

Senate Bill 310: Proposed Changes to Puerto Rico Permitting Process

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PRACTICE AREAS

- Environmental & Land Use Litigation
- Environmental Regulation
- Environmental, Energy & Land Use
- Land Use Regulation

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Senate Bill 310 (House Bill 752), a legislative measure sponsored by Governor Ricardo Rosselló's administration filed on February 7, 2017, would amend and repeal portions of the Puerto Rico Permits Process Reform Act, Act 161-2009, as amended ("Permits Reform Act"), to expedite the evaluation, and issuance of land use approvals and permits in Puerto Rico. Senate Bill 310 also proposes to amend, among others, the Autonomous Municipalities Act, Act 81-1991, as amended, and the Puerto Rico Environmental Public Policy Act, Act 416-2004, as amended. The administration's main objective is to promote new businesses and incentivize Puerto Rico's economy in the construction and land use sector.

Some of the major changes introduced by Senate Bill 310 are the following:

- **Location/Siting Approvals & Permitting:** The evaluation and issuance of location/siting approvals would be transferred from the Puerto Rico Planning Board to the Permits Management Office ("OGPe," by its Spanish acronym). OGPe will continue evaluating construction variances, and issuing permits associated with land use and development. Autonomous Municipalities' Permits Offices (Municipal Permit Offices) will continue evaluating and issuing permits within the scope of powers delegated by the central government (San Juan, Carolina, Guaynabo, Bayamón, Caguas, Ponce, Aguadilla, Humacao, Fajardo, Cidra, Barranquitas, Aibonito, Comerío, Cabo Rojo).

Senate Bill 310 also lays the groundwork for OGPe to issue various types of permits currently being issued by other government agencies, provided the Joint Regulation is amended to that end.

- **Adjudicative Board:** Creates OGPe's Adjudicative Board, which would be responsible for evaluating and issuing discretionary permits, such as use and construction variances, location/siting approvals, and environmental compliance determinations for Environmental Impact Statements under Article 4(B)3 of the Puerto Rico Environmental Public Policy Act, as amended. Under the proposed bill, the Executive Director of OGPe would preside over the Adjudicative Board.

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- **Sole Permit:** Seeks to consolidate in a single permit the traditional use permit with other government approvals, such as the fire prevention permit, the environmental health certificate, sanitary license, the categorical exclusion determination, and any other license or authorization required for the operation of a business.
- **Automatic Use Permit:** Proposes that OGPe and the Municipal Permit Offices can issue automatic use permits when an architect or engineer certifies that the proposed use (1) is permitted (as of right) in the location, (2) complies with the parameters of the zoning district, (3) complies with fire prevention and environmental health requirements, and (4) does not require any other license to operate.
- **Operational Incidental Sole Permit:** Proposes to consolidate in a single permit all permits associated with land clearing activities, such as the authorization for the pruning and cutting of trees, the consolidated general permit, the general permit for other construction activities, and single and incidental earth crust extraction permits.
- **Time Limits:** Imposes time limits for the issuance of permits and final determinations. For any ministerial (as-of-right) permit, OGPe and Municipal Permit Offices must issue its final permit or determination within thirty (30) days after the permit application is deemed complete. For discretionary permits and/or approvals that do not require public hearings, the foregoing term is extended for one hundred and twenty (120) days. For projects that require either a public hearing or the evaluation of an Environmental Impact Statement, both OGPe and the Municipal Permit Offices must issue their final determination within one hundred and eighty (180) days after the application is deemed complete.
- **Unified Information System:** Proposes to consolidate all OGPe, Autonomous Municipalities' Permits Offices, and Puerto Rico Planning Board's information systems into a unified system. To wit, there will be one *website* to apply for permits in Puerto Rico.
- **Joint Regulation:** To promote uniformity, Senate Bill 310 would make the Joint Regulation applicable to all Autonomous Municipalities with Permits Offices. Therefore, proposed projects in Puerto Rico would have to follow one set of zoning and construction rules, regardless of project's location.

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- **Environmental Compliance Determination:** Proposes that the environmental compliance determination under Article 4(B)3 of the P.R. Environmental Public Policy Act, as amended, be an element of the final resolution, decision, or determination to be issued by OGPe, Municipal Permit Offices, and/or the Puerto Rico Planning Board. The environmental compliance determination would not be subject to interlocutory review by the courts. It would be reviewable as part of the final resolution, decision, and or determination of the agency.
- **Recommendations issued by DNER, PREQB, and IPC:** Proposes to remove from the definition of “Recommendation” the provision that requires OGPe, the Puerto Rico Planning Board, and the Municipal Permit Offices to comply with any recommendation issued by Department of Natural and Environmental Resources (“DNER”), the P.R. Environmental Quality Board (“PREQB”), or the Institute of Puertorrican Culture (“IPC”). Currently, recommendations issued by these three agencies - issued within their respective jurisdiction - are binding to OGPe, the Puerto Rico Planning Board, and the Municipal Permit Offices.
- **Economic Impact Analysis:** Seeks to remove the requirement of preparing a regional economic impact analysis that is currently required for retail and wholesale development projects of 65,000 sq. ft or more (in certain cases the threshold is 15,000 sq. ft. or more).
- **Planning Board as Auditor:** Senate Bill 310 would give the Planning Board authority to audit and investigate final determinations and permits issued by OGPe, the Municipal Permit Offices, and/or Authorized Professionals. The Planning Board would also have the power to issue orders of cease and desist, and impose administrative penalties and fines when there is a violation of law or regulation, among others. Senate Bill 310 would also authorize the Planning Board to evaluate and resolve complaints concerning alleged violations to laws, regulations or permits. Under Senate Bill 310, these administrative fines would be considered a lien upon the real property. Administrative fines and penalties must be recorded in the Unified Information System.

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