

Finally!

*With a backlog of nearly
5,000 projects,
holding thousands of jobs
for Puerto Rico in limbo—*

CUTTING THROUGH THE RED TAPE

AT ARPE

**How Gov. Fortuño's
new, 1-stop
permit agency
OGPE
will operate**



By John Marino
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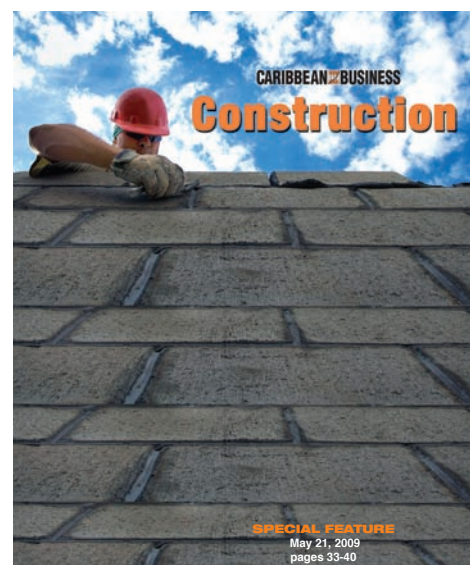
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Cutting the red tape

Fortuño administration aims to reinvent Puerto Rico's permitting process

BUSINESS PERMITS



BY JOHN MARINO
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Saying you are going to fix the permitting problem in Puerto Rico is about as credible as saying you are going to resolve the island's century-old status dilemma in the next four years. No one believes it anymore.

Since the Rules & Permits Administration (ARPE for its Spanish initials) was created in 1975, every governor (and every economic development chief named by a governor) has pledged to "cut the red tape" out of the permitting process that they blamed for strangling potential investment on the island. Just four years after ARPE was created, former Gov. Carlos Romero Barceló proposed its first fix by creating the Special Interagency Unit to clear up a backlog of permits already created under the then-new entity.

Similar vehicles have been created under successive administrations since then. Former Gov. Rafael Hernández Colón began the Single Processing Center, while former Gov. Pedro Rosselló created the Center for Fast Processing in his first term and the Fast-Track Model in his second. Former Gov. Sila Calderón created the Express Transaction Center in 2001, while her successor, former Gov. Aníbal Acevedo Vilá, created the Interagency Center for Fast Permit Processing and then the Office of Technical Evaluation.

By the time Gov. Luis Fortuño and Economic Development & Commerce Secretary José Ramón Pérez-Riera took office in January, the permit backlog had soared again to 4,900 applications, representing an estimated potential investment of \$12 billion.

"Nobody has fixed anything. These

patches helped speed along a system that quite simply does not work," Pérez-Riera said. "We are dealing with a system that is broken. You need to start from scratch to fix it."

The proposed 171-page "Law for the Restructuring & Unification of the Permit Evaluation & Authorization Process" aims to do just that, not only scrapping the main actor in the island's permits saga, ARPE, but reinventing the entire process from start to finish. Importantly, it would leash the government bureaucracy to a 90-day deadline to approve or reject most permits, a process that now too often takes months or years.

The Fortuño administration has also developed its own patch, the Interagency Permit & Endorsement Committee (CEAP by its Spanish acronym), to deal once again with the permit backlog.

"That's money that should be flowing through the economy," Pérez-Riera said of the potential \$12 billion in investment snagged in the current bureaucracy.

More importantly, however, administration officials are banking that their sweeping reform will do something that has never been done before—resolve Puerto Rico's permitting problem once and for all.

"From the very beginning, the idea was to deal with the problem on a short-term basis and then create a team of players that is going to take hold of the situation and try to fix it on a long-term basis," Pérez-Riera said, referring to Fortuño's Feb. 19 executive order, which set in motion the two-pronged approach. "That's what we've done."

STARTING WITH A CLEAN SLATE

The legislation will create the new Oficina de Gerencia de Permisos y

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Endosos (OGPE), or the Permits & Endorsements Management Office, to replace ARPE. It will be the sole permit-granting power agency of the central government, a significantly stripped down process, which now involves 25 different government agencies.

The new plan also calls for authorized, certified professionals to grant permits for "ministerial permits where no discretion is required," which will allow many permits to be expedited in a matter of days, or even hours, under the new system.

In response to numerous legal challenges of permitted projects, such as the notorious Paseo Caribe case, the administration's plan attempts to limit the standing of challenges to those directly affected by a potential activity allowed under the permit, and would require those seeking the halt of a project to post a bond to cover potential damages should their challenge fail.

While such efforts, and related steps to "streamline" the environmental approval process, will likely draw fire from island environmental groups and political opponents, as well as legal challenges, the administration says its plan will balance current environmental and other safeguards with the rights of permit holders and

those that seek permits.

They also say the restructuring of the process will push more resources into oversight and transparency efforts, such as the creation of a new permits watchdog, the Oficina del Inspector General de Permisos (OIGP), or the Office of the Inspector General for Permits. This will draw more people into the system, which should also increase environmental and general permit compliance.

Indeed, about 56.25% of existing island construction is "informal," or done without permits, while 43.75% is formal construction, according to a report last year by Interviron Services Inc.

