



HOUSE BILL No. 5362

November 7, 1995, Introduced by Reps. Rhead, Green, Middleton, Gernaat and DeLange and referred to the Committee on Agriculture and Forestry.

A bill to amend sections 2, 3, 5, 7, 8, 10, 15, and 22 of Act No. 232 of the Public Acts of 1965, entitled as amended "Agricultural commodities marketing act," section 7 as amended by Act No. 145 of the Public Acts of 1992, being sections 290.652, 290.653, 290.655, 290.657, 290.658, 290.660, 290.665, and 290.672 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 3, 5, 7, 8, 10, 15, and 22 of Act
2 No. 232 of the Public Acts of 1965, section 7 as amended by Act
3 No. 145 of the Public Acts of 1992, being sections 290.652,
4 290.653, 290.655, 290.657, 290.658, 290.660, 290.665, and 290.672
5 of the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2. As used in this act:

7 (a) "Agricultural commodity" means all agricultural,
8 AQUACULTURAL, SILVICULTURAL, horticultural, floricultural, or

1 ~~vineyard~~ VITICULTURAL products, livestock or livestock
2 products, poultry or poultry products, Christmas trees, bees,
3 maple syrup and honey, produced in this state, either in their
4 natural state or as processed by the producer thereof. The
5 kinds, types, and subtypes of products to be classed together as
6 an agricultural commodity for the purposes of this act shall be
7 determined on the basis of common usage, ~~and~~ practice, AND
8 CERTIFICATION.

9 (B) "AGRICULTURAL COMMODITY INPUT" MEANS AN ITEM OR INGREDI-
10 ENT USED IN THE PRODUCTION OF AN AGRICULTURAL COMMODITY THAT IS
11 ASSESSED BY A SPECIFIC MARKETING AGREEMENT.

12 (C) ~~(b)~~ "Producer" means a person engaged in the business
13 of producing, or causing to be produced for any market, an agri-
14 cultural commodity in quantity beyond that person's own family
15 use, and having a value at first point of sale of more than
16 \$800.00 OR OF AN AMOUNT AS OTHERWISE EXPRESSLY PROVIDED FOR IN A
17 MARKETING PROGRAM for the agricultural commodity in any 1 growing
18 and marketing season within the last 3 years.

19 (D) ~~(c)~~ "Handler" means a person engaged in the operation
20 of packing, grading, selling, offering for sale or marketing a
21 marketable agricultural commodity OR AN AGRICULTURAL COMMODITY
22 INPUT in commercial quantities as defined in a marketing program,
23 who as owner, agent, or otherwise, ships or causes an agricul-
24 tural commodity OR AGRICULTURAL COMMODITY INPUT to be shipped.

25 (E) ~~(d)~~ "Processor" means a person engaged in canning,
26 freezing, dehydrating, fermenting, distilling, extracting,
27 preserving, grinding, crushing, or otherwise preserving or

1 changing the form of an agricultural commodity for the purpose of
2 marketing it.

3 (F) ~~(e)~~ "Distributor" means a person engaged in selling,
4 offering for sale, marketing, or distributing an agricultural
5 commodity which he OR SHE has purchased or acquired from a
6 producer or which that person is marketing on behalf of a produc-
7 er, whether as owner, agent, employee, broker, or otherwise. ~~→~~
8 ~~but shall~~ DISTRIBUTOR DOES not include a retailer ~~, except a~~
9 OF AN AGRICULTURAL COMMODITY EXCEPT FOR EITHER OF THE FOLLOWING:

10 (i) A retailer who purchases or acquires from ~~→~~ or handles
11 on behalf of a producer ~~→~~ an agricultural commodity not previ-
12 ously subjected to regulations by the marketing program covering
13 the AGRICULTURAL commodity.

14 (ii) A RETAILER SPECIFICALLY IDENTIFIED BY A MARKETING PRO-
15 GRAM THAT IS SUBJECT TO AN ASSESSMENT.

16 (G) ~~(f)~~ "Department" means the state department of
17 agriculture.

18 (H) ~~(g)~~ "Director" means the director of the department of
19 agriculture.

