

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 1507*
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
5/21/07
Third Edition Engrossed 5/23/07

Short Title: Housing Conditions/Inspections.

(Public)

Sponsors:

Referred to:

March 27, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING CITIES AND COUNTIES TO HAVE PROBABLE CAUSE BEFORE INSPECTING RESIDENTIAL AND NONRESIDENTIAL STRUCTURES AND REQUIRING OWNERS AND LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a) is amended by adding a new subsection to read:

"(7) Within a reasonable period of time based on the severity of the condition, repair or remedy any imminently dangerous condition in the premises after acquiring actual knowledge or receiving notice of the condition. For purposes of this subdivision, the term 'imminently dangerous condition' means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.

- 1 1. Excessive standing water, sewage, or flooding problems caused
2 by plumbing leaks or inadequate drainage that contribute to
3 mosquito infestation or mold."

4 **SECTION 2.** G.S. 153A-364 reads as rewritten:

5 **"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

6 (a) The inspection department ~~shall~~may make periodic inspections, subject to
7 the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous
8 and unlawful conditions in residential and nonresidential buildings within its territorial
9 jurisdiction. Except as provided in subsection (b) of this section, the inspection
10 department shall make periodic inspections only when there is probable cause to believe
11 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
12 residential or nonresidential building. For purposes of this section, the term 'probable
13 cause' means: (i) the landlord or owner has a history of more than one verified violation
14 of the housing ordinances within a 12-month period; (ii) there has been a complaint that
15 substandard conditions exist within the building or an occupant has requested that the
16 building be inspected; or (iii) the inspections department has actual knowledge of unsafe
17 conditions within the building that was acquired as a result of routine business activities
18 conducted by government officials. In conducting inspections authorized under this
19 section, the inspection department shall not discriminate between single-family and
20 multifamily buildings or between owner-occupied and tenant-occupied buildings. In
21 addition, it shall make any necessary inspections when it has reason to believe that such
22 conditions may exist in a particular building. In exercising these powers, each member
23 of the inspection department has a right, upon presentation of proper credentials, to
24 enter on any premises within the territorial jurisdiction of the department at any
25 reasonable hour for the purposes of inspection or other enforcement action.

26 (b) A county may require periodic inspections under subsection (a) of this section
27 as part of a targeted effort to respond to blighted or potentially blighted conditions in an
28 area found by the board of commissioners or within a Community Development Block
29 Grant geographic area that has been designated by the board of commissioners, the
30 Department of Commerce, Division of Community Assistance, or the United States
31 Department of Housing and Urban Development."

32 **SECTION 3.** G.S. 160A-424 reads as rewritten:

33 **"§ 160A-424. Periodic inspections.**

34 (a) The inspection department ~~shall~~may make periodic inspections, subject to
35 the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful
36 conditions in residential and nonresidential buildings or structures within its territorial
37 jurisdiction. Except as provided in subsection (b) of this section, the inspection
38 department shall make periodic inspections only when there is probable cause to believe
39 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
40 residential or nonresidential building or structure. For purposes of this section, the term
41 'probable cause' means: (i) the landlord or owner has a history of more than one verified
42 violation of the housing ordinances within a 12-month period; (ii) there has been a
43 complaint that substandard conditions exist within the building or structure or an
44 occupant has requested that the building or structure be inspected; or (iii) the

1 inspections department has actual knowledge of unsafe conditions within the building or
2 structure that was acquired as a result of routine business activities conducted by
3 government officials. In conducting inspections authorized under this section, the
4 inspection department shall not discriminate between single-family and multifamily
5 buildings or structures or between owner-occupied and tenant-occupied buildings or
6 structures. In addition, it shall make inspections when it has reason to believe that such
7 conditions may exist in a particular structure. In exercising this power, members of the
8 department shall have a right to enter on any premises within the jurisdiction of the
9 department at all reasonable hours for the purposes of inspection or other enforcement
10 action, upon presentation of proper credentials.

11 (b) A city may require periodic inspections under subsection (a) of this section as
12 part of a targeted effort to respond to blighted or potentially blighted conditions in an
13 area found by the city council or within a Community Development Block Grant
14 geographic area that has been designated by the city council, the Department of
15 Commerce, Division of Community Assistance, or the United States Department of
16 Housing and Urban Development."

17 **SECTION 4.** G.S. 160A-443 reads as rewritten:

18 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of**
19 **public officer.**

20 Upon the adoption of an ordinance finding that dwelling conditions of the character
21 described in G.S. 160A-441 exist within a city, the governing body of the city is hereby
22 authorized to adopt and enforce ordinances relating to dwellings within the city's
23 territorial jurisdiction that are unfit for human habitation. These ordinances shall include
24 the following provisions:

25 ...

