



# General Statutes Commission

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## MEMORANDUM

**To:** House Judiciary  
**From:** General Statutes Commission  
**Re:** SB 720 (GSC Conforming Amends./2019 Land-Use Changes)  
**Date:** June 4, 2020

### Background

Part II of S.L. 2019-111 enacts a new Chapter 160D of the General Statutes on land-use regulation. The new Chapter replaces Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes, where the current local land-use laws are located. These two Articles are repealed when Chapter 160D becomes effective. Part II sets this date as January 1, 2021. The delayed effective date provides time for local governments to bring their ordinances into conformity with the new Chapter 160D. In addition, the delay also allows time for the incorporation of amendments to Articles 19 and 18 that the General Assembly enacted last year but were not included in Chapter 160D as enacted. Part II directed the General Statutes Commission to recommend legislation to accomplish that goal.

### General Comments

This bill fulfills Part II's directive to the General Statutes Commission. Part I of S.L. 2019-111 itself enacted new statutes and amendments to Articles 19 and 18 that were not included in the new Chapter 160D, as did three other 2019 acts: S.L. 2019-35, 2019-79, and 2019-174. This bill incorporates into Chapter 160D the provisions of Part I and the portions of the other three acts relating to land-use regulation. The disposition in Chapter 160D is shown in an appendix to the General Statutes Commission's study report to the General Assembly filed on May 7, 2020, that is also attached to the end of this memorandum.

In addition, this bill also:

- Brings forward other provisions from Article 19 and Article 18 that were inadvertently not already added to Chapter 160D.
- Updates or corrects cross-references, updates terms to match the new definitions and usage in Chapter 160D, and makes stylistic updates to conform to the requirements of the General Assembly's drafting manual.
- Makes stylistic and other conforming and clarifying amendments that do not change the underlying policy.
- Reorganizes and restates G.S. 160D-1116, also removing an optional bond requirement that has not yet become effective.
- Accelerates the effective date of the new Chapter 160D and its accompanying changes from January 1, 2021, to the date this bill becomes law, while also extending to July 1, 2021, the deadline for local governments to come into compliance with Chapter 160D. The accelerated date accommodates those local governments that are already prepared to begin

operating under Chapter 160D but allows others additional time due to the extra demands caused by COVID-19.

A draft of this bill was circulated before final approval by the Commission to the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the North Carolina Home Builders Association, and a representative of the North Carolina Bar Association's Zoning, Planning, and Land Use Section and Real Property Section. As of the date of this explanatory memorandum, no opposition to the bill has been reported to the General Statutes Commission.

### Specific Comments

**Sections 1 and 2** of this bill amend G.S. 6-21.7 and G.S. 143-755(d) and (e) to update cross-references (from G.S. 160A-360.1 and G.S. 153A-320.1 to G.S. 160D-108(b)). **Section 2** also amends phrasing in G.S. 143-755(b1), (d), and (e) to conform to the requirements of the General Assembly's drafting manual (use of the indicative mood).

**Section 3** amends G.S. 160D-102 to:

- Amend the introductory language and the definition of "governing board" to conform to the requirements of the drafting manual (use of the indicative mood).
- Simplify the definition of "comprehensive plan."
- Delete a duplicative phrase in the definition of "development."
- Update a cross-reference in the definition of "local act."
- Delete the definition of "vested right" due to conflict over its accuracy after the incorporation of the provisions of Part I of S.L. 2019-111 into Chapter 160D.

