

[Fourth Reprint]
ASSEMBLY, No. 1338

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Extends expiration date of certain permits pursuant to the "Permit Extension Act of 2008."

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 21, 2012.

(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning the extension of certain permits and approvals
2 affecting the physical development of property located within the
3 State of New Jersey and amending P.L.2008, c.78.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.2008, c.78 (C.40:55D-136.2) is amended to
9 read as follows:

10 2. The Legislature finds and declares that:

11 a. **【There exists a state of national recession, which】** The most
12 recent national recession has caused one of the longest economic
13 downturns since the Great Depression of the 1930's and has
14 drastically affected various segments of the New Jersey economy,
15 but none as severely as the State's banking, real estate and
16 construction sectors.

17 b. The real estate finance sector of the economy is in severe
18 decline due to the sub-prime mortgage problem and the resultant
19 widening mortgage finance crisis. The extreme tightening of
20 lending standards for home buyers and other real estate borrowers
21 has reduced access to the capital markets.

22 c. As a result of the crisis in the real estate finance sector of the
23 economy, real estate developers and redevelopers, including
24 homebuilders, and commercial, office, and industrial developers,
25 have experienced an industry-wide decline, including reduced
26 demand, cancelled orders, declining sales and rentals, price
27 reductions, increased inventory, fewer buyers who qualify to
28 purchase homes, layoffs, and scaled back growth plans.

29 d. The process of obtaining planning board and zoning board of
30 adjustment approvals for subdivisions, site plans, and variances can
31 be difficult, time consuming and expensive, both for private
32 applicants and government bodies.

33 e. The process of obtaining the myriad other government
34 approvals, required pursuant to legislative enactments and their
35 implementing rules and regulations, such as wetlands permits,
36 treatment works approvals, on-site wastewater disposal permits,
37 stream encroachment permits, flood hazard area permits, highway
38 access permits, and numerous waivers and variances, also can be
39 difficult and expensive; further, changes in the law can render these
40 approvals, if expired or lapsed, impossible to renew or re-obtain.

41 f. County and municipal governments obtain determinations of
42 master plan consistency, conformance, or endorsement with State or

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted January 30, 2012.

²Assembly floor amendments adopted February 16, 2012.

³Assembly AAP committee amendments adopted March 12, 2012.

⁴Assembly floor amendments adopted June 21, 2012.

1 regional plans, from State and regional government entities which
2 may expire or lapse without implementation due to the state of the
3 economy.

4 g. The current national recession has severely weakened the
5 building industry, and many landowners and developers are seeing
6 their life's work destroyed by the lack of credit and dearth of buyers
7 and tenants, due to the crisis in real estate financing and the
8 building industry, uncertainty over the state of the economy, and
9 increasing levels of unemployment in the construction industry.

10 h. The construction industry and related trades are sustaining
11 severe economic losses, and the lapsing of government development
12 approvals would, if not addressed, exacerbate those losses.

13 i. Financial institutions that lent money to property owners,
14 builders, and developers are experiencing erosion of collateral and
15 depreciation of their assets as permits and approvals expire, and the
16 extension of these permits and approvals is necessary to maintain
17 the value of the collateral and the solvency of financial institutions
18 throughout the State.

19 j. Due to the current inability of builders and their purchasers
20 to obtain financing, under existing economic conditions, more and
21 more once-approved permits are expiring or lapsing and, as these
22 approvals lapse, lenders must re-appraise and thereafter
23 substantially lower real estate valuations established in conjunction
24 with approved projects, thereby requiring the reclassification of
25 numerous loans which, in turn, affects the stability of the banking
26 system and reduces the funds available for future lending, thus
27 creating more severe restrictions on credit and leading to a vicious
28 cycle of default.

29 k. As a result of the continued downturn of the economy, and
30 the continued expiration of approvals which were granted by State
31 and local governments, it is possible that thousands of government
32 actions will be undone by the passage of time.

