House
Legislative
Analysis
Section

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REVISE AG MARKETING PROGRAM ASSESSMENT COLLECTIONS

House Bill 5362 (Substitute H-2)
First Analysis (3-12-96)

Sponsor: Rep. Kim Rhead
Committee: Agriculture and Forestry

THE APPARENT PROBLEM:

The Agricultural Commodities Marketing Act (Public Act 232 of 1965) authorizes the director of the Department of Agriculture (MDA) to establish marketing programs, approved by referenda among the affected producers, for agricultural commodities produced in the state. Marketing programs can be established on the initiative of the director, if the director determines that it would be in the public interest, or a marketing program can be established, or changed, through a petition signed by 200--or 25 percent--of the producers of an agricultural commodity. Marketing programs can do a number of things, including establishing advertising and promotional programs or market development programs, developing and disseminating market information, establishing certain grading standards for (as well as providing for the inspection and grading of) certain fresh agricultural commodities, providing for handling (and equitably sharing the costs of storing) surpluses, providing payment for useable products bought from producers according to established grades, and exempting nonparticipating producers.

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 program and whose duties and responsibilities are laid out in the order issued by the director of the MDA that establishes the program. Commodity committees, among other things, prepare estimated budgets for the operation of the programs and develop methods for assessing producers and for collecting the assessments.

Reportedly, it is sometimes difficult and costly to collect assessments due under the act. The Department of Agriculture used to assume these costs of collection, but in recent years (due to budgetary constraints) it has stopped doing so, and these costs now fall on the individual commodity groups. In at least one instance, when a commodity marketing board sued a processor for assessments that hadn't been turned in, the processor countersued. Also, because it is not clear whether commodity committees are presently authorized to borrow money, some people believe the act should grant explicit borrowing authority to them as long as certain criteria are met. Legislation has been proposed that would help commodity marketing boards deal with issues related to funding and financing of their activities, and that would address a number of other issues.

THE CONTENT OF THE BILL:

Currently, the Agricultural Commodities Marketing Act requires that assessments be collected from each producer of an agricultural commodity who is directly affected by a marketing program issued for that commodity, where "producer" means someone who is in the business of producing an agricultural commodity worth more than $800 a season at first point of sale. Under the bill, assessments could also be collected--subject to approval by the agriculture department director--from both producers and distributors of marketable agricultural commodities produced in Michigan if the director determined that "the unique nature of the agricultural commodity or industry structure" warranted such assessments. In addition, the bill would permit a marketing program to provide for "any other assessment mechanism," as approved by the director, to cover program and administrative costs.

Aquaculture and silviculture programs. The bill would add aquaculture (fish) and silviculture (trees and woody plants) to the act's provisions, thereby allowing these two industries to participate in marketing programs under the act. Both aquaculture and silviculture would be added to the definition of "agricultural commodity," and other provisions would, without mentioning either aquaculture or silviculture, effectively allow marketing programs for these industries. Assessments for aquaculture marketing programs would be made possible by adding a definition of "agricultural commodity input," which would mean "an item of ingredient used in the production of an agricultural commodity which is assessed by a specific marketing agreement." (Under this definition, for example, assessments could be collected on fish feed.)

Awarding of grants, profits. At present, the act authorizes marketing programs or agreements to contain provisions governing various aspects of such programs (for instance, advertising and promotion, market development, research, and the like). The bill also would allow them to provide for the awarding of grants, from money collected pursuant to the act, to organizations, agencies, or individuals with whom a specific commodity committee or advisory board had contracted for activities specified in the act. A marketing agreement or program that allowed such contracts or allowed grants to be awarded could specify that the agreement or program could participate in the earnings of any royalties derived from the results of those activities. However, the program or agreement would have to specify that such royalties could be used only in the manner provided for in that program or agreement.

Collection of assessments. The bill would revise the collection of assessments on producers and establish a procedure for commodity committees to file complaints with the Department of Agriculture when processors, distributors, handlers, or producers failed to deduct or remit assessments.

If an agricultural commodity or commodity input didn't involve a processor, distributor, or handler at the first point of sale, producers would be required to remit any required assessments to the commodity committee. Otherwise, the bill would require that the processors, distributors, or handlers dealing with the producer collect the assessments by deducting them from the gross amount the processor, distributor, or handler owed the producer. Processors, distributors, and handlers couldn't charge producers or commodity committees fees for collecting assessments unless the marketing program expressly provided for the payment of a reasonable fee for making the deduction and remittance. Processors, distributors, and handlers who failed to deduct or remit required assessments would be liable to the commodity committee for the assessments. The commodity committee for the marketing program would set a "reasonable" time period within which assessments would have to be remitted to the committee (whether by producers or by processors, distributors, and handlers), and would specify the date when assessments were due in the marketing program account on that production.

