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SENATE BILL NO. 537

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 15.2-961 and 15.2-961.1 of the Code of Virginia, relating to powers of local government; replacement and conservation of trees during development process.

Patron—Marsden

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-961 and 15.2-961.1 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-961. Replacement of trees during development process in certain localities.

A. Any locality with a population density of at least 75 persons per square mile or any locality within the Chesapeake Bay watershed may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section. Population density shall be based upon the latest population estimates of the Cooper Center for Public Service of the University of Virginia.

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; and

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

5. For a mixed-use development, in accordance with subdivisions 1 through 4, the percentage applicable to the predominant use of the development or the average of the percentages applicable to each use of the development, as provided in the ordinance adopted pursuant to this section.

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

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 § 15.2-961.1 that directs the planting of trees in an underserved community. For the purposes of this subsection, "underserved community" means the same as provided in subdivision G 1 of § 15.2-961.1. 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

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59 AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape
60 specifications jointly adopted by the Virginia Nursery and Landscape Association, the Virginia Society
61 of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects,
62 Urban Tree Foundation or, if applicable, the road and bridge specifications of the Virginia Department
63 of Transportation.

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

67 H. For purposes of this section:

68 "Tree canopy" or "tree cover" includes all areas of coverage by plant material exceeding five feet in
69 height, and the extent of planted tree canopy at 10 or 20 years maturity. Planted canopy at 10 or 20
70 years maturity shall be based on published reference texts generally accepted by landscape architects,
71 nurserymen, and arborists in the community or the standards adopted by the Virginia State Forester
72 pursuant to subsection R of § 15.2-961.1, and the texts shall be specified in the ordinance.

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

75 J. In no event shall any local tree replacement or planting ordinance adopted pursuant to this section
76 exceed the requirements set forth herein.

77 K. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of
78 this section prior to July 1, 1990, which imposes standards for tree replacement or planting during the
79 development process.

80 L. 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 M. Nothing in this section shall invalidate any local ordinance adopted pursuant to the provisions of
84 this section after July 1, 1990, which imposes standards for 20-year-minimum tree cover replacement or
85 planting during the development process.

86 **§ 15.2-961.1. 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 within Planning District 8 that meets the population density criteria of subsection A
91 of § 15.2-961 and is classified as an eight-hour nonattainment area for ozone under the federal Clean
92 Air Act and Amendments of 1990, in effect as of July 1, 2008, may adopt an ordinance providing for
93 the conservation of trees during the land development process pursuant to the provisions of this section.
94 In no event shall any local tree conservation ordinance adopted pursuant to this section also impose the
95 tree replacement provisions of § 15.2-961 or the provisions of this section.

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

- 99 1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
- 100 2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;
- 101 3. Fifteen percent tree canopy for a residential site zoned more than eight but less than 20 units per
102 acre;
- 103 4. Twenty percent tree canopy for a residential site zoned more than four but not more than eight
104 units per acre;
- 105 5. Twenty-five percent tree canopy for a residential site zoned more than two but not more than four
106 units per acre; and
- 107 6. Thirty percent tree canopy for a residential site zoned two or fewer units per acre; and
- 108 7. For a mixed-use development, in accordance with subdivisions 1 through 6, the percentage for the
109 predominant use of the development or the average of the percentages applicable in the ordinance to
110 each use of the development, as provided in the ordinance adopted pursuant to this section.

111 A locality may increase any of the tree canopy percentages applicable to a subdivision or
112 development as established in subdivisions 1 through 6 by an amount not to exceed 10 percent of the
113 percentage authorized in each subdivision of this section if as provided in its ordinance (i) the locality
114 grants to such subdivision or development either administrative approval of a mutually agreed-upon
115 reduction of lot requirements, setback requirements, yard requirements, or parking requirements or
116 administrative approval of a mutually agreed-upon increase in density or (ii) 20 percent or more of the
117 land area of the subdivision or development is within a sensitive land area. However, if a locality
118 increases the required canopies pursuant to clause (i) or (2), it shall specify in its ordinance the
119 increased percentages applicable to each of the uses enumerated in subdivisions 1 through 6.

120 In meeting these percentages, (a) the ordinance shall first emphasize the preservation of existing

tree 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 (ii) (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 above, 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 the standards adopted by the Virginia State Forester pursuant to subsection R.*

For purposes of this subsection, "sensitive land 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 by 9VAC25-210-10.B, (iii) within 100 feet of an RPA, (iv) within 100 feet of an intermittent stream, (v) located in a Federal Emergency Management Agency designated 100-year floodplain, (vi) identified by the Virginia Natural Heritage Program as a rare or state significant natural community, (vii) forested, or (viii) listed as containing federal or state threatened or endangered species. Nothing in this subsection shall be deemed to authorize land disturbance or other construction activity in any sensitive land 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. ~~Construction~~ *A certified 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 onsite 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, ~~or 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 a certified 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 onsite.* Proposed deviations shall be reviewed by the locality's *employed or retained urban forester, certified arborist, or equivalent licensed landscape architect* in consultation with the locality's land development or licensed professional civil engineering review staff. ~~The locality 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) — 2005 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 standard).* The developer shall consider the alternative and redesign the plan accordingly, or elect to satisfy the unmet portion of the ~~tree preservation threshold target~~ *through on-site onsite tree planting or through the off-site planting mechanisms identified in subsection G, so long as the developer provides the locality*

