HOUSE BILL 765:
Local Gov. Development Regulations Omnibus.

2025-2026 General Assembly

Committee:	House Housing and Development. If favorable, re-refer to Judiciary 2. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	April 16, 2025
Introduced by:	Reps. Zenger, Brody, Winslow, Cunningham	**Prepared by:**	Erika Churchill, Staff Attorney
Analysis of:	PCS to First Edition H765-CSST-5		

OVERVIEW: The Proposed Committee Substitute for House Bill 765 would make various changes to the land use regulation authority of local governments, including the following:

- ***Repeals the prohibition on down-zoning, retroactive to December 11, 2024.***
- ***Clarifies the general authority to adopt and enforce development regulations.***
- ***Clarifies nonconformities.***
- ***Amends various aspects related to the process of implementing development regulations, including certain uses by right in certain jurisdictions, subdivision approvals and certain zoning approvals by administrative decision, and imposing a requirement for fiscal notes in certain instances.***
- ***Imposes personal civil liability for each member of decision-making boards in certain instances related to development decisions and approvals.***
- ***Requires every local governmental unit operating a water system, sewer system, or both to allocate capacity as requests are received, and establishes a vested right in that capacity allocation that runs with the land.***

CURRENT LAW and BILL ANALYSIS:

Chapter 160D of the General Statutes contains procedures local governments utilize for development approvals under their planning and development regulations. Land use regulations include zoning, subdivision regulation, building code enforcement, minimum housing code enforcement, historic preservation, erosion and sedimentation control regulation, and historic district regulation.

General Authority and Civil Liability for Actions. – Under general law, counties and cities have general ordinance making authority to protect the public health, safety, and welfare. The authority for adopting and enforcing land use regulations is separate from this general ordinance making authority. Current law provides that governing board members, and members of appointed boards, cannot vote on any decision regarding a development regulation where the outcome of the matter is reasonably likely to have a

financial impact on the board member or when the landowner of the property subject to the development regulation if the landowner is a person with whom the member has a family, business, or other relationship.

Section 2 would clarify that local governments may not exercise development regulation authority except as expressly authorized by Chapter 160D of the General Statutes unless the development regulation pertains to floodplain management regulations.

Section 7 would require that a governing board member or a member of appointed boards not participate in or vote on decisions regarding a development regulation if any of the following applies to the vote:

- The outcome of the matter is reasonably likely to have a financial impact on the member.
- The landowner of the property subject to the development regulation is a person with whom the member has a family, business, or other relationship.
- The member has expressed or holds a fixed opinion on the matter that is not susceptible to change.
- The member has undisclosed ex parte communication about the matter.

Section 25 would establish personal, individual civil liability for any board member who engages in impermissible violations of due process; considers evidence or other material gained outside of an evidentiary hearing when making a quasi-judicial decision; acts maliciously, arbitrarily and capriciously, unlawfully, grossly negligent, or wrongfully. In any action finding individual civil liability for a board member under this provision, the court must also award the plaintiff reasonable attorneys' fees and costs.

Section 28 would require, with respect to bills or ordinances that could result in an increase in the cost of constructing, purchasing, owning, or selling a building or structure subject to the North Carolina Residential Code, the General Assembly and all counties and cities to have a fiscal note prepared on the matter. The fiscal note would be based on the basis of a median priced single-family residence, estimating for the first 5 years of the proposed change and all the anticipated effects on costs of the proposed change. For the General Assembly, the fiscal note would be requested by the bill sponsor, prepared by the Fiscal Research Division within 2 weeks of its request, and attached to the bill jacket at the time of consideration. For counties and cities, the fiscal note must be submitted to the governing body at least 5 days prior to consideration of the ordinance generating the need for the fiscal note; the requirement for the fiscal note would apply to amendments of zoning maps and zoning regulations, which under **Section 14** would be subject to a 90 day 'shot clock' for review and decision.

Section 23 would provide that certain parties may bring a claim against a development regulation that is arbitrary and capricious or a claim that a development approval is ultra vires, preempted, in excess of statutory authority, made upon unlawful procedure, made in error of law, arbitrary and capricious, or an abuse of discretion.

Additionally, the section adds to the list of parties with standing to bring such a claim associations, organizations, societies, or entities whose membership is comprised of an individual or entity who was a development permit applicant before the decision making board whose decision is being challenged or was a development permit applicant aggrieved by a final and binding decision of an administrative official charged with applying a development regulation. Under current law, certain parties may bring an original civil action to challenge the enforceability, validity, or effect of a development regulation for any of the following claims: (1) the regulation is unconstitutional, (2) the regulation is ultra vires, preempted, or otherwise in excess of statutory authority, or (3) the regulation constitutes a taking of property.

