

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Revised

House Bill 1344

(Delegate Beidle, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Construction and Development - Permits and Approvals - Expiration Dates

This bill amends provisions of State law, enacted under Chapters 334 and 335 of 2009, that require the running of the period of approval for specified permits issued by the State, a county, or a municipality to be tolled beginning on January 1, 2008, and ending on June 30, 2010. The bill, among other things, extends the toll period to December 31, 2012; replaces references to “a county or a municipality” with “a local approving authority,” defined as a county, municipality, or specified governmental unit; specifies “approvals” issued by a local approving authority that the toll period also applies to; specifies that the toll period applies to grading permits; specifies that the bill may not be construed to affect the applicability of any requirement of the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program or of a regulation or requirement adopted under, or in accordance with, the program; and extends the termination date of Chapters 334 and 335 of 2009 from June 30, 2010, to December 31, 2014.

The bill takes effect June 1, 2010.

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 re-obtaining 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: Meaningful.

Analysis

Bill Summary: The bill specifies that the running of a period of approval begins again on January 1, 2013, once the period for which it was tolled ends on December 31, 2012. The specified “approvals” issued by a local approving authority that are tolled under the bill include:

- an action by a local approving authority on an application for a zoning special exemption, a zoning variance, or a conditional zoning use;
- a development or subdivision approval by a local approving authority, including a site plan approval, a development plan approval, a planned unit development plan approval, an initial or sketch plan approval, or any other development or subdivision approval authorized or required under the laws or regulations of the local approving authority; or
- any other approval by, fee paid to, or agreement with a local approving authority that is associated with an application for development or subdivision approval.

The bill amends uncodified provisions of Chapters 334 and 335 of 2009 relating to the revocation, modification, or cancellation of a permit, and the retroactive application of the Acts, to also apply to approvals.

The bill specifies that, with respect to permits issued by the State, in addition to the toll period being applicable to the running of the period of approval for any permit, it also applies to the running of the duration of any permit. The bill also specifies that, with respect to permits or approvals issued by a local approving authority, notwithstanding the toll period, in addition to being required to pay any applicable renewal fees, a person also must pay any permit extension fees.

The bill specifies that it may not be construed to affect the applicability of any requirement under State law provisions governing the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program, any regulation adopted under the authority of those provisions, or any local program requirement or other legal requirement adopted in accordance with the Critical Area Program.

Current Law/Background:

Construction Permitting/Approval

In Maryland, local governments have the primary role in enforcing building and construction codes. There are over 90 local jurisdictions that 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 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.

Chapters 334 and 335 of 2009

Chapters 334 and 335 of 2009 require the running of the period of approval for any permit issued by the State, a county, or a municipality to be tolled beginning on January 1, 2008, and ending on June 30, 2010. A “permit” includes a development permit, as defined under Title 11 of the State Government Article. Notwithstanding the requirement that the running of the period of approval be tolled, a person who was issued a permit by the State, a county, or a municipality that will expire during the time period for which the running of the period of approval is tolled is required to pay any applicable renewal fees.

The provisions of Chapters 334 and 335 do not apply to specified permits or approvals, including permits, licenses, or approvals issued under specified provisions of the Environment Article, including provisions requiring approval of a stormwater management plan by a county or municipality before development of land.

The Acts do not affect the authority of the State or any county or municipality to revoke or modify a permit, and the State or any county or municipality may cancel a permit affected by the Acts if the permit is determined to present a threat to the public health, safety, or welfare of its citizens.

The Acts also must be construed to apply retroactively and must be applied to and interpreted to affect any permit for construction or development issued by the State or any county or municipality on or after January 1, 2008, and on or before June 30, 2010.

The Acts terminate June 30, 2010.

Maryland Department of Planning Report on Chapters 334 and 335

Chapters 334 and 335 of 2009 required the Maryland Department of Planning (MDP) to report to the General Assembly on or before December 31, 2009, on, among other things, the impact of the Acts. MDP's submitted report characterized the purpose of the legislation, according to its preamble, as: (1) assisting the private sector by ensuring that additional time and financial resources would not have to be spent on obtaining an extension of permits; and (2) allowing for additional time for the private sector to secure financing for development projects.

As part of its report, MDP conducted a survey of permit-issuing jurisdictions to assess the impact of Chapters 334 and 335 of 2009 and received varying responses with regard to whether the jurisdictions were familiar with the legislation, the types of permits the jurisdictions viewed Chapters 334 and 335 as affecting, and the number of projects that would be affected, among other things. The report also identified legal interpretation issues with respect to the laws, which this bill appears to address. The issues raised included uncertainty regarding the effect of the toll period and what permits are subject to the tolling period.

MDP was required to address in the report whether the toll period should be extended, but indicated it could not make a recommendation on extending the toll period generally due to there being insufficient information to determine the impact of the law in achieving its intended purposes. MDP, however, did recommend that, if the General Assembly decides to extend the toll period, the legal issues relating to the interpretation of the law be addressed.

Chesapeake and Atlantic Coastal Bays Critical Area Program

The Chesapeake and Atlantic Coastal Bays Critical Area Program is intended to foster more sensitive development activity for certain shoreline areas to minimize damage to water quality and natural habitats. The program is intended to be primarily implemented by local jurisdictions through development and implementation of local programs, subject to review and approval by the Critical Area Commission within the Department of Natural Resources. The program is established under Title 8, Subtitle 18 of the Natural Resources Article, which contains, among other things, minimum standards for local programs. A required element of a local program is that project approvals (defined

as approval of development, other than development by a State or local government agency, in the Chesapeake Bay or Atlantic Coastal Bays critical areas by the appropriate local approval authority) be based on findings that projects are consistent with specified standards related to the environmental impacts of development in the critical areas.

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 those projects. In addition, local revenues may 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.

One county indicates that the broad meaning of "approval" under the bill could reduce its collection of building permit fee revenues in a given year if the toll period applies to an approval of a permit application. This would allow a person to delay picking up a permit and paying the permit fee, yet the approval would remain valid where it otherwise would be invalidated after a period of time. Another county has expressed concern that the toll period could cause bonds posted by developers to ensure that public improvements are made along with residential or commercial development to expire before the associated permits or approvals expire. This could leave the county without security to ensure improvements are made and potentially require county expenditures to make the improvements or for associated litigation.

The Maryland Association of Counties also notes that county permitting and legal offices will have to devote staff time and resources to managing the retroactive application of Chapters 334 and 335 of 2009, as amended by this bill.

Small Business Effect: Small businesses involved in development and construction in Maryland are expected to benefit from the bill's changes allowing for permits and approvals to remain valid for the duration of the toll period and any remaining approval period. The expiration of a permit or approval could cause additional costs to be incurred to regain permits or approvals and to complete a project subject to newly adopted regulations. The bill could benefit a permitted and approved project that cannot commence due to economic considerations, allowing for the permits and approvals to remain valid if the project is later able to move forward.

The 2007 Economic Census indicated that the overall construction industry in Maryland was made up of 15,581 establishments with an average of 12 employees per establishment.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning; Maryland Department of the Environment; Department of Housing and Community Development; Board of Public Works; Anne Arundel, Carroll, Garrett, and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Maryland-National Capital Building Industry Association; Department of Legislative Services

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