

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1507*

Short Title: Housing Conditions/Inspections.

(Public)

Sponsors: Senator Boseman.

Referred to: Commerce, Small Business and Entrepreneurship.

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 IMMEDIATELY REPAIRING CERTAIN UNSAFE CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a)(2) reads as rewritten:

"(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. However, the landlord shall immediately repair or remedy any imminently dangerous condition in the premise 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 substantial history of noncompliance with
14 the county's ordinances on unsafe buildings; (ii) an occupant of the building has
15 reported that substandard conditions exist within the building or an occupant has
16 requested that the building be inspected; and (iii) the inspections department has actual
17 knowledge of unsafe conditions within the building that was acquired as a result of
18 routine business activities conducted by the inspection department. In conducting
19 inspections authorized under this section, the inspection department shall not
20 discriminate between single-family and multifamily buildings or between
21 owner-occupied and tenant-occupied buildings. In addition, it shall make any necessary
22 inspections when it has reason to believe that such conditions may exist in a particular
23 building. In exercising these powers, each member of the inspection department has a
24 right, upon presentation of proper credentials, to enter on any premises within the
25 territorial jurisdiction of the department at any reasonable hour for the purposes of
26 inspection or other enforcement action.

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

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

34 "**§ 160A-424. Periodic inspections.**

35 (a) The inspection department ~~shall~~may make periodic inspections, subject to
36 the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful
37 conditions in residential and nonresidential buildings or structures within its territorial
38 jurisdiction. Except as provided in subsection (b) of this section, the inspection
39 department shall make periodic inspections only when there is probable cause to believe
40 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
41 residential or nonresidential building or structure. For purposes of this section, the term
42 'probable cause' means: (i) the landlord or owner has a substantial history of
43 noncompliance with the city's ordinances on unsafe buildings or structures; (ii) an
44 occupant of the building or structure has reported that substandard conditions exist

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

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

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

19 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of**
20 **public officer.**

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

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

1 (3) That if, after notice and hearing, the public officer determines that the
2 dwelling under consideration is unfit for human habitation, he shall
3 state in writing his findings of fact in support of that determination and
4 shall issue and cause to be served upon the owner thereof an order,

5 a. If the repair, alteration or improvement of the dwelling can be
6 made at a reasonable cost in relation to the value of the
7 dwelling (the ordinance of the city may fix a certain percentage
8 of this value as being reasonable), requiring the ~~owner, within~~
9 ~~the time specified,~~ owner to repair, alter or improve the
10 ~~dwelling in order to render it fit for human habitation or to~~
11 ~~vacate and close the dwelling as a human habitation; or within a~~
12 reasonable time, which shall be fixed in the order, any
13 ordinance violations that are not imminently dangerous to the
14 occupant of the dwelling and to render the dwelling safe for
15 human habitation. If any of the following imminently dangerous
16 conditions are found to exist in the dwelling, the order shall
17 require the owner to immediately repair or remedy the
18 conditions:

- 19 1. Unsafe wiring.
- 20 2. Unsafe flooring or steps.
- 21 3. Unsafe ceilings or roofs.
- 22 4. Unsafe chimneys or flues.
- 23 5. Lack of potable water.
- 24 6. Lack of operable locks on all doors leading to the
25 outside.
- 26 7. Broken windows or lack of operable locks on all
27 windows on the ground level.
- 28 8. Lack of operable heating facilities capable of heating
29 living areas to 65 degrees Fahrenheit when it is 20
30 degrees Fahrenheit outside from November 1 through
31 March 31.
- 32 9. Lack of an operable toilet.
- 33 10. Lack of an operable bathtub or shower.
- 34 11. Rat infestation as a result of defects in the structure that
35 make the premises not impervious to rodents.
- 36 12. Excessive standing water, sewage, or flooding problems
37 caused by plumbing leaks or inadequate drainage that
38 contribute to mosquito infestation or mold.

39 b. If the repair, alteration or improvement of the dwelling cannot
40 be made at a reasonable cost in relation to the value of the
41 dwelling (the ordinance of the city may fix a certain percentage
42 of this value as being reasonable), requiring the owner, within
43 the time specified in the order, to remove or demolish such
44 dwelling. However, notwithstanding any other provision of law,

1 if the dwelling is located in a historic district of the city and the
2 Historic District Commission determines, after a public hearing
3 as provided by ordinance, that the dwelling is of particular
4 significance or value toward maintaining the character of the
5 district, and the dwelling has not been condemned as unsafe, the
6 order may require that the dwelling be vacated and closed
7 consistent with G.S. 160A-400.14(a).

