

(H. B. 2971)  
(Conference)

**(No. 175-2010)**

(Approved November 23, 2010)

## **AN ACT**

To amend Sections 1.5, 2.10, 7.1, 7.3, 7.7, 7.8, 8.7, 11.4, 12.5, and 14.2 of Act No. 161 of December 1, 2009, better known as the “Puerto Rico Permit Process Reform Act,” in order to make technical corrections; include Agronomists as Authorized Professionals; amend Section 6 of Act No. 374 of May 14, 1949, as amended, known as the “Ancient or Historic Zones and Touristic Interest Zones Act”; and for other purposes.

### **STATEMENT OF MOTIVES**

Act No. 161 of December 1, 2009, known as the “Puerto Rico Permit Process Reform Act,” constitutes one of the most important advancements in the development of the Government of Puerto Rico and our economy by creating a new integrated and efficient permit evaluation system.

Since the approval of Act No. 161, the Government of Puerto Rico has been actively working for the new permit system to start operating pursuant to Act No. 161 on or before December 1, 2010. To such effects, Governor Luis Fortuño established the Integrated Permit System (IPS) as the entity that groups and integrates the main components of the permit evaluation, certification, and authorization process in Puerto Rico, to wit: the Planning Board, the Permit Management Office (PMO), the Land Use and Permit Reviewing Board (the “Reviewing Board”), and the Office of the Chief Permit Inspector (OCPI). The IPS, through its administrative components, shall have the mission of providing streamlined and reliable services to clients, which services shall be facilitated by the adoption of uniform, clear, and objective regulations that contribute to the all-around progress and development of Puerto Rico.

On the other hand, agronomists are professionals with formal university studies and broad knowledge in soil properties, erosion control, biological systems, afforestation, water, forest management, forestry, hydrology, and wetland conservation and management, among others, which facilitate the holistic evaluation of projects to be developed. These professionals currently certify environmental documents.

Within the scope of their field, agronomists interact with forest, agricultural, pedological, aquicultural, and livestock development. Furthermore, they collaborate in recommending, designing, coordinating, and certifying activities for the use of biodegradable energy derived from crop residues and livestock waste, among others. As part of their duties, agronomists certify the extraction, excavation, removal, and dredging of materials from the Earth's cortex when in situ removal of soil is required, but only for activities related to agriculture.

Agronomists are hired by different Federal agencies, such as the Natural Resources Conservation Services (NRCS), the United States Department of Agriculture (USDA), and the Environmental Quality Board (EPA)[sic], among other regulatory entities, in order to assess, study, and mitigate the impact of agricultural projects on environmental resources. The participation of Agronomists as Authorized Professionals can guarantee that appropriate practices are used in the agro-industrial development of Puerto Rico, thus fostering the economic development of agriculture and the general economy of the Island.

As Authorized Professionals, Agronomists are essential in evaluating project impact and preparing documents in compliance with the new Law together with other certified professionals such as Land Surveyors and Engineers.

The role of Professional Agronomist as Authorized Professionals, created specifically for the exploitation and adequate transformation of natural resources, ecosystems, economic development, agricultural potential, and the custody and oversight of the environment, is imperative in the development of the infrastructure and conservation of our natural resources for reasons of health, public biological safety, and environmental protection.

This way, the importance and pertinence of these professionals, who shall be able to issue ministerial permits pursuant to the provisions of Chapter VII of the Act, is recognized.

In conclusion, this Legislative Assembly deems it important for this last phase of the implementation of Act No. 161 to be successfully completed on or before December 1, 2010. The change process must be successfully implemented and facilitated but, in order to achieve that, it is necessary to include Agronomists as Authorized Professionals and make some technical amendments to Act No. 161.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1. – A new paragraph (4) is hereby added, and subsequent paragraphs are hereby renumbered in Section 1.5 of Act No. 161 of December 1, 2009, to read as follows:

“Section 1.5. – Definitions. –

For the purposes of this Act, the following terms shall have the meaning stated below, except when the text indicates otherwise:

(1) ...

(2) ...

(3) ...

(4) ‘Professional Agronomist’: Shall be any person to whom a license for the practice of agronomy in Puerto Rico has been issued pursuant to Act No. 20 of April 9, 1941, as amended.

(5) ...

...

(99) ...”

Section 2. – The new paragraph (69) of Section 1.5 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 1.5. – Definitions. –

For the purposes of this Act, the following terms shall have the meaning stated below, except when the text indicates otherwise:

(1) ...

...

(69) ‘Authorized Professional’: Shall be any Professional Land Surveyor, Agronomist, Engineer, Geologist, and Planner and Licensed Architect who obtains the authorization, as well as any licensed professional in construction-related fields who complies with the requirements established by the Chief Permit Inspector;”

...

