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SENATE BILL NO. 1239

Offered January 9, 2013

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

Patron—Herring

Referred to Committee on General Laws and Technology

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; issuance of permits.

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. 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 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~~ city 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~~ city 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 *with equal dignity as it does in unincorporated areas of the county, and no agreement between the town and the county shall be required as a prerequisite for the county to perform this obligation.* 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 situated within their respective boundaries.

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. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

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 owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an

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59 inspection warrant under this section.

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

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

68 6. A locality may require by ordinance that any landmark, building or structure that contributes to a
69 district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing,
70 demolition or moving thereof is approved by the review board, or, on appeal, by the governing body
71 after consultation with the review board unless the local maintenance code official consistent with the
72 Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that
73 it shall be razed, demolished or moved.

74 For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to
75 or is consistent with the historic or architectural qualities, historic associations, or values for which the
76 district was established pursuant to § 15.2-2306, because it (i) was present during the period of
77 significance, (ii) relates to the documented significance of the district, and (iii) possesses historic
78 integrity or is capable of yielding important information about the period.

79 7. Fees may be levied by the local governing body in order to defray the cost of such enforcement
80 and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs
81 incurred for such enforcement during normal business hours, but shall not include overtime costs unless
82 conducted outside of the normal working hours established by the locality. A schedule of such costs
83 shall be adopted by the local governing body in a local ordinance. A locality shall not charge an
84 overtime rate for inspections conducted during the normal business hours established by the locality.
85 Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided
86 the private entity has been approved to perform such inspections in accordance with the written policy
87 of the maintenance code official for the locality.

88 D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a
89 building permit as otherwise provided under this chapter, however, notwithstanding any provision of
90 law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on
91 the owner's property, such applicant shall not be denied a permit under the Building Code solely upon
92 the basis that the property owner has financial obligations to the locality that constitute a lien on such
93 property in favor of the locality. If such applicant is the property owner, in addition to payment of the
94 fees for issuance of a building permit, the locality may require full payment of any and all financial
95 obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For
96 purposes of this subsection, "property owner" means the owner of such property as reflected in the land
97 records of the circuit court clerk where the property is located, the owner's agent, or any entity in which
98 the owner holds an ownership interest greater than 50 percent.