

Senate Bill 247

By: Senators Anderson of the 24th, Walker III of the 20th, Miller of the 49th, Goodman of the 8th, Summers of the 13th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 8 of Title 2 of the Official Code of Georgia Annotated,
2 relating to agricultural commodity commissions generally, so as to replace certain public
3 hearings with online public comment opportunities; to revise procedures for issuing,
4 amending, and renewing marketing orders; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to
9 agricultural commodity commissions generally, is amended by revising Code Section 2-8-21,
10 relating to issuance of marketing orders authorized, notice, public hearing, record, reports
11 from handlers, compilation of lists of producers and handlers, and use of information in
12 reports, as follows:

13 "2-8-21.

14 (a) The Commissioner, upon the approval and request of a commission governed by this
15 article, is authorized to issue, administer, and enforce the provisions of marketing orders
16 regulating producer marketing or the handling of agricultural commodities within this state.

17 (b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing
18 order or amendments to an existing marketing order will tend to effectuate the declared
19 policy of this article with respect to any agricultural commodity, he or she shall, either
20 upon his or her own motion, upon the motion of any commission, or upon the application
21 of any producer of such commodity or any organization of such persons, give due notice
22 of and an opportunity for ~~a public hearing~~ online public comment either by email or
23 posting to the Commissioner's website as set forth in the notice upon a proposed
24 marketing order or amendments to an existing marketing order.

25 (2) Notice of any hearing called for such purpose shall be given by the Commissioner
26 or the commission by publishing a notice of such hearing for a period of not less than five
27 days ~~in a newspaper of general circulation published in the capital of the state and in such~~
28 ~~other newspapers as the Commissioner may prescribe on the Commissioner's website.~~
29 ~~No such public hearing shall be held prior to five days after the last day of such period~~
30 ~~of publication.~~ The Commissioner or the commission shall also mail a copy of such
31 notice of hearing and a copy of such proposed marketing order or proposed amendments
32 to all producers of such agricultural commodity whose names and addresses appear upon
33 lists of such persons on file in the department and who may be directly affected by the
34 provisions of such proposed marketing order or such proposed amendments. ~~Such notice~~
35 ~~of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50,~~
36 ~~the 'Georgia Administrative Procedure Act.'~~

37 (3) ~~The hearing shall be public and all testimony shall be received under oath. All~~
38 ~~comments received during an online public comment opportunity shall be public.~~ A full
39 and complete record of the ~~proceedings at such hearing~~ public comments received shall
40 be made and maintained on file in the office of the Commissioner or the commission.
41 The hearing shall, in all respects, be conducted in accordance with ~~Chapter 13 of Title 50,~~
42 ~~the 'Georgia Administrative Procedure Act.'~~ The hearing may be conducted by the
43 commission, by a member of the commission, or by the Commissioner, as may be

44 designated by the commission in each instance, but no No decision shall be made based
45 on hearings conducted public comments received during any public comment opportunity
46 other than by the commission itself, at which by a majority of the members thereof are
47 present, until the members of the commission have after having been afforded an
48 opportunity to review the hearing record public comments. Where the commission
49 conducts hearings, its recommendation Commission recommendations shall be based on
50 the findings reached after a review of the record of the hearing public comments.

51 (c)(1) In order to provide the Commissioner or the commission with accurate and reliable
52 information with respect to the persons who may be directly affected by any proposed
53 marketing order for any agricultural commodity when such information is not then on file
54 in the department, the Commissioner or the commission is authorized and directed,
55 whenever the Commissioner or the commission has reason to believe that the issuance
56 of a marketing order will tend to effectuate the declared policy of this article or upon
57 receipt of a written application for a hearing pursuant to subsection (b) of this Code
58 section, to notify all handlers of such agricultural commodity, by publication of a notice
59 as required in paragraph (2) of this subsection, to file with the Commissioner or the
60 commission within ten days from the last date of such publication a report, properly
61 certified, showing:

- 62 (A) The correct name and address of such handler;
- 63 (B) The quantities of the agricultural commodity affected by the proposed marketing
64 order handled by such handler in the marketing season next preceding the filing of such
65 report;
- 66 (C) The correct names and addresses of all producers of such agricultural commodity
67 who may be directly affected by such proposed marketing order, from whom such
68 handler received such agricultural commodity in the marketing season next preceding
69 the filing of such report; and

70 (D) The quantities of such agricultural commodity received by such handler from each
71 such producer in the marketing season next preceding the filing of such report.

