2009 North Carolina Legislation Affecting Building Code Enforcement

Richard Ducker
School of Government
The University of North Carolina at Chapel Hill
September, 2009
919-966-4179
ducker@sog.unc.edu

Code Enforcement

2009 was an unusually active year in terms of legislation affecting building code officials. Building code enforcement authority for State buildings was transferred from the Department of insurance to the Department of Administration. Legislation to extend the life of development approvals of all sorts will have a major impact on local inspection departments. The seals of design professionals on building permit documents have now become confidential records. Certain farm buildings associated with horses and certain elevators operated by nonprofit organizations will now be exempt from the State Building Code. In addition, the repair or replacement of certain lighting fixtures and residential hot-water heaters are now exempt from requirements that permits be obtained. These and other legislative developments are discussed below.

Building Code Enforcement for State Buildings Transferred

Late in this year's General Assembly session a bill out of nowhere was adopted that makes major changes in the way new state building construction projects are reviewed for compliance with the State Building Code. Session Law 2009 – 474 (S 425), which grew out of the late summer rewriting of a bill on a different topic, shifts authority away from the North Carolina Department of Insurance and transfers it to the Office of State Construction in the Department of Administration. The law strips the Commissioner of Insurance, acting through the office of the State Fire Marshal, of the power (G.S. 58-31-40) to review plans for new, expanded, and remodeled State buildings to ensure that they meet fire safety requirements. It adds new G.S 143-345.11 to transfer this authority to the Secretary of Administration; it does direct the Secretary to provide quarterly reports on plans reviewed and approved to the Commissioner of Insurance. The Commissioner of Insurance retains the authority to make necessary inspections of existing State properties to ensure fire safety, but any notice the Commissioner gives to a state agency concerning defects or needed improvements must be forwarded to the Department of Administration. NCDOI does retain existing fire-safety review authority for plans for county, city, and school district buildings with square footage exceeding 20,000 square feet.

The act also adds a new G.S. 143-139(e) to clarify that NCDOA through the Office of State Construction now will have general supervisory authority to administer and enforce all sections of the State Building Code with respect to State buildings. It will act as the official inspector or inspection department for purposes of G.S. 143 - 143.2. It will also be the only agency with authority to pursue enforcement remedies for code violations affecting State buildings.

To carry out these changes the act transfers from NCDOI to NCDOA four existing code review positions selected by NCDOA and requires that the positions continue to be supported by the Insurance Regulatory Fund through fiscal year 2011 – 2012. Thereafter the positions will be funded by the State Property Fire Insurance Fund through the Office of the State Treasurer. In addition, the act creates within NCDOA four new positions that are each entitled "Engineering/Architectural Technician – Advanced" to help the Office of State Construction

assume its new duties. These positions will also be supported for now by the Insurance Regulatory Fund to the tune of $69,862 apiece.

Finally, section 6 of the new law directs the North Carolina Code Officials Qualification Board to develop an expedited training course on State Building Code regulation and code-enforcement administration to facilitate the ability of NCDOA employees to obtain Level III standard certification. Specifically, it requires the board to issue a Level III standard certificate to anyone who (i) was employed by NCDOA when the act became effective; (ii) possesses a valid license to practice as a registered architect or registered professional engineer; (iii) successfully completes the expedited training course; and (iv) successfully completes all exams required by the board.

The portions of the act described above became effective October 1, 2009.

Extend Certain Development Approvals

The text of Session Law 2009 - 406 (S 831) declares that it shall be known as the "Permit Extension Act of 2009." According to the preamble of the act, the process of obtaining various development approvals "can be difficult, time consuming, and expensive" and "changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain." The purpose of the act, then, is to relieve developers and builders of the problems associated with lapsed or expired permits. Because of ambiguities in the legislation, the General Assembly amended the law three times (Session Law 2009 – 484 (S 838), Session Law 2009 – 572 (H 1490), and Session Law 2009 – 550 (H 274) after the original act was ratified.

The legislation applies to a specific list of development approvals granted and permits issued by a broad range of State and local agencies and governmental units. The list, however, is intended to be comprehensive and apparently includes most key local government development approvals and permits. The list specifically applies to city and county building permits.

