HOUSE BILL 794:
NC Permitting Efficiency Act of 2017.

2017-2018 General Assembly

Committee:	House Finance	**Date:**	June 21, 2017
Introduced by:	Reps. Stone, Saine, Bradford, Torbett	**Prepared by:**	Trina Griffin
Analysis of:	PCS to Second Edition H794-CSSVf-38		Committee Co-Counsel

OVERVIEW: House Bill 794 creates general requirements for issuing permits by counties and cities related to site construction and land use permits, delegates to certain municipalities the authority to issue construction permits and approvals associated with State maintained roads located within the municipality and the municipality's extraterritorial jurisdiction, and makes changes designed to foster efficiency in State and local permitting. The act becomes October 1, 2017.

The PCS makes the same change in both the county and city provisions for issuing permits to allow a fee in lieu of payment related to off-site improvements up to 120% of the impact or cost associated with the development. The current edition of the bill would only allow a fee of up to 20% of the cost.

This bill is in Finance because it authorizes local governments and State agencies to charge a fee cover the cost of creating an online permitting system, it authorizes counties and cities to charge a fee in lieu of payment related to off-site improvements related to the impact of the construction or development, it authorizes cities that are exercising delegated permitting authority to charge a fee for the review of a transportation-related or right-of-way impacting construction plan. Each of these fee authorizations are subject to various limitations set out in the bill.

BILL ANALYSIS: House Bill 794 makes changes to change permitting requirements for construction permits issued by a county or city related to site construction and land use permits.

Sections 1 and 2 create general requirements for issuing permits by counties and cities related to site construction and land use permits:

- All standards or requirements for the issuance of a construction permit must be included in a written policy, standard, procedure or ordinance adopted or authorized by the governing body, and the written policy, standard, procedure or ordinance must be available for public inspection. A county or city may deny a complete construction permit application only if the permittee fails to meet the standards or requirements established by the county as prescribed in the written policy, standard, procedure or ordinance.
- A county or city must not require a permittee to reserve land, dedicate rights of way, adhere to planning or land use conditions, or make accommodations for future construction activities, including the installation of future infrastructure, unless the requirement is included in a written policy, standard, procedure or ordinance authorized or adopted by the governing body.
- The governing body must adopt a written policy, standard, procedure or ordinance establishing or authorizing county or city departments to establish a schedule that must be used in reviewing permit applications. The schedule may allow for extenuating circumstances which make adherence impractical, as determined by the city or county, but these schedule exceptions should

be noted in required reporting. The schedule must be published on the county or city's Website if one is available.

- County and city departments must on a quarterly basis, submit to the governing body a report detailing the department's compliance with the schedule. The department's report must be made available for public inspection and must be published on the county or city's Web site, if one is available.
- A written policy, standard, procedure or ordinance must not require a permit be reviewed only after another agency or department has conducted its own review of the same or another permit application related to the same project. Permits issued by the county or city must require that that construction permits be reviewed concurrently with other permits related to the same project. The requirement for departments or agencies to review concurrently does not apply if the project is proposed to be constructed in phases which make a concurrent review impractical, or if the permittee requests non-concurrent reviews.
- If an online program is used, where feasible, every department or agency and State agencies, where applicable, must use the online program. Also, where feasible, the online program must be made accessible to outside local and State agencies. To ensure security, a web-based program or portal must be used or a secure login option must be provided if an outside agency will have access to the program.
- Where feasible, counties and cities must make their programs accessible to one another to facilitate concurrent review and approval of permit applications.
- A county or city may establish a fee to cover the cost of creating an online program, but the fee must not be more than the anticipated first two years' actual cost of establishing and implementing the online program. The total cost must be evenly distributed to all permit applicants based on an estimated number of expected applicants.
- A county or city must not require a permittee to construct off site infrastructure improvements unless the improvements are roughly proportionate to the impact of the permittee's development.
- A fee in lieu of payments related to off site improvements authorized by law must not exceed one hundred twenty percent (120%) of the roughly proportionate impact of the permittee's development, unless otherwise agreed to by the permitee.

Section 2 creates a new Article 3C, in Chapter 136 of the General Statutes called the Local Government Permitting Act of 2017.

It delegates to certain municipalities the authority to issue construction permits and approvals associated with State maintained roads located within the municipality and the municipality's extraterritorial jurisdiction (ETJ). This authority includes the authority to approve plats, issue driveway permits, and inspect and approve construction activities and encroachment within the Department's rights of way. All municipalities with a population of 50,000 or more are granted this new permitting authority unless the municipality specifically declines the delegation.

Nothing in this Article modifies the Department's responsibility to perform typical maintenance activities on State maintained roads and bridges, or modifies bonding requirements.

