

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 483

Short Title: Land Use Regulatory Changes. (Public)

Sponsors: Representative Jordan (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAND USE REGULATORY LAWS OF THE
3 STATE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-755 reads as rewritten:

6 "**§ 143-755. Permit choice.**

7 (a) If a permit applicant submits a permit for any type of development and a rule or
8 ordinance changes between the time the permit application was submitted and a permit decision
9 is made, the permit applicant may choose which version of the rule or ordinance will apply to
10 the permit.

11 (b) This section applies to all development permits issued by the State and by local
12 ~~governments.~~government, including any zoning permit.

13 ~~(c) This section shall not apply to any zoning permit."~~

14 **SECTION 2.** G.S. 160A-385(b) reads as rewritten:

15 "(b) Amendments in land development regulations, as defined in G.S. 160A-400.21(6),
16 including zoning ordinances or unified development ordinances, shall not be applicable or
17 enforceable without the written consent of the owner with regard to buildings and
18 usesbuildings, uses, or developments for which either (i) a zoning permit or (ii) a building
19 permits havepermit has been issued pursuant to ~~G.S. 160A-417~~this Chapter prior to the
20 enactment of the ordinance making the change or changes so long as ~~the permits remain either~~
21 permit remains valid and unexpired pursuant to ~~G.S. 160A-418 and unrevoked pursuant to~~
22 ~~G.S. 160A-422 or (ii)~~law. Amendments shall also not be applicable or enforceable without the
23 written consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1
24 and such vested right remains valid and unexpired pursuant to ~~G.S. 160A-385.1 or if a vested~~
25 right is established by the terms of a development agreement authorized by Part 3D of this
26 Article."

27 **SECTION 3.** G.S. 153A-344(b) reads as rewritten:

28 "(b) Amendments in land development regulations, as defined in G.S. 153A-349.2(6),
29 including zoning ordinances or unified development ordinances, shall not be applicable or
30 enforceable without the written consent of the owner with regard to buildings and
31 usesbuildings, uses, or developments for which either (i) a zoning permit or (ii) building
32 permits havepermit has been issued pursuant to ~~G.S. 153A-357~~this Chapter prior to the
33 enactment of the ordinance making the change or changes so long as ~~the permits remain either~~
34 permit remains valid and unexpired pursuant to ~~G.S. 153A-358 and unrevoked pursuant to~~
35 ~~G.S. 153A-362 or (ii)~~law. Amendments shall also not be applicable or enforceable without the



1 written consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1
2 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1 or if a vested
3 right is established by the terms of a development agreement authorized by Part 3A of this
4 Article."

5 **SECTION 4.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
6 amended by adding a new section to read:

7 "**§ 160A-393.1. Civil action for declaratory relief, injunctive relief, or other remedies.**

8 (a) Action for Relief Authorized. – Notwithstanding any law to the contrary, any
9 landowner, permit applicant, or tenant aggrieved by a final and binding decision of an
10 administrative official involving the application or enforcement of a zoning or unified
11 development ordinance or any other ordinance that regulates land use or development may, in
12 lieu of an appeal to a board of adjustment, maintain an original action in superior court or
13 business court for declaratory relief, injunctive relief, damages or any other remedies provided
14 by law or equity, where any of the following claims or defenses are asserted by the aggrieved
15 party:

- 16 (1) Constitutional matters;
- 17 (2) The invalidity of the development regulation;
- 18 (3) Preemption;
- 19 (4) 42 U.S.C. § 1983;
- 20 (5) Common law vested rights; or
- 21 (6) Damages.

22 (b) Time for Filing of Action. – Such action shall be filed within one year after the later
23 of the following occurrence: (i) notice of the decision as provided in G.S. 160A-388(b1)(2); or
24 (ii) where a taking of property is alleged by the aggrieved party, the final decision of a board of
25 adjustment denying a variance has been delivered as provided in G.S. 160A-388(e2)(1),
26 whenever the context makes the granting of such variance discretionary and not prohibited.

27 (c) Means for Obtaining Relief. – Except for exhausting the administrative remedy of a
28 variance, if applicable, as provided in this section, once the aggrieved party selects an appeal to
29 a board of adjustment as provided in G.S. 160A-388(b1) and the prescribed hearing proceeding
30 is concluded, such procedures, including an appeal thereafter in G.S. 160A-393, shall be the
31 exclusive means for obtaining relief as to the merits of the enforcement action or administrative
32 decision being challenged. Nothing herein shall preclude any other procedure authorized by
33 law for claims arising under 42 U.S.C. § 1983."

