

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 573
Senate Commerce and Insurance Committee Substitute Adopted 6/7/18
Third Edition Engrossed 6/11/18

Short Title: Business/Regulatory Changes.

(Public)

Sponsors:

Referred to:

April 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE BUSINESS AND REGULATORY CHANGES TO VARIOUS STATE
3 LAWS.

4 The General Assembly of North Carolina enacts:

5
6 **AUTHORIZE MUNICIPALITIES TO PETITION THE SUPERIOR COURT TO**
7 **APPOINT A RECEIVER TO REHABILITATE, DEMOLISH, OR SELL A VACANT**
8 **BUILDING, STRUCTURE, OR DWELLING WHERE THE OWNER HAS FAILED TO**
9 **COMPLY WITH AN ORDER TO DO SO**

10 SECTION 1.(a) Part 5 of Article 19 of Chapter 160A of the General Statutes is
11 amended by adding a new section to read as follows:

12 "**§ 160A-439.1. Vacant building receivership.**

13 (a) Petition to Appoint a Receiver. – The governing body of a municipality or its
14 delegated commission may petition the superior court for the appointment of a receiver to
15 rehabilitate, demolish, or sell a vacant building, structure, or dwelling upon the occurrence of any
16 of the following, each of which is deemed a nuisance per se:

17 (1) The owner fails to comply with an order issued pursuant to G.S. 160A-429,
18 related to building or structural conditions that constitute a fire or safety
19 hazard or render the building or structure dangerous to life, health, or other
20 property, from which no appeal has been taken.

21 (2) The owner fails to comply with an order of the city council following an
22 appeal of an inspector's order issued pursuant to G.S. 160A-429.

23 (3) The governing body of the municipality adopts any ordinance pursuant to
24 subdivision (f)(1) of G.S. 160A-439, related to nonresidential buildings or
25 structures that fail to meet minimum standards of maintenance, sanitation, and
26 safety, and orders a public officer to continue enforcement actions prescribed
27 by the ordinance with respect to the named nonresidential building or
28 structure. The public officer may submit a petition on behalf of the governing
29 body to the superior court for the appointment of a receiver, and if granted by
30 the superior court, the petition shall be considered an appropriate means of
31 complying with the ordinance. In the event the superior court does not grant
32 the petition, the public officer and the governing body may take action
33 pursuant to the ordinance in any manner authorized in G.S. 160A-439.



1 (4) The owner fails to comply with an order to repair, alter, or improve, remove,
2 or demolish a dwelling issued under G.S. 160A-443, related to dwellings that
3 are unfit for human habitation.

4 (5) Any owner or partial owner of a vacant building, structure, or dwelling, with
5 or without the consent of other owners of the property, submits a request to
6 the governing body in the form of a sworn affidavit requesting the governing
7 body to petition the superior court for appointment of a receiver for the
8 property pursuant to this section.

9 (b) Petition for Appointment of Receiver. – The petition for the appointment of a receiver
10 shall include all of the following: (i) a copy of the original violation notice or order issued by the
11 city or, in the case of an owner request to the governing body for a petition for appointment of a
12 receiver, a verified pleading that avers that at least one owner consents to the petition; (ii) a
13 verified pleading that avers that the required rehabilitation or demolition has not been completed;
14 and (iii) the names of the respondents, which shall include the owner of the property, as recorded
15 with the register of deeds, any mortgagee with a recorded interest in the property, and all other
16 parties in interest, as defined in G.S. 160A-442(5). If the petition fails to name a respondent as
17 required by this subsection, the proceeding may continue, but the receiver's lien for expenses
18 incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as
19 authorized by subsection (f) of this section, shall not have priority over the lien of that respondent.