The law suspends the running of time periods associated with development approvals that were or will be current and valid at any point during the three-year period that runs from January 1, 2008, through December 31, 2010. Thus the legislation both extends the life of certain permits that will be issued after the effective date of the act and resurrects certain permits that had already expired before the law became effective.

The legislation, as amended, does not apply to permits and approvals that have been legally revoked. Similarly, the law does not apply to permits that are voluntarily relinquished

The legislation also addresses certain competing utility allocation claims. A resurrected development approval does not revive a water or sewer allocation associated with it if the capacity was reallocated and there is insufficient capacity also to serve the resurrected permit. However, the resurrected permit gets first priority if additional capacity becomes available.

For further information about this law see "2009 Building Inspector Exercises," a document that is also online.

Building Permit Exemptions for Certain Electrical Lighting Devices and the Replacement of Residential Water Heaters

Session Law 2009 – 532 (H 1409) exempts two types of work from the requirement that a building permit be obtained prior to the work being undertaken. One type of exempt work is the replacement of a water heater in a one- or two-family dwelling unit by a licensed plumbing contractor who examines the work at completion. The contractor must ensure that (i) a leak test has been performed on gas piping; (ii) the energy use rate or thermal input is not greater than that of the water heater being replaced; (iii) there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping; and (iv) the replacement is installed in accordance with the current edition of the State Building Code.

The other category of exempt work involves minor electrical work. The repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, is exempt if the replacement involves a fixture or device having the same voltage and the same or less amperage and meets the electrical standards of the current edition of the State Building Code. Also exempt is the connecting of an existing branch circuit to an electric water heater that is being

replaced. The replacement electric water heater must be placed in the same location and feature no greater capacity or electrical rating than the original. The work must be done by a licensed electrical contractor.

The new law amends G.S. 143-138(b5), G.S. 153A-357(a), and G.S. 160A-417(a). It became effective October 1, 2009.

Professional Seal on Permit Documents

As a general rule, documents that are a part of an application for a building permit and the like are public records and available for inspection and copying. Session 2009 – 346 (H 1478) makes an exception to this general rule by adding G.S. 132-1.2(5) to the state's public records statutes to disallow a public agency from revealing the seal of a licensed design professional that has been submitted in connection with the building permit approval process. The law specifically applies to documents sealed by either a licensed architect (chapter 83A), a licensed professional engineer (chapter 89C), or a licensed professional land surveyor (chapter 89C). Session Law 2009 – 346 provides that if a city or county receives a request for a document submitted as part of a project approval that includes the seal of one of these design professionals and the document is otherwise a public record, then the city or county is obligated to allow examining and copying of the document without the seal. However, the law requires the examining and copying to be done in a manner consistent with any rules regarding an unsealed document that are adopted by the North Carolina Board of Architecture and the North Carolina State Board of Examiners for Engineering and Surveying.

The purpose of the law appears to be to prevent the reproduction and counterfeiting of the seals of design professionals.

The law became effective October 1, 2009.

Certain Elevators Exempt from Building Code

Session Law 2009 – 79 (S 114) adds a new G.S. 143-138(c1) to provide that the North Carolina State Building Code and related standards affecting the installation and maintenance of limited-use or limited-access hydraulic elevators shall not apply to those owned by private clubs or religious organizations. The act also specifically provides that no local government may adopt an ordinance that conflicts with or limits the exemption above.

The legislation specifically provides that it is not to be construed to limit the authority of the North Carolina Department of Labor to perform safety inspections of hydraulic elevators. It does, however, direct the Commissioner of Labor to adopts rules affecting buildings with more than one elevator so that there is posted in the passenger cabin of each such elevator a distinct number in plain view for the purpose of identifying the elevator to "facilitate extrication from any elevator that malfunctions while occupied." The act became effective June 11, 2009.

Farm Buildings Associated with Equine Activities Exempt from Building Code

The North Carolina State Building Code does not apply to "farm buildings" located in a county's building-code-enforcement jurisdiction. Session 2009 – 245 adds a new G.S. 143-138(b4)(1) to clarify that the code does not apply to structures associated with the care, management, boarding, or training of horses and the instruction and training of riders. The equestrian exemption includes free-standing or attached sheds, barns, or other structures used to store equipment, tools, commodities, or other items associated with equine activities. However, the new law also provides that a farm building associated with horses is not exempt if it is to be used for a spectator event at which more than ten members of the public are to be present. These provisions apply to all farm buildings, including those buildings whose construction either began or was completed prior to June 30, 2009, the effective date of the act.