34 **SECTION 5.** G.S. 160A-364.1 reads as rewritten:

35 "**§ 160A-364.1. Statute of limitations.**

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

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

46 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
47 action involving the enforcement of a ~~zoning or unified development ordinance~~ development
48 regulation or in an action authorized by G.S. 160A-393.1 from raising as a defense to such
49 enforcement action the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10)
50 or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision,
51 or determination made by an administrative official contending that such party is in violation of

1 a zoning or unified development ordinance from raising in the appeal the invalidity of such
2 ordinance as a defense to such order, requirement, decision, or determination. A party in an
3 enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an
4 alleged defect in the adoption process unless the defense is formally raised within three years of
5 the adoption of the challenged ordinance.

6 (d) When a use constituting a violation of a zoning or unified development ordinance is
7 in existence prior to adoption of the zoning or unified development ordinance creating the
8 violation, and that use is grandfathered and subsequently terminated for any reason, a city shall
9 bring an enforcement action within 10 years of the date of the termination of the grandfathered
10 status, unless the violation poses an imminent hazard to health or public safety."

11 **SECTION 6.** G.S. 160A-393 reads as rewritten:

12 **"§ 160A-393. Appeals in the nature of certiorari.**

13 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of
14 decision-making boards when that appeal is to superior court and in the nature of certiorari as
15 required by this Article.

16 (b) For purposes of this section, the following terms mean:

17 (1) Decision-making board. – A city council, planning board, board of
18 adjustment, or other board making quasi-judicial decisions appointed by the
19 city council under this Article or under comparable provisions of any local
20 act or any interlocal agreement authorized by law.

21 (2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

22 (3) Quasi-judicial decision. – A decision involving the finding of facts regarding
23 a specific application of an ordinance and the exercise of discretion when
24 applying the standards of the ordinance. Quasi-judicial decisions include
25 decisions involving variances, special and conditional use permits, and
26 appeals of administrative determinations. Decisions on the approval of site
27 plans are quasi-judicial in nature if the ordinance authorizes a
28 decision-making board to approve or deny the site plan based not only upon
29 whether the application complies with the specific requirements set forth in
30 the ordinance, but also on whether the application complies with one or
31 more generally stated standards requiring a discretionary decision on the
32 findings of fact to be made by the decision-making board.

33 (c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing
34 with the superior court a petition for writ of certiorari. The petition shall:

35 (1) State the facts that demonstrate that the petitioner has standing to seek
36 review.

37 (2) Set forth the grounds upon which the petitioner contends that an error was
38 made.

39 (3) Set forth with particularity the allegations and facts, if any, in support of
40 allegations that, as the result of impermissible conflict as described in
41 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
42 body was not sufficiently impartial to comply with due process principles.

43 (4) Set forth the relief the petitioner seeks.

44 (d) Standing. – A petition may be filed under this section only by a petitioner who has
45 standing to challenge the decision being appealed. The following persons shall have standing to
46 file a petition under this section:

47 (1) Any person meeting any of the following criteria:

48 a. Has an ownership interest in the property that is the subject of the
49 decision being appealed, a leasehold interest in the property that is
50 the subject of the decision being appealed, or an interest created by

- 1 easement, restriction, or covenant in the property that is the subject
2 of the decision being appealed.
- 3 b. Has an option or contract to purchase the property that is the subject
4 of the decision being appealed.
- 5 c. Was an applicant before the decision-making board whose decision
6 is being appealed.
- 7 (2) Any other person who will suffer special damages as the result of the
8 decision being appealed.
- 9 (3) An incorporated or unincorporated association to which owners or lessees of
10 property in a designated area belong by virtue of their owning or leasing
11 property in that area, or an association otherwise organized to protect and
12 foster the interest of the particular neighborhood or local area, so long as at
13 least one of the members of the association would have standing as an
14 individual to challenge the decision being appealed, and the association was
15 not created in response to the particular development or issue that is the
16 subject of the appeal.
- 17 (4) A city whose decision-making board has made a decision that the council
18 believes improperly grants a variance from or is otherwise inconsistent with
19 the proper interpretation of an ordinance adopted by that council.
- 20 (e) Respondent. – The respondent named in the petition shall be the city whose
21 decision-making board made the decision that is being appealed, except that if the petitioner is
22 a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then
23 the respondent shall be the decision-making board. If the petitioner is not the applicant before
24 the decision-making board whose decision is being appealed, the petitioner shall also name that
25 applicant as a respondent. Any petitioner may name as a respondent any person with an
26 ownership or leasehold interest in the property that is the subject of the decision being appealed
27 who participated in the hearing, or was an applicant, before the decision-making board.
- 28 (f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
29 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
30 arose. The writ shall direct the respondent city, or the respondent decision-making board if the
31 petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this
32 section, to prepare and certify to the court the record of proceedings below within a specified
33 date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each
34 respondent named therein in the manner provided for service of a complaint under Rule 4(j) of
35 the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the
36 petition and the writ shall be served upon the chair of that decision-making board. Rule
37 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making
38 board cannot be found. No summons shall be issued. The clerk shall issue the writ without
39 notice to the respondent or respondents if the petition has been properly filed and the writ is in
40 proper form. A copy of the executed writ shall be filed with the court.
- 41 (g) Answer to the Petition. – The respondent may, but need not, file an answer to the
42 petition, except that, if the respondent contends that any petitioner lacks standing to bring the
43 appeal, that contention must be set forth in an answer served on all petitioners at least 30 days
44 prior to the hearing on the petition.
- 45 (h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to
46 intervene as a petitioner or respondent in an action initiated under this section with the
47 following exceptions:
- 48 (1) Any person described in subdivision (1) of subsection (d) of this section
49 shall have standing to intervene and shall be allowed to intervene as a matter
50 of right.