20 (I) ~~(h)~~ "Marketing agreement" means an agreement entered
21 into, with the director, by producers, distributors, processors,
22 or handlers pursuant to this act and binding only on those sign-
23 ing THE AGREEMENT.

24 (J) ~~(i)~~ "Marketing program" means a program established by
25 order of the director pursuant to this act ~~→~~ prescribing rules
26 and regulations governing the marketing for processing,
27 distributing, selling, or handling an agricultural commodity

1 produced in this state during a specified period and which the
2 director determines would be in the public interest.

3 (K) ~~(j)~~ "Committee" means the commodity committee or
4 advisory board established under a marketing program.

5 Sec. 3. (1) Any marketing agreement or MARKETING program
6 issued pursuant to this act may contain ~~one~~ 1 or more of the
7 following:

8 (a) Provisions for establishing advertising and promotional
9 programs.

10 (b) Provisions for establishing market development
11 programs.

12 (c) Provisions for establishing and supporting supplemental
13 research programs designed to improve the market acceptability of
14 the specific AGRICULTURAL commodity and contribute to the effec-
15 tiveness of the program.

16 (d) Provisions for development and dissemination of market
17 information.

18 (e) Provision for contracting with organizations, agencies
19 or individuals for carrying out any of the ~~above~~ activities
20 DESCRIBED IN THIS SECTION.

21 (f) Provisions for EITHER OR BOTH OF THE FOLLOWING:

22 (i) ~~(j)~~ Establishing standards for quality, CERTIFICATION
23 condition, or size for agricultural commodities sold as fresh OR
24 SEED products for resale or processing and standards for pack
25 ~~and/or~~ OR container, OR BOTH, for AGRICULTURAL commodities sold
26 for use as fresh products.

1 (ii) ~~(2)~~ Inspection and grading of the fresh OR SEED
2 AGRICULTURAL commodity in accordance with the grading standards
3 so established.

4 (g) Provision for determining the existence and extent of
5 any surplus in any marketing period ~~—~~ for any AGRICULTURAL
6 commodity, ~~or product,~~ or of any grade, size, or quality
7 ~~thereof~~ OF ANY AGRICULTURAL COMMODITY, and providing for han-
8 dling and equitably sharing the cost of such surplus handling
9 among the producers of the AGRICULTURAL commodity. Before provi-
10 sions under this paragraph are included in any marketing program,
11 particular attention shall be given to determining that Michigan
12 producers affected by the provisions produce a sufficient propor-
13 tion of the product covered by the provisions for the program to
14 be effective in the particular market toward which the provisions
15 would be applicable.

16 (h) Provision for payment for all usable products purchased
17 from producers according to established grades.

18 (i) Provision for exemption of nonparticipating producers.

19 (J) PROVISION FOR THE AWARDING OF GRANTS FROM MONEY COL-
20 LECTED PURSUANT TO THIS ACT. THE GRANTS MAY BE AWARDED TO ORGAN-
21 IZATIONS, AGENCIES, OR INDIVIDUALS WITH WHOM THE COMMITTEE HAS
22 CONTRACTED FOR ACTIVITIES DESCRIBED IN THIS SECTION.

23 (2) A MARKETING AGREEMENT OR MARKETING PROGRAM THAT ALLOWS
24 THE COMMITTEE TO CONTRACT WITH ORGANIZATIONS, AGENCIES, OR INDI-
25 VIDUALS IN ORDER TO CARRY OUT THE ACTIVITIES DESCRIBED IN THIS
26 SECTION OR ALLOWS THE COMMITTEE TO AWARD GRANTS MAY PROVIDE IN
27 THE MARKETING AGREEMENT OR MARKETING PROGRAM THAT THE COMMITTEE

