

DIMENSIONS

Newsletter of the New Jersey Builders Association



Governor Chris Christie is sworn in for his second term January 21, 2014

IN THIS ISSUE

NJBA'S LAME DUCK "HAT TRICK" 2
DAY PITNEY, LLP JOINS THE NJBA MASTER SPONSOR PROGRAM 4
EXTENSION OF 2012 WATER QUALITY PLANNING ACT SIGNED BY GOVERNOR 5
THINK YOU MAXED OUT ON RETIREMENT SAVINGS THIS YEAR? THINK AGAIN. 6
LESSONS LEARNED FROM SUPERSTORM SANDY 7
BILL EXTENDING REMEDIAL INVESTIGATION DEADLINE NOW LAW 8
THE AFFORDABLE CARE ACT - OFF AND RUNNING..... 9
HISTORIC REHABILITATION TAX CREDIT 10
ARE YOU READY FOR ABC? 11

Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). The New Jersey Builders Association is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating their realization of the American Dream. NJBA serves as a resource for its members through continuing education and advocacy. The NJBA and its members strive for a better, greener, more affordable New Jersey. Additional information is available at www.njba.org.

Questions or comments may be sent to Irene Opitz at iopitz@njba.org.

NJBA recognizes and appreciates the expertise of its members. In this spirit we invite and encourage our members to submit articles for publication in Dimensions. NJBA reserves the right to make the determination on which articles will be published, the timing of the publication and, if need be, the right to edit articles after consultation with the author.

DIMENSIONS

NJBA'S LAME DUCK "HAT TRICK"

Carol Ann Short, Esq., CEO, New Jersey Builders Association



Carol Ann Short
Chief Executive
Officer, NJBA

The Lame Duck Session

At noon on January 14, 2014 the 215th New Jersey Legislature officially concluded its 10-week lame duck legislative session, having sent close to 150 bills to the Governor during the final 10 days of the session. On that same day, the 120 newly-elected members of the New Jersey Senate and General Assembly were officially sworn-in to office marking the start of the 216th New Jersey Legislature.

The "Pocket Veto"

The New Jersey Constitution allows bills passed during the last 10 days of any lame duck session to be outright vetoed by the Governor or, what is referred to as, "pocket vetoed." In other words, the Governor may simply reject those bills passed within the last 10 days of the prior legislative session without explanation. The rationale is simply that there may not be sufficient time for the Governor to thoroughly review what could be 100's of bills landing on his desk just days before the end of his term.

The Governor has seven days from the official adjournment of the legislative session to act on all the bills that were delivered to him during the last 10 days of the prior session. So, in this case, on January 21, 2014, the official end of Governor Christie's first term in office and the swearing in of his second term, the Governor signed approximately 100 of the bills that were delivered to him and rejected close to 50 with the use of the "pocket veto."

The "Hat Trick"

NJBA successfully lobbied during the lame duck session for a "hat trick," with the enactment of two NJBA strongly supported critical legislative proposals

and the use of the "pocket veto" to deal with the third NJBA strongly opposed proposal. After months of ongoing negotiations and deliberations with various Democratic and Republican sponsors, their respective staff, OLS staff, members of the affected agencies, as well as Governor's Counsel and others, NJBA emerged victorious, with respect to several key legislative issues.

Over intense opposition by a number of environmental objectors, NJBA successfully lobbied to support a critically needed extension to the Water Quality Planning Act law, as well as an extension to the required remedial investigations under the Site Remediation Reform Act (SRRRA). Equally important to the membership, NJBA successfully lobbied against a proposal which would have imposed a mandatory requirement that all newly constructed single and two-family homes include a fire sprinkler suppression system.

Extension of the Water Quality Planning Act

First, NJBA **strongly supported A4531/S3107 (Greenwald/Bramnick/Sarlo/Oroho)** which extends the 2011 law concerning the Water Quality Management Planning (WQMP) rules for up to an additional two years. This bill was signed into law by Governor Christie as **PL. 2013, c.188** on January 15, 2014, just two days prior to the expiration of the 2011 law.

The wastewater management planning process has required extensive time and work to prepare the detailed plans. It has proven to be an enormous and expensive undertaking. Counties are in varying stages for completing the outstanding WQMP tasks such as nitrate dilution modeling, build-out analysis, water supply needs and capacity analysis, and the adoption of municipal ordinances. These counties need the additional time to complete the work required under the WQMP regulations.

This extension was also critical to the process as a result of the current requirement in the WQMP rules that authorizes the Department of Environmental Protection (DEP) to rescind sewer service areas. Although the DEP had not yet exercised that power, the threat of withdrawal of sewer service areas created considerable anxiety for the business community. Financial commitments from lenders and investors require certainty that sewer service areas will not be revoked. The extension of the law provides the needed reassurance for the regulated community.

