

**REPORT OF THE
SECRETARY OF AGRICULTURE AND FORESTRY**

The Relationship Between Counties and Farm Wineries (Part I)

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 85

**COMMONWEALTH OF VIRGINIA
RICHMOND
2006**

December 20, 2006

The Honorable Timothy M. Kaine
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

The Honorable William J. Howell
Speaker, Virginia House of Delegates
General Assembly Building, Room 635
Richmond, VA 23218

The Honorable John H. Chichester
President Pro Tempore, Senate of Virginia
General Assembly Building, Room 626
Richmond, VA 23218

Gentlemen:

With this letter I am transmitting the report on the relationship between Counties and farm wineries, as required in HB 1435 (2006). Please let me know if I can answer any questions about this document.

Sincerely,

Robert S. Bloxom

cc: The Honorable David B. Albo
The Honorable Emmett W. Hanger, Jr.

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PREFACE

This study and the processes described below were undertaken as a result of the requirements of HB 1435 as enacted by the 2006 session of the Virginia General Assembly. A copy of HB 1435 is attached to this report as Appendix A.

HB1435 requires that the Secretary of Agriculture and Forestry conduct a study of the Virginia Wine Industry as described below and address the relationship between wineries and the counties in which they operate. The Secretary gratefully acknowledges the efforts of all government partners, industries, organizations, and citizens who contributed to the ideas contained in this report.

EXECUTIVE SUMMARY

After imposing prohibitions on enactment of new local regulations on farm wineries, HB1435 requires, that the Secretary of Agriculture and Forestry conduct a profitability study on the farm wine industry in Virginia, and further that he continue efforts to address the relationship between the farm wineries and the communities in which they operate. The results of the study of farm winery profitability will be reported in a separate document. The principle focus of this document is on the findings and recommendations related to the relationships between the farm wineries and local government.

Summary of Findings

The primary findings in the study are that:

1. conflict between counties and farm wineries is not yet a statewide problem; at present, such problems appear to be limited to four or five counties.

2. for the most part, such conflict arises from a desire and need for some farm wineries to conduct frequent and sizeable events for the marketing of wine in agricultural districts and the obligation of counties to protect the health, welfare, and safety of those in the community within which the farm winery is located.
3. in most cases, it appears responsibility for this conflict is shared between counties and the wineries. (Please see Findings below for a more complete explanation of this item.)
4. the most intense conflict appears to occur where suburbanization is encroaching on rural areas.

Summary of Recommendations

The Office of the Secretary recommends:

1. that the Assembly take no action which might have the unintended consequence of increasing tensions between counties and wineries or causing such tensions where they do not currently exist. (Please see Recommendations below for a more complete explanation of this item).
2. that the Assembly enacts legislation patterned after that shown in Appendix B to replace HB1435.
3. that the Assembly work with localities to create a type of information clearinghouse accessible to farm wineries and localities for guidance and resources to resolve disputes as they arise. Such resources may include mediation services.
4. that the Assembly support further efforts by the Office of the Secretary of Agriculture and Forestry to build positive relationship between counties

and wineries through educational outreach and improved communication. An emphasis should be put on creating relationships between farm wineries and their neighbors at the earliest possible time in the winery development/growth cycle.

BACKGROUND AND AUTHORITY

Since 2000, the wine industry has been among the most rapidly growing sectors in the Virginia agriculture industry, with the number of farm wineries in Virginia increasing from around 80 to approximately 116 at the date of this report. While entry into the wine industry requires a considerable capital investment, successful vineyard and winery operations can become sources of economic growth for rural Virginia, primarily because of their contributions to local tourism. Tourists are drawn to Virginia wine country by the beauty of its scenery and opportunities to participate in a wine tasting experience while they are enjoying that beauty.

Recognizing that the wine industry is a tourism magnet and a real source of economic growth, Virginia state government has assisted the industry in recent years in developing a strategic plan to promote its continued growth and viability over the next two decades. The prospect for such growth, however, may turn on legal rulings concerning wineries' ability to distribute their own wines and, on their ability to expand production and processing. In recent years, their efforts to expand and their efforts to attract more visitors to Virginia wine country have occasioned conflict with localities over traffic volumes, types of events, and other issues which impact public health and safety for its citizens. This conflict, which is most focused in four or five counties, prompted the enactment of HB1435. This bill, as indicated earlier, prohibits the implementation of new local regulations on farm wineries through July 1, 2007, pending the outcome of

this study and makes several other requirements of the Office of the Secretary of Agriculture and Forestry relative to the wine industry.

