

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 139*

Judiciary Committee Substitute Adopted 4/5/89

Short Title: Historic Districts/Landmarks.

(Public)

Sponsors:

Referred to:

February 9, 1989

A BILL TO BE ENTITLED

AN ACT TO REGULATE HISTORIC DISTRICTS AND LANDMARKS.

The General Assembly of North Carolina enacts:

Section 1. Part 3A and Part 3B of Article 19 of Chapter 160A of the General Statutes are repealed.

Sec. 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

“PART 3C. HISTORIC DISTRICTS AND LANDMARKS

”§ 160A-400.1. Legislative findings.

The historical heritage of our State is one of our most valued and important assets. The conservation and preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State within their respective zoning jurisdictions and by means of listing, regulation, and acquisition:

(1) To safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory; and

(2) To promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole.

”§ 160A-400.2. Exercise of powers by counties as well as cities.

The term ‘municipality’ or ‘municipal’ as used in G.S. 160A-400.1 through 160A-400.15 shall be deemed to include the governing board or legislative board of a county,

1 to the end that counties may exercise the same powers as cities with respect to the
2 establishment of historic districts and designation of landmarks.

3 **"§ 160A-400.3. Character of historic district defined.**

4 Historic districts established pursuant to this Part shall consist of areas which are
5 deemed to be of special significance in terms of their history, prehistory, architecture,
6 and/or culture, and to possess integrity of design, setting, materials, feeling, and
7 association.

8 **"§ 160A-400.4. Designation of historic districts.**

9 Any municipal governing board may, as part of a zoning or other ordinance enacted
10 or amended pursuant to this Article, designate and from time to time amend one or more
11 historic districts within the area subject to the ordinance. Such ordinance may treat
12 historic districts either as a separate use district classification or as districts which
13 overlay other zoning districts. Where historic districts are designated as separate use
14 districts, the zoning ordinance may include as uses by right or as conditional uses those
15 uses found by the Preservation Commission to have existed during the period sought to
16 be restored or preserved, or to be compatible with the restoration or preservation of the
17 district.

18 No historic district or districts shall be designated until:

- 19 (1) An investigation and report describing the significance of the
20 buildings, structures, features, sites or surroundings included in any
21 such proposed district, and a description of the boundaries of such
22 district has been prepared, and
23 (2) The Department of Cultural Resources, acting through the State
24 Historic Preservation Officer or his or her designee, shall have made
25 an analysis of and recommendations concerning such report and
26 description of proposed boundaries. Failure of the department to
27 submit its written analysis and recommendations to the municipal
28 governing board within 30 calendar days after a written request for
29 such analysis has been received by the Department of Cultural
30 Resources shall relieve the municipality of any responsibility for
31 awaiting such analysis, and said board may at any time thereafter take
32 any necessary action to adopt or amend its zoning ordinance.

33 The municipal governing board may also, in its discretion, refer the report and
34 proposed boundaries to any local preservation commission or other interested body for
35 its recommendations prior to taking action to amend the zoning ordinance. With respect
36 to any changes in the boundaries of such district subsequent to its initial establishment,
37 or the creation of additional districts within the jurisdiction, the investigative studies and
38 reports required by subdivision (1) of this section shall be prepared by the
39 preservation commission, and shall be referred to the local planning agency for its
40 review and comment according to procedures set forth in the zoning ordinance.
41 Changes in the boundaries of an initial district or proposal for additional districts shall
42 also be submitted to the Department of Cultural Resources in accordance with the
43 provisions of subdivision (2) of this section.

1 On receipt of these reports and recommendations, the municipality may proceed in
2 the same manner as would otherwise be required for the adoption or amendment of any
3 appropriate zoning ordinance provisions.

4 **"§ 160A-400.5. Designation of landmarks; adoption of an ordinance; criteria for**
5 **designation.**

6 Upon complying with G.S. 160A-400.6, the governing board may adopt and from
7 time to time amend or repeal an ordinance designating one or more historic landmarks.
8 No property shall be recommended for designation as a historic landmark unless it is
9 deemed and found by the preservation commission to be of special significance in terms
10 of its historical, prehistorical, architectural, or cultural importance, and to possess
11 integrity of design, setting, workmanship, materials, feeling and/or association.

