



Jeff Grim

Final Analysis
Legislative Service Commission

Am. H.B. 455
124th General Assembly
(As Passed by the General Assembly)

Reps. Aslanides, Seitz, Hollister, Schaffer, Carmichael, Redfern, Niehaus, Kearns, Boccieri, Krupinski, Core, Distel, Collier, Barrett, Faber, Metzger, Wolpert, Rhine, Grendell, Peterson, Husted, Flowers, Latell, Coates, Seaver, Perry, Ogg, Sulzer, Allen, Hagan, Sferra, Schmidt, Barnes, Key, Gilb, Latta, Olman, Buehrer, Strahorn, Woodard, Lendrum, Manning, Schneider, Hughes, G. Smith, Fessler, Carey, Roman

Sens. Carnes, Mumper, Harris, Austria, Amstutz

Effective date: *

ACT SUMMARY

Agricultural commodity marketing programs

- Eliminates language requiring an operating committee for an agricultural commodity marketing program to consist of an odd number of members, and reduces the minimum number of members of such a committee from five to three.
- Establishes more specific criteria for making refunds of assessments paid by producers of an agricultural commodity, and extends the deadline by which an operating committee must make a refund from 30 days to 60 days after receipt of a producer's valid application for one.
- For purposes of the hearing held by the Director of Agriculture to consider whether to continue an agricultural commodity marketing program, requires the Director to follow specified procedures in the Administrative Procedure Act when providing public notice and conducting the hearing rather than requiring him to hold the hearing as

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

prescribed in that Act, and requires the Director to file a copy of the public notice with the Director of the Legislative Service Commission for publication in the Register of Ohio.

- Revises requirements for public notice that the Director of Agriculture must give regarding his recommendation to continue or terminate an agricultural commodity marketing program after he has conducted a hearing on the issue.
- Establishes uniform criteria for determining whether affected producers favor the Director's proposed termination of an agricultural commodity marketing program.

Agro Ohio Fund and grant authority

- Authorizes the Director of Agriculture to use all or any portion of the moneys in the continuing Agro Ohio Fund to award grants for the purpose of promoting agriculture in this state, and, with respect to the awarding of such grants that consist of moneys other than federal moneys, requires the Director to adopt rules establishing necessary procedures and requirements.
- Specifies that federal moneys deposited into the Agro Ohio Fund must be used in accordance with any terms that federal law prescribes for their use.

CONTENT AND OPERATION

Background: agricultural commodity marketing programs

Law not changed by the act provides a mechanism by which producers of agricultural commodities may establish agricultural commodity marketing programs to promote their products. "Agricultural commodity" means any food, fiber, feed, animal, or plant, or group of foods, fibers, feeds, animals, or plants that the Director of Agriculture determines to be of the same nature, in either a natural or processed state (sec. 924.01(A), not in the act). "Producer" means any person who is in the business of producing, or causing to be produced, any agricultural commodity for commercial sale, except that when used in reference to nursery stock, "producer" also means a distributor, processor, handler, or retailer of nursery stock (sec. 924.01(H), not in the act).

The Director is required to establish procedures by which producers of Ohio agricultural commodities may propose, develop, and operate marketing programs to promote the sale and use of their products, develop new uses and markets for the products, improve the methods of distributing the products to consumers, and standardize the quality of the products for specific uses (sec. 924.02, not in the act). The programs are funded through assessments on the commodities (sec. 924.09). Generally, the Director must hold a hearing at least once every five years to consider the continuation of each such program (sec. 924.12).

Membership of operating committee

Under law not changed by the act, producers of an Ohio agricultural commodity may present the Director with a petition signed by the lesser of 1,000 or 20% of all such producers requesting that the Director hold a referendum to establish a marketing program for that commodity or to amend an existing program (sec. 924.04(A), not in the act). When the producers of an agricultural commodity who vote in a referendum favor a proposed marketing program, the Director of Agriculture must order the program established and, if the marketing program does not provide for the election of an operating committee, appoint an operating committee to administer the program (sec. 924.07(A)). An operating committee, which consists of producers, has the authority to make assessments on the marketable agricultural commodity for which the marketing program was established (sec. 924.09(A)).

Under former law, an operating committee was to consist of an odd number of producers, specifically not less than five nor more than 15. The act eliminates the language that required an operating committee to consist of an odd number of producers. In addition, it reduces the minimum required number of producers who serve on an operating committee from five to three. (Sec. 924.07(A).)