Down-zoning. – Under current law, a local government cannot, without the written consent of the affected property owner, initiate rezonings or text amendments that (i) decrease the permitted density of

development, (ii) reduces the range or permitted uses of the property, or (iii) creates any type of nonconformity on land not in a residential zoning district.

Section 1 would allow local governments to initiate a down-zoning amendment, retroactive to December 11, 2024.

Nonconformities and Vested Rights. – Current law provides that the vested right to complete a project granted by the issuance of a development permit expires for an uncompleted development project if the development work is intentionally and voluntarily discontinued for 24 months. The statutory vesting period for a non-conformity also expires if the use is intentionally and voluntarily discontinued for 24 months. A vested right for a site-specific development plan is vested for two years; however a local government may provide for site-specific development plan vesting for up to five years. Currently, there are no statutory provisions regarding nonconformities other than expiration of a nonconforming use of property that is intentionally and voluntarily discontinued for 24 months.

Sections 4 - 6 would provide that:

- The 24-month discontinuance period for the vested right to complete a project is tolled for the duration of an emergency declaration for which the defined emergency includes some or all of the property under development.
- A vested right for a site-specific development remains vested for five years and that a local government could provide for site-specific development plan vesting for up to eight years.
- Amendments to land development regulations affecting a non-conformity would not be applicable or enforceable without the written consent of the landowner. A non-conformity would continue unless it expired due to the intentional and voluntary discontinuance of the non-conformity for 24 months. The 24-month discontinuance period would be tolled during the same time periods applicable to vested rights. Reconstruction, re-establishment, repair and maintenance of a non-conformity would be permitted by right provided the nonconformity is not extended, expanded, enlarged, increased, or intensified. A definition of non-conformity is added in **Section 3**.

Process of Obtaining Development Approvals. – Under current law, if a parcel of land lies within the planning and development jurisdiction of two local governments, the local governments may agree, with the consent of the landowner, to assign exclusive planning and development jurisdiction over the parcel to one of the local governments. Current law requires that, when a local government adopts or rejects any zoning text or map amendment, the governing board must approve a statement of whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan; this statement is not subject to judicial review.

Section 8 would establish which local government would have planning and development jurisdiction over the parcel based on the availability of public water and sewer service from the local governments.

Section 9 would require local governments to designate at least one administrative staff member charged with making administrative determinations. This section would also provide that fees collected to support a building inspection department must not exceed the actual direct and reasonable costs required to support, administer, and implement programs authorized by Chapter 160D.

Sections 10 and 14 would establish a 90-day timeline for review of an application for a development approval and a rezoning request, respectively. Within 14 days, the local government or its staff must

determine if the application is complete. When the application is deemed complete, the 90-day timeline begins. Failure to act within the 90-day period would constitute an approval of the application.

Section 11 would make the consistency statement subject to judicial review.

Section 12 would prohibit certain development regulations concerning the size of structures regulated under the North Carolina Residential Code, parking spaces, driveways, sidewalks, and setbacks and buffer yards. This section would also require a local government to demonstrate that there is a rational and substantial relationship between its zoning map, ordinance, or amendments and the health, safety, and welfare of the public through the finding of facts and conclusions.

Section 13 would, with respect to zoning regulations, do all of the following:

- Require that local governments classify residential zoning districts based on the number of dwelling units per acre rather than minimum lot size.
- Require a certain number of dwelling units per acre based on the size of the local government. In large cities, non-agricultural commercial or industrial districts would also have to allow multifamily structures with a maximum height restriction of not less than 60 feet.
- Exempt structures subject to the North Carolina Residential Code and multifamily structures from local design standards and landscape buffering regulations.
- Clarify that a local government may not incorporate into its zoning ordinance any regulation or condition not specifically authorized by law or accept any offer to consent to a condition not specifically authorized by law.
- Require that development approvals for permitted uses be made administratively.
- Require that a local government support its conditional zoning decisions with facts and information reasonably establishing a rational and substantial relationship between the conditional district and the health, safety, and welfare of the public.

Section 15 would change the process for subdivision approval to be solely by administrative staff. Once the subdivision approval has been entered on the face of the plat, the approval is valid indefinitely, unless and until the landowner applies for, and receives, a subsequent development approval. This would be in addition to any other vested rights under the common law or Chapter 160D of the General Statutes.

Section 18 would require at least 75% of the property owners in a proposed historic district sign a petition requesting designation of the district and the governing board then unanimously approve the adoption of the historic district. Under current law, a local government may designate and amend historic districts either as separate use districts or as districts that overlay other zoning districts so long as there is an investigation and report describing the significance of features of the district and a description of the boundaries, and the Department of Natural and Cultural Resources has made an analysis and recommendation.

