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ASSEMBLY, No. 2867

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 22, 2008

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SYNOPSIS

The "Permit Extension Act of 2008."

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 19, 2008, with amendments.

(Sponsorship Updated As Of: 6/24/2008)

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, superseding all statutory and regulatory
4 requirements to the contrary, and supplementing Title 40 of the
5 Revised Statutes.

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

9
10 1. This act shall be known and may be cited as the “Permit
11 Extension Act of 2008.”

12
13 2. The Legislature finds and declares that:

14 a. There exists a state of ¹**[economic emergency in the State of**
15 **New Jersey, which began on January 1, 2006, and is anticipated to**
16 **extend at least through December 31, 2012]** national recession¹,
17 which has drastically affected various segments of the New Jersey
18 economy, but none as severely as the State's banking, real estate
19 and construction sectors.

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

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

32 d. ¹**[A myriad of new regulations with regard to environmental**
33 **protection have significantly increased the costs of infrastructure,**
34 **site remediation, and construction, putting an additional strain on**
35 **the economy.**

36 e. ¹**[**The process of obtaining planning board and zoning board
37 of adjustment approvals for subdivisions, site plans, and variances
38 **[is] can be** difficult, time consuming and expensive, both for
39 private applicants and government bodies.

40 ¹**[f.] e.** ¹The process of obtaining the myriad other government
41 approvals, ¹required pursuant to legislative enactments and their
42 implementing rules and regulations,¹ such as wetlands permits,
43 treatment works approvals, on-site wastewater disposal permits,

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 AEN committee amendments adopted June 12, 2008.

²Assembly ABU committee amendments adopted June 19, 2008.

1 stream encroachment permits, flood hazard area permits, highway
2 access permits, and numerous waivers and variances, '[is]' also
3 'can be' difficult and expensive; further, changes in the law can
4 render these approvals, if expired or lapsed, impossible to renew or
5 re-obtain.

6 '[g. County and municipal governments, including local sewer
7 and water authorities, obtain permits and approvals from State
8 government agencies, particularly the Department of Environmental
9 Protection, which permits and approvals may expire or lapse due to
10 the state of the economy and the inability of both the public sector
11 and the private sector to proceed with projects authorized by the
12 permit or approval.

13 h.] f.' County and municipal governments '[also]' obtain
14 determinations of master plan consistency, conformance, or
15 endorsement with State or regional plans, from State and regional
16 government entities which may expire or lapse without
17 implementation due to the state of the economy.

18 '[i.] g.' The current '[economic crisis] national recession' has
19 severely weakened the building industry, and many landowners and
20 developers are seeing their life's work destroyed by the lack of
21 credit and dearth of buyers and tenants, due to the crisis in real
22 estate financing and the building industry, uncertainty over the state
23 of the economy, and increasing levels of unemployment in the
24 construction industry.

25 '[j.] h.' The construction industry and related trades are
26 sustaining severe economic losses, and the lapsing of government
27 development approvals '[is exacerbating] would, if not addressed,
28 exacerbate' those losses.

29 '[k.] i.' Financial institutions that lent money to property
30 owners, builders, and developers are experiencing erosion of
31 collateral and depreciation of their assets as permits and approvals
32 expire, and the extension of these permits and approvals is
33 necessary to maintain the value of the collateral and the solvency of
34 financial institutions throughout the State.

35 '[l.] j.' Due to the current inability of builders and their
36 purchasers to obtain financing, under existing economic conditions,
37 more and more once-approved permits are expiring or lapsing and,
38 as these approvals lapse, lenders must re-appraise and thereafter
39 substantially lower real estate valuations established in conjunction
40 with approved projects, thereby requiring the reclassification of
41 numerous loans which, in turn, affects the stability of the banking
42 system and reduces the funds available for future lending, thus
43 creating more severe restrictions on credit and leading to a vicious
44 cycle of default.

45 '[m.] k.' As a result of the continued downturn of the economy,
46 and the continued expiration of approvals which were granted by

1 State and local governments, it is possible that thousands of
2 government actions will be undone by the passage of time.

