

SENATE BILL NO. 537

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government

on _____)

(Patron Prior to Substitute--Senator Marsden)

A BILL to amend the Code of Virginia by adding sections numbered 15.2-961.3 and 15.2-961.4, relating to powers of local government; replacement and conservation of trees during development process.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 9 of Title 15.2 sections numbered 15.2-961.3 and 15.2-961.4 as follows:

§ 15.2-961.3. Replacement of trees during development process in localities.

A. Any locality may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section.

B. The ordinance shall require that the site plan for any subdivision or development include the planting or replacement of trees on the site to the extent that, at 20 years, minimum tree canopies or covers will be provided in areas to be designated in the ordinance, as follows:

1. Ten percent tree canopy for a site zoned business, commercial, or industrial;

2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;

3. Fifteen percent tree canopy for a residential site zoned more than 10 but less than 20 units per acre;

4. Twenty percent tree canopy for a residential site zoned 10 units or less per acre; and

5. The tree canopy percentage for a mixed-use development shall be the percentage applicable to the predominant use of the development. For purposes of this subdivision, "predominant use" means the use within the development that constitutes the largest percentage of gross land area or, in the case of a building or buildings, the largest percentage of the total floor area.

26 However, the City of Williamsburg may require at 10 years the minimum tree canopies or covers
27 set out in this subsection.

28 C. The ordinance shall require that the site plan for any subdivision or development include, at 20
29 years, that a minimum 10 percent tree canopy will be provided on the site of any cemetery as defined in §
30 54.1-2310, notwithstanding any other provision of this section. In no event shall any local tree replacement
31 or planting ordinance adopted pursuant to this section exceed the requirements of this subsection.

32 D. The ordinance shall provide for reasonable provisions for reducing the tree canopy requirements
33 of subsection B or granting tree cover credit in consideration of the preservation of existing tree cover or
34 for preservation of trees of outstanding age, size, or physical characteristics.

35 E. The ordinance shall provide for reasonable exceptions to or deviations from these requirements
36 to allow for the reasonable development of farm land or other areas devoid of healthy or suitable woody
37 materials, for the preservation of wetlands, or otherwise when the strict application of the requirements
38 would result in unnecessary or unreasonable hardship to the developer. In such instances, the ordinance
39 may provide for a tree canopy bank whereby a portion of a development's tree canopy requirement may
40 be met from off-site planting or replacement of trees at the direction of the locality. Any such bank shall
41 be within the locality and located as closely as feasible to where the development project is situated. If
42 there is no bank within the locality of the development project with sufficient credits to meet the project's
43 off-site needs, and with the approval of the locality where the development project is located, the unmet
44 portion of a development's tree canopy requirement may be met through a tree bank located in an
45 underserved community or a tree canopy fund as described in subdivision G 2 of § 15.2-961.4 that directs
46 the planting of trees in an underserved community. Trees planted in a bank or by a fund outside of the
47 locality of the development project shall be planted in an underserved community that is as close as
48 feasible to where the development project is situated. For the purposes of this subsection, "underserved
49 community" means the same as provided in subdivision G 1 of § 15.2-961.4. The following shall be
50 exempt from the requirements of any tree replacement or planting ordinance promulgated under this
51 section: dedicated school sites, playing fields and other nonwooded recreation areas, and other facilities
52 and uses of a similar nature.

53 F. The ordinance may designate tree species that cannot be planted to meet minimum tree canopy
54 requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii)
55 cause damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that
56 cause such trees to structurally fail. All trees to be planted shall meet the specifications of the
57 AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape
58 specifications adopted by the Virginia Nursery and Landscape Association, the Virginia Society of
59 Landscape Designers, or the Virginia Chapter of the American Society of Landscape Architects or, if
60 applicable, the road and bridge specifications of the Virginia Department of Transportation.

61 G. Existing trees which are to be preserved may be included to meet all or part of the canopy
62 requirements, and may include wooded preserves, if the site plan identifies such trees and the trees meet
63 standards of desirability and life-year expectancy which the locality may establish.

