

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 380

H. P. 308

House of Representatives, January 21, 1981

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 24.

Referred to the Committee on Agriculture. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Michael of Auburn.

Cosponsors: Senator Carpenter of Aroostook and Representative Sherburne of Dexter.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Improve Marketing of Maine Agricultural Products.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 7 MRSA c. 101, subchapter I-B is enacted to read:

SUBCHAPTER I-B

AGRICULTURAL COMMODITIES MARKETING ACT

§ 421. Title

This subchapter shall be known and may be cited as the "Maine Agricultural Commodities Marketing Act."

§ 422. Purposes

The purposes of this subchapter are:

1. **Correlated marketing.** To enable producers of agricultural commodities of this State, with the aid of the State, to more effectively correlate the marketing of their crops with market demands;

2. **Uniform grading.** To provide for uniform grading and proper preparation of agricultural commodities for market;

3. **Development of markets.** To provide methods and means for the development of new and larger markets for agricultural commodities grown within the State;

4. **Orderly marketing.** To establish orderly marketing and pricing of agricultural commodities grown within this State; and

5. **Elimination of economic waste.** To eliminate or reduce economic waste in the marketing of agricultural commodities grown within the State.

§ 423. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Agricultural commodity.** "Agricultural commodity" means any and all agricultural, horticultural and vineyard crops and products when produced or sold in this State, either in their natural state or as processed by the producer, including such products as:

- A. Poultry or poultry products;
- B. Bees;
- C. Maple syrup;
- D. Livestock, including swine; and
- E. Honey.

Agricultural commodity does not include timber or timber products.

2. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Food and Rural Resources or his designee.

3. **Committee.** "Committee" means a commodity marketing committee established pursuant to section 937.

4. **District.** "District" means geographical division of the production areas in this State as may be established by the commissioner pursuant to this subchapter.

5. **Grade.** "Grade" means one of the officially established grades for an agricultural commodity as defined by the commissioner.

6. **Handler.** "Handler" means any person, except a common carrier, exempt carrier or contract carrier of agricultural commodities, who is engaged in packing, grading, selling, offering for sale or marketing any agricultural commodities, who as owner, agent or otherwise ships or causes to be shipped an agricultural commodity.

7. **Market agreement.** "Market agreement" means an agreement with the commissioner entered into pursuant to this subchapter.

8. **Market order.** "Market order" means an order issued by the commissioner pursuant to this subchapter, prescribing rules governing the marketing, distribution, sale or handling, in any manner of any agricultural commodity during any specified period.

9. **Person.** "Person" means an individual, partnership, corporation, association, legal representative or any organized group or business unit.

10. **Processor.** "Processor" means any person, other than a consumer, who purchases or contracts to purchase an agricultural commodity primarily for manufacture into food or other products by operations which change the physical form which that agricultural commodity possessed when produced.

11. **Producer.** "Producer" means any person engaged within this State in the business of producing, or causing to be produced, for any market, any agricultural commodity.

§ 424. Administration

The commissioner shall administer and enforce this subchapter.

1. **Rules.** The commissioner may, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, adopt such rules as may be necessary to carry out and interpret the provisions and purposes of this subchapter.

2. **Considerations.** In carrying out the purposes of this subchapter the commissioner shall consider any and all facts available to him with respect to the following economic factors:

A. The quality of an agricultural commodity available for distribution as well as the quantity of the agricultural commodity which would normally be required by consumers;

B. The cost of producing an agricultural commodity, the purchasing power of consumers, and the level of prices of commodities, services and articles which producers commonly buy;

C. The level of prices of other commodities which compete with or are utilized as substitutes for an agricultural commodity; and

D. Such other factors as the nature of the location, volume and marketing structure of production of the agricultural commodity.

3. **Enforcement.** The commissioner may institute such investigations, hold such hearings, require such reports, subpoena such records and persons and take such other actions as he finds necessary to implement this subchapter. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this subchapter, or any

rule, market agreement or order, committed to his administration. In addition to any other remedy under this subchapter or otherwise, the commissioner may apply for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist and without being compelled to post bond.

§ 425. Market orders and agreements

1. Market orders. To carry out the purposes of this subchapter, the commissioner may issue, administer and adopt orders regulating the marketing of any agricultural commodity or designated portion of that commodity. Before issuing a proposed market order or market agreement under this subsection, the commissioner shall, by rule, define the commodity, area and persons proposed to be affected and may, to the extent he considers necessary, establish by rule, the procedures for adopting and implementing that proposal. Such market orders shall be proposed and adopted after public hearing, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act. All testimony at the hearings shall be received under oath.

2. Referendum approval. No market order adopted under this subchapter may take effect unless and until the commissioner determines that the adoption of the order is favored by:

A. Not less than 66 $\frac{2}{3}$ % of the persons participating in a referendum in the area affected;

B. Not less than 60% of the persons participating in a referendum in the area affected and having marketed not less than 51% of the total quantity of the commodity which was marketed in the preceding marketing season by all persons that participated in the referendum; or

C. Not less than 51% of the persons participating in a referendum in the area affected and having marketed not less than 65% of the total quantity of the commodity which was marketed in the preceding marketing season by all persons that participated in the referendum.

