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HOUSE BILL NO. 2078

Offered January 12, 2011

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A BILL to amend and reenact §§ 15.2-4302 through 15.2-4305, 15.2-4307, 15.2-4309, 15.2-4310, and 15.2-4314 of the Code of Virginia and to repeal § 15.2-4308 of the Code of Virginia, relating to agricultural and forestal districts.

 Patron—Landes

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-4302 through 15.2-4305, 15.2-4307, 15.2-4309, 15.2-4310, and 15.2-4314 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-4302. Definitions.

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

"Advisory committee" means the agricultural and forestal districts advisory committee.

"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 and furs.

"Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.

"Agriculturally and forestally significant land" means land that has recently or historically produced agricultural and forestal products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestal production as determined by such factors as soil quality, topography, climate, markets, farm structures, and other relevant factors.

"Application" means the set of items a landowner or landowners must submit to the local governing body when applying for the creation of a district or an addition to an existing district.

"District" means an agricultural, forestal, or agricultural and forestal district.

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

"Landowner" or "owner of land" means any person holding a fee simple interest in property but does not mean the holder of an easement.

"Program administrator" means the local governing body or local official appointed by the local governing body to administer the agricultural and forestal districts program.

§ 15.2-4303. Power of localities to enact ordinances; application form and fees; maps; sample form.

A. Each locality shall have the authority to promulgate forms and to enact ordinances to effectuate this chapter. The locality may charge a reasonable fee for each application submitted pursuant to this chapter; such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is less.

B. The locality shall prescribe application forms for districts that include but need not be limited to the following information:

1. The general location of the district;
2. The total acreage in the district or acreage to be added to an existing district;
3. The name, address, and signature of each landowner applying for creation of a district or an addition to an existing district and the acreage each owner owns within the district or addition;
4. The conditions proposed by the applicant pursuant to § 15.2-4309;
5. The period before first review proposed by the applicant pursuant to § 15.2-4309; and
6. The date of application, date of final action by the local governing body and whether approved, modified or rejected.

C. The application form shall be accompanied by a United States Geological Survey 7.5 minute topographic map that maps or aerial photographs, or both, prescribed by the locality that clearly shows the boundaries of the proposed district and each addition and boundaries of properties owned by each applicant, any other features as prescribed by the locality. A Department of Transportation general highway map for the locality that shows the general location of the proposed district shall also accompany each application form.

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D. The following sample form illustrates the minimum requirements of this section:

~~APPLICATION FOR THE CREATION OF OR ADDITION TO AGRICULTURAL, FORESTAL
OR AGRICULTURAL AND FORESTAL DISTRICT~~

~~(A copy of this completed form and required maps shall be submitted by the applicant landowners to the local governing body. This form shall be accompanied by United States Geological Survey 7.5 minute topographic maps that clearly show the boundaries of the district or addition and the boundaries of the property each applicant owns within the district or addition. A Department of Transportation general highway map for the locality that shows the general location of the district or addition shall also accompany this form.)~~

~~SECTION A: TO BE COMPLETED BY APPLICANT~~

~~1. GENERAL LOCATION OF THE DISTRICT (CITY, COUNTY OR
TOWN)~~

~~2. TOTAL ACREAGE IN THE DISTRICT OR ADDITION~~

~~3. LANDOWNERS APPLYING FOR THE DISTRICT~~

NAME	SIGNATURE	ADDRESS	WITNESS	TOTAL	LAND BOOK
		(current		ACREAGE	REFERENCE
		legal		OWNED IN	NUMBER
		residence)		THE DISTRICT	
				OR ADDITION	

~~4. THE PROPOSED CONDITIONS TO CREATION OF THE DISTRICT~~

~~PURSUANT TO § 15.2-4309 of the Code of Virginia~~

~~5. THE PROPOSED PERIOD BEFORE FIRST REVIEW~~

~~SECTION B: TO BE COMPLETED BY LOCAL GOVERNING BODY~~

~~1. Date submitted to the local governing body~~

~~2. Date referred to the local planning commission~~

~~3. Date referred to the advisory committee~~

~~4. Date of action by the local governing body~~

~~[] Approved [] Modified [] Rejected~~

~~ED.~~ For each notice required by this chapter to be sent to a landowner, notice shall be sent by first-class mail to the last known address of such owner as shown on the application hereunder or on the current real estate tax assessment books or maps. A representative of the local planning commission or local governing body shall make affidavit that such mailing has been made and file such affidavit with the papers in the case.

§ 15.2-4304. Agricultural and forestal districts advisory committee.

A. Upon receipt of the first agricultural and forestal districts application, the local governing body shall establish an advisory committee which shall consist of four landowners who are engaged in agricultural or forestal production, four other landowners of the locality, the commissioner of revenue or the local government's chief property assessment officer, and a member of the local governing body. The members of the committee shall be appointed by and serve at the pleasure of the local governing body. The advisory committee shall elect a chairman and a vice-chairman and elect or appoint a secretary who need not be a member of the committee. The advisory committee shall serve without pay but the locality may reimburse each member for actual and necessary expenses incurred in the performance of his duties. *Any expenditures of the committee shall be within the amounts appropriated for such purpose by the local governing body.* The committee shall advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.

