ASSEMBLY, No. 3919

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 9, 2020

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SYNOPSIS
Extends certain permits, approvals, and deadlines during COVID-19 emergency.

CURRENT VERSION OF TEXT
As amended on June 25, 2020 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 6/29/2020)
AN ACT extending certain governmental permits, approvals, and deadlines during the public health emergency created by the COVID-19 emergency and supplementing Title 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2008, c.78 (C.40:55D-136.2) is amended to read as follows:

2. The Legislature finds and declares that:

a. The most recent national recession has caused one of the longest economic downturns since the Great Depression of the 1930s and has drastically affected various segments of the New Jersey economy, but none as severely as the State's banking, real estate and construction sectors.

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

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

d. The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming and expensive, both for private applicants and government bodies.

e. The process of obtaining the myriad other government approvals, required pursuant to legislative enactments and their implementing rules and regulations, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, also can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, impossible to renew or re-obtain.

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 AAP committee amendments adopted May 11, 2020.
2Assembly amendments adopted in accordance with Governor’s recommendations June 25, 2020.
f. County and municipal governments obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities which may expire or lapse without implementation due to the state of the economy.

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

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

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

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

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

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

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

n. Due to the need to implement strict social distancing measures and take other precautions in order to limit the spread of COVID-19 and minimize its public health impacts, much business and government activity has been halted, disrupted, or delayed.
This has in turn resulted in a severe downturn in the economy. It is therefore appropriate to toll the term of approvals during a new COVID-19 extension period in order to prevent the abandonment of approved projects and activities, and the waste of public and private resources that comes with it, as well as to be ready to quickly resume projects when it is safe to restart normal business and government activity.

(Cf. P.L.2014, c.84, s.1) COVID-19 is a contagious, and at times, fatal, respiratory disease caused by the SARS-CoV-2 virus first discovered in the city of Wuhan, Hubei Province, People’s Republic of China, and quickly spread to multiple other countries, including the United States, and has severely impacted residents of the State of New Jersey:

b. Due to the potential risk of COVID-19 to residents of New Jersey, by way of Executive Order No. 103, Governor Philip D. Murphy declared that a State of Emergency and a Public Health Emergency exists in the State of New Jersey;

c. To limit the spread of COVID-19, it has become imperative for governments, institutions, businesses, organizations, and people throughout New Jersey to implement strict social distancing measures and take other precautions to reduce the public health impacts of the disease;

d. Due to the impacts of COVID-19, and protective measures necessary to avoid its further spread, much government, business, and economic activity has been halted, disrupted, or delayed;

e. These delays have adversely impacted real estate developers and redevelopers, including homebuilders and commercial, office, and industrial developers, whose projects may be held in abeyance as a result of the COVID-19 pandemic. Many of these projects have already received myriad governmental permits and approvals, which are expensive and time-consuming to obtain;

f. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources; moreover, the costs imposed may fall on the public as well as the private sector; and

g. It is therefore appropriate, and the purpose of P.L. c. (C. ) (pending before the Legislature as this bill), to toll the term of certain permits and approvals during the COVID-19 extension period in order to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable economic conditions, thereby preventing a waste of public and private resources and allowing for the quick resumption of projects when it is safe to restart normal business and government activity.

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

3. As used in P.L.2008, c.78 (C.40:55D-136.1 et seq.)
P.L.1977, c.74 (C 58:10A-1 et seq.), certification granted pursuant to "The Realty Improvement Sewerage and Facilities Act (1954),"

P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued and water quality management plan approved pursuant to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), permit issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or State approval or permit granted under the general authority conferred by State law or rule or regulation, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement or any other executive or administrative decision which allows a development or governmental project to proceed, provided that, for all of the foregoing, the approval was validly issued, and the term of such approval was unexpired as of March 9, 2020.

"COVID-19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

"COVID-19 extension period" means the period beginning March 9, 2020 and continuing for as long as a public health emergency, pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), [for a state of emergency, pursuant to P.L.1942, c. 251 (C.App.A.9-33 et seq.), or both] that has been declared by the Governor in response to COVID-19, is in effect.

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

"Environmentally sensitive area" means an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78 (C.40:55D-136.1 et seq.), pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 4B (Rural/Environmentally Sensitive), Planning Area 5 (Environmentally Sensitive), or a critical environmental site, but shall not include any extension area as defined in this section.

"Extension area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan),
Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area), a designated center, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey’s State Strategic Plan and adopts regulations to refine this definition as it pertains to Statewide planning areas, whichever is later; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas, villages, and towns, designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); the planning area of the Highlands Region as defined in section 3 of the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-3), and any Highlands center designated by the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection. "Extension area" shall not include an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78, pursuant to P.L.1985, c.398 as Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive), except for any area within Planning Area 4B or Planning Area 5 that is a designated center, or a designated growth center in an endorsed plan.

"Extension period" means the period beginning January 1, 2007 and continuing through December 31, 2015; provided, however, that the period in Superstorm Sandy-impacted counties shall continue through December 31, 2016. [2]

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

2["Superstorm Sandy-impacted counties" means Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union counties, as identified by the United States Department of Housing and Urban Development. "Superstorm Sandy-impacted extension period" means the period beginning January 1, 2016 and continuing through December 31, 2016. (cf: P.L.2016, c.14, s.1)]
3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to read as follows:

4. a. [1] For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period.

(2) For any government approval in existence on December 31, 2015 concerning lands located entirely within one or more of the Superstorm Sandy-impacted counties, as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3), the running of the period of approval is automatically suspended for the Superstorm Sandy-impacted extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the Superstorm Sandy-impacted extension period.

