

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 165
Committee Substitute Favorable 3/28/91

Short Title: Low-Income Housing Preservation.

(Public)

Sponsors:

Referred to:

February 25, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE THE MAINTENANCE OF AFFORDABLE HOUSING
3 STOCK.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 160A-443 reads as rewritten:

6 "**§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of**
7 **public officer.**

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

13 (1) That a public officer be designated or appointed to exercise the powers
14 prescribed by the ordinance.

15 (2) That whenever a petition is filed with the public officer by a public
16 authority or by at least five residents of the city charging that any
17 dwelling is unfit for human habitation or whenever it appears to the
18 public officer (on his own motion) that any dwelling is unfit for human
19 habitation, the public officer shall, if his preliminary investigation
20 discloses a basis for such charges, issue and cause to be served upon
21 the owner of and parties in interest in such dwellings a complaint
22 stating the charges in that respect and containing a notice that a
23 hearing will be held before the public officer (or his designated agent)

1 at a place within the county in which the property is located fixed not
2 less than 10 days nor more than 30 days after the serving of the
3 complaint; that the owner and parties in interest shall be given the right
4 to file an answer to the complaint and to appear in person, or
5 otherwise, and give testimony at the place and time fixed in the
6 complaint; and that the rules of evidence prevailing in courts of law or
7 equity shall not be controlling in hearings before the public officer.

8 (3) That if, after notice and hearing, the public officer determines that the
9 dwelling under consideration is unfit for human habitation, he shall
10 state in writing his findings of fact in support of that determination and
11 shall issue and cause to be served upon the owner thereof an order,

12 a. If the repair, alteration or improvement of the dwelling can be
13 made at a reasonable cost in relation to the value of the
14 dwelling (the ordinance of the city may fix a certain percentage
15 of this value as being reasonable), requiring the owner, within
16 the time specified, to repair, alter or improve the dwelling in
17 order to render it fit for human habitation or to vacate and close
18 the dwelling as a human habitation; or

19 b. If the repair, alteration or improvement of the dwelling cannot
20 be made at a reasonable cost in relation to the value of the
21 dwelling (the ordinance of the city may fix a certain percentage
22 of this value as being reasonable), requiring the owner, within
23 the time specified in the order, to remove or demolish such
24 dwelling.

25 (4) That, if the owner fails to comply with an order to repair, alter or
26 improve or to vacate and close the dwelling, the public officer may
27 cause the dwelling to be repaired, altered or improved or to be vacated
28 and closed; that the public officer may cause to be posted on the main
29 entrance of any dwelling so closed, a placard with the following
30 words: 'This building is unfit for human habitation; the use or
31 occupation of this building for human habitation is prohibited and
32 unlawful.' Occupation of a building so posted shall constitute a
33 misdemeanor.

34 (5) That, if the owner fails to comply with an order to remove or demolish
35 the dwelling, the public officer may cause such dwelling to be
36 removed or demolished. The duties of the public officer set forth in
37 subdivisions (4) and (5) shall not be exercised until the governing body
38 shall have by ordinance ordered the public officer to proceed to
39 effectuate the purpose of this Article with respect to the particular
40 property or properties which the public officer shall have found to be
41 unfit for human habitation and which property or properties shall be
42 described in the ordinance. No such ordinance shall be adopted to
43 require demolition of a dwelling until the owner has first been given a
44 reasonable opportunity to bring it into conformity with the housing

1 code. This ordinance shall be recorded in the office of the register of
2 deeds in the county wherein the property or properties are located and
3 shall be indexed in the name of the property owner in the grantor
4 index.