As extended, the law also allows for the continuation of applications of site specific amendments and revisions. The opportunity to request inclusion within the adopted sewer service area maps is essential for economic development and to rectify any errors in the underlying data used to create the sewer maps. Without the extension of the law, that process would have ceased until the adoption of the full Wastewater Management Plan which would have had a negative impact on the State's overall economic growth.

Extension of the Remedial Investigations

Second, NJBA also **strongly supported A4543/S3075 (Spencer/Shepesi/Smith/Bateman)** which authorizes the DEP to extend the time for completion of remedial investigation of certain contaminated sites prior to undertaking direct oversight. This bill was signed into law as **PL. 2013, c. 283** on January 21, 2014.

The 2009 Site Remediation Reform Act (SRRRA) imposed the upcoming deadline of May 7, 2014 for the completion of the remedial investigations of contaminated sites. NJBA strongly supported an extension to this definitive and problematic deadline. SRRRA does not explicitly provide discretion to the DEP

[Continued on Page 3](#)

NJBA'S LAME DUCK "HAT TRICK"

Continued from page 2

to consider the multitude of factors that could hamper compliance. Two examples of extenuating circumstances include sites impacted by Hurricane Sandy and sites facing financial challenges due to the recession. Without an extension to the May 2014 deadline, the revamped site remediation program was in danger of reverting to the old model where the DEP would have been extensively involved in the remediation process. That result would have been clearly contrary to the goals of SRRRA and would have required the DEP to assign additional resources to a purpose that does not help move remediation projects ahead.

As NJBA had highlighted, the law includes clear parameters that parties must certify to comply with in an application prepared by their LSRP to the DEP by March 7, 2014, **which is deemed approved upon submission**. Such a self-effectuating approach is necessary due to DEP's limited resources and rapidly approaching May 7, 2014 deadline. It is anticipated that DEP will soon make the required application form and guidance available.

Rejection of Mandatory Fire Sprinklers

Third, NJBA **strongly opposed** the proposal that would have required all newly constructed single and two-family homes to include mandatory fire sprinklers, **A1570/S2273 (Wisniewski/Norcross)**. While NJBA certainly appreciates the concern for life safety, fire suppression systems should remain optional, especially given the reality of the economic challenges facing home buyers in today's marketplace.

When the Department of Community Affairs (DCA) adopted the 2009 International Residential Code, it amended the sprinkler system out of the Final Adoption. As the DCA explained "it is paramount that State agency policies be

sensitive to their impact on our economic recovery" and that "the imposition of an additional cost that might impede the recovery of the residential construction sector, however desirable the result may be, is a step that cannot be taken at this time." Additionally, members of the Uniform Construction Code Advisory Board unanimously recommended that the sprinkler requirement be delayed in order to accurately assess the continuing economic downturn and the increased cost to homeowners.

While NJBA wholeheartedly supports a Uniform Construction Code that promotes safe and healthy housing, that must be balanced with affordability. Unfortunately, the proposed bill would have added thousands of dollars in costs to the housing that middle and modest income families are already struggling to afford. The affordability of homes should be even more of a concern following the devastation caused by Hurricane Sandy.

Critical Issues Moving Forward

NJBA has a substantial agenda for the 216th legislative session

Fees for Application and Inspection Review Reform Act (FAIRR Act)

The municipal government review and approval of development applications, posting of performance guarantees, and inspection of site improvements is a complex and expensive process that places New Jersey at an economic disadvantage. The procedures used by towns, and the amounts charged to review applications and inspect the installation of improvements varies widely. There are significant variations throughout the state in how these procedures are handled, which results in higher development costs with little or no benefit to the general public.

To improve the State's position in

competing for economic development, the Municipal Land-Use Law (MLUL) should be amended to (1) standardize fees for review and approval of all development applications (as opposed to the open-ended municipal escrow process), (2) require site improvements to be certified complete by licensed engineers known as "land development inspectors" selected by the developer, and (3) simplify and streamline the release and reduction of guarantees.

Liquor License Reform for Redevelopment Projects

Mixed-use developments in New Jersey continue to increase in popularity as more consumers desire walkable town centers and neighborhoods with a range of housing options, variety of transportation modes and retail facilities/amenities such as restaurants, bars and liquor stores. These types of developments facilitate urban revitalization efforts and create vibrant suburban town centers that enhance the economic viability of communities and the quality of life for residents and visitors.

The State's liquor laws need to be amended to establish a procedure for corporations or other legal entities developing smart growth development projects to be issued special licenses to sell alcoholic beverages. NJBA is currently working with the Smart Growth Economic Development Coalition and sponsors in an effort to promote such an initiative.

Economic Opportunity Act of 2013 Clean-up

The "Economic Opportunity Act of 2013" (EO13) was signed into law by Governor Christie as **PL.2013, c.161** on September 18, 2013. The new law consolidates our state's various financial incentive programs down to two very powerful economic development tools:

Continued on Page 4

DIMENSIONS

DAY PITNEY, LLP JOINS THE NJBA MASTER SPONSOR PROGRAM

 DAY PITNEY LLP



We are pleased to announce that Day Pitney, LLP is the newest New Jersey Builders Association (NJBA) Master Sponsor. Day Pitney is a leading full-service regional U.S. law firm with a more than 100-year reputation for superior client service and high-value legal representation.

