Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

S.B. 309

129th General Assembly
(As Introduced)

Sens. Hite, Balderson, Widener, Cafaro, Seitz

BILL SUMMARY

- Authorizes the execution of voluntary marketing agreements for agricultural commodities, provided that certain criteria are met.
- Allows producers of an agricultural commodity to present to the Director of Agriculture a petition signed by a specified number of producers of that agricultural commodity requesting the Director to approve a marketing agreement for that agricultural commodity or for a region of the state concerning that agricultural commodity.
- Requires a petition to include specified information, including a proposed marketing agreement and a document that creates and identifies a provisional board of directors for the purpose of facilitating the execution of the proposed marketing agreement.
- Requires a proposed marketing agreement to contain specified information, including the length of time that the proposed agreement will be in effect and the estimated costs to and rate of assessment to be made on each signatory to the agreement.
- Requires petitioners to submit specified information, including a list of applicable producers, and an administration fee with a petition.
- Requires the Director, after receiving a request to approve a marketing agreement, to notify all producers on the list provided by the petitioners of a public meeting on the petition.

- Requires the provisional board of directors of a proposed marketing agreement to attend the public meeting and to submit a marketing agreement to the Director within 30 days after the public meeting.

- Requires a marketing agreement submitted by a provisional board to contain terms that establish generally the same provisions as those in a proposed marketing agreement as well as specified additional provisions.

- Requires the Director to consider all of the information presented at the public meeting before approving or denying the marketing agreement, and authorizes the Director to approve the marketing agreement if specified criteria are met, including the availability of sufficient funds to administer the agreement.

- Establishes requirements and procedures for the creation of a board of directors to administer a marketing agreement.

- Requires a marketing agreement's board of directors to perform specified duties, including establishing priorities of the board and preparing a budget to administer the marketing agreement.

- Authorizes a board of directors to perform certain functions, including proposing to the Director rules that are necessary for the board to perform its duties required under the marketing agreement and the bill.

- Requires the Director to adopt rules that establish procedures and requirements that are necessary to administer and implement a marketing agreement executed under the bill.

- Authorizes the Director to perform specified functions, including inspecting a facility of a producer that signed a marketing agreement to ensure compliance with the marketing agreement.

CONTENT AND OPERATION

Purpose of agricultural commodity marketing agreement

The bill authorizes the execution of a voluntary marketing agreement to provide for the establishment and regulation of one or more of the following:

(1) Standards of production for an agricultural commodity, including growing and handling practices, provided that the standards are equivalent to or more stringent than standards of production for that agricultural commodity that are established in state or federal law;

(2) Standards for the establishment and use of a logo, trademark, or brand associated with an agricultural commodity, provided that the standards do not violate state or federal law;

(3) Collection of fees for services provided pursuant to the marketing agreement; and

(4) Any other topic that the Director of Agriculture may allow by rule (see "**Responsibilities and duties of Director of Agriculture**," below).[1]

An agricultural commodity is generally any food, fiber, feed, animal, or plant, or group of foods, fibers, feeds, animals, or plants that the Director determines to be of the same nature, in either a natural or a processed state.[2]

Establishment of marketing agreement

Petition

Under the bill, producers of an agricultural commodity in Ohio may present to the Director a petition signed by at least 200 or 25% of all the producers of that agricultural commodity in Ohio, whichever is less, requesting the Director to approve a marketing agreement for that agricultural commodity.[3] A petition must include all of the following:

(1) A document that creates and identifies a provisional board of directors for the purpose of facilitating the execution of the proposed marketing agreement. The provisional board must consist of between three and five producers of the agricultural commodity that is the subject of the proposed agreement.

(2) A proposed marketing agreement that at a minimum contains a description of all of the following:

(a) The affected agricultural commodity or the region of the state concerning the agricultural commodity that is the subject of the proposed marketing agreement;

(b) Any standards that will be adopted under the proposed agreement;

(c) Procedures by which the proposed marketing agreement may be amended;

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[1] R.C. 924.41.

[2] R.C. 924.01(A).

[3] R.C. 924.42(A).

(d) The length of time that the proposed agreement will be in effect;

(e) The size and composition of a board of directors that will be established under the marketing agreement for the purpose of administering it;

(f) The method by which the members of the board of directors will be elected;

(g) The estimated costs to and rate of assessment to be made on each person who is a signatory to the marketing agreement for purposes of membership, inspections, or other services provided by the board of directors under the marketing agreement in conjunction with the person's participation in the marketing agreement;

(h) The minimum number of producers that are necessary for the marketing agreement to be financially self-supporting; and

(i) Any other information that the Director may require by rule.

