
Coates' Canons Blog: Proposed Reorganization and Modernization of Planning and Development Regulation Statutes

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UPDATE: The bill discussed below was not adopted in the 2015 or 2017 sessions, but a substantially similar bill was adopted in 2019. It is S.L. 2019-111 (Part II, S. 355). More details and an annotated version of the adopted legislation is online [here](#).

Do planners, developers, neighborhood activists, local officials, and land use lawyers need to get ready for a complete reorganization and modernization of state statutes on local planning and development regulation? They will if legislation recently introduced in the 2015 session of the General Assembly is adopted.

House Bill 548, introduced on April 2, 2015, is entitled “AN ACT TO REORGANIZE, CLARIFY, AND MODERNIZE STATUTES REGARDING LOCAL PLANNING AND DEVELOPMENT REGULATION.” It proposes to do just that.

Where did this bill come from? How was it developed? And just what does it really do?

Origins

H. 548 originated as a proposal developed by the Zoning, Planning, and Land Use Law Section of the North Carolina Bar Association. Over the past several years this group has developed several legislative proposals to clarify the state land use law on several key points. They proposed a reform of the process for judicial review of land use decisions that was enacted in 2009 as G.S. 160A-393. An update of the statute on quasi-judicial land use decision-making and boards of adjustment was proposed and enacted in 2013 as a revised G.S. 160A-388. In each instance the bar association proposed legislative reforms that clarified and simplified the law without making major policy changes. The proposals modernized and improved the law and were not designed to advantage either the local government or development community. Both bills were adopted with near-unanimous bipartisan legislative support.

Based on this track record of success with policy neutral legislation, the same bar association group in 2013 embarked on a more audacious undertaking – a complete reorganization and modernization of the entire body of state laws on local planning and development regulation, what is now in the General Statutes as Article 19 of Chapter 160A for cities and Article 18 of Chapter 153A for counties. Although it would be more challenging to remain policy neutral across such a large body of law, the group was committed to maintaining the approach of including only consensus-based substantive amendments in undertaking this project.

North Carolina's planning and development regulation statutes have evolved over the past century. Statutes on building standards date to 1905, planning statutes to 1919, and zoning was first adopted in 1923. Over the decades much more has been added – housing codes in 1939, subdivision regulation in 1955, building inspection in 1969, and many more individual additions and edits over the decades. The various statutes were collected as articles in Chapters 160A and 153A when those chapters were created in the early 1970s. Beyond that, there has been no attempt to integrate, consolidate, and put these various separate laws into a coherent whole. Until now.

The group that previously worked on reforming and modernizing key individual statutes – G.S. 160A-388 and 160A-393 –

endeavored to do the same for the state's planning and development statutes. Their objective was to develop a new organizational structure for these statutes that was coherent and easy to follow, allowing seasoned professionals and new comers as well to quickly find applicable laws. In addition, the group proposed to edit the entire body of law to secure greater clarity, removing archaic, obsolete, and confusing language and recommending greater uniformity and consistency among the various laws. Finally, where consensus among the various affected parties was possible, the group sought to incorporate modest commonsense reforms and fixes to nagging problems and ambiguities in the statutes.

Process

A small drafting committee worked from the summer of 2013 to the fall of 2014 to prepare a draft for broader discussion (full disclosure here – this blog's author was a member of that committee, along with attorneys **Tom Terrell, LeAnn Nease Brown, and Mike Brough, with Robin Currin replacing Brough in 2016**). The initial draft of the proposal that would become H. 548 was completed in October 2014. It was immediately circulated as a discussion draft to everyone the bar association committee thought would be interested or who could offer suggestions for improvement. Copies were mailed to all city and county attorneys, planners, and zoning administrators. Copies were shared with key government and development interest groups – homebuilders, commercial and industrial developers, planners, zoning officials, city and county government associations, attorneys, state agencies, the Government and Public Sector section of the bar association, and others. Listserves and web postings were used as well as direct mailings and individual meetings. In all some 4,000 individuals and organizations were asked to review and comment on the draft.

A substantial number of reviewers took the committee up on the offer to suggest improvements. Some reviewers raised conceptual concerns, some asked for a few specific changes, and a number of others submitted detailed line by line proposed edits. In early January 2015 an updated draft bill that responded to these initial reviews was re-circulated for review and comment, a process that was repeated in February and again in March. During this period the proposed bill also went through the North Carolina Bar Association's legislative review process to assure it was indeed a bipartisan, consensus, "good government" proposal.

The review process resulted in hundreds of edits to the original draft of the bill. Some new ideas were added. Some provisions were dropped when it became clear there was not broad consensus support for a particular idea or that more detailed study and discussion was needed before the law should be amended. The end result was a bill approved by the council of the Zoning, Planning, and Land Use Section on March 24, 2015.

