

# VIRGINIA ACTS OF ASSEMBLY -- 1998 RECONVENED SESSION

## CHAPTER 833

*An Act to amend and reenact §§ 15.2-4305, 15.2-4307, 15.2-4308, 15.2-4309, and 15.2-4313 of the Code of Virginia, relating to agricultural and forestal districts.*

[H 563]

Approved April 22, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-4305, 15.2-4307, 15.2-4308, 15.2-4309, and 15.2-4313 of the Code of Virginia are amended and reenacted as follows:**

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

§ 15.2-4307. Planning commission review of application; notice; hearing.

Upon the receipt of an application for a district or for an addition to an existing district, the local governing body shall refer such application to the planning commission which shall:

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

2. ~~Upon the termination of the initial thirty-day period~~, Refer such application and proposed modifications to the advisory committee;

3. ~~Upon the termination of the initial sixty-day period, and within the next succeeding thirty days~~, Report its recommendations to the local governing body including but not limited to the potential effect of the district and proposed modifications upon the locality's planning policies and objectives;

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

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

§ 15.2-4308. Advisory committee review of application.

Within thirty days of receiving an application and proposed modifications pursuant to subdivision 2 of § ~~15.2-4307~~, The advisory committee shall review and make recommendations concerning the application and modifications to the local planning commission.

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

The local governing body, after receiving the report of the local planning commission and the advisory committee, shall hold a public hearing as provided by law, and after such public hearing, may by ordinance create the district or add land to an existing district as applied for, or with any modifications it deems appropriate. The governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, be developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which the parcel remains within the district. Local governing bodies shall not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, or divisions of parcels for such family members, unless the governing body finds that such use in the particular case would be incompatible with farming or forestry in the district. To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the local governing body may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district. Programs offering such incentives shall not be permitted unless authorized by law. Any conditions to creation of the district and the period before the review of the district shall be described, either in the application or in a notice sent by first-class mail to all landowners in the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance creating the district. The ordinance shall state any conditions to creation of the district and shall prescribe the period before the first review of the district, which shall be no less than four years but not more than ten years from the date of its creation. In prescribing the period before the first review, the local governing body shall consider the period proposed in the application. The ordinance shall remain in effect at least until such time as the district is to be reviewed. In the event of annexation by a city or town of any land within a district, the district shall continue until the time prescribed for review.

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

§ 15.2-4313. Proposals as to land acquisition or construction within district.

A. Any agency of the Commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to: (i) acquire land or any interest therein for public utility facilities not subject to approval by the State Corporation Commission, provided that the proposed acquisition from any one farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten acres or (ii) advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures, shall at least ~~thirty~~ *ninety* days prior to such action ~~file a notice of intent with~~ *notify* the local governing body ~~containing such information and in such manner and form as the governing body may prescribe and all of the owners of land within the district. Such Notice of intent shall contain~~ *to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body. Notice to the local governing body shall be filed in the form of a report detailing all reasons for the proposed action including, but not limited to, an* containing the following information:

1. *A detailed description of the proposed action, including a proposed construction schedule;*
2. *All the reasons for the proposed action;*
3. *A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures are to be constructed;*
4. *An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized;*
5. *An evaluation of alternatives which would not require action within the district; and*
6. *Any other relevant information required by the local governing body.*

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action to

~~determine and make written findings as to~~ (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter ~~and~~; (ii) the necessity of the proposed action to provide service to the public in the most economical and ~~practicable~~ *practical* manner; and (iii) *whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.*

C. If the local governing body finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall (i) issue an order within ~~thirty~~ *ninety* days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of ~~ninety~~ *150* days from the date the notice was filed. ~~During such ninety-day period, the local governing body shall and~~ (ii) hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the local governing body usually meets or at a place otherwise easily accessible to the district. The locality shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the ~~ninety-day~~ *150-day* period, the local governing body shall ~~decide whether the proposed action will have an adverse effect upon state or local policy and whether the proposed action is necessary to provide service to the public in the most economical and practicable manner, and it shall, by the issuance of~~ *issue* a final order, ~~report its decision to the agency, corporation or political subdivision proposing to take on the proposed action. Unless the local governing body, by an affirmative vote of a majority of all the members elected to it, determines that the proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed action. In the event that~~ *If* the agency, corporation or political subdivision is aggrieved by the final order of the local governing body, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the State Corporation Commission, an appeal shall be to the State Corporation Commission.