Pointing to such data, administration officials argue that such poor compliance, resulting largely from the over-burdensome system, spawns environmental damage from zoning violations, a lack of required documentation and failure to implement erosion and contamination controls during construction.

The bill's chief aim is to shatter what officials paint as the worst face of the Puerto Rico government, a Byzantine bureaucracy that too often serves as a barrier to investment, and a strong disincentive to seek legal permits, even among otherwise law-abiding citizens. In essence, officials say, the new scheme attempts to bring permit seekers' rights into balance

with current safeguards, while cutting down substantially the inherent inefficiencies in the current process.

"The idea has been to make sure that the system allows those who have legitimate claims to have those claims addressed, and at the same time, to limit the baseless claims that only increase the inefficiency of the process because you are pushing additional costs and time limits on people who have done everything right," Pérez-Riera said.

"The process of re-conceptualizing Puerto Rico's permitting system, and of designing the system that we are now proposing, has been a collaborative effort, under the governor's leadership, to guarantee that Puerto Rico has a permitting process that is efficient and that can serve the best interests of the people of Puerto Rico," Pérez-Riera said.

"Planning Board President Héctor Morales has been instrumental in this process given his expertise, knowledge of the different components of the current system, and his unquestionable leadership. The participation of Environmental Quality Board President Pedro Nieves and Natural & Environmental Resources Secretary Daniel Galán Kercadó has ensured that the proposed bill incorporates all the environmental protection requirements and safeguards, illustrating that economic development and



*Economic Development & Commerce
Secretary José Ramón Pérez-Riera*

environmental protection are not mutually exclusive but go hand in hand," he added.

Pérez-Riera added that Chief Information Officer Juan Eugenio Rodríguez is incorporating "all the technological aspects that will be necessary for the system to perform as required. The composition of the CEAP, rounded off by the ARPE Administrator, the secretary of State, and La Fortaleza's infrastructure advisor, has ensured that the proposed bill contemplates all the necessary angles to produce the most efficient, most functional, and most transparent permitting system that Puerto Rico has ever seen—a world class system that will ensure that Puerto Rico and its private sector have the tools to compete in the global arena."

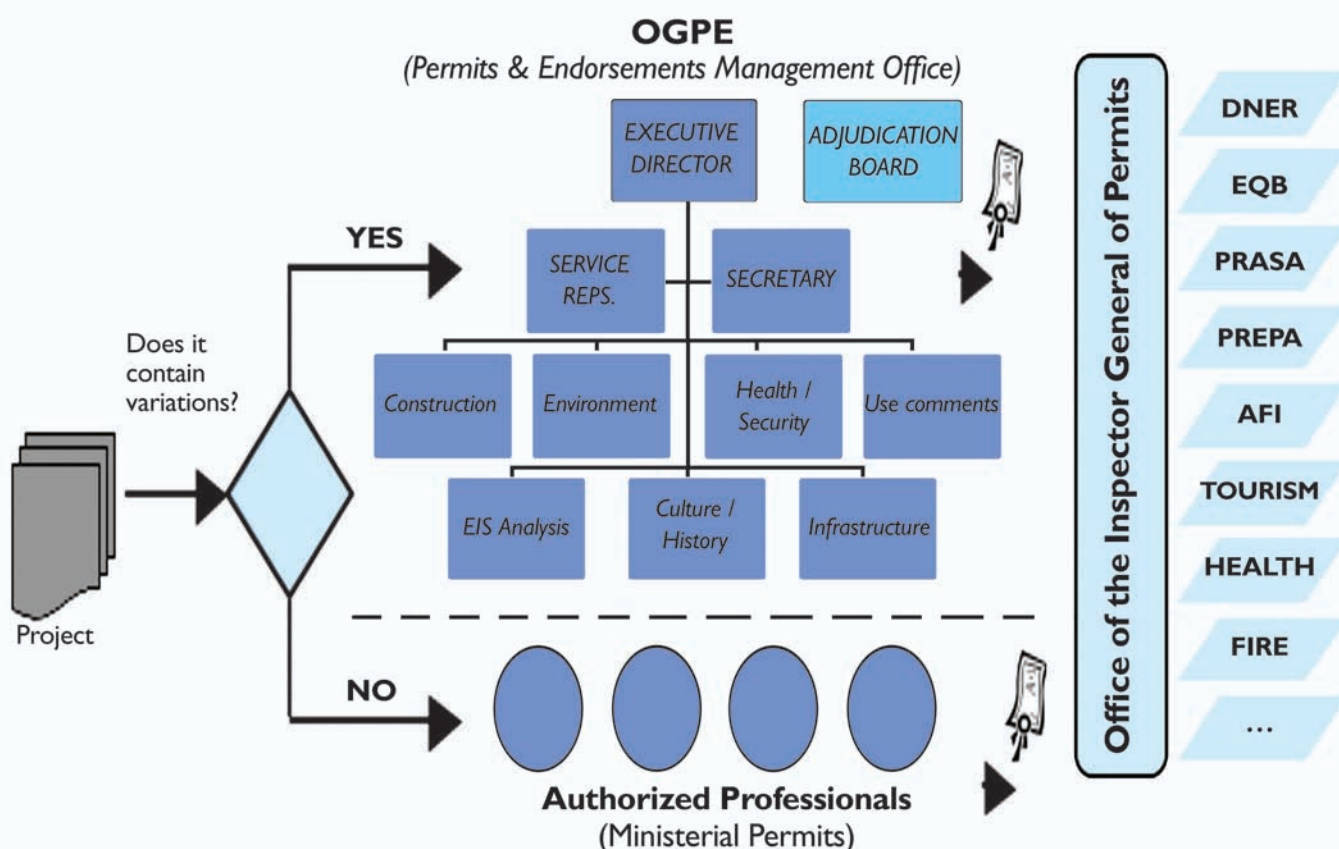
GOVERNMENT BUREAUCRACY EARNs A 'JUNK RATING'

