

[Second Reprint]
SENATE, No. 743

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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District 36 (Bergen and Passaic)

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District 24 (Morris, Sussex and Warren)

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 8, 2012, with amendments.



(Sponsorship Updated As Of: 5/25/2012)

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
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:

¹Senate SEG committee amendments adopted March 5, 2012.

²Senate SBA committee amendments adopted March 8, 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.), ¹an
29 agreement with a municipality, county, municipal authority,
30 sewerage authority, or other governmental authority for the use or
31 reservation of sewerage capacity,¹ 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 ²(a)² 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 ¹
29 ²[, and except] or (b)² where the permit or approval authorizes
30 work on real property owned by the government or the federal
31 government¹; or
- 32 (7) any coastal center designated pursuant to the "Coastal Area
33 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of
34 March 15, 2007 (a) had not submitted an application for plan
35 endorsement to the State Planning Commission, and (b) was not in
36 compliance with the provisions of the Coastal Zone Management
37 Rules at N.J.A.C.7:7E-5B.6.
- 38 c. This act shall not affect any administrative consent order
39 issued by the Department of Environmental Protection in effect or
40 issued during the extension period, nor shall it be construed to
41 extend any approval in connection with a resource recovery facility
42 as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).
- 43 d. Nothing in this act shall affect the ability of the
44 Commissioner of Environmental Protection to revoke or modify a
45 specific permit or approval, or extension thereof pursuant to this
46 act, when that specific permit or approval contains language

1 authorizing the modification or revocation of the permit or approval
2 by the department.

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

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

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

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

36 i. All underlying municipal, county, and State permits or
37 approvals ¹within the extension area as defined in section 3 of
38 P.L.2008, c.78 (C.40:55D-136.3), as amended, ¹ are extended in the
39 Pinelands Area as designated pursuant to the "Pinelands Protection
40 Act," ²[pursuant to]² P.L.1979, c.111 (C.13:18A-1 et seq.).
41 (cf: P.L.2008, c.78, s.4)

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

45 5. State agencies shall, within 30 days after the effective date
46 [of this act] of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within
47 30 days after the effective date of any subsequent amendment and

- 1 supplement thereto, place a notice in the New Jersey Register
2 tolling all approvals in conformance with this act.
3 (cf: P.L.2008, c.78, s.5)
4
- 5 5. Section 6 of P.L.2008, c.78 (C.40:55D-136.6) is amended to
6 read as follows:
- 7 6. The provisions of this act shall be liberally construed to
8 effectuate the purposes of this act, and any subsequent amendment
9 and supplement thereto.
10 (cf: P.L.2008, c.78, s.6)
11
- 12 6. This act shall take effect immediately.