1) establishing "plans for advertising and sales promotion to maintain present markets or to create new or

42. O.C.G.A. § 2-8-90 through § 2-8-105 (Supp. 2013).

43. *Id.*

44. *Id.*

45. O.C.G.A. §§ 2-8-92, -93 (Supp. 2013).

46. O.C.G.A. § 2-8-93(a) (Supp. 2013).

47. *See generally* O.C.G.A. §§ 2-8-95, -101 (Supp. 2013).

48. O.C.G.A. § 2-8-95(a) (Supp. 2013). Those funds must be held in trust for the commission. O.C.G.A. § 2-8-95(b) (Supp. 2013). As such, they are not required to be "deposited in the state treasury and appropriated therefrom as are other state funds." *Id.*

49. O.C.G.A. § 2-8-96 (Supp. 2013).

50. O.C.G.A. § 2-8-97(a) (Supp. 2013).

larger markets for Georgia grown products”; (2) “carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of Georgia grown products”; and (3) “establishing an educational program designed to acquaint producers or the general public about Georgia grown products.”⁵¹ Code section 2-8-99 instructs the means by which the Commissioner or commission may effect amendments to these orders.⁵²

In order to defray the costs of formulating, issuing, administering, and enforcing the marketing orders, Code section 2-8-100 also provides that the commission may levy assessments upon producers and processors for their utilization of the Georgia Grown trademark.⁵³ Code section 2-8-102 then instructs how the commission should collect, audit, and deposit these funds.⁵⁴ Code section 2-8-101 allows the commission to limit the application of marketing orders to specific areas or portions of the state.⁵⁵ In cases of failure to comply with a marketing order, or violation of any rule or regulation issued under the Act, Code section 2-8-103 tasks the Attorney General with representing the commission in legal matters and bringing suit in superior court for such violations.⁵⁶

Section 2 of the Act revises Code section 2-8-10, relating to the nonapplicability of Article 2 of Chapter 8 of Title 2.⁵⁷ The original Code section excluded the Agricultural Commodity Commission for Peanuts and Equines under said section.⁵⁸ The revision adds that Article 2 of Chapter 8 of Title 2 shall also not apply to the Agricultural Commodity Commission of Georgia Grown Products.⁵⁹

Section 3 of the Act revises Code section 2-8-14, relating to the composition and membership of agricultural commodity commissions.⁶⁰ In addition to the Commissioner of Agriculture, the President of the Georgia Farm Bureau Federation, and one member

51. O.C.G.A. § 2-8-98 (Supp. 2013).

52. O.C.G.A. § 2-8-99 (Supp. 2013).

53. O.C.G.A. § 2-8-100(a) (Supp. 2013).

54. O.C.G.A. § 2-8-102 (Supp. 2013).

55. O.C.G.A. § 2-8-101 (Supp. 2013). Even with a limited application, however, the marketing order must “embrace[] all persons of a like class.” *Id.*

56. O.C.G.A. § 2-8-103 (Supp. 2013).

57. O.C.G.A. § 2-8-10 (Supp. 2013).

58. 2006 Ga. Laws 632, § 1, at 633 (codified at O.C.G.A. § 2-8-10 (2000)).

59. O.C.G.A. § 2-8-10 (Supp. 2013).

60. O.C.G.A. § 2-8-14 (Supp. 2013).

each from the House and Senate Agriculture and Consumer Affairs Committees, the original Code section provided for five additional members, who are producers of the affected commodity, to be appointed to the commissions.⁶¹ The revision increases the additional members appointed to the Agricultural Commodity Commission for Cotton to seven.⁶²

Analysis

State-Grown Benefits

Whereas the bulk of agricultural policy is created and implemented at the federal level, due to the highly competitive nature of the agricultural commodity market, state efforts to protect and promote agricultural interests have increased in recent years.⁶³ Hoping to capitalize on consumers' loyalty to their state of residence, states have initiated state-branding programs to protect local producers from interstate competition.⁶⁴ These programs implement "state of origin" labeling which display labels that are typically standardized logos or slogans on point-of-purchase materials supplied to the vendors distributing the products, such as supermarkets.⁶⁵

State branding programs provide worthwhile benefits to a state's growers, processors, retailers, and consumers,⁶⁶ namely improving the economic opportunities and enhancing the competitiveness of a state's producers.⁶⁷ By increasing the desirability of its producers and their locally grown produce, a state protects its open spaces used for "agricultural production from encroaching urbanization."⁶⁸ Additionally, states hope that the "program's extensive labeling helps

61. 1989 Ga. Laws 1421, § 2, at 1426 (formerly found at O.C.G.A. § 2-8-14(a) (2000)).

