

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  
PROPOSED SENATE COMMITTEE SUBSTITUTE H806-PCS30396-TD-51

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



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1 conditional zoning district rezoning request adopted under this Part or other applicable law  
2 shall accrue upon adoption of the ordinance, or amendment thereto, such ordinance and shall be  
3 brought within two months as provided in G.S. 1-54.1.

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

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

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

21 "**§ 160A-364.1. Statute of limitations.**

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

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

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

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

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

1 private road, or be served by public water or sewer lines, in order to be developed for  
2 single-family residential purposes."

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