72 (2) The notice to handlers requiring them to file a report shall be published by the
73 Commissioner or the commission for a period of not less than five days ~~in a newspaper~~
74 ~~of general circulation published in the capital of the state and in such other newspaper or~~
75 ~~newspapers as the Commissioner or the commission may prescribe on the~~
76 ~~Commissioner's website.~~ The Commissioner or the commission shall also mail a copy
77 of such notice to all handlers of such agricultural commodity whose names and addresses
78 appear upon the lists on file in the department who may be directly affected by such
79 proposed marketing order.

80 (3) Each handler of an agricultural commodity directly affected by a proposed marketing
81 order shall file his or her verified report with the Commissioner or the commission within
82 the time frame specified in paragraph (1) of this subsection. Failure or refusal of any
83 handler to file such report shall not invalidate any proceeding taken or marketing order
84 issued. The Commissioner or the commission is authorized and directed to proceed upon
85 the basis of such information and reports as may otherwise be available.

86 (4) From the reports so filed and the information so received or available to the
87 Commissioner or the commission, including any proper corrections, the Commissioner
88 or the commission shall prepare a list of the names and addresses of such producers and
89 the volume of such commodity produced or marketed by all such producers and a list of
90 the names and addresses of such handlers and the volume of such commodity handled by
91 all such handlers, directly affected by such proposed marketing order or amendments
92 thereto, in the preceding marketing season. Such lists shall constitute complete and
93 conclusive lists for use in any finding made by the Commissioner or the commission
94 pursuant to subsection (a) of Code Section 2-8-23 and such findings shall be conclusive.

95 (5) The information contained in the individual reports of handlers filed with the
96 Commissioner or the commission pursuant to this Code section shall not be made public

97 in such form. The information contained in such reports may be prepared in combined
98 form for use by the Commissioner or the commission, their agents, or other interested
99 persons in the formulation, administration, and enforcement of a marketing order or may
100 be made available pursuant to court order. Such information shall not be made available
101 to anyone for private purposes."

SECTION 2.

103 Said article is further amended by revising subsection (a) of Code Section 2-8-22, relating
104 to recommendation of marketing orders or amendments by commission and authorized
105 provisions, as follows:

106 "2-8-22.

107 (a) If, upon the basis of the record of testimony and documentary evidence received at the
108 hearing online public comments received as provided for in Code Section 2-8-21 and the
109 facts officially noticed therein from official publications or institutions of recognized
110 standing, the commission determines that the issuance of a marketing order or an
111 amendment will tend to effectuate the intent and purpose of this article, it may recommend
112 the promulgation of a marketing order or amendment with respect to the matters specified
113 in the hearing online public comment notice and supported by the record, containing any
114 or all of the following provisions, but no others:

115 (1) Provisions regulating the period or periods during which any agricultural commodity
116 or any grade, size, or quality of such commodity may be processed, distributed, or
117 otherwise marketed within this state by any and all persons engaged in such processing,
118 distributing, or marketing within this state; such periods shall be established by the
119 commission so as to conform to the better principles of sound agricultural practices with
120 respect to production of the commodities affected, in order to secure, so far as is
121 commercially practical, a sufficient supply of good quality of each grade of such
122 commodity proportionate to normal market demand and to prevent disruptive marketing

123 practices likely to result in oversupply or scarcity, which create unnecessarily inflated
124 prices to consumers and handlers, depressed prices to producers, or salability of products
125 of inferior grade and quality due to unavailability of good quality products;

126 (2) Provisions establishing or providing for establishing, with respect to any agricultural
127 commodity, either as delivered by producers to handlers or processors or as handled,
128 processed, or otherwise prepared for market or as marketed by producers, handlers, or
129 processors:

130 (A) Grading standards of quality, condition, size, maturity, or pack, which standards
131 may include minimum standards, provided that the standards so established shall not
132 be established below any minimum standards prescribed by law for such commodity;
133 and

134 (B) Uniform inspection and grading of such commodity in accordance with the
135 standards so established.

