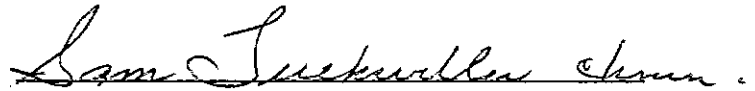


WEST VIRGINIA BEEF INDUSTRY SELF-IMPROVEMENT
ASSESSMENT BOARD

NOTICE OF FINAL FILING - LEGISLATIVE RULE

LEGISLATIVE RULE: Beef Industry Self-Improvement Assessment Program.

The attached legislative rule is hereby final filed with the Secretary of State by Beef Industry Self-Improvement Assessment Board as authorized by Senate Bill 434, Section 64-2-19(2F) (6).



Beef Industry Self-Improvement Assessment
Board

FILED
1996 APR -1 AM 11:15
CLERK OF COURTS
STATE OF WEST VIRGINIA

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Beef Industry Self-Improvement Assessment Board

Subject: Proposed rules and regulations setting up the
Beef Industry Self-Improvement Assessment Program

Fiscal Impact: None

PERTINENT DATES

Filed for public hearing: April 19, 1985

Date of public hearing: May 21, 1985

Filed following public hearing: June 14, 1985

Filed LRMRC: June 14, 1985

Filed as emergency: June 3, 1985

ABSTRACT

Section 1 - This general section deals with the scope, filing date and effective date of the proposed rules and regulations as well as the authority under which they are promulgated.

Section 2 - This section defines relevant terms.

Section 3 - The section provides for the election of officers and specifies their duties. Also under this section, the Board is authorized to employ personnel and enter into contracts. It is also required to keep public records.

Section 4 - This section requires that an assessment fee of \$1.00 per head be collected on all fee eligible cattle which are purchased. All fees collected are to be sent to the Board within 30 days of collection. Those persons collecting the fees are entitled to retain 5% of the fees which they collect.

Section 5 - This section requires requests for refunds to be submitted on forms provided by the Board. Refunds based upon valid requests are to be processed within 30 days. Questions relating to the validity of a request are to be submitted to the Executive Committee for final determination.

AUTHORITY

Statutory authority: W. Va. Code, §19-2-F-6(d) which provides as follows:

(d) The board, in order to carry out the provisions of this article, shall have authority to issue rules and regulations after a public hearing following due

notice to all interested persons in conformance with the provisions of the state administrative procedure set forth in chapter twenty-nine-a of the code.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

As stated above, under W. Va. Code, §19-2F-6(d), the Board has the authority to promulgate rules and regulations in order to carry out the provisions of Article 2F, the Beef Check-off Act of 1983. The proposed legislative rules approved by the Board address, for the most part, procedural matters relating to the Board and to the Beef Industry Self-Improvement Assessment Program, both of which are created by the article. In approving these proposed legislative rules, the Board has not exceeded the scope of its authority.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Section 2 of Article 19 states the purpose of the Act and reads as follows:

The purpose of this article is to enhance the sale and thus the profit potential of the state's beef industry by supporting efforts to solve problems in livestock, health, production, marketing and breeding; by supporting the research and educational activities of the national livestock and meat board and its beef industry council; and by informing and educating the public about the value of beef and beef products.

To carry out its purpose, the Legislature created the Board and the program. The proposed legislative rule, the intent of which is to implement the statute, is, as far as it goes, in conformity with the intent of the statute. It would seem reasonable to assume that the Legislature intended for the Board to address the allocation of the funds collected. In other words, the proposed legislative rules should specify what projects are eligible for funds, how funding may be obtained, the amount of funding available to individual projects and accountability of the project for allocated funds.

Additionally, the proposed legislative rule does not address the procedure which must be followed before the Commissioner may revoke a license to engage in cattle purchasing activities. Such procedures are not necessary if the Commissioner has procedural rules elsewhere. The wording of W. Va. Code, §19-2F-7 also seems to make these procedures unnecessary and in effect

negates most of the provisions of section 9. Section 7 "authorizes" certain persons to collect the assessments but does not mandate that they do so. Section 9 sets forth a penalty for not collecting the assessment. It is inconsistent to assess a penalty for something which is not required to be done. It should also be pointed out that, under the statute, those who fail to collect the assessment are penalized while there is no penalty for those who fail to pay the assessment.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

W. Va. Code, §19-2F-8 gives a producer the absolute right to a refund if he submits a written request to the Board within thirty days of the assessment and if he in fact paid the assessment. Section 5 of the proposed legislative rule is in conflict with section 8 in that it seems to give the Board and its executive committee some discretion in determining whether or not a request for refund is valid, when proof of payment is the only test of validity.

