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Short Title: Surveyors Right of Entry/Exped. Comm. Bldg.

(Public)

Sponsors:

Referred to:

April 10, 2023

A BILL TO BE ENTITLED

AN ACT TO ALLOW A LIMITED RIGHT OF ENTRY FOR PROFESSIONAL LAND SURVEYORS IN CERTAIN CIRCUMSTANCES, AND TO EXPEDITE PLAN REVIEW AND AUTHORIZE AT-RISK CONSTRUCTION PERMITTING FOR CERTAIN COMMERCIAL AND MULTIFAMILY BUILDING PROJECTS.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Chapter 89C of the General Statutes is amended by adding a new section to read:

**"§ 89C-19.2. Limited right of entry by professional land surveyors.**

(a) A professional land surveyor licensed under this Chapter shall have the right to enter upon the lands of others, if necessary to perform surveys for the practice of land surveying, including the location of property corners, boundary lines, rights-of-way, and easements, and may carry with them their customary equipment and vehicles. An entry by a professional land surveyor to perform the practice of land surveying under this section shall not constitute trespass under Article 22A or 22B of Chapter 14 of the General Statutes or shall not cause the professional land surveyor to be subject to arrest or a civil action by reason of the entry.

(b) Nothing in this section shall be construed as giving authority to a professional land surveyor to destroy, injure, damage, or move anything on the lands of another without the written permission of the landowner, and nothing in this section shall be construed as removing civil liability for such damage.

(c) A professional land surveyor shall make reasonable efforts to notify adjoining landowners upon whose land it is necessary to enter.

(d) No professional land surveyor or person under such surveyor's supervision shall have a civil cause of action against a landowner or lessee for personal injury or property damage incurred while on the land for purposes consistent with those described in subsection (a) of this section, except when such damages and injury were willfully or deliberately caused by the landowner or lessee.

(e) Nothing in this section shall be construed as to give authority to a professional land surveyor to enter lands traversed by an operating railroad or properties owned, held, used, or operated by a railroad or their subsidiaries.

(f) Nothing in this section shall be construed as to give authority to a professional land surveyor to enter lands containing critical infrastructure or critical infrastructure facilities.

(g) For the purposes of this section, the following terms are defined as follows:

(1) Critical infrastructure. – As defined in 42 U.S.C. § 5195c.



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1           (2) Critical infrastructure facilities. – Critical infrastructure that is completely  
2           enclosed by a fence or other physical barriers that is obviously designed to  
3           exclude intruders or clearly marked with a sign or signs posted on the property  
4           that are reasonably likely to come to the attention of a person and indicate that  
5           entry is forbidden without site authorization.

6           (3) Professional land surveyor. – As defined in G.S. 89C-3, including any agents,  
7           employees, or personnel under their supervision."

8           **SECTION 1.(b)** This section becomes effective July 1, 2024, and applies to acts on  
9 or after that date.

10           **SECTION 2.(a)** Article 11 of Chapter 160D of the General Statutes is amended by  
11 adding a new section to read:

12           "**§ 160D-1110.1. Commercial and multifamily building permits for applications with**  
13           **sealed plans; third-party plan review alternatives; at-risk building foundation**  
14           **permits; at-risk building structure permits.**

15           (a) Applicability. – This section applies to commercial and multifamily development  
16 project building permit applications that have plans and specifications that are complete and  
17 sealed for construction, as applicable, by a professional engineer licensed under Chapter 89C of  
18 the General Statutes or an architect licensed under Chapter 83A of the General Statutes.

19           (b) Pre-submittal Meeting Option. – A local government must provide the option for an  
20 eligible building permit applicant to request, and schedule within five business days of a request,  
21 a pre-submittal meeting prior to applying for a building permit to discuss a building project and  
22 to determine whether the permit applicant possesses necessary plans and sufficient information  
23 the local government would require for building permit plan review. A building permit applicant  
24 is eligible to request a pre-submittal meeting under the following circumstances:

25           (1) The project plans and specifications for a building project are complete and  
26 sealed for construction, as applicable, by a professional engineer licensed  
27 under Chapter 89C of the General Statutes or an architect licensed under  
28 Chapter 83A of the General Statutes.

29           (2) The project plans and specifications for a building project are substantially  
30 identical to those that the permit applicant would submit with the building  
31 permit application.

32           (3) The building permit applicant has made best efforts to compile and prepare  
33 documents required by a local government, and other State or federal  
34 agencies, for the building project.

35           (4) The building permit applicant has determined whether an at-risk permit option  
36 will be utilized in accordance with subsection (h) of this section.

37           (c) Plan Review Timeline. – A local government shall complete its review of plans and  
38 specifications and issue a building permit decision to a permit applicant, that has submitted  
39 necessary plans and sufficient information with a permit application, within 45 days, unless a  
40 local government and a permit applicant otherwise agree. If a local government requests  
41 additional information or requires plan resubmission with changes during its review, after  
42 receiving requested information and changes from the permit applicant, a local government has  
43 up to 10 additional days to issue a building permit decision. Notwithstanding the 45 day limit in  
44 this subsection, a local government may issue a building permit decision within 60 days if a local  
45 government issues an at-risk building permit at the request of a permit applicant pursuant to  
46 subsection (h) of this section.

