



**House
Legislative
Analysis
Section**

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**AGRICULTURAL COMMODITIES
MARKETING ACT REVISIONS**

**House Bill 6256 (Substitute H-2)
First Analysis (11-7-02)**

**Sponsor: Rep. Larry Julian
Committee: Agriculture and Resource
Management**

THE APPARENT PROBLEM:

The Agricultural Commodities Marketing Act (Public Act 232 of 1965) was enacted to aid the state’s agricultural commodities producers to organize themselves in order to better market and promote their commodities, and to engage in agricultural research. The act permits the director of the Department of Agriculture (MDA) to establish marketing programs, with approval through referenda of the affected commodities producers. Marketing programs may contain provisions establishing advertising or promotional programs; establishing market development programs; establishing and supporting research programs; developing and disseminating market information; and establishing grading standards for certain fresh agricultural commodities; among other things.

Once a marketing program is established, the governor appoints a commodity committee, which consists of producers and handlers or processors who are directly affected by the marketing program. The MDA works with each committee, composed of growers and producers of a particular commodity, to promote the commodity, conduct referenda, and provide administrative assistance to the committees. In addition, the director of the department (or his or her representative) serves as an ex officio nonvoting member of the committee.

Under the act, commodities committees are permitted to impose an assessment on all producers of a particular commodity, subject to approval by the affected producers. The MDA acts to ensure that the assessments are imposed in a fair and equitable manner, and to provide authority to the commodities committees to enforce the collection of such assessments.

Since the enactment of the act in 1965, there have been relatively few amendments to the act. However, in recent years, the various commodity groups established pursuant to the act, the Department of

Agriculture, and other interested groups have met and reviewed the provisions of the act, and have proposed several amendments to the act in an attempt to update and clarify certain provisions of the act. Legislation has been introduced that incorporates those proposals.

THE CONTENT OF THE BILL:

The bill would make several amendments to the Agricultural Commodities Marketing Act (Public Act 232 of 1965) including, among others, provisions relating to agricultural commodity inputs, marketing agreements, marketing programs, commodity committees, and assessments.

Definitions. The bill would make several changes to the definitions of various terms and phrases utilized in the act. The bill strikes ‘poultry or poultry products’ from the definition of ‘agricultural commodity’. In addition, the bill adds several duties to the definition of ‘handler’ so that it would be defined to mean, “a person who *takes title to and* is engaged in the operation of packing, *cleaning, drying, packaging, sizing, hauling, grading, selling,* offering for sale, or marketing a marketable agricultural commodity or an agricultural commodity input in commercial quantities who, as an owner, agent, or otherwise, ships an agricultural commodity or agricultural commodity input.” Furthermore, the bill adds several duties to the definition of a ‘processor’ so that it would also include a person who is engaged in drying or milling an agricultural commodity.

In addition, the bill would amend the definition of ‘agricultural commodity input’ and add that phrase to several other provisions throughout the bill. The bill would define ‘agricultural commodity input’ to mean an item used in the production, processing, or packaging of an agricultural commodity that is assessed by a specific marketing agreement. The bill

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would also add that an agricultural commodity input would not include feed, fertilizer, and pesticides. The bill would add the phrase to the definition of 'distributor', so that a distributor would also mean a person engaged in the selling, offering for sale, marketing, or distribution of an agricultural commodity input. The bill would also add the phrase to the definition of 'marketing program' so that such a program could also govern marketing for the processing, distributing, selling, or handling of an agricultural commodity input. Finally, the bill would also add the phrase to the definition of 'producer' so that a producer would also include a person engaged in the business of producing, or causing to be produced for any market, an agricultural commodity input.

Marketing Agreements or Programs. Under the act, a marketing agreement or marketing program may contain provisions for, among others, the establishment and support of supplemental research programs designed to improve the market acceptability of the specific agricultural commodity. The bill would permit, instead, a marketing agreement or marketing program to include provisions for the establishment and support of research designed to improve or develop new agricultural commodities or agricultural commodity inputs. In addition, the bill would add that marketing agreements or programs could also contain provisions for accepting grants, royalties, license fees, interest, gifts, income, or other items of value that enhance the purpose of the marketing agreement or program, and for the payment of assessments on agricultural commodity inputs. The act also permits marketing programs and marketing agreements to contain several provisions relating to the quality, inspection, surplus, and research of agricultural commodities. The bill adds that these provisions would apply to commodity inputs as well.

