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SENATE BILL NO. 513

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture
on March 4, 1994)

(Patron Prior to Substitute—Senator Nolen)

A BILL to amend and reenact Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and to amend and reenact § 3.1-22.29 of the Code of Virginia, relating to the right to farm.

Be it enacted by the General Assembly of Virginia:

1. That Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and § 3.1-22.29 of the Code of Virginia are amended and reenacted as follows:

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

It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this chapter to reduce the loss to the Commonwealth of its agricultural resources by limiting 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 or conditional 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 silviculture" means the production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products. 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 shall exercise any of its powers to enact local laws or ordinances in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices unless such restrictions or regulations bear a direct relationship to public health or safety. This section shall become effective on April 1, 1995.

§ 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, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year 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 or when there has been a significant change in the operation itself.

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production for sale of crops, or animals, or fowl, including but not limited to the production for sale of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and trees in such quantity and so spaced and maintained as to constitute a forest area and the production and harvest of products from silviculture activity.

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 or when there has been a significant change in the operation itself.

E. This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

HOUSE SUBSTITUTE

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