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SENATE BILL NO. 632

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend the Code of Virginia by adding a section numbered 15.2-961.1, relating to the conservation of trees during the land development process for air quality improvement in certain localities.

Patrons—Ticer, Herring and Petersen; Delegates: Bulova, Marsden, Moran and Watts

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-961.1 as follows:

§ 15.2-961.1. Conservation of trees during land development process in localities classified as part of the Washington, DC-MD-VA nonattainment area for ozone standards in order to provide improvements to air quality.

A. Notwithstanding the provisions of § 15.2-961, any Virginia locality classified by the United States Environmental Protection Agency as being part of the Washington, DC-MD-VA nonattainment area where ambient ozone levels persistently exceed the eight-hour average standard for ozone defined in the National Ambient Air Quality Standards as provided by the federal Clean Air Act and Amendments of 1990, may adopt an ordinance providing for the conservation of trees during the land development process pursuant to the provisions of this section.

B. The ordinance may require that the site plan for any subdivision or development provide for the preservation and replacement of trees on the development site such that the minimum tree canopy or tree cover percentage 10 years after development is projected to be 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 more than five but not more than 10 units per acre; and
- 5. Thirty percent tree canopy for a residential site zoned one to five units per acre.

C. The ordinance shall provide for reasonable exceptions to or deviations from the canopy requirements set forth in subsection B to allow for the reasonable development of farmland or other areas devoid of healthy or suitable plant 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. The following shall be exempt from the requirements of any ordinance promulgated under this section: silvicultural operations, dedicated school sites, playing fields and other nonwooded recreation areas, and other facilities and uses of a similar nature. The ordinance may also provide for the reasonable reduction of tree canopy percentages for sites or portions of sites dedicated to the development of affordable housing for low and moderate income households. 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.

D. The ordinance shall require that site plans provide for the preservation of trees by requiring plans to identify a preservation threshold that is determined by the percentage of the site covered with tree canopy at the time of plan submission. Except as provided in subsection E, the preservation threshold shall determine the minimum proportion of the total requirement identified in subsection B that shall be met through the preservation of existing trees. The remaining proportion of the total requirement not met through tree preservation shall be met through the planting of trees.

E. The ordinance shall provide for reasonable exceptions to or deviations from the minimum preservation threshold identified in subsection D where the locality determines that these requirements would hinder the development of uses or densities otherwise allowed by the locality's zoning or other development ordinance. In these cases, the tree preservation provisions of subsection D may be waived or modified with the balance of the total requirement identified in subsection B met through the planting of trees.

F. To encourage tree preservation over tree replacement, the tree conservation ordinance may provide additional canopy credits for trees and associated plant communities preserved from the predevelopment tree cover. As an incentive to preserve higher quality vegetation, the ordinance may also provide additional canopy credits for the preservation of trees and associated plant communities

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59 *from the predevelopment tree cover that achieve specific environmental, ecological, historic, or cultural*  
60 *objectives.*

61 *G. To encourage tree planting for purposes of air quality improvement and planning, the ordinance*  
62 *may provide additional canopy credits for trees that (i) are effective in reducing air pollutants, (ii)*  
63 *produce low levels of reactive volatile organic compounds, or (iii) indirectly act to reduce emissions by*  
64 *conserving energy used to cool and heat buildings. These credits may also be applied to trees that are*  
65 *preserved if identified as such on site plans and determined by the locality to provide air quality*  
66 *improvements.*

67 *H. The ordinance may designate species that cannot be used to meet minimum tree canopy*  
68 *requirements due to tendencies of such species to (i) negatively impact native plant communities, (ii)*  
69 *cause damage to nearby structures and infrastructure, or (iii) possess inherent physiological traits that*  
70 *cause such trees to structurally fail. All trees to be planted shall meet the specifications of the American*  
71 *Association of Nurserymen. The planting of trees shall be done in accordance with either the*  
72 *standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the*  
73 *Virginia Society of Landscape Designers, and the Virginia Chapter of the American Society of*  
74 *Landscape Architects, or the road and bridge specifications of the Virginia Department of*  
75 *Transportation.*

76 *I. For purposes of this section, "tree canopy" or "tree cover" includes all areas of coverage by*  
77 *self-supporting and healthy woody plant material exceeding five feet in height, and the extent of planted*  
78 *tree canopy at 10-years maturity. Calculation of the amount of planted canopy projected to be present*  
79 *10 years after development shall be based on published reference texts generally accepted by landscape*  
80 *architects, nurserymen, and arborists in the community and the texts shall be specified in the ordinance.*

81 *J. The ordinance shall establish standards of health and desirability for existing trees and associated*  
82 *plant communities to be preserved.*

83 *K. Penalties for violation of ordinances adopted pursuant to this section shall be the same as those*  
84 *applicable to violations of zoning ordinances of the locality.*

85 *L. In no event shall any local tree conservation ordinance adopted pursuant to this section exceed*  
86 *the requirements set forth herein.*

87 *M. Nothing in this section shall invalidate any local ordinance adopted pursuant to § 15.2-961.*