REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

AGRICULTURAL AND FORESTAL DISTRICTS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 3

COMMONWEALTH OF VIRGINIA
RICHMOND
1999

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I. INTRODUCTION

House Joint Resolution 468 was introduced by Delegate Davies during the 1997 legislative session. See Appendix A. Pursuant to directions from the Speaker of the House of Delegates, the resolution was not reported by the committee to which it was referred, but the chairmen of the House Counties, Cities and Towns and Agriculture committees appointed committee members to undertake the study. The chairmen of the corresponding Senate committees were also requested to appoint committee members to form a joint subcommittee. See Appendix B. HJR 468 directed the subcommittee to "examine how well agricultural and forestal districts are achieving their purpose and determine whether legislative changes are required to increase the effectiveness of districts." The resolution instructed the subcommittee to seek input from localities, agriculture and forestry interests, and representatives of state agencies and public service corporations who have experience in complying with the requirements of the agricultural and forestal district laws.

The Agricultural and Forestal Districts Act (Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2 of the Code of Virginia*), enacted in 1977, provides a means by which any locality, upon landowner petition, can create agricultural and forestal districts. Within districts, land is eligible for use-value taxation, and the locality and state agencies have a responsibility to protect agricultural and forestal land uses. In 1982, the General Assembly enacted the Local Agricultural and Forestal Districts Act (Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2), which applies only to four counties: Fairfax, Prince William, Albemarle, and Loudoun. The subcommittee's work focused almost exclusively on the 1977 law, which will be referred to in this report as "the Act." References to "the Local Act" will be to the 1982 law.

Agricultural and forestal districts have not been the subject of an in-depth legislative study since the enactment of the Act. The declared purpose of the program is "to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance." (§ 15.2-4300) Through the use of a survey, the subcommittee endeavored to determine how well local officials administering the program felt the program was fulfilling this purpose. Interested parties were also given opportunities to provide comments to the subcommittee at its meetings.

The subcommittee met three times during the 1997 interim. All meetings were held in Richmond. The subcommittee's recommendations were reflected in House Bill 563, introduced by Delegate Davies. The bill was enacted as Chapter 833 of the 1998 Acts of Assembly. See Appendices C and D.

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* Subsequent citations are to the Code of Virginia unless otherwise indicated.

II. EXISTING LAW

A. CREATION AND REVIEW OF DISTRICTS

Under the Agricultural and Forestal Districts Act, landowners may petition for the creation of an agricultural, forestal, or agricultural and forestal district by submitting an application to the local governing body, on a form prescribed by the locality. (§ 15.2-4305) The statute sets out a list of the information that must be included on the form and includes a sample form that illustrates the statute's requirements. The application must include information regarding the size and location of each parcel of land proposed to be included in the district and both a United States Geological Survey map and a Department of Transportation map showing the boundaries of the proposed district. (§ 15.2-4303) The applicant(s) may propose conditions to the creation of the district, such as a requirement that no parcel in the district may be developed to a more intensive use without prior approval of the governing body. The proposed conditions, if accepted by the governing body, and any others that the governing body deems appropriate, will be incorporated into the ordinance creating the district. Similarly, the application may propose a length of time before which the district will be reviewed, which must be at least four and no more than ten years. (§ 15.2-4309)

Each district must have a core of at least 200 acres in one parcel or contiguous parcels and may include parcels outside of the core if they are within one mile of the boundary of the core or contiguous to a parcel which is within the district and whose nearest boundary is within one mile of the core. A district may be located in more than one locality, but must be approved by each locality in which it lies. No land may be included in a district without the approval of all of its owners. (§ 15.2-4305)

The first steps in the application evaluation process are assigned to the planning commission, which must publish notice of the application in a local newspaper, post the notice at five places within the district, and notify adjacent property owners by mail. Each notice must contain the information that:

- The application is open to public inspection in the office of the clerk of the local governing body;
- Any political subdivision whose territory includes land within the proposed district may, within 30 days, propose a modification to the proposed district;
- Any owner of qualifying land may, within 30 days (or later with the governing body's permission), join the application;

- Any landowner may withdraw his land from the application at any time until the local governing body passes an ordinance creating the district;

- Land may be added to an existing district by separate application;

- The application will be submitted to the agricultural and forestal districts advisory committee in 30 days; and

- The planning commission will hold a public hearing on the application upon receipt of the advisory committee's report. (§ 15.2-4307)

The planning commission refers the application and any proposed modifications to the agricultural and forestal districts advisory committee, which is appointed by the local governing body when it receives its first district application. The advisory committee consists of four landowners engaged in agricultural and forestal production, four other landowners in the locality, a member of the local governing body, and the locality's chief property assessment officer or commissioner of revenue. The duties of the advisory committee are to "advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing or terminating districts within the locality." It must make recommendations on applications within 30 days of receiving the application. (§§ 15.2-4304 and 15.2-4308)

After receiving the advisory committee's recommendation, the planning commission must within 30 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." The planning commission must hold a public hearing on the application and, after making its recommendation, publish a notice describing its recommendations and those of the advisory committee. This notice must be mailed to adjacent property owners and the political subdivisions whose territories include land within the proposed district. (§ 15.2-4307)

The statute lists the factors that should be considered by the planning commission and advisory committee in considering applications:

- The agricultural and forestal significance of land within the district and in adjacent areas;

- The presence of any significant agricultural and forestal lands within or adjacent to the district that are not in agricultural or forestal production;

- The nature and extent of land uses other than active farming or forestry within and adjacent to the district;

- Local developmental patterns and needs;

- The comprehensive plan and zoning regulations; and
- The environmental benefits of retaining the lands in the district for agricultural and forestal uses. (§ 15.2-4306)

"Agriculturally and forestally significant land" is defined by the statute as "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." (§ 15.2-4302) Land being considered for inclusion in a district may also be evaluated by the advisory committee and planning commission through the Virginia Land Evaluation and Site Assessment System (LESA) or a local LESA system. (§ 15.2-4306)

The local governing body must also hold a public hearing on the application, after which it may by ordinance create the district with any modifications or conditions it deems appropriate. If the ordinance contains conditions or a period before first review that differs from those proposed in the application, notice must be published and mailed to all landowners in the district at least two weeks before the ordinance is adopted. The local governing body must act to create the district or reject the application within 180 days of having originally received the application. (§ 15.2-4309) Parcels may be added to an existing district by the same process as that required for the creation of a district. (§ 15.2-4310)