3. Market agreement. To carry out the declared purposes of this subchapter, the commissioner may enter into market agreements with producers, handlers or processors of agricultural commodities. These market agreements shall be binding only upon the signatories. The market agreements shall be proposed and adopted, after public hearing, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act. All testimony at the hearings shall be received under oath. The commissioner may, by rule, establish the minimum number of signatories necessary to effectuate a market agreement.

4. Coexistence of market orders and market agreements. The commissioner may, in his discretion, hold concurrent hearings upon proposed market agreements and proposed market orders. The commissioner may issue a market order without executing a market agreement or may execute a market agreement without issuing a market order covering the same commodity. The execution of a

market agreement shall in no manner affect the issuance, administration or enforcement of any market order for the same agricultural commodity.

§ 426. Contents of market order or market agreement

Any market order or market agreement adopted by the commissioner may contain any or all of the following:

1. **Surplus.** Provisions for determining the existence and extent of the surplus of any agricultural commodity, or of any grade, size or quality thereof, and for regulating and disposing of the surplus;

2. **Quantity.** Provisions for limiting the total quantity of any agricultural product, or of any grade or grades, size or sizes, or quality or portions of those agricultural products which may be marketed during any specified period or periods. The total limitations of any commodity so regulated shall not provide for the marketing of less than the quantity which the commissioner finds is reasonably necessary to supply the market demand of consumers for that commodity;

3. **Time periods.** Provisions for regulating the period or periods, during which any agricultural commodity, or any grade or grades, size or sizes or quality or portions or combinations of a commodity, may be marketed;

4. **Standards.** Provisions for establishing uniform standards of quality, grade, condition, size, maturity or pack of any agricultural commodity delivered by producers or other persons to handlers or processors or others engaged in the handling of agricultural commodities;

5. **Inspection.** Provisions for requiring that, except as provided in the market order or market agreement, no producer of any agricultural commodity for which standards are established pursuant to subsection 4 may sell, offer for sale or deliver any such commodity, not meeting and complying with established standards; provided that any provision for compulsory inspection shall be so indicated in the market order and specifically included in the referendum proposal;

6. **Other sales.** Provisions for requiring that no handler or processor of any agricultural commodity for which standards are established pursuant to subsection 4 may, except as otherwise provided in the market agreement or order, have in his possession, sell, offer for sale, process, distribute or otherwise handle any such commodity produced within or without the State, not meeting or complying with the established standards;

7. **Other provisions.** Such other provisions as may be necessary to carry out the declared purposes of this subchapter.

§ 427. Commodity marketing committee

1. **Establishment.** For market orders, the commissioner shall, and for market agreements, the commissioner may, establish a commodity marketing

committee or committees to administer and implement the provisions of the orders or agreements. Members of the committees shall be initially appointed by the commissioner to equitably represent the producers, handlers or processors who are directly affected by the order or agreement. The size of a committee, its geographic representation, membership qualification, selection procedure, term of office and operating procedures shall be prescribed by rule for each market order or market agreement for which a committee or committees may be established; provided that in each case where a market order or market agreement is in effect for a period greater than 12 months, the rules shall provide for a system for election of the producer, handler and processor members.

2. Expenses and compensation. Committee members are not entitled to compensation for their services, but are entitled to actual expenses incurred while engaged in the performance of their duties. The commissioner may authorize the committee to employ necessary personnel, including an attorney, fix their compensation and term of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as provided, as the commissioner may deem necessary and proper, to enable the committee to perform its duties. Members of any committee established under this section when acting in their official capacity under this subchapter shall be considered agents of the commissioner.

3. Duties. The duties of each commodity marketing committee shall be prescribed by the commissioner and he may, by rule, specifically delegate to the committee any or all of the following responsibilities, subject to his continuing supervision:

- A. The recommendation to the commissioner of the adoption of rules relating to the market order or agreement;
- B. The recommendation to the commissioner of such amendments to the market order or agreement as seem advisable;
- C. The preparation and submission to the commissioner of the estimated budget required for the proper operation of the market order or agreement;
- D. The recommendation to the commissioner of methods for assessing members of the industry and methods for collecting the necessary funds;
- E. The collection and compilation of information and data necessary to the proper administration of the market order or agreement; and
- F. The performance of such other duties in connection with the administration or implementation of the market order or agreement as the commissioner considers appropriate.

§ 428. Expenses and fees

1. Petition. Whenever the issuance, amendment or termination of a market order or a market agreement is initiated by petition consistent with this subchapter or with Title 5, section 8055, the commissioner may require the

petitioners to deposit with him such amount as he may consider necessary to defray the expenses of preparing, adopting, amending or terminating a market order or market agreement. Those funds shall be received, deposited and disbursed by the commissioner in the same manner as other fees received by him under this subchapter and, in the event the application for adoption, amendment or termination of a market order or market agreement is approved in a referendum, the commissioner shall reimburse any such petitioner in the amount of any such deposit from any unexpended moneys collected under the market order or market agreement affected by the referendum.