64 H. For purposes of this section, "tree canopy" or "tree cover" includes all areas of coverage by
65 plant material exceeding five feet in height, and the extent of planted tree canopy at 10 or 20 years'
66 maturity. Planted canopy at 10 or 20 years' maturity shall be based on published reference texts generally
67 accepted by landscape architects, nurserymen, and arborists in the community or standards adopted by the
68 Virginia State Forester, and the texts shall be specified in the ordinance.

69 I. Penalties for violations of ordinances adopted pursuant to this section shall be the same as those
70 applicable to violations of zoning ordinances of the locality.

71 J. In no event shall any local tree replacement or planting ordinance adopted pursuant to this
72 section exceed the requirements set forth herein, nor shall they prohibit forestry or forestry activity.

73 For the purposes of this subsection:

74 "Forestry" means the professional practice embracing the science, business, and art of creating,
75 conserving, and managing forests and forest land for the sustained use and enjoyment of their resources,
76 materials, or other forest or silvicultural products.

77 "Forestry activity" means any activity associated with the growing, managing, harvesting, and
78 related transportation, reforestation, or protection of trees and timber, provided that such activities comply
79 with existing rules and regulations pertaining to forestry or any other silvicultural activity.

80 K. Nothing in this section shall invalidate any local ordinance adopted by the City of Williamsburg
81 that imposes standards for 10-year-minimum tree cover replacement or planting during the development
82 process.

83 L. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions
84 of § 15.2-961 or 15.2-961.1.

85 **§ 15.2-961.4. Conservation of trees during land development process in localities.**

86 A. For purposes of this section, "tree canopy" or "tree cover" includes all areas of canopy coverage
87 by self-supporting and healthy woody plant material exceeding five feet in height and the extent of planted
88 tree canopy at 20 years' maturity.

89 B. Any locality may adopt an ordinance providing for the conservation of trees during the land
90 development process pursuant to the provisions of this section. In no event shall any local tree
91 conservation ordinance adopted pursuant to this section also impose the tree replacement provisions of §
92 15.2-961, 15.2-961.1, or 15.2-961.3.

93 C. The ordinance shall require that the site plan for any subdivision or development provide for
94 the preservation or replacement of trees on the development site such that the minimum tree canopy or
95 tree cover percentage 20 years after development is projected to be as follows:

96 1. Ten percent tree canopy for a site zoned business, commercial, or industrial;

97 2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;

98 3. Fifteen percent tree canopy for a residential site zoned more than eight but less than 20 units per
99 acre;

100 4. Twenty percent tree canopy for a residential site zoned more than four but not more than eight
101 units per acre;

102 5. Twenty-five percent tree canopy for a residential site zoned more than two but not more than
103 four units per acre;

104 6. Thirty percent tree canopy for a residential site zoned two or fewer units per acre;

105 7. The tree canopy percentage for a mixed-use development shall be the percentage applicable to
106 the predominant use of the development. For purposes of this subdivision, "predominant use" means the

107 use within the development that constitutes the largest percentage of gross land area or, in the case of a
108 building or buildings, the largest percentage of the total floor area; and

109 8. A locality may increase any of the tree canopy percentages applicable to a subdivision or
110 development as established in subdivisions 1 through 6 by an amount not to exceed 10 percent of the
111 percentage authorized in each subdivision of this subsection if as provided in its ordinance (i) the locality
112 grants to such subdivision or development either administrative approval of a mutually agreed-upon
113 reduction of lot size requirements, setback requirements, yard requirements, or parking requirements or
114 administrative approval of a mutually agreed-upon increase in density or (ii) 20 percent or more of the
115 land area of the subdivision or development is within an enhanced tree canopy area. However, if a locality
116 increases the required canopies pursuant to clause (i) or (ii), it shall specify in its ordinance the increased
117 percentages applicable to each of the uses enumerated in subdivisions 1 through 6.

