

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 806
Committee Substitute Favorable 4/27/11
Third Edition Engrossed 5/12/11
Senate Commerce Committee Substitute Adopted 6/14/11

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

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT CHANGING THE STATUTE OF LIMITATIONS AND REPOSE FOR CHALLENGING ZONING ORDINANCES, CLARIFYING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO ENFORCEMENT ACTIONS OR ADMINISTRATIVE APPEALS, AND TO PROHIBIT SPECIFIED ZONING ORDINANCES AFFECTING SINGLE-FAMILY DETACHED RESIDENTIAL USES ON LOTS GREATER THAN TEN ACRES IN AGRICULTURAL ZONING DISTRICTS.

The General Assembly of North Carolina enacts:

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

"(10) Actions contesting the validity of any zoning or unified development ordinance or any provision thereof adopted under Part 3 of Article 18 of Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law, other than an ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request. Such an action accrues when the party bringing such action first has standing to challenge the ordinance; provided that, a challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance."

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

"§ 1-54.1. Two months.

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

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

"§ 153A-348. Statute of limitations.

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



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

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

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

18 "**§ 160A-364.1. Statute of limitations.**

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

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

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

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

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

50 **SECTION 6.** This act becomes effective July 1, 2011, but the provisions of
51 Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not

1 apply to litigation pending on that date. Upon the effective date, any ordinance provision that is
2 inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.