

# HOUSE BILL No. 4868

May 23, 1991, Introduced by Reps. Muxlow, Gnodtke, Randall, Bender, Strand, Dalman, McBryde, Pitoniak, Hoffman, DeMars, Middaugh and Middleton and referred to the Committee on Agriculture, Forestry and Minerals.

A bill relating to corn; to create a corn commission and prescribe its powers and duties; to prescribe certain powers and duties to certain state agencies and departments; to levy and collect assessments on corn production; to provide for certain referenda; to provide for the promulgation of rules; and to provide penalties and remedies for violation of this act.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "Michigan corn utilization commission act".

3       Sec. 3. As used in this act:

4       (a) "Commission" means the Michigan corn utilization commis-  
5 sion created by this act.

6       (b) "Corn" means all varieties of corn, including seed corn,  
7 which is produced within the state. Corn does not include sweet  
8 corn or popcorn.

1 (c) "Director" means the director of the department of  
2 agriculture.

3 (d) "First purchaser" means any person, corporation, associ-  
4 ation, or partnership, including the USDA-ASCS, buying, accepting  
5 for shipment, or otherwise acquiring the property in or to corn  
6 from a grower. First purchaser includes a mortgagee, pledgee,  
7 lienor, or other person having a claim against the grower when  
8 the actual or constructive possession of the corn is taken as  
9 part payment or in satisfaction of the mortgage, pledge, lien, or  
10 claim.

11 (e) "Grower" means any business unit, including a family  
12 operation, sole proprietorship, partnership, corporation, associ-  
13 ation, trust, or other business organization engaged in the busi-  
14 ness of producing corn for sale.

15 (f) "Produced within the state" means corn grown in this  
16 state and sold to a first purchaser who is a resident of or doing  
17 business in this state even though actual delivery occurs outside  
18 this state.

19 (g) "Sale" means the transfer of ownership of and title to  
20 property from 1 person to another for a price and includes a  
21 pledge or mortgage of corn after harvest to any person.

22 Sec. 5. (1) For purposes of this act, the state is divided  
23 into 8 districts:

24 (a) District 1 consists of the counties of Mason, Lake,  
25 Osceola, Clare, Gladwin, Arenac, Bay, the counties within the  
26 Upper Peninsula, and all counties north of these counties that  
27 are not otherwise assigned to a district.

1 (b) District 2 consists of the counties of Midland, Gratiot,  
2 Isabella, Mecosta, Montcalm, Newaygo, Oceana, Muskegon, Kent, and  
3 Ottawa.

4 (c) District 3 consists of the counties of Saginaw, Tuscola,  
5 Huron, and Sanilac.

6 (d) District 4 consists of the counties of Ionia, Clinton,  
7 Ingham, Shiawassee, Eaton, and Barry.

8 (e) District 5 consists of the counties of Genesee, Lapeer,  
9 Macomb, St. Clair, Oakland, Wayne, and Livingston.

10 (f) District 6 consists of the counties of Allegan, Van  
11 Buren, Kalamazoo, Cass, and Berrien.

12 (g) District 7 consists of the counties of Calhoun, Jackson,  
13 Branch, Hillsdale, and St. Joseph.

14 (h) District 8 consists of the counties of Lenawee, Monroe,  
15 and Washtenaw.

16 (2) Any area not represented in the districts described in  
17 subsection (1) may vote in the nearest adjacent county.

18 (3) An at-large petition may come from any area of the  
19 state.

20 (4) The commission may reapportion these districts at any  
21 time based upon a 3-year average in county corn production as  
22 determined by the statistics compiled by the director.

23 Sec. 7. (1) The Michigan corn utilization commission of 16  
24 voting members is created, consisting of 1 grower each from dis-  
25 tricts 1, 2, and 5; 2 growers each from districts 3, 4, 6, 7, and  
26 8; and 3 growers selected at large throughout the state. The  
27 director and the dean of the college of agriculture of Michigan

1 state university are ex officio members without vote. An  
2 appointed member shall be of legal voting age in this state and a  
3 citizen and resident of this state who is engaged in the actual  
4 growing of corn within the state, lives in the region from which  
5 he or she was nominated, and has not requested a refund of an  
6 assessment imposed under this act.