Pérez-Riera may be the first Economic Development chief to finally reform the island's permit process because he may be the one who most clearly has to.

The permits problem is "completely within our own control," he told reporters in announcing the new legislation earlier this month. With the recent loss of federal industrial incentives, and the U.S. economy going through its own problems, Puerto Rico increasingly can only count on things within its control.

While the Fortuño administration came into office facing a fiscal crisis including a \$3.2 billion budget deficit and the potential downgrading of the commonwealth credit rating to junk bond status, Pérez-Riera and his staff

The proposed new permit process



Source: Department of Economic Development & Commerce

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say the island's bureaucracy has already been rated "junk," pointing to its recent ranking of 144 out of 181 destinations analyzed for a World Bank Group report on permits.

Moreover, as other jurisdictions undertake reforms in this area, the perception of Puerto Rico's permitting problems has worsened in recent years. For example, the island was ranked 91 in construction permit processes in the 2007 World Bank report and fell to 144 by 2009.

The permitting problem is the No. 1 most problematic factor for doing business in Puerto Rico, according to the Global Competitiveness Report (2008-2009) by the World Economic Forum. It is the main factor in dragging down the island's overall competitiveness ranking.

Puerto Rico's overall "ease of doing business" ranking fell to 35 in 2009 from 19 in 2007, according to World Bank. It simply takes far too long to get a permit: with the average process for a tourism project lasting 7.8 years, a commercial project 5.3 years, housing project more than 5 years, and industrial projects 3.3 years. Even simple permit requests, such as when a new owner buys an operating, existing business and will simply continue operations, can take several months.

With the administration focused on



Gov. Luis Fortuño

improving island competitiveness to attract offshore investment and boost conditions to help local business flourish, it says this effort will finally confront the problem head on.

"This is going to revolutionize the way permitting takes place on the island," Pérez-Riera said. "It's going to give us a tool to empower the private sector to do what it is supposed to be doing: generating economic activity on the island and creating employment."

A TORTUROUS PROCESS

The problem with the current permitting process in Puerto Rico is that it has no clear beginning or end, and no uniform set of rules to play by, Pérez-Viera said. Currently, permit seekers deal with as many as four principle agencies to get permits: the proponent agency (which is the agency under which the permit falls), ARPE, the Planning Board and the Environmental Quality Board. These entities, in theory, should interact with more than 20 so-called secondary agencies, which emit comments and endorsements for specific projects. Overall, some 25 different government agencies are involved in the permitting process.

"It was badly designed from the start," said Deputy Economic Development & Commerce Secretary Edward F. Calvesbert Juliá. "The theory was that government agencies would communicate with each other more efficiently and effectively. The reality is that it's twice as bad."

So instead of dealing with four agencies, permit seekers have to follow up with all the different agencies directly in order to track their request and shepherd it through the bureaucracy. Worse, a single piece of missing information or a minor potential objection along the way may bring an automatic rejection that will require the permit seeker to begin the

entire process over again. This can routinely happen a few times along the entire process.

Pérez-Riera and his team are also quick to point out that the worst ones hurt by the current process are entrepreneurs and small-business owners who can't afford to hire consulting help that big companies use to more nimbly navigate the permitting processes. The bureaucratic process itself too often serves as a de facto permit rejection as it leads permit seekers to give up in frustration.

"The person submitting himself or herself to the process does not necessarily know all the information he needs beforehand," Pérez-Riera said. "That will stretch the process on forever."

'BEST PRACTICES' AND STREAMLINING

In crafting its permits reform, the Fortuño administration looked from Philadelphia to Singapore to adopt what it considered the top permits practices in the world, which include consolidating permitting procedures within a single agency, enacting a time deadline and using authorized professionals for some permits—all key components of the new plan.

For simple, ministerial permits that don't require the discretion of government officials, permit requests will be able to be made directly to authorized professionals. A full 35% of all permits granted fall into this category, Pérez-Riera said.