12 The ordinance shall describe each property designated in the ordinance, the name or
13 names of the owner or owners of the property, those elements of the property that are
14 integral to its historical, architectural, or prehistorical value, including the land area of
15 the property so designated, and any other information the governing board deems
16 necessary. For each building, structure, site, area, or object so designated as a historic
17 landmark, the ordinance shall require that the waiting period set forth in this Part be
18 observed prior to its demolition. For each designated landmark, the ordinance may also
19 provide for a suitable sign on the property indicating that the property has been so
20 designated. If the owner consents, the sign shall be placed upon the property. If the
21 owner objects, the sign shall be placed on a nearby public right-of-way.

22 **"§ 160A-400.6. Required landmark designation procedures.**

23 As a guide for the identification and evaluation of landmarks, the commission shall
24 undertake, at the earliest possible time and consistent with the resources available to it,
25 an inventory of properties of historical, architectural, prehistorical, and cultural
26 significance within its jurisdiction. Such inventories and any additions or revisions
27 thereof shall be submitted as expeditiously as possible to the Division of Archives and
28 History. No ordinance designating a historic building, structure, site, area or object as a
29 landmark nor any amendment thereto may be adopted, nor may any property be
30 accepted or acquired by a preservation commission or the governing board of a
31 municipality, until all of the following procedural steps have been taken:

- 32 (1) The preservation commission shall (i) prepare and adopt rules of
33 procedure, and (ii) prepare and adopt principles and guidelines, not
34 inconsistent with this Part, for altering, restoring, moving, or
35 demolishing properties designated as landmarks.
- 36 (2) The preservation commission shall make or cause to be made an
37 investigation and report on the historic, architectural, prehistorical,
38 educational or cultural significance of each building, structure, site,
39 area or object proposed for designation or acquisition. Such
40 investigation or report shall be forwarded to the Division of Archives
41 and History, North Carolina Department of Cultural Resources.
- 42 (3) The Department of Cultural Resources, acting through the State
43 Historic Preservation Officer shall either upon request of the
44 department or at the initiative of the preservation commission be given

1 an opportunity to review and comment upon the substance and effect
2 of the designation of any landmark pursuant to this Part. Any
3 comments shall be provided in writing. If the Department does not
4 submit its comments or recommendation in connection with any
5 designation within 30 days following receipt by the Department of the
6 investigation and report of the commission, the commission and any
7 city or county governing board shall be relieved of any responsibility
8 to consider such comments.

9 (4) The preservation commission and the governing board shall hold a
10 joint public hearing or separate public hearings on the proposed
11 ordinance. Reasonable notice of the time and place thereof shall be
12 given. All meetings of the commission shall be open to the public, in
13 accordance with the North Carolina Open Meetings Law, Chapter 143,
14 Article 33C.

15 (5) Following the joint public hearing or separate public hearings, the
16 governing board may adopt the ordinance as proposed, adopt the
17 ordinance with any amendments it deems necessary, or reject the
18 proposed ordinance.

19 (6) Upon adoption of the ordinance, the owners and occupants of each
20 designated landmark shall be given written notification of such
21 designation insofar as reasonable diligence permits. One copy of the
22 ordinance and all amendments thereto shall be filed by the
23 preservation commission in the office of the register of deeds of the
24 county in which the landmark or landmarks are located. Each
25 designated landmark shall be indexed according to the name of the
26 owner of the property in the grantee and grantor indexes in the register
27 of deeds office, and the preservation commission shall pay a
28 reasonable fee for filing and indexing. In the case of any landmark
29 property lying within the zoning jurisdiction of a city, a second copy of
30 the ordinance and all amendments thereto shall be kept on file in the
31 office of the city or town clerk and be made available for public
32 inspection at any reasonable time. A third copy of the ordinance and
33 all amendments thereto shall be given to the city or county building
34 inspector. The fact that a building, structure, site, area or object has
35 been designated a landmark shall be clearly indicated on all tax maps
36 maintained by the county or city for such period as the designation
37 remains in effect.