7 (2) The terms of office of members of the commission shall  
8 be 3 years after the date of appointment or until their succes-  
9 sors are appointed and qualified. The first appointments, how-  
10 ever, shall be made as follows: 5 grower members shall be  
11 appointed for a term of 1 year; 5 grower members shall be  
12 appointed for a term of 2 years; and 6 grower members shall be  
13 appointed for a term of 3 years. A person shall not serve more  
14 than 3 full terms in succession.

15 (3) A member shall be dismissed due to 3 consecutive unex-  
16 cused absences from a scheduled commission meeting as determined  
17 by the records of the commission if it is determined that the  
18 member had received at least 10 days' written or published notice  
19 of the missed meeting.

20 Sec. 9. (1) The governor shall appoint as temporary members  
21 16 members of the Michigan corn growers association as the first  
22 members of the commission within 30 days after this act takes  
23 effect without use of the nominating procedures provided in this  
24 section. The governor shall appoint subsequent members only from  
25 the lists of nominees submitted to him or her and subject to the  
26 advice and consent of the senate. If a list is not submitted to  
27 the governor at least 30 days before the expiration of the term

1 of office of a member, or within 30 days after a vacancy  
2 otherwise occurs, the governor may appoint any person who is oth-  
3 erwise qualified under this act.

4 (2) A meeting of growers shall be held in each district in  
5 each year when a vacancy occurs. The commission shall give  
6 notice of each meeting by at least 2 notices in a farm publica-  
7 tion of general circulation in the district where the meeting is  
8 to be held, with the final notice to be at least 10 days before  
9 the meeting. The commission shall supervise the conduct of the  
10 meeting. Two nominees for members of the commission shall be  
11 selected at each meeting and submitted to the governor.

12 (3) A member of the commission who fails to meet the quali-  
13 fications of this act shall cease to be a member of the  
14 commission. This vacancy or a vacancy for another reason shall  
15 be filled by the governor for the unexpired term in the same  
16 manner as the original appointment.

17 Sec. 11. (1) A majority of the members of the commission  
18 constitutes a quorum for the transaction of business and for per-  
19 forming the duties of the commission. A member shall receive a  
20 per diem rate to be established by the commission on an annual  
21 basis which shall not exceed the rate allowed by law to state  
22 officers or appointees for each day spent in actual attendance at  
23 meetings of the commission, and traveling and other expenses  
24 incurred in connection with the business of the commission at the  
25 rate allowed by law to state officers by the standardized regula-  
26 tions of the department of management and budget, but shall not  
27 receive any other compensation or salary.

1       (2) The business which the commission may perform shall be  
2 conducted at a public meeting of the commission held in compli-  
3 ance with the open meetings act, Act No. 267 of the Public Acts  
4 of 1976, being sections 15.261 to 15.275 of the Michigan Compiled  
5 Laws. Public notice of the time, date, and place of the meeting  
6 shall be given in the manner required by Act No. 267 of the  
7 Public Acts of 1976.

8       Sec. 13. (1) The commission shall elect each year a chair-  
9 person, a treasurer, and other officers it considers advisable  
10 for a term of 1 year and until a successor can be duly elected  
11 and qualified. An officer may succeed himself or herself once in  
12 the same office.

13       (2) The commission, as often as it considers advisable,  
14 shall appoint an executive secretary and fix his or her  
15 compensation.

16       (3) The officers of the commission shall also serve as the  
17 operating executive committee.

18       Sec. 15. (1) All money received by the commission or any  
19 other state official from the assessments under this act shall be  
20 deposited in such financial institutions in this state as the  
21 commission designates, and shall be disbursed by order of the  
22 commission.

23       (2) The treasurer of the commission shall file with the com-  
24 mission a fidelity bond executed by a surety company, authorized  
25 to do business in this state, in favor of the commission and the  
26 state, jointly and severally, conditioned for the faithful  
27 performance of his or her duties and the strict accounting of all

1 funds of the commission. The amount of the bond shall be  
2 determined by the commission.

3       Sec. 17. (1) The commission is a body corporate and may sue  
4 and be sued and contract and be contracted with. The commission  
5 shall adopt a seal.

