

# CODE ENFORCEMENT LAW

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## LEGISLATION OF INTEREST TO CODE- ENFORCEMENT OFFICIALS ADOPTED BY THE GENERAL ASSEMBLY IN 2003

■ Richard D. Ducker

The 2003 session of the North Carolina General Assembly produced fewer pieces of new legislation affecting code-enforcement than it has in many recent years. However, the session was not without legislative developments of interest. Bills that would have revamped the structure of the North Carolina Building Code Council and directed the council to adopt certain international codes—with only minimal North Carolina modifications—died in committee. Little statewide legislation was adopted. One exception was a comprehensive act affecting manufactured and modular housing; it requires all modular homes fabricated after January 1, 2004, to meet certain design and appearance standards intended to make them more compatible with site-built houses. Also of note is an eleventh-hour change in the law that prevents local governments from adopting zoning regulations that amortize nonconforming off-premises outdoor advertising signs. This law functions as a moratorium on such regulations and will expire on December 31, 2004. In the meantime, the Revenue Laws Study Committee will study the sign-amortization issue.

### Building Code

#### Homeowner Recovery Fund Permit Fee

Since 1991 local inspection departments have collected a fee from each general contractor applying for a single-family residential building permit; the fee is



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remitted to the Licensing Board of General Contractors and earmarked for its Homeowners Recovery Fund. The fund provides funds for homeowners who have suffered a loss from the dishonest or incompetent work of a licensed general contractor or someone who fraudulently acts as one. Session Law 2003-372 (S 324) (hereinafter S.L.) doubles the fee from \$5.00 to \$10.00 per permit. The act allows inspection departments to continue retaining \$1.00 for each such permit fee collected.

### **Pyrotechnic Displays**

A recent tragic fire caused by a fireworks display in a Rhode Island nightclub spawned several legislative reactions in this state. The first response affects the ability of local governments to approve pyrotechnic displays at concerts and various public exhibitions. S.L. 2003-298 (S 521) amends Section 14-413 of the North Carolina General Statutes (hereinafter G.S.) to prohibit a board of county commissioners from issuing a permit for the indoor use of pyrotechnics at a concert or public exhibition unless the local fire marshal or the State Fire Marshal certifies their safety. In particular, a fire marshal must certify that (1) adequate fire suppression will be used; (2) the structure is safe for the use of pyrotechnics, given the type of fire suppression available; and (3) egress from the building is adequate, based on the size of the expected crowd.

Such certifications are also required in cities authorized by local act to grant pyrotechnic permits. The act also authorizes the State Fire Marshal to certify the pyrotechnics used in certain concerts or exhibitions authorized by the University of North Carolina at Chapel Hill. Most of the act becomes effective on December 1, 2003.

### **No Architect or Engineer Required**

S.L. 2003- 305 (H 994) amends G.S. 133-1.1(c), the statute that defines when a registered architect or engineer must prepare plans and specifications for a government project. It allows cities, counties, local boards of education, and the State of North Carolina to erect pre-engineered structures without the involvement of a registered architect or engineer if several conditions are met. First, the structure must be a garage, shed, or workshop no larger than five thousand square feet in area. Second, the buildings must be for the exclusive use of city, county, public school, or state employees for purposes related to their work. Finally, the bill requires that such pre-

engineered structures be located at least thirty (30) feet from other buildings or from property lines.

### **Subcontractor May Bid**

The general contractor licensing law, G.S. 87-1, requires a person who submits a bid for a public contract to have a license that covers the type of work involved in the contract. In many cases, however, a project involves multiple trades, which may be subcontracted by the bidding contractor. S.L. 2003-231 (S 437) authorizes the North Carolina General Contractors Licensing Board to adopt rules allowing a licensed HVAC contractor or electrical contractor to bid on projects for work that includes general contracting work, as long as the general contracting work does not exceed a given percentage of the total bid price, as established by board rules. The act also allows the board to adopt temporary rules to carry out this authority.

