

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1507*
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
5/21/07

Short Title: Housing Conditions/Inspections.

(Public)

Sponsors:

Referred to:

March 27, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING CITIES AND COUNTIES TO HAVE PROBABLE CAUSE BEFORE INSPECTING RESIDENTIAL AND NONRESIDENTIAL STRUCTURES AND REQUIRING OWNERS AND LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) is amended by adding a new subsection to read:

"(7) Within a reasonable period of time based on the severity of the condition, repair or remedy any imminently dangerous condition in the premises after acquiring actual knowledge or receiving notice of the condition. For purposes of this subdivision, the term 'imminently dangerous condition' means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.

- 1 1. Excessive standing water, sewage, or flooding problems caused
2 by plumbing leaks or inadequate drainage that contribute to
3 mosquito infestation or mold."

4 **SECTION 2.** G.S. 153A-364 reads as rewritten:

5 **"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

6 (a) The inspection department ~~shall~~may make periodic inspections, subject to
7 the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous
8 and unlawful conditions in residential and nonresidential buildings within its territorial
9 jurisdiction. Except as provided in subsection (b) of this section, the inspection
10 department shall make periodic inspections only when there is probable cause to believe
11 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
12 residential or nonresidential building. For purposes of this section, the term 'probable
13 cause' means: (i) the landlord or owner has a history of more than one verified violation
14 of the housing ordinances within a 12-month period; (ii) there has been a complaint that
15 substandard conditions exist within the building or an occupant has requested that the
16 building be inspected; or (iii) the inspections department has actual knowledge of unsafe
17 conditions within the building that was acquired as a result of routine business activities
18 conducted by government officials. In conducting inspections authorized under this
19 section, the inspection department shall not discriminate between single-family and
20 multifamily buildings or between owner-occupied and tenant-occupied buildings. In
21 addition, it shall make any necessary inspections when it has reason to believe that such
22 conditions may exist in a particular building. In exercising these powers, each member
23 of the inspection department has a right, upon presentation of proper credentials, to
24 enter on any premises within the territorial jurisdiction of the department at any
25 reasonable hour for the purposes of inspection or other enforcement action.

26 (b) A county may require periodic inspections under subsection (a) of this section
27 as part of a targeted effort to respond to blighted or potentially blighted conditions
28 within a Community Development Block Grant geographic area that has been
29 designated by the board of commissioners, the Department of Commerce, Division of
30 Community Assistance, or the United States Department of Housing and Urban
31 Development."

32 **SECTION 3.** G.S. 160A-424 reads as rewritten:

33 **"§ 160A-424. Periodic inspections.**

34 (a) The inspection department ~~shall~~may make periodic inspections, subject to
35 the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful
36 conditions in residential and nonresidential buildings or structures within its territorial
37 jurisdiction. Except as provided in subsection (b) of this section, the inspection
38 department shall make periodic inspections only when there is probable cause to believe
39 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
40 residential or nonresidential building or structure. For purposes of this section, the term
41 'probable cause' means: (i) the landlord or owner has a history of more than one verified
42 violation of the housing ordinances within a 12-month period; (ii) there has been a
43 complaint that substandard conditions exist within the building or structure or an
44 occupant has requested that the building or structure be inspected; or (iii) the

1 inspections department has actual knowledge of unsafe conditions within the building or
2 structure that was acquired as a result of routine business activities conducted by
3 government officials. In conducting inspections authorized under this section, the
4 inspection department shall not discriminate between single-family and multifamily
5 buildings or structures or between owner-occupied and tenant-occupied buildings or
6 structures. In addition, it shall make inspections when it has reason to believe that such
7 conditions may exist in a particular structure. In exercising this power, members of the
8 department shall have a right to enter on any premises within the jurisdiction of the
9 department at all reasonable hours for the purposes of inspection or other enforcement
10 action, upon presentation of proper credentials.

11 (b) A city may require periodic inspections under subsection (a) of this section as
12 part of a targeted effort to respond to blighted or potentially blighted conditions within a
13 Community Development Block Grant geographic area that has been designated by the
14 city council, the Department of Commerce, Division of Community Assistance, or the
15 United States Department of Housing and Urban Development."

16 **SECTION 4.** G.S. 160A-443 reads as rewritten:

17 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of**
18 **public officer.**

19 Upon the adoption of an ordinance finding that dwelling conditions of the character
20 described in G.S. 160A-441 exist within a city, the governing body of the city is hereby
21 authorized to adopt and enforce ordinances relating to dwellings within the city's
22 territorial jurisdiction that are unfit for human habitation. These ordinances shall include
23 the following provisions:

24 ...

