

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 806
Committee Substitute Favorable 4/27/11
Third Edition Engrossed 5/12/11

Short Title: Zoning St. of Limit./Ag. Dist. Change.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT CHANGING THE STATUTE OF LIMITATIONS AND REPOSE FOR
3 CHALLENGING ZONING ORDINANCES, CLARIFYING THE APPLICABILITY OF
4 THE STATUTE OF LIMITATIONS TO ENFORCEMENT ACTIONS OR
5 ADMINISTRATIVE APPEALS AND TO PROHIBIT SPECIFIED ZONING
6 ORDINANCES AFFECTING SINGLE-FAMILY DETACHED RESIDENTIAL USES
7 ON LOTS GREATER THAN TEN ACRES IN AGRICULTURAL ZONING DISTRICTS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 1-54 is amended by adding a new subdivision to read:

10 "(10) Actions contesting the validity of any zoning or unified development
11 ordinance or any provision thereof adopted under Part 3 of Article 18 of
12 Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General
13 Statutes or other applicable law, other than an ordinance adopting or
14 amending a zoning map or approving a special use, conditional use, or
15 conditional zoning district rezoning request. Such an action accrues when
16 the party bringing such action first has standing to challenge the ordinance."

17 **SECTION 2.** G.S. 1-54.1 reads as rewritten:

18 "**§ 1-54.1. Two months.**

19 Within two months an action contesting the validity of any ~~zoning~~ ordinance adopting or
20 amending a zoning map or approving a special use, conditional use, or conditional zoning
21 district rezoning request amendment thereto adopted by a county under Part 3 of Article 18 of
22 Chapter 153A of the General Statutes or other applicable law or adopted by a city under or Part
23 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law. Such an action
24 accrues upon adoption of such ordinance or amendment."

25 **SECTION 3.** G.S. 153A-348 reads as rewritten:

26 "**§ 153A-348. Statute of limitations.**

27 (a) A cause of action as to the validity of any ~~zoning ordinance, or amendment thereto,~~
28 ordinance adopting or amending a zoning map or approving a special use, conditional use, or
29 conditional zoning district rezoning request adopted under this Part or other applicable law
30 shall accrue upon adoption of ~~the ordinance, or amendment thereto,~~ such ordinance and shall be
31 brought within two months as provided in G.S. 1-54.1.

32 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
33 the validity of any zoning or unified development ordinance or any provision thereof adopted
34 under this Part or other applicable law shall be brought within two years of the accrual of such



1 action. Such an action accrues when the party bringing such action first has standing to
2 challenge the ordinance.

3 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
4 action involving the enforcement of a zoning or unified development ordinance from raising as
5 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
6 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
7 requirement, decision, or determination made by an administrative official contending that such
8 party is in violation of a zoning or unified development ordinance from raising in the appeal the
9 invalidity of such ordinance as a defense to such order, requirement, decision, or
10 determination."

11 **SECTION 4.** G.S. 160A-364.1 reads as rewritten:

12 **"§ 160A-364.1. Statute of limitations.**

13 (a) A cause of action as to the validity of any ~~zoning ordinance, or amendment thereto,~~
14 ordinance adopting or amending a zoning map or approving a special use, conditional use, or
15 conditional zoning district request adopted under this Article or other applicable law shall
16 accrue upon adoption of the ~~ordinance, or amendment thereto,~~ such ordinance and shall be
17 brought within two months as provided in G.S. 1-54.1.

18 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
19 the validity of any zoning or unified development ordinance or any provision thereof adopted
20 under this Article or other applicable law shall be brought within two years of the accrual of
21 such action. Such an action accrues when the party bringing such action first has standing to
22 challenge the ordinance.

23 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
24 action involving the enforcement of a zoning or unified development ordinance from raising as
25 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
26 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
27 requirement, decision, or determination made by an administrative official contending that such
28 party is in violation of a zoning or unified development ordinance from raising in the appeal the
29 invalidity of such ordinance as a defense to such order, requirement, decision, or
30 determination."

31 **SECTION 5.** G.S. 153A-340 is amended by adding a new subsection to read:

32 "(j) An ordinance adopted pursuant to this section shall not prohibit single-family
33 detached residential uses constructed in accordance with the North Carolina State Building
34 Code on lots greater than 10 acres in size in zoning districts where more than fifty percent
35 (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction
36 shall not apply to commercial or industrial districts where a broad variety of commercial or
37 industrial uses are permissible. An ordinance adopted pursuant to this section shall not require
38 that a lot greater than 10 acres in size have frontage on a public road or county-approved
39 private road, or be served by public water or sewer lines, in order to be developed for
40 single-family residential purposes."

41 **SECTION 6.** This act becomes effective July 1, 2011, but the provisions of
42 Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not
43 apply to litigation pending on that date. Upon the effective date, any ordinance provision that is
44 inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.