

A Third Permit Extension Act is Enacted

Nathaniel Stevens, Esq., Partner

McGregor Legere & Stevens PC

On November 20, 2024, Massachusetts Governor Maura Healey signed the "Act relative to strengthening Massachusetts' economic leadership." Also known as the "Mass Leads Act", this comprehensive economic development bill includes provisions to again extend the life of land use permits.

As a result of the real estate downturn in 2008, the state enacted very similar permit extension acts in 2010 and then again in 2012.

Like the first two, this latest act automatically extends many but not all real estate development permits by two years. As before, this extends many types of land development permits as an operation of law, requiring no action by the entities issuing the permit. For that reason, there is no need for a document officially memorializing the extension. Also, as earlier, this act could revive permits that have expired.

Specifically, Section 280 of Chapter 238 of the Acts of 2024 provides that "an approval in effect or existence" during the "tolling period" of January 1, 2023 to January 1, 2025, inclusive, shall be extended for a period of two (2) years from its expiration date. Note that the granting of the approval does not have to occur during that period; rather, the approval only has to be in effect during the tolling period, even for just one day.

An "approval" is broadly defined as "any permit, certificate, order, excluding enforcement orders, license, certification, determination, exemption, variance, waiver, building permit . . . concerning the use or development of real property" from municipal, regional or state governmental entities under specific laws, including, but not limited to those pertaining to wetlands protection, waterways, subdivision, and zoning and the relatively new Starter Home Law (Chapter 40Y). Unlike before, certain approvals granted under the state's hazardous waste clean-up law, 21E, are included in the definition.

Enforcement orders are specifically exempt and thus not extended. Federal permits and certain hunting, fishing and aquaculture licenses issued by the state also are not extended. These exclusions are consistent with the exclusions in the first two extension acts.

Unlike the first two extension acts, this one explicitly provides that any approval in effect during the tolling period shall be governed by the applicable by-law or ordinance in effect at the time the approval was granted, unless the holder of the approval elects to waive this protection. Interestingly, there is not a similar provision for approvals by regional or state entities.

This third Permit Extension Act requires one to look at each permit, determine whether it was in effect during at any point between January 1, 2023 and January 1, 2025, and, if so, determine its expiration date, and then add two years to reach the new expiration date.

Note that some permits that expired are revived. For example, a permit that had a stated expiration date of February 1, 2023 is now revived by this law by being extended, retroactively, two years. It now expires February 1, 2025.

This Permit Extension Act, like the ones before it, does not provide for formalizing or memorializing its extension of a permit. That is, the holder of an approval, or permit, is not required to apply for an extension.

For example, with Wetlands Protection Act permits, under the prior permit extension acts, Conservation Commissions were largely left to handle this issue on their own, so will need to do so again. Some Commissions, when requested, issued confirmation letters to applicants and could do so again. MassDEP is rumored to be preparing to issue some guidance which should be helpful to Commissions.

Some boards, agencies, and officials issued generic letters acknowledging the existence of the Permit Extension Act. Others did nothing other than perhaps update their internal list of permits. Yet others issued corrected permits with new expiration dates, so the permit can be recorded showing the actual calendar dates they cease having effect, so they are self-contained on the record.

At least this third time around, Commissions and other municipal, regional, and state entities will be able to look back and largely repeat what they did (or did not) do in 2010 and 2012.