

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 794
Committee Substitute Favorable 6/14/17

Short Title: NC Permitting Efficiency Act of 2017.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE EFFICIENCY OF CONSTRUCTION PERMITTING BY
3 REMOVING REDUNDANCIES IN REVIEWS AND APPROVALS BY STATE AND
4 LOCAL AGENCIES, IMPROVE ACCOUNTABILITY AND TRANSPARENCY OF
5 REVIEWING AGENCIES, AND MAKE NORTH CAROLINA A NATIONAL LEADER
6 IN PERMITTING EFFICIENCY, WHICH WILL ENCOURAGE INVESTORS TO
7 CHOOSE NORTH CAROLINA TO CREATE JOBS.

8 Whereas, the construction industry represents 10% of the overall North Carolina
9 economy; and

10 Whereas, expediting the permitting process will expedite the commencement of
11 construction projects, which in turn can increase the speed of job creation in the construction
12 industry as well as in other industries such as commercial, retail, and manufacturing when
13 employment facilities are completed; and

14 Whereas, eliminating redundant steps in the permit approval process will reduce
15 costs and maximize efficiency; and

16 Whereas, many businesses that invest in North Carolina do so based on the value of
17 doing business in the State and often after comparing North Carolina's competitiveness with
18 other states in which they may do business; and

19 Whereas, it is the design professionals, duly licensed by North Carolina boards of
20 licensure, who have responsible charge over the design and the overall responsibility for design
21 of permit plan preparation, while the permit review agency has authority to review for
22 compliance of standards set forth by its agency or others authorized to set standards; and

23 Whereas, maximizing efficiency assists in increasing the affordability of homes; and

24 Whereas, the General Assembly continues to seek ways to reduce burdens on North
25 Carolina businesses to make our State the most business friendly in the country while still
26 maintaining adequate and reasonable review of applications for construction to ensure
27 protection of the people's interests, health, and welfare and to ensure protection of the
28 environment; Now, therefore,

29 The General Assembly of North Carolina enacts:

30 **SECTION 1.(a)** Article 6 of Chapter 153A of the General Statutes is amended by
31 adding a new section to read as follows:

32 "**§ 153A-145.7. General requirements for issuing permits.**

33 The following shall apply to construction permits issued by a county, related to site
34 construction and land use permits:

35 (1) All standards or requirements for the issuance of a construction permit shall
36 be included in a written policy, standard, procedure, or ordinance adopted or



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1 authorized by the governing body, and the written policy, standard,
2 procedure, or ordinance shall be available for public inspection. A county
3 may deny a complete construction permit application only if the permittee
4 fails to meet the standards or requirements established by the county as
5 prescribed in this subdivision. If the county denies a complete permit
6 application, the county shall notify the permittee of the areas of
7 noncompliance with specific notation regarding which written policy,
8 standard, procedure, or ordinance was deficient.

9 (2) A county shall not require a permittee to reserve land, dedicate
10 rights-of-way, adhere to planning or land use conditions, or make
11 accommodations for future construction activities, including the installation
12 of future infrastructure, unless the requirement is included in a written
13 policy, standard, procedure, or ordinance authorized or adopted by the
14 governing body. A written policy, standard, procedure, or ordinance may
15 include formal land use maps, capital improvement plans, or fiscally
16 constrained road improvements established by the county or Department of
17 Transportation.

18 (3) The governing body shall adopt a written policy, standard, procedure, or
19 ordinance establishing or authorizing county departments to establish a
20 schedule that shall be used by county departments in reviewing permit
21 applications, including the maximum number of days in which a county
22 department shall have to approve or deny a complete permit application. The
23 schedule may allow for extenuating circumstances which make adherence
24 impractical, as determined by the county, but these schedule exceptions
25 should be noted in the reporting as defined in subdivision (4) of this section.
26 The schedule shall be made available for public inspection and shall be
27 published on the county's Web site, if one is available. If the governing body
28 authorizes county departments to establish a schedule as provided in this
29 subdivision, the governing body shall approve the schedule before it is
30 implemented for use by the public.

