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HOUSE BILL NO. 1113

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 36-105 of the Code of Virginia, relating to statewide transportation impact fees.

Patron—Cole

Referred to Committee on Counties, Cities and Towns

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. 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 in order to defray the cost of such enforcement and appeals.

B. New construction.

1. 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. A building official may issue an annual permit for any construction regulated by the Building Code. 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.

2. a. In addition to all other fees imposed by law, beginning July 1, 2008, every local building department shall charge and collect a fee for its issuance of a final certificate of occupancy for any building or any structure, as defined in § 36-97, that is neither exempt from taxation by law nor actually valued at less than $100,000 at the time such final certificate of occupancy is issued. Each such fee shall become due and payable no later than 90 days from the date that the local building department issued the final certificate of occupancy associated with such fee.

b. The amount of such fee shall be five percent of the actual value of the building or structure, exclusive of the first $100,000 of such actual value, except that:

(1) The amount of such fee shall be reduced by two-thirds if the Governor declares that the economic benefits produced by such building or structure would outweigh any negative transportation impact caused by such building or structure; subject to subdivision 2 b (2), however, the local building department shall deposit such amount into the road improvement account, as described in subdivision 2 c, of the locality served by the local building department to be used only for transportation projects in such locality;

(2) The amount of such fee shall be reduced by one-third, independent of the reduction allowed by subdivision 2 b (1) if the governing body of the locality served by the local building department, by ordinance, declares that the economic benefits produced by such building or structure would outweigh any negative transportation impact caused by such building or structure; in such event, the local building department shall remit to the person from whom a fee was collected an amount equal to the total amount of such fee that the locality was authorized to accept, including the applicable amount

authorized under subdivision 2 b (1);

(3) The amount of such fee shall not exceed $20,000; and

(4) If a building or structure is sold within 90 days from the date that the local building department issued the final certificate of occupancy for such building or structure but prior to the collection of the fee charged for the issuance of such final certificate of occupancy, then the amount of such fee shall be five percent of the consideration of the deed conveying such building or structure or the actual value of the building or structure conveyed, exclusive of the first $100,000 of such consideration or such actual value, respectively, whichever is greater, except that (i) such amount shall become due and payable on the date of the settlement of the sale and (ii) subdivisions 2 b (1) through (3) shall apply.

c. Except as provided by subdivisions 2 b (1) and (2), the local building department shall deposit two-thirds of each fee collected under this section into the Transportation Trust Fund to be used for transportation projects in the construction district that embraces the locality served by the local building department. The local building department shall deposit the remainder of all fees collected under this subsection into a separate road improvement account, which shall be established by the treasurer of the locality served by the local building department; interest earned on deposits shall become funds of the account. The governing body of the locality shall (i) expend funds from such account only for transportation projects in such locality, (ii) remit any or all funds of such account to the Transportation Trust Fund to be used only for transportation projects in the construction district that embraces such locality, or (iii) any combination thereof.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

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

3. Inspection warrants. 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 magistrate or a court of competent jurisdiction and request that the magistrate or 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.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

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