1 BE ALLOWED TO SHARE IN ANY BENEFITS OR ROYALTIES DERIVED FROM THE
2 RESULTS OF THOSE ACTIVITIES.

3 Sec. 5. (a) Assessments shall be collected from each
4 producer of a marketable agricultural commodity produced in this
5 state and directly affected by a marketing program issued for the
6 AGRICULTURAL commodity to defray all program and administrative
7 costs except FOR NONPARTICIPATING PRODUCERS as provided FOR under
8 section ~~3(i)~~ 3(1)(i). SUBJECT TO APPROVAL BY THE DIRECTOR,
9 ASSESSMENTS MAY ALSO BE COLLECTED FROM BOTH PRODUCERS AND DIS-
10 TRIBUTORS OF A MARKETABLE AGRICULTURAL COMMODITY PRODUCED IN THIS
11 STATE IF THE DIRECTOR DETERMINES THAT THE UNIQUE NATURE OF THE
12 AGRICULTURAL COMMODITY OR INDUSTRY STRUCTURE WARRANTS THE ASSESS-
13 MENT OF BOTH THE PRODUCER AND THE DISTRIBUTORS OF THE AGRICUL-
14 TURAL COMMODITY.

15 (b) Each MARKETING program shall specify the maximum assess-
16 ment ON AN AGRICULTURAL COMMODITY OR AN AGRICULTURAL COMMODITY
17 INPUT AND MAY PROVIDE FOR ANY OTHER ASSESSMENT MECHANISM AS
18 APPROVED BY THE DIRECTOR to be collected to cover program and
19 administrative costs.

20 (c) ~~For~~ PURSUANT TO THE MARKETING PROGRAM AND FOR
21 convenience, the processors, distributors, or handlers of the
22 AGRICULTURAL commodity OR AGRICULTURAL COMMODITY INPUT may be
23 required to collect and remit producer assessments at no cost to
24 the marketing program UNLESS THE MARKETING PROGRAM EXPRESSLY PRO-
25 VIDES FOR THE PAYMENT OF A REASONABLE FEE FOR MAKING THE DEDUC-
26 TION AND REMITTANCE. ~~Processors, distributors, or handlers~~
27 ~~paying the assessments for a producer may deduct the amount from~~

1 ~~any money which they owe to the producers.~~ IN THE CASE OF A
2 MARKETING PROGRAM THAT PROVIDES FOR THE IMPOSITION OF AN ASSESS-
3 MENT, THE PROCESSORS, DISTRIBUTORS, OR HANDLERS DEALING WITH THE
4 PRODUCER SHALL COLLECT THE ASSESSMENT FROM THE PRODUCER BY
5 DEDUCTING THE ASSESSMENT FROM THE GROSS AMOUNT OWING TO THE
6 PRODUCER AND SHALL REMIT THE ASSESSMENT TO THE COMMITTEE WITHIN A
7 REASONABLE TIME PERIOD AS ESTABLISHED BY THE COMMITTEE. A PRO-
8 CESSOR, DISTRIBUTOR, OR HANDLER WHO FAILS TO DEDUCT OR REMIT THE
9 ASSESSMENT IS LIABLE TO THE COMMITTEE FOR ANY ASSESSMENTS NOT
10 DEDUCTED OR REMITTED. IF A PROCESSOR, DISTRIBUTOR, OR HANDLER IS
11 NOT INVOLVED AT THE FIRST POINT OF SALE OF AN AGRICULTURAL COM-
12 MODITY OR AGRICULTURAL COMMODITY INPUT, THE PRODUCER SHALL REMIT
13 THE ASSESSMENTS TO THE COMMITTEE ON ALL SALES OF THE AGRICULTURAL
14 COMMODITY OR AGRICULTURAL COMMODITY INPUT, SUBJECT TO A MARKETING
15 PROGRAM AND WITHIN A TIME PERIOD SPECIFIED BY THE COMMITTEE.