1 (2) Any person, other than one described in subdivision (1) of subsection (d) of
2 this section, who seeks to intervene as a petitioner must demonstrate that the
3 person would have had standing to challenge the decision being appealed in
4 accordance with subdivisions (2) through (4) of subsection (d) of this
5 section.

6 (3) Any person, other than one described in subdivision (d)(1) of this section,
7 who seeks to intervene as a respondent must demonstrate that the person
8 would have had standing to file a petition in accordance with subdivisions
9 (2) through (4) of subsection (d) of this section if the decision-making board
10 had made a decision that is consistent with the relief sought by the petitioner.

11 (i) The Record. – The record shall consist of all documents and exhibits submitted to
12 the decision-making board whose decision is being appealed, together with the minutes of the
13 meeting or meetings at which the decision being appealed was considered. Upon request of any
14 party, the record shall also contain an audio or videotape of the meeting or meetings at which
15 the decision being appealed was considered if such a recording was made. Any party may also
16 include in the record a transcript of the proceedings, which shall be prepared at the cost of the
17 party choosing to include it. The parties may agree, or the court may direct, that matters
18 unnecessary to the court's decision be deleted from the record or that matters other than those
19 specified herein be included. The record shall be bound and paginated or otherwise organized
20 for the convenience of the parties and the court. A copy of the record shall be served by the
21 municipal respondent, or the respondent decision-making board, upon all petitioners within
22 three days after it is filed with the court.

23 (j) Hearing on the Record. – The court shall hear and decide all issues raised by the
24 petition by reviewing the record submitted in accordance with subsection (h) of this section.
25 Except that the court may, in its discretion, allow the record to be supplemented with affidavits,
26 testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is
27 not adequate to allow an appropriate determination of the following issues:

- 28 (1) Whether a petitioner or intervenor has standing.
29 (2) Whether, as a result of impermissible conflict as described in
30 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
31 body was not sufficiently impartial to comply with due process principles.
32 (3) Whether the decision-making body erred for the reasons set forth in
33 sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this
34 ~~section~~section, including an error related to the claims or defenses in
35 subdivision (k)(4) of this section.

36 (k) Scope of Review. –

- 37 (1) When reviewing the decision of a decision-making board under the
38 provisions of this section, the court shall ensure that the rights of petitioners
39 have not been prejudiced because the decision-making body's findings,
40 inferences, conclusions, or decisions were:
41 a. In violation of constitutional provisions, including those protecting
42 procedural due process rights.
43 b. In excess of the statutory authority conferred upon the city or the
44 authority conferred upon the decision-making board by ordinance.
45 c. Inconsistent with applicable procedures specified by statute or
46 ordinance.
47 d. Affected by other error of law.
48 e. Unsupported by substantial competent evidence in view of the entire
49 record.
50 f. Arbitrary or capricious.

