

HOUSE BILL No. 6256

August 13, 2002, Introduced by Rep. Julian and referred to the Committee on Agriculture and Resource Management.

A bill to amend 1965 PA 232, entitled "Agricultural commodities marketing act," by amending the title and sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 17, 19, 21, 22, 23, and 24 (MCL 290.652, 290.653, 290.654, 290.655, 290.657, 290.658, 290.659, 290.660, 290.661, 290.667, 290.669, 290.671, 290.672, 290.673, and 290.674), sections 2, 3, 5, 7, 9, 10, 21, and 22 as amended by 1996 PA 216, section 8 as amended by 1997 PA 20, and sections 19, 23, and 24 as amended by 1980 PA 196; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act relating to the marketing of agricultural commodities OR AGRICULTURAL COMMODITY INPUTS; to provide for marketing AND RESEARCH programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to

1 prescribe ~~the~~ CERTAIN functions of the department of
2 agriculture relative thereto including powers of enforcement of
3 this act; and to prescribe REMEDIES AND penalties.

4 Sec. 2. As used in this act:

5 (a) "Agricultural commodity" means all agricultural, aqua-
6 cultural, silvicultural, horticultural, floricultural, or viti-
7 cultural products, livestock or livestock products, ~~poultry or~~
8 ~~poultry products,~~ Christmas trees, bees, maple syrup, honey,
9 commercial fish or fish products, and seeds produced in this
10 state, either in their natural state or as processed by the
11 producer of the commodity. The kinds, types, and subtypes of
12 products to be classed together as an agricultural commodity for
13 the purposes of this act shall be determined on the basis of
14 common usage and practice.

15 (b) "Agricultural commodity input" means an item ~~or~~
16 ~~ingredient~~ used in the production, PROCESSING, OR PACKAGING of
17 an agricultural commodity that is assessed by a specific market-
18 ing agreement.

19 ~~(c) "Producer" means a person engaged in the business of~~
20 ~~producing, or causing to be produced for any market, an agricul-~~
21 ~~tural commodity in quantity beyond that person's own family use,~~
22 ~~and having a value at first point of sale of more than \$800.00 or~~
23 ~~of an amount as otherwise expressly provided for in a marketing~~
24 ~~program for the agricultural commodity in any 1 growing and mar-~~
25 ~~keting season within the last 3 years.~~

26 (d) "Handler" means a person engaged in the operation of
27 packing, grading, selling, offering for sale or marketing a

~~1 marketable agricultural commodity or an agricultural commodity
2 input in commercial quantities as defined in a marketing program,
3 who as owner, agent, or otherwise, ships or causes an agricul-
4 tural commodity or agricultural commodity input to be shipped.~~

~~5 (e) "Processor" means a person engaged in canning, freezing,
6 dehydrating, fermenting, distilling, extracting, preserving,
7 grinding, crushing, or otherwise preserving or changing the form
8 of an agricultural commodity for the purpose of marketing it.~~

~~9 (f) "Distributor" means a person engaged in selling, offer-
10 ing for sale, marketing, or distributing an agricultural commod-
11 ity which he or she has purchased or acquired from a producer or
12 which that person is marketing on behalf of a producer, whether
13 as owner, agent, employee, broker, or otherwise. Distributor
14 does not include a retailer of an agricultural commodity except
15 for either of the following:~~

~~16 (i) A retailer who purchases or acquires from or handles on
17 behalf of a producer an agricultural commodity not previously
18 subjected to regulations by the marketing program covering the
19 agricultural commodity.~~

~~20 (ii) A retailer specifically identified by a marketing pro-
21 gram that is subject to an assessment.~~

~~22 (g) "Department" means the state department of agriculture.~~

~~23 (h) "Director" means the director of the department of
24 agriculture.~~

~~25 (i) "Marketing agreement" means an agreement entered into,
26 with the director, by producers, distributors, processors, or~~

1 ~~handlers pursuant to this act and binding only on those signing~~
2 ~~the agreement.~~

3 ~~(j) "Marketing program" means a program established by order~~
4 ~~of the director pursuant to this act prescribing rules and regu-~~
5 ~~lations governing the marketing for processing, distributing,~~
6 ~~selling, or handling an agricultural commodity produced in this~~
7 ~~state during a specified period and which the director determines~~
8 ~~would be in the public interest.~~

9 ~~(k) "Committee" means the commodity committee or advisory~~
10 ~~board established under a marketing program.~~

11 (C) "COMMITTEE" MEANS THE COMMODITY COMMITTEE OR ADVISORY
12 BOARD ESTABLISHED UNDER A MARKETING PROGRAM.

