COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Housing and Environmental Standards Workgroup
May 16, 2013
10:00AM
Senate Room A, General Assembly Building

I. Welcome and Call to Order

- **Senator John Watkins,** *Chair* called the meeting to order at 10:00AM
  - In addition to the invited speakers the following Workgroup members were in attendance:
    - **Workgroup Members:** *Delegate David Bulova; Delegate Barry D. Knight; and Senator John Watkins; Ron Clements, Virginia Building & Code Officials Association; Tyler Craddock, Manufactured & Modular Housing Association; Chip Dicks, Virginia Association of Realtors; Sean P. Farrell, Virginia Building & Code Officials Association; Mark Flynn, Governor Appointee; John Hastings, Virginia Housing Development Authority; John H. Jordan, Manufactured Housing Communities of Virginia; Art Lipscomb, Virginia Professional Fire Fighters; R. Schaefer Oglesby, Virginia Association of Realtors; Ed Rhodes, Virginia Fire Chiefs Association; Neal Rogers, Virginia Housing Development Authority; Michael T. Toalson, Home Builders Association of Virginia; and Cal Whitehead, Whitehead Consulting*
    - ***Staff:*** *Elizabeth Palen, Executive Director of VHC*

II. Generators in High-Rise Buildings

- **Donna Fossum,** *resident, City of Alexandria:* I was asked by Senator George Barker to address this issue because of the 23 years I served on the City of Alexandria's Planning Commission, reviewing and passing judgment on development proposals; and because, for the past 32 years, I have lived in a high-rise condominium in Alexandria's West End,

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SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER
MARK K. FLYNN
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where most of the City's high-rise residential buildings are located. As you may know, Arlington and Alexandria have a higher proportion of residents living in high-rise condominium and apartment buildings than anywhere else in the Commonwealth. Indeed, 26% of all the households in Alexandria are located in one of the 31 high-rise condominium buildings or 43 high-rise apartment buildings located in the City.

- Like many other communities throughout Virginia, Alexandria suffered a tremendous amount of damage from the derecho of June 29-30, 2012, that is said to be one of the most destructive and deadly, fast-moving thunderstorms in North American history.
- Because of the derecho, large parts of the City were without power for extended periods of time. This included a number of high-rise residential buildings. And while the derecho was an unusually severe storm event, hurricanes more regularly cause a loss of power. In fact, while about 1 million customers lost power in Virginia as a result of the derecho, two hurricanes in recent years (Hurricane Isabel in 2003 and Hurricane Irene in 2011) caused even greater power outages.
- If you live in a one or two-story house, it is inconvenient to be without power for an extended period of time. If you live on the 10th, 12th, or 15th floor of a high-rise building, however, it is a major inconvenience to be without power for an extended period of time. Indeed, for people on the upper floors of high-rise residential building who have ambulatory challenges, an extended loss of power can present an extreme hardship. This is especially true for the residents of the 3 high-rise apartment complexes in Alexandria that serve senior citizens exclusively.
- People in residential high-rises, as you know, generally rely on elevators to get in and out of their homes. If the building elevators are not working, it can be a real hardship for residents to get to the doctor, the grocery store, or to a friend's home that *does* have power.
- Ideally, every high-rise residential building would have sufficient alternative generator capacity to power at least one elevator when normal electric power is interrupted. I believe that all of the newer ones – built in or after 1975 – do, as they were required to have alternative generator capacity by the State Building Code. But the older high-rise residential buildings – mostly apartments -- generally do not have backup generators.
- While the City has identified the lack of backup power for many high-rise apartment buildings as a problem, we know it is not an easy problem to address. While it may be wise to require these buildings to have backup generators – we know that it could be expensive to retrofit these buildings.
- The City took this problem to Senator Barker, and because none of us could come up with a simple solution to this problem, he recommended that we ask the

Housing Commission to look into this matter. So I am here today to formally request that the Housing Commission study this matter.

- Alexandria's Legislative Director, Bernie Caton, is here with me, and we will be happy to try and answer any questions that you may have. Thank you.

