

[First Reprint]

**SENATE, No. 743**

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**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Economic Growth Committee on March 5, 2012, with amendments.



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  
43 regional plans, from State and regional government entities which

**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>Senate SEG committee amendments adopted March 5, 2012.

1 may expire or lapse without implementation due to the state of the  
2 economy.

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

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

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

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

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

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

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

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

43

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

46 3. As used in this act:

1 "Approval" means, except as otherwise provided in section 4 of  
2 this act, any approval of a soil erosion and sediment control plan  
3 granted by a local soil conservation district under the authority  
4 conferred by R.S.4:24-22 et seq., waterfront development permit  
5 issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to  
6 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.),  
7 permit issued pursuant to the "Freshwater Wetlands Protection  
8 Act," P.L.1987, c.156 (C.13:9B-1 et al.), approval of an application  
9 for development granted by the Delaware and Raritan Canal  
10 Commission pursuant to the "Delaware and Raritan Canal State  
11 Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.), permit  
12 issued by the New Jersey Meadowlands Commission pursuant to  
13 the "Hackensack Meadowlands Reclamation and Development  
14 Act," P.L.1968, c.404 (C.13:17-1 et al.), approval of an application  
15 for development granted by the Pinelands Commission and  
16 determination of municipal and county plan conformance pursuant  
17 to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et  
18 seq.), permit issued and center designations pursuant to the "Coastal  
19 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.),  
20 septic approval granted pursuant to Title 26 of the Revised Statutes,  
21 permit granted pursuant to R.S.27:7-1 et seq. or any supplement  
22 thereto, right-of-way permit issued by the Department of  
23 Transportation pursuant to paragraph (3) of subsection (h) of  
24 section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a  
25 sewerage authority pursuant to the "sewerage authorities law,"  
26 P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a  
27 municipal authority pursuant to the "municipal and county utilities  
28 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), <sup>1</sup>an  
29 agreement with a municipality, county, municipal authority,  
30 sewerage authority, or other governmental authority for the use or  
31 reservation of sewerage capacity,<sup>1</sup> approval issued by a county  
32 planning board pursuant to chapter 27 of Title 40 of the Revised  
33 Statutes, preliminary and final approval granted in connection with  
34 an application for development pursuant to the "Municipal Land  
35 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted  
36 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
37 c.217 (C.52:27D-119 et seq.), plan endorsement and center  
38 designations pursuant to the "State Planning Act," P.L.1985, c.398  
39 (C.52:18A-196 et al.), permit or certification issued pursuant to the  
40 "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et  
41 al.), permit granted authorizing the drilling of a well pursuant to  
42 P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted,  
43 exemption from a sewerage connection ban granted, wastewater  
44 management plan approved, and pollution discharge elimination  
45 system permit pursuant to the "Water Pollution Control Act,"  
46 P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant  
47 to "The Realty Improvement Sewerage and Facilities Act (1954),"

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

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

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

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

44 "Government" means any municipal, county, regional, or State  
45 government, or any agency, department, commission or other  
46 instrumentality thereof.

1        '["Smart growth] "Extension' area" means an area designated  
2 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning  
3 Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area  
4 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area),  
5 a designated center, or a designated growth center in an endorsed  
6 plan 'until June 30, 2013, or until the State Planning Commission  
7 revises and readopts New Jersey's State Strategic Plan and adopts  
8 regulations to refine this definition as it pertains to Statewide  
9 planning areas, whichever is later' ; a smart growth area and  
10 planning area designated in a master plan adopted by the New  
11 Jersey Meadowlands Commission pursuant to subsection (i) of  
12 section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas,  
13 villages, and towns, designated in the comprehensive management  
14 plan prepared and adopted by the Pinelands Commission pursuant  
15 to section 7 of the "Pinelands Protection Act," P.L.1979, c.111  
16 (C.13:18A-8); the Planning Area of the New Jersey Highlands  
17 pursuant to the "Highlands Water Protection and Planning Act,"  
18 P.L.2004, c.120 (C.13:20-1 et al.); an urban enterprise zone  
19 designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or  
20 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in  
21 need of redevelopment pursuant to sections 5 and 6 of P.L.1992,  
22 c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the  
23 Department of Community Affairs; or similar areas designated by  
24 the Department of Environmental Protection.  
25 (cf: P.L.2009, c.336, s.1)

26  
27        3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to  
28 read as follows:

29        4. a. For any government approval in existence during the  
30 extension period, the running of the period of approval is  
31 automatically suspended for the extension period, except as  
32 otherwise provided hereunder; however, the tolling provided for  
33 herein shall not extend the government approval more than six  
34 months beyond the conclusion of the extension period. Nothing in  
35 this act shall shorten the duration that any approval would have had  
36 in the absence of this act, nor shall this act prohibit the granting of  
37 such additional extensions as are provided by law when the tolling  
38 granted by this act shall expire. Notwithstanding any previously  
39 enacted provision of P.L.2008, c.78, as amended and supplemented,  
40 the running of the period of approval of all government approvals  
41 which would have been extended pursuant to the definition of  
42 '["smart growth] "extension' area," added by P.L. , c. (pending  
43 before the Legislature as this bill), shall be calculated, using that  
44 definition, retroactive to the enactment of P.L.2008, c.78.