### **Sprinkler Requirements-Local Acts**

The North Carolina Building Code does not require sprinklers in clubs and bars. S.L. 2003-237 (S 494), however, allows Carrboro to adopt an ordinance to require sprinklers in bars, clubs, and other similar places of public assembly that sell alcoholic beverages and are designed for occupancy by at least a hundred people. Restaurants are exempt. The requirement may be made applicable to any new occupancy, and sprinklers must be installed before the certificate of occupancy is issued. The regulation may also be made applicable to existing occupancies for three years following enactment of the ordinance. Another act, S.L. 2003-247 (H 773), extends similar authority to the Town of Chapel Hill. However, Chapel Hill may apply such regulations to bars and clubs with occupancies of between one hundred and two hundred (100–200) only if required exits are one story above or below grade. Otherwise, the regulation may apply only to occupancies exceeding two hundred people. The Chapel Hill legislation would allow an existing club lacking sprinklers up to five years to comply if its existing occupancy exceeds two hundred. It would also allow a club up to five years to comply if its occupancy exceeds a hundred and fifty and it lacks suitable at-grade egress.

## Building Condemnation-Local Acts

The municipal building condemnation statutes (G.S. 160A-426 et seq.) allow cities to use summary procedures to demolish nonresidential buildings in target areas. Summary procedures permit a city to demolish the building without a court order if the owner refuses to do so. However, the power to demolish *residential* buildings without a court order has previously been available to only the few cities that managed to obtain local legislation. S.L. 2003-23 (S 465) (for High Point and Goldsboro) and S.L. 2003-42 (S 123) (for Clinton, Lumberton, and Franklin) allow these cities to use summary procedures under the unsafe-building condemnation statutes to demolish residential structures in community development target areas.

## Bills That Failed

Two sets of companion bills generated considerable controversy among those with an interest in state building-code enforcement. Both were part of the legislative agenda of the North Carolina Chapter of the American Institute of Architects.

H 857 (identical to S 913) would have split the North Carolina Building Code Council into separate residential and nonresidential councils and directed adoption of the International Building Code as it applies to one- and two-family residential construction. H 856, a companion bill to H 857, would have directed that the North Carolina State Building Code be adopted “by reference with limited technical amendments from the most current edition of the International Code Council’s International Building Code” and would have limited subsequent amendment of the North Carolina code. These bills were left to die in committee.

S 675 would have authorized the Code Officials Qualification Board to adopt a continuing education program for code enforcement officials, requiring no more than six credit hours per year for each technical area of certification. The bill called for a \$750,000 appropriation from Department of Insurance funds to develop and implement it. The bill died, and its contents were not included in this year’s state appropriations act.

## Housing Code

Current enabling legislation (G.S. 160A-441) governing the application of minimum housing ordinances seems to imply that if a dwelling is deteriorating (but not yet dilapidated) a housing inspector’s order must allow the

owner a choice: either repair the dwelling or close and board it up. Because of the blighting effect of boarded-up houses, some local governments have sought other options. S.L. 2003-76 (S 290) and S.L. 2003-320 (S 357) allow Greensboro and Roanoke Rapids, respectively, to require owners to repair their properties rather than vacating them. H 628, which would have extended this power to all local governments, was left to die in a House committee.

## Historic Preservation

North Carolina currently provides a state income tax credit equal to 20 percent of the qualifying expenses for rehabilitating an income-producing historic structure if the owner qualifies for a corresponding federal income tax credit. Several changes were made to this law (G.S. 105-129.35) in 2003. Section 35A.1 of the appropriations act, S.L. 2003-284 (H 397), amends the statute to require the taxpayer intending to claim the credit to provide the Department of Revenue with a copy of the State Historic Preservation Officer’s certification that the structure has been rehabilitated in accordance with the law. S.L. 2003-415 (S 119) liberalizes the ability of partnerships, joint ventures, and the like to take advantage of these credits. It allows the credit to be allocated among any of the structure’s owners as long as each owner’s adjusted basis for the property at the end of the year in which the structure is placed into service is at least 40 percent of the amount of the credit allocated to that owner. (Prior to this act, the credit could not exceed the owner’s adjusted basis.) In addition, the act extends the expiration date for these so-called “pass-through” provisions from January 1, 2004, to January 1, 2008.

S.L. 2003-46 (H 512) allows nonresident property owners to serve on the Nags Head Historic Preservation Commission.

## Nuisance Abatement Ordinances

### Overgrown Vegetation Ordinance

In 1999, S.L. 1999-58 allowed the City of Roanoke Rapids to give chronic violators of its overgrown-vegetation ordinance a single annual notice before it remedied (abated) the violation and charged the costs to property owners. The idea proved popular, and other cities followed the lead of Roanoke Rapids. This year several more cities sponsored identical legislation: S.L. 2003-77 (S 478) authorizes Durham and Monroe to use this procedure; and S.L. 2003-80 (S 83) adds Rocky Mount to the list of cities that come under the original

act. S.L. 2003-120 (H 153) adjusts the authority of Winston-Salem under the original act to define as a chronic violator someone to whom the city has issued a violation notice—formerly, against whom it has taken remedial action—at least three times in the preceding calendar year.

