

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

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 2 of the Official Code of Georgia Annotated, relating to agriculture, so as to  
2 repeal and reserve Code Section 2-4-8, relating to terms of office of appointed members of  
3 commission and board; to provide for full or partial remote communication with regard to  
4 public hearings; to provide for notice of hearings; to revise procedures for issuing, amending,  
5 and renewing marketing orders; to provide for related matters; to repeal conflicting laws; and  
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended by  
10 repealing Code Section 2-4-8, relating to terms of office of appointed members of  
11 commission and board, and designating said Code section as reserved.

12 **SECTION 2.**

13 Said title is further amended by revising Code Section 2-8-21, relating to issuance of  
14 marketing orders authorized, notice, public hearing, record, reports from handlers,  
15 compilation of lists of producers and handlers, and use of information in reports, as follows:

16 "2-8-21.

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

20 (b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing  
21 order or amendments to an existing marketing order will tend to effectuate the declared  
22 policy of this article with respect to any agricultural commodity, he or she shall, either  
23 upon his or her own motion, upon the motion of any commission, or upon the application  
24 of any producer of such commodity or any organization of such persons, give due notice  
25 of and an opportunity for a public hearing either in person or wholly or partially by means  
26 of remote communication as determined by the Commissioner upon a proposed  
27 marketing order or amendments to an existing marketing order.

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

42 (3) ~~The hearing shall be public and all testimony shall be received under oath. The~~  
43 hearing and all testimony shall be public. A full and complete record of the proceedings  
44 at such hearing shall be made and maintained on file in the office of the Commissioner  
45 or the commission. The hearing shall, in all respects, be conducted in accordance with  
46 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The hearing may be  
47 conducted by the commission, by a member of the commission, or by the Commissioner,  
48 as may be designated by the commission in each instance, but no decision shall be made  
49 based on hearings conducted other than by the commission itself, at which a majority of  
50 the members thereof are present, until the members of the commission have been  
51 afforded an opportunity to review the hearing record. Where the commission conducts  
52 hearings, its recommendation shall be based on the findings reached after a review of the  
53 record of the hearing.

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

- 65 (A) The correct name and address of such handler;
- 66 (B) The quantities of the agricultural commodity affected by the proposed marketing  
67 order handled by such handler in the marketing season next preceding the filing of such  
68 report;

69 (C) The correct names and addresses of all producers of such agricultural commodity  
70 who may be directly affected by such proposed marketing order, from whom such  
71 handler received such agricultural commodity in the marketing season next preceding  
72 the filing of such report; and

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

75 (2) The notice to handlers requiring them to file a report shall be published by the  
76 Commissioner or the commission for a period of not less than five days ~~in a newspaper~~  
77 ~~of general circulation published in the capital of the state and in such other newspaper or~~  
78 ~~newspapers as the Commissioner or the commission may prescribe~~ on the  
79 Commissioner's website and in The Farmers and Consumers Market Bulletin or other  
80 similar publication that will effectively notify those affected by such marketing order or  
81 amendment. The Commissioner or the commission shall also mail a copy of such notice  
82 to all handlers of such agricultural commodity whose names and addresses appear upon  
83 the lists on file in the department who may be directly affected by such proposed  
84 marketing order.

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

91 (4) From the reports so filed and the information so received or available to the  
92 Commissioner or the commission, including any proper corrections, the Commissioner  
93 or the commission shall prepare a list of the names and addresses of such producers and  
94 the volume of such commodity produced or marketed by all such producers and a list of  
95 the names and addresses of such handlers and the volume of such commodity handled by

96 all such handlers, directly affected by such proposed marketing order or amendments  
 97 thereto, in the preceding marketing season. Such lists shall constitute complete and  
 98 conclusive lists for use in any finding made by the Commissioner or the commission  
 99 pursuant to subsection (a) of Code Section 2-8-23 and such findings shall be conclusive.  
 100 (5) The information contained in the individual reports of handlers filed with the  
 101 Commissioner or the commission pursuant to this Code section shall not be made public  
 102 in such form. The information contained in such reports may be prepared in combined  
 103 form for use by the Commissioner or the commission, their agents, or other interested  
 104 persons in the formulation, administration, and enforcement of a marketing order or may  
 105 be made available pursuant to court order. Such information shall not be made available  
 106 to anyone for private purposes."

107

### SECTION 3.

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

111 "2-8-23.

