

ASSEMBLY BILL NO. 3919
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3919 (First Reprint) with my recommendations for reconsideration.

This bill would extend environmental permits and other governmental approvals for the duration of a newly-created "COVID-19 extension period." In order to protect the health, safety, and welfare of New Jersey residents, it was necessary to suspend, among other activities, non-essential construction projects from continuing in the State, effective April 8, 2020. As I explained in Executive Order No. 122 (2020), construction sites pose particular social distancing challenges, as they frequently require large numbers of workers to gather in close proximity, make contemporaneous, direct contact with the same materials and surfaces, and use common facilities. Although construction projects were allowed to resume beginning on May 13, 2020, I agree with the bill's sponsors that it is necessary to extend permits and other approvals in order to prevent previously approved projects from being abandoned as a result of the COVID-19 pandemic.

While I strongly support the bill's goal of providing businesses impacted by the pandemic with the flexibility and tools they need to support the State's economic development and recovery, I am concerned that the length of the extension period contemplated in the bill could inadvertently undermine this worthy objective. The bill would define the "COVID-19 extension period" to cover the period beginning March 9, 2020 and continuing for the duration of the public health emergency, or the state of emergency, or both, declared in response to the COVID-19 pandemic. In the case of

construction projects suspended pursuant to Executive Order No. 122, approvals would be tolled for an additional twelve months following the conclusion of the COVID-19 extension period.

Because of the unprecedented and myriad impacts the COVID-19 pandemic has had and continues to have on the State, the current State of Emergency could remain in place for many years, even after the adverse conditions from the economic downturn caused by the pandemic have improved. By way of comparison, elements of the state of emergency declared in 2012 in response to Superstorm Sandy are still in effect today. Extending approvals potentially years into the future is not only unnecessary, that extension may also provide an unintended avenue that could actually frustrate the intended purpose of stimulating the State's economy. Additionally, an overly lengthy extension could be susceptible to manipulation to circumvent environmental standards. I am therefore recommending that the COVID-19 extension period be limited to just the public health emergency, a period of time that should be shorter in duration than the state of emergency and would more closely coincide with the State's COVID-19 recovery. For these reasons, I am also recommending eliminating the additional twelve-month extension for nonessential projects. At the same time, and in order to ensure that the extension period provides sufficient relief to permit holders, I am also recommending language specifying that the tolling must extend the approval period by at least six months beyond the COVID-19 extension period.

My recommended revisions also modify the bill's structure in order to create a stand-alone COVID-19 permit extension provision. As passed by the Legislature, the bill would amend P.L.2008, c.78 by adding a new COVID-19 related extension period. I am concerned that supplementing an outdated and inefficient paradigm of permit

extensions established in response to the 2008 recession and Superstorm Sandy could unintentionally resurrect non-viable permits or projects that no longer have active approvals. Indeed, when P.L.2008, c.78 was amended in response to Superstorm Sandy in 2012, several parties unscrupulously attempted to revive expired permits that had been initially extended when P.L.2008, c.78 was first enacted in response to the economic recession. This led to frivolous and unnecessary legal challenges that diverted resources from storm recovery efforts. My recommended revisions avoid such an undesirable outcome by creating separate provisions of law to be entitled "The Permit Extension Act of 2020."

My recommendations also expand upon the bill's transparency requirements by directing the Department of Environmental Protection (the "Department") to publish the list of impacted permits extended on the department's website. This will ensure that the public, as well as impacted government agencies and businesses, are able to more readily identify the permits that have been extended under the bill.

Therefore, I herewith return Assembly Bill No. 3919 (First Reprint) and recommend that it be amended as follows:

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| <u>Page 2, Title, Line 3:</u> | Delete "amending P.L.2008, c.78 and" |
| <u>Page 2, Section 1, Line 9:</u> | Delete "Section 2 of P.L.2008, c.78 (C.40:55D-136.2) is amended to" and insert "P.L. ,c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the 'Permit Extension Act of 2020.'" |
| <u>Page 2, Section 1, Line 10:</u> | Delete in its entirety |
| <u>Page 2, Section 1, Line 12:</u> | Delete "The most recent national recession has caused one of the" and insert "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."

- Page 2, Section 1, Lines 13-45: Delete in their entirety
- Page 3, Section 1, Lines 1-48: Delete in their entirety
- Page 4, Section 1, Lines 1-6: Delete in their entirety
- Page 4, Section 2, Line 7: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. ,c. (C.) (pending before the Legislature as this bill)"
- Page 4, Section 2, Line 8: Delete "section 4 of" and insert "sections 4 through 11 of P.L. ,c. (C.) (pending before the Legislature as this bill)"
- Page 4, Section 2, Line 9: Delete "P.L.2008, c.78 (C.40:55D-136.4)"
- Page 4, Section 2, Lines 19-20: Delete "by the New Jersey Meadowlands Commission"
- Page 5, Section 2, Line 23: After "proceed" insert "; 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"
- Page 5, Section 2, Lines 30-31: Delete "or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both,"
- Page 5, Section 2, Lines 41-47: Delete in their entirety
- Page 6, Section 2, Lines 1-37: Delete in their entirety
- Page 6, Section 2, Lines 41-48: Delete in their entirety
- Page 7, Section 3, Lines 1-2: Delete in their entirety
- Page 7, Section 3, Line 3: Delete "(1) For any government approval in existence during the"
- Page 7, Section 3, Lines 4-30: Delete in their entirety
- Page 7, Section 3, Line 31: Delete "(4)"
- Page 7, Section 3, Line 33: After "period," insert "except as otherwise provided hereunder;"

Page 7, Section 3, Line 34: Delete "not"

Page 7, Section 3, Line 35: Delete "more than" and insert "at least"

Page 7, Section 3, Line 36: Delete ", except that for a" and insert "."

