



Jeff Grim

Final Analysis

Legislative Service Commission

Sub. H.B. 217

127th General Assembly
(As Passed by the General Assembly)

Reps. Reinhard, Adams, Aslanides, Evans, Fessler, Latta, J. McGregor, Schlichter, Seitz, Setzer, Stebelton, Webster, Zehringer, Core, Goodwin, Huffman, Hite, Luckie, Domenick, Blessing, Bolon, Book, Brown, Bulp, Chandler, Collier, Combs, Daniels, Dodd, Dyer, Garrison, Gerberry, Goyal, R. Hagan, Harwood, Hughes, Letson, Mallory, Okey, Otterman, Raussen, Schneider, Widener

Sens. Schuring, Amstutz, Buehrer, Faber, Grendell, Harris, Kearney, Morano, Mumper, Niehaus, Roberts, Seitz, Fedor, Wilson

Effective date: March 24, 2008; Sections 3 and 4 effective December 21, 2007

ACT SUMMARY

- Provides that continuing law governing the establishment and operation of agricultural commodity marketing programs does not apply, unless specified otherwise, to the establishment and operation of a grain marketing program, defines "grain" to include wheat, barley, rye, or oats, and establishes a separate grain marketing program.
- Requires the Director of Agriculture to hold elections to determine who will serve as the nine members of a grain marketing program operating committee.
- Establishes the duties and authority of the operating committee regarding the administration of the grain marketing program, and requires the Director to monitor the activities of the operating committee and to adopt rules that are necessary to carry out the act's purposes.
- Requires the operating committee to levy on producers and, under specified circumstances, handlers assessments in the amount of one-half of 1% of the per-bushel price of each type of grain at the first point of sale.

- Establishes procedures under which a producer may request and receive a refund of assessments that have been collected from him.
- Specifies that assessments collected under the act must be used only for defraying the costs of administration of the grain marketing program and for carrying out the act.
- Prohibits a person from knowingly failing or refusing to withhold or remit an assessment levied under the act, and establishes the penalty for violating the prohibition as a fourth degree misdemeanor.
- Authorizes the Director to institute an action at law or in equity that appears necessary to enforce compliance with the act, rules, or the grain marketing program.
- Requires the operating committee to publish an annual activity and financial report and to make the report available to each producer who pays the assessment levied under the act or otherwise contributes to the program and to other interested persons, and also requires it to submit financial statements to the Director.
- Specifies that the grain marketing program may be suspended or terminated in the same manner in which other marketing programs are suspended or terminated under continuing law.
- Provides that the Director of Agriculture has exclusive authority to regulate the provision of food nutrition information at food service operations, authorizes the Director to adopt rules for that purpose, and states that such rules constitute a comprehensive plan for the regulation of the provision of food nutrition information at food service operations.
- Prohibits political subdivisions from enacting, adopting, or continuing in effect local legislation relating to the provision of food nutrition information at food service operations.
- Provides financial incentives for bioproducts innovation in the Ohio polymer industry, and specifies that the provision takes immediate effect.

CONTENT AND OPERATION

Establishment of grain marketing program

Continuing law establishes requirements and procedures under which agricultural commodity marketing programs may be established and operated (secs. 924.01 to 924.16, generally not in the act). The act provides that unless otherwise specified, continuing law does not apply to the establishment and operation of a grain marketing program, which is instead governed by the act (secs. 924.01, 924.02, 924.08, and 924.09).

The act then establishes a separate grain marketing program that must be administered in accordance with the act and rules (sec. 924.21). "Grain" is defined as wheat, barley, rye, or oats (sec. 924.20(A)). The act defines "rule" as a rule adopted under the act (sec. 924.20(D)).

Election of members of operating committee

For purposes of administering the grain marketing program, the Director of Agriculture must hold an election to determine the membership of a grain marketing program operating committee in accordance with rules. The election must be for nine members of the operating committee. (Sec. 924.22(A).) Not later than 120 days after the act's effective date, the Director must accept the names of persons as nominees to serve on the operating committee. In accepting nominations and placing names on the ballot, the Director is required to follow the procedures established in rules. (Sec. 924.22(B).)