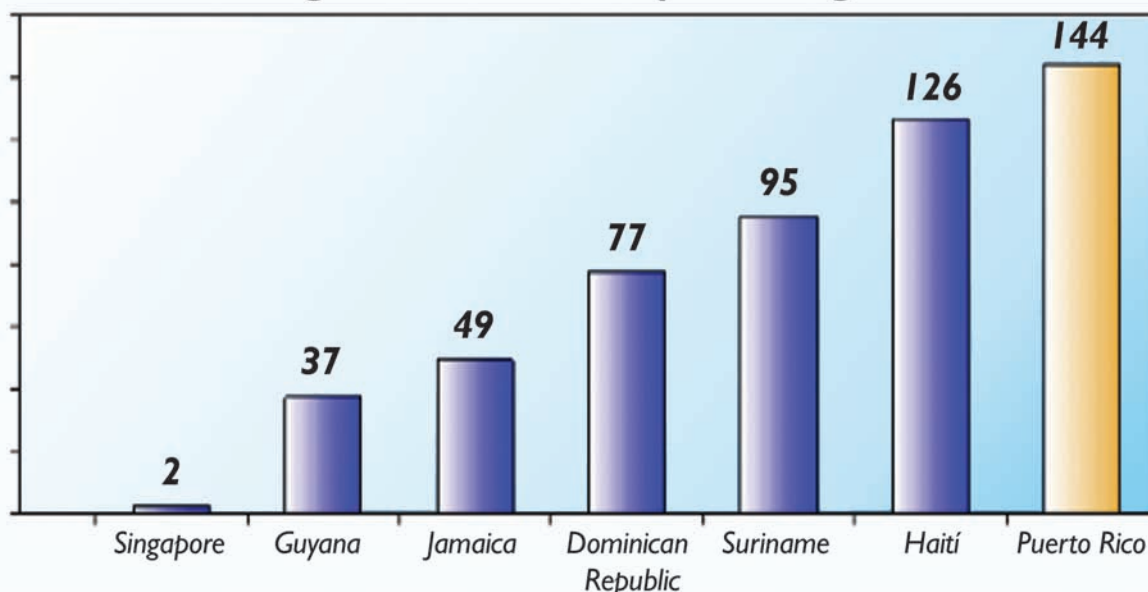
Professionals will not only be able to comply with most permit requests in a matter of days, or even hours, rather than weeks or months, but this alternate route will also substantially cut down on the permit requests being placed directly with the government, which should also work to increase the efficiency of the process. The law creates two types of these professionals: Authorized architects or engineers, which emit permits, and authorized inspectors, which emit fire, health and sanitary certificates and licenses.

Unless one goes to one of these authorized professionals, all applicants will go to the new entity, OGPE, to begin the permit process. There will be a 90-day deadline set under the new laws for projects that don't seek variances from established zoning laws or environmental impact statements or related documents. Under the new system, no one can request a permit until the environmental documents have been completed.

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The construction permits process - Rates as "junk" at a global level

Dealing with construction permits - global rank



Source: The World Bank

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In one sense, the creation of OGPE employs the central strategy of the "several patches" created over the years to periodically clean up the backlog in the permit process—putting all the officials involved in the permit process in the same room. But rather than creating a temporary, inter-agency group, the new entity will constitute this on a permanent basis.

The new scheme scraps the concept of secondary agencies in the permitting process, and replaces them with the positions of seven permit managers, which will take the place of the 23 secondary agencies currently participating in the permit process. There will be six permit managers to handle distinctive issues of environment, culture & historic preservation, construction, use commentary, health & security and infrastructure. While agencies participate in the nominating process, the new permit managers will each cover areas that currently involve several different government agencies. The seventh manager is appointed by the Environmental Quality Board (EQB) and will oversee the environmental impact statement (EIS) process.

The permit managers are fulfilling the roles of the previous endorsements issued by the agencies.

Under the new law, they can make determinations on ministerial permits that can be issued by the OGPE executive director once unanimously "approved." Otherwise, each of the permit managers will make a recommendation on a determination to the Adjudicative Board, which ultimately calls the shots on discretionary decisions.

Unlike today, when the lack of an endorsement from a specific agency can tank an application, the new board will "consider in aggregate" the determinations and recommendations made by the permit managers.

"The board is not bound by individual recommendations, which is different than today, when an agency can effectively veto a project by denying an endorsement," Calvesbert Juliá said.

When the 90-day deadline is broken, the executive director can submit the case directly to the Adjudicative Board for a final determination, thus eliminating the implicit denial of permits today when officials "sit on" the process, he added.

While the EIS is given some special attention, the Adjudicative Board also is the ultimate authority on its acceptance or rejection, with the EQB-appointed official only making recommendations to it. The EQB's role is limited to drawing up the regulations and making commentaries



on specific permit requests. While public hearings will be held on the EIS, they will be held in conjunction with all hearings mandated for a particular permit.

The OGPE executive director is appointed by the governor, with the advice and consent of the Senate. Permit managers are appointed by "concerned government agencies" and must be approved by the governor, according to the bill.