The bill adds that a proposed marketing program would include the definition of terms, purpose, maximum assessment rate, method of assessment calculation, as well as nominating procedures, qualifications, representation, and the size of the program committee and other provisions deemed necessary by the committee. [Note: This would replace language currently found in section 15(1), which would be repealed by the bill.] However, the bill adds that this requirement would not invalidate any marketing programs established prior to the bill's effective date that the director of the MDA determines to be substantially in compliance with the provisions of the act.

Under the act, a marketing agreement or program that allows the committee to contract with organizations, agencies, or individuals may provide that the marketing program or agreement be allowed to participate in the earnings of any royalties. Under the bill, any marketing agreement or program that allows the committee to contract with organizations, agencies, governmental entities, institutions of higher education, or individuals could provide that the marketing program or agreement be allowed to participate in the income or earnings of any royalties or license fees.

Assessments. Under the act, assessments are collected from each producer of a marketable agricultural commodity produced in the state and directly affected by a marketing program. The bill would also allow assessments to be collected on agricultural commodity inputs in the state directly affected by a marketing program established for that input.

In addition, the act permits assessments to be collected from both producers and distributors of a marketable agricultural commodity if the MDA director determines that the unique nature of the commodity or industry structure warrants the assessment of both. The bill would permit assessments to be collected on producers, distributors, or both, and manufacturers of a marketable agricultural commodity or commodity input.

The act requires the processors, distributors, or handlers dealing with a producer to collect the assessment (if the marketing program imposes one) from the producer by deducting the assessment from the gross amount owed to the producer. However, if the processor, distributor, or handler is not involved at the first point of sale of the commodity or commodity input, the producer is required to remit the assessment to the committee on all sales of the commodity or input. The bill would add that the producer would also remit the assessment to the committee if the processor, distributor, or handler is not within this state and the assessment is not deducted and remitted.

The bill also adds that all assessments deducted or collected and held by a processor, distributor, or handler for over 90 days would be deposited in a separate interest bearing escrow account held jointly with the marketing program committee and could not be commingled with other funds. Furthermore, the bill adds that all assessments collected or deducted would be considered trust funds and be remitted

quarterly or more frequently if required by the marketing program to the appropriate committee.

Under the act, if a processor, distributor, or handler fails to deduct an assessment, the MDA director is required to compute the amount that reasonably should have been deducted, and impose an assessment in that amount. If the assessment is not remitted within 30 days, the director is permitted to file an action in court to collect the assessment. The bill adds that if the assessment is not in compliance with a written agreement for full payment, the MDA director could file an action to collect the assessment.

Finally, under certain circumstances, the act permits a marketing program committee to borrow money in anticipation of the receipt of assessments. The bill adds that the MDA director would assess against the agricultural commodity input all outstanding loans, including interest, if the marketing program is inactive or terminated.

Marketing Program Committees. The act requires a marketing program to establish a committee to administer the marketing program, consisting of an odd number of members with not less than five members and not more than 15 members. Under the bill, the committee would not have more than 13 members. The bill also adds that the term of office of a committee member would be three years, or until such time as his or her successor is appointed and qualified. In addition, the bill adds that the MDA director, or his or her representative, would serve on the committee as a nonvoting ex officio member.

In addition, the bill adds that a committee, with the advice and consent of the MDA director and the Commission on Agriculture, could reapportion the number of committee members or member districts, or both. Reapportionment of the districts would be based on production or industry representation. The reapportionment could commence 30 days after the bill's effective date. In addition, reapportionment would not occur more than twice in any five-year period and would not occur within six months before a referendum to determine whether the affected processors agree to the marketing program.