3 '[n.] l.' Obtaining an extension of an approval pursuant to
4 existing statutory or regulatory provisions '[is] can be' both costly
5 in terms of time and financial resources, and insufficient to cope
6 with the extent of the present financial '[emergency] situation' ;
7 moreover, the costs imposed fall on the public as well as the private
8 sector.

9 '[o. Obtaining extensions of approvals granted by State
10 government is frequently impossible, always difficult, and always
11 expensive and no policy reason is served by the expiration of these
12 permits, which were approved only after exhaustive review of the
13 application.

14 p.] m.' It is the purpose of this act to prevent the wholesale
15 abandonment of '[approvals] approved projects and activities' due
16 to the present unfavorable economic conditions, by tolling the term
17 of these approvals '[until such] for a period of' time '[as the
18 economy improves]' , thereby preventing a waste of public and
19 private resources.

20

21 3. As used in this act:

22 "Approval" means ², except as otherwise provided in section 4 of
23 this act,² any approval of a soil erosion and sediment control plan
24 granted by a local soil conservation district under the authority
25 conferred by R.S.4:24-22 et seq., waterfront development permit
26 issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to
27 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.),
28 permit issued pursuant to the "Freshwater Wetlands Protection
29 Act," P.L.1987, c.156 (C.13:9B-1 et seq.), approval of an
30 application for development granted by the Delaware and Raritan
31 Canal Commission pursuant to the "Delaware and Raritan Canal
32 State Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.),
33 permit issued by the New Jersey Meadowlands Commission
34 pursuant to the "Hackensack Meadowlands Reclamation and
35 Development Act," P.L.1968, c.404 (C.13:17-1 et seq.), approval of
36 an application for development granted by the Pinelands
37 Commission and determination of municipal and county plan
38 conformance pursuant to the "Pinelands Protection Act," P.L.1979,
39 c.111 (C.13:18A-1 et seq.), permit issued '[and center
40 designations]' ²and center designations² pursuant to the "Coastal
41 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.),
42 '[permit and approval issued by the Highlands Water Protection
43 and Planning Council and the Department of Environmental
44 Protection pursuant to the "Highlands Water Protection and
45 Planning Act," P.L. 2004, c.120 (C.13:20-1 et al.),]'¹ septic
46 approval granted pursuant to Title 26 of the Revised Statutes,
47 permit granted pursuant to R.S.27:7-1 et seq. or any supplement

1 thereto, 'right-of-way'¹ permit '[granted] issued'¹ by the
2 Department of Transportation pursuant to '[Title 27 of the Revised
3 Statutes or under the general authority conferred by State law]
4 paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301
5 (C.27:1A-5)'¹, approval granted by a sewerage authority pursuant to
6 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
7 seq.), approval granted by a municipal authority pursuant to the
8 "municipal and county utilities authorities law," P.L.1957, c.183
9 (C.40:14B-1 et seq.), approval issued by a county planning board
10 pursuant to Chapter 27 of Title 40 of the Revised Statutes,
11 preliminary and final approval granted in connection with an
12 application for development pursuant to the "Municipal Land Use
13 Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted
14 pursuant to the "State Uniform Construction Code Act," P.L.1975,
15 c.217 (C.52:27D-119 et seq.), plan endorsement '[and center
16 designations]'¹ and center designations'² pursuant to the "State
17 Planning Act," P.L.1985, c.398 (C.52:18A-196 et '[seq.] al.'¹),
18 permit or certification issued pursuant to the "Water Supply
19 Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), permit
20 granted authorizing the drilling of a well pursuant to P.L.1947,
21 c.377 (C.58:4A-5 et seq.), certification or permit granted,
22 exemption from a sewerage connection ban granted, wastewater
23 management plan approved, and pollution discharge elimination
24 system permit pursuant to the "Water Pollution Control Act,"
25 P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant
26 to "The Realty Improvement Sewerage and Facilities Act (1954),"
27 P.L.1954, c.199 (C.58:11-23 et seq.), '[certification or approval
28 granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et seq.),
29 certification issued and water quality management plan approved
30 pursuant to the "Water Quality Planning Act," P.L.1977, c.75
31 (C.58:11A-1 et seq.),]'¹ certification or approval granted pursuant
32 to P.L.1971, c.386 (C.58:11-25.1 et seq.), certification issued and
33 water quality management plan approved pursuant to the "Water
34 Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.)'²
35 approval granted pursuant to the "Safe Drinking Water Act,"
36 P.L.1977, c.224 (C.58:12A-1 et seq.), permit issued pursuant to the
37 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et
38 seq.), any municipal, county, regional, or State approval or permit
39 granted under the general authority conferred by State law or rule or
40 regulation, or any other government authorization of any
41 development application or any permit related thereto whether that
42 authorization is in the form of a permit, approval, license,
43 certification, permission, determination, interpretation, exemption,
44 variance, exception, waiver, letter of interpretation, no further
45 action letter, agreement or any other executive or administrative
46 decision which allows a development or governmental project to
47 proceed.

