

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 570\*

Short Title: Housing Violation Closings.

(Public)

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Sponsors: Senator Block.

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Referred to: Local Government and Regional Affairs.

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April 11, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE CITIES TO VACATE AND CLOSE CERTAIN  
3 DWELLINGS FOUND TO BE IN VIOLATION OF THE MINIMUM HOUSING  
4 CODE.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of**  
8 **public officer.**

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

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

16 (2) That whenever a petition is filed with the public officer by a public  
17 authority or by at least five residents of the city charging that any  
18 dwelling is unfit for human habitation or whenever it appears to the  
19 public officer (on his own motion) that any dwelling is unfit for human  
20 habitation, the public officer shall, if his preliminary investigation  
21 discloses a basis for such charges, issue and cause to be served upon  
22 the owner of and parties in interest in such dwellings a complaint  
23 stating the charges in that respect and containing a notice that a  
24 hearing will be held before the public officer (or his designated agent)

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

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

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

19 b. If the repair, alteration or improvement of the dwelling cannot  
20 be made at a reasonable cost in relation to the value of the  
21 dwelling (the ordinance of the city may fix a certain percentage  
22 of this value as being reasonable), requiring the owner, within  
23 the time specified in the order, to remove or demolish such  
24 dwelling. However, notwithstanding any other provision of  
25 law, if the dwelling is located in a historic district of the city  
26 and the Historic District Commission determines, after a public  
27 hearing as provided by ordinance, that the dwelling is of  
28 particular significance or value toward maintaining the  
29 character of the district, and the dwelling has not been  
30 condemned as unsafe, the order may require that the dwelling  
31 be vacated and closed.

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

41 (5) That, if the owner fails to comply with an order to remove or demolish  
42 the dwelling, the public officer may cause such dwelling to be  
43 removed or demolished. The duties of the public officer set forth in  
44 subdivisions (4) and (5) shall not be exercised until the governing body

1 shall have by ordinance ordered the public officer to proceed to  
2 effectuate the purpose of this Article with respect to the particular  
3 property or properties which the public officer shall have found to be  
4 unfit for human habitation and which property or properties shall be  
5 described in the ordinance. No such ordinance shall be adopted to  
6 require demolition of a dwelling until the owner has first been given a  
7 reasonable opportunity to bring it into conformity with the housing  
8 code. This ordinance shall be recorded in the office of the register of  
9 deeds in the county wherein the property or properties are located and  
10 shall be indexed in the name of the property owner in the grantor  
11 index.

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

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

41 This ordinance shall be recorded in the Office of the Register of  
42 Deeds in the county wherein the property or properties are located and  
43 shall be indexed in the name of the property owner in the grantor

1 index. If the owner fails to comply with this ordinance, the public  
2 officer shall effectuate the purpose of the ordinance.

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

6 (6) That the amount of the cost of repairs, alterations or improvements, or  
7 vacating and closing, or removal or demolition by the public officer  
8 shall be a lien against the real property upon which the cost was  
9 incurred, which lien shall be filed, have the same priority, and be  
10 collected as the lien for special assessment provided in Article 10 of  
11 this Chapter. If the dwelling is removed or demolished by the public  
12 officer, he shall sell the materials of the dwelling, and any personal  
13 property, fixtures or appurtenances found in or attached to the  
14 dwelling, and shall credit the proceeds of the sale against the cost of  
15 the removal or demolition and any balance remaining shall be  
16 deposited in the superior court by the public officer, shall be secured in  
17 a manner directed by the court, and shall be disbursed by the court to  
18 the persons found to be entitled thereto by final order or decree of the  
19 court. Nothing in this section shall be construed to impair or limit in  
20 any way the power of the city to define and declare nuisances and to  
21 cause their removal or abatement by summary proceedings, or  
22 otherwise.

23 (7) If any occupant fails to comply with an order to vacate a dwelling, the  
24 public officer may file a civil action in the name of the city to remove  
25 such occupant. The action to vacate the dwelling shall be in the nature  
26 of summary ejectment and shall be commenced by filing a complaint  
27 naming as parties-defendant any person occupying such dwelling. The  
28 clerk of superior court shall issue a summons requiring the defendant  
29 to appear before a magistrate at a certain time, date and place not to  
30 exceed 10 days from the issuance of the summons to answer the  
31 complaint. The summons and complaint shall be served as provided in  
32 G.S. 42-29. The summons shall be returned according to its tenor, and  
33 if on its return it appears to have been duly served, and if at the hearing  
34 the public officer produces a certified copy of an ordinance adopted by  
35 the governing body pursuant to subdivision (5) authorizing the officer  
36 to proceed to vacate the occupied dwelling, the magistrate shall enter  
37 judgment ordering that the premises be vacated and that all persons be  
38 removed. The judgment ordering that the dwelling be vacated shall be  
39 enforced in the same manner as the judgment for summary ejectment  
40 entered under G.S. 42-30. An appeal from any judgment entered  
41 hereunder by the magistrate may be taken as provided in G.S. 7A-228,  
42 and the execution of such judgment may be stayed as provided in G.S.  
43 7A-227. An action to remove an occupant of a dwelling who is a  
44 tenant of the owner may not be in the nature of a summary ejectment

1 proceeding pursuant to this paragraph unless such occupant was served  
2 with notice at least 30 days before the filing of the summary ejectment  
3 proceeding that the governing body has ordered the public officer to  
4 proceed to exercise his duties under paragraphs 4 and 5 of this section  
5 to vacate and close or remove and demolish the dwelling."

6 Sec. 2. This act is effective upon ratification.