Section 3. – Section 2.10 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 2.10. – **Construction Plan Submittal Charges and Stamps.** –

As of the effective date of this Act, applicants shall pay such submittal fees as determined by regulation at the time of filing any construction plans and amendments thereto with the Management Office, Autonomous Municipalities with I to V granted hierarchy, or an Authorized Professional. Authorized Professionals shall remit the payment made by the applicant to the Management Office within a term not to exceed twenty-four (24) hours. Such payments shall be made through the means or mechanisms established by the Management Office. A certified document to such effect shall be submitted with the purpose of stating an estimate of the cost of the construction works conceived under such

construction plan; in the event that the Management Office considers that the estimate of the works has been miscalculated, the Management Office, through an order to that effect, shall compute such value and require that the applicant pay fees according to the value thus corrected, and charge an additional ten percent (10%) over the difference of the incorrectly estimated total. Furthermore, whenever the final cost for construction works turns out to be greater than the estimated cost, such applicants shall pay the fees and additional stamps, either affixed and cancelled or in digital format, on the difference, and if the value of such construction works were to represent a difference of ten percent (10%) over the original estimated cost, such applicants shall pay the fees and additional stamps, either affixed and cancelled or in digital format, on the total difference, plus twenty percent (20%) of such difference, as an initial penalty for miscalculating the estimated costs. Any instrumentality of the Government of Puerto Rico, its municipalities, and the Federal Government, if applicable, shall pay twenty-five percent (25%) of the applicable fees under this Section, except as otherwise provided under any specific legal requirement and the applicant attests to that fact in writing to the Management Office. No public works directly or indirectly involving private investment or contracting shall be exempt, and fees shall be paid as provided under the Joint Permit Regulation. Furthermore, the corresponding professional stamps shall be cancelled as provided in Act No. 319 of May 15, 1938, as amended, Act No. 96 of July 6, 1978, as amended, Act No. 249 of September 3, 2003, as amended, and this Act according to the value of the construction works, except for those corresponding to any public works conducted for and by any instrumentality of the Government of Puerto Rico, its municipalities, and the Federal Government, which do not involve private investment or contracting either directly or indirectly. If such plans, documents, certifications, or other paperwork were to be used for public works and were

drafted, as applicable, by Land Surveyors, Architects, Engineers, or Authorized Professionals who are public employees in any municipality, department, or similar entity of the Government of Puerto Rico, they shall be exempt from the payment of stamps, either affixed and cancelled or in digital format, and such Land Surveyors, Architects, Engineers, or Authorized Professionals, be it understood that the same shall not be deemed to be public employees for the purposes of this exemption when, in drafting documents for public works pursuant to the powers granted by their respective colleges and licenses, such Land Surveyors, Architects, Engineers, or Authorized Professionals act as independent professionals, advisers, or consultants engaged in private practice and whose compensation is based on the payment of fees.”

Section 4. – Section 7.1 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 7.1. – **Creation of the Authorized Professional.** –

The legal construct of the Authorized Professional is hereby created, to include Professional Land Surveyors, Agronomists, Geologists, Engineers, and Planners and Licensed Architects who obtain the authorization, and any other professional holding a license in construction-related fields, pursuant to Section 7.2 and 7.3 of this Act.”

...

Section 5. – Section 7.3 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 7.3. – **Permits Issued by Authorized Professionals.** –

Authorized Professionals shall be circumscribed to granting or denying the following final determinations and permits in connection with: (a) use permits; (b) demolition permits; (c) remodeling building permits; (d) general consolidated permits, except as provided in Section 2.5 of this Act; (e) categorical exclusion

determinations; (f) building permits; and (g) land subdivision permits. Authorized Professionals shall require authorization from the Permit Manager of the Archaeology and Historic Conservation Unit for any use permit to be issued for structures officially designated and included in the Historic Site and Zone Register of the Planning Board; permits and final determinations regarding demolition permits, remodeling building permits, and building permits, shall require the authorization of the Institute of Puerto Rican Culture. Any final determination or certification issued by an Authorized Professional shall contain, as part of the record, an assessment of the parameters that apply according to the laws and regulations in effect and which he/she used to come to such determination. Said assessment shall not require findings of fact or conclusions of law.

Authorized Professionals may issue permits in Autonomous Municipalities with I to V granted hierarchy only if such municipality has so provided by municipal ordinance to that effect. Such municipal ordinance shall establish the powers that Authorized Professionals shall have, which shall not be greater than those set forth in this Act.”