26 (2) That whenever a petition is filed with the public officer by a public
27 authority or by at least five residents of the city charging that any
28 dwelling is unfit for human ~~habitation~~ or habitation, whenever the
29 occupant of a dwelling requests that the dwelling be inspected, or
30 whenever it appears to the public officer (on his own motion) that any
31 dwelling is unfit for human habitation, the public officer shall, if his
32 preliminary investigation discloses a basis for such charges, issue and
33 cause to be served upon the owner of and parties in interest in such
34 dwellings a complaint stating the charges in that respect and
35 containing a notice that a hearing will be held before the public officer
36 (or his designated agent) at a place within the county in which the
37 property is located fixed not less than 10 days nor more than 30 days
38 after the serving of the complaint; that the owner and parties in interest
39 shall be given the right to file an answer to the complaint and to appear
40 in person, or otherwise, and give testimony at the place and time fixed
41 in the complaint; and that the rules of evidence prevailing in courts of
42 law or equity shall not be controlling in hearings before the public
43 officer.

- 1 (3) That if, after notice and hearing, the public officer determines that the
2 dwelling under consideration is unfit for human habitation, he shall
3 state in writing his findings of fact in support of that determination and
4 shall issue and cause to be served upon the owner thereof an order,
5 a. If the repair, alteration or improvement of the dwelling can be
6 made at a reasonable cost in relation to the value of the
7 dwelling (the ordinance of the city may fix a certain percentage
8 of this value as being reasonable), requiring the ~~owner, within~~
9 ~~the time specified,~~ owner to repair, alter or improve the
10 ~~dwelling in order to render it fit for human habitation or to~~
11 ~~vacate and close the dwelling as a human habitation; or~~
12 dwelling.
13 b. If the repair, alteration or improvement of the dwelling cannot
14 be made at a reasonable cost in relation to the value of the
15 dwelling (the ordinance of the city may fix a certain percentage
16 of this value as being reasonable), requiring the owner, within
17 the time specified in the order, to remove or demolish such
18 dwelling. However, notwithstanding any other provision of law,
19 if the dwelling is located in a historic district of the city and the
20 Historic District Commission determines, after a public hearing
21 as provided by ordinance, that the dwelling is of particular
22 significance or value toward maintaining the character of the
23 district, and the dwelling has not been condemned as unsafe, the
24 order may require that the dwelling be vacated and closed
25 consistent with G.S. 160A-400.14(a).
- 26 (4) That, if the owner fails to comply with an order to repair, alter or
27 improve ~~or to vacate and close~~ the dwelling, the public officer may
28 cause the dwelling to be repaired, altered or improved or to be vacated
29 and closed; that the public officer may cause to be posted on the main
30 entrance of any dwelling so closed, a placard with the following
31 words: "This building is unfit for human habitation; the use or
32 occupation of this building for human habitation is prohibited and
33 unlawful." Occupation of a building so posted shall constitute a Class
34 1 misdemeanor.
- 35 ...
- 36 (5a) If the governing body shall have adopted an ordinance, or the public
37 officer shall have:
38 a. In a municipality located in counties which have a population in
39 excess of 71,000 by the last federal census (including the
40 entirety of any municipality located in more than one county at
41 least one county of which has a population in excess of 71,000),
42 other than municipalities with a population in excess of 190,000
43 by the last federal census, issued an order, ordering a dwelling
44 to be repaired or vacated and closed, as provided in ~~subdivision~~

1 ~~(3)a., subdivisions (3)a. and (4) of this section,~~ and if the owner
2 has vacated and closed such dwelling and kept such dwelling
3 vacated and closed for a period of one year pursuant to the
4 ordinance or order;

5 b. In a municipality with a population in excess of 190,000 by the
6 last federal census, commenced proceedings under the
7 substandard housing regulations regarding a dwelling to be
8 repaired or vacated and closed, as provided in ~~subdivision~~
9 ~~(3)a., subdivisions (3)a. and (4) of this section,~~ and if the owner
10 has vacated and closed such dwelling and kept such dwelling
11 vacated and closed for a period of one year pursuant to the
12 ordinance or after such proceedings have commenced,