2. **Budget.** The commissioner shall prepare a budget for administration and operation costs, including advertising and sales promotion, when required in any market agreement or order executed under this subchapter and may provide for the collection of fees to defray the costs and expenses. In no case, however, may those fees exceed 5% of the gross dollar value of the volume of sales or of purchases or of amounts handled, as applicable, to be collected from each person engaged in the production, processing or handling of any marketable agricultural commodity produced in this State and directly affected by any market order issued for that commodity.

3. **Assessments.** Expenses of a commodity marketing committee shall be financed by an assessment levied on the persons involved with the agricultural commodity covered by the market order or agreement under which the committee was established. For a market order, assessments may be levied on producers, handlers or processors only to the extent that those groups were provided, pursuant to section 425 with the opportunity to participate in the referendum. For a market agreement, assessments may be levied only upon signatories.

4. **Pro rata share.** The commissioner shall, by rule, fix the rate of assessment. The commissioner may, by rule, increase the rate of assessment to secure funds sufficient to cover any later finding by the commissioner relative to the expense of the committee. To provide funds to carry out the functions of the committee, advance payment of assessments may be required. Each person regulated by a market order or by a market agreement, as applicable, shall pay to the committee, upon demand, such pro rata share of the expenses as the commissioner finds will be incurred by the committee for its maintenance and functioning during each fiscal year and for such other purposes as the commissioner may determine to be appropriate under the law.

5. **Use of funds.** Any moneys collected by the commissioner under this subchapter shall not be considered state funds but shall be deposited to a separate account established by the commissioner and allocated to each market order or agreement under which they are collected. The funds shall be disbursed by the commissioner only for the necessary expenses incurred by the commissioner or committee with respect to each separate market order or agreement in accordance with the rules of the commissioner. All the expenditures shall be audited by the State Auditor at least annually and within 30 days after the

completion of the audit the State Auditor shall give a copy thereof to the commissioner. Any moneys remaining in that fund allocable to any particular commodity affected by a market order or agreement may, in the discretion of the commissioner, be refunded at the close of any marketing season upon a pro-rata basis to all persons from whom assessments were collected, or, whenever the commissioner finds that those moneys may be necessary to defray the cost of operating that market order or agreement in a succeeding marketing season, he may carry over all or any portion of those moneys into the next season. Upon the termination of any market order or agreement, all moneys remaining and not required by the commissioner or committee to defray the expenses of operating that market order or agreement shall be refunded by the commissioner upon a pro-rata basis to all persons from whom assessments were collected; provided that if the commissioner finds that the amounts so refundable are so small as to make impracticable the computation and refund of those moneys, the commissioner may use those moneys to defray the expenses incurred by him in the formulation, issuance, administration or enforcement of any subsequent market order or agreement for that commodity.

6. Committee accountability. All funds received by the committee under this subchapter shall be used solely for the purposes specified and shall be accounted for in the following manner.

- A. The commissioner may at any time require the committee and its members to account for all receipts and disbursements; and
- B. Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property, funds, books and records of the committee in his possession, to his successor in office or to such person as the commissioner may designate.

§ 429. Termination, amendment or suspension of market order or agreement

1. Termination by the commissioner. The commissioner may, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act, terminate the operation of any or all of the provisions of a market order or agreement, whenever he finds that those provisions do not tend to effectuate the declared purposes of this subchapter.

2. Suspension by the commissioner. The commissioner may, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act, temporarily suspend the operation of any or all of the provisions of an effective market order or agreement, for a period not longer than one growing and marketing season, if he determines that, for purposes of this subchapter, those provisions are unnecessary during that season.

3. Mandatory termination. The commissioner shall determine any market order at the end of any fiscal year, whenever he determines that termination is favored by a majority of the persons who participated in a referendum on the question of its termination and who, during the preceding fiscal year, have

produced at least 51% of the volume of that commodity, marketed within the State during the preceding marketing season. The commissioner may, by rule, establish procedures for initiation of a referendum concerning termination.

§ 430. Penalties

Violation of any provision of a market order or agreement adopted under this subchapter or of any provision of this subchapter or any rule adopted under this subchapter is a civil violation for which a forfeiture of not less than \$100 nor more than \$500 shall be adjudged; each day during which that violation continues constitutes a separate offense.

Sec. 2. 7 MRSA §§ 991 to 1006, as amended, are repealed.

Sec. 3. Transition provision. Any market order or market agreement or any rule, contract or other action initiated under such order or agreement which was instituted under the Revised Statutes, Title 7, sections 991 to 1006 shall remain in full force and effect according to the terms of such orders or agreements.

STATEMENT OF FACT

Marketing is a central component of the agricultural economy. The ability to maintain consistently high quality in the marketplace is essential. This bill provides the statutory framework for the various agricultural industries in the State to impose restrictions on themselves in order to enhance their abilities to market our agricultural commodities.

Potatoes are the only commodity for which this ability is now available; the Maine Potato Marketing Act has been used successfully to adopt a russet marketing order and to initiate a round white marketing agreement. This bill follows the format of the Maine Potato Marketing Act and creates similar potential for other agricultural commodities.