Pyrotechnics Safety

In 2007 the General Assembly revised the manner in which local governments were able to issue permits for indoor events involving pyrotechnics (fireworks). A fatal accident involving the handling of fireworks at the coast early this summer prompted expedited handling of a bill this past summer governing who may handle them. Session 2009 – 507 (S 563) rewrites the law so that pyrotechnics may be exhibited, used, or discharged only at a concert or public exhibition, and then only by authorized personnel. Someone may become authorized by completing a pyrotechnics training and permitting program developed and administered by the State Fire Marshal, if that person is under the direct supervision and control of a "display operator." Alternatively an active member of a local fire or rescue department may become authorized if he has had experience in pyrotechnics or explosives and is either qualified by the jurisdiction where permitting is sought or by the State Fire Marshal. In addition, the act adds a new G.S. 58, article 82A to provide for the training and permitting of display operators.

The act also amends G.S. 14 - 413 to provide that a local government may not issue a pyrotechnics permit unless the display operator provides proof of insurance in the amount of $500,000 or an amount established in the State Building Code, whichever is greater. It also allows a local government to set an amount higher than the minimum if it chooses.

The pyrotechnics law also directs the Commissioner of Insurance to report to the General Assembly by May 1, 2010, and to recommend additional statutory changes and the need for additional personnel or other resources to implement the act. The act has a delayed effective date, February 1, 2010.

Code Standards for College Buildings Used by High School Students

G.S. 116-43.15 provides that the facilities of institutions of the University of North Carolina systems and private colleges that comply with the North Carolina State Building Code may be used without modification by public school students who are participating in early college or dual enrollment programs. Session Law 2009 - 305 (S 689) amends the statute to clarify that this is true not only for existing university facilities but new facilities as well. It also provides that for purposes of the use and occupancy classifications of the building code, facilities accommodating these programs for high school students are to be treated as "Business – Group B" in the same manner as other college and university uses. Session Law 2009 – 206 (H 735) amends G.S. 115D-41(b) to provide similar authorization for community college facilities.

Session 2009 – 206 (H 735) also includes an unrelated provision affecting building code enforcement. Until August 1, 2009, a county may obtain a permit for the construction of administrative facilities under the 2006 version of the North Carolina State Building Code, notwithstanding any other established expiration date for the application of that version of the Code.

The act became effective June 26, 2009.

Building Code Standards for Day-Care Facilities

Session Law 2009 – 123 (H 1031) adds a new G.S. 115C-521.1 to allow a public school that voluntarily applies for a child-care facility license to use an existing or newly constructed public school classroom for three- and four-year-old preschool students. However, the classroom must (1) include at least one toilet and one sink for hand washing; (2) meet kindergarten standards for overhead light fixtures; (3) meet kindergarten standards for floors, walls, and ceilings; and (4) include floors, walls, and chairs free from mold, mildew, and lead hazards. The public school must also meet all those other day-care facility licensing requirements that do not apply to the physical classroom. The act became effective June 19, 2009

Cistern Water for Toilets and Irrigation

Session Law 2009 – 243 (H 749) amends G.S. 143-138(b) to authorize the Building Code Council to adopt State Building Code regulations that would allow the use of non-potable cistern water for flushing toilets and for outdoor irrigation. If adopted, the regulations may allow cisterns to be used in connection with the construction or renovation of both residential or commercial buildings and structures. The act expressly provides that no State or local government regulation may prohibit the use of cisterns to provide water for the uses mentioned above. The act became effective June 30, 2009.

Local Acts: No Building Permit unless Taxes Paid

Session Law 2009 – 117 (H 103) is a local act that applies only to the following counties: Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokers, Surry, and Tyrrell. It allows the county to withhold a building permit for real property for which property taxes are delinquent. The act already applies to Davie, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin counties.

