

ASSEMBLY, No. 4422

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED DECEMBER 8, 2011

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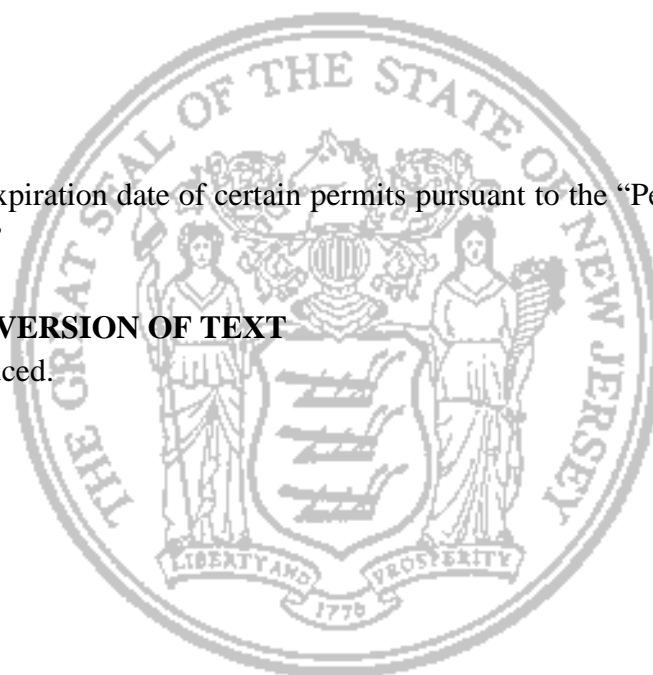
Assemblyman Fuentes, Assemblywoman Riley, Assemblymen Singleton, Coutinho, Amodeo, Polistina, Rible, DiCicco, Malone, Coughlin, Assemblywoman Spencer, Assemblyman Bramnick, Assemblywoman McHose, Assemblymen Chiusano, Wilson, Diegnan, Assemblywoman Lampitt, Assemblymen Johnson, Albano and DeAngelo

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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
44 may expire or lapse without implementation due to the state of the
45 economy.

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.

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

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

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

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

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

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

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

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

41
42 2. Section 3 of P.L.2008, c.78 (C.40:55D-136.3) is amended to
43 read as follows:

44 3. As used in this act:

45 "Approval" means, except as otherwise provided in section 4 of
46 this act, any approval of a soil erosion and sediment control plan
47 granted by a local soil conservation district under the authority
48 conferred by R.S.4:24-22 et seq., waterfront development permit

1 issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to
2 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.),
3 permit issued pursuant to the "Freshwater Wetlands Protection
4 Act," P.L.1987, c.156 (C.13:9B-1 et al.), approval of an application
5 for development granted by the Delaware and Raritan Canal
6 Commission pursuant to the "Delaware and Raritan Canal State
7 Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.), permit
8 issued by the New Jersey Meadowlands Commission pursuant to
9 the "Hackensack Meadowlands Reclamation and Development
10 Act," P.L.1968, c.404 (C.13:17-1 et al.), approval of an application
11 for development granted by the Pinelands Commission and
12 determination of municipal and county plan conformance pursuant
13 to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et
14 seq.), permit issued and center designations pursuant to the "Coastal
15 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.),
16 septic approval granted pursuant to Title 26 of the Revised Statutes,
17 permit granted pursuant to R.S.27:7-1 et seq. or any supplement
18 thereto, right-of-way permit issued by the Department of
19 Transportation pursuant to paragraph (3) of subsection (h) of
20 section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a
21 sewerage authority pursuant to the "sewerage authorities law,"
22 P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a
23 municipal authority pursuant to the "municipal and county utilities
24 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), approval
25 issued by a county planning board pursuant to chapter 27 of Title 40
26 of the Revised Statutes, preliminary and final approval granted in
27 connection with an application for development pursuant to the
28 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.),
29 permit granted pursuant to the "State Uniform Construction Code
30 Act," P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement
31 and center designations pursuant to the "State Planning Act,"
32 P.L.1985, c.398 (C.52:18A-196 et al.), permit or certification issued
33 pursuant to the "Water Supply Management Act," P.L.1981, c.262
34 (C.58:1A-1 et al.), permit granted authorizing the drilling of a well
35 pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or
36 permit granted, exemption from a sewerage connection ban granted,
37 wastewater management plan approved, and pollution discharge
38 elimination system permit pursuant to the "Water Pollution Control
39 Act," P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted
40 pursuant to "The Realty Improvement Sewerage and Facilities Act
41 (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), certification or
42 approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.),
43 certification issued and water quality management plan approved
44 pursuant to the "Water Quality Planning Act," P.L.1977, c.75
45 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe
46 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), permit
47 issued pursuant to the "Flood Hazard Area Control Act," P.L.1962,
48 c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or

1 State approval or permit granted under the general authority
2 conferred by State law or rule or regulation, or any other
3 government authorization of any development application or any
4 permit related thereto whether that authorization is in the form of a
5 permit, approval, license, certification, permission, determination,
6 interpretation, exemption, variance, exception, waiver, letter of
7 interpretation, no further action letter, agreement or any other
8 executive or administrative decision which allows a development or
9 governmental project to proceed.