33 l. Obtaining an extension of an approval pursuant to existing
34 statutory or regulatory provisions can be both costly in terms of
35 time and financial resources, and insufficient to cope with the
36 extent of the present financial situation; moreover, the costs
37 imposed fall on the public as well as the private sector.

38 m. It is the purpose of this act to prevent the wholesale
39 abandonment of approved projects and activities due to the present
40 unfavorable economic conditions, by tolling the term of these
41 approvals for a period of time, thereby preventing a waste of public
42 and private resources.

43 (cf: P.L.2008, c.78, s.2)

44

45 2. Section 3 of P.L.2008, c.78 (C.40:55D-136.3) is amended to
46 read as follows:

1 3. As used in ⁴[this act] P.L.2008, c.78 (C.40:55D-136.1 et
2 seq.)⁴ :

3 "Approval" means, except as otherwise provided in section 4 of
4 ⁴[this act] P.L.2008, c.78 (C.40:55D-136.4)⁴ , any approval of a
5 soil erosion and sediment control plan granted by a local soil
6 conservation district under the authority conferred by R.S.4:24-22
7 et seq., waterfront development permit issued pursuant to R.S.12:5-
8 1 et seq., permit issued pursuant to "The Wetlands Act of 1970,"
9 P.L.1970, c.272 (C.13:9A-1 et seq.), permit issued pursuant to the
10 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
11 et al.), approval of an application for development granted by the
12 Delaware and Raritan Canal Commission pursuant to the "Delaware
13 and Raritan Canal State Park Law of 1974," P.L.1974, c.118
14 (C.13:13A-1 et seq.), permit issued by the New Jersey
15 Meadowlands Commission pursuant to the "Hackensack
16 Meadowlands Reclamation and Development Act," P.L.1968, c.404
17 (C.13:17-1 et al.), approval of an application for development
18 granted by the Pinelands Commission and determination of
19 municipal and county plan conformance pursuant to the "Pinelands
20 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), permit
21 issued and center designations pursuant to the "Coastal Area
22 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), septic
23 approval granted pursuant to Title 26 of the Revised Statutes,
24 permit granted pursuant to R.S.27:7-1 et seq. or any supplement
25 thereto, right-of-way permit issued by the Department of
26 Transportation pursuant to paragraph (3) of subsection (h) of
27 section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a
28 sewerage authority pursuant to the "sewerage authorities law,"
29 P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a
30 municipal authority pursuant to the "municipal and county utilities
31 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), ¹an
32 agreement with a municipality, county, municipal authority,
33 sewerage authority, or other governmental authority for the use or
34 reservation of sewerage capacity.¹ approval issued by a county
35 planning board pursuant to chapter 27 of Title 40 of the Revised
36 Statutes, preliminary and final approval granted in connection with
37 an application for development pursuant to the "Municipal Land
38 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted
39 pursuant to the "State Uniform Construction Code Act," P.L.1975,
40 c.217 (C.52:27D-119 et seq.), plan endorsement and center
41 designations pursuant to the "State Planning Act," P.L.1985, c.398
42 (C.52:18A-196 et al.), permit or certification issued pursuant to the
43 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et
44 al.), permit granted authorizing the drilling of a well pursuant to
45 P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted,
46 exemption from a sewerage connection ban granted, wastewater
47 management plan approved, and pollution discharge elimination

1 system permit pursuant to the "Water Pollution Control Act,"
2 P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant
3 to "The Realty Improvement Sewerage and Facilities Act (1954),"
4 P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval
5 granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.),
6 certification issued and water quality management plan approved
7 pursuant to the "Water Quality Planning Act," P.L.1977, c.75
8 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe
9 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), permit
10 issued pursuant to the "Flood Hazard Area Control Act," P.L.1962,
11 c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or
12 State approval or permit granted under the general authority
13 conferred by State law or rule or regulation, or any other
14 government authorization of any development application or any
15 permit related thereto whether that authorization is in the form of a
16 permit, approval, license, certification, permission, determination,
17 interpretation, exemption, variance, exception, waiver, letter of
18 interpretation, no further action letter, agreement or any other
19 executive or administrative decision which allows a development or
20 governmental project to proceed.

