COMMITTEE REPORT

March 24, 2010

**H. 4445**

Introduced by Reps. Loftis, Norman, Merrill, Hardwick, Erickson, Wylie, Chalk, Stewart, Pinson, Bedingfield, Huggins, Frye, Clemmons, Rice, Parker, G.R. Smith, Lowe, Hiott, Allison, Allen, Anthony, Bales, Ballentine, Bannister, Barfield, Bingham, Bowen, Cato, Cole, Cooper, Crawford, Daning, Delleney, Duncan, Edge, Gambrell, Hamilton, Harrell, Hearn, Horne, Kelly, Limehouse, Littlejohn, Long, Lucas, D.C. Moss, V.S. Moss, Nanney, Owens, M.A. Pitts, Sandifer, Scott, Simrill, D.C. Smith, G.M. Smith, Spires, Stringer, Thompson, Toole, Umphlett, Viers, White, Whitmire, Willis, A.D. Young, T.R. Young and Weeks

S. Printed 3/24/10--S.

Read the first time March 2, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Joint Resolution (H. 4445) to extend certain government approvals affecting the development of real property within the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution, as and if amended, by striking the joint resolution in its entirety and inserting therein the following:

/ A JOINT RESOLUTION

TO EXTEND CERTAIN GOVERNMENT APPROVALS AFFECTING THE DEVELOPMENT OF REAL PROPERTY WITHIN THE STATE.

Whereas, there exists a state of economic emergency in the State of South Carolina and the nation, which has drastically affected various segments of the South Carolina economy, but none as severely as the state’s banking, real estate, and construction sectors; and

Whereas, the real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub‑prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets; and

Whereas, as a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, commercial, office, and industrial developers, have experienced an industry‑wide decline, including reduced demand, canceled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled‑back growth plans; and

Whereas, the process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and governmental bodies; and

Whereas, the process of obtaining the myriad of other government approvals, such as wetlands permits, land disturbance and stormwater management permits, treatment works approvals, on‑site wastewater disposal permits, highway access permits, critical area permits and coastal zone consistency certifications, and numerous waivers and variances, can be difficult and expensive. Changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain; and

Whereas, the citizens of this State and county and municipal governments, including local sewer and water authorities, obtain permits and approvals from state governmental agencies, particularly the Department of Health and Environmental Control, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval; and

Whereas, the citizens of this State and county and municipal governments also obtain determinations of consistency, conformance, or endorsement with state or regional plans from state and regional governmental entities that may expire or lapse without implementation due to the state of the economy; and

Whereas, the current national recession has severely weakened the building industry, and many landowners and developers are seeing their life’s work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry; and

Whereas, the construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses; and

Whereas, financial institutions that loaned money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State; and

Whereas, due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once‑approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default; and

Whereas, as a result of the continued downturn of the economy and the continued expiration of approvals that were granted by state and local governments, it is possible that thousands of government actions will be undone by the passage of time; and

Whereas, obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector; and

Whereas, it is the purpose of this joint resolution to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This joint resolution must be known and may be cited as the “Permit Extension Joint Resolution of 2010”.

SECTION 2. As used in this resolution:

(1) “Department” means the South Carolina Department of Health and Environmental Control.

(2) “Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

(3) “Development approval” means an approval issued by the State, an agency or subdivision of the State, or a unit of local government, regardless of the form of the approval, that is for the development of land or for the provision of water or wastewater services by a governmental entity, including:

(a) an approval of an erosion and sedimentation control plan, land disturbance permit application, or stormwater management plan granted by a local government or by the department;

(b) a coastal zone consistency certification issued by the department’s Office of Ocean and Coastal Resource Management;

(c) a water or wastewater permit issued by the department, including authorization for construction and installation of lines and infrastructure extending water and sewer service and authorization to connect to available or proposed lines and infrastructure;

(d) an NPDES permit issued by the department for the construction, operation, and expansion of a publicly owned treatment works;

(e) a 401 water quality certification issued by the department;

(f) a critical area permit issued by the department’s Office of Ocean and Coastal Resource Management;

(g) an air quality permit issued by the department;

(h) an approval by a county or its duly authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit; and

(i) an approval by a city or its duly authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, or a building permit. For building permits that have expired and not been renewed by the city for one year, the building permit must be issued at no additional cost; however, the building permit must comply with existing rules and regulations in effect at the time the building permit is reissued.

SECTION 3. This joint resolution is intended to apply retroactively. For development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2012, the running of the period of the development approval and any associated vested right is suspended during the period beginning January 1, 2008, and ending December 31, 2012.