(3) Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall shorten the duration that any approval would have had in the absence of P.L.2008, c.78 (C.40:55D-136.1 et seq.), nor shall P.L.2008, c.78 (C.40:55D-136.1 et seq.) prohibit the granting of such additional extensions as are provided by law when the tolling granted by P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall expire. Notwithstanding any previously enacted provision of P.L.2008, c.78 (C.40:55D-136.1 et seq.), as amended and supplemented, the running of the period of approval of all government approvals which would have been extended pursuant to the definition of "extension area," added by P.L.2012, c.48, shall be calculated, using that definition, retroactive to the enactment of P.L.2008, c.78 (C.40:55D-136.1 et seq.).

(4) For any government approval in existence on March 9, 2020, the running of the period of approval is automatically suspended for the COVID-19 extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall extend the government approval at least six months beyond the conclusion of the COVID-19 extension period, except that for a construction project suspended pursuant to either the Governor’s Executive Order No. 122 or any other government order, the tolling period shall be 12 months beyond the conclusion of the COVID-19 extension period.

b. Nothing in P.L., c. (C.) (pending before the Legislature as this bill) shall be construed to reduce the time period of any approval in existence as of March 9, 2020.
c. Nothing in P.L., c. (C.) (pending before the Legislature as this bill) shall be construed to extend the time period of any government approval that expired before March 9, 2020.

d. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be deemed to extend or purport to extend:

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

(2) any permit or approval issued pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) 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. s.471i);

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

(4) any permit or approval within an environmentally sensitive area issued pursuant to the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or any permit or approval issued within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3);

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

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

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

any permit or approval within the Highlands planning area located in a municipality subject to the "Highlands Water Protection and Planning Act," P.L.2004, c.120, that has adopted,
1. As of May 1, 2012, in accordance with the Highlands Water Protection and Planning Council conformance approval, a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory, except that the provisions of this paragraph shall not apply to any permit or approval within a Highlands center designated by the Highlands Water Protection and Planning Council, notwithstanding the adoption by the municipality of a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory.

2. [c. P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.)] P.L. , c. (C. ) (pending before the Legislature as this bill) shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the extension period or COVID-19 extension period, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L. 1985, c. 38 (C.13:1E-137).

3. Nothing in [c. P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.)] P.L. , c. (C. ) (pending before the Legislature as this bill) shall affect the ability of the Commissioner of Environmental Protection to revoke or modify a specific permit or approval, or extension thereof pursuant to [c. P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.)] P.L. , c. (C. ) (pending before the Legislature as this bill), when that specific permit or approval or the commissioner’s underlying statutory or regulatory authority contains language authorizing the modification or revocation of the permit or approval by the department.

4. In the event that any approval tolled pursuant to [c. P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.)] P.L. , c. (C. ) (pending before the Legislature as this bill) is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the date of enactment of P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.) March 9, 2020. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to [c. P.L. 2008, c. 78 (C. 40:55D-136.1 et seq.)] P.L. , c. (C. ) (pending before the Legislature as this bill) shall be allocated in order of the granting of the original approval of the connection.
8. P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 2007, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

9. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.


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

5. a. State agencies shall, within 30 days after the effective date of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within 30 days after the effective date of any subsequent amendment and supplement thereto, place a notice in the New Jersey Register
tolling approvals in the Superstorm Sandy-impacted counties, as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3) in conformance with P.L.2008, c.78 (C.40:55D-136.1 et seq.).


(P.L.2016, c.14, s.3) P.L.2016, c.14 (pending before the Legislature as this bill).

b. Any government approval subject to the automatic suspension of the running period of such approval for the COVID-19 extension period shall be registered with the department within 30 days of the notice in the New Jersey register.

c. The running period of any approval not registered pursuant to this section shall not be suspended for the COVID-19 extension period.

d. The department shall publish on its website a list of government approvals for which the running of the period of such approvals are suspended for the COVID-19 extension period within 14 days of receipt of the government approval registration pursuant to this section.

5. (New Section) Any registration, application, or licensing requirement or timeframe imposed pursuant to P.L.2019, c.397 (C.13:1E-127.1 et al.), applicable to a person who performs soil and fill recycling services related to road or bridge construction activities, shall be suspended as of March 9, 2020 and the calculation of any registration, application filing, and licensing dates and the requirements related thereto, shall resume on the 60th day after the conclusion of the COVID-19 extension period.

6. (New Section) Notwithstanding any provision of P.L.1975, c.291 (C.40:55D-1 et seq.) to the contrary, a. The 45-day period for an application for development to a municipal agency to be certified as complete pursuant to section 5 of P.L.1984, c.20 (C.40:55D-10.3) shall be extended to either 90 days after March 9, 2020, or 60 days after the date the application for development is submitted to the municipal agency, whichever date is later, for any application:

(1) awaiting certification as a complete application by a municipal agency as of March 9, 2020; or

(2) submitted by an applicant during the COVID-19 extension period.

b. The time periods for a municipal agency to either grant or deny any other application for development required under
P.L.1975, c.291 (C.40:55D-1 et seq.) 2 for any municipal agency to either grant or deny any application for development 2 shall be extended by 2 60 2 days for any application:

(1) awaiting certification as a complete application by a municipal agency as of March 9, 2020; or

(2) pending before a municipal agency as of March 9, 2020 2;

or

(3) .

c. The time periods for a municipal agency to either grant or deny any other application for development required under P.L.1975, c.291 (C.40:55D-1) shall be extended to either 120 days after March 9, 2020, or 60 days after the application for development is certified as complete by the municipal agency, whichever date is later, for any application 2 submitted by an applicant during the COVID-19 extension period. 1

15, 2 7.1 15, 2 This act shall take effect immediately and shall be retroactive to March 9, 2020.