31 (4) Each county department responsible for reviewing construction permit
32 applications shall, on a quarterly basis, submit to the governing body a report
33 detailing the department's compliance with the schedule established under
34 subdivision (3) of this section, including the number of permit application
35 reviews that were completed within the time periods specified in the
36 schedule, the number completed prior to the expiration of the time periods,
37 and the number completed after the expiration of the time periods. The
38 department's report shall be made available for public inspection and shall be
39 published on the county's Web site, if one is available. The county may
40 present the data in the format of its choosing provided it is in compliance
41 with this section.

42 (5) A written policy, standard, procedure, or ordinance shall not require a
43 construction permit be reviewed only after another agency or department,
44 including a State agency or department, has conducted its own review of the
45 same or another permit application related to the same project. Written
46 policies, standards, procedures, or ordinances adopted by the county shall
47 require that construction permits issued by the county shall be reviewed
48 concurrently with other permits related to the same project. The requirement
49 for departments or agencies to review concurrently does not apply if the
50 project is proposed to be constructed in phases which make a concurrent
51 review impractical, or if the permittee requests non-concurrent reviews.

- 1 (6) If the county uses an online construction permit application review and
2 approval program, where feasible, every department or agency of the county
3 and State agencies authorized to review and approve permit applications
4 shall use the online program. The county shall, where feasible, make its
5 online program accessible to outside local and State agencies, and those
6 agencies shall use the online program to review and approve permit
7 applications submitted to those agencies. To ensure technology security, the
8 county shall utilize a Web-based program or portal, or provide a secure login
9 option, if an outside agency will have access to and utilize the county review
10 and approval program.
- 11 (7) Where feasible, a county shall make its online permit review and approval
12 program accessible by municipalities in the county to facilitate concurrent
13 review and approval of permit applications.
- 14 (8) A county may establish a fee to cover the cost of creating an online permit
15 application review and approval program, but the fee shall not be more than
16 the anticipated first two years' actual cost of establishing and implementing
17 the online program, including maintenance, upgrades, security features, and
18 software licensing fees, and the total cost of the program shall be evenly
19 distributed to all permit applicants, based on an estimated number of
20 expected annual applicants for that county.
- 21 (9) A county shall not require a permittee to construct off-site infrastructure
22 improvements, including improvements related to utilities or traffic, unless
23 the improvements are roughly proportionate to the impact of the permittee's
24 development.
- 25 (10) A fee in lieu of payments related to off-site improvements authorized by law
26 shall not exceed twenty percent (20%) of the roughly proportionate impact
27 of the permittee's development, unless otherwise agreed to by the permittee.
28 The estimated actual costs shall be calculated by a licensed professional
29 engineer."

30 **SECTION 1.(b)** Article 8 of Chapter 160A of the General Statutes is amended by
31 adding a new section to read as follows:

32 **"§ 160A-205.3. General requirements for issuing permits.**

33 The following shall apply to construction permits issued by a city, related to site
34 construction and land use permits, but not to include permits or approvals related to subdivision
35 of land or zoning of land:

- 36 (1) All standards or requirements for the issuance of a construction permit shall
37 be included in a written policy, standard, procedure, or ordinance adopted or
38 authorized by the governing body, and the written policy, standard,
39 procedure, or ordinance shall be available for public inspection. A city may
40 deny a complete construction permit application only if the application fails
41 to meet the standards or requirements established by the city as prescribed in
42 this subdivision. If the city denies a complete permit application, the city
43 shall notify the permittee of the areas of noncompliance with specific
44 notation regarding which written policy, standard, procedure, or ordinance
45 was deficient.
- 46 (2) A city shall not require a permittee to reserve land, dedicate rights-of-way,
47 adhere to planning or land use conditions, or make accommodations for
48 future construction activities, including the installation of future
49 infrastructure, unless the requirement is included in a written policy,
50 standard, procedure, or ordinance authorized or adopted by the governing
51 body. A written policy, standard, procedure, or ordinance may include