**Section 4** amends G.S. 160D-107 to update a cross-reference (from G.S. 160D-108 to G.S. 160D-108.1), to remove a reference to the now-obsolete term "phased" vesting plan, and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 5(a) and (b)** rewrite G.S. 160D-108 and enact a new G.S. 160D-108.1 in order to incorporate the provisions of Sections 1.2 and 1.3 of S.L. 2019-111, because the provisions of those sections and the provisions of G.S. 160D-108 as enacted do not appear to be structurally or philosophically compatible. **Section 5(a)** incorporates the gist of G.S. 160A-385/153A-344, as amended by Section 1.3 of S.L. 2019-111, into G.S. 160D-108, while updating terminology and cross-references and rearranging the text and the catchline. **Section 5(a)** retains some features from G.S. 160D-108 as enacted, notably the retention of the findings subsection, the inclusion of the law on permit choice, and a revised provision dealing with continuing review. **Section 5(b)** similarly incorporates the gist of G.S. 160A-385.1/153A-344.1 into a new G.S. 160D-108.1, without the portions that are essentially duplicated elsewhere in Chapter 160D (for example, the findings subsection and the definitions) or are obsolete (for example, the provisions on phased development plans). Current G.S. 160D-108(c) and (f) are not repealed but are relocated. G.S. 160D-108(c) is moved to become G.S. 160D-108(h). G.S. 160D-108(f), which was originally derived from G.S. 160A-385.1(e)/153A-344.1(d), is moved to become G.S. 160D-108.1(f).

**Section 6** amends G.S. 160D-111 to correct a date (from January 1, 2019, to January 1, 2021), and to conform to the requirements of the General Assembly's drafting manual (use of the indicative mood).

**Section 7** amends G.S. 160D-201 to:

- In subsection (a), update the terminology (from "municipalities" to "cities") and to correct an internal reference (from "this Article" to a specific reference to G.S. 160D-202).
- Add a new subsection (c) that codifies current case law.

**Section 8** amends G.S. 160D-307(b) to update terminology (from "municipalities" to "cities"), to conform the timeframe for making appointments to the procedure under Chapter 160D, and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 9** amends G.S. 160D-403(c) to conform to the changes to G.S. 160D-108, including the enactment of G.S. 160D-108.1. **Section 9** also amends the statute to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 10** amends G.S. 160D-405(a), (c), and (f) to incorporate and conform to the provisions of Section 1.6 of S.L. 2019-111, to update terminology and conform to the requirements of the drafting manual (use of the indicative mood), to divide subsection (f) into two paragraphs, and to add a new subsection (h) to cross-refer to the estoppel provisions in G.S. 160D-1403.2, which also apply to appeals under this statute.

**Section 11** amends G.S. 160D-501 to clarify that local governments that have not adopted comprehensive plans but do have land-use plans are authorized to adopt zoning regulations.

**Section 12** amends G.S. 160D-601 to incorporate the provisions of Sections 1.4 and 1.5 of S.L. 2019-111, with new subsection catchlines to match the style elsewhere in G.S. 160D-601.

**Section 13** deletes G.S. 160D-602(d) to conform to the provisions of Sections 1.4 and 1.5 of S.L. 2019-111. **Section 13** also amends subsections (a) and (b) to conform to the requirements of the drafting manual (use of the indicative mood) and to clarify that the provisions of G.S. 160D-602 are subject to any limitations found elsewhere in Chapter 160D.

**Section 14** amends G.S. 160D-603 to conform to changes made by Section 1.3 of S.L. 2019-111.

**Section 15** amends G.S. 160D-702 to correct a formatting error in the first sentence, to conform a cross-reference (adding the reference to G.S. 160D-804.1), to conform to the requirements of the drafting manual (use of the indicative mood), and to add a subsection (c) incorporating the provisions of Section 3(b) and (d) of S.L. 2019-174.

**Section 16** amends G.S. 160D-703 to incorporate the provisions of Sections 1.14 and 1.15 of S.L. 2019-111 in subsection (b) and to conform the statute generally to the requirements of the drafting manual (use of the indicative mood).

**Section 17** amends G.S. 160D-705(c) to incorporate the provisions of Sections 1.12 and 1.13 of S.L. 2019-111 and to enact the correction indicated by the brackets in the word "regulation[s]." **Section 17** also conforms the statute generally to the requirements of the drafting manual (use of the indicative mood).

