

(S. B. 1791)  
(Conference)

**(No. 76)**

(Approved May 5, 2000)

**AN ACT**

To exempt the agencies, public corporations, and government instrumentalities involved in the processing of permits, endorsements, consultations and / or certifications that may be related to projects that arise as a result of states of emergency declared by Executive Orders of the Governor of Puerto Rico or the President of the United States of America, from compliance with the terms and procedures established in Act No. 75 of June 24, 1975, as amended, known as “Puerto Rico Planning Board Organic Act”, Act No. 76 of June 24, 1975, as amended, known as “Regulations and Permits Administration Organic Act”, Act No. 81 of August 30, 1991, as amended, known as “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991,” and Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act”; establish special provisions to handle the procedures before the Planning Board, the Regulations and Permits Administration, and the Environmental Quality Board; adopt the procedure to deal with emergency situations or events that require the execution of works, projects, or programs, that do not require the issuance of permits, endorsements, consultations and/or certifications; empower the Governor to promulgate, amend, revoke regulations and orders, and rescind or resolve agreements, contracts, or any part of them during the state of emergency; provide the term of effectiveness of the executive orders issued by virtue of this Act; enable the different government agencies for the accelerated processing of the procedures established in the abovementioned laws; and provide for judicial revision.

## **STATEMENT OF MOTIVES**

Section 19 of Article II of our Constitution recognizes the ample power of the Legislature to approve laws for the protection of the life, health, and the welfare of the citizenry. This is so, in harmony with the representative nature of the people that the legislative bodies hold, and as a part of the inherent authority of the state.

The Legislature exercises, by virtue of its condition as constitutional power of the People of Puerto Rico, the authority to make decisions on behalf of all the people. Although it is true that many of the functions of the legislative power have been delegated to the agencies of the executive power, it is necessary to remember that said power ultimately lies in those we represent and their democratically-elected representatives. This power is exercised within the constitutional framework of the separation of powers. In keeping with these powers, the Legislature is empowered to legislate in order to satisfy the basic needs of the People of Puerto Rico.

Throughout the years, a series of events have arisen on the Island that have created emergency situations, needing immediate action by the government to achieve their solution. As an example, we can mention hurricanes, devastating floods, problems related to the deterioration of the physical infrastructure that renders essential services to the people, and any others that because of the nature of their effects on the population, may, from time to time, be considered as emergency situations.

In view of situations such as those indicated above, and the corresponding state of emergency declared by Executive Order of the Governor of Puerto Rico or the President of the United States of America, the complexity of the government structures and procedures must yield. In

order to deal with this type of situation successfully, we must establish an agile and vigorous process that will allow the achieving of the stated objectives in the least possible time. For the effective implementation of this type of procedure, the affirmative action of the Legislature is necessary.

In the exercise of the inherent authority of the State, the Legislature deems it is necessary, that with regard to situations declared as emergencies, as established herein, the government instrumentalities involved in the granting of permits, consultations, endorsements and/or certifications, be exempted from the routine procedures and terms, in order to follow a speedy process in the resolution of these cases.

On the other hand, this Act considers the procedure that shall be complied with when emergency situations or events require the execution of works, projects, or programs not to require the issuing of a permit, endorsement, and or consultation or certification. Thus, it is specifically provided that these emergency situations shall be governed by the criteria and parameters included in the Executive Order issued by the Governor when declaring said state of emergency.

In order to achieve a greater efficiency and effectiveness in the solution of problems and needs related to the emergency, the Governor is empowered to promulgate, amend, and rescind such regulations as needed. He or she may also promulgate, amend, and rescind those orders, and rescind or resolve those agreements, contracts, or part thereof, that he / she may deem convenient or necessary, to govern during the state of emergency. Likewise, it is provided that the Executive Orders to declare emergencies under the provisions of this Act, shall be effective for not more than six (6) months. Once this period has elapsed, the Legislature, at the Governor's request, may

authorize through a resolution, to continue the state of emergency for additional periods of one (1) year.

With the approval and implementation of a measure of this nature, the most effective conservation of the existing resources, and the greatest development and use thereof shall be achieved, in order to protect and guarantee the health, public safety, and welfare of all the People of Puerto Rico.