6       (2) Copies of the proceedings, records and acts of the com-  
7 mission, when certified by the secretary and authenticated by the  
8 seal, shall be admissible in evidence in all courts of this  
9 state, and shall be prima facie evidence of the truth of all  
10 statements therein contained.

11       Sec. 19. (1) The state is not liable for the acts of the  
12 commission or its contracts.

13       (2) All disbursements shall be limited to the funds col-  
14 lected by the commission. A member of the commission or any  
15 employee or agent of the commission is not liable on the con-  
16 tracts of the commission.

17       (3) All salaries, expenses, costs, obligations, and liabili-  
18 ties incurred by the commission are payable only from funds col-  
19 lected by the commission under this act, except that any money  
20 obtained through donations and gifts or provided by a governmen-  
21 tal agency may be used within limits stipulated by the donor or  
22 governmental agency.

23       (4) Administrative cost shall not exceed 15% of the money  
24 collected by the commission under this act.

25       Sec. 21. (1) The commission shall perform the following:

26       (a) Adopt, amend, or rescind rules pursuant to the  
27 administrative procedures act of 1969, Act No. 306 of the Public

1 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
2 Compiled Laws, for the exercise of its powers and performance of  
3 its duties.

4 (b) Administer this act and investigate violations of this  
5 act, and perform all acts and exercise all powers reasonably nec-  
6 essary to implement this act.

7 (c) Employ and discharge employees as it considers neces-  
8 sary, prescribe their powers and duties, and fix their  
9 compensation.

10 (d) Establish offices, incur expenses, enter into contracts  
11 and agreements, and create liabilities, when reasonable, for the  
12 proper administration and enforcement of this act.

13 (e) In the name of the commission, enter into necessary  
14 advertising contracts and other agreements and cooperate with and  
15 support national, state, and county associations of growers in  
16 implementing this act.

17 (f) Keep accurate books, records, and accounts of all com-  
18 mission dealings, which shall be open to inspection by the public  
19 and shall be audited by the auditor general or by a certified  
20 public accountant. A writing prepared, owned, used, in the pos-  
21 session of, or retained by the commission in the performance of  
22 an official function shall be made available to the public in  
23 compliance with the freedom of information act, Act No. 442 of  
24 the Public Acts of 1976, being sections 15.231 to 15.246 of the  
25 Michigan Compiled Laws.

26 (g) Contract and cooperate with any person or with any  
27 governmental department or agency for market maintenance and



1 expansion, utilization research, transportation, and for the  
2 prevention or elimination of trade barriers that obstruct the  
3 free flow of corn and corn products.

4 (h) Provide educational and informational materials through  
5 the Michigan corn growers association at the request of growers  
6 who do not seek a refund under section 25.

7 (2) The commission shall not be a party to a procedure that  
8 includes price setting or production quotas and shall not engage  
9 in marketing or an activity that would result in the setting up  
10 of a marketing order.

11 (3) The commission shall not use any assessments to support  
12 political action committees or candidates for political office.

13 Sec. 23. The department of agriculture or its agents shall  
14 enforce this act. The commission shall reimburse the department  
15 of agriculture for costs it incurs in such enforcement.

16 Sec. 25. (1) There is levied and imposed upon a grower an  
17 assessment of  $1/4$  of 1% of the net value of each bushel of corn  
18 produced in this state in the year 1991, and annually thereafter,  
19 to be collected by the first purchaser in the manner described in  
20 section 31.

21 (2) Money levied and collected under this act shall be spent  
22 for purposes authorized by this act.

23 (3) Any grower subject to the assessment provided by this  
24 section may, within 60 days following an assessment, apply by  
25 personal letter to the commission for a refund application. Upon  
26 the return of the properly executed refund application not more  
27 than 60 days after the date it was mailed to the grower and

1 accompanied by a record of the assessment paid by the first  
2 purchaser, the commission shall refund to the grower the net  
3 amount of the assessment collected. If a request for refund is  
4 not made within the period prescribed in this subsection, the  
5 grower is presumed to have agreed to the assessment. A grower  
6 who has paid the assessment more than once on the same corn, upon  
7 furnishing proof satisfactory to the commission, shall receive a  
8 refund of the overpayment.

