

24106192D

HOUSE BILL NO. 529

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on February 2, 2024)

(Patron Prior to Substitute—Delegate Hope)

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

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

B. 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.

C. 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 more than five but not more than 10 units or less per acre.

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

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

For purposes of this subsection, where a locality approves an increase in the number of units per acre through development or subdivision of existing units through a site plan approval, such site plan approval may require that the plan meet the tree canopy percentage applicable to the site in its predevelopment state.

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

D. 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.

E. 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.

F. 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 developer requests and the locality concurs that strict application of the requirements would result in unnecessary or unreasonable hardship to the developer or prevent the development of uses and densities otherwise allowed by the locality's zoning or development ordinance. Such a determination may take into consideration neighborhood environmental and natural resource considerations such as stormwater management and preservation of trees of outstanding age, size, or physical characteristics. In such instances, the ordinance may provide for a tree canopy bank or fund, which bank or fund shall be consistent with subdivisions G 1 and 2 of § 15.2-961.1 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

60 similar nature.

61 ~~F. G.~~ The ordinance may designate tree species that cannot be planted to meet minimum tree canopy
62 requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii)
63 cause damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that
64 cause such trees to structurally fail. All trees to be planted shall meet the specifications of the
65 AmericanHort. The planting of trees shall be done in accordance with either the standardized landscape
66 specifications jointly adopted by the Virginia Nursery and Landscape Association, the Virginia Society
67 of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or
68 the road and bridge specifications of the Virginia Department of Transportation.

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

72 ~~H.~~ For purposes of this section:

73 ~~"Tree canopy" or "tree cover" includes all areas of coverage by plant material exceeding five feet in~~
74 ~~height, and the extent of planted tree canopy at 10 or 20 years maturity. Planted canopy at 10 or 20~~
75 ~~years maturity shall be based on published reference texts generally accepted by landscape architects,~~
76 ~~nurserymen, and arborists in the community, and the texts shall be specified in the ordinance.~~

77 ~~I.~~ *The ordinance may permit the locality without entering the property to monitor and assess the*
78 *condition and coverage of tree canopies at development sites approved pursuant to the ordinance during*
79 *the time period up to 20 years' maturity of the planted trees.*

80 ~~J. J.~~ Penalties for violations of ordinances adopted pursuant to this section shall be the same as those
81 applicable to violations of zoning ordinances of the locality.

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

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

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

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

93 ~~N. O.~~ Nothing in this section shall prohibit or unreasonably limit silvicultural practices in accordance
94 with § 10.1-1126.1.