112 (a)(1)(A) No marketing order or major amendment thereto, directly affecting producers  
 113 or producer marketing, issued pursuant to this article, shall be made effective by the  
 114 Commissioner or the commission until ~~the finding of one or more of the following:~~  
 115 ~~(A) That such marketing order or amendment thereto has been assented to in writing~~  
 116 ~~by not less than 65 percent of the producers who are engaged within the area specified~~  
 117 ~~in such marketing order or amendment thereto in the production for market or the~~  
 118 ~~producer marketing of not less than 51 percent of the agricultural commodity specified~~  
 119 ~~therein in commercial quantities;~~

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

123 ~~(C) That such marketing order or amendment thereto has been approved or favored by~~  
124 ~~producers in a referendum among producers directly affected if the valid votes cast in~~  
125 ~~such referendum in favor of such marketing order or amendment thereto represent not~~  
126 ~~less than 51 percent of the total number of producers of the commodity of record with~~  
127 ~~the department who marketed not less than 51 percent of the total quantity of the~~  
128 ~~commodity marketed in the next preceding marketing season by the total number of~~  
129 ~~producers of record with the department approved in a referendum by two-thirds of a~~  
130 ~~quorum consisting of at least 25 percent of the notified eligible producers who are~~  
131 ~~engaged within the area specified in such marketing order or amendment thereto.~~

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

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

139 (3) If the Commissioner or the commission determines that a referendum shall be had,  
140 the Commissioner or the commission shall establish a referendum period of 30 days. At  
141 the close of such referendum period, the Commissioner or the commission shall count  
142 and tabulate the ballots filed during such period. ~~If from such tabulation the~~  
143 ~~Commissioner or the commission finds that the number of producers voting in favor of~~  
144 ~~such marketing order or amendment thereto is not less than 51 percent of the total number~~  
145 ~~of producers of record with the department and that such producers who voted in favor~~  
146 ~~of the marketing order or amendment thereto marketed not less than 51 percent of the~~

147 ~~total volume of such commodity marketed by all producers of record with the department~~  
148 ~~during the marketing season next preceding such referendum, the Commissioner or the~~  
149 ~~commission may make such marketing order or amendment thereto effective. The~~  
150 ~~Commissioner and the commission are authorized to prescribe such additional procedures~~  
151 ~~as may be necessary to conduct such referendum.~~

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

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

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

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

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

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

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

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

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

200 (D) Authority to prohibit unfair trade practices;



- 201 (E) Authority for carrying out research studies in the production, processing, or  
202 distribution of any agricultural commodity;
- 203 (F) Authority to increase an assessment rate beyond the maximum rate authorized by  
204 the marketing order in effect;
- 205 (G) Authority to extend the application of the provisions of any marketing order to  
206 portions or uses of an agricultural commodity not previously subject to such provisions  
207 or to restrict or extend the application of such provisions upon the producers or handlers  
208 of such portions or uses of such commodity.
- 209 (3) Modification of any provisions of any marketing order in effect, for the purpose of  
210 clarifying the meaning or application of such provisions or of modifying administrative  
211 procedures for carrying out such provisions, are declared not to be a major amendment  
212 of such marketing order.
- 213 (d) Upon the issuance of any order making effective a marketing order or any suspension,  
214 amendment, or termination thereof, ~~a notice thereof shall be posted on a public bulletin~~  
215 ~~board maintained at the Department of Agriculture;~~ and a copy of such notice shall be  
216 published as the Commissioner or the commission may prescribe. No marketing order nor  
217 any suspension, amendment, or termination thereof shall become effective until the  
218 termination of a period of five days from the date of such posting and publication. It shall  
219 also be the duty of the Commissioner or the commission to mail a copy of the notice of  
220 such issuance to all persons directly affected by the terms of such marketing order,  
221 suspension, amendment, or termination whose names and addresses are on file in the office  
222 of the Commissioner or the commission and to every person who files in the office of the  
223 Commissioner or the commission a written request for such notice.
- 224 (e) The Commissioner or the commission shall have the power, consistent with this article  
225 and in accordance with marketing orders and agreements made effective under this article,  
226 to establish such general rules and regulations for uniform application to all marketing  
227 orders issued hereunder as may be necessary to facilitate the administration and

228 enforcement of such marketing orders. The provisions of subsection (d) of this Code  
229 section relative to ~~posting, publication,~~ publication, mailing of notice, and time of taking  
230 effect shall be applicable to any such general rule or regulation established pursuant to this  
231 subsection and applicable to marketing orders generally. Such notice shall be furnished by  
232 the Commissioner or the commission for each marketing order in active operation.

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

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

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

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

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

251 (i) If the Commissioner or the commission determines that a referendum shall be held, the  
252 Commissioner or the commission shall establish a referendum period of 30 days, such  
253 referendum period to terminate at least 30 days prior to the expiration date of the marketing  
254 order which is the subject of such referendum. At the close of such referendum period, the

255 Commissioner or the commission shall count and tabulate the ballots cast during such  
256 period. If from such tabulation the Commissioner or the commission finds that the number  
257 of producers voting in favor of the extension of such marketing order is not less than 66 2/3  
258 percent of the total number of ballots cast, then such marketing order shall be extended for  
259 a period of three years after the expiration date. If it is found from the tabulation of such  
260 referendum that the number of producers who had voted in favor of the extension of such  
261 marketing order is less than the required 66 2/3 percent of the total number of ballots cast,  
262 then the marketing order shall expire, terminate, and be of no force and effect as provided  
263 in subsection (g) of this Code section."

264

**SECTION 4.**

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