The bill would allow commodity committees to file written complaints with the director of the MDA documenting failures to deduct or remit any assessments due to the committee under a marketing program. When the director received a complaint, he or she would investigate the allegations. If the director found that a processor, distributor, handler, or producer had failed to deduct or remit an assessment, the director would have to request the assessment to be remitted in not less than ten days; but if an assessment was not deducted, the director would compute and impose an assessment in that amount. If the assessment weren't remitted within 30 days after the director's request, the director would file an action to collect in a court in the county where the processor, distributor, handler, or producer had its primary place of business. If the director prevailed in the court action, the court would award all costs and expenses in bringing the action (including reasonable and actual attorney fees, court costs, and audit expenses); if not, he or she would have to charge the committee for these costs and expenses incurred in bringing the action.

Waive referendum. The act currently provides that every marketing program established by the act must be resubmitted to a referendum of producers during each fifth year of its operation. Under the bill, this would not be required if the agricultural commodity subject to the marketing program was involved in a commodity checkoff established under federal law, the checkoff program in which it was involved provided for a mandatory periodic producer referendum, and the program in which the commodity was involved was financed entirely by the federal program.

Borrowing by commodity committees. The bill would expressly grant commodity committees established under the act statutory ability to borrow money in anticipation of receiving assessments, under the following conditions:

* If the loan would not be requested or authorized, or would not mature, within 90 days before a resubmittal or termination referendum for the marketing program;

* If the loan amount did not exceed 50 percent of the annual average assessment revenue during the previous three years. For programs that had been in existence for less than three years, the loan could not exceed 25 percent of the projected annual assessment revenue.

* If the loan repayment period would not exceed the life of the marketing program; and

* If the loan had the prior written consent of the agriculture department director, who could request an audit of the committee by the auditor general before giving approval.

The bill would require the director to assess against the producers of an agricultural commodity all outstanding loans, including interest, that were approved if the marketing program were inactive or terminated.

Refund to agriculture research. The act currently provides that upon the termination of a marketing program, all money remaining that wasn't needed to defray the cost of operating the program must be refunded to persons from whom assessments were collected in proportion to what they contributed. Under the bill, money earned from royalties that was collected after a program had been terminated would be allocated to any higher education institution that was engaged in agricultural research, as determined by the department director.

Qualification as a "producer." The bill would change the definition of "producer" to allow marketing programs to specify an amount, other than the current $800, that would qualify someone as a "producer" (in addition to the existing $800 per growing and marketing season at first point of sale).

Retailers. Currently, the act exempts most retailers from its definition of "distributor," which is one of the categories of people who can be assessed for an agricultural commodity program under the act. The only existing retailers who are not excluded from the definition (and who, therefore, can be assessed) are those who buy or acquire agricultural commodities from a producer, or who handle a commodity for a producer that hadn't previously been subject to regulations by the marketing program covering that commodity. The bill provides that a distributor would not include a retailer specifically identified by a marketing program that was subject to assessments.

MCL 290.652 et al.

BACKGROUND INFORMATION:

Agricultural commodity groups. There currently exist twelve so-called "232" groups--that is, agricultural commodity groups that have marketing programs under Public Act 232 of 1965, the Agricultural Commodities Marketing Act. These include programs for corn, asparagus, plums, apples, cherries, red tart cherries, mint, carrots, onions, soybeans, veal, and dairy. In addition, other commodity groups exist which are established under separate laws, including for beans (under Public Act 114 of 1965), potatoes (under Public Act 29 of 1970), and beef (under Public Act 291 of 1972). Finally, of course, there also are a number of privately established agricultural commodity groups for such commodities as sugar beets, cattle, poultry, timber, bees, blueberries, celery, Christmas trees, fish, flowers, horses, maple syrup, peaches, pork, sheep, and turfgrass.

AG opinions on borrowing by Act 232 commodity committees. In a February, 1986, letter regarding the Michigan Apple Committee (a commodity promotional group formed in 1968 under the provisions of the Agricultural Commodities Marketing Act), the attorney general cited existing law and the Apple Committee program as providing "adequate legal foundation for the Michigan Apple Committee to borrow money consistent with its adopted purposes." However, in a memorandum dated September 9, 1991, the attorney general did "not see any authorization in either Act 232 or Rule 285.301 for the borrowing of money by any Act 232 commodity committee." And in an official opinion the following year (OAG No. 6725 of 1992) the attorney general stated that "a commodity committee established under the Agricultural Commodities Marketing Act lacks the legal authority to borrow money."

Earlier legislation. A similar bill (House Bill 5393) passed the House during the 1993-94 legislative session, but died in the Senate Agriculture and Forestry Committee.