62. O.C.G.A. § 2-8-14(a)(5) (Supp. 2013).

63. Mark D. Jekanowski et al., *Consumers' Willingness to Purchase Locally Produced Agricultural Products: An Analysis of an Indiana Survey*, 29 AGRIC. AND RES. ECON. REV. 43, 43 (2000).

64. *Id.* Examples of "state of origin" labeling include: "Ohio Proud," "Jersey Fresh," and "Virginia's Finest." *Id.* at 44.

65. *Id.* at 44.

66. William E. Nganje et. al., *State-Branded Programs and Consumer Preference for Locally Grown Produce*, 40 AGRIC. AND RES. ECON. REV. 31 (2011) (finding consumers are willing to pay a premium for products labeled locally grown as compared to locally grown products not labeled as such because of "consumers' perceptions of locally grown as an indicator, or 'cue,' of safety in their food supply").

67. Paul M. Patterson, *State-Grown Promotion Programs: Fresher, Better?*, CHOICES, 2006, at 41.

68. *Id.*

consumers easily identify and buy fresh, high-quality local food.”⁶⁹ The idea is that the state brand allows the state’s growers, processors, and retailers a way to “meaningfully differentiate otherwise undifferentiated commodities.”⁷⁰ This distinction then enables growers and producers to command higher margins and gain more predictable sales volumes, which in turn benefits that state’s economy.⁷¹

Similarly, proponents of the Georgia Grown state-branding program envision many of the same benefits for Georgia’s growers, producers, retailers, and consumers.⁷² According to Representative Robert Dickey (R-140th), producers will benefit from the differentiation and interest the Georgia Grown logo brings; retailers that set up designated displays for the Georgia Grown products will sell more of those products; and consumers seeing the Georgia Grown displays will know they have a choice, will prefer the locally grown products, and will buy such products, thereby generating increased sales volumes.⁷³ The Georgia Department of Agriculture Commissioner Gary Black, likewise, emphasizes that the Georgia Grown Commission not only will promote the goods of the grower or producer individually but also will bring the producers, retailers, and consumers together.⁷⁴ In addition to producers, food retail

69. Joanie Stiers, *State’s Consumers Believe in Benefits of Local Food*, FARM FLAVOR, <http://farmflavor.com/us-ag/south-carolina/local-food-south-carolina/states-consumers-believe-in-benefits-of-local-food/> (last visited Jun. 29, 2013).

70. Nganje, *supra* note 66 at 20.

71. *Id.*

72. Senate Recording, *supra* note 12, at 22 min., 40 sec., (remarks by Rep. Robert Dickey (R-140th)) (“I think a lot of different types of organizations would see a benefit in doing this and contributing.”); *see also id.* at 25 min., 49 sec., (remarks by Georgia Department of Agriculture Commissioner Gary Black) (“We just have literally hundreds of goods that could benefit from this[.]”).

73. *See* Dickey Interview, *supra* note 18 (“People are going to see benefits with [Georgia Grown] and [a] kind of the connection between the growers and the retailers and the people who sell the products and how they all work together for everybody’s mutual benefit. You know, consumers now want to know where their food is grown. They don’t want their food shipped in from Indonesia, or South America, or wherever it’s coming from. I think if consumers have a choice, they want something home grown right here from Georgia, nearby. And the retailers see the benefit in that too. I think it moves more products in the seasons where we have these products growing. You know, we included the timber industry. We hope we’ll have Georgia Grown wood for new houses and people will make a preference when they’re building a new house or doing a construction project, that they’ll buy Georgia Grown lumber, instead of Canadian lumber. So, it helps our economy and jobs and just helps everything here in the state of Georgia.”).

