

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1180

Short Title: Migrant Worker Housing Act. (Public)

Sponsors: Representatives Alexander, Glazier (Primary Sponsors); B. Allen, Coleman, Faison, Harrison, Insko, Luebke, and Weiss.

Referred to: Agriculture.

April 12, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENHANCE LAWS RELATED TO THE MIGRANT HOUSING ACT OF  
3 NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 95-223 reads as rewritten:

6 "**§ 95-223. Definitions.**

7 As used in this Article, unless the context requires otherwise:

- 8 (1) "Agricultural employment" means employment in any service or  
9 activity included within the provisions of Section 3(f) of the Fair Labor  
10 Standards Act of 1938, or section 3121(g) of the Internal Revenue  
11 Code of 1986; and the handling, planting, drying, packing, packaging,  
12 processing, freezing, or grading prior to delivery for storage of any  
13 agricultural or horticultural commodity in its unmanufactured state and  
14 including the harvesting of Christmas trees, the planting of trees, and  
15 the harvesting of saltwater ~~crabs;~~crabs.
- 16 (2) "Commissioner" means the Commissioner of Labor of North  
17 ~~Carolina;~~Carolina.
- 18 (3) "Day" means a calendar ~~day;~~day.
- 19 (4) "Established federal standard" means those standards as set out in, and  
20 interpretations issued by, the Secretary of the United States  
21 Department of Labor in 29 C.F.R. 1910.142, as ~~amended;~~amended.
- 22 (5) "Migrant" means an individual, and his dependents, who is employed  
23 in agricultural employment ~~of a seasonal or other temporary nature,~~  
24 ~~and who is required to be absent overnight from his permanent place~~  
25 ~~of residence;~~ where housing is provided as an incident of employment.
- 26 (6) "Migrant housing" or "migrant housing unit" means any facility,  
27 structure, real property, or other unit that is established, operated, or  
28 used as living quarters for ~~migrants;~~migrants.

- 1 (7) "Operator" means any person who owns or controls migrant ~~housing;~~  
2 ~~and housing~~ and any person who contracts with or employs an operator  
3 to provide him or her with migrants for the purpose of performing  
4 agricultural employment.
- 5 (8) "Person" means an individual, partnership, association, joint stock  
6 company, corporation, trust, or legal ~~representative;~~representative.
- 7 (8a) "Reasonable cost" does not include a profit to the operator and may  
8 not exceed actual cost or fair market value, whichever is less.
- 9 (8b) "Retaliatory action" means the discharge, suspension, demotion,  
10 retaliatory relocation of a migrant, eviction or summary ejection, or  
11 other adverse action taken against a migrant or the migrant's dependent  
12 in the terms, conditions, privileges, and benefits of tenancy or  
13 employment.
- 14 (9) "Substantive violation" means a violation of a safety and health  
15 standard, including those that provide fire prevention, and adequate  
16 and sanitary supply of water, plumbing maintenance, structurally  
17 sound construction of buildings, effective maintenance of those  
18 buildings, provision of adequate heat as weather conditions require,  
19 and reasonable protection for inhabitants from insects and rodents. A  
20 substantive violation does not include technical or procedural  
21 violations of safety and health standards."

22 **SECTION 2.** G.S. 95-224 reads as rewritten:

23 **"§ 95-224. Scope.**

24 The provisions of this Article shall apply to all operators and migrants except:

- 25 (1) Any ~~person-operator~~ who owns housing and who, in the ordinary  
26 course of that person's business, regularly provides housing on a  
27 commercial basis to the general public; and who provides housing to  
28 migrants of the same character and on the same or comparable terms  
29 and conditions as those provided to the general ~~public;~~public,  
30 provided that more than fifty percent (50%) of the tenants are not  
31 migrants or their dependents; or
- 32 (2) A housing unit owned by one or more of the occupants and occupied  
33 solely by a family unit."

