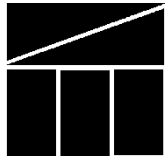


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



## Virginia Department of Planning and Budget Economic Impact Analysis

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### **2 VAC 5-20 Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law**

**Department of Agriculture and Consumer Services**

**Town Hall Action/Stage: 5076 / 8590**

July 11, 2019

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#### **Summary of the Proposed Amendments to Regulation**

The Commissioner of Agriculture and Consumer Services (Commissioner) proposes amendments to this regulation for consistency with changes to the Virginia Land Use Assessment Law (Law), § 58.1-3229 et seq., that occurred through Chapter 504 of the 2018 Acts of Assembly (Chapter 504).

#### **Background**

The regulation includes a preamble that states that the purpose of the regulation is to: 1) Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population; 2) Conserve natural resources in forms that will prevent erosion; 3) Protect adequate and safe water supplies; 4) Preserve scenic natural beauties and open spaces; 5) Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population; and 6) Promote a balanced economy and ease pressures that force the conversion of real estate to more intensive uses.

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<sup>1</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

The Law authorizes localities that have adopted a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of real estate classified in § 58.1-3230. Use value assessment is in contrast to fair market value assessment. Fair market value is essentially the amount one could expect to sell a parcel for if no further restrictions were placed on its use other than those placed on the parcel through the local political process. Use value is the amount that one would expect to sell the land for if it were restricted to a pre-defined use. For instance, agricultural use value is the amount one would expect to receive if the land were to be maintained solely in agricultural use. As the options for land use are restricted, one would typically find that use value is less than fair market value.<sup>2</sup>

In practice, localities often choose to have use value ordinances to discourage the conversion of land from a preferred purpose such as agriculture, to a less preferred purpose, such as an additional housing development. Since keeping real estate in agriculture may result in lower property value assessments with the use value, it may lower the real estate tax bill for the owner.

Section 58.1-3230 establishes four special classifications of real estate for the purposes of the Law, including “real estate devoted to agricultural use” and “real estate devoted to horticultural use.” The definitions of both real estate devoted to agricultural use and real estate devoted to horticultural use in the Law require the Commissioner to prescribe uniform standards in accordance with the Virginia Administrative Process Act (Va. Code § 2.2-4000 et seq.). As directed by this requirement, the Commissioner promulgated this regulation, which first became effective in 1988.

The regulation includes specified activities associated with agriculture or horticulture that must occur on the property for it to qualify as “real estate devoted to agricultural use” or “real estate devoted to horticultural use.” In order for the property to qualify, the owner must certify that the real estate is being used in a planned program of practices that: 1) With respect to real estate devoted to a use that disturbs the soil or that affects water quality, is intended to (in the case of soil) reduce or prevent soil erosion and (in the case of water) improve water quality by best management practices such as terracing, cover cropping, strip cropping, no-till planting,

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<sup>2</sup> Source for “use value” and “fair market value” definitions: Lamie, Dave and Gordon Groover, “A Citizens’ Guide to The Use Value Taxation Program in Virginia,” 2009, Virginia Cooperative Extension Publication 448-037.

sodding waterways, diversions, water impoundments, and other best management practices, to the extent that best management practices exist for that use of the real estate; 2) With respect to real estate devoted to crops grown in the soil, is intended to maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of such crops or as recommended by soil tests; and 3) Is intended to control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

### **Estimated Benefits and Costs**

The Commissioner proposes several amendments to the regulation that mirror changes to the Law from Chapter 504. The changes generally expand the situations where real estate qualifies as “real estate devoted to agricultural use” or “real estate devoted to horticultural use.” To the extent that local commissioners of revenue and landowners are already aware of the changes to the Law, these proposed changes to the regulation should not have a large impact. The changes would be beneficial in that they would reduce the likelihood of confusion as toward the law in effect for readers of the regulation.

The current regulation includes a requirement that for real estate to qualify for designation as “real estate devoted to agricultural use” or “real estate devoted to horticultural use,” it must have been devoted, for at least five consecutive years previously, to specified activities associated with agriculture or horticulture. The current regulation also specifies minimum field crop production and minimum sales over the previous three years. Chapter 504 inserted the following statement into the Law:

If the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services pursuant to § 58.1-3230 require real estate to have been used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural use, then (i) use of other similar property by a lessee of the owner shall be included in calculating such time and (ii) the Commissioner of Agriculture and Consumer Services shall include in the uniform standards a shorter minimum length of time for real estate with no prior qualifying use, provided that the owner submits a written document of the owner's intent regarding use of the real estate containing elements set out in the uniform standards. Localities are not required to maintain such written document.