13 (D) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF AGRICULTURE.

14 (E) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF
15 AGRICULTURE.

16 (F) "DISTRIBUTOR" MEANS A PERSON ENGAGED IN SELLING, OFFER-
17 ING FOR SALE, MARKETING, OR DISTRIBUTING AN AGRICULTURAL COMMOD-
18 ITY OR AGRICULTURAL COMMODITY INPUT THAT HE OR SHE HAS PURCHASED
19 OR ACQUIRED FROM A PRODUCER OR THAT THE PERSON IS MARKETING ON
20 BEHALF OF A PRODUCER, WHETHER AS OWNER, AGENT, EMPLOYEE, BROKER,
21 OR OTHERWISE. DISTRIBUTOR DOES NOT INCLUDE A RETAILER OF AN
22 AGRICULTURAL COMMODITY EXCEPT FOR EITHER OF THE FOLLOWING:

23 (i) A RETAILER WHO PURCHASES OR ACQUIRES FROM OR HANDLES ON
24 BEHALF OF A PRODUCER AN AGRICULTURAL COMMODITY NOT PREVIOUSLY
25 SUBJECTED TO REGULATIONS BY THE MARKETING PROGRAM COVERING THE
26 AGRICULTURAL COMMODITY.

1 (ii) A RETAILER SPECIFICALLY IDENTIFIED BY A MARKETING
2 PROGRAM THAT IS SUBJECT TO AN ASSESSMENT.

3 (G) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
4 CHARTERED BANK, MEMBER OF THE FARM CREDIT SYSTEM, SAVINGS AND
5 LOAN ASSOCIATION, SAVINGS BANK, AND CREDIT UNION, WHOSE DEPOSITS
6 ARE INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT
7 MAINTAINS A PRINCIPAL OR BRANCH OFFICE LOCATED IN THIS STATE
8 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

9 (H) "HANDLER" MEANS A PERSON WHO TAKES TITLE TO AND IS
10 ENGAGED IN THE OPERATION OF PACKING, CLEANING, DRYING, PACKAGING,
11 SIZING, HAULING, GRADING, SELLING, OFFERING FOR SALE, OR MARKET-
12 ING A MARKETABLE AGRICULTURAL COMMODITY OR AN AGRICULTURAL COM-
13 MODITY INPUT IN COMMERCIAL QUANTITIES AS DEFINED IN A MARKETING
14 PROGRAM, WHO AS OWNER, AGENT, OR OTHERWISE, SHIPS OR CAUSES AN
15 AGRICULTURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT TO BE
16 SHIPPED.

17 (I) "LIVESTOCK" MEANS THAT TERM AS DEFINED IN SECTION 5 OF
18 THE ANIMAL INDUSTRY ACT, 1988 PA 466, MCL 287.705.

19 (J) "MARKETING AGREEMENT" MEANS AN AGREEMENT ENTERED INTO,
20 WITH THE DIRECTOR, BY PRODUCERS, DISTRIBUTORS, PROCESSORS, OR
21 HANDLERS PURSUANT TO THIS ACT AND BINDING ONLY ON THOSE SIGNING
22 THE AGREEMENT.

23 (K) "MARKETING PROGRAM" MEANS A PROGRAM ESTABLISHED BY ORDER
24 OF THE DIRECTOR PURSUANT TO THIS ACT PRESCRIBING RULES AND REGU-
25 LATIONS GOVERNING THE MARKETING FOR PROCESSING, DISTRIBUTING,
26 SELLING, OR HANDLING AN AGRICULTURAL COMMODITY PRODUCED IN THIS
27 STATE OR AGRICULTURAL COMMODITY INPUT DURING A SPECIFIED PERIOD

1 AND WHICH THE DIRECTOR DETERMINES WOULD BE IN THE PUBLIC
2 INTEREST.

3 (I) "PROCESSOR" MEANS A PERSON ENGAGED IN CANNING, FREEZING,
4 DEHYDRATING, DRYING, FERMENTING, DISTILLING, EXTRACTING, PRESERV-
5 ING, GRINDING, CRUSHING, MILLING, OR OTHERWISE PRESERVING OR
6 CHANGING THE FORM OF AN AGRICULTURAL COMMODITY FOR THE PURPOSE OF
7 MARKETING IT.