34 **SECTION 3.** G.S. 95-225 reads as rewritten:

35 **"§ 95-225. Adoption of standards and interpretations.**

- 36 (a) Unless otherwise provided, all established federal standards are adopted and  
37 shall be enforced by the Department of Labor of North Carolina.
- 38 (b) The Commissioner shall provide for publication in the North Carolina  
39 Register any modification by the federal government of the established federal  
40 standards within 30 days of their adoption.
- 41 (c) For the protection of the public health, the Commission for Health Services  
42 shall adopt and the Department of Environment and Natural Resources shall enforce  
43 rules that establish water quality and water sanitation standards for migrant housing  
44 under this Article.

1 (d) The requirements for the collection, treatment, and disposal of sewage, as  
2 provided in Article 11 of Chapter 130A, and the rules adopted pursuant to that Article  
3 shall apply to migrant housing.

4 (d1) Charges for migrant housing shall not exceed reasonable cost. The employer  
5 has the burden of providing reasonable cost through records or other credible evidence.

6 (e) Whenever the outside temperature falls below 50 degrees Fahrenheit and the  
7 migrant housing is occupied, heating equipment shall be provided by the operator and  
8 ~~operable.~~ operable by the migrant. Regardless of outside temperature, this equipment  
9 must be capable of maintaining living areas of 65 degrees Fahrenheit. If housing is to be  
10 occupied from May 15 until September 1 only, no heating equipment shall be required  
11 at the time of preoccupancy inspection. No migrant shall be charged for heat or fuel for  
12 heat.

13 (f) All migrant housing shall comply with the standards regarding fire safety for  
14 migrant housing as adopted by the Commission for Health Services and in effect on  
15 January 1, 1989.

16 (g) For purposes of this Article, the established federal standard provided in 29  
17 C.F.R. 1910.142(i) does not apply. The following standards shall apply to migrant  
18 housing:

19 (1) Food preparation facilities and eating areas shall be provided and  
20 maintained in a clean and sanitary ~~manner;~~ manner.

21 (2) A kitchen facility shall be provided with an operable stove with at least  
22 one burner per ~~five-three~~ three people, and in no event with less than two  
23 burners; an operable refrigerator with ~~.75-two~~ two cubic feet per person  
24 minimum; a ~~table;~~ table and chairs or benches providing sufficient  
25 seating and table space to accommodate the number of migrants for  
26 which the housing is permitted, and a sink with running hot and cold  
27 ~~water;~~ water.

28 (3) Surfaces with which food or drink come in contact shall be easily  
29 accessible for cleaning, and shall be nontoxic, resistant to corrosion,  
30 nonabsorbent, and free of open ~~erevices;~~ crevices.

31 (4) Acceptable storage facilities shall be provided and shall be kept clean  
32 and free of ~~vermin;~~ and vermin.

33 (5) All food service facilities, other than those where migrants procure and  
34 prepare food for their own or their family's consumption, shall comply  
35 with the standards regarding kitchen and dining room facilities for  
36 migrant housing, as adopted by the Commission for Health Services  
37 and in effect on January 1, 1989.

38 (6) Migrants shall have access to all food preparation facilities and eating  
39 areas at all times during their occupancy of the migrant housing.

40 (h) Each migrant housing unit shall have at least one working telephone that is  
41 accessible at all times if there is no working public telephone within a distance of one  
42 mile from the unit.

1        (i) Each toilet, water closet, chemical toilet, and urinal shall be separated by a  
2 wall on three sides at least six feet in height and by a door which can be locked from the  
3 inside.

4        (j) For purposes of this Article, the established federal standards provided in 29  
5 C.F.R. § 1910.142(d)(5-6) do not apply. The following standards shall apply to migrant  
6 housing:

7            (1) Where toilet facilities are shared, the number of water closets provided  
8 for each sex shall be based on the maximum number of persons of that  
9 sex which the camp is designed to house at any one time, in the ratio  
10 of one such unit to each 10 persons, with a minimum of two units for  
11 any shared facility.

