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SENATE BILL NO. 313

Offered January 8, 2014

Prefiled January 6, 2014

A *BILL to amend and reenact §§ 36-103 and 36-105 of the Code of Virginia, relating to the Uniform Statewide Building Code; enforcement by counties and towns for existing buildings.*

Patrons—Vogel; Delegate: Minchew

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-103 and 36-105 of the Code of Virginia are amended and reenacted as follows:

§ 36-103. Buildings, etc., existing or projected before effective date of Code.

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as ~~part~~ *Part III* of the Building Code, building regulations ~~that facilitate for the maintenance, rehabilitation, development and reuse of existing buildings and structures~~ at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

§ 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~~ *Parts I and II* 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 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 *Parts I and II* of the Building Code; however, where the town does not elect to administer and enforce *Parts I and II* of the Building Code, the county in which the town is situated shall administer and enforce *Parts I and II* of the Building Code for the town. In the event ~~such~~ a town is situated in two or more counties, those counties shall administer and enforce *Parts I and II* of 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 *Part III* of the Building Code. The local governing body may also inspect and enforce the provisions of *Part III* of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement *shall include enforcement of the unsafe structures provisions for tenant complaints in accordance with subdivision 2 and enforcement of the elevator, escalator, or related conveyance inspections in accordance with subdivision 5. Such inspection*

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59 and enforcement shall be carried out by an agency or department designated by the local governing
60 body. Where a county provides enforcement of Parts I and II in a town, and elects to inspect and
61 enforce Part III, the county shall also inspect and enforce Part III in any such town situated in the
62 county that has also adopted Part III, upon entering into a nonmonetary agreement with the town for
63 such enforcement, unless the town elects to inspect and enforce Part III. In the event that any town that
64 has adopted Part III is situated in two or more counties, then those counties, if electing to inspect and
65 enforce Part III of the Building Code, shall inspect and enforce Part III of the Building Code for that
66 portion of the town situated within their respective boundaries, only if such county provides enforcement
67 of Parts I and II in the town, upon the counties' entering into nonmonetary agreements with the town
68 for such enforcement, unless the town elects to inspect and enforce Part III of the Building Code. Any
69 county enforcing Part III in any such town shall collect and retain all fees received from such
70 enforcement.

71 2. Complaints by tenants. However, in any locality that has not elected to inspect and enforce Part
72 III of the Building Code, upon a finding by the local building department established for the
73 enforcement of Parts I and II of the Building Code, following a complaint by a tenant of a residential
74 dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures
75 provisions of Part III of the Building Code, the local building department established for the
76 enforcement of Parts I and II of the Building Code shall enforce such provisions.

77 3. Inspection warrants. If the local building department receives a complaint that a violation of the
78 Building Code exists that is an immediate and imminent threat to the health or safety of the owner,
79 tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby
80 building or structure, and the owner, occupant, or tenant of the building or structure that is the subject
81 of the complaint has refused to allow the local building official or his agent to have access to the
82 subject building or structure, the local building official or his agent may present sworn testimony to a
83 magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local
84 building official or his agent an inspection warrant to enable the building official or his agent to enter
85 the subject building or structure for the purpose of determining whether violations of the Building Code
86 exist. The local building official or his agent shall make a reasonable effort to obtain consent from the
87 owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an
88 inspection warrant under this section.

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

93 5. Elevator, escalator, or related conveyance inspections. ~~The~~ In localities that have not elected to
94 inspect and enforce Part III of the Building Code, the local governing body shall, however, inspect and
95 enforce Part III of the Building Code for elevators, escalators, or related conveyances, except for
96 elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an
97 agency or department designated by the local governing body.

98 6. A locality may require by ordinance that any landmark, building or structure that contributes to a
99 district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing,
100 demolition or moving thereof is approved by the review board, or, on appeal, by the governing body
101 after consultation with the review board unless the local maintenance code official consistent with the
102 Uniform Statewide Building Code, agency or department designated by the local governing body to
103 enforce Part III Maintenance, of the Building Code determines that it constitutes such a hazard that it
104 shall be razed, demolished or moved.

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

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

119 D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a
120 building permit as otherwise provided under this chapter, however, notwithstanding any provision of

121 law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on
122 the owner's property, such applicant shall not be denied a permit under the Building Code solely upon
123 the basis that the property owner has financial obligations to the locality that constitute a lien on such
124 property in favor of the locality. If such applicant is the property owner, in addition to payment of the
125 fees for issuance of a building permit, the locality may require full payment of any and all financial
126 obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For
127 purposes of this subsection, "property owner" means the owner of such property as reflected in the land
128 records of the circuit court clerk where the property is located, the owner's agent, or any entity in which
129 the owner holds an ownership interest greater than 50 percent.
130 **2. That this act shall not invalidate any agreement between a town and county for the enforcement**
131 **of any part of the Uniform Statewide Building Code in effect on January 1, 2014, or entered into**
132 **at any later date.**

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