8 (M) "PRODUCER" MEANS A PERSON ENGAGED IN THE BUSINESS OF
9 PRODUCING, OR CAUSING TO BE PRODUCED FOR ANY MARKET, AN AGRICUL-
10 TURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT IN QUANTITY
11 BEYOND THAT PERSON'S OWN FAMILY USE, AND HAVING A VALUE AT FIRST
12 POINT OF SALE OF MORE THAN \$800.00 OR OF AN AMOUNT AS OTHERWISE
13 EXPRESSLY PROVIDED FOR IN A MARKETING PROGRAM FOR THE AGRICUL-
14 TURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT IN ANY 1 GROWING
15 AND MARKETING SEASON WITHIN THE LAST 3 YEARS.

16 Sec. 3. (1) Any marketing agreement or marketing program
17 ~~issued pursuant to~~ AUTHORIZED UNDER this act may contain 1 or
18 more of the following:

19 (a) Provisions for establishing advertising and promotional
20 programs.

21 (b) Provisions for establishing market development
22 programs.

23 (c) Provisions for establishing and supporting
24 ~~supplemental~~ research ~~programs~~ designed to improve ~~the~~
25 ~~market acceptability of the specific~~ OR DEVELOP NEW agricultural
26 ~~commodity~~ COMMODITIES OR AGRICULTURAL COMMODITY INPUTS and
27 contribute to the effectiveness of the program.

1 (d) Provisions for development and dissemination of market
2 information.

3 (E) PROVISION FOR ACCEPTING GRANTS, ROYALTIES, LICENSE FEES,
4 INTEREST, GIFTS, INCOME, OR OTHER ITEMS OF VALUE THAT ENHANCE THE
5 PURPOSE OF THE MARKETING PROGRAM OR MARKETING AGREEMENT.

6 (F) ~~(e)~~ Provision for contracting with organizations,
7 agencies, or individuals ~~for carrying~~ TO CARRY out ~~any of~~ the
8 activities described in this ~~section~~ ACT.

9 (G) ~~(f)~~ Provisions for either or both of the following:

10 (i) Establishing standards for quality, PURITY, condition,
11 ~~or~~ size, OR OTHER ACCEPTED STANDARDS FOR THAT INDUSTRY for
12 agricultural commodities OR AGRICULTURAL COMMODITY INPUTS sold as
13 fresh, ~~or~~ seed, ~~products for resale or processing~~ OR
14 PROCESSED and standards for pack or container, or both, for agri-
15 cultural commodities OR AGRICULTURAL COMMODITY INPUTS sold for
16 use as fresh, SEED, OR PROCESSED products.

17 (ii) Inspection and grading of the fresh, ~~or~~ seed, OR
18 PROCESSED agricultural commodity OR AGRICULTURAL COMMODITY INPUT
19 in accordance with the grading standards so established.

20 (H) ~~(g)~~ Provision for determining the existence and extent
21 of any surplus in any marketing period for any agricultural com-
22 modity OR AGRICULTURAL COMMODITY INPUT, or of any grade, size, or
23 quality of any agricultural commodity OR AGRICULTURAL COMMODITY
24 INPUT, and providing for handling and equitably sharing the cost
25 of such surplus handling among the producers of the agricultural
26 commodity OR AGRICULTURAL COMMODITY INPUT. Before provisions
27 under this subdivision are included in any marketing program,

1 particular attention shall be given to determining that Michigan
2 producers affected by the provisions produce a sufficient propor-
3 tion of the product covered by the provisions for the program to
4 be effective in the particular market toward which the provisions
5 would be applicable.

6 (I) ~~(h)~~ Provision for payment OF ASSESSMENTS for all
7 usable products purchased from producers according to established
8 grades.

9 (J) PROVISION FOR PAYMENT OF ASSESSMENTS ON AGRICULTURAL
10 COMMODITY INPUTS.

11 (K) ~~(i)~~ Provision for exemption of nonparticipating
12 producers.

13 (l) ~~(j)~~ Provision for the awarding of grants from money
14 collected pursuant to this act. The grants may be awarded to
15 organizations, agencies, or individuals with whom the committee
16 has contracted for activities described in this section.

17 (2) A PROPOSED MARKETING PROGRAM SHALL INCLUDE DEFINITION OF
18 TERMS, PURPOSE, MAXIMUM RATE OF AN ASSESSMENT, METHOD OF COLLEC-
19 TION OF THE ASSESSMENT, AND NOMINATING PROCEDURES, QUALIFICA-
20 TIONS, REPRESENTATION, AND SIZE OF THE COMMITTEE AS WELL AS OTHER
21 PROVISIONS CONSIDERED NECESSARY BY A COMMITTEE. THIS SUBSECTION
22 DOES NOT INVALIDATE ANY MARKETING PROGRAMS ESTABLISHED UNDER THIS
23 ACT BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
24 THIS SENTENCE THAT ARE IN SUBSTANTIAL COMPLIANCE WITH THIS ACT AS
25 DETERMINED BY THE DIRECTOR.

