

(H. B. 2512)
(Conference)

(No. 2-2012)

(Approved January 3, 2012)

AN ACT

To amend Sections 4, 6, 7, 8, and 9 of Act No. 2 of February 23, 1988, as amended, known as the “Special Independent Prosecutor’s Panel Act,” in order to establish a term for the Department of Justice to notify the Special Independent Prosecutor’s Panel the date of receipt of the information on the commission of acts that may be subject to investigation and subsequent referral to guarantee the full exercise of its jurisdiction; extend the jurisdiction of said Act over other public officials; expressly provide the power of the Secretary of Justice and the Special Independent Prosecutor’s Panel to receive referrals from the Governor of Puerto Rico and from other similar entities with investigative powers, such as the Legislative Bodies, the Office of the Comptroller of Puerto Rico, the Office of Government Ethics, or an agency of the Government of the United States of America; establish that a request for investigation or a report referred by said officials or entities shall constitute sufficient grounds for investigation; and for other purposes.

STATEMENT OF MOTIVES

The Office of the Special Independent Prosecutor’s Panel Act, hereinafter OPFEI (Spanish acronym), was created by virtue of Act No. 2 of February 23, 1988, as amended, known as the “Special Independent Prosecutor’s Panel Act.” The mission of OPFEI is to prevent, eradicate, and punish any criminal or improper conduct of government officials seeking to restore the People’s trust in their Government and its public servants.

OPFEI was created for the main purpose of establishing an unbiased and independent entity to investigate and criminally prosecute unlawful actions of high-ranking and former government officials. The isolation of this Office shall prevent any undue influence, as well as potential conflicts or the appearance of conflict that could arise should the Secretary of Justice have to prosecute high-ranking officials of the government apparatus of which he is part.

Act No. 2, *supra*, grants a special and unique authority to OPFEI by designating a Special Prosecutor to criminally prosecute present and former public officials, since the Secretary of Justice cannot appear as legal counsel to the People to bring a criminal action through his prosecutors. The goal is for the prosecution of public officials to be objective and unbiased without the interference of political favoritism or persecution.

In order to carry out the aforementioned public policy, Act No. 2, *supra*, empowered the Secretary of Justice to discharge the duties entrusted to him promptly and within a limited timeframe. This shall enable the State to timely answer to any charges brought against high-ranking government officials holding critical positions, while upholding their procedural and substantive rights.

For instance, the Secretary of Justice is responsible for conducting a preliminary investigation when he receives information that, in his judgment, constitutes sufficient cause to investigate whether or not an offense included in said statute has been committed by any government official covered thereunder. Act No. 2, *supra*, provides that the Secretary of Justice shall complete the preliminary investigation within an extendable term of ninety (90) days, and once such term has concluded, the Secretary shall submit a report and forward the case file to the OPFEI Panel, a recommendation not to designate a Special Independent Prosecutor notwithstanding.

Moreover, Section 7 of Act No. 2, *supra*, provides that if after having informed the Panel that a preliminary investigation is not warranted or that there is no sufficient cause that warrants further investigation, the Secretary of Justice receives information that, in his judgment, warrants a preliminary investigation or a more in-depth investigation, the Secretary has the legal responsibility to notify so immediately to the Panel. It further establishes that if the Secretary, upon conducting any additional investigations deemed pertinent, believes that there is sufficient cause for designating a Special Independent Prosecutor, the Secretary shall thus notify the Panel not later than ninety (90) days after having received said additional information.

The terms so discussed are of such importance that the legislator provided that if the Secretary of Justice, after having received a complaint against any official, employee, former official, or former employee fails to take any action within a term of ninety (90) days or within a term not to exceed one hundred eighty (180) days, when an extension has been granted by the Panel, **he shall forward the entire file of the investigation to the Panel, which shall determine whether or not a Special Prosecutor shall be designated to conduct the investigation and the prosecution deemed necessary for the disposition of said complaint.**

The aforementioned provisions clearly establish that the Secretary of Justice is responsible for maintaining communication with OPFEI within specific time limits in order to ensure that the acts attributable to government officials are settled promptly. However, it has been noted that such time limits begin to count without the OPFEI being aware of the exact date on which the Secretary of Justice received sworn information from a particular complainant or as part of a referral from the Office of Government Ethics or the Comptroller of Puerto Rico.