- 1 formal land use maps, capital improvement plans, or fiscally constrained
2 road improvements established by the Department of Transportation.
- 3 (3) The governing body shall adopt a written policy, standard, procedure, or
4 ordinance establishing or authorizing city departments to establish a
5 schedule that shall be used by city departments in reviewing permit
6 applications, including the maximum number of days in which a city
7 department shall have to approve or deny a complete permit application. The
8 schedule may allow for extenuating circumstances which make adherence
9 impractical, as determined by the city, but these schedule exceptions should
10 be noted in the reporting as defined in subdivision (4) of this section. The
11 schedule shall be made available for public inspection and shall be published
12 on the city's Web site, if one is available. If the governing body authorizes
13 city departments to establish a schedule as provided in this subdivision, the
14 governing body shall approve the schedule before it is implemented for use
15 by the public.
- 16 (4) Each city department responsible for issuing construction permits shall, on a
17 quarterly basis, submit to the governing body a report detailing the
18 department's compliance with the schedule established under subdivision (3)
19 of this section, including the number of permit application reviews that were
20 completed within the time periods specified in the schedule, the number
21 completed prior to the expiration of the time periods, and the number
22 completed after the expiration of the time periods. The department's report
23 shall be published in the same manner as city written policies, standards,
24 procedures, or ordinances and shall be published on the city's Web site, if
25 one is available. The city may present the data in the format of its choosing
26 provided it is in compliance with this section.
- 27 (5) A written policy, standard, procedure, or ordinance shall not require a permit
28 be reviewed only after another agency or department, including a State
29 agency or department, has conducted its own review of the same or another
30 permit related to the same project. Written policies, standards, procedures, or
31 ordinances adopted by the city shall require that permits issued by the city
32 shall be reviewed concurrently with other permits related to the same
33 project. The requirement for departments or agencies to review concurrently
34 does not apply if the project is proposed to be completed in phases which
35 make a concurrent review impractical, or if the permittee requests
36 nonconcurrent reviews.
- 37 (6) If the city uses an online permit review and approval program, where
38 feasible, every department or agency of the city authorized to review and
39 approve permit applications shall use the online program. The city shall,
40 where feasible, make its online program accessible to outside local and State
41 agencies, and those agencies shall use the online program to review and
42 approve permits. To ensure technology security, the city shall utilize a
43 Web-based program or portal, or provide a secure login option, if an outside
44 agency will have access to and utilize the city review and approval program.
- 45 (7) Where feasible, a city shall make its online permit review and approval
46 program accessible by the county in which the city is located to facilitate
47 concurrent review and approval of permit applications.
- 48 (8) A city may establish a fee to cover the cost of creating an online permit
49 review and approval program, but the fee shall not be more than the
50 anticipated first two years' actual cost of establishing and implementing the
51 online program, including maintenance, upgrades, security features, and

1 software licensing fees, and the total cost of the program shall be evenly
2 distributed to all permit applicants, based on an estimated number of
3 expected annual applicants for that city.

4 (9) A city shall not require a permittee to construct off-site infrastructure
5 improvements, including improvements related to utilities or traffic, unless
6 the improvements are roughly proportionate to the impact of the permittee's
7 development.

8 (10) A fee in lieu of payments related to off-site improvements authorized by law
9 shall not exceed twenty percent (20%) of the roughly proportionate impact
10 of the permittee's development unless otherwise agreed to by the permittee.
11 The estimated actual costs shall be calculated by a licensed professional
12 engineer."

13 **SECTION 2.** Chapter 136 of the General Statutes is amended by adding a new
14 Article to read:

15 "Article 3C.

16 "Delegation of Permitting Authority.

17 "**§ 136-166.50. Short title.**

18 This Article shall be known as and may be cited as the "Local Government Permitting Act
19 of 2017."

20 "**§ 136-166.51. Purpose; scope.**

21 (a) The purpose of this Article is to delegate to certain municipalities the authority to
22 issue construction permits and approvals associated with State-maintained roads located within
23 the municipality and the municipality's extraterritorial jurisdiction. The authority delegated
24 under this subsection includes the authority to approve plats, issue driveway permits, and
25 inspect and approve construction activities and encroachment within the Department's
26 rights-of-way. All municipalities with a population of 50,000 or more are hereby granted the
27 permitting authority provided for in this Article unless the municipality specifically declines the
28 delegation. A municipality may, by making a request of the Department Division Engineer,
29 decline delegated authority for certain roads or infrastructure and other elements as provided in
30 this section, but that request does not decline delegated authority for all State-maintained roads.

31 (b) The authority of a municipality to review and approve construction permit
32 applications for State-maintained roads in its municipal boundary and the municipality's
33 extraterritorial jurisdiction exists only to the extent explicitly provided in this Article or
34 otherwise granted by the Board.

35 (c) Nothing in this Article modifies the Department's responsibility to perform typical
36 maintenance activities on State-maintained roads and bridges, or modifies bonding
37 requirements.

