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Agricultural Commodity Commissions

Chapter 76, Article 21, Sections 1 through 22

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76-21-1. Short title.

This act [76-21-1 to 76-21-22 NMSA 1978] may be cited as the "Agricultural Commodity Commission Act".

76-21-2. Definitions.

As used in the Agricultural Commodity Commission Act [76-21-1 to 76-21-11 NMSA 1978]:

- A. "animal" means any agricultural animal except beef cattle and horses;
- B. "commercial channels" means the sale of the commodity for use as food or for industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom;
- C. "commission" means a commodity commission established under the Agricultural Commodity Commission Act;
- D. "commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class, in its natural or processed state. The director of the New Mexico department of agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of the Agricultural Commodity Commission Act;
- E. "director" means the director of the New Mexico department of agriculture;
- F. "first purchaser" means any person who buys the commodity, for which a commission is created, from the producer in the first instance, or the handler who received the commodity in the first instance from the producer for resale or processing;
- G. "handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is created, whether as an owner, agent, employee, broker or otherwise; and
- H. "producer" means any person engaged in a proprietary capacity in the commercial production of a commodity for market within this state.

76-21-3. Petition for establishment of commission for a particular commodity.

Any twenty-five or more persons interested in the production of a particular commodity for which it is proposed to establish a commission may file a petition with the department [New Mexico department of agriculture] asking that a commission be established for such commodity. The petition shall set forth:

- A. the name of the commodity for which the commission is to be established;

- B. a concise statement of the reasons for the establishment of a commission;
- C. a request that a referendum be held among the producers of the commodity on the question of the establishment of a commission;
- D. the name and address of the individual who is authorized to represent the petitioners;
- E. the number of persons to serve on the commission;
- F. the maximum per unit assessment on the commodity for which the commission is established; and
- G. the method of levy and collection of an assessment upon producers for the support of the commission.

76-21-4. Petition filing fee.

- A. The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum.
- B. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

76-21-5. Hearings regarding establishment of commodity commission; notice of hearings.

- A. Within sixty days after the petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the proposed hearings in areas of the state where the commodity is grown in economic quantities.
- B. The notices of hearing shall be published at least fourteen days prior to the date of hearing in a newspaper of general circulation in the state.

76-21-6. Determination by director regarding need for commodity commission.

- A. After hearing, the director shall determine, based upon the facts presented and other relevant data available, if there is a need for the creation of a commission whose interest is the general welfare of the producers of the commodity and if the need is sufficient to justify the holding of a referendum thereon.
- B. Subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date the director has recorded a determination denying the need for the creation of a commission for a commodity.

76-21-7. Referendum regarding establishment of commodity commission after determination by director.

A. If the director determines the need for a commission is sufficient to justify the holding of a referendum, he shall within a reasonable time hold a referendum upon the proposition of the creation of the commission.

B. Notice of a referendum upon the proposition of the creation of a commission shall be given in the same manner as notice of other hearings. Included in the notice of referendum shall be:

1. the name of the commodity for which the commission is to be established;
2. a concise statement of the reasons for the establishment of a commission;
3. the name and address of the individual who is authorized to represent the petitioners;
4. the number of persons to be elected to the commission;
5. the maximum per unit assessment on the commodity for which the commission is established; and
6. method of levy and collection of an assessment upon producers for the support of the commission.

C. Preceding any referendum held pursuant to the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978], the director shall determine the number of producers in this state and their total production in the last preceding production season or year of the commodity for which a commission is proposed. The director's determination shall be predicated upon available relevant and reliable information establishing such facts from statistics of the New Mexico department of agriculture, the United States department of agriculture, the United States department of commerce or other sources as determined by the director. At the request of the director, any handlers or other persons shall furnish information available relevant to the determination required of the director.

D. A ballot on the referendum shall be sent to each producer of record. Included on the ballot shall be the minimum information required in the notice of referendum in Paragraphs (1) through (6) of Subsection B of this section.

76-21-8. Creation of commission

The director shall declare a commission created if the proposition received an affirmative vote in the referendum of two-thirds of the producers voting and if the total voting producers are producers of more than one-third of the total quantity of the commodity produced in the state in the last preceding year as determined by the director.

76-21-9. Election of members of commission; number of producers and handlers.

A. The commission shall be composed of from five to eleven members, as stated in the petition for referendum. Members shall be elected by producers from nominations made to the director by producers or producers' organizations.

B. Members of the commission shall be elected as follows within sixty days following the director's declaration that a commission is created:

1. approximately one-third of the members for a one-year term;
2. one-third of the members for a two-year term; and
3. one-third of the members for a three-year term.

Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy when the appointee shall serve the unexpired part of the term of the member whom he replaces.

C. A majority of the members shall be producers, and at least one member shall be a handler. All members other than handlers shall be producers.