- **Delegate Danny Marshall:** What is the definition for a high rise building?
    - **Fossum:** A high rise residential building is considered over eight stories in Alexandria.
    - **Mr. Emory Rogers:** Under previous legislation, high rise buildings were defined as over 150 feet, and today they are set at 75 feet. Thus, older apartments in Arlington could be as high as 150 feet, although there may be few of them.
- **Delegate Marshall**: Would the back-up generators be for the elevators or for heating air?
    - **Fossum:** The generators would be primarily for the elevators, but would also power emergency lights and emergency directionals.
- **Mr. Shaun Pharr:** Does the city have specific information on the scope of the problem?
    - **Fossum**: I found the construction dates for all buildings and divided them into condominium and apartments. Over half the apartments do not have generators and were built before the code. A few apartments have retrofitted, but for the purpose of upgrading to become a condominium. However, none have retrofitted voluntarily.
    - **Bernie Caton:** We do not have an exact number, and thought this was a problem bigger than just the city. We understand that this problem is more complex that putting it in a bill and requiring backup generators, and we are open do ideas
- **Senator Watkins:** What is the position of the city with regard to generators?
    - **Caton:** If we have never confronted the issue because we do not have the authority; and I have never discussed it with the council, so I do not know their position.
- **Delegate Marshall:** Are we only discussing the issue for residential buildings?
    - **Caton:** Yes, and only for apartments. Condominium owners have more opportunity to deal with the problem themselves.
- **Delegate Marshall:** What about noise ordinances, as I imagine the generators are quite noisy?
    - **Caton:** I would be surprised if it were a problem. These building usually large parking lots in between the two; and with newer buildings, that has never been an issue.

- **James Dawson,** *Virginia Fire Prevention Association:* I would suggest looking into HVAC even though there have been problem with it in other jurisdictions. Mobility may be the short-term issue; but with long-term power outages in the summer heat, ventilation becomes a more serious concern.
- **Ron Clements,** *Virginia Building and Code Officials Association:* You have stated that the bill will only require backup generators for apartment buildings and not condominiums. However, that makes it more complicated. Under the building code, there is not much or a distinction between an apartment and condominium. The current code states that if a building is over 75ft above fire department vehicle access, then the high rise provisions apply to the buildings, regardless of use.

- **Mark Flynn:** What are the current requirements for high rise buildings?
  - **Fossum**: If a building is a high-rise, then the building must provide emergency power to provide for exit signs, means of *ingress/egress* illumination, elevator car lighting, alarm systems, detection systems, elevators, ventilation, and the fire command center.
- **Flynn:** To clarify, a building constructed before 1975 is not subject to those rules?
  - **Fossum:** Yes, these buildings were grandfathered in. The reason that we are focusing mainly on apartment is because virtually all condominiums were built under the code, but many of the apartments are older.
  - **Pharr:** I do not believe ownership is a valid distinction when considering health and welfare of occupants. Does current code require HVAC in the whole building?
    - **Clements:** The requirement is for ventilation, not for comfort or cooling.
  - **Rogers:** Creating a study groups is an avenue for further study although it would take a few years. The current regulatory procedure is in the second half of the process, and I suspect there is not enough time to take up for final regulations to be completed by the end of this year.
  - **Delegate Marshall:** I would think it appropriate to get more data from the city and surrounding jurisdictions, and get an idea of the scope of the problem.
    - **Caton**: I believe Alexandria, Arlington, and Fairfax counties would be most affected by this issue.
  - **Flynn:** I propose a survey of the jurisdictions that are likely candidates.
  - **Lipscomb:** Could we find how many emergency calls were made from these buildings while the power was out?
  - **Brian Gordon,** *AOBA and Virginia Apartment Managers Association:* Retrofitting existing buildings can be very costly and has a tremendous impact on affordability. For the Condominiums, there would need to be a direct assessment to fund a retrofit. However, for an apartment that is a pass through cost, causing rent prices to rise to cover those expenses.
    - Secondly, I think helpful to see how many high-rise buildings are owned by their jurisdictions, as this would have a cost for the local governments,

too. Ultimately, we would be supportive of the move to push this through the DHCD process and convene all the stakeholders and experts to do a thorough analysis.

- **Dawson:** Are there any estimates of cost for typical retrofit in these buildings?
  - **Gordon:** We can survey our members and get a ball park estimate.
- **Delegate Marshall:** What would the cost for maintenance of these systems be?
- **Senator Watkins:** At our next meeting, we will have more information and discuss this further.

