

Massachusetts Legislature Passes Permit Extension Act As Part of Economic Development Legislation

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In the final hours of the session, the Massachusetts Legislature passed sweeping economic development legislation which included, as section 173, what has come to be known as the Permit Extension Act. The purpose of the Permit Extension Act is to recognize that the economic downturn has meant that projects that were otherwise “shovel-ready” may have difficulty in the short-run obtaining financing. If we want to help the economy get back on its feet, we shouldn’t make those projects have to go through the Massachusetts state and local permitting gauntlet again, just because the financing problems may have meant that permits would expire before the developer can get in the ground.

The Legislature’s solution was simple (the Permit Extension Act takes up only 2 pages of the overall 173-page economic development package). Any permit that is or was in effect for any part of the time between August 15, 2008 and August 15, 2010 is extended for two years beyond its otherwise applicable expiration date. If your permit expired on August 15, 2008, it is now in effect until August 15, 2010. If it is first issued on August 15, 2010, and would have expired on August 15, 2013, it will now expire on August 15, 2015.

The only other real question is: What is a Permit? In short, *almost* everything. Permits include environmental permits, such as those covering water discharges, wetlands, waterways, and MEPA (but not air or solid waste permits under Chapter 111), as well as approvals under Chapters 40A, 40C, and 40R (but not 40B), and any approval under any local by-law or ordinance. The complete list is found under the definition of “Approval.”

One final note: if ownership of a project changes, the new owner must agree to be bound by any commitments made under the terms of the permit to be extended in order to take advantage of the extension. Of course, most permits already provide that their obligations apply to successor owners, so the burden imposed by this provision is not too great.

The Permit Extension Act is certainly not a panacea for the development slowdown, but it will help certain projects get in the ground as soon as their financing is in place.

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