- 1 (2) When the issue before the court is whether the decision-making board erred
2 in interpreting an ordinance, the court shall review that issue de novo. The
3 court shall consider the interpretation of the decision-making board, but is
4 not bound by that interpretation, and may freely substitute its judgment as
5 appropriate.
- 6 (3) The term "competent evidence," as used in this subsection, shall not preclude
7 reliance by the decision-making board on evidence that would not be
8 admissible under the rules of evidence as applied in the trial division of the
9 General Court of Justice if (i) the evidence was admitted without objection
10 or (ii) the evidence appears to be sufficiently trustworthy and was admitted
11 under such circumstances that it was reasonable for the decision-making
12 board to rely upon it. The term "competent evidence," as used in this
13 subsection, shall not be deemed to include the opinion testimony of lay
14 witnesses as to any of the following:
- 15 a. The use of property in a particular way would affect the value of
16 other property.
- 17 b. The increase in vehicular traffic resulting from a proposed
18 development would pose a danger to the public safety.
- 19 c. Matters about which only expert testimony would generally be
20 admissible under the rules of evidence.
- 21 (4) Notwithstanding any law to the contrary, the petitioner may assert and the
22 court shall determine de novo, based on the record in subsection (j) of this
23 section, any of the following claims or defenses:
- 24 a. That the applicable ordinance is invalid or otherwise unenforceable.
25 b. Constitutional matters.
26 c. Preemption.
27 d. 42 U.S.C. § 1983.
28 e. Common law vested rights.
- 29 (5) In order to raise any of the claims or defenses listed in subdivision (4) of this
30 subsection, to the extent that they do not involve some act of the
31 decision-making board itself or any of its members, the claim or defense
32 shall be made known to the decision-making board at the hearing.
- 33 (l) Decision of the Court. – Following its review of the decision-making board in
34 accordance with subsection (k) of this section, the court may affirm the decision, reverse the
35 decision and remand the case with appropriate instructions, or remand the case for further
36 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
37 be guided by the following in determining what relief should be granted to the petitioners:
- 38 (1) If the court concludes that the error committed by the decision-making board
39 is procedural only, the court may remand the case for further proceedings to
40 correct the procedural error.
- 41 (2) If the court concludes that the decision-making board has erred by failing to
42 make findings of fact such that the court cannot properly perform its
43 function, then the court may remand the case with appropriate instructions so
44 long as the record contains substantial competent evidence that could
45 support the decision below with appropriate findings of fact. However,
46 findings of fact are not necessary when the record sufficiently reveals the
47 basis for the decision below or when the material facts are undisputed and
48 the case presents only an issue of law.
- 49 (3) If the court concludes that the decision by the decision-making board is not
50 supported by substantial competent evidence in the record or is based upon
51 an error of law, then the court may remand the case with an order that directs

1 the decision-making board to take whatever action should have been taken
2 had the error not been committed or to take such other action as is necessary
3 to correct the error. Specifically:

4 a. If the court concludes that a permit was wrongfully denied because
5 the denial was not based on substantial competent evidence or was
6 otherwise based on an error of law, the court may remand with
7 instructions that the permit be issued, subject to reasonable and
8 appropriate conditions.

9 b. If the court concludes that a permit was wrongfully issued because
10 the issuance was not based on substantial competent evidence or was
11 otherwise based on an error of law, the court may remand with
12 instructions that the permit be revoked.

13 (m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this
14 section, and under appropriate circumstances, the court may issue an injunctive order requiring
15 any other party to that proceeding to take certain action or refrain from taking action that is
16 consistent with the court's decision on the merits of the appeal."

17 **SECTION 7.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
18 amended by adding a new section to read:

19 **"§ 160A-393.2. No estoppel effect when challenging unlawful conditions.**

20 No landowner or permit applicant shall be precluded from timely challenging any unlawful
21 condition imposed on a development as part of the application of land development regulations
22 as defined in G.S. 160A-400.21(6) as a result of actions by the landowner or permit applicant to
23 proceed with the development or use."

24 **SECTION 8.** G.S. 6-21.7 reads as rewritten:

25 **"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

26 In any action in which a city or county is a party, upon a finding by the court that the city or
27 county ~~acted outside the scope of its legal authority, violated a statute setting forth clear limits~~
28 on its authority or otherwise abused its discretion, the court ~~may~~shall award reasonable
29 attorneys' fees and costs to the party who successfully challenged the city's or county's ~~action,~~
30 ~~provided that if the court also finds that the city's or county's action was an abuse of its~~
31 discretion, the court shall award attorneys' fees and costs. In all other matters, the court
32 may award reasonable attorneys' fees and costs to the prevailing private litigant."

33 **SECTION 9.** G.S. 6-19.1 reads as rewritten:

34 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

35 (a) In any civil action, other than an adjudication for the purpose of establishing or
36 fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a
37 party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate
38 provisions of law, unless the prevailing party is the State, the court ~~may, in its discretion,~~shall
39 allow the prevailing party to recover reasonable attorney's fees, including attorney's fees
40 applicable to the administrative review portion of the case, in contested cases arising under
41 Article 3 of Chapter ~~150B,~~150B, or any other provision of law, to be taxed as court costs
42 against the appropriate agency if:

43 (1) The court finds that the agency acted without substantial justification in
44 pressing its claim against the ~~party;~~party. The lack of substantial justification
45 shall be conclusively established when an agency acts in violation of a
46 statute setting forth clear limits on its authority; and

47 (2) The court finds that there are no special circumstances that would make the
48 award of attorney's fees unjust. The party shall petition for the attorney's fees
49 within 30 days following final disposition of the case. The petition shall be
50 supported by an affidavit setting forth the basis for the request.

