

THE PERMIT EXTENSION ACT
Frequently Asked Questions
November 2010

This document provides answers to frequently asked questions about the Permit Extension Act as it affects permits issued by state agencies. It is not intended to provide guidance to permits issued by a municipality. (The excerpts in this document were copied from the Mass.Gov website.)

What is the Permit Extension Act?

The Permit Extension Act was created by [Section 173 of Chapter 240 of the Acts of 2010](#). The purpose of this act is to promote job growth and long-term economic recovery and the Permit Extension Act furthers this purpose by establishing an automatic two-year extension to certain permits and licenses concerning the use or development of real property.

With limited exceptions, the Act automatically **extends, for two years beyond its otherwise applicable expiration date, any permit or approval that was “in effect or existence” during the qualifying period beginning on August 15, 2008 and extending through August 15, 2010.**

What types of approvals are included in this act?

The Act applies to regulatory approvals issued by local, regional or state entities that concern the use or development of real property. “Approval” is defined broadly to include any permit, certificate, license, certification, determination, exemption, variance, waiver, building permit, or other approval or determination of rights, and any order, except for enforcement orders.

Does this extension apply only to state-issued permits?

No, this extension applies to all qualifying permits issued by any municipal, regional, or state entity.

The act refers to a list of statutes. Does the act cover approvals under other statutes?

Yes. While the definition of “Approval” includes a particular list of statutes, it is not an exclusive list of all statutes affected by this Act. As such, the Act applies to all regulatory approvals concerning the use or development of real property, except those expressly exempted.

Are any types of approvals exempted from this statute?

Yes. **The following approvals are** expressly exempted and therefore are **NOT covered by the Act:**

- Permits or approvals issued by the Federal government, or by a state agency issued pursuant to federal law
- Permits issued under sections 20 to 23 of Chapter 40B
- Enforcement orders.

Is the 2 year extension automatic?

Yes. The two year extension authorized by the Act is automatic, meaning it occurred by operation of law. **Neither the permit holder nor the issuing agency needs to take action to implement the extension.**

Does a permit or approval extended by the Act require any further review?

No, unless the permit or approval by its terms called for such further review when in effect during the qualifying period. Permits or approvals issued prior to the qualifying period and in effect at any time during the qualifying period, and permits or approvals issued during the qualifying period have completed review and are valid for two additional years from the original date of expiration.

What is the new expiration date?

The new expiration date is **two years from the date that otherwise marked the end of the lawful term of the permit** or approval. For example, a permit that expired on September 1, 2009 is now revived and will expire on September 1, 2011.

Are issuing agencies required to issue written notices of extension to approval holders?

No. The Act does not require issuing agencies to provide written notice of extension and an approval holder does not need written notice of extension of its permit or approval. However, an issuing agency may post a general notice of the Act on its website and may issue a standard notice of extension eligibility to approval holders who request a document for financing or other purposes.

Does the Act apply to Mass Environmental Policy Act (MEPA) decisions, certificates or waivers?

Yes. Certificates issued pursuant to MEPA are specifically listed in the definition of “Approval” included in the Act. Therefore, Certificates that were issued or were in effect between August 15, 2008 and August 15, 2010 will have two additional years before a “Lapse of Time” will have occurred triggering either a Notice of Project Change or a new Environmental Notification Form (See 301 CMR 11.10).

Does the Act apply to a permit that expired during the qualifying period?

Yes, the Act revives and extends any permit or approval that was valid during the qualifying period of August 15, 2008 through August 15, 2010. For instance, a permit that expired on July 1, 2009 is now revived and set to expire on July 1, 2011.

Does the Act apply to a permit that was not due to expire until after the qualifying period?

Yes. The Act provides an additional two years to the original “lawful term of the permit” or approval. If a permit or approval was due to expire on September 1, 2011, it will now automatically expire on September 1, 2013.

Does the Act extend the term of a permit that was revoked during the qualifying period?

No. The Act applies to permits or approvals that were “in effect or existence” during the qualifying period. Any permits or approvals that were revoked during the qualifying period were not in effect or existence for the purposes of this Act. The Act expressly preserves an issuing agency’s authority to suspend or revoke an approval in accordance with the terms of approval itself, or the authorizing statute or regulations.