38 (7) Upon the adoption of the landmarks ordinance or any amendment
39 thereto, it shall be the duty of the preservation commission to give
40 notice thereof to the tax supervisor of the county in which the property
41 is located. The designation and any recorded restrictions upon the
42 property limiting its use for preservation purposes shall be considered
43 by the tax supervisor in appraising it for tax purposes.

44 **"§ 160A-400.7. Historic Preservation Commission.**

1 Before it may designate one or more landmarks or historic districts, a municipality
2 shall establish or designate a historic preservation commission. The municipal
3 governing board shall determine the number of the members of the commission, which
4 shall be at least three, and the length of their terms, which shall be no greater than four
5 years. A majority of the members of such a commission shall have demonstrated
6 special interest, experience, or education in history, architecture, archaeology, or related
7 fields. All the members shall reside within the territorial jurisdiction of the municipality
8 as established pursuant to G.S. 160A-360. The commission may appoint advisory
9 bodies and committees as appropriate.

10 In lieu of establishing a historic preservation commission, a municipality may
11 designate as its historic preservation commission, (i) a separate historic districts
12 commission or a separate historic landmarks commission established pursuant to this
13 Part to deal only with historic districts or landmarks respectively, (ii) a planning agency
14 established pursuant to this Article, or (iii) a community appearance commission
15 established pursuant to Part 7 of this Article. In order for a commission or board other
16 than the preservation commission to be designated, at least three of its members shall
17 have demonstrated special interest, experience, or education in history, architecture, or
18 related fields. At the discretion of the municipality the ordinance may also provide that
19 the preservation commission may exercise within a historic district any or all of the
20 powers of a planning agency or a community appearance commission.

21 A county and one or more cities in the county may establish or designate a joint
22 preservation commission. If a joint commission is established or designated, the county
23 and cities involved shall determine the residence requirements of members of the joint
24 preservation commission.

25 **"§ 160A-400.8. Powers of the Historic Preservation Commission.**

26 A preservation commission established pursuant to this Part may, within the zoning
27 jurisdiction of the municipality:

- 28 (1) Undertake an inventory of properties of historical, prehistorical,
29 architectural, and/or cultural significance;
- 30 (2) Recommend to the municipal governing board areas to be designated
31 by ordinance as 'Historic Districts'; and individual structures,
32 buildings, sites, areas, or objects to be designated by ordinance as
33 'Landmarks';
- 34 (3) Acquire by any lawful means the fee or any lesser included interest,
35 including options to purchase, to properties within established districts
36 or to any such properties designated as landmarks, to hold, manage,
37 preserve, restore and improve the same, and to exchange or dispose of
38 the property by public or private sale, lease or otherwise, subject to
39 covenants or other legally binding restrictions which will secure
40 appropriate rights of public access and promote the preservation of the
41 property;
- 42 (4) Restore, preserve and operate historic properties;
- 43 (5) Recommend to the governing board that designation of any area as a
44 historic district or part thereof, or designation of any building,

- 1 structure, site, area, or object as a landmark, be revoked or removed
2 for cause;
- 3 (6) Conduct an educational program with respect to historic properties and
4 districts within its jurisdiction;
- 5 (7) Cooperate with the State, federal, and local governments in pursuance
6 of the purposes of this Part. The governing board or the commission
7 when authorized by the governing board may contract with the State,
8 or the United States of America, or any agency of either, or with any
9 other organization provided the terms are not inconsistent with State or
10 federal law;
- 11 (8) Enter, solely in performance of its official duties and only at
12 reasonable times, upon private lands for examination or survey thereof.
13 However, no member, employee or agent of the commission may enter
14 any private building or structure without the express consent of the
15 owner or occupant thereof;
- 16 (9) Prepare and recommend the official adoption of a preservation element
17 as part of the municipality's comprehensive plan;
- 18 (10) Review and act upon proposals for alterations, demolitions, or new
19 construction within historic districts, or for the alteration or demolition
20 of designated landmarks, pursuant to this Part; and
- 21 (11) Negotiate at any time with the owner of a building, structure, site, area,
22 or object for its acquisition or its preservation, when such action is
23 reasonably necessary or appropriate.

