

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-141
SENATE BILL 1036**

AN ACT TO CLARIFY THAT THE STATE BUILDING CODE COUNCIL IS
SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(a) reads as rewritten:

"§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. – The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be published in the North Carolina Register at least 15 days prior to the date of the hearing. ~~given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.~~

The Council shall request the Office of State Budget, Planning, and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit. ~~The Council shall not take final action on a proposed Code change that has a substantial economic impact or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d).~~"

SECTION 2. G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. – The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. ~~Code revisions and amendments adopted by the Building Code Council on or after September 1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code revisions and amendments adopted by the Building Code Council on or after July 1, 1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future revisions and amendments shall be adopted prior to July 1 every three years after July 1, 2001, to become effective the first day of January of the following year. A revision or amendment may be made effective on an earlier date if determined by the Building Code Council to be necessary to address an imminent threat to the public's health, safety, or welfare.~~

Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each triennial revision of the Code

or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks."

SECTION 3. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. – The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

SECTION 4. G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1

Department of Environment and Natural Resources.....	1
Department of Health and Human Services	1
Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation.....	1
Utilities Commission	1
Department of Administration.....	1
Clerk of the Supreme Court.....	1
Clerk of the Court of Appeals.....	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State Library]	5
Supreme Court Library	2
Legislative Library.....	1
<u>Office of Administrative Hearings</u>	<u>1</u>
<u>Rules Review Commission.....</u>	<u>1</u>
Schools	
All state-supported colleges and universities in the State of North Carolina.....	1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county.....	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

SECTION 5. G.S. 150B-21.5 is amended by adding a new subsection to read:

"(d) State Building Code. – The Building Code Council is not required to publish a notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The Building Code Council is required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection. In adopting a rule, the Council shall comply with the procedural requirements of G.S. 150B-21.3."

SECTION 6. G.S. 150B-21.17(a) reads as rewritten:

"Part 4. Publication of Code and Register.

"§ 150B-21.17. North Carolina Register.

(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

- (1) Temporary rules entered in the North Carolina Administrative Code.
- (1a) Notices of rule-making proceedings, the text of proposed rules, and the text of permanent rules approved by the Commission. This subdivision does not apply to the North Carolina State Building Code.
- (2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
- (3) Executive orders of the Governor.
- (4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
- (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- (6) Other information the Codifier determines to be helpful to the public."

SECTION 7. G.S. 150B-21.21 reads as rewritten:

"§ 150B-21.21. Publication of rules of North Carolina State Bar ~~Bar~~, Building Code Council, and exempt agencies.

(a) ~~State Bar.~~ – The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(a1) Building Code Council. – The Building Code Council shall publish the North Carolina State Building Code as provided in G.S. 143-138(g). The Codifier of Rules is not required to publish the North Carolina State Building Code in the North Carolina Administrative Code.

(b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule.

(c) Publication. – A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule submitted under this section in the same manner as other rules in the North Carolina Administrative Code."

SECTION 8. G.S. 150B-38(a) reads as rewritten:

"§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing ~~agencies;~~agencies.
- (2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Commerce, and the Credit Union Division of the Department of ~~Commerce;~~and Commerce.
- (3) The Department of Insurance and the Commissioner of Insurance.
- (4) The Department of Commerce in the administration of the provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes.
- (5) The North Carolina State Building Code Council."

SECTION 9. This act is effective when it becomes law and applies to revisions made to the North Carolina State Building Code on or after January 1, 2002. In the General Assembly read three times and ratified this the 24th day of May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:24 a.m. this 31st day of May, 2001