1 "Development" means the division of a parcel of land into two or
2 more parcels, the construction, reconstruction, conversion,
3 structural alteration, relocation or enlargement of any building or
4 other structure or facility, or of any grading, soil removal or
5 relocation, excavation or landfill or any use or change in the use of
6 any building or other structure or land or extension of the use of
7 land.

8 ¹"Environmentally sensitive area" means ²an area designated
9 pursuant to the State Development and Redevelopment Plan
10 adopted, as of the effective date of this act, pursuant to P.L.1985,
11 c.398 (C.52:18A-196 et al.) as Planning Area 4B
12 (Rural/Environmentally Sensitive), Planning Area 5
13 (Environmentally Sensitive), or a critical environmental site;² the
14 Highlands Region as defined in section 3 of P.L.2004, c.120
15 (C.13:20-3) but shall not include any area designated for growth in
16 the Highlands regional master plan adopted by the Highlands Water
17 Protection and Planning Council pursuant to P.L.2004, c.120
18 (C.13:20-1 et al.) ²[,] ;² and the pinelands area designated in
19 section 10 of P.L.1979, c.111 (C.13:18A-11) but shall not include
20 any growth area designated in the comprehensive management plan
21 prepared and adopted by the Pinelands Commission pursuant to
22 section 7 of the "Pinelands Protection Act," P.L.1979, c.111
23 (C.13:18A-8).¹

24 ¹["Economic emergency"] "Extension period"¹ means the period
25 beginning ¹[January 1, 2006] ²[January 1, 2008¹] January 1, 2007²
26 and continuing through ¹[to December 31, 2012] ²[December 31,
27 2010¹] July 1, 2010².

28 "Government" means any municipal, county, regional, or State
29 government, or any agency, department, commission or other
30 instrumentality thereof.

31

32 4. a. For any government approval in existence during the
33 ¹[economic emergency] extension period¹, the running of the
34 period of approval is automatically suspended for the ¹extension¹
35 period ¹[of the economic emergency]¹, except as otherwise
36 provided hereunder; however, the tolling provided for herein shall
37 not extend the government approval more than ¹[two years] ²[one
38 year¹] ²six months² beyond the ¹conclusion of the extension¹ period
39 ¹[of the economic emergency]¹. Nothing in this act shall ²shorten
40 the duration that any approval would have had in the absence of this
41 act, nor shall this act² prohibit the granting of such additional
42 extensions as are provided by law when the tolling granted by this
43 act shall expire.