B. *The local governing body may designate the planning commission to act for and in lieu of an agricultural and forestal districts advisory committee if the membership of the planning commission includes at least four landowners who are engaged in agricultural or forestal production.*

§ 15.2-4305. Application for creation of district in one or more localities; size and location of parcels.

On or before November 1 of each year or any other annual date selected by the locality, any owner or owners of land may submit an application to the locality for the creation of a district or addition of land to an existing district within the locality. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district (i) if the nearest boundary of the parcel is within one mile of the boundary of the core, ~~or~~ (ii) if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core, or (iii) if the local governing body finds, in consultation with the advisory committee or

119 *planning commission, that the parcel not part of the core or within one mile of the boundary of the core*
 120 *contains agriculturally and forestally significant land.* No land shall be included in any district without
 121 the signature on the application, or the written approval of all owners thereof. A district may be located
 122 in more than one locality, provided that (i) separate application is made to each locality involved, (ii)
 123 each local governing body approves the district, and (iii) the district meets the size requirements of this
 124 section. In the event that one of the local governing bodies disapproves the creation of a district within
 125 its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected,
 126 provided that the district otherwise meets the requirements set out in this chapter. In no event shall the
 127 act of creating a single district located in two localities pursuant to this subsection be construed to create
 128 two districts.

129 § 15.2-4307. Review of application; notice; hearing.

130 Upon the receipt of an application for a district or for an addition to an existing district, the ~~local~~
 131 ~~governing body program administrator~~ shall refer such application to the ~~planning commission which~~
 132 ~~shall: advisory committee.~~

133 *The advisory committee shall review and make recommendations concerning the application or*
 134 *modification thereof to the local planning commission, which shall:*

135 1. *Provide notice of the application by publishing a notice in a newspaper having general circulation*
 136 *within the district and by providing for the posting of such notice in five conspicuous places within the*
 137 *district. The planning commission shall notify* Notify, by first-class mail, adjacent property owners, as
 138 shown on the maps of the locality used for tax assessment purposes, *of the application.* The notice shall
 139 contain: (i) a statement that an application for a district has been filed with the ~~local governing body~~
 140 ~~and referred to the local planning commission program administrator~~ pursuant to this chapter; (ii) a
 141 statement that the application will be on file open to public inspection in the office of the clerk of the
 142 local governing body; (iii) where applicable a statement that any political subdivision whose territory
 143 encompasses or is part of the district may propose a modification which must be filed with the local
 144 planning commission within thirty days of the date that the notice is first published; (iv) a statement that
 145 any owner of additional qualifying land may join the application within thirty days from the date the
 146 notice is first published or, with the consent of the local governing body, at any time before the public
 147 hearing the local governing body must hold on the application; (v) a statement that any owner who
 148 joined in the application may withdraw his land, in whole or in part, by written notice filed with the
 149 local governing body, at any time before the local governing body acts pursuant to § 15.2-4309; and (vi)
 150 a statement that additional qualifying lands may be added to an already created district at any time upon
 151 separate application pursuant to this chapter; (vii) ~~a statement that the application and proposed~~
 152 ~~modifications will be submitted to the advisory committee; and (viii) a statement that, upon receipt of~~
 153 ~~the report of the advisory committee, a public hearing will be held by the planning commission on the~~
 154 ~~application and any proposed modifications;~~

155 2. *Refer such application and proposed modifications to the advisory committee* Hold a public
 156 *hearing as prescribed by law; and*

157 3. *Report its recommendations to the local governing body including but not limited to the potential*
 158 *effect of the district and proposed modifications upon the locality's planning policies and objectives;*

159 4. *Hold a public hearing as prescribed by law; and*

160 5. *Publish in a newspaper having general circulation within the district a notice describing the district*
 161 *or addition, any proposed modifications and any recommendations of the planning commission and the*
 162 *advisory committee and send the notice by first-class mail to adjacent property owners and to those*
 163 *political subdivisions whose territory encompasses all or is any part of the district or addition.*

164 § 15.2-4309. Hearing; creation of district; conditions; notice.

165 A. The local governing body, after receiving the report of the local planning commission and the
 166 advisory committee, shall hold a public hearing as provided by law, and after such public hearing, may
 167 by ordinance create the district or add land to an existing district as applied for, or with any
 168 modifications it deems appropriate.