A municipality may request the Department review permit applications, construction activities and encroachments, or inspections, for certain specific State-maintained roads, certain types of State-maintained roads, bridges, or provide technical services, which may be outside of the municipality’s expertise.

A municipality may request a modification of a Department standard or policy by submitting the request to the Department Division Engineer. The modification request must include the basis of the request and a description how the modification will not adversely impact safety, road maintenance, or traffic flow.

A municipality may approve a minor site-specific deviation from a Department standard or policy if, in the opinion of the municipality, the modification will not adversely impact safety, road maintenance, or traffic flow and is necessitated by a minor site specific condition. The municipality is not required to get the Department's approval of the minor deviation.

The delegation of authority to municipalities to issue construction permits and approvals for State maintained roads within the municipality or its ETJ does not apply to any of the following:

- Interstate highways including ramps and interchanges.
- State-maintained roads which have high traffic volumes.
- Sections of State-maintained roads located within 2,000 feet of an interstate interchange as measured from the limits of the right-of-way of the interstate.
- Sections of state-maintained controlled access roads.

G.S. 136-166.52 provides that a municipality that does not otherwise qualify for the delegation of authority provided for under the Article may request that the Board grant the authority. The municipality must develop a review program for its jurisdiction and submit its program to the Board for review and approval. The Board must review each program submitted by a municipality and within 90 days of receipt of the application must notify the municipality whether it has been (i) approved, (ii) approved with modifications, or (iii) disapproved. The Board must only approve an application upon determining the municipality's review staff has adequate experience and technical expertise.

G.S. 136-166.53 provides that the Department must establish review guidelines that a local government must follow. The guidelines must be consistent with existing permitting standards must not establish different standards for different municipalities.

If the Department determines a municipality is failing to adequately administer or enforce a local program, it must notify the municipality in writing. If the municipality does not take corrective action within 60 days, the Department will assume administration and enforcement of the program until the municipality demonstrates to the satisfaction of the Department the ability to resume administration of the program.

G.S. 136-166.54 permits municipalities to do all of the following:

- Adopt written policies, standards, procedures or ordinances necessary to establish and enforce transportation review programs established in accordance with this Article. A written policy, standard, procedure or ordinance must at least meet, but may not exceed, the minimum requirements established by the Department for State maintained roads.
- Create or designate agencies or subdivisions to administer and enforce the programs.
- Collect from the Department the amounts necessary to administer and enforce this program, not to exceed the actual costs to the municipality.

A municipality must approve a plan only after determining that it complies with all applicable federal, State, and local regulations. A municipality must disapprove a plan if implementation of the plan would result in a violation of federal and State laws.

For projects related to transportation or activities or encroachments within the Department's rights of way, a municipality must, within 30 days of receipt, notify the person submitting the application that the application has been (i) approved, (ii) approved with modifications, or (iii) disapproved.

G.S. 136-166.55 addresses fees. It provides that an ordinance adopted by a municipality may establish a fee for the review of a transportation related or right of way impacting construction plan and related activities, except as limited by statute. However, if the local government already performs reviews of the same construction plans under this Article, it may not establish an additional fee for review of a construction activity impacting a State maintained road or its right of way.

Section 3(a) creates a new Article 82 in Chapter 143 of the General Statutes addressing transparency and efficiency in State and local permitting.

G.S. 143-675 provides that State and local government agencies that have the authority to review and approve construction permits must maintain published records that present a summary of adherence to their published review schedules. Agencies must also publish summary data that present the number of reviews and submittals for each project. This data must be published on the agency's or municipal government's public Web site

G.S. 143-766 provides that State and local government agencies that had authority to review and approve construction permit must make accommodations so that all entities can utilize the system concurrently and collaboratively. If reviews are performed through an online system, where feasible, all agencies must review using the same online system or portal. To ensure security, the agency or municipal government which hosts the online review system must utilize a web-based program or portal, or provide a secure login option, if an outside agency will have access to the program.

G.S. 143-767 provides that State or local governments, which incur costs associated with the creation or adoption of an online permitting system, may establish a fee or increase an existing fee for the review, but the new or additional fee must not be more than the anticipated actual cost associated with implementation. The fees must be distributed equally among all permit applicants over the course of two years. The fee, or increased fee, must be in effect only for the first 24 months following the initiation of the online permitting process. The State or local government must estimate the anticipated number of permit applications for the program's first 24 months based on the number of applicants from the previous 12 months.

Section 3(b) provides that State agencies which review construction documents and have permit authority must develop and implement an online system for submittal, review, and approval, by 2020.

EFFECTIVE DATE: The act becomes effective October 1, 2017.

Brad Krehely, counsel to House State and Local Government II, substantially contributed to this summary.