44 b. Nothing in this act shall be deemed to extend or purport to
45 extend ¹;

1 (1)¹ any permit ²or approval² issued by the government of the
 2 United States or any agency or instrumentality thereof, or to any
 3 permit ²or approval² 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 ¹[.];

7 c. Nothing in this act shall be deemed to extend];

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

13 (3) any permit or approval issued within an environmentally
 14 sensitive area;

15 (4) ²[any certification or approval granted pursuant to P.L.1971,
 16 c.386 (C.58:11-25.1 et seq.);

17 (5) any certification or approval issued or water quality
 18 management plan approved pursuant to the "Water Quality Planning
 19 Act," P.L.1977, c.75 (C.58:11A-1 et seq.);

20 (6) any center designation pursuant to either the "Coastal Area
 21 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.) or the
 22 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.);

23 (7)]² any permit or approval ²within an environmentally
 24 sensitive area² issued pursuant to the "Highlands Water Protection
 25 and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.); ²[or

26 (8)] (5)² any permit or approval issued by the Department of
 27 Transportation pursuant to Title 27 of the Revised Statutes or under
 28 the general authority conferred by State law, other than a right-of-
 29 way permit issued pursuant to paragraph (3) of subsection (h) of
 30 section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted
 31 pursuant to R.S.27:7-1 et seq. or any supplement thereto ²;

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

38 (7) any coastal center designated pursuant to the "Coastal Area
 39 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of
 40 March 15, 2007 (a) had not submitted an application for plan
 41 endorsement to the State Planning Commission, and (b) was not in
 42 compliance with the provisions of the Coastal Zone Management
 43 Rules at N.J.A.C.7:7E-5B.6² .¹

44 ¹[d.] c.¹ This act shall not affect any administrative consent
 45 order issued by the Department of Environmental Protection in
 46 effect or issued during the ¹extension¹ period ¹[of the economic

1 emergency¹ , nor shall it be construed to extend any approval in
2 connection with a resource recovery facility as defined in section 2
3 of P.L.1985, c.38 (C.13:1E-137).

4 ¹[e.] d.¹ ²Nothing in this act shall affect the ability of the
5 Commissioner of Environmental Protection to revoke or modify a
6 specific permit or approval, or extension thereof pursuant to this
7 act, when that specific permit or approval contains language
8 authorizing the modification or revocation of the permit or approval
9 by the department.

10 e.² In the event that any approval tolled pursuant to this act is
11 based upon the connection to a sanitary sewer system, the
12 approval's extension shall be contingent upon the availability of
13 sufficient capacity, on the part of the treatment facility, to
14 accommodate the development whose approval has been extended.
15 If sufficient capacity is not available, those permit holders whose
16 approvals have been extended shall have priority with regard to the
17 further allocation of gallonage over those approval holders who
18 have not received approval of a hookup prior to the ²date of²
19 enactment of this act. Priority regarding the distribution of further
20 gallonage to any permit holder who has received the extension of an
21 approval pursuant to this act shall be allocated in order of the
22 granting of the original approval of the connection.

23 ¹[f.] ²[e.] f.² This act shall not toll any approval issued under
24 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et
25 seq.) in connection with an application for development involving a
26 residential use where, subsequent to the expiration of the permit but
27 prior to January 1, ¹[2005] 2007¹ , an amendment has been adopted
28 to the master plan and the zoning ordinance to rezone the property
29 to industrial or commercial use when the permit was issued for
30 residential use.

31 ²[f.] g.² Nothing in this act shall be construed or implemented
32 in such a way as to modify any requirement of law that is necessary
33 to retain federal delegation to, or assumption by, the State of the
34 authority to implement a federal law or program.¹

35 ²h. Nothing in this act shall be deemed to extend the obligation
36 of any wastewater management planning agency to submit a
37 wastewater management plan or plan update, or the obligation of a
38 municipality to submit a wastewater management plan or plan
39 update, pursuant to the "Water Quality Planning Act," P.L.1977,
40 c.75 (C.58:11A-1 et seq.) and the Water Quality Management
41 Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by the Department
42 of Environmental Protection, effective July 7, 2008.²

43

44 5. State agencies shall, within 30 days after the effective date
45 of this act, place a notice in the New Jersey Register tolling all
46 approvals in conformance with this act.

1 6. The provisions of this act shall be liberally construed to
2 effectuate the purposes of this act.

3

4 7. This act shall take effect immediately.