

SENATE, No. 1919

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED JUNE 5, 2008

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

**Senators Haines, Sweeney, Buono, Cardinale, Oroho, Pennacchio, Ciesla,
Bateman, Sacco, Allen, Kyrillos, Singer, Codey, Bucco, Madden and Stack**

SYNOPSIS

The "Permit Extension Act of 2008."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/13/2008)

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 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, which has drastically
17 affected various segments of the New Jersey economy, but none as
18 severely as the State's banking, real estate and construction sectors.

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

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

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

35 e. The process of obtaining planning board and zoning board of
36 adjustment approvals for subdivisions, site plans, and variances is
37 difficult, time consuming and expensive, both for private applicants
38 and government bodies.

39 f. The process of obtaining the myriad other government
40 approvals, such as wetlands permits, treatment works approvals, on-
41 site wastewater disposal permits, stream encroachment permits,
42 flood hazard area permits, highway access permits, and numerous
43 waivers and variances, is also difficult and expensive; further,
44 changes in the law can render these approvals, if expired or lapsed,
45 impossible to renew or re-obtain.

46 g. County and municipal governments, including local sewer
47 and water authorities, obtain permits and approvals from State
48 government agencies, particularly the Department of Environmental

- 1 Protection, which permits and approvals may expire or lapse due to
2 the state of the economy and the inability of both the public sector
3 and the private sector to proceed with projects authorized by the
4 permit or approval.
- 5 h. County and municipal governments also obtain
6 determinations of master plan consistency, conformance, or
7 endorsement with State or regional plans, from State and regional
8 government entities which may expire or lapse without
9 implementation due to the state of the economy.
- 10 i. The current economic crisis has severely weakened the
11 building industry, and many landowners and developers are seeing
12 their life's work destroyed by the lack of credit and dearth of buyers
13 and tenants, due to the crisis in real estate financing and the
14 building industry, uncertainty over the state of the economy, and
15 increasing levels of unemployment in the construction industry.
- 16 j. The construction industry and related trades are sustaining
17 severe economic losses, and the lapsing of government development
18 approvals is exacerbating those losses.
- 19 k. Financial institutions that lent money to property owners,
20 builders, and developers are experiencing erosion of collateral and
21 depreciation of their assets as permits and approvals expire, and the
22 extension of these permits and approvals is necessary to maintain
23 the value of the collateral and the solvency of financial institutions
24 throughout the State.
- 25 l. Due to the current inability of builders and their purchasers
26 to obtain financing, under existing economic conditions, more and
27 more once-approved permits are expiring or lapsing and, as these
28 approvals lapse, lenders must re-appraise and thereafter
29 substantially lower real estate valuations established in conjunction
30 with approved projects, thereby requiring the reclassification of
31 numerous loans which, in turn, affects the stability of the banking
32 system and reduces the funds available for future lending, thus
33 creating more severe restrictions on credit and leading to a vicious
34 cycle of default.
- 35 m. As a result of the continued downturn of the economy, and
36 the continued expiration of approvals which were granted by State
37 and local governments, it is possible that thousands of government
38 actions will be undone by the passage of time.
- 39 n. Obtaining an extension of an approval pursuant to existing
40 statutory or regulatory provisions is both costly in terms of time and
41 financial resources, and insufficient to cope with the extent of the
42 present financial emergency; moreover, the costs imposed fall on
43 the public as well as the private sector.
- 44 o. Obtaining extensions of approvals granted by State
45 government is frequently impossible, always difficult, and always
46 expensive and no policy reason is served by the expiration of these
47 permits, which were approved only after exhaustive review of the
48 application.

1 p. It is the purpose of this act to prevent the wholesale
2 abandonment of approvals due to the present unfavorable economic
3 conditions, by tolling the term of these approvals until such time as
4 the economy improves, thereby preventing a waste of public and
5 private resources.

