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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2650

(By Delegates Beach, Stemple, Proudfoot,
Swartzmiller, Williams, Anderson and Schoen)



Passed April 7, 2005

In Effect July 1, 2005

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H. B. 2650

(BY DELEGATES BEACH, STEMPLE, PROUDFOOT,
SWARTZMILLER, WILLIAMS, ANDERSON AND SCHOEN)

[Passed April 7, 2005; in effect July 1, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated § 19-2F-1, § 19-2F-2, § 19-2F-3, § 19-2F-4, § 19-2F-5, § 19-2F-6, § 19-2F-7, § 19-2F-8, § 19-2F-9, § 19-2F-10 and § 19-2F-11, all relating to beef industry self-improvement assessment program; stating purpose; defining terms; requiring petition to conduct referendum; requiring a public hearing on referendum; requiring notice of referendum; conducting referendum; authorizing subsequent referendum; continuing Beef Industry Council; establishing qualifications, appointment and terms of members; establishing powers and duties of Council; requiring collection and remittance of assessment; authorizing refunds; establishing penalties; and continuing program.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated § 19-2F-1, § 19-2F-2, § 19-

2F-3, §19-2F-4, §19-2F-5, §19-2F-6, §19-2F-7, §19-2F-8, §19-2F-9, §19-2F-10 and §19-2F-11, all to read as follows:

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2F-1. Purpose.

1 The purpose of this article is to promote and stimulate,
2 through research, education, advertising and other methods, the
3 increased and efficient production, distribution, sale and use of
4 cattle and beef products by providing a means and procedure
5 for financing a promotional program for the West Virginia
6 cattle industry through activities of the West Virginia Beef
7 Industry Council.

§19-2F-2. Definitions.

1 As used in this article:

2 (1) “Council” means the West Virginia Beef Industry
3 Council.

4 (2) “Commissioner” means the Commissioner of the West
5 Virginia Department of Agriculture.

6 (3) “Person” means an individual, partnership, corporation,
7 association, fiduciary, or other group of persons acting together
8 whether organized or not.

9 (4) “Producer” means any person in the business of raising,
10 breeding or growing cattle or calves for beef production.

§19-2F-3. Petition for referendum; public hearing; notice.

1 (a) Producers may petition the Commissioner to conduct a
2 referendum of West Virginia producers authorizing the levying

3 of an assessment for the purposes set forth in this article:
4 *Provided*, That no referendum may be held until the provisions
5 of 7 U.S.C. §2901 *et seq.*, the federal beef research and infor-
6 mation program, have terminated.

7 (b) The Commissioner, when petitioned by no less than
8 fifty producers, must hold a public hearing no more than forty-
9 five days after receipt of the petition to decide whether a
10 referendum should be held to establish an assessment on the
11 sale of beef and dairy cattle, the amount of the assessment and
12 the duration of the assessment. The Commissioner shall give no
13 less than fifteen days notice of the public hearing including the
14 date, time and place of the public hearing. If a majority of those
15 present vote in favor of holding the referendum, including the
16 amount and duration of the proposed assessment, the Commis-
17 sioner shall notify the Council to schedule and hold a referen-
18 dum on the proposed assessment.

§19-2F-4. Conduct of referendum.

1 (a) The Council shall notify producers of the date, hours
2 and polling places for voting in the referendum, along with the
3 amount and duration of the proposed assessment, the manner of
4 collecting the assessment and the general purposes for which
5 the assessment will be expended. The notice must be published
6 no less than three times in two newspapers of general circula-
7 tion within this state and the Council may give notice of the
8 referendum in other publications and at places the Council
9 considers appropriate.

10 (b) The Council shall provide ballots and polling places in
11 each county. All cattle producers who may be subject to the
12 proposed assessment are eligible to vote in the referendum upon
13 presentation of proof showing them to be bona fide cattle
14 producers subject to the assessment. The referendum is decided
15 by a majority of the votes cast.

16 (c) The Commissioner shall canvass, tabulate and
17 publically announce the results of the referendum no later than
18 five days after the end of the election. The Commissioner must
19 preserve all ballots for one year after the date of the referen-
20 dum.

21 (d) All expense and costs necessary to conduct a referen-
22 dum are bourne by the Council.

§19-2F-5. Subsequent referendums.

1 (a) In the event that a referendum conducted pursuant to the
2 provisions of this article fails to receive a majority of the
3 affirmative votes cast, the Council is authorized to conduct a
4 subsequent referendum under the provisions of section four of
5 this article no earlier than twelve months after the date on
6 which the last referendum was held without complying with the
7 requirements set forth in section three of this article, so long as
8 the amount and duration of the assessment are not increased.

9 (b) In the event that an assessment is in effect and set to
10 expire, the Council is authorized to conduct a subsequent
11 referendum under the provisions of section four of this article
12 during the last year of the assessment without complying with
13 the requirements set forth in section three of this article, so long
14 as the amount and duration of the subsequent assessment are
15 not increased.

**§19-2F-6. Beef Industry Council; appointment; terms; qualifica-
tion of members; removal of members; officers;
meetings; expenses.**

1 (a) The West Virginia Beef Industry Council is hereby
2 continued. The members of the Council in office on the date
3 this section becomes effective shall, unless sooner removed,

4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b) (1) Commencing with the Council terms beginning on
7 the first day of July, two thousand five, the Council shall
8 consist of nine members appointed for terms of three years by
9 the Governor with the advice and consent of the Senate. Six
10 members of the Council must be beef cattle producers, one
11 member must be a dairy cattle producer, one member must be
12 a representative of a public livestock market and one member
13 must be a meat packer or meat processor.