24 **"§ 160A-400.9. Certificate of appropriateness required.**

25 (a) From and after the designation of a landmark or a historic district, no exterior
26 portion of any building or other structure (including masonry walls, fences, light
27 fixtures, steps and pavement, or other appurtenant features), nor above-ground utility
28 structure nor any type of outdoor advertising sign shall be erected, altered, restored,
29 moved, or demolished on such landmark or within such district until after an application
30 for a certificate of appropriateness as to exterior features has been submitted to and
31 approved by the preservation commission. The municipality shall require such a
32 certificate to be issued by the commission prior to the issuance of a building permit or
33 other permit granted for the purposes of constructing, altering, moving, or demolishing
34 structures, which certificate may be issued subject to reasonable conditions necessary to
35 carry out the purposes of this Part. A certificate of appropriateness shall be required
36 whether or not a building or other permit is required.

37 For purposes of this Part, 'exterior features' shall include the architectural style,
38 general design, and general arrangement of the exterior of a building or other structure,
39 including the kind and texture of the building material, the size and scale of the
40 building, and the type and style of all windows, doors, light fixtures, signs, and other
41 appurtenant fixtures. In the case of outdoor advertising signs, 'exterior features' shall be
42 construed to mean the style, material, size, and location of all such signs. Such 'exterior
43 features' may, in the discretion of the local governing board, include historic signs,
44 color, and significant landscape, archaeological, and natural features of the area.

1 Except as provided in (b) below, the commission shall have no jurisdiction
2 over interior arrangement and shall take no action under this section except to prevent
3 the construction, reconstruction, alteration, restoration, moving, or demolition of
4 buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant
5 features in the district which would be incongruous with the special character of the
6 landmark or district.

7 (b) Notwithstanding subsection (a) of this section, jurisdiction of the commission
8 over interior spaces shall be limited to specific interior features of architectural, artistic
9 or historical significance in publicly owned landmarks; and of privately owned historic
10 landmarks for which consent for interior review has been given by the owner. Said
11 consent of an owner for interior review shall bind future owners and/or successors in
12 title, provided such consent has been filed in the office of the register of deeds of the
13 county in which the property is located and indexed according to the name of the owner
14 of the property in the grantee and grantor indexes. The landmark designation shall
15 specify the interior features to be reviewed and the specific nature of the commission's
16 jurisdiction over the interior.

17 (c) Prior to any action to enforce a landmark or historic district ordinance, the
18 commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt
19 principles and guidelines not inconsistent with this Part for new construction,
20 alterations, additions, moving and demolition. The ordinance may provide, subject to
21 prior adoption by the preservation commission of detailed standards, for the review and
22 approval by an administrative official of applications for a certificate of appropriateness
23 or of minor works as defined by ordinance; provided, however, that no application for a
24 certificate of appropriateness may be denied without formal action by the preservation
25 commission.

26 Prior to issuance or denial of a certificate of appropriateness the commission shall
27 take such steps as may be reasonably required in the ordinance and/or rules of procedure
28 to inform the owners of any property likely to be materially affected by the application,
29 and shall give the applicant and such owners an opportunity to be heard. In cases where
30 the commission deems it necessary, it may hold a public hearing concerning the
31 application. All meetings of the commission shall be open to the public, in accordance
32 with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

33 (d) All applications for certificates of appropriateness shall be reviewed and
34 acted upon within a reasonable time, as defined by the ordinance or the commission's
35 rules of procedure. As part of its review procedure, the commission may view the
36 premises and seek the advice of the Division of Archives and History or such other
37 expert advice as it may deem necessary under the circumstances.

38 (e) An appeal may be taken to the Board of Adjustment from the commission's
39 action in granting or denying any certificate, which appeals (i) may be taken by any
40 aggrieved party, (ii) shall be taken within times prescribed by the preservation
41 commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal
42 from the Board of Adjustment's decision in any such case shall be heard by the superior
43 court of the county in which the municipality is located.