While the length of the draft bill is imposing, coming in at 171 pages, most of the provisions are in the existing law and have just been moved and reorganized. The draft bill shows how the proposal relates to the current statutory language by showing deletions in current statutory language with strike-through and new language as underlined. The proposal includes nearly 600 footnotes to explain each of the changes proposed. A chart showing where all of the existing statutes are relocated in the proposed new statute is included at the end of the bill draft linked above.

The primary sponsors for H. 548 are Rep. Dan Bishop (a former member of the Mecklenburg County Board of Commissioners), Rep. Paul Stam (who was the lead sponsor of the bill to revise G.S. 160A-388 in 2013 and is a former town attorney), Rep. Rob Bryan (chair of the House Judiciary IV Committee), and Rep. Susie Hamilton (a former planner and past executive director of Wilmington Downtown).

Summary

So what is included in H. 548? More than can be summarized here, but the highlights are noted below.

First, it reorganizes the statutes into a coherent, accessible framework. It consolidates provisions common to all development regulations into a single initial Article: Proposed Article 1 includes definitions and provisions on maps, moratoria, vested rights, and other provisions that are generally applicable. Provisions on geographic jurisdiction are consolidated into Article 2. Creation and duties of various boards and commissions are consolidated into Article 3. Administration and enforcement provisions that apply to multiple types of development regulations are brought together in Article 4. For the first time, general provisions regarding applications, permit reviews, enforcement, appeals, and quasi-judicial procedures are pulled together in a single location. Detailed administrative provisions that apply to specialized regulations (most notably building permits) are left in the Articles that address those specific regulations. Article 5 covers planning and Article 6 consolidates the provisions that govern the process for adopting and amending ordinances. The

remaining Articles include specialized provisions that apply to zoning, subdivision, housing codes, building code enforcement, development agreements, regulation of particular land uses or areas, and judicial review.

Second, the provisions for cities and counties are consolidated. Intentional differences between city and county authority are retained, such as the bona fide farm use exemption in county zoning and the protest petition in city zoning. But unintended differences that have crept in over the decades are eliminated in order to provide greater simplicity and uniformity. Since these provisions apply to both cities and counties, the proposal places the laws in a new Chapter – Chapter 160D – rather than placing the laws in either the city (160A) or county (153A) chapters of the General Statutes.

Third, it provides more uniform terminology and procedures. For example, rather than referring to quasi-judicial zoning approvals as special use permits, conditional use permits, or special exceptions, it simplifies matters by requiring all ordinances to use the standard term “special use permit” for a quasi-judicial zoning approval. It replaces the confusing hybrid legislative and quasi-judicial “conditional use district/conditional use permit” with a single, purely legislative “conditional zoning.” It largely eliminates use of jurisdiction population size or specialized provisions only applicable to specified jurisdictions by making these provisions uniformly applicable to all cities and counties.

Fourth, it clarifies and simplifies the language of the statute without changing the scope or meaning of the provisions. Simple declarative sentences, gender neutral language, and contemporary terminology replace outdated provisions.

Fifth, it codifies some key common law principles that have been developed by the courts. For example, mandatory exactions required for development approvals are limited to those expressly authorized, those needed to address the impacts reasonably expected to be generated, and no more than those roughly proportional to the scale of impacts anticipated. The original draft of the bill also included a codification of the common law vested right, but consensus was not reached on the formulation of that so it was not included in the final draft bill. [*Note: Most of the provisions codifying common law principles are deleted in the 2017 version of the legislation.*]

Finally, the bill includes a number of common sense, consensus reforms. For example, the bill allows use of digital maps, allows incorporation by reference of flood insurance rate maps, adds conflict of interest provisions where a decision-maker’s close family member is involved, requires a plan to be adopted prior to zoning, and allows smaller areas in central business districts to be included in a development agreement. A list of these reforms prepared by the drafting committee is included in the overview of the bill draft linked above. Where consensus was not reached on particular items during the vetting process described above, those provisions were deleted from the proposed bill. The legislative process, which is now underway, will determine which of these are indeed consensus, noncontroversial items.

The intent of those drafting and proposing this bill to the General Assembly was to clarify and modernize the statutes, not to make major policy changes. Other bills are already before the legislature to address more controversial issues, among them bills proposed to eliminate the zoning protest petition, eliminate municipal extraterritorial planning jurisdiction, revise the judicial appeal process for land use regulatory decisions, and to limit regulatory design standards for single-family homes.

Some, all, or none of these bills may eventually be enacted. But there is certainly plenty to talk about in the legislative building this spring when it comes to planning and development regulation.

Links

- www.sog.unc.edu/resources/microsites/planning-and-development-regulation/proposed-ch-160d-2019
- www.smithmoorelaw.com/terrell_tom
- www.brownandbunch.com/attorneys/leann-nease-brown/
- www.broughlawfirm.com/attorney-profiles.asp
- www.ashevillenc.gov/Departments/Legal.aspx