

(S. B. 504)
(Conference)

(No. 240-2014)

(Approved December 22, 2014)

AN ACT

To amend Section 8.14 of Act No. 161-2009, known as the “Puerto Rico Permit Process Reform Act,” in order to clarify that exaction impact fees imposed by infrastructure agencies shall not be collected by the Permit Management Office on their behalf, but rather by each of said government agencies; and other purposes.

STATEMENT OF MOTIVES

The Legislative Assembly of the Commonwealth of Puerto Rico enacted the Permit Process Reform Act for the purpose of creating the new permitting legal framework on the Island, taking into consideration efficiency and swiftness in the permitting process and centralizing in the Permit Management Office (OGPe, Spanish acronym) the legal successor of the Regulations and Permits Administration (ARPE, Spanish acronym), every process in consultation with infrastructure agencies.

Under this new legal framework, this Legislative Assembly empowered OGPe to collect the exaction impact fees charged by infrastructure agencies to new project developments, due to the impact that such new projects have, for example, on the electrical, water, or highway infrastructure.

Under this new system, infrastructure agencies such as the Electric Power Authority (PREPA); the Aqueduct and Sewer Authority (PRASA); and the Highways and Transportation Authority (HTA), among others, stopped collecting said exaction fees and the power to do so on behalf of infrastructure agencies was

vested in OGPe. Moreover, OGPe not only collects fees on behalf of these agencies but it may also impose a nominal fee on the concerned government entities for the collection thereof. This new legal framework clashes with the fact that OGPe has never had an internal collection structure and, to this day, years after Act No. 161 *supra* became effective, OGPe has not collected not even one exaction from the developers of new projects, a payment that is a *sine qua non* condition for the construction permit to be granted. However, the public corporations that benefit from this kind of fees have continued collecting them from the developers consistently and uninterruptedly.

For all of the foregoing, it is necessary for this Legislative Assembly to reinstate through this Act the authority of infrastructure agencies: to collect the exaction impact fees that they had until Act No. 161, *supra*, became effective.

Secondly, Section 8.14 of Act No. 161, *supra*, grants project developers ample privilege with regard to the credits that they may request to infrastructure agencies, allowing them to sell, lease, or transfer their own credits to third parties, without any type of control or legal provision. This practice could entail less revenues for these public corporations.

Likewise, the Joint Permit Regulation approved in accordance with Act No. 161 *supra*, directs infrastructure agencies to create a trust account to deposit these funds to be used for improvements in the municipalities where the projects upon which the fee was imposed were carried out. That is to say, these funds may only be used for improving the infrastructure of municipalities where projects are carried out to the detriment of municipalities with less financial resources.

In seeking to rectify these provisions of the Puerto Rico Permit Process Reform Act, this Legislative Assembly hereby approves this statute for the purpose of striking a fair balance in the collection of exaction impact fees and the use of the revenues therefrom.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 8.14 of Act No. 161-2009, as amended, known as the “Puerto Rico Permit Process Reform Act,” is hereby amended to read as follows:

“Section 8.14.- Impact fees

Exactions and Impact Fees.

As part of the issuance of a final determination, the Concerned Government Agencies or the Autonomous Municipality with I to V Granted Hierarchy shall impose, pursuant to the provisions of the Joint Permit Regulation or Ordinance, such exaction and impact fees applicable to a project and direct the applicant to pay such fees in favor of the pertinent Concerned Government Entity using the payment methods prescribed through regulation by the Concerned Government Entity and this Act. Projects that obtain a green design certification, private housing developments duly certified as affordable housing, projects whose owner and proponent is the Government of Puerto Rico, a municipal government, or the United States Government shall be exempt from the payment of exactions and impact fees.

Provided, that if the Concerned Government Entity authorizes the payment of exactions and impact fees in installments, the proponent shall post a financial guarantee bond in favor of the Concerned Government Entity guaranteeing such payment. Said bond shall be issued by a bonding company duly authorized by the Office of the Commissioner of Insurance.

The Joint Permit Regulation shall provide that, in the event that the improvements required from an applicant exceed the exactions and impact fees applicable to the project, the Concerned Government Entity shall provide the applicant with a credit which may be applied towards any other fee charged to the applicant by the Concerned Government Entity in connection with the project, except for consumption charges. Said credit may also be transferred by the applicant

solely to other projects of the applicant that require payment of exactions and impact fees to the Concerned Government Entity.”

Section 2.- The concerned government entities are hereby authorized to deposit the revenues of the exaction impact fee in their accounts and to use said funds for improvements to the infrastructure throughout the Island in accordance with their respective plans. Concerned government entities shall not be required to deposit said revenues in trust accounts.

Section 3.- The Planning Board in conjunction with the Concerned Government Entities shall amend the Joint Permit Regulation to conform it with the provisions of this Act.

Section 4.- This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 240-2014 (H. B. 504)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT amend Section 8.14 of Act No. 161-2009, known as the “Puerto Rico Permit Process Reform Act,” in order to clarify that exaction impact fees imposed by infrastructure agencies shall not be collected by the Permit Management Office on their behalf, but rather by each of said government agencies; and other purposes.

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

In San Juan, Puerto Rico, on this 8th day of October, 2021.

Mónica Freire-Florit, Esq.
Director