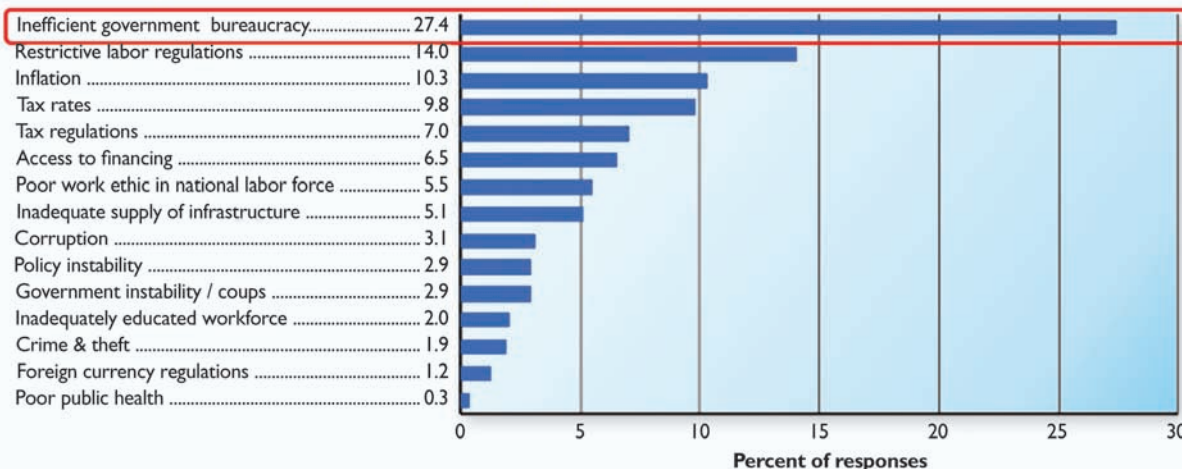
The members of the powerful Adjudicative Board, which essentially makes all discretionary decisions on permits, is composed of a full-time president, two associate members

and an alternate member. They are appointed to two-year terms by the Planning Board with the approval of the governor. At least one member must be either a lawyer, professional licensed planner, professional engineer or licensed architect.

In addition to the permits managers, the legislation also creates at least four permit officials, which are functionaries of the public corporations involved in the permits process and are mandated to expedite any request made of them by the permits manager. They represent the Office of Historic Preservation, Puerto Rico Electric Power Authority (Prepa), Puerto Rico Aqueduct & Sewer Authority (Prasa) and the Highways & Transportation Authority. Another class of employee at the new entity will be the service representatives, who will orient the public on the established policies, ensure that permits managers are following procedures, and help report back to the executive director any deviation from them, according to the bill.

Inefficient government bureaucracy - The most problematic factor for doing business in Puerto Rico

The most problematic factors for doing business



Note: From a list of 15 factors, respondents were asked to select the five most problematic for doing business in their country and rank them between 1 (most problematic) and 5. The bars in the figure rank their responses weighted according to their rankings.

Source: The Global Competitiveness Report 2008-2009, World Economic Forum

LIMITING APPEALS

When Fortuño first discussed the permits overhaul, which he described as a major economic development initiative, he said that it would include "the judicial review" of the permitting process. Increasing oversight and enforcement of the permits process is one way the new proposal would attempt to limit court challenges to permitted projects. However, it also employs more direct methods, such as attempting to limit the "standing" of who can challenge a permit to those directly impacted by the potential activities under a permit.

Neighbors of a particular project

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would certainly have standing to challenge a permit, and perhaps community groups based in an area near a project. But the legislation appears to attempt to block more general environmental groups from waging such challenges.

"It's very difficult to pin down whether or not these groups will or will not have standing because that is ultimately a legal question," Pérez-Riera said. "The system is designed so that those who have a direct interest can intervene in the process, and those who are trying to intervene to limit what people can do with their land, and what people can do to create jobs and employment and economic development in Puerto Rico, can't do it simply on a whim. They need to have a legitimate claim."

While any interested party can participate in public hearings for a permit, only those with standing will be able to appeal a permit once it is approved. People without direct standing may still make a challenge through the new Office of the Inspector General for Permits, which will act as a filter to weed out frivolous challenges.

"What that does is allow for the Office of the Inspector General for Permits to act as a filter. The OIGP will say you need to stake a claim. You just can't say you don't want buildings to be built," Pérez-Riera said. "On the other hand, if you have

somebody that has a legitimate claim, then that will be analyzed."

The legislation also requires groups seeking to suspend a permitted activity like a construction project to post a bond to cover potential damages such as a stoppage would cause to the permit holder if the challenge posed is not upheld. Challengers could continue to appeal a permit without posting a bond if a halt to the project was not sought. This is meant to prevent frivolous appeals from halting permitted construction projects. Government entities would be exempt from posting bond for seeking to halt such a challenge, however, and could seek such action through the new Office of the Inspector General for Permits, which would request the suspension of a permit it believed was "granted incorrectly or illegally."

The legislation also attempts to limit subsequent judicial review, calling for appeals of decisions by the newly created Appellate Board to be appealed directly to the Supreme Court. OIGP decisions could be appealed to the commonwealth Circuit Court of Appeals and then the Supreme Court.

"Everyone gets two opportunities to appeal," Calvesbert Juliá said. "We do not want to flood the Appeals Board, which will be handling all the permit appeals within a strict timeframe. The Appeals Board will see permitting issues and the Appeals Court will see compliance issues."

TRANSPARENCY AND OVERSIGHT

The overhaul's main purpose is to streamline bureaucracy to make it much easier to get a permit and help foster economic development. However, two of the main structural changes proposed by Pérez-Riera's team are aimed at increasing transparency and oversight, which officials say will also restore credibility and certainty to permits issued by the government.