38 (d) Nothing in this Article shall modify the process for review of erosion and sediment
39 control plans or stormwater plans, including authorities of the Department of Environmental
40 Quality or any delegated authority for the same under Chapter 113 of the General Statutes.

41 (e) A municipality may request the Department review permit applications,
42 construction activities and encroachments, or inspections, for certain specific State-maintained
43 roads, certain types of State-maintained roads, bridges, or provide technical services, which
44 may be outside of the municipality's expertise. The manner by which the services requested by
45 the municipality are provided to the municipality by the Department shall be consistent with
46 current practices or in a manner mutually agreeable to the municipality and the Department
47 Division Engineer.

48 (f) A municipality may request a modification of a Department standard or policy by
49 submitting the request to the Department Division Engineer. The modification request must
50 include the basis of the request and a detailed description of how the modification will not

1 adversely impact safety, road maintenance, or traffic flow to the State-maintained road
2 network.

3 (g) A municipality may, as part of its delegated review function, approve a minor
4 site-specific deviation from a Department standard or policy if, in the opinion of the
5 municipality, the modification will not adversely impact safety, road maintenance, or traffic
6 flow to the State-maintained road network and is necessitated by a minor site-specific
7 condition. When a municipality approves a minor deviation from the Department standard or
8 policy, the municipality shall notify the Department through a process established by the
9 Department Division Engineer and the municipality. The municipality is not required to obtain
10 the Department's approval of the minor deviation but may seek the Department's approval or
11 guidance related to the deviation from the Department's standard or policy.

12 (h) Delegation of authority to municipalities to issue construction permits and approvals
13 associated with State-maintained roads located within the municipality and the municipality's
14 extraterritorial jurisdiction shall not apply to any of the following:

15 (1) Interstate highways, including ramps and interchanges.

16 (2) State-maintained roads which have high traffic volumes. For the purpose of
17 this Article, a road with high traffic volumes are those sections of road with
18 annual average daily traffic (AADT) of 50,000 as presented in the
19 Department's most current AADT volume maps.

20 (3) Sections of State-maintained roads located within 2,000 feet of an interstate
21 interchange as measured from the limits of the right-of-way of the interstate.

22 (4) Sections of State-maintained controlled access roads. For the purpose of this
23 Article, controlled access roads which will be excluded from delegated
24 authority will be those considered "full control of access" or "limited control
25 of access" as defined by the Board.

26 **"§ 136-166.52. Application for delegation.**

27 (a) A municipality that does not otherwise qualify for the delegation of authority
28 provided for under the Article may request that the Board grant the authority. The municipality
29 shall develop a review program for its jurisdiction and submit its program to the Board for
30 review and approval.

31 (b) The Board shall review each program submitted by a municipality and within 90
32 days of receipt of the application shall notify the municipality whether it has been (i) approved,
33 (ii) approved with modifications, or (iii) disapproved. The Board shall only approve an
34 application upon determining the municipality's review staff has adequate experience and
35 technical expertise related to the review of transportation design and construction activities.

36 **"§ 136-166.53. Department's authority.**

37 (a) The Department shall establish review guidelines that a local government shall
38 follow in its review. These guidelines shall be consistent with existing permitting standards,
39 including those followed by the Department, and of a technical nature. The Department shall
40 not establish different technical standards for different municipalities. The standards must be
41 similar to those established for other State-maintained roads.

42 (b) If the Department determines a municipality is failing to adequately administer or
43 enforce a local program, it shall notify the municipality in writing and shall specify the
44 deficiencies of administration and enforcement. If the municipality does not take corrective
45 action within 60 days of receipt of notification, the Department shall assume administration and
46 enforcement of the program until the municipality demonstrates to the satisfaction of the
47 Department the ability to resume administration and enforcement of the program.

48 (c) The Department shall retain the authority to review and approve construction
49 permits for construction activities within State-maintained road rights-of-way for activities
50 conducted by local, State, or federal governments. The review is limited to technical elements
51 only and the Department may not request modifications to reviewed plans based on conflicting

1 policies established by a municipality that has been delegated authority to approve local
2 programs.