The local governing body must decide whether to review the district at least 90 days before the expiration of the period established when the district was created. If it determines that a review is unnecessary, it must decide when the next review will occur. As part of the review, a public meeting with the owners of land within the district must be held by the advisory committee or planning commission, both of which are asked to make a recommendation as to whether the district should be continued, modified, or terminated. The local governing body must hold a public hearing. In continuing the district, the local governing body may adopt conditions or a period before the next review that differs from those established when the district was created. (§ 15.2-4311)

Land may be withdrawn from a district if the landowner files written notice with the governing body between the time that he receives notice that the district is being reviewed and the time that the governing body acts to continue, modify, or terminate the district. At any other time, a landowner may file a request with the governing body to withdraw his land. After receiving the recommendations of the advisory committee and planning commission and holding a public hearing, the governing body may decide whether the withdrawal will be allowed. A denial of the landowner's request to withdraw land may be appealed de novo to the circuit court. (§ 15.2-4314)

B. EFFECTS OF DISTRICTS

1. Land Use Taxation

In Virginia, the real property tax is the largest source of local government revenue. The tax is assessed annually against the fair market value of real estate. Virginia's Constitution authorizes the General Assembly to allow localities to appraise real estate at its value for agricultural, horticultural forest, or open space use and apply a jurisdiction-wide tax rate to the special use valuation. The General Assembly has enacted such a scheme in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1. The purpose of the scheme is to reduce the pressure that increasing taxes may play in a landowner's decision to sell or convert such property to a more intensive use. In a locality which has adopted an ordinance pursuant to Article 4, landowners must submit an annual application to the locality in order to receive the special tax rate. (§ 58.1-3234) Land lying within an agricultural and forestal district that is used in agricultural or forestal production, however, automatically qualifies for such special use valuation, regardless of whether a special use valuation ordinance has been adopted by the locality. (§ 15.2-4312) When land is removed from a district or the district is terminated, the owner must pay roll-back taxes for the difference between the tax that would have been paid on the land's fair market value and the special tax amount. (§ 15.2-4314) The same rule applies to land that qualified for the special tax rate but was not part of a district if the land is subsequently developed to a more intensive use or rezoned to a more intensive classification at the request of the owner. (§ 58.1-3237)

2. Limitations on Local Authority

The Agricultural and Forestal Districts Act lists several ways that the existence of an agricultural and forestal district may have the effect of limiting local authority. The extent to which these limitations have a practical effect on local government decisions is not obvious from the language of the statute, however. For example, the Act provides that "[n]o local government shall exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety." (§ 15.2-4312) Similar language in the Right to Farm Act (§§ 3.1-22.28 and 3.1-22.29) applies to the effect of zoning ordinances on agriculturally zoned land in any locality.

The Agricultural and Forestal Districts Act also provides that the comprehensive plan and zoning and subdivision ordinances shall apply within districts, but only to the extent that they do not conflict with the conditions to the creation or continuation of the district set forth in the district ordinance. Further, "[l]ocal ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any

district shall take into account the existence of [the] district and the purposes of [the Act]." Finally, the Act provides that, after a district is created, special districts for sewer, water, electricity, or nonfarm or nonforest drainage may not impose taxes on land within a district on the basis of frontage, acreage, or value except for on a lot less than one-half acre surrounding any dwelling or nonfarm structure on the land. (§ 15.2-4312)

3. Limitations on State Authority

The Act contains general language describing the responsibilities of state agencies with regard to districts:

> It shall be the policy of all agencies of the Commonwealth to encourage the maintenance of farming and forestry in districts and all administrative regulations and procedures of such agencies shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding. (§ 15.2-4312)

The Act also contains specific procedural requirements that apply when the Commonwealth or any political subdivision intends to acquire land or any interest in land within a district. These requirements also apply when a public service corporation intends to acquire an interest in land within a district for public utility facilities, or 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. The agency or public service corporation must file a notice of intent with the local governing body at least 30 days prior to the proposed action. The notice must include a description of the reasons for the proposed action and an evaluation of alternatives that would not require action within the district. (§ 15.2-4313)

The local governing body must, in consultation with the planning commission and agricultural and forestal districts advisory committee, "review the proposed action to determine (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 [the Act] and (ii) the necessity of the proposed action to provide service to the public in the most economical and practicable manner." If the local governing body "finds that the proposed action might have an unreasonably adverse effect upon either state or local policy," it must issue an order directing the agency or public service corporation to delay the proposed action for 90 days from the day that the notice of intent was filed. The local governing body must then hold a public hearing and report its decision "by the issuance of a final order" as to 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." This decision may be appealed to circuit court or, if the public service corporation is regulated by the State Corporation Commission, to the SCC. (§ 15.2-4313)

C. LOCAL AGRICULTURAL AND FORESTAL DISTRICTS ACT

The Local Agricultural and Forestal Districts Act, which was enacted in 1982, applies only to four counties: Fairfax, Prince William, Albemarle, and Loudoun. Those counties may create districts pursuant to either or both Acts. Fairfax County, for example, has created both types of districts. Albemarle County has ordinances which allow the creation of both types of districts, but currently only Chapter 43 districts exist there. Chapter 44's major differences from Chapter 43 include the following:

- Application. The maximum application fee is $50, rather than $300. The applicant does not propose conditions to the creation of the district or a period before first review. The type of map that must accompany the application is not specified. The statute does not contain a sample application form. (§ 15.2-4403)

- Districts. Districts are referred to as "districts of local significance." Counties may by ordinance set the minimum size of districts, but it may not be less than 20 acres. Contiguous acreage may be added to an existing district by following the same process as for the creation of a district. No provision is made for a district to encompass land in more than one locality. (§ 15.2-4405)

- Process. Applications must be acted upon by the local governing body within one year of receiving the application. The process is similar to the one required by Chapter 43 but includes fewer deadlines and specific notification requirements. (§ 15.2-4405)

- Review period. The review period for districts created pursuant to Chapter 44 is every 8 years. (§ 15.2-4406)

- Mandatory land-use restriction. An ordinance creating a district pursuant to Chapter 44 must prohibit the development of land in the district to a more intensive use for eight years. When land is added to an existing district, the restriction applies for eight years from the adoption of the ordinance that created the district. (§ 15.2-4406)

- Effects of districts. Chapter 44 does not contain the limitations on local and state authority in districts that appear in Chapter 43.