The first eliminates the revision capacity granted to the current ARPE, which eliminates an inherent conflict of interest. Instead, all OGPE decisions will be final and the appeals will be handled by a new, independent Appeals Board, nominated by the governor, with the advice and consent of the Senate. The board consists of three associate members: with one professional planner or natural sciences professional, one licensed architect or engineer and one lawyer. The governor will nominate one as the president. An alternate member will also be named, to serve at the discretion of the president.

Meanwhile, the law creates the new permits sheriff's office, the Office of the Inspector General for Permits, which will supervise the authorized professionals, audit permits to ensure compliance to standards, and take complaints from government agencies and the public concerning permit violations. The OIGP will have broad powers to appeal permits and

seek to halt illegal projects through the Appeals Board.

Part comptroller and part prosecutor, the OIGP's effectiveness appears key to complying with the intent of the law, with its multiple oversight function. It will oversee the work of the certified inspectors, ensure the transparency of the permit process and receive and act on any public complaints. An independent entity like the Comptroller's Office, it also can act as a "permits police and prosecutor."

Pérez-Riera also said that government agencies, from the Department of Natural & Environmental Resources to the Institute of Puerto Rican Culture, should play an active role in policing permit compliance by reporting suspected violations to the OIGP. Freed from the burden of the permitting process, agency employees would be able to spend more time in the field on the lookout for any violations.

"By separating the system into different functions, and creating the Office of the Inspector General for Permits, you are assuring that everything that is being done is being done according to the law. In other words, when you give out permits, people comply with what it allows you to do. For example, when you get a permit to build a 10-story building, you don't ultimately build a 12-story building," Pérez-Riera said.

The "higher fines and tougher penalties" for permit violations called for under the new law are aimed at "sending a strong message that the permit system will be more transparent and agile, but if you don't play by the rules there will be consequences," Calvesbert Juliá added.

Also, the entire permits process will be online, at OGEP's new agency portal, so that every time a permit request is made, the application is posted on the Internet for public scrutiny.

Current public hearings for permits will continue, although they might be single hearings dedicated to multiple permit issues, according to the law. Other public notification procedures for permits will also be retained.

"Anyone who has an issue with a permit, there will be an opportunity to present it," Calvesbert Juliá said, adding that specific details regarding such procedures will be ironed out in regulations that will be drawn up.



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A YEAR-LONG TRANSFORMATION

The law setting in motion this re-engineered permit process calls for it to be fully functional in a year.

Much work needs to be done, however, before that system can function properly.

Permits are currently based on a myriad of agency regulations, and over the year-long phase in, the law calls for these rules to be reviewed, streamlined and consolidated into a new set of "consolidated bylaws."

The concerned government agencies will review their rules and make recommendations to the Planning Board, which will present a final version of the streamlined rule book, eliminating any duplications or contradictions.

There are more than 100 "endorsements and comments" currently emitted by 25 agencies in the permit process, and the idea is to reduce this to a smaller set of specific recommendations made by each of the six permit managers, Calvesbert Juliá said.

Specific requirements for each permit will be addressed in the new regulations.

"The law mandates that all agencies look into their regulations and decide what works and what doesn't so you can start with coherent regulations

across the board," Pérez-Riera said. "That's why the Planning Board is

essential to the process because it is the one that would have the 'overview'

of the different regulations."

The phase-in will also enable the new entity to develop the geographic information system that will serve as the backbone of Puerto Rico's permitting & planning process, by incorporating all the information held in different government agencies into a virtual rendering of Puerto Rico that would put it at the fingertips of government planners and permit offices.

The year-long phase-in, however, will have to wait for now, as the Legislature just began taking up the measures with public hearings getting underway this week.

Pérez-Riera is aware the process to come may forge changes to the permits overhaul proposal, but he said he is encouraged by the widespread acknowledgement of the problem and a recognition that his team's proposal finally addresses it in a meaningful way.

"Everybody is cognizant of the fact that something needs to be done," Pérez-Riera said. "We are confident that this will pass, in one way, shape, form or another, and that this is much better than anything we've ever had in Puerto Rico." ■

A long list of temporary patches

Past efforts to improve the permit process:

