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SENATE BILL NO. 1535

Senate Amendments in [ ] — February 4, 2019

A BILL to amend and reenact §§ 33.2-1229 and 36-105 of the Code of Virginia, relating to the Uniform Statewide Building Code; outdoor advertising.

Patron Prior to Engrossment—Senator Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-1229 and 36-105 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-1229. Penalties for violation.

A. Notwithstanding any other provision of law, any person, firm, or corporation that violates any provision of this article or applicable regulations that fails to take corrective action within 30 days as specified in a written notice from the Commissioner of Highways shall be subject to any or all of the following penalties:

1. A civil penalty of not more than \$250 per violation. Each day during which the violation continues after a final determination by the Commissioner of Highways of such violation shall be deemed a separate violation;

2. Revocation by the Commissioner of Highways of any permit for the sign; or

3. Removal of the sign by the Commissioner of Highways. The Commissioner of Highways may collect the costs of the removal from the owner of the sign.

B. Any person aggrieved by the action of the Commissioner of Highways in enforcing the provisions of subsection A may appeal the decision of the Commissioner of Highways in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner of Highways may remove signs without giving a corrective action notice as provided in subsection A (i) for any violation of subdivision 3, 6, 7, 8, 9, or 10 of § 33.2-1216 or of § 33.2-1223 or; (ii) if the Commissioner of Highways determines that the sign poses a risk to highway safety; or (iii) as authorized in subdivision C 8 of § 36-105.

D. The Commissioner of Highways may recover all civil penalties authorized in subsection A in any manner permitted by law, including (i) the placement of a tax lien on the owner's real property upon which the sign is located and (ii) the use of the Setoff Debt Collection Act (§ 58.1-520 et seq.).

E. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of certain signs; 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 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 that 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. Additionally, the local governing body of a county or municipality may enter into an agreement with the governing body of another county or municipality for the provision to such county or municipality's local building department of technical assistance with administration and enforcement of the Building Code.

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

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59 cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be  
60 waived. A building official may issue an annual permit for any construction regulated by the Building  
61 Code. The building official shall coordinate all reports of inspections for compliance with the Building  
62 Code, with inspections of fire and health officials delegated such authority, prior to issuance of an  
63 occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such  
64 enforcement and appeals.

65 C. Existing buildings and structures.

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

70 2. Complaints by tenants. However, upon a finding by the local building department, following a  
71 complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may  
72 be a violation of the unsafe structures provisions of the Building Code, the local building department  
73 shall enforce such provisions.

74 3. Inspection warrants. If the local building department receives a complaint that a violation of the  
75 Building Code exists that is an immediate and imminent threat to the health or safety of the owner,  
76 tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby  
77 building or structure, and the owner, occupant, or tenant of the building or structure that is the subject  
78 of the complaint has refused to allow the local building official or his agent to have access to the  
79 subject building or structure, the local building official or his agent may make an affidavit under oath  
80 before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the  
81 local building official or his agent an inspection warrant to enable the building official or his agent to  
82 enter the subject building or structure for the purpose of determining whether violations of the Building  
83 Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in  
84 the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents  
85 shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was  
86 made. 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 local governing body shall, however,  
94 inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for  
95 elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an  
96 agency or department designated by the local governing body.

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

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

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

117 8. *Recurring inspection of certain sign structures. Privately owned signs along Interstate System*  
118 *highways, located outside of the highway right-of-way, whose height from foundation or point of entry*  
119 *into the ground to its highest point, including all support structures, is greater than its distance from the*  
120 *shoulder edge of the pavement of the Interstate System highway shall be subject to [ the requirements of*

121 *the Building Code when erected and shall be properly maintained periodic inspections as provided in*  
122 *this section ] . The sign owner shall cause periodic [ third-party ] inspections to be conducted no less*  
123 *than once every five years by, or under the direction of, a professional engineer licensed pursuant to*  
124 *§ 54.1-406, with the inspection report signed and sealed, to determine compliance with the Building*  
125 *Code and the provisions of this section. The sign owner shall keep records of such inspections and make*  
126 *them available to federal, state, or local authorities upon request. If the inspection report indicates that*  
127 *the sign or its structure exhibits or is at risk of structural instability or poses any other risk to highway*  
128 *safety or public safety, the [ ~~sign owner~~ engineer ] shall send a copy of such inspection report to the*  
129 *Virginia Department of Transportation highway construction district in which the structure is located.*  
130 *The locality may pursue any enforcement options available to it for violations of the inspection*  
131 *requirements in this section and for violations of the Building Code. The Commissioner of Highways*  
132 *shall have the authority to remove any such sign without prior notice and collect the costs of the*  
133 *removal from the sign owner if the Commissioner determines that the sign poses a risk to highway*  
134 *safety as provided in § 33.2-1229. For the purpose of this section, removal shall include, but not be*  
135 *limited to, mitigating the hazard posed by the sign without effecting a complete removal and disposal of*  
136 *the sign.*

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

148 **2. That any owner of a sign in existence on July 1, 2019, that is impacted by the provisions of this**  
149 **act shall comply with the provisions of this act and conduct or cause to be conducted the first**  
150 **periodic inspection of such sign no later than January 1, 2021.**

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