This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 483: Land Use Regulatory Changes

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	April 28, 2015
Introduced by:	Rep. Jordan	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H483-CSRN-21		Committee Counsel

SUMMARY: House Bill 483 would make changes to the land use regulatory laws in North Carolina. The Proposed Committee Substitute provides additional information regarding what a zoning permit includes in Sections 2 and 3, provides that the actions that may be pursued in court in Section 4 apply to county or city ordinances, clarifies that the list of claims set forth in Section 4 is not exclusive, and deletes Section 10 of the First Edition of the bill.

BILL ANALYSIS:

Section 1 provides that, for zoning permits, if an applicant submits a permit for any type of development and a rule or ordinance changes between the time the application was submitted and a decision is made, then the applicant may choose which version of the rule or ordinance will apply.

Sections 2 and 3 provide that amendments in city and county land development regulations, including zoning ordinances or unified development ordinances, must not be applicable or enforceable without the written consent of the owner with regard to buildings, uses, or developments for which either of the following applies:

- A zoning permit which includes, a site plan approval, a special exception permit or any other permit or approval given under the authority of Chapter 160A, Article 19, that authorizes the use of land.
- A building permit has been issued prior to the enactment of the ordinance making the change or changes so long as either permit remains valid and unexpired.

Amendments must not be applicable or enforceable without the written consent of the owner if a vested right has been established and such vested right remains valid and unexpired or if a vested right is established by the terms of a development agreement.

Section 4 provides that any landowner, permit applicant, or tenant aggrieved by a final decision involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal, sue in superior court or business court where any of the following claims or defenses are asserted by the aggrieved party: (1) Constitutional matters, (2) invalidity of the development regulation, (3) preemption, (4) claims under 42 U.S.C. section 1983, (5) common law vested rights, or (6) damages. This list is not exclusive, and the aggrieved party may raise any other available claims or defenses, including asserting error in the interpretation of an ordinance.

An action must be filed within one year after the later of the following:

- Notice of the decision under 160A-388(b1)(2); or

- Where a taking of property is alleged by the aggrieved party, the final decision of a board of adjustment denying a variance has been delivered whenever the context makes the granting of the variance discretionary and not prohibited.

Except for exhausting the administrative remedy of a variance, if applicable, once the aggrieved party selects an appeal to a board of adjustment and the prescribed hearing proceeding is concluded, such procedures are the exclusive means for obtaining relief as to the merits of the city or county enforcement action or administrative decision being challenged. However, this does not limit other procedures allowed for civil rights claims under federal law.

Section 5 provides that in a civil action providing relief under G.S. 160A-393.1, a party is not barred from raising the invalidity of the ordinance as a defense to enforcement of a zoning or unified development ordinance.

Section 6 provides that a petitioner may assert and the court must determine de novo any of the following claims or defenses: (1) the applicable ordinance is invalid or otherwise unenforceable, (2) Constitutional matters, (3) preemption, (4) claims under 42 U.S.C. section 1983, and (5) common law vested rights. To raise any of these claims or defenses, the claim or defense must be made known to the decision-making board at the hearing if the claim or defense does not involve some act of the decision-making board or its members.

Section 7 provides that a landowner or permit applicant must not be precluded from challenging any unlawful condition imposed on a development as part of the application of land development regulations as a result of the landowner or permit applicant's actions to proceed with the development or use.

Section 8 provides that in any action in which a city or county is a party, if the court finds that the city or county violated a statute setting forth clear limits on its authority or otherwise abused its discretion, then the court must award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant.

Section 9 provides that in any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action, unless the prevailing party is the State, the court must allow the prevailing party to recover reasonable attorney's fees. This includes attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, or any other provision of law, to be taxed as court costs against the appropriate agency if the agency acted without substantial justification in pressing its claim against the party. The lack of substantial justification is conclusively established when an agency acts in violation of a statute setting forth clear limits on its authority and there are no special circumstances that would make the award unjust.

EFFECTIVE DATE: The act becomes effective October 1, 2015.