1 (f) All of the provisions of this Part are hereby made applicable to construction,
2 alteration, moving and demolition by the State of North Carolina, its political
3 subdivisions, agencies and instrumentalities, provided however they shall not apply to
4 interiors of buildings or structures owned by the State of North Carolina. The State and
5 its agencies shall have a right of appeal to the North Carolina Historical Commission or
6 any successor agency assuming its responsibilities under G.S. 121-12(a) from any
7 decision of a local preservation commission. The commission shall render its decision
8 within 30 days from the date that the notice of appeal by the State is received by it. The
9 current edition of the Secretary of the Interior's Standards for Rehabilitation and
10 Guidelines for Rehabilitating Historic Buildings shall be the sole principles and
11 guidelines used in reviewing applications of the State for certificates of appropriateness.
12 The decision of the commission shall be final and binding upon both the State and the
13 preservation commission.

14 **"§ 160A-400.10. Conflict with other laws.**

15 Whenever any ordinance adopted pursuant to this Part requires a longer waiting
16 period or imposes other higher standards with respect to a designated historic landmark
17 or district than are established under any other statute, charter provision, or regulation,
18 this Part shall govern. Whenever the provisions of any other statute, charter provision,
19 ordinance or regulation require a longer waiting period or impose other higher standards
20 than are established under this Part, such other statute, charter provision, ordinance or
21 regulation shall govern.

22 **"§ 160A-400.11. Remedies.**

23 In case any building, structure, site, area or object designated as a historic landmark
24 or located within a historic district designated pursuant to this Part is about to be
25 demolished whether as the result of deliberate neglect or otherwise, materially altered,
26 remodeled, removed or destroyed, except in compliance with the ordinance or other
27 provisions of this Part, the city or county, the historic preservation commission, or other
28 party aggrieved by such action may institute any appropriate action or proceedings to
29 prevent such unlawful demolition, destruction, material alteration, remodeling or
30 removal, to restrain, correct or abate such violation, or to prevent any illegal act or
31 conduct with respect to such building, structure, site, area or object. Such remedies
32 shall be in addition to any others authorized by this Chapter for violation of a municipal
33 ordinance.

34 **"§ 160A-400.12. Appropriations.**

35 A city or county governing board is authorized to make appropriations to a historic
36 preservation commission established pursuant to this Part in any amount that it may
37 determine necessary for the expenses of the operation of the commission, and may make
38 available any additional amounts necessary for the acquisition, restoration, preservation,
39 operation, and management of historic buildings, structures, sites, areas or objects
40 designated as historic landmarks or within designated historic districts, or of land on
41 which such buildings or structures are located, or to which they may be removed.

42 **"§ 160A-400.13. Certain changes not prohibited.**

43 Nothing in this Part shall be construed to prevent the ordinary maintenance or repair
44 of any exterior architectural feature in a historic district or of a landmark which does not

1 involve a change in design, material or appearance thereof, nor to prevent the
2 construction, reconstruction, alteration, restoration, moving or demolition of any such
3 feature which the building inspector or similar official shall certify is required by the
4 public safety because of an unsafe or dangerous condition. Nothing in this Part shall be
5 construed to prevent a property owner from making any use of his property that is not
6 prohibited by other law. Nothing in this Part shall be construed to prevent a) the
7 maintenance, or b) in the event of an emergency the immediate restoration, of any
8 existing above-ground utility structure without approval by the preservation
9 commission.

10 **"§ 160A-400.14. Delay in demolition of landmarks and buildings within historic**
11 **district.**

12 (a) An application for a certificate of appropriateness authorizing the demolition
13 or destruction of a designated landmark or a building, structure or site within the district
14 may not be denied except as provided in subsection (c). However, the effective date of
15 such a certificate may be delayed for a period of up to 365 days from the date of
16 approval. The maximum period of delay authorized by this section shall be reduced by
17 the commission where it finds that the owner would suffer extreme hardship or be
18 permanently deprived of all beneficial use of or return from such property by virtue of
19 the delay. During such period the preservation commission shall negotiate with the
20 owner and with any other parties in an effort to find a means of preserving the building
21 or site. If the preservation commission finds that a building or site within a district has
22 no special significance or value toward maintaining the character of the district, it shall
23 waive all or part of such period and authorize earlier demolition, or removal.

