

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 795

An Act to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 3.4, consisting of sections numbered 3.1-18.13 through 3.1-18.25, relating to the Agricultural Enterprise District Act; penalty.

[H 1947]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 3.4, consisting of sections numbered 3.1-18.13 through 3.1-18.25, as follows:

CHAPTER 3.4.

AGRICULTURAL ENTERPRISE ACT OF 2005.

§ 3.1-18.13. Definitions.

As used in this chapter:

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the business of agritourism, the processing of agricultural or forestal products, or the wholesale or retail sale of agricultural or forestal products.

"Agricultural enterprise district" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Agricultural production" means the production for commercial purposes of agricultural products, and includes the processing or retail sale by the producer of agricultural products that are produced on the parcel or in an agricultural enterprise district.

"Agricultural products" means crops, livestock, and livestock products, including, but not limited to, field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, aquaculture, and furs.

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

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

"Farm business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the business of agricultural or forestal production in the Commonwealth.

"Forestal production" means the production for commercial purposes of forestal products and includes the processing or retail sales, by the producer, of forestal products that are produced on the parcel or in an agricultural enterprise district.

"Forestal products" means, but is not limited to, saw timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use.

"Local zone administrator" means the chief executive of the locality in which an agricultural enterprise district is located, or his designee.

"Qualified agricultural business" means an agricultural business designated as a qualified agricultural business by the Department pursuant to this chapter that also meets the definition of small business as defined in the Code of Federal Regulations, Title 13, Part 121, as amended.

"Qualified farm business" means a farm business designated as a qualified farm business by the Department pursuant to this chapter that also meets the definition of small business as defined in the Code of Federal Regulations, Title 13, Part 121, as amended.

"Secretary" means the Secretary of Agriculture and Forestry.

§ 3.1-18.14. Administration.

The Department shall administer this chapter as an element of the Office of Farmland Preservation (§ 3.1-18.9 et seq.) with the assistance and cooperation of the Department of Forestry, Department of Business Assistance, Department of Minority Business Enterprise, and Virginia Cooperative Extension. The Virginia Agricultural Enterprise Program is herein established in order to administer the provisions of this chapter. The Department shall have the following powers and duties:

- 1. To establish criteria for determining what areas qualify as agricultural enterprise districts, and which criteria shall be the minimum required for implementation of the purposes of this chapter;*
- 2. To monitor the implementation and operation of this chapter;*
- 3. To conduct a continuing evaluation program of agricultural enterprise districts;*
- 4. To assist localities in the designation of agricultural enterprise districts and in developing appropriate local policies and incentives to qualify for such designation; and*
- 5. To administer and enforce the regulations adopted pursuant to this chapter.*

§ 3.1-18.15. Agricultural enterprise district designation.

A. Any locality that has established (i) an agricultural or forestal district pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, (ii) a locally designated agricultural enterprise district, or (iii) a purchase of development rights program to extinguish nonagricultural uses may make written application to the Department to have any such district or area declared to be an agricultural enterprise district. Such application shall include a description of the location of the district or area in question, and a general statement identifying proposed local incentives and policies to complement the state and any federal incentives.

B. Local incentives and policies that meet the requirements of this section may include, but are not limited to, (i) rural land use plans or overlay districts that minimize nonagricultural or nonforestal uses or nonfarm residential densities that are suburban in nature; (ii) capital improvement plans that support the retention or development of agricultural infrastructure, such as rural roads and bridges, agricultural drainage systems, and adequate water supplies; (iii) land use policies including comprehensive plan sections and zoning ordinances that minimize nonagricultural uses of land or nonfarm residential densities within agricultural enterprise districts; (iv) local funding for the purchase of agricultural easements or purchase of development rights programs; and (v) local agricultural economic development officers and programs. Localities shall enact at least two of the above policies to qualify for designation as an approved agricultural enterprise district.

§ 3.1-18.16. Expansion of agricultural enterprise districts.

Upon designation of an area as an agricultural enterprise district, the local governing body may make written application to the Department to expand the area of the agricultural enterprise district. Such application for expansion shall be considered by the Department in accordance with the requirements of §§ 3.1-18.15 and 3.1-18.17 and such regulations as may be applicable.

§ 3.1-18.17. Application review.

A. The Department shall review each application upon receipt and shall secure any additional information that the Department deems necessary for the purpose of determining whether the area described in the application qualifies to be declared an agricultural enterprise district.

B. The Department shall complete review of the application within 60 days of the last date designated for receipt of an application. After review of the applications, the Department shall forward to the Governor those applications that meet the basic requirements for designation as an agricultural enterprise district. The Secretary shall recommend to the Governor within 30 days those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact, together with the reasons for the denial.

§ 3.1-18.18. Government assistance; prohibition.

There shall be no duplication of existing state tax incentives or grants to qualified farm businesses or qualified agricultural businesses that locate in an agricultural enterprise district.

§ 3.1-18.19. Regulations.

Regulations prescribing procedures effectuating the purpose of this chapter shall be adopted by the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 3.1-18.20. Eligibility; qualified agricultural business.

A. Any agricultural business may be designated a qualified agricultural business for purposes of this chapter if it establishes a new business operation or plans to expand and improve an existing operation within a designated agricultural enterprise district.