Session Law 2009 – 68 (H 563) is very similar, but it requires the adoption of a local ordinance and allows the ordinance to provide that a building permit may be issued to a person protesting the assessment or collection of property taxes. It applies only to the towns of Columbia and Edenton.

Another bill of the same type, H 1000, which applies to Allegheny and Surry counties, has passed the House, has been referred to a Senate committee, and is eligible for further action in 2010.

Studies Act

The "studies act," enacted as Session Law 2009 – 574 (H 945) would authorize several studies of interest to building inspectors. Section 6.15 authorizes the Environmental Review Commission to study "the possibility of requiring new and renovated commercial buildings and new residential buildings to comply with energy conservation standards" ("Green Building Code" (H.B. 1443)). Section 8.7 allows the Joint Legislative Utility Review Committee to study "the possibility of extending the standards governing energy efficiency and water use for major facility construction and renovation projects involving State, university, and community college buildings to major facility construction and renovation projects involving buildings of entities that receive state funding" ("Energy Efficiency in State-Funded Buildings" (H 1199)). Section 25.1 permits the State Board of Community Colleges to study strategies for making the construction process for community colleges more efficient (S. 418)).

Residential Buildings Condemned Because of Bighting Influences

For over 100 years the North Carolina statutes have authorized cities to condemn unsafe buildings and structures. However, only since 2000 have cities been authorized to condemn certain buildings and structures solely because they have a blighting influence upon the neighborhood and even that authority has been restricted to nonresidential properties. In order to exercise this authority the property must (i) be located within a community development target area; (ii) appear to be vacant or abandoned; and (iii) appear to be in such a dilapidated condition that it contributes to blight, disease, vagrancy, fire or safety hazards, is a danger to children, tends to attract persons intent on criminal activities, or otherwise constitutes a public nuisance. A companion statute, G.S. 160A – 432.1, permitted a dozen municipalities to apply this power to residential properties as well.

Session Law 2009 – 263 broadens this authority by allowing any municipality to exercise this authority with respect to both nonresidential and residential property. However, to do so a city must adopt an ordinance providing for such after first holding a properly noticed public hearing. (Heretofore the statute has not required that an ordinance be adopted to implement it; a local building inspector is delegated the condemnation power directly by the General Assembly.) This change in the law also means that cities may take summary action to cause both residential and

nonresidential buildings to be removed or demolished if the owner fails to do so. The act repeals G.S. 160A-425.1 (the legislation applicable to a dozen cities) and an associated statute (G.S. 160A-432(a1), effective October 1, 2009. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

Notice to Chronic Violators of Overgrown Lot Ordinances

Session 2009 – 19 (S 452) is intended to improve the enforcement of municipal overgrown-lot ordinances. It amends G.S. 160A-200, which was applicable to 26 cities, to make the statute of statewide application to all cities. The new law defines a chronic violator of such an ordinance to be an owner of property with respect to which a local government has taken remedial action at least three times during the previous calendar year. Session Law 2009 – 19 then allows a municipality without further notice to take summary action to remedy the violation and makes the expense of the action a lien against the property such that it may be collected as unpaid taxes. The new law requires the requisite notices to be sent by registered or certified mail.

The act repeals prior local legislation of the same sort, effective October 1, 2009, but preserves all ordinances that are consistent with the new statewide legislation. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

Notice to Chronic Violators of Public Nuisance Ordinances

Session Law 2009 – 287 (S 564) is very similar to the overgrown-lot legislation above. However, since it applies to all public nuisances ordinances, it is broader in scope. It also applies to both cities and counties by adding two new statutes, G.S. 160A-220.1 and G.S. 153A-140.2. They define a chronic violator of such an ordinance to be an owner of property with respect to which a local government has sent at least three violation notices during a calendar year. The law then allows a city or county without further notice to take summary action to remedy the violation and makes the expense of the action a lien against the property such that it may be collected as unpaid taxes. The new law requires the requisite notices to be sent by certified mail.

The act repeals prior local legislation, effective October 1, 2009, but preserves all ordinances that are consistent with the new statewide legislation. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

Session Law 2009 – 287 and Session Law 2009 – 19 (described above) are both examples of new general local government enabling authority that has grown out of the success of local legislation on the same subject.

Richard Ducker