With close to 300 attorneys in nine offices throughout the Northeast, Day Pitney is well-positioned to provide regional, national and international clients results-based representation and forward-thinking solutions to complex litigation, transactions and regulatory matters.

Day Pitney's real estate, environmental, and land use lawyers offer a full spectrum of legal services. Representative clients include international, national, regional, and local businesses as well as individuals. The firm provides legal counsel to a broad range of commercial enterprises, including real estate developers and investors, utilities (energy, water, and telecommunications), manufacturing companies, academic institutions, hospitality and retail companies, lending institutions and property owners.

Gary Forshner, Chair of the NJBA Master Sponsor program shared, "We're delighted that a law firm of the caliber of Day Pitney has joined the Master Sponsor program. The firm is well-respected in the development industry and complements the extensive legal talent currently serving as NJBA Sponsors. We warmly welcome Day

Pitney as a Master Sponsor and look forward to enhancing our relationship with the firm."

Long-time NJBA member Craig Gianetti, Esq. will serve as NJBA's main contact with the firm. Craig can be contacted at (973) 966 8053 or cgianetti@daypitney.com. More information on the value Day Pitney can bring to a relationship is available at www.daypitney.com.

For information about the NJBA Master Sponsor program, visit www.njba.org/master-sponsors.php or call Gary Forshner, Esq. Master Sponsor Chair at 609-895-7250 or Eileen Monesson, Master Sponsor Liaison at 609-570-2150.

NJBA'S LAME DUCK "HAT TRICK"

Continued from page 3

(1) a new and improved GrowNJ program that would be the state's sole business attraction and retention incentive and (2) a new and improved Economic Redevelopment Growth Grant (ERG) program that would be the state's sole developer incentive and makes available \$600 million for qualified residential projects.

However, the new law contains a rigid 20 percent affordable housing set-aside requirement that makes some projects that could receive an incentive under EO13 impractical. EO13 should be amended to allow the municipality in which such projects are located to have the option of determining whether there shall be a set-aside requirement, up to a maximum of 20 percent of the total

number of units.

Senator Lesniak has already introduced **S928**, which authorizes certain municipalities to grant an exception to the 20 percent affordable housing set-aside requirement for qualified residential projects under the ERGG program. NJBA will continue to work with the Smart Growth Economic Development Coalition to pursue this and other technical amendments to EO13.

Insurance Coverage for Faulty Workmanship

Construction contracts typically require that the general contractor and subcontractors performing work on a project secure commercial liability insurance that includes coverage for property damage and bodily injury caused by

an occurrence. Since this coverage is often written on standard form insurance policies, courts have varied in their holdings as to whether damage from faulty workmanship is accidental in nature and therefore within the definition of an occurrence, for which coverage is provided.

NJBA supports legislation that requires commercial liability insurance policies to contain a definition of "occurrence" in order to provide more certainty with respect to coverage for faulty workmanship. In early February, NJBA will be participating in a stakeholders meeting hosted by Assemblyman Schaar to discuss legislation that he recently drafted and introduced as **A1077**, in response to NJBA's specific concerns.

DIMENSIONS

EXTENSION OF 2012 WATER QUALITY PLANNING ACT SIGNED BY GOVERNOR

By Paul H. Schneider, Esq and Steven M. Dalton, Esq., Giordano, Halleran & Ciesla, P.C.

On the last day of the legislative session both the Assembly and Senate passed a bill extending the 2012 Water Quality Planning Act and Governor Christie acted quickly signing the bill into law on January 16, 2014. The 2012 law was enacted to avoid the withdrawal of sewer service areas and to require that DEP resume the review and approval of applications for site specific amendments to water quality management plans (WQMP), which allow development projects

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to be added to a sewer service area. The 2012 law was set to automatically expire on January 17, 2014, and while the counties and DEP have adopted new sewer service area/wastewater service area maps in response to the 2012 law, other components of the WQMP planning process have not yet been completed, raising the specter that sewer service areas would have been withdrawn and the site specific WQMP amendment process would have halted if the extension was not signed by the Governor.

This issue dates back to rules DEP adopted during the Corzine administration in order to pressure wastewater planning agencies, primarily counties, to adopt or update wastewater management plans (WMP). The rules call for the withdrawal of wastewater service area designations in counties that did not submit new or updated wastewater management plans to DEP by April 7, 2009. This deadline was subsequently extended until April 7, 2010. Where these deadlines were not met, the rules provide that sewer service area designations would be withdrawn in areas where sewers are not already in the ground, with limited exceptions for situations such as infill

development where sewer lines are in place, projects for which sewer permits have been issued, or for site specific amendments less than six years old. Withdrawal of sewer service areas would have catastrophic consequences by precluding much new development,

including development in many areas long planned for growth and that meet all environmental criteria. Although DEP delayed withdrawing sewer service areas, it implemented a companion rule back in 2009 that stopped the review and approval of new applications for site specific plan amendments, hindering the ability of landowners and developers to secure sewer service for parcels located outside of sewer service areas.