118 In meeting these percentages, (a) the ordinance shall first emphasize the preservation of existing
119 tree canopy where that canopy meets local standards for health and structural condition and where it is
120 feasible to do so within the framework of design standards and densities allowed by the local zoning and
121 other development ordinances and (b) second, where it is not feasible in whole or in part for any of the
122 justifications listed in subsection E to preserve existing canopy in the required percentages listed in this
123 subsection, the ordinance shall provide for the planting of new trees to meet the required percentages.
124 Computation of achievement of the percentage of tree canopy or tree cover percentage required for the
125 applicable use by the ordinance shall be determined by the locality using standards adopted by the Virginia
126 State Forester.

127 For purposes of this subdivision:

128 "Enhanced tree canopy area" means any land area that is (i) a Resource Protection Area (RPA) as
129 defined by local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et
130 seq.), (ii) a wetland that is not determined by the Department of Environmental Quality to be an isolated
131 wetland of minimal ecological value as defined in subsection B of 9VAC25-210-10, (iii) located in a
132 Federal Emergency Management Agency-designated 100-year floodplain, (iv) identified by the Virginia
133 Natural Heritage Program as a rare or state significant natural community, (v) comprised of, at the time

134 of permit application for the subdivision or development, tree canopy that covers an area equal to 3,000
135 square feet or more per quarter acre of the property with an understory of vegetation that is not managed
136 turf, or (vi) found as a result of compliance with any applicable existing state or federal permitting
137 requirements to contain listed federal or state threatened or endangered species.

138 Nothing in this subdivision shall be deemed to alter existing law or regulation governing land
139 disturbance or other construction activity in any enhanced tree canopy area.

140 D. Except as provided in subsection E, the percentage of the site covered by tree canopy at the
141 time of plan submission shall equate to the minimum portion of the requirements identified in subsection
142 C that shall be provided through tree preservation. This portion of the canopy requirements shall be
143 identified as the "tree preservation target" and shall be included in site plan calculations or narratives
144 demonstrating how the overall requirements of subsection C have been met.

145 E. The ordinance shall provide deviations, in whole or in part, from the tree preservation target
146 defined in subsection D under the following conditions:

147 1. Meeting the preservation target would prevent the development of uses and densities otherwise
148 allowed by the locality's zoning or development ordinance.

149 2. The predevelopment condition of vegetation does not meet the locality's standards for health
150 and structural condition or for trees that should be preserved.

151 3. An International Society of Arboriculture certified arborist, ASCA Registered Consulting
152 Arborist, or licensed landscape architect determines and demonstrates in writing to the locality why
153 construction activities that cannot reasonably be avoided could be reasonably expected to impact existing
154 trees to the extent that they would not likely survive in a healthy and structurally sound manner. This
155 includes activities that would cause direct physical damage to the trees, including root systems, or cause
156 environmental changes that could result in or predispose the trees to structural and health problems.

157 4. The development is a redevelopment project and a certified arborist or licensed landscape
158 architect determines and provides in writing to the locality that the planting of trees on site will better
159 achieve the applicable canopy goal.

160 The allowable deviations provided in subdivisions 1 through 4 shall be included verbatim in the
161 ordinance and in any guidance or worksheets provided to applicants on meeting the requirements of the
162 ordinance.