The Legislature of Puerto Rico, in the exercise of its constitutional authority and based on the inherent power it holds to face an emergency as well as an urgent need, when the public interests thus demand it, deems it imperative to approve this legislation in the light of the compelling interest of safeguarding the life, health, and general welfare of the citizenry.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- Definitions

For the purposes of this Act, the following terms and phrases shall have the meaning set forth below:

(a) “Emergency” – is any serious abnormality such as a hurricane, tidal wave, earthquake, volcanic eruption, drought, fire, explosion, or any other kind of catastrophe, or any serious disruption of the public law and order, or an attack by enemy forces through sabotage or through the use of bombs, artillery or explosives of any nature, or by atomic, radiological, chemical, or bacteriological means, or by any other means that the enemy may use in any part of the territory of the Commonwealth of Puerto Rico, that merits the mobilization and extraordinary use of human and economic resources to remedy, avoid, prevent or diminish the severity or magnitude of the damages caused or that could be caused. Likewise, the term ‘emergency’ covers any event or grave problems of deterioration in the

physical infrastructure for the rendering of essential services to the people, or that endangers the life, public health, or safety of the population or of a sensitive ecosystem.

(b) “Agency” – is any board, body, Board of examiners, public corporation, commission, independent office, division, administration, bureau, department, authority, official, person, entity, municipality, or any instrumentality of the Commonwealth of Puerto Rico, or an administrative body authorized by law to perform duties of regulating, investigating, or that may issue a decision, or with the power to issue licenses, certificates, permits, concessions, accreditations, privileges, franchises; accuse or award, except the Senate and the House of Representatives of the Legislature and the Judicial Branch.

Section 2.- For the duration of an emergency so declared through an Executive Order by the Governor of Puerto Rico under Section 18 of Act No. 22 of June 23, 1976, or the President of the United States of America, those works that are intimately related to the problem, or that respond to an immediate solution to the situation created by the emergency, which entail the issuing of a permit, endorsement, consultation and/or certification, the government agencies involved in the processing of such permits, endorsements, consultations and/or certifications, shall have to abide by the provisions of this Act, and shall be exempt from the compliance of the terms and procedures established by Act No. 75 of June 24, 1975, as amended, known as the “Puerto Rico Planning Board Organic Act”, Act No. 76 of June 24, 1975, as amended, known as “Regulations and Permits Administration Organic Act”, Act No. 81 of August 30, 1991, as amended, known as “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991”, and Act No. 170 of August 12, 1988, as amended, known as the

“Commonwealth of Puerto Rico Uniform Administrative Procedures Act”, and the regulations promulgated thereunder. The agencies are hereby authorized to establish alternate procedures and terms to expedite the granting of permits, endorsements, consultations and/or certifications related to the solution of the emergencies thus declared. The Executive Order shall establish the geographic area, the intensity and extent of the damages, and the public works or government function that must be urgently reinforced or protected.

Section 3.- All the government agencies involved in the projects presented under the provisions of this Act, and from which the Planning Board requests comments and/or endorsements, shall have a non-deferrable term of five (5) working days from the request for comments and/or endorsements, to present their endorsement or opposition to the request to be evaluated. Should no answer be received, after said term of five (5) working days has elapsed, the proposal shall be deemed as endorsed.

This transaction shall be carried out at the Expedited Transactions Center of the Planning Board.

Section 4.- A term of ten (10) working days from the moment the corresponding environmental document is filed by the government agency that is responsible therefor is hereby established, to allow the Environmental Quality Board to state its approval or objection pursuant to the provisions of Act No. 9 of June 18, 1970, as amended, known as “Environmental Public Policy Act”. This term may be deferred, in order to harmonize it with the factual reality of the probable date of the beginning of the works or the termination of the studies required by the Environmental Quality Board from the appropriate agency. The evaluation of said environmental document shall be carried out by one (1) Interagency Subcommittee on Expedited

Environmental Regulations to be created in the Executive Order that declares the emergency, whose representatives shall have the power to evaluate and adjudicate the possible environmental impact that the projects to be developed could have. The corresponding government entity shall present the documents and information related to the evaluation of the environmental documents that are requested. Likewise, the participation on the Interagency Subcommittee could be required of a representative of the Department of Natural and Environmental Resources, the Puerto Rico Water Company, the Electric Power Authority, and any other agency, public corporation, government instrumentality, and municipality, determined by the Chairman of the Environmental Quality Board.

In extraordinary situations, the majority vote of the Interagency Subcommittee may extend the term to evaluate and adjudicate the possible environmental impacts, up to a period no greater than forty-five (45) days.

Section 5.- Once the corresponding government entity files a site selection consultation in compliance with the abovementioned Act No. 9, before the Planning Board, the Planning Board shall have a non-deferrable term of fifteen (15) working days to evaluate the site selection consultation thus filed.

Section 6.- Once the site selection consultation is approved, the corresponding government agency shall submit the project for the consideration of the Regulations and Permits Administration. The Administration shall have five (5) working days to evaluate and issue the corresponding permits, once the project has been filed.