The 2012 law precluded withdrawal of sewer service area designations for at least 180 days while counties prepared new or updated WMPs. Moreover, counties were not required to submit complete WMPs in order to avoid the withdrawal of wastewater service areas, but, rather, only the portion of a wastewater management plan designating a sewer service area. Once the county submitted such a partial WMP, sewer service areas would remain in effect until adoption of the new or updated WMP. Additionally, DEP was required to resume the review of applications for site specific amendments, and to act on those applications within a designated time frame. The 2012 Water Quality Planning Act was adopted as a temporary law to expire on January 17, 2014.

Over the past two years all remaining counties submitted new or updated sewer service areas. Most of those sewer service areas have been adopted, and DEP expects the remainder will be approved in the near future. Unfortunately, however, in the aftermath of Sandy, DEP was unable to take advantage of the two-year reprieve by adopting amended WQMP regulations that would permanently fix these problems. As a result, the specter of expiration of the 2012 legislation and reversion of the WQMP process back to the old rules that call for the automatic withdrawal of the newly adopted sewer service areas and a halt to the site specific plan amendment process loomed up until the 2012 legislation was extended on the day before it was set to expire.

The bill signed by the Governor extends the 2012 legislation for a maximum of two more years until DEP adopts new WQMP rules that meet the purposes of the legislation. The legislation also makes some notable clarifications to site specific plan amendment process. Among other things:

- Site specific amendments are limited to a specific proposed development project or activity, though applicants are not required to submit engineered subdivision, site plans or stormwater management plans unless DEP establishes some demonstrated need for such plans.
- Applications for site specific amendments must comply with the criteria under the current WQMP rules for delineation of sewer service areas. Thus, portions of parcels constituting "environmentally sensitive" land will be precluded from sewer service areas.

Continued on Page 8

DIMENSIONS

THINK YOU MAXED OUT ON RETIREMENT SAVINGS THIS YEAR? THINK AGAIN.

By Paul V. Gergel, CPA, CFP®, Partner, WithumSmith+Brown, PC

The American Taxpayer Relief Act of 2012, which was signed by the President into law on January 2, 2013, increased the taxes for most business owners and their employees, especially for those already in the highest income tax bracket. These changes have stirred many business owners to explore new ways of sheltering profits from current taxation by using retirement plans. But what happens when you have already maximized your deduction through these qualified plans? Below, I discuss a few alternative tax strategies to help you keep more of what you have earned.

Roth IRAs are excellent retirement savings vehicles. Although contributions to a Roth are not tax deductible, qualified distributions, including the earnings, are tax-free. And unlike the traditional IRA, you can continue to make contributions to a Roth IRA even after you reach age 70 ½. Furthermore, you can leave amounts in your Roth IRA for as long as you live as opposed to a traditional IRA which requires mandatory minimum distributions upon reaching age 70 ½. It is a great way to eliminate taxes on your portfolio's earnings and watch your account balance grow even larger without the drag of income taxes.

Most high income taxpayers, however, cannot make a direct contribution into a Roth IRA. For example, in 2013, a single taxpayer can no longer make a Roth IRA contribution once modified AGI exceeds \$127,000. Taxpayers that file jointly with their spouse will have their Roth IRA contributions become limited once their income reaches \$178,000. However, there is a strategy which would allow high income taxpayers in these brackets to get money into a Roth IRA. How? By making a non-deductible IRA contribution, then immediately



converting it to a Roth IRA. The tax code allows virtually anyone with earned income under age 70 ½ to make a non-deductible IRA contribution of \$5,500 per year (\$6,500 if you're age 50 or older) and then do the Roth conversion. If done immediately, there should be little or no tax on the conversion.

Need to shelter more compensation from current taxation? Consider implementing a **nonqualified deferred compensation (NQDC) plan** in your business. Because of the recent rise in tax rates, these plans have once again become a valuable tool in deferring an executive's compensation subject to tax. In these uncertain times, executives and business owners are looking for new ways to accumulate wealth to meet their long-term financial goals such as retirement, healthcare needs and other obligations, and a NQDC plan could be part of that strategy. They can be a valuable supplement to your other qualified retirement plans, giving you an edge in attracting and retaining your top performers. In a typical NQDC plan, an employee elects to defer a part of salary until a future date. The employee would be able to defer paying taxes on this compensation until receiving a distribution from the plan. The employer, however, would be foregoing a current income tax deduction for the payment as the

actual deduction is received in the year the employee receives the plan benefits. For this reason, many small business owners, particularly those of S Corporations and Partnerships, may see less merit in establishing such a plan if they themselves were unable to benefit from the plan.