21 "Development" means the division of a parcel of land into two or
22 more parcels, the construction, reconstruction, conversion,
23 structural alteration, relocation or enlargement of any building or
24 other structure or facility, or of any grading, soil removal or
25 relocation, excavation or landfill or any use or change in the use of
26 any building or other structure or land or extension of the use of
27 land.

28 "Environmentally sensitive area" means an area designated
29 pursuant to the State Development and Redevelopment Plan
30 adopted, as of the effective date of ⁴**[this act] P.L.2008, c.78⁴** ,
31 pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area
32 4B (Rural/Environmentally Sensitive), Planning Area 5
33 (Environmentally Sensitive), or a critical environmental site **;** the
34 Highlands Region as defined in section 3 of P.L.2004, c.120
35 (C.13:20-3) but shall not include any area designated for growth in
36 the Highlands regional master plan adopted by the Highlands Water
37 Protection and Planning Council pursuant to P.L.2004, c.120
38 (C.13:20-1 et al.); and the pinelands area designated in section 10 of
39 P.L.1979, c.111 (C.13:18A-11) but shall not include any growth
40 area designated in the comprehensive management plan prepared
41 and adopted by the Pinelands Commission pursuant to section 7 of
42 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8) **], but**
43 shall not include any ¹**[smart growth] extension¹** area as defined in
44 this section.

45 "Extension period" means the period beginning January 1, 2007
46 and continuing through December 31, **[2012] 2014.**

1 "Government" means any municipal, county, regional, or State
2 government, or any agency, department, commission or other
3 instrumentality thereof.

4 ¹["Smart growth"] ¹"Extension¹ area" means an area designated
5 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
6 Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area
7 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area),
8 a designated center, or a designated growth center in an endorsed
9 plan ¹until June 30, 2013, or until the State Planning Commission
10 revises and readopts New Jersey's State Strategic Plan and adopts
11 regulations to refine this definition as it pertains to Statewide
12 planning areas, whichever is later¹ ; a smart growth area and
13 planning area designated in a master plan adopted by the New
14 Jersey Meadowlands Commission pursuant to subsection (i) of
15 section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas,
16 villages, and towns, designated in the comprehensive management
17 plan prepared and adopted by the Pinelands Commission pursuant
18 to section 7 of the "Pinelands Protection Act," P.L.1979, c.111
19 (C.13:18A-8); the ⁴["Planning Area"] planning area⁴ of the ⁴["New
20 Jersey"]⁴ Highlands ⁴["pursuant to"] Region as defined in section 3
21 of⁴ the "Highlands Water Protection and Planning Act," P.L.2004,
22 c.120 ⁴[(C.13:20-1 et al.)] (C.13:20-3), and any Highlands center
23 designated by the Highlands Water Protection and Planning
24 Council, established pursuant to section 4 of P.L.2004, c.120
25 (C.13:20-4)⁴ ; an urban enterprise zone designated pursuant to
26 P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347
27 (C.52:27H-66.2 et al.); an area determined to be in need of
28 redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
29 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department
30 of Community Affairs; or similar areas designated by the
31 Department of Environmental Protection. ⁴"Extension area" shall
32 not include an area designated pursuant to the State Development
33 and Redevelopment Plan adopted, as of the effective date of
34 P.L.2008, c.78, pursuant to P.L.1985, c.398 as Planning Area 4B
35 (Rural/Environmentally Sensitive) or Planning Area 5
36 (Environmentally Sensitive), except for any area within Planning
37 Area 4B or Planning Area 5 that is a designated center, or a
38 designated growth center in an endorsed plan.⁴

39 (cf: P.L.2009, c.336, s.1)

40
41 3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to
42 read as follows:

43 4. a. For any government approval in existence during the
44 extension period, the running of the period of approval is
45 automatically suspended for the extension period, except as
46 otherwise provided hereunder; however, the tolling provided for
47 herein shall not extend the government approval more than six

1 months beyond the conclusion of the extension period. Nothing in
2 ⁴[this act] P.L.2008, c.78 (C.40:55D-136.1 et seq.)⁴ shall shorten
3 the duration that any approval would have had in the absence of
4 ⁴[this act] P.L.2008, c.78⁴ , nor shall ⁴[this act] P.L.2008, c.78⁴
5 prohibit the granting of such additional extensions as are provided
6 by law when the tolling granted by ⁴[this act] P.L.2008, c.78⁴ shall
7 expire. Notwithstanding any previously enacted provision of
8 P.L.2008, c.78, as amended and supplemented, the running of the
9 period of approval of all government approvals which would have
10 been extended pursuant to the definition of ¹["smart growth]
11 "extension¹ area," added by P.L. , c. (pending before the
12 Legislature as this bill), shall be calculated, using that definition,
13 retroactive to the enactment of P.L.2008, c.78.

14 b. Nothing in ⁴[this act] P.L.2008, c.78 (C.40:55D-136.1 et
15 seq.)⁴ shall be deemed to extend or purport to extend:

16 (1) any permit or approval issued by the government of the
17 United States or any agency or instrumentality thereof, or any
18 permit or approval by whatever authority issued of which the
19 duration of effect or the date or terms of its expiration are specified
20 or determined by or pursuant to law or regulation of the federal
21 government or any of its agencies or instrumentalities;

22 (2) any permit or approval issued pursuant to the "Pinelands
23 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the
24 extension would result in a violation of federal law, or any State
25 rule or regulation requiring approval by the Secretary of the Interior
26 pursuant to Pub.L.95-625 (16 U.S.C. s.471i);

27 (3) any permit or approval issued within an environmentally
28 sensitive area;

29 (4) any permit or approval within an environmentally sensitive
30 area issued pursuant to the "Highlands Water Protection and
31 Planning Act," P.L.2004, c.120 (C.13:20-1 et al.) ⁴, or any permit or
32 approval issued within the preservation area of the Highlands
33 Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3)⁴ ;

34 (5) any permit or approval issued by the Department of
35 Transportation pursuant to Title 27 of the Revised Statutes or under
36 the general authority conferred by State law, other than a right-of-
37 way permit issued pursuant to paragraph (3) of subsection (h) of
38 section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted
39 pursuant to R.S.27:7-1 et seq. or any supplement thereto;

40 (6) any permit or approval issued pursuant to the "Flood Hazard
41 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except
42 ³(a)³ where work has commenced, in any phase or section of the
43 development, on any site improvement as defined in paragraph (1)
44 of subsection a. of section 41 of the "Municipal Land Use Law,"
45 P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures ³or

1 (b) where the permit or approval authorizes work on real property
2 owned by the government or the federal government³ ; ⁴[or]⁴

3 (7) any coastal center designated pursuant to the "Coastal Area
4 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of
5 March 15, 2007 (a) had not submitted an application for plan
6 endorsement to the State Planning Commission, and (b) was not in
7 compliance with the provisions of the Coastal Zone Management
8 Rules at N.J.A.C.7:7E-5B.6 ⁴; or

9 (8) any permit or approval within the Highlands planning area
10 located in a municipality subject to the "Highlands Water Protection
11 and Planning Act," P.L.2004, c.120, that has adopted, as of May 1,
12 2012, in accordance with the Highlands Water Protection and
13 Planning Council conformance approval, a Highlands master plan
14 element, a Highlands land use ordinance, or an environmental
15 resource inventory, except that the provisions of this paragraph
16 shall not apply to any permit or approval within a Highlands center
17 designated by the Highlands Water Protection and Planning
18 Council, notwithstanding the adoption by the municipality of a
19 Highlands master plan element, a Highlands land use ordinance, or
20 an environmental resource inventory⁴ .