1975 - The Rules & Permits Administration (ARPE) is created

1979 - Special Interagency Unit

1991 - Single Processing Center

1994 - Center for Fast Processing

1997 - The Fast Track Model

2001 - The Express Transaction Center

2007 - Interagency Center for Fast Permit Processing

2008 - Office of Technical Evaluation

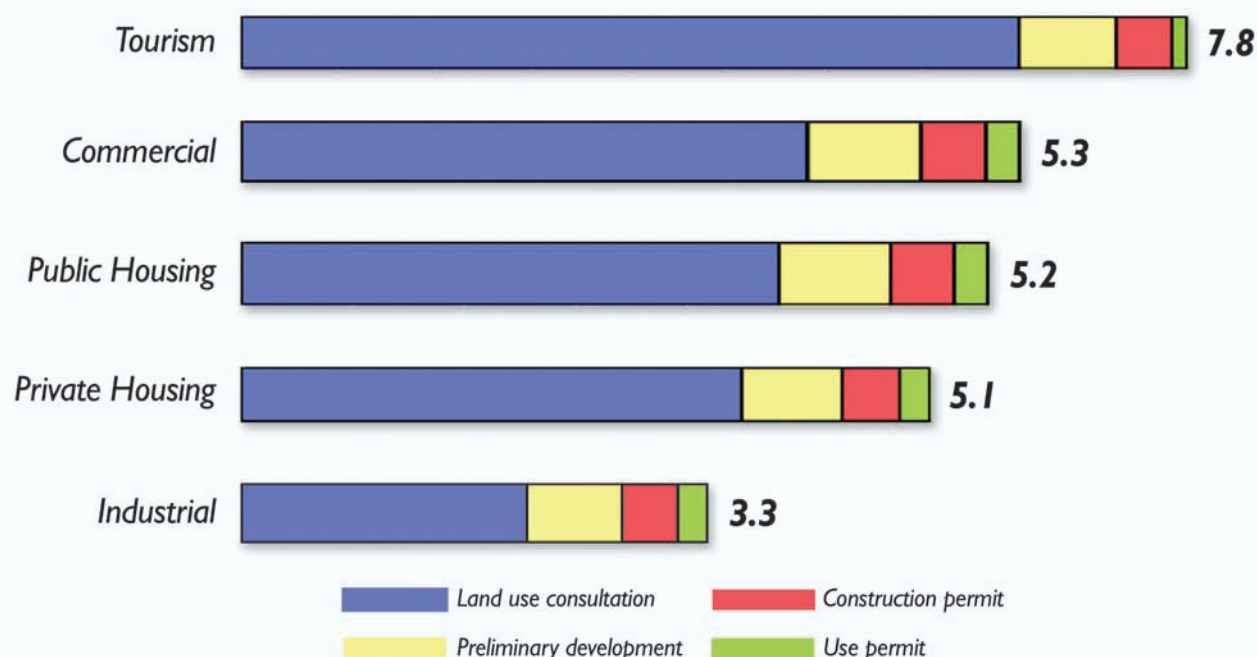
2009 - Interagency Committee for Permits & Endorsements

Some of these efforts were successful in the short term; however, they didn't focus on solving ARPE's fundamental problems

Source: Department of Economic Development & Commerce

Approximate timeframes to obtain permits

By type of project - conventional method (years)



Source: Department of Economic Development & Commerce

Entrepreneurs snagged in the permitting process vent frustrations

BY ROSARIO FAJARDO, JOHN MARINO & LAWSON D. THURSTON

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Government officials say there are 4,900 projects worth a collective \$12 billion awaiting permitting approval and the tie-up is inflicting serious harm to the local economy as it creates roadblocks to starting new businesses and investing money in the island.

For the past 18 months, Lynn Descoteau and David Mansfield have been embroiled in “permit hell,” as they have battled with one agency after another in an attempt to set up Caribbean Images Tours, a water sports company in Ponce. Today, the couple, with 15 years experience operating a snorkel and dive boat business in Tortola, British Virgin Islands, is close to packing up and leaving Puerto Rico.

“We’ve been at this for 1 1/2 years. We’ve already spent \$150,000 and we aren’t rich people. It’s so anti free enterprise it’s astounding. No one ever told us about permit hell. Had we known, we would never have come to Puerto Rico. We are on the verge of packing up and leaving,” Descoteau told CARIBBEAN BUSINESS. “The global economy isn’t hurting us the way the governments of Ponce and Puerto Rico are hurting us. They are the ones who are holding us up.”

Mansfield related their saga of trying to obtain permits from the Public Service Commission, the Department of Natural & Environmental Resources (DNER for its English initials), the Ponce Municipal Public Use Office, the Guánica Municipal Business Tax (patente) Office, as well as endorsements from the Puerto Rico Tourism Co. and the Ponce Tourism Office.

So far, the couple has yet to receive permits from the DNER and Ponce’s Public Use Office, which is hindering their ability to operate their business.

“The Public Service Commission provisional permit took four months and in retrospect that was the easiest to obtain,” Mansfield said, adding that on a recent day he spent more than 2 1/2 hours at the Ponce Public Use Office pleading his case once again, but to avail.

“No one does their job properly. Every time I go, the employees look at me as though this was the first time they were dealing with me. I have given them all the documents they wanted. I have talked to them, I have called,” Mansfield said. “The government does everything in its power to prevent a tourism business from opening. It makes no sense whatsoever. This is not rocket science. This is a water-sports activity.”



Víctor González has been working on obtaining environmental approvals and permits to construct a windmill farm on his privately owned land in Guayanilla since 2003.

As a last resort, Descoteau wrote a letter to Gov. Luis Fortuño, asking for his help. “Our goal has been to put our 30-foot, U.S. Coast Guard-inspected and certified dive boat at La Guancha in Ponce. We wanted to procure dock space for the boat and other water-sport activities to attract tourists to the island of Caja de Muertos for guided snorkel excursions,” she wrote in her April 20 letter.

“We have now come to realize that Puerto Rico is not supportive of new, small businesses and is not interested in increasing visits from off-island tourists to the island to develop a healthy economy. We have encountered one roadblock after another in trying to get our business up and running and to start employing people in the Ponce area,” Descoteau stated in her letter.

In response, La Fortaleza sent her a letter saying the matter would be referred to Eli Díaz, deputy advisor for infrastructure, planning & urbanism. “I’ve called several times and left messages, but so far we haven’t received a response,” Descoteau said.