- Withdrawal of land from a district. Except for Fairfax County, land may be withdrawn from a district the same as is provided in Chapter 43. In Fairfax

County, land may be withdrawn by simply filing a notice of withdrawal with the local governing body. In addition to being liable for roll-back taxes, an owner who withdraws land from a district created under Chapter 44 must pay a penalty of two times the taxes determined in the year following the withdrawal from the district on all land previously within the district. (§ 15.2-4407)

III. ACTIVITIES

A. SURVEY

According to the Virginia Department of Agriculture and Consumer Services, 24 counties and one city have agricultural and forestal districts. The number of districts in each locality ranges from one to thirty-six, and total district acreage in each locality ranges from 668 acres to over 86,000 acres. Counties with a large number of districts or total district acreage include Accomack, Fauquier, Albemarle, Loudoun, New Kent, Fairfax, and Shenandoah Counties. See Appendix E.

A survey was mailed in July to all of the localities that have a districts. The survey appears as Appendix F. Survey responses were received from 19 localities, including Accomack, Albemarle, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Hanover, Isle of Wight, James City, Loudoun, Louisa, Montgomery, New Kent, Prince William, Rappahannock, and Warren Counties. Tazewell County's response indicated that that county no longer has any districts.

The survey responses, all but three of which were prepared by members of the counties' planning staffs, yielded the following information. Ten respondents answered that the opportunity to create agricultural and forestal districts is adequately utilized by local landowners. Four counties have encountered difficulties in following the statutorily prescribed process for creating districts or for adding land to an existing district, while 13 have not. Difficulties listed related to the number of steps in the required notification and advertising process and the time frame in which each step in the process is to take place. Four counties have encountered difficulties in following the process prescribed for reviewing districts, while 13 have not. One respondent mentioned difficulty in obtaining a quorum on the advisory committee, and another mentioned difficulty in obtaining responses from some of the landowners. Two counties have encountered difficulties in following the process prescribed for withdrawing land from or terminating districts while 15 have not; both of those indicating difficulties said that the "good and reasonable cause" standard for withdrawal set forth in the statute is vague and difficult to apply. Two counties indicated that they had experienced difficulties regarding the procedure to be followed when a state agency, other political

subdivision, or public service corporation plans to acquire land within the district; eight indicated that this situation had never been encountered.

Every county but one indicated that its agricultural and forestal district advisory committee does not have a set meeting schedule, but meets as needed. Five counties' advisory committees usually meet more than once a year. One county indicated that routine matters are often handled by mailed ballot. Ten counties indicated that their advisory committees are quite active, while five said that the role taken by the advisory committee varies or is minimal. Four counties' advisory committees engage in other activities in addition to reviewing proposals related to districts. Fourteen of the counties have a designated advisory committee chairman, while four do not. One county indicated that the Board of Supervisors representative serves as the informal chairman.

B. TESTIMONY; SUGGESTIONS

The subcommittee heard testimony from a number of people involved in local districts, including an owner of district land, a member of an agricultural and forestal districts advisory committee, and several local planning staff members. Their comments reflected general support for the program. Several speakers urged that agricultural and forestal districts be utilized as part of a comprehensive effort to promote open space preservation. A representative of Virginia Farm Bureau stated that, in general, agricultural and forestal districts are achieving the purpose for which they were designed. The group believes that individual problems that have been experienced in different localities should continue to be addressed at the local level and that the program should continue to be flexible for both localities and farmers.

A representative of the Virginia Department of Transportation (VDOT) explained the agency's approach to projects which may affect land lying within a district. VDOT determines whether a district will be affected early in the planning process for each project. If it appears that a district will be involved, the locality is notified well before the deadline imposed by the law. VDOT attempts to avoid districts when possible and to minimize the impacts when avoiding the district is not possible. The VDOT representative noted that the review process for agency actions that affect districts can be controversial. As examples, he cited the "Smart Road" project in Montgomery County and the widening of Route 3 in Culpeper County. Difficulties with these two projects were also mentioned in testimony by citizens involved in local districts. See Appendices G and H.

The subcommittee also sought the advice of a recognized expert on the issue of agricultural and forestal districts, J. Paxton Marshall, Professor Emeritus of Agricultural Economics at Virginia Tech. See Appendix I. Among his suggestions were that an annual date should be set in the statute by which applications for creating a district must be submitted, and that localities should be notified at least

60 days before a state agency, other political subdivision, or a public service corporation plans to acquire land within the district. Other suggestions for changes in the statute were made as part of the survey responses and by persons who addressed the subcommittee at its meetings, including the following:

- A detailed evaluation of such proposals should be prepared by the local government and the entity proposing to acquire the land. In deciding whether to approve the proposal, the locality should consider whether alternatives exist which would minimize or avoid any adverse impact on agriculture and forestry.

- Owners of district land should be required to meet annually.

- The law could be strengthened if membership in an agricultural and forestal district was required for agriculturally related benefits, such as cost-share grants for the implementation of best management practices.

- There are too many requirements that must be completed within 30-day increments. It would be easier for localities to complete the application review process within 180 days if the time devoted to each individual step in the process could be determined on a case-by-case basis.

- Owners of district land should have an increased role in the process of reviewing state acquisitions of land in districts.

- Localities should be able to enforce the conditions contained in the district ordinance, either by forcing compliance or terminating the district.

- The law should allow the district renewal process to be handled by the board of supervisors' designated agent.

- The procedure for adding land to an existing district should be simplified.

- The "good and reasonable cause" standard by which landowner requests to withdraw land from a district are to be judged should be clarified.

- The planning commission and the advisory committee should be involved in the locality's final review of proposals by state agencies to acquire land within districts.

IV. FINDINGS AND RECOMMENDATIONS

It was clear from the survey responses and testimony heard by the subcommittee that the districts generally serve their purposes well. The subcommittee identified only a few areas in need of improvement. It was agreed that the following were desirable: more uniformity statewide in when district applications are considered, increased flexibility in the district creation process, and improved notice to localities and local citizens of proposals to acquire land within a district. The subcommittee also sought to clarify and strengthen the standard by which localities would evaluate proposals to acquire land within the district.

The subcommittee's recommendations were enacted by the General Assembly as Chapter 833 of the 1998 Acts of Assembly. See Appendices C and D. The legislation eliminates the specific time periods assigned to various steps in the creation and expansion process; however, the overall period during which a locality must act on applications continues to be six months. Consideration of applications will begin on November 1 of each year, although the locality may set another annual date. The notice that agencies and public service corporations are required to give to the locality before acquiring interest in land within a district is increased to 90 days. Notice must also be given to district landowners. The notice to the locality must include detailed information about the proposal. In the first stage of the local review of such proposals, the locality must make its findings in writing, and the findings must include a determination as to 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. In the second stage of the local review process, the vote required for the locality to allow the proposal to proceed is increased to a majority of all the members elected to the local governing body. The local review process as amended by the legislation is summarized in Appendix J.