After the reapportionment, if the residence of a committee member falls outside of the district that he or she represents and falls within the district of another committee member, both members would continue to serve on the committee for a term equal to the remaining term of the member who has served for the longest period of time. If, after reapportionment, a district were created in which no committee member resides, a member would be

selected in the manner set forth in the marketing program. In addition, the bill would allow, as a result of reapportionment or redistricting, a committee to temporarily have more members than allowed under the program until the term of the longest serving member from that district expires.

Under the act, a committee member is entitled to reimbursement of actual expenses and a per diem payment not exceeding \$75 per day while attending committee meetings or while in the performance of the official duties of the committee. The bill states that the per diem payment paid to committee members would be set by the committee and not exceed the Commission of Agriculture rate while attending committee meetings or in the performance of the official duties of the committee. In addition, the act prescribes several duties and responsibilities of the committee including, among others, developing methods for assessing and collecting the necessary funds. Under the bill, the committee would, instead, develop methods for collecting and auditing the assessments. Furthermore, under the act, information regarding specific assessments to a specific person under a marketing program is exempt from disclosure under the Freedom of Information Act (Public Act 442 of 1976). The bill specifies that the names and addresses of producers (as they relate to assessments) would also be exempt from disclosure.

Disposition of Money. Under the act, all expenditures are required to be audited by the state auditor general or by a certified public accountant, in addition to other requirements. The bill would delete the reference to the auditor general and require an audit by a certified public accountant. In addition, the bill would require a committee with annual assets of \$50,000 or less, based on a three-year average, to be audited twice between referenda and also to have a financial review conducted in those years where it is not audited (instead of the annual audit otherwise required).

Refunds. Under the act, any money earned from royalties that may be collected after a marketing program is terminated is allocated to any institution of higher education that is engaged in agricultural research. The bill would also allow an allocation for nutritional research.

Action to Enforce Compliance. Under the act, the MDA director may apply to the circuit court in any county for injunctive relief to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Under

the bill, such application for relief could be made to a court of competent jurisdiction.

The act also requires the business of a marketing program committee to be held in compliance with the Open Meetings Act, and any writings prepared, owned, used, possessed, or retained by a committee, with certain exceptions, be made available in compliance with the Freedom of Information Act. The bill would make an apparently technical change and delete a provision that states that a violation of the requirement that the business of a committee be in compliance with the Open Meetings Act is enforced by that act, and another provision that states that a violation of the requirement that the writings of a committee be made available in compliance with the Freedom of Information Act is enforced by that act.

Referendum. The act requires that all marketing programs established be subject to a referendum of the producers during the fifth year of operation, with certain exceptions. Under the act, a referendum is not required if the agricultural commodity that is the subject of the program is involved in a commodity checkoff program established under federal law; the federal commodity checkoff provides for a mechanism for a producer referendum; and the marketing program involved is entirely financed by that federal checkoff program. The bill would simply add 'agricultural commodity input' to the first and third requirements listed above, so that the referendum would not be required if the input is involved in a commodity checkoff under federal law and the marketing program involving the input is entirely financed by that federal checkoff program.

Violations and Penalties. Currently, a person who violates the act is subject to a fine not exceeding \$100 per day. The bill would provide that a violation would be a misdemeanor punishable by a fine not exceeding \$1,000 a day. Violations of the Open Meetings Act and the Freedom of Information Act would be punishable by penalties specified in those acts.

Repeals. The bill would repeal section 15 of the act (MCL 290.65). Section 15 pertains to provisions for marketing programs proposed for adoption. However, these provisions would be substantially incorporated into section 3. In addition, the bill would also repeal the administrative rules related to the act (R 285.301.1 to R 285.301.40).

MCL 290.652 et al.

BACKGROUND INFORMATION:

Currently, there are several commodities committees that are organized under the act, including committees concerning apples, asparagus, carrots, cherries, corn, cranberries, dairy products, onions, plums, privately owned cervids, soybeans, and special-fed veal. In addition, a committee for ornamental plant growers is pending. Commodities marketing programs for beans, beef, and potatoes are each established under separate statutes. [See Public Act 114 of 1965, Public Act 291 of 1972, and Public Act 29 of 1970, respectively].