- 8 (4) That, if the owner fails to comply with an order to repair, alter or
9 improve ~~or to vacate and close~~ the dwelling, the public officer may
10 cause the dwelling to be repaired, altered or improved or to be vacated
11 and closed; that the public officer may cause to be posted on the main
12 entrance of any dwelling so closed, a placard with the following
13 words: "This building is unfit for human habitation; the use or
14 occupation of this building for human habitation is prohibited and
15 unlawful." Occupation of a building so posted shall constitute a Class
16 1 misdemeanor.

17 ...

- 18 (5a) If the governing body shall have adopted an ordinance, or the public
19 officer shall have:

20 a. In a municipality located in counties which have a population in
21 excess of 71,000 by the last federal census (including the
22 entirety of any municipality located in more than one county at
23 least one county of which has a population in excess of 71,000),
24 other than municipalities with a population in excess of 190,000
25 by the last federal census, issued an order, ordering a dwelling
26 to be repaired or vacated and closed, as provided in ~~subdivision~~
27 ~~(3)a., subdivisions (3)a. and (4) of this section,~~ and if the owner
28 has vacated and closed such dwelling and kept such dwelling
29 vacated and closed for a period of one year pursuant to the
30 ordinance or order;

31 b. In a municipality with a population in excess of 190,000 by the
32 last federal census, commenced proceedings under the
33 substandard housing regulations regarding a dwelling to be
34 repaired or vacated and closed, as provided in ~~subdivision~~
35 ~~(3)a., subdivisions (3)a. and (4) of this section,~~ and if the owner
36 has vacated and closed such dwelling and kept such dwelling
37 vacated and closed for a period of one year pursuant to the
38 ordinance or after such proceedings have commenced,

39 then if the governing body shall find that the owner has abandoned the
40 intent and purpose to repair, alter or improve the dwelling in order to
41 render it fit for human habitation and that the continuation of the
42 dwelling in its vacated and closed status would be inimical to the
43 health, safety, morals and welfare of the municipality in that the
44 dwelling would continue to deteriorate, would create a fire and safety

1 hazard, would be a threat to children and vagrants, would attract
2 persons intent on criminal activities, would cause or contribute to
3 blight and the deterioration of property values in the area, and would
4 render unavailable property and a dwelling which might otherwise
5 have been made available to ease the persistent shortage of decent and
6 affordable housing in this State, then in such circumstances, the
7 governing body may, after the expiration of such one year period,
8 enact an ordinance and serve such ordinance on the owner, setting
9 forth the following:

- 10 a. If it is determined that the repair of the dwelling to render it fit
11 for human habitation can be made at a cost not exceeding fifty
12 percent (50%) of the then current value of the dwelling, the
13 ordinance shall require that the owner either repair or demolish
14 and remove the dwelling within 90 days; or
- 15 b. If it is determined that the repair of the dwelling to render it fit
16 for human habitation cannot be made at a cost not exceeding
17 fifty percent (50%) of the then current value of the dwelling, the
18 ordinance shall require the owner to demolish and remove the
19 dwelling within 90 days.

20 This ordinance shall be recorded in the Office of the Register of
21 Deeds in the county wherein the property or properties are located and
22 shall be indexed in the name of the property owner in the grantor
23 index. If the owner fails to comply with this ordinance, the public
24 officer shall effectuate the purpose of the ordinance.

25 ~~This subdivision only applies to municipalities located in counties~~
26 ~~which have a population in excess of 71,000 by the last federal census~~
27 ~~(including the entirety of any municipality located in more than one~~
28 ~~county at least one county of which has a population in excess of~~
29 ~~71,000).~~

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

- 32 (5b) If the governing body shall have adopted an ordinance, or the public
33 officer shall have:
- 34 a. In a municipality other than municipalities with a population in
35 excess of 190,000 by the last federal census, issued an order,
36 ordering a dwelling to be repaired or vacated and closed, as
37 provided in ~~subdivision (3)a,~~ subdivisions (3)a. and (4) of this
38 section, and if the owner has vacated and closed such dwelling
39 and kept such dwelling vacated and closed for a period of one
40 year pursuant to the ordinance or order;
- 41 b. In a municipality with a population in excess of 190,000 by the
42 last federal census, commenced proceedings under the
43 substandard housing regulations regarding a dwelling to be
44 repaired or vacated and closed, as provided in ~~subdivision~~

1 ~~(3)~~a., subdivisions (3)a. and (4) of this section, and if the owner
2 has vacated and closed such dwelling and kept such dwelling
3 vacated and closed for a period of one year pursuant to the
4 ordinance or after such proceedings have commenced,
5 then if the governing body shall find that the owner has abandoned the
6 intent and purpose to repair, alter or improve the dwelling in order to
7 render it fit for human habitation and that the continuation of the
8 dwelling in its vacated and closed status would be inimical to the
9 health, safety, morals and welfare of the municipality in that the
10 dwelling would continue to deteriorate, would create a fire and safety
11 hazard, would be a threat to children and vagrants, would attract
12 persons intent on criminal activities, would cause or contribute to
13 blight and the deterioration of property values in the area, and would
14 render unavailable property and a dwelling which might otherwise
15 have been made available to ease the persistent shortage of decent and
16 affordable housing in this State, then in such circumstances, the
17 governing body may, after the expiration of such one year period,
18 enact an ordinance and serve such ordinance on the owner, setting
19 forth the following:

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

30 This ordinance shall be recorded in the Office of the Register of Deeds
31 in the county wherein the property or properties are located and shall
32 be indexed in the name of the property owner in the grantor index. If
33 the owner fails to comply with this ordinance, the public officer shall
34 effectuate the purpose of the ordinance.

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

38 (6) Liens. –

- 39 a. That the amount of the cost of repairs, alterations or
40 improvements, or vacating and closing, or removal or
41 demolition by the public officer shall be a lien against the real
42 property upon which the cost was incurred, which lien shall be
43 filed, have the same priority, and be collected as the lien for
44 special assessment provided in Article 10 of this Chapter.

- 1 b. If the real property upon which the cost was incurred is located
2 in an incorporated city, then the amount of the cost is also a lien
3 on any other real property of the owner located within the city
4 limits or within one mile thereof except for the owner's primary
5 residence. The additional lien provided in this sub-subdivision
6 is inferior to all prior liens and shall be collected as a money
7 judgment.
- 8 c. If the dwelling is removed or demolished by the public officer,
9 he shall sell the materials of the dwelling, and any personal
10 property, fixtures or appurtenances found in or attached to the
11 dwelling, and shall credit the proceeds of the sale against the
12 cost of the removal or demolition and any balance remaining
13 shall be deposited in the superior court by the public officer,
14 shall be secured in a manner directed by the court, and shall be
15 disbursed by the court to the persons found to be entitled thereto
16 by final order or decree of the court. Nothing in this section
17 shall be construed to impair or limit in any way the power of the
18 city to define and declare nuisances and to cause their removal
19 or abatement by summary proceedings, or otherwise.

- 20 (7) If any occupant fails to comply with an order to vacate a dwelling, the
21 public officer may file a civil action in the name of the city to remove
22 such occupant. The action to vacate the dwelling shall be in the nature
23 of summary ejectment and shall be commenced by filing a complaint
24 naming as parties-defendant any person occupying such dwelling. The
25 clerk of superior court shall issue a summons requiring the defendant
26 to appear before a magistrate at a certain time, date and place not to
27 exceed 10 days from the issuance of the summons to answer the
28 complaint. The summons and complaint shall be served as provided in
29 G.S. 42-29. The summons shall be returned according to its tenor, and
30 if on its return it appears to have been duly served, and if at the hearing
31 the public officer produces a certified copy of an ordinance adopted by
32 the governing body pursuant to subdivision (5) authorizing the officer
33 to proceed to vacate the occupied dwelling, the magistrate shall enter
34 judgment ordering that the premises be vacated and that all persons be
35 removed. The judgment ordering that the dwelling be vacated shall be
36 enforced in the same manner as the judgment for summary ejectment
37 entered under G.S. 42-30. An appeal from any judgment entered
38 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
39 and the execution of such judgment may be stayed as provided in
40 G.S. 7A-227. An action to remove an occupant of a dwelling who is a
41 tenant of the owner may not be in the nature of a summary ejectment
42 proceeding pursuant to this paragraph unless such occupant was served
43 with notice at least 30 days before the filing of the summary ejectment
44 proceeding that the governing body has ordered the public officer to

1 proceed to exercise his duties under subdivisions (4) and (5) of this
2 section to vacate and close or remove and demolish the dwelling.
3 (8) That whenever a determination is made pursuant to subdivision ~~(3)~~
4 subdivisions (3) and (4) of this section that a dwelling must be vacated
5 and closed, or removed or demolished, under the provisions of this
6 section, notice of the order shall be given by first-class mail to any
7 organization involved in providing or restoring dwellings for
8 affordable housing that has filed a written request for such notices. A
9 minimum period of 45 days from the mailing of such notice shall be
10 given before removal or demolition by action of the public officer, to
11 allow the opportunity for any organization to negotiate with the owner
12 to make repairs, lease, or purchase the property for the purpose of
13 providing affordable housing. The public officer or clerk shall certify
14 the mailing of the notices, and the certification shall be conclusive in
15 the absence of fraud. Only an organization that has filed a written
16 request for such notices may raise the issue of failure to mail such
17 notices, and the sole remedy shall be an order requiring the public
18 officer to wait 45 days before causing removal or demolition."

19 **SECTION 5.** This act is effective when it becomes law.