III. Statewide Fire Prevention Code: authority to recover enforcement costs (SB 822, Puckett, 2013)

- **Senator Phillip Puckett,** *Senator District 38:* During session, we endeavored on the seemingly simple task of placing the Fire Service Board and the State Fire Marshall office together. During the committee process, we encountered issues because the Board of Housing Community Development was left out of the process. The legislation removes them from the State Fire Marshall's responsibility. Most discussion during session concerned fees, and I will be happy to answer any question concerning the legislation.
- **Delegate Marshall:** Was there a fiscal impact from the bill?
  - **Senator Puckett:** Actually no, that was not an issue. This simply is an issue that fire services and those involved think that is where the State Fire Marshall's office ought to be. The bill still tracks old language, saying that the State Fire Marshall can assess fees, but those fees go through an administrative process.
- **Delegate Marshall:** Can you specifically tell us what where the issues discussed last session?
  - **Senator Puckett**: State Fire Marshall has been under the Board of Housing and Community Development for a considerable amount of time, and they felt it should have remained there. This may be due to the cooperative process for how fees determined. Fire Services Board believed that naturally that is where the State fire Marshall should. Personally, I believe it was a bit of a debate over territory.
- **Robbie Dawson:** I believe the State Fire Marshall's office was moved a few years ago, and the fees piece just got left behind inadvertently. The budget and programs are set and established by the Fire Services Board, and, therefore, their fees should also be set under that same program. One question asked last session was whether there are any other state agencies that set fees for a separate agency.
- **Senator Watkins**: The Board of Housing and Community Development is structured is a "stopgap" with regard to making everyone reflects on cost.
  - **Senator Puckett:** Yes that was discussed in the Senate Committee.

- **Senator Watkins:** I can understand why fire services board and fire marshal should go together, but there is also a bias present. Everyone wants safety to be the predominant concern; but there is a problem with affordable housing that is very present, and this could affect it.
- **Dawson:** Most of the fees that Fire Marshals charge are inspection fees for mostly commercial properties. From a residential perspective, the fire code and inspections cannot occur on a regular basis, so there are no inspections regulated to residential buildings.
- These fees are part the Statewide Fire Prevention code; this bill would take a few code sections that one board promulgates and then have another board promulgate a few more sections.
- **Rhodes:** The Fire Service Board made of fifteen or sixteen people not necessarily fire service related. The majority of inspections are done by local Fire Marshals, and they, along with the State Fire Marshal, have the authority to set their own fees.
    - The State Marshal charges roughly $51-52 per hour, while other areas charge double, as the localities can set own fees, regarding fees. I suspect that of those in opposition of the bill, most of the localities are not inspected by the State Fire Marshal.
- **Pharr:** I would like to add that the fire services board is composed of fifteen members, thirteen members of which are associated with local government, one member associated with the insurance industry, and one representative from public.
    - Board of Housing and Community Development is far more diverse, including far more citizen and stakeholder membership which may explain the huge number of groups opposing this in the General Assembly Is there a history of the Board of Housing and Community Development reducing or rejecting proposed fees?
- **Rhodes:** The Board of Housing has one represented from Fire Board, one from the Building Code Office, and the rest are all developers and builders; so I do not believe they have the diversity that is present on the Fire Board.
- **David Bailey,** *Virginia State Firefighters Association:* To clarify, Virginia State Firefighter is made up of primarily members of volunteer fire departments. Localities have the authority to set the fees, but the Fire Board does not. The fees may be levied by local governing body in order to defray the cost of such enforcement and appeals. Of those who opposed this bill and subcommittee of House General Laws, most were not in industries that were affected by the State Fire Marshal. They are in jurisdictions were the locality is in charge of these inspections.

    - Fire programs board does not have that similar authority. In 2007, the Fire Marshal was moved to Fire Programs. Fees probably stayed with Housing and Community Development because that was all the General Assembly wanted to do that year. I am not certain it was an oversight, but a way to begin this process. I know of other entities that have moved where enforcement was handled, and the fees always went along with it.
    - The code states that the Fire Programs Fund shall not be used for salaries or operating expenses associated with the State Fire Marshal. By code, they should not use any fire programs fund to offset costs. I would contend that the Fire Programs Board and Department of Fire Programs, that has the responsibility of the State Fire Marshal, can ask with dispatch if those needs need to be adjusted.
    - I ask you to reflect on whether they are in jurisdictions where the State Fire Marshal is their concern. If they are concerned on what a specific jurisdiction is charge, then that is a local issue.
- **Delegate Marshall:** Of the 17% of localities are under the State Fire Marshal, how are they distributed throughout the state?
    - **Bailey:** I believe those jurisdictions are predominately in rural areas, and the fees in those areas are probably about half of those under local enforcement.
- **Rhodes:** 17% of population of state and 62% of landmass of state is under the State Fire Marshal. The Fire Marshal covers four of thirty-nine cities, sixty-one of ninety-five counties, and 116 of 190 towns.
- **Sean Farrell,** *Prince William County***:** Has there been a problem setting or adjusting fees through the Board of Housing and Community Development to date?
    - **Bailey:** Yes, recently there has been some tension with timing regarding the budgeting cycle
- **Ed Rhodes:** The Board of Housing sets our fees on a three year cycle, and budget cycles are two years. We have large issues with that, and are unsure if fees are increased or decreased. In 2010, the Fire Service Board asked the Board of Housing to remove the State Fire Marshal fees from the fire code process. It is part of the Fire Code process now, which is not required by the Code of Virginia. In the section 2798 it is an enforcement, not regulatory, part of the code. If that were the case, then the local government fees would be part of the Fire Code. Fire Services Board asked the Board of Housing to remove the fees from the Fire Code, which is on a three year cycle, and put it on a budget cycle, so we could rely more on our own needs at that time. However, the Board of Housing decided against this, and we are still part of a three year cycle. Our fee increase or decrease is not projected until 2014, so we cannot include it in this budget cycle.