The specific requirements of HB1435 on the Office of the Secretary are as follows:

1. “That the Office of the Secretary of Agriculture and Forestry shall continue its examination of the economic viability of the farm winery industry in Virginia. In doing so, the Secretary shall (i) assess the profitability of farm wineries, industry trends, current marketing and promotional efforts, capabilities and authority, (ii) consider the findings of previous relevant studies on Virginia farm wineries, (iii) develop recommendations, including legislative, administrative or other recommendations as appropriate for how the state can better foster the economic viability of Virginia farm wineries, and (iv) report such recommendations to the Governor and the General Assembly no later than November 20, 2006.
2. The examination and recommendations shall also address the relationship between farm wineries and the communities in which they operate, including an assessment of local land use regulations as they relate to efforts to market Virginia wines through activities, whether held inside or outside farm winery structures, such as wine tastings, special events such as wine festivals, or other promotional activities held at farm wineries, and the potential for a more efficient and streamlined permitting process for such activities. Finally, the Secretary shall examine agritourism in Virginia as it relates to the on-farm marketing of agricultural products, including the

benefits and negative impacts that such marketing has on farms, surrounding communities and on the Commonwealth as a whole.

3. The following agencies and organizations shall be included in this coordinated effort in a manner that is equally representative of all interested parties: the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Alcoholic Beverage Control, the Virginia Wineries Association, the Virginia Vineyards Association, the Virginia Wine Travel and Tourism Office, the Virginia Hospitality and Travel Association, the Virginia Farm Bureau, the Virginia Agribusiness Council, the Virginia Association of Counties, the Virginia Municipal League, the Virginia Tourism Corporation, and any other agencies or organizations deemed appropriate by the Secretary of Agriculture and Forestry.”

METHODOLOGY AND PROCESS

Overview

As it is evident in the language, HB1435 attempts to deal with a number of complex issues. To focus on the most important tasks in the legislation, the Office of the Secretary launched two major work efforts:

- development of a profitability study for the Virginia wine industry and
- a resumption of efforts to increase the dialog between farm wineries and their localities.

Profitability Study

Although no funds were appropriated to support a profitability study of the wine industry, the Secretary recognized the importance of conducting such a study,

particularly at this time, because the Virginia Wineries Association is now also conducting a study of the economic impact of the wine industry. Given the potential importance of this study to the future growth of the industry, the Office of the Secretary, following state procedures for issuing an RFP and securing a contractor, awarded a contract for the study to MKF Associates of St. Helena, California in September 2006. MKF is to assess profitability of farm wineries, factors critical to profitability, and the current wine marketing and promotional efforts in Virginia. MKF Associates has had considerable experience doing such studies in other states and for the wine industry at a national level.

Because much of the data required for profitability study necessitates face-to-face meetings with Virginia grape growers and winery operators, MKF staff came to Virginia during the week of November 6, 2006 and conducted interviews with approximately 20 wineries and growers at their individual business locations across the state.

As the Secretary has communicated in a separate letter to the President Pro Tem of the Senate and Speaker of the House, because of certain delays in receiving data from the farm wineries, MKF has been delayed in making an initial report. While the intent was to file an initial report with the General Assembly and the Governor before the end of 2006 as required by HB1435, such a timeframe does not appear realistic, and he has requested an extension of the report date to June 30, 2007. (A copy of letter requesting this extension is attached as Appendix C).

Relationship Between Farm Wineries and the Counties

Late in 2005, the Office of the Secretary began to conduct meetings between the counties, farm wineries, and their representative associations, to build a more positive

relationship between these entities. Participants in the 2005 discussions were joined in renewed discussions in 2006 by several new parties as specified in HB1435, and this group was constituted as an Advisory Group to the Secretary on issues raised in HB1435. This group held four meetings in 2006 facilitated by the staff from the Governor's Office. These four meetings were held on October 12, October 31, November 21, and December 11, with the objective of trying to distill major sources of problems between the counties and wineries and to attempt to reach a consensus on a legislative approach to solving the problems.