Section 6. – The first paragraph of Section 7.7 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 7.7 – **Records.** –

Authorized Professionals shall keep a copy of all permits and related documents issued by them, as determined by the Office of the Chief Permit Inspector, for the period established by the Chief Permit Inspector through regulations. Authorized Professionals shall surrender the records of permits issued by them to the Permit Management Office, as set forth in the Joint Regulation, as well as approved plans with the corresponding stamps, affixed and cancelled or in digital format, as required by Law. Authorized Professionals may pay for stamps, affixed and cancelled or in digital format, in connection with documents,

certifications, or other paper work related to construction works, insofar as such action is authorized by their respective colleges, boards, and licenses. Such powers shall be recognized in the Joint Permit Regulation.

...”

Section 7. – Section 7.8 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 7.8. – **Notice of Disciplinary Proceedings.** –

The Office of the Chief Permit Inspector shall notify the Examining Board of Engineers and Land Surveyors of Puerto Rico, the Board of Examiners of Agronomists, the Board of Examiners of Architects and Landscape Architects of Puerto Rico, the Professional Planners Examining Board, the Board of Examiners of Geologists of Puerto Rico, the College of Engineers and Land Surveyors of Puerto Rico, or the Agronomists Association of Puerto Rico, or the Puerto Rico Architects and Landscape Architects Association, or any professional association or Examining Board that regulates the practice of an Authorized Professional, of the filing of any complaint and the institution and outcome of any disciplinary proceeding against professionals whose conduct they regulate, so that they may take the corresponding action.

The Examining Board of Engineers and Land Surveyors of Puerto Rico, the Board of Examiners of Agronomists, the Board of Examiners of Architects and Landscape Architects of Puerto Rico, the Professional Planners Examining Board, the Board of Examiners of Geologists of Puerto Rico, the College of Engineers and Land Surveyors of Puerto Rico, the Agronomists Association of Puerto Rico, the Puerto Rico Architects and Landscape Architects Association, or any professional association or Examining Board that regulates the practice of an Authorized Professional, shall notify the Office of the Chief Permit Inspector, within a twenty-four (24)-hour period, of the filing of any complaint and the institution and



outcome of any disciplinary proceedings against professionals whose conduct they regulate. Colleges or Boards of Authorized Professionals, as well as any other institution that regulates the practice of an Authorized Professional, shall take action *motu proprio* upon learning about any violation of this Act committed by one of their members without having to be notified by the Office of the Chief Permit Inspector or any agency of the Government of Puerto Rico.”

Section 8. – Section 8.7 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

“Section 8.7. – **Findings of Fact and Conclusions of Law.** –

With regards to discretionary applications, the Permit Management Office shall issue all final determinations in writing and include and state separately therein the findings of fact and conclusions of law that constitute the grounds for its determination. With regards to ministerial applications, the Permit Management Office shall include, as part of the record, an assessment of the applicable parameters pursuant to the laws and regulations in effect that were used to come to such determination. Said assessment shall not require findings of fact or conclusions of law. The final determination shall advise on the right to request a review and state the corresponding terms to request such review. Upon meeting this requirement, such terms shall begin to run their course. As for final determinations related to the land requalification process, the same shall contain: (a) a clear statement of the right to request a judicial review and the term available therefor; and (b) a clear statement of the date of effectiveness of such requalifications.”

Section 9. – Section 11.4 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

**“Section 11.4. – Authorities, Duties, and Functions of the Reviewing Board and its Chair. –**

The authorities, duties, and functions of the Reviewing Board and its Chair shall be the following:

a. ...

b. ...

...

u. The Reviewing Board may issue any order, solicitation, revocation, or resolution warranted under the law in cases under its consideration, including the imposition of fines for noncompliance with an order or solicitation from the Board. The party adversely affected by the imposition of fines may request a review before the Court of First Instance, as established through Regulations.”

Section 10. – Section 12.5 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

**“Section 12.5. – Reviewing Standard. –**

The actions, final determinations, or resolutions of the Permit Management Office, the Adjudicatory Board, Autonomous Municipalities with I to V granted hierarchy, or an Authorized Professional, as applicable, shall be upheld if the same are based upon substantial evidence included in the administrative record, and findings of fact and conclusions of law shall be reviewable in all their aspects by the Reviewing Board. In the specific case of final determinations that correspond to ministerial applications, the provisions of Sections 7.3 and 8.7 shall apply. In any case, the Reviewing Board and the Supreme Court shall show deference to the expertise of the Permit Management Office, the Adjudicatory Board, the Autonomous Municipalities with I to V granted hierarchy, or the Authorized Professional, as the case may be.”