**Section 18** amends G.S. 160D-706 to incorporate the provisions of Section 1.17 of S.L. 2019-111 in subsection (b) and to conform the statute generally to the requirements of the drafting manual (use of the indicative mood).

**Section 19** as introduced also amended G.S. 160D-705(c) (see **Section 17**). Because there is no need for the amendments to G.S. 160D-705 to be in separate sections of this bill, the Senate Committee on State and Local Government merged the amendments from this section into **Section 17**. As a result, this section is now just a reserved section of the bill.

**Section 20(a)** amends G.S. 160D-804(c) to incorporate as subdivision (3) the provisions of G.S. 153A-331(d), which was inadvertently not brought forward into Chapter 160D, and to make conforming adjustments to the language, style, and order of the subsection. **Section 20(a)** also amends G.S. 160D-804(d) to update the terminology (from "municipalities" to "cities").

**Section 20(b)** recodifies G.S. 160D-804(g) as G.S. 160D-804.1 and incorporates the provisions of Sections 1 and 2 of S.L. 2019-79, with terminology and stylistic updates. **Section 20(c)** provides that the amendments in **Section 20(b)** apply to performance guarantees issued on or after the effective date of this act, which will also be the effective date of Chapter 160D (see Section 51 for this change).

**Section 20(d)** adds two new subsections (h) and (i) to G.S. 160D-804 to incorporate the provisions of Section 3(a) and (c) of S.L. 2019-174.

**Section 21** amends G.S. 160D-807 to correct a cross-reference in subsection (a) (from G.S. 160D-1108 to G.S. 160D-1110) and to make text gender neutral, eliminate legalese, and conform the statute generally to other requirements of the drafting manual (use of the indicative mood).

**Section 22** amends G.S. 160D-903(c) to conform the wording of the last sentence to a change made in the first sentence in 2019 (reference to "municipal zoning"). **Section 22** also amends the statute generally to update the terminology ("municipality" to "city") and conform to the requirements of the drafting manual (use of the indicative mood).

**Section 23** repeals G.S. 160D-916(b) to conform to the provisions of Section 3 of S.L. 2019-35. That act repealed the Transportation Corridor Official Map Act.

**Section 24** amends G.S. 160D-947 to correct two cross-references in subsection (e) (from G.S. 160D-405(c) to G.S. 160D-405(d) and from G.S. 160D-1404 to G.S. 160D-1405) and to generally eliminate legalese and otherwise conform to the requirements of the drafting manual (use of the indicative mood).

**Section 25** amends G.S. 160D-1005 in both the catchline and the text to make a conforming amendment. Chapter 160D does not use the term "public hearing"; it defines three new terms, administrative hearing, legislative hearing, and evidentiary hearing, to cover the different types of hearings that formerly came under the umbrella term "public hearing" in local government law. The General Statutes Commission is informed that the purpose was to better describe what is supposed to happen at these hearings and thereby eliminate some confusion. In G.S. 160D-947, the term was changed to the correct new term in the first sentence, but these two additional locations were overlooked.

**Section 26** amends G.S. 160D-1006 to correct cross-references in subsections (d) (eliminating an unnecessary reference to G.S. 160D-804) and (f) (from G.S. 160D-804(d) to G.S. 160D-804.1) and to amend subsection (b) to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 27** amends G.S. 160D-1007(b) to conform a cross-reference (from G.S. 160D-108(e) to G.S. 160D-108(c) or 160D-108.1(f)).

**Section 28(a)** amends G.S. 160D-1104(a), (b), and (e) to conform to the requirements of the drafting manual (use of the indicative mood). **Section 28(a)** also amends subsection (b) to correct the terminology ("city council" should now be "governing board") and subsection (d) to correct a cross-reference (from G.S. 160D-1115 to G.S. 160D-1117).

**Section 28(b)** repeals G.S. 160D-1104(f) effective October 1, 2021, to conform to the repeal of the equivalent provisions in Chapters 160A and 153A on that date and to conform the repeal of the Chapter 160A/153A provisions to the effective date of Chapter 160D.