26 (3) ~~(2)~~ A marketing agreement or marketing program that
27 allows the committee to contract with organizations, agencies,

1 GOVERNMENTAL ENTITIES, INSTITUTIONS OF HIGHER EDUCATION, or
2 individuals in order to carry out the activities described in
3 this ~~section~~ ACT or allows the committee to award grants may
4 provide in the marketing agreement or marketing program that the
5 marketing program or MARKETING agreement be allowed to partici-
6 pate in the INCOME OR earnings of any royalties OR LICENSE FEES
7 derived from the results of those activities. However, the mar-
8 keting program or MARKETING agreement shall provide that the roy-
9 alties OR LICENSE FEES be utilized only in the manner provided
10 for in that marketing program or MARKETING agreement.

11 Sec. 4. For the purpose of this act, all inspection and
12 grading shall be performed by or under the supervision of
13 ~~competently~~ trained inspectors approved by the director or by
14 inspectors supplied under cooperative agreement between the
15 department and the United States department of agriculture.

16 Sec. 5. (a) Assessments shall be collected from each
17 producer of a marketable agricultural commodity produced in this
18 state and directly affected by a marketing program issued for the
19 agricultural commodity to defray all program and administrative
20 costs except for nonparticipating producers as provided for under
21 section ~~3(1)(i)~~ 3(1)(K). ASSESSMENTS SHALL BE COLLECTED ON
22 AGRICULTURAL COMMODITY INPUTS IN THIS STATE DIRECTLY AFFECTED BY
23 A MARKETING PROGRAM ESTABLISHED FOR THE AGRICULTURAL COMMODITY
24 INPUT IN ORDER TO DEFRAY ALL MARKETING PROGRAM AND ADMINISTRATIVE
25 COSTS. Subject to approval by the director, assessments may also
26 be collected from ~~both~~ EITHER producers ~~and~~ OR distributors,
27 OR BOTH, AND MANUFACTURERS, of a marketable agricultural

1 commodity produced in this state OR AN AGRICULTURAL COMMODITY
2 INPUT USED IN THIS STATE if the director determines that the
3 unique nature of the agricultural commodity OR AGRICULTURAL COM-
4 MODITY INPUT or THE industry structure warrants the assessment of
5 both the producer and the distributors of the agricultural com-
6 modity OR AGRICULTURAL COMMODITY INPUT.

7 (b) Each marketing program shall specify the maximum assess-
8 ment on an agricultural commodity or an agricultural commodity
9 input and may provide for any other assessment mechanism as
10 approved by the director to be collected to cover program and
11 administrative costs.

12 (c) Pursuant to the marketing program and for convenience,
13 the processors, distributors, or handlers of the agricultural
14 commodity or agricultural commodity input may be required to col-
15 lect and remit producer assessments TO THE COMMITTEE at no cost
16 to the marketing program unless the marketing program expressly
17 provides for the payment of a reasonable fee for making the
18 deduction and remittance.

19 In the case of a marketing program that provides for the
20 imposition of an assessment, the processors, distributors, or
21 handlers dealing with the producer shall collect the assessment
22 from the producer by deducting the assessment from the gross
23 amount owing to the producer and shall remit the assessment AND
24 DATA to the committee within a reasonable time period as estab-
25 lished by the committee. A processor, distributor, or handler
26 who fails to deduct or remit the assessment is liable to the
27 committee for any assessments not deducted or remitted. If a

1 processor, distributor, or handler is not involved at the first
2 point of sale of an agricultural commodity or agricultural com-
3 modity input, OR IS NOT WITHIN THIS STATE AND THE ASSESSMENT IS
4 NOT DEDUCTED AND REMITTED, the producer shall remit the assess-
5 ments to the committee on all sales of the agricultural commodity
6 or agricultural commodity input, subject to a marketing program
7 and within a time period specified by the committee.

8 (D) ALL ASSESSMENTS DEDUCTED OR COLLECTED AND HELD BY A PRO-
9 CESSOR, DISTRIBUTOR, OR HANDLER FOR OVER 90 DAYS SHALL BE DEPOS-
10 ITED IN A SEPARATE INTEREST BEARING ESCROW ACCOUNT HELD JOINTLY
11 WITH THE MARKETING PROGRAM COMMITTEE AND NOT COMMINGLED WITH
12 OTHER FUNDS.

13 (E) ALL ASSESSMENTS COLLECTED OR DEDUCTED SHALL BE REMITTED
14 QUARTERLY OR MORE FREQUENTLY IF REQUIRED BY THE MARKETING PROGRAM
15 TO THE APPROPRIATE COMMITTEE.