14 (2) Each member of the Council, at the time of his or her
15 appointment, must have been engaged in his or her representa-
16 tive occupation for a period of not less than five years immedi-
17 ately preceding the appointment and each member must be a
18 United States citizen and a resident of this state during the
19 appointment term.

20 (3) In making appointments to the Council, the Governor
21 shall consider proposed member recommendations made by
22 West Virginia organizations and groups concerned with or
23 engaged in beef production.

24 (4) No member may serve more than two consecutive full
25 terms and any member having served two full terms may not be
26 appointed for one year after completion of his or her second full
27 term. A member continues to serve until his or her successor
28 has been appointed and qualified.

29 (5) The Governor may remove any member of the Council
30 for neglect of duty, incompetency or official misconduct.

31 (c) The Council elects a chair, a secretary and a treasurer
32 from its membership each for a term of two years. The Council
33 meets as often as necessary at the time and place designated by
34 the chair or by call of a majority of the Council members. All

35 Council meetings shall be held in accordance with the provi-
36 sions of article nine-a, chapter six of this code. All decisions of
37 the Council are determined by a majority of the members
38 appointed.

39 (d) The Board shall reimburse each member's expenses for
40 room, meals and mileage in the same manner and amount as
41 state employees receive for travel. No member may receive any
42 other salary or compensation for his or her services.

**§19-2F-7. Powers and duties of the council; rule-making author-
ity.**

1 (a) The Council has the authority to:

2 (1) Receive and disburse funds as prescribed in this article
3 to be used for the purposes of this article;

4 (2) Enter into contracts;

5 (3) Hire and discharge employees, prescribe their duties and
6 fix their compensation;

7 (4) Accept grants, gifts and contributions for expenditure
8 consistent with the purposes of this article;

9 (5) Sue and be sued as a council without individual liability
10 of the members for acts of the Council when the Council is
11 acting within the scope of the powers conferred by this article;

12 (6) Cooperate with other state or federal agencies and
13 organizations engaged in work or activities consistent with the
14 purposes of this article;

15 (7) Conduct public relations and education programs for
16 increasing beef production and improving beef marketing
17 practices;

18 (8) Conduct or contract for scientific research with any
19 accredited college or university which will aid in implementing
20 the purposes of this article; and,

21 (9) Prepare and submit an annual report of its activities and
22 fiscal accounting to the Commissioner no later than the
23 fifteenth day of January of each year.

24 (b) The Council may propose rules for legislative approval
25 in accordance with the provisions of article three, chapter
26 twenty-nine-a of this code designed to implement the provisions
27 of this article.

§19-2F-8. Notice, levy and collection of assessment.

1 (a) Upon approval of an assessment, the Council shall
2 notify all known livestock markets, packers, buying stations,
3 order buyers, livestock dealers or other persons purchasing
4 cattle, including dairy cattle, that they are required to deduct the
5 amount of the assessment stipulated in the authorizing referen-
6 dum from the sale settlement beginning on the date designated
7 in the notice.

8 (b) The assessment approved by referendum is deducted by
9 all livestock markets, packers, buying stations, order buyers,
10 livestock dealers or other persons purchasing cattle, including
11 dairy cattle, on each cattle purchase from the sale settlement.
12 The purchasers remit the assessments within thirty days of the
13 date of the sale settlement to the treasurer of the Council.

14 (c) The Council must keep accurate records of the amount
15 of assessments received, the date on which they were received
16 and the name of the person making the remittance. The records
17 must be preserved for at least five years.

§19-2F-9. Refunds.

1 Any producer against whom an assessment is made and
2 deducted from the proceeds of sale, if dissatisfied with the
3 assessment, has the right to demand and receive from the
4 treasurer of the Council a refund of the total amount of assess-
5 ment collected from the producer if the demand is made in
6 writing to the Council within thirty days of the date the assess-
7 ment was deducted from the sale proceeds. The demand for
8 refund must contain the name and address of the producer, the
9 date of purchase, the number of head sold, the amount of the
10 assessment, the name and address of the collecting agent, the
11 date of sale and the invoice number. The refund is made upon
12 determination that the assessment was paid by the producer.

§19-2F-10. Penalties.

1 When a person required to collect the assessment in
2 accordance with section eight of this article fails to do so or
3 fails to remit it to the treasurer of the Council within thirty days,
4 the Council certifies that fact to the Commissioner. The
5 Commissioner notifies the person in writing that he or she has
6 fifteen days to begin the collection of the assessment, or to
7 remit previously collected assessments to the Council's
8 treasurer or to submit a written justification for the failure to
9 collect or remit the assessment. If the Commissioner determines
10 that person was required to remit the assessment and if payment
11 is not made within the fifteen day period, the Commissioner
12 may revoke the person's license to engage in cattle purchasing
13 activities in the state. Persons having their license revoked
14 under this section are not eligible for license-reinstatement for
15 a period of three years.

§19-2F-11. Continuation of program.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the beef industry self-improvement assessment program
- 3 shall continue to exist until the first day of July, two thousand
- 4 eight, unless sooner terminated, continued or reestablished.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Kandy White
Chairman Senate Committee

D. Richard Bean
Chairman House Committee

Originating in the House.

In effect July 1, 2005.

Daniel Holmes
Clerk of the Senate

Bruce W. Snel
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert K. Kis
Speaker of the House of Delegates

The within is approved this the 20th
day of April 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

APR 14 2005

Time 3:15 