**Section 29** amends G.S. 160D-1106 to incorporate the provisions of Section 1 of S.L. 2019-174, to clarify an ambiguity in the introductory language of subdivision (a)(3), to correct the reference to "city" to be "local government," and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 30** amends G.S. 160D-1110 to incorporate the provisions of Section 7(a) and (b) of S.L. 2019-174, with updated terminology, and to eliminate legalese and otherwise conform to the requirements of the drafting manual (use of the indicative mood).

**Section 31** amends G.S. 160D-1113 to correct a cross-reference (from G.S. 160D-1104(b) to G.S. 160D-1104(d)) and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 32** amends G.S. 160D-1116 to:

- Incorporate the provisions of Section 5(a) and (b) of S.L. 2019-174.
- Better specify what acts in violation of the section actually constitute a crime.
- Remove the option for a local government to require a security bond for code compliance before issuing a temporary certificate of occupancy, at the request of the North Carolina Home Builders Association. The optional bond provision was added as part of new Chapter 160D and is therefore not yet effective, and, as of the date of this memorandum, no opposition to its removal is known to the General Statutes Commission.
- Reorganize the statute for greater clarity.

**Section 33** amends the introductory language of G.S. 160D-1121 to correct a cross-reference (from G.S. 160D-1117 to G.S. 160D-1119) and to conform subdivision (2) to the requirements of the drafting manual (use of the indicative mood).

**Section 34** amends G.S. 160D-1123 to correct a cross-reference (from G.S. 160D-1120 to G.S. 160D-1122), to rephrase an awkward sentence, and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 35** amends G.S. 160D-1124 to correct a cross-reference (from G.S. 160D-1120 to G.S. 160D-1122) and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 36** amends G.S. 160D-1125 to correct a cross-reference that appears in two places (from G.S. 160D-1117 to G.S. 160D-1119), to update terminology (from "municipalities" to "cities"), and to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 37** amends G.S. 160D-1129 in subsection (a) to add the option of designating target areas in an adopted comprehensive plan. **Section 37** also updates the reference to a "public hearing" to an "administrative hearing" (see explanation of that change at **Section 25**), eliminates legalese, and otherwise makes changes to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 38(a)** enacts a new G.S. 160D-1130 to bring forward the provisions of current G.S. 160A-439.1, which was inadvertently omitted from Chapter 160D. The section authorizes the appointment of a receiver to rehabilitate, demolish, or sell a vacant building that is essentially unfit/unsafe for occupation after notice to the owner and the owner's failure to correct the problems. As introduced, new G.S. 160D-1130 would apply to both cities and counties, but the inclusion of counties was removed by the Senate Committee on State and Local Government at the request of the North Carolina Association of County Commissioners.

**Section 38(b)** is an applicability provision for the new G.S. 160D-1130 (essentially, applies on or after the effective date of this act but also continues the applicability of G.S. 160A-439.1 by having this section apply to any nuisance per se as described in the section that occurred on or after the effective date of G.S. 160A-439.1).

**Section 39** makes a conforming amendment to G.S. 160D-1201(a) by deleting "occupied" from the subsection catchline, because the text clearly applies also to dwellings that are not necessarily occupied.

**Sections 40** and **41** amend G.S. 160D-1203(3) and G.S. 160D-1207(b), respectively, to update the terminology for the type of hearing referenced (see explanation in **Section 25**). **Section 41** also eliminates legalese.

**Section 42** amends G.S. 160D-1208(a) to correct a cross-reference (from G.S. 160D-306 to G.S. 160D-305) and to insert a missing "to" in the sixth sentence. **Section 42** also makes changes throughout the section to conform to the requirements of the drafting manual (use of the indicative mood).

**Section 43** amends G.S. 160D-1312 to update the terminology for the type of hearing referenced (see explanation in **Section 25**) and to eliminate legalese.