12           (2) Urinals shall be provided on the basis of one unit or two linear feet of  
13 urinal trough for every 15 men. The floor from the wall and for a  
14 distance not less than 15 inches measured from the outward edge of  
15 the urinals shall be constructed of materials impervious to moisture.  
16 Where water under pressure is available, urinals shall be provided with  
17 an adequate water flush.

18           (3) Privies are not permitted.

19        (k) Each migrant housing unit in which three or more migrants live shall have a  
20 working washing machine and dryer, and at least one working washing machine and  
21 dryer shall be provided for every 10 migrants.

22        (l) All doors opening to the exterior shall have functioning deadbolt locks, and  
23 each migrant shall be provided a key to any door that opens into a common area and to  
24 any door that opens into his or her sleeping quarters.

25        (m) All exterior windows shall have functioning locks.

26        (n) A migrant is entitled to receive visitors to the migrant housing provided for  
27 lawful purposes. Nothing contained in this subsection shall prohibit an owner from  
28 banning or barring any visitors who are engaged in criminal activity.

29        (o) Operators shall keep all common areas in safe and sanitary condition.

30        (p) For purposes of this Article, the established federal standard provided in 29  
31 C.F.R. § 1910.142(b)(9) does not apply. The following standards shall apply to migrant  
32 housing:

33           (1) Sleeping quarters shall be provided which are separate from cooking  
34 facilities.

35        (q) Each migrant shall be provided with a mattress that is clean and in good  
36 repair, as follows:

37           (1) Mattresses shall comply with Commission for Health Services rules on  
38 sanitation, Title 15A Chapter 18B .0202-.0215 and G.S. 130A-273.

39           (2) Mattresses shall not be less than four inches thick and shall be the  
40 same length and width as the bunks.

41           (3) Mattresses shall not have any metal, plastic, or other rigid framing  
42 component.

43           (4) Mattress ticking shall be durable and water-repellent.

44           (5) Mattresses shall be of fire-resistant and nontoxic construction.

1 (r) One shower head within a separate shower stall shall be provided for every  
2 five migrants."

3 **SECTION 4.** G.S. 95-226 reads as rewritten:

4 **"§ 95-226. Application for inspection.**

5 (a) Every operator shall request a preoccupancy inspection at least 45 days prior  
6 to the anticipated date of occupancy by applying directly to the Department of Labor of  
7 North Carolina or to the local health department. Upon receipt of an application by the  
8 Department of Labor of North Carolina, the Department of Labor of North Carolina  
9 shall immediately notify, in writing, the appropriate local health department; and the  
10 local health department shall inspect the migrant housing for compliance with  
11 G.S. 95-225(c) and (d). Upon receipt of the application by the local health department,  
12 the local health department shall immediately notify, in writing, the Department of  
13 Labor of North Carolina and shall inspect the migrant housing for compliance with  
14 G.S. 95-225(c) and (d).

15 The local health department shall forward the results of its inspection to the  
16 Department of Labor of North Carolina and to the operator. The Department of Labor of  
17 North Carolina shall inspect the migrant housing and certify to the operator the results  
18 of the inspection.

19 (b) The Department of Labor of North Carolina shall provide local health  
20 departments and Agricultural Extension offices with blank copies of forms for applying  
21 for preoccupancy inspections.

22 (c) The application for inspection shall include:

23 (1) The name, address, and telephone number of the operator;

24 (2) The location of the migrant housing;

25 (3) The anticipated number of migrants to be housed in the migrant  
26 housing; and

27 (4) The anticipated dates of occupancy of the migrant housing.

