

P.L.2012, CHAPTER 48, *approved September 19, 2012*  
Assembly, No. 1338 (*Fourth Reprint*)

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

**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:**

<sup>1</sup>Assembly AHO committee amendments adopted January 30, 2012.

<sup>2</sup>Assembly floor amendments adopted February 16, 2012.

<sup>3</sup>Assembly AAP committee amendments adopted March 12, 2012.

<sup>4</sup>Assembly floor amendments adopted June 21, 2012.

- 1 difficult and expensive; further, changes in the law can render these  
2 approvals, if expired or lapsed, impossible to renew or re-obtain.
- 3 f. County and municipal governments obtain determinations of  
4 master plan consistency, conformance, or endorsement with State or  
5 regional plans, from State and regional government entities which  
6 may expire or lapse without implementation due to the state of the  
7 economy.
- 8 g. The current national recession has severely weakened the  
9 building industry, and many landowners and developers are seeing  
10 their life's work destroyed by the lack of credit and dearth of buyers  
11 and tenants, due to the crisis in real estate financing and the  
12 building industry, uncertainty over the state of the economy, and  
13 increasing levels of unemployment in the construction industry.
- 14 h. The construction industry and related trades are sustaining  
15 severe economic losses, and the lapsing of government development  
16 approvals would, if not addressed, exacerbate those losses.
- 17 i. Financial institutions that lent money to property owners,  
18 builders, and developers are experiencing erosion of collateral and  
19 depreciation of their assets as permits and approvals expire, and the  
20 extension of these permits and approvals is necessary to maintain  
21 the value of the collateral and the solvency of financial institutions  
22 throughout the State.
- 23 j. Due to the current inability of builders and their purchasers  
24 to obtain financing, under existing economic conditions, more and  
25 more once-approved permits are expiring or lapsing and, as these  
26 approvals lapse, lenders must re-appraise and thereafter  
27 substantially lower real estate valuations established in conjunction  
28 with approved projects, thereby requiring the reclassification of  
29 numerous loans which, in turn, affects the stability of the banking  
30 system and reduces the funds available for future lending, thus  
31 creating more severe restrictions on credit and leading to a vicious  
32 cycle of default.
- 33 k. As a result of the continued downturn of the economy, and  
34 the continued expiration of approvals which were granted by State  
35 and local governments, it is possible that thousands of government  
36 actions will be undone by the passage of time.
- 37 l. Obtaining an extension of an approval pursuant to existing  
38 statutory or regulatory provisions can be both costly in terms of  
39 time and financial resources, and insufficient to cope with the  
40 extent of the present financial situation; moreover, the costs  
41 imposed fall on the public as well as the private sector.
- 42 m. It is the purpose of this act to prevent the wholesale  
43 abandonment of approved projects and activities due to the present  
44 unfavorable economic conditions, by tolling the term of these  
45 approvals for a period of time, thereby preventing a waste of public  
46 and private resources.
- 47 (cf: P.L.2008, c.78, s.2)

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

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

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

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

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

30 "Environmentally sensitive area" means an area designated  
31 pursuant to the State Development and Redevelopment Plan  
32 adopted, as of the effective date of <sup>4</sup>**[this act]** P.L.2008, c.78<sup>4</sup> ,  
33 pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area  
34 4B (Rural/Environmentally Sensitive), Planning Area 5  
35 (Environmentally Sensitive), or a critical environmental site **;** the  
36 Highlands Region as defined in section 3 of P.L.2004, c.120  
37 (C.13:20-3) but shall not include any area designated for growth in  
38 the Highlands regional master plan adopted by the Highlands Water  
39 Protection and Planning Council pursuant to P.L.2004, c.120  
40 (C.13:20-1 et al.); and the pinelands area designated in section 10 of  
41 P.L.1979, c.111 (C.13:18A-11) but shall not include any growth  
42 area designated in the comprehensive management plan prepared  
43 and adopted by the Pinelands Commission pursuant to section 7 of  
44 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8) **], but**  
45 shall not include any <sup>1</sup>**[smart growth]** extension<sup>1</sup> area as defined in  
46 this section.

