

(H. B. 1274)
(Conference)

(No. 1-2023)

(Approved January 3, 2023)

AN ACT

To enact the “Puerto Rico Research, Analysis, and Budget Oversight Act,” in order to create the Legislative Assembly Budget Office within the Legislative Branch; set forth its duties; provide for the appointment of its Directors and all that pertains to the operations thereof; for the purpose of strengthening the exercise of the constitutional powers of the Legislative Branch of the Commonwealth of Puerto Rico; and for other related purposes.

STATEMENT OF MOTIVES

The Legislative Assembly has the “power and duty to oversee the execution of the public policy and the conduct of department heads through the exercise of its vast powers which involve: investigation, summoning, public hearings, appropriation of funds and approval of the General Budget Costs.” *Hernández Agosto v. Romero Barceló*. 112 D.P.R. 407 (1982). Furthermore, with regard to its oversight duty, the Supreme Court has held that “the reasonable and necessary resources, plus the same opportunities, must be provided at all critical stages of the legislative process.” *Hernández Torres v. Gobernador*, 129 DPR 824, 846 (1992); *Rexach Benítez v. Gobernador*, 119 D.P.R. 521, 536 (1987) (Negrón García, dissenting opinion). This power is the unequivocal manifestation of the investigation power which furthers the discharge of nondelegable duties such as the informed control of the legislative process.

The importance of the investigative power of the Legislative Branch is such that the Supreme Courts of the United States and Puerto Rico have recognized it as an inherent power of the legislative function. Our Supreme Court has always stressed

that “the power of inquiry was a sequel to, and an indispensable part of the very power to legislate.” *Peña Clos v. Cartagena Ortiz*, 114 D.P.R. 576, 587 (1983). For an example of the transcendence and vastness of this power, *see*, for example, *Tenney v. Brandhove* 341 U.S. 367 (1951); *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Killbourn v. Thompson*, 103 U.S. 168 (1880); *Pueblo v. Pérez Casillas*, 117 DPR 380, 395 (1986); *Banco Popular v. Corte de Distrito de San Juan*, 63 DPR 66, 80 (1944).

The preparation, establishment, and implementation of the General Budget of Puerto Rico is the result of the legislative process. Thus, it is evident that the Legislative Assembly has another inherent power; the power to prepare and approve the General Budget. It can be no other way given that the legislative process is the *raison d’être* of the Legislative Branch. The Legislative Branch is the strongest manifestation of the democratic nature of our republican form of government. This is the only Branch that is exclusive to democratic systems of government, because its processes are initiated, directed, and completed by its members who directly represent the People of Puerto Rico.

The power to control and design the General Budget through the legislative process has been recognized as a power of the Legislative Branch even before the Constitution of the Commonwealth of Puerto Rico integrated it into our system of government. In this regard, the Supreme Court held that:

It is clearly the legislative province to keep a general control over the expenditure of the public funds, but this it does so long as no money is paid out without a previous appropriation for that purpose. While it thus holds the purse strings, it controls the whole subject as completely as its proper functions under the constitution demand.

Ortiz Reyes v. MacLeod, 56 DPR 871, 876 (1940).

In *Ortiz Reyes*, the Supreme Court of Puerto Rico upheld the creation of government positions in the budget bill, provided, that such positions were included as part of the ordinary expenses of government departments. *Id.*, at pp. 877-878. The budget approval process should follow the “preexisting legislative rules [and be submitted] to an active review by the representatives of the People, that is the Legislative Assembly’s authority. The participation of the Legislative Assembly during this process ensures that the public programs adopted have a real and effective democratic foundation.” [Translation supplied] *Presidente de la Cámara v. Gobernador*, 167 DPR 149, 176-177 (2006) (Rodríguez Rodríguez, dissenting opinion).

While it is clear that the Governor has the constitutional duty to report the Legislative Assembly on the state of the Commonwealth, which includes revenues and budget projections, the Legislative Branch’s authority over budgetary issues is broader. Legislative participation is established as a *sine qua non* requirement for the approval of the Island’s Budget within the code of laws of Puerto Rico.