Under Section 1, Article VI of the Constitution of West Virginia, the power to legislate is vested in the Senate and the House of Delegates. The Supreme Court of Appeals has upheld the Legislature's delegation of its power to administrative bodies in the form of rule-making power. In the area of delegation to private parties of the power to legislate, the law is not quite as clear. Under the proposed legislative rules and the Act, the authority to determine whether or not to activate the program and to determine the amount of the assessment are delegated to private parties--the beef producers. Although counsel does not believe that the Supreme Court of Appeals would rule that this is an unlawful delegation, the Committee should at least be aware that the issue could arise.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Much of the proposed legislative rule is procedural and reiterates provisions in the statute. However, the proposed legislative rule is necessary in that it specifies the amount of the assessment as determined by the legislatively mandated referendum and outlines procedures for forwarding assessments and obtaining refunds. As mentioned above, counsel feels that the proposed legislative rules have not gone far enough to fully accomplish the objectives of the statute.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE
ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC
OR OF PERSONS AFFECTED BY IT?

The proposed legislative rule affects producers and buyers of beef cattle and appears to be reasonable, particularly because the assessment was determined by referendum. The reasonableness would depend to a certain extent on the number of producers who participated in the referendum.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS
COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

There are several references and terms in the proposed legislative rule which are ambiguous and need to be defined. Terms which need to be defined include the following: "fee eligible cattle"; "persons collecting the assessment"; "regular filers"; "occasional filers"; "those empowered to do so"; and "valid request for refund".

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN
COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND
WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

W. Va. Code, §29A-3-7 requires that notices of hearing be filed in the State Register not less than 30 days before the date of the hearing. Notice of hearing was filed on April 26, 1985 and the hearing was held on May 21, 1985, a period of 25 days. Also, the proposed legislative rules were not accompanied by a brief summary of the content of the rule and a statement of the circumstances which require the rule as mandated by W. Va. Code, §29A-3-11.

Identical emergency rules were filed on June 3, 1985. Under W. Va. Code, §29A-3-15(e), "an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest." Counsel does not feel that facts and circumstances cited by the Board constitute an emergency under this section. Promulgation of emergency rules based upon a desire to "get started at once" and a lack of understanding as to "why the Legislature should have any input at all" seems to be a fairly clear violation of W. Va. Code, §29A-3-15(c) which states that "the provisions of this section shall not be used to avoid or evade any provisions of this article ..., including any provisions for legislative review and approval of proposed rules."

SENATE BILL NO. 430

Bill 2

(By Senator R. Williams

[Introduced February 3, 1986

referred to the Committee on Agriculture; then to the
Committee on the Judiciary]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section nineteen(two-f)(six), relating to authorizing the beef industry self-improvement assessment board to promulgate legislative rules setting up the beef industry self-improvement assessment program.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen(two-f)(six), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-19(2F)(6). Beef industry self-improvement assessment
board.

1 The legislative rules filed in the state register on the
2 nineteenth day of April, one thousand nine hundred eighty-
3 five, relating to the beef industry self-improvement assessment
4 board (beef industry self-improvement assessment program) are
5 authorized.

6
7
8
9 NOTE: The purpose of this bill is to authorize the beef
10 industry self-improvement assessment board to promulgate
11 legislative rules relating to the beef industry self-improvement
12 assessment program.

13
14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.
16

1 Bill 2

2 H. B. 1747

3 (By Delegate Casey)

4 (Introduced February 5, 1986; referred to the

5 Committee on Agriculture and Natural Resources)
6 with the direction that it later be referred
7 to the Committee on the Judiciary

8
9
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11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
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1747

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

March 11, 1986

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

IMPORTANT NOTICE

TO: Bill Gillespie, Beef Industry Self-Improvement Bd

FROM: RICH O. HARTMAN, DIRECTOR

RE: LEGISLATIVE RULE Rules of the Board

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B.434 SECTION 64-2-19(2F)(6) PASSED ON March 8, 1986, EFFECTIVE FROM PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE. YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.