

**REPORT OF THE
SUBCOMMITTEE STUDYING THE FUNDING OF
AGRICULTURAL INSPECTION PROGRAMS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report of the
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To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1980**

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

I. Introduction

During the 1978 session of the General Assembly, legislation was introduced which sought to eliminate the inspection fee imposed by the Virginia Commercial Feed Law (Chapter 28 of Title 3.1, §§ 3.1-797 through 3.1-828 of the Code of Virginia). This legislation, amended by the Senate Committee on Finance, was carried over to the 1979 session. It was subsequently approved by both houses of the General Assembly and signed into law by the Governor.

The amended version which was approved, however, differed considerably from the bill introduced in 1978. The earlier legislation sought to remove all tonnage fees levied on commercial feed at the time of inspection, except for that which was paid into the Virginia Agricultural Foundation Fund to support agricultural research. The new legislation continues to assess fees which are used (i.e., they are deposited in the general fund), to support the feed inspection program.

Prior to the passage of this legislation, a fee of \$.20 per ton was assessed on all feed sold in the Commonwealth. Twenty-five percent of the revenue derived from this fee was paid into the Virginia Agricultural Foundation Fund. As a result of the amendments to this statute, those covered by this program are divided into two groups. The first group consists of contract feeders (those who own animals and the feed supplied them, but contract with someone else to supply the necessary management, housing or labor); the second group consists of all other feed manufacturers and distributors. Under the new legislation (which is not effective until July 1, 1980), contract feeders are to be assessed a fee of \$.06 per ton of feed, while all others will be assessed \$.16 per ton of feed. All of the money derived from contract feeders, and \$.06 of the \$.16 tonnage fee levied on others, will be paid into the Virginia Agricultural Foundation Fund.

Although the General Assembly was unwilling to abolish, as requested, all feed fees except those which go to the Virginia Agricultural Foundation, it did agree by resolution to further study this question. This Subcommittee was appointed pursuant to this resolution, and was asked to study whether agricultural inspection programs, such as those pertaining to feed and fertilizer, should be supported by the imposition of fees, the general fund, or some combination of both. The following is the text of Senate Joint Resolution No. 169:

SENATE JOINT RESOLUTION NO. 169

Requesting a joint subcommittee of the House and Senate Finance Committees, the Senate Agriculture, Conservation and Natural Resources, and the House Agriculture Committee to study methods of funding certain agricultural inspection programs.

WHEREAS, Senate Bill No. 474, a measure carried over by the nineteen hundred seventy-eight Session of the General Assembly, proposed to eliminate the inspection fee imposed by the Virginia Commercial Feed Law; and

WHEREAS, there are a variety of similar laws imposing inspection fees on other agricultural and consumer commodities such as fertilizer; and

WHEREAS, it has been a policy for these types of consumer protection programs to be partially or totally supported from fees; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the question of the funding of such inspection programs to determine whether such programs should be funded by fees, the general fund, or a combination of both should be studied by a joint subcommittee constituted as follows. The joint subcommittee shall be composed of six members who shall be appointed in the following manner: one member appointed by the Chairman of the Senate Finance Committee from the membership of that Committee; one member appointed by the Chairman of the Senate Agriculture, Conservation and Natural Resources Committee from the membership of that Committee; two members appointed by the Chairman of the House Finance Committee from the membership of that Committee; and two members appointed by the Chairman of the House Agriculture Committee from the membership of that Committee. The subcommittee is requested to make its recommendations to the nineteen hundred eighty General Assembly.

II. Activities of the Subcommittee

The Subcommittee met four times between the months of June and November to review agricultural inspection programs for which a fee or similar levy is assessed. The programs which were reviewed by the Subcommittee were selected because they conformed to the following set of criteria:

- (a) a specific inspection fee is levied on a product;
- (b) the fee relates to a "consumer commodity" rather than a registration fee or business license;
- (c) the purpose of the fee is to defray inspection costs;
- (d) the inspection program is required by law; and
- (e) the inspection program has not been preempted by a federal program or otherwise inactivated.