182 with an explanation of why the alternative design recommendations were rejected. Letters of explanation
183 from the developer *for any request to deviate from the alternative site design proposed by the locality*
184 shall be prepared and certified by a licensed professional engineer as defined in § 54.1-400. If
185 arboricultural issues are part of explanation then the letter shall be signed by a Certified Arborist who
186 has taken and passed the certification examination sponsored by the International Society of
187 Arboriculture and who maintains a valid certification status or by a Registered Consulting Arborist as
188 designated by the American Society of Consulting Arborists or licensed landscape architect. If
189 arboricultural issues are the sole subject of the letter of explanation requesting a deviation from a
190 locality-proposed alternative site design, then certification by a licensed professional engineer shall not
191 be required.

192 F. The ordinance shall provide for deviations of the overall canopy requirements set forth in
193 subsection C to allow for the (i) preservation of wetlands, (ii) the development of farm land or other
194 areas previously devoid of healthy ~~and/or~~ or suitable tree canopy, or (iii) where the strict application of
195 the requirements would result in unnecessary or unreasonable hardship to the developer. *Nothing in this*
196 *subsection shall prevent a locality from adopting the discretionary increase in canopy requirements of*
197 *not more than 10 percent authorized in subsection C.*

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

208 1. A tree canopy bank may be established *by a locality or an Internal Revenue Service-qualified §*
209 *501(c)(3) nonprofit organization* in order for the locality to facilitate off-site tree preservation, tree
210 planting, stream bank, and riparian restoration projects. Banking efforts shall provide tree canopy that is
211 preserved in perpetuity through conservation easements, deed restrictions, or similar protective
212 mechanisms acceptable to the locality. ~~Projects used in Development projects that use~~ off-site banking
213 ~~will~~ shall meet the same ordinance standards established for ~~on-site onsite~~ tree canopy; however, the
214 locality may also require the submission of five-year management plans and funds to ensure the
215 execution of maintenance and management obligations identified in those plans. Any such bank shall
216 ~~occur within the same nonattainment area in which the locality approving the tree banking is situated be~~
217 *within the locality and located as closely as feasible to where the development project is situated. If*
218 *there is no bank within the locality of the development project with sufficient credits to meet the*
219 *project's off-site needs, and with the approval of the locality where the development project is located,*
220 *the unmet portion of a development's tree canopy requirement may be met through a tree bank located*
221 *in an underserved community, or a tree canopy fund as described in subdivision G 2 that directs the*
222 *planting of trees in an underserved community.*

223 *For the purposes of this subsection, "underserved community" means (i) an area that prior to the*
224 *passage of the federal Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) was redlined or graded "D"*
225 *by the federal Home Owners' Loan Corporation or (ii) an area that is subject to an urban heat island*
226 *effect as determined by the locality where the bank is located or into which a fund directs the planting*
227 *of trees.*

228 2. A tree canopy fund may be established to act as a fiscal mechanism to collect, manage, and
229 disburse fees collected from developers that cannot provide full canopy requirements ~~on-site onsite~~. The
230 locality may use this fund directly to plant trees on public property, or the locality may elect to disburse
231 this fund, *for tree planting programs that benefit the community at large*, to community-based
232 organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code ~~with that are~~
233 *focused on tree planting or community beautification missions for tree planting programs that benefit the*
234 *community at large or on advancing environmental goals, such as pollution reduction, stormwater*
235 *management, flood mitigation, urban heat reduction, and similar goals.* For the purposes of establishing
236 consistent and predictable fees, the ordinance shall establish cost units that are based on average costs to
237 establish 20-year canopy areas using two-inch caliper nursery stock trees. Any funds collected by
238 localities for these purposes shall be spent within a five-year period established by the collection date by
239 *the locality or disbursed to a community-based organization provided for in this subsection*, or the
240 locality shall return such funds to the original contributor, or legal successor.

241 H. The following uses shall be exempt from the requirements of any ordinance promulgated under
242 this section: bona fide silvicultural activity as defined by § 10.1-1181.1 and the areas of sites included in
243 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.*

I. 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. ~~The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits. Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).~~

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. ~~The ordinance shall provide canopy credits of one and one-half the area normally projected for trees~~ 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. ~~The ordinance shall provide canopy credits of one and one-quarter the area normally projected for trees~~ Trees planted for water quality-related reforestation or afforestation projects, and for trees planted in *approved* low-impact development and bioretention water quality facilities. ~~The low-impact development practices and designs shall conform to local standards in order for these supplemental credits to apply.~~

3. ~~The ordinance shall provide canopy credits of one and one-half the area normally projected for native~~ 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. ~~The ordinance shall provide canopy credits of one and one-half the area normally projected for use of native~~ Native tree species that are propagated from seed or tissue collected within the mid-Atlantic region.

