

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

HOUSE BILL 806  
RATIFIED BILL

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. 1-54 is amended by adding a new subdivision to read:

"(10) Actions contesting the validity of any zoning or unified development ordinance or any provision thereof adopted under Part 3 of Article 18 of Chapter 153A or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law, other than an ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district rezoning request. Such an action accrues when the party bringing such action first has standing to challenge the ordinance; provided that, a challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance."

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

**"§ 1-54.1. Two months.**

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

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

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

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

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

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance from raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the



basis of an alleged deft in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance."

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

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

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

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

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

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

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

**SECTION 6.** The LRC, in consultation with the NC Home Builders Association and NC Association of County Commissioners, shall study the extent to which counties shall be able to require that lots exempt from county subdivision regulations must be accessible to emergency services providers, along with any issues deemed relevant by the LRC. The LRC may provide an interim report, including any recommendations and any legislative proposals to the General Assembly by May 1, 2012, and shall provide a final report, including any recommendations and any legislative proposals to the General Assembly by January 15, 2013.

**SECTION 7.** This act becomes effective July 1, 2011, but the provisions of Sections 1 through 4 of this act, to the extent they effect a change in existing law, shall not apply to litigation pending on that date. Upon the effective date, any ordinance provision that is inconsistent with the provisions of Section 5 of this act shall be void and unenforceable.

In the General Assembly read three times and ratified this the 17<sup>th</sup> day of June, 2011.

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Walter H. Dalton  
President of the Senate

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Thom Tillis  
Speaker of the House of Representatives

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Beverly E. Perdue  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2011