B. After designation as a qualified agricultural business pursuant to this section, each agricultural business in a designated agricultural enterprise district may submit to the Department a written application for assistance in developing a new business plan and grant funding for implementation of that plan through the Virginia Agricultural Enterprise Program. A copy of the statement submitted by each agricultural business to the Department shall be forwarded to the district administrator.

§ 3.1-18.21. Eligibility; qualified farm business.

A. Any farm business may be designated a qualified farm business for purposes of this chapter if it establishes a new agricultural or forestal production operation or plans to expand or improve an existing operation within a designated agricultural enterprise district.

B. After designation as a qualified farm business pursuant to this section, each farm business in an agricultural enterprise district shall submit to the Department a written application for assistance in developing a new business plan and grant funding for implementation of that plan through the Virginia Agricultural Enterprise Program. A copy of the statement submitted by each farm business to the Department shall be forwarded to the district administrator.

§ 3.1-18.22. Agricultural enterprise district grant.

A. As used in this section "agricultural enterprise grant" means a grant to implement the new business plans developed through the Virginia Agricultural Enterprise Program for up to 50 percent of the associated costs to qualified agricultural businesses and to qualified farm businesses, not to exceed \$500,000.

B. The Department shall establish policies and procedures for approving applications for the development of business plans and grants to qualified farm and agricultural businesses.

C. Actions of the Department relating to the approval or denial of applications under this chapter

shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 3.1-18.23. Confidentiality of information; penalty.

Except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the Department shall not divulge any information acquired by him in the performance of his duties with respect to the tax liability, employment, property, business plan, or income of any farm or agricultural business submitted to the Department pursuant to this chapter. Any person violating this section shall be guilty of a Class 2 misdemeanor. The provisions of this section shall not be applicable, however, to:

- 1. Acts performed or words spoken or published in the line of duty under law;*
- 2. Inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged;*
- 3. Disclosures of information to the Department of Taxation as may be required to implement the provisions of this chapter; or*
- 4. The publication of statistics so classified as to prevent the identification of a particular farm or agricultural businesses.*

§ 3.1-18.24. Local incentives.

A. In making an application for designation as an agricultural enterprise district, the applying locality or localities may propose local tax incentives, including, but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of the business, professional, and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (v) adoption of a local agricultural enterprise district development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1, mutatis mutandis. The extent and duration of such incentive proposals shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States.

B. In making application for designation as an agricultural enterprise district, such application may also contain proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances not including ordinances designed to reduce pollution or to protect or restore water quality, air quality, and natural resources; and (iv) other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the agricultural enterprise district.

C. A locality may establish eligibility criteria for local incentives for farm and agricultural businesses that are the same as the criteria for eligibility for grants or other benefits provided by this chapter.

§ 3.1-18.25. Review and termination of agricultural enterprise districts.

A. Upon designation of an area as an agricultural enterprise district, the proposals for regulatory flexibility, tax incentives, and other public incentives specified in this chapter shall be binding upon the local governing body to the extent and for the period of time specified in the application for district designation. If the local governing body is unable or unwilling to provide the regulatory flexibility, tax incentives, or other public incentives as proposed in the application for district designation, the agricultural enterprise district shall terminate. Qualified farm or agricultural businesses located in such district shall be eligible to receive the state grants provided by this chapter even though the district designation has terminated. No farm or agricultural business may become a qualified farm or agricultural business after the date of district termination. The governing body may amend its application with the approval of the Department, provided the governing body proposes an incentive equal or superior to the unamended application.

B. The Department shall annually review the effectiveness of state and local incentives in increasing investment in each agricultural enterprise district, and the Secretary shall annually report its findings to (i) the Senate Finance Committee, (ii) the Senate Committee on Agriculture, Conservation and Natural Resources, (iii) the House Finance Committee, and (iv) the House Committee on Agriculture, Chesapeake and Natural Resources. If no farm or agricultural businesses in an agricultural enterprise district have qualified for benefits provided pursuant to this chapter within a five-year period, the Department shall terminate that agricultural enterprise district designation.

2. That the provisions of the first enactment of this act shall become effective on January 1, 2007, provided funding for these provisions is included in the appropriations act for fiscal years 2006-2008.

3. That the Secretary of Agriculture and Forestry shall: (i) develop criteria for the designation of qualified agricultural enterprise districts; (ii) develop criteria for determining qualified agricultural and farm businesses; (iii) determine the types of business improvements and investments, including thresholds, that will qualify for the program; (iv) develop a process by which an applicant is assisted in the development of a qualified business plan including the functions and responsibilities of state employees and departments and outside advisors that will provide the necessary professional advice for a successful investment; (v) provide guidance for local governments in the development and establishment of the local components of the program, including minimum

criteria for district designation; and (vi) recommend such other actions as may be necessary and appropriate to procure the assistance and services and reports provided for in the enactment of this act.

4. That the Secretary of Agriculture and Forestry shall submit a report, no later than January 1, 2006, on the initial program development required by this act to the Governor; the chairmen of the Senate Committee on Finance; the Senate Committee on Agriculture, Conservation and Natural Resources; the House Committee on Finance; the House Committee on Agriculture, Chesapeake and Natural Resources; and any other such entity designated by the Governor.