Section 11. – Section 14.2 of Act No. 161 of December 1, 2009, is hereby amended to read as follows:

**“Section 14.2. – Judicial Proceeding to Request the Revocation of Permits or the Stay of Works or Use; the Chief Permit Inspector; Bond Requirement. –**

In such cases, in response to a complaint such as the one described in Section 14.1, the Chief Permit Inspector shall have fifteen (15) business days to investigate the same. If, after conducting the corresponding investigation, the Chief Permit Inspector decides to exercise his/her powers pursuant to Chapter X of this Act, he/she may request the revocation of the permit or the stay of the construction work or use that is allegedly not authorized by the Permit Management Office, the Adjudicatory Board, the Authorized Professional, or the Autonomous Municipality with I to V granted hierarchy, provided that the same is not in conflict with Section 10.10 of this Act, in which case he/she shall resort to the Court of First Instance to request a court order to such effect. However, if the Chief Permit Inspector fails to take action within the term of fifteen (15) business days provided herein, the complainant may resort to the Court of First Instance to request the aforementioned remedies. In any case, the Court of First Instance shall hold a hearing within a term not to exceed ten (10) calendar days following the filing of the writ and prior to granting the remedies requested, and shall pronounce judgment within a term not greater than twenty (20) calendar days as of the filing of the complaint. In the event that, for any reason, the Court issues an order granting the remedies requested without duly notifying the parties and/or having previously held a hearing, such court order shall not be valid nor shall it have any effect or be enforceable until the petitioner posts a bond that is sufficient to cover all damages this could cause to the respondent if, at the end of the judicial proceeding, the cause for action initiated by the petitioner is not in order. In any case, the

computation of the damages to be covered by the bond shall be based on all the factors established in the Joint Permit Regulation, following reasonable criteria, and the Court of First Instance shall not accept the posting of a bond from an insurance or bonding company that fails to clearly establish that it has sufficient solvency and financial capacity to respond for all damages, according to the computation of possible damages made by the Court.”

Section 12. – Section 6 of Act No. 374 of May 14, 1949, as amended, known as the “Ancient or Historic Zones and Touristic Interest Zones Act,” is hereby amended to read as follows:

“Section 6. –

In harmony with the provisions of Act No. 374 of May 14, 1949, as amended, known as the “Ancient or Historic Zones and Touristic Interest Zones Act,” no action may be implemented in an old or historic zone or in a tourist interest zone by private persons or government agencies, including municipalities, to modify traffic or alter buildings, structures, property, places, squares, parks, or areas of the zone without the previous approval of the Planning Board or the Permit Management Office, as the case may be. The corresponding agency may not approve any of the actions noted herein without a written recommendation from the Institute of Puerto Rican Culture, in the case of old or historic zones, and by the Tourism Company, in the case of a tourist interest zone.

For those actions of the nature indicated in the preceding paragraph that have been implemented prior to the approval of this Act or are to be implemented in the future, the Planning Board, *motu proprio*, and with the advice of the Institute of Puerto Rican Culture in the case of old or historic zones and of the Tourism Company in the case of tourist interest zones, or at the request of any of said agencies or any official, entity, or interested person, may initiate the corresponding investigation to determine if the action in question conforms to the purposes and

objectives of this Act. The Planning Board may request the needed information from all sources it may deem pertinent, shall offer the parties a reasonable period of time to express themselves regarding the information received or generated, and may hold an administrative or public hearing to obtain information in such cases the Board may deem it necessary. After evaluating the information and evidence obtained, the Planning Board may order, among other things, the stay of the implementation of the action in question and the return of the zone to its original state, require the modification of the action implemented or in the course of being implemented, or condition the continuance of the implementation of the action on meeting with the corresponding requirements to guarantee that the purposes and objectives of this Act are attained.

Any party affected by the determination of the Planning Board may resort to the Court of Appeals for review, whereas any party affected by the determination of the Permit Management Office, Adjudicatory Board, Autonomous Municipalities with I to V granted hierarchy, or an Authorized Professional may resort to the Reviewing Board for review, except as otherwise provided by law, pursuant to the provisions of Section 5 of this Act.

Section 13. – This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 175-2010 (H. B. 2971) (Conference)** of the **4<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Sections 1.5, 2.10, 7.1, 7.3, 7.7, 7.8, 8.7, 11.4, 12.5, and 14.2 of Act No. 161 of December 1, 2009, better known as the “Puerto Rico Permit Process Reform Act,” in order to make technical corrections; include Agronomists as Authorized Professionals; amend Section 6 of Act No. 374 of May 14, 1949, as amended, known as the “Ancient or Historic Zones and Touristic Interest Zones Act”; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 18<sup>th</sup> day of April, 2013.

Juan Luis Martínez Martínez  
Acting Director