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HOUSE BILL NO. 828

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 36-105 of the Code of Virginia, relating to the Uniform Statewide Building Code; enforcement; rental inspections.

Patrons—Drake and Rapp

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; inspection of elevators.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department official. 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 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 building official in order to defray the cost actual costs of such enforcement and appeals.

B. New construction. 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.

C. Existing buildings and structures.

1. The local governing body may also inspect and enforce the provisions of the Building Code for all existing commercial and residential 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 the local building official or department designated by the local governing body as provided in subsection D.

2. However, upon a finding by the local building department official, following a complaint by a tenant of a residential rental dwelling 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 official shall enforce such provisions.

If the local building department official 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.

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HB828

59 3. Notwithstanding any law or local ordinance to the contrary, the authority of a local governing
60 body to adopt and enforce an inspection program for residential dwelling units that are rented to
61 tenants pursuant to the Landlord and Tenant Act (§ 55-217 et seq.) or the Virginia Residential Landlord
62 Tenant Act (§ 55-248.2 et seq.) shall be limited to the provisions of this section. The local governing
63 body may, (i) only upon an affirmative finding of the need to protect the public health, safety and
64 welfare, require the issuance of certificates of compliance with ~~current building regulations for existing~~
65 ~~residential buildings~~ the Building Code for Maintenance of Existing Structure and (ii) only for
66 residential dwelling units located in conservation and rehabilitation districts designated by the local
67 governing body districts as defined in § 36-49.1, redevelopment districts as defined in § 36-49, or in
68 other areas designated as that are blighted pursuant to as defined in § 36-49.1:1; after inspections of
69 such buildings. The local governing body shall adopt an ordinance establishing the boundaries of such
70 conservation or redevelopment districts, and its determination of specific property that is blighted as
71 provided in § 36-49.1:1. Such enforcement and inspection shall be carried out by the building official or
72 department designated by the local governing body as provided in subsection D and only upon
73 termination of the rental tenancies or when such rental property is sold, or . However, upon a separate
74 finding that additional inspections are necessary to protect the public health, safety or welfare, the local
75 building official or department designated by the local governing body may inspect a specific property
76 at specific time intervals; for a specific property, but not more than once each calendar year upon a
77 separate finding that such additional inspections are necessary to protect the public health, safety or
78 welfare. If, however, if an inspection has been conducted within the last 12-month period, no inspection
79 shall occur upon the termination of a rental tenancy or upon a change in ownership.

80 The provisions of this section subdivision shall not in any way alter the rights and responsibilities of
81 landlords or tenants pursuant to applicable provisions of Chapters 13 (§ 55-217 et seq.) or 13.2
82 (§ 55-248.2 et seq.) of Title 55. Such certificate of compliance shall be issued in accordance with the
83 administrative provisions of the Building Code.

84 D. Inspection and enforcement. The inspection and enforcement authority granted by subdivisions C
85 1 and C 3 shall be conducted in strict conformance with the provisions of this subsection. Such
86 inspections or enforcement shall only be in response to a complaint received or the visual observation
87 by the local building official or other department designated by the local governing body of the exterior
88 of the building or structure. The real property owner shall have the right to refuse access to the local
89 building official or other person designated by the local governing body, subject to the authority granted
90 in this section for the building official or other department designated by the local governing body to
91 obtain an inspection warrant. The local governing body shall have no right to require, by ordinance or
92 otherwise, real property owners to register real property with the local governing body or to impose any
93 fee relative to such a registration program.

94 E. Elevator inspections. The local governing body shall, however, inspect and enforce the Building
95 Code for elevators, except for elevators in single- and two-family homes and townhouses. Such
96 inspection shall be carried out by an agency or department designated by the local governing body.