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

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

6 <sup>1</sup>["Smart growth"] "Extension" area means an area designated  
7 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning  
8 Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area  
9 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area),  
10 a designated center, or a designated growth center in an endorsed  
11 plan <sup>1</sup>until June 30, 2013, or until the State Planning Commission  
12 revises and readopts New Jersey's State Strategic Plan and adopts  
13 regulations to refine this definition as it pertains to Statewide  
14 planning areas, whichever is later<sup>1</sup>; a smart growth area and  
15 planning area designated in a master plan adopted by the New  
16 Jersey Meadowlands Commission pursuant to subsection (i) of  
17 section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas,  
18 villages, and towns, designated in the comprehensive management  
19 plan prepared and adopted by the Pinelands Commission pursuant  
20 to section 7 of the "Pinelands Protection Act," P.L.1979, c.111  
21 (C.13:18A-8); the <sup>4</sup>[Planning Area] planning area<sup>4</sup> of the <sup>4</sup>[New  
22 Jersey]<sup>4</sup> Highlands <sup>4</sup>[pursuant to] Region as defined in section 3  
23 of<sup>4</sup> the "Highlands Water Protection and Planning Act," P.L.2004,  
24 c.120 <sup>4</sup>[(C.13:20-1 et al.)] (C.13:20-3), and any Highlands center  
25 designated by the Highlands Water Protection and Planning  
26 Council, established pursuant to section 4 of P.L.2004, c.120  
27 (C.13:20-4)<sup>4</sup>; an urban enterprise zone designated pursuant to  
28 P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347  
29 (C.52:27H-66.2 et al.); an area determined to be in need of  
30 redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79  
31 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department  
32 of Community Affairs; or similar areas designated by the  
33 Department of Environmental Protection. <sup>4</sup>"Extension area" shall  
34 not include an area designated pursuant to the State Development  
35 and Redevelopment Plan adopted, as of the effective date of  
36 P.L.2008, c.78, pursuant to P.L.1985, c.398 as Planning Area 4B  
37 (Rural/Environmentally Sensitive) or Planning Area 5  
38 (Environmentally Sensitive), except for any area within Planning  
39 Area 4B or Planning Area 5 that is a designated center, or a  
40 designated growth center in an endorsed plan.<sup>4</sup>  
41 (cf: P.L.2009, c.336, s.1)

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

45 4. a. For any government approval in existence during the  
46 extension period, the running of the period of approval is

1 automatically suspended for the extension period, except as  
2 otherwise provided hereunder; however, the tolling provided for  
3 herein shall not extend the government approval more than six  
4 months beyond the conclusion of the extension period. Nothing in  
5 <sup>4</sup>[this act] P.L.2008, c.78 (C.40:55D-136.1 et seq.)<sup>4</sup> shall shorten  
6 the duration that any approval would have had in the absence of  
7 <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup>, nor shall <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup>  
8 prohibit the granting of such additional extensions as are provided  
9 by law when the tolling granted by <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup> shall  
10 expire. Notwithstanding any previously enacted provision of  
11 P.L.2008, c.78, as amended and supplemented, the running of the  
12 period of approval of all government approvals which would have  
13 been extended pursuant to the definition of <sup>1</sup>["smart growth]  
14 "extension<sup>1</sup> area," added by P.L. , c. (pending before the  
15 Legislature as this bill), shall be calculated, using that definition,  
16 retroactive to the enactment of P.L.2008, c.78.

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

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

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

30 (3) any permit or approval issued within an environmentally  
31 sensitive area;

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

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

43 (6) any permit or approval issued pursuant to the "Flood Hazard  
44 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except  
45 <sup>3</sup>(a)<sup>3</sup> where work has commenced, in any phase or section of the  
46 development, on any site improvement as defined in paragraph (1)

1 of subsection a. of section 41 of the "Municipal Land Use Law,"  
 2 P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures <sup>3</sup>or  
 3 (b) where the permit or approval authorizes work on real property  
 4 owned by the government or the federal government<sup>3</sup> ; <sup>4</sup>[or]<sup>4</sup>