The Commissioner proposes to eliminate the requirement that the land have been devoted, for at least five consecutive years previously, to specified activities associated with agriculture or

horticulture, and instead have the applicant certify that the real estate currently is devoted to the specified activities. Mirroring the Law, those activities are: 1) Be devoted to the bona fide production for sale of plants or animals that are useful to man; 2) Be devoted to the bona fide production for sale of products that are useful to man and that are made on the real estate from plants or animals produced on the real estate; 3) Be devoted to the bona fide production for sale of fruit of all kinds, including grapes, nuts, and berries; 4) Be devoted to the bona fide production for sale of vegetables; 5) Be devoted to the bona fide production for sale of nursery or floral products; 6) Be devoted to the bona fide production for sale of plants or products directly produced on such real estate from fruits, vegetables, nursery or floral products, or plants produced on such real estate; or 7) Be devoted to and meet the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with an agency of the state or federal government.

This proposed change would very likely increase the number of properties that qualify as “real estate devoted to agricultural use” or “real estate devoted to horticultural use,” since meeting at least one of those activities in the present is substantially easier to achieve than to do so for five consecutive years. The Commissioner also proposes to remove the three-year requirements for minimum field crop production and minimum sales. These proposed amendments also make it easier for properties to qualify, and would likely increase the number of properties that are designated as “real estate devoted to agricultural use” or “real estate devoted to horticultural use.” To the extent that the specified activities are preferable to alternative uses of the land such as building new houses or office buildings, and to the extent that the property owner maintains the best management practices required for qualification, the proposed amendments would be beneficial.

Since more properties would qualify, more real estate would be assessed at the typically lower use value rather than the fair market value. Owners of the qualified properties would often pay lower real estate taxes. Thus, localities that have ordinances for use value assessments for agricultural and/or horticultural real estate may receive lower revenue.

## **Businesses and Other Entities Affected**

All owners of real estate in the Commonwealth that is not exempt from taxation are potentially affected. Owners of real estate located in a participating locality who would consider devoting the land to agriculture or horticulture use are particularly affected.

## **Localities<sup>3</sup> Affected<sup>4</sup>**

Since all local governments may choose to have use value assessments for agricultural and/or horticultural real estate, all are potentially affected by the proposed amendments. As of 2017, the following local governments did have use value assessments for agricultural and/or horticultural real estate:<sup>5</sup>

Cities: Buena Vista, Chesapeake, Danville, Franklin, Fredericksburg, Hampton, Harrisonburg, Lynchburg, Petersburg, Radford, Roanoke, Staunton, Suffolk, Virginia Beach, Waynesboro, and Winchester.

Counties: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Caroline, Carroll, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Henry, Isle of Wight, James City, King George, King William, Lancaster, Loudoun, Louisa, Madison, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russel, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe, and York.

Towns: Altavista, Amherst, Blacksburg, Bridgewater, Chilhowie, Christiansburg, Dayton, Front Royal, Hillsville, Lebanon, Leesburg, Louisa, Lovettsville, Montross, New Market, Pulaski, Remington, Windsor, and Wytheville.

Eliminating the five-year consecutive use requirement and the three-year requirements for minimum field crop production and minimum sales would likely increase the number of

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<sup>3</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>4</sup> § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>5</sup> Source: Kulp, Stephen C. "Virginia Local Tax Rates, 2017: Information for All Cities and Counties and Selected Incorporated Towns," Weldon Cooper Center for Public Service.

properties that qualify for use value assessments. Since use value assessments are typically lower than fair market value assessments, there would likely be reduced revenue for participating localities.

### **Projected Impact on Employment**

The proposals to eliminate the five-year consecutive use requirement and the three-year requirements would likely increase the use of land for agricultural or horticultural purposes versus for other purposes. Consequently, employment in agricultural and horticultural activities may increase, and employment associated with alternative uses of the land may decrease. It is not clear whether there would be a net increase or decrease in total employment.

### **Effects on the Use and Value of Private Property**

The proposals to eliminate the five-year consecutive use requirement and the three-year requirements would likely increase the use of land for agricultural or horticultural purposes. Since the real estate taxes would likely be lower for the affected properties, the cost of developing the land for agricultural or horticultural purposes would likely be lower.

### **Adverse Effect on Small Businesses<sup>6</sup>:**

The proposed amendments do not directly adversely affect small businesses.

### **Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject

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<sup>6</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

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to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.