S.L. 2003-40 (S 356) extends similar authority to the City of Henderson with respect to its “weeded-lot” ordinance. This act allows the city to notify repeat violators that not only may the city charge the expense of its remedial action to them but may also impose a surcharge of up to 50 percent of those costs.

### **Refuse and Debris Ordinance**

S.L. 2003-133 (H 735) provides Durham with authority to give annual notice to chronic violators of the city’s refuse and debris ordinance. A chronic violator is defined as someone against whom the city has taken remedial action under the ordinance at least three times in the preceding calendar year. S.L. 2003-120 (H 153) extends similar power to Winston-Salem but defines the chronic violator as someone to whom the city has issued violation notices under the ordinance at least three times in the preceding calendar year.

### **Nuisance Ordinance Procedure**

S.L. 2003-51 (S 477) amends the Durham city charter to allow the city council to delegate to the housing appeals board the authority to hear public health nuisance cases.

## **Other Legislation of Interest to Inspectors**

### **Amortization of Nonconforming Off-Premises Signs**

One last-minute change in the law could have a pronounced effect on the removal of nonconforming off-premises outdoor advertising signs under a zoning ordinance. S.L. 2003-432 (H 754), adopted the last weekend before adjournment, establishes a moratorium on the adoption of amortization provisions affecting these signs. The act prohibits a local government from enacting, extending, or expanding new ordinance regulations that would amortize (*i.e.*, allow for a stipulated period) off-premises outdoor advertising displays (billboards). The act applies to any ordinance action a local government might otherwise take between August 19,

2003 (the effective date of the act) and December 31, 2004. Although the act does not expressly say so, it may be read to allow amortization periods in local ordinances to continue to run if they were established prior to August 19, 2003. Also, local governments may enforce sign regulations against owners of illegal signs that remain after an existing amortization period has ended.

S.L. 2003-432 (H 754) also directs the Revenue Laws Study Committee to study local government ordinances amortizing off-premises outdoor advertising and report its findings and any recommended legislation to the 2004 session of the General Assembly.

### **Manufactured /Modular Housing**

One of the more remarkable pieces of comprehensive legislation adopted by the General Assembly this year affects manufactured and modular housing. S.L. 2003-400 (H 1006) expands the ability of owners of manufactured homes to treat their units as a form of real property. It also requires owners of manufactured-home communities to give notice to tenants if they plan to convert the land on which the homes are located to another use; adds new requirements governing the sale of manufactured homes; establishes new conditions governing the licensing of manufactured-home producers, dealers, salespersons, and set-up contractors; and requires new modular homes to meet certain design and appearance standards.

One section of the act provides the first statutory definition of a modular home ever included in the North Carolina statutes. New G.S. 105-164.3(21a) provides that a modular home is a “factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.”

Legislation adopted in 2001 also made important changes to the law setting out the conditions under which manufactured homes can be classified as real property. The law allows an owner of a singlewide or doublewide manufactured home to qualify the unit as real property by, among other things, submitting an affidavit to the Division of Motor Vehicles stating that its owner also owns the land on which it is situated. S.L. 2003-400 (H 1006), adopted this year, also allows a unit to qualify as real property if its owner has a lease for the land of at least twenty years.

The 2003 legislation also adds a new G.S. 42-14.3, which applies to manufactured-home com-

munities (defined as at least five manufactured homes). The law requires owners of such communities who intend to convert them to another use to notify all owners of all manufactured homes in the community at least 180 days before the tenants are required to vacate and move—regardless of the terms of the tenancies. Local government code inspectors should note that if the manufactured-home community is being closed under a valid order issued by the state or a local government (e.g., because the community’s water system is contaminated), the owner must give notice of the closure to each resident of the community within three business days of the date of the order.

Perhaps the most remarkable feature of S.L. 2003-400 is an amendment to G.S. 143-139.1 that establishes minimum appearance standards each new modular home must meet to qualify for a label or seal showing conformance with the State Building Code. These appearance standards are similar to zoning standards that some local governments apply to manufactured homes to ensure that such units blend into existing neighborhoods. But few of the existing zoning appearance regulations have ever been applied to modular homes. The new legislation, adopted with the support of the modular home industry, represents a preemptive strike to dissuade local governments from trying to apply zoning regulations to modular homes the way they do to manufactured homes.

