

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 684
House Committee Substitute Favorable 8/4/97

Short Title: Durham/City Development Review Bd.

(Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE DURHAM CITY CHARTER TO RENAME THE
2 SUBDIVISION REVIEW BOARD AND INCREASING THE NUMBER OF
3 PERSONS WHO MAY SERVE ON THAT BOARD, TO ALLOW DURHAM
4 COUNTY TO ADOPT A FAIR HOUSING ORDINANCE, AND PROVIDING
5 THAT THE INITIAL ELECTION OF THE ALAMANCE-BURLINGTON BOARD
6 OF EDUCATION SHALL BE HELD IN 1997.

7 The General Assembly of North Carolina enacts:

8 Section 1. Subsection (3) of Section 97 of the Charter of the City of Durham,
9 being Chapter 671 of the 1975 Session Laws, reads as rewritten:

10 "(3) The City Council may provide for the appointment of a board to be known as a
11 ~~Subdivision Review Board consisting of not less than four nor more than six members~~
12 Development Review Board consisting of four or more members who shall serve without
13 pay as such members, each of whom shall be appointed by the Council for a term of years
14 or for a term at the will of the Council, as may be determined by the Council; in the event
15 the Council appoints such Board for a term of years, the term of the office of each
16 member shall be three years. ~~Such Subdivision~~ The Development Review Board shall
17 hear and decide appeals from and review any order, requirement, decision or
18 determination made by any administrative official charged with the enforcement of any
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1 ordinance adopted pursuant to this section. It shall also hear and decide all matters
2 referred to in or upon which it is required to pass under any such ordinance. The
3 affirmative vote of a majority of members of the Board shall be necessary to reverse any
4 order, requirement, decision or determination of any administrative official, or to decide
5 in favor of the applicant any matter upon which it is required to pass under any such
6 ordinance or to effect any variation in any of the provisions of such ordinance. Every
7 decision of such Board shall, however, be subject to review by proceedings in the nature
8 of certiorari. Such appeal may be taken by any person aggrieved or by an officer,
9 department, board or bureau of the City. Such appeal shall be taken within such time as
10 shall be prescribed by the ~~Subdivision~~ Development Review Board by general rule, by
11 filing with the officer from whom the appeal is taken and with the ~~Subdivision~~
12 Development Review Board a notice of appeal, specifying the grounds thereof. The
13 officer from whom the appeal is taken shall forthwith transmit to the Board all the papers
14 constituting the record upon which the action appealed from was taken. An appeal from
15 the administrative official to the ~~Subdivision~~ Development Review Board stays all
16 proceedings in furtherance of the action appealed from until the decision of the
17 ~~Subdivision~~ Development Review Board is rendered, at which time the stay of
18 proceedings shall cease, unless the proceedings shall be further stayed by a restraining
19 order granted by a court of record or by the ~~Subdivision~~ Development Review Board. The
20 ~~Subdivision~~ Development Review Board shall fix a reasonable time for the hearing of the
21 appeal from the administrative official and shall give due notice thereof to the parties,
22 and decide the same within a reasonable time. Upon the hearing, any party may appear in
23 person or by agent or by attorney. The ~~Subdivision~~ Development Review Board may
24 reverse or affirm, wholly or partly, or may modify the order, requirement, decision,
25 action or determination appealed from, and shall make such order, requirement, decision
26 or determination as in its opinion ought to be made in the premises, and to that end shall
27 have all of the powers of the officer from whom the appeal is taken. Where there are
28 practical difficulties or unnecessary hardships in the way of carrying out the strict letter
29 of such ordinances, the ~~Subdivision~~ Development Review Board shall have the power, in
30 passing upon appeals, to vary or modify any of the regulations or provisions of such
31 ordinances relating to subdivisions, plats, maps and all other requirements of the
32 ordinance, in harmony with the general purpose and intent of this section, so that the
33 spirit of the ordinance may be observed, public safety, convenience and welfare secured
34 and substantial justice done."

35 Section 2. **Equal Housing.** A county board of commissioners may adopt
36 ordinances prohibiting discrimination on the basis of race, color, sex, religion, national
37 origin, age, familial status, or handicap in real estate transactions. Such ordinances may
38 regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly,
39 to the sale or rental of public or private housing, which affects or may tend to affect the
40 availability or desirability of housing on an equal basis to all persons; may provide that
41 violations constitute a misdemeanor and shall be punishable under G.S. 14-4; may subject
42 the offender to civil penalties; and may provide that a county may enforce the ordinances
43 by application to the General Court of Justice, Superior Court Division, for appropriate

1 legal and equitable remedies, including, but not limited to, mandatory and prohibitory
2 injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court
3 shall have jurisdiction to grant such remedies.