136 (3) Provisions for the establishment of plans for advertising and sales promotion to
137 maintain present markets or to create new or larger markets for agricultural commodities
138 grown in this state or for the prevention, modification, or removal of trade barriers which
139 obstruct the normal flow of agricultural commodities to market. The commission is
140 authorized to prepare, issue, administer, and enforce plans for promoting the sale of any
141 agricultural commodity, provided that any such plan shall be directed toward promoting
142 and increasing the sale, use, and utilization of such commodity without reference to a
143 particular brand or trade name; and provided, further, that no advertising or sales
144 promotion program shall be issued by the Commissioner or the commission which makes
145 use of false or unwarranted claims in behalf of any such product or disparages the quality,
146 value, sale, or use of any other agricultural commodity;

147 (4) Provisions prohibiting unfair trade practices by which any producer or handler tends
148 toward establishment of monopoly, unfairly discriminates among customers as to price
149 or quality, or engages in fraudulent, deceptive, or misleading representations,

150 concealment, or other similar sharp business practices which are harmful to his or its
151 customers, injurious to competitors, likely to bring into disrepute persons generally
152 engaged in production and handling of the commodity involved, or detrimental to the
153 intent and purpose of this article;

154 (5) Provisions for carrying on research studies in promoting the production, marketing,
155 sale, use and utilization, processing, and improvement of any agricultural commodity or
156 any combination thereof and for the expenditure of moneys for such purposes. In any
157 research carried on under this paragraph, the dean of the College of Agricultural and
158 Environmental Sciences of the University of Georgia, the Commissioner, and the
159 commission shall cooperate in selecting the research project or projects to be carried on
160 from time to time. Insofar as practicable such projects shall be carried out by the College
161 of Agricultural and Environmental Sciences but, if the dean of the college and the
162 commission determine that the college has no facilities for a particular project or that
163 some other research agency has better facilities therefor, the project may be carried out
164 by other research agencies selected by the commission;

165 (6) Provisions establishing or providing authority for establishing, for any agricultural
166 commodity, either as such commodity is produced or is delivered by producers to
167 handlers or as such commodity is handled or otherwise prepared for market or as such
168 commodity is marketed by producers or handlers, an educational program designed to
169 acquaint producers, handlers, or other interested persons with quality improvement,
170 including sanitation practices, procedures, or methods as applied to such commodity;

171 (7) Provisions for the promotion of the marketing of surplus commodities through the
172 establishment of surplus, stabilization, or by-product pools for any agricultural
173 commodity or any grade, size, quality, or condition thereof, providing for the sale of the
174 commodity in any such pool and for the equitable distribution among the persons
175 participating therein of the net returns derived from the sale of such commodity.

176 Whenever the marketing order authorizes the establishment of any such pool or pools, the

177 commission shall have the power to receive such commodity from each producer or
178 handler, to handle the same according to the grade, size, quality, or condition thereof, and
179 to account to each producer or handler participating therein upon a pro rata basis for the
180 net proceeds derived from the sale thereof. Whenever the marketing order authorizes the
181 establishment of a surplus, stabilization, or by-product pool, the commission shall have
182 authority to promote the marketing of surplus commodities by making arrangements for
183 and operating any necessary facilities for the storing, financing, grading, hauling,
184 packing, servicing, processing, preparing for market, selling, and disposing of the
185 contents of any pools provided for in this paragraph. Whenever the marketing order
186 authorizes the establishment of any type of pool authorized in this paragraph, the
187 commission shall have authority to create, by a uniform assessment upon producers, or
188 to maintain and disburse, upon some other uniform and equitable basis, an equalization
189 fund to be used for the removal of any inequalities between producers or handlers
190 participating in any pool."

191

SECTION 3.

192 Said article is further amended by revising Code Section 2-8-23, relating to approval by
193 producers prerequisite to issuance of marketing order or major amendment, notice, rules and
194 regulations, expiration, extensions, and referendum, as follows:

195 "2-8-23.

196 (a)(1)(A) No marketing order or major amendment thereto, directly affecting producers
197 or producer marketing, issued pursuant to this article, shall be made effective by the
198 Commissioner or the commission until ~~the finding of one or more of the following:~~
199 ~~(A) That such marketing order or amendment thereto has been assented to in writing~~
200 ~~by not less than 65 percent of the producers who are engaged within the area specified~~
201 ~~in such marketing order or amendment thereto in the production for market or the~~

202 producer marketing of not less than 51 percent of the agricultural commodity specified
203 therein in commercial quantities;

204 (B) That such marketing order or amendment thereto has been assented to in writing
205 by producers who produce not less than 65 percent of the volume of such agricultural
206 commodity and by 51 percent of the total number of producers so engaged; or

207 (C) That such marketing order or amendment thereto has been approved or favored by
208 producers in a referendum among producers directly affected if the valid votes cast in
209 such referendum in favor of such marketing order or amendment thereto represent not
210 less than 51 percent of the total number of producers of the commodity of record with
211 the department who marketed not less than 51 percent of the total quantity of the
212 commodity marketed in the next preceding marketing season by the total number of
213 producers of record with the department approved in a referendum by two-thirds of a
214 quorum consisting of at least 25 percent of the notified eligible producers who are
215 engaged within the area specified in such marketing order or amendment thereto.

