

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

5

HOUSE BILL 806
Committee Substitute Favorable 4/27/11
Third Edition Engrossed 5/12/11
Senate Commerce Committee Substitute Adopted 6/14/11
Fifth Edition Engrossed 6/14/11

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 provided that, a challenge to an ordinance on the basis of an alleged defect in
18 the adoption process shall be brought within three years after the adoption of
19 the ordinance."

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

21 **"§ 1-54.1. Two months.**

22 Within two months an action contesting the validity of any ~~zoning~~ ordinance adopting or
23 amending a zoning map or approving a special use, conditional use, or conditional zoning
24 district rezoning request amendment thereto adopted by a county under Part 3 of Article 18 of
25 Chapter 153A of the General Statutes or other applicable law or adopted by a city under or Part
26 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law. Such an action
27 accrues upon adoption of such ordinance or amendment."

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

29 **"§ 153A-348. Statute of limitations.**

30 (a) A cause of action as to the validity of any ~~zoning ordinance, or amendment thereto,~~
31 ordinance adopting or amending a zoning map or approving a special use, conditional use, or
32 conditional zoning district rezoning request adopted under this Part or other applicable law



1 shall accrue upon adoption of ~~the ordinance, or amendment thereto,~~ such ordinance and shall be
2 brought within two months as provided in G.S. 1-54.1.

3 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
4 the validity of any zoning or unified development ordinance or any provision thereof adopted
5 under this Part or other applicable law shall be brought within one year of the accrual of such
6 action. Such an action accrues when the party bringing such action first has standing to
7 challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the
8 adoption process shall be brought within three years after the adoption of the ordinance.

9 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
10 action involving the enforcement of a zoning or unified development ordinance from raising as
11 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
12 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
13 requirement, decision, or determination made by an administrative official contending that such
14 party is in violation of a zoning or unified development ordinance from raising in the appeal the
15 invalidity of such ordinance as a defense to such order, requirement, decision, or determination.
16 A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the
17 basis of an alleged deft in the adoption process unless the defense is formally raised within
18 three years of the adoption of the challenged ordinance."

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

20 "**§ 160A-364.1. Statute of limitations.**

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

26 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
27 the validity of any zoning or unified development ordinance or any provision thereof adopted
28 under this Article or other applicable law shall be brought within one year of the accrual of
29 such action. Such an action accrues when the party bringing such action first has standing to
30 challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the
31 adoption process shall be brought within three years after the adoption of the ordinance.

32 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
33 action involving the enforcement of a zoning or unified development ordinance from raising as
34 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
35 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
36 requirement, decision, or determination made by an administrative official contending that such
37 party is in violation of a zoning or unified development ordinance from raising in the appeal the
38 invalidity of such ordinance as a defense to such order, requirement, decision, or determination.
39 A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the
40 basis of an alleged deft in the adoption process unless the defense is formally raised within
41 three years of the adoption of the challenged ordinance."

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

43 "(j) An ordinance adopted pursuant to this section shall not prohibit single-family
44 detached residential uses constructed in accordance with the North Carolina State Building
45 Code on lots greater than 10 acres in size in zoning districts where more than fifty percent
46 (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction
47 shall not apply to commercial or industrial districts where a broad variety of commercial or
48 industrial uses are permissible. An ordinance adopted pursuant to this section shall not require
49 that a lot greater than 10 acres in size have frontage on a public road or county-approved
50 private road, or be served by public water or sewer lines, in order to be developed for
51 single-family residential purposes."

1 **SECTION 6.** The LRC, in consultation with the NC Home Builders Association
2 and NC Association of County Commissioners, shall study the extent to which counties shall
3 be able to require that lots exempt from county subdivision regulations must be accessible to
4 emergency services providers, along with any issues deemed relevant by the LRC. The LRC
5 may provide an interim report, including any recommendations and any legislative proposals to
6 the General Assembly by May 1, 2012, and shall provide a final report, including any
7 recommendations and any legislative proposals to the General Assembly by January 15, 2013.

8 **SECTION 7.** This act becomes effective July 1, 2011, but the provisions of
9 Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not
10 apply to litigation pending on that date. Upon the effective date, any ordinance provision that
11 is inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.