13 then if the governing body shall find that the owner has abandoned the
14 intent and purpose to repair, alter or improve the dwelling in order to
15 render it fit for human habitation and that the continuation of the
16 dwelling in its vacated and closed status would be inimical to the
17 health, safety, morals and welfare of the municipality in that the
18 dwelling would continue to deteriorate, would create a fire and safety
19 hazard, would be a threat to children and vagrants, would attract
20 persons intent on criminal activities, would cause or contribute to
21 blight and the deterioration of property values in the area, and would
22 render unavailable property and a dwelling which might otherwise
23 have been made available to ease the persistent shortage of decent and
24 affordable housing in this State, then in such circumstances, the
25 governing body may, after the expiration of such one year period,
26 enact an ordinance and serve such ordinance on the owner, setting
27 forth the following:

28 a. If it is determined that the repair of the dwelling to render it fit
29 for human habitation can be made at a cost not exceeding fifty
30 percent (50%) of the then current value of the dwelling, the
31 ordinance shall require that the owner either repair or demolish
32 and remove the dwelling within 90 days; or

33 b. If it is determined that the repair of the dwelling to render it fit
34 for human habitation cannot be made at a cost not exceeding
35 fifty percent (50%) of the then current value of the dwelling, the
36 ordinance shall require the owner to demolish and remove the
37 dwelling within 90 days.

38 This ordinance shall be recorded in the Office of the Register of
39 Deeds in the county wherein the property or properties are located and
40 shall be indexed in the name of the property owner in the grantor
41 index. If the owner fails to comply with this ordinance, the public
42 officer shall effectuate the purpose of the ordinance.

43 ~~This subdivision only applies to municipalities located in counties~~
44 ~~which have a population in excess of 71,000 by the last federal census~~

1 ~~(including the entirety of any municipality located in more than one~~
2 ~~county at least one county of which has a population in excess of~~
3 ~~71,000).~~

4 [This subdivision does not apply to the local government units
5 listed in subdivision (5b) of this section.]

6 (5b) If the governing body shall have adopted an ordinance, or the public
7 officer shall have:

8 a. In a municipality other than municipalities with a population in
9 excess of 190,000 by the last federal census, issued an order,
10 ordering a dwelling to be repaired or vacated and closed, as
11 provided in ~~subdivision (3)a,~~subdivisions (3)a. and (4) of this
12 section, and if the owner has vacated and closed such dwelling
13 and kept such dwelling vacated and closed for a period of one
14 year pursuant to the ordinance or order;

15 b. In a municipality with a population in excess of 190,000 by the
16 last federal census, commenced proceedings under the
17 substandard housing regulations regarding a dwelling to be
18 repaired or vacated and closed, as provided in ~~subdivision~~
19 ~~(3)a,~~subdivisions (3)a. and (4) of this section, and if the owner
20 has vacated and closed such dwelling and kept such dwelling
21 vacated and closed for a period of one year pursuant to the
22 ordinance or after such proceedings have commenced,

23 then if the governing body shall find that the owner has abandoned the
24 intent and purpose to repair, alter or improve the dwelling in order to
25 render it fit for human habitation and that the continuation of the
26 dwelling in its vacated and closed status would be inimical to the
27 health, safety, morals and welfare of the municipality in that the
28 dwelling would continue to deteriorate, would create a fire and safety
29 hazard, would be a threat to children and vagrants, would attract
30 persons intent on criminal activities, would cause or contribute to
31 blight and the deterioration of property values in the area, and would
32 render unavailable property and a dwelling which might otherwise
33 have been made available to ease the persistent shortage of decent and
34 affordable housing in this State, then in such circumstances, the
35 governing body may, after the expiration of such one year period,
36 enact an ordinance and serve such ordinance on the owner, setting
37 forth the following:

38 a. If it is determined that the repair of the dwelling to render it fit
39 for human habitation can be made at a cost not exceeding fifty
40 percent (50%) of the then current value of the dwelling, the
41 ordinance shall require that the owner either repair or demolish
42 and remove the dwelling within 90 days; or

43 b. If it is determined that the repair of the dwelling to render it fit
44 for human habitation cannot be made at a cost not exceeding

1 fifty percent (50%) of the then current value of the dwelling, the
2 ordinance shall require the owner to demolish and remove the
3 dwelling within 90 days.

4 This ordinance shall be recorded in the Office of the Register of Deeds
5 in the county wherein the property or properties are located and shall
6 be indexed in the name of the property owner in the grantor index. If
7 the owner fails to comply with this ordinance, the public officer shall
8 effectuate the purpose of the ordinance.

9 This subdivision applies to the Cities of Eden, Lumberton,
10 Roanoke Rapids, and Whiteville, to the municipalities in Lee County,
11 and the Towns of Bethel, Farmville, Newport, and Waynesville only.