74. Senate Recording, *supra* note 12, at 24 min., 37 sec., (remarks by Georgia Department of Agriculture Commissioner Gary Black) (“It’s unbelievable with the school systems and with our new

companies, school systems, members of the Georgia Restaurant Association, members of the agritourism industry and others will come together to use the Georgia Grown logo, collectively raising awareness of Georgia's agricultural products, which will result in increased sales for Georgia businesses, thereby benefitting the state's economy as a whole.⁷⁵

The Future of Georgia Grown

The voluntary nature of the Georgia Grown legislation will likely be a determinative factor in its successful implementation.⁷⁶ Unlike the national and state mandatory “checkoff” programs,⁷⁷ those participating in the Georgia Grown state-branding program do so voluntarily, which explains the legislation's unlikely legal challenge.⁷⁸ Arguably though, the Georgia Grown program could potentially face issues in its implementation—managing quality and control standards of those licensed under the Georgia Grown logo.⁷⁹

restaurant program, people are partnered and joining every day. In April, we'll open a Georgia Grown licensed kiosk store at terminal D at the airport here, and only Georgia Grown companies with their food products and other goods and t-shirts and ties and other odds and ends, those are the only products that are going to be sold there. So, it's really bringing Georgia companies together.”)

75. See House Floor Debate, Mar. 1, 2013, *supra* note 33, at 1 hr., 18 min., 52 sec. (remarks by Rep. Robert Dickey (R-140th)).

76. See Telephone Interview with Georgia Department of Agriculture, Director of Policy, Sydne Smith (May 23, 2013) [hereinafter Smith Interview] (“If you don't want to put the Georgia Grown logo on your product, you don't have to. And if in five years nobody wants it and we are not bringing in any . . . funds, it will cease to exist.”).

77. See Gary W. Williams & Oral Capps, Jr., *Overview: Commodity Checkoff Programs*, CHOICES, 2006, at 53 (“Commodity checkoff programs are primarily cooperative efforts by groups of suppliers of agricultural products intended to enhance their individual and collective profit-ability. Virtually every [state] agricultural commodity has some type of organization dedicated to promoting the economic welfare of its producers funded through some form of fee on sales by producers and often others in the marketing chain. The term “checkoff” refers to the collection of a fee and comes from the concept of checking off the appropriate box on a form, like a tax return, to authorize a contribution for a specific purpose, such as the public financing of election campaigns, or, as in this case, the financing of programs to enhance producer welfare.”).

78. See generally Jennifer Williams Zwagerman, *Checking out the Checkoff: An Overview and Where We are Now that the Legal Battles Have Quietened*, 14 DRAKE J. AGRIC. L. 149, 150 (2009) (“[M]ost [checkoff programs] have been the subject of some controversy over the past 10 years[.]”); John M. Crespi & Roger A. McEowen, *The Constitutionality of Generic Advertising Checkoff Programs*, CHOICES, 2006, at 61 (“Over the last two decades, nearly every commodity promotion program in the country has been challenged” on grounds of violating freedom of speech and freedom of association, among others.).

79. See Patterson, *supra* note 67 at 45 (“Monitoring the quality of a broad set of products, however, is a significant challenge for state branding programs.”).

Nonetheless, studies suggest that state-branding programs have a beneficial effect on the state's economy.⁸⁰

The Georgia Grown Commodity Commission will likely not face the same legal challenges the majority of commodity commissions have faced.⁸¹ Mandatory checkoff programs have faced years of litigation, being challenged on the grounds that the mandated programs violated producers' freedom of speech and freedom of association.⁸² Producers argued that the federally-mandated advertising programs were compelled private speech, in that producers were being compelled to "pay for advertising when [they] would prefer to remain silent," or to "fund a promotional message with which they did not agree."⁸³ Additionally, producers asserted that the mandatory assessments compelled association, because they not only compelled industry participants to be associated with a particular message but also forced farmers to associate with their competitors.⁸⁴ The Georgia Grown Commodity Commission, however, will be completely voluntary.⁸⁵ Unlike Georgia's fifteen other commodity commissions that obligate producers to pay mandatory assessments, whether a producer pays the assessment, or

80. See, e.g., Njanje, *supra* note 66 at 31–32 ("Respondents who were aware of the *Arizona Grown* brand nearly doubled their purchase frequency of locally grown produce."); Jekanowski, *supra* note 63 at 50 ("The probability estimates from the [Indiana study] indicate a strong willingness to purchase local products if that option is available. This is evidence of a latent demand for such products, which increases the likelihood that identifying and promoting agricultural products at the state level will affect sales, directly benefiting the state's producers.")