163 If, in the opinion of the developer, the project cannot meet the tree preservation target due to the
164 conditions described in subdivision 1, 2, 3, or 4, the developer may request a deviation from the
165 preservation requirement in subsection D. In the request for deviation for conditions described in
166 subdivision 1, 2, or 3, the developer shall provide a letter to the locality from an International Society of
167 Arboriculture certified arborist, ASCA Registered Consulting Arborist, or licensed landscape architect
168 that provides justification for the deviation, describes how the deviation is the minimum necessary to
169 afford relief, and describes how the requirements of subsection C will be met through tree planting or a
170 tree canopy bank or fund established by the locality. In the request for a deviation for the condition
171 described in subdivision 4, the developer's letter shall describe how the requirements of subsection C will
172 be met through tree planting on site. Proposed deviations shall be reviewed by the locality's employed or
173 retained urban forester, International Society of Arboriculture certified arborist, ASCA Registered
174 Consulting arborist, licensed landscape architect, or in consultation with the locality's land development
175 or licensed professional civil engineering review staff, who may propose an alternative site design based
176 upon adopted land development practices and sound vegetation management practices that take into
177 account the relationship between the cost of conservation and the benefits of the trees to be preserved as
178 described in ANSI A300 (Part 5) -- 2019 Management: Tree, Shrub, and Other Woody Plant Maintenance
179 -- Standard Practices, Management of Trees and Shrubs During Site Planning, Site Development, and
180 Construction, Annex A, A-1.5, Cost Benefits Analysis (or the latest version of this standard). The
181 developer shall consider the alternative and redesign the plan accordingly, or elect to satisfy the unmet
182 portion of the tree preservation target through onsite tree planting or through the off-site planting
183 mechanisms identified in subsection G, so long as the developer provides the locality with an explanation
184 of why the alternative design recommendations were rejected. Letters of explanation from the developer
185 for any request to deviate from the alternative site design proposed by the locality shall be prepared and
186 certified by a licensed professional engineer as defined in § 54.1-400, International Society of

187 Arboriculture certified arborist, ASCA Registered Consulting Arborist, licensed landscape architect, or
188 other authorized licensed professional. If arboricultural issues are part of the explanation, then the letter
189 shall be signed by a licensed landscape architect. If arboricultural issues are the sole subject of the letter
190 of requesting a deviation from a locality-proposed alternative site design, then certification by a licensed
191 professional engineer shall not be required.

192 F. The ordinance shall provide for deviations of the overall canopy requirements set forth in
193 subsection C (i) to allow for the preservation of wetlands, (ii) to allow for the development of farmland or
194 other areas previously devoid of healthy or suitable tree canopy, or (iii) where the strict application of the
195 requirements would result in unreasonable hardship to the developer. Nothing in this subsection shall
196 prevent a locality from adopting the discretionary increase in canopy requirements authorized in
197 subdivision C 8. Nothing in this subsection shall prohibit forestry or forestry activity.

198 For the purposes of this subsection:

199 "Forestry" means the professional practice embracing the science, business, and art of creating,
200 conserving, and managing forests and forest land for the sustained use and enjoyment of their resources,
201 materials, or other forest or silvicultural products.

202 "Forestry activity" means any activity associated with the growing, managing, harvesting, and
203 related transportation, reforestation, or protection of trees and timber, provided that such activities comply
204 with existing rules and regulations pertaining to forestry or any other silvicultural activity.

205 G. The ordinance shall provide for the establishment or use of a tree canopy bank or fund whereby
206 any portion of the tree canopy requirement that cannot be met on site may be met through off-site tree
207 preservation or tree planting efforts. Such provisions may be offered where it can be demonstrated that
208 application of the tree canopy requirements of subsection C would cause irresolvable conflicts with other
209 local site development requirements or standards, where sites or portions of sites lack sufficient space for
210 future tree growth, where planting spaces will not provide adequate space for healthy root development,
211 where trees will cause unavoidable conflicts with underground or overhead utilities, or where it can be
212 demonstrated that trees are likely to cause damage to public infrastructure. The ordinance may utilize any
213 of the following off-site canopy establishment mechanisms:

214 1. A tree canopy bank may be established by a locality, a for-profit entity, or an Internal Revenue
215 Service-qualified § 501(c)(3) nonprofit organization that is qualified in tree planting and maintenance in
216 order for the locality to facilitate off-site tree preservation, tree planting, stream bank, and riparian
217 restoration projects. Banking efforts shall provide tree canopy that is preserved in perpetuity through
218 conservation easements, deed restrictions, or similar protective mechanisms acceptable to the locality.
219 Development projects that use off-site banking shall meet the same ordinance standards established for
220 onsite tree canopy; however, the locality may also require the submission of five-year management plans
221 and funds to ensure the execution of maintenance and management obligations identified in those plans.
222 Any such bank shall be within the locality and located as closely as feasible to where the development
223 project is situated. If there is no bank within the locality of the development project with sufficient credits
224 to meet the project's off-site needs, and with the approval of the locality where the development project is
225 located, the unmet portion of a development's tree canopy requirement may be met through a tree bank
226 located in an underserved community, or a tree canopy fund as described in subdivision 2 that directs the
227 planting of trees in an underserved community. Trees planted in a bank or by a fund outside of the locality
228 of the development project shall be planted in an underserved community that is as close as feasible to
229 where the development project is situated.

230 For purposes of this subsection, "underserved community" means (i) an area that was redlined or
231 graded "D" by the federal Home Owners' Loan Corporation, (ii) an area that is subject to an urban heat
232 island effect as determined by the locality where the bank is located or into which a fund directs the
233 planting of trees, or (iii) an area composed of low-income census blocks as defined by U.S. Department
234 of Housing and Urban Development Section 8 income limits.

235 2. A tree canopy fund may be established to act as a fiscal mechanism to collect, manage, and
236 disburse fees collected from developers that cannot provide full canopy requirements onsite. The locality
237 may use this fund directly to plant and then maintain trees on public property, or the locality may elect to
238 disburse this fund, for tree planting programs that benefit the community at large, to community-based
239 organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code that are focused on
240 tree planting or community beautification or on advancing environmental goals, such as pollution

241 reduction, stormwater management, flood mitigation, urban heat reduction, and similar goals. For the
242 purposes of establishing consistent and predictable fees, the ordinance shall establish cost units that are
243 based on average costs to establish 20-year canopy areas using two-inch caliper nursery stock trees. Any
244 funds collected by localities for these purposes shall be spent within a five-year period established by the
245 collection date by the locality or disbursed to a community-based organization for tree planting and
246 subsequent maintenance provided for in this subsection, or the locality shall return such funds to the
247 original contributor or legal successor.

248 H. The following uses shall be exempt from the requirements of any ordinance promulgated under
249 this section: bona fide silvicultural activity as defined by § 10.1-1181.1 and the areas of sites included in
250 lakes, ponds, and the normal water elevation area of stormwater retention facilities. The ordinance shall
251 modify the canopy requirements of dedicated school sites, playing fields, and other nonwooded active
252 recreation areas by allowing these and other facilities and uses of a similar nature to provide 10 percent
253 tree canopy 20 years after development. The ordinance shall require that the site plan for any subdivision
254 or development include, at 20 years, that a minimum 10 percent tree canopy will be provided on the site
255 of any cemetery as defined in § 54.1-2310, notwithstanding any other provision of this section.

256 I. 1. In recognition of the added benefits of tree preservation, the ordinance shall provide for an
257 additional tree canopy credit of up to one and one-quarter times the canopy area at the time of plan
258 submission for individual trees or the coalesced canopy of forested areas preserved from the
259 predevelopment tree canopy.

260 2. The following additional credits may be provided in the ordinance in connection with tree
261 preservation:

262 a. The ordinance may provide canopy credits of up to one and one-half times the actual canopy
263 area for the preservation of forest communities that achieve environmental, ecological, and wildlife
264 conservation objectives set by the locality.

265 b. The ordinance may provide canopy credits of up to three times the actual canopy area of trees
266 that are officially designated for preservation in conjunction with local tree conservation ordinances based
267 on the authority granted by § 10.1-1127.1.

268 J. The following additional credits shall be provided in the ordinance in connection with tree
269 planting of one and one-half the area normally projected for:

270 1. Trees planted to absorb or intercept air pollutants, tree species that produce lower levels of
271 reactive volatile organic compounds, or trees that act to reduce air pollution or greenhouse gas emissions
272 by conserving the energy used to cool and heat buildings.