Furthermore, this measure amends Act No. 2, *supra*, in order to expressly provide that the Governor of Puerto Rico, the Comptroller of Puerto Rico, the Director of the Office of Government Ethics, the Legislative Assembly, and any entity of the Government of the United States of America may file with the Secretary of Justice or the Panel a request for investigation or report stating in detail the acts committed by any of the officials covered under Act No. 2, *supra*, that could potentially constitute an offense; and to provide that the referral or report filed by said officials or entities shall constitute sufficient cause for investigation. This legislative determination was made in deference to those institutions whose investigative powers and procedures warrant the highest recognition for they contribute with the findings and conclusions that allow for the enforcement of Act No. 2, *supra*. Throughout the history of the Legislative Branch, the documented experience suggests that a similar deference is granted to the reports issued by legislative committees in the exercise of their constitutional power to investigate, when the same are filed with the appropriate Legislative Body and their recommendations are approved by a majority of the members thereof. A similar conclusion was reached regarding agencies of the Government of the United States of America when, as part of their investigative powers, they have grounds to believe that a public servant covered under Act No. 2, *supra*, may have committed an offense. Furthermore, given the responsibility of the Chief Executive of setting forth a policy of correctness and lawfulness in government procedures, he is granted the power to directly request the Panel to conduct an investigation under Act No. 2, *supra*.

Through this initiative, Act No. 2, *supra*, is amended in order to extend the scope of the jurisdiction provided therein over the charges subject to investigation. Specifically, we have decided to include Prosecutors, Registrars, Advocates for Family Relations and for Minors, as well as Deputy Directors within the jurisdiction

of said Act. The basis for extending such jurisdiction is to ensure the highest degree of independence and neutrality in order to prevent Prosecutors of the Department of Justice from being required to criminally investigate public servants rendering direct services to said Institution; and recognizing that the aforementioned charges have the same priority in public administration as those mentioned in Section 4(1) of Act No. 2, *supra*.

Likewise, Act No. 2, *supra*, is hereby amended to specifically provide that the Secretary of Justice's noncompliance with the time limits set forth in this Act to carry out the tasks delegated to him shall divest him of any jurisdiction over an investigation. Consequently, the Secretary shall be required to forward the entire investigation file to the Panel within a term not to exceed ten (10) business days. The Panel shall determine whether or not a Special Prosecutor shall be designated to conduct the investigation and prosecution needed to address a complaint.

Lastly, a comprehensive revision is made to OPFEI's Enabling Act to guarantee consistency in its application and interpretation, temper its provisions with recent case law, and to the new responsibilities delegated to the Panel.

For all the foregoing, this Legislative Assembly deems it necessary and convenient to revise the juridical framework of OPFEI in order to accomplish its mission to conduct an objective, unbiased, independent investigation of excellence, while promptly upholding the rights and protecting the integrity and reputation of those officials who have been unjustly accused.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. – Section 4 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 4.- Preliminary Investigation by the Department of Justice

(1) The Secretary of Justice shall carry out a preliminary investigation whenever he receives sworn information that, in his judgment,

constitutes sufficient cause for investigating whether a felony or misdemeanor included in the same transaction or event, or any offense against civil rights, public function, or the treasury has been committed. The Secretary shall notify the Panel whenever any of the following officials are involved:

- (a) The Governor;
- (b) the secretaries and deputy secretaries of Government departments;
- (c) heads and deputy heads of agencies;
- (d) executive directors and deputy directors of public corporations;
- (e) mayors;
- (f) members of the Legislative Assembly of Puerto Rico;
- (g) advisors and aides to the Governor;
- (h) judges;
- (i) prosecutors;
- (j) property registrars;
- (k) advocates for family relations and minors;
- (l) any individual who has held any of the offices mentioned above

and who has been accused of a felony or misdemeanor included in the same transaction or event, or offenses against civil rights, public function, or the treasury while holding any of said offices; provided, that the designation of a Special Prosecutor is made within four (4) years following the date on which said individual ceased to hold office. The fixing of this term shall in no way alter the statute of limitations of the corresponding criminal action against said official or individual. Provided, that if the Secretary fails to obtain a sworn statement prior to conducting an investigation, this shall not prevent the Secretary from initiating a preliminary investigation; provided, that the complainant furnishes the information under oath before the Secretary concludes the preliminary investigation.

If, due to any circumstances, a sworn statement from the complainant cannot be obtained, sworn statements from any other potential witnesses may be obtained in lieu thereof in the course of the investigation conducted by the Secretary.

(2) Whenever the Secretary of Justice conducts a preliminary investigation with respect to any of the officials or individuals listed in subsection (1) of this Section, the Secretary shall determine, based on the information available and the alleged facts, whether there is sufficient cause to believe that a felony and misdemeanor included in the same transaction or event and offenses against civil rights, public function, or the treasury have been committed. The Secretary of Justice shall not recommend nor shall the Panel authorize the designation of a Special Prosecutor when the alleged offenses have prescribed. Upon completion of the preliminary investigation, the Secretary shall render a report in detail of such investigation to the Special Prosecutor's Panel, who shall be designated pursuant to the provisions of Section 10 of this Act. Said report shall include the recommendations of the Secretary as to whether the designation of a Special Prosecutor is warranted or not. A recommendation not to designate a Special Prosecutor notwithstanding, the Secretary shall be required to forward the full report and file to the Panel, which may designate a Special Prosecutor and order an investigation of the case, at its discretion.