76-21-10. Ex officio member of commission.

The director or his designee shall be ex officio member of the commission, without right to vote.

76-21-11. Qualifications of members.

Each member of the commission shall have the following qualifications which shall continue during his term of office:

- A. a legal resident of the United States;
- B. a bona fide resident of the state;
- C. shall have demonstrated an active interest in the development of the commodity industry in New Mexico; and
- D. producer members shall be and have been actively engaged in producing and the handler members in the handling of the commodity for which the commission is established and shall derive a substantial portion of their incomes from the sale of the commodity.

76-21-12. Removal of members.

A. The director shall immediately declare the office of any member of the commission vacant whenever such member has ceased to be an active producer or handler in this state, has become a resident of another state or is not performing the duties of his office.

B. The director may remove any member of the commission for inefficiency, neglect of duty or misconduct in office.

C. The director shall fill vacancies by appointing a replacement to serve the unexpired term.

76-21-13. Commission organization; meetings.

The commission shall meet as soon as practicable for the purpose of organizing. It shall elect a chairman and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at such other times as called by the chairman.

76-21-14. Authority of commission generally.

The commission may:

A. conduct or cause to be conducted studies to increase the commercial value of, expand current markets and find new markets for and establish or provide for the establishment of marketing development projects for the commodity and products thereof;

B. disseminate or cause to be disseminated, reliable information relative to market conditions, current prices and sources of supply and demand showing the value of the commodity and its products for any purpose for which they may be found useful and profitable;

C. sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978];

D. enter into contracts which it deems appropriate to the carrying out of the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

E. make grants for studies or for the purchase of facilities necessary to carry out the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

F. appoint subordinate officer and employees of the commission and prescribe their duties and fix their compensation;

G. cooperate or act jointly with any local, state or national organization or governmental agency, whether created by law or voluntary, engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs deemed by the commission to be beneficial to the commodity industry of this state, and expend funds in connection therewith, provided that such program is compatible with the powers conferred by the Agricultural Commodity Commission Act;

H. adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties; and I. advertise the commodity and develop new markets through such advertising or entering into contracts for same.

76-21-15. Levy of assessment on commodity sales.

Follows 76-21-21 Disposition of funds.

76-21-16. Refunds

Any producer on whose behalf an assessment has been paid is entitled to a refund of the amount paid by making written application therefor to the commission. The application shall be made within thirty days after the sale was made giving rise to the assessment and shall contain enough detail to enable the commission to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the commission, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information.

76-21-17. First purchaser of commodity to make reports and pay assessment.

A. On dates established by the commission, the first purchaser shall provide prescribed information and reports on forms designated by the commission.

B. The first purchaser shall deduct an assessment at the time of sale and pay to the commission the amount of the assessment on dates established by the commission.

76-21-18. Records of person required to pay assessment.

Each person required to pay an assessment on a commodity under the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978] shall keep records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission. The commission or any person authorized by the commission may inspect and audit these records.

76-21-19. Records and accounts of commission.

The commission shall:

- A. submit to the director for approval a detailed annual budget for the commission on a fiscal year basis and provide a copy of such budget upon request to any person who has paid an assessment;
- B. bond officers and employees of the commission who receive and disburse commission funds;
- C. keep detailed and accurate records as approved by the director of all receipts and disbursements, have such records audited annually and keep such audit available for inspection in the commission office; and
- D. establish procedures for the adoption of regulations that will provide for input from producers.

76-21-20. Referendum on continuance of commission.

After three years from the date any commission is created, a referendum may be held at the petition of twenty-five or more producers of the commodity or at the request of the commission upon the question of the discontinuance of the commission. Any costs of such referendum are to be borne by the commission.

76-21-21. Disposition of funds.

- A. All funds received by the commission shall be received by the commission and disbursed directly by the commission according to procedures approved by the director and shall be subject to audit by the state auditor at his discretion. The commission is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.
- B. The commission shall issued warrants against funds of the commission in payment of its lawful obligations. The commission shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by two officers or employees designated by the commission.
- C. The commission shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

76-21-15. Levy of assessment on commodity sales.

- A. The commission may assess, levy and collect an assessment, the amount of which shall not exceed the maximum stated in the petition for referendum, on all units, plants or animals of the commodity produced or handled within this state and sold in commercial channels, or on wire, twine, binding or packaging material, an assessment may be imposed on the producer. All casual sales of the commodity made by the producer direct

to the consumer shall be exempt from the assessment. The amount of the assessment shall be determined by the commission and published annually.

B. The assessment shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer. In the case of assessments imposed on wire, twine, binding or packaging materials, the assessment shall be added to the purchase price by the seller and paid to the commission. In the case of acreage assessments, the amount shall be imposed on the producer at a time established by the commission and the producer shall pay the assessment directly to the commission.