While the Advisory Group did not reach total consensus on proposed legislative actions, consensus was nearly achieved on the proposed legislation presented in Appendix B to this report. The findings and recommendations detailed below are those observations of the Office of the Secretary after hearing the discussions from the Advisory Group and the general public.

FINDINGS

As a result of these discussions between the counties, wineries, and affected citizens, the Secretary finds the following:

1. conflict between counties and wineries is not yet a statewide problem. At present, such problems appear to be limited to four or five localities.
2. for the most part, such conflict arises from a desire and need for some farm wineries to conduct frequent and sizeable events for the marketing of wine in agricultural districts and the obligation of counties to protect the health, welfare, and safety of those in the community within which the farm winery is located.

3. the conflict between counties and wineries appears to be the result of either inconsistent or overly-restricted interpretation of zoning laws and the right to farm law or activity and events staged by wineries, which are well beyond the normal activities associated with wine tasting and wine marketing.
4. the most intense conflict appears to occur where suburbanization is encroaching on rural areas.

RECOMMENDATIONS

The Office of the Secretary recommends:

1. that the Assembly take no action which might have the unintended consequence of increasing tensions between counties and wineries or causing such tensions where they do not currently exist. Among the actions which might have this unintended consequence is attempting to legislate from the state level the numbers and types of events which may be held at wineries.
2. that the Assembly enact legislation patterned after that shown in Appendix B to replace HB1435.
3. that the Assembly work with localities to create a type of information clearinghouse accessible to farm wineries and localities for guidance and resources to resolve disputes as they arise. Such resources may include mediation services.
4. that the Assembly support further efforts by the Office of the Secretary of Agriculture and Forestry to build positive relationship between counties

and wineries through educational outreach and improved communication.

An emphasis should be put on creating relationships between farm wineries and their neighbors at the earliest possible time in the winery development/growth cycle.

APPENDICES

CHAPTER 794

An Act to amend the Code of Virginia by adding a section numbered [15.2-2288.2](#), relating to local regulation of farm wineries.

[H 1435]

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [15.2-2288.2](#) as follows:

§ [15.2-2288.2](#). Licensed farm wineries; local regulation of certain activities.

A. Localities may not require that a special exception or special use permit be obtained for the processing of wine by licensed farm wineries.

B. No locality may adopt any requirements for special exceptions or special use permits relating to licensed farm wineries that would be more restrictive than its requirements in effect as of January 1, 2006. Further, any special exception or special use permit in effect as of January 1, 2006, shall remain in effect until July 1, 2007, unless such exception or permit is either no longer required by the locality or is amended to be less restrictive.

C. No locality may, as related to farm wineries, adopt any requirements for special exceptions or special use permits or enforce any existing restrictions or conditions that (i) prohibit music or the amplification of music, except as necessary to prevent such music from being audible beyond the farm winery property or property adjacent thereto owned or controlled by the owners of the farm winery, unless consent is obtained from all affected adjacent property owners, (ii) regulate private personal parties held by the owners of the farm winery who reside at the farm winery or on property adjacent thereto owned or controlled by the owners of the farm winery at which event wine is not sold or marketed and for which no consideration is received by the farm winery or its agents, or (iii) are more restrictive as to the construction or expansion of farm winery facilities, as long as such facilities are for farm wine production or processing, as compared to other agricultural facilities in agricultural districts.

2. That the Office of the Secretary of Agriculture and Forestry shall continue its examination of the economic viability of the farm winery industry in Virginia. In doing so, the Secretary shall (i) assess the profitability of farm wineries, industry trends, current marketing and promotional efforts, capabilities and authority, (ii) consider the findings of previous relevant studies on Virginia farm wineries, (iii) develop recommendations, including legislative, administrative or other recommendations as appropriate for how the state can better foster the economic viability of Virginia farm wineries, and (iv) report such recommendations to the Governor and the General Assembly no later than November 20, 2006.