81. See, e.g., *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 560–62, (2005) (upholding a beef checkoff assessment used to pay for generic beef advertising, reasoning that the beef checkoff funded message was government speech, since it was effectively controlled by the government, and the government established the message and certain aspects of the campaign supporting the message); *United States v. United Foods, Inc.*, 533 U.S. 405, 411–13 (2001) (invalidating mandatory mushroom checkoff, reasoning that the mushroom industry was unregulated except for the regional advertising program and thus assessment was not a "logical concomitant of a valid scheme of economic regulation"); *Glickman v. Wileman Bros. & Elliot, Inc.*, 521 U.S. 457, 469 (1997) (upholding a mandatory assessment for generic advertising imposed upon California tree fruit growers as part "of a broader collective enterprise in which their freedom to act independently is already constrained by the regulatory scheme"); see generally Zwagerman, *supra* note 78 (discussing the history of the legal battles surrounding checkoff programs).

82. Crespi and McEowen, *supra* note 78 at 61.

83. John M. Crespi, *The Generic Advertising Controversy: How Did We Get Here and Where Are We Going?*, 25 REV. OF AGRIC. ECON. 294, 299 (2003) (discussing generic advertising policies and surrounding litigation).

84. *Id.*

85. House Video, Feb. 20, 2013, *supra* note 23, at 11 min., 33 sec. (remarks by Georgia Department of Agriculture Commissioner Gary Black).

licensing fee, to participate in the Georgia Grown program, is completely up to the decision of that producer.⁸⁶ As a consequence of its voluntary nature, the enactment of the Georgia Grown commission has faced little opposition or controversy prior to its enactment and will likely not face any in its future.⁸⁷

On the other hand, the Georgia Grown Commodity Commission may potentially face problems in implementation of the program. Generally, states with state-branding programs require participants to sign a licensing or membership agreement.⁸⁸ These agreements require participants' products bearing the state-branding logo to be registered and to meet certain quality standards.⁸⁹ Some states also mandate the percentage of a product that must be made or produced within the state for that product to be eligible to use the state-branding logo.⁹⁰ In this approach, Georgia is no different—requiring participants to sign a licensing agreement and to follow certain quality control standards.⁹¹

The Georgia Grown licensing agreement provides that the Georgia Grown trademark will only be licensed for specific classes of products that are produced or processed in Georgia.⁹² The agreement

86. *Id.* (“So when you’re talking about revenue and how money is going to come into the commission, it’s important that versus other commodities where you’re assessed so much per bale of cotton, so much per bushel of soy beans, and those are done by producer referendums that are done every three years. Peaches are done every three years. And one thing that makes us believe this one is a little different. Even if Robert [Dickey] voted No, but if it passed at 70%, we’d still have a mandatory assessment even if he voted No for peaches. That’s the way commodity commissions have operated since the ‘60’s. What makes this different is the marketing on it starts . . . [when producers] pay in to this. It will not be a referendum but . . . [a] licensing agreement for the use of the logo. And so that licensing will be renewed every year. So technically you just vote voluntarily whether you want to participate or not.”)

87. *See* Dickey Interview, *supra* note 18, at 5 min., 6 sec. and 5 min., 42 sec. (“[Georgia’s] twelve other commissions . . . are set up the same. We have to vote every three years whether to assess ourselves the money. And once [the referendum] passes, you are obligated to pay it, and the Department of Agriculture enforces it . . . Yes, mandatory, with a referendum every three years. But this HB 298 does not have a referendum, because it will all be totally voluntary. That’s why it wasn’t controversial.”)

88. Kathryn A. Onken & John C. Bernard, *Catching the “Local” Bug: A Look at State Agricultural Marketing Programs*, CHOICES, 2010, at 28.

89. *Id.*

90. *Id.* at 24–25.

91. *See* Terms & Conditions, GA. GROWN, <http://georgiagrown.com/terms-conditions> (last visited July 31, 2013).

