



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5362 (Substitute H-2 as passed by the House)

Sponsor: Representative Kim Rhead

House Committee: Agriculture and Forestry

Senate Committee: Agriculture and Forestry

Date Completed: 4-23-96

CONTENT

The bill would amend the Agricultural Commodities Marketing Act to do the following

- Permit assessments to be collected from both producers and distributors of a marketable agricultural commodity, if the Director of the Department of Agriculture determined that the “unique nature of the commodity or industry structure” warranted the assessments.**
- Permit a marketing agreement or program to award grants to organizations or individuals to carry out activities in the agreement or program.**
- Establish a process for the collection of unpaid assessments, including providing for an investigation of a processor, distributor, handler, or producer who did not deduct or remit any assessment and permitting the Department Director to file an action in court to collect the assessment.**
- Permit a commodity committee to borrow money under certain conditions in anticipation of receiving an assessment.**
- Include aquacultural (water plants and animals) and silvicultural (forestry) products within the Act’s definition of “agricultural commodity”.**

Grants

Currently, any marketing agreement or program issued pursuant to the Act may contain one or more of the provisions outlined in the Act. The bill would add a provision for the awarding of grants from money collected under the Act. The grants could be awarded to organizations, agencies, or individuals with whom a committee had contracted for activities described in the agreement or program. (“Committee” means the commodity committee or advisory board established under a marketing program.)

A marketing agreement or program that allowed the committee to contract with organizations, agencies, or individuals to carry out these activities or allowed the committee to award grants could provide in the agreement or program that it be allowed to participate in the earnings of any royalties derived from the results of those activities. The marketing agreement or program, however, would have to provide that the royalties be used only in the manner provided for in that program or agreement.

Assessments

The Act requires that assessments be collected from each producer of a marketable agricultural commodity produced in the State and directly affected by a marketing program issued from the commodity to defray all program and administrative costs, except as provided for nonparticipating producers. Under the bill, subject to the approval by the Director of the Department of Agriculture, assessments also could be collected from producers and distributors of a marketable agricultural commodity produced in the State if the Director determined that the unique nature of the commodity or industry structure warranted the assessment of both the producer and the distributors of the agricultural commodity.

Currently, each marketing program must specify the maximum assessment to be collected to cover program and administrative costs. Under the bill, each marketing program would have to specify the maximum assessment on an agricultural commodity or an agricultural commodity input and could provide for any other assessment mechanism as approved by the Director to be collected to cover program and administrative costs. ("Agricultural commodity input" would mean an item or ingredient used in the production of an agricultural commodity that was assessed by a specific marketing agreement.)

Under the Act, processors, distributors, or handlers of the commodity for convenience may be required to collect and remit producer assessments at no cost to the marketing program. Under the bill, this collection would have to be pursuant to the marketing program, and would affect processors, distributors, or handlers of the agricultural commodity or agricultural commodity input. The bill also specifies that the collection would be at no cost to the marketing program unless it expressly provided for the payment of a reasonable fee for making the deduction and remittance. The bill would delete the current provision that permits processors, distributors, or handlers paying the assessments for a producer to deduct the amount from any money that they owe to the producers.

Also, under the bill, in the case of a marketing program that provided for the imposition of an assessment, the processors, distributors, or handlers dealing with the producer would have to collect the assessment from the producer by deducting the assessment from the gross amount owing to the producer and would have to remit the assessment to the committee within a reasonable time period as established by the committee. A processor, distributor, or handler who failed to deduct or remit the assessment would be liable to the committee for any assessments not deducted or remitted. If a processor, distributor, or handler were not involved at the first point of sale of an agricultural commodity or agricultural commodity input, the producer would have to remit the assessments to the committee on all sales of the commodity or commodity input, subject to a marketing program and within a time period specified by the committee.