The examination and recommendations shall also address the relationship between farm wineries and the communities in which they operate, including an assessment of local land use regulations as they relate to efforts to market Virginia wines through activities, whether held inside or outside farm winery structures, such as wine tastings, special events such as wine festivals, or other promotional activities held at farm wineries, and the

potential for a more efficient and streamlined permitting process for such activities. Finally, the Secretary shall examine agritourism in Virginia as it relates to the on-farm marketing of agricultural products, including the benefits and negative impacts that such marketing has on farms, surrounding communities and on the Commonwealth as a whole.

The following agencies and organizations shall be included in this coordinated effort in a manner that is equally representative of all interested parties: the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Alcoholic Beverage Control, the Virginia Wineries Association, the Virginia Vineyards Association, the Virginia Wine Travel and Tourism Office, the Virginia Hospitality and Travel Association, the Virginia Farm Bureau, the Virginia Agribusiness Council, the Virginia Association of Counties, the Virginia Municipal League, the Virginia Tourism Corporation, and any other agencies or organizations deemed appropriate by the Secretary of Agriculture and Forestry.

3. That the provisions of subsections B and C of § [15.2-2288.2](#) of this act shall expire on July 1, 2007.

DRAFT OF 11/17/06

New language in italics.

REDRAFT 12/11/06

§ 15.2-2288.2. Licensed farm wineries; local regulation of certain activities.

~~1. That the Code of Virginia is amended by adding a section numbered 15.2-2288.2 as follows:~~

In an effort to preserve the viability of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety and welfare of the citizens, and to permit the reasonable expectation of uses in specific zoning categories, the following provisions are applicable.

~~A. Localities may not require that a special exception or special use permit be obtained for the processing of wine by licensed farm wineries.~~

A. Localities may, but are not required to, regulate activities at licensed farm wineries. Such reasonable local land use regulation may ~~shall~~ only detail the hours of such activities, signage, emergency services requirements, traffic, safety, guest management, management of noise as explained below ~~from being audible beyond the farm winery property or property adjacent thereto owned or controlled by the owners of the farm winery, unless consent is obtained from all affected adjacent property owners and sanitation as applicable.~~

i.) Noise will not be prohibited but may be regulated in a manner that is no more restrictive than for similar activities

B. Localities may not treat private personal gatherings held by the owners of the farm winery who reside at the farm winery or on property adjacent thereto owned or controlled by the owners of the farm winery at which gathering wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently than private personal gatherings by other citizens

C. No locality shall regulate the following activities of licensed farm wineries:

i) the production and harvesting of fruit and other agricultural products and the manufacturing ~~processing~~ of wine;

ii) the on premises sale, tasting and consumption of wine during regular business hours within the normal course of conduct.

iii) the direct sale and shipment of wine by common carrier to consumers

DRAFT OF 11/17/06

New language in italics.

iv) The sale and shipment of wine to ABC, wholesalers and out of state purchasers pursuant to federal or state licensure

v) the storage, warehousing and wholesaling of wine pursuant to federal or state licensure;

vi) the sale of wine related items incidental to the sale of wine

~~vii) private personal gatherings held by the owners of the farm winery who reside at the farm winery or on property adjacent thereto owned or controlled by the owners of the farm winery at which gathering wine is not sold or marketed and for which no consideration is received by the farm winery or its agents *private personal gatherings, or meetings of business or professional organizations of which a licensee is personally a member, and at which wine is not sold or marketed and for which the licensee or its agents receives no consideration or sponsorship, held by a licensee at the farm winery or on property adjacent to it where the licensee resides; and*~~

~~B. No locality may adopt any requirements for special exceptions or special use permits relating to licensed farm wineries that would be more restrictive than its requirements in effect as of January 1, 2006. Further, any special exception or special use permit in effect as of January 1, 2006, shall remain in effect until July 1, 2007, unless such exception or permit is either no longer required by the locality or is amended to be less restrictive.~~

~~C. No locality may, as related to farm wineries, adopt any requirements for special exceptions or special use permits or enforce any existing restrictions or conditions that (i) prohibit music or the amplification of music, except as necessary to prevent such music from being audible beyond the farm winery property or property adjacent thereto owned or controlled by the owners of the farm winery, unless consent is obtained from all affected adjacent property owners, (ii) regulate private personal parties held by the owners of the farm winery who reside at the farm winery or on property adjacent thereto owned or controlled by the owners of the farm winery at which event wine is not sold or marketed and for which no consideration is received by the farm winery or its agents, or (iii) are more restrictive as to the construction or expansion of farm winery facilities, as long as such facilities are for farm wine production or processing, as compared to other agricultural facilities in agricultural districts.~~

~~2. That the Office of the Secretary of Agriculture and Forestry shall continue its examination of the economic viability of the farm winery industry in Virginia. In doing so, the Secretary shall (i) assess the profitability of farm wineries, industry trends, current marketing and promotional efforts, capabilities and authority, (ii) consider the findings of~~

DRAFT OF 11/17/06

New language in italics.