20 (c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give
21 notice of the pendency and nature of the proceeding by regular and certified mail to the last
22 known address of all owners of the property, as recorded with the register of deeds, any
23 mortgagee with a recorded interest in the property, and all other parties in interest, as defined in
24 G.S. 160A-442(5). Within 30 days of the date on which the notice was mailed, an owner of the
25 property, as recorded with the register of deeds, any mortgagee with a recorded interest in the
26 property, and all other parties in interest, as defined in G.S. 160A-442(5), may apply to intervene
27 in the proceeding and to be appointed as receiver. If the city fails to give notice to any owner of
28 the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the
29 property, and all other parties in interest, as defined in G.S. 160A-442(5), as required by this
30 subsection, the proceeding may continue, but the receiver's lien for expenses incurred in
31 rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized
32 by subsection (f) of this section, shall not have priority over the lien of that owner, as recorded
33 with the register of deeds, any mortgagee with a recorded interest in the property, and all other
34 parties in interest, as defined in G.S. 160A-442(5).

35 (d) Appointment of Receiver. – The court shall appoint a qualified receiver if the
36 provisions of subsections (b) and (c) of this section have been satisfied. If the court does not
37 appoint a person to rehabilitate or demolish the property pursuant to subsection (e) of this section,
38 or if the court dismisses such an appointee, the court shall appoint a qualified receiver for the
39 purpose of rehabilitating and managing the property, demolishing the property, or selling the
40 property to a buyer. To be considered qualified, a receiver must demonstrate to the court (i) the
41 financial ability to complete the purchase or rehabilitation of the property; (ii) the knowledge of,
42 or experience in, the rehabilitation of vacant real property; (iii) the ability to obtain any necessary
43 insurance; and (iv) the absence of any building code violations issued by the city on other real
44 property owned by the person or any member, principal, officer, major stockholder, parent,
45 subsidiary, predecessor, or others affiliated with the person or the person's business. No member
46 of the petitioning city's governing body or a public officer of the petitioning city is qualified to
47 be appointed as a receiver in that action. If, at any time, the court determines that the receiver is
48 no longer qualified, the court may appoint another qualified receiver.

49 (e) Rehabilitation Not by Receiver. – The court may, instead of appointing a qualified
50 receiver to rehabilitate or sell a vacant building, structure, or dwelling, appoint an owner,
51 mortgagee, or other parties in interest in the property, as defined in G.S. 160A-442, to rehabilitate

1 or demolish the property if that person (i) demonstrates the ability to complete the rehabilitation
2 or demolition within a reasonable time, (ii) agrees to comply with a specified schedule for
3 rehabilitation or demolition, and (iii) posts a bond in an amount determined by the court as
4 security for the performance of the required work in compliance with the specified schedule.
5 After the appointment, the court shall require the person to report to the court on the progress of
6 the rehabilitation or demolition, according to a schedule determined by the court. If, at any time,
7 it appears to the city or its delegated commission that the owner, mortgagee, or other person
8 appointed under this subsection is not proceeding with due diligence or in compliance with the
9 court-ordered schedule, the city or its delegated commission may apply to the court for immediate
10 revocation of that person's appointment and for the appointment of a qualified receiver. If the
11 court revokes the appointment and appoints a qualified receiver, the bond posted by the owner,
12 mortgagee, or other person shall be applied to the receiver's expenses in rehabilitating,
13 demolishing, or selling the vacant building, structure, or dwelling.

14 (f) Receiver Authority Exclusive. – Upon the appointment of a receiver under subsection
15 (d) of this section and after the receiver records a notice of receivership in the county in which
16 the property is located that identifies the property, all other parties are divested of any authority
17 to collect rents or other income from or to rehabilitate, demolish, or sell the building, structure,
18 or dwelling subject to the receivership. Any party other than the appointed receiver who actively
19 attempts to collect rents or other income from or to rehabilitate, demolish, or sell the property
20 may be held in contempt of court and shall be subject to the penalties authorized by law for that
21 offense. Any costs or fees incurred by a receiver appointed under this section and set by the court
22 shall constitute a lien against the property, and the receiver's lien shall have priority over all other
23 liens and encumbrances, except taxes or other government assessments.