Section 19 would add two new sections to Article 9 of Chapter 160D, applicable to cities with a population of 125,000 or more according to the most recent decennial federal census, to allow:

- Tiny housing, defined as a detached single-family dwelling unit that is no greater than 600 square feet and built to applicable standards, in areas zoned for residential or mixed-use residential including those that allow for the development of detached single-family dwellings.
- Accessory dwelling units (ADUs), defined as an attached or detached residential structure that is used in connection with or that is accessory to a primary single-family dwelling that has less total square footage than the primary dwelling. A city may regulate ADUs provided that the regulations

do not act to discourage development or siting through unreasonable costs or delay and may impose a setback minimum the lesser of five feet or the minimum imposed on lots in the same zoning classification. Development and permitting of ADUs must not be subject to (1) owner-occupancy, (2) minimum parking requirements or other parking restrictions, or (3) conditional use zoning. Further, a city shall not (1) prohibit connection of the ADU to existing utilities serving the primary dwelling or (2) charge any fee, other than a building permit fee, that exceeds the amount charged for any single-family dwelling unit similar in nature.

Section 21 would amend G.S. 160D-1110(d) to prohibit local governments from requiring more than a shell permit, defined as a permit that allows for the structural construction of a building but does not result in issuance of a certificate of occupancy, for the construction of a multifamily development. The local government would be required to issue certificates of occupancy for individual units in a multifamily development permitted under a shell permit as the units meet the criteria for issuance upon the request of the permittee.

Section 24 would allow any person with standing to bring a civil action to enforce the provisions of Chapter 160D and recover damages, costs, disbursements, and other equitable relief.

Streets and Roads. –

Section 30 would require the Division of Highways to accept a performance guarantee under G.S. 160D-804.1 to ensure the completion of streets required by a development regulation. Upon receipt of a performance guarantee, the Division of Highways would be required to issue a certificate of approval regarding those streets.

Section 36 would no longer allow a city to regulate the size, location, or manner of construction except as expressly provided in Chapter 160D of the General Statutes, and would also require the city to provide "substantial evidence" that the need for such improvements is reasonably attributable to traffic using the driveway and that the improvements serve the traffic of the driveway. "Substantial evidence" would mean "facts and information, other than mere personal preferences or speculation, that a reasonable person would accept in support of a conclusion."

Provision of Water and Sewer. –

Section 29 would allow property owners to install a wastewater system to serve undeveloped or unimproved property located to be served by a public or community wastewater system and owners of developed or improved property to install a wastewater system if the property is located to be served by a public or community wastewater system that has not installed sewer lines directly available to the property, or cannot otherwise provide wastewater service, at the time the owner desires. With limited exceptions, any property owner who installs a wastewater system in accordance with these provisions would not be required to connect to the public or community wastewater system but may opt to do so if they desire.

Section 37 repeals a provision prohibiting local government units from implementing a scoring or preference system to allocate water or sewer service among applicants for water or sewer service for residential development and from requiring an applicant for water or sewer service for residential development to agree to any condition not otherwise authorized by law, or to accept any offer by the applicant to consent to any condition not otherwise authorized by law. The section would replace those provisions with a new Article in Chapter 162A of the General Statutes that mandates every local governmental unit operating a water system, sewer system, or both to allocate capacity as requests are received, and establishes a vested right in that capacity allocation that runs with the land, as follows:

- Requires providers to approve or deny applications for allocation in chronological order within 10 days of receiving the application. Applications for allocation must be approved if the provider has capacity, unless the applicant does not have plat approval, there is no available capacity, or the applicant has rejected the offer of the reduced capacity allocation available.
- Establishes a reservation period of 24-months after an allocation is approved with the potential for a 12-month extension.
- Establishes allocations as a vested right running with the land and transferable.
- Requires an approved applicant to notify the provider if a modification of allocations is needed.
- Allows providers to give priority in allocation to requests from public schools, in accordance with G.S. 115C- 521, and to applications demonstrating a substantial threat to public health, safety, or welfare.
- Requires providers to prepare annual reports no later than October 1 of each year regarding its system capacity and available capacity.

Section 37 would require providers to reserve, allocate, and provide water or sewer, or both, in the chronological order a service commitment made on or after July 1, 2020, was issued prior to making any other capacity allocations under the new provisions.

Technical and Conforming Changes. Sections 3, 16, 17, 20, 22, 26, 27, 31, 32, 33, 34, and 35 make additional technical and conforming changes.

EFFECTIVE DATE: October 1, 2025.

*Chris Saunders, Ike McRee, Karyl Smith, Michael Whitfield, and William Brewer substantially contributed to this summary.