A committee could file with the Director a written complaint documenting that a processor, distributor, handler, or producer had failed to deduct or remit any assessment due to the committee pursuant to a marketing program. Upon receiving a complaint, the Director would have to conduct an investigation of the allegations. If, after the investigation, the Director found that the processor, distributor, handler, or producer failed to deduct or remit an assessment to the committee, the Director would have to request the processor, distributor, handler, or producer to remit the assessment within 10 days after he or she determined that a deduction or remittance had not been made. In the case of a failure to deduct an assessment, the Director would have to compute the amount that reasonably should have been deducted and impose an assessment in that amount. If the assessment were not remitted within 30 days after the request, the Director could file an action in a court of competent jurisdiction to collect the assessment. The bill specifies that venue

in this action would have to be the place where the processor, distributor, handler, or producer had its primary place of business. In any action to recover an assessment, if the Director prevailed, the court would have to award to the Director all costs and expenses in bringing the action, including, but not limited to, reasonable and actual attorney fees, court costs, and audit expenses. If the Director did not prevail, he or she would have to charge the committee for reasonable and actual attorney fees, court costs, and expenses incurred in bringing about the action.

Currently, each program must specify the date when the assessment, whether collected by the producers, processors, distributors, or handlers of the commodity, is due in the account of the program on that production. Under the bill, each committee would have to specify this date, and the bill would delete reference to persons collecting the assessment.

The Act defines “distributor” as a person engaged in selling, offering for sale, marketing, or distributing an agricultural commodity that he or she has purchased or acquired from a producer that the person is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. Distributor does not include a retailer, except for a retailer who purchases or acquires from, or handles on behalf of, a producer, an agricultural commodity not previously subjected to regulations by the marketing program covering the commodity. The bill would add to this exception a retailer specifically identified by a marketing program that was subject to an assessment.

Loans

A committee established pursuant to the Act would have the ability to borrow money in anticipation of receiving assessments if the following conditions were met:

- The loan would not be requested or authorized, or would not mature, within 90 days before a resubmittal or termination referendum for the marketing program.
- The loan amount did not exceed 50% of the annual average assessment revenue during the previous three years. In the case of a marketing program that had existed for less than three years, the loan could not exceed 25% of the projected annual assessment revenue.
- The loan repayment period did not exceed the life of the marketing program.
- The loan had the prior written consent of the Director, who could request an audit of the committee by the Auditor General before approving the loan.

The Director would have to assess against the producers of the agricultural commodity all outstanding loans, including interest, approved under these provisions if the marketing program were inactive or were terminated.

Currently, any money collected pursuant to the Act is not State money and must be deposited in a bank or other depository in the State. Under the bill, this provision would apply to money collected under the Act, whether collected from assessments or earned from royalties derived from any activities performed by another organization, agency, or individual and conducted pursuant to a marketing program. Currently, the money may be disbursed only for the expenses incurred with respect to each marketing program. The bill would allow the money also to be disbursed for grants authorized under a marketing agreement or marketing program.

In addition, the Act provides for disbursement of funds upon the termination of a marketing program. The bill would add that in the case of money earned from royalties that could be collected after termination of a marketing program, that money would have to be allocated to any higher educational institution engaged in agricultural research, as determined by the Director.

Proposed Marketing Program

The Act provides a process for the Director to approve or disapprove the establishment of a marketing program upon receiving petitions from a specified number of producers of an agricultural commodity. The bill specifies that for purposes of these provisions, producers could include both producers and distributors of a marketable agricultural commodity produced in the State and subject to the Act's assessment requirements.

Under the bill, a marketing program proposed for adoption could provide for the awarding of grants or the participation in the earnings by the marketing program or agreement of any royalties derived from any activities performed by another organization, agency, or individual and conducted pursuant to the marketing program or agreement. Any money earned from these royalties would have to be spent according to the marketing agreement or program.

Producer Referendum

Currently, all marketing program established under the Act must be resubmitted to a referendum of the producers during each fifth year of operation. Under the bill, a producer referendum would not be required for a marketing program if all of the following circumstances existed:

- The agricultural commodity subject to the marketing program was involved in a commodity checkoff program established pursuant to Federal law.
- The Federal commodity checkoff program involving the agricultural commodity provided for a mandatory periodic producer referendum.
- The marketing program involving the agricultural commodity was entirely financed by that Federal commodity checkoff program.

MCL 290.652 et al.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The Department of Agriculture would incur minimal costs for conducting referenda, which costs would be reimbursed by the affected marketing board. The Department has 1.0 FTE that monitors the various commodity groups by attending over 90 meetings a year. The bill would require the attendance of a few more meetings. There would be no fiscal impact on local governments.

Fiscal Analyst: A. Rich

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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.