V. CONCLUSION

Through the use of a survey and provision of opportunities for interested persons to present testimony, the subcommittee was able to take a comprehensive look at the use of the agricultural and forestal district tool by localities and citizens across the state. Assured both by the scarcity of complaints about the agricultural and forestal district law and the positive comments received on the program, the subcommittee decided that a major overhaul of the statute was not necessary. Most of the complaints that were brought to the subcommittee's attention arose in the limited number of situations when a state agency, other political subdivision or public service corporation, planned to acquire land within the district. To address

these concerns, the subcommittee recommended legislation that ensured that localities and citizens would receive earlier and more detailed notice of such proposals. The legislation also made it easier for localities to reject proposals with negative effects on state or local policy. Several other adjustments in the law were made in response to suggestions given during the subcommittee's review of local experiences with districts. It is the subcommittee's hope that, with these few improvements, agricultural and forestal districts will continue to serve as an important tool to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

VI. APPENDICES

APPENDIX A

970373198

HOUSE JOINT RESOLUTION NO. 468

Offered January 15, 1997

Establishing the joint subcommittee to study agricultural and forestal districts.

Patrons—Davies, Barlow, Deeds, Orrock, Van Yahres, Watkins and Way; Senators: Couric, Houck and Miller, K.G.

Referred to Committee on Rules

WHEREAS, it is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products.; and

WHEREAS, it is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, and for aesthetic purposes.; and

WHEREAS, the Agricultural and Forestal District Act was enacted in 1977 for the declared purpose of providing "a means for a mutual undertaking by landowners and local governments to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and an economic and environmental resource of major importance;" and

WHEREAS, since the Act's enactment twenty years ago, agricultural and forestal districts have been created at the request of landowners across the Commonwealth; and

WHEREAS, the Act affects not only localities and landowners but also state agencies and public service corporations, certain of whose proposed actions must be reviewed by the locality if they are to occur within a district; and

WHEREAS, the effectiveness of districts in serving their purpose under the current structure prescribed by the Code of Virginia and the efficient administration of the agricultural and forestal districts program is of vital importance to the promotion and preservation of agriculture and forestry and to the work of the landowners and government agencies affected by the existence of districts; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study agricultural and forestal districts. The joint subcommittee shall examine how well agricultural and forestal districts are achieving their purpose and determine whether legislative changes are required to increase the effectiveness of districts. The joint subcommittee shall be composed of five members as follows: three members of the House of Delegates, to be appointed by the Speaker; and two members of the Senate, to be appointed by the Senate Committee on Privileges and Elections.

In conducting its study, the joint subcommittee shall seek input from localities, agriculture and forestry interests, and representatives of state agencies and public service corporations who have experience in compliying with the requirements of the Agricultural and Forestal District Act.

The direct costs of this study shall not exceed $3000.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

APPENDIX B

HJ 468 Study; agricultural and forestal districts.

Patron-John J. Davies III

Summary:
Study; agricultural and forestal districts. Creates a joint subcommittee to examine how well agricultural and forestal districts are achieving their purpose and to determine whether legislative changes are required to increase the effectiveness of districts. The matter was referred by letter from the Speaker to the House Agriculture and the Counties, Cities and Towns Committees for study. The Senate Agriculture, Conservation and Natural Resources, and Local Government Committees will be invited to participate in the study.

Full text:
01/15/97 House: Presented & ordered printed 970373198

Status:
01/15/97 House: Referred to Committee on Rules
01/22/97 House: Assigned to Rules sub-committee: 3
01/27/97 House: Passed by indefinitely in Rules (10-Y 0-N)

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APPENDIX C

HB 563 Agricultural and forestal districts.

Patron-John J. Davies III

Summary:

Agricultural and forestal districts. Modifies the procedures required for (i) district creation and expansion and (ii) local review of agency and public service corporation proposals to acquire interests in land within a district. Time periods assigned to various steps in the creation and expansion process are eliminated, but the overall period during which a locality must act on applications (six months) has not been changed. Agencies and public service corporations are currently required to notify the locality 30 days before acquiring interest in land within a district. Under the bill, the notice period is 90 days, notice must also be given to district landowners, and the notice to the locality must include detailed information about the proposal. For the second stage of the local review process, the vote required for the locality to allow the proposal to proceed is increased. This is a recommendation of the Joint Subcommittee Studying Agricultural and Forestal Districts.

Full text:

01/21/98 House: Presented & ordered printed 980359198
02/10/98 House: Printed as engrossed 980359198-E
03/25/98 House: Enrolled bill text (HB563ER)
04/29/98 House: Reenrolled bill text (HB563ER)
05/14/98 Governor: Acts of Assembly Chapter text (CHAP0833)

Amendments:

House Amendments
Governor's Amendments

Status:

01/21/98 House: Referred to Committee on Agriculture
02/04/98 House: Assigned to Agriculture sub-committee: 2
02/06/98 House: Reported from Agriculture w/amendments (24-Y 0-N)
02/09/98 House: Read first time
02/10/98 House: Read second time
02/10/98 House: Committee amendments agreed to
02/10/98 House: Engrossed by House as amended
02/11/98 House: Read third time and passed House (Block Vote) (98-Y 0-N)
02/11/98 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)
02/11/98 House: Communicated to Senate
02/12/98 Senate: Constitutional reading dispensed
02/12/98 Senate: Referred to Committee on Agriculture, Conservation & Nat.
03/09/98 Senate: Reported from A. C. & N. R. (14-Y 0-N)
03/10/98 Senate: Const. reading disp., passed by for the day (39-Y 0-N)
03/10/98 Senate: VOTE: CONST. RDG. DISPENSED R (39-Y 0-N)
03/11/98 Senate: Read third time
03/11/98 Senate: Passed Senate (40-Y 0-N)
03/11/98 Senate: VOTE: PASSAGE R (40-Y 0-N)
03/30/98 House: Enrolled
03/30/98 House: Signed by Speaker
03/31/98 Senate: Signed by President
04/16/98 House: Received from Governor by House
04/22/98 House: Placed on Calendar
04/22/98 House: House concurred in Gov's recom. (Block Vote) (100-Y 0-N)
04/22/98 House: VOTE: BLOCK VOTE-ADOPTION (100-Y 0-N)
04/22/98 Senate: Senate concurred in Gov's recommendation (39-Y 0-N)
04/22/98 Senate: VOTE: (39-Y 0-N)

04/22/98 Governor: Governor's recommendation adopted
04/22/98 House: Reenrolled
04/22/98 House: Signed by Speaker as reenrolled
04/22/98 Senate: Signed by President as reenrolled
04/22/98 House: Enacted, Chapter 833 (effective 7/1/98)

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CHAPTER 833

APPENDIX

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. ~~In the event that~~ *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. 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.