This reality notwithstanding, the Legislative Assembly, historically, has been disproportionately dependent on the economic analyses of the Executive Branch, including those related to the operating expenses of its agencies during each fiscal year. Furthermore, there is the brief period during which the Legislative Assembly is required to receive, process, analyze, and prepare the General Budget of Puerto Rico each year. Although the Legislative Assembly approves the Budget, its intervention is limited. The commendable work performed by the Committees of Ways and Means of the House of Representatives and the Senate is limited by the lack of resources caused by the ongoing fiscal crisis.

Without omitting the honor that it is to exercise this constitutional prerogative, it must be made clear that this task requires an independent, objective, and careful analysis. The discussion regarding the creation of an advisory unit within the

Legislative Assembly is not new. On the contrary, permanent advisory units have been an object of discussion since the Constitutional Convention. At the time, a Report by the Committee on the Legislative Assembly established that “the Committee thoroughly studied the idea of granting constitutional rank to a technical advisory service for the Legislative Assembly. We discarded the idea because we believe that this matter should be addressed through regular legislation. However, we still believe that the establishment of this service, on a foundation of efficiency and merit, is extremely important and that our lawmakers should be advised so they are able to find the most appropriate solutions for the complex government problems before their consideration.” [Translation supplied] (Journal of the Constitutional Convention of Puerto Rico, p. 2581).

Ever since, there have been multiple examples of government entities within the Legislative Branch whose purpose is to assist with specific technical matters. Some noteworthy examples at the local level include the Office of Legislative Services, the Legislative Center for Fiscal Analysis and Innovation, and the Joint Committees of the Legislative Assembly. In the case of the United States, it is extremely important to highlight the Congressional Budget Office (CBO), created by the “Congressional Impoundment Act of 1974,” as amended.

The main objective of the CBO is to provide the Budget Committees and Congress with objective and impartial information with regard to budgetary and economic matters. The CBO is a nonpartisan agency whose mission is to perform independent analyses of budgetary and economic issues to support the Congressional budget process. In the performance of this function, it publishes reports and cost estimates with regards to proposed legislation without making any public policy recommendations. Similar offices in the international sphere include the Argentine Congressional Budget Office, Analysis and Budgetary Advisory Office of the Senate of Chile, the Center for Public Finance Studies of the Mexican Chamber of Deputies.

Like the aforementioned entities, OPAL's mission shall be to provide technical and practical assistance as well as advice to the Legislative Assembly with regards to budgetary, financial, tax, and fiscal issues. It shall also make analyses, studies, and reports on the annual budget, economic perspectives, and income and expenditure projections encompassing a ten (10)-year period. Furthermore, it shall prepare cost estimates for the any laws enacted and proposed legislation together with existing mechanisms. OPAL shall find a balance between its commitment to promptly address the petitions made by the members of the Legislative Assembly and its professional responsibility to only publish high quality work.

Taking into consideration the foregoing, OPAL's primary duty shall be, without it being construed to supersede its other duties, to certify the fiscal impact of any legislative measure or proposal introduced and under the consideration of the Legislative Assembly. Thus, OPAL shall ensure that each legislative proposal meets standards that are consistent with the economic and fiscal reality of the Government of Puerto Rico. Among other things, it shall evaluate and assess the feasibility of the tax, administrative, financial, or fiscal reforms as well as the impact such proposals shall have on the Government of Puerto Rico's administration. OPAL shall evaluate, assess, and certify the fiscal impact of any legislative proposal concerning economic, fiscal, tax, or budgetary issues. The Legislative Branch shall thereby ensure that its duty to establish public policies is never dissociated or disconnected from Puerto Rico's economic reality.

This Legislative Assembly has the responsibility to continue to identify mechanisms through which the People can be informed of the actual and transparent use and management of public funds, not only to confirm the legitimacy of the government's operations and transactions, but also to promote citizen interest in the work and importance of their elected representatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the “Puerto Rico Research, Analysis, and Budget Oversight Act.”