By law, we cannot make a profit, so we must continually review the fees we charge.

- **Lipscomb**: In 2007, firefighters came forward with a bill to move the control of the Fire Marshal from the Secretary of Commerce to the Secretary of Public Safety. The Secretary of Commerce would not oppose the move if only the Fire Marshal himself was moved, and no other legislation would be perused to move codes, development of codes, or fees under Governor Kaine. That is how this came to be.
- **Pharr:** How long has the Board of Housing and Community Development had authority over fees and what issues have arisen over the period?
    - **Rogers:** I can get the exact date, but I know that for every cycle from 2003, 2006, 2009, and 2012 we can provide chronological schedule of the fees proposed the Fire Marshal and which ones passed.
    - **Rhodes:** The Fire Marshal's Office became answerable to DHCD in 1978, but we were not authorized to collect fees until 1990.
- **Brian Gordon,** *AOBA:* I am serving as representative of a broad coalition of organizations that opposed SB 822 last year. Majority of these organizations are statewide and would be affected.
    - This has been presented as an oversight in previous legislation. The legislation in 2007, as originally drafted, did transfer the oversight of the fees as well as the promulgation of the statewide fire prevention code. Based on a deal cut, not just with the administration but also with stakeholder groups. It was agreed that that would not be transferred over.
    - The main concern is that if the administration of the fees is moved from DHCD to Fire Services Board that that body does not represent to stakeholders groups. The Fire Marshal's Office is represented on DHCD, which has worked with the fire services agencies.
- **Rogers:** This year the Fire Prevention Code Development Code was created by the Fire Services Board and Board of Housing consisting of three members from each board, which undertakes and listens to all Fire Prevention Code changes be it administrative, technical, or fees.
- **Gordon:** We do not believe proposed transfer of authority is necessary, and do not believe it is an impediment to the Fire Marshal's Office. We believe DHCD provides the backstop to investigating the fees and to determining that they are reasonable
    - The means do exist to amend the fees off cycle. Regarding the issue of a two year budget and three year development cycle, there is the ability to request that the fees be adjusted at any time.
    - We request if we are to further evaluate the issue that we look at how many time such a request has been put before the BHCD and the

frequency they have been adjusted. We believe that the existing structure is currently working.

- **Rhodes:** What makes you believe that it will be easier for the Fire Marshal to increase fees?
    - **Gordon:** By moving authority to the Fire Services Board, the stakeholders are not represented.
- **Rhodes:** Regarding the DHCD's requirements for the APA, we find they are actually except form going through Planning and Budget in their regulatory process. Fire services board is not.
- **Senator Watkins:** Understanding that DHCD has handled all requests, I would like an understanding the timeline of a request being submitted and time to getting it approved. The flaw present is that the Fire Marshal must live within a budget, which is controlled by that revenue stream provided from the inspections.
    - **Rodgers:** We will provide chronological list of past cycles and current cycle. We had Senator Norman got the fire codes exempted from part of the APA processes, so our agency and board are able to move forward our through the regulatory process much more prudently.
- **Delegate Bulova:** We have timing concerns and checks and balances concerns and a very specific previous piece of legislation. Encouraging the parties to think about how to change process to address concerns and create a compromise.
    - **Dawson:** Why so many volunteer firemen are interested in . Fire prevention and how a building is maintained is critical for firefighter safety. In those areas where volunteer fire service is present, the fire prevention officer is the State Fire Marshal. That is their vested interest in the issue.

IV. Public Comment:

- **Eddy Aliff,** *Virginia Assembly of Independent Baptists***:** In 2006-2008, the Fire Marshal charged from $900 to $1200 on churches in rural areas, which are now exempt. We show concern as a statewide organization.

- **Senator Watkins** asked if those in the audience had any further thoughts or concerns.

V. Adjourn:

- Upon hearing no public comment, **Senator Watkins** adjourned the meeting at 11:19 AM.