216 (B) No marketing order renewal, directly affecting producers or producer marketing,
217 issued pursuant to this article, shall be made effective by the Commissioner or the
218 Commission until approved in a referendum by two-thirds of the producers who are
219 engaged within the area specified in such marketing order or amendment thereto.

220 (2) Whenever any marketing order or any major amendment to any marketing order is
221 issued by the commission, the commission shall determine whether assent, approval, or
222 favor thereto of the producers shall be by written assents or by referendum.

223 (3) If the Commissioner or the commission determines that a referendum shall be had,
224 the Commissioner or the commission shall establish a referendum period of 30 days. At
225 the close of such referendum period, the Commissioner or the commission shall count
226 and tabulate the ballots filed during such period. ~~If from such tabulation the~~
227 ~~Commissioner or the commission finds that the number of producers voting in favor of~~
228 ~~such marketing order or amendment thereto is not less than 51 percent of the total number~~

229 of producers of record with the department and that such producers who voted in favor
230 of the marketing order or amendment thereto marketed not less than 51 percent of the
231 total volume of such commodity marketed by all producers of record with the department
232 during the marketing season next preceding such referendum, the Commissioner or the
233 commission may make such marketing order or amendment thereto effective. The
234 Commissioner and the commission are authorized to prescribe such additional procedures
235 as may be necessary to conduct such referendum.

236 (4) At a public hearing held to consider a proposed marketing order or major
237 amendments to an existing marketing order which directly affect producers or producer
238 marketing, the Commissioner or the commission shall also receive testimony or evidence
239 from which he or she or it can determine whether the assent, approval, or favor of such
240 producers shall be determined by written assents or by referendum as prescribed in this
241 Code section. Upon the conclusion of any hearing which involves a marketing order or
242 a major amendment thereto directly affecting producers or producer marketing, the
243 Commissioner or the commission shall make a finding, based upon the testimony and
244 evidence received, whether producer assent, approval, or favor shall be determined by
245 written assents or by referendum. If the Commissioner or the commission finds that a
246 referendum shall be had, he or she or it shall direct that a referendum be held in
247 accordance with this subsection.

248 (5) Any referendum or assent in writing to a marketing order under paragraphs (3), (5),
249 and (6) of subsection (a) of Code Section 2-8-22 shall be held pursuant to this Code
250 section; and upon the approval thereof by two-thirds of those voting therein, where the
251 total vote cast thereon represents not less than 25 percent of those eligible to vote or
252 where the total vote cast thereon represents not less than 25 percent of the total amount
253 of the affected agricultural commodity, such marketing order may be declared by the
254 commission to be approved.

255 (6) In the event of the failure of any proposed marketing order to be approved, no
256 additional referendum thereon shall be held during a period of 12 months from the date
257 of the close of the previous referendum period.

258 (b) Subject to the provisions, restrictions, and limitations imposed in this article, the
259 Commissioner or the commission may issue marketing orders regulating producer
260 marketing and the processing, distributing, or handling in any manner of agricultural
261 commodities by any and all persons engaged in such producer marketing, processing,
262 distributing, or handling of such agricultural commodities within this state.

263 (c)(1) Upon the recommendation of not less than three of the appointive members of the
264 commission, the Commissioner or the commission may make effective minor
265 amendments to a marketing order. The Commissioner or the commission may require
266 a public hearing upon minor amendments if in ~~his or its~~ the Commissioner's or
267 commission's opinion the substance of such minor amendments so warrants. The
268 Commissioner or the commission, however, shall not be required to submit minor
269 amendments for written assents or referendum approval.