Section 2.- Creation and Purpose; Objectivity Standard

The Legislative Assembly Budget Office (OPAL) is hereby created within the Legislative Assembly of Puerto Rico. Its mission is to provide advice to the members of the Senate and the House of Representatives, as a consultant for both bodies, without participating in the deliberation or decision-making processes of either body. In order to attain this objective, OPAL shall exercise independent judgment and be objective and impartial in the discharge of its duties and obligations as well as in the exercise of its powers. Likewise, it shall remain impartial with regard to partisan politics as its services are to be rendered to the elected representatives of all the residents of Puerto Rico, thus, such services shall be rendered regardless of the delegation that requests them.

The foregoing shall be known as the OPAL’s Objectivity Standard. For the purposes of this Act, the concept of matters or issues of a budgetary nature shall include budgetary, economic, financial, and fiscal matters, and shall be interpreted in a flexible manner to ensure that OPAL has access to and is able to clearly and objectively transmit the data collected and the materials prepared. No employee or person rendering services in OPAL may disclose, reproduce, or otherwise publish any information or documents whose disclosure or publication is prohibited or protected by law. The Speaker of the House of Representatives and the President of the Senate shall establish the duties and powers of the components of OPAL by joint administrative order.

Section 3.- Executive Director and Deputy Executive Director.

A. In General

OPAL shall be directed and administered by a person appointed by the Speaker of the House of Representatives of Puerto Rico with the advice of the Senate of Puerto Rico. This person shall hold the position of director or executive director as long as he enjoys the trust of the Speaker of the House of Representatives and the President of the Senate.

The position of Executive Director shall be held by person who has a bachelor's degree in Business or Public Administration and at least five (5) years of experience in public administration or, in default thereof, who is a Certified Public Accountant in the jurisdiction of Puerto Rico. Furthermore, he shall be a person of known moral probity who is not related to any legislator within the degrees of consanguinity provided in Act No. 99 of May 5, 1941, as amended.

The position of Deputy Executive Director shall be held by a person appointed by the President of the Senate of Puerto Rico with the advice of the Speaker of the House of Representatives. This person shall hold the position of Deputy Executive Director as long as he enjoys the trust of the Speaker of the House of Representatives and the President of the Senate.

The position of Executive Deputy Director shall be held by a person who has a bachelor's degree in Business or Public Administration and a minimum of five (5) years of experience in public administration or, in default thereof, who is a Certified Public Accountant in the jurisdiction of Puerto Rico. Furthermore, he shall be a person of known moral probity who is not related to any legislator within the degrees of consanguinity provided in Act No. 99 of May 5, 1941, as amended.

The Speaker of the House of Representatives and the President of the Senate of Puerto Rico shall fix the annual compensation of the Executive Director through joint administrative order.

B. Powers and Duties

The Executive Director shall have the following powers and duties:

a) To administer the budget of OPAL and establish its rules and bylaws to provide for the sound and efficient administration thereof. Said rules and bylaws shall provide for the accounting of OPAL's appropriations, obligations and contracts, as well as the processing of disbursements.

b) To hire professional and consulting services to carry out his duties.

c) To procure the equipment, materials, and supplies as are necessary for OPALS operations.

d) To examine and evaluate books, financial statements, documents, reports, studies by the government bodies, and any other information necessary, in print or digital or similar formats, that are available through the Internet or in any public records that is useful or convenient to achieve the purposes of this Act.

e) To require any government body, and said government body shall be compelled to provide it free of charge, in electronic or print media, estimates, statistics, and technical assistance, including books, financial statements, cost or expense estimates, reports, statistics, studies, records or documents related to the financial, operational, and management activities thereof or related to any programmatic or public policy matter for the purpose of discharging his duties and responsibilities.