6

7 3. As used in this act:

8 "Approval" means any approval of a soil erosion and sediment
9 control plan granted by a local soil conservation district under the
10 authority conferred by R.S.4:24-22 et seq., waterfront development
11 permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant
12 to "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et
13 seq.), permit issued pursuant to the "Freshwater Wetlands
14 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), approval of an
15 application for development granted by the Delaware and Raritan
16 Canal Commission pursuant to the "Delaware and Raritan Canal
17 State Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.),
18 permit issued by the New Jersey Meadowlands Commission
19 pursuant to the "Hackensack Meadowlands Reclamation and
20 Development Act," P.L.1968, c.404 (C.13:17-1 et seq.), approval of
21 an application for development granted by the Pinelands
22 Commission and determination of municipal and county plan
23 conformance pursuant to the "Pinelands Protection Act," P.L.1979,
24 c.111 (C.13:18A-1 et seq.), permit issued and center designations
25 pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185
26 (C.13:19-1 et seq.), permit and approval issued by the Highlands
27 Water Protection and Planning Council and the Department of
28 Environmental Protection pursuant to the "Highlands Water
29 Protection and Planning Act," P.L. 2004, c.120 (C.13:20-1 et al.),
30 septic approval granted pursuant to Title 26 of the Revised Statutes,
31 permit granted pursuant to R.S.27:7-1 et seq. or any supplement
32 thereto, permit granted by the Department of Transportation
33 pursuant to Title 27 of the Revised Statutes or under the general
34 authority conferred by State law, approval granted by a sewerage
35 authority pursuant to the "sewerage authorities law," P.L.1946,
36 c.138 (C.40:14A-1 et seq.), approval granted by a municipal
37 authority pursuant to the "municipal and county utilities authorities
38 law," P.L.1957, c.183 (C.40:14B-1 et seq.), approval issued by a
39 county planning board pursuant to Chapter 27 of Title 40 of the
40 Revised Statutes, preliminary and final approval granted in
41 connection with an application for development pursuant to the
42 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.),
43 permit granted pursuant to the "State Uniform Construction Code
44 Act," P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement
45 and center designations pursuant to the "State Planning Act,"
46 P.L.1985, c.398 (C.52:18A-196 et seq.), permit or certification
47 issued pursuant to the "Water Supply Management Act," P.L.1981,
48 c.262 (C.58:1A-1 et seq.), permit granted authorizing the drilling of

1 a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification
2 or permit granted, exemption from a sewerage connection ban
3 granted, wastewater management plan approved, and pollution
4 discharge elimination system permit pursuant to the "Water
5 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
6 certification granted pursuant to "The Realty Improvement
7 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23
8 et seq.), certification or approval granted pursuant to P.L.1971,
9 c.386 (C.58:11-25.1 et seq.), certification issued and water quality
10 management plan approved pursuant to the "Water Quality Planning
11 Act," P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted
12 pursuant to the "Safe Drinking Water Act," P.L.1977, c.224
13 (C.58:12A-1 et seq.), permit issued pursuant to the "Flood Hazard
14 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), any
15 municipal, county, regional, or State county or municipal approval
16 or permit granted under the general authority conferred by State law
17 or rule or regulation, or any other government authorization of any
18 development application or any permit related thereto whether that
19 authorization is in the form of a permit, approval, license,
20 certification, permission, determination, interpretation, exemption,
21 variance, exception, waiver, letter of interpretation, no further
22 action letter, agreement or any other executive or administrative
23 decision which allows a development or governmental project to
24 proceed.

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

32 "Economic emergency" means the period beginning January 1,
33 2006 and continuing through to December 31, 2012.

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

37

38 4. a. For any government approval in existence during the
39 economic emergency, the running of the period of approval is
40 automatically suspended for the period of the economic emergency,
41 except as otherwise provided hereunder; however, the tolling
42 provided for herein shall not extend the government approval more
43 than two years beyond the period of the economic emergency.
44 Nothing in this act shall prohibit the granting of such additional
45 extensions as are provided by law when the tolling granted by this
46 act shall expire.

