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SENATE BILL NO. 347

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 58.1-3851 of the Code of Virginia and to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 2.1, consisting of sections numbered 3.2-207 through 3.2-212, relating to the Agri-tourism Incentives Act; penalty.*

Patrons—Hanger and Hurt

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3851 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 2.1, consisting of sections numbered 3.2-207 through 3.2-212, as follows:

CHAPTER 2.1.**AGRI-TOURISM INCENTIVES ACT.****§ 3.2-207. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agricultural production" means the production for commercial purposes of agricultural products, and includes the processing or retail sale of agricultural products produced by a qualified farm business.

"Agricultural products" means field crops, fruits, grapes, vegetables, horticultural specialties, and forestal products.

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

"Equine operations" means (i) equine training or teaching activities or (ii) boarding equines.

"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 production, forestal production, or equine operations in the Commonwealth.

"Forestal production" means the production for commercial purposes of forestal products and includes the processing or retail sales of forestal products produced by a qualified farm business.

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

"Full service restaurant" means any establishment wherein meals with substantial entrees are regularly sold to the public and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises of the establishment.

"Limited service restaurant" means a restaurant serving only individually portioned prepackaged foods prepared offsite by a licensed food service provider.

"Local administrator" means the chief executive officer of the county, city, or town in which a qualified farm business is located, or his designee.

"Qualified farm business" means a farm business designated as a qualified farm business by the Department pursuant this chapter.

"Secretary" means the Secretary of Agriculture and Forestry.

§ 3.2-208. Administration.

The Department shall administer this chapter and shall have the power and duty to:

1. Establish eligibility requirements for farm businesses to be designated as qualified farm businesses in accordance with this chapter;

2. Monitor the implementation and operation of this chapter;

3. Conduct a continuing evaluation of the effect of this program on agricultural production, forestal production, and equine operations;

4. Assist counties, cities, and towns in reducing unnecessarily burdensome regulations within agricultural and forestry zoned areas; and

5. Establish conditions under which a designation as a qualified farm business may be suspended or revoked, and provide for the termination of the activities permitted under this chapter.

§ 3.2-209. Eligibility for designation as qualified farm business.

Any farm business may be designated a qualified farm business for purposes of this chapter if it:

1. Establishes or maintains within a rural or agricultural zoned area a farm business with a net investment of at least \$100,000;

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SB347

59 2. Increases the average number of employees employed at the farm business' establishment by at
60 least 10 percent over the lower of the preceding two years' employment. Current employees of the farm
61 business who are transferred directly to the qualified farm business facility from another site within the
62 Commonwealth owned by the farm business resulting in a net loss of employment at that site shall not
63 be included in calculating the increase in the average number of employees employed by the qualified
64 farm business;

65 3. Has existing agricultural or forestal plantings meeting the minimum acres as set forth in
66 § 3.2-212, or engages in equine operations, which operations regularly take place on a minimum of 13
67 contiguous acres; and

68 4. Has submitted an application for designation as a qualified farm business to the Department.

69 § 3.2-210. Application required; notice to local administrator; redesignation.

70 A. The Department shall review each application upon receipt and shall secure any additional
71 information that the Department deems necessary for the purpose of determining whether the farm
72 business described in the application qualifies to be declared a qualified farm business.

73 B. The Department shall complete a review of the application within 60 days of its receipt. After
74 review of the application, the Department shall forward those applications that meet the requirements
75 for a qualified farm business to the Secretary with a copy to the local administrator in whose
76 jurisdiction such qualified business is located. If an application is denied, the applicant shall be
77 informed of that fact together with the reasons for the denial.

78 C. After a business has initially been designated as a qualified farm business pursuant to this
79 section, the Department shall periodically on a schedule it has established make a determination as to
80 whether the business continues to meet the definition of a qualified farm business and continues to meet
81 the requirements for eligibility as a qualified farm business in effect at the time of its designation. The
82 Department shall as soon as practicable provide a copy of its written determination to the business, the
83 Secretary, and the local administrator in whose jurisdiction such business is located.

84 D. Actions of the Department relating to (i) the approval or denial of applications for qualification
85 under this chapter, and (ii) determinations pursuant to subsection C shall be exempt from the
86 Administrative Process Act (§ 2.2-4000 et seq.).

87 § 3.2-211. Confidentiality of information; penalty.

88 Except in accordance with proper judicial order or as otherwise provided by law, no employee or
89 former employee of the Department shall divulge any information acquired by him in the performance of
90 his duties with respect to the tax liability, employment, property, or income of any farm business making
91 application to the Department pursuant to this chapter. Any person violating this section shall be guilty
92 of a Class 2 misdemeanor. The provisions of this section shall not apply to:

93 1. Acts performed or words spoken or published in the line of duty under law;

94 2. Inquiries and investigations to obtain information as to the implementation of this chapter by a
95 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to
96 its study, provided that any such information shall be privileged; and

97 3. The publication of statistics so classified as to prevent the identification of particular farms or
98 agricultural businesses.

99 § 3.2-212. Agri-business Incentives; permitted activities; local control.

100 A. A qualified farm business that grows agricultural products on or engages in equine operations
101 regularly taking place on:

102 1. Fifty or more contiguous acres, but less than 100 contiguous acres, shall be entitled to operate
103 either a limited service restaurant or a facility to provide overnight lodging of not more than five
104 rooms, provided that a qualified farm business engaging in equine operations regularly taking place on
105 13 or more contiguous acres, but less than 100 contiguous acres, shall be entitled to operate either a
106 limited service restaurant or a facility to provide overnight lodging of not more than five rooms;

107 2. One hundred or more contiguous acres, but less than 200 contiguous acres, shall be entitled to
108 operate either a full service restaurant or a facility to provide overnight lodging of not more than 10
109 rooms; or

110 3. Two hundred or more contiguous acres shall be entitled to operate either a limited service or a
111 full service restaurant and a facility to provide overnight lodging of not more than 10 rooms.

112 B. The operation of restaurants and overnight lodging facilities authorized by this chapter shall be
113 permitted notwithstanding the provisions of any local zoning ordinance. However, a locality may
114 establish requirements for:

115 1. The resolution of demonstrated conflicts with existing forestry or farming practices on adjacent
116 lands to minimize the adverse impact of the operation of a qualified farm business to adjoining property
117 owners;

118 2. The establishment of setback requirements for any restaurants and overnight lodging facilities
119 authorized by this chapter; and

120 3. Direct road access, internal circulation, and parking.

121 C. Except as provided in subsection B, nothing in this chapter shall be construed or interpreted to
122 exempt any qualified farm business from other state or local requirements necessary to protect the
123 public health, safety or welfare, including but not limited to the Uniform Statewide Building Code,
124 Statewide Fire Prevention Code, or any program administered by or regulations of the State Board of
125 Health, the State Health Commissioner, the State Health Department, or any local health departments.

126 § 58.1-3851. Creation of local tourism zones.

127 A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality
128 may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

129 B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i)
130 reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax.
131 The extent and duration of such incentive proposals shall conform to the requirements of the
132 Constitutions of Virginia and of the United States.

133 C. The governing body may also provide for regulatory flexibility in such zone that may include, but
134 not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from
135 ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the
136 Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), the Erosion and Sediment Control Law
137 (§ 10.1-560 et seq.), or the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.), and (iv) any
138 other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10
139 years.

140 D. Each county, city, or town may provide the tax incentives described under subsection B or the
141 regulatory flexibility described under subsection C to each qualified farm business as defined in
142 § 3.2-207 located in the county, city, or town.

143 E. The establishment of a tourism zone shall not preclude the area from also being designated as
144 an enterprise zone.