24 If the commission or planning agency has voted to recommend designation of a
25 property as a landmark or designation of an area as a district, and final designation has
26 not been made by the local governing board, the demolition or destruction of any
27 building, site, or structure located on the property of the proposed landmark or in the
28 proposed district may be delayed by the commission or planning agency for a period of
29 up to 180 days or until the local governing board takes final action on the designation,
30 whichever occurs first.

31 (b) The governing board of any municipality may enact an ordinance to prevent
32 the demolition by neglect of any designated landmark or any building or structure
33 within an established historic district. Such ordinance shall provide appropriate
34 safeguards to protect property owners from undue economic hardship.

35 (c) An application for a certificate of appropriateness authorizing the demolition
36 or destruction of a building, site, or structure determined by the State Historic
37 Preservation Officer as having statewide significance as defined in the criteria of the
38 National Register of Historic Places may be denied except where the commission finds
39 that the owner would suffer extreme hardship or be permanently deprived of all
40 beneficial use or return by virtue of the denial."

41 Sec. 3. G.S. 40A-3(b) reads as rewritten:

42 "(b) Local Public Condemnors. – For the public use or benefit, the governing body
43 of each municipality or county shall possess the power of eminent domain and may

1 acquire by purchase, gift or condemnation any property, either inside or outside its
2 boundaries, for the following purposes.

- 3 (1) Opening, widening, extending, or improving roads, streets, alleys, and
4 sidewalks. The authority contained in this subsection is in addition to
5 the authority to acquire rights-of-way for streets, sidewalks and
6 highways under Article 9 of Chapter 136. The provisions of this
7 subdivision (1) shall not apply to counties.
- 8 (2) Establishing, extending, enlarging, or improving any of the public
9 enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for
10 counties.
- 11 (3) Establishing, enlarging, or improving parks, playgrounds, and other
12 recreational facilities.
- 13 (4) Establishing, extending, enlarging, or improving storm sewer and
14 drainage systems and works, or sewer and septic tank lines and
15 systems.
- 16 (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or
17 library facilities.
- 18 (6) Constructing, enlarging, or improving city halls, fire stations, office
19 buildings, courthouse jails and other buildings for use by any
20 department, board, commission or agency.
- 21 (7) Establishing drainage programs and programs to prevent obstructions
22 to the natural flow of streams, creeks and natural water channels or
23 improving drainage facilities. The authority contained in this
24 subdivision is in addition to any authority contained in Chapter 156.
- 25 (8) Acquiring designated historic properties, designated as such before
26 October 1, 1989, or acquiring a designated landmark designated as
27 such on or after October 1, 1989, or acquiring a building, structure or
28 site within a historic district, for which an application has been made
29 for a certificate of appropriateness for demolition, in pursuance of the
30 purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B,
31 effective until October 1, 1989, or G.S. 160A-400.14, whichever is
32 appropriate.
- 33 (9) Opening, widening, extending, or improving public wharves.

34 The board of education of any municipality or county or a combined board may
35 exercise the power of eminent domain under this Chapter for purposes authorized by
36 other statutes.

37 The power of eminent domain shall be exercised by local public condemnors under
38 the procedures of Article 3 of this Chapter."

39 Sec. 4. Nothing in Sections 1 or 2 of this act shall affect the validity of any
40 historic district commission or historic district established prior to the effective date of
41 this act pursuant to Part 3A of Article 19 of Chapter 160A of the General Statutes, nor
42 of any historic properties commission or historic properties established prior to the
43 effective date of this act pursuant to Part 3B of Article 19 of Chapter 160A of the
44 General Statutes.

1 Sec. 5. This act shall become effective October 1, 1989.