

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 794
Committee Substitute Favorable 6/14/17
Committee Substitute #2 Favorable 6/21/17

Short Title: NC Permitting Efficiency Act of 2017.

(Public)

Sponsors:

Referred to:

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO IMPROVE EFFICIENCY OF CONSTRUCTION PERMITTING BY REMOVING REDUNDANCIES IN REVIEWS AND APPROVALS BY STATE AND LOCAL AGENCIES, IMPROVE ACCOUNTABILITY AND TRANSPARENCY OF REVIEWING AGENCIES, AND MAKE NORTH CAROLINA A NATIONAL LEADER IN PERMITTING EFFICIENCY, WHICH WILL ENCOURAGE INVESTORS TO CHOOSE NORTH CAROLINA TO CREATE JOBS.

Whereas, the construction industry represents 10% of the overall North Carolina economy; and

Whereas, expediting the permitting process will expedite the commencement of construction projects, which in turn can increase the speed of job creation in the construction industry as well as in other industries such as commercial, retail, and manufacturing when employment facilities are completed; and

Whereas, eliminating redundant steps in the permit approval process will reduce costs and maximize efficiency; and

Whereas, many businesses that invest in North Carolina do so based on the value of doing business in the State and often after comparing North Carolina's competitiveness with other states in which they may do business; and

Whereas, it is the design professionals, duly licensed by North Carolina boards of licensure, who have responsible charge over the design and the overall responsibility for design of permit plan preparation, while the permit review agency has authority to review for compliance of standards set forth by its agency or others authorized to set standards; and

Whereas, maximizing efficiency assists in increasing the affordability of homes; and

Whereas, the General Assembly continues to seek ways to reduce burdens on North Carolina businesses to make our State the most business friendly in the country while still maintaining adequate and reasonable review of applications for construction to ensure protection of the people's interests, health, and welfare and to ensure protection of the environment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"§ 153A-145.7. General requirements for issuing permits.

The following shall apply to construction permits issued by a county, related to site construction and land-use permits:



- 1 (1) All standards or requirements for the issuance of a construction permit shall
2 be included in a written policy, standard, procedure, or ordinance adopted or
3 authorized by the governing body, and the written policy, standard,
4 procedure, or ordinance shall be available for public inspection. A county
5 may deny a complete construction permit application only if the permittee
6 fails to meet the standards or requirements established by the county as
7 prescribed in this subdivision. If the county denies a complete permit
8 application, the county shall notify the permittee of the areas of
9 noncompliance with specific notation regarding which written policy,
10 standard, procedure, or ordinance was deficient.
- 11 (2) A county shall not require a permittee to reserve land, dedicate
12 rights-of-way, adhere to planning or land-use conditions, or make
13 accommodations for future construction activities, including the installation
14 of future infrastructure, unless the requirement is included in a written
15 policy, standard, procedure, or ordinance authorized or adopted by the
16 governing body. A written policy, standard, procedure, or ordinance may
17 include formal land-use maps, capital improvement plans, or fiscally
18 constrained road improvements established by the county or Department of
19 Transportation.
- 20 (3) The governing body shall adopt a written policy, standard, procedure, or
21 ordinance establishing or authorizing county departments to establish a
22 schedule that shall be used by county departments in reviewing permit
23 applications, including the maximum number of days in which a county
24 department shall have to approve or deny a complete permit application. The
25 schedule may allow for extenuating circumstances which make adherence
26 impractical, as determined by the county, but these schedule exceptions
27 should be noted in the reporting as defined in subdivision (4) of this section.
28 The schedule shall be made available for public inspection and shall be
29 published on the county's Web site, if one is available. If the governing body
30 authorizes county departments to establish a schedule as provided in this
31 subdivision, the governing body shall approve the schedule before it is
32 implemented for use by the public.
- 33 (4) Each county department responsible for reviewing construction permit
34 applications shall, on a quarterly basis, submit to the governing body a report
35 detailing the department's compliance with the schedule established under
36 subdivision (3) of this section, including the number of permit application
37 reviews that were completed within the time periods specified in the
38 schedule, the number completed prior to the expiration of the time periods,
39 and the number completed after the expiration of the time periods. The
40 department's report shall be made available for public inspection and shall be
41 published on the county's Web site, if one is available. The county may
42 present the data in the format of its choosing provided it is in compliance
43 with this section.
- 44 (5) A written policy, standard, procedure, or ordinance shall not require a
45 construction permit be reviewed only after another agency or department,
46 including a State agency or department, has conducted its own review of the
47 same or another permit application related to the same project. Written
48 policies, standards, procedures, or ordinances adopted by the county shall
49 require that construction permits issued by the county shall be reviewed
50 concurrently with other permits related to the same project. The requirement
51 for departments or agencies to review concurrently does not apply if the