Finally, very profitable businesses may want to explore setting up a **captive insurance company** to supplement their risk management program. A captive is a sophisticated strategy and, when properly set up, can yield substantial operational and tax savings to business owners.

In recent years, new IRS revenue rulings have created opportunities for mid-sized companies to take advantage of this strategy which had been used almost exclusively by Fortune 500 companies. Smaller, closely-held companies can now create a "mini-captive" under Code Sec. 831(b). This provision allows companies to make tax deductible premiums of \$1.2 million or less to the captive. The best part is that the mini-captive does not pay tax on this premium income and would only be subject to tax on its investment income

Furthermore, the captive could be setup with family members of the small business owning most or all of the shares of the captive. Accordingly, the family members would receive the economic benefits associated with the captive without any gift or estate taxes being assessed on this substantial intra-family transfer of wealth.

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DIMENSIONS

LESSONS LEARNED FROM SUPERSTORM SANDY

By Anthony Bevilacqua, CPCU, President of Anthony & Company, Inc.

It has been more than a year from the wound Superstorm Sandy inflicted on our State. During this time, business owners have had time to reflect upon their individual situation and bring focus toward strategies that better protect themselves against another catastrophic event.

Disasters come in two forms – internal such as a fire, boiler explosion, chemical spill or building collapse, and external such as flood, ice storm, or earthquake, for example. Superstorm Sandy taught business owners the key to a controlled and expedient recovery of their operations involves in-depth pre-planning. Crafting a Business Continuity Plan makes your business less vulnerable to internal or external events.

A Business Continuity Plan provides a framework for a business to return to normalcy. By planning, one identifies the internal and external hazards associated with a disaster, and then creates systems and strategies to help mitigate devastating events should a catastrophe occur. A sound plan includes these three components:

- Disaster Preparedness
- Emergency Response
- Business Recovery

Disaster Preparedness considers the types of internal and external event that can compromise the operations of your business. Once determined, assess the hazards posed by each type of event; then identify steps to eliminate or mitigate the impact of those hazards. Preparedness improves the ability of your business to protect employees, safeguard assets and minimize the financial consequences these events create.

Emergency Response planning creates procedures that outline how a business will respond when a disaster hits. The response plan is designed to account

for immediate response activities after a major event such as a fire or explosion. Emergency Response planning also can address functions to be undertaken prior to the forecast of an imminent natural disaster.

Business Recovery planning helps define a company's critical business functions with procedures that enable efficient restoration of production and operations to pre-disaster levels.

Insurance industry statistics are grim when little or no planning is undertaken. Studies shows about 60% of unprepared firms never recover to pre-disaster levels. Conversely, recovery rates improve dramatically for businesses that have effective planning, reducing losses by up to 75%-85%.

Where and how does one start its planning process? First, a continuity plan should be based on the "worst case" scenario. A business should start to identify and prioritize those types of internal and external events that can cause a major interruption of operations. Second, build a team of responsible parties across all company disciplines. A continuity plan is not a one-person against all odds job. Each member of the team has specific input and responsibilities in the plan. Third, determine effective recovery strategies for each type of disaster. Find solutions that are easily implemented and reliable. Fourth, develop an emergency response plan for the first 24-72 hours after a disaster.

Emergency response within the first days after a disaster is critical to resuming business operations. For example, does the business have emergency generators to continue operations? What alternate methods of communication are available when telephone lines and cell towers are damaged? In areas of wide-spread disaster, employees will



be dealing with their own loss of home, property and transportation. Can the business create car pool arrangements, flexible work schedules other than the normal 9-5 pattern? Can your business access third parties to offer substitute services during your interruption of operations? Does the business have a contractor "on call" to perform emergency repairs? Are you aware of the services provided by the local Office of Emergency Services?

If you have taken the time to prepare for a disaster, what's next? Test the plan, and then test it again! Emergency service first responders know what to do when they arrive at a scene because they have practiced and tested a variety of variables before the actual event itself. The only effective business continuity and disaster recovery plan is one that has been developed and tested to work out unforeseen problems before they are instituted.

Continued on Page 8

DIMENSIONS

BILL EXTENDING REMEDIAL INVESTIGATION DEADLINE NOW LAW

By Andy Robins, Esq., Sills Cummis & Gross P.C.

Legislation to extend the deadline for remedial investigation of contaminated sites to May 7, 2016 was passed by the Assembly and the Senate on January 13 and signed into law by Governor Christie on January 17 as **PL. 2013, c.283**. In the absence of the extension, a failure to comply with the statutory deadline would have triggered for many sites a requirement of direct NJDEP oversight of the remedial investigation, resulting in a large loss of control over remediation decision-making and possibly higher costs.

