

Article 61.

Agricultural Development and Preservation of Farmland.

Part 1. General Provisions.

**§ 106-735. Short title, purpose, and administration.**

(a) This Article shall be known as "The Agricultural Development and Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties and cities to undertake a series of programs to encourage the preservation of qualifying farmland, as defined herein, and to foster the growth, development, and sustainability of family farms.

(c) This Article shall be administered and supervised by the Department of Agriculture and Consumer Services. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 9; 2011-251, s. 1.)

**§ 106-736. Agricultural Development/Farmland preservation programs authorized.**

(a) A county or a city may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article.

(b) A county or a city may develop programs to promote the growth, development, and sustainability of farming and assist farmers in developing and implementing plans that achieve these goals. For purposes of this Article, the terms "agriculture", "agricultural", and "farming" have the same meaning as set forth in G.S. 106-581.1. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 10.)

Part 2. Voluntary Agricultural Districts.

**§ 106-737. Qualifying farmland.**

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

- (1) Is engaged in agriculture as that word is defined in G.S. 106-581.1.
- (2) Repealed by Session Laws 2005-390, s. 11 effective September 13, 2005.
- (3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodable land; and
- (4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least 10 years, except for the creation of not more than three lots that meet applicable county and municipal zoning and subdivision regulations. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 11; 2011-219, s. 1.)

**§ 106-737.1. Revocation of conservation agreement.**

By written notice to the county, the landowner may revoke this conservation agreement. Such revocation shall result in loss of qualifying farm status. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, s. 3.)

**§ 106-738. Voluntary agricultural districts.**

(a) An ordinance adopted under this Part shall provide:

- (1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of agricultural land, and forestland or horticultural land that is part of a qualifying farm or the number of

qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance;

- (2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;
- (3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;
- (4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county or city that adopted an ordinance under this Part may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 12.)

#### **§ 106-739. Agricultural advisory board.**

An ordinance adopted under this Part or Part 3 of this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county or city that adopted the ordinance shall deem appropriate. The county or city that adopted the ordinance may confer upon this advisory board authority to:

- (1) Review and make recommendations concerning the establishment and modification of agricultural districts;
- (2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Part or Part 3 of this Article;
- (3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;
- (4) Advise the governing board of the county or city that adopted the ordinance on projects, programs, or issues affecting the agricultural economy or way of life within the county;
- (5) Perform other related tasks or duties assigned by the governing board of the county or city that adopted the ordinance. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 13.)

#### **§ 106-740. Public hearings on condemnation of farmland.**

An ordinance adopted under this Part or Part 3 of this Article may provide that no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district under this Part or an enhanced voluntary agricultural district under Part 3 of this Article until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.

- (1) Following a public hearing held pursuant to this section, the board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.

- (2) The board designated to hold the hearing shall have 30 days after receiving a request under this section to hold the public hearing and submit its findings and recommendations to the agency.
- (3) The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 14.)

**§ 106-741. Record notice of proximity to farmlands.**

(a) Any county that has a computerized land records system may require that such records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district.

(b) In no event shall the county or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by any ordinance adopted under subsection (a).

(c) In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, s. 3.)

**§ 106-742. Waiver of water and sewer assessments.**

(a) A county or a city that has adopted an ordinance under this Part may provide by ordinance that its water and sewer assessments be held in abeyance, with or without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(d) If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201 or G.S. 160A-237. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 15.)

**§ 106-743. Local ordinances.**

A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult with the North Carolina Commissioner of Agriculture or his staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county or city shall submit to the Commissioner at least once a year, a written report including the status, progress and activities of its farmland preservation program under this Part or Part 3 of this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 16.)

Part 3. Enhanced Voluntary Agricultural Districts.