**Section 44** amends G.S. 160D-1401 to conform the cross-references (from G.S. 160D-108(c) or (g) to G.S. 160D-108(h) or (i) and from G.S. 160D-405(c) to G.S. 160D-1403.1).

**Section 45** amends G.S. 160D-1402 to:

- Incorporate the provisions of Section 1.9 of S.L. 2019-111, with appropriate internal reference changes, and moves a paragraph initially included with provisions now in subsection (c) to become a new subsection (j1).
- Add a new subsection (n) cross-referencing the stay provisions of G.S. 160D-405, which also apply to this statute.
- Eliminate legalese and otherwise conform to the requirements of the drafting manual (use of the indicative mood).

**Section 46** enacts a new G.S. 160D-1403.1 to continue the provisions of G.S. 160A-393.1, as enacted by Section 1.7 of S.L. 2019-111, with necessary changes to internal references and cross-references. As in **Section 45**, a paragraph originally included with subsection (b) is moved to become a new subsection (e), and subsection (f) is added to cross-reference the stay provisions of G.S. 160D-405 because they also apply to this statute.

**Section 47** enacts a new G.S. 160D-1403.2 to continue the provisions of G.S. 160A-393.2, as enacted by Section 1.10 of S.L. 2019-111, with a terminology update.

**Section 48** amends G.S. 160D-1405 (i) to incorporate the provisions of Section 1.8 of S.L. 2019-111 by adding a cross-reference in subsection (c) to G.S. 160D-1403.1 and (ii) to add a new subsection (c1) incorporating G.S. 160A-364.1(d)/153A-348(d), which was inadvertently omitted from Chapter 160D. **Section 48** also generally eliminates legalese and otherwise conforms this statute to the requirements of the drafting manual (use of indicative mood).

**Section 49(a)** repeals Section 2.6(j) of S.L. 2019-111, which is an overbroad conforming amendment to the enactment of Chapter 160D. Section 2.6(j) of S.L. 2019-111 repeals Article 3 of Chapter 168 of the General Statutes, which, as a whole, prevents local governments from adopting zoning regulations that exclude family care homes from residential areas. Because the first three sections in that article, G.S. 168-20, -21, and -22, are incorporated into Chapter 160D as G.S. 160D-907, they should have been repealed. The fourth section in the article, however, G.S. 168-23, was not moved to Chapter 160D and should not have been repealed. That section voids restrictive covenants and other private agreements that would prohibit the use of residential property as a family care home. Its repeal was unintentional. **Section 49(b)** accordingly repeals G.S. 168-20, -21, and -22, and **Section 49(c)** leaves G.S. 168-23 in its current location but makes conforming amendments to the cross-references and eliminates legalese and otherwise conforms the statute to the requirements of the drafting manual (use of indicative mood).

**Section 50(a)** and **(b)** continue the interpretive provisions of Section 3.1 of S.L. 2019-111.

**Section 51(a)** repeals Section 3.2 of S.L. 2019-111, the effective date and applicability provisions of S.L. 2019-111, and **Section 51(b)** replaces them with a new effective date and essentially the same interpretive provisions. The new effective date is when this bill becomes law, except that local governments are given until July 1, 2021 to come into compliance with Chapter 160D. **Section 51(c)** authorizes the Revisor of Statutes to replace references to January 1, 2021, the original effective date of Chapter 160D, with the effective date of this act throughout Chapter 160D. **Section 51(d)** repeals Section 4.33 of S.L. 2020-3 as no longer necessary. That provision amended Section 3.2 of S.L. 2019-111 to extend the effective date of Part II of that act from January 1, 2021, to August 1, 2021. If this bill becomes law before that time, the provision will no longer be needed. Although **Section 51(d)** is technically unnecessary because **Section 51(a)** repeals Section 3.2 itself, it is included in this bill in an abundance of caution.

