

O'NEILL & BORGES

American International Plaza
250 Muñoz Rivera Avenue, Ste. 800
San Juan, Puerto Rico 00918-1813
Teléfono: (787) 764-8181
Fax: (787) 753-8944

CLIENT BRIEFING
November 20, 2009

Legislative Development

SUBJECT: "PUERTO RICO PERMITS PROCESS REFORM ACT"

On November 17, 2009, the Puerto Rico Legislative Assembly approved draft bill H.B. 1649 known as the Puerto Rico Permits Process Reform Act Bill (the "Bill"). Since this is one of this administration's bills, it is expected that the Honorable Governor Luis Fortuño will sign it within the next few days.

The Bill establishes as a public policy improving the quality and efficiency of the application evaluation process for the granting or denial of final determinations and permits for the development of construction projects in Puerto Rico. This public policy includes ensuring the transparency, certainty, reliability, and expeditiousness of the permits process. To implement such a public policy, the Bill establishes a new structure that contemplates the creation of several offices, organisms, and positions described as follows.

Permits Management Office (PMO or OGPE, by its Spanish acronym)

The OGPE will be ascribed to the Puerto Rico Planning Board and will operate under the direction and supervision of an Executive Director appointed by the Governor with the advice and consent of the Senate. The latter will channel through its office and signature all communications and final determinations. Once the Bill becomes law, the OGPE, the Adjudicative Board, the Authorized Professionals, Authorized Inspectors, as may be applicable, will issue final determinations, permits, and certifications that were previously evaluated and issue or denied by the Government Entities Involved. Under certain scenarios, the Government Entities will continue performing some of these functions. The OGPE will have the following divisions or operating components: (a) a Clerk's Office; (b) Environment; (c) Health and Safety; (d) Infrastructure; (e) Archeology and Historical Conservation; (e) Recommendations on Uses; and (f) Suitability for Building, Energy and Construction Codes; (g) Environmental Compliance Assessment Division. Each division will be directed by a Manager, appointed by the Director with the approval of the Governor and in coordination with the Government Entities Involved. The Environmental Quality Board and the Executive Director will appoint the Director of the Environmental Compliance Assessment Division with the approval of the Governor.

The proponent will file the pertinent documentation through a computerized information system. Among other things, this information system will incorporate the database needed for the corresponding analysis of the permit application by the Permits Managers, Permits Officers, and the Director of the Environmental Compliance Assessment Division.

Service Representatives and Permits Officers

The Service Representatives will be officers of the OGPE, designated by the Executive Director to verify the Permits Managers' compliance with the terms set forth in the Joint Permits Regulation for the processing of the evaluation, approval or denial of final determinations and permits at the Management Office. The Bill also creates the Permits Officers, who will be officers from certain agencies and government entities who will have the duty of serving as dedicated liaison with OGPE to facilitate and expedite the exchange of information or process required by the Managers.

Adjudicative Board

The Adjudicative Board will be an organism ascribed to the OGPE, responsible for evaluating and adjudicating discretionary matters. With certain exceptions, the Planning Board will appoint the members of each Adjudicative Board. In coordination with the Planning Board, the Executive Director will establish, eliminate, or relocate the Adjudicative Boards that may be necessary to attend the OGPE's Regional Offices.

Authorized Professionals and Authorized Inspectors

The Bill establishes a mechanism for Authorized Professionals to evaluate and grant certain permits, which include: demolition, construction, and use permits, and determinations on categorical exclusions. Subject to obtaining the authorization required by the Bill, the Authorized Professionals may also issue permits in the Autonomous Municipalities with Hierarchies from I to V. On the other hand, the Authorized Inspectors will address the inspection and issuance of the corresponding certifications, or documents required for the construction works, land developments, use permits, and the operation of businesses in Puerto Rico.

Environmental Compliance Assessment

The Bill establishes that the OGPE will function as the proponent agent in connection with the environmental planning process, except in those cases in which the Autonomous Municipality with Hierarchies from I to V have been delegated this authority. The OGPE will direct the environmental document evaluation process through the Environmental Compliance Assessment Division. Note that the Government Entities Involved may act as proponent agencies when the OGPE is not authorized to issue final determinations under this Act. It is important to point out

that the Bill establishes that the determination of environmental compliance will not be considered as a reviewable decision of a final or independent or separate nature, but that it will be a component of the final determination of the permit requested.

Office of the Inspector General of Permits

The Office of the Inspector General (the "OIG," by its Spanish acronym) will be an independent organism with ample supervisory power and will be directed by the Inspector General of Permits, who will be appointed by the Governor with the advice and consent of the Legislative Assembly.

Pursuant to these ample powers, the OIG, among other things: (a) will conduct audits on the final determinations and permits issued by the OGPE and the Authorized Professionals; (b) will oversee the conduct and compliance of the Authorized Professionals and the Authorized Inspectors in the evaluation and issuance of permits; (c) will oversee through complaint compliance with the final determinations and the regulations relative to the development and use of lands and the issuance of fines; (d) will maintain the Permits Registry; (e) will investigate and process the compliance oversight complaints referred by the Government Entities Involved or the Autonomous Municipalities with Hierarchies from I to V; and (f) will channel certain types of objections and claims by third parties with respect to the revocation of permits or the halting of works or uses.

Permits and Land Use Review Board (the "Review Board")

The Bill creates the Review Board as multi-member independent organism, and specialized whose function will be to review those final determinations of the Adjudicative Board, of the OGPE, of the Authorized Professionals, and the Autonomous Municipalities with Hierarchies from I to V. The Review Board will consist of three associated members and will act as a body of professional associated members presided by an attorney. The members of the Review Board will be appointed by the Governor of Puerto Rico, with the advice and consent of the Senate. The Review Board's decision will be reviewable by the Puerto Rico Supreme Court.

Miscellaneous

The Bill proposes administrative fines and penalties more severe than those currently under the organic act of the Regulations and Permits Administration. However, the Bill proposes that the OIG establish, through regulation, parameters for the imposition of administrative fines based on specific criteria, such as the severity of the violation, the term during which the violation persisted, recidivism, the economic benefit derived from the commission of the violation, and the risk or damages to health and safety caused as a result of the violation.

O'NEILL & BORGES

Client Briefing
November 20, 2009
Page 4 of 4

Should you need any additional information regarding the Bill and the proposed changes to the current permits structure, as well as the impact that its enactment would have on your operations or future plans, you may contact the attorneys in our Land Use Practice Group.

Jorge L. San Miguel	(787) 282-5745	Lillian Mateo-Santos	(787) 282-5729
Víctor R. Rodríguez	(787) 282-5764	Alfredo Álvarez-Ibáñez	(787) 282-5749
David Rivé-Power	(787) 282-5733	Juan Aquino	(787) 282-5718
Carla García-Benítez	(787) 282-5737	Mariacté Correa-Cestero	(787) 282-5730
Samuel Rosado-Domenech	(787) 282-5767	Juan Agustín Rivero	(787) 282-5703
Edgardo Nieves-Quiles	(787) 282-5754	Christian M. Echavarri	(787) 282-5719

O'Neill + Borges