92. *Id.* Products include: agricultural products produced in Georgia; agricultural food products processed in Georgia; wine, nursery, floral, and forestry products; leather, textile or apparel products; horticultural products, meats, or poultry feeds; fish, shellfish, or other aquatic species; natural woods or

further defines exactly how agricultural or wood products are produced⁹³ or processed⁹⁴ in Georgia, and additionally states that for any meat to be certified, it must have been “born, raised, fed, slaughtered and/or fabricated in Georgia.”⁹⁵ The Georgia Grown licensing agreement makes a limited exception for leather, textile, or apparel products, allowing the products to be “composed of 50% or greater natural fibers derived from crops or livestock grown or raised” in Georgia.⁹⁶ All products, however, must “conform to any standards which may be set from time to time by the [Department of Agriculture,]” and registrants of the mark must also permit “reasonable inspection of the registrant’s operation” and supply “specimens of use of the mark upon request.”⁹⁷ The Commissioner of the Department of Agriculture still retains the right to deny or revoke permission to use the Georgia Grown trademark if a product is found to have “quality markedly inferior to that representative of similar products produced in Georgia.”⁹⁸

Nonetheless, Georgia’s licensing requirements appear less stringent than those of other states. New Jersey, for example, requires products using the “Jersey Fresh” logo to be registered, to meet quality standards “equal to or better than U.S. No. 1,” and to be 100 percent from New Jersey.⁹⁹ Also, New Mexico’s “Mexico Select” logo not only imposes quality control standards for its products but also requires implementation of certified production and handling practices to “insure the product’s safety from contamination.”¹⁰⁰ One

fiber, etc. *Id.*

93. *Id.* “Produced in Georgia” is defined as an agricultural product that is “grown, raised, nurtured, sown, or cultivated within the state . . . [or] has been altered by a mechanical or physical value-added procedure in Georgia to change or add to its physical characteristics. *Id.*

94. *Id.* “Processed food product” is defined as having “undergone a value-added procedure in Georgia to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, or dehydrating.” *Id.* “Processed natural fiber or natural wood product” is defined as having “undergone mechanical or physical changes in Georgia resulting in a finished, distinct product.” *Id.*

95. *Id.*

96. *Id.* (“the identity of the fibers [must be] preserved throughout processing so as to be verifiable by satisfactory documentation as having originated in Georgia . . .”).

97. Terms and Conditions, *supra* note 91.

98. *Id.*

99. Onken & Bernard, *supra* note 88 at 25, 28.

100. Patterson, *supra* note 67 at 45.

study, finding a strong willingness of consumers to buy local products, emphasized the importance of “building a strong brand image.”¹⁰¹ The study warned that a decrease in quality below other states “could actually lead to a negative effect from the promotion campaign”—leading consumers to identify the products of that state as lower quality.¹⁰² Accordingly, states that do not have certification requirements “may find themselves having to adopt quality grading and certification processes” not only to ensure the state’s producers remain competitive but also so consumers do not begin to question the “authenticity of and meaning behind the [state’s] logo.”¹⁰³

The Georgia Grown program does set out a quality grading and certification process but seems to lack any process or procedure for monitoring goods once they have been licensed. The program then may benefit from developing a standard procedure for monitoring the quality of its licensees’ goods. Furthermore, as compared to states like New Jersey and New Mexico, the Georgia Grown program may also benefit from more stringent eligibility requirements. States’ licensing requirements show their recognition that the value of their brand is “intrinsically tied [to their products’] quality,” but, as one commentator notes, monitoring the quality of the goods has posed “significant challenge for state branding programs.”¹⁰⁴ As demand increases for Georgia’s locally produced products and more growers, producers, and retailers license the logo, there will be more opportunity for the Georgia Grown logo to be used on goods that are not of Georgia Grown quality. Arguably, the issue concerning quality standards may only be a problem in theory, since the Georgia Grown logo has, in fact, been used since 2000, without any notable problems. Nonetheless, as Representative Robert Dickey states, “[W]e’ve got to make sure that consumers know that they have a choice out there . . . so I think it’s [] big that Georgia Grown will . . . educate consumers to ask and prefer something locally grown.”¹⁰⁵ Undoubtedly, with this goal, the Georgia Grown Commodity Commission will only want the highest quality goods

101. Jekanowski, *supra* note 63 at 50 (“The quality of the products is especially important, since the perception of quality was found to have the strongest positive effect on the likelihood of purchase.”).

102. *Id.*; *see also* Onken & Bernard, *supra* note 88 at 28.

103. Onken & Bernard, *supra* note 88 at 28, 29.

104. Patterson, *supra* note 67 at 45.

105. *See* Dickey Interview, *supra* note 18, at 11 min., 54 sec.

associated with the Georgia Grown brand, and thus may greatly benefit from the inclusion of more stringent certification standards as well as a standard process for quality monitoring.

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