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HOUSE BILL NO. 1328

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 58.1-3230, 58.1-3236, 58.1-3237, 58.1-3240, and 58.1-3241 of the Code of Virginia and to amend and reenact part of Chapter 675 of the Acts of Assembly of 1984, carried by reference in the Code of Virginia as § 58.1-3229, relating to assessments of real property devoted to water-dependent use.

Patrons—Wittman and Lewis

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3230, 58.1-3236, 58.1-3237, 58.1-3240, and 58.1-3241 of the Code of Virginia are amended and reenacted and that part of Chapter 675 of the Acts of Assembly of 1984, carried by reference in the Code of Virginia as § 58.1-3229, is amended and reenacted as follows:

§ 58.1-3229. Declaration of policy.

An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and, open space, and water-dependent uses make the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and, forest, and water-dependent products and of open spaces within reach of concentrations of population, to conserve natural resources in forms which will prevent erosion, to protect adequate and safe water supplies, to preserve scenic natural beauty and open spaces and to promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or, open space, or water-dependent purposes.

It is the intent of this article to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of it ultimately for the public benefit.

§ 58.1-3230. Special classifications of real estate established and defined.

For the purposes of this article the following special classifications of real estate are established and defined:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for a profit or otherwise, shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.); or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for profit or otherwise, shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to forest use" shall mean land including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the

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59 real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester
60 pursuant to the authority set out in § 58.1-3240.

61 "Real estate devoted to open-space use" shall mean real estate used as, or preserved for, (i) park or
62 recreational purposes, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands
63 as defined in § 58.1-3666, (v) riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes,
64 or (vii) assisting in the shaping of the character, direction, and timing of community development or for
65 the public interest and consistent with the local land-use plan under uniform standards prescribed by the
66 Director of the Department of Conservation and Recreation pursuant to the authority set out in
67 § 58.1-3240, and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the local
68 ordinance.

69 *"Real estate devoted to water-dependent use" shall mean a development of land that cannot exist*
70 *outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic*
71 *nature of its operation. Such real estate includes, but is not limited to (i) ports; (ii) the intake and*
72 *outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;*
73 *(iii) beaches and other public water-oriented recreation areas; and (iv) fisheries or other marine*
74 *resources facilities. For purposes of this section, "Resource Protection Area" means that component of*
75 *the Chesapeake Bay Preservation Area, as defined in § 10.1-2101, comprised of lands adjacent to water*
76 *bodies with perennial flow that have an intrinsic water quality value due to the ecological and*
77 *biological processes they perform or are sensitive to impacts that may result in significant degradation*
78 *to the quality of state waters.*

79 § 58.1-3236. Valuation of real estate under ordinance.

80 A. In valuing real estate for purposes of taxation by any county, city or town which has adopted an
81 ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall
82 consider only those indicia of value which such real estate has for agricultural, horticultural, forest or
83 open space use, and real estate taxes for such jurisdiction shall be extended upon the value so
84 determined. In addition to use of his personal knowledge, judgment and experience as to the value of
85 real estate in agricultural, horticultural, forest ~~or~~, open space, *or water-dependent* use, he shall, in
86 arriving at the value of such land, consider available evidence of agricultural, horticultural, forest ~~or~~,
87 open space, *or water-dependent* capability, and the recommendations of value of such real estate as
88 made by the State Land Evaluation Advisory Council.

89 B. In determining the total area of real estate actively devoted to agricultural, horticultural, forest ~~or~~,
90 open space, *or water-dependent* use there shall be included the area of all real estate under barns, sheds,
91 silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams,
92 irrigation ditches and like facilities; but real estate under, and such additional real estate as may be
93 actually used in connection with, the farmhouse or home or any other structure not related to such
94 special use, shall be excluded in determining such total area.

