**SENATE BILL 720, GSC Conforming Amends/2019 Land-Use Changes**Introduced by Senators Edwards, Wells, and D. Davis and referred to the Senate Judiciary Committee.

This bill would:

• Complete the consolidation of land-use provisions into one chapter of the general statutes as directed by Session Law 2019-111 which would include various statutory cross references and make technical and clarifying changes to land-use provisions.

• Amend the permit choice provision to now provide that if a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, then statute related to permit choice applies;

• Specify that amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to:

(1) buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued,   
  
(2) subdivisions of land for which a development permit application authorizing the subdivision has been submitted and issued,   
  
(3) a site-specific vesting plan,   
  
(4) a multi-phased development, and   
  
(5) a vested right established by the terms of a development agreement.

* Would provide that the establishment of a vested right under the above does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. Would provide that a vested right precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in state or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use; • set local development permits to expire one year after issuance unless work authorized by the permit has substantially commenced; would allow local land development regulation to provide for a longer permit period;

• Set the statutory vesting to expire for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this statute for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. Would remove the provision setting building permits to expire six months after issuance. Would provide that where multiple local development permits are required to complete a development project, the applicant may choose the version of each of the local land development regulations applicable to the project;

• Amend the definition of multi-phased development to be a development containing 25 acres (currently 100 acres) or more that is (1) submitted for development permit approval to occur in more than one phase and (2) subject to a master development plan with committed elements showing the type and intensity of use of each phase;

• Concerning site-specific vesting plans, this would amend two of the five conditions under which an established vested right may be changed to include conditions where upon findings, by ordinance after notice and an evidentiary hearing: (1) that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan or (2) that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the local government of the site-specific vesting plan or the phased development plan. Would provide that if a local government fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division;

• Add that if a city elects to adopt zoning or subdivision regulations, they must be applied to the city's entire planning and development regulation jurisdiction. If a county chooses to do so, each may be applied to all or a part of the county's planning and development regulation jurisdiction;

• Require a county to make appointments to a joint municipal-county planning agency or board of adjustment within 90 days of receiving a city's request to make the appointments;

• Provide that a development approval expires one year from the date of issuance if the work authorized by the approval has not been substantially commenced; would remove language immediately expiring a development approval in instances when after commencement, the work or activity is discontinued for 12 months. Would allow local development regulations to provide for development approvals of longer duration for specified types of development approvals;

• Require local governments, as a condition of adopting and applying zoning regulations under statute, to adopt and reasonably maintain a comprehensive plan or land use plan;

• Prohibit initiating or enforcing an amendment to zoning regulations or a zoning map that down-zones property without the written consent of all property owners whose property is subject to the amendment, unless the down-zoning amendment is initiated by the local government;

• Require the process for handling a written statement from a resident or property owner about a proposed amendment, modification, or repeal to a zoning regulation, be applicable to a map amendment that has been properly initiated as provided under statute;

• Prohibit a zoning regulation from setting a minimum square footage of any structures subject to regulation under the NC Residential Code for One- and Two-Family Dwellings;

• Add that, unless consented to in writing by the petitioner, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law;

• Provide examples of impermissible conditions and safeguards;

• Provide that when adopting regulations under Article 7: Zoning Regulation, a local government may not use a definition of building, dwelling, dwelling unit, bedroom or sleeping unit that is inconsistent with any definition of those terms in another statute or rule adopted by a state agency;

• Add that a county regulation may provide that in lieu of required street construction, a developer may provide funds to a county to be used for the development of roads to serve provide that when adopting regulations under Article 7: Zoning Regulation, a local government may not use a definition of building, dwelling, dwelling unit, bedroom or sleeping unit that is inconsistent with any definition of those terms in another statute or rule adopted by a state agency;

• Add that a county regulation may provide that in lieu of required street construction, a developer may provide funds to a county to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development;