1 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the
2 administrative review portion of the case in contested cases arising under Article 9 of Chapter
3 131E of the General Statutes.

4 Nothing in this section grants permission to bring an action against an agency otherwise
5 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
6 bring the action.

7 Any attorney's fees assessed against an agency under this section shall be charged against
8 the operating expenses of the agency and shall not be reimbursed from any other source.

9 (b) Expired."

10 **SECTION 10.** G.S. 1A-1, Rule 65, reads as rewritten:

11 **"Rule 65. Injunctions.**

12 (a) Preliminary injunction; notice. – No preliminary injunction shall be issued without
13 notice to the adverse party.

14 (b) Temporary restraining order; notice; hearing; duration. – A temporary restraining
15 order may be granted without written or oral notice to the adverse party or that party's attorney
16 only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that
17 immediate and irreparable injury, loss, or damage will result to the applicant before the adverse
18 party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney
19 certifies to the court in writing the efforts, if any, that have been made to give the notice and the
20 reasons supporting the claim that notice should not be required. Every temporary restraining
21 order granted without notice shall be endorsed with the date and hour of issuance; shall be filed
22 forthwith in the clerk's office and entered of record; shall define the injury and state why it is
23 irreparable and why the order was granted without notice; and shall expire by its terms within
24 such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed
25 the order, for good cause shown, is extended for a like period or unless the party against whom
26 the order is directed consents that it may be extended for a longer period. The reasons for the
27 extension shall be entered of record. In case a temporary restraining order is granted without
28 notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the
29 earliest possible time and takes precedence over all matters except older matters of the same
30 character; and when the motion comes on for hearing, the party who obtained the temporary
31 restraining order shall proceed with a motion for a preliminary injunction, and, if he does not
32 do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party
33 who obtained the temporary restraining order without notice or on such shorter notice to that
34 party as the judge may prescribe, the adverse party may appear and move its dissolution or
35 modification and in that event the judge shall proceed to hear and determine such motion as
36 expeditiously as the ends of justice require. Damages may be awarded in an order for
37 dissolution as provided in section (e).

38 (c) Security. – No restraining order or preliminary injunction shall issue except upon
39 the giving of security by the applicant, in such sum as the judge deems proper, for the payment
40 of such costs and damages as may be incurred or suffered by any party who is found to have
41 been wrongfully enjoined or restrained. ~~No such security shall be required of the State of North
42 Carolina or of any county or municipality thereof, or any officer or agency thereof acting in an
43 official capacity, but damages may be awarded against such party in accord with this rule.~~

44 In suits between spouses relating to support, alimony, custody of children, separation,
45 divorce from bed and board, and absolute divorce no such security shall be required of the
46 plaintiff spouse as a condition precedent to the issuing of a temporary restraining order or
47 preliminary injunction enjoining the defendant spouse from interfering with, threatening, or in
48 any way molesting the plaintiff spouse during pendency of the suit, until further order of the
49 court, but damages may be awarded against such party in accord with this rule.

50 A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of
51 the court and irrevocably appoints the clerk of the court as his agent upon whom any papers

1 affecting his liability on the bond or undertaking may be served. His liability may be enforced
2 on motion without the necessity of an independent action. The motion and such notice of the
3 motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail
4 copies to the persons giving the security and the sureties thereon if their addresses are known.

5 (d) Form and scope of injunction or restraining order. – Every order granting an
6 injunction and every restraining order shall set forth the reasons for its issuance; shall be
7 specific in terms; shall describe in reasonable detail, and not by reference to the complaint or
8 other document, the act or acts enjoined or restrained; and is binding only upon the parties to
9 the action, their officers, agents, servants, employees, and attorneys, and upon those persons in
10 active concert or participation with them who receive actual notice in any manner of the order
11 by personal service or otherwise.

12 (e) Damages on dissolution. – An order or judgment dissolving an injunction or
13 restraining order may include an award of damages against the party procuring the injunction
14 and the sureties on his undertaking without a showing of malice or want of probable cause in
15 procuring the injunction. The damages may be determined by the judge, or he may direct that
16 they be determined by a referee or jury."

17 **SECTION 11.** This act becomes effective October 1, 2015.