25 (2) That whenever a petition is filed with the public officer by a public
26 authority or by at least five residents of the city charging that any
27 dwelling is unfit for human ~~habitation~~ or habitation, whenever the
28 occupant of a dwelling requests that the dwelling be inspected, or
29 whenever it appears to the public officer (on his own motion) that any
30 dwelling is unfit for human habitation, the public officer shall, if his
31 preliminary investigation discloses a basis for such charges, issue and
32 cause to be served upon the owner of and parties in interest in such
33 dwellings a complaint stating the charges in that respect and
34 containing a notice that a hearing will be held before the public officer
35 (or his designated agent) at a place within the county in which the
36 property is located fixed not less than 10 days nor more than 30 days
37 after the serving of the complaint; that the owner and parties in interest
38 shall be given the right to file an answer to the complaint and to appear
39 in person, or otherwise, and give testimony at the place and time fixed
40 in the complaint; and that the rules of evidence prevailing in courts of
41 law or equity shall not be controlling in hearings before the public
42 officer.

43 (3) That if, after notice and hearing, the public officer determines that the
44 dwelling under consideration is unfit for human habitation, he shall

1 state in writing his findings of fact in support of that determination and
 2 shall issue and cause to be served upon the owner thereof an order,

3 a. If the repair, alteration or improvement of the dwelling can be
 4 made at a reasonable cost in relation to the value of the
 5 dwelling (the ordinance of the city may fix a certain percentage
 6 of this value as being reasonable), requiring the ~~owner, within~~
 7 ~~the time specified,~~ owner to repair, alter or improve the
 8 ~~dwelling in order to render it fit for human habitation or to~~
 9 ~~vacate and close the dwelling as a human habitation; or~~
 10 dwelling.

11 b. If the repair, alteration or improvement of the dwelling cannot
 12 be made at a reasonable cost in relation to the value of the
 13 dwelling (the ordinance of the city may fix a certain percentage
 14 of this value as being reasonable), requiring the owner, within
 15 the time specified in the order, to remove or demolish such
 16 dwelling. However, notwithstanding any other provision of law,
 17 if the dwelling is located in a historic district of the city and the
 18 Historic District Commission determines, after a public hearing
 19 as provided by ordinance, that the dwelling is of particular
 20 significance or value toward maintaining the character of the
 21 district, and the dwelling has not been condemned as unsafe, the
 22 order may require that the dwelling be vacated and closed
 23 consistent with G.S. 160A-400.14(a).

24 (4) That, if the owner fails to comply with an order to repair, alter or
 25 improve ~~or to vacate and close~~ the dwelling, the public officer may
 26 cause the dwelling to be repaired, altered or improved or to be vacated
 27 and closed; that the public officer may cause to be posted on the main
 28 entrance of any dwelling so closed, a placard with the following
 29 words: "This building is unfit for human habitation; the use or
 30 occupation of this building for human habitation is prohibited and
 31 unlawful." Occupation of a building so posted shall constitute a Class
 32 1 misdemeanor.

33 ...
 34 (5a) If the governing body shall have adopted an ordinance, or the public
 35 officer shall have:

36 a. In a municipality located in counties which have a population in
 37 excess of 71,000 by the last federal census (including the
 38 entirety of any municipality located in more than one county at
 39 least one county of which has a population in excess of 71,000),
 40 other than municipalities with a population in excess of 190,000
 41 by the last federal census, issued an order, ordering a dwelling
 42 to be repaired or vacated and closed, as provided in ~~subdivision~~
 43 ~~(3)a,~~ subdivisions (3)a. and (4) of this section, and if the owner
 44 has vacated and closed such dwelling and kept such dwelling

1 vacated and closed for a period of one year pursuant to the
2 ordinance or order;

- 3 b. In a municipality with a population in excess of 190,000 by the
4 last federal census, commenced proceedings under the
5 substandard housing regulations regarding a dwelling to be
6 repaired or vacated and closed, as provided in ~~subdivision~~
7 ~~(3)a., subdivisions (3)a. and (4) of this section,~~ and if the owner
8 has vacated and closed such dwelling and kept such dwelling
9 vacated and closed for a period of one year pursuant to the
10 ordinance or after such proceedings have commenced,