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

11 (8) any permit or approval within the Highlands planning area  
 12 located in a municipality subject to the "Highlands Water Protection  
 13 and Planning Act," P.L.2004, c.120, that has adopted, as of May 1,  
 14 2012, in accordance with the Highlands Water Protection and  
 15 Planning Council conformance approval, a Highlands master plan  
 16 element, a Highlands land use ordinance, or an environmental  
 17 resource inventory, except that the provisions of this paragraph  
 18 shall not apply to any permit or approval within a Highlands center  
 19 designated by the Highlands Water Protection and Planning  
 20 Council, notwithstanding the adoption by the municipality of a  
 21 Highlands master plan element, a Highlands land use ordinance, or  
 22 an environmental resource inventory<sup>4</sup> .

23 c. <sup>4</sup>[This act] P.L.2008, c.78<sup>4</sup> shall not affect any  
 24 administrative consent order issued by the Department of  
 25 Environmental Protection in effect or issued during the extension  
 26 period, nor shall it be construed to extend any approval in  
 27 connection with a resource recovery facility as defined in section 2  
 28 of P.L.1985, c.38 (C.13:1E-137).

29 d. Nothing in <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup> shall affect the ability  
 30 of the Commissioner of Environmental Protection to revoke or  
 31 modify a specific permit or approval, or extension thereof pursuant  
 32 to <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup> , when that specific permit or  
 33 approval contains language authorizing the modification or  
 34 revocation of the permit or approval by the department.

35 e. In the event that any approval tolled pursuant to <sup>4</sup>[this act]  
 36 P.L.2008, c.78<sup>4</sup> is based upon the connection to a sanitary sewer  
 37 system, the approval's extension shall be contingent upon the  
 38 availability of sufficient capacity, on the part of the treatment  
 39 facility, to accommodate the development whose approval has been  
 40 extended. If sufficient capacity is not available, those permit  
 41 holders whose approvals have been extended shall have priority  
 42 with regard to the further allocation of gallonage over those  
 43 approval holders who have not received approval of a hookup prior  
 44 to the date of enactment of <sup>4</sup>[this act] P.L.2008, c.78<sup>4</sup> . Priority  
 45 regarding the distribution of further gallonage to any permit holder  
 46 who has received the extension of an approval pursuant to <sup>4</sup>[this

1 act] P.L.2008, c.78<sup>4</sup> shall be allocated in order of the granting of  
2 the original approval of the connection.

3 f. <sup>4</sup>**[This act]** P.L.2008, c.78<sup>4</sup> shall not toll any approval  
4 issued under the "Municipal Land Use Law," P.L.1975, c.291  
5 (C.40:55D-1 et seq.) in connection with an application for  
6 development involving a residential use where, subsequent to the  
7 expiration of the permit but prior to January 1, 2007, an amendment  
8 has been adopted to the master plan and the zoning ordinance to  
9 rezone the property to industrial or commercial use when the permit  
10 was issued for residential use.

11 g. Nothing in <sup>4</sup>**[this act]** P.L.2008, c.78<sup>4</sup> shall be construed or  
12 implemented in such a way as to modify any requirement of law  
13 that is necessary to retain federal delegation to, or assumption by,  
14 the State of the authority to implement a federal law or program.

15 h. Nothing in <sup>4</sup>**[this act]** P.L.2008, c.78<sup>4</sup> shall be deemed to  
16 extend the obligation of any wastewater management planning  
17 agency to submit a wastewater management plan or plan update, or  
18 the obligation of a municipality to submit a wastewater  
19 management plan or plan update, pursuant to the "Water Quality  
20 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.) and the Water  
21 Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq.,  
22 adopted by the Department of Environmental Protection, effective  
23 July 7, 2008.

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

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

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

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

42 6. The provisions of this act shall be liberally construed to  
43 effectuate the purposes of this act, and any subsequent amendment  
44 and supplement thereto.  
45 (cf: P.L.2008, c.78, s.6)

46  
47 6. This act shall take effect immediately.

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Extends expiration date of certain permits pursuant to the

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“Permit Extension Act of 2008.”