VIRGINIA DEPARTMENT OF AGRICULTURAL AND CONSUMER SERVICES

VIRGINIA AGRICULTURAL AND FORESTAL DISTRICTS

BREAKDOWN BY COUNTIES AND CITIES AS OF 07/01/97

COUNTY/CITY	TOTAL DISTRICTS	TOTAL ACRES
ACCOMACK	22	86,661.2830
ALBEMARLE	21	69,501.4100
CLARKE	2	28,286.7000
CULPEPER	12	38,842.0492
FAIRFAX COUNTY	30	3,232.5908
FAUQUIER	12	85,670.3900
FREDERICK	1	15,013.5800
GREENE	7	15,298.7900
HANOVER	8	14,183.8140
ISLE OF WIGHT	4	27,845.7298
JAMES CITY	15	19,687.7090
LOUDOUN	24	63,127.6690
LOUISA	9	8,673.4080
MONTGOMERY	12	41,222.7680
NEW KENT	36	31,192.8600
NORTHAMPTON	14	8,082.1500
ORANGE	1	668.0000
POWHATAN	9	7,526.7000
PRINCE WILLIAM	2	3,466.8300
RAPPAHANNOCK	9	18,073.6347
SHENANDOAH	20	43,428.9570
STAUNTON	1	1,674.3400
TAZEWELL	1	7,362.0000
WARREN	1	6,089.1400
WYTHE	1	2,643.2300
** TOTAL **	274	647,455.7325

APPENDIX F

COMMONWEALTH OF VIRGINIA

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DIVISION OF LEGISLATIVE SERVICES

AGRICULTURAL AND FORESTAL DISTRICTS SURVEY

Please answer, on a separate sheet of paper, the following questions about agricultural and forestal districts in your county. Please explain your answers as much as possible. Thank you!

1. County?

2. Name, title, and telephone number of the person completing the survey?

3. Name and address of agricultural and forestal district advisory committee chair?

4. Do the agricultural and forestal districts in your county operate under the Agricultural and Forestal District Act (Chapter 36 of Title 15.1 of the Code of Virginia) or the Local Agricultural and Forestal Districts Act (Chapter 36.1 of the same title)?

5. Have you encountered any difficulties in following the statutorily prescribed process for creating districts or for adding land to an existing district?

6. Have you encountered any difficulties in following the statutorily prescribed process for reviewing districts?

7. Have you encountered any difficulties in following the statutorily prescribed process for withdrawing land from or terminating districts?

8. (This question applies only to counties operating under Chapter 36.) Have you encountered any difficulties regarding the effects of districts as prescribed in § 15.1-1512? Of particular interest is the provision regarding the procedure to be followed when a state agency, other political subdivision or public service corporation plans to acquire land within the district.

9. The law states that agricultural and forestal districts advisory committees are to "advise the local planning commission and the local governing body and assist in

creating, reviewing, modifying, continuing or terminating districts within the locality."

a. How often does the advisory committee meet?

b. How active a role does the advisory committee take in creating, reviewing, modifying and terminating districts? In evaluating state agency, other political subdivision or public service corporation proposals to acquire land within the district?

10. In your opinion, is the opportunity to create agricultural and forestal districts adequately utilized by land owners in your locality?

11. Please add any other comments that you think would be helpful to the Joint Subcommittee Studying Agricultural and Forestal Districts. Include any suggestions you may have as to legislative changes that would allow districts to more effectively fulfill their purpose of providing "a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance."

Route 3 Four-Laning: Consideration of Impacts on the Environment and the Agricultural and Forestal District

On December 12, 1995, the Virginia Department of Transportation ("VDOT") held a public hearing on the proposed expansion of Route 3 from the existing two lanes to four lanes from Lignum to Culpeper. At the hearing, VDOT disclosed the proposed location of the two new lanes in general fashion, alternating between the north and south sides of the existing road. No study of the need for the expansion was presented, although some comments were made about some deterioration in the road surface and about limited passing zones along the road. The only alternative discussed was "no build," which was summarily rejected by VDOT as failing to "address the safety and traffic concerns that these projects are intended to relieve."

A brief environmental overview was available for review at the hearing. It was noted that significant historic properties may exist, and the Virginia Department of Historic Resources requested a Phase I identification survey for archeological sites and historic structures. It was also noted that agricultural fields are prevalent, and that VDOT would coordinate with the Natural Resources Conservation Service to determine the extent of prime agricultural lands within the project corridor. It was stated that the alignment was chosen to minimize the effect on Agricultural and Forestal Districts ("AFDs"). It was noted that total avoidance of wetlands in the corridor would be impossible.

It is fair to summarize the documentation presented by VDOT as sketchy at best. There was no independent analysis of the need for the project, in terms of accidents, traffic volume, or comparative state of deterioration. Historic resources and prime farmland had not been surveyed. No analysis was made of any alternatives to address the alleged deficiencies of the road. All information was presented in conclusive terms, without supporting documentation which could be independently verified.

A few months after the hearing, at the urging of citizens and (eventually) the Culpeper County Board of Supervisors ("BOS"), VDOT conducted an "origin and destination" study. This VDOT said established that the traffic on Route 3 could not be effectively served by the alternative route suggested by citizens. The methodology of the study was roundly criticized by several citizens.

Apparently without further consideration of the need for improvements, the alternatives, and the impacts of the proposed project, the Commonwealth Transportation Board ("CTB") approved the location of the improvements for Route 3 on July 18, 1996.

On August 8, 1996, VDOT initiated the procedure provided in former Va. Code § 15.1-1512D (now § 15.2-4313) for condemnation of land in an AFD by requesting the BOS to evaluate the impacts on the AFD. In support of its request VDOT presented no information to the BOS about the project, the need or justification for the project, any alternatives, or its impacts

Despite the determination by the AFD Advisory Committee and the County Planning Commission that the project would have adverse impacts on the AFD, the BOS on September 3,

1996 voted that the hearing authorized by the AFD Act to determine the impacts on the AFD would not be held.

Procedure under the MOA.

Pursuant to the Memorandum of Agreement between the Secretaries of Natural Resources and Transportation ("MOA"), VDOT issued early notifications to the Interagency Environmental Coordination Committee ("IECC") for the Route 3 projects on August 26, 1994 and December 9, 1994. The MOA requires VDOT to conduct monthly meetings of the IECC, as well as monthly scoping meetings. As to Route 3, no meetings were held with the IECC, nor were any scoping meetings ever held. None of the work contemplated by the MOA and referenced in the materials distributed by VDOT at the location hearing was completed by the time of the hearing; most is still incomplete.