47           (d) Independent Third-Party Review to Assist Local Government. – A local government  
48 may utilize and contract with a licensed professional engineer or licensed architect certified under  
49 G.S. 143-151.13(f) to perform independent third-party plan review under this section, provided  
50 that the review time does not exceed the time frame prescribed by subsection (c) of this section.

1       (e) Independent Third-Party Review Election by Permit Applicant. – If a local  
2 government initially undertakes plan review of the submitted plans and does not issue a building  
3 permit decision or determines it is unable to complete plan review within the time frame  
4 prescribed by subsection (c) of this section, a permit applicant may subsequently elect to utilize  
5 and contract with a licensed professional engineer or licensed architect certified under  
6 G.S. 143-151.13(f) to perform an independent third-party plan review. Upon the local  
7 government's receipt of a completed plan review with certification required by subsection (f) of  
8 this section, the local government shall issue applicable building permits for the project within  
9 three business days and will refund or waive all applicable plan review and permit fees for the  
10 project upon issuance of the applicable building permits.

11       (f) Third-Party Review Certification Required. – A permit applicant that elects a  
12 third-party review under subsection (e) of this section shall provide the local government with a  
13 written certification signed by the plan reviewer that plans comply with applicable North  
14 Carolina State Building Codes and other applicable State and local laws. The certification shall  
15 be made on a form created by the local government.

16       (g) Conflicts of Interest. – A third-party plan reviewer shall avoid conflicts of interest in  
17 conducting independent third-party plan reviews under this section. Conflicts of interest include  
18 a plan reviewer having any financial interest in, or being employed, other than as a plan reviewer  
19 under this section, by a business that has a financial interest in the furnishing of labor, material,  
20 or appliances for the construction, alteration, or maintenance of, or any involvement in the  
21 making of plans or specifications for, the project subject to plan review.

22       (h) At-risk Building Permit Options. – At-risk building permit options are available to an  
23 eligible building permit applicant that requested and attended a pre-submittal meeting in  
24 accordance with subsection (b) of this section to discuss a building project prior to permit  
25 application. An eligible permit applicant proceeding with an at-risk permit issued by a local  
26 government pursuant to this subsection assumes all risks of liability, and the local government is  
27 discharged and released from any liabilities, duties, and responsibilities attributable to the review,  
28 approval, or construction pursuant to that at-risk permit. In accordance with G.S. 160D-108(e),  
29 where multiple local development permits are required to complete a development project, a  
30 permit issued by a local government pursuant to this subsection is not an initial development  
31 permit for purposes of the vesting protections of G.S. 160D-108(e). The following at-risk  
32 building permit options are available:

33           (1) At-risk building foundation permit. – At the time of permit application, an  
34 eligible building permit applicant may request an at-risk building foundation  
35 permit authorizing a permit applicant to proceed with building foundation  
36 construction. A local government must issue an at-risk building foundation  
37 permit if a local government determines a permit applicant has submitted all  
38 necessary plans and sufficient information, as discussed at a pre-submittal  
39 meeting pursuant to subsection (b) of this section, and received all approvals  
40 necessary, for building foundation construction notwithstanding that other  
41 development approvals from the local government, or other state or federal  
42 agencies, for the project have not yet been obtained. For the purposes of this  
43 subdivision, a permit applicant must have received an approved erosion and  
44 sedimentation control plan in accordance with Article 4 of Chapter 113A of  
45 the General Statutes for land-disturbing activity at a building foundation  
46 construction site.

47           (2) At-risk building structure permit. – An eligible building permit applicant that  
48 has obtained an at-risk building foundation permit pursuant to subdivision (1)  
49 of this subsection may request the issuance of an at-risk building structure  
50 permit. A local government may issue an at-risk building structure permit  
51 authorizing a permit applicant to proceed with building structure construction

1 if a local government determines a permit applicant has submitted all  
2 necessary plans and sufficient information, and received all approvals  
3 necessary, for building structure construction notwithstanding that other  
4 development approvals from the local government, or other state or federal  
5 agencies, for the project have not yet been obtained. Prior to issuance of an  
6 at-risk building structure permit, a local government may require a meeting  
7 with a permit applicant to discuss issues with submitted plans and information  
8 that a permit applicant would need to address prior to building structure permit  
9 issuance. For the purposes of this subdivision, "building structure  
10 construction" includes the erection and installation of structural or framing  
11 members for exterior walls and roof assemblies.

12 (i) Manufacturer Information. – In the event the local government requires manufacturer  
13 specifications or manufacturer engineering information on an element, component, or fixture  
14 related to the submitted plans and specifications, a local government shall not delay or deny the  
15 issuance of applicable building permits based upon the receipt of specifications or manufacturer  
16 engineering information on an element, component, or fixture.

