

# Massachusetts and Rhode Island Enact New Permit Extension Laws

August 2010

[Jennifer R. Cervenka, Esq.](#)

[Jay R. Peabody, Esq.](#)

Due to the unpredictability of available financing and depressed real estate market conditions, many developers are struggling to keep their new construction projects alive and to avoid the inevitable costs associated with maintaining local and state permits. In recognition of this reality, the legislatures in Massachusetts and Rhode Island have enacted “tolling” laws designed to automatically extend the expiration dates of most development-related permits. The new laws give developers, lenders, municipalities, and state agencies in both states a welcome reprieve from having to address impending permit expiration dates and expending the time and money that will be required for extensions or new applications before market conditions improve.

## Massachusetts

In the final hours of the 2009-2010 legislative session, the Massachusetts legislature enacted, and the Governor promptly signed into law, the Permit Extension Act of 2010 (Section 173 of Senate Bill 2582) (the “Act”).

The Act automatically extends for two years beyond their original term the life of most state and local development-related permits and approvals issued or in existence between August 15, 2008 and August 15, 2010. For example, a permit issued on February 1, 2009 which would expire on February 1, 2011, will now expire on February 1, 2013.

The Act defines “approvals” broadly to include zoning and subdivision approvals, approvals issued under the Massachusetts Environmental Policy Act, Chapter 91 waterways permits, permits and approvals by local conservation commissions under the Wetlands Protection Act, Endangered Species Act permits, building permits, permits issued related to Smart Growth, and like permits issued under any local by-law or ordinance.

The Act is not exhaustive and does not cover a number of permits and approvals, including most notably Comprehensive Permits issued pursuant to Chapter 40B, oil and hazardous material release permits issued under Chapter 21E, approvals issued by the Massachusetts Historical Commission, permits and licenses issued by the Division of Fisheries and Wildlife for hunting, fishing, or aquaculture, and all other approvals issued by the government of the United States or its agencies and instrumentalities. In addition, the Act does not extend compliance dates under enforcement orders nor allow for the extension of so-called “zoning freeze” dates under section 6 of Chapter 40A.

Under the Act, if ownership of a property or project changes, the new owner must agree to be bound by any and all commitments made under the terms of the prior issued permit in order to take advantage of the extension.

[Click here for a copy of the complete text of the recently signed law, including the Permit Extension Act \(Section 173\).](#)

## Rhode Island

In 2009, the Rhode Island General Assembly enacted a permit tolling law designed to extend the life of local and state environmental agency permits for a 20 month period. The new tolling law amended provisions of state subdivision and zoning laws as well as provisions of the enabling acts of the Rhode Island Department of Environmental Management and Rhode Island Coastal Resources Management Council, R.I. Gen. Laws §§ 45-23-63.1, 45-24-61.1, 42-17.1-2.5, and 46-23-6.3 respectively (“Rhode Island Tolling Law”). The language used in the new law, however, was unclear as to what the General Assembly actually intended by the word “tolling,” whether the benefits of the new law would apply to permits issued during the tolling period and how the new expiration dates would be calculated. Predictably, the law’s ambiguities resulted in differing interpretations by state agencies and local permitting authorities. The objective of providing relief for development projects was frustrated; rather, developers were left confused as to the practical effect of the new law.

During its 2009-2010 session, the General Assembly revisited the Rhode Island Tolling Law and enacted several clarifying amendments. The amended law, set forth in Senate Bill 2656, retains the 20 month tolling period but, now, expressly defines “tolling” to mean “the suspension or temporary stopping of the running of the applicable permit or approval period.” The amended law also clearly expands its reach to permits that are issued during the tolling period and provides clear instructions for calculating the new expiration dates.

The amended Rhode Island Tolling Law applies to all local or state environmental agency permits or approvals issued before and in effect on November 9, 2009 (the start of the tolling period) as well as those permits issued between November 9, 2009 and June 30, 2011 (during the tolling period). The new law does not apply to permits that were expired on November 9, 2009; thus the law will not “revive” dead permits.

The new expiration date for permits issued before and in effect on November 9, 2009 is to be recalculated as of July 1, 2011 by adding the number of days between November 9, 2009 and the day on which the permit would otherwise have expired. By way of example, if a local zoning variance was set to expire 10 days after the start of the tolling period (November 19, 2009), the new expiration date would be July 10, 2011. For permits issued during the tolling period (November 9, 2009 to June 30, 2011), the new expiration date is recalculated as of July 1, 2011 by adding the number of days between the day the permit is issued and the day the permit otherwise would have expired. For example, if a Department of Environmental Management water quality certificate is issued on June 30, 2010 and would have expired on June 30, 2013, the three year permit period “starts” on July 1, 2011.

**The amended Rhode Island Tolling Law (Senate Bill 2656) became effective on June 25, 2010. [Click here for a copy of the new law.](#)**