The Person Responsible for Conducting the Remediation ("PRCR") **must apply to the NJDEP by March 7, 2014** for an extension of the deadline for remedial investigation. This application must certify to the following seven items:

1. A licensed site remediation professional ("LSRP") was retained;
2. All other mandatory timeframes have been met;
3. Technically complete submissions have been made in compliance with all rules and regulations for site remediation, as applicable, for the (a) initial receptor evaluation, (b) immediate environmental concern source control report, (c) light non-aqueous phase liquid interim remedial measure report, (d) preliminary assessment report, and (e) site investigation report;
4. A remediation funding source has been established if already required;
5. If a remediation funding source is not required to be established by the applicant pursuant to law, then a remediation trust fund for the estimated cost of the remedial investigation has been established;
6. Any oversight costs imposed by the NJDEP, known at the time of the application and not in dispute on the date of enactment of this legislation, have been paid to the department;



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7. The annual fees imposed by the NJDEP for the remediation and remediation funding source surcharges have been paid to the NJDEP, as applicable; and
8. Applications for extensions under the proposed legislation must be filed by March 7, 2014. Extensions are also available if the failure to complete the remedial investigation is due to a delay in the provision of State financial assistance from the Hazardous Discharge Site Remediation Fund.

Extensions will be deemed approved upon receipt by NJDEP. NJDEP may, however, undertake direct oversight of a remediation during the extension of time if:

1. the conditions listed above are no longer met; or
2. the PRCR fails to meet a mandatory remediation timeframe after submission of the certification submitted pursuant to this section.

Under NJDEP direct oversight, the NJDEP may guide the remediation, choose the specific remedy, and require the person responsible for conducting the remediation to establish a Remediation Trust Fund in order to pay for the remedial approach chosen by the NJDEP. For a copy of the legislation, [click here](#)

About the Author

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WQP ACT SIGNED BY GOVERNOR

Continued from page 5

- The maximum wastewater flows from a proposed development that is the subject of a site specific amendment was increased from less than 20,000 gallons per day to less than 50,000 gallons per day.
- Site specific amendments for discharges to groundwater or surface water must meet the NJPDES permit standards.

Apart from the site specific amendment process, the legislation also provides that land which had been in a sewer service area but was removed during the recent county WMP adoption and update process may be restored to the sewer service area where the parcel is less than 100 acres and technical data demonstrates the land satisfies environmental criteria.

About the Authors:

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LESSONS LEARNED - SUPERSTORM SANDY

Continued from page 7

Business Continuity Planning and Disaster Preparedness planning may seem daunting to a business. However, the consequence of not planning, that being the failure of a business you have invested countless hours to build, is not an option for any forward-thinking entrepreneur.

About the Author:

Anthony Bevilacqua, CPCU is President of [Anthony & Company, Inc.](#), an independent insurance agency with special insurance and risk management services tailored to the needs of the commercial and residential development community. You can reach Mr. Bevilacqua at 908-806-8844 or email him at anthony.bevilacqua@anthonycompany.com.

DIMENSIONS

THE AFFORDABLE CARE ACT - OFF AND RUNNING

By Harvey I. Mishkin, Chief Operating Officer, Association Master Trust

The launch of the Affordable Care Act (many refer to as "Obamacare") has certainly had a rocky start. Most everyone is aware of the widespread problems that plagued the new federal health insurance exchange/marketplace website. The frustrations voiced by individuals who initially tried to enroll for coverage, as well as those facing plan cancellations, loss of doctors and rising prices were heard throughout the country.

The federal government moved quickly to improve the flawed website, as well as possibly delay for one year the cancellation of plans that don't meet the federal standard for benefits (as decided by state insurance commissioners and the insurance carriers doing business in the state). The administration maintains its confidence in the long term success of the law and its help to many Americans. While the political debate over the merits of the law will undoubtedly continue, we'd like to focus on the impacts of the law particularly on small businesses right here in New Jersey.

The Affordable Care Act was signed into law by President Obama on March 23, 2010. Since that time there have been a number of changes made to group coverage affecting both benefits and price. Of note, you'll remember that in 2011 the law required non-grandfathered plans to eliminate lifetime benefit maximums, expand annual benefit limits, eliminate pre-existing condition limitations for children up to age 19, extend coverage for dependents to age 26, and require plans to offer specific preventive care benefits. In 2012 the Act required Summary of Benefits and Coverage (SBC) be provided to employees, and asked large employers (those issuing 250+ W-2s) to voluntarily report the value of health benefits on employees W-2s. 2013 capped health care FSA's to

\$2,500 and the Medicare tax increase for higher income individuals was initiated.

The Individual Mandate requiring every individual to obtain health insurance or to pay an additional tax will begin in 2014. Those who don't have access to affordable and qualified health insurance plans through their employer can buy coverage through the health care exchange also known as the Health Insurance Marketplace. Subsidies to help offset the cost of coverage may be available to individuals based on household income and family size. (In 2014, for those that decide not to buy coverage the tax penalty is \$95 per adult and \$47.50 per child, up to \$285 per family; or the penalty could be 1% of household income, if that results in a larger fine).

