

*PHRC Special Webinar Presentation  
Tuesday, August 20<sup>th</sup>, 1:00pm*

**Permit & Approval Extension**  
 Act 46 of 2010 (SB 1042)  
 Act 87 of 2012 (SB 1263)  
 Act 54 of 2013 (HB 784)

Presenter: Katie Blansett PhD, PE, BCO



**Pennsylvania Housing Research Center**  
[www.engr.psu.edu/phrc](http://www.engr.psu.edu/phrc)

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**Interpretation**

- The information contained in this presentation is believed to be accurate
- Other parties or stakeholders may offer differing opinions or interpretations
- As always, confer with your municipal solicitor or legal counsel for case-specific issues




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**Outline**

- **Basics of permit extension legislation**
  - Act 46 of 2010 (SB 1042)
  - Act 87 of 2012 (SB 1263)
  - Act 54 of 2013 (HB 784)
    - ♦ What it does
    - ♦ Details of the legislation




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### Act 46 – Basic facts

- SB 1042 (Fiscal Code) signed by Governor Rendell on July 6, 2010
- Effective immediately on July 6, 2010



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### Purpose

- To suspend, extend, or reinstate permits and approvals issued by any government agency, approved prior to July 6, 2010, pertaining to:
  - Zoning
  - Land use
  - Land planning & development
  - Construction and building



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### Purpose

- Provide some degree of economic relief for various land development, land use and construction activities
- Avoid the process and expense of obtaining new approvals and permits or renewing existing ones at full cost
- Compensate, in part, for the sluggish economy



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**What does the Act actually do?**

- Extended
- Reinstated




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**Act 46**

**What does the Act actually do?**

- Extends Permit
  - Automatically extended the expiration date of an approval or permit of the 33 statutes/regulations specifically listed in the Act
  - If the expiration date fell between January 1, 2009 and July 1, 2013 → automatically extended to July 1, 2013
    - ◆ If an approval was due to expire on May 1, 2011 → Automatically extended to July 1, 2013




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**Act 46**

**What does the Act actually do?**

- Reinstates Permit
  - Automatically reinstated a permit or approval of those issued under one of the 33 statutes/regulations specified in the bill
  - If the permit or approval had expired and the original expiration date fell between January 1, 2009 and July 6, 2010 → automatically extended to July 1, 2013




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**Act 46**


### What does the Act actually do?

Permits approved after 12/31/08

OR

Permits approved prior to 12/31/08, but would have expired between 1/1/09 and 7/1/13

**Extended to** **July 1, 2013**



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**Act 46**

### Case Law

- Lancaster County appeal of Keystone Custom Homes, Inc. and Fox Clearing, LLC, (Oct. 22, 2010)
- Act 46 does not have all permits expire on July 1, 2013
- If permit or approval still had 4 years remaining before it expired, that 4 years does not begin to run until July 2, 2013



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### Act 87 – Basic facts

- Finance bill
- Changed definition of “Extension Period”
  - Act 46 -- December 31, 2008 to July 2, 2013
  - Act 87 – December 31, 2008 to July 2, 2016



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### Act 54 – Basic facts

- **HB 784 signed by Governor Corbett on July 6, 2013**
- **Will *suspend* the timeframe of already approved permits**
- **Effective immediately**
- **Clarifies Act 87**
  - Court decisions indicated that the current language may cause all extended permits to end on the same day, July 2, 2016, which is not the original intent of the legislation.
  - A single expiration date not the intent and unmanageable




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### Act 54

### What does the Act actually do?

- **Suspends/Extends Permit**
  - Automatically suspends and extends the expiration date of an approval or permit of the 33 statutes/regulations specifically listed in the Act
  - If the expiration date falls between January 1, 2009 and July 1, 2016 → automatically extended to July 1, 2016 (plus existing life of the permit – based on “suspension” language of Act)




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### Act 54

### What does the Act actually do?

- **If an approval was due to expire on January 5, 2009 (5 days after December 31, 2008)**
  - Automatically extended to July 6, 2016 (5 days after July 1, 2016)
- **If an approval is due to expire on July 6, 2016**
  - Terminates July 6, 2016
  - The full term of the approval would apply




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**Act 54**

### What does the Act actually do?


Permits approved after 12/31/08

OR

Permits approved prior to 12/31/08, but would have expired between 1/1/09 and 7/1/16

**Extended to**

**July 1, 2016  
plus existing  
life of permit**



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### Applicability to Uniform Construction Code

- The ICC code edition under which the original permit was issued shall apply until the expiration of the permit
  - Some projects can still be using the 2006 I-codes
- The 2009 I-codes apply for all new permits issued effective January 1, 2010 unless a previously executed contract for design or construction exists



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### Development as related to UCC

- All permits issued under the Uniform Construction Code regulations are subject to Act 54 regardless of whether the specific activity for which they were issued appears in the definition of “development”



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SENATE AMENDED  
 HOUSE PRINTED \*S HOUSE 822, 1478 PRINTED \*S NO. 2158

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
 No. **784** Session of 2013


INTROUCED BY EVANSPOUGH, SCHLIDGEN, HARPER, C. HARRIS,  
 F. KELLER, M. E. KELLER, KROMER, KOPPEL, LAWRENCE, LONGIOTTI,  
 LUCAS, MENCALONE, OBERLINDER, SHIMKO, ZANOFF, WILLEN,  
 D. BRUSH, HARRIS, REID, REGAN AND SCARVELLO,  
 FEBRUARY 23, 2013

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 26, 2013

AN ACT

- 1 Providing for permit extensions; and making a repeal.
- 2 The General Assembly of the Commonwealth of Pennsylvania
- 3 hereby enacts as follows:
- 4 Section 1. Short title.
- 5 This act shall be known and may be cited as the Development
- 6 Permit Extension Act.

Detailed  
look at the  
Legislation




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Definitions  
Act 54, Section 2




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“Approval”

- Any government agency approval allowing a development or construction project to proceed
  - Approval
  - Agreement
  - Permit
  - Includes building permit or construction permit or other authorization or decision

Section 2. Definitions




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### Statutes, Regulations, or Ordinances

- (A) 37 Pa.C.S. (relating to historical and museums).
- (B) 53 Pa.C.S. (relating to municipalities generally).
- (C) 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums).
- (D) 68 Pa.C.S. Pt. II Subpt. C (relating to cooperatives).
- (E) 68 Pa.C.S. Pt. II, Subpt. D (relating to planned communities).
- (F) The act of March 7, 1901 (P.L.20, No.14), referred to as the Second Class City Law, as it relates to development and construction.
- (G) The act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law.
- (H) The act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.
- (I) The act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, as it relates to development and construction.



Section 2. Definitions

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### Statutes, Regulations, or Ordinances

- (J) The act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, as it relates to development and construction.
- (K) The act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, as it relates to development and construction.
- (L) The act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.
- (M) The act of June 1, 1945 (P.L.1242, No.428), known as the State Highway Law, as it relates to the issuance of highway occupancy permits which are regulated under 67 Pa. Code Ch. 441 (relating to access to and occupancy of highways by driveways and local roads) or which are affected by other laws or regulations.
- (N) The act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, as it relates to development and construction.



Section 2. Definitions

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### Statutes, Regulations, or Ordinances

- (O) The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.
- (P) The act of August 9, 1955 (P.L.323, No.130), known as The County Code.
- (Q) The act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law, as it relates to development and construction.
- (R) The act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.
- (S) The act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, as it relates to development and construction.
- (T) The act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.**



Section 2. Definitions

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### Statutes, Regulations, or Ordinances

- (U) The act of July 9, 1971 (P.L.206, No.34), known as the Improvement of Deteriorating Real Property or Areas Tax Exemption Act.
- (V) The act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act.
- (W) The act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.
- (X) The act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.
- (Y) The act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.**
- (Z) The act of December 20, 2000 (P.L.724, No.99), known as the Municipal Code and Ordinance Compliance Act.
- (Z.1) The act of June 22, 2001 (P.L.390, No.29), known as the Conservation and Preservation Easements Act.



