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**Administrative and Clerical**

Office of Clerk, House of Delegates

**Legal and Research**

Division of Legislative Services

**Report of the**

**House Finance Subcommittee**

**On Land Use Taxation**

**To**

**The Governor and the General Assembly of Virginia**

**Richmond, Virginia**

**December, 1978**

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

**I. INTRODUCTION AND BACKGROUND**

In 1971, the Virginia General Assembly enacted legislation permitting localities to adopt a program of special assessments for agricultural, horticultural, forest and open space lands. The purpose of the program was:

To encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within the reach of concentrations of population,

To conserve natural resources in forms which will prevent erosion and to protect adequate and safe water supplies,

To preserve scenic natural beauty and open spaces,

To promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and

To promote a balanced economy and ameliorate pressures which force conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

A rapidly growing population and a reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space use, and the benefits that accrue to the Commonwealth from such land have caused the Commonwealth to adopt certain programs which will hopefully tend to preserve these types of land. The land use assessment program is one such program and its goal, as previously mentioned, is to assist and to aid the preservation of such real estate. Although there are reasons that have contributed to the reduction in these lands, the rapidly escalating real property tax has been one of the major factors. The intent of the land use assessment law was to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of the above type of land for the public benefit. The acceptance and usefulness of land use is demonstrated by the large number of localities which have adopted land use.

Last year, the House Finance Committee heard considerable testimony concerning possible abuses of the present law as well as problems in the administration of land use taxation. To further investigate these areas, the Chairman of the House Finance Committee appointed a subcommittee to examine Virginia's Land Use Assessment law and to determine if there are sufficient abuses of the present law to necessitate modification of its provisions. Moreover, the subcommittee was to recommend changes in other areas, which would improve the administration of the land use law.

The subcommittee has received testimony and information concerning individual landowners who have received land use tax benefits for land which was never properly devoted to agricultural, horticultural, forest, and open space or was held in the above uses in anticipation of a change in use. Most of these instances have involved individuals or owners who hold land for speculative purposes, especially in the fringes of rapidly urbanizing areas, particularly Tidewater and Northern Virginia. These speculators receive tax preferences even when the five year roll back and 6 percent interest rate is applied.

The subcommittee has also heard testimony regarding the propriety of granting land use taxes to 10 acre farmettes which qualify for land use but actually constitute a residence rather than a farming operation.

In order to corroborate the extent of abuses, the subcommittee has heard testimony from a number of members of SLEAC, including W. H. Forst, State Tax Commissioner; S. Mason Carbaugh, Secretary of Agriculture; C. M. Pennock, Department of Conservation and Economic Development; Rob R. Blackmore, Commission on Outdoor Recreation; and Dr. J. Paxton Marshall, VPI & SU. All of the individuals agreed that there were abuses in land use. However, the question remained as to what types of changes were necessary to eliminate the abuses.

To further comprehend the specific problems and concerns of individuals the subcommittee held a public hearing in Leesburg where an unusually large turnout demonstrated the need for the land use program in Virginia. The individuals who appeared addressed a number of the alternatives the subcommittee was considering.

## II. POSSIBLE ALTERNATIVES

To eliminate these abuses, the subcommittee has considered a number of alternatives:

1. Increase the present 5 year roll back period to provide a greater penalty on real estate which has changed use.

An increase in the roll back would provide greater penalties for those that change use and therefore impose a greater penalty on speculators. Although this alternative would impose a greater penalty, the subcommittee notes that this will not eliminate speculators from receiving land use taxation treatment. The subcommittee has examined the roll back periods in other states and it appears that Virginia already has one of the longer roll back periods. (There are a few states that have 10 year roll back periods for specific types of land).

2. Increase the minimum acreage which is necessary to qualify for land use.

The subcommittee has received testimony regarding the minimum acreage that should be required for application to land use. The subcommittee has also heard testimony concerning primarily residential parcels of land of 5-10 acres which are also used for growing agricultural products. Although this land qualifies for land use, the subcommittee questions whether it should. However, the subcommittee does acknowledge that there are some viable farm operations which operate on 5 acres of land, particularly poultry operations.