16 (D) A COMMITTEE MAY FILE A WRITTEN COMPLAINT WITH THE DIREC-
17 TOR DOCUMENTING THAT A PROCESSOR, DISTRIBUTOR, HANDLER, OR
18 PRODUCER HAS FAILED TO DEDUCT OR REMIT ANY ASSESSMENT DUE TO THE
19 COMMITTEE PURSUANT TO A MARKETING PROGRAM. UPON RECEIPT OF SUCH
20 A COMPLAINT, THE DIRECTOR SHALL CONDUCT AN INVESTIGATION OF THE
21 ALLEGATIONS. IF, AFTER INVESTIGATION, THE DIRECTOR FINDS THAT
22 THE PROCESSOR, DISTRIBUTOR, HANDLER, OR PRODUCER HAS FAILED TO
23 DEDUCT OR REMIT AN ASSESSMENT TO THE COMMITTEE, THE DIRECTOR
24 SHALL MAKE A REQUEST TO THE PROCESSOR, DISTRIBUTOR, HANDLER, OR
25 PRODUCER FOR THE REMITTING OF THE ASSESSMENT WITHIN 10 DAYS AFTER
26 THE DIRECTOR DETERMINES THAT A DEDUCTION OR REMITTANCE WAS NOT
27 MADE. IN THE CASE OF THE FAILURE TO DEDUCT AN ASSESSMENT, THE

1 DIRECTOR SHALL COMPUTE THE AMOUNT THAT REASONABLY SHOULD HAVE
2 BEEN DEDUCTED AND IMPOSE AN ASSESSMENT IN THAT AMOUNT. IF THE
3 ASSESSMENT IS NOT REMITTED WITHIN 30 DAYS AFTER THE REQUEST, THE
4 DIRECTOR MAY FILE AN ACTION TO COLLECT THE ASSESSMENT IN A COURT
5 OF COMPETENT JURISDICTION WHERE THE PROCESSOR, DISTRIBUTOR, HAN-
6 DLER, OR PRODUCER HAS ITS PRIMARY PLACE OF BUSINESS. IN ANY
7 ACTION TO RECOVER AN ASSESSMENT UNDER THIS SUBSECTION, IF THE
8 DIRECTOR PREVAILS, THE COURT SHALL AWARD TO THE DIRECTOR ALL
9 COSTS AND EXPENSES IN BRINGING THE ACTION, INCLUDING, BUT NOT
10 LIMITED TO, REASONABLE AND ACTUAL ATTORNEY FEES, COURT COSTS, AND
11 AUDIT EXPENSES. IF THE DIRECTOR DOES NOT PREVAIL, HE OR SHE SHALL
12 BILL THE COMMITTEE FOR REASONABLE AND ACTUAL ATTORNEY FEES, COURT
13 COSTS, AND EXPENSES INCURRED IN BRINGING ABOUT THE ACTION.

14 (E) ~~(d)~~ Each ~~program~~ COMMITTEE shall specify the date
15 when the assessment ~~whether collected by the producers, pro-~~
16 ~~cessors, distributors, or handlers of the commodity,~~ is due in
17 the account of the MARKETING program on that production:
18 Producers, processors, distributors, or handlers of the affected
19 AGRICULTURAL commodity OR AGRICULTURAL COMMODITY INPUT shall be
20 given reasonable notice of the due date.

21 (F) A COMMITTEE ESTABLISHED PURSUANT TO THIS ACT HAS THE
22 POWER TO BORROW MONEY IN ANTICIPATION OF THE RECEIPT OF ASSESS-
23 MENTS IF THE FOLLOWING CONDITIONS ARE MET:

24 (i) THE LOAN WILL NOT BE REQUESTED OR AUTHORIZED, OR WILL
25 NOT MATURE WITHIN, 90 DAYS BEFORE A RESUBMITTAL OR TERMINATION
26 REFERENDUM FOR THE MARKETING PROGRAM.

1 (ii) THE AMOUNT OF THE LOAN DOES NOT EXCEED 50% OF THE
2 ANNUAL AVERAGE ASSESSMENT REVENUE DURING THE PREVIOUS 3 YEARS.

3 (iii) THE LOAN REPAYMENT PERIOD DOES NOT EXCEED THE LIFE OF
4 THE MARKETING PROGRAM.

5 (iv) IN THE CASE OF A MARKETING PROGRAM ESTABLISHED AFTER
6 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVI-
7 SION, THE LOAN DOES NOT EXCEED 25% OF THE PROJECTED ANNUAL
8 ASSESSMENT REVENUE.

9 (v) THE LOAN HAS THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.
10 THE DIRECTOR MAY REQUEST AN AUDIT OF THE COMMITTEE BY THE AUDITOR
11 GENERAL BEFORE APPROVING THE LOAN.

