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SENATE BILL NO. 537

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 8, 2022)

(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.

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

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

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

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

F. The ordinance may designate tree species that cannot be planted to meet minimum tree canopy requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii) cause damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that cause such trees to structurally fail. All trees to be planted shall meet the specifications of the AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape specifications adopted by the Virginia Nursery and Landscape Association, the Virginia Society of

60 *Landscape Designers, or the Virginia Chapter of the American Society of Landscape Architects or, if*
61 *applicable, the road and bridge specifications of the Virginia Department of Transportation.*

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

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

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

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

74 *For the purposes of this subsection:*

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

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

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

84 *L. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of*
85 *§ 15.2-961 or 15.2-961.1.*

86 ***§ 15.2-961.4. Conservation of trees during land development process in localities.***

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

90 *B. Any locality may adopt an ordinance providing for the conservation of trees during the land*
91 *development process pursuant to the provisions of this section. In no event shall any local tree*
92 *conservation ordinance adopted pursuant to this section also impose the tree replacement provisions of*
93 *§ 15.2-961, 15.2-961.1, or 15.2-961.3.*

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

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

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

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

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

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

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

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

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

120 *In meeting these percentages, (a) the ordinance shall first emphasize the preservation of existing tree*
121 *canopy where that canopy meets local standards for health and structural condition and where it is*

feasible to do so within the framework of design standards and densities allowed by the local zoning and other development ordinances and (b) second, where it is not feasible in whole or in part for any of the justifications listed in subsection E to preserve existing canopy in the required percentages listed in this subsection, the ordinance shall provide for the planting of new trees to meet the required percentages. Computation of achievement of the percentage of tree canopy or tree cover percentage required for the applicable use by the ordinance shall be determined by the locality using standards adopted by the Virginia State Forester.

For purposes of this subdivision:

"Enhanced tree canopy area" means any land area that is (i) a Resource Protection Area (RPA) as defined by local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), (ii) a wetland that is not determined by the Department of Environmental Quality to be an isolated wetland of minimal ecological value as defined in subsection B of 9VAC25-210-10, (iii) located in a Federal Emergency Management Agency-designated 100-year floodplain, (iv) identified by the Virginia Natural Heritage Program as a rare or state significant natural community, (v) comprised of, at the time of permit application for the subdivision or development, tree canopy that covers an area equal to 3,000 square feet or more per quarter acre of the property with an understory of vegetation that is not managed turf, or (vi) found as a result of compliance with any applicable existing state or federal permitting requirements to contain listed federal or state threatened or endangered species.

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

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

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

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

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

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

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

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

If, in the opinion of the developer, the project cannot meet the tree preservation target due to the conditions described in subdivision 1, 2, 3, or 4, the developer may request a deviation from the preservation requirement in subsection D. In the request for deviation for conditions described in subdivision 1, 2, or 3, the developer shall provide a letter to the locality from an International Society of Arboriculture certified arborist, ASCA Registered Consulting Arborist, or licensed landscape architect that provides justification for the deviation, describes how the deviation is the minimum necessary to afford relief, and describes how the requirements of subsection C will be met through tree planting or a tree canopy bank or fund established by the locality. In the request for a deviation for the condition described in subdivision 4, the developer's letter shall describe how the requirements of subsection C will be met through tree planting on site. Proposed deviations shall be reviewed by the locality's employed or retained urban forester, International Society of Arboriculture certified arborist, ASCA Registered Consulting arborist, licensed landscape architect, or in consultation with the locality's land development or licensed professional civil engineering review staff, who may propose an alternative site design based upon adopted land development practices and sound vegetation management practices that take into account the relationship between the cost of conservation and the benefits of the trees to be preserved as described in ANSI A300 (Part 5) — 2019 Management: Tree, Shrub, and Other Woody Plant Maintenance — Standard Practices, Management of Trees and Shrubs During Site Planning, Site Development, and Construction, Annex A, A-1.5, Cost Benefits Analysis (or the latest version of this

183 standard). The developer shall consider the alternative and redesign the plan accordingly, or elect to
184 satisfy the unmet portion of the tree preservation target through onsite tree planting or through the
185 off-site planting mechanisms identified in subsection G, so long as the developer provides the locality
186 with an explanation of why the alternative design recommendations were rejected. Letters of explanation
187 from the developer for any request to deviate from the alternative site design proposed by the locality
188 shall be prepared and certified by a licensed professional engineer as defined in § 54.1-400,
189 International Society of Arboriculture certified arborist, ASCA Registered Consulting Arborist, licensed
190 landscape architect, or other authorized licensed professional. If arboricultural issues are part of the
191 explanation, then the letter shall be signed by a licensed landscape architect. If arboricultural issues are
192 the sole subject of the letter of requesting a deviation from a locality-proposed alternative site design,
193 then certification by a licensed professional engineer shall not be required.

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

200 For the purposes of this subsection:

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

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

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

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

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

237 2. A tree canopy fund may be established to act as a fiscal mechanism to collect, manage, and
238 disburse fees collected from developers that cannot provide full canopy requirements onsite. The locality
239 may use this fund directly to plant and then maintain trees on public property, or the locality may elect
240 to disburse this fund, for tree planting programs that benefit the community at large, to
241 community-based organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code
242 that are focused on tree planting or community beautification or on advancing environmental goals,
243 such as pollution reduction, stormwater management, flood mitigation, urban heat reduction, and similar
244 goals. For the purposes of establishing consistent and predictable fees, the ordinance shall establish cost

units that are based on average costs to establish 20-year canopy areas using two-inch caliper nursery stock trees. Any funds collected by localities for these purposes shall be spent within a five-year period established by the collection date by the locality or disbursed to a community-based organization for tree planting and subsequent maintenance provided for in this subsection, or the locality shall return such funds to the original contributor or legal successor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324 *2. Site plans proposing modification to tree canopy requirements or claiming supplemental tree*
325 *canopy credits will require a text narrative.*

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

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

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

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

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

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

351 *T. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of*
352 *§ 15.2-961 or 15.2-961.1.*

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

368 3. That the adoption and publication of the standards required under the second enactment of this
369 act shall initially be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et
370 seq. of the Code of Virginia) and shall be completed by July 1, 2023. After receiving the input of
371 the stakeholder advisory group, the State Forester shall provide at least 90 days for public
372 comment before adopting the final standards required under the second enactment of this act. The
373 stakeholder advisory group established pursuant to the second enactment of this act shall not be a
374 public body as defined in § 2.2-3701 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.
375 of the Code of Virginia), but its meetings shall be open to the public with notice provided by the
376 Department of Forestry as provided in subsection C of § 2.2-3707 of the Code of Virginia.
377 4. That the provisions of § 15.2-961.3 of the Code of Virginia, as created by this act, and the
378 second and third enactments of this act shall become effective on July 1, 2022, and the provisions
379 of § 15.2-961.4 of the Code of Virginia, as created by this act, shall become effective on January 1,
380 2023.