Unfortunately, their story is a common tale among would-be entrepreneurs in Puerto Rico.

Advanced Disc Puerto Rico Inc. a music transfer business, is trying to set up operations at a Microsoft facility in Humacao, but company director George Pérez said the “frustrating” permitting process has threatened the project. The permit snag, for instance, prevented the

company from claiming some of its machinery and equipment that was shipped to the island for 25 days, boosting storage costs.

What has puzzled Pérez is that the space that they are going to occupy in Humacao has already been through the permitting scrutiny before with Microsoft. The company is a subsidiary of a Holland-based firm and has locations in Hong Kong and Russia, where permits were granted very quickly and facilitated through the Internet.

Another entrepreneur, Víctor González, has been working on obtaining environmental approvals and permits to construct a windmill farm on his privately owned land in Guayanilla since 2003. While federal and commonwealth authorities approved his proposed project, it has been hit with repeated court challenges by private environmental groups not directly impacted by it.

“In my case, the neighbors of this huge property are the government and we have engaged them as regulators and partners,” said González, who has offered to cede some of his land to the adjacent Guánica Dry Forest as part of his plan.

“The commonwealth and the federal government approved the project, then out of nowhere these guys come and challenge it because they don’t want development on private land. Why do we have regulatory agencies then?” questioned González.

The entrepreneur said the ease with which opponents can bring legal challenges has “brought the system to a standstill. Anybody can try to delay or stop any project. It has reached a point where opponents should put their money where their mouths are,” he added, pointing to the proposed permits reform, which would require posting a bond for those wanting to halt a permitted construction project.

González has survived the court challenges and has won final approval of environmental documents, which should clear the way for permits. But getting approval is not necessarily the end of the road in Puerto Rico’s nightmarish permitting process.

He has been waiting since February for the Environmental Quality Board to inform the Planning Board that the project’s environmental papers are in order, but despite repeated phone calls from himself, lawyers and consultants, he is still waiting.

“One of the things that is really frustrating is the amount of time it takes once they say yes to something. Sometimes months go by from when the board of one agency makes a determination and informs the board of another,” González said. “That is simply unacceptable.” ■

A new era in permitting is seen

BY JOHN MARINO AND JOSÉ L. CARMONA
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The administration's attempt to reform Puerto Rico's permitting process is generating positive feedback as diverse sectors acknowledge that the system is in desperate need of transformation.

Hector Del Río, local chapter president of the Associated General Contractors of America (AGC), called the proposed 90-day permit deadline a "monumental achievement" and said it was important that the administration finally established a "metric" in the area. He also championed the proposal to use authorized independent contractors to emit "ministerial permits" where no discretion is required.

"This concept is a model commonly used in other countries with great success. There is nothing better than adopting best practices for economic development," he said.

Puerto Rico Homebuilders Association President Rafael E. Rojo said the new permit plan's "centralization and consolidation of agencies under one roof is a logical and necessary step which provides several benefits," such as cutting down on paperwork and improving communication between proponents and government officials.

"We don't want to sacrifice reasonable time for case evaluations. What we want is the elimination of excessive bureaucracy and the



Héctor Del Río
*Local chapter president of the
Associated General Contractors
of America (AGC)*



Rafael E. Rojo
*Puerto Rico Homebuilders
Association president*



Clarisa Jiménez
president, PRHTA

ambivalence to which some cases are subjected," Rojo added. "Projects should be evaluated by strictly following applicable laws and regulations, not through whims or individual political agendas, as we have seen in the past in some agencies. We believe the proposed structure will prevent a lot of this by centralizing and making the processes uniform."

Clarisa Jiménez, president of the Puerto Rico Hotel & Tourism Association (PRHTA), said the success of the measure will, in large part, depend on keeping a new computerized information system supplied with data from the government agencies and the adoption of new "consolidated bylaws" that are easy to administer without "granting a free hand to developers."

"Above all, the PRHTA favors responsible development and the efficient use of our natural

resources," Jiménez said. "That does not impede bringing the necessary certainty to people who propose projects. The government, in a reasonable time, should be able to make an informed decision based on legal and regulatory dispositions."

Camilla Feibelman, of the Sierra Club de Puerto Rico, also acknowledged that the permit process needs to be restructured. "We are in favor of restructuring the permitting process," she said. "We don't want to spend years fighting illegal projects either. We want to make our best case based on applicable zoning regulations and be done with it."

She also said that separating the permit issuing from the permit oversight authority was a sensible development.

However, Feibelman said that too often the Planning Board and the Environmental Quality Board have made "questionable decisions,"

essentially approving projects that do not conform to zoning standards and forcing opponents to seek court action. That's why her group opposes the proposal's attempt to limit access to court challenges of permits and to require groups wanting to stop projects to post a bond. She also said the new proposal calls for the imposition of fees when complaints about permits are lodged. "Communities impacted by illegal projects have the right to intervene," she said.

Both Del Río and Rojo, however, said it is essential to restore "certainty" to permits and that requiring a bond to halt ongoing projects would cut down on frivolous lawsuits.

"It gives us great hope to see a new permits era in which bureaucracy is contained," Del Río said. "This helps attract investors to the island. We are seeing the light at the end of the tunnel." ■

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