273 2. Trees planted for water quality-related reforestation or afforestation projects, and for trees
274 planted in approved low-impact development and bioretention water quality facilities.

275 3. Native tree species planted to provide food, nesting, habitat, and migration opportunities for
276 wildlife. These canopy credits may also apply to cultivars of native species if the locality determines that
277 such a cultivar is capable of providing the same type and extent of wildlife benefit as the species it is
278 derived from.

279 4. Native tree species that are propagated from seed or tissue collected within the mid-Atlantic
280 region.

281 5. The use of cultivars or varieties that develop desirable growth and structural patterns, resist
282 decay organisms and the development of cavities, show high levels of resistance to disease or insect
283 infestations, or exhibit high survival rates in harsh urban environments.

284 6. Trees planted as a best management practice (BMP) approved pursuant to the Stormwater
285 Management Act (§ 62.1-44.15:24 et seq.) and Erosion and Sediment Control Law (§ 62.1-44.15:51 et
286 seq.).

287 If the developer and the locality agree upon a canopy for the subdivision or development that
288 exceeds the canopy percentage required by subsection C by more than 10 percent, the ordinance may
289 provide that 50 percent of the amount by which the canopy exceeds the required canopy may be used by
290 the applicant as credits toward meeting a canopy requirement on another project within the locality. Such
291 credits may only be earned if the project receiving the credits is identified in the canopy plan for the project
292 generating the credits or is identified in writing to the locality by the applicant within one year of issuance
293 of the building permit for the project.

294 K. Tree preservation areas and individual trees may not receive more than one application of
295 additional canopy credits provided in subsection I. Individual trees planted to meet these requirements
296 may not receive more than two categories of additional canopy credits provided in subsection J. Canopy
297 credits will only be given to trees with trunks that are fully located on the development site, or in the case
298 of tree banking projects only to trees with trunks located fully within easements or other areas protected
299 by deed restrictions listed in subsection G.

300 L. All trees planted for tree cover credits shall meet the specifications of the AmericanHort and
301 shall be planted in accordance with the publication entitled "Tree and Shrub Planting Guidelines,"
302 published by the Virginia Cooperative Extension.

303 M. In order to provide higher levels of biodiversity and to minimize the spread of pests and
304 diseases, or to limit the use of species that cause negative impacts to native plant communities, cause
305 damage to nearby structures, or possess inherent physiological traits that prone trees to structural failure,
306 the ordinance may designate species that cannot be used to meet tree canopy requirements or designate
307 species that will only receive partial 20-year tree canopy credits.

308 N. The locality may allow the use of tree seedlings for meeting tree canopy requirements. In these
309 cases, the ordinance shall allow the ground surface area of seedling planting areas to equate to a 20-year
310 canopy credit area. The locality may set standards for seedling mortality rates and replacement procedures
311 if unacceptable rates of mortality occur. The locality may elect to allow native woody shrubs or native
312 woody seed mix to substitute for tree species as long as these treatments do not exceed 33 percent of the
313 overall seedling planting area. The number of a single species may not exceed 10 percent of the overall
314 number of trees or shrubs planted to meet the provisions of this subsection.

315 O. The following process shall be used to demonstrate achievement of the required percentage of
316 tree canopy listed in subsection C:

317 1. The site plan shall graphically delineate the edges of predevelopment tree canopy, the proposed
318 limits of disturbance on grading or erosion and sedimentation control plans, and the location of tree
319 protective fencing or other tree protective devices allowed in the Virginia Erosion and Sediment Control
320 Handbook or any successor publication issued by the Department of Environmental Quality.

321 2. Site plans proposing modification to tree canopy requirements or claiming supplemental tree
322 canopy credits will require a text narrative.

323 3. The site plan shall include the 20-year tree canopy calculations on a worksheet provided by the
324 locality that adheres to standards established by the Virginia State Forester for computation of
325 achievement of tree canopy percentages.

