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SENATE BILL NO. 1290

Offered January 16, 2003

A BILL to amend and reenact § 36-105 of the Code of Virginia, relating to occupancy permits.

Patron—Puckett

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 36-105 of the Code of Virginia is amended and reenacted as follows:**

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants.

Enforcement of the Building Code shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the Building Code covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure shall first lie to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. *The building official shall also file the final occupancy permit with the clerk of the circuit court for the locality.*

The local governing body may also inspect, and enforce the Building Code for, existing buildings and structures, whether occupied or not. The local governing body, however, shall inspect and enforce the Building Code for elevators except for elevators in single and two-family homes and townhouses. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body. However, upon a finding by the local building department, following a complaint by a tenant of a residential rental unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject dwelling, the local building official or his agent may present sworn testimony to a court of competent jurisdiction and request that the court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject dwelling for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

The local governing body may, upon an affirmative finding of the need to protect the public health, safety and welfare, require the issuance of certificates of compliance with current building regulations for existing residential buildings located in conservation and rehabilitation districts designated by the local governing body, or in other areas designated as blighted pursuant to § 36-49.1:1, after inspections of such buildings upon termination of the rental tenancies or when such rental property is sold, or at

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59 specific time intervals, for a specific property, but not more than once each calendar year upon a
60 separate finding that such additional inspections are necessary to protect the public health, safety or
61 welfare. If, however, an inspection has been conducted within the last twelve-month period, no
62 inspection shall occur upon the termination of a rental tenancy or upon a change in ownership. The
63 provisions of this section shall not in any way alter the rights and responsibilities of landlords or tenants
64 pursuant to applicable provisions of Chapters 13 (§ 55-217 et seq.) or 13.2 (§ 55-248.2 et seq.) of Title
65 55. Such certificate of compliance shall be issued in accordance with the administrative provisions of the
66 Building Code.