5. ~~The ordinance shall provide canopy credits of one and one-quarter the area normally projected for the~~ 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.

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 ~~American Association~~

of ~~Nurserymen~~ *Urban Tree Foundation* and shall be planted in accordance with the publication entitled "Tree and Shrub Planting Guidelines," published by the Virginia Cooperative Extension.

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

N. The locality may allow the use of tree seedlings for meeting tree canopy requirements ~~in large open spaces, low-density residential settings, or in low-impact development reforestation/afforestation projects~~. In these cases, the ordinance shall allow the ground surface area of seedling planting areas to equate to a 20-year canopy credit area. ~~Tree seedling plantings will be comprised of native species and will be planted in densities that equate to 400 seedlings per acre, or in densities specified by low-impact development designs approved by the locality.~~ The locality may set standards for seedling mortality rates and replacement procedures if unacceptable rates of mortality occur. The locality may elect to allow native woody shrubs or native woody seed mix to substitute for tree species as long as these treatments do not exceed 33 percent of the overall seedling planting area. The number of a single species may not exceed 10 percent of the overall number of trees or shrubs planted to meet the provisions of this subsection.

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

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

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

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

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

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

Q. ~~The ordinance shall establish standards of health and structural condition of existing trees and associated plant communities to be preserved. The ordinance may also identify standards for removal of trees or portions of trees that are dead, dying, or hazardous due to construction impacts. Such removal standards may allow for the retention of trunk snags where the locality determines that these may provide habitat or other wildlife benefits and do not represent a hazardous condition. In the event that existing tree canopy proposed to be preserved for tree canopy credits dies or must be removed because it represents a hazard, the locality may require the developer to remove the tree, or a portion of the tree and to replace the missing canopy area by the planting of nursery stock trees, or if a viable alternative, by tree seedlings. Existing trees that have been granted credits will be replaced with canopy area determined using the same supplemental credit multipliers as originally granted for that canopy area.~~

R. *The Virginia State Forester, after receiving the recommendations of the Stakeholder Advisory Group provided for in this subsection and consideration of ANSI Z60.1 and other applicable ANSI standards, shall adopt standards to be used by localities in determining achievement of tree canopy percentages. The State Forester shall convene a Stakeholder Advisory Group to obtain its recommendations on the standards required by this subsection within 60 days of the effective date of this section. The Stakeholder Advisory Group shall be composed of such persons selected by the State Forester and shall include at least one representative of each of the six sectors represented on the Collaborative Decision-Making Group that served during completion of the report required by Chapters 89 and 90 of the Acts of Assembly of 2021, Special Session I, as well as certified arborists, licensed landscape architects, and urban foresters employed by both the public and private sectors.*

~~R.~~ S. Penalties for violation of ordinances adopted pursuant to this section shall be the same as those

367 applicable to violations of zoning ordinances of the locality.

368 ~~S. In no event shall any T. Except as provided in subsection C, no local tree conservation ordinance~~
369 ~~adopted pursuant to this section exceed the requirements set forth herein; however, any local ordinance~~
370 ~~adopted pursuant to the provisions of § 15.2-961 prior to July 1, 1990, may adopt the tree conservation~~
371 ~~provisions of this section based on 10-year minimum tree canopy requirements.~~

372 ~~T. Nothing in this section shall invalidate any local ordinance adopted pursuant to § 15.2-961.~~

373 **2. That the adoption and publication of the standards, lists, and tables required under subsection**
374 **R of § 15.2-961.1 of the Code of Virginia, as amended by this act, shall initially be exempt from**
375 **the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and**
376 **shall be completed by July 1, 2023. After receiving the input of the Stakeholder Advisory Group,**
377 **established pursuant to § 15.2-961.1 of the Code of Virginia, as amended by this act, the State**
378 **Forester shall provide at least 90 days for public comment before finally adopting the standards**
379 **required under subsection R of § 15.2-961.1 of the Code of Virginia, as amended by this act. The**
380 **Stakeholder Advisory Group shall not be a "public body" as defined in § 2.2-3701 of the Virginia**
381 **Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), but its meetings shall be**
382 **open to the public, with notice provided by the Department of Forestry as provided in subsection**
383 **C of § 2.2-3707 of the Code of Virginia.**

384 **3. That the provisions of this act amending § 15.2-961 of the Code of Virginia and subsection Q of**
385 **§ 15.2-961.1 of the Code of Virginia shall become effective in due course, and the remaining**
386 **provisions of this act shall become effective January 1, 2023.**