4 Section 3. **Exemptions.** Any ordinance enacted pursuant to this act may
5 provide for exemption from its coverage:

6 (1) a. Any single-family house sold or rented by an owner; provided,
7 however, that such private individual owner does not own more than
8 three such single-family houses at any one time; provided further,
9 however, that in the case of the sale of any such single-family house by
10 a private individual owner not residing in such house at the time of such
11 sale or who was not the most recent resident of such house prior to such
12 sale, the exemption granted by this subdivision shall apply only with
13 respect to one such sale within any 24-month period; provided further,
14 however, that such bona fide private individual owner does not own any
15 interest in, nor is there owned or reserved on his or her behalf, under
16 any express or voluntary agreement, title to or any right to all or a
17 portion of the proceeds from the sale or rental of, more than three such
18 single-family houses at any one time; provided further, however, that
19 the sale or rental of any such single-family house shall be exempted
20 from the application of an ordinance adopted pursuant to this act only if
21 such house is sold or rented (i) without the use in any manner of the
22 sales or rental facilities or the sales or rental services of any real estate
23 broker, agent, or salesman, or of such facilities or services of any person
24 in the business of selling or renting housing accommodations, or of any
25 employee or agent of any such broker, agent, salesman, or person and
26 (ii) without the publication, posting, or mailing, after notice, of any
27 advertisement or written notice in violation of the provisions of the
28 ordinance.

29 b. Nothing in this subdivision shall prohibit the use of attorneys,
30 escrow agents, abstractors, title companies, or other such
31 professional assistance as necessary to perfect or transfer the
32 title.

33 c. For the purposes of this subdivision, a person shall be deemed to
34 be in the business of selling or renting accommodations if:

35 1. That person has, within the preceding 12 months,
36 participated as principal in three or more transactions
37 involving the sale or rental of any housing
38 accommodations or interest therein, or

39 2. That person has, within the preceding 12 months,
40 participated as agent other than in the sale of his own
41 personal residence in providing sales or rental facilities or
42 sales or rental services in two or more transactions

- 1 involving the sale or rental of any housing
2 accommodation or interest therein, or
- 3 3. That person is the owner of any housing accommodation
4 designed or intended for occupancy by, or occupied by,
5 five or more families.
- 6 (2) Rooms or units in housing accommodations containing living quarters
7 occupied or intended to be occupied by no more than three families
8 living independently of each other, if the owner actually maintains and
9 occupies one of such living quarters as his residence.
- 10 (3) With respect to discrimination based on sex, to the rental or leasing of
11 housing accommodations in a single-sex dormitory property.
- 12 (4) With respect to discrimination based upon religion, to housing
13 accommodations owned and operated for other than a commercial
14 purpose by a religious organization, association, or society, or any
15 nonprofit institution or organization operated, supervised, or controlled
16 by or in conjunction with a religious organization, association, or
17 society, the sale, rental, or occupancy of such housing accommodation
18 being limited or preference being given to persons of the same religion.
- 19 (5) With respect to discrimination based on age, to any bona fide senior
20 citizen or retirement community, provided, however, that this exemption
21 shall be subject to the following limitations:
- 22 a. The covenants, conditions, and restrictions or other documents or
23 written policy pertaining to such community shall not limit
24 occupancy more proscriptively than to require that one person in
25 each residence be a senior citizen and that each other resident, if
26 any, except the spouse or cohabitant of, or a person who resides
27 with and provides primary physical or economic support to the
28 senior citizen, shall be at least 45 years of age;
- 29 b. The covenants, conditions, and restrictions or other documents or
30 written policy pertaining to such community shall permit
31 temporary residency by a person less than 45 years of age for
32 specified periods of not less than 60 days in any calendar year;
- 33 c. Upon the death or dissolution of marriage, or upon
34 hospitalization, or other prolonged absence of the qualifying
35 resident, any other person who was a qualified permanent
36 resident pursuant to the provisions of this subdivision shall be
37 entitled to continue in residence;
- 38 d. The senior citizen or retirement community shall have been
39 developed for, and initially put to use as, housing for senior
40 citizens, or shall have been substantially rehabilitated or
41 renovated for, and immediately afterward put to use as, housing
42 for senior citizens;

1 e. Any person who has the right to reside in, occupy, or use the
2 housing subject to this section prior to the date of its enactment
3 shall not be deprived of the right to continue that residency,
4 occupancy, or use as the result of the enactment of this section.