Page 7, Section 3, Lines 37-39: Delete in their entirety

Page 7, Section 3, Line 40: Delete "extension period." and insert

"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."

Page 7, Section 3, Line 41: Delete "b." and insert "d."

Page 7, Section 3, Line 41: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"

Page 8, Section 3, Line 6: Delete "any permit or approval issued within an environmentally"

Page 8, Section 3, Lines 7-9: Delete in their entirety

Page 8, Section 3, Line 10: Delete "Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or"

Page 8, Section 3, Line 13: Delete "(5)" and insert "(4)"

Page 8, Section 3, Line 19: Delete "(6)" and insert "(5)"

Page 8, Section 3, Line 27: Delete "(7)" and insert "(6)"

Page 8, Section 3, Line 28: Delete ", that as of"

Page 8, Section 3, Lines 29-31: Delete in their entirety

Page 8, Section 3, Line 32: Delete "Rules at N.J.A.C.7:7E-5B.6"

Page 8, Section 3, Line 33: Delete "(8)" and insert "(7)"

Page 8, Section 3, Lines 35-36: Delete "as of May 1, 2012,"

Page 8, Section 3, Line 45: Delete "c. P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "5. P.L. , c.

- (C.) (pending before the Legislature as this bill)"
- Page 8, Section 3, Lines 47-48: Delete "extension period or"
- Page 9, Section 3, Line 3: Delete "d." and insert "6."
- Page 9, Section 3, Line 3: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 6: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 7: After "approval" insert "or the commissioner's underlying statutory or regulatory authority"
- Page 9, Section 3, Line 10: Delete "e." and insert "7."
- Page 9, Section 3, Line 10: Delete "P.L.2008," and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 11: Delete "c.78 (C.40:55D-136.1 et seq.)"
- Page 9, Section 3, Line 19: Delete "the date of enactment of P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "March 9, 2020"
- Page 9, Section 3, Line 22: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 24: Delete "f. P.L. 2008, c.78 (C.40:55D-136.1 et seq.)" and insert "8. P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 28: Delete "January 1, 2007" and insert "March 9, 2020"
- Page 9, Section 3, Line 32: Delete "g." and insert "9."
- Page 9, Section 3, Line 32: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (pending before the Legislature as this bill)"
- Page 9, Section 3, Line 37: Delete "h." and insert "10."
- Page 9, Section 3, Line 37: Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c.

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| | (C.) (pending before the Legislature as this bill)" |
| <u>Page 9, Section 3, Line 43:</u> | After "seq." delete ",," |
| <u>Page 9, Section 3, Lines 44-45:</u> | Delete in their entirety |
| <u>Page 9, Section 3, Line 46:</u> | Delete "i." and insert "11." |
| <u>Page 9, Section 3, Line 47:</u> | Delete "extension area as defined in section 3 of" and insert "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)," |
| <u>Page 9, Section 3, Line 48:</u> | Delete "P.L.2008, c.78 (C.40:55D-136.3), as amended," |
| <u>Page 9, Section 3, Line 48:</u> | Delete "in the" and insert "." |
| <u>Page 10 Section 3, Lines 1-3:</u> | Delete in their entirety |
| <u>Page 10, Section 4, Lines 5-13:</u> | Delete in their entirety |
| <u>Page 10, Section 4, Line 14:</u> | Delete "b." and insert "12. a." |
| <u>Page 10, Section 4, Line 17:</u> | Delete "P.L.2008, c.78 (C.40:55D-136.1 et seq.)" and insert "P.L. , c. (C.) (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." |
| <u>Page 10, Section 4, Line 18:</u> | Delete in its entirety |

Page 10, Section 5, Line 20: Delete "5. (New Section) Any" and insert "13. The running of the period of any"

Page 10, Section 6, Line 29: Delete "6. (New Section)" and insert "14."

Page 10, Section 6, Line 33: Delete "90" and insert "120"

Page 10, Section 6, Line 41: After "periods" insert "for a municipal agency to either grant or deny any other application for development"

Page 10, Section 6, Lines 42-43: Delete "for any municipal agency to either grant or deny any application for development"

Page 10, Section 6, Line 43: Delete "60" and insert "120"

Page 10, Section 6, Line 47: Delete "; or" and insert "."

Page 11, Section 6, Line 1: Delete "(3)" and insert "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"

Page 11, Section 7, Line 4: Delete "7." and insert "15."

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Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor