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SFA



BILL ANALYSIS

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House Bill 6256 (Substitute H-2 as passed by the House)
Sponsor: Representative Larry Julian
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 12-3-02

CONTENT

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

- **Allow a marketing program to provide for assessments on agricultural commodity inputs.**
- **Authorize a commodity committee to reapportion the number of committee members and/or districts.**
- **Reduce the maximum size of a committee.**
- **Reduce the audit requirements for a committee with annual assets of \$50,000 or less.**
- **Increase the penalty for violations.**
- **Require a committee to conduct a producer referendum if a Federal commodity checkoff program were suspended or terminated.**
- **Repeal administrative rules for a general marketing program.**

Overview of Act

The Act provides for the establishment of agricultural commodity marketing programs in order to promote a product and conduct research, and provides for assessments on the affected producers. The Director of the Michigan Department of Agriculture (MDA) may recommend that a marketing program be established after receiving a petition signed by 25% or 200, whichever is less, of the producers of an agricultural commodity, and holding a public hearing. After recommending the establishment of a program, the Director must determine by referendum whether the affected producers assent to that action. When a program is established, all producers of the commodity (except nonparticipating producers) must pay an assessment to defray

program and administrative costs. A marketing program must include provisions specified in the Act, and must provide for the establishment of a committee (a commodity committee or an advisory board).

Marketing Agreement or Program

The Act defines "marketing program" as a program established by order of the Director under the Act, prescribing rules and regulations governing the marketing for processing, distributing, selling, or handling an agricultural commodity produced in this State during a specified period, and that the Director determines would be in the public interest. The bill would amend this definition to refer to an agricultural commodity or an agricultural commodity input. A "marketing agreement" is an agreement entered into, with the Director by producers, distributors, processors, or handlers under the Act.

Under the bill, a marketing program or marketing agreement could provide for the payment of assessments on agricultural commodity inputs. The bill would refer to agricultural commodity inputs in provisions for establishing research programs, establishing standards of quality, condition, or size, and determining the existence and extent of any surplus.

The bill also would allow a marketing program or agreement to provide for accepting grants, royalties, license fees, interest, gifts, income, or other items of value that enhance the purpose of the program or agreement.

In addition, the bill would require a proposed marketing program to include definitions of terms, maximum rate of an assessment,

method of collecting the assessment, and nominating procedures, qualifications, representation, and size of a commodity committee, as well as other provisions a committee considered necessary. (Currently, this requirement is contained in Section 15 of the Act, which the bill would repeal.) The bill states that this provision would not invalidate any marketing programs established under the Act before the bill's effective date, that were in substantial compliance with the Act as determined by the Director.

Currently, if a marketing program or agreement allows the commodity committee to contract with organizations, agencies, or individuals in order to carry out the activities described in the Act, or allows the committee to award grants, the program or agreement may provide that it is allowed to participate in the earnings of any royalties derived from those activities. The bill would refer to a marketing program or agreement that allowed the commodity committee to contract with organizations, agencies, governmental entities, institutions of higher education, individuals, or other legal entities. The program or agreement also could participate in the income or earnings of any royalties or license fees derived from these activities. As presently required for royalties, the license fees would have to be used in the manner provided for in the marketing program or agreement.

The Act defines "agricultural commodity input" as an item used in the production of an agricultural commodity that is assessed by a specific marketing agreement. The bill also would refer to the processing or packaging of an agricultural commodity. The bill specifies that "agricultural commodity input" would not include feed, fertilizer, or pesticides.

Assessments

The Act requires assessments to be collected from each producer of a marketable agricultural commodity produced in this State and directly affected by a marketing program issued for the commodity, to defray all program and administrative costs, although nonparticipating producers may be exempted. The bill would include the same assessment requirement for agricultural commodity inputs.

Currently, subject to the Director's approval, assessments also may be collected from

distributors of a marketable agricultural commodity produced in this State, if the Director determines that the unique nature of the commodity or the industry structure warrants the assessment of both the producer and the distributors of the commodity. Under the bill, assessments could be collected from producers or distributors, or both, and manufacturers of a marketable agricultural commodity produced in this State or an agricultural commodity input used in this State, if the Director determined that the unique nature of the commodity or input or the industry structure warranted the assessment of the producer and the distributors of the commodity or input.

As provided in the Act, processors, distributors, or handlers must collect an assessment from a producer by deducting the assessment from the gross amount owed to the producer, and must remit the assessment to the committee. If a processor, distributor, or handler is not involved at the first point of sale of an agricultural commodity or agricultural commodity input, the producer must remit the assessment to the committee on all sales of the commodity or input, subject to a marketing program. Under the bill, a producer also would have to remit the assessment if a processor, distributor, or handler were not within this State and the assessment were not deducted and remitted.

The bill provides that all assessments deducted or collected and held by a processor, distributor, or handler for over 92 days would have to be deposited in a separate interest-bearing escrow account held jointly with the marketing program committee and not commingled with other funds. Interest accrued in the account would have to be forwarded to the committee.

The bill also specifies that all assessments collected or deducted would have to be considered trust funds and be remitted quarterly or more frequently by the marketing program to the appropriate committee.

Under the Act, a committee may file with the Director a complaint documenting that a processor, distributor, handler, or producer has failed to deduct or remit an assessment due under a marketing program. The Director then must conduct an investigation. If the Director determines that the person has failed to deduct or remit an assessment, the Director

must request the person to do so within 10 days after the Director's determination. If the assessment is not remitted within 30 days after the request, the Director may file an action in court to collect the assessment. Under the bill, the Director also could file an action if the assessment were not in compliance with a written agreement for full payment. In addition, the request for payment within 10 days would have to be made by certified mail.

Committee; Reapportionment

Under the Act, a committee must consist of an odd number of members, which may not be less than five or more than 15. The bill would reduce the maximum number to 13. The bill specifies that the term of office of a committee member would be three years or until his or her successor was appointed and qualified. The MDA Director or the Director's representative would have to serve as a nonvoting ex officio member. Additional nonvoting ex officio members could serve if approved in a specific marketing program.

The bill would authorize a committee, with the advice and consent of the Director and the Agriculture Commission, to reapportion the number of committee members or member districts, or both, beginning 30 days after the bill's effective date. District reapportionment would have to be on the basis of production or industry representation. Reapportionment of either members or districts could not occur more than twice in any five-year period, and could not occur within six months before a referendum.

After reapportionment, if a member's residence fell outside of the district for which he or she served on the committee, and fell within another member's district, then both members would continue to serve for a term equal to the remaining term of the member who served for the longest period of time. If reapportionment resulted in a district in which no committee member resided, then a member would have to be selected in the manner prescribed in the marketing program. After a reapportionment or redistricting, a committee could temporarily have more members than prescribed in the program until the term of the longest serving member from that district expired.

Currently, a committee member is entitled to

reimbursement for actual expenses and a per diem payment of up to \$75 while attending committee meetings or performing official responsibilities delegated by the committee. Under the bill, the per diem payment would have to be set by the committee and could not exceed the Agriculture Commission rate.

Under the Act, a committee is subject to the Open Meetings Act and the Freedom of Information Act. Except for information regarding penalties levied under the Agricultural Commodities Marketing Act, however, information relating to specific assessments to a specific person under a marketing program is exempt from disclosure to any other person or committee. Under the bill, names and addresses of producers also would be exempt from disclosure.

Finances

Money collected under the Act, whether collected from assessments or earned from royalties or derived from any activities performed by another person and conducted under a marketing program, is not State money and must be deposited in a financial institution, and allocated to the marketing program under which it is collected. Under the bill, these provisions would apply to money, assets, or other items of value collected or received under the Act, whether collected from assessments, received as grants or gifts, earned from royalties or license fees, or derived from any activities performed by another person under a marketing program. The money, assets, or other items of value would have to be deposited in a financial institution in this State.

Currently, all expenditures must be audited by the State Auditor General or a certified public accountant at least annually. Under the bill, expenditures would have to be audited at least annually by a certified public accountant. A committee with annual assets of \$50,000 or less, based upon a three-year average, would have to be audited twice between referenda and have a financial review conducted in those years in which it was not audited.

The Act provides for the refund of money remaining upon the termination of a marketing program. In the case of money earned from royalties collected after the program's termination, that money must be

allocated to any institution of higher education engaged in agricultural research. Under the bill, money earned from royalties, license fees, or other assets collected or received after the termination of a program would have to be allocated to an institution of higher education engaged in agricultural or nutritional research.

Enforcement and Penalties

The MDA Director may institute an action in court to enforce compliance with the Act, a rule promulgated under it, or a marketing agreement or program adopted under the Act. A violation of the Act's public meeting requirement, however, must be enforced as provided in the Open Meetings Act (OMA), and a violation of the public disclosure requirement must be enforced as provided in the Freedom of Information Act (FOIA). (Under the OMA, a person may bring an action to compel compliance or enjoin noncompliance, and may recover actual and exemplary damages. Under FOIA, a person may bring an action to compel disclosure, and may recover actual and punitive damages.) The bill would delete the requirements for enforcement under the OMA or FOIA.

Currently, a person who violates the Agricultural Commodities Marketing Act is subject to a fine of up to \$100 a day. The bill provides, instead, that a violator would be guilty of a misdemeanor punishable by a fine of up to \$1,000 a day. (A board member who intentionally violated the public meeting requirement, and a board that arbitrarily and capriciously violated the public disclosure requirement, still would be subject to the penalties prescribed in the OMA and FOIA, respectively.)

Producer Referendum

Under the Act, all marketing programs must be resubmitted to a referendum of the producers during each fifth year of operation. A referendum is not required, however, if the agricultural commodity is involved in a commodity checkoff program under Federal law, that program provides for a mechanism for a producer referendum, and the marketing program is entirely financed by that Federal checkoff program. Under the bill, this exception also would apply to an agricultural commodity input subject to a Federal checkoff program.

The bill specifies that, if a Federal commodity checkoff were suspended or terminated, a marketing program would have to conduct a referendum of the producers within 18 months after the suspension or termination.

Repeals

The bill would repeal Section 15 of the Act, which requires a proposed marketing program to include certain provisions (which the bill would continue to require). Section 15 also allows a proposed marketing program to provide for the program to award grants or participate in royalties derived from any activities performed by another person under the marketing program.

In addition, the bill would repeal administrative rules that contain a "general marketing program" whose purpose is to furnish general provisions that must be incorporated into any specific marketing program, with necessary adaptations (R 285.301.1 through 285.301.40).

MCL 290.625 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a potential fiscal impact on the State and no fiscal impact on local government. It is expected that the assessments collected by a commodity board would increase as a result of allowing assessments to be collected on agricultural commodity inputs. Total assessments presently amount to approximately \$13.5 million annually. This revenue is collected, retained, and distributed by the private commodity boards. Currently, there are 15 commodity groups organized under the Act or separate legislation.

By allowing all audits of commodity groups to be conducted by a certified public accountant, instead of the State Auditor General, the bill could result in decreased State expenditures to the extent that these are State-subsidized audits.

Fiscal Analyst: Craig Thiel

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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.