**Section 52** contains the act's effective date (when it becomes law, except as otherwise provided).



**CHART OF DISPOSITION OF OTHER 2019 LEGISLATION INTO  
CHAPTER 160D**

<b>2019 Legislation Affecting Repealed Land Use Articles</b>	<b>G.S. Sections Amended</b>	<b>Disposition in Chapter 160D</b>	<b>[SB 720 Section ]</b>
2019-35, s. 3	160A-458.4	160D-916(b)	s. 23
2019-79, s. 1	160A-372	160D-804.1	s. 20(b)
2019-79, s. 2	153A-331	160D-804.1	s. 20(b)
2019-174, s. 1	160A-413.5	160D-1106	s. 29
2019-174, s. 3(a), (c) <sup>1</sup>	160A-372(f1), (f2) 153A-331(f1), (f2)	160D-804(h), (i)	s. 20(d)
2019-174, s. 3(b), (d)	160A-381 153A-340	160D-702	s. 15
2019-174, s. 5(a), (b)	160A-423 153A-363	160D-1116	s. 32
2019-174, s. 7(a), (b)	160A-417(a1) 153A-357(a1)	160D-1110(b)	s. 30
2019-174, s. 9	2018-29, s. 6(c) (expiration date for 153A-352(g)/160A- 412(g))	160D-1104(f)	s. 28(b)
2019-111, s. 1.2(a), (b) <sup>2</sup>	160A-360.1 153A-320.1	160D-108(b)	s. 5(a)
2019-111, s. 1.3(a), (d)	160A-385(c) 153A-344(b1)	160D-108(c), (f)	s. 5(a)
2019-111, s. 1.3(b)	160A-385(a)	160D-603	s. 14
2019-111, s. 1.3(b), (e)	160A-385(b) 153A-344(b)	160D-108(c), (f)	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(d) 153A-344(c)	160D-108(d)	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(e) 153A-344(d)	160D-108(e)	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(f) 153A-344(e)	160D-108(c), (d), (i)	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(g) 153A-344(f)	160D-108(j)	s. 5(a)
2019-111, s. 1.4	160A-384(a)	160D-601(d)	s. 12
2019-111, s. 1.4	160A-384(a), (b1)	160D-602(a), (d)	s. 13
2019-111, s. 1.5	153A-343(a)	160D-601(d)	s. 12
2019-111, s. 1.5	153A-343(b1)	160D-602(d)	s. 13

<sup>1</sup> S.L. 2019-174, ss. 2, 4, 6, 8, 10, and 11 did not affect Article 19 of Chapter 160A or Article 18 of Chapter 153A, and the remaining provisions in that act are effective date/applicability provisions that are not codified.

<sup>2</sup> S.L. 2019-111, ss. 1.1, 1.11, and 1.16 did not amend sections in Article 19 of Chapter 160A or Article 18 of Chapter 153A. Section 1.3(c) and (f) repealed a definition that was not brought forward into Chapter 160D, so incorporation into Chapter 160D is needed.

<b>2019 Legislation Affecting Repealed Land Use Articles</b>	<b>G.S. Sections Amended</b>	<b>Disposition in Chapter 160D</b>	<b>[SB 720 Section ]</b>
2019-111, s. 1.6	160A-388(b1)(6)	160D-405(f)	s. 10
2019-111, s. 1.7	160A-393.1	160D-1403.1	s. 46
2019-111, s. 1.8	160A-364.1(c)	160D-1405(c)	s. 48
2019-111, s. 1.9	160A-393(d), (j), (k), (l)	160D-1402(j1), (i), (j), (k)	s. 45
2019-111, s. 1.10	160A-393.2	160D-1403.2	s. 47
2019-111, s. 1.12	160A-381(c)	160D-705(c)	s. 17
2019-111, s. 1.13	153A-340(c1)	160D-705(c)	s. 17
2019-111, s. 1.14	160A-382(b)	160D-703(b)	s. 16
2019-111, s. 1.15	153A-342(b)	160D-703(b)	s. 16
2019-111, s. 1.17(a), (b)	153A-346(b) 160A-390(b)	160D-706(b)	s. 18