- 5 (6) Any person subject to this act who adopts and carries out a plan to
6 eliminate present effects of past discriminatory practices or to assure
7 equal opportunity in real estate transactions if the plan is part of a
8 conciliation agreement entered into by that person under the provisions
9 of an ordinance adopted pursuant to this act.

10 Section 4. **Enforcement.** (a) A county board of commissioners may create or
11 designate a committee or committees to assume the duty and responsibility of enforcing
12 ordinances adopted pursuant to this act. Such committee(s) may be granted the necessary
13 authority by the county for the proper enforcement of any fair housing ordinance,
14 including, but not limited to, the power to:

- 15 (1) Promulgate rules for the receipt, initiation, investigation, and
16 conciliation of complaints of violations of the ordinance;
17 (2) Require answers to interrogatories, the production of documents and
18 things, and the entry upon land and premises in the possession of a party
19 to a complaint alleging a violation of the ordinance; compel the
20 attendance of witnesses at hearings; administer oaths; and examine
21 witnesses under oath or affirmation;
22 (3) Apply to the Superior Court Division of the General Court of Justice,
23 upon the failure of any person to respond to or comply with a lawful
24 interrogatory, request for production of documents and things, request to
25 enter upon land and premises, or subpoena, for an order requiring such
26 person to respond or comply;
27 (4) Upon finding reasonable cause to believe that a violation of the
28 ordinance has occurred, to petition the General Court of Justice,
29 Superior Court Division, for appropriate civil relief on behalf of the
30 aggrieved person or persons;
31 (5) Sit as arbitrators in binding arbitration pursuant to the Uniform
32 Arbitration Act, embodied in Article 45A of Chapter 1 of the General
33 Statutes, provided that the time within which a party may apply to the
34 General Court of Justice to vacate, modify, or correct an award may be
35 limited to 60 days.

36 (b) Judicial Review of Committee Orders. Judicial review of committee orders
37 other than arbitration awards shall be in accordance with Article 4 of Chapter 150B of the
38 General Statutes; provided, however, that the provisions of G.S. 150B-45
39 notwithstanding, petitions for judicial review shall be filed in the superior court of the
40 county; provided, further, the provisions of G.S. 150B-51(b) notwithstanding, the trial
41 court judge may grant to the petitioner, or to any other party, such temporary relief,
42 restraining order, or other order as the court determines is just and proper, and the trial
43 court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or

1 remand the order for further proceedings and enforce the order to the extent that the order
2 is affirmed or modified. The term "Agency", whenever used in Article 4 of Chapter 150B
3 of the General Statutes, shall mean the committee(s) as authorized or created by the board
4 of commissioners of a county under the authority of this act.

5 (c) Enforcement of Committee Orders.

6 (1) Decisions of a committee sitting as arbitrators shall be enforced as
7 provided in Article 45A of Chapter 1 of the General Statutes.
8 Otherwise, if within 60 days after entry of an order of the committee, a
9 respondent has neither complied with nor sought review of such order,
10 any aggrieved person or the committee may apply to the superior court
11 of the county for an order of the court enforcing the order of the
12 committee.

13 (2) Within 30 days after the court's receipt of the petition for enforcement
14 of the agency's order or within such additional time as the court may
15 allow, the committee shall transmit to the court the original or a certified
16 copy of the entire record of the proceedings leading to the order. With
17 the permission of the court, the record may be shortened and testimony
18 submitted by tape recording by stipulation of all parties. Any party
19 unreasonably refusing to stipulate to limit the record may be taxed by
20 the court for such additional cost as may be occasioned by the refusal.
21 The court may require or permit subsequent corrections or additions to
22 the record when deemed desirable.

23 (3) The hearing on the petition for enforcement of the committee's order
24 shall be conducted by the court without a jury. The court shall hear oral
25 arguments and receive written briefs, but shall take no evidence not
26 offered at the committee's hearing; except that in cases of alleged
27 irregularities in proceedings before the committee not shown in the
28 record, testimony thereon may be taken by the court; and except that
29 where no record was made of the proceedings or the record is
30 inadequate, the judge in his discretion, may hear all or part of the matter
31 de novo; provided that if the order imposed includes punitive damages,
32 then as to that portion of the order, the respondent shall have a right to a
33 trial de novo on that issue.