12 (G) THE DIRECTOR SHALL ASSESS AGAINST THE PRODUCERS OF THE
13 AGRICULTURAL COMMODITY ALL OUTSTANDING LOANS, INCLUDING INTEREST,
14 APPROVED UNDER SUBSECTION (F) IF THE MARKETING PROGRAM IS INAC-
15 TIVE OR IS TERMINATED.

16 Sec. 7. (1) A marketing program shall provide for the
17 establishment of a ~~commodity~~ committee to consist of an odd
18 number of members which shall be not less than 5 ~~nor~~ AND NOT
19 more than 15.

20 (2) The members of the committee shall be appointed by the
21 governor with the advice and consent of the senate from nomina-
22 tions received from the producers and handlers or processors of
23 the AGRICULTURAL commodity OR AGRICULTURAL COMMODITY INPUT for
24 which the marketing program is established. Nominating proce-
25 dures, qualifications, representation, term of office, and size
26 of the committee shall be prescribed in the marketing program for
27 which the committee is appointed. Each committee shall be

1 composed of producers and handlers or processors who are directly
2 affected by the marketing program in the proportion of represen-
3 tation as prescribed by the program.

4 (3) A member of a committee ~~shall be~~ IS entitled to reim-
5 bursement for actual expenses, and a per diem payment not to
6 exceed \$75.00 per day while attending meetings of the committee
7 or while engaged in the performance of official responsibilities
8 delegated by the committee.

9 (4) The duties and responsibilities of a committee shall be
10 prescribed in the order establishing the MARKETING program and to
11 the extent applicable shall include the following duties and
12 responsibilities:

13 (a) Developing administrative procedures relating to the
14 marketing program.

15 (b) Recommending amendments to the marketing program as are
16 considered advisable.

17 (c) Preparing the estimated budget required for the proper
18 operation of the marketing program.

19 (d) Developing methods for assessing ~~producers and methods~~
20 ~~for~~ AND collecting the necessary funds.

21 (e) Collecting and assembling information and data necessary
22 for proper administration of the MARKETING program.

23 (f) Performing other duties necessary for the operation of
24 the marketing program as agreed upon with the director.

25 (5) The business which a committee may perform shall be con-
26 ducted at a public meeting of the committee held in compliance
27 with the open meetings act, Act No. 267 of the Public Acts of

1 1976, ~~as amended,~~ being sections 15.261 to 15.275 of the
2 Michigan Compiled Laws. Public notice of the time, date, and
3 place of the meeting shall be given in the manner required by Act
4 No. 267 of the Public Acts of 1976. ~~, as amended.~~

5 (6) Subject to section 10(b) and except as otherwise pro-
6 vided in this subsection, a writing prepared, owned, used, in the
7 possession of, or retained by a committee in the performance of
8 an official function shall be made available to the public in
9 compliance with the freedom of information act, Act No. 442 of
10 the Public Acts of 1976, ~~as amended,~~ being sections 15.231 to
11 15.246 of the Michigan Compiled Laws. Except for information
12 regarding penalties levied under this act, information relating
13 to specific assessments to a specific person under a marketing
14 program shall be exempt from disclosure to any other person or
15 committee. This subsection does not prevent the director or the
16 department from obtaining information necessary to confirm com-
17 pliance with this act and does not prevent the director or the
18 department from disclosing statistical information so long as
19 that disclosure does not reveal specific assessments or produc-
20 tion levels of any producer, handler, or processor.

21 Sec. 8. (1) ~~(a) Any moneys~~ MONEY collected pursuant to
22 this act ~~shall~~ IS not ~~be~~ state ~~funds~~ MONEY and shall be
23 deposited in a bank or other depository in this state ~~,~~ AND
24 allocated to the marketing program under which ~~they are~~ IT IS
25 collected. ~~, and~~ THE MONEY SHALL BE disbursed only for the nec-
26 essary expenses incurred with respect to each such separate
27 marketing program, in accordance with the rules established under

1 the MARKETING program, AND FOR GRANTS AUTHORIZED UNDER A
2 MARKETING AGREEMENT OR MARKETING PROGRAM.

