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**HOUSE BILL NO. 2333**

Offered January 9, 2019

Prefiled January 8, 2019

*A BILL to amend and reenact § 15.2-961 of the Code of Virginia, relating to replacement of trees during development process; exceeding requirements to meet certain water goals.*

Patrons—Keam, Lopez and Plum; Senator: Marsden

Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:****1. That § 15.2-961 of the Code of Virginia is 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.

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 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. 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 jointly adopted by the Virginia Nursery and Landscape Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation.

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

H. For purposes of this section:

"Tree canopy" or "tree cover" includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at 10 or 20 years maturity. Planted canopy at 10 or 20

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59 years maturity shall be based on published reference texts generally accepted by landscape architects,  
60 nurserymen, and arborists in the community, and the texts shall be specified in the ordinance.

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

63 J. ~~In no event shall any~~ No local tree replacement or planting ordinance adopted pursuant to this  
64 section ~~shall require the planting or replacement of trees at levels that~~ exceed the requirements set forth  
65 herein, ~~except that a locality may adopt an ordinance requiring tree preservation, planting, or~~  
66 ~~replacement in development or redevelopment to provide for minimum tree canopies that exceed the~~  
67 ~~requirements set forth herein in order to assist in achieving specific water quality or water quantity~~  
68 ~~goals identified in the ordinance, including (i) achieving the locality's Chesapeake Bay TMDL~~  
69 ~~Watershed Implementation Plan local area planning goals using forested buffers or other urban tree~~  
70 ~~best management practices, (ii) meeting a locality's MS4 permit for the Chesapeake Bay Action Plan to~~  
71 ~~reduce nitrogen, phosphorus, or sediments by converting impervious or pervious land to forest or adding~~  
72 ~~streamside forested buffers, (iii) establishing or reestablishing effective forested buffers in Chesapeake~~  
73 ~~Bay Protection Act resource protection areas, (iv) meeting requirements enacted by the locality in~~  
74 ~~accordance with § 62.1-44.15:33, or (v) local flood control.~~

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

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

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