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SESSION 2009

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HOUSE BILL 683  
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Proposed Conference Committee Substitute H683-PCCS30556-TA-2

Short Title: Permit Extensions.

(Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PERMIT EXTENSION ACT OF 2009.

The General Assembly of North Carolina enacts:

**SECTION 1.** S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, and Sections 2 and 3 of S.L. 2009-572, reads as rewritten:

"**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 home builders, 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 of 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) It is the purpose of this act to prevent the wholesale abandonment of already  
47 approved projects and activities due to the present unfavorable economic  
48 conditions by tolling the term of these approvals for a finite period of time as  
49 the economy improves, thereby preventing a waste of public and private  
50 resources.

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

- 1           (1)    Development approval. – Any of the following approvals issued by the  
2           State, any agency or subdivision of the State, or any unit of local  
3           government, regardless of the form of the approval, that are for the  
4           development of land or for the provision of water or wastewater services by  
5           a government entity:
- 6           a.     Any detailed statement by a State agency under G.S. 113A-4.
  - 7           b.     Any detailed statement submitted by a special purpose unit of  
8           government or a private developer of a major development project  
9           under G.S. 113A-8.
  - 10          c.     Any finding of no significant impact prepared by a State agency  
11          under Article 1 of Chapter 113A of the General Statutes.
  - 12          d.     Any approval of an erosion and sedimentation control plan granted  
13          by a local government or by the North Carolina Sedimentation  
14          Control Commission under Article 4 of Chapter 113A of the General  
15          Statutes.
  - 16          e.     Any permit for major development or minor development, as defined  
17          in G.S. 113A-118, or any other permit issued under the Coastal Area  
18          Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of  
19          the General Statutes.
  - 20          f.     Any water or wastewater permit issued under Article 10 or Article 11  
21          of Chapter 130A of the General Statutes.
  - 22          g.     Any building permit issued under Article 9 of Chapter 143 of the  
23          General Statutes.
  - 24          h.     Any nondischarge or extension permit issued under Part 1 of Article  
25          21 of Chapter 143 of the General Statutes.
  - 26          i.     Any stream origination certifications issued under Article 21 of  
27          Chapter 143 of the General Statutes.
  - 28          j.     Any water quality certification under Article 21 of Chapter 143 of  
29          the General Statutes.
  - 30          k.     Any air quality permit issued by the Environmental Management  
31          Commission under Article 21B of Chapter 143 of the General  
32          Statutes.
  - 33          l.     Any approval by a county of sketch plans, preliminary plats, plats  
34          regarding a subdivision of land, a site specific development plan or a  
35          phased development plan, a development permit, a development  
36          agreement, or a building permit under Article 18 of Chapter 153A of  
37          the General Statutes.
  - 38          m.     Any approval by a city of sketch plans, preliminary plats, plats  
39          regarding a subdivision of land, a site specific development plan or a  
40          phased development plan, a development permit, a development  
41          agreement, or a building permit under Article 19 of Chapter 160A of  
42          the General Statutes.
  - 43          n.     Any certificate of appropriateness issued by a preservation  
44          commission of a city under Part 3C of Article 19 of Chapter 160A of  
45          the General Statutes.
- 46           (2)    Development. – The division of a parcel of land into two or more parcels,  
47           the construction, reconstruction, conversion, structural alteration, relocation,  
48           or enlargement of any building or other structure or facility, or any grading,  
49           soil removal or relocation, excavation or landfill, or any use or change in the  
50           use of any building or other structure or land or extension of the use of land.

1 "SECTION 4. For any development approval that is current and valid at any point during  
2 the period beginning January 1, 2008, and ending December 31, 2010, the running of the period  
3 of the development approval and any associated vested right under G.S. 153A-344.1 or  
4 G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending  
5 December 31, ~~2010-2011~~.

6 "SECTION 4.1. A unit of local government may by resolution provide that S.L. 2009-406,  
7 as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, Sections 2 and 3 of  
8 S.L. 2009-572, and by this act, shall not apply to a development approval issued by that unit of  
9 local government. A development approval issued by a unit of local government that opts out  
10 pursuant to this section shall expire as it was scheduled to expire pursuant to S.L. 2009-406, as  
11 amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, and Sections 2 and 3  
12 of S.L. 2009-572 prior to the enactment of this act.

