

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1036
House Committee Substitute Favorable 5/14/01

Short Title: Building Code Subject to APA.

(Public)

Sponsors:

Referred to:

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 published in the North Carolina Register at least 15 days prior to the date of the hearing. ~~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-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.~~

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:

1 "(d) Amendments of the Code. – The Building Code Council may revise and
2 amend the North Carolina State Building Code, either on its own motion or upon
3 application from any citizen, State agency, or political subdivision of the State. In
4 adopting any amendment, the Council shall comply with the same procedural
5 requirements and the same standards set forth above for adoption of the Code. ~~Code~~
6 ~~revisions and amendments adopted by the Building Code Council on or after September~~
7 ~~1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code~~
8 ~~revisions and amendments adopted by the Building Code Council on or after July 1,~~
9 ~~1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future~~
10 ~~revisions and amendments shall be adopted prior to July 1 every three years after July 1,~~
11 ~~2001, to become effective the first day of January of the following year. A revision or~~
12 ~~amendment may be made effective on an earlier date if determined by the Building~~
13 ~~Code Council to be necessary to address an imminent threat to the public's health,~~
14 ~~safety, or welfare.~~

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

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

20 "(e) Effect upon Local Codes. – The North Carolina State Building Code shall
21 apply throughout the State, from the time of its adoption. Approved rules shall become
22 effective in accordance with G.S. 150B-21.3. However, any political subdivision of the
23 State may adopt a fire prevention code and floodplain management regulations within
24 its jurisdiction. The territorial jurisdiction of any municipality or county for this
25 purpose, unless otherwise specified by the General Assembly, shall be as follows:
26 Municipal jurisdiction shall include all areas within the corporate limits of the
27 municipality and extraterritorial jurisdiction areas established as provided in G.S.
28 160A-360 or a local act; county jurisdiction shall include all other areas of the county.
29 No such code or regulations, other than floodplain management regulations and those
30 permitted by G.S. 160A-436, shall be effective until they have been officially approved
31 by the Building Code Council as providing adequate minimum standards to preserve
32 and protect health and safety, in accordance with the provisions of subsection (c) above.
33 Local floodplain regulations may regulate all types and uses of buildings or structures
34 located in flood hazard areas identified by local, State, and federal agencies, and include
35 provisions governing substantial improvements, substantial damage, cumulative
36 substantial improvements, lowest floor elevation, protection of mechanical and
37 electrical systems, foundation construction, anchorage, acceptable flood resistant
38 materials, and other measures the political subdivision deems necessary considering the
39 characteristics of its flood hazards and vulnerability. In the absence of approval by the
40 Building Code Council, or in the event that approval is withdrawn, local fire prevention
41 codes and regulations shall have no force and effect. Provided any local regulations
42 approved by the local governing body which are found by the Council to be more

1 stringent than the adopted statewide fire prevention code and which are found to
 2 regulate only activities and conditions in buildings, structures, and premises that pose
 3 dangers of fire, explosion or related hazards, and are not matters in conflict with the
 4 State Building Code, shall be approved. Local governments may enforce the fire
 5 prevention code of the State Building Code using civil remedies authorized under G.S.
 6 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State
 7 official with responsibility for enforcement of the Code institutes a civil action pursuant
 8 to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139,
 9 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or
 10 imposition of such civil remedies shall be as provided in G.S. 160A-434."

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

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

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

1 Supreme Court Library2
2 Legislative Library.....1
3 Office of Administrative Hearings1
4 Rules Review Commission.....1
5 Schools
6 All state-supported colleges and universities
7 in the State of North Carolina.....1 each
8 Local Officials
9 Clerks of the Superior Courts1 each
10 Chief Building Inspector of each incorporated
11 municipality or county.....1

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

14 **SECTION 5.** G.S. 150B-21.5 is amended by adding a new subsection to
15 read:

16 "(d) State Building Code. – The Building Code Council is not required to publish
17 a notice of text in the North Carolina Register when it proposes to adopt a rule that
18 concerns the North Carolina State Building Code. The Building Code Council is
19 required to submit to the Commission for review a rule for which notice and hearing is
20 not required under this subsection. In adopting a rule, the Council shall comply with the
21 procedural requirements of G.S. 150B-21.3."

22 **SECTION 6.** G.S. 150B-21.17(a) reads as rewritten:

23 "Part 4. Publication of Code and Register.

24 "§ **150B-21.17. North Carolina Register.**

25 (a) Content. – The Codifier of Rules must publish the North Carolina Register.
26 The North Carolina Register must be published at least two times a month and must
27 contain the following:

- 28 (1) Temporary rules entered in the North Carolina Administrative Code.
- 29 (1a) Notices of rule-making proceedings, the text of proposed rules, and the
30 text of permanent rules approved by the Commission. This subdivision
31 does not apply to the North Carolina State Building Code.
- 32 (2) Notices of receipt of a petition for municipal incorporation, as required
33 by G.S. 120-165.
- 34 (3) Executive orders of the Governor.
- 35 (4) Final decision letters from the United States Attorney General
36 concerning changes in laws that affect voting in a jurisdiction subject
37 to section 5 of the Voting Rights Act of 1965, as required by G.S.
38 120-30.9H.
- 39 (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- 40 (6) Other information the Codifier determines to be helpful to the public."

41 **SECTION 7.** G.S. 150B-21.21 reads as rewritten:

1 **"§ 150B-21.21. Publication of rules of North Carolina State ~~Bar~~Bar, Building**
2 **Code Council, and exempt agencies.**

3 (a) State Bar. – The North Carolina State Bar must submit a rule adopted or
4 approved by it and entered in the minutes of the North Carolina Supreme Court to the
5 Codifier of Rules for inclusion in the North Carolina Administrative Code. The State
6 Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme
7 Court. The Codifier of Rules must compile, make available for public inspection, and
8 publish a rule included in the North Carolina Administrative Code under this subsection
9 in the same manner as other rules in the Code.

10 (a1) Building Code Council. – The Building Code Council shall publish the North
11 Carolina State Building Code as provided in G.S. 143-138(g). The Codifier of Rules is
12 not required to publish the North Carolina State Building Code in the North Carolina
13 Administrative Code.

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

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

24 (c) Publication. – A rule submitted to the Codifier of Rules under this section
25 must be in the physical form specified by the Codifier of Rules. The Codifier of Rules
26 must compile, make available for public inspection, and publish a rule submitted under
27 this section in the same manner as other rules in the North Carolina Administrative
28 Code."

29 **SECTION 8.** G.S. 150B-38(a) reads as rewritten:

30 **"§ 150B-38. Scope; hearing required; notice; venue.**

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

32 (1) Occupational licensing ~~agencies;~~agencies.

33 (2) The State Banking Commission, the Commissioner of Banks, the
34 Savings Institutions Division of the Department of Commerce, and the
35 Credit Union Division of the Department of ~~Commeree;~~
36 and Commerce.

37 (3) The Department of Insurance and the Commissioner of Insurance.

38 (4) The Department of Commerce in the administration of the provisions
39 of Part 16 of Article 10 of Chapter 143B of the General Statutes.

40 (5) The North Carolina State Building Code Council."

41 **SECTION 9.** This act is effective when it becomes law and applies to
42 revisions made to the North Carolina State Building Code on or after January 1, 2002.