Not later than 180 days after the act's effective date, the Director must hold an election to determine the membership of the operating committee. In the election, eligible producers may cast votes in person at or mail ballots to polling places designated by the Director. The act defines "producer" as a person who is in the business of producing, or causing to be produced, grain for commercial sale (sec. 924.20(C)). The Director is required to establish a three-day period during which eligible producers may vote in person during normal business hours at the designated polling places. The Director or another appropriate person must send a ballot by ordinary first-class mail to an eligible producer who requests one by calling the toll-free telephone number or submitting the ballot request form provided for under the act (see below), by calling one of the designated polling places, or by any additional method that the Director may provide. A ballot returned by mail is not valid if it is postmarked later than the third day of the election period established by the Director. (Sec. 924.22(C).)

For the purposes of such an election, the Director must cause a ballot request form to be published at least 30 days before the beginning of the election period in at least two appropriate periodicals designated by the Director and must

make the form available for reproduction to any interested group or association. The Director also must provide a toll-free telephone number that producers may call to request a ballot. (Sec. 924.22(D).)

Following the election of the initial members of the operating committee, the Director must hold subsequent elections in order to maintain the membership of the operating committee as provided in rules. The elections must be held in the manner established in the act and rules for the election of initial members. (Sec. 924.22(E).) Persons elected to the grain marketing program operating committee must hold office in accordance with rules (sec. 924.22(F)).

Meetings, quorum, expenses, and liability of operating committee

The act requires the grain marketing program operating committee to hold at least one meeting per quarter each year. The members of the operating committee annually must select officers, including a chairperson and a vice-chairperson. (Sec. 924.23(A).) The Director of Agriculture, or the Director's designee, is an ex-officio voting member of the operating committee (sec. 924.23(C)).

The act specifies that a majority of the members of the operating committee constitutes a quorum. A majority of concurring votes is required to pass a motion or approve any operating committee action. (Sec. 924.23(B).)

Each member of the operating committee, except the Director or the Director's designee, is entitled to actual and necessary travel and incidental expenses while attending meetings of the committee or while engaged in the performance of official responsibilities as a member of the committee (sec. 924.23(D)). A member or employee of the operating committee is not civilly liable for any actions taken in good faith as a member or employee, as applicable, of the committee (sec. 924.23(E)).

Duties and authority of operating committee

The act requires the grain marketing program operating committee to do all of the following:

- (1) Hire personnel and contract for services that are necessary for the operation of the grain marketing program;
- (2) Promote the sale of grain for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for grain, and inform the public of the uses and benefits of grain;

(3) Establish requirements and procedures for the collection of assessments that the operating committee is required to levy under the act (see "Assessments," below), including the method and frequency of collection;

(4) Establish procedures to be used by a person who wishes to file for a refund of the person's assessment that is levied under the act; and

(5) Perform all acts and exercise all powers incidental to, in connection with, or considered reasonably necessary, proper, or advisable to effectuate the purposes of the act (sec. 924.24(A)).

The act authorizes the operating committee to do any or all of the following:

(1) Conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, concerning the marketing and distribution of grain, the storage, processing, and transportation of grain, and the production and product development of grain;

(2) Provide the wholesale and retail grain trade with information relative to proper methods of handling and selling grain;

(3) Conduct, and contract with others to conduct, market surveys and analyses, undertake any other similar activities that it determines are appropriate for the maintenance and expansion of present markets and the creation of new and larger markets for grain, and enter into contracts, in the name of the committee, to render service in formulating and conducting plans and programs and other contracts or agreements that the committee considers necessary for the promotion of the sale of grain;

(4) Publish and distribute to producers and others information relating to the grain industry;

(5) Propose to the Director rules that are necessary for the exercise of its powers and the performance of its duties;

(6) Establish priorities and prepare and approve a budget consistent with estimated resources and the scope of the grain marketing program; and

(7) Receive and investigate, or cause to be investigated, complaints concerning and violations of the grain marketing program. The operating committee must refer any violations to the Director for action under the act (see "Compliance action at law or in equity," below). (Sec. 924.24(B).)