3 **"§ 136-166.54. Local authority.**

4 (a) Municipalities with delegated authority under this Article may do all of the
5 following:

6 (1) Adopt written policies, standards, procedures, or ordinances and regulations
7 necessary to establish and enforce transportation review programs
8 established in accordance with this Article. A written policy, standard,
9 procedure, or ordinance shall at least meet, but may not exceed, the
10 minimum requirements established by the Department for State-maintained
11 roads.

12 (2) Create or designate agencies or subdivisions to administer and enforce the
13 programs.

14 (3) Collect from the Department the amounts necessary to administer and
15 enforce this program, not to exceed the actual costs to the municipality,
16 taking into account fees collected by the municipality pursuant to
17 G.S. 136-166.55.

18 (b) A municipality shall approve a plan only after determining that it complies with all
19 applicable federal, State, and local regulations and shall condition approval of a construction
20 plan upon the applicant's compliance with federal and State laws, regulations, and rules. A
21 municipality shall disapprove a plan if implementation of the plan would result in a violation of
22 federal and State laws, regulations, rules, and standards.

23 (c) The municipality shall take into consideration adherence to regional plans
24 developed and approved by Metropolitan Planning Organizations (MPOs) or Rural
25 Transportation Planning Organizations (RPOs) as well as local ordinances and standards. The
26 transportation-related elements of a construction plan may be submitted in a manner prescribed
27 by the local government. Separate sets of construction plans which are distinct to the
28 transportation system are not required unless prescribed by the municipality.

29 (d) For projects related to transportation or activities or encroachments within the
30 Department's rights-of-way, a municipality shall review each construction permit application
31 submitted and within 30 days of receipt thereof shall notify the person submitting the
32 application that the application has been (i) approved, (ii) approved with modifications, or (iii)
33 disapproved.

34 **"§ 136-166.55. Fees.**

35 An ordinance adopted by a municipality may establish a fee for the review of a
36 transportation-related or right-of-way impacting construction plan and related activities, except
37 as limited by provisions of G.S. 160A-296. However, if the local government already performs
38 reviews of the same construction plans under this Article, it may not establish an additional fee
39 for review of a construction activity impacting a State-maintained road or its right-of-way."

40 **SECTION 3.(a)** Chapter 143 of the General Statutes is amended by adding a new
41 Article to read:

42 "Article 82.

43 "Transparency and Efficiency in State and Local Permitting; Fees.

44 **"§ 143-765. Transparency.**

45 State agencies that have the authority to review and approve construction permits shall
46 maintain published records that present a summary of adherence to their published review
47 schedules with data on frequency of reviews that were not performed within the established
48 time lines, as well as those reviews performed ahead of schedule. Agencies shall also publish
49 summary data that present the number of reviews and submittals for each project. This data
50 shall be published on the agency's public Web site.

51 **"§ 143-766. Efficiency.**

1 State and local government agencies that have the authority to review and approve
2 construction permits shall make accommodations to incorporate and facilitate access by staff of
3 other agencies, departments, or local governments so that all entities can utilize the system
4 concurrently and collaboratively. For municipalities that have separate local governments with
5 separate areas of responsibility, such as a county review of stormwater permits and a city with
6 review authority of site plans, but both are reviewing the same construction project, the
7 municipalities shall coordinate their review processes so that submittals and reviews are done
8 through the same system and process. If reviews are performed through an online system,
9 where feasible, all review agencies and departments shall review using the same online system
10 or portal. To ensure technology security, the agency or municipal government which hosts the
11 online review system shall utilize a Web-based program or portal, or provide a secure login
12 option, if an outside agency will have access to and utilize the online review and approval
13 program.

14 **"§ 143-767. Fees.**

15 State agencies which incur costs associated with the creation or adoption of an online
16 permitting system may establish a fee or increase an existing fee for the review, but the new or
17 additional fee shall not be more than the anticipated actual cost associated with implementation
18 including maintenance, upgrades, security features, and software licensing fees distributed
19 equally among all permit applicants over the course of two years. The fee, or increased fee,
20 shall be in effect only for the first 24 months following the initiation of the online permitting
21 process. State agencies shall estimate the anticipated number of permit applications for the
22 program's first 24 months based on the number of applicants from the previous 12 months."

23 **SECTION 3.(b)** State agencies which review construction documents and have
24 permit authority shall develop and implement an online system for submittal, review, and
25 approval by 2020.

26 **SECTION 4.** This act becomes effective October 1, 2017, and applies to
27 applications filed on or after that date.