SECTION 4. This joint resolution may not be construed or implemented to:

(1) extend a permit or approval issued by the United States or its agencies or instrumentalities;

(2) extend a permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law;

(3) shorten the duration that a development approval would have had in the absence of this act;

(4) prohibit the granting of additional extensions provided by law;

(5) affect an administrative consent order issued by the department in effect or issued at any time from the effective date of this act to December 31, 2012;

(6) affect the ability of a governmental entity to revoke or modify a development approval pursuant to law;

(7) modify a requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program;

(8) affect a Certificate of Need issued pursuant to Title 44, Chapter 7, Article 3 or a Demonstration of Need issued pursuant to Title 44, Chapter 96, Article 2; or

(9) affect SCDHEC-OCRM permits issued pursuant to R.30-12(N) Access to Coastal Islands.

SECTION 5. Within thirty days after the effective date of this joint resolution, each agency or subdivision of the State to which this joint resolution applies shall place a notice in the State Register listing the types of development approvals that the agency or subdivision issues and noting the extension provided in this joint resolution. This section does not apply to units of local government.

SECTION 6. The provisions of this joint resolution must be liberally construed to effectuate the purposes of this joint resolution.

SECTION 7. This joint resolution takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

RAYMOND E. CLEARY III for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Health & Environmental Control reports that there would be a minimal cost ($3,000) associated with the preparation of the State Register notice and re-issuing expired permits upon request. But these costs will be absorbed by the agency using available resources.

*Approved By:*

Harry Bell

Office of State Budget

**A** **JOINT RESOLUTION**

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Whereas, the real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets; and

Whereas, as a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, canceled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled-back growth plans; and

Whereas, the process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies; and

Whereas, the process of obtaining the myriad of other government approvals, such as wetlands permits, land disturbance and storm water management permits, treatment works approvals, on-site wastewater disposal permits, highway access permits, critical area permits and coastal zone consistency certifications, and numerous waivers and variances, can be difficult and expensive. Changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain; and

Whereas, the citizens of this State and county and municipal governments, including local sewer and water authorities, obtain permits and approvals from state government agencies, particularly the Department of Health and Environmental Control, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval; and

Whereas, the citizens of this State and county and municipal governments also obtain determinations of consistency, conformance, or endorsement with state or regional plans from state and regional government entities that may expire or lapse without implementation due to the state of the economy; and

Whereas, the current national recession has severely weakened the building industry, and many landowners and developers are seeing their life’s work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry; and

Whereas, the construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses; and

Whereas, financial institutions that loaned money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State; and

Whereas, due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default; and

Whereas, as a result of the continued downturn of the economy and the continued expiration of approvals that were granted by state and local governments, it is possible that thousands of government actions will be undone by the passage of time; and

Whereas, obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector; and

Whereas, it is the purpose of this joint resolution to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources. Now, therefore,

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(3) “Development approval” means an approval issued by the State, an agency or subdivision of the State, or a unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity, including:

(a) an approval of an erosion and sedimentation control plan, land disturbance permit application, or storm water management plan granted by a local government or by the department;

(b) a coastal zone consistency certification issued by the department’s Office of Ocean and Coastal Resource Management;

(c) a water or wastewater permit issued by the department’s Office of Ocean and Coastal Resource Management, including authorization for construction and installation of lines and infrastructure extending water and sewer service and authorization to connect to available or proposed lines and infrastructure;

(d) an NPDES permit issued by the department for the construction, operation, and expansion of a publicly owned treatment works;

(e) a 401 water quality certification issued by the department;

(f) an encroachment permit issued by the Department of Transportation;

(g) a critical area permit issued by the department’s Office of Ocean and Coastal Resource Management;

(h) an air quality permit issued by the department;

(i) an approval by a county or its duly authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit; and

(j) an approval by a city or its duly authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit.

SECTION 3. This joint resolution is intended to apply retroactively. For development approval that is current and valid at any point during the period beginning January 1, 2009, and ending March 15, 2011, the running of the period of the development approval and the running of any associated vested right is suspended during the period beginning January 1, 2009, and ending March 15, 2011.

SECTION 4. This joint resolution may not be construed or implemented to:

(1) extend a permit or approval issued by the United States or its agencies or instrumentalities;

(2) extend a permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law;

(3) shorten the duration that a development approval would have had in the absence of this act;

(4) prohibit the granting of additional extensions provided by law;

(5) affect an administrative consent order issued by the department in effect or issued at any time from the effective date of this act to December 31, 2012;

(6) affect the ability of a government entity to revoke or modify a development approval pursuant to law; and

(7) modify a requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

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