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SENATE BILL NO. 733

Offered January 13, 1999

Prefiled December 18, 1998

A BILL to amend and reenact §§ 3.1-22.28, 3.1-22.29 and 15.2-2228 of the Code of Virginia, relating to the Right to Farm Act.

Patron—Marye

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-22.28, 3.1-22.29 and 15.2-2228 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-22.28. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purpose of this section, "production agriculture ~~and~~ or silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include *confined animal feeding operations with 300 or more animal units* or the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge. However, counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

§ 3.1-22.29. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production of crops, or animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity. *"Agricultural operation" shall not include the production of animals in a confined animal feeding operation with 300 or more animal units.*

C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

D. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; however, the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities.

A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, "production agriculture ~~and~~ or silviculture" is the bona fide production or harvesting of agricultural or silviculture products but shall not include *confined animal feeding operations with 300 or more animal units* or the processing of agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or

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