3 (2) ~~(b)~~ All expenditures shall be audited by the state
4 auditor general ~~—~~ or by a certified public accountant at least
5 annually ~~—~~ and within 30 days after completion ~~—thereof—~~ OF THE
6 AUDIT, the state auditor general or certified public accountant
7 shall give copies ~~—thereof—~~ OF THE AUDIT to the members of the
8 committee and the director. An activity and financial report
9 shall be published annually and made available to interested
10 parties.

11 Sec. 10. (a) Whenever the director has received a petition
12 signed by 25%, or 200, WHICHEVER IS LESS, of the producers of an
13 agricultural commodity ~~—, whichever is less, for—~~ REGARDING the
14 adoption of a marketing program or amendments to an existing mar-
15 keting program, he OR SHE shall give notice of a public hearing
16 on the proposed marketing program or the proposed amendments to
17 an existing marketing program. After receiving a petition for
18 the establishment of a marketing program, the director may
19 appoint a temporary producer committee to develop the proposed
20 MARKETING program to be considered at the public hearing.

21 (b) The director may require all handlers or processors of
22 the agricultural commodity OR AGRICULTURAL COMMODITY INPUT as
23 individuals or through their trade associations to file with him
24 OR HER within 30 days a report, properly certified, showing the
25 correct names and addresses of all producers of the agricultural
26 commodity from whom such handler or processor received such
27 agricultural commodity in the marketing season next preceding the

1 filing of such report. The DIRECTOR SHALL NOT MAKE PUBLIC OR
2 PROVIDE TO ANYONE FOR PRIVATE USE THE information contained in
3 the individual reports of handlers or processors filed with the
4 director pursuant to ~~provisions of~~ this section. ~~shall not be~~
5 ~~made public by the director, nor available to anyone for private~~
6 ~~use.~~

7 (c) The director shall issue a decision within 45 days after
8 the close of the hearing based upon his OR HER findings ~~and~~
9 deliver TO ALL PARTIES OF RECORD APPEARING AT THE HEARING AND ANY
10 OTHER INTERESTED PARTIES UPON THE REQUEST OF THOSE INTERESTED
11 PARTIES, by mail or otherwise, copies of the findings and recom-
12 mendation ~~and~~ approving or disapproving of the proposed MARKETING
13 program. ~~to all parties of record appearing at the hearing and~~
14 ~~any other interested parties.~~ The recommendation shall contain
15 the text in full of any proposed MARKETING program or amendment
16 of an existing MARKETING program. The recommendation shall be
17 substantially within the purview of the notice of hearings and
18 shall be supported by evidence taken at the hearing or by docu-
19 ments of which the director is authorized to take official
20 notice.

21 (D) FOR PURPOSES OF THIS SECTION, PRODUCERS MAY INCLUDE BOTH
22 PRODUCERS AND DISTRIBUTORS OF A MARKETABLE AGRICULTURAL COMMODITY
23 PRODUCED IN THIS STATE SUBJECT TO THE REQUIREMENTS OF SECTION 5.

24 Sec. 15. (1) ~~Any proposed~~ A marketing program ~~adopted~~
25 PROPOSED FOR ADOPTION pursuant to this act shall include defini-
26 tion of terms, purpose of the MARKETING program, the maximum rate
27 of assessment, method of collection, nominating procedure,

1 qualifications, representation and size of the committee, and
2 other necessary provisions.

3 (2) A MARKETING PROGRAM PROPOSED FOR ADOPTION PURSUANT TO
4 THIS ACT MAY PROVIDE FOR THE AWARDING OF GRANTS OR THE SHARING BY
5 THE COMMITTEE OF ANY BENEFITS OR ROYALTIES DERIVED FROM ANY
6 ACTIVITIES PERFORMED BY ANOTHER ORGANIZATION, AGENCY, OR INDIVID-
7 UAL AND CONDUCTED PURSUANT TO THE MARKETING PROGRAM.

8 Sec. 22. If the assessment is not paid by the date speci-
9 fied by a ~~program~~ COMMITTEE as permitted under section ~~5(d)~~
10 5(E), the unpaid assessment shall be subject to an interest
11 charge of 1% per month.