The following construction and design standards apply to modular homes inspected and labeled after January 1, 2004:

- In homes with a single predominant roofline, the pitch of the roof shall be no less than a five-foot rise for every twelve feet of run.
- The eave projections of the roof shall be not less than ten inches (excluding roof gutters) unless the roof pitch is an eight-foot rise for every twelve feet of run or greater.
- The minimum height of the first story exterior wall must be at least seven feet six inches.
- The materials and texture of exterior materials must be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.
- The house must be designed to require foundation supports around the perimeter. These may be in the form of piers, piers and curtain walls, piling foundations, perimeter walls, or other forms of approved perimeter support.

## Tree Protection

The topic of tree protection continues to generate interest among municipalities and in the General Assembly. In 2000 the towns of Apex, Cary, Garner, Kinston, and Morrisville gained authority to adopt ordinances regulating the planting, removal, and preservation of trees and shrubs [S.L. 2000-108 (H 684)]. In the 2001 session, Cary, Garner, and Morrisville, along with their sister Wake County municipalities of Knightdale and Fuquay-Varina, and the two cities of Durham and Spencer, returned to the General Assembly to clarify and expand their authority.

S.L. 2001-191 (H 910) expressly authorized these municipalities to adopt regulations governing the removal and preservation of existing trees and shrubs within certain buffer zones prior to development. The perimeter buffer zone extends up to sixty-five feet along roadways and property boundaries adjacent to undeveloped properties. The regulations must allow reasonable access onto and within the land they affect. In addition, they must exclude normal forestry activities that are either taxed at present-use value (under the state’s program for use-value taxation) or conducted pursuant to a forestry management plan prepared or approved by a registered forester. The 2001 legislation gave the affected cities several important new powers. First, if all or substantially all of the perimeter buffer trees that should have been protected from clear-cutting are removed and a property owner subsequently seeks a permit or plan approval for that tract of land, the city may deny the building permit or refuse to approve the site or subdivision plan for that site for a period of five years following the “harvest.” Second, a municipality subject to the act may adopt regulations governing the removal and preservation of specimen or “champion” trees on sites being planned for new development. The application of these specimen- or champion-tree regulations is not restricted to the corridors or buffer zones subject to clear-cutting restrictions.

Legislation affecting six additional municipalities was adopted in 2003. S.L. 2003-128 (H 679) amends S.L. 2001-191 (H 910) to add Raleigh to those municipalities coming under the 2001 local act. However, five other cities succeeded in obtaining local acts of their own that provide somewhat less ambitious authority than the 2001 act. The provisions governing tree protection in S.L. 2003- 246 (H 516) (applicable to Statesville, Rockingham, and Smithfield), S.L. 2003-73 (H 517) (applicable to Holly Springs), and S.L. 2003-129 (H 679) (applicable to Rutherfordton and Wake County) are essentially identical. The notable features of these five local acts are as follows:

- The perimeter buffer zone within which tree-cutting is restricted may be up to 50 feet along public roadways and up to 25 feet along property boundaries adjacent to undeveloped properties;
- The required buffer area may not exceed 20 percent of the area of the tract, excluding road and conservation easements;
- Tracts of two acres or less that are zoned for single-family residential use are exempt;
- Local governments may not require surveys of individual trees;
- A local government may deny approval of a site plan or a subdivision plat for a period of just three years after an impermissible “harvest” of trees from the land involved; and
- If the owner of a “harvested” area replants the buffer area within 120 days of the harvest with plant materials consistent with the required buffer area, denial of site plan or subdivision approval may be reduced to two years.

The local act affecting Holly Springs became effective June 25, 2003, but the provisions that affect the remaining local governments will become effective January 1, 2004.

### Local Government Liability Insurance

A local government may be held liable for the negligent acts of code-enforcement officials only to the extent that it waives its immunity by insuring against such acts. S.L. 2003-175 (S 647) makes statewide the legislation that formerly applied only to Charlotte and Raleigh and to Catawba and Mecklenburg counties. It amends G.S. 160A-485(a) and G.S. 153A-435(a) to provide that the creation of a self-funded risk program by a local government qualifies as the purchase of insurance for the purpose of waiving governmental immunity. If a city or county uses a funded reserve instead of purchasing insurance against liability, the governing board may adopt a resolution providing that the creation of a funded reserve serves the same purpose as the purchase of insurance. Adoption of such a resolution waives immunity only to the extent specified in the resolution, but in no event can the extent of immunity exceed the funds available in the funded reserve for the payment of claims.

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