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (11-6-02)

ARGUMENTS:

For:

The bill would place in statute a provision that permits commodity committees to receive grants, license fees, and other income, in addition to the funding they receive through assessments imposed on growers. This is particularly important as federal grants and other outside revenue sources become more available to support the marketing programs and valuable research projects of the committees.

For:

The bill also adds a provision relating to the reapportionment of committees. Often reapportionment become necessary due to changes in commodity acreage or production within certain areas. According to committee testimony, one commodity committee has a district with more than 900,000 acres and another district with slightly more than 90,000. The department reports that in another committee, one district is composed of one person's farming operations, and that, in another committee, it has been difficult in recent years to attract individuals to serve on the committee.

Currently, there exists an administrative rule relating to reapportionment, though the act is silent on the matter. Under the rule (R 285.301.12), if provided for in the marketing program, a committee may recommend for approval by the MDA director the reestablishment of members within the commodity production area or the reapportionment of members among districts. However, according to the department, most marketing programs do not contain provisions providing for reapportionment. Absent

this explicit language in the marketing program itself, any reapportionment of the committee must be in the same manner as any other amendment to the marketing program, because the establishment of the committee is provided for in the marketing program. Under current statute, any amendments to a marketing program require a petition signed by the lesser of 25 percent or 200 of the producers affected, a public hearing on the proposed amendments, and approval through a referendum. This process is rather cumbersome and time consuming, and may effectively prohibit committees from considering any changes in their structures.

In addition, committees have been hesitant to push for reapportionment, based on a general fear that the ballot would become too long and, similar to ballot proposals in statewide elections, the proposed changes would get lost in the myriad of other amendments to the marketing program, and would get voted down simply because of a lack of understanding. Furthermore, the process of conducting a referendum can be rather expensive – committee testimony reported that the cost of conducting a referendum would be between \$30,000 and \$40,000. These costs deter commodity committees that do not generate a great deal of money from going through the reapportionment process, notwithstanding an apparent need for reapportionment.

While the bill's reapportionment provision largely mirrors the administrative rule, it also specifies that the reapportionment of members or districts would be subject to the advice and consent of the MDA director and the Commission on Agriculture. The current rule only requires approval from the MDA director. Requiring the approval of the Commission of Agriculture, a bipartisan commission appointed by the governor, provides the reapportionment process with an additional level of oversight to ensure that commodities growers are proportionately represented.

Furthermore, the bill provides an additional protection, in that reapportionment could not occur more than twice within any five-year period. This, too, serves to prohibit a commodity committee from arbitrarily and continually changing the nature of the committee's membership and representation without cause or justification.

For:

Under current law, the MDA director is permitted to file an action for payment if an assessment is not remitted in 30 days. The bill adds that if an assessment is not remitted in compliance with a

written agreement for full payment, the MDA director could file an action in court. This provision provides the department with added flexibility to collect an assessment from those with an arrearage, in such a manner that it does not harm the person with the arrearage. Allowing an individual the opportunity to work with the department and reach a structured payment compliance agreement could ensure that the assessments are being collected in such a manner that it is neither burdensome nor detrimental to the agricultural operations of that individual.

For:

The bill would permit the establishment of marketing programs and assessments for agricultural commodity inputs. A previous amendment to the act added a definition of 'agricultural commodity inputs' with the intent of establishing programs and assessments for commodity inputs. However, according to the department, those amendments did not adequately provide for the authority for the assessments on those agricultural commodity inputs. Since the enactment of previous amendatory legislation, there have been some commodity groups (namely Christmas tree growers) that have explored the possibility of establishing a program and an assessment for a commodity input. The bill would provide for the explicit authority of a committee to impose and assessment and states, "assessments shall be collected on agricultural commodity inputs in this state directly affected by a marketing program established for the agricultural commodity input".

POSITIONS:

The Department of Agriculture supports the bill. (9-24-02)

The Michigan Farm Bureau supports the bill. (9-24-02)

The Michigan Agri-Business Association supports the bill. (9-24-02)

The Michigan Corn Growers Association supports the bill. (9-24-02)

The Michigan Soybean Committee supports the concept of the bill. (9-30-02)

The Michigan Dairy Marketing Committee supports the bill (9-24-02)

Analyst: M. Wolf

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