For 2014, health plans must eliminate pre-existing condition limitations for all, employers must reduce employee waiting periods to no more than 90 days and insured plans must limit deductibles and out of pocket expenses. Small employers (those with less than 50 full-time equivalent workers) are not required to offer health insurance to their employees, but may be eligible for a tax credit if they do (provided they meet eligibility requirements under the law). Small group plans will be subject to a new rating methodology. Large employers that don't offer affordable and qualified coverage are subject to penalty; however the penalty imposed under the law has been delayed for one year.

While small employers don't have to offer coverage, many do in order to attract and maintain a competitive work force. Upon renewal, small employers may likely see changes in the plan designs offered to them, smaller provider networks and most importantly the cost of providing

coverage. The underwriting rules have changed and as a result we will see premium calculations based on specific employee demographics (i.e. employee age, spouse age and number of children). This may result in unexpected variants in cost between covered employees that were previously equal in cost. Additionally, new taxes and fees required of health insurers and health plans will affect premiums. Overall, many small employers will experience a significant increase in cost. Some employers with advantageous employee demographics may see a decrease.

For those that participate in NJBA's sponsored health plan through Association Master Trust (AMT) we're happy to report that AMT has been able to maintain its wide selection of health plan designs and provider networks made available through Horizon Blue Cross Blue Shield all at very competitive rates. Some employers outside of AMT have reported rate increases of 20%, 30% and even 40%. AMT's average rate increase taken in October of 2013 was 6.5%; additionally, AMT issued a dividend credit of 4.5% on July 2013 invoices to all members in good standing as of December 31, 2012.

NJBA's partnership with AMT has produced excellent results for our participating employer members. As you continue to evaluate and learn about your future health care coverage choices, you may find that your best option for group coverage is right here... with NJBA and AMT.

About the author:

Harvey I. Mishkin is the Chief Operating Officer for Association Master Trust. Association Master Trust (AMT) is NJBA's sponsored health benefits plan. AMT provides Association members with access to its "state of the art" benefit plan designs, extraordinary service and competitive pricing. Mr. Mishkin can be reached at 973-379-1090 ext. 241 or at hmishkin@amt-nj.com.

DIMENSIONS

HISTORIC REHABILITATION TAX CREDIT

By Thomas A. Girone, CPA, Withum, Smith+Brown, PC

Do you own, lease or are you considering purchasing a building in a historic district? The property may already be listed on the National Park Services (NPS) National Register of Historic Places but if not, you can apply to the NPS for inclusion on the list if your property meets certain criteria.

The NPS defines the criteria as:

- **Age and Integrity.** Is the property old enough to be considered historic (generally at least 50 years old) and does it still look much the way it did in the past?
- **Significance.** Is the property associated with events, activities, or developments that were important in the past? With the lives of people who were important in the past? With significant architectural history, landscape history, or engineering achievements? Does it have the potential to yield information through archeological investigation about our past?

Any rehabilitation or renovation done to the property may qualify for significant tax incentives from both the federal government and the state in which the property is located.

This article outlines the rules and regulations surrounding the federal credit. In many cases individual states have separate programs that are the same or similar to the federal program.

The federal government provides a credit of 20% on certain rehabilitation projects done to the building. The State of Maine, for example, allows a 25% credit on the same rehabilitation expenditures. Therefore, if you have a qualifying property located in Maine you will receive credits totaling 45% of your expenditures. Once these credits are established they may be subject to certain limitations; however, any credits not used can be carried forward to future years or carried back.

It is important to note that not all of the



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construction done to the building will qualify for these credits. These rules will be explained later in the article.

The federal program is administered by the National Park Service (NPS), US Department of the Interior. There is a three-part application process involved in

order to have your building certified. The NPS's outline of the application process is listed below.

- Part 1 presents information about the significance and appearance of the building.
- Part 2 describes the condition of the building and the planned rehabilitation work. The proposed work will be evaluated based upon the Secretary of the Interior's Standards for Rehabilitation—a set of 10 rules of practice.
- Part 3 of the application is submitted after the project is complete and documents that the work was completed as proposed. National Park Service approval of the Part 3 certifies that the project meets the Standards and is a "certified rehabilitation."

To qualify for the credit the property must be substantially rehabilitated. You will be required to choose a 24-month period and during that period the rehabilitation expenditures must exceed the greater of the adjusted basis of the building and its structural components (prior to undertaking the rehabilitation) or \$5,000 (land is not included).

If your project requires you to complete the renovation in phases then you may use a 60-month period instead of the 24-month period noted above. Using the 60-month period requires more documentation on the phases including more detailed architectural plans for each phase of the project.

Property qualifying for the credit is generally 27.5 and 39 year property that is depreciated on the straight line basis. Some examples of property not qualifying

for the credit include:

- Costs of acquiring the building
- Costs of enlarging the building
- Costs of separate structures on the property that are not certified historic structures
- Costs associated with parking lots, sidewalks and landscaping
- Storm and sewer construction
- Carpeting (only if tacked in place as opposed to glued)

Some examples of property that qualifies for the credit include:

- Interior and exterior structural components
- Painting
- Walls and partitions
- Bathroom remodels
- HVAC systems
- Plumbing and electrical
- Interest on construction loans incurred during the construction period
- Architectural fees and reasonable development/manager fees

When placing the property in service and claiming the credit you will need to reduce the basis of the building by the amount of the credit generated. The remaining basis is required to be depreciated on the straight line basis over the useful life of 27.5 or 39 years, depending on the use of the property.