9 (4) The refund provision shall remain in effect until the  
10 initial referendum on this act as described in section 27. If a  
11 majority of the growers voting upon the question vote in favor of  
12 reaffirming this act, then the commission shall cease immediately  
13 in granting a refund of assessments.

14 Sec. 27. (1) The commission shall conduct a referendum at  
15 the county agricultural extension offices within 3 years after  
16 the first assessment imposed under this act for the purpose of  
17 reaffirming or disaffirming this act. This referendum may be  
18 conducted concurrently with the referendum provided for in  
19 section 29.

20 (2) If a majority of the growers voting on the question vote  
21 in favor of disaffirming the commission, the commission shall  
22 immediately cease to carry out this act.

23 Sec. 29. Within 3 years after the first assessment imposed  
24 under this act, the commission may conduct a referendum at the  
25 county agricultural extension office among the growers of this  
26 state to determine an increase in the assessment rate. The  
27 assessment rate may be increased to 1/2 of 1% of the net value of

1 each bushel of corn marketed during that calendar year, subject  
2 to consent of the director. The referendum shall be conducted in  
3 a manner to protect the purity of the ballot. If a majority of  
4 the growers voting upon the question vote in favor of the pro-  
5 posed change, the change in the assessment shall be effective in  
6 the year in which it is voted.

7       Sec. 31. (1) A first purchaser shall keep complete and  
8 accurate records of the corn purchased from each grower by the  
9 purchaser during each calendar year.

10       (2) The records shall be preserved for 2 years, and shall be  
11 available to the commission or the commission's authorized agent  
12 upon request.

13       (3) A grower processing or retailing the grower's own pro-  
14 duction shall keep the records prescribed in this section.

15       (4) The first purchaser who purchases or receives corn  
16 produced within this state from growers shall deduct the assess-  
17 ment from the price paid and remit it to the commission on or  
18 before the fifteenth of the following month.

19       (5) If a first purchaser fails to remit to the commission  
20 the assessment deducted from the grower, the director shall ini-  
21 tiate an action in a court of competent jurisdiction to collect  
22 the assessment.

23       Sec. 33. (1) Except as provided in subsection (2), a person  
24 who violates or aids in the violation of this act is guilty of a  
25 misdemeanor.

26       (2) A member of the commission who intentionally violates  
27 section 11(2) shall be subject to the penalties prescribed in the

1 open meetings act, Act No. 267 of the Public Acts of 1976, being  
2 sections 15.261 to 15.275 of the Michigan Compiled Laws.

3 (3) A prosecution under this act may be instituted in a  
4 county in this state in which the violation was committed, or in  
5 which a defendant resides, is doing business, or has a principal  
6 place of business.

7 Sec. 35. (1) Five years after the latest referendum held  
8 under subsection (2), the department of agriculture shall conduct  
9 a referendum at the county agricultural extension office at which  
10 growers shall vote on whether the commission shall continue to  
11 levy the assessments and otherwise carry out this act. If a  
12 majority of the growers vote against having the commission con-  
13 tinue to function, the commission shall cease its operations and  
14 deliver its assets to the director, who shall transfer the assets  
15 to the national corn development foundation for corn research. A  
16 grower shall be entitled to 1 vote and the grower must be able to  
17 verify that he or she is a grower.

18 (2) Upon written petition signed by at least 3,000 growers  
19 but with not more than 750 of them from any 1 district the direc-  
20 tor shall, within 30 days, give 10 days' notice and hold a hear-  
21 ing on termination of the commission. Within 30 days after the  
22 close of the hearings, the director shall conduct a referendum at  
23 the county agricultural extension office to determine whether the  
24 growers assent to the proposed action. The commission is termi-  
25 nated if a majority by number of those voting vote against its  
26 continuation. The commission shall then cease its operations and  
27 deliver its assets to the director who shall transfer the assets

1 to the national corn development foundation for corn research. A  
2 referendum described in this subsection shall not be conducted  
3 within 1 year before or after any other referendum. A grower  
4 shall be entitled to 1 vote and the grower must be able to verify  
5 that he or she is a grower.

6       Sec. 37. This act shall take effect July 1, 1991.