Duties of Director of Agriculture to monitor operating committee

The act requires the Director to monitor the activities of the grain marketing program operating committee to ensure all of the following:

- (1) The grain marketing program is self-supporting;
- (2) The operating committee keeps all records that are required for agencies of the state;
- (3) The program's operations comply with the provisions of the program, rules, and the act; and
- (4) Administrative activities of the committee are coordinated with those of the Department of Agriculture (sec. 924.25(A)).

Rules. Not later than 90 days after the act's effective date, the Director must adopt rules in accordance with the Administrative Procedure Act that are necessary to carry out the purposes of the act. The rules must include all of the following:

- (1) Deadlines and nomination procedures for the placement of persons on the ballot for election to the grain marketing program operating committee;
- (2) The terms of office of members of the operating committee, including the staggering of terms for the initial members; and
- (3) Insofar as possible, requirements providing for the equitable distribution of members on the operating committee by geographic and production areas of the state. (Sec. 924.25(B).)

Assessments

The act requires the grain marketing program operating committee to levy on producers and, as discussed below, handlers the following assessments, as applicable:

- (1) One-half of 1% of the per-bushel price of wheat at the first point of sale;
 - (2) One-half of 1% of the per-bushel price of barley at the first point of sale;
 - (3) One-half of 1% of the per-bushel price of rye at the first point of sale;
- and

(4) One-half of 1% of the per-bushel price of oats at the first point of sale (sec. 924.26(A)).

The Director may require a handler to withhold assessments from any amounts that the handler owes to producers and to remit them to the Director. A handler who pays for a producer an assessment that is levied under the act may deduct the amount of the assessment from any money that the handler owes to the producer. (Sec. 924.26(B).) The act defines "handler" as a person who is in the business of agricultural commodity handling of grain (sec. 924.20(B)). "Agricultural commodity handling," as defined in continuing law, means any of the following:

(1) Engaging in or participating in the business of purchasing from producers agricultural commodities for any use in excess of 30,000 bushels annually;

(2) Operating a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receiving into a warehouse an agricultural commodity purchased under a delayed price agreement; or

(4) Providing marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer (sec. 926.01(B), not in the act).

Under the act, the operating committee must deposit all money collected from assessments with a bank or savings and loan association. All money so collected and deposited must be used only for defraying the costs of administration of the marketing program and for carrying out the provisions of the act. The operating committee is prohibited from using any assessments that it levies for any political or legislative purpose or for preferential treatment of one person to the detriment of any other person affected by the grain marketing program. (Sec. 924.26(C).)

The act requires the operating committee to refund to a producer the assessments that it collects from the producer not later than 30 days after receipt of a valid application by the producer for a refund, provided that the producer complies with the procedures for a refund established by the committee under the act. An application for a refund must be made on a form provided by the Director. The operating committee must ensure that refund forms are available where assessments for the grain marketing program are collected. (Sec. 924.26(D).)

Prohibition, enforcement action, and penalty

The act prohibits a person from knowingly failing or refusing to withhold or remit an assessment levied under the act (sec. 924.30(A)). The act specifies that before instituting an enforcement action for a violation of the prohibition, the Director must give the alleged violator an opportunity to present the alleged violator's views to the Director as to why the action should not be instituted (sec. 924.30(B)). Whoever violates the prohibition is guilty of a misdemeanor of the fourth degree (sec. 924.99).

Compliance action at law or in equity

The act authorizes the Director to institute an action at law or in equity that appears necessary to enforce compliance with the act, rules, or the grain marketing program (sec. 924.29).

Reports and financial statements

The act requires the grain marketing program operating committee to establish a fiscal year for the grain marketing program. Within 60 days of the end of each fiscal year, the operating committee must publish an activity and financial report and make the report available to each producer who pays the assessment levied under the act or otherwise contributes to the program and to other interested persons. (Sec. 924.27(A).)

In addition to the above reports, the operating committee must submit to the Director both of the following:

- (1) An annual financial statement prepared by a certified public accountant holding a permit issued by the Accountancy Board, which must be filed not more than 60 days after the end of each fiscal year; and
- (2) A monthly unaudited financial statement (sec. 924.27(B)).

