

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1036**

Short Title: Building Code Subject to APA.

(Public)

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Sponsors: Senators Hoyle, Rand, Kerr, Foxx; and Berger.

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Referred to: Judiciary I.

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April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE STATE BUILDING CODE COUNCIL IS  
SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-138(a) reads as rewritten:

"**§ 143-138. North Carolina State Building Code.**

(a) Preparation and Adoption. – The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. ~~Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary. Notwithstanding G.S. 150B-2(8a)(h), the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-(8a), and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B.~~

The Council shall request the Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit. ~~The Council shall not take final action on a proposed Code change that has a substantial economic impact or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d).~~"

**SECTION 2.** G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. – The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon

1 application from any citizen, State agency, or political subdivision of the State. In  
2 adopting any amendment, the Council shall comply with the same procedural  
3 requirements and the same standards set forth above for adoption of the Code. Code  
4 revisions and amendments adopted by the Building Code Council on or after September  
5 1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code  
6 revisions and amendments adopted by the Building Code Council on or after July 1,  
7 1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future  
8 revisions and amendments shall be adopted prior to July 1 every three years after July 1,  
9 2001, to become effective the first day of January of the following ~~year~~, year, subject to  
10 G.S. 150B-21.3. A revision or amendment may be made effective on an earlier date if  
11 determined by the Building Code Council to be necessary to address an imminent threat  
12 to the public's health, safety, or welfare.

13 Handbooks providing explanatory material on Code provisions shall be provided no  
14 later than January 1, 2000, and shall be updated with each triennial revision of the Code  
15 or, in the discretion of the Council, more frequently. The Department may charge a  
16 reasonable fee for the handbooks."

17 **SECTION 3.** G.S. 143-138(e) reads as rewritten:

18 "(e) Effect upon Local Codes. – The North Carolina State Building Code shall  
19 apply throughout the State, from the time of its adoption. Future amendments shall  
20 become effective in accordance with subsection (d) of this section. However, any  
21 political subdivision of the State may adopt a fire prevention code and floodplain  
22 management regulations within its jurisdiction. The territorial jurisdiction of any  
23 municipality or county for this purpose, unless otherwise specified by the General  
24 Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the  
25 corporate limits of the municipality and extraterritorial jurisdiction areas established as  
26 provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other  
27 areas of the county. No such code or regulations, other than floodplain management  
28 regulations and those permitted by G.S. 160A-436, shall be effective until they have  
29 been officially approved by the Building Code Council as providing adequate minimum  
30 standards to preserve and protect health and safety, in accordance with the provisions of  
31 subsection (c) above. Local floodplain regulations may regulate all types and uses of  
32 buildings or structures located in flood hazard areas identified by local, State, and  
33 federal agencies, and include provisions governing substantial improvements,  
34 substantial damage, cumulative substantial improvements, lowest floor elevation,  
35 protection of mechanical and electrical systems, foundation construction, anchorage,  
36 acceptable flood resistant materials, and other measures the political subdivision deems  
37 necessary considering the characteristics of its flood hazards and vulnerability. In the  
38 absence of approval by the Building Code Council, or in the event that approval is  
39 withdrawn, local fire prevention codes and regulations shall have no force and effect.  
40 Provided any local regulations approved by the local governing body which are found  
41 by the Council to be more stringent than the adopted statewide fire prevention code and  
42 which are found to regulate only activities and conditions in buildings, structures, and  
43 premises that pose dangers of fire, explosion or related hazards, and are not matters in  
44 conflict with the State Building Code, shall be approved. Local governments may

1 enforce the fire prevention code of the State Building Code using civil remedies  
 2 authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of  
 3 Insurance or other State official with responsibility for enforcement of the Code  
 4 institutes a civil action pursuant to G.S. 143-139, a local government may not institute a  
 5 civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation.  
 6 Appeals from the assessment or imposition of such civil remedies shall be as provided  
 7 in G.S. 160A-434."

8 **SECTION 4.** G.S. 143-138(g) reads as rewritten:

9 "(g) Publication and Distribution of Code. – The Building Code Council shall  
 10 cause to be printed, after adoption by the Council, the North Carolina State Building  
 11 Code and each amendment thereto. It shall, at the State's expense, distribute copies of  
 12 the Code and each amendment to State and local governmental officials, departments,  
 13 agencies, and educational institutions, as is set out in the table below. (Those marked by  
 14 an asterisk will receive copies only on written request to the Council.)