Section 2. Definitions

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### Statutes, Regulations, or Ordinances

- (Z.2) The former act of May 16, 2002 (P.L.315, No.46), known as the former Community Services Block Grant Act.
- (Z.3) The act of February 22, 2008 (P.L.36, No.4), entitled "An act authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to VTE Philadelphia, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances."
- (Z.4) The act of February 22, 2008 (P.L.41, No.5), entitled "An act authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to NCCB Associates, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances."



Section 2. Definitions

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### Statutes, Regulations, or Ordinances

- (Z.5) Soil erosion and sediment control plans approved by a local soil conservation district under 25 Pa. Code Ch. 102 (relating to erosion and sediment control).
- (Z.6) The National Historic Preservation Act (Public Law 89-665, 80 Stat. 915), to the extent the Commonwealth has been empowered to administer, approve or otherwise authorize activities under that act.
- (Z.7) The Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.), to the extent the Commonwealth has been empowered to administer, approve or otherwise authorize activities under that act.



Section 2. Definitions

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### Additional definition of “Approval”

- **In Philadelphia**
  - Cities of the first class and agencies established by such cities
  - Includes *only* the issuance of a *building permit, a zoning use and registration permit*, and any administrative approval



Section 2. Definitions

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### Additional definition of “Approval”

- **Creating additional units and common elements out of convertible real estate in a condominium or planned community**



Section 2. Definitions

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### “Development”

- **Division of a parcel of land into two or more parcels, including a subdivision**
- **Construction, re-construction, conversion, structural alteration, relocation or enlargement of a building or other structure**
- **Site preparation (grading, earth moving, clearance, soil removal or movement, timber harvesting relocation, excavation, landfill, moving depositing or storing soil, rock or earth materials.**



Section 2. Definitions

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### “Development”

- Use or change in the use of a building or other structure or change in land use
- Land development or land use, as defined at Section 107 of the PA Municipalities Planning Code
- Demolition, moving, or removing a building or other structure
- Right to convert convertible real estate or withdraw withdrawable real estate (condominiums and planned communities)



Section 2. Definitions

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### “Extension Period”

- The period beginning after December 31, 2008 and ending before July 2, 2016



Section 2. Definitions

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### “Government Agency”

- The Commonwealth
- Any political subdivision
- An agency, department, authority, board or commission of the Commonwealth or a political subdivision
- Regional commissions, boards or instrumentalities with authority to issue approvals



Section 2. Definitions

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## “Government Agency”

### • Third party agencies

- For the purposes of the Uniform Construction Code and the applicability of Act 54, all certified third party agencies are considered government agencies (instrumentality authorized to issue approvals)
  - ♦ Contracted or retained by one or more municipalities, or
  - ♦ Serving as the Building Code Official and the issuer of permits in opt-out municipalities




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## Existing Approval Act 54, Section 3




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## Act 54 – Automatic Suspension

- 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



Section 3. Existing approval (A)

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### Limitation

- Any government approval granted after July 2, 2013 shall not be extended beyond the normal approval periods of the government agency with the permission or approval of the government agency



Section 3. Existing Approval (A) (a.2)

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### Duration

- Extension period is the maximum approval period and supersedes normal time for approvals related to development
- Government agencies are not prohibited from granting additional extensions



Section 3. Existing Approval (A) (b)

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### Subsequent Changes Act 54, Section 4



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### Change in Law

- 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
  - New actions cannot be taken to circumvent the intent of the extension period



Section 4. Subsequent changes (a)

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### Planning Code Approvals

- Approvals granted under the Pa Municipalities Planning Code
  - Change in zoning, subdivision, or other ordinance does not apply during the extension period
- Extension period extended for the duration of any litigation, including appeals



Section 4. Subsequent changes (b)

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### Planning Code Approvals

- Changes in zoning, subdivision or other ordinance if enacted after January 1, 2009
  - ◆ Not enforced until after the suspension & extension period – July 2, 2016
- Suspension and extension includes:
  - all conditional use approvals
  - any agreement with any municipality for conditions that were part of a preliminary or final plan approval issued within the extension period




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### Examples related to planning