Suspension or termination of marketing program

The act specifies that the grain marketing program may be suspended or terminated in the same manner in which other marketing programs are suspended or terminated under continuing law (sec. 924.28). Law unchanged by the act authorizes the Director of Agriculture to temporarily suspend the operation of a marketing program, or any part of a program, for any reason, upon recommendation by the operating committee for the program, for a period of not more than 12 consecutive months (sec. 924.12(A), not in the act).

Continuing law also provides that at least once in each five years of operation, or at any time upon written petition by the lesser of 20% or 1,000 of the

producers affected by a marketing program, the Director must give public notice and conduct a hearing in accordance with the Administrative Procedure Act to consider the continuation of the program. The Director must 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), not in the act.)

Continuing law specifies that within 30 days after the close of any hearing to consider the continuation of a marketing program, the Director must recommend continuation or termination of the program and must give public notice of the recommendation by publication in the Register of Ohio. The Director also must provide notice of the recommendation to any person who, in writing, has requested notification and may give whatever other notice the Director reasonably considers necessary to ensure that notice is constructively given to all persons who are affected by the program. (Sec. 924.12(C), not in the act.)

Under law unchanged by the act, when the Director recommends termination of a marketing program, the Director, within 45 days, must conduct a referendum to determine whether the affected producers favor the proposed termination. The affected producers favor the termination of the program if a majority of the producers who vote in the referendum vote in favor of termination. (Sec. 924.12(D), not in the act.)

Finally, continuing law specifies that when affected producers of an agricultural commodity favor termination of a marketing program for the commodity, the operating committee and the Director must terminate all operations of the program (sec. 924.13(A), not in the act). Upon the termination of any marketing program, the Director may spend any remaining unobligated funds for any lawful purpose of the Department of Agriculture (sec. 924.13(B), not in the act).

Requirements regarding provision of food nutrition information at food service operations

The act states that the Director of Agriculture has sole and exclusive authority in Ohio to regulate the provision of food nutrition information at food service operations (sec. 3717.53(B)). Under the act, "food nutrition information" includes the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, and sodium content of food (sec. 3717.53(A)(1)). The Director may adopt rules for that purpose in accordance with the Administrative Procedure Act, including rules that establish a schedule of civil penalties for violations of that provision of the act and rules adopted under it. Subject to the approval of the Joint Committee on Agency Rule Review, portions of the rules may be adopted by

referencing all or any part of any federal regulations pertaining to the provision of food nutrition information.

The act then states that the regulation of the provision of food nutrition information at food service operations is a matter of general statewide interest that requires statewide regulation and that rules adopted under that provision of the act constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information at food service operations in this state. Those rules must be applied uniformly throughout Ohio. (Sec. 3717.53(B).)

The act prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation relating to the provision of food nutrition information at food service operations (sec. 3717.53(C)). "Political subdivision" means a county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. "Local legislation" includes, but is not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision. (Sec. 3717.53(A)(2), by reference to sec. 905.501, not in the act.)

Financial incentives for bioproducts innovation in Ohio polymer industry

Under the act, in fiscal year 2009, up to \$200,000 from a non-General Revenue Fund source to be determined by the Director of Development must be used for the Ohio BioProducts Innovation Center to conduct a material flow study, which must examine biobased resources in Ohio and the flow of materials through the chain of harvesting, refining, and production of a commercialized product. In addition, up to \$350,000 from a non-General Revenue Fund source to be determined by the Director must be used for the Center to conduct a techno-economic analysis to determine the economic feasibility of using bioderived chemicals over petroleum-derived or other types of chemicals in the polymer industry. (Section 3.) Those provisions take immediate effect and are not subject to the referendum (Section 4).

HISTORY

ACTION	DATE
Introduced	05-09-07
Reported, H. Agriculture & Natural Resources	06-07-07
Passed House (96-0)	06-14-07
Reported, S. Agriculture	10-25-07
Passed Senate (30-0)	11-14-07
House concurred in Senate amendments (63-29)	12-12-07

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