An additional problem with a set limit of 5 acres is that this criteria must be applied throughout the diverse localities of the Commonwealth. For example, while a 5 acre farm may be viable in Augusta, does it constitute a viable farm in Dinwiddie?

3. Require the owner, as a condition for land use taxation, to sign a contract with the local government to keep the land in a particular use for a specified time period (i.e., ten years).

The subcommittee notes that a limited number of other states have adopted this approach. The

adoption of this alternative would keep land in its intended use. The subcommittee believes that this requirement, however, would lead to unnecessary conditions on the land owner and would not solve the problem of abuse. That is, land which qualifies for land use but should not. The subcommittee believes its recommendations should move in the direction of eliminating abuses, but not complicating the provisions of land use.

4. Require that land taxed on the basis of use must produce a certain amount of income or that the owner of the land must derive a certain percentage of his income from the land.

Although this alternative appears to have merit at first glance, the subcommittee can foresee numerous problems. The income amount or percentage would by necessity be arbitrary, while at the same time a figure that may be appropriate for one area may be unrealistic in another. Moreover, a speculator who holds land for development could "rent" land to another party to grow agricultural crops, for example, and in this way meet the income requirement but still hold the land for development. The subcommittee feels this approach is impractical for Virginia at the present time.

5. Require a residency requirement for owners of land qualifying for land use.

Adoption of this type of legislation would limit land use taxation only to land that is the owner's place of residence (also owner's spouse, sibling, or parents). This approach would not only eliminate the majority of abuses but would also eliminate many other parcels of land which otherwise would qualify. The subcommittee believes that this approach is too restrictive. Moreover, the subcommittee believes that land use eligibility should be judged by the actual use of the land rather than the ownership.

6. Stiffen standards for classification of land.

The standards for classification of real estate devoted to forest use, open space use, and agricultural and horticultural use are established by the Department of Conservation and Economic Development, Commission of Outdoor Recreation, and Department of Agriculture and Consumer Services, respectively. These standards are then used to determine if the land in question falls into such qualifying use.

The subcommittee has examined, as one alternative, the strengthening of these standards, particularly the standards for forest use. The subcommittee has heard considerable testimony that the standards for forest use need to be tightened. The subcommittee applauds the Department of Conservation and Economic Development for formulating and proposing more meaningful standards for forest use land. The subcommittee strongly endorses the new standards. (Please see Appendix C for copy of old standards and new.)

7. Increase the present six percent interest rate that is applied to such roll back taxes.

The 6% interest rate is applied to all roll back taxes so that the locality does not, in fact, grant a locally subsidized loan to the owner of the land which has changed use. The subcommittee has heard considerable support for an increase in this interest rate because it is simply too low. It is substantially below the interest penalties which are applied to other taxes. Moreover, the present rate is clearly out of line with other interest rates in the money market.

The subcommittee recommends that the interest rate be increased to a more realistic figure. The subcommittee notes that present law generally provides for up to a 8% interest rate on delinquent property taxes (§ 58-847) and recommends that the interest rate applicable to roll back taxes be the same interest rate that the locality charges for other delinquent taxes. (Please see Appendix A for suggested legislation.)

8. Provide that a petition by an owner or his agent for a change in zoning would be deemed to be a change in use for purposes of land use taxation.

The subcommittee has been concerned about situations where an owner of a parcel of land, presently under land use, petitions for a change in zoning. This petition for a change in zoning appears to clearly signal the intention for a change in use. The subcommittee has heard interest and support for this type of legislation in its public hearing as well as from Secretary Carbaugh and Mr. Blackmore. The subcommittee has also heard testimony against this recommendation. After

considering both sides, the subcommittee believes that this type of legislation would only solve portion of the problem at best. The subcommittee does not recommend the adoption of this type of legislation at the present time.

