

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

4

HOUSE BILL 165
Committee Substitute Favorable 3/28/91
Committee Substitute #2 Favorable 4/10/91
Fourth Edition Engrossed 4/15/91

Short Title: Low-Income Housing Preservation.

(Public)

Sponsors:

Referred to:

February 25, 1991

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE MAINTENANCE OF AFFORDABLE HOUSING STOCK.

The General Assembly of North Carolina enacts:

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

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

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

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

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint

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

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

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

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

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

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

1 require demolition of a dwelling until the owner has first been given a
2 reasonable opportunity to bring it into conformity with the housing
3 code. This ordinance shall be recorded in the office of the register of
4 deeds in the county wherein the property or properties are located and
5 shall be indexed in the name of the property owner in the grantor
6 index.

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

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

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

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

- 1 (6) That the amount of the cost of repairs, alterations or improvements, or
2 vacating and closing, or removal or demolition by the public officer
3 shall be a lien against the real property upon which the cost was
4 incurred, which lien shall be filed, have the same priority, and be
5 collected as the lien for special assessment provided in Article 10 of
6 this Chapter. If the dwelling is removed or demolished by the public
7 officer, he shall sell the materials of the dwelling, and any personal
8 property, fixtures or appurtenances found in or attached to the
9 dwelling, and shall credit the proceeds of the sale against the cost of
10 the removal or demolition and any balance remaining shall be
11 deposited in the superior court by the public officer, shall be secured in
12 a manner directed by the court, and shall be disbursed by the court to
13 the persons found to be entitled thereto by final order or decree of the
14 court. Nothing in this section shall be construed to impair or limit in
15 any way the power of the city to define and declare nuisances and to
16 cause their removal or abatement by summary proceedings, or
17 otherwise.
- 18 (7) If any occupant fails to comply with an order to vacate a dwelling, the
19 public officer may file a civil action in the name of the city to remove
20 such occupant. The action to vacate the dwelling shall be in the nature
21 of summary ejectment and shall be commenced by filing a complaint
22 naming as parties-defendant any person occupying such dwelling. The
23 clerk of superior court shall issue a summons requiring the defendant
24 to appear before a magistrate at a certain time, date and place not to
25 exceed 10 days from the issuance of the summons to answer the
26 complaint. The summons and complaint shall be served as provided in
27 G.S. 42-29. The summons shall be returned according to its tenor, and
28 if on its return it appears to have been duly served, and if at the hearing
29 the public officer produces a certified copy of an ordinance adopted by
30 the governing body pursuant to subdivision (5) authorizing the officer
31 to proceed to vacate the occupied dwelling, the magistrate shall enter
32 judgment ordering that the premises be vacated and that all persons be
33 removed. The judgment ordering that the dwelling be vacated shall be
34 enforced in the same manner as the judgment for summary ejectment
35 entered under G.S. 42-30. An appeal from any judgment entered
36 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
37 and the execution of such judgment may be stayed as provided in G.S.
38 7A-227. An action to remove an occupant of a dwelling who is a
39 tenant of the owner may not be in the nature of a summary ejectment
40 proceeding pursuant to this paragraph unless such occupant was served
41 with notice at least 30 days before the filing of the summary ejectment
42 proceeding that the governing body has ordered the public officer to
43 proceed to exercise his duties under paragraphs 4 and 5 of this section
44 to vacate and close or remove and demolish the dwelling.

1 (8) That whenever a determination is made that a dwelling must be
2 vacated and closed, or removed or demolished, under the provisions of
3 this section, notice of the order shall be given by first-class mail to any
4 organization involved in providing or restoring dwellings for
5 affordable housing that has filed a written request for such notices. A
6 minimum period of 45 days from the mailing of such notice shall be
7 given before removal or demolition by action of the public officer, to
8 allow the opportunity for any organization to negotiate with the owner
9 to make repairs, lease, or purchase the property for the purpose of
10 providing affordable housing. The public officer or clerk shall certify
11 the mailing of the notices, and the certification shall be conclusive in
12 the absence of fraud. Only a nonprofit organization that has filed a
13 written request for such notices may raise the issue of failure to mail
14 such notices, and the sole remedy shall be an order requiring the public
15 officer to wait 45 days before causing removal or demolition."

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