FISCAL IMPLICATIONS:

The Department of Agriculture says that the bill would not affect state or local budget expenditures. (3-11-96)

ARGUMENTS:

For:

The bill would make existing and future agricultural commodity marketing programs less subject to litigation when commodity committees try to collect assessments levied by members of the programs. It would implement a positive administrative procedure for collecting assessments under these programs, while also providing for a complaint procedure for the committees in cases of unpaid assessments. The bill also would give commodity committees, if certain criteria are met, explicit authority to borrow money, since collection of assessments reportedly often lags behind periods of time in which a board needs to expend money (such as for promotional efforts or for initial start-up costs when establishing a new commodity marketing program). At least one commodity committee, after consulting with the attorney general, apparently borrowed money to improve its cash flow during a particular fall season in order to promote sales before the assessment revenue had been collected. However, a later attorney general

opinion held that commodity committees did not have the authority to borrow, so commodity committees have not done so. Nevertheless, it would be to a committee's advantage to be able to borrow occasionally on a short term basis. Without this ability, commodity committees are forced to carry large cash reserves and are put in the position of possibly having to lay off staff or even close programs simply due to short term cash flow problems.

For:

The bill would make possible, for the first time, aquaculture and silvicultural marketing programs under Act 232 by providing mechanisms for imposing and collecting assessments in these industries. Currently, marketing programs are adopted through referenda and assessments are collected on quantities (such as bushels) or weights of the agricultural product sold. However, neither aquaculture nor silviculture have marketing structures that easily lend themselves to assessment collections under the existing act. By adding "agricultural commodity input" and by allowing inputs to be assessed, the bill would allow a fish marketing program to assess fish feed (an "input") to pay for the program. (Although a fish marketing program would assess fish feed dealers directly, it would indirectly assess the fish growers, since it is assumed that feed dealers would pass the assessment costs on to growers.)

The plant nursery industry also is different from the more traditional agricultural commodity industries, which typically send their commodities to processors or end users. Nursery stock growers sell to other growers, who sometimes replant the stock, or to a landscape development market, or to end users. Because of this market structure, assessments on both producers and retailers of nursery stock would benefit the whole industry, even though current law exempts retailers from assessment programs. The bill would allow the director of the MDA to approve assessments on producers and retailers of nursery stock for a nursery program under the act by allowing certain retailers--those specifically identified by a marketing program which was subject to an assessment on a basis other than production levels and which were approved by the director of the MDA--to be assessed as, technically, "distributors."

For:

The bill would allow commodity groups to share in the royalties and profits that resulted when they made grants to outside entitities involved in researching various aspects related to producing, marketing, or selling a particular commodity. For instance, if a commodity group involved in the marketing of potatoes made a grant to a group that was researching better ways to ship potatoes to the market, and this research was sold in the marketplace, that group could share in any royalties or profits the research generated. However, the bill would require any royalties earned by a commodity group in this way to be used solely for purposes related to the group's primary purpose.

For:

The bill includes a provision that would enable commodity groups with marketing programs established under the act to forego resubmitting those programs to a referendum of producers of that commodity every five years if the commodity in question met certain criteria relating to involvement in a federal commodity checkoff program. This provision would enable some commodity groups, such as soybean growers, to avoid having to meet duplicative requirements under both state and federal programs.

Against:

Currently, when the director of the MDA receives a petition signed by 25 percent or 200 of the producers of an agricultural commodity, whichever is less, regarding adopting or amending a program, he or she must hold a public hearing on the proposal and issue recommendations within 45 days afterwards. However, the work needed to initiate a petition drive to bring before the director proposed program amendments--even routine "housekeeping" amendments--reportedly is so extensive that programs end up without otherwise desirable changes. Moreover, as there appear to be differing opinions over how the number of producers of a particular commodity is calculated, requiring 25 percent of the producers of a particular commodity to sign a petition can sometimes result in a real conflict concerning how many signatures it would take to fulfill this requirement. Especially in cases where a large discrepancy exists between, say, some official estimate of the number of producers and the number of producers who actually pay assessments in any one year, this potential difference can cause the number of required signatures to vary by as much as 50 percent. The percentage or number of producers needed to propose amendments to existing marketing programs should be reduced, perhaps to only ten or 15 percent of the producers from the current 25 percent.

Response:

Current Farm Bureau policy on such referenda requires the number of signatures to be 25 percent or 200 of the producers involved, whichever is less. Since the director of the department is required to hold a public hearing on proposed amendments to existing programs whenever he or she receives a petition with the requisite number of signatures, lowering the number of signatures needed could impose undue costs on the program in question. Using a ten percent or 100-

member signature minimum could result in amendments being proposed and adopted by as few as three members in some very small commodity groups (e.g., only 25 members). Also, such a change would give a minority of producers a disproportionate ability to initiate amendments to, and possibly incur costs against, an existing program. The existing 25 percent or 200 signature requirement is a more realistic approach, both for initiating entirely new programs or for amending existing ones.

Reply:

The act only gives producers the right to petition the director for amendments, it doesn't require the director to approve the petition. Changing the existing number of producer signatures required for a petition would pose, at most, minimal costs to existing programs.

POSITIONS:

The Department of Agriculture supports the bill. (3-11-96)

The Michigan Farm Bureau supports the bill. (3-11-96)

The Michigan Nursery and Landscape Association supports the bill. (3-11-96)

The Michigan Apple Committee supports the bill. (3-11-96)

■ 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.