

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-65
HOUSE BILL 573**

AN ACT TO MAKE BUSINESS AND REGULATORY CHANGES TO VARIOUS STATE LAWS.

The General Assembly of North Carolina enacts:

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

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

"§ 160A-439.1. Vacant building receivership.

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

- (1) The owner fails to comply with an order issued pursuant to G.S. 160A-429, related to building or structural conditions that constitute a fire or safety hazard or render the building or structure dangerous to life, health, or other property, from which no appeal has been taken.
- (2) The owner fails to comply with an order of the city council following an appeal of an inspector's order issued pursuant to G.S. 160A-429.
- (3) The governing body of the municipality adopts any ordinance pursuant to subdivision (f)(1) of G.S. 160A-439, related to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety, and orders a public officer to continue enforcement actions prescribed by the ordinance with respect to the named nonresidential building or structure. The public officer may submit a petition on behalf of the governing body to the superior court for the appointment of a receiver, and if granted by the superior court, the petition shall be considered an appropriate means of complying with the ordinance. In the event the superior court does not grant the petition, the public officer and the governing body may take action pursuant to the ordinance in any manner authorized in G.S. 160A-439.
- (4) The owner fails to comply with an order to repair, alter, or improve, remove, or demolish a dwelling issued under G.S. 160A-443, related to dwellings that are unfit for human habitation.
- (5) Any owner or partial owner of a vacant building, structure, or dwelling, with or without the consent of other owners of the property, submits a request to the governing body in the form of a sworn affidavit requesting the governing body to petition the superior court for appointment of a receiver for the property pursuant to this section.



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

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

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

(e) Rehabilitation Not by Receiver. – The court may, instead of appointing a qualified receiver to rehabilitate or sell a vacant building, structure, or dwelling, appoint an owner, mortgagee, or other parties in interest in the property, as defined in G.S. 160A-442, to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete the rehabilitation or demolition within a reasonable time, (ii) agrees to comply with a specified schedule for rehabilitation or demolition, and (iii) posts a bond in an amount determined by the court as security for the performance of the required work in compliance with the specified schedule. After the appointment, the court shall require the person to report to the court on the progress of the rehabilitation or demolition, according to a schedule determined by the court. If, at any time, it appears to the city or its delegated commission that the owner, mortgagee, or other person appointed under this subsection is not proceeding with due diligence or in compliance with the

court-ordered schedule, the city or its delegated commission may apply to the court for immediate revocation of that person's appointment and for the appointment of a qualified receiver. If the court revokes the appointment and appoints a qualified receiver, the bond posted by the owner, mortgagee, or other person shall be applied to the receiver's expenses in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling.

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

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

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

(h) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do all of the following: (i) sell the property to the highest bidder at public sale, following the same presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes, and (ii) sell the property privately for fair market value if no party to the receivership objects to the amount and procedure. In the notice of public sale authorized under this subsection, it shall be sufficient to describe the property by a street address and reference to the book and page or other location where the property deed is registered. Prior to any sale under this subsection, the applicants to bid in the public sale or the proposed buyer in the private sale shall demonstrate the ability and experience needed to rehabilitate the property within a reasonable time. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver shall apply any remaining proceeds of the sale first to the city's costs and expenses, including reasonable attorneys' fees, and then to the liens against the property in order of priority. Any remaining proceeds shall be remitted to the property owner.

(i) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by subsection (f) of this section by selling the property subject to the lien at a public sale, following public notice and notice to interested parties in the manner as a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the sale and

the amount of any outstanding taxes and other government assessments, the receiver shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer his or her ownership in the property to either the receiver or an agreed upon third party for an amount agreed to by all parties to the receivership as being the property's fair market value.

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

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

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

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

EXEMPT RESIDENTIAL GARAGES FROM ENERGY EFFICIENCY CODES

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

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

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

AMEND THE LAW AUTHORIZING MALT BEVERAGE AND UNFORTIFIED WINE ELECTIONS FOR CERTAIN CITIES

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

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

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

AMEND WELL CASING, GROUTING, AND SETBACK REQUIREMENTS

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

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

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

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

SECTION 4.(d) Additional Rule-Making Authority. – The Commission shall adopt rules to amend the Well Standards Rules consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

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

REDUCE FREQUENCY OF REQUIRED GROUNDWATER SAMPLING FOR C&D LANDFILLS FROM SEMIANNUAL TO ANNUAL

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 15th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:35 a.m. this 25th day of June, 2018