Procedure under the AFD Act.

The AFD Act, § 15.2-4313, provides that, at least thirty days prior to a proposed condemnation of ten acres or more land within an AFD, the state agency shall file a "notice of intent" with the local governing body. The notice of intent shall contain such information and be in such manner and form as the local governing body may prescribe, and shall contain a report detailing all reasons in justification for the proposed action including an evaluation of alternatives which would not require action within the district. In the case of Route 3, the County had no formal procedure or requirements for a notice of intent (this has since been corrected by adoption of an ordinance), and the BOS declined to specify any contents for the notice of intent. The "justification" presented in the notice of intent was superficial, and VDOT stated that it rejected the citizens' alternative, based on its origin and destination study.

Pursuant to the AFD Act, upon receipt of the notice of intent, the local governing body, in consultation with the planning commission and advisory committee, is to review the proposed action to determine the effect the action would have upon the preservation of agriculture and forestry and agricultural and forestal resources within the district and upon the policy of the AFD Act and the necessity of the proposed action. If the local governing body finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall issue an order directing the state agency not to take the proposed action for sixty days, and shall hold a public hearing. Following the hearing, the local governing body shall decide as to whether the action will have an adverse effect and whether such action is necessary, and shall report its decision to the agency.

In the case of Route 3, the BOS merely voted not to hold the hearing, and made no findings as to the effect the proposed action would have upon agriculture and forestry or as to the necessity of the proposed action. The BOS vote seems to have terminated the procedure under the AFD Act, at an early stage, before any design work was done so that its effects could be known, and without an analysis of need for the project or of alternatives to the project.

Suggested Improvements.

The MOA was developed as a compromise between VDOT and those who thought that perhaps VDOT's exemption from the environmental impact report requirement applying to all other state agencies (Va. Code § 10.1-1188) should be terminated. If compliance with the MOA is lax, perhaps the exemption in Va. Code § 10.1-1188 should be reconsidered, and the section made applicable to all state agencies without exception.

To ensure that the AFD Act accomplishes what is intended, § 15.2-4313 might be amended to specify that the notice of intent should include a detailed description of the project, information on adverse effects on the AFD and on the various purposes of the AFD Act, measures proposed to minimize the impact, any irreversible changes in agricultural and forestal lands, as well as all reasons in justification of the project, and any alternatives to the project which would not require action within the district. It is necessary to require more complete information, to prevent short-circuiting of the procedure and foreclosure of alternatives before enough is known about the project to evaluate the impacts.

Another amendment might be to require the public hearing if any landowner in the district requests a hearing. Current law makes the hearing optional at the discretion of the local governing body, allowing it to decline the hearing regardless of the impacts on the district. AFDs are a mutual undertaking between landowners and local government. Landowners should have an equal opportunity for a hearing. The local governing body would retain the authority to make the final determination on the adverse effects, but at least the landowners would be heard.

APPENDIX H

Presentation to
AFD Committee, State of Virginia
Presented in Richmond, Virginia, September 10, 1997

Michael Abraham, Blacksburg, Virginia

Thank you for the opportunity to make comment to this committee. I had wanted and planned to appear personally, however the heavy workload and two key absences at our small business make it impossible for me to make the 8-hour round-trip to Richmond. I have asked my Senator, Madison Marye, to deliver my presentation in my stead.

My experience with AFD policy and laws is not in the context of an AFD owner or participant. I own neither farm nor forest property and do not stand in any way to gain or lose monetarily from AFD preservation. Instead, I am one of the most fervent and vocal opponents of the dubiously named "Smart Road," perhaps the most controversial and divisive project in our county over the last 50 years.

I became an active opponent to the Smart Road four years ago after attending a public hearing on the project. It was clear to me that this was not only a huge waste of money, but a tremendous disruption to a beloved area of our county, a disruption which could easily be avoided.

VDOT's goals with this project were two-fold: to relieve congestion on the planned bypass connector, 3A, which would tie Christiansburg's bypass with Blacksburg's bypass and Christiansburg's bypass with Interstate 81, and to provide a test facility for AHS technologies. The test facility was to be operated by Virginia Tech and their Center for Transportation Research. Virginia Tech became a major player in the proceedings. The test facility was dangled as an economic carrot before the local business community, backers asserting "back of the envelope" projections of $100 million in direct research revenues and $300 million in "spin-off" economic development.

Public records show that this was never a popular or well-conceived project. Opposition has been widespread and intense from the beginning, as at public hearing after hearing opponents outnumbered proponents significantly. In retrospect, I believe many opponents thought this project would simply go away, given such significant opposition. However, VDOT was paying no attention to the public input, nor to the concerns of their own Citizen's Advisory Board. VDOT had made this a "done deal" from day one, and was not to be denied. Bill Richardson, Chairman of the Citizen's Advisory Committee told me that as far as he could tell, whether VDOT intended to do this was never an issue. It was his opinion that his committee was simply put in place to deflect citizen opposition.

Virginia Tech had hired Ray Pethtel, former commissioner of VDOT, to spearhead their efforts to secure the project. Pethtel has proudly asserted that he had given over 200 speeches to area civic and business groups to convince them of the worth of the project. In this effort, he was utterly unsuccessful. For example, Blacksburg vice-mayor Michael Chandler told me that in his estimation, if the issue were put to referendum in Blacksburg, the town it was ostensibly to benefit, it would fail with perhaps 30% of the vote. And yet, public opinion, we were to learn, was never a factor.

As the project lumbered forward, a problem loomed for backers. The Road was to bifurcate AFD-7, a county preservation district. It was the task of the County Board of Supervisors to decide whether this violation of the AFD should be allowed. The public hearing in the Montgomery County courthouse in November 1995, was standing room only, and the air was tense as all in attendance knew much was at stake. Forty-four people spoke to the Board, 9 speaking in favor and 35 speaking against.

When the time came for the vote, Supervisor Joe Stewart, a land-owner in the affected AFD, was required to pledge that his vote would be in the interest of the entire County, his land notwithstanding.