13 "SECTION 5. This act shall not be construed or implemented to:

- 14 (1) Extend any permit or approval issued by the United States or any of its  
15 agencies or instrumentalities.
- 16 (2) Extend any permit or approval for which the term or duration of the permit  
17 or approval is specified or determined pursuant to federal law.
- 18 (3) Shorten the duration that any development approval would have had in the  
19 absence of this act.
- 20 (4) Prohibit the granting of such additional extensions as are provided by law.
- 21 (5) Affect any administrative consent order issued by the Department of  
22 Environment and Natural Resources in effect or issued at any time from the  
23 effective date of this act to December 31, ~~2010-2011~~.
- 24 (6) Affect the ability of a government entity to revoke or modify a development  
25 approval or to accept voluntary relinquishment of a development approval  
26 by the holder of the development approval pursuant to law.
- 27 (7) Modify any requirement of law that is necessary to retain federal delegation  
28 by the State of the authority to implement a federal law or program.
- 29 (8) Modify any person's obligations or impair the rights of any party under  
30 contract, including bond or other similar undertaking.
- 31 (9) Authorize the charging of a water or wastewater tap fee that has been  
32 previously paid in full for a project subject to a development approval.

33 "SECTION 5.1.(a) This act does not revive a vested right to the water or sewer allocation  
34 associated with a development approval that expired between January 1, 2008, and August 5,  
35 2009, and is revived by the operation of this act if both of the following conditions are met:

- 36 (1) The water or sewer capacity was reallocated to other development projects  
37 prior to August 5, 2009, based upon the expiration of the development  
38 approval.
- 39 (2) There is not sufficient supply or treatment capacity to accommodate the  
40 project that is the subject of the revived development approval.

41 "SECTION 5.1.(b) A person whose development approval is revived under this act but  
42 whose water or sewer allocation is not revived under this section must be given first priority if  
43 additional supply or treatment capacity becomes available.

44 "SECTION 5.2.(a) This section applies only to Union County.

45 "SECTION 5.2.(b) When a development approval that is contingent upon connection to a  
46 water supply system or a sanitary sewer system is suspended under Section 4 of this act and  
47 there is not sufficient supply or treatment capacity to accommodate requests for additional  
48 allocation, the local government that granted the allocation may reallocate ~~reserved-requested~~  
49 capacity from projects whose approvals are suspended but are not ready to proceed, if the local  
50 government meets all of the following requirements:

- 1 (1) Establishes an allocation plan for existing capacity that determines actual  
2 capacity and provides for a fair and equitable process to distribute the  
3 remaining capacity.
- 4 (2) Establishes a reallocation plan to meet requests for capacity above permitted  
5 capacity that is fair and equitable and requires the following:
- 6 a. That an applicant for a new or additional allocation demonstrate the  
7 ability to begin construction.
- 8 b. That the holder of a development permit suspended under Section 4  
9 of this act demonstrate the ability or intent to begin construction in  
10 no less than 120 days in order to retain the reserved capacity.
- 11 (3) Does not reallocate capacity to exceed the amount of the reserved capacity.

12 **"SECTION 5.2.(c)** This act does not reduce the original period of a development permit.

13 **"SECTION 6.** Within 30 days after the effective date of this act, each agency or  
14 subdivision of the State to which this act applies shall place a notice in the North Carolina  
15 Register listing the types of development approvals that the agency or subdivision issues and  
16 noting the extension provided in this act. This section does not apply to units of local  
17 government.

18 **"SECTION 7.** The provisions of this act shall be liberally construed to effectuate the  
19 purposes of this act.

20 **"SECTION 7.1.** Conditions for qualification; termination; right of appeal.

21 (a) For any development approval extended by S.L. 2009-406, as amended by Section  
22 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, Sections 2 and 3 of S.L. 2009-572, and by  
23 this act, the holder of the development approval shall:

- 24 (1) Comply with all applicable laws, regulations, and policies in effect at the  
25 time the development approval was originally issued by the governmental  
26 entity.
- 27 (2) Maintain all performance guarantees that are imposed as a condition of the  
28 initial development approval for the duration of the period the development  
29 approval is extended or until affirmatively released from that obligation by  
30 the issuing governmental entity.
- 31 (3) Complete any infrastructure necessary in order to obtain a certificate of  
32 occupancy or other final permit approval from the issuing governmental  
33 entity.

34 (b) Failure to comply with any condition in this section may result in termination of the  
35 extension of the development approval by the issuing governmental entity. In the event of a  
36 termination of the extension of a development approval, the issuing governmental entity shall  
37 provide written notice to the last known address of the original holder of the development  
38 approval of the termination of the extension of the development approval, including the reason  
39 for the termination.

40 (c) Termination of an extension of a development approval shall be subject to appeal to  
41 the Board of Adjustment under the requirements set forth in law if the development approval  
42 was issued by a unit of local government with planning authority under Article 18 of Chapter  
43 153A or Article 19 of Chapter 160A of the General Statutes.

44 **"SECTION 8.** This act is effective when it becomes law."

45 **SECTION 2.** This act is effective when it becomes law.