45        b. Nothing in this act shall be deemed to extend or purport to  
46 extend:

- 1 (1) any permit or approval issued by the government of the  
2 United States or any agency or instrumentality thereof, or any  
3 permit or approval by whatever authority issued of which the  
4 duration of effect or the date or terms of its expiration are specified  
5 or determined by or pursuant to law or regulation of the federal  
6 government or any of its agencies or instrumentalities;
- 7 (2) any permit or approval issued pursuant to the "Pinelands  
8 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the  
9 extension would result in a violation of federal law, or any State  
10 rule or regulation requiring approval by the Secretary of the Interior  
11 pursuant to Pub.L.95-625 (16 U.S.C. s.471i);
- 12 (3) any permit or approval issued within an environmentally  
13 sensitive area;
- 14 (4) any permit or approval within an environmentally sensitive  
15 area issued pursuant to the "Highlands Water Protection and  
16 Planning Act," P.L.2004, c.120 (C.13:20-1 et al.);
- 17 (5) any permit or approval issued by the Department of  
18 Transportation pursuant to Title 27 of the Revised Statutes or under  
19 the general authority conferred by State law, other than a right-of-  
20 way permit issued pursuant to paragraph (3) of subsection (h) of  
21 section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted  
22 pursuant to R.S.27:7-1 et seq. or any supplement thereto;
- 23 (6) any permit or approval issued pursuant to the "Flood Hazard  
24 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except  
25 where work has commenced, in any phase or section of the  
26 development, on any site improvement as defined in paragraph (1)  
27 of subsection a. of section 41 of the "Municipal Land Use Law,"  
28 P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures <sup>1</sup>,  
29 and except where the permit or approval authorizes work on real  
30 property owned by the government or the federal government<sup>1</sup>; or
- 31 (7) any coastal center designated pursuant to the "Coastal Area  
32 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of  
33 March 15, 2007 (a) had not submitted an application for plan  
34 endorsement to the State Planning Commission, and (b) was not in  
35 compliance with the provisions of the Coastal Zone Management  
36 Rules at N.J.A.C.7:7E-5B.6.
- 37 c. This act shall not affect any administrative consent order  
38 issued by the Department of Environmental Protection in effect or  
39 issued during the extension period, nor shall it be construed to  
40 extend any approval in connection with a resource recovery facility  
41 as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).
- 42 d. Nothing in this act shall affect the ability of the  
43 Commissioner of Environmental Protection to revoke or modify a  
44 specific permit or approval, or extension thereof pursuant to this  
45 act, when that specific permit or approval contains language  
46 authorizing the modification or revocation of the permit or approval  
47 by the department.

1 e. In the event that any approval tolled pursuant to this act is  
2 based upon the connection to a sanitary sewer system, the  
3 approval's extension shall be contingent upon the availability of  
4 sufficient capacity, on the part of the treatment facility, to  
5 accommodate the development whose approval has been extended.  
6 If sufficient capacity is not available, those permit holders whose  
7 approvals have been extended shall have priority with regard to the  
8 further allocation of gallonage over those approval holders who  
9 have not received approval of a hookup prior to the date of  
10 enactment of this act. Priority regarding the distribution of further  
11 gallonage to any permit holder who has received the extension of an  
12 approval pursuant to this act shall be allocated in order of the  
13 granting of the original approval of the connection.

14 f. This act shall not toll any approval issued under the  
15 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)  
16 in connection with an application for development involving a  
17 residential use where, subsequent to the expiration of the permit but  
18 prior to January 1, 2007, an amendment has been adopted to the  
19 master plan and the zoning ordinance to rezone the property to  
20 industrial or commercial use when the permit was issued for  
21 residential use.

22 g. Nothing in this act shall be construed or implemented in  
23 such a way as to modify any requirement of law that is necessary to  
24 retain federal delegation to, or assumption by, the State of the  
25 authority to implement a federal law or program.

26 h. Nothing in this act shall be deemed to extend the obligation  
27 of any wastewater management planning agency to submit a  
28 wastewater management plan or plan update, or the obligation of a  
29 municipality to submit a wastewater management plan or plan  
30 update, pursuant to the "Water Quality Planning Act," P.L.1977,  
31 c.75 (C.58:11A-1 et seq.) and the Water Quality Management  
32 Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by the Department  
33 of Environmental Protection, effective July 7, 2008.

34 i. All underlying municipal, county, and State permits or  
35 approvals 'within the extension area as defined in section 3 of  
36 P.L.2008, c.78 (C.40:55D-136.3), as amended, ' are extended in the  
37 Pinelands Area as designated pursuant to the "Pinelands Protection  
38 Act," pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.).  
39 (cf: P.L.2008, c.78, s.4)

40

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

43 5. State agencies shall, within 30 days after the effective date  
44 【of this act】 of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within  
45 30 days after the effective date of any subsequent amendment and  
46 supplement thereto, place a notice in the New Jersey Register



1 tolling all approvals in conformance with this act.

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

3

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

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

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

10

11 6. This act shall take effect immediately.