Within this context, the Executive Director shall be empowered to issue subpoenas requiring the production of information on behalf of OPAL in order to achieve the purposes of this Act as well as to resort to the courts to enforce compliance therewith and assert any other powers, rights and responsibilities following the applicable procedures in order for the Legislative Assembly and its committees to enforce its legislative prerogatives.

f) To delegate to the OPAL personnel any authority granted by this Act, except for the appointing authority and the authority, approve, amend, and repeal OPAL bylaws; and to represent OPAL in any legal dispute initiated by or against it.

g) To have custody of all files, registries, records and other documents in OPALS' possession in accordance with the provisions of Act No. 5 of December 8, 1995, as amended, known as the "Puerto Rico Public Documents Administration Act".

C. Personnel Regulations; Recruitment and Detailing

The Executive Director shall prepare the bylaws to ensure the effective implementation of the provisions of this Act, which bylaws shall incorporate the merit principle in the administration of its human resources. OPAL personnel shall hold positions of trust and are thus at-will employees. Any bylaws pertaining to personnel administrative matters shall guarantee due process to the affected parties.

The Executive Director shall establish the minimum parameters, based on the merit principle, which shall guide the search for and evaluation and selection of OPAL personnel. The minimum requirements for the personnel shall be consistent with the salary scale corresponding to the position; the duties and responsibilities of any position or division; and all other statutory and regulatory requirements applicable to the personnel of the Legislative Assembly. Furthermore, the Executive Director may request any government body to detail professional or technical personnel who specialize in financial, fiscal, and budgetary policy, and technology, among others, to assist OPAL personnel in the performance of their duties or to conduct any study, analysis, evaluation or innovation that requires specialized or technical knowledge.

Any public officials or employees on detail to render services to OPAL shall retain all their rights and benefits, as well as their classification and the position held in the public agency of origin. Likewise, at the request of the Executive Director, the Speaker of the House of Representatives and the President of the Senate of Puerto Rico may detail any employee or consultant who is rendering services to such bodies

under an appointment or contract in order for such employee to perform any duty or function at OPAL.

Section 4.- Advisory Body, Assistant Executive Officers; Consulting Group; Fiscal Impact Evaluation and Certification Unit

OPAL's duty shall be to advise the elected officials of both Houses of the Legislative Assembly; therefore, it shall play a consulting role and not an executive role. For such reason, its advisors and consultants shall be prohibited from participating in the deliberation processes of the Legislative Assembly except as otherwise provided by the Speaker of the House of Representatives or the President of the Senate through administrative order for the their respective Houses.

OPAL's organizational chart shall establish its operations and hierarchy placing, from top to bottom, the Executive Director at the first level; the Advisory Body at the second level; the Consulting Group parallel to the Advisory Body; the Assistant Executive Officers at the third level; and the Fiscal Impact Evaluation and Certification Unit at the fourth level. Any offices, units or subdivisions created subsequently shall be placed parallel to the Evaluation and Certification Unit.

A. The Advisory Body of the Legislative Assembly Budget Office

The Advisory Body shall be composed of the Executive Director's advisors and shall have not less than five (5) full-time employees. The Advisory Body shall be composed of specialized professionals such as economists, jurists, certified public accountants, engineers, data scientists, programmers, financial analysts, and other experts in budgetary, finance, tax, and fiscal issues, among others, who have experience in their areas of expertise or related areas, at the discretion of the Executive Director. The Advisory Body shall ensure that the use of technology is maximized in OPAL's operations and transactions and shall oversee the operations of each of the subdivisions created by this Act as determined by the Executive Director of OPAL, in the form and manner established in OPAL's bylaws.

B. Assistant Executive Officers

The Executive director shall designate two (2) persons to ensure that OPAL's services are rendered in equal conditions to both Legislative Bodies. The first of these positions shall be known as the Assistant Executive Director to the House of Representatives and the second position shall be known as the Assistant Executive Director to the Senate. Both positions shall be jointly known as the Assistant Executive Directors and have those powers and duties established by the Executive Director, provided, that each position shall solely focus on overseeing and ensuring that OPAL renders services to his corresponding Legislative Body.

C. Consulting Group

The Consulting Group shall refer to any number of contractors that, from time to time, are actively rendering services to the Executive Director and his Advisory Body. The Consulting Group, just like the Advisory Body, shall be composed of specialized professionals such as economists, jurists, certified public accountants, engineers, data scientists, programmers, financial analysts, and other experts in budgetary, finance, tax, and fiscal issues, among others, who have experience in their areas of expertise or related areas, at the discretion of the Executive Director, who shall be authorized to award consulting contracts in accordance with the laws in effect on government contracting.