Does the act apply to a permit that expired prior to the qualifying period, but which had been extended by the issuing agency?

Yes, provided the extension resulted in the permit being “in effect” during the qualifying period; if the permit application was pending but not granted during the qualifying period it was not “in effect or existence” for purposes of the Act. For example, a permit that was set to expire on January 31, 2007, but which was lawfully extended for three years by the issuing authority (until January 31, 2010), would now be set to expire on January 31, 2012.

Can an agency revoke or suspend a permit or approval to avoid the 2 year extension?

No. An issuing agency must have an independent reason authorized by the terms of the permit, the statute or the regulation to revoke or to suspend a permit.

Does the Act revive permits that expired during the qualifying period where a request for an extension or renewal was already denied?

Yes. The Act only preserves certain rights of an agency to suspend or to revoke an approval. Even if an extension had been previously denied, the permit or approval is revived by the Act. However, a permitting authority retains its rights to revoke or modify a permit to the extent authorized permitted by the underlying permit, statutory or regulatory authority.

Can the issuing agency condition the extension to correct problems, errors, and/or project changes since the permit expired?

No. The extension is automatic and no conditions can be placed on the extension. The Act automatically changes the expiration date of a qualifying approval. Any work that takes place under an extended permit or approval must conform to the existing performance standards. However, an issuing agency may modify the conditions of the extended permit or approval if the underlying statutory or regulatory authority would allow such modification.

Can the issuing agency modify a permit or approval to correct problems, errors, and/or project changes since the permit expired?

Yes. The Act preserves the issuing agency’s authority to modify an approval if the underlying statutory or regulatory authority would allow a modification to correct problems, errors, or project changes. Any work that takes place under an extended permit or approval must conform to performance standards otherwise applicable to the permit as originally granted or previously extended.

Can the issuing agency take enforcement action to address noncompliance?

Yes. The Act upholds the issuing agency’s enforcement authority.

Does the Act affect mitigation that was required as a condition of my permit?

No. Any and all conditions that applied to the permit or approval extended by the Act continue to apply.

Is anything other than the expiration date of my permit or approval changed by the Act?

No. A permit or approval is subject to the same substantive terms that applied when it was issued by the agency, except that any interim deadlines established by the permit are extended for two years. Permits or approvals can be modified under the same terms that were originally contained in the permit or approval or that are authorized by the underlying statute or regulations.

If an approval holder is in violation, does the Act extend the permit or approval?

Yes, but the issuing agency can take appropriate enforcement action if a violation has occurred. The Act does not alter other substantive provisions of the permit or approval, or the authority of the issuing agency under which it was issued.

What if a permit was issued during the qualifying period but was subject to an administrative appeal?

A permit or approval that was pending adjudicatory appeal during the qualifying period is not extended because it is not a final permit or approval and as such is not “in effect or existence.”

However, if the administrative appeal that prevented the permit or approval from taking effect was resolved and a final permit was issued during the qualifying period, it is a permit in effect or existence and is entitled to the two year extension. If the administrative appeal is resolved and a final permit is issued after the qualifying period, the final permit is not entitled to the two year extension.

What if a permit was issued during the qualifying period but is now pending Judicial appeal?

As with any permit pending judicial appeal, it is subject to the court’s ultimate decision. If a permit that would qualify for the extension is pending appeal, and the court upholds the permit, the permit will qualify for an extension. There is no need for an extension if the court invalidates the permit.

What if a permit was issued during the qualifying period but was appealed to court and the court’s decision upholding the permit was not issued until after the qualifying period?

Because the permit was issued during the qualifying period, it was in effect or existence during the qualifying period and qualifies for an extension.

Can an approval holder refuse an extension?

No. If the Act applies to a permit or approval, it is automatically extended. However, an approval holder can surrender its approval under the same terms and conditions of that permit or approval that it could absent the Act.

Understanding that Chapter 40B permits are exempt from this act, are the non-40B permits associated with a 40B project (such as wetlands permits, etc.) extended?

Yes. Only permits issued under sections 20 to 23 of Chapter 40B are not extended. All other permits associated with the project are extended.