- **Subdivision & land development plan approved in Dec 2009**
  - Approval set to expire in Dec 2013
  - New township stormwater management ordinance or zoning ordinance adopted in June 2011
  - Act 54 automatically extends permit expiration date under ordinance active at time of original permit
- **No need to resubmit or update plans**




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### Agency Verification Act 54, Section 5




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### Request for verification

- **Approval holder may (but is not required to) request verification from the government agency issuing the approval for the:**
  - Existence of a valid approval
  - Expiration date of the approval under Act 46
- **Request must set forth the approval in question and the anticipated expiration date under Act 54**



Section 5. Agency verification (a)

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### Request for verification

- **Government agency receiving request for verification shall respond in writing:**
  - affirming or denying the existence of the approval
  - the approval expiration date
  - any issues associated with approval validity
  
- **Response must be within 30 days of receipt**
  - Failure to respond within 30 days = assumed affirmation of the existence of the approval and the expiration date set forth in the request



Section 5. Agency verification (b)

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### Request for verification

- **Government agency may charge a fee for verification**
  - Up to \$100 for residential approvals
  - Up to \$500 for commercial approvals



Section 5. Agency verification (b)

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### Request for verification

- **There is no penalty to an approval holder if they do not pursue verification**
  - Approval cannot be terminated, revoked or otherwise invalidated if the approval is not verified



Section 5. Agency verification (c)

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### Appeals of verification

- Any dispute over verification between an issuing agency and an approval holder may be appealed in accordance with:
  - Local agency law
  - PA Municipalities Planning Code



Section 5. Agency verification (d)

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### Applicability Act 54, Section 6




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### Exceptions – Act 54 does not apply to:

- Approvals issued to comply with Federal law – where the duration or the term of expiration is specified or determined by Federal law
  - ♦ This includes NPDES (DEP stormwater) permits
- Administrative consent orders or other enforcement actions relating to an approval that is subject to the extension period



Section 6. Applicability (a) (1) & (2)

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**Exceptions –  
Act 54 does not apply to:**

- Approvals, designations, or benefits pertaining to:
  - ♦ Keystone Opportunity Zone
  - ♦ Keystone Opportunity Expansion Zone
  - ♦ Keystone Opportunity Improvement Zone

 Section 6. Applicability (a) (3)

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**Exceptions –  
Act 54 does not apply to:**

- “One Call” determinations or responses
- PennDOT approvals
  - ♦ Access to and occupancy of highways by driveways and local roads shall be extended for one year periods upon submission of a complete application to PennDOT

 Section 6. Applicability (a) (4) & (6)

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**Exceptions –  
Act 54 does not apply to:**

- DEP approvals related to antidegradation requirements for surface waters or wetlands if the water body is reclassified as High Quality (HQ) or Exceptional Value (EV) during the extension period
- DEP approvals for surface waters or wetlands classified as Exceptional Value (EV)

 Section 6. Applicability (a) (7) & (8)

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## Sewer and Water Systems

- Approval extension is contingent on the availability of sufficient capacity of the system to accommodate the development
- If insufficient capacity, priority of allocation will be established by the date the approval was obtained



Section 6. Applicability (b)

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## Fees

- A government agency which issued an approval may charge a fee to extend the approval
- Fee is limited to
  - 25% of the original application fee
  - May not exceed \$5,000



Section 6. Applicability (c)

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## Miscellaneous

Section 8



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## Authority

- **During the extension period, the government agency retains the authority to:**
  - Suspend or review an approval for noncompliance with a written condition of the approval
  - Enforce conditions of approvals granted under law prior to the extension period
  - Enforce only those conditions in an approval issued under the MPC that are required to be performed prior to final plan approval



Section 8. Miscellaneous (b)

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## Summary

- **Act 54 of 2013**
  - Suspends approvals and permits to July 1, 2016 plus the amount of time remaining on the permit as of December 31, 2008
  - I-codes in place at the time of approval remain in effect
  - Approvals and permits issued after July 9, 2013 follow normal permit expiration




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## Questions?

**Next webinar:**  
**Tuesday, September 10<sup>th</sup> at 1:00pm**  
*Quick Guide to the UCC*



**Pennsylvania Housing Research Center**  
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