A total of nineteen programs fit these criteria and were thus included in the study. A list of these programs can be found in Appendix B of this report.

After the Subcommittee had identified the programs it intended to review, it sought and received from the Department of Agriculture and Consumer Services data pertaining to the costs of, appropriations for, revenue generated by, and beneficiaries of each of the programs. The Department also provided, at the request of the Subcommittee, historical information on each program, as well as comparative information on similar programs administered by other states.

III. Positions Adopted by Those Affected by Inspection Programs

At its meetings, the Subcommittee received testimony from Mr. James F. Brownell, Chairman of the Board of Agriculture and Consumer Services, Mr. S. Mason Carbaugh, Commissioner of Agriculture and Consumer Services, and several other representatives of the Department of Agriculture and Consumer Services. Spokesman for several interest groups which might be affected by any actions resulting from the study also addressed the Subcommittee. Among these groups were the Virginia Poultry Federation, the Virginia State Feed Association, the Virginia Soil Fertility Association, the Virginia Seed Potato Commission, the Virginia Association of Potato and Vegetable Growers, the Virginia Agribusiness Council, and the Farm Bureau Federation of Virginia.

The Department of Agriculture recommended that the fee structures presently adopted for most programs remain as they are. It suggested, nevertheless, that consideration should be given to removing the fees imposed on several commodities.

General consensus among the interest groups which testified seemed to develop along these lines:

- (a) Programs which benefit consumers in general, as opposed to a specific interest group or segment of the population, should be supported through appropriations from the general fund;
- (b) When fees are levied to support inspection programs, the fees charged should be no greater

than those charged by Virginia's neighboring states;

(c) The agricultural community is supportive of agricultural research and willing to help fund it through the imposition of limited fees on agricultural commodities.

The following positions regarding specific inspection programs were taken by interest groups as indicated:

(a) The Virginia Poultry Federation and the Virginia State feed association urged the removal of that portion of the tonnage fee on feed which is not deposited into the Virginia Agricultural Foundation Fund;

(b) The Virginia Seed Potato Commission and the Virginia Association of Potato and Vegetable Growers recommended the abolition of any inspection fees levied on seed potatoes;

(c) The Virginia Soil Fertility Association opposed any change in the procedures used to fund the inspection of fertilizers and agricultural limestone.

IV. Recommendations

At its final meeting, the Subcommittee decided to make the following recommendations to the General Assembly.

1. Discontinue the assessment of fees for seed potato inspections. The Subcommittee concluded that such action is merited since

(a) this is the only seed inspection in the State for which a fee is charged;

(b) no other state charges such a fee;

(c) revenues from this fee are relatively small; and

(d) this inspection protects not only the grower, but also the general consumer.

2. Eliminate the tonnage fee levied on commercial feed, except for that portion which is deposited in the Virginia Agricultural Foundation Fund; the fee which is assessed to help support the Virginia Agricultural Foundation Fund should be increased from \$.06 to \$.07 per ton for all manufacturers and distributors of feed as well as contract feeders. The Subcommittee believes that this action is justified because

(a) the ultimate beneficiary of the inspection program is the general consumer;

(b) most of the states with which Virginia farmers and feed millers compete levy a lower fee or no fee at all on feed; and

(c) a continuation of and increase in assessments used to support the Virginia Agricultural Foundation Fund will allow for the furtherance of agricultural research.

3. Take no action with regard to fees assessed by the Virginia Milk Commission on dairies. The Subcommittee had previously made a tentative decision not to recommend any changes in this program since the Milk Commission had undergone an extensive legislative study several years ago.

4. Retain the fee structures for the remaining programs as they are now. This recommendation is made since no compelling evidence suggests that changes in these programs are desirable.