9. Provide more flexibility in the land use legislation to account for local variations.

The subcommittee has been concerned with the application of one set of standards to determine if a particular piece of land qualifies for a use tax category, given the differences among Virginia localities. The subcommittee notes that the Constitution requires the General Assembly to classify and define the classes of property. For example, at the present time for agricultural land, five acre minimum acreage requirement applies to the entire Commonwealth. It appears reasonable that this number may be correct in certain instances and incorrect in others.

The subcommittee's counsel is of the opinion that perhaps a system could be fashioned that would allow the General Assembly to define and classify the categories of land, yet allow some flexibility to reflect the diversity of farming operations throughout the Commonwealth.

One of the problems the subcommittee encountered during its study was that the definition of a working farm varies by region. Although this area of study was not within the scope of the subcommittee, the issue was considered. The subcommittee believes that there is merit in a limited amount of local flexibility and suggests that an appropriate committee study this area.

Another area that was studied, but not in the original purview of the subcommittee was the question of linking the land use tax program to the goal of preserving farm land. The subcommittee acknowledges the fact that the land use program, in and of itself, cannot preserve farm land, but is only one part of such a program. The preservation of farm land question should be addressed by the appropriate committee. This subcommittee has concentrated on tax policy questions.

### III. ADMINISTRATIVE MODIFICATIONS

The subcommittee has also examined the administrative procedures of the land use assessment law. The subcommittee has been concerned with ensuring that the requirements for application be as simple as possible and not cause an undue burden on the property owner. One recommendation of the subcommittee is to modify the requirement for an application whenever the use of acreage of land previously approved changes to exclude a change in acreage which occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for land use taxation. (See Appendix B for the suggested legislation.)

The subcommittee has also examined the reapplication procedures for land use. The subcommittee suggests, to ease the administrative burden on land owners, a reapplication form be included with, or as part of, the tax ticket (notice) that is sent annually to the owner. This would eliminate the land owner having to make a separate reapplication in those localities which require an annual reapplication.

The subcommittee suggests that the attached legislation (see Appendix A and B) be introduced in the 1979 Session of the General Assembly to implement these recommendations.

Respectfully submitted,

David G. Brickley, Chairman \*1

Lewis W. Parker, Jr.

Warren G. Stambaugh

George P. Beard, Jr.

\*1 Please note supplemental concurring statement.



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

DAVID G. BRICKLEY  
4804 KELLOGG DRIVE  
WOODBIDGE, VIRGINIA 22193

TWENTIETH DISTRICT  
PRINCE WILLIAM, LOUDOUN,  
AND THE CITIES OF MANASSAS  
AND MANASSAS PARK

COMMITTEE ASSIGNMENTS:  
FINANCE  
HEALTH, WELFARE AND INSTITUTIONS  
AGRICULTURE

January 12, 1979

STATEMENT OF DAVID G. BRICKLEY

I commend the Land Use Subcommittee members for their excellent work, support and long hours, and fully approve of the recommendations offered. However, I believe that certain changes should be made in the law when an owner or his agent petitions for a change in zoning. The subcommittee was divided on the question of whether a change in zoning constitutes a change in use. Presently it does not. However, as the purpose of the land use program was to preserve agricultural, horticultural, forest products and open space it must be considered that a change in zoning signals the intention to change the use of the land. If the use is changed, the question follows as to whether the land should continue to be eligible for special assessment. In light of the difference of opinion on this matter, I would suggest that as a compromise, when a change in zoning occurs on land currently under land use assessment, then the roll back period be increased to ten years rather than the present five years. This would serve to increase the penalty on real estate when the owner has every intention of developing the land. However, if the real estate was not developed until many years later, or for that matter, never developed, the property owner would also be protected.