D. Fiscal Impact Evaluation and Certification Unit

The Fiscal Impact Evaluation and Certification Unit shall determine the fiscal impact of each legislative proposal under consideration by the Legislative Assembly, as established in Section 5 of this Act. Each Legislative Body shall designate the personnel that shall be responsible for issuing the fiscal impact certification of such Body. For such purposes, the House and the Senate shall each designate 50% of the technical personnel. This proportional composition shall not prevent the technical personnel of the House of Representatives from rendering services to the Senate, and

vice versa, with the consent of the Executive Director. The technical personnel shall include economists, jurists, certified public accountants, engineers, data scientists, programmers, financial analysts, and other experts in budgetary, finance, tax, and fiscal issues, among others, who have experience in their areas of expertise or related areas.

The budget allocated for the Unit to discharge its duties shall never be less than one third of the budget appropriated to OPAL.

Section 5.- Duties of the Legislative Assembly Budget Office

(a) OPAL's ministerial and primary duty shall be to determine the fiscal impact of each legislative proposal under consideration by the Legislative Assembly, without it being construed as OPAL having the authority to directly or indirectly suspend the legislative process of any measure.

i. For the purposes of this legislation, a legislative proposal shall consist, without limitation, of a legislative measure that proposes a change in the Government's public policy or in the administration of any government entity. Thus, OPAL shall ensure that each legislative proposal meets standards that are consistent with the economic and fiscal reality of the Government of Puerto Rico. Among other things, it shall evaluate and assess feasibility of the tax, administrative, financial, or fiscal reforms as well as the impact such proposals on the Government of Puerto Rico's administration. OPAL shall evaluate, assess, and certify the fiscal impact of any legislative proposal concerning economic, fiscal, tax, or budgetary issues.

ii. In discharging this duty, OPAL shall maintain communication with the Office of Management and Budget (OMB) in order to identify whether there are fiscal impact evaluations or determinations that are inconsistent or contradictory. In the event that the evaluations or determinations of the Office of Management and Budget contradict those of OPAL, the latter shall refer such evaluations or determinations to the Committees on Ways and Means of the Legislative Assembly

so that they may conduct the studies and make the adjustments deemed necessary to ensure the feasibility of the measure in question. The foregoing shall not prevent OPAL from collaborating with the OMB for the purposes of exchanging any information deemed necessary in order to authorize or update their respective fiscal impact evaluations or determinations before referring any contradictory information to the Committees on Ways and Means.

(b) To prepare, at the request of the Legislative Assembly, estimates, analyses, studies, reports, recommendations, and educational or informative materials on public administration in Puerto Rico with an emphasis on the budgetary context. The prepared materials shall also include economic projections, analyses, and the development of economic indicators and trends. The purpose of the foregoing is to objectively report the financial, fiscal, and budgetary data regarding the government's operations, as well as to educate the population about these aspects and their relevance to the daily life of present and future generations.

(c) To analyze the economic, budgetary, or financial reports prepared or issued by the Executive and Judicial Branches of the Commonwealth of Puerto Rico, as well as the fiscal plans and any related documentation exchanged or issued pursuant to the provisions of PROMESA. Furthermore, it shall present to the Speaker of the House of Representatives and the President of the Senate, as well as to their respective Committees on Ways and Means, a document containing the most relevant and important data collected as a result of its evaluation as well as its findings, observations, comments, and recommendations regarding said reports and documents as they are produced.

i. In discharging this duty, OPAL shall structure its workflow so as to provide its analysis within thirty (30) days from the end of each quarter of the current fiscal year. The purpose of the foregoing is for the metrics or parameters developed as a result of its analyses to be consistent with the key periods of the fiscal years,

and thus collect the most relevant and accurate information with regard to Government projections and revenues.