24 (g) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary and
25 customary powers, a receiver appointed to rehabilitate or demolish a vacant building, structure,
26 or dwelling shall have the right of possession with authority to do all of the following:

- 27 (1) Contract for necessary labor and supplies for rehabilitation or demolition.
- 28 (2) Borrow money for rehabilitation or demolition from an approved lending
29 institution or through a governmental agency or program, using the receiver's
30 lien against the property as security.
- 31 (3) Manage the property prior to rehabilitation or demolition and pay operational
32 expenses of the property, including taxes, insurance, utilities, general
33 maintenance, and debt secured by an interest in the property.
- 34 (4) Collect all rents and income from the property, which shall be used to pay for
35 current operating expenses and repayment of outstanding rehabilitation or
36 demolition expenses.
- 37 (5) Manage the property after rehabilitation, with all the powers of a landlord, for
38 a period of up to two years and apply the rent received to current operating
39 expenses and repayment of outstanding rehabilitation or demolition expenses.
- 40 (6) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

41 (h) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a
42 receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do
43 all of the following: (i) sell the property to the highest bidder at public sale, following the same
44 presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of
45 the General Statutes, and (ii) sell the property privately for fair market value if no party to the
46 receivership objects to the amount and procedure. In the notice of public sale authorized under
47 this subsection, it shall be sufficient to describe the property by a street address and reference to
48 the book and page or other location where the property deed is registered. Prior to any sale under
49 this subsection, the applicants to bid in the public sale or the proposed buyer in the private sale
50 shall demonstrate the ability and experience needed to rehabilitate the property within a
51 reasonable time. After deducting the expenses of the sale, the amount of outstanding taxes and

1 other government assessments, and the amount of the receiver's lien, the receiver shall apply any
2 remaining proceeds of the sale first to the city's costs and expenses, including reasonable
3 attorneys' fees, and then to the liens against the property in order of priority. Any remaining
4 proceeds shall be remitted to the property owner.

5 (i) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by
6 subsection (f) of this section by selling the property subject to the lien at a public sale, following
7 public notice and notice to interested parties in the manner as a mortgage foreclosure under
8 Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the sale and
9 the amount of any outstanding taxes and other government assessments, the receiver shall apply
10 the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure,
11 and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs,
12 fees, including reasonable attorneys' fees, and expenses or may transfer his or her ownership in
13 the property to either the receiver or an agreed upon third party for an amount agreed to by all
14 parties to the receivership as being the property's fair market value.

15 (j) Deed After Sale. – Following the court's ratification of the sale of the property under
16 this section, the receiver shall sign a deed conveying title to the property to the buyer, free and
17 clear of all encumbrances, other than restrictions that run with the land. Upon the sale of the
18 property, the receiver shall at the same time file with the court a final accounting and a motion
19 to dismiss the action.

20 (k) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or
21 sell a vacant building, structure, or dwelling shall extend no longer than two years after the
22 rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition,
23 or sale of the property, any party to the receivership may file a motion to dismiss the receiver
24 upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration of
25 the receiver's tenure, the receiver shall file a final accounting with the court that appointed the
26 receiver.

27 (l) Administrative Fee Charged. – The city may charge the owner of the building,
28 structure, or dwelling subject to the receivership an administrative fee that is equal to five percent
29 (5%) of the profits from the sale of the building, structure, or dwelling or one hundred dollars
30 (\$100.00), whichever is less."

31 **SECTION 1.(b)** This section becomes effective October 1, 2018, and applies to any
32 nuisance per se described in G.S. 160A-439.1, as enacted by this section, that occurs on or after
33 that date, or any action listed in G.S. 160A-439.1(a)(1) through (4) that has not been complied
34 with as of that date.

35 36 **EXEMPT RESIDENTIAL GARAGES FROM ENERGY EFFICIENCY CODES**

37 **SECTION 2.(a)** G.S. 143-138 is amended by adding a new subsection to read:

38 "(b19) Exclusion From Energy Efficiency Code Requirements for Residential Garages. –
39 The Council shall provide for an exemption for detached and attached garages located on the
40 same lot as a dwelling from any requirements in the energy efficiency standards pursuant to
41 Chapter 11 of the North Carolina Residential Code for One- and Two-Family Dwellings and
42 Chapter 4 of the North Carolina Energy Conservation Code."