47 b. Nothing in this act shall be deemed to extend or purport to
48 extend any permit issued by the government of the United States or

1 any agency or instrumentality thereof, or to any permit by whatever
2 authority issued of which the duration of effect or the date or terms
3 of its expiration are specified or determined by or pursuant to law or
4 regulation of the federal government or any of its agencies or
5 instrumentalities.

6 c. Nothing in this act shall be deemed to extend any permit or
7 approval issued pursuant to the "Pinelands Protection Act,"
8 P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result
9 in a violation of federal law, or any State rule or regulation
10 requiring approval by the Secretary of the Interior pursuant to
11 Pub.L.95-625 (16 U.S.C. s.471(i)).

12 d. This act shall not affect any administrative consent order
13 issued by the Department of Environmental Protection in effect or
14 issued during the period of the economic emergency, nor shall it be
15 construed to extend any approval in connection with a resource
16 recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-
17 137).

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

31 f. This act shall not toll any approval issued under the
32 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
33 in connection with an application for development involving a
34 residential use where, subsequent to the expiration of the permit but
35 prior to January 1, 2005, an amendment has been adopted to the
36 master plan and the zoning ordinance to rezone the property to
37 industrial or commercial use when the permit was issued for
38 residential use.

39

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

43

44 6. The provisions of this act shall be liberally construed to
45 effectuate the purposes of this act.

46

47 7. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill provides that for any government approval, as defined by the bill, in existence during the economic emergency, the running of the period of approval is automatically suspended for the period of the economic emergency, except as otherwise provided. The bill provides, however, that the tolling provided by the bill would not extend the government approval more than two years beyond the period of the economic emergency. The bill defines "economic emergency" to be the period beginning January 1, 2006 and continuing through December 31, 2012.

This bill would not extend any permit issued by the federal government or any agency or instrumentality thereof, nor would the bill affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the period of the economic emergency. In addition, the bill would not extend any approval of a resource recovery facility.

Also, the provisions of this bill would not extend any permit or approval issued pursuant to the "Pinelands Protection Act" if the extension would result in a violation of federal law or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C.A. s.471 (i)).

In addition, this bill would provide that if the approval extended was based upon the acquisition of a hookup to a sanitary sewer system, the approval's extension would be contingent upon the availability of sufficient capacity to accommodate the development. If the capacity is not available at the time the approval would otherwise be extended by this act, the bill establishes priority on behalf of those approval holders whose approvals are extended, once additional capacity becomes available. Priority would be accorded in order of the granting of the original connection approval by the granting agency.

Also, the bill would not extend any approval granted under the "Municipal Land Use Law" involving a residential development where the master plan and zoning ordinance have been amended to rezone the property to industrial or commercial use subsequent to the expiration of the permit but prior to January 1, 2005, when the permit was issued for residential use.

A state of economic emergency has existed in New Jersey since January 1, 2006, and is anticipated to extend through December 31, 2012. It has drastically affected various segments of the New Jersey economy, but none as severely as the State's banking, real estate and construction sectors that are no longer able to obtain financing under existing economic conditions.

As a result, more and more once-approved permits are in danger of expiring or lapsing because gaining permit extensions is difficult and costly. In addition, no policy reason is served by the expiration

1 of these permits, which were approved only after exhaustive review
2 of the application.

3 As permit approvals lapse, lenders must re-appraise and
4 thereafter substantially lower real estate valuations established in
5 conjunction with approved projects, thereby requiring the
6 reclassification of numerous loans. This in turn affects the stability
7 of the banking system and reduces the funds available for future
8 lending, thus creating more severe restrictions on credit and leading
9 to a vicious cycle of default.

10 The same external factors were present in the 1990s resulting in
11 the passage of the "Permit Extension Act," P.L.1992, c.82
12 (C.40:55D-130 et seq.), to save the work of many in the
13 development field which had, by virtue of the collapse of the
14 savings and loan industry, been in danger of expiration. The same
15 external factors are present today, and the permits which have been
16 so laboriously obtained will expire, unless extended. Accordingly,
17 this bill would extend permits which have been granted by State,
18 regional, county, and municipal agencies in order to prevent a waste
19 of public and private resources.