169 B. The governing body may require, as a condition to creation of the district, that any parcel in the
 170 district shall not, without the prior approval of the governing body, be developed to any more intensive
 171 use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal
 172 production, during the period which the parcel remains within the district. Local governing bodies shall
 173 not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a
 174 substantial part of their livelihood from a farm or forestry operation on the same property, or for
 175 members of the immediate family of the owner, or divisions of parcels for such family members, unless
 176 the governing body finds that such use in the particular case would be incompatible with farming or
 177 forestry in the district. To further the purposes of this chapter and to promote agriculture and forestry
 178 and the creation of districts, the local governing body may adopt programs offering incentives to
 179 landowners to impose land use and conservation restrictions on their land within the district. Programs

180 offering such incentives shall not be permitted unless authorized by law. Any conditions to creation of
181 the district and the period before the review of the district shall be described, either in the application or
182 in a notice sent by first-class mail to all landowners in the district and published in a newspaper having
183 a general circulation within the district at least two weeks prior to adoption of the ordinance creating the
184 district. The ordinance shall state any conditions to creation of the district and shall prescribe the period
185 before the first review of the district, which shall be no less than four years but not more than ten years
186 from the date of its creation. In prescribing the period before the first review, the local governing body
187 shall consider the period proposed in the application. The ordinance shall remain in effect at least until
188 such time as the district is to be reviewed. In the event of annexation by a city or town of any land
189 within a district, the district shall continue until the time prescribed for review.

190 C. The local governing body shall act to adopt or reject the application, or any modification of it, no
191 later than 180 days from (i) November 1 or (ii) the other date selected by the locality as provided in
192 § 15.2-4305. Upon the adoption of an ordinance creating a district or adding land to an existing district,
193 the local governing body shall submit a copy of the ordinance with maps to the local commissioner of
194 the revenue, and the State Forester, and the Commissioner of Agriculture and Consumer Services for
195 information purposes. The commissioner of the revenue shall identify the parcels of land in the district
196 in the land book and on the tax map, and the local governing body shall identify such parcels on the
197 zoning map, where applicable and shall designate the districts on the official comprehensive plan map
198 each time the comprehensive plan map is updated.

199 § 15.2-4310. Additions to a district.

200 Additional parcels of land may be added to an existing district *at any time* by following the process
201 *and application deadlines* prescribed for the creation of a new district. ~~Such additions shall be reviewed~~
202 ~~at the time previously established for review of the district to which they are added.~~

203 § 15.2-4314. Withdrawal of land from a district; termination of a district.

204 A. At any time after the creation of a district within any locality, any owner of land lying in such
205 district may file with the ~~locality~~ *program administrator* a written request to withdraw all or part of his
206 land from the district for good and reasonable cause. The ~~local governing body~~ *program administrator*
207 shall refer the request to the ~~local planning commission and the advisory committee for their~~
208 ~~recommendations and shall hold a public hearing~~ *advisory committee for its recommendation. The*
209 *advisory committee shall make recommendations concerning the request to withdraw to the local*
210 *planning commission, which shall hold a public hearing and make recommendations to the local*
211 *governing body.* Land proposed to be withdrawn may be reevaluated through the Virginia or local Land
212 Evaluation and Site Assessment (LESA) System. The landowner seeking to withdraw land from a
213 district, if denied favorable action by the governing body, shall have an immediate right of appeal de
214 novo to the circuit court serving the territory wherein the district is located. This section shall in no way
215 affect the ability of an owner to withdraw an application for a proposed district or withdraw from a
216 district pursuant to clause (v) of subdivision 1 of § 15.2-4307 or § 15.2-4311.

217 B. Upon termination of a district or withdrawal or removal of any land from a district created
218 pursuant to this chapter, land that is no longer part of a district shall be subject to and liable for
219 roll-back taxes as are provided in § 58.1-3237. Sale or gift of a portion of land in a district to a member
220 of the immediate family as defined in § 15.2-2244 shall not in and of itself constitute a withdrawal or
221 removal of any of the land from a district.

222 C. Upon termination of a district or upon withdrawal or removal of any land from a district, land
223 that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the
224 provisions of subsection B of § 15.2-4312.

225 D. Upon the death of a property owner, any heir at law, devisee, surviving cotenant or personal
226 representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter
227 of right, be entitled to withdraw such land from such district upon the inheritance or descent of such
228 land provided that such heir at law, devisee, surviving cotenant or personal representative files written
229 notice of withdrawal with the local governing body and the local commissioner of the revenue within
230 two years of the date of death of the owner.

231 E. Upon termination or modification of a district, or upon withdrawal or removal of any parcel of
232 land from a district, the local governing body shall submit a copy of the ordinance or notice of
233 withdrawal to the local commissioner of revenue, the State Forester and the State Commissioner of
234 Agriculture and Consumer Services for information purposes. The commissioner of revenue shall delete
235 the identification of such parcel from the land book and the tax map, and the local governing body shall
236 delete the identification of such parcel from the zoning map, where applicable.

237 F. The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in
238 itself serve to terminate the existence of the district. The district shall continue in effect and be subject
239 to review as to whether it should be terminated, modified or continued pursuant to § 15.2-4311 of this
240 chapter.

241 2. That § 15.2-4308 of the Code of Virginia is repealed.

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