

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 831  
Commerce Committee Substitute Adopted 5/11/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S831-PCS15287-TA-20

Short Title: Extend Permits Regarding Land Development.

(Public)

Sponsors:

Referred to:

March 25, 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



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

1 conditions by tolling the term of these approvals for a finite period of time as  
2 the economy improves, thereby preventing a waste of public and private  
3 resources.

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

- 5 (1) Approval. – Except as otherwise provided in Section 4 of this act, any  
6 detailed statement by a State agency under G.S. 113A-4; any detailed  
7 statement submitted by a special purpose unit of government or a private  
8 developer of a major development project under G.S. 113A-8; any finding of  
9 no significant impact prepared by a State agency under Article 1 of Chapter  
10 113A of the General Statutes; any approval of an erosion and sedimentation  
11 control plan granted by a local government or by the North Carolina  
12 Sedimentation Control Commission under Article 4 of Chapter 113A of the  
13 General Statutes; any permit for major development or minor development,  
14 as defined in G.S. 113A-118, or any other permit issued under the Coastal  
15 Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the  
16 General Statutes; any water or wastewater permit issued under Article 10 or  
17 Article 11 of Chapter 130A of the General Statutes; any building permit  
18 issued under Article 9 of Chapter 143 of the General Statutes; any discharge,  
19 nondischarge, or extension permit issued under Part 1 of Article 21 of  
20 Chapter 143 of the General Statutes; any stream origination certifications  
21 issued under Article 21 of Chapter 143 of the General Statutes; any water  
22 quality certification under Article 21 of Chapter 143 of the General Statutes;  
23 any air quality permit issued by the Environmental Management  
24 Commission under Article 21B of the General Statutes; any approval by a  
25 county of sketch plans, preliminary plats, plats regarding a subdivision of  
26 land, a site specific development plan or a phased development plan, a  
27 development permit, or a building permit under Article 18 of Chapter 153A  
28 of the General Statutes; any approval by a city of sketch plans, preliminary  
29 plats, or plats regarding a subdivision of land, a site specific development  
30 plan or a phased development plan, a development agreement, or a building  
31 permit under Article 19 of Chapter 160A of the General Statutes; any  
32 certificate of appropriateness issued by a preservation commission of a city  
33 under Part 3C of Article 19 of Chapter 160A of the General Statutes; when  
34 the approval under this subdivision pertains to the development of land or to  
35 the provision of water or wastewater services by a government entity and  
36 whether the approval under this subdivision is in the form of a permit,  
37 approval, license, certification, permission, determination, interpretation,  
38 exemption, variance, exception, waiver, letter of interpretation, no further  
39 action letter, agreement, or any other executive or administrative decision  
40 that allows the development or provision of services to proceed.
- 41 (2) Area of environmental concern. – An area designated under G.S. 113A-113  
42 by the Coastal Resources Commission.
- 43 (3) Development. – The division of a parcel of land into two or more parcels,  
44 the construction, reconstruction, conversion, structural alteration, relocation,  
45 or enlargement of any building or other structure or facility, or of any  
46 grading, soil removal or relocation, excavation or landfill, or any use or  
47 change in the use of any building or other structure or land or extension of  
48 the use of land.
- 49 (4) Extension period. – The period beginning January 1, 2007, and continuing  
50 through December 31, 2010.

- 1 (5) Government. – Any municipal, county, regional, or State government, or any  
2 agency, department, commission, or other instrumentality thereof.

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

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

- 11 (1) Any permit or approval under Section 3 of this act when the permit or  
12 approval is for a development project that has been substantially altered  
13 since the permit or approval was granted, as determined by the government  
14 entity that granted the permit or approval.  
15 (2) Any permit or approval issued by the government of the United States or any  
16 agency or instrumentality thereof, or to any permit or approval by whatever  
17 authority issued of which the duration of effect or the date or terms of its  
18 expiration are specified or determined by or pursuant to law or regulation of  
19 the federal government or any of its agencies or instrumentalities.  
20 (3) Any Department of Transportation permit other than a right-of-way permit.

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

24 **SECTION 4.(d)** Nothing in this act shall affect the ability of the Secretary of  
25 Environment and Natural Resources to revoke or modify a specific permit or approval, or  
26 extension thereof pursuant to this act, when that specific permit or approval contains language  
27 authorizing the modification or revocation of the permit or approval by the Department of  
28 Environment and Natural Resources. Nothing in this act shall affect the ability of the  
29 Environmental Management Commission to revoke or modify a specific permit or approval, or  
30 extension thereof pursuant to this act, when that specific permit or approval contains language  
31 authorizing the modification or revocation of the permit or approval by the Environmental  
32 Management Commission.

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

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

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

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

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