(3) An unbiased and accurate summary of the proposed marketing agreement.[4]

The petitioners must include with the petition all of the following:

(1) A current list of the applicable producers. The list may be created from existing records or records that are available from any reliable source.

(2) An administration fee of $500 or another amount that the Director determines is necessary to pay the Director's costs of notifying all known applicable producers and the costs of conducting the public meeting that is required by the bill concerning the proposed marketing agreement (see below); and

(3) Information that demonstrates that the applicable producers have sufficient money to pay the costs of a board of directors to administer the marketing agreement and to pay the costs of administration and enforcement of it.[5]

Public meeting

After receiving a petition requesting the Director to approve a marketing agreement for an agricultural commodity, the Director must notify all producers included in the list provided to the Director by the petitioners. The notification must contain a description of the purpose of the proposed marketing agreement and provide the date, time, and location of a public meeting that will be conducted by the Director.

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[4] R.C. 924.42(B).

[5] R.C. 924.42(C).

The notification must be sent through regular mail and published in at least one publication specific to the agricultural commodity that is the subject of the proposed marketing agreement. In addition, the Director may post the notification on the Department of Agriculture's web site.[6]

Not later than 30 days after receipt of a petition, the Director must conduct a public meeting concerning the proposed marketing agreement. At the meeting, the Director must allow any interested person to present information concerning the proposed agreement.[7] At least a majority of the members of the provisional board of directors must attend the public meeting. The provisional board must consider all of the information presented at the public meeting before drafting a marketing agreement to be submitted to the Director. Not later than 30 days after the public meeting, the provisional board must submit to the Director for approval a marketing agreement that complies with the bill (see below).[8]

Marketing agreement provisions

The bill requires a marketing agreement submitted by a provisional board of directors to contain terms that establish generally the same provisions as those submitted for a proposed marketing agreement (see above) with the following additional provisions:

(1) Standards for the use of a logo, trademark, or brand associated with the agricultural commodity;

(2) Whether the marketing agreement may be renewed and, if so, procedures for renewal;

(3) Procedures by which the marketing agreement may be amended. The procedures must require the approval of the Director and of at least a majority of the producers that are signatories to the marketing agreement in order for an amendment to be effective.

(4) The lengths of terms of members of the board of directors and conditions, if any, for reelection;

(5) Procedures for the removal of a member of the board of directors for misfeasance, malfeasance, or nonfeasance;

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[6] R.C. 924.43(A).

[7] R.C. 924.43(B).

[8] R.C. 924.43(C).

(6) Procedures by which producers of the agricultural commodity may become signatories to the marketing agreement after the agreement takes effect;

(7) By which producers that are signatories to the marketing agreement may be removed from the marketing agreement or terminate the agreement; and

(8) Any other procedures or requirements that the Director requires by rule (see below).[9]

Director's approval of marketing agreement

Under the bill, not later than 30 days after receipt of a marketing agreement, the Director must consider all of the information presented at the public meeting conducted under the bill before approving or denying the marketing agreement. The Director may approve a marketing agreement only if all of the following apply:

(1) The Director is unable to discover a substantially similar marketing agreement existing for the agricultural commodity or for the region of the state concerning the agricultural commodity that is the subject of the marketing agreement;

(2) The marketing agreement complies with the bill and state and federal law; and

(3) The Director determines that the applicable producers have sufficient money to pay the costs of a board of directors to administer the marketing agreement and to pay the costs of administration and enforcement of it.[10]

The Director must send notice to the provisional board of directors of the Director's decision to approve or deny the marketing agreement. If the Director approves the marketing agreement, the notice must indicate the date by which producers will be required to sign the marketing agreement, which must be 60 days after the date on which the Director approved the marketing agreement. The board then must notify all known applicable producers. The notice must include the date by which producers must sign the marketing agreement.[11]

Following the date by which producers desiring to be signatories to the marketing agreement are required to sign the agreement, the Director must determine if there is a sufficient number of producers that signed the marketing agreement for the

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[9] R.C. 924.44.

[10] R.C. 924.43(D)(1).

[11] R.C. 924.43(D)(2) and (3).

administration of the marketing agreement to be financially self-supporting plus an additional 20% of that number. If the Director determines that at least the minimum number of required producers have signed the marketing agreement, the Director must sign the marketing agreement, and it takes effect on the Director's signature.[12]

Marketing agreement board of directors

Selection of board

After a marketing agreement takes effect, a board of directors that will administer the agreement must be established in accordance with the terms of the marketing agreement. Except for the Director of Agriculture or the Director's designee who must serve as an ex officio member of the board of directors, members of the board must be selected only from individuals who are producers that signed the marketing agreement.

