

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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**HOUSE BILL 806
Committee Substitute Favorable 4/27/11**

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

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

1 AN ACT CHANGING THE STATUTE OF LIMITATIONS AND REPOSE FOR
2 CHALLENGING ZONING ORDINANCES, CLARIFYING THE APPLICABILITY OF
3 THE STATUTE OF LIMITATIONS TO ENFORCEMENT ACTIONS OR
4 ADMINISTRATIVE APPEALS AND TO PROHIBIT SPECIFIED ZONING
5 ORDINANCES AFFECTING SINGLE-FAMILY DETACHED RESIDENTIAL USES
6 ON LOTS GREATER THAN TEN ACRES IN AGRICULTURAL ZONING DISTRICTS.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 1-53 reads as rewritten:

10 **"§ 1-53. Two years.**

11 Within two years -

- 12 (1) An action against a local unit of government upon a contract, obligation or
13 liability arising out of a contract, express or implied. Unless otherwise
14 provided by law, if the preceding sentence of this subsection would bar
15 commencement of a cause of action arising out of a contract to improve real
16 property: (i) such an action may be brought no later than 90 days after
17 substantial completion, provided proper notice of the claim has been given if
18 required by contract, or (ii) if prior to substantial completion the contract
19 was terminated by either party, such an action may be brought no later than
20 90 days after the date of termination of the contract. As used in this
21 subdivision, "substantial completion" has the same meaning as in
22 G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon
23 bonds, notes and interest coupons or when a different period of limitation is
24 prescribed by this Article.
- 25 (2) An action to recover the penalty for usury, including an action regarding the
26 financing of usurious points, usurious fees, or other usurious charges; the
27 two-year period shall accrue with each payment made and accepted on the
28 loan.
- 29 (3) The forfeiture of all interest for usury.
- 30 (4) Actions for damages on account of the death of a person caused by the
31 wrongful act, neglect or fault of another under G.S. 28A-18-2; the cause of
32 action shall not accrue until the date of death. Provided that, whenever the
33 decedent would have been barred, had he lived, from bringing an action for
34 bodily harm because of the provisions of G.S. 1-15(c) or 1-52(16), no action
35 for his death may be brought.
- 36 (5) Actions contesting the validity of any zoning or unified development
37 ordinance or any provision thereof adopted under Part 3 of Article 18 of



1 Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General
2 Statutes or other applicable law, other than an ordinance adopting or
3 amending a zoning map or approving a special use, conditional use, or
4 conditional zoning district rezoning request. Such an action accrues when
5 the party bringing such action first has standing to challenge the ordinance."

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

7 **"§ 1-54.1. Two months.**

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

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

15 **"§ 153A-348. Statute of limitations.**

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

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

26 (c) Nothing in this section or in G.S. 1-53(5) or G.S. 1-54.1 shall bar a party in an
27 action involving the enforcement of a zoning or unified development ordinance from raising as
28 a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or
29 in G.S. 1-53(5) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
30 requirement, decision, or determination made by an administrative official contending that such
31 party is in violation of a zoning or unified development ordinance from raising in the appeal the
32 invalidity of such ordinance as a defense to such order, requirement, decision, or
33 determination."

34 **SECTION 4.** 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 ~~zoning ordinance, or amendment thereto,~~
37 ordinance adopting or amending a zoning map or approving a special use, conditional use, or
38 conditional zoning district request adopted under this Article or other applicable law shall
39 accrue upon adoption of the ordinance, or amendment thereto, such ordinance and shall be
40 brought within two months as provided in G.S. 1-54.1.

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

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

1 invalidity of such ordinance as a defense to such order, requirement, decision, or
2 determination."

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

4 "(j) An ordinance adopted pursuant to this section shall not prohibit single-family
5 detached residential uses constructed in accordance with the North Carolina State Building
6 Code on lots greater than 10 acres in size in zoning districts where more than fifty percent
7 (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction
8 shall not apply to commercial or industrial districts where a broad variety of commercial or
9 industrial uses are permissible. An ordinance adopted pursuant to this section shall not require
10 that a lot greater than 10 acres in size have frontage on a public road or county-approved
11 private road, or be served by public water or sewer lines, in order to be developed for
12 single-family residential purposes."

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