

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE DRS85149-LD-82B (3/13)**

Short Title:   Extend Permits Regarding Land Development.

(Public)

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Sponsors:     Senator Clodfelter.

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE  
3 PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE  
4 OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND  
5 REGULATORY REQUIREMENTS TO THE CONTRARY.

6 The General Assembly of North Carolina enacts:

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

9           **SECTION 2.** The General Assembly makes the following findings:

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



- 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.