- 1 project is proposed to be constructed in phases which make a concurrent
2 review impractical, or if the permittee requests nonconcurrent reviews.
3 (6) If the county uses an online construction permit application review and
4 approval program, where feasible, every department or agency of the county
5 and State agencies authorized to review and approve permit applications
6 shall use the online program. The county shall, where feasible, make its
7 online program accessible to outside local and State agencies, and those
8 agencies shall use the online program to review and approve permit
9 applications submitted to those agencies. To ensure technology security, the
10 county shall utilize a Web-based program or portal, or provide a secure login
11 option, if an outside agency will have access to and utilize the county review
12 and approval program.
13 (7) Where feasible, a county shall make its online permit review and approval
14 program accessible by municipalities in the county to facilitate concurrent
15 review and approval of permit applications.
16 (8) A county may establish a fee to cover the cost of creating an online permit
17 application review and approval program, but the fee shall not be more than
18 the anticipated first two years' actual cost of establishing and implementing
19 the online program, including maintenance, upgrades, security features, and
20 software licensing fees, and the total cost of the program shall be evenly
21 distributed to all permit applicants, based on an estimated number of
22 expected annual applicants for that county.
23 (9) A county shall not require a permittee to construct off-site infrastructure
24 improvements, including improvements related to utilities or traffic, unless
25 the improvements are roughly proportionate to the impact of the permittee's
26 development.
27 (10) A fee in lieu of payment related to off-site improvements authorized by law
28 shall not exceed one hundred twenty percent (120%) of the roughly
29 proportionate impact or the estimated cost of the associated construction
30 element of the permittee's development, unless otherwise agreed to by the
31 permittee. The estimated construction costs shall be calculated by a licensed
32 professional engineer."

33 **SECTION 1.(b)** Article 8 of Chapter 160A of the General Statutes is amended by
34 adding a new section to read as follows:

35 **"§ 160A-205.3. General requirements for issuing permits.**

36 The following shall apply to construction permits issued by a city, related to site
37 construction and land-use permits, but not to include permits or approvals related to subdivision
38 of land or zoning of land:

- 39 (1) All standards or requirements for the issuance of a construction permit shall
40 be included in a written policy, standard, procedure, or ordinance adopted or
41 authorized by the governing body, and the written policy, standard,
42 procedure, or ordinance shall be available for public inspection. A city may
43 deny a complete construction permit application only if the application fails
44 to meet the standards or requirements established by the city as prescribed in
45 this subdivision. If the city denies a complete permit application, the city
46 shall notify the permittee of the areas of noncompliance with specific
47 notation regarding which written policy, standard, procedure, or ordinance
48 was deficient.
49 (2) A city shall not require a permittee to reserve land, dedicate rights-of-way,
50 adhere to planning or land-use conditions, or make accommodations for
51 future construction activities, including the installation of future

1 infrastructure, unless the requirement is included in a written policy,
2 standard, procedure, or ordinance authorized or adopted by the governing
3 body. A written policy, standard, procedure, or ordinance may include
4 formal land-use maps, capital improvement plans, or fiscally constrained
5 road improvements established by the Department of Transportation.

6 (3) The governing body shall adopt a written policy, standard, procedure, or
7 ordinance establishing or authorizing city departments to establish a
8 schedule that shall be used by city departments in reviewing permit
9 applications, including the maximum number of days in which a city
10 department shall have to approve or deny a complete permit application. The
11 schedule may allow for extenuating circumstances which make adherence
12 impractical, as determined by the city, but these schedule exceptions should
13 be noted in the reporting as defined in subdivision (4) of this section. The
14 schedule shall be made available for public inspection and shall be published
15 on the city's Web site, if one is available. If the governing body authorizes
16 city departments to establish a schedule as provided in this subdivision, the
17 governing body shall approve the schedule before it is implemented for use
18 by the public.