17 (j) Local Government Liability and Vested Rights. – A permit issued by a local  
18 government pursuant to this section shall not be construed to guarantee the issuance of further  
19 building permits, development approvals, or certificates of occupancy by a local government, or  
20 other State or federal agencies, that a project requires. A local government and inspection  
21 department are discharged and released from any liabilities, duties, and responsibilities imposed  
22 by this Article, or in common law, from any claim arising out of, or attributed to, plans subject  
23 to a third-party independent review pursuant to subsection (e) of this section."

24 **SECTION 2.(b)** G.S. 143-151.8(a)(3) reads as rewritten:

25 "(3) Code enforcement. – The examination and approval of plans and  
26 specifications, the inspection of the manner of construction, workmanship,  
27 and materials for construction of buildings and structures and their  
28 components, or the enforcement of fire code regulations by any of the  
29 following, to assure compliance with the State Building Code and related local  
30 building rules:

- 31 a. An employee of the State or local government, except an employee of  
32 the State Department of Labor engaged in the administration and  
33 enforcement of sections of the Code that pertain to boilers and  
34 elevators.
- 35 b. An employee of a federally recognized Indian Tribe employed to  
36 perform inspections on tribal lands.
- 37 c. An individual contracting with the State, a local government, or a  
38 federally recognized Indian Tribe to perform inspections on tribal  
39 lands.
- 40 d. An individual who is employed by a company contracting with a  
41 county or a city to conduct inspections.
- 42 e. A person who is contracting with a local government to perform  
43 third-party plan review under G.S. 160D-1110.1(d).
- 44 f. A person who is contracting with a permit applicant to perform  
45 third-party plan review under G.S. 160D-1110.1(e)."

46 **SECTION 2.(c)** G.S. 143-151.13 is amended by adding a new subsection to read:

47 "(g) A licensed architect or licensed professional engineer who possesses a valid  
48 certificate under subsection (f) of this section, but is not employed by the State or a local  
49 government, may utilize that certificate for the limited purpose of performing independent  
50 third-party plan review under subsections (d) and (e) of G.S. 160D-1110.1."

51 **SECTION 2.(d)** G.S. 113A-61 reads as rewritten:

1 **"§ 113A-61. Local approval of erosion and sedimentation control plans.**

2 ...

3 (b1) A local government shall not deny a draft erosion and sedimentation control plan  
4 based solely upon the applicant's need to obtain other development approvals for the project, as  
5 that term is defined by G.S. 160D-102(13). A local government shall condition approval of a  
6 draft erosion and sedimentation control plan upon the applicant's compliance with federal and  
7 State water quality laws, regulations, and rules. A local government shall disapprove an erosion  
8 and sedimentation control plan if implementation of the plan would result in a violation of rules  
9 adopted by the Environmental Management Commission to protect riparian buffers along surface  
10 waters. A local government may disapprove an erosion and sedimentation control plan or  
11 disapprove a transfer of a plan under subsection (b3) of this section upon finding that an applicant  
12 or a parent, subsidiary, or other affiliate of the applicant:

13 ...."

14 **SECTION 2.(e)** G.S. 160D-922 reads as rewritten:

15 **"§ 160D-922. Erosion and sedimentation control.**

16 (a) Any local government may enact and enforce erosion and sedimentation control  
17 regulations as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply  
18 with all applicable provisions of that Article and, to the extent not inconsistent with that Article,  
19 with this Chapter. Fees charged by a local government under its erosion and sedimentation  
20 control program shall not exceed that authorized in G.S. 113A-60(a).

21 (b) Once a local government administering an erosion and sedimentation control program  
22 approves an erosion and sedimentation control plan for land-disturbing activity at a site, the local  
23 government shall allow the plan holder to begin land-disturbing activity in accordance with  
24 G.S. 160D-1110.1(h) and the approved plan, notwithstanding that other development approvals  
25 that may be required from the local government for the project have not yet been obtained. In  
26 accordance with G.S. 160D-108(e), where multiple local development permits are required to  
27 complete a development project, approval of an erosion and sedimentation control plan is not an  
28 initial development permit for purposes of the vesting protections of that subsection."

29 **SECTION 2.(f)** G.S. 160D-1110, as amended by Section 16 of S.L. 2023-46 and  
30 Section 8.1(a) of S.L. 2023-90, reads as rewritten:

31 **"§ 160D-1110. Building permits.**

32 (a) Except as provided in subsection (c) of this section and subsection (h) of  
33 G.S. 160D-1110.1, no person shall commence or proceed with any of the following without first  
34 securing all permits required by the State Building Code and any other State or local laws  
35 applicable to any of the following activities:

36 ...

37 ...

38 (e) No building permit shall be issued pursuant to subsection (a) of this section or  
39 G.S. 160D-1110.1(h) for any land-disturbing activity, as defined in G.S. 113A-52, or for any  
40 activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan for the site  
41 of the activity or a tract of land including the site of the activity has been approved under Article  
42 4 of Chapter 113A of the General Statutes, the Sedimentation Pollution Control Act.

43 ...."

44 **SECTION 2.(g)** This section becomes effective July 1, 2024, and applies to permit  
45 applications submitted on or after that date.

46 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes  
47 law.