

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to SB 247:

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 provide for full or partial
3 remote communication with regard to public hearings; to provide for notice of hearings; to
4 revise procedures for issuing, amending, and renewing marketing orders; to provide for
5 related matters; to repeal 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 either in person or wholly or partially by means
23 of remote communication as determined by the Commissioner 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 and
29 in The Farmers and Consumers Market Bulletin or other similar publication that will
30 effectively notify those affected by such marketing order or amendment. ~~No such public~~
31 ~~hearing shall be held prior to five days after the last day of such period of publication.~~
32 The Commissioner or the commission shall also mail a copy of such notice of hearing
33 and a copy of such proposed marketing order or proposed amendments to all producers
34 of such agricultural commodity whose names and addresses appear upon lists of such
35 persons on file in the department and who may be directly affected by the provisions of
36 such proposed marketing order or such proposed amendments. ~~Such notice of hearing~~
37 ~~shall in all respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia~~
38 ~~Administrative Procedure Act.'~~

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

44 conducted by the commission, by a member of the commission, or by the Commissioner,
45 as may be designated by the commission in each instance, but no decision shall be made
46 based on hearings conducted other than by the commission itself, at which a majority of
47 the members thereof are present, until the members of the commission have been
48 afforded an opportunity to review the hearing record. Where the commission conducts
49 hearings, its recommendation shall be based on the findings reached after a review of the
50 record of the hearing.

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 and in The Farmers and Consumers Market Bulletin or other
77 similar publication that will effectively notify those affected by such marketing order or
78 amendment. The Commissioner or the commission shall also mail a copy of such notice
79 to all handlers of such agricultural commodity whose names and addresses appear upon
80 the lists on file in the department who may be directly affected by such proposed
81 marketing order.

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

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

97 (5) The information contained in the individual reports of handlers filed with the
98 Commissioner or the commission pursuant to this Code section shall not be made public
99 in such form. The information contained in such reports may be prepared in combined
100 form for use by the Commissioner or the commission, their agents, or other interested
101 persons in the formulation, administration, and enforcement of a marketing order or may
102 be made available pursuant to court order. Such information shall not be made available
103 to anyone for private purposes."

104

SECTION 2.

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

108 "2-8-23.

109 (a)(1)(A) No marketing order or major amendment thereto, directly affecting producers
110 or producer marketing, issued pursuant to this article, shall be made effective by the
111 Commissioner or the commission until ~~the finding of one or more of the following:~~

112 ~~(A) That such marketing order or amendment thereto has been assented to in writing~~
113 ~~by not less than 65 percent of the producers who are engaged within the area specified~~
114 ~~in such marketing order or amendment thereto in the production for market or the~~
115 ~~producer marketing of not less than 51 percent of the agricultural commodity specified~~
116 ~~therein in commercial quantities;~~

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

120 ~~(C) That such marketing order or amendment thereto has been approved or favored by~~
121 ~~producers in a referendum among producers directly affected if the valid votes cast in~~
122 ~~such referendum in favor of such marketing order or amendment thereto represent not~~

123 ~~less than 51 percent of the total number of producers of the commodity of record with~~
124 ~~the department who marketed not less than 51 percent of the total quantity of the~~
125 ~~commodity marketed in the next preceding marketing season by the total number of~~
126 ~~producers of record with the department approved in a referendum by two-thirds of a~~
127 ~~quorum consisting of at least 25 percent of the notified eligible producers who are~~
128 ~~engaged within the area specified in such marketing order or amendment thereto.~~

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

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

136 (3) If the Commissioner or the commission determines that a referendum shall be had,
137 the Commissioner or the commission shall establish a referendum period of 30 days. At
138 the close of such referendum period, the Commissioner or the commission shall count
139 and tabulate the ballots filed during such period. ~~If from such tabulation the~~
140 ~~Commissioner or the commission finds that the number of producers voting in favor of~~
141 ~~such marketing order or amendment thereto is not less than 51 percent of the total number~~
142 ~~of producers of record with the department and that such producers who voted in favor~~
143 ~~of the marketing order or amendment thereto marketed not less than 51 percent of the~~
144 ~~total volume of such commodity marketed by all producers of record with the department~~
145 ~~during the marketing season next preceding such referendum, the Commissioner or the~~
146 ~~commission may make such marketing order or amendment thereto effective. The~~
147 ~~Commissioner and the commission are authorized to prescribe such additional procedures~~
148 ~~as may be necessary to conduct such referendum.~~

149 (4) At a public hearing held to consider a proposed marketing order or major
150 amendments to an existing marketing order which directly affect producers or producer
151 marketing, the Commissioner or the commission shall also receive testimony or evidence
152 from which he or she or it can determine whether the assent, approval, or favor of such
153 producers shall be determined by written assents or by referendum as prescribed in this
154 Code section. Upon the conclusion of any hearing which involves a marketing order or
155 a major amendment thereto directly affecting producers or producer marketing, the
156 Commissioner or the commission shall make a finding, based upon the testimony and
157 evidence received, whether producer assent, approval, or favor shall be determined by
158 written assents or by referendum. If the Commissioner or the commission finds that a
159 referendum shall be had, he or she or it shall direct that a referendum be held in
160 accordance with this subsection.