As with most tax credits and incentives they come with some limitations. The rehabilitation tax credit can be limited due to the passive activity rules, alternative minimum tax (AMT) and the tentative minimum tax. Taxpayers that materially participate in the activity, as well as taxpayers that are considered to be real estate professionals, will not be subject to the AMT limitations.

These credits are first claimed on Form 3468, Investment Credit, and then on Form 3800, General Business Credit, where the limitations are applied, if applicable.

[Continued on Page 11](#)



Atlantic Builders Convention

Conference & Expo March 25-27, 2014

WHERE BUILDING BEGINS

ARE YOU READY FOR ABC?

By Eileen Monesson, Principal, PRCOUNTS, llc

The 65th Atlantic Builders Convention (ABC) is closer than you think. Plan now to join us March 25-27, 2014 at the Atlantic City Convention Center in Atlantic City, NJ.

We have shaken everything up for ABC 2014. This year we are kicking off the Convention with the President's Installation dinner on Tuesday, March 25. You will not want to miss this opportunity to welcome David B. Fisher, PP, AICP as President of the New Jersey Builders Association (NJBA) and the 2014-2015 slate of Officers.

You might ask: Why this change is important? We wanted to start ABC with the premier networking event of the Convention. Industry leaders and decision makers attend the President's Installation Banquet – and YOU should too. Doing so will give you the opportunity to meet the people who can help you to grow your business. Once you meet them, you can work on developing rapport during ABC so when you leave Atlantic City, you will have solid relationships to nurture that could lead to new business.

Other key events are scheduled for Tuesday. The day will start with the NJBA Board of Directors Meeting which will be followed by the Economic Forecast. All NJBA members are invited to attend both events.

The educational programs will begin on Wednesday, March 26 at 9:00 AM. Educational courses offering Continuing Professional Education (CPE) credits will be available in the following disciplines: AIA – Architects, AICP CM - Professional Planners, CE – Realtors, CLE – Attorneys,

CPC – Engineers, IDCEC - Interior Designers, NARI - Remodel Contractors, NJEC – Electricians, NKBA – Kitchen & Bath Designers. Even if you do not need to earn CPE credits, it is good to attend the seminars to learn important industry information to keep your business growing. As an extra benefit, you will also have the opportunity to network with current contacts and meet new ones. We all know how important networking is for the success of your business since people do business with people that they know, like and trust.

The Exhibit Floor will be open from 10:00 AM until 5:00 PM on Wednesday, March 26 and Thursday, March 27. Expect to meet more than 400 vendors showcasing the latest product innovations in the industry. We are pleased that so many product vendors decided to invest in ABC this year. Be prepared to spend enough time on the Exhibit Floor to visit them all.

ABC is known for the receptions and networking events open to all attendees. This year promises to give you ample opportunity to grow and expand your network. The Builder's Reception sponsored by the NJBA Master Sponsors will be on Wednesday night with the rocking Builders Bash afterwards. The grand finale of the convention will be the Sales and Marketing (SAM) Awards Dinner on Thursday, March 27.

Exhibiting at ABC is always a worthwhile investment. More than 6,500 people attend the Convention annually. Booth space is still available. Act now to secure your booth. Exhibitors can sell product on the show floor. Make ABC a business growth event.

There are also plenty of ways to build your brand beyond exhibiting through sponsorships. Opportunities are available for any budget to increase name recognition and demonstrate your commitment to the industry.

Resorts Casino Hotel will be our host which has been recently renovated. Rooms start at \$71.00, a very affordable rate.

All the information you need about ABC is available at www.ABCConvention.com. Make your reservations to attend, exhibit and/or sponsor ABC today – its **Where Building Begins!**

About the Author

Eileen P. Monesson, MBA, ELI-MP, is a founding Principle with PRCounts, llc. Builders and other professionals hire PRCOUNTS to increase brand engagement. Marketing, PR, Branding, Leadership Coaching, Content Development and Website Design. Learn more at www.PRCOUNTS.com.

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HISTORIC REHABILITATION TAX CREDIT

Continued from page 10

If you are in the process of rehabilitating a qualified building or examining the future benefits of a potential project it is important to follow the steps for approval with the National Park Service and that you understand the costs that qualify for the credit and the potential limitations that may apply.

About the Author

Thomas A. Girone, CPA, is a senior manager in WithumSmith+Brown's Red Bank, NJ, office and is a manager in the firm's National and International Tax Services Groups. He specializes in corporate, partnership and individual taxation and is a member of WS+B's Construction Services Team. Mr. Girone can be contacted at tgirone@withum.com or 732-842-3113.