Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1397 (as introduced 6-22-10)
Sponsor: Senator Gerald Van Woerkom
Committee: Agriculture and Bioeconomy

Date Completed: 6-24-10

CONTENT

The bill would amend the Farm Produce Insurance Act to do the following:

- **Permit the Farm Produce Insurance Fund to be used to reimburse the Michigan Department of Agriculture (MDA) Director for administering and enforcing the Grain Dealers Act.**
- **Require the board of the Farm Produce Insurance Authority to enter into a memorandum of understanding with the MDA Director to provide for that reimbursement.**
- **Describe circumstances under which a producer would not be eligible for reimbursement from the Fund.**
- **Permit the board to determine the distribution of money in the Fund if the Farm Produce Insurance Act were held invalid.**
- **Permit the board to select the certified public accountant to conduct the annual audit required under the Act.**

Producer Security Activities

The Act established the Farm Produce Insurance Fund to reimburse an agricultural producer for losses incurred if a grain dealer fails or is unable to pay a claim after the producer has delivered produce to the dealer. Participating producers must pay into the Fund a premium of up to 0.2% of the net proceeds from all produce sold to a licensed grain dealer (a licensee) in the State.

The Fund is under the direction and control of the board of directors of the Farm Produce Insurance Authority, which must direct payments from the Fund to pay only the following:

- Valid claims.
- Producer premium refunds.
- Administrative expenses.
- Legal fees and legal expenses.

Under the bill, the board also could direct payments from the Fund to reimburse the MDA Director for producer security activities.

"Producer security activities" would mean any action by the MDA Director under Section 22 of the Grain Dealers Act to administer or enforce that Act. (That section deals with powers and duties of the Director.)

The bill would require the board of directors of the Authority to enter into a memorandum of understanding with the MDA Director that provided for the reimbursement of the Director for producer security activities from the Fund.

The Farm Produce Insurance Act requires the board to allocate money from the Fund to a separate administrative expenses account. The allocation to that account may not exceed $250,000. The bill would increase the maximum allocation to $500,000 and would require that account to be used to reimburse the Director for producer security expenses as well as administrative expenses.

Eligibility for Reimbursement

The Act allows a producer to submit a claim for reimbursement from the Fund if the producer has not previously requested a refund or previously received a refund and reentered the program as prescribed by the Act, and the producer satisfies one of the conditions in the Act related to a licensed grain dealer's failure.

Under the bill, a producer would be ineligible for reimbursement if the claim related to delivery of farm produce to a licensee that was a cooperative association, under an agreement between the producer and the licensee that allocated delivery rights and obligations proportionate to a capital investment of the producer in the licensee.

("Cooperative association" would mean that term as defined in 12 USC 1141j, i.e., any association in which farmers act together in processing, preparing for market, handling, and/or marketing their farm products, or any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services, provided that the association is operated for the mutual benefit of the members and meets certain other requirements.)

A producer also would not be eligible for reimbursement if, at the time the claim was submitted, excluding patronage interests, the producer owned at least 5% of the voting shares, other than publicly trades shares, membership interests, partnership interests, or other ownership interests, of the licensee whose failure was the basis of the claim.

("Patronage interests" would mean shares or membership, partnership, or other ownership interests in a licensee that is cooperative association that are allocated and distributed to the producer in proportion to the producer's patronage of the cooperative association.)

A producer would not be eligible for reimbursement if, at the time the claim was submitted, the producer owned at least 5% of the voting shares, other than publicly traded shares, membership interests, partnership interests, or other ownership interests of the parent corporation of the licensee whose failure was the basis of the claim.

In addition, a producer would not be eligible for reimbursement if title to the farm produce that was the subject of the claim had been transferred to the producer more than three years before the date the claim was submitted.

Currently, the board must deny the payment of a valid claim if it determines that the claimant has engaged in marketing practices that have contributed to the claimant's loss. In making its determination, the board may consider whether the marketing practices are generally accepted practices in this State. Under the bill, the board also would have to deny payment if it determined that the claimant had engaged in management practices that contributed to its loss, and the board could consider whether the management practices were generally accepted.

Fund Distribution; Audit

Section 17 of the Act requires the board to use money in the Fund only for a purpose described in the Act. If any portion of Section 17 is held to be invalid, the entire Act must be held invalid and any money remaining in the Fund must be distributed to producers in proportion to the amount of producer premiums each producer has paid to the authority. Under the bill, the money remaining in the Fund would have to be distributed to producers at the time and in the amounts established by the board.

Section 17 also requires all expenditures from the Fund to be audited by a certified public accountant (CPA) at least annually. Under the bill, the CPA would be selected by the board.

MCL 285.313 et al. Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have an indeterminate impact on the Department of Agriculture. The bill would increase the potential amount of revenue reimbursed to the Department from the Farm Produce Insurance Fund as it would raise the reimbursement cap from $250,000 to $500,000.

Fiscal Analyst: Bruce Baker

S0910\s1397sa