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## AGRICULTURAL COMMODITIES MARKETING ACT REVISIONS

House Bill 6256  
Sponsor: Rep. Larry Julian  
Committee: Agriculture and Resource  
Management

Complete to 8-19-02

### A SUMMARY OF HOUSE BILL 6256 AS INTRODUCED 8-13-02

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 and committees, and assessments to offset programmatic and administrative costs

Definitions. The bill makes 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 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 would add the phrase to the definitions 'distributor' so that a distributor also includes a person engaged in the selling, offering for sale, marketing, or distributing 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

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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 Department of Agriculture (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 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 be required 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. Under the act, with the exception of violations of the Open Meetings Act and the Freedom of Information Act, a person who violates the act is subject to a fine not exceeding \$100 per day. Under the bill, a person who violates that act would be guilty of a misdemeanor punishable by a fine not exceeding \$1,000 a day.

Repeals. The bill would repeal sections 15 and 18 of the act (MCL 290.65 and 290.668). Section 15 pertains to provision for marketing programs proposed for adoption. However, these provisions would be substantially incorporated into section 3. Section 18 grants the MDA director with rule making authority. 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.

Analyst: M. Wolf

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■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.