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

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

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

176 (c)(1) Upon the recommendation of not less than three of the appointive members of the
177 commission, the Commissioner or the commission may make effective minor
178 amendments to a marketing order. The Commissioner or the commission may require
179 a public hearing upon minor amendments if in ~~his or its~~ the Commissioner's or
180 commission's opinion the substance of such minor amendments so warrants. The
181 Commissioner or the commission, however, shall not be required to submit minor
182 amendments for written assents or referendum approval.

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

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

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

195 (C) Authority for the establishment of plans for advertising and sales promotion of any
196 agricultural commodity;

197 (D) Authority to prohibit unfair trade practices;

198 (E) Authority for carrying out research studies in the production, processing, or
199 distribution of any agricultural commodity;

200 (F) Authority to increase an assessment rate beyond the maximum rate authorized by
201 the marketing order in effect;

202 (G) Authority to extend the application of the provisions of any marketing order to
203 portions or uses of an agricultural commodity not previously subject to such provisions
204 or to restrict or extend the application of such provisions upon the producers or handlers
205 of such portions or uses of such commodity.

206 (3) Modification of any provisions of any marketing order in effect, for the purpose of
207 clarifying the meaning or application of such provisions or of modifying administrative
208 procedures for carrying out such provisions, are declared not to be a major amendment
209 of such marketing order.

210 (d) Upon the issuance of any order making effective a marketing order or any suspension,
211 amendment, or termination thereof, ~~a notice thereof shall be posted on a public bulletin~~
212 ~~board maintained at the Department of Agriculture; and~~ a copy of such notice shall be
213 published as the Commissioner or the commission may prescribe. No marketing order nor
214 any suspension, amendment, or termination thereof shall become effective until the
215 termination of a period of five days from the date of such posting and publication. It shall
216 also be the duty of the Commissioner or the commission to mail a copy of the notice of
217 such issuance to all persons directly affected by the terms of such marketing order,
218 suspension, amendment, or termination whose names and addresses are on file in the office
219 of the Commissioner or the commission and to every person who files in the office of the
220 Commissioner or the commission a written request for such notice.

221 (e) The Commissioner or the commission shall have the power, consistent with this article
222 and in accordance with marketing orders and agreements made effective under this article,
223 to establish such general rules and regulations for uniform application to all marketing
224 orders issued hereunder as may be necessary to facilitate the administration and
225 enforcement of such marketing orders. The provisions of subsection (d) of this Code
226 section relative to ~~posting, publication, publication, mailing of notice,~~ and time of taking
227 effect shall be applicable to any such general rule or regulation established pursuant to this

228 subsection and applicable to marketing orders generally. Such notice shall be furnished by
229 the Commissioner or the commission for each marketing order in active operation.

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

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

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

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

245 (2) Approval or favor of such marketing order has been given by producers in a
246 referendum among producers directly affected if at least $66 \frac{2}{3}$ percent of the votes cast
247 in such referendum favor the extension of such marketing order.

248 (i) If the Commissioner or the commission determines that a referendum shall be held, the
249 Commissioner or the commission shall establish a referendum period of 30 days, such
250 referendum period to terminate at least 30 days prior to the expiration date of the marketing
251 order which is the subject of such referendum. At the close of such referendum period, the
252 Commissioner or the commission shall count and tabulate the ballots cast during such
253 period. If from such tabulation the Commissioner or the commission finds that the number
254 of producers voting in favor of the extension of such marketing order is not less than $66 \frac{2}{3}$

255 percent of the total number of ballots cast, then such marketing order shall be extended for
256 a period of three years after the expiration date. If it is found from the tabulation of such
257 referendum that the number of producers who had voted in favor of the extension of such
258 marketing order is less than the required $66 \frac{2}{3}$ percent of the total number of ballots cast,
259 then the marketing order shall expire, terminate, and be of no force and effect as provided
260 in subsection (g) of this Code section."

261

SECTION 3.

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