

Environmental and Land Use Alert

Senate Bill 880 and House Bill 1649 Law for the Reorganization and Unification of the Process for the Evaluation and Issuance of Permits

On May 11, 2009, the present Administration introduced Senate Bill 880 and House Bill 1649 (the “Bills”) to establish a new framework to govern the application, evaluation, issuance or denial of permits. The Bills have the main objective of streamlining the permitting process in Puerto Rico.

To achieve their objectives, the Bills create the following offices and positions under a new organizational permitting regime:

1. **Permitting Management Office** (“OGPE”, by its Spanish acronym): The OGPE will evaluate and process construction permits, use permits, location approvals, re-zoning, and land sub-divisions, among others (collectively, “Permit”). The Bills propose to transfer to OGPE the authority to evaluate Permit applications, prepare comments and recommendations and issue or deny Permits. With certain exceptions, the Permit applicant would only have to focus on the OGPE to obtain all required certifications, authorizations, licenses or endorsements. An Executive Director will head the OGPE.

The OGPE is to be comprised of a Clerk’s Office and the following divisions: Environment, Health and Security, Infrastructure, Culture and Historic Conservation, Use Comments and Suitability for Building (the “Divisions”). The OGPE will also have a division for the Evaluation of Environmental Compliance. In addition, the following positions are created:

- a. **Permit Managers (“PM”)**: OGPE, through regional offices, will have a PM for each of the Divisions. The PMs will be in charge of their corresponding area of practice. PMs will evaluate all Permit applications filed, determine whether the proposed action meets the regulatory requirements of their respective Division, work closely with **Permit Officials** and submit to the Executive Director their recommendations for final adjudication.
 - i. **Permit Officials**: Permit Officials are representatives of the following agencies: State Historic Preservation Office, Puerto Rico Electric Power Authority, Highway and Transportation Authority and the Puerto Rico Aqueducts and Sewer Authority. Their main role is to obtain information or documents necessary for the PMs to carry out their duties and responsibilities.
 - ii. **Service Representatives**: Service representatives will assist the Executive Director in verifying whether PMs are carrying out their duties and

responsibilities under the Joint Permits Regulation to be adopted under the Act, once adopted.

- b. **Environmental Compliance Manager (“ECM”)**: The OGPE will have an ECM that will evaluate proposed projects pursuant to Article 4(B)(3) of Act No. 416 of 2004, also known as the Environmental Public Policy Act.
- c. **Adjudicative Board**: This Board will evaluate petitions of re-zoning, location approvals and amendments to location approvals, use and construction variances, and exceptions, among others.

2. **Authorized Professionals**: The Bills allows for certain professional architects and engineers to issue ministerial or “as-of-right” Permits; and for certain authorized inspectors to issue certificates of inspection for fire prevention, certificates of environmental health and sanitary licenses, as a separate approval mechanism.

3. **Inspector General Office (“IGO”)**: The Bills also create the IGO as an independent agency of the Executive Branch. The IGO will be headed by the Permitting Inspector General who will act as the representative of the public interest. The Inspector has the authority to audit final determinations and permits issued by the OGPE and/or Authorized Professionals and may file appeals before the Permitting Appeals Board on behalf of the public. The IGO may also issue orders of cease and desist, orders of immediate closure of properties or structures found to be in violation of law or regulation, among others. The Bills extend IGO’s authority to those autonomous municipalities that administer their own permitting offices. The Bills also designate IGO as the exclusive office where all complaints concerning alleged permit violations will be addressed.

4. **Permitting Appeals Board (“PAB”)**: The Bills would also create the PAB. The PAB will be an independent and specialized body which will review final determinations of the OGPE and Authorized Professionals. PAB determinations would be reviewable only before the Supreme Court of Puerto Rico through a discretionary writ of certiorari.

The Bills provide that if any person wishes to stay the effectiveness of a final determination of the OGPE or Authorized Professional, he may petition such remedy to the PAB. However, the person must demonstrate that he will suffer an irreparable harm if the stay is not granted. In addition, and most importantly, the Bills require the posting of a bond by any petitioner who wishes to pursue a stay.

The Bills may undergo changes as a result of public hearings and the legislative process of approval.



If you have any question or comment, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental and Land Use Practice Group.

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