11 then if the governing body shall find that the owner has abandoned the
12 intent and purpose to repair, alter or improve the dwelling in order to
13 render it fit for human habitation and that the continuation of the
14 dwelling in its vacated and closed status would be inimical to the
15 health, safety, morals and welfare of the municipality in that the
16 dwelling would continue to deteriorate, would create a fire and safety
17 hazard, would be a threat to children and vagrants, would attract
18 persons intent on criminal activities, would cause or contribute to
19 blight and the deterioration of property values in the area, and would
20 render unavailable property and a dwelling which might otherwise
21 have been made available to ease the persistent shortage of decent and
22 affordable housing in this State, then in such circumstances, the
23 governing body may, after the expiration of such one year period,
24 enact an ordinance and serve such ordinance on the owner, setting
25 forth the following:

- 26 a. If it is determined that the repair of the dwelling to render it fit
27 for human habitation can be made at a cost not exceeding fifty
28 percent (50%) of the then current value of the dwelling, the
29 ordinance shall require that the owner either repair or demolish
30 and remove the dwelling within 90 days; or
31 b. If it is determined that the repair of the dwelling to render it fit
32 for human habitation cannot be made at a cost not exceeding
33 fifty percent (50%) of the then current value of the dwelling, the
34 ordinance shall require the owner to demolish and remove the
35 dwelling within 90 days.

36 This ordinance shall be recorded in the Office of the Register of
37 Deeds in the county wherein the property or properties are located and
38 shall be indexed in the name of the property owner in the grantor
39 index. If the owner fails to comply with this ordinance, the public
40 officer shall effectuate the purpose of the ordinance.

41 ~~This subdivision only applies to municipalities located in counties~~
42 ~~which have a population in excess of 71,000 by the last federal census~~
43 ~~(including the entirety of any municipality located in more than one~~

1 county at least one county of which has a population in excess of
2 71,000).

3 [This subdivision does not apply to the local government units
4 listed in subdivision (5b) of this section.]

5 (5b) If the governing body shall have adopted an ordinance, or the public
6 officer shall have:

7 a. In a municipality other than municipalities with a population in
8 excess of 190,000 by the last federal census, issued an order,
9 ordering a dwelling to be repaired or vacated and closed, as
10 provided in ~~subdivision (3)a.~~ subdivisions (3)a. and (4) of this
11 section, and if the owner has vacated and closed such dwelling
12 and kept such dwelling vacated and closed for a period of one
13 year pursuant to the ordinance or order;

14 b. In a municipality with a population in excess of 190,000 by the
15 last federal census, commenced proceedings under the
16 substandard housing regulations regarding a dwelling to be
17 repaired or vacated and closed, as provided in ~~subdivision~~
18 ~~(3)a.~~ subdivisions (3)a. and (4) of this section, and if the owner
19 has vacated and closed such dwelling and kept such dwelling
20 vacated and closed for a period of one year pursuant to the
21 ordinance or after such proceedings have commenced,

22 then if the governing body shall find that the owner has abandoned the
23 intent and purpose to repair, alter or improve the dwelling in order to
24 render it fit for human habitation and that the continuation of the
25 dwelling in its vacated and closed status would be inimical to the
26 health, safety, morals and welfare of the municipality in that the
27 dwelling would continue to deteriorate, would create a fire and safety
28 hazard, would be a threat to children and vagrants, would attract
29 persons intent on criminal activities, would cause or contribute to
30 blight and the deterioration of property values in the area, and would
31 render unavailable property and a dwelling which might otherwise
32 have been made available to ease the persistent shortage of decent and
33 affordable housing in this State, then in such circumstances, the
34 governing body may, after the expiration of such one year period,
35 enact an ordinance and serve such ordinance on the owner, setting
36 forth the following:

37 a. If it is determined that the repair of the dwelling to render it fit
38 for human habitation can be made at a cost not exceeding fifty
39 percent (50%) of the then current value of the dwelling, the
40 ordinance shall require that the owner either repair or demolish
41 and remove the dwelling within 90 days; or

42 b. If it is determined that the repair of the dwelling to render it fit
43 for human habitation cannot be made at a cost not exceeding
44 fifty percent (50%) of the then current value of the dwelling, the

1 ordinance shall require the owner to demolish and remove the
2 dwelling within 90 days.

3 This ordinance shall be recorded in the Office of the Register of Deeds
4 in the county wherein the property or properties are located and shall
5 be indexed in the name of the property owner in the grantor index. If
6 the owner fails to comply with this ordinance, the public officer shall
7 effectuate the purpose of the ordinance.

8 This subdivision applies to the Cities of Eden, Lumberton,
9 Roanoke Rapids, and Whiteville, to the municipalities in Lee County,
10 and the Towns of Bethel, Farmville, Newport, and Waynesville only.