270 (2) In making effective major amendments to a marketing order, the Commissioner or
271 the commission shall follow the same procedures prescribed in this article for the
272 institution of a marketing order. For the purpose of this article, a major amendment to
273 a marketing order shall include, but shall not be limited to, any amendment which adds
274 to or deletes from any such marketing order any of the following types of regulations or
275 authorizations:

276 (A) Authority for regulating the period or periods during which any agricultural
277 commodity or any grade, size, or quality of such commodity may be processed,
278 distributed, or otherwise marketed within this state;

279 (B) Authority for the establishment of uniform grading and inspection of any
280 agricultural commodity and the establishment of grading standards of quality,
281 condition, size, or pack of such commodity;

- 282 (C) Authority for the establishment of plans for advertising and sales promotion of any
283 agricultural commodity;
- 284 (D) Authority to prohibit unfair trade practices;
- 285 (E) Authority for carrying out research studies in the production, processing, or
286 distribution of any agricultural commodity;
- 287 (F) Authority to increase an assessment rate beyond the maximum rate authorized by
288 the marketing order in effect;
- 289 (G) Authority to extend the application of the provisions of any marketing order to
290 portions or uses of an agricultural commodity not previously subject to such provisions
291 or to restrict or extend the application of such provisions upon the producers or handlers
292 of such portions or uses of such commodity.
- 293 (3) Modification of any provisions of any marketing order in effect, for the purpose of
294 clarifying the meaning or application of such provisions or of modifying administrative
295 procedures for carrying out such provisions, are declared not to be a major amendment
296 of such marketing order.
- 297 (d) Upon the issuance of any order making effective a marketing order or any suspension,
298 amendment, or termination thereof, ~~a notice thereof shall be posted on a public bulletin~~
299 ~~board maintained at the Department of Agriculture~~, and a copy of such notice shall be
300 published as the Commissioner or the commission may prescribe. No marketing order nor
301 any suspension, amendment, or termination thereof shall become effective until the
302 termination of a period of five days from the date of such posting and publication. It shall
303 also be the duty of the Commissioner or the commission to mail a copy of the notice of
304 such issuance to all persons directly affected by the terms of such marketing order,
305 suspension, amendment, or termination whose names and addresses are on file in the office
306 of the Commissioner or the commission and to every person who files in the office of the
307 Commissioner or the commission a written request for such notice.

308 (e) The Commissioner or the commission shall have the power, consistent with this article
309 and in accordance with marketing orders and agreements made effective under this article,
310 to establish such general rules and regulations for uniform application to all marketing
311 orders issued hereunder as may be necessary to facilitate the administration and
312 enforcement of such marketing orders. The provisions of subsection (d) of this Code
313 section relative to ~~posting, publication, publication, mailing of notice,~~ and time of taking
314 effect shall be applicable to any such general rule or regulation established pursuant to this
315 subsection and applicable to marketing orders generally. Such notice shall be furnished by
316 the Commissioner or the commission for each marketing order in active operation.

317 (f) Upon the recommendation of the commission concerned, the Commissioner shall have
318 the power, consistent with this article, to establish administrative rules and regulations for
319 each marketing order issued and made effective as may be necessary to facilitate the
320 supervision, administration, and enforcement of each such order. The provisions of
321 subsection (d) of this Code section relative to ~~posting, publication, mailing of notice,~~ and
322 time of taking effect shall be applicable to any such administrative rules and regulations.

323 (g) Unless extended as provided in this Code section, all marketing orders issued under the
324 authority of this article shall expire, terminate, and become of no force and effect at the
325 expiration of three years from the date of the issuance of the original marketing order or,
326 if such marketing order has been extended, at the expiration of three years after the date of
327 any such extension.

328 (h) In the event either one of the following conditions is complied with, a marketing order
329 shall be extended for a period of three years after the date of its original expiration:

330 (1) Assent has been given in writing to such marketing order by not less than two-thirds
331 of the producers participating; or

332 (2) Approval or favor of such marketing order has been given by producers in a
333 referendum among producers directly affected if at least 66 2/3 percent of the votes cast
334 in such referendum favor the extension of such marketing order.

335 (i) If the Commissioner or the commission determines that a referendum shall be held, the
336 Commissioner or the commission shall establish a referendum period of 30 days, such
337 referendum period to terminate at least 30 days prior to the expiration date of the marketing
338 order which is the subject of such referendum. At the close of such referendum period, the
339 Commissioner or the commission shall count and tabulate the ballots cast during such
340 period. If from such tabulation the Commissioner or the commission finds that the number
341 of producers voting in favor of the extension of such marketing order is not less than 66 2/3
342 percent of the total number of ballots cast, then such marketing order shall be extended for
343 a period of three years after the expiration date. If it is found from the tabulation of such
344 referendum that the number of producers who had voted in favor of the extension of such
345 marketing order is less than the required 66 2/3 percent of the total number of ballots cast,
346 then the marketing order shall expire, terminate, and be of no force and effect as provided
347 in subsection (g) of this Code section."

348

SECTION 4.

349 All laws and parts of laws in conflict with this Act are repealed.