Procedures for refund of assessments

Under prior law, each marketing program had to require a refund of assessments collected by its operating committee not later than 30 days after receipt of an application by a producer for a refund. The act instead specifies that the operating committee of each marketing program must refund to a producer the assessments that it collects from the producer not later than 60 days, rather than 30 days, after receipt of a *valid* application by the producer for a refund. In addition, the act specifies that a refund can be made only to a producer who complies with the procedures for a refund that were established under the program when it was established. (Sec. 924.09(E).)

Continuation or termination of a marketing program

Public notice of Director's decision

Law retained in part by the act requires the Director to hold a hearing, as prescribed in the Administrative Procedure Act, to consider the continuation of a marketing program at least once in each five years of its operation or at any time upon written petition by the lesser of 20% or 1,000 of the producers affected by the marketing program. Rather than requiring the Director to hold a hearing as prescribed in the Administrative Procedure Act, the act specifies which provisions of that Act apply. The act requires the Director only to give public notice by analogy to and conduct a hearing under the procedures established in that Act for adopting, amending, or rescinding a rule. The act requires the Director to file a copy of the public notice with the Director of the Legislative Service Commission for purposes of publishing the public notice in the Register of Ohio. (Sec. 924.12(B).)

Under continuing law, within 30 days after the close of a hearing to consider the continuation of a marketing program, the Director of Agriculture must recommend continuation or termination of the program. Former law required the Director to give public notice, and notify each producer of record, all parties appearing at the hearing, and other interested parties, of his recommendation. The act retains the requirement that the Director give public notice, but eliminates the requirement that the Director notify each producer of record, all parties appearing at the hearing, and other interested parties. Instead, the act requires the Director to give public notice of his recommendation by publication in the Register of Ohio. The act also requires the Director to provide notice of the recommendation to any other person who, in writing, has requested notification and authorizes the Director to give whatever other notice he reasonably considers necessary to ensure that notice is constructively given to all persons who are affected by the program. (Sec. 924.12(C).)

Referendum on proposed termination of marketing program

Law unchanged by the act requires the Director, not later than 45 days after he recommends termination of a marketing program, to conduct a referendum to determine whether the affected producers favor the proposed termination. However, former law established slightly different criteria for determining whether the affected producers favor the termination of a marketing program depending on whether the program was established before April 10, 1985, or on or after that date. The act establishes uniform criteria for determining whether termination of a program is favored regardless of when the program was established as discussed below. (Sec. 924.12(D) and (E).)



Prior law specified that, with respect to a marketing program established before April 10, 1985, the affected producers favored termination of the program if 51% or more, by number, of the producers who voted in the referendum voted in favor of termination of the program and represented 51% or more of the volume of the affected agricultural commodity that was produced in the preceding marketing year by all producers who voted in the referendum. The act eliminates this provision. (Sec. 924.12(D).)

Law generally retained by the act specifies that, with respect to a marketing program established on or after April 10, 1985, the affected producers favor termination of the program if a majority of the producers who vote in the referendum vote in favor of termination of the program. The act eliminates the reference to marketing programs established on or after April 10, 1985, and instead applies the provision to all marketing programs regardless of when they were established. (Sec. 924.12(E).)

Agro Ohio Fund and grant authority

Law unchanged by the act creates the Agro Ohio Fund and specifies that the Department of Agriculture may accept and must deposit in the state treasury to the credit of the Fund any grant, gift, devise, or bequest of money made to or for the use of the Department or for promoting any part of the public welfare that is under the supervision and control of the Department (sec. 901.04(A) and (B)). The act adds that the Department may solicit or accept such moneys from any public or private source and specifies that the moneys are for the use of the Department in fulfilling its statutory duties (sec. 901.04(A)).

In addition, the act authorizes the Director of Agriculture to use all or any portion of the moneys in the Agro Ohio Fund to award grants for the purpose of promoting agriculture in this state. With respect to such grants that consist of moneys other than federal moneys, the act requires the Director to adopt rules in accordance with the Administrative Procedure Act establishing all of the following:

- (1) Specific purposes for which the grants may be awarded;
- (2) Procedures for soliciting grant applications, applying for grants, awarding grants, and otherwise administering grants;
- (3) Eligibility criteria for receiving grants that must be satisfied by applicants; and
- (4) Any other procedures and requirements that are necessary to administer a grant program. (Sec. 901.04(C).)

The act also specifies that federal moneys deposited into the Fund must be used in accordance with any terms that federal law prescribes for their use (sec. 901.04(D)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-18-01	p. 1179
Reported, H. Agriculture & Natural Resources	01-31-02	pp. 1357-1358
Passed House (96-0)	02-13-02	pp. 1390-1391
Reported, S. Agriculture	03-14-02	p. 1587
Passed Senate (32-0)	03-19-02	pp. 1593-1594
House concurred in Senate amendments (97-0)	03-20-02	pp. 1575-1576

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