19 (4) Each city department responsible for issuing construction permits shall, on a
20 quarterly basis, submit to the governing body a report detailing the
21 department's compliance with the schedule established under subdivision (3)
22 of this section, including the number of permit application reviews that were
23 completed within the time periods specified in the schedule, the number
24 completed prior to the expiration of the time periods, and the number
25 completed after the expiration of the time periods. The department's report
26 shall be published in the same manner as city written policies, standards,
27 procedures, or ordinances and shall be published on the city's Web site, if
28 one is available. The city may present the data in the format of its choosing
29 provided it is in compliance with this section.

30 (5) A written policy, standard, procedure, or ordinance shall not require a permit
31 be reviewed only after another agency or department, including a State
32 agency or department, has conducted its own review of the same or another
33 permit related to the same project. Written policies, standards, procedures, or
34 ordinances adopted by the city shall require that permits issued by the city
35 shall be reviewed concurrently with other permits related to the same
36 project. The requirement for departments or agencies to review concurrently
37 does not apply if the project is proposed to be completed in phases which
38 make a concurrent review impractical, or if the permittee requests
39 nonconcurrent reviews.

40 (6) If the city uses an online permit review and approval program, where
41 feasible, every department or agency of the city authorized to review and
42 approve permit applications shall use the online program. The city shall,
43 where feasible, make its online program accessible to outside local and State
44 agencies, and those agencies shall use the online program to review and
45 approve permits. To ensure technology security, the city shall utilize a
46 Web-based program or portal, or provide a secure login option, if an outside
47 agency will have access to and utilize the city review and approval program.

48 (7) Where feasible, a city shall make its online permit review and approval
49 program accessible by the county in which the city is located to facilitate
50 concurrent review and approval of permit applications.

- 1 (8) A city may establish a fee to cover the cost of creating an online permit
2 review and approval program, but the fee shall not be more than the
3 anticipated first two years' actual cost of establishing and implementing the
4 online program, including maintenance, upgrades, security features, and
5 software licensing fees, and the total cost of the program shall be evenly
6 distributed to all permit applicants, based on an estimated number of
7 expected annual applicants for that city.
- 8 (9) A city shall not require a permittee to construct off-site infrastructure
9 improvements, including improvements related to utilities or traffic, unless
10 the improvements are roughly proportionate to the impact of the permittee's
11 development.
- 12 (10) A fee in lieu of payment related to off-site improvements authorized by law
13 shall not exceed one hundred twenty percent (120%) of the roughly
14 proportionate impact or the estimated cost of the associated construction
15 element of the permittee's development, unless otherwise agreed to by the
16 permittee. The estimated construction costs shall be calculated by a licensed
17 professional engineer."

18 **SECTION 2.** Chapter 136 of the General Statutes is amended by adding a new
19 Article to read:

20 "Article 3C.

21 "Delegation of Permitting Authority.

22 "§ 136-166.50. Short title.

23 This Article shall be known as and may be cited as the "Local Government Permitting Act
24 of 2017."

25 "§ 136-166.51. Purpose; scope.

26 (a) The purpose of this Article is to delegate to certain municipalities the authority to
27 issue construction permits and approvals associated with State-maintained roads located within
28 the municipality and the municipality's extraterritorial jurisdiction. The authority delegated
29 under this subsection includes the authority to approve plats, issue driveway permits, and
30 inspect and approve construction activities and encroachment within the Department's
31 rights-of-way. All municipalities with a population of 50,000 or more are hereby granted the
32 permitting authority provided for in this Article unless the municipality specifically declines the
33 delegation. A municipality may, by making a request of the Department Division Engineer,
34 decline delegated authority for certain roads or infrastructure and other elements as provided in
35 this section, but that request does not decline delegated authority for all State-maintained roads.

36 (b) The authority of a municipality to review and approve construction permit
37 applications for State-maintained roads in its municipal boundary and the municipality's
38 extraterritorial jurisdiction exists only to the extent explicitly provided in this Article or
39 otherwise granted by the Board.

40 (c) Nothing in this Article modifies the Department's responsibility to perform typical
41 maintenance activities on State-maintained roads and bridges, or modifies bonding
42 requirements.