43 **SECTION 2.(b)** This section becomes effective October 1, 2018.

44 45 **AMEND THE LAW AUTHORIZING MALT BEVERAGE AND UNFORTIFIED WINE** 46 **ELECTIONS FOR CERTAIN CITIES**

47 **SECTION 3.** G.S. 18B-600(c1) reads as rewritten:

48 "(c1) **Certain City Malt Beverage and Unfortified Wine Elections. –** A city may hold a malt
49 beverage or unfortified wine election only if all of the following criteria are met:

50 (1) The county in which more than fifty percent (50%) of the area of the primary
51 corporate limits of the city is located has already held such an election, and

- 1 the vote in the last county election was against the sale of that kind of alcoholic
2 beverage.
- 3 (2) The city has a population of 200 or more.
- 4 (3) The county in which more than fifty percent (50%) of the area of the primary
5 corporate limits of the city is located also contains three or more other cities
6 that have previously voted to allow malt beverage ~~and~~or unfortified wine
7 sales."
- 8

9 **AMEND WELL CASING, GROUTING, AND SETBACK REQUIREMENTS**

10 **SECTION 4.(a)** Definitions. – "Well Standards Rules" means 15A NCAC 02C .0101
11 through 15A NCAC 02C .0119 (Criteria and Standards Applicable to Water-Supply and Certain
12 Other Types of Wells) for purposes of this section and its implementation.

13 **SECTION 4.(b)** Well Standards Rules. – Until the effective date of the revised
14 permanent rules that the Environmental Management Commission is required to adopt pursuant
15 to subsection (d) of this section, the Commission shall implement the Well Standards Rules as
16 provided in subsection (c) of this section.

17 **SECTION 4.(c)** Implementation. – The Well Standards Rules shall be implemented
18 as follows:

- 19 (1) Notwithstanding 15A NCAC 02C .0107(a)(2)(A) (Standards of Construction:
20 Water Supply Wells), the minimum horizontal separation between a water
21 supply well serving a single-family dwelling and a septic tank and drainfield,
22 including the drainfield repair area, shall be 50 feet, except that the minimum
23 horizontal separation between a water supply well serving a single-family
24 dwelling and a saporlite system as described in 15A NCAC 18A .1956 shall
25 be 100 feet.
- 26 (2) Notwithstanding 15A NCAC 02C .0107(f)(1) (Standards of Construction:
27 Water Supply Wells), casing shall be grouted to a depth of 20 feet below the
28 surface, except that in those areas designated by the Director to meet the
29 criteria of 15A NCAC 02C .0116 (Designated Areas: Water Supply Wells
30 Cased to Less Than 20 Feet), grout shall extend to a depth of two feet above
31 the screen or, for open end wells, to the bottom of the casing, but in no case
32 less than 10 feet.
- 33 (3) Notwithstanding 15A NCAC 02C .0107(b)(2) (Standards of Construction:
34 Water Supply Wells), in designated areas described in 15A NCAC 02C .0117
35 (Designated Areas: Water Supply Wells Cased to Minimum Depth of 35
36 Feet), the source of water shall be greater than 43 feet below land surface.
- 37 (4) Notwithstanding 15A NCAC 02C .0107(d)(4) (Standards of Construction:
38 Water Supply Wells), well located within the area described in 15A NCAC
39 02C .0117 (Designated Areas: Water Supply Wells Cased to Minimum Depth
40 of 35 Feet) shall be cased from land surface to a depth of at least 43 feet and
41 wells constructed with separation distances less than those specified in 15A
42 NCAC 02C .0107(a)(2) based on lot size or other fixed conditions as specified
43 in 15A NCAC 02C .0107(a)(3) shall be cased from land surface to a depth of
44 at least 43 feet except in areas described in 15A NCAC 02C .0116 (Designated
45 Areas: Water Supply Wells Cased to Minimum Depth of 20 Feet).
- 46 (5) Notwithstanding 15A NCAC 02C .0117 (Designated Areas: Water Supply
47 Wells Cased to Minimum Depth of 35 Feet), water supply wells constructed
48 in the areas set out in 15A NCAC 02C .0117 or within 400 feet of these areas
49 shall be cased to a depth of 43 feet and grouted to a depth of 20 feet.

