

Decoding the Recent Changes to North Carolina Code and Zoning Regulations

Written By **Trafton P. Dinwiddie** (tpdinwiddie@wardandsmith.com) and **Alexandra E. Ferri** (aeferri@wardandsmith.com)

April 12, 2024



The North Carolina General Assembly made several significant steps during its 2023 legislative session to respond to the construction and development boom throughout the state and the subsequent delays in permitting and inspections.

As lawmakers begin to prepare for their short legislative session beginning in April, we will be exploring the laws that were passed during the legislative long session, as well as those that are still pending, which could be acted on when lawmakers reconvene.

House Bill 488

In March 2023, lawmakers introduced House Bill 488 entitled Code Council Reorganization and Various Code Amendments. Among other changes that can be found in the bill, lawmakers proposed separating the Residential Code Committee from the overall Building Code Council effective January 1, 2026, and thus granting the rulemaking authority over all residential buildings in North Carolina to the newly formed Residential Code Council. Unlike the Building Code Council, the new Residential Code Council will consist of only 13 members, who are to be appointed by the General Assembly and Governor, whereas currently, the entire Building Code Council is appointed by the Governor to serve six-year terms.

Another notable change in the bill as introduced is a prohibition on adoption of the 2021, or any future, energy efficiency and conservation related codes until 2031. Following some negotiations through the summer months of the legislative session, this prohibition was eventually reduced to 2026, meaning that some of the decades-old energy efficiency codes would be left unchanged for another two years.

Following passage of the bill on June 27th, 2023, Governor Cooper vetoed the bill, saying in part in his veto message; "This bill stops important work to make home construction safer from disaster and more energy efficient, and ultimately will cost homeowners and renters more money...". Lawmakers subsequently overrode the Governor's veto on August 16th, and House Bill 488 became law.

After the override vote and establishment of the Residential Code Council, Governor Cooper sued General

Assembly leaders, challenging the appointment structure changes that had been passed into law during the 2023 legislative session. That lawsuit included the changes to the Building Code Council and particularly the legislative appointments provided for the Residential Code Council in House Bill 488. On February 26th, 2024, a three-judge panel of Superior Court Judges upheld the legislative changes to five of the seven challenged Boards, including the Residential Code Council. The Governor as well as legislative leaders have both filed notice of appeal on the case, and it remains ongoing.

House Bill 893

Another notable piece of legislation that emerged but has yet to be enacted by the General Assembly is House Bill 893 which would provide for authorization of private commercial building inspections. Initially introduced in March 2023, the bill did not pass the House until September 19th, 2023, after months of negotiations and other priorities captured lawmakers' attention. The primary objective the bill attempts to accomplish is to alleviate the delays that builders and contractors experience, particularly in areas of high, rapid growth and local governments who struggle to keep up with demand, especially given vacancy rates post-pandemic.

While North Carolina already allows inspectors to "pool" and perform inspections and certification in adjacent jurisdictions at the request of the applicant, House Bill 893 would allow the North Carolina Code Officials Qualifications Board to license and permit private inspectors to inspect and certify building, plumbing, electrical, mechanical and fire codes. Some may look to the composition of the General Assembly and its various members who come from development and construction backgrounds and wonder why the bill has yet to pass, especially given the dozens of bills related to the subject that have passed in recent years, which in part has led to the robust development and construction economy North Carolina now enjoys. One potential hold-up could be the potential impact of private commercial inspections on local government revenues. Many, if not all, local governments rely on the receipts from building inspection-related fees to employ and run their various planning departments. Builders and contractors opting to have a private commercial inspector service their development could have a vast impact on some local governments in North Carolina into the future, especially those that were previously rural and are experiencing rapid growth.

Ward and Smith attorneys and government relations professionals will continue to monitor these issues, as well as the related litigation, and will provide timely and in-depth analysis as soon as they become available.

--

© 2024 Ward and Smith, P.A. For further information regarding the issues described above, please contact Trafton P. Dinwiddie or Alexandra E. Ferri .

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.