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HOUSE BILL NO. 171

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 28, 2004)

(Patron Prior to Substitute— Delegate Sherwood)

A BILL to amend and reenact §§ 3.1-618, 3.1-626, 3.1-634, 3.1-634.1 and 3.1-635 of the Code of Virginia, and to repeal Article 3 (§§ 3.1-646.01 through 3.1-646.09) of Chapter 23 of Title 3.1 of the Code of Virginia, relating to the Apple Board.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-618, 3.1-626, 3.1-634, 3.1-634.1, and 3.1-635 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-618. Definitions.

As used in this article, *unless the context requires a different meaning*:

"Board" means the Virginia State Apple Board.

"Bushel" means a container with a content of not less than 2,140 cubic inches nor more than 2,500 cubic inches.

"District" means one of the districts set forth in § 3.1-632.

"Member" means a member of the Board.

"Packer" means any person who first packs apples in a container for shipment or sale.

"Processing" means changing the form of apples from their naturally occurring form.

"Processor" means any person who processes apples for sale.

"Producer" means any person who, in a *tax calendar* year, grows or causes to be grown within the Commonwealth, for sale, a minimum of ~~500~~ 5,000 bushels of apples.

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

§ 3.1-626. Apple Fund; audit.

All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Apple Fund." All moneys credited to the Apple Fund shall be used exclusively for the administration and enforcement of this article, including the collection of the apple excise tax, the payment for personal services and expenses of employees and agents of the Board and the payment of rent, services, materials, and supplies necessary to effectuate the purposes and objects of this article. The Auditor of Public Accounts shall audit all the accounts of the Board as provided for in § 30-133. The unexpended balance of the Apple Fund at the end of each ~~biennium~~ year shall not be transferred to the general fund of the state treasury, but shall remain in the Apple Fund.

§ 3.1-634. Composition of Board; qualifications and terms of members; chairman; compensation of members.

The Virginia State Apple Board is hereby established within the Department of Agriculture and Consumer Services. The Board shall consist of nine members elected as provided in § 3.1-634.1, with three members representing each district. Each member must be a citizen of Virginia who is engaged in producing apples in Virginia, who has paid his excise taxes pursuant to ~~§ 3.1-623~~, and a majority of whose apple production occurs in the district he represents.

Members shall be elected for terms of three years; ~~except as provided in § 3.1-634.1 B 1. There shall be no limitation on the number of terms of office that a member may serve; however, after serving two consecutive full terms of office, a member shall be ineligible for membership for one year after the expiration of his most recent term.~~

If a member fails to attend a minimum of two Board meetings per tax year or otherwise fails to meet the qualifications for membership established by this section, he may be removed by the Board.

The Board shall elect one of its members as chairman. The members of the Board shall serve without compensation, but they may be reimbursed for actual expenses incurred in attending meetings of the Board.

§ 3.1-634.1. Special election; voting requirements; filling unexpired terms; method of voting.

A. The Commissioner of Agriculture and Consumer Services shall hold a special election in each district to elect each member. The special election shall be held by secret ballot at least ~~thirty~~ 30 days but not more than ~~ninety~~ 90 days before the expiration of the term of office of any member. The candidate receiving the highest number of votes in the special election shall thereupon be appointed by the Commissioner of Agriculture and Consumer Services as a member. In the case of a vacancy occurring other than by the expiration of the term of office, such vacancy shall be filled within at least ~~thirty~~ 30 days but not more than ~~ninety~~ 90 days before or after the vacancy by a special election held to elect a member for the unexpired term. The Board may ~~make~~ adopt and enforce rules and regulations

governing the conduct of special elections and voting therein. Such rules and regulations shall be exempt from Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.

B. A producer shall be eligible to vote only in the district where the majority of his apple production occurs and only if he has paid all excise taxes in accordance with this article for the five tax years preceding the election. Votes will be allocated among eligible producers as follows:

1. All nine Board members shall be elected in 1999. In such election, each eligible producer may cast one vote. One member from each district shall be elected for a one-year term, one member from each district shall be elected for a two-year term, and one member from each district shall be elected for a three-year term. Each ballot shall specify the persons who are candidates for the one-year term, the persons who are candidates for the two-year term and the persons who are candidates for the three-year term.

2. For elections held in 2000 and every third year thereafter, each eligible producer may cast one vote.

3. For elections held in 2001 and every third year thereafter, each eligible producer may cast one vote for each 500 bushels of apples produced in the tax year immediately preceding the election, as shown by the reports required to be submitted under § 3.1-622. Production figures shall be rounded to the lowest 500 bushels. However, any person who produced fewer than 500 bushels of apples in such tax year and paid a donation to the Apple Fund in an amount equal to the tax he would have paid, had he been a producer as defined in § 3.1-618, may cast one vote.

4. For elections held in 2002 and every third year thereafter, any eligible producer may cast one vote for each \$100 of excise taxes paid in accordance with this article for the tax year immediately preceding the election. Tax figures shall be rounded to the lowest \$100. However, (i) any producer who paid less than \$100 in excise taxes for such tax year may cast one vote and (ii) any person who produced fewer than 500 bushels of apples in such tax year and paid a donation to the Apple Fund in an amount equal to the tax he would have paid, had he been a producer as defined in § 3.1-618, may cast one vote.

C. Elections shall be held at the end of each calendar year.

§ 3.1-635. Powers and duties; report.

A. The Board is authorized to may:

1. Administer, manage, and make expenditures from the Apple Fund;

2. Plan and conduct campaigns of *research*, education, advertising, publicity, sales promotions, and *research and industry development* for the purpose of enhancing the viability and profitability of the Virginia apple industry;

3. Make contracts to accomplish the purposes of this article;

4. Cooperate with other state, regional and national agricultural and horticultural international organizations in research ; advertising, publicity, concerning education; and other means of promoting the sale and use on promotion of apples, and to expend moneys of the Apple Fund for such purposes;

5. Appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Board, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.);

6. Establish committees of the Board to address horticultural, marketing, and such other issues as the Board deems pertinent to the Virginia apple industry; and

7. Do whatever else may be necessary to effectuate the purposes of this article.

B. The chairman shall make a report at least annually, furnishing Board members with a statement of total receipts and disbursements of the Board for the year. The chairman shall annually file with the Commissioner a copy of the report and audit that is required by § 3.1-626.

2. That Article 3 (§§ 3.1-646.01 through 3.1-646.09) of Chapter 23 of Title 3.1 of the Code of Virginia is repealed.

3. That this act shall not be construed to affect existing appointments for which the terms have not expired. However, any new appointments made after the effective date of this act shall be made in accordance with the provisions of this act.