**§ 106-743.1. Enhanced voluntary agricultural districts.**

(a) A county or a municipality may adopt an ordinance establishing an enhanced voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

- (1) For the establishment of an enhanced voluntary agricultural district that initially consists of at least the number of contiguous acres of agricultural land, and forestland and horticultural land that is part of a qualifying farm under G.S. 106-737 or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance.
- (2) For the formation of the enhanced voluntary agricultural district upon the execution of a conservation agreement, as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2 by the landowners of the requisite acreage to sustain agriculture in the enhanced voluntary agricultural district.
- (3) That the form of the agreement under subdivision (2) of this subsection be reviewed and approved by an agricultural advisory board established under G.S. 106-739, or other governing board of the county or city that adopted the ordinance.
- (4) That each enhanced voluntary agricultural district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of establishing an enhanced voluntary agricultural district is to allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the ordinance may take any action it deems appropriate to encourage the formation of these districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

(d) A county or city ordinance adopted pursuant to this Part may be adopted simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738. (2005-390, s. 5.)

#### **§ 106-743.2. Conservation agreements for farmland in enhanced voluntary agricultural districts; limitation.**

A conservation agreement entered into between a county or city and a landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural district. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the conservation agreement. (2005-390, s. 5.)

#### **§ 106-743.3. Enhanced voluntary agricultural districts entitled to all benefits of voluntary agricultural districts.**

The provisions of G.S. 106-739 through G.S. 106-741 and G.S. 106-743 apply to an enhanced voluntary agricultural district under this Part, to an ordinance adopted under this Part, and to any person, entity, or farmland subject to this Part in the same manner as they apply under Part 2 of this Article. (2005-390, s. 5.)

#### **§ 106-743.4. Enhanced voluntary agricultural districts; additional benefits.**

(a) Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) of its gross sales from the sale of

nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under G.S. 153A-340(b). For purposes of G.S. 153A-340(b), the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five percent (25%) of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

Nothing in this section shall affect the county's authority to zone swine farms pursuant to G.S. 153A-340(b)(3).

(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. 106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Article 72 of this Chapter for funds to benefit that farmland.

(c) State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect. (2005-390, s. 5; 2011-145, s. 13.22A(cc).)

#### **§ 106-743.5. Waiver of utility assessments.**

(a) In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county or a city may provide that all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

(d) If an ordinance is adopted by a county or a city under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201 and G.S. 160A-237. (2005-390, s. 5.)

#### **Part 4. Agricultural Conservation Easements.**

#### **§ 106-744. Purchase of agricultural conservation easements; establishment of North Carolina Agricultural Development and Farmland Preservation Trust Fund and Advisory Committee.**

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations;

(1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and

- (2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for any of the following purposes:

- (1) For the purchase of agricultural conservation easements, including transaction costs.
- (2) For the costs of public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.
- (3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.
- (4) For the costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for only the purposes under subsection (c) of this section, including transaction costs, as follows:

- (1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.
- (2) To counties according to the match requirements under subsection (c2) of this section.

(c2) A county that is a development tier two or three county, as these tiers are defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is a development tier one county, as defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

- (e) As used in subsection (c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:
- (1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.
  - (2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.
  - (3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.
  - (4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.
  - (5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.
- (f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.
- (g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:
- (1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.
  - (2) The Secretary of Commerce or the Secretary's designee.
  - (3) The Secretary of Environment and Natural Resources or the Secretary's designee.
  - (4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.
  - (5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
  - (6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
  - (7) The Executive Director of the North Carolina Rural Economic Development Center, Inc., or the Executive Director's designee.
  - (8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.
  - (9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.
  - (10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

- (11) The Executive Director of the Rural Advancement Foundation International – USA or the Executive Director's designee.
- (12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.
- (13) The President of the North Carolina State Grange or the President's designee.
- (14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.
- (16) The President of the North Carolina Forestry Association or the President's designee.
- (17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year. (1991, c. 734, s. 1; 2000-171, ss. 1, 2; 2005-390, ss. 4, 17; 2006-252, s. 2.12; 2007-495, s. 23; 2009-303, ss. 1, 2, 3; 2009-484, s. 12.)

**§§ 106-745 through 106-749. Reserved for future codification purposes.**