

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1050

(Delegate Beidle, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Construction Permits - Expiration Dates

This bill extends the duration of approved State, county, and municipal permits for proposed construction and development that were approved on or after January 1, 2008. The bill does not apply to several specified permits or permit approvals. The bill applies retroactively to construction and development permits issued by the State, a county, or a municipality on or after January 1, 2008.

The bill takes effect June 1, 2011, and terminates December 31, 2012.

Fiscal Summary

State Effect: State agencies could benefit from the bill to the extent the tolling of permits and approvals may avoid any costs associated with reobtaining permits or approvals for delayed projects. The bill, however, is not expected to otherwise materially affect State finances.

Local Effect: Local government operations and finances may be meaningfully impacted by the bill. The extent of the impact, however, cannot be reliably estimated. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill tolls (stops) the running of the period for which State, county, and municipal permits for proposed construction and development are valid until December 31, 2012. The running of any permit tolled under the bill begins again on January 1, 2013. The bill only applies to permits issued on or after January 1, 2008; thus,

the bill does not affect the obligation of permit holders to pay any applicable renewal fees for permits issued before January 1, 2008. In addition, a person that was issued a permit that would have expired between January 1, 2008, and December 31, 2012, is required to pay any applicable renewal or permit extension fees. Further, the bill does not affect the authority of the State, a county, or municipality to revoke or modify a permit. Affected permits may be cancelled if the State, a county, or municipality determines that the permit presents a threat to the public health, safety, or welfare of its citizens.

The bill does not apply to the running time of permits or approvals:

- issued by the U.S. government or any federal agency;
- issued jointly by the U.S. government and a county or a municipality;
- issued jointly by any federal agency and a county or a municipality;
- that has an expiration date established under a law or regulation of the federal government; or
- issued under specified State environmental laws.

The bill also does not affect the applicability of any requirement under laws and regulations governing the Chesapeake and Atlantic Coastal Bays Critical Area or any local program or other requirements adopted in accordance with the Critical Area program.

Current Law/Background:

Construction and Development Permits

In Maryland, local governments have the primary role in enforcing building and construction codes. More than 90 local jurisdictions issue building permits in the State, including all 23 counties and Baltimore City. Construction and development permits are generally required for the purpose of assuring public safety, health, and welfare as they are affected by construction. The permitting process varies by local jurisdiction. Local jurisdictions may charge permit fees to help cover inspection and other related expenses. The duration, or running time, for a building permit (*e.g.*, for construction of a single home) is often shorter than for permits for commercial development or creation of a subdivision.

At the local level, a site planning process involving multiple local governmental agencies concerned with regulating water, sewer, utilities, roadways, erosion and sediment control, fire safety, and other issues may be a prerequisite for applying for a commercial development or subdivision permit. Subdivision development may involve not only

building permits for individual properties, but also permits for grading of roadways and may require approval of road design and the creation of individual lots.

Permits generally remain in effect once construction begins. If there is a delay in construction, a permit may be renewed, rerouted, or reactivated. At this point in time, the permit-granting authority typically reviews whether, and to what degree, changes to pertinent zoning, water and sewer, or other regulations affect the construction that would be permitted.

Department of Planning Report on Tolling of Permits under Chapters 334 and 335 of 2009

Chapters 334 and 335 of 2009 established a similar mandate to toll the running of construction and development permits for a period of two and a half years beginning on January 1, 2008, and ending June 30, 2010, and required the Maryland Department of Planning (MDP) to report to the General Assembly on the impacts of the Act, whether the toll period should be extended, and what other alternatives might be available to the State and local jurisdictions in light of the economic downturn.

According to the report, of the 8 counties and 31 municipalities that responded to a request for information regarding the implementation of the Act, 1 county and 13 municipalities reported that they were not familiar with the Act. In addition, 10 jurisdictions reported that none of the permits they issued was affected by the legislation, while 7 jurisdictions indicated that some permits would be affected (ranging from 5 to 400 affected permits for each of these jurisdictions).

The report also noted that there were legal questions as to the interpretation of the Act, primarily relating to the meaning of the term “tolling.” MDP has advised that the General Assembly be aware of the differing interpretations regarding the concept of tolling and that the Maryland Association of Counties and the Maryland Municipal League should be consulted. Additionally, MDP reported some variation in the types of permits that local governments believed to be affected by the Act.

Due to the lack of awareness of the passage of the Act and the many problems encountered by local governments in interpreting the Act, MDP concluded that it could not make a recommendation as to whether the tolling period should be extended following its expiration on June 30, 2010. As an alternative, MDP recommended that the General Assembly enact enabling legislation to allow each local government to enact an ordinance for the tolling of its various permits.

Local Fiscal Effect: Local government operations and finances may be meaningfully impacted by the bill. The extent of the impact, however, cannot be reliably estimated.

Allowing permits and approvals for proposed construction or development to remain valid for an extended period of time may affect local governments' ability to apply updated codes or regulations to construction or development projects. In addition, local revenues decrease to the extent the bill extends permits or approvals for projects that otherwise would have been subject to updated development charges (which are generally paid prior to a building permit or zoning certificate being issued) upon expiration of the original permit. On the other hand, the bill's changes could presumably allow some projects to move forward in the future that otherwise might not be able to. To the extent this occurs, local revenues from development charges could actually increase.

Further, there is the potential that the toll period could cause bonds posted by developers to expire before the associated permits or approvals expire. This could leave a local government without security to ensure improvements are made and potentially require expenditures to make the necessary improvements or for associated litigation.

Small Business Effect: Small businesses involved in development and construction in Maryland are expected to benefit from the extension in the period of validity for permits issued after January 1, 2008.

Additional Information

Prior Introductions: HB 1344 of 2010, a similar bill, passed in the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee; no further action was taken.

Cross File: None.

Information Source(s): Montgomery County, Baltimore City, Board of Public Works, Maryland Department of Planning, Maryland Department of the Environment, Department of General Services, Department of Housing and Community Development, Maryland Association of Counties, Maryland Department of Transportation, Department of Legislative Services

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