~~previous relevant studies on Virginia farm wineries, (iii) develop recommendations, including legislative, administrative or other recommendations as appropriate for how the state can better foster the economic viability of Virginia farm wineries, and (iv) report such recommendations to the Governor and the General Assembly no later than November 20, 2006.~~

~~The examination and recommendations shall also address the relationship between farm wineries and the communities in which they operate, including an assessment of local land use regulations as they relate to efforts to market Virginia wines through activities, whether held inside or outside farm winery structures, such as wine tastings, special events such as wine festivals, or other promotional activities held at farm wineries, and the potential for a more efficient and streamlined permitting process for such activities. Finally, the Secretary shall examine agritourism in Virginia as it relates to the on-farm marketing of agricultural products, including the benefits and negative impacts that such marketing has on farms, surrounding communities and on the Commonwealth as a whole.~~

~~The following agencies and organizations shall be included in this coordinated effort in a manner that is equally representative of all interested parties: the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Alcoholic Beverage Control, the Virginia Wineries Association, the Virginia Vineyards Association, the Virginia Wine Travel and Tourism Office, the Virginia Hospitality and Travel Association, the Virginia Farm Bureau, the Virginia Agribusiness Council, the Virginia Association of Counties, the Virginia Municipal League, the Virginia Tourism Corporation, and any other agencies or organizations deemed appropriate by the Secretary of Agriculture and Forestry.~~

~~3. That the provisions of subsections B and C of § [15.2-2288.2](#) of this act shall expire on July 1, 2007.~~

December 8, 2006

The Honorable William J. Howell
Speaker, Virginia House of Delegates
General Assembly Building, Room 635
Richmond, VA 23218

The Honorable John H. Chichester
President Pro Tempore, Senate of Virginia
General Assembly Building, Room 626
Richmond, VA 23218

Re: Request to extend deadline for submitting wine industry profitability study required by HB 1435 (2006)

Gentlemen:

As you may recall, the 2006 Session of the General Assembly enacted HB1435, which among other things, requires the Office of the Secretary of Agriculture and Forestry to conduct a rather comprehensive study of the Virginia wine industry including "...the profitability of farm wineries, industry trends, current marketing and promotional efforts, capabilities and authority...." The results of this study were to be submitted to the Governor and General Assembly by November 20, 2006.

Due to the approach we took on the study and to the fact that - while legislation may result from other activities associated with HB1435 - the study itself is unlikely to result in an immediate need for legislation, I am writing to ask that the deadline for submitting this document be extended to June 30, 2007.

Although we received no appropriation to do the study, we made a decision to take a very serious approach to such an effort and contracted MKF Research, LLC of St Helena, California – a nationally renowned company to lead this study. MKF has done similar studies in several states and is also doing one for WineAmerica, the national wine industry organization. Because what is required in HB1435 is essentially a profitability study of the wine industry and because business owners cannot be expected to give confidential business data to a telephone interviewer, MKF sent two of its representatives to Virginia during the week of October 6-10 to conduct in-person interviews of more than twenty businesses – both wineries and wine growers – in all regions of the state.

While we had hoped to have some preliminary observations to report by November 20, MKF is still awaiting data from several major wineries and we are not yet able to do so. Therefore, I am writing to request the submission extension detailed above, and I am convinced that such an extension will result in a much better report – both for us and for the industry. We have apprised Delegate Albo, the patron of HB1435, of this situation.

I will greatly appreciate your favorable consideration of this request. If I can answer further questions on this matter or on our efforts to meet the requirements of HB1435 in general, please let me know.

Sincerely,

Robert S. Bloxom

C: The Honorable Timothy M. Kaine
The Honorable David B. Albo