

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 1490*

Short Title: Extend Permits Regarding Land Development. (Public)

Sponsors: Representatives Harrell, Goforth, Dollar, Tillis (Primary Sponsors);
Burriss-Floyd, Gillespie, Lewis, McCormick, McLawhorn, Neumann, Stam,
Stewart, Tarleton, Wilkins, and Wray.

Referred to: Environment and Natural Resources, if favorable, Commerce, Small Business,
and Entrepreneurship.

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE
PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE
OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND
REGULATORY REQUIREMENTS TO THE CONTRARY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension
Act of 2009."

SECTION 2. The General Assembly makes the following findings:

- (1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.
- (2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.
- (3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including homebuilders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.
- (4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.
- (5) The process of obtaining the myriad other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and



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- 1 expensive; further, changes in the law can render these approvals, if expired
2 or lapsed, difficult to renew or re-obtain.
- 3 (6) County and municipal governments, including local sewer and water
4 authorities, obtain permits and approvals from State government agencies,
5 particularly the Department of Environment and Natural Resources, which
6 permits and approvals may expire or lapse due to the state of the economy
7 and the inability of both the public sector and the private sector to proceed
8 with projects authorized by the permit or approval.
- 9 (7) County and municipal governments also obtain determinations of master
10 plan consistency, conformance, or endorsement with State or regional plans,
11 from State and regional government entities that may expire or lapse without
12 implementation due to the state of the economy.
- 13 (8) The current national recession has severely weakened the building industry,
14 and many landowners and developers are seeing their life's work destroyed
15 by the lack of credit and dearth of buyers and tenants, due to the crisis in real
16 estate financing and the building industry, uncertainty over the state of the
17 economy, and increasing levels of unemployment in the construction
18 industry.
- 19 (9) The construction industry and related trades are sustaining severe economic
20 losses, and the lapsing of government development approvals would
21 exacerbate, if not addressed, those losses.
- 22 (10) Financial institutions that lent money to property owners, builders, and
23 developers are experiencing erosion of collateral and depreciation of their
24 assets as permits and approvals expire, and the extension of these permits
25 and approvals is necessary to maintain the value of the collateral and the
26 solvency of financial institutions throughout the State.
- 27 (11) Due to the current inability of builders and their purchasers to obtain
28 financing, under existing economic conditions, more and more
29 once-approved permits are expiring or lapsing and, as these approvals lapse,
30 lenders must reappraise and thereafter substantially lower real estate
31 valuations established in conjunction with approved projects, thereby
32 requiring the reclassification of numerous loans which, in turn, affects the
33 stability of the banking system and reduces the funds available for future
34 lending, thus creating more severe restrictions on credit and leading to a
35 vicious cycle of default.
- 36 (12) As a result of the continued downturn of the economy, and the continued
37 expiration of approvals that were granted by State and local governments, it
38 is possible that thousands of government actions will be undone by the
39 passage of time.
- 40 (13) Obtaining an extension of an approval pursuant to existing statutory or
41 regulatory provisions can be both costly in terms of time and financial
42 resources and insufficient to cope with the extent of the present financial
43 conditions; moreover, the costs imposed fall on the public as well as the
44 private sector.
- 45 (14) Obtaining extensions of approvals granted by State government is frequently
46 impossible, always difficult, and always expensive, and no policy reason is
47 served by the expiration of these permits, which were approved only after
48 thorough review of the application.
- 49 (15) It is the purpose of this act to prevent the wholesale abandonment of already
50 approved projects and activities due to the present unfavorable economic
51 conditions, by tolling the term of these approvals for a finite period of time

1 as the economy improves, thereby preventing a waste of public and private
2 resources.

3 **SECTION 3.** Definitions. – As used in this act, the following definitions apply:

- 4 (1) Approval. – Except as otherwise provided in Section 4 of this act, any
5 detailed statement by a State agency under G.S. 113A-4; any detailed
6 statement submitted by a special-purpose unit of government or a private
7 developer of a major development project under G.S. 113A-8; any finding of
8 no significant impact prepared by a State agency under Article 1 of Chapter
9 113A of the General Statutes; any approval of an erosion and sedimentation
10 control plan granted by a local government or by the North Carolina
11 Sedimentation Control Commission under Article 4 of Chapter 113A of the
12 General Statutes; any permit for major development or minor development,
13 as defined in G.S. 113A-118, or any other permit issued under the Coastal
14 Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the
15 General Statutes; any building permit issued under Article 9 of Chapter 143
16 of the General Statutes; any discharge or nondischarge permit issued under
17 Part 1 of Article 21 of Chapter 143 of the General Statutes; any stream
18 origination certifications issued under Article 21 of Chapter 143 of the
19 General Statutes; any water quality certification under Article 21 of Chapter
20 143 of the General Statutes; any air quality permit issued by the
21 Environmental Management Commission under Article 21B of the General
22 Statutes; any approval by a county of sketch plans, preliminary plats, plats
23 regarding a subdivision of land, a site specific development plan or a phased
24 development plan, a development permit, or a building permit under Article
25 18 of Chapter 153A of the General Statutes; any approval by a city of sketch
26 plans, preliminary plats, or plats regarding a subdivision of land, a site
27 specific development plan or a phased development plan, a development
28 agreement, or a building permit under Article 19 of Chapter 160A of the
29 General Statutes; any certificate of appropriateness issued by a preservation
30 commission of a city under Part 3C of Article 19 of Chapter 160A of the
31 General Statutes; when the approval under this subdivision pertains to the
32 development of land and whether the approval under this subdivision is in
33 the form of a permit, approval, license, certification, permission,
34 determination, interpretation, exemption, variance, exception, waiver, letter
35 of interpretation, no further action letter, agreement, or any other executive
36 or administrative decision that allows the development to proceed.
- 37 (2) Area of environmental concern. – An area designated under G.S. 113A-113
38 by the Coastal Resources Commission.
- 39 (3) Development. – The division of a parcel of land into two or more parcels,
40 the construction, reconstruction, conversion, structural alteration, relocation,
41 or enlargement of any building or other structure or facility, or of any
42 grading, soil removal or relocation, excavation or landfill, or any use or
43 change in the use of any building or other structure or land or extension of
44 the use of land.
- 45 (4) Extension period. – The period beginning January 1, 2007, and continuing
46 through December 31, 2010.
- 47 (5) Government. – Any municipal, county, regional, or State government, or any
48 agency, department, commission, or other instrumentality thereof.
- 49 (6) Substantially altered. – Any change to the plans regarding the approval
50 under subdivision (1) of this section that does not constitute a "permit
51 amendment" or a "new permit," including a change in ownership or

1 corporate structure of a permitted facility, a change to the permit that is the
2 subject of the approval that increases by ten percent (10%) or more the
3 population or the geographic area to be served by the development project,
4 or a change in the category or characterization of the development project.
5 As used in this subdivision, "permit" includes any license, certification,
6 permission, determination, interpretation, exemption, variance, exception,
7 waiver, letter of interpretation, no further action letter, agreement, or any
8 other executive or administrative decision that allows a development or
9 governmental project to proceed.

10 **SECTION 4.(a)** For any government approval in existence during the extension
11 period, the running of the period of approval is automatically suspended for the extension
12 period, except as otherwise provided hereunder; however, the tolling provided for herein shall
13 not extend the government approval more than six months beyond the conclusion of the
14 extension period. Nothing in this act shall shorten the duration that any approval would have
15 had in the absence of this act, nor shall this act prohibit the granting of such additional
16 extensions as are provided by law when the tolling granted by this act expires.

17 **SECTION 4.(b)** Nothing in this act shall be deemed to extend or purport to extend:

- 18 (1) Any permit or approval under Section 3 of this act when the permit or
19 approval is for a development project that has been substantially altered
20 since the permit or approval was granted, as determined by the government
21 that granted the permit or approval.
- 22 (2) Any permit or approval issued by the government of the United States or any
23 agency or instrumentality thereof, or to any permit or approval by whatever
24 authority issued of which the duration of effect or the date or terms of its
25 expiration are specified or determined by or pursuant to law or regulation of
26 the federal government or any of its agencies or instrumentalities.
- 27 (3) Any permit or approval issued within an area of environmental concern.
- 28 (4) Any Department of Transportation permit other than a right-of-way permit.

29 **SECTION 4.(c)** This act shall not affect any administrative consent order issued by
30 the Department of Environment and Natural Resources in effect or issued during the extension
31 period.

32 **SECTION 4.(d)** Nothing in this act shall affect the ability of the Secretary of
33 Environment and Natural Resources to revoke or modify a specific permit or approval, or
34 extension thereof pursuant to this act, when that specific permit or approval contains language
35 authorizing the modification or revocation of the permit or approval by the Department of
36 Environment and Natural Resources. Nothing in this act shall affect the ability of the
37 Environmental Management Commission to revoke or modify a specific permit or approval, or
38 extension thereof pursuant to this act, when that specific permit or approval contains language
39 authorizing the modification or revocation of the permit or approval by the Environmental
40 Management Commission.

41 **SECTION 4.(e)** In the event that any approval tolled pursuant to this act is based
42 upon the connection to a sanitary sewer system, the approval's extension shall be contingent
43 upon the availability of sufficient capacity, on the part of the treatment facility, to
44 accommodate the development whose approval has been extended. If sufficient capacity is not
45 available, those permit holders whose approvals have been extended shall have priority with
46 regard to the further allocation of gallonage over those approval holders who have not received
47 approval of a hookup prior to the effective date of this act. Priority regarding the distribution of
48 further gallonage to any permit holder who has received the extension of an approval pursuant
49 to this act shall be allocated in order of the granting of the original approval of the connection.

1 **SECTION 4.(f)** Nothing in this act shall be construed or implemented in such a
2 way as to modify any requirement of law that is necessary to retain federal delegation to, or
3 assumption by, the State of the authority to implement a federal law or program.

4 **SECTION 5.** Each State agency shall, within 30 days after the effective date of this
5 act, place a notice in the North Carolina Register tolling all approvals in conformance with this
6 act.

7 **SECTION 6.** The provisions of this act shall be liberally construed to effectuate
8 the purposes of this act.

9 **SECTION 7.** This act is effective when it becomes law.