326 4. Site plans requiring tree planting shall provide a planting schedule that provides botanical and
327 common names of trees, the number of trees being planted, the total of tree canopy area given to each
328 species, variety or cultivars planted, total of tree canopy area that will be provided by all trees, planting
329 sizes, and associated planting specifications. The site plan will also provide a landscape plan that
330 delineates where the trees shall be planted.

331 P. The ordinance shall provide a list of commercially available tree species, varieties, and cultivars
332 that are capable of thriving in the locality's climate and ranges of planting environments. The ordinance
333 will also provide a 20-year tree canopy area credit for each tree. The amount of tree canopy area credited
334 to individual tree species, varieties, and cultivars 20 years after they are planted shall be based on
335 references published or endorsed by Virginia academic institutions such as the Virginia Polytechnic
336 Institute and State University and accepted by urban foresters, arborists, landscape architects, and
337 horticulturalists as being accurate for the growing conditions and climate of the locality.

338 Q. In the event that existing tree canopy proposed to be preserved for tree canopy credits dies or
339 must be removed because it represents a hazard, the locality may require the developer to remove the tree,
340 or a portion of the tree and to replace the missing canopy area by the planting of nursery stock trees, or if
341 a viable alternative, by tree seedlings. Existing trees that have been granted credits will be replaced with
342 canopy area determined using the same supplemental credit multipliers as originally granted for that
343 canopy area.

344 R. Penalties for violation of ordinances adopted pursuant to this section shall be the same as those
345 applicable to violations of zoning ordinances of the locality.

346 S. Except as provided in subsection C, no local tree conservation ordinance adopted pursuant to
347 this section shall exceed the requirements set forth herein.

348 T. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions
349 of § 15.2-961 or 15.2-961.1.

350 **2. That the Virginia State Forester, after receiving the recommendations of the Stakeholder**
351 **Advisory Group provided for in this enactment and considering applicable ANSI standards and**
352 **any other standards the State Forester deems appropriate, shall adopt standards to be used by**
353 **localities in determining achievement of tree canopy percentages. The State Forester shall convene**
354 **a stakeholder advisory group within 60 days of the effective date of this act to obtain**
355 **recommendations on the standards required to be adopted by this act. The stakeholder advisory**
356 **group shall be composed of members selected by the State Forester and shall include at least one**
357 **representative of each of the six sectors represented on the Collaborative Decision-Making Group**
358 **that served during completion of the report required by Chapters 89 and 90 of the Acts of Assembly**
359 **of 2021, Special Session I, as well as certified arborists, licensed landscape architects, and urban**
360 **foresters employed by both the public and private sectors. However, the stakeholder advisory group**
361 **is only required to be consulted for the initial adoption of the standards. Such standards adopted**
362 **pursuant to this enactment shall be the standards used by the State Forester pursuant to subsection**
363 **H of § 15.2-961.3 of the Code of Virginia, as created by this act, and subsections C and O of § 15.2-**
364 **961.4 of the Code of Virginia, as created by this act.**

365 **3. That the adoption and publication of the standards required under the second enactment of this**
366 **act shall initially be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et**
367 **seq. of the Code of Virginia) and shall be completed by July 1, 2023. After receiving the input of the**
368 **stakeholder advisory group, the State Forester shall provide at least 90 days for public comment**
369 **before adopting the final standards required under the second enactment of this act. The**
370 **stakeholder advisory group established pursuant to the second enactment of this act shall not be a**
371 **public body as defined in § 2.2-3701 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.**
372 **of the Code of Virginia), but its meetings shall be open to the public with notice provided by the**
373 **Department of Forestry as provided in subsection C of § 2.2-3707 of the Code of Virginia.**

374 4. That the provisions of § 15.2-961.3 of the Code of Virginia, as created by this act, and the second
375 and third enactments of this act shall become effective on July 1, 2022, and the provisions of § 15.2-
376 961.4 of the Code of Virginia, as created by this act, shall become effective on January 1, 2023.

377 #