43 (d) Nothing in this Article shall modify the process for review of erosion and sediment
44 control plans or stormwater plans, including authorities of the Department of Environmental
45 Quality or any delegated authority for the same under Chapter 113 of the General Statutes.

46 (e) A municipality may request the Department review permit applications,
47 construction activities and encroachments, or inspections, for certain specific State-maintained
48 roads, certain types of State-maintained roads, bridges, or provide technical services, which
49 may be outside of the municipality's expertise. The manner by which the services requested by
50 the municipality are provided to the municipality by the Department shall be consistent with

1 current practices or in a manner mutually agreeable to the municipality and the Department
2 Division Engineer.

3 (f) A municipality may request a modification of a Department standard or policy by
4 submitting the request to the Department Division Engineer. The modification request must
5 include the basis of the request and a detailed description of how the modification will not
6 adversely impact safety, road maintenance, or traffic flow to the State-maintained road
7 network.

8 (g) A municipality may, as part of its delegated review function, approve a minor
9 site-specific deviation from a Department standard or policy if, in the opinion of the
10 municipality, the modification will not adversely impact safety, road maintenance, or traffic
11 flow to the State-maintained road network and is necessitated by a minor site-specific
12 condition. When a municipality approves a minor deviation from the Department standard or
13 policy, the municipality shall notify the Department through a process established by the
14 Department Division Engineer and the municipality. The municipality is not required to obtain
15 the Department's approval of the minor deviation but may seek the Department's approval or
16 guidance related to the deviation from the Department's standard or policy.

17 (h) Delegation of authority to municipalities to issue construction permits and approvals
18 associated with State-maintained roads located within the municipality and the municipality's
19 extraterritorial jurisdiction shall not apply to any of the following:

20 (1) Interstate highways, including ramps and interchanges.

21 (2) State-maintained roads which have high traffic volumes. For the purpose of
22 this Article, a road with high traffic volumes are those sections of road with
23 annual average daily traffic (AADT) of 50,000 as presented in the
24 Department's most current AADT volume maps.

25 (3) Sections of State-maintained roads located within 2,000 feet of an interstate
26 interchange as measured from the limits of the right-of-way of the interstate.

27 (4) Sections of State-maintained controlled access roads. For the purpose of this
28 Article, controlled access roads which will be excluded from delegated
29 authority will be those considered "full control of access" or "limited control
30 of access" as defined by the Board.

31 **"§ 136-166.52. Application for delegation.**

32 (a) A municipality that does not otherwise qualify for the delegation of authority
33 provided for under the Article may request that the Board grant the authority. The municipality
34 shall develop a review program for its jurisdiction and submit its program to the Board for
35 review and approval.

36 (b) The Board shall review each program submitted by a municipality and within 90
37 days of receipt of the application shall notify the municipality whether it has been (i) approved,
38 (ii) approved with modifications, or (iii) disapproved. The Board shall only approve an
39 application upon determining the municipality's review staff has adequate experience and
40 technical expertise related to the review of transportation design and construction activities.

41 **"§ 136-166.53. Department's authority.**

42 (a) The Department shall establish review guidelines that a local government shall
43 follow in its review. These guidelines shall be consistent with existing permitting standards,
44 including those followed by the Department, and of a technical nature. The Department shall
45 not establish different technical standards for different municipalities. The standards must be
46 similar to those established for other State-maintained roads.

47 (b) If the Department determines a municipality is failing to adequately administer or
48 enforce a local program, it shall notify the municipality in writing and shall specify the
49 deficiencies of administration and enforcement. If the municipality does not take corrective
50 action within 60 days of receipt of notification, the Department shall assume administration and

1 enforcement of the program until the municipality demonstrates to the satisfaction of the
2 Department the ability to resume administration and enforcement of the program.

3 (c) The Department shall retain the authority to review and approve construction
4 permits for construction activities within State-maintained road rights-of-way for activities
5 conducted by local, State, or federal governments. The review is limited to technical elements
6 only and the Department may not request modifications to reviewed plans based on conflicting
7 policies established by a municipality that has been delegated authority to approve local
8 programs.

9 **"§ 136-166.54. Local authority.**

10 (a) Municipalities with delegated authority under this Article may do all of the
11 following:

12 (1) Adopt written policies, standards, procedures, or ordinances and regulations
13 necessary to establish and enforce transportation review programs
14 established in accordance with this Article. A written policy, standard,
15 procedure, or ordinance shall at least meet, but may not exceed, the
16 minimum requirements established by the Department for State-maintained
17 roads.