16 (F) ~~-(d)-~~ A committee may file a written complaint with the
17 director 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 request BY CERTIFIED MAIL the processor, distributor, han-
25 dler, or producer to remit 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 OR IN
4 NONCOMPLIANCE WITH A WRITTEN AGREEMENT FOR FULL PAYMENT, the
5 director may file an action in a court of competent jurisdiction
6 to collect the assessment. Venue in such an action is the place
7 where the processor, distributor, handler, or producer has its
8 primary place of business. In any action to recover an assess-
9 ment under this subsection, if the director prevails, the court
10 shall award to the director all costs and expenses in bringing
11 the action, including, but not limited to, reasonable and actual
12 attorney fees, court costs, and audit expenses. If the director
13 does not prevail, he or she shall charge the committee for rea-
14 sonable and actual attorney fees, court costs, and expenses
15 incurred in bringing about the action.

16 (G) ~~(e)~~ Each committee shall specify the date the assess-
17 ment is due in the account of the marketing program on that
18 production. Producers, processors, distributors, or handlers of
19 the affected agricultural commodity or agricultural commodity
20 input shall be given reasonable notice of the due date.

21 (H) ~~(f)~~ A committee established pursuant to this act has
22 the ability to borrow money in anticipation of the receipt of
23 assessments 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 In the case of a marketing program that has been in existence for
4 less than 3 years, the loan does not exceed 25% of the projected
5 annual assessment revenue.

6 (iii) The loan repayment period does not exceed the life of
7 the marketing program.

8 (iv) The loan has the prior written consent of the
9 director. The director may request an audit of the committee by
10 the auditor general before approving the loan.

11 (I) ~~(g)~~ The director shall assess against the AGRICULTURAL
12 COMMODITY INPUT OR THE producers of the agricultural commodity
13 all outstanding loans, including interest, approved under subsec-
14 tion ~~(f)~~ (H) if the marketing program is inactive or is
15 terminated.

16 Sec. 7. (1) A marketing program shall provide for the
17 establishment of a committee to consist of an odd number of mem-
18 bers which shall be not less than 5 and not more than ~~15~~ 13.

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

1 affected by the marketing program in the proportion of
2 representation as prescribed by the program. THE TERM OF OFFICE
3 OF A COMMITTEE MEMBER IS 3 YEARS OR UNTIL SUCH TIME AS HIS OR HER
4 SUCCESSOR IS APPOINTED AND QUALIFIED.

5 (3) THE DIRECTOR OR HIS OR HER REPRESENTATIVE SHALL SERVE AS
6 A NONVOTING EX OFFICIO MEMBER. ADDITIONAL NONVOTING EX OFFICIO
7 MEMBERS MAY SERVE IF APPROVED FOR IN A SPECIFIC MARKETING
8 PROGRAM.

9 (4) A COMMITTEE, WITH THE ADVICE AND CONSENT OF THE DIRECTOR
10 AND THE COMMISSION OF AGRICULTURE, MAY REAPPORTION EITHER THE
11 NUMBER OF COMMITTEE MEMBERS OR MEMBER DISTRICTS, OR BOTH.
12 REAPPORTIONMENT OF THE DISTRICTS SHALL BE ON THE BASIS OF PRODUC-
13 TION OR INDUSTRY REPRESENTATION. THE REAPPORTIONMENT MAY BE COM-
14 MENCED 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
15 THAT ADDED THIS SUBSECTION. REAPPORTIONMENT OF EITHER MEMBERS OR
16 DISTRICTS SHALL NOT OCCUR MORE OFTEN THAN TWICE IN ANY 5-YEAR
17 PERIOD AND SHALL NOT OCCUR WITHIN 6 MONTHS BEFORE A REFERENDUM.

18 (5) AFTER THE REAPPORTIONMENT DESCRIBED IN SUBSECTION (4),
19 IF THE RESIDENCE OF A MEMBER OF THE COMMITTEE FALLS OUTSIDE OF
20 THE DISTRICT FOR WHICH HE OR SHE SERVES ON THE COMMITTEE AND
21 FALLS WITHIN THE DISTRICT FOR WHICH ANOTHER MEMBER SERVES ON THE
22 COMMITTEE, THEN BOTH MEMBERS SHALL CONTINUE TO SERVE ON THE COM-
23 MITTEE FOR A TERM EQUAL TO THE REMAINING TERM OF THE MEMBER WHO
24 SERVED FOR THE LONGEST PERIOD OF TIME. AFTER THE REAPPORTIONMENT
25 DESCRIBED IN SUBSECTION (4), IF A DISTRICT IS CREATED IN WHICH NO
26 MEMBER SERVING ON THE COMMITTEE RESIDES, THEN A MEMBER SHALL BE
27 SELECTED IN THE MANNER AS PRESCRIBED IN EACH PROGRAM. AFTER A

