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## HOUSE BILL NO. 1111

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology  
on March 5, 2012)

(Patron Prior to Substitute—Delegate Greason)

A *BILL to amend and reenact §§ 27-98 and 36-105 of the Code of Virginia, relating to fees for enforcement and appeals under Statewide Fire Prevention Code and Uniform Statewide Building Code.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 27-98 and 36-105 of the Code of Virginia are amended and reenacted as follows:**

§ 27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. No fee may be charged for the inspection of any school. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. *For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs, unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the fire official for the locality.* Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.

§ 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 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 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.~~

60 B. New construction. Any building or structure may be inspected at any time before completion, and  
61 shall not be deemed in compliance until approved by the inspecting authority. Where the construction  
62 cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be  
63 waived. A building official may issue an annual permit for any construction regulated by the Building  
64 Code. The building official shall coordinate all reports of inspections for compliance with the Building  
65 Code, with inspections of fire and health officials delegated such authority, prior to issuance of an  
66 occupancy permit. *Fees may be levied by the local governing body in order to defray the cost of such*  
67 *enforcement and appeals.*

68 C. Existing buildings and structures.

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

73 2. Complaints by tenants. However, upon a finding by the local building department, following a  
74 complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may  
75 be a violation of the unsafe structures provisions of the Building Code, the local building department  
76 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 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. *Fees may be levied by the local governing body in order to defray the cost of such enforcement*  
98 *and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs*  
99 *incurred for such enforcement during normal business hours, but shall not include overtime costs unless*  
100 *conducted outside of the normal working hours established by the locality. A schedule of such costs*  
101 *shall be adopted by the local governing body in a local ordinance. A locality shall not charge an*  
102 *overtime rate for inspections conducted during the normal business hours established by the locality.*  
103 *Nothing herein shall be construed to prohibit a private entity from conducting such inspections,*  
104 *provided the private entity has been approved to perform such inspections in accordance with the*  
105 *written policy of the maintenance code official for the locality.*

106 D. Issuance of a building permit under certain circumstances.

107 1. *That notwithstanding any provision of law, general or special, if a property owner has financial*  
108 *obligations to the locality that constitute a lien on such property, and the applicant for a permit under*  
109 *the Building Code is a tenant or the owner of an easement on the owner's property, such applicant shall*  
110 *not be denied a permit under the Building Code solely upon the basis that the property is subject to a*  
111 *lien in favor of the locality.*

112 2. *Upon request of the locality, prior to issuance of a permit under the Building Code, such*  
113 *applicant shall disclose to the locality in writing whether the applicant has or will have financial*  
114 *obligations to such property owner and provide documentation thereof to the locality. The locality may*  
115 *proceed to collect any such money as otherwise provided by law.*

116 3. *However, if the applicant for a permit under the Building Code is the property owner, the*  
117 *owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, the*  
118 *locality may require full payment of any and all financial obligations of the owner to the locality to*  
119 *satisfy such lien prior to issuance of such permit.*