11 (6) Liens. –

12 a. That the amount of the cost of repairs, alterations or
13 improvements, or vacating and closing, or removal or
14 demolition by the public officer shall be a lien against the real
15 property upon which the cost was incurred, which lien shall be
16 filed, have the same priority, and be collected as the lien for
17 special assessment provided in Article 10 of this Chapter.

18 b. If the real property upon which the cost was incurred is located
19 in an incorporated city, then the amount of the cost is also a lien
20 on any other real property of the owner located within the city
21 limits or within one mile thereof except for the owner's primary
22 residence. The additional lien provided in this sub-subdivision
23 is inferior to all prior liens and shall be collected as a money
24 judgment.

25 c. If the dwelling is removed or demolished by the public officer,
26 he shall sell the materials of the dwelling, and any personal
27 property, fixtures or appurtenances found in or attached to the
28 dwelling, and shall credit the proceeds of the sale against the
29 cost of the removal or demolition and any balance remaining
30 shall be deposited in the superior court by the public officer,
31 shall be secured in a manner directed by the court, and shall be
32 disbursed by the court to the persons found to be entitled thereto
33 by final order or decree of the court. Nothing in this section
34 shall be construed to impair or limit in any way the power of the
35 city to define and declare nuisances and to cause their removal
36 or abatement by summary proceedings, or otherwise.

37 (7) If any occupant fails to comply with an order to vacate a dwelling, the
38 public officer may file a civil action in the name of the city to remove
39 such occupant. The action to vacate the dwelling shall be in the nature
40 of summary ejectment and shall be commenced by filing a complaint
41 naming as parties-defendant any person occupying such dwelling. The
42 clerk of superior court shall issue a summons requiring the defendant
43 to appear before a magistrate at a certain time, date and place not to
44 exceed 10 days from the issuance of the summons to answer the

1 complaint. The summons and complaint shall be served as provided in
2 G.S. 42-29. The summons shall be returned according to its tenor, and
3 if on its return it appears to have been duly served, and if at the hearing
4 the public officer produces a certified copy of an ordinance adopted by
5 the governing body pursuant to subdivision (5) authorizing the officer
6 to proceed to vacate the occupied dwelling, the magistrate shall enter
7 judgment ordering that the premises be vacated and that all persons be
8 removed. The judgment ordering that the dwelling be vacated shall be
9 enforced in the same manner as the judgment for summary ejectment
10 entered under G.S. 42-30. An appeal from any judgment entered
11 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
12 and the execution of such judgment may be stayed as provided in
13 G.S. 7A-227. An action to remove an occupant of a dwelling who is a
14 tenant of the owner may not be in the nature of a summary ejectment
15 proceeding pursuant to this paragraph unless such occupant was served
16 with notice at least 30 days before the filing of the summary ejectment
17 proceeding that the governing body has ordered the public officer to
18 proceed to exercise his duties under subdivisions (4) and (5) of this
19 section to vacate and close or remove and demolish the dwelling.

- 20 (8) That whenever a determination is made pursuant to ~~subdivision (3)~~
21 subdivisions (3) and (4) of this section that a dwelling must be vacated
22 and closed, or removed or demolished, under the provisions of this
23 section, notice of the order shall be given by first-class mail to any
24 organization involved in providing or restoring dwellings for
25 affordable housing that has filed a written request for such notices. A
26 minimum period of 45 days from the mailing of such notice shall be
27 given before removal or demolition by action of the public officer, to
28 allow the opportunity for any organization to negotiate with the owner
29 to make repairs, lease, or purchase the property for the purpose of
30 providing affordable housing. The public officer or clerk shall certify
31 the mailing of the notices, and the certification shall be conclusive in
32 the absence of fraud. Only an organization that has filed a written
33 request for such notices may raise the issue of failure to mail such
34 notices, and the sole remedy shall be an order requiring the public
35 officer to wait 45 days before causing removal or demolition."

36 **SECTION 5.** G.S. 42-44 is amended by adding a new subsection to read:

37 "(a3) Whenever the landlord has knowledge or notice of any imminently dangerous
38 condition, as provided in G.S. 42-42(a)(7), the landlord shall repair or remedy the
39 condition within a reasonable period of time based on the severity of the condition. If
40 the landlord fails to remedy the dangerous condition within a reasonable period of time
41 based on the severity of the condition, then the landlord shall be deemed to have
42 breached the implied covenant of quiet enjoyment. Notwithstanding the landlord's repair
43 or remedy, the landlord may recover from the tenant the actual and reasonable costs of
44 the work that was the fault of the tenant."

1 **SECTION 6.** This act becomes effective October 1, 2007, and does not
2 apply to ordinances or programs adopted on or prior to that date or amendments to these
3 ordinances or programs adopted on or after that date.