1 REAPPORTIONMENT OR REDISTRICTING, A COMMITTEE MAY TEMPORARILY
2 HAVE MORE MEMBERS THAN PRESCRIBED IN THE MARKETING PROGRAM UNTIL
3 THE EXPIRATION OF THE TERM OF THE LONGEST SERVING MEMBER FROM
4 THAT DISTRICT.

5 (6) ~~-(3)-~~ A member of a committee is entitled to reimburse-
6 ment for actual expenses and a per diem payment TO BE SET BY THE
7 COMMITTEE not to exceed ~~-\$75.00 per day-~~ THE COMMISSION OF AGRI-
8 CULTURE RATE while attending meetings of the committee or while
9 engaged in the performance of official responsibilities delegated
10 by the committee.

11 (7) ~~-(4)-~~ The duties and responsibilities of a committee
12 shall be prescribed in the order establishing the marketing pro-
13 gram and to the extent applicable shall include the following
14 duties and responsibilities:

15 (a) Developing ~~administrative-~~ procedures relating to the
16 marketing program.

17 (b) Recommending amendments to the marketing program as are
18 considered advisable.

19 (c) Preparing the estimated budget required for the proper
20 operation of the marketing program.

21 (d) Developing methods for ~~assessing and-~~ collecting AND
22 AUDITING the ~~necessary funds-~~ ASSESSMENTS.

23 (e) Collecting and assembling information and data necessary
24 for proper administration of the marketing program.

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

1 (8) ~~(5)~~ The business which a committee may perform shall
2 be conducted at a public meeting of the committee held in
3 compliance with the open meetings act, ~~Act No. 267 of the Public~~
4 ~~Acts of 1976, being sections 15.261 to 15.275 of the Michigan~~
5 ~~Compiled Laws~~ 1976 PA 267, MCL 15.261 TO 15.275. Public notice
6 of the time, date, and place of the meeting shall be given in the
7 manner required by ~~Act No. 267 of the Public Acts of 1976~~ THE
8 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

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

26 Sec. 8. (1) Money, ASSETS, OR OTHER ITEMS OF VALUE
27 collected OR RECEIVED under this act, whether collected from

1 assessments, RECEIVED AS GRANTS OR GIFTS, or earned from
2 royalties OR LICENSE FEES OR derived from any activities per-
3 formed by another organization, agency, or individual and con-
4 ducted under a marketing program, ~~is~~ ARE not state money and
5 shall be deposited in a financial institution IN THIS STATE. The
6 money shall be allocated to the marketing program under which it
7 is collected OR RECEIVED and shall be disbursed only for the nec-
8 essary expenses incurred for the marketing program according to
9 the rules established under the marketing program ~~,~~ and for
10 grants authorized under a marketing agreement or marketing
11 program.

12 (2) ~~All~~ EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SUBSEC-
13 TION, ALL expenditures shall be audited by ~~the state auditor~~
14 ~~general or by~~ a certified public accountant at least annually
15 and within 30 days after completion of the audit, the ~~state~~
16 ~~auditor general or~~ certified public accountant shall give copies
17 of the audit to the members of the committee and the director.
18 An activity and financial report shall be published annually and
19 made available to interested parties. A COMMITTEE WITH ANNUAL
20 ASSETS OF \$50,000.00 OR LESS, BASED UPON A 3-YEAR AVERAGE, SHALL
21 BE AUDITED TWICE BETWEEN REFERENDA AND SHALL HAVE A FINANCIAL
22 REVIEW CONDUCTED IN THOSE YEARS WHERE IT IS NOT AUDITED UNDER
23 THIS SUBSECTION.

24 ~~(3) As used in this section, "financial institution" means~~
25 ~~a state or nationally chartered bank or a state or federally~~
26 ~~chartered savings and loan association, savings bank, or credit~~
27 ~~union whose deposits are insured by an agency of the United~~

~~1 States government and which maintains a principal office or
2 branch office located in this state under the laws of this state
3 or the United States.~~

4 Sec. 9. (1) Money remaining from the assessments collected
5 under a marketing program may be refunded at the close of any
6 marketing season upon a pro rata basis to all persons from whom
7 assessments were collected. If the committee finds that the
8 money may be necessary to defray the cost of operating a market-
9 ing program in succeeding marketing seasons, all or any portion
10 of the money may be carried over into succeeding seasons.