18 (2) Create or designate agencies or subdivisions to administer and enforce the
19 programs.

20 (3) Collect from the Department the amounts necessary to administer and
21 enforce this program, not to exceed the actual costs to the municipality,
22 taking into account fees collected by the municipality pursuant to
23 G.S. 136-166.55.

24 (b) A municipality shall approve a plan only after determining that it complies with all
25 applicable federal, State, and local regulations and shall condition approval of a construction
26 plan upon the applicant's compliance with federal and State laws, regulations, and rules. A
27 municipality shall disapprove a plan if implementation of the plan would result in a violation of
28 federal and State laws, regulations, rules, and standards.

29 (c) The municipality shall take into consideration adherence to regional plans
30 developed and approved by Metropolitan Planning Organizations (MPOs) or Rural
31 Transportation Planning Organizations (RPOs) as well as local ordinances and standards. The
32 transportation-related elements of a construction plan may be submitted in a manner prescribed
33 by the local government. Separate sets of construction plans which are distinct to the
34 transportation system are not required unless prescribed by the municipality.

35 (d) For projects related to transportation or activities or encroachments within the
36 Department's rights-of-way, a municipality shall review each construction permit application
37 submitted and within 30 days of receipt thereof shall notify the person submitting the
38 application that the application has been (i) approved, (ii) approved with modifications, or (iii)
39 disapproved.

40 **"§ 136-166.55. Fees.**

41 An ordinance adopted by a municipality may establish a fee for the review of a
42 transportation-related or right-of-way impacting construction plan and related activities, except
43 as limited by provisions of G.S. 160A-296. However, if the local government already performs
44 reviews of the same construction plans under this Article, it may not establish an additional fee
45 for review of a construction activity impacting a State-maintained road or its right-of-way."

46 **SECTION 3.(a)** Chapter 143 of the General Statutes is amended by adding a new
47 Article to read:

48 "Article 82.

49 "Transparency and Efficiency in State and Local Permitting; Fees.

50 **"§ 143-765. Transparency.**

1 State agencies that have the authority to review and approve construction permits shall
2 maintain published records that present a summary of adherence to their published review
3 schedules with data on frequency of reviews that were not performed within the established
4 time lines, as well as those reviews performed ahead of schedule. Agencies shall also publish
5 summary data that present the number of reviews and submittals for each project. This data
6 shall be published on the agency's public Web site.

7 **"§ 143-766. Efficiency.**

8 State and local government agencies that have the authority to review and approve
9 construction permits shall make accommodations to incorporate and facilitate access by staff of
10 other agencies, departments, or local governments so that all entities can utilize the system
11 concurrently and collaboratively. For municipalities that have separate local governments with
12 separate areas of responsibility, such as a county review of stormwater permits and a city with
13 review authority of site plans, but both are reviewing the same construction project, the
14 municipalities shall coordinate their review processes so that submittals and reviews are done
15 through the same system and process. If reviews are performed through an online system,
16 where feasible, all review agencies and departments shall review using the same online system
17 or portal. To ensure technology security, the agency or municipal government which hosts the
18 online review system shall utilize a Web-based program or portal, or provide a secure login
19 option, if an outside agency will have access to and utilize the online review and approval
20 program.

21 **"§ 143-767. Fees.**

22 State agencies which incur costs associated with the creation or adoption of an online
23 permitting system may establish a fee or increase an existing fee for the review, but the new or
24 additional fee shall not be more than the anticipated actual cost associated with implementation
25 including maintenance, upgrades, security features, and software licensing fees distributed
26 equally among all permit applicants over the course of two years. The fee, or increased fee,
27 shall be in effect only for the first 24 months following the initiation of the online permitting
28 process. State agencies shall estimate the anticipated number of permit applications for the
29 program's first 24 months based on the number of applicants from the previous 12 months."

30 **SECTION 3.(b)** State agencies which review construction documents and have
31 permit authority shall develop and implement an online system for submittal, review, and
32 approval by 2020.

33 **SECTION 4.** This act becomes effective October 1, 2017, and applies to
34 applications filed on or after that date.