(d) At the request of the Legislative Assembly, it shall conduct independent studies and review any information of a budgetary nature submitted by government bodies or officials, or potential officials, to the Legislative Branch, thus preserving the system of checks and balances. Likewise, it shall conduct studies on and make projections with regards to Puerto Rico's economic situation, in what pertains to both the public and private sector, including the economic growth rates, including the empirical data that support such projections.

(e) To provide technical assistance and advice to the Legislative Assembly by making financial, programmatic, management, and operation analyses for all government bodies, including those that operate using funds from the General Fund, own funds, federal funds, or municipal funds.

(f) To provide budgetary advice and technical assistance to the Committees on Ways and Means of the House of Representatives and the Senate of Puerto Rico, as well as to the respective members of such committees in what pertains to all matters of legislative nature that require technical expertise in the areas of economic, financial, fiscal, or budgetary public policy.

(g) To analyze compliance by the Executive and Judicial Branches of the Commonwealth of Puerto Rico with the budgetary parameters established in any Joint Resolution that allocates public funds for specific purposes including, but not limited to, the General Budget of Puerto Rico, in order to keep the Legislative Assembly informed.

(h) To make available to the Legislative Assembly the documentation and information that serves as the basis for any of OPAL's estimates, analyses, studies, reports or recommendations.

i. The Advisory Body shall evaluate all materials prior to their publication to ensure that such materials meet the Objectivity Standard, are consistent findings of fact and conclusions of law, and include the sources used and references cited.

(i) To make available all materials prepared in accordance with the Objectivity Standard through OPAL's free, reliable, and secure webpages as well as through its social media accounts.

(j) To analyze the economic development plans and objectives as well as propose innovative or model legislation to the Legislative Assembly.

(k) To require government agencies, including the offices of the Legislative Assembly, to produce information it deems necessary to keep the Legislative Assembly informed and achieve the purposes of this Act.

(l) To coordinate with the Office of Legislative Services of the Legislative Assembly of Puerto Rico to develop joint and integrated service plans with the goal of maximizing human resources as well as other available resources, thus ensuring the cost-efficient rendering of services to the Legislative Assembly. For such purposes, it may, in conjunction with the OLS, establish a legislative internship program for university students who are about to graduate in order to provide them with the opportunity to become familiar with the government's budgetary, financial, and economic matters.

(m) OPAL shall prioritize transparency and the use of technology in its operations and transactions.

The Legislative Assembly may expand these powers through Concurrent Resolution.

Section 6.- Fund Appropriation

The necessary funds to cover the operating expenses of OPAL shall be earmarked in the General Budget of Expenses of the Commonwealth of Puerto Rico.

These funds shall be set aside for the administrative expenses necessary to organize, commence, and ensure the continuity of OPAL's operations until a higher or additional budget is appropriated. If no additional funds are appropriated from the General Budget the following fiscal year, or if said budget is not approved, a minimum amount equal to \$3,000,000 shall be appropriated until it is provided otherwise. However, its initial budget shall be one million five hundred thousand dollars (\$1,500,000), as established in General Budget for Fiscal Year 2021-2022, as amended and certified.

Section 7.- Severability

This Act is approved in the exercise of the constitutional prerogatives of the Legislative Branch as granted by Article II of the Constitution of the Commonwealth of Puerto Rico.

If, notwithstanding, any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be void or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be void or unconstitutional.

If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be void or unconstitutional, the ruling, judgment, or sentence to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied.

It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, thus honoring the constitutional mandates, even if it renders ineffective, invalidates, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 8.- Effectiveness

This Act shall take effect upon its approval. The Legislative Assembly shall appoint an acting or the official Executive Director of OPAL within thirty (30) days from the approval of this Act. The Executive Director, in turn, shall have sixty (60) days as of the approval of this Act to designate the positions of trust that, in the judgment of the Executive Director, are necessary for OPAL to start rendering services as well as to ensure the continuity thereof. During this period, the Executive Director may request the Committees on Ways and Means of the House of Representatives and/or Senate, as the case may be, to provide technical assistance in order to comply with the time periods established herein.