11 (2) Upon termination of any marketing program, all money
12 remaining and not required to defray the expenses of operating
13 the marketing program shall be refunded on a pro rata basis to
14 persons from whom assessments were collected. If the committee
15 finds that the refundable amount is so small as to make impracti-
16 cable the computation and refunding of the money, it may be used
17 to defray the expenses incurred by the department in the formula-
18 tion, adoption, administration, or enforcement of any subsequent
19 marketing program for the commodity or for agricultural research
20 for that commodity. In the case of money earned from royalties,
21 LICENSE FEES, OR OTHER ASSETS that may be collected OR RECEIVED
22 after termination of a marketing program, that money shall be
23 allocated to any institution of higher education engaged in agri-
24 cultural OR NUTRITIONAL research, as determined by the director.

25 Sec. 10. (a) Whenever the director has received a petition
26 signed by 25%, or 200, whichever is less, of the producers of an
27 agricultural commodity regarding the adoption of a marketing

1 program or amendments to an existing marketing program, he or she
2 shall give notice of a public hearing on the proposed marketing
3 program or the proposed amendments to an existing marketing
4 program. After receiving a petition for the establishment of a
5 marketing program, the director may appoint a temporary producer
6 committee to develop the proposed marketing program to be consid-
7 ered at the public hearing.

8 (b) The director may require all handlers or processors of
9 the agricultural commodity or DISTRIBUTORS OF THE agricultural
10 commodity input as individuals or through their trade associa-
11 tions to file with him or her within 30 days a report, properly
12 certified, showing the correct names and addresses of all produc-
13 ers of the agricultural commodity from whom such handler, ~~or~~
14 processor, OR DISTRIBUTOR received such agricultural commodity OR
15 AGRICULTURAL COMMODITY INPUT in the marketing season next preced-
16 ing the filing of such report. The director shall not make
17 public or provide to anyone for private use the information con-
18 tained in the individual reports of handlers or processors filed
19 with the director pursuant to this section.

20 (c) The director shall issue a decision within 45 days after
21 the close of the hearing based upon his or her findings and
22 deliver to all parties of record appearing at the hearing and any
23 other interested parties upon the request of those interested
24 parties, by mail or otherwise, copies of the findings and recom-
25 mendation approving or disapproving of the proposed marketing
26 program. The recommendation shall contain the text in full of
27 any proposed marketing program or amendment of an existing

1 marketing program. The recommendation shall be substantially
2 within the purview of the notice of hearings and shall be sup-
3 ported by evidence taken at the hearing or by documents of which
4 the director is authorized to take official notice.

5 ~~(d) For purposes of this section, producers may include~~
6 ~~both producers and distributors of a marketable agricultural com-~~
7 ~~modity produced in this state subject to the requirements of sec-~~
8 ~~tion 5.~~

9 Sec. 11. (1) After recommending the adoption or amendment
10 of a marketing program, the director shall determine by a refer-
11 endum whether the affected producers assent to the proposed
12 action. If provisions prescribed in section ~~3(g)~~ 3(1)(H) are
13 part of the proposed MARKETING program, the director shall also
14 determine by a referendum if processors assent to the proposed
15 action. The director shall conduct the referendum within 45 days
16 after the issuance of the recommendation. The affected producers
17 shall be considered to have assented to the proposal if more than
18 50% by number of those voting representing more than 50% of the
19 volume of the affected AGRICULTURAL commodity produced by those
20 voting assent to the proposal. The affected processors, if pro-
21 visions prescribed in section ~~3(g)~~ 3(1)(H) are in the MARKETING
22 program, shall be considered to have assented to the proposal if
23 more than 50% by number of those voting representing more than
24 50% of the volume of the affected AGRICULTURAL commodity pro-
25 cessed by those voting assent to the proposal.

1 (2) A MARKETING program involving provisions prescribed in
2 section ~~3(g)~~ 3(1)(H) shall not be instituted without assent of
3 both the affected producers and the affected processors.

4 Sec. 17. (1) The director may enter into marketing agree-
5 ments with producers, handlers, or other parties where such
6 agreements will tend to supplement or aid in the accomplishment
7 of the objectives of a marketing program.

8 (2) The execution of a marketing agreement ~~shall~~ DOES not
9 affect the adoption, administration, or enforcement of any mar-
10 keting program under this act. The director may hold a concur-
11 rent hearing upon a proposed marketing agreement and a proposed
12 marketing program in the manner provided in this act, giving due
13 notice and opportunity for hearing for a marketing agreement.

