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HOUSE BILL NO. 1261

Offered January 20, 2012

A *BILL to amend and reenact § 55-226.2 of the Code of Virginia, relating to landlord and tenant law; energy submetering.*

Patron—Ware, R.L.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55-226.2 of the Code of Virginia is amended and reenacted as follows:

§ 55-226.2. Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems.

A. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a commercial or residential building or campground as defined in § 35.1-1 if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

B. If energy submetering equipment, water and sewer submetering equipment, or energy allocation equipment is used in any building, the owner, manager, or operator of the building shall bill the tenant for electricity, natural gas or water and sewer for the same billing period as the utility serving the building, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building may charge and collect from the tenant additional service charges, including, but not limited to, monthly billing fees, account set-up fees or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building owner and the tenant in the rental agreement or lease. The building owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

C. If a ratio utility billing system is used in any building, in lieu of increasing the rent, the owner, manager, or operator of the building may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a building, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building owner from a third-party provider of the utility service. The owner, manager, or operator of the building may charge and collect from the tenant additional service charges, including but not limited to monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building owner and the tenant in the rental agreement or lease. The building owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent as defined in § 55-248.4 if a ratio utility billing system is used in a residential multifamily dwelling unit subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.).

D. Energy allocation equipment shall be tested periodically by the owner, operator or manager of the building. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

E. The owner of any building shall maintain adequate records regarding energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within the building. The owner of the building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

F. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3,

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59 if applicable, to the same extent as such actions may be maintained for breach of other terms of the
60 rental agreement or lease under Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of
61 this title, if applicable. The use of energy submetering equipment, water and sewer submetering
62 equipment, energy allocation equipment, or a ratio utility billing system is not within the jurisdiction of
63 the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title
64 3.2.

65 G. As used in this section:

66 "Building" means all of the individual units served through the same utility-owned meter within a
67 commercial or residential building that is defined in subsection A of § 56-245.2 as an apartment building
68 or house, office building or shopping center.

69 "Energy allocation equipment" has the same meaning ascribed to such term in subsection A of
70 § 56-245.2.

71 "Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in
72 subsection A of § 56-245.2.

73 "Ratio utility billing system" means a program that utilizes a mathematical formula for allocating,
74 among the tenants in a building, the actual or anticipated water, sewer, electrical, or natural gas billings
75 billed to the building owner from a third-party provider of the utility service. Permitted allocation
76 methods may include formulas based upon square footage, occupancy, number of bedrooms, or some
77 other specific method agreed to by the building owner and the tenant in the rental agreement or lease.

78 "Water and sewer submetering equipment" means equipment used to measure actual water or sewer
79 usage in any dwelling unit or nonresidential rental unit, as defined in subsection A of § 56-245.2, when
80 such equipment is not owned or controlled by the utility or other provider of water or sewer service that
81 provides service to the building in which the dwelling unit or nonresidential rental unit is located.