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**HOUSE BILL NO. 312**

Offered January 13, 2010

Prefiled January 11, 2010

*A BILL to amend and reenact §§ 36-105 and 36-114 of the Code of Virginia, relating to the Uniform Statewide Building Code; appeals to the local board of Building Code appeals and the State Technical Review Board.*

Patrons—McClellan, McQuinn and Tyler

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 36-105 and 36-114 of the Code of Virginia are 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~~ Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code ~~shall first lie~~ *he may appeal* 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. 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.

**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, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, 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 building or structure 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

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HB312

59 owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an  
60 inspection warrant under this section.

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

65 5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however,  
66 inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for  
67 elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an  
68 agency or department designated by the local governing body.

69 § 36-114. Board to hear appeals.

70 The Review Board shall have the power and duty to hear all appeals from decisions arising under  
71 application of the Building Code, the ~~amusement device regulations~~ *Virginia Amusement Device*  
72 *Regulations adopted pursuant to § 36-98.3*, the Fire Prevention Code adopted under the Statewide Fire  
73 Prevention Code Act (§ 27-94 et seq.), *and rules and regulations implementing the Industrialized*  
74 *Building Safety Law (§ 36-70 et seq.)*, ~~the Virginia Manufactured Housing Construction and Safety~~  
75 ~~Standards Law (§ 36-85.2 et seq.)~~, ~~and the Virginia Certification Standards adopted by the Board of~~  
76 ~~Housing and Community Development~~, and to render its decision on any such appeal, which decision  
77 shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the  
78 provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference  
79 pursuant to § 2.2-4019 shall not be required.