95 C. All structures which are located on real estate in agricultural, horticultural, forest ~~or~~, open space,
96 *or water-dependent* use and the farmhouse or home or any other structure not related to such special use
97 and the real estate on which the farmhouse or home or such other structure is located, together with the
98 additional real estate used in connection therewith, shall be valued, assessed and taxed by the same
99 standards, methods and procedures as other taxable structures and other real estate in the locality.

100 D. In addition, such real estate in agricultural, horticultural, forest ~~or~~, open space, *or water-dependent*
101 use shall be evaluated on the basis of fair market value as applied to other real estate in the taxing
102 jurisdiction, and land book records shall be maintained to show both the use value and the fair market
103 value of such real estate.

104 § 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.

105 A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance
106 adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the
107 zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it
108 shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall
109 only be assessed against that portion of such real estate which no longer qualifies for assessment and
110 taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the
111 treasurer only if the amount of tax due exceeds ten dollars.

112 B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to
113 the sum of the deferred tax for each of the five most recent complete tax years including simple interest
114 on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to
115 delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for
116 each year shall be equal to the difference between the tax levied and the tax that would have been
117 levied based on the fair market value assessment of the real estate for that year. In addition the taxes for
118 the current year shall be extended on the basis of fair market value which may be accomplished by
119 means of a supplemental assessment based upon the difference between the use value and the fair
120 market value.

C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

D. Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection D. Real property zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, ~~or~~ open space, *or water-dependent*, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

§ 58.1-3240. Duties of Director of the Department of Conservation and Recreation, the State Forester and the Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or nonaction of Director, State Forester or Commissioner.

The Director of the Department of Conservation and Recreation, the State Forester, and the

182 Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the
183 commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant
184 to this article, a statement of the standards referred to in § 58.1-3230 and subdivision 1 of § 58.1-3233,
185 which shall be applied uniformly throughout the Commonwealth in determining whether real estate is
186 devoted to agricultural use, horticultural use, forest use ~~or~~, open-space use, *or water-dependent use* for
187 the purposes of this article and the procedure to be followed by such official to obtain the opinion
188 referenced in subdivision 1 of § 58.1-3233. Upon the refusal of the Commissioner of Agriculture and
189 Consumer Services, the State Forester or the Director of the Department of Conservation and Recreation
190 to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set
191 forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit
192 court of the county or city wherein the real estate in question is located, and in the event that the court
193 finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this
194 article.

195 § 58.1-3241. Separation of part of real estate assessed under ordinance; contiguous real estate located
196 in more than one taxing locality.

197 A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued,
198 assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other
199 action of the owner of such real estate, shall subject the real estate so separated to liability for the
200 roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real
201 estate to qualify for such valuation, assessment and taxation in any and all future years, provided it
202 meets the minimum acreage requirements and such other conditions of this article as may be applicable.
203 Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance
204 of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the
205 minimum acreage requirements and other applicable conditions of this article.

206 No subdivision of property which results in parcels which meet the minimum acreage requirements
207 of this article, and which the owner attests is for one or more of the purposes set forth in § 58.1-3230,
208 shall be subject to the provisions of this subsection.

209 B. Where contiguous real estate in agricultural, horticultural, forest ~~or~~, open-space, *or*
210 *water-dependent* use in one ownership is located in more than one taxing locality, compliance with the
211 minimum acreage shall be determined on the basis of the total area of such real estate and not the area
212 which is located in the particular taxing locality.

213 **2. That the provisions of this act shall become effective on January 1, 2009, only if a**
214 **Constitutional amendment to Section 2 of Article X of the Constitution of Virginia authorizing the**
215 **General Assembly to define and classify real estate devoted to water-dependent use, and to by**
216 **general law authorize any county, city, town, or regional government to allow deferral of, or relief**
217 **from, portions of taxes otherwise payable on, such real estate if it were not so classified is ratified**
218 **by a majority of voters voting on such measure at the election directed by law to be held on the**
219 **Tuesday after the first Monday in November 2008.**