28 (d) Except as provided in subsection (e) of this section, an operator may allow  
29 the migrant housing to be occupied only if the migrant housing has been certified by the  
30 Department of Labor of North Carolina or the United States Department of Labor to be  
31 in compliance with all of the standards under this Article, except that an operator may  
32 allow migrant housing to be occupied on a provisional basis if the operator applied for a  
33 preoccupancy inspection at least 45 days prior to occupancy and the preoccupancy  
34 inspection was not conducted by the Department of Labor of North Carolina at least  
35 four days prior to the anticipated occupancy. Upon subsequent inspection by the  
36 Department of Labor of North Carolina, such provisional occupancy shall be revoked if  
37 any deficiencies have not been corrected within the period of time specified by the  
38 Department of Labor of North Carolina, or within two days after receipt of written  
39 notice provided on-site to the operator. No penalties may be assessed for any violation  
40 of this Article which are found during the first preoccupancy inspection, inspection of a  
41 migrant housing unit unless substantive violations exist during provisional occupancy.

42 (e) If an operator has applied for an inspection pursuant to this Article and one or  
43 more migrants arrives in advance of the arrival date stated in the application, the

1 operator shall notify the Department of Labor of North Carolina within two working  
2 days of the occupancy of the migrant housing.

3 (f) The Department of Labor of North Carolina shall conduct annual  
4 postoccupancy inspections of operators who have been issued a fine in any of the  
5 previous three calendar years or who have more than one complaint filed against him or  
6 her in the previous three calendar years."

7 **SECTION 5.** G.S. 95-227 reads as rewritten:

8 **"§ 95-227. Enforcement.**

9 (a) For the purpose of enforcing the standards provided by this Article, the  
10 provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall  
11 apply under this Article in a similar manner as they apply to places of employment  
12 under OSHANC; however, G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to  
13 migrant housing; the Occupational Safety and Health Act of North Carolina. For the  
14 purposes of this Article, the term:

15 (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through  
16 G.S. 95-142 shall be construed to mean an ~~operator~~; operator or the  
17 person or entity contracting with an operator for the operator to  
18 provide him or her with migrants for the purpose of performing  
19 agricultural employment.

20 (2) "Employee" shall be construed to mean a ~~migrant~~; and migrant.

21 (3) "Director" shall mean the agent designated by the Commissioner to  
22 assist in the administration of this Article.

23 The Commissioner may establish a new division to enforce this Article.

24 (b) The Department of Labor of North Carolina shall maintain a list of operators  
25 and the physical address of their migrant housing units, number and summary of  
26 complaints filed annually with the division that enforces this Article, and number and  
27 summary of inspections performed annually by the division that enforces this Article,  
28 including the number and type of citations issued and the violations found. The list shall  
29 be made available to the public upon written request within 15 days.

30 (c) If the condition of the housing is such that the Director determines that the  
31 housing is uninhabitable, the migrants shall be allowed to remain in the housing for a  
32 reasonable period, not to exceed 14 days, while the operator locates alternative housing  
33 or makes such repairs as render the housing inhabitable. The alternative housing must  
34 be provided at the same rate or less than the rate paid by the migrants for the  
35 uninhabitable housing.

36 (d) The Department of Labor of North Carolina shall establish and implement  
37 procedures to identify and prosecute the most serious violators of this Article, including  
38 failure to apply for or obtain permits to operate migrant housing pursuant to the Article.

39 (e) The Department of Labor of North Carolina shall maximize the efforts of  
40 personnel implementing this Article by seeking to use new resources and nontraditional  
41 means, by coordinating with State, local, and federal agencies, and by training and  
42 coordinating with local health and building departments.

1       (f)     All of the requirements of this Article shall be performed by employees of the  
2 Department of Labor of North Carolina who, to the extent feasible, shall be bilingual in  
3 Spanish and English.

4       (g)     An operator shall not take retaliatory action against a migrant because of a  
5 good faith attempt to exercise, secure, or enforce any rights or protections existing  
6 under this Article or any other State or federal law.

7       (h)     Any right or obligation declared by this Article is enforceable by civil action,  
8 in addition to other remedies in law and in equity."

9             **SECTION 6.** This act becomes effective January 1, 2006.