5 (5a) If the governing body shall have adopted an ordinance ordering a
6 dwelling to be repaired or vacated and closed, as provided in
7 subdivision (3)a., and if the owner has vacated and closed such
8 dwelling and kept such dwelling vacated and closed for a period of one
9 year pursuant to the ordinance, then if the governing body shall find
10 that the owner has abandoned the intent and purpose to repair, alter or
11 improve the dwelling in order to render it fit for human habitation and
12 that the continuation of the dwelling in its vacated and closed status
13 would be inimical to the health, safety, morals and welfare of the
14 municipality in that the dwelling would continue to deteriorate, would
15 create a fire and safety hazard, would be a threat to children and
16 vagrants, would attract persons intent on criminal activities, would
17 cause or contribute to blight and the deterioration of property values in
18 the area, and would render unavailable property and a dwelling which
19 might otherwise have been made available to ease the persistent
20 shortage of decent and affordable housing in this State, then in such
21 circumstances, the governing body may, after the expiration of such
22 one year period, enact an ordinance and serve such ordinance on the
23 owner, setting forth the following:

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

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

39 This subdivision only applies to municipalities located in counties
40 which have a population in excess of 163,000 by the last federal
41 census.

42 (6) That the amount of the cost of repairs, alterations or improvements, or
43 vacating and closing, or removal or demolition by the public officer
44 shall be a lien against the real property upon which the cost was

1 incurred, which lien shall be filed, have the same priority, and be
2 collected as the lien for special assessment provided in Article 10 of
3 this Chapter. If the dwelling is removed or demolished by the public
4 officer, he shall sell the materials of the dwelling, and any personal
5 property, fixtures or appurtenances found in or attached to the
6 dwelling, and shall credit the proceeds of the sale against the cost of
7 the removal or demolition and any balance remaining shall be
8 deposited in the superior court by the public officer, shall be secured in
9 a manner directed by the court, and shall be disbursed by the court to
10 the persons found to be entitled thereto by final order or decree of the
11 court. Nothing in this section shall be construed to impair or limit in
12 any way the power of the city to define and declare nuisances and to
13 cause their removal or abatement by summary proceedings, or
14 otherwise.

15 (7) If any occupant fails to comply with an order to vacate a dwelling, the
16 public officer may file a civil action in the name of the city to remove
17 such occupant. The action to vacate the dwelling shall be in the nature
18 of summary ejectment and shall be commenced by filing a complaint
19 naming as parties-defendant any person occupying such dwelling. The
20 clerk of superior court shall issue a summons requiring the defendant
21 to appear before a magistrate at a certain time, date and place not to
22 exceed 10 days from the issuance of the summons to answer the
23 complaint. The summons and complaint shall be served as provided in
24 G.S. 42-29. The summons shall be returned according to its tenor, and
25 if on its return it appears to have been duly served, and if at the hearing
26 the public officer produces a certified copy of an ordinance adopted by
27 the governing body pursuant to subdivision (5) authorizing the officer
28 to proceed to vacate the occupied dwelling, the magistrate shall enter
29 judgment ordering that the premises be vacated and that all persons be
30 removed. The judgment ordering that the dwelling be vacated shall be
31 enforced in the same manner as the judgment for summary ejectment
32 entered under G.S. 42-30. An appeal from any judgment entered
33 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
34 and the execution of such judgment may be stayed as provided in G.S.
35 7A-227. An action to remove an occupant of a dwelling who is a
36 tenant of the owner may not be in the nature of a summary ejectment
37 proceeding pursuant to this paragraph unless such occupant was served
38 with notice at least 30 days before the filing of the summary ejectment
39 proceeding that the governing body has ordered the public officer to
40 proceed to exercise his duties under paragraphs 4 and 5 of this section
41 to vacate and close or remove and demolish the dwelling.

42 (8) That whenever a determination is made that a dwelling must be
43 vacated and closed, or removed or demolished, under the provisions of
44 this section, notice of the order shall be given by first-class mail to any

1 organization or person involved in providing or restoring dwellings for
2 affordable housing who has filed a written request for such notices. A
3 minimum period of 45 days from the mailing of such notice shall be
4 given before removal or demolition by action of the public officer, to
5 allow the opportunity for any organization or person to negotiate with
6 the owner to make repairs, lease, or purchase the property for the
7 purpose of providing affordable housing. The public officer or clerk
8 shall certify the mailing of the notices, and the certification shall be
9 conclusive in the absence of fraud. Only an organization or person
10 who has filed a written request for such notices may raise the issue of
11 failure to mail such notices, and the sole remedy shall be an order
12 requiring the public officer to wait 45 days before causing removal or
13 demolition."

14 Sec. 2. This act becomes effective October 1, 1991.