The provisional board of directors must verify that the board of directors is established in accordance with the terms of the marketing agreement. If the provisional board determines that the board was not established in accordance with those terms, the provisional board must notify the Director who must take appropriate actions to ensure that the board is established in accordance with the terms of the marketing agreement. If the provisional board determines that the board was established in accordance with those terms, the provisional board ceases to exist.[13]

Responsibilities and authority of board

A board of directors that is established to administer a marketing agreement must do all of the following:

(1) Establish priorities and prepare a budget that are consistent with the estimated financial resources that will be generated under the terms of the marketing agreement and with the scope of the agreement;

(2) Deposit all money collected pursuant to the marketing agreement with a bank or savings and loan association. The board must use the money only to pay its costs in administering the marketing agreement and the costs of the activities authorized under the marketing agreement and the bill.

(3) Establish a fiscal year for purposes of marketing activities performed under the terms of the marketing agreement;

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[12] R.C. 924.43(D)(4).

[13] R.C. 924.45(A).

(4) Publish an activity and financial report not later than 60 days after the end of a fiscal year. The board must make the report available to each producer that signed the marketing agreement and to other interested parties.

(5) Provide annually to the Director and to each producer that signed the marketing agreement a financial statement that is prepared by a certified public accountant. The board must provide the financial statement to the Director not later than 60 days after the end of a fiscal year.

(6) Reimburse the Department of Agriculture for actual administrative costs incurred by the Department in the administration of the bill. However, the amount reimbursed in a fiscal year cannot exceed 10% of the total amount of money collected in that fiscal year by the board under the authority of the marketing agreement.

(7) Perform all other acts and exercise all other powers that are reasonably necessary, proper, or advisable to effectuate the bill's purposes.[14]

A board of directors also may do all of the following:

(1) Propose rules to the Director that are necessary for the board to perform its duties under the marketing agreement and the bill;

(2) Hire personnel and contract for services that are necessary for the implementation and administration of the marketing agreement;

(3) Receive and investigate, or cause to be investigated, a complaint concerning an alleged violation of a term of the marketing agreement. If the board determines that such a violation has occurred, the board must refer the matter to the Director for enforcement.

(4) Amend the marketing agreement in accordance with its terms and the bill; and

(5) Terminate the marketing agreement with the approval of a majority of the participating producers that are signatories to the marketing agreement. If the marketing agreement is terminated, the board must distribute any remaining unobligated money collected under the authority of the agreement to each participating producer in the same proportion that the producer paid assessments under it.[15]

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[14] R.C. 924.45(B).

[15] R.C. 924.45(C).

Responsibilities and duties of Director of Agriculture

For purposes of the bill, the Director must adopt rules in accordance with the Administrative Procedure Act that establish procedures and requirements that are necessary to administer and implement a marketing agreement executed under it. In addition, the Director may do all of the following:

(1) Approve a marketing agreement;

(2) Terminate a marketing agreement if any of the following applies:

(a) The Director finds that the agreement or any of its terms violate state or federal law;

(b) A producer is engaging in malfeasance, disparagement, or unfair trade practices; or

(c) The number of producers that signed the marketing agreement becomes fewer than the minimum number of producers that are necessary for the administration of the marketing agreement to be financially self-supporting.

(3) Enter and inspect a facility of a producer that signed a marketing agreement to ensure compliance with the agreement. The Director may delegate that authority to another person or contract with another person to exercise that authority.

(4) Adopt rules in accordance with the Administrative Procedure Act that establish civil penalties that the Director may assess against a person that signed a marketing agreement who violates its terms or who violates the bill and rules adopted under it; and

(5) Enforce rules adopted under the bill.[16]

Existing law

Existing law provides a mechanism by which producers of certain agricultural commodities may establish programs to promote the sale and use of their products, develop new uses and markets for their products, improve the methods of distributing their products to consumers, and standardize the quality of their products for specific uses. The agricultural commodity marketing programs are established through the Department of Agriculture and are funded through assessments on the agricultural commodities.

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[16] R.C. 924.40.

Certain terms are defined and used in the law governing agricultural commodity marketing programs. Those terms and their meanings apply to the bill. A producer is any person who is in the business of producing, or causing to be produced, any agricultural commodity for commercial sale. However, when used in reference to nursery stock, a producer also is a distributor, processor, handler, or retailer of nursery stock.

A distributor is any person who sells, offers for sale, markets, or distributes an agricultural commodity that the person has purchased or acquired directly from a producer or that the person markets on behalf of a producer. A handler is any person who is in the business of packing, grading, selling, offering for sale, or marketing any agricultural commodity in commercial quantities as defined in a marketing program. Finally, a processor is any person who is in the business of grading, packaging, packing, canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, juicing, or in any other way preserving or changing the form of any agricultural commodity.[17]

HISTORY

ACTION	DATE
Introduced	03-06-12

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[17] R.C. 924.01.