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**HOUSE BILL NO. 2355****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Agriculture  
on January 25, 2001)

(Patron Prior to Substitute—Delegate Weatherholtz)

A BILL to amend the Code of Virginia by adding in Chapter 23 of Title 3.1 an article numbered 3, consisting of sections numbered 3.1-636.1 through 3.1-636.9, and to repeal §§ 3.1-621 through 3.1-625, 3.1-629 and 3.1-630 of the Code of Virginia, relating to the levy of excise tax on apples.

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 23 of Title 3.1 an article numbered 3, consisting of sections numbered 3.1-636.1 through 3.1-636.9 as follows:**

*Article 3.**Referendum on Continuation of the Levy of Excise Tax on Apples.**§ 3.1-636.1. Declaration of public interest.*

The General Assembly hereby declares it to be in the public interest that apple producers be permitted to express in a referendum whether the excise tax levied pursuant to § 3.1-621 upon apples grown in Virginia should be continued.

*§ 3.1-636.2. Definitions.*

As used in this article, unless the context otherwise requires:

"Agriculture Board" means the Board of Agriculture and Consumer Services.

"Apple Board" means the Virginia State Apple Board.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Producer" means any person who, in a tax year, grows or causes to be grown within the Commonwealth, for sale, a minimum of 500 bushels of apples.

"Tax year" means the period from July 1 of one year through June 30 of the following year.

*§ 3.1-636.3. Petition for referendum on question of continuation of the levy of excise tax.*

The Agriculture Board, upon petition by the Virginia State Horticultural Society or at least ten percent of the producers in the Commonwealth requesting a referendum, shall authorize the holding of a referendum on the continuation of the levy of excise tax on apples grown in Virginia. Any referendum held under this section shall be conducted in accordance with the provisions of §§ 3.1-636.4 through 3.1-636.9. The Commissioner, or his designated agents, shall thereupon be fully empowered and directed to conduct a referendum on the question of whether the excise tax levied pursuant to § 3.1-621 upon apples grown in Virginia should be continued.

*§ 3.1-636.4. Rules governing ballots; conduct of referendum.*

The Agriculture Board shall adopt rules governing the ballots to be used in the referendum provided for in this article, the conduct of the referendum, the canvassing of the results of the referendum, and the declaration of the results of the referendum. The Agriculture Board shall fix the date, hours, and voting places with respect to the holding of the referendum and may provide for voting by mail if it deems advisable. No requirement of this section shall be governed by Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

*§ 3.1-636.5. Persons eligible to vote.*

Any person in the Commonwealth who paid the excise tax levied pursuant to § 3.1-621 in the tax year preceding any referendum held pursuant to this article shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. Natural persons, partnerships, or corporations may vote provided that such person is a resident of the Commonwealth or qualified to do business in the Commonwealth. The vote of a partnership shall be cast by one of the general partners. A corporation shall vote by its president, general manager, or such other person as may be authorized by the corporation to cast its vote.

*§ 3.1-636.6. Management of referendum; expenses of referendum.*

A. The Commissioner shall, under the rules adopted pursuant to § 3.1-636.4, manage any referendum conducted under this article and arrange for the use of any polling places, if necessary. The Commissioner shall, at least sixty days before the date on which a referendum is to be held, mail notice to the clerk of the circuit court in each locality where apples are grown. The clerk of the court shall post the notice to the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall also mail, at least sixty days prior to the holding of any referendum under this article, notice of the referendum by certified mail to those who have met the requirements in § 3.1-636.5, and send a notice of the referendum to a newspaper of general circulation in each Virginia locality where apples are grown. The notice shall contain (i) the date, hours, voting places, and method of voting in the referendum; (ii) the amount of the excise tax currently collected, the

60 means by which the excise tax are collected, and the general purposes for which the excise tax are  
61 being used; and (iii) the rules adopted pursuant to § 3.1-636.4.

62 B. Notwithstanding any other provision of law, the cost of conducting any referendum pursuant to  
63 this article shall be from funds paid into the Apple Fund established pursuant to § 3.1-626.

64 § 3.1-636.7. Distribution of ballots; canvass and declaration of results.

65 The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots,  
66 certificates, and supplies required for the referendum. The Commissioner shall, within ten days after the  
67 referendum, (i) canvass and publicly declare the results of the referendum, (ii) certify the results of the  
68 referendum to the Governor, and (iii) notify, by mail, each member of the Agriculture Board and the  
69 Apple Board of the results of the referendum.

70 § 3.1-636.8. Referendum results; action of Governor; subsequent referendum.

71 A. If the Governor finds the referendum in order and that a majority of those voting are in  
72 opposition to the continuation of the levy of excise tax on apples grown in Virginia, the Governor shall  
73 so proclaim, and upon such proclamation the levy of excise tax on apples grown in Virginia shall be  
74 discontinued.

75 B. If the Governor finds that any referendum held pursuant to this article is in order and that a  
76 majority of those voting are in favor of the continuation of the levy of excise tax on apples grown in  
77 Virginia, (i) the Governor shall proclaim that a majority are in favor of the continuation of the levy and  
78 (ii) no subsequent referendum shall be held except that the Agriculture Board, upon petition by at least  
79 ten percent of the producers in the Commonwealth, shall provide for a referendum on the continuation  
80 of the levy of the excise tax on apples grown in Virginia. The Agriculture Board shall not act on any  
81 such petition until at least five years have passed since the holding of a referendum on the continuation  
82 of the levy of excise tax on apples grown in Virginia. A subsequent referendum shall be conducted in  
83 accordance with the provisions of §§ 3.1-636.4 through 3.1-636.9.

84 § 3.1-636.9. Question to be printed on ballots.

85 The question to be printed on the ballots used in any referendum authorized by this article shall be  
86 as follows:

87 "Do you favor the continuation of the levy of excise taxes of (i) five cents per bushel or ten cents per  
88 hundred pounds for apples grown in Virginia and sold for fresh consumption and (ii) ten cents per  
89 bushel for apples grown in Virginia that are graded and packed in containers in Virginia, and (iii) five  
90 cents per one hundred pounds for apples produced in Virginia and used or sold for processing, slicing,  
91 freezing, juice production or other commercial uses, for research concerning, education on, and the  
92 promotion of apples?

93 [ ] Yes

94 [ ] No."

95 2. That §§ 3.1-621 through 3.1-625, 3.1-629 and 3.1-630 of the Code of Virginia are repealed on  
96 the date the Governor issues the proclamation authorized by subsection A of § 3.1-636.8 of the  
97 Code of Virginia.

98 3. That the provisions of this act shall become effective on March 15, 2002.