• Make the type of performance guarantee at the election of the developer, adding that the duration of the performance guarantee is initially one year, unless the scope of work necessitates a longer duration. Would set the completion date in the case of a bonded obligation as one year from the date the bond is issued, unless the scope of the work necessitates a longer duration. Would require a local government to return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if they are subject to local government acceptance. Would add provisions for determining the amount of the performance guarantee and add that the local government may require the performance guarantee to be posted either at the time the plat is recorded or at a subsequent time. Would apply to performance guarantees issued on or after the effective date of this act;

• Prohibit requiring a developer or builder to bury power lines in the specified circumstances. Prohibits setting a minimum square footage of any structures subject to regulation under the NC Residential Code for One- and Two-Family Dwellings;

• Amend the requirements to be met before a local government can accept and approve a design or proposal for a component or element in the construction of a building from a licensed architect or professional engineer, to require that the necessary certification be made on a form created by the NC Building Code Council;

• Add that if a local government reviews residential building plans for structures regulated under the NC Residential Code for One- and Two-Family Dwellings, all initial reviews for the building permit must be performed within 15 business days of plan submission;

• Add that a permit holder may request and be issued a temporary certificate of occupancy if the conditions of the NC State Building Code are met;

* mend provisions concerning regulations authorized as to the repair, closing, and demolition of nonresidential buildings or structures, to provide that regulations adopted under the statute are also applicable within defined geographical areas designated for improvement and investment in an adopted comprehensive plan;

• Allow the governing board of a local government or its delegated commission to petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell a vacant building, structure, or dwelling upon the occurrence of any of the five specified occurrences, each of which is deemed a nuisance per se. Would allow the court, instead of appointing a qualified receiver to rehabilitate or sell a vacant building, structure, or dwelling, to appoint an owner or other party in interest in the property to rehabilitate or demolish the property. Would give a receiver appointed to rehabilitate or demolish a vacant building, structure, or dwelling the right of possession with authority to take the specified actions. Would set out actions that may be taken by a receiver appointed to sell and actions that must be taken when a receiver forecloses on the lien. Would apply to any nuisance per se that occurs on or after October 1, 2018, or any action listed in statute that was not complied with as of that date;

• Require that when conducting inspections as part of a targeted effort to respond to blighted or potentially blighted conditions, the local government must provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a legislative hearing regarding the plan, and hold a legislative hearing regarding the plan;

• Concerning appeals of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari, this would require the court to allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the specified issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure apply to the supplementation of the record. Would add that an action filed under this statute is not rendered moot, if during the pendency of the action the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages. Would provide that if the court concludes that a permit was wrongfully denied because the denial was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court must remand with instructions that the permit be issued, subject to any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal. Would add that if the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court must reverse the decision.

• Allow a person with standing to bring an original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, in superior court or federal court to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims: (1) the ordinance, either on its face or as applied, is unconstitutional; (2) the ordinance, either on its face or as applied, is ultra vires, preempted, or otherwise in excess of statutory authority; (3) the ordinance, either on its face or as applied, constitutes a taking of property. Would require the action to be commenced within one year after the date on which written notice of the final decision is delivered to the aggrieved party. Would provide that an action filed under this statute is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under this statute;

• Prohibit a local government from asserting before a board of adjustment or in any civil action the defense of estoppel as a result of actions by the landowner or permit applicant to proceed with development authorized by a development permit if the landowner or permit applicant is challenging conditions that were imposed and not consented to in writing by a landowner or permit applicant;

• Add that when a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a local government must bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety;

• Provide that valid local government development regulations that are in effect at the time of the effective date of Part II of SL 2019-111 remain in effect but local governments must amend those regulations to conform to the provisions of Part II of SL 2019-111 on or before July 1, 2021. Part II of SL 2019-111 applies to local government development regulation decisions made on or after the earlier of: (1) the effective date of the amendments to local development regulations made to conform to the provisions of Part II of SL 2019-111 or (2) July 1, 2021; and

• Repeal current statute which extended the effective date of Part II of SL 2019-111 to August 1, 2021.

For more detail and to review the status of this bill, click <https://www.ncleg.gov/BillLookup/2019/S720>