  
David G. Brickley

## APPENDIX A

A BILL to amend and reenact § 58-769.10 of the Code of Virginia, relating to interest rate applicable to roll-back taxes.

Be it enacted by the General Assembly of Virginia:

1. That § 58-769.10 of the Code of Virginia is amended and reenacted as follows:

§ 58-769.10. Change in use of real estate assessed under ordinance; roll-back taxes.—When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality in the year of the change and in each of the five years immediately preceding the year of the change, plus simple interest on such roll-back taxes at the ~~rate of six per centum per annum~~ *same interest rate applicable to delinquent taxes in such locality, pursuant to § 58-847 or § 58-964* . If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

In determining roll-back taxes chargeable on real estate which has changed in use, the treasurer shall extend the real estate tax rates for the current and next preceding five years, or such lesser number of years as the property may have been taxed on its use value, upon the difference between the value determined under § 58-769.9 (d) and the use value determined under § 58-769.9 (a) for each such year.

Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs and shall be paid to the treasurer within thirty days of the assessment.



## APPENDIX B

A BILL to amend and reenact § 58-769.8 of the Code of Virginia, relating to application by property owners for special use assessment.

Be it enacted by the General Assembly of Virginia:

1. That § 58-769.8 of the Code of Virginia is amended and reenacted as follows:

§ 58-769.8. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc.—Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer at least sixty days preceding the tax year for which such taxation is sought; provided, however, that in any year in which a general reassessment is being made the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58-792.01, or sixty days preceding the tax year, whichever is later; provided, however, in any locality which has adopted a fiscal tax year under §58-851.6 but continues to assess as of January one, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year; provided further, that in Franklin County, such application shall be filed for the year nineteen hundred seventy-eight within thirty days of adoption of an ordinance hereunder. The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes , *except when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment* ; provided, however, that the governing body of any county, city or town may require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

The local assessing officer shall prepare and transmit to the clerk a list of all applications filed and approved hereunder and the clerk shall index the names in a book entitled "Land Use Tax Assessment Book" and file said application in the clerk's office. The local governing body shall beginning July one, nineteen hundred seventy-three, compensate the clerk at the rate of one dollar per application filed and indexed, notwithstanding any limitation provided in § 14.1-143 or any other section of the Code of Virginia.

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of value determined under § 58-769.9 (d).

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the land.

2. That the provisions of this act shall be effective for all tax years beginning on and after January one, nineteen hundred seventy-seven.

APPENDIX C

STANDARDS FOR CLASSIFICATION OF A FOREST AREA

(LAND USE TAX ACT - Title 58, Chapter 15, Section 58-769.4 through 58-769.16)

A. STANDARDS

PRODUCTIVE FOREST LAND - is real estate devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 10% normal stocking of forest trees, or formerly having such tree cover, and not currently developed for non-forest use. It must be growing a forest crop or be capable of growing a forest crop of industrial wood, and such crop must be accessible for harvesting.

NON-PRODUCTIVE FOREST LAND - is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility on adverse site conditions such as steep outcrops of rock and shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibits the growth and harvesting of a crop of trees suitable for commercial industrial use.

TREE - is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

STOCKING - is the number of trees 3 inches and larger in diameter breast high (d.b.h. - at a point on the tree trunk outside bark 4 1/2 feet from ground level) required to equal a total basal area (area in square feet of a cross section of the tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 10% stocking set forth in the following Table.