21 c. ⁴[This act] P.L.2008, c.78⁴ shall not affect any
22 administrative consent order issued by the Department of
23 Environmental Protection in effect or issued during the extension
24 period, nor shall it be construed to extend any approval in
25 connection with a resource recovery facility as defined in section 2
26 of P.L.1985, c.38 (C.13:1E-137).

27 d. Nothing in ⁴[this act] P.L.2008, c.78⁴ shall affect the ability
28 of the Commissioner of Environmental Protection to revoke or
29 modify a specific permit or approval, or extension thereof pursuant
30 to ⁴[this act] P.L.2008, c.78⁴ , when that specific permit or
31 approval contains language authorizing the modification or
32 revocation of the permit or approval by the department.

33 e. In the event that any approval tolled pursuant to ⁴[this act]
34 P.L.2008, c.78⁴ is based upon the connection to a sanitary sewer
35 system, the approval's extension shall be contingent upon the
36 availability of sufficient capacity, on the part of the treatment
37 facility, to accommodate the development whose approval has been
38 extended. If sufficient capacity is not available, those permit
39 holders whose approvals have been extended shall have priority
40 with regard to the further allocation of gallonage over those
41 approval holders who have not received approval of a hookup prior
42 to the date of enactment of ⁴[this act] P.L.2008, c.78⁴ . Priority
43 regarding the distribution of further gallonage to any permit holder
44 who has received the extension of an approval pursuant to ⁴[this
45 act] P.L.2008, c.78⁴ shall be allocated in order of the granting of
46 the original approval of the connection.

1 f. ⁴**[This act]** P.L.2008, c.78⁴ shall not toll any approval
2 issued under the "Municipal Land Use Law," P.L.1975, c.291
3 (C.40:55D-1 et seq.) in connection with an application for
4 development involving a residential use where, subsequent to the
5 expiration of the permit but prior to January 1, 2007, an amendment
6 has been adopted to the master plan and the zoning ordinance to
7 rezone the property to industrial or commercial use when the permit
8 was issued for residential use.

9 g. Nothing in ⁴**[this act]** P.L.2008, c.78⁴ shall be construed or
10 implemented in such a way as to modify any requirement of law
11 that is necessary to retain federal delegation to, or assumption by,
12 the State of the authority to implement a federal law or program.

13 h. Nothing in ⁴**[this act]** P.L.2008, c.78⁴ shall be deemed to
14 extend the obligation of any wastewater management planning
15 agency to submit a wastewater management plan or plan update, or
16 the obligation of a municipality to submit a wastewater
17 management plan or plan update, pursuant to the "Water Quality
18 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.) and the Water
19 Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq.,
20 adopted by the Department of Environmental Protection, effective
21 July 7, 2008.

22 i. All underlying municipal, county, and State permits or
23 approvals ¹within the extension area as defined in section 3 of
24 P.L.2008, c.78 (C.40:55D-136.3), as amended,¹ are extended in the
25 Pinelands Area as designated pursuant to the "Pinelands Protection
26 Act," ³**[pursuant to]**³ P.L.1979, c.111 (C.13:18A-1 et seq.).
27 (cf: P.L.2008, c.78, s.4)
28

29 4. Section 5 of P.L.2008, c.78 (C.40:55D-136.5) is amended to
30 read as follows:

31 5. State agencies shall, within 30 days after the effective date
32 **[of this act]** of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within
33 30 days after the effective date of any subsequent amendment and
34 supplement thereto, place a notice in the New Jersey Register
35 tolling all approvals in conformance with this act.

36 (cf: P.L.2008, c.78, s.5)
37

38 5. Section 6 of P.L.2008, c.78 (C.40:55D-136.6) is amended to
39 read as follows:

40 6. The provisions of this act shall be liberally construed to
41 effectuate the purposes of this act, and any subsequent amendment
42 and supplement thereto.

43 (cf: P.L.2008, c.78, s.6)
44

45 6. This act shall take effect immediately.