

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 806
PROPOSED COMMITTEE SUBSTITUTE H806-PCS30314-RW-16

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. 1-53 reads as rewritten:

"§ 1-53. **Two years.**

Within two years -

- (1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by law, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property: (i) such an action may be brought no later than 90 days after substantial completion, provided proper notice of the claim has been given if required by contract, or (ii) if prior to substantial completion the contract was terminated by either party, such an action may be brought no later than 90 days after the date of termination of the contract. As used in this subdivision, "substantial completion" has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.
- (2) An action to recover the penalty for usury, including an action regarding the financing of usurious points, usurious fees, or other usurious charges; the two-year period shall accrue with each payment made and accepted on the loan.
- (3) The forfeiture of all interest for usury.
- (4) Actions for damages on account of the death of a person caused by the wrongful act, neglect or fault of another under G.S. 28A-18-2; the cause of action shall not accrue until the date of death. Provided that, whenever the decedent would have been barred, had he lived, from bringing an action for



* H 8 0 6 - P C S 3 0 3 1 4 - R W - 1 6 *

1 bodily harm because of the provisions of G.S. 1-15(c) or 1-52(16), no action
2 for his death may be brought.

3 (5) Actions contesting the validity of any zoning or unified development
4 ordinance or any provision thereof adopted under Part 3 of Article 18 of
5 Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General
6 Statutes or other applicable law, other than an ordinance adopting or
7 amending a zoning map or approving a special use, conditional use, or
8 conditional zoning district rezoning request. Such an action accrues when
9 the party bringing such action first has standing to challenge the ordinance."

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

11 **"§ 1-54.1. Two months.**

12 Within two months an action contesting the validity of any ~~zoning~~-ordinance adopting or
13 amending a zoning map or approving a special use, conditional use, or conditional zoning
14 district rezoning request amendment thereto adopted by a county under Part 3 of Article 18 of
15 Chapter 153A of the General Statutes or other applicable law or adopted by a city under or Part
16 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law. Such an action
17 accrues upon adoption of such ordinance or amendment."

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

19 **"§ 153A-348. Statute of limitations.**

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

25 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
26 the validity of any zoning or unified development ordinance or any provision thereof adopted
27 under this Part or other applicable law shall be brought within two years of the accrual of such
28 action. Such an action accrues when the party bringing such action first has standing to
29 challenge the ordinance.

30 (c) Nothing in this section or in G.S. 1-53(5) 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. 1-53(5) 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
37 determination."

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

39 **"§ 160A-364.1. Statute of limitations.**

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

45 (b) Except as otherwise provided in subsection (a) of this section, an action challenging
46 the validity of any zoning or unified development ordinance or any provision thereof adopted
47 under this Article or other applicable law shall be brought within two years of the accrual of
48 such action. Such an action accrues when the party bringing such action first has standing to
49 challenge the ordinance.

50 (c) Nothing in this section or in G.S. 1-53(5) or G.S. 1-54.1 shall bar a party in an
51 action involving the enforcement of a zoning or unified development ordinance from raising as

1 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
2 in G.S. 1-53(5) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
3 requirement, decision, or determination made by an administrative official contending that such
4 party is in violation of a zoning or unified development ordinance from raising in the appeal the
5 invalidity of such ordinance as a defense to such order, requirement, decision, or
6 determination."

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

8 "(j) An ordinance adopted pursuant to this section shall not prohibit single-family
9 detached residential uses constructed in accordance with the North Carolina State Building
10 Code on lots greater than 10 acres in size in zoning districts where more than fifty percent
11 (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction
12 shall not apply to commercial or industrial districts where a broad variety of commercial or
13 industrial uses are permissible. An ordinance adopted pursuant to this section shall not require
14 that a lot greater than 10 acres in size have frontage on a public road or county-approved
15 private road, or be served by public water or sewer lines, in order to be developed for
16 single-family residential purposes."

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