Minimum Number of Trees or Combination Thereof to Determine 7.5 Square Feet of Tree Basal Area or 10 Percent Stocking Require to be Classified as Forest Land

D.B.H. Range	D.B.H. in 2" Classes		Basal Area			
			Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 acre
up to 2.9"	Seedlings			100	20	10
3.0 - 4.9"	4	0.1257	59	12	6	
5.0 - 6.9"	6	0.1964	38	8	4	
7.0 - 8.9"	8	0.3404	22	4	2	
9.0 - 10.9"	10	0.5346	14	3	1	
11.0 - 12.9"	12	0.7466	10	2	1	
13.0 - 14.9"	14	0.0690	7	1	-	
15.0"+	16+	1.4845	5	-	-	

Note:

- (a) Area 1/5 acre: circle, diameter 105'4", square 93'4" per side
- (b) Area 1/10 acre: circle, diameter 74.6"; square 66'
- (c) Number of seedlings present may qualify on a percentage basis; Example, 20 seedlings would be equivalent of 1.5 sq. feet of basal area (20% x 7.5 = 1.5)

## APPENDIX C (con't.)

### B. PRODUCTIVE EARNING POWER

The forest land productive earning power will be determined by soil series classification and current market prices for each county. The base species will be selected according to the major forest type of greatest economic value in the county.

The annual productive earning power will be computed by discounting the per acre gross dollar value of tree growth to the time of stand establishment using a 6% compound rate of interest. The cost of establishing the stand will then be subtracted, leaving a net worth of the timber crop above and beyond the 6% compound interest allowance for the cost of establishment.

Prepared By: VIRGINIA DIVISION OF FORESTRY  
June 1, 1973

## APPENDIX C

## STANDARDS FOR CLASSIFICATION OF A FOREST AREA

(LAND USE TAX ACT - Title 58, Chapter 15, Section 58-769.4 through 58-769.16)

A. STANDARDS

**PRODUCTIVE FOREST LAND** - is real estate devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, or formerly having such tree cover, and not currently developed for non-forest use. It must be growing a commercial forest crop that is accessible for harvesting.

**NON-PRODUCTIVE FOREST LAND** - is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility on adverse site conditions such as steep outcrops of rock and shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibits the growth and harvesting of a crop of trees suitable for commercial industrial use.

**TREE** - is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

**STOCKING** - is the number of trees 3 inches and larger in diameter breast high (d.b.h. - at a point on the tree trunk outside bark  $4\frac{1}{2}$  feet from ground level) required to equal a total basal area (area in square feet of a cross section of the tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in the following Table.

Minimum Number of Trees or Combination Thereof to Determine  
30 Square Feet of Tree Basal Area or 40 Percent Stocking  
Require to be Classified as Forest Land

<u>D.B.H. Range</u>	<u>D.B.H. in 2"</u>		<u>Basal Area</u>			
	<u>Classes</u>	<u>Per Tree</u>	<u>Per Acre</u>	<u>Per 1/5 Acre</u>	<u>Per 1/10 Acre</u>	
up to 2.9"	Seedlings			400	80	40
3.0 - 4.9" ...	4	0.0873	344	69	34	
5.0 - 6.9"	6	0.1964	153	31	15	
7.0 - 8.9"	8	0.3491	86	17	9	
9.0 - 10.9"	10	0.5454	55	11	6	
11.0 - 12.9"	12	0.7854	38	8	4	
13.0 - 14.9"	14	1.0690	28	6	3	
15.0"+	16+	1.3963	21	4	2	

NOTE: (a) Area 1/5 acre: circle, diameter 105'4"; square 93'4" per side  
 (b) Area 1/10 acre: circle, diameter 74'6"; square 66'  
 (c) Number of seedlings present may qualify on a percentage basis;  
 Example, 100 seedlings would be equivalent of 7.5 sq. feet of basal area (25% x 30 = 7.5)

APPENDIX C (con't.)

**B. PRODUCTIVE EARNING POWER**

*The forest land productive earning power will be determined by soil series classification and current market prices for each county. The base species will be selected according to the major forest type of greatest economic value in the county.*

*The annual productive earning power will be computed by converting the estimated acre volume yields for a rotation to dollar yields. The cost for land management and stand establishment is then subtracted from the gross income, leaving a net worth for the timber crop. The forest use value is then calculated by dividing the net worth by a determined capitalization rate.*

**Prepared By: VIRGINIA DIVISION OF FORESTRY  
July 1978**