Section 7.- The government agencies are hereby authorized to issue the necessary administrative orders to enforce and comply with the purposes of this Act.

The projects that are to be carried out under the provisions of this Act, shall be exempted from the payment of any stamp, voucher, or duty required for the granting of permits, endorsements, consultations and/or certifications.

Section 8.- In every procedure in which it is required to notify the interested parties, it shall be sufficient to publish only one (1) single notice in two (2) newspapers of general circulation. Furthermore, a sign shall be placed in a site of prominent exposure that indicates, among other things, the purpose of the work or project, the Internet address, and the telephone number of the appropriate agency.

Section 9.- The projects that are to be executed under the provisions of this Act shall have priority in the programming of all the government agencies. The projects shall be processed directly with the corresponding government agencies, regardless of the fact that the municipalities may have agreements for the transfer of hierarchy.

Section 10.- The emergency situations or events that entail the performance of works, projects, or programs that do not require the issuing of any permit, endorsement, consultation and/or certification, shall be governed by the provisions of the Executive Order issued by the Governor of Puerto Rico declaring said state of emergency, and throughout its duration.

Section 11.- In emergency situations, the Governor shall promulgate, amend, and revoke those regulations; promulgate, amend, and rescind those orders, and rescind or resolve those agreements, contracts or part thereof that he or she deems are convenient or necessary to govern during the state of emergency.

Section 12.- The Executive Orders issued by the Governor under the provisions of this Act, to declare emergencies, shall be effective for no

longer than six (6) months. During said period of time, the Legislature shall pass judgment on their contents during the Session in which they are decreed, or in an Special Session convened for such purpose, and may delimit their scope through the mechanism of the Concurrent Resolution.

Section 13.- The only remedy available to the party adversely affected by any resolution or order issued by any agency shall be to file a request for review before the Circuit Court of Appeals. Any request for judicial review by the administrative agency concerned shall be presented before said Court, within the jurisdictional term of twenty (20) calendar days from the date that a copy of the notice of the resolution or final order of the agency has been filed for the record. The appellant party shall notify the presentation of the request for revision to the appealed agency, and to all the interested parties, within the established term; provided, that compliance with said notice shall be jurisdictional in nature.

The issuing of a writ of review shall not stay the authorization or the execution of a work, nor the implementation of a rule, regulation, order, resolution, determination, processing, awarding, or effectiveness of any permit, endorsement, or certification of an agency or official; the adjudication of an auction, or the granting of a contract issued or emerging from the projects that are to be carried out, unless the Court expressly orders it, in order to prevent an irreparable damage, after having considered a motion in aid of jurisdiction to such effects.

In order for the Court to issue such order, the petitioning party must prove that it is indispensable for the protection of the Court's jurisdiction; that it has a great probability of prevailing on the merits; that the order to stay will not cause substantial damage to the other parties; that it will not impair the public interest; that there is no reasonable alternative to avoid the

alleged damages; and that the damage can not be compensated by granting a monetary remedy or any other adequate legal remedy, all of this in accordance with the provisions of the 1933 Code of Civil Procedure, as amended.

Any order of the Court shall only affect the component or components of the project that are subject to controversy in the case, and in which a substantial damage is involved.

Section 14.- The provisions of this Act shall prevail over any general or special provision of law or regulation that is inconsistent therewith. However, it is provided that for the awarding of contracts pursuant to this Act, all the requirements for contracting with the Government of Puerto Rico shall be met. No documents or certifications to be issued by the Government of Puerto Rico shall be delayed more than five (5) days.

Section 15.- The provisions of this Act are severable and if a court of competent jurisdiction declares any of its provisions unconstitutional, said decision shall not affect or impair any of the remaining provisions, nor shall it provide for any project that is to be executed there under to be detained.

Section 16.- The interpretation of the provisions of this Act to elucidate cases or controversies presented before the agencies or courts of the Government of Puerto Rico, shall be in the broadest sense possible, in order to achieve the effective implementation of the public policy contained herein.

Section 17.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 76 (S.B. 1791) (Conference) of the 7<sup>th</sup> Session of the 13<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to exempt the agencies, public corporations, and government instrumentalities involved in the processing of permits, endorsements, consultations and/or certifications that may be related to projects that arise as a result of states of emergency declared by Executive Orders of the Governor of Puerto Rico or the President of the United States of America, from compliance with the terms and procedures established in Act No. 75 of June 24, 1975, as amended, known as “Puerto Rico Planning Board Organic Act”, etc.,

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

In San Juan, Puerto Rico, today 10<sup>th</sup> of November of 2003.

Elba Rosa Rodríguez-Fuentes  
Director