14 (3) When a marketing agreement is proposed for any
15 AGRICULTURAL commodity OR AGRICULTURAL COMMODITY INPUT, the
16 director shall call a public hearing. ~~, and the~~ THE DIRECTOR'S
17 decision to enter into or not enter into a marketing agreement
18 ~~shall be~~ IS subject to the same requirements for justification
19 on the basis of factual evidence introduced at the hearing. A
20 marketing agreement, if recommended by the director, shall become
21 effective when signed by the director and the other parties to
22 the agreement.

23 Sec. 19. ~~(1) Except as provided in subsections (2) and~~
24 ~~(3), the~~ THE director may institute an action necessary to
25 enforce compliance with this act, a rule promulgated under this
26 act, or a marketing agreement or program ~~,~~ adopted under this
27 act and committed to his or her administration. In addition to

1 any other remedy provided by law, the director may apply for
2 relief by injunction to protect the public interest without being
3 compelled to allege or prove that an adequate remedy at law does
4 not exist. The application may be made to ~~the circuit~~ A court
5 ~~in any county~~ OF COMPETENT JURISDICTION.

6 ~~(2) A violation of section 7(5) shall be enforced in the~~
7 ~~manner provided for enforcement of a violation of Act No. 267 of~~
8 ~~the Public Acts of 1976, as amended.~~

9 ~~(3) A violation of section 7(6) shall be enforced in the~~
10 ~~manner provided for enforcement of a violation of Act No. 442 of~~
11 ~~the Public Acts of 1976, as amended.~~

12 Sec. 21. (1) Except as otherwise provided in subsection
13 (2), all marketing programs established under this act shall be
14 resubmitted to a referendum of the producers during each fifth
15 year of operation.

16 (2) A producer referendum under subsection (1) is not
17 required for a marketing program if all the following circum-
18 stances exist:

19 (a) The agricultural commodity OR AGRICULTURAL COMMODITY
20 INPUT subject to the marketing program is involved in a commodity
21 checkoff program established pursuant to federal law.

22 (b) The federal commodity checkoff program involving the
23 agricultural commodity provides for a mechanism for a ~~periodic~~
24 producer referendum.

25 (c) The marketing program involving the agricultural commod-
26 ity OR AGRICULTURAL COMMODITY INPUT is entirely financed by that
27 federal commodity checkoff program.

1 Sec. 22. If the assessment is not paid by the date
2 specified by a committee as permitted under section ~~5(e)~~ 5(G),
3 the unpaid assessment shall be subject to an interest charge of
4 1% per month.

5 Sec. 23. (1) Except as provided in subsections (2) and (3),
6 a person who violates this act ~~shall be subject to~~ IS GUILTY OF
7 A MISDEMEANOR PUNISHABLE BY a fine of up to ~~\$100.00~~ \$1,000.00 a
8 day.

9 (2) A member of the board who intentionally violates section
10 ~~7(5)~~ 7(8) shall be subject to the penalties prescribed in ~~Act~~
11 ~~No. 267 of the Public Acts of 1976, as amended~~ THE OPEN MEETINGS
12 ACT, 1976 PA 267, MCL 15.261 TO 15.275.

13 (3) If the board arbitrarily and capriciously violates sec-
14 tion ~~7(6)~~ 7(9), the board shall be subject to the penalties
15 prescribed in ~~Act No. 442 of the Public Acts of 1976, as~~
16 ~~amended~~ THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231
17 TO 15.246.

18 Sec. 24. (1) Except as provided in subsections (2) and (3),
19 prosecution for violation of this act may be instituted in any
20 county in which any of the defendants reside, or in which the
21 violation was committed, or in which any of the defendants have a
22 principal place of business. State and county law enforcement
23 officers shall enforce this act.

24 (2) A prosecution for a violation of section ~~7(5)~~ 7(8)
25 shall be instituted in the manner provided for in ~~Act No. 267 of~~
26 ~~the Public Acts of 1976, as amended~~ THE OPEN MEETINGS ACT, 1976
27 PA 267, MCL 15.261 TO 15.275.

1 (3) A prosecution for a violation of section ~~7(6)~~ 7(9)
2 shall be instituted in the manner provided for in ~~Act No. 442 of~~
3 ~~the Public Acts of 1976, as amended~~ THE FREEDOM OF INFORMATION
4 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

5 Enacting section 1. (1) Sections 15 and 18 of the agricul-
6 tural commodities marketing act, 1965 PA 232, MCL 290.665 and
7 290.668, are repealed.

8 (2) R 285.301.1 to R 285.301.40 of the Michigan administra-
9 tive code are repealed.