50 **SECTION 4.(d)** Additional Rule-Making Authority. – The Commission shall adopt
51 rules to amend the Well Standards Rules consistent with subsection (c) of this section.

1 Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section
2 shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted
3 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
4 Statutes. Rules adopted pursuant to this section shall become effective as provided in
5 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided in
6 G.S. 150B-21.3(b2).

7 **SECTION 4.(e)** Sunset. – This section expires when permanent rules adopted as
8 required by subsection (d) of this section become effective.

9
10 **REDUCE FREQUENCY OF REQUIRED GROUNDWATER SAMPLING FOR C&D**
11 **LANDFILLS FROM SEMIANNUAL TO ANNUAL**

12 **SECTION 5.(a)** Definitions. – "Monitoring Plans and Requirements for C&DLF
13 Facilities Rule" means 15A NCAC 13B .0544 for purposes of this section and its implementation.

14 **SECTION 5.(b)** Monitoring Plans and Requirements for C&DLF Facilities Rule. –
15 Until the effective date of the revised permanent rule that the Environmental Management
16 Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall
17 implement the Monitoring Plans and Requirements for C&DLF Facilities Rule, as provided in
18 subsection (c) of this section.

19 **SECTION 5.(c)** Implementation. – Notwithstanding sub-subdivision (b)(1)(D) of
20 the Monitoring Plans and Requirements for C&DLF Facilities Rule, the Commission shall not
21 require semiannual monitoring frequency for required groundwater sampling but shall only
22 require such sampling on an annual basis.

23 **SECTION 5.(d)** Additional Rule-Making Authority. – The Commission shall adopt
24 a rule to amend the Monitoring Plans and Requirements for C&DLF Facilities Rule consistent
25 with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the
26 Commission pursuant to this section shall be substantively identical to the provisions of
27 subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of
28 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
29 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had
30 been received as provided in G.S. 150B-21.3(b2).

31 **SECTION 5.(e)** Sunset. – This section expires when permanent rules adopted as
32 required by subsection (d) of this section become effective.

33
34 **DIRECT ABC COMMISSION TO ALLOW INDOOR ADVERTISEMENTS AT SPORTS**
35 **AND ENTERTAINMENT VENUES THAT ARE VISIBLE FROM OUTSIDE**

36 **SECTION 5.1.(a)** Definition. – "Advertising Rule" means 14B NCAC 15B .1006
37 (Advertising of Malt Beverages, Wine and Mixed Beverages by Retailers) for purposes of this
38 section and its implementation.

39 **SECTION 5.1.(b)** Advertising Rule. – Until the effective date of the revised
40 permanent rule that the Alcoholic Beverage Control Commission is required to adopt pursuant
41 to subsection (d) of this section, the Commission shall implement the Advertising Rule as
42 provided in subsection (c) of this section.

43 **SECTION 5.1.(c)** Implementation. – Notwithstanding the Advertising Rule, the
44 Commission shall allow a sports or entertainment venue with a permanently constructed seating
45 capacity of 3,000 or more, which is not located on the campus of a school, college, or university,
46 to display point-of-sale advertising for malt beverages and unfortified wine inside the venue that
47 is visible from the outside of the venue, and shall not require the venue to move or remove the
48 advertising.

49 **SECTION 5.1.(d)** The Commission shall adopt rules to amend the Advertising Rule
50 consistent with subsection (c) of this section.

1 **SECTION 5.1.(e)** Sunset. – This section expires when permanent rules adopted as
2 required by subsection (d) of this section become effective.

3

4 **EFFECTIVE DATE**

5 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
6 law.