34 (4) The court shall issue the order requiring compliance with the
35 committee's order unless it finds that enforcement of the committee's
36 order would prejudice substantial rights of the party against whom the
37 order is sought to be enforced because the committee's findings,
38 inferences, conclusions, or decisions are:

- 39 a. In violation of constitutional provisions; or
40 b. In excess of the statutory authority of jurisdiction of
41 the committee; or
42 c. Made upon unlawful procedure; or
43 d. Affected by other error of law; or

- 1 e. Unsupported by substantial evidence in view of the entire record
2 as submitted; or
3 f. Arbitrary or capricious.
- 4 (5) If the court declines to enforce the committee's order for one of the
5 reasons specified in subdivision (4) of this section, it shall either:
6 a. Dismiss the petition; or
7 b. Modify the committee's order and enforce it as modified; or
8 c. Remand the case to the committee for further proceedings.
- 9 (6) Any party to the hearing on the petition for enforcement of the
10 committee's order may appeal the court's decision to the Appellate
11 Division of the General Court of Justice under the rules of procedure
12 applicable to other civil cases.

13 Section 5. **Enforcement.** (a) Civil Action for Unlawful Housing Practice. An
14 ordinance adopted pursuant to this act may permit any complainant to bring a civil action
15 in the Superior Court Division of the General Court of Justice of the county against the
16 person allegedly engaging in the unlawful practice. Such civil action for a housing
17 practice shall be brought no later than one year after an alleged discriminatory housing
18 practice has occurred or terminated.

19 (b) Injunctions; Equitable Relief. If the court finds that the respondent has
20 engaged in or is engaging in an unlawful housing practice charged in the complaint, the
21 court may enjoin the respondent from engaging in such unlawful housing practice, award
22 special damages, actual damages, and punitive damages.

23 Section 6. **Attorneys' Fees.** An ordinance adopted pursuant to this act may
24 provide for an award of attorneys' fees to the prevailing party in any action or
25 proceedings under such ordinance other than the committee in the discretion of the
26 committee or court.

27 Section 7. **Complaints and Other Records.** A county board of
28 commissioners may provide that neither complaints filed with any committee pursuant to
29 the ordinance nor the discovery, or attempts at conciliation, in whatever form prepared
30 and preserved, shall be subject to inspection, examination, or copying under the
31 provisions of what is now Chapter 132 of the General Statutes.

32 Section 8. **Committee Meetings.** The provisions relating to meetings of
33 governmental bodies as set forth in Article 33C of Chapter 143 of the General Statutes
34 shall apply to the activities of any committee authorized to enforce the ordinance;
35 provided, however, that county may provide that said statutory provisions shall not apply
36 to the activity of a committee to the extent that the committee is:

- 37 (1) Receiving a complaint; or
38 (2) Conducting an investigation, discovery, or conciliation pertaining to a
39 complaint filed pursuant to the ordinance.

40 Section 9. Section IV of the Plan of Merger of the Alamance County Schools
41 and the Burlington City Schools, dated June 16, 1994, and filed with the Secretary of
42 State on March 20, 1996, under G.S. 115C-67 reads as rewritten:

43 "IV. Establishment of the Permanent Board of Education.

1 The Alamance County and Burlington City Boards of Education shall continue until
2 the effective date of merger, July 1, 1996, at which time those boards and their respective
3 school districts will cease to exist, and the interim board will become the Alamance-
4 Burlington Board of Education for the merged districts. Members of the permanent
5 board of education shall be elected for terms of four years on a nonpartisan basis.

6 The first election will take place on ~~November 3, 1998.~~ November 4, 1997. The
7 Alamance County Board of Elections shall establish a special filing period for the 1997
8 election. In 1997 four members shall be elected for three-year terms. Their successors
9 shall be elected in 2000 and quadrennially thereafter for four-year terms. The election in
10 1998 shall take place on November 3, 1998. In 1998 and quadrennially thereafter, three
11 members shall be elected to four-year terms. Vacancies on the permanent board shall be
12 filled in accordance with G.S. 115C-37.

13 The terms of office of ~~three~~ the three board members appointed by the Burlington City
14 School Board and the one member appointed by the Alamance-Burlington Board of
15 Education shall be extended until December 1, 1998. ~~1997,~~ and the terms of the other
16 three board members are extended until December 1, 1998. ~~The terms of office for four~~
17 ~~board members shall be extended until December 1, 2000.~~ ~~Determination of the term of~~
18 ~~extension for individual board members will be based upon total length of service of individual~~
19 ~~board members with the members having the longest terms having the shortest extension.~~

20 The Alamance-Burlington Board of Education shall have authority and powers as
21 stipulated in Chapter 115C of the General Statutes of North Carolina."

22 Section 10. Sections 2 through 8 of this act apply to Durham County only.

23 Section 11. This act is effective when it becomes law.