The legislation necessary to initiate the changes recommended by the Subcommittee can be found in Appendix A.

Respectfully submitted,

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Appendix A

A BILL to amend and reenact § 3.1-292 of the Code of Virginia, to eliminate the fee charged for the inspection of seed potatoes.

Be it enacted by the General Assembly of Virginia:

1. That § 3.1-292 of the Code of Virginia is amended and reenacted as follows:

§ 3.1-292. Inspection of potatoes; right of entry; "stop sale" order; seizure of potatoes.—To effectively enforce the provisions of this chapter, the Commissioner of Agriculture and ~~Commerce~~ *Consumer Services* shall require employees of his department to inspect Irish potatoes and parts thereof shipped into, advertised, possessed, sold or offered for sale within this State for the purpose of propagation or being planted for the production of commercial Irish potatoes, and the Commissioner and such employees may enter any place of business, warehouse, common carrier or other place where such potatoes are being stored, being held or being planted, for the purpose of making such inspection. It shall be unlawful for any person having custody of such potatoes or of the place in which the same are held to interfere with such inspections. ~~The fee for such inspection shall not exceed the current rate for federal state inspection of table stock potatoes or the reasonable cost of inspection, whichever is less.~~ Records such as bills of lading or invoices accompanying each shipment of "approved seed" Irish potatoes shall give the name of the consignee, consignor and/or custodian. The Commissioner or his duly authorized agents shall have the right to inspect such records for the purpose of the effective administration of this chapter. When the Commissioner or his employees find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this chapter or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes within this State, any potatoes with respect to which such order has been issued until the Commissioner has evidence that such potatoes will be used for other than propagation purposes or for propagation purposes outside of this State. When the Commissioner has evidence that such potatoes will be used for other than propagation purposes or for propagation purposes outside of this State, he shall issue a notice releasing such potatoes from the "stop sale" order. Further, any shipment of Irish potato seed being offered or exposed for sale, advertised, planted, or held with intent to sell or being planted for propagation purposes or for production of commercial white potatoes, contrary to the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the county or city in which the Irish potatoes are located. In the event the court finds the Irish potatoes to be in violation of the provisions of this chapter and orders the condemnation thereof, the person having possession of the Irish potatoes shall be permitted to post a bond double the amount of the value of the Irish potatoes, and such person shall have ten days from the date of the order of condemnation to denature, destroy or process for other than propagation purposes the Irish potatoes in such person's possession. If the person in possession of the Irish potatoes fails to post the bond required or act within the time limit set forth in the preceding sentence, then the court shall order that the Irish potatoes shall be denatured, destroyed or processed for other than propagation purposes.

A BILL to amend and reenact § 3.1-814 of the Code of Virginia, to change the tonnage fee imposed on stock and poultry feeds.

Be it enacted by the General Assembly of Virginia:

1. That § 3.1-814 of the Code of Virginia is amended and reenacted as follows:

§ 3.1-814. (Effective July 1, 1980) Tonnage fee imposed; records, reports and payments; definitions.—A. As used in this section, the following terms shall have the following meanings:

1. "Ton" means a net weight of two thousand pounds avoirdupois.
2. "Manufacturer" means a person who operates a feed milling facility for the purposes of manufacturing mixed feeds which are sold, offered or exposed for sale or distributed in this State.
3. "Distributor" means a person who offers for sale, sells, or otherwise supplies mixed feed in this State; provided, however, that a distributor shall not be liable for the tonnage fee on any quantities of mixed feeds for which the manufacturer has paid or is liable for payment of the tonnage fee.
4. "Mixed feed" means a combination of two or more individual feed ingredients to produce a mixture intended to be fed undiluted to animals or poultry to supply all or a substantial part of the total nutritional requirements of a specific class of animals or poultry. The term shall not include premixes, concentrates, or supplements intended for further mixing or dilution before feeding.
5. "Contract feeder" means a person who owns animals or poultry and who owns the mixed feed supplied to such animals or poultry but contracts with another person for housing, management or labor, and when such person who supplies the housing, management or labor is remunerated on the basis of either feed conversion, mortality, amount or quality of animals or poultry produced, or by profits from the flock, batch or number of animals or poultry subject to the contract.
6. "Person" means any individual person, firm, corporation, partnership, association or other legal entity.