Supervisor Jim Moore had an enlightening dialogue with Roy Thorpe, the County Attorney. To the best of my recollection, it went like this:

> Moore: "Mr. Thorpe, am I correct that AFD law dictates that in order for me to vote to allow the condemnation of this property, the project in question must provide a service to the public in the most economical and practical manner?"
>
> Thorpe: "Yes, Mr. Moore. That's how I read it."
>
> Moore: "And am I correct that AFD law dictates that in order for me to vote to allow the condemnation of this property, the project in question have no adverse impact on AFD policy?"
>
> Thorpe: "Yes, Mr. Moore. That's also how I read it."
>
> Moore: "Well, it is clear to me that this project does not provide a service to the public in the most economical and practical manner; Alternative 3A does. And it certainly does complete damage to AFD policy. I cannot vote for it."

The other votes were cast: 3 "for" and 3 "against" (including Mr. Stewart). The measure was defeated. AFD-7 was protected by a vote of 4 to 3. Opponents were ecstatic! However, it was clear from the comments made by each Supervisor before

he cast his vote, that all were making their decisions strictly on whether he felt it was a good idea or a bad idea. In other words, only Mr. Moore paid any attention to the laws governing AFD-7.

Let's consider Mr. Moore's analysis more closely. Did the "Smart Road" provide a service to the public in the most economical and practicable manner? One of the purported purposes was to relieve congestion on Alternative 3A. Certainly this was and is ludicrous. Where in Virginia, America, or the world has a government committed upwards of $100 million on a project designed to relieve congestion on another nearby project which hadn't even been begun? Wouldn't prudence dictate that 3A be completed and allowed to work as designed before deciding it needed relief? If 3A were to need relief, merely redesigning it for more lanes would have been infinitely more economical and practicable than building another parallel and largely redundant road. Regarding the other purpose, a test facility for AHS testing, many people would argue that such a facility provides no service to the public whatsoever, merely a plaything for Tech's engineers. But should it provide a service, there was never convincing evidence that a similar facility elsewhere, with no AFD infringement, would be any less desirable or capable. Note that VDOT had steadfastly refused any analysis of alternatives which would have separated these two purposes and allowed them to be met by more than one project.

Regarding the other condition, that the project would have no adverse impact on AFD policy, it is completely clear that no conceivable action could have had ***WORSE*** impact. Wouldn't we all agree that this action by our Board is one of the primary reason for today's meeting?!

During the course of discussions within the County, I chanced upon a conversation with a the head of a local engineering and architectural firm. He said that he has always been afraid that AFD laws might block necessary projects. My response was that if these laws are bad for the commonwealth, they should be changed, but laws they were, and they deserved to be followed. My greater fear is that VDOT's strongmen will lobby to have these "pesky" laws further weakened to insure unimpeded access to all Virginia lands.

But back to the Supervisors and the issue at hand. One week after the vote, Supervisor Joe Gorman rescinded his vote. Claiming lack of sufficient information, the Board submitted to VDOT a list of 90 questions, and allowed themselves the opportunity to vote again. Opponents later learned that under the intense pressure of a private 3-hour meeting with Tech president Paul Torgerson, a personal call from Congressman Rick Boucher, and lobbying from many of the area's most powerful people, Gorman had "changed his mind."

VDOT promised their answers within three months, by February 1996. Jack Hodge, VDOT's lead engineer statewide in Richmond, was known to be opposed to the Smart Road. His signature was required on the document of answers. He was

due for early retirement in May, 1996. The answers were submitted in late May, 1996, two weeks after Hodge's retirement.

The answers themselves were complete grandstanding, underscoring VDOT's intention to consider no other options than that of the chosen Smart Road corridor. Their audacity and insensitivity was displayed by their assertion that AFD-7 would actually be enhanced with a superhighway through it, as forest fires would be more easily detected and extinguished. (By inference, we should build superhighways through all forests to detect fires more quickly!)

Meanwhile, Tech responded to the concerns of those who anguished over the loss of the 140 acres VDOT wanted in AFD-7 by offering a conservation easement of 140 acres of their property. While this may at first glance have appeared to be a one-for-one offer, in fact it was completely hollow and disingenuous. First of all, as one letter to the editor in the Roanoke Times said, the Smart Road was "like a slash mark across the Mona Lisa." A trade of land elsewhere was no recompense. Second, the Road would have far greater impact on the AFD than the 140 acres taken. Third, we later learned that Tech had no plans to develop the land anyway, and further their offer was for 10 years only, whereas the land lost to the Road would be lost forever.

The County's AFD committee met to consider their recommendation. They voted unanimously to suggest to the Board that they NOT allow this action. So, too, did the County's Planning Commission. Even VDOT's own Citizen's Advisory Committee submitted a resolution asking the Board NOT to allow the action. By contrast, the County's Economic Development commission recommended that the action be allowed, many falsely believing that this was the only suitable corridor for the coveted test facility.

Two more public hearings ensued, both in the auditorium of Christiansburg's High School, secured because of the large crowd wishing to attend. This time, proponents, fearing that they could actually lose, wrote letters to businesses throughout the area threatening economic doom should they not send representatives to the hearings. Proponents sent some of the wealthiest and most powerful people in our area, including Blacksburg's Mayor, Tech's President, Mr. Pethtel, and many Chamber of Commerce officials, to plead their case.

It became clear very quickly that Supervisor Gorman's reversal would turn the tide. The re-vote was 4 "for" and 3 "against", and the green light for the violation of AFD-7 was given. Land acquisition was swift. The first of what will be many construction contracts was let, 45% over budget.

While two lawsuits against the Road are still pending, the Road is very much on the fast track, with significant earthmoving already done. Meanwhile, Alternative 3A hasn't had the first shovel turned. Tech's land swap offer is so meaningless

that the Board hasn't even bothered to take action on it. And statewide AFD policy is completely shattered.

It is clear that when faced with the most controversial and divisive projects in the history of our county, AFD laws were totally ignored, rendered impotent by the very people we in this county have intrusted to *make* our laws. It is my interpretation that this is specifically the type of intrusion AFD laws were designed to prevent, yet they were utterly worthless in doing so.

Understandably, the public is disgusted and disillusioned with our agencies, laws, and representatives.

APPENDIX I

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July 24, 1997

MEMORANDUM

TO: The Joint Subcommittee Studying Agricultural and Forestal Districts - HJR 468

FR: J. Paxton Marshall, Professor Emeritus of Agricultural Economics at Virginia Tech

RE: Proposed amendments to the Agricultural and Forestal Districts Act—Chapter 43

Twenty-seven amendments are proposed, of which twenty-two are technical, i.e., housekeeping-type amendments.

Five substantive amendments are proposed:

- To make more orderly the required review and decision process, applications for creating a district would be submitted to the locality on or before a date certain each year, and such date would also be the first day of the 180-day review and decision period provided in the law. The suggested date certain is November 1. See J. on pages 5 and 6. For further discussion, see Appendix A, Part 1, page 18.