15 **OFFICIAL OR AGENCY** **NUMBER OF COPIES**

16 State Departments and Officials	
17 Governor .....	1
18 Lieutenant Governor .....	1
19 Auditor .....	1
20 Treasurer .....	1
21 Secretary of State .....	1
22 Superintendent of Public Instruction .....	1
23 Attorney General (Library) .....	1
24 Commissioner of Agriculture .....	1
25 Commissioner of Labor .....	1
26 Commissioner of Insurance .....	1
27 Department of Environment and	
28 Natural Resources .....	1
29 Department of Health and Human Services .....	1
30 Department of Juvenile Justice and	
31 Delinquency Prevention .....	1
32 Board of Transportation .....	1
33 Utilities Commission .....	1
34 Department of Administration .....	1
35 Clerk of the Supreme Court .....	1
36 Clerk of the Court of Appeals .....	1
37 Clerk of the Superior Court .....	1 each
38 Department of Cultural Resources [State	
39 Library] .....	5
40 Supreme Court Library .....	2
41 Legislative Library .....	1
42 <u>Office of Administrative Hearings .....</u>	<u>1</u>

43 **Schools**

44 All state-supported colleges and universities

- 1 in the State of North Carolina.....1 each
- 2 Local Officials
- 3 Clerks of the Superior Courts .....1 each
- 4 Chief Building Inspector of each incorporated
- 5 municipality or county .....1

6 In addition, the Building Code Council shall make additional copies available at  
7 such price as it shall deem reasonable to members of the general public."

8 **SECTION 5.** G.S. 150B-21.21 reads as rewritten:

9 "**§ 150B-21.21. Publication of rules of North Carolina State ~~Bar~~Bar, Building**  
10 **Code Council, and exempt agencies.**

11 (a) State Bar. – The North Carolina State Bar must submit a rule adopted or  
12 approved by it and entered in the minutes of the North Carolina Supreme Court to the  
13 Codifier of Rules for inclusion in the North Carolina Administrative Code. The State  
14 Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme  
15 Court. The Codifier of Rules must compile, make available for public inspection, and  
16 publish a rule included in the North Carolina Administrative Code under this subsection  
17 in the same manner as other rules in the Code.

18 (a1) Building Code Council. – The Building Code Council shall publish the North  
19 Carolina State Building Code as provided in G.S. 143-138(g).

20 (b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina  
21 Utilities Commission must submit to the Codifier of Rules those rules of the Utilities  
22 Commission that are published from time to time in the publication titled "North  
23 Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule  
24 required to be included in the Code within 30 days after it is adopted.

25 Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is  
26 exempted from this Article by that statute must submit a temporary or permanent rule  
27 adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative  
28 Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days  
29 after adopting the rule.

30 (c) Publication. – A rule submitted to the Codifier of Rules under this section  
31 must be in the physical form specified by the Codifier of Rules. The Codifier of Rules  
32 must compile, make available for public inspection, and publish a rule submitted under  
33 this section in the same manner as other rules in the North Carolina Administrative  
34 Code. This requirement does not apply to the North Carolina State Building Code."

35 **SECTION 6.** G.S. 150B-38(a) reads as rewritten:

36 "**§ 150B-38. Scope; hearing required; notice; venue.**

37 (a) The provisions of this Article shall apply to the following agencies:

- 38 (1) Occupational licensing agencies;
- 39 (2) The State Banking Commission, the Commissioner of Banks, the
- 40 Savings Institutions Division of the Department of Commerce, and the
- 41 Credit Union Division of the Department of Commerce; and
- 42 (3) The Department of Insurance and the Commissioner of Insurance.
- 43 (4) The Department of Commerce in the administration of the provisions
- 44 of Part 16 of Article 10 of Chapter 143B of the General Statutes.

1           (5) The North Carolina State Building Code Council."  
2           **SECTION 7.** This act is effective when it becomes law and applies to  
3 revisions made to the North Carolina State Building Code made on or after January 1,  
4 2002.