B. Every manufacturer or distributor as defined in this section shall pay the Commissioner a tonnage fee of ~~sixteen~~ *seven* cents a ton for each ton of mixed feed sold, offered or exposed for sale or distributed in this State; provided, however, that for all mixed feeds sold in individual packages of five pounds or less the annual registration fee shall be fifteen dollars for each brand in lieu of any other fee imposed by this section on the tonnage so packaged. Every contract feeder as defined herein shall pay the Commissioner a tonnage fee of ~~six~~ *seven* cents a ton for each ton of mixed feed supplied under the conditions described in § 3.1-814 A 5.

Each manufacturer, distributor or contract feeder subject to the tonnage fee shall keep an accurate record of the tonnage of mixed feeds sold, offered or exposed for sale, or distributed in the State. Such records shall be subject to examination and verification by the Commissioner or his authorized representative during regular business hours.

A report, under oath, on forms supplied by the Commissioner shall be filed in the office of the Commissioner by each manufacturer, distributor or contract feeder subject to the provisions of this section on the fifteenth day of January, setting forth the tonnage of mixed feeds sold, offered or exposed for sale or distribution in this State during the preceding twelve months, and the tonnage fee based upon such report shall then be due and payable to the Commissioner. If the report is not filed and the tonnage fee is not paid by the due date, the Commissioner within five days thereafter shall notify the manufacturer, distributor or contract feeder of his failure to file or pay. If the tonnage fee is not paid by the fifteenth day following due date, the amount shall bear a penalty of ten percent, which shall be added to the tonnage fee due and shall constitute a debt and become the basis of judgment against such manufacturer, distributor or contract feeder.

All of the revenue derived from the tonnage fee from contract feeders ~~and six cents of the sixteen cents per ton fee derived from all other~~ manufacturers or distributors, shall be paid by the Commissioner into the State treasury to the credit of the Virginia Agricultural Foundation Fund. ~~All~~

other revenues derived by this ~~section~~ shall be paid by the ~~Commissioner~~ into the general fund of the State treasury.

C. Nothing in this section shall be construed to include the service of custom mixing.

Appendix B

- (1) Virginia Fertilizer Law (3.1-76.1 and 3.1-81.1)
- (2) Virginia Agricultural Liming Materials Act (3.1-126.4)
- (3) Plant Pest Act (3.1-143)
- (4) Virginia Pesticide Law (3.1-227)
- (5) Virginia Pesticide Use and Application Act (3.1-249.4.B)
- (6) Virginia Seed Law (3.1-275.1.D)
- (7) Seed Potatoes (3.1-292)
- (8) Turfgrass, Sod, Plugs and Sprigs (3.1-296.2:1)
- (9) Milk (3.1-452) [These fees are paid to the Milk Commission but the program is basically like the others listed here]
- (10) Ice Cream and Similar Products (3.1-562.1)
- (11) Licensing Creameries, Plants and Stations (3.1-563)
- (12) Importation of Sweet Cream and Ice Cream Mix (3.1-572)
- (13) Commission Merchants (3.1-696 & 3.1-697)
- (14) Dealers in Agricultural Products (3.1-722.4 & 3.1-722.6)
- (15) Dealers in Grain Products (3.1-722.19 & 3.1-722.21)
- (16) Virginia Commercial Feed Law (3.1-814)
- (17) Virginia Animal Remedies Law (3.1-842)
- (18) Virginia Canned Animal Food Law (3.1-888)
- (19) Cold Storage Warehouses (61.1-8)