- To provide uniformity of options between § 15.2-4309 and § 15.2-4311 in the period for which a district may be established, the number of years is increased from eight to ten in § 15.2-4309. Uniformity between these sections is important. See O. on page 9. For further discussion, see Appendix A, Part 2, page 18.

- To encourage earlier acknowledgment of a decision by any Commonwealth agency or any public service corporation to acquire land or an interest therein in a district, the suggested number of days for filing a notice of intent with the local governing body in advance of such action is increased from thirty to sixty. See U. on page 13. For further discussion, see Appendix A, Part 3, page 18.

- To aid in providing information to the local planning commission, it is added as a party to receive, in accordance with § 15.2-4314 D, a notice if heirs elect to withdraw land from a district within two years from the date of death of an owner. See W. on page 15. For further discussion, see Appendix A, Part 4, page 18.

- To make evident that a district is a mutual undertaking by landowners and localities, a requirement is made for owners of parcels within a district to meet annually to evaluate the situation affecting parcels within their district and to file a report of their meeting. The locality is to prescribe a form for the report. See AA. on page 16. For further discussion, see Appendix A, Part 5, page 18.

APPENDIX A

Part 1. This amendment makes more orderly the administrative tasks associated with the filing, reviewing and decision processes required of a locality receiving applications for the creation of districts. Improved order is achieved by prescribing an annual date certain by which applications for creation of districts or additions to districts shall be filed. November 1 is suggested as the date certain. This date would begin the prescribed 180-day period for completing the processes applications require. With a November 1 date, the processes would be completed about May 1. Those localities that have not authorized either use-value assessment or agricultural and forestal districts must, if they do so, notify the State Department of Taxation by June 30 of their action. Such taxation is effective upon the start the next tax year. Localities that have approved creation of many districts will consider this proposal as an administrative improvement.

Part 2. This amendment provides both applicants for creation of districts and the locality processing the application uniformity of options for the period a district may be created. To achieve this uniformity, the years in § 15.2-4309 are made four to ten the same period currently stipulated in § 15.2-4311. By improving uniformity of options, localities can also work to bring about uniformity in the periods before review.

Part 3. This amendment extends from thirty to sixty days the period a locality has to respond to an agency of the Commonwealth or public service corporation that files a notice of intent to acquire land or an interest therein in a district. Such notices often create controversy that disrupts on-going administrative processes. Few such agencies or corporations conduct business with a thirty-day decision period. Therefore, it seems unreasonable to expect localities to react within thirty days to filed notices of intent.

Part 4. This amendment adds the local planning commission to the local governing body and commissioner of the revenue or the local government's chief property assessing officer as parties to receive notices of withdrawal from a district filed by an heir of a deceased person who had placed his land in a district. This change assures that the local planning commission is informed that such land is at risk of being shifted to a more intense use.

Part 5. This amendment requires landowners within a district to actively participate with their locality in furthering their mutual undertaking with the district. Some, perhaps many, districts may continue for decades. To assure continuity of their district, landowners need to provide evidence to their locality that they have an interest in their district's structure and stability. Landowners can provide such evidence by meeting yearly and filing the prescribed report with their local planning commission. Special effort is made in § 15.2-4315 to require *only* one owner of each parcel or his representative to attend the yearly meeting. This recognizes that some parcels of land have many owners of whom some may live at great distance making their attendance costly. Both landowners and localities derive benefits from a district. Assuring continuing access to such benefits by meeting yearly at minimum expense can prove most cost effective.

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TO: The Joint Subcommittee Studying Agricultural and Forestal Districts - HJR 468

FR: J. Paxton Marshall, Professor Emeritus of Agricultural Economics at Virginia Tech

RE: Opening statement applicable to the Agricultural and Forestal Districts Act—Chapter 43

Mr. Chairman, Members of the Joint Subcommittee, Ladies and Gentlemen, I appreciate being requested to comment today as the Subcommittee considers matters relating to the Agricultural and Forestal Districts Act. I first present a bit of background that may serve to put the agricultural and forestal district in perspective.

State government authorizes this institution as a means of enabling landowners to apply to their local governing board and request that they jointly engage in a mutual endeavor. When first adopted by New York late in the 1960s, the district became an institution without precedent since enactment of the Second Northwest Ordinance in 1789. This new institution permitted landowners to join with their local governing board in a mutual effort to protect significant agricultural and forestal land from encroachment.

An institution is "something that enlarges and liberates." In a more formal sense,

> [a]n institution is a gathering of persons who have accepted a common purpose, and a common discipline to guide the pursuit of that purpose, to the end that each involved person reaches a higher fulfillment as a person, through *serving and being served by* the common venture, than he or she would achieve alone or in a less committed relationship [Emphasis in the original.]. Robert K. Greenleaf, 1961.

Evidence abounds that the agricultural and forestal district meets the test for an institution. Like all institutions districts require regular attention and maintenance so they may progress over future decades to become more firmly embedded in their localities. It follows that enabling the effectiveness of districts requires assuring that landowners maintain the strength shown when entering into their initial commitment in support of their mutual undertaking with their local governing board. Toward this end, I propose five substantive amendments. Three are offered as ways to further enhance the structure of districts by improving their organization and maintenance processes.

DECISION MAKING PROCESS REQUIRED BY DRAFT AMENDMENTS TO § 15.2-4313

APPENDIX J

STEP	DECISION	BY WHOM	RESULT	STANDARD TO BE APPLIED	TIME FRAME	VOTE REQUIRED
1		The local governing body, in consultation with the local planning commission and the advisory committee.	Written findings.	(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; (ii) the necessity of the proposed action to provide service to the public in the most economical and feasible 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.	Upon receiving notice of the proposed action.	Not stated.
2	Whether to delay proposed action for 60 days (beyond the original 90 notice period). Before the end of this delay period, (1) a hearing will be held and (2) the local governing body will decide whether to allow the proposed action to proceed.	Local governing body.	Order imposing delay. If no order is issued, the action may proceed.	Whether the proposed action might have an unreasonably adverse effect on state or local policy.	Within 90 days of receiving notice of the proposed action.	Not stated.
3 (Occurs only if order imposing delay is issued in step 2).	Whether to allow the proposed action to proceed.	Local governing body.	Order allowing or prohibiting proposed action.	Whether the proposed action is necessary to provide service to the public in the most economic and feasible manner and whether the proposed action will have an (unreasonably) adverse effect upon state or local policy.	Within 150 days of receiving notice of the proposed action.	A majority of all the members elected to the local governing body.