10 "Development" means the division of a parcel of land into two or
11 more parcels, the construction, reconstruction, conversion,
12 structural alteration, relocation or enlargement of any building or
13 other structure or facility, or of any grading, soil removal or
14 relocation, excavation or landfill or any use or change in the use of
15 any building or other structure or land or extension of the use of
16 land.

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

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

35 "Government" means any municipal, county, regional, or State
36 government, or any agency, department, commission or other
37 instrumentality thereof.

38 "Smart growth area" means an area designated pursuant to
39 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
40 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3
41 (Fringe Planning Area), Planning Area 4A (Rural Planning Area), a
42 designated center, or a designated growth center in an endorsed
43 plan; a smart growth area and planning area designated in a master
44 plan adopted by the New Jersey Meadowlands Commission
45 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-
46 6); regional growth areas, villages, and towns, designated in the
47 comprehensive management plan prepared and adopted by the
48 Pinelands Commission pursuant to section 7 of the "Pinelands

1 Protection Act," P.L.1979, c.111 (C.13:18A-8); the Planning Area
2 of the New Jersey Highlands pursuant to the "Highlands Water
3 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.); an
4 urban enterprise zone designated pursuant to P.L.1983, c.303
5 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an
6 area determined to be in need of redevelopment pursuant to sections
7 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as
8 approved by the Department of Community Affairs; or similar areas
9 designated by the Department of Environmental Protection.
10 (cf: P.L.2009, c.336, s.1)

11
12 3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to
13 read as follows:

14 4. a. For any government approval in existence during the
15 extension period, the running of the period of approval is
16 automatically suspended for the extension period, except as
17 otherwise provided hereunder; however, the tolling provided for
18 herein shall not extend the government approval more than six
19 months beyond the conclusion of the extension period. Nothing in
20 this act shall shorten the duration that any approval would have had
21 in the absence of this act, nor shall this act prohibit the granting of
22 such additional extensions as are provided by law when the tolling
23 granted by this act shall expire. Notwithstanding any previously
24 enacted provision of P.L.2008, c.78, as amended and supplemented,
25 the running of the period of approval of all government approvals
26 which would have been extended pursuant to the definition of
27 "smart growth area," added by P.L. _____, c. _____ (pending before the
28 Legislature as this bill), shall be calculated, using that definition,
29 retroactive to the enactment of P.L.2008, c.78.

30 b. Nothing in this act shall be deemed to extend or purport to
31 extend:

32 (1) any permit or approval issued by the government of the
33 United States or any agency or instrumentality thereof, or any
34 permit or approval by whatever authority issued of which the
35 duration of effect or the date or terms of its expiration are specified
36 or determined by or pursuant to law or regulation of the federal
37 government or any of its agencies or instrumentalities;

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

43 (3) any permit or approval issued within an environmentally
44 sensitive area;

45 (4) any permit or approval within an environmentally sensitive
46 area issued pursuant to the "Highlands Water Protection and
47 Planning Act," P.L.2004, c.120 (C.13:20-1 et al.);

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

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

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

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

24 d. Nothing in this act shall affect the ability of the
25 Commissioner of Environmental Protection to revoke or modify a
26 specific permit or approval, or extension thereof pursuant to this
27 act, when that specific permit or approval contains language
28 authorizing the modification or revocation of the permit or approval
29 by the department.

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

43 f. This act shall not toll any approval issued under the
44 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
45 in connection with an application for development involving a
46 residential use where, subsequent to the expiration of the permit but
47 prior to January 1, 2007, an amendment has been adopted to the
48 master plan and the zoning ordinance to rezone the property to

1 industrial or commercial use when the permit was issued for
2 residential use.

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

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

15 i. All underlying municipal, county, and State permits or
16 approvals are extended in the Pinelands Area as designated pursuant
17 to the "Pinelands Protection Act," pursuant to P.L.1979, c.111
18 (C.13:18A-1 et seq.).

19 (cf: P.L.2008, c.78, s.4)

20

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

23 5. State agencies shall, within 30 days after the effective date
24 **【of this act】** of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within
25 30 days after the effective date of any subsequent amendment and
26 supplement thereto, place a notice in the New Jersey Register
27 tolling all approvals in conformance with this act.

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

29

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

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

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

36

37 6. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 Under the provisions of this bill, the "extension period," as
43 defined in the "Permit Extension Act of 2008," P.L.2008, c.78
44 (C.40:55D-136.1 et seq.), would be extended until December 31,
45 2014, rather than December 31, 2012, as provided in current law.

46 Thus, under this bill, government approvals, as defined and
47 extended by the "Permit Extension Act of 2008," would continue to
48 be valid until December 31, 2014. In accordance with the tolling

1 provision provided in the “Permit Extension Act of 2008,” no
2 approval would be extended beyond six months after the conclusion
3 of the extension period, or until June 30, 2015 under this bill.

4 The bill also clarifies that the original intent of P.L.2008, c.78
5 was to extend the running period of government approvals to
6 include smart growth areas, as defined in the bill.