

Fiscal Code Bill Passes with Permit Extension Amendment

In 2010 the General Assembly passed SB 1042 (Act 46-2010), the fiscal code bill that accompanies the budget, which included language extending permits granted from government agencies. The amendment was intended to extend permit deadlines where development had not proceeded due to the sagging economy.

On June 30, 2012 the General Assembly passed SB 1263, the fiscal code bill accompanying the budget, which contained language **further extending** government agency permits by three years, **now ending July 2, 2016** instead of 2013 as in Act 46 of 2010.

Highlighted below are some relevant portions of the original Act (Act 46-2010) regarding permit extensions. Please keep in mind that the requirements remain the same but the extension period now ends July 2, 2016, not 2013. We ask that you have your solicitor review this for any potential impact it may have on your authority either directly or indirectly (through municipalities you serve).

Approval: Section 1602-1 (Definitions). *...any government agency approval, agreement, permit, including a building permit or construction permit, or other authorization or decision: (1) allowing a development or construction project to proceed; or (2) relating to or affecting development, granted pursuant to a statute, regulation or ordinance adopted by a municipality, including . . . (33 laws that this act applies to are listed under this definition).*

Extension Period: Section 1602-1 (Definitions). *The period beginning after December 31, 2008 and ending before July 2, 2013 (from Act 46 of 2010). **Please note: The new extension period ends July 2, 2016.***

Government Agency: Section 1602-1 (Definitions). *The Commonwealth, a political subdivision or an agency, department, **authority**, commission or board of the Commonwealth or a political subdivision. The term includes regional commissions, boards or instrumentalities with the authority to issue approvals.*

Automatic Suspension: Section 1603-1(A). *The expiration date of an approval by a government agency that is granted for or in effect during the extension period, whether obtained before or after the beginning of the extension period, shall be automatically suspended during the extension period.*

Change in Law: 1604-1(A). *A law, regulation or policy enacted, adopted or modified by a government agency during the extension period shall not have the effect of prohibiting or limiting an existing approval during the extension period.*

Agency Verification: 1605-1(A). *The holder or recipient of an approval may seek written verification from the issuing government agency for . . . existence of . . . expiration date for a valid approval . . . The government agency shall respond in writing within 30 days.*

Failure to seek verification: 1605-1(C). *The failure of the holder of an approval to seek verification from a government agency shall not be grounds for termination, revocation or other invalidation of an approval.*

Sewer and Water Systems: 1606-1(B). *If an approval is based upon the connection to a sanitary sewer system or water distribution system, the application of the extension period as it relates to capacity shall be contingent upon the availability of sufficient capacity of the system to accommodate the development that is the subject of the extended approval. If sufficient capacity is unavailable at the time it is required to proceed with development under the approval, priority with regard to further distribution or allocation of capacity shall be established by the date on which the approval was obtained. Priority relating to distribution of additional capacity shall be allocated in order of the granting of the original approval for the connection.*

Fee: 1606-1(C). *A government agency which issued an approval may charge a fee to extend the approval that may be no more than 25% of the original application fee. In no event may the fee be more than \$5000.*

Notice: 1607-1. *Within 30 days of the effective date of this section, each affected government agency shall publish notice of applicability of the extension period to approvals granted by the government agency under this article in the Pennsylvania Bulletin.*

Miscellaneous: Section 1608-1(B)(1-2). *During the extension period, a government agency shall retain the authority to do all of the following: (1) suspend or revoke an approval for noncompliance with a written condition of the approval. (2) enforce conditions of approvals granted under law prior to the extension period.*

This new law also applies to state agencies, particularly DEP. Section 1602-1 (Definitions) under the term "APPROVAL" lists 33 different state Acts that apply to state agencies and local governments that this amendment impacts. Some of these include the MPC (Municipalities Planning Code), Act 537, Stormwater Management, Title 53: Municipalities Generally, 3rd Class City Code, 1st and 2nd Class Township Codes, the Borough Code, and the State Highway Law.

You may also want to check with your incorporating municipalities and municipalities in your service area to query their reaction to this law and any impacts they expect. Particularly, you may want information on the status of their building permits and how they relate to Section 1606-1(B) *Sewer and Water Systems*.