12 (6) Liens. –

13 a. That the amount of the cost of repairs, alterations or
14 improvements, or vacating and closing, or removal or
15 demolition by the public officer shall be a lien against the real
16 property upon which the cost was incurred, which lien shall be
17 filed, have the same priority, and be collected as the lien for
18 special assessment provided in Article 10 of this Chapter.

19 b. If the real property upon which the cost was incurred is located
20 in an incorporated city, then the amount of the cost is also a lien
21 on any other real property of the owner located within the city
22 limits or within one mile thereof except for the owner's primary
23 residence. The additional lien provided in this sub-subdivision
24 is inferior to all prior liens and shall be collected as a money
25 judgment.

26 c. If the dwelling is removed or demolished by the public officer,
27 he shall sell the materials of the dwelling, and any personal
28 property, fixtures or appurtenances found in or attached to the
29 dwelling, and shall credit the proceeds of the sale against the
30 cost of the removal or demolition and any balance remaining
31 shall be deposited in the superior court by the public officer,
32 shall be secured in a manner directed by the court, and shall be
33 disbursed by the court to the persons found to be entitled thereto
34 by final order or decree of the court. Nothing in this section
35 shall be construed to impair or limit in any way the power of the
36 city to define and declare nuisances and to cause their removal
37 or abatement by summary proceedings, or otherwise.

38 (7) If any occupant fails to comply with an order to vacate a dwelling, the
39 public officer may file a civil action in the name of the city to remove
40 such occupant. The action to vacate the dwelling shall be in the nature
41 of summary ejectment and shall be commenced by filing a complaint
42 naming as parties-defendant any person occupying such dwelling. The
43 clerk of superior court shall issue a summons requiring the defendant
44 to appear before a magistrate at a certain time, date and place not to

1 exceed 10 days from the issuance of the summons to answer the
2 complaint. The summons and complaint shall be served as provided in
3 G.S. 42-29. The summons shall be returned according to its tenor, and
4 if on its return it appears to have been duly served, and if at the hearing
5 the public officer produces a certified copy of an ordinance adopted by
6 the governing body pursuant to subdivision (5) authorizing the officer
7 to proceed to vacate the occupied dwelling, the magistrate shall enter
8 judgment ordering that the premises be vacated and that all persons be
9 removed. The judgment ordering that the dwelling be vacated shall be
10 enforced in the same manner as the judgment for summary ejectment
11 entered under G.S. 42-30. An appeal from any judgment entered
12 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
13 and the execution of such judgment may be stayed as provided in
14 G.S. 7A-227. An action to remove an occupant of a dwelling who is a
15 tenant of the owner may not be in the nature of a summary ejectment
16 proceeding pursuant to this paragraph unless such occupant was served
17 with notice at least 30 days before the filing of the summary ejectment
18 proceeding that the governing body has ordered the public officer to
19 proceed to exercise his duties under subdivisions (4) and (5) of this
20 section to vacate and close or remove and demolish the dwelling.

- 21 (8) That whenever a determination is made pursuant to ~~subdivision (3)~~
22 subdivisions (3) and (4) of this section that a dwelling must be vacated
23 and closed, or removed or demolished, under the provisions of this
24 section, notice of the order shall be given by first-class mail to any
25 organization involved in providing or restoring dwellings for
26 affordable housing that has filed a written request for such notices. A
27 minimum period of 45 days from the mailing of such notice shall be
28 given before removal or demolition by action of the public officer, to
29 allow the opportunity for any organization to negotiate with the owner
30 to make repairs, lease, or purchase the property for the purpose of
31 providing affordable housing. The public officer or clerk shall certify
32 the mailing of the notices, and the certification shall be conclusive in
33 the absence of fraud. Only an organization that has filed a written
34 request for such notices may raise the issue of failure to mail such
35 notices, and the sole remedy shall be an order requiring the public
36 officer to wait 45 days before causing removal or demolition."

37 **SECTION 5.** G.S. 42-44 is amended by adding a new subsection to read:

38 "(a3) Whenever the landlord has knowledge or notice of any imminently dangerous
39 condition, as provided in G.S. 42-42(a)(7), the landlord shall repair or remedy the
40 condition within a reasonable period of time based on the severity of the condition. If
41 the landlord fails to remedy the dangerous condition within a reasonable period of time
42 based on the severity of the condition, then the landlord shall be deemed to have
43 breached the implied covenant of quiet enjoyment. Notwithstanding the landlord's repair

1 or remedy, the landlord may recover from the tenant the actual and reasonable costs of
2 the work that was the fault of the tenant."

3 **SECTION 6.** This act becomes effective October 1, 2007, and does not
4 apply to ordinances or programs adopted on or prior to that date or amendments to these
5 ordinances or programs adopted on or after that date.