(3) The Secretary of Justice shall notify the Panel of the request for investigation in accordance with this Act, within a term that shall not exceed fifteen (15) business days counting from the date on which the complaint, report, or information was received so that the Panel becomes aware of the date on which the term provided under this Act for the Secretary to conduct the preliminary investigation shall begin to count.

(4) The Secretary of Justice or the Panel shall conduct a preliminary investigation upon receipt of a partial or final report approved by the appropriate Legislative House and referred by the appropriate Presiding Officer; a report from the Office of the Comptroller, the Office of Government Ethics, or from any other agency of the Government of the United States of America, stating in detail the acts committed by any of the officials covered under this Act that may potentially constitute an offense.

(5) Whenever the acts of any of the officials listed in subsection (1) of this Section are under investigation, if the need to file a complaint should arise, the Secretary of Justice may not take such action. Said responsibility shall always fall on the Special Prosecutor designated by the Panel. Whenever the Secretary of Justice makes the determination as to whether he recommends the designation of a Special Prosecutor, the Secretary shall notify so to the complainant who requested the designation of a Special Prosecutor and the official who shall be investigated.

(6) Whenever the Secretary of Justice believes that the information received against any of the officials or individuals listed in subsection (1) of this Section does not constitute sufficient cause for an investigation, the Secretary shall notify so to the Panel or the Special Prosecutor stating the grounds for his decision.

(7) If the Panel determines that the designation of a Special Prosecutor is not warranted, said determination shall be final and binding and a new complaint based on the same facts shall not be filed.”

Section 2.- Section 6 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 6.- Charges Against the Secretary of Justice

In the event that the Secretary is charged with the commission of any of the crimes referred to in Section 4 of this Act, the complainant shall submit the information directly to the Panel. When the Department of Justice directly receives

information accusing the Secretary of committing any of the offenses listed in Section 4 of this Act, said information shall be submitted to the Panel within five (5) business days. In both cases, the Panel shall make the appropriate determination following the same standards that apply to the investigations for complaints against any person or official subject to the provisions of this Act.”

Section 3.- Section 7 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 7.- Reopening of Investigation Due to New Information

If, after notifying the Panel that a preliminary investigation is not in order or that there is no sufficient cause that warrants an in-depth investigation, the Secretary of Justice receives new information under oath that, in his judgment, should warrant a preliminary or a full investigation, the Secretary shall so notify the Panel within a term that shall not exceed ten (10) business days counted from the date on which the sworn complaint stating the offense charged therein or the report is received.

If the Secretary determines that there is sufficient cause to designate a Special Prosecutor upon conducting additional investigations as appropriate, the Secretary shall forward his preliminary investigation to the Panel within ninety (90) days, to be counted from the receipt of said information. If no action whatsoever is taken within the term established above, the Secretary shall be divested of jurisdiction over the investigation and shall forward the case file to the Panel within a term that shall not exceed ten (10) business days to be counted from the expiration of the aforementioned ninety (90)-day term.”

Section 4.- Section 8 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 8.- Determination Whether Preliminary Investigation is in Order; Procedure

(1) To determine whether there is cause to conduct a preliminary investigation, the Secretary or the Panel shall consider the following factors:

(a) that the facts included in the sworn statement suggest that any of the offenses listed in subsection 1 of Section 4 of this Act could potentially have been committed;

(b) That from the contents of the sworn statement it arises that the information whereby the official is accused of committing the alleged offense under the Special Independent Prosecutor’s Act was furnished by the complainant to the best of his abilities and personal knowledge;

(c) That the degree of involvement of said official arises out of the sworn statement and, if necessary, other sources of information shall be used.

(2) For purposes of subsection (1) of this Section, there shall constitute sufficient cause for investigation any partial or final report approved by the appropriate Legislative House and referred by the Presiding Officer of the corresponding Legislative House; a report from the Office of the Comptroller, from the Office of Government Ethics, or from any other agency of the Government of the United States of America recommending to the Secretary of Justice to file criminal charges against any of the officials covered by the provisions of this Act;

(3) In the event that the Secretary of Justice receives a complaint from any source accusing an employee, official, former employee, or official covered under Section 5 of this Act of committing a violation, the Secretary shall notify the Panel of said complaint and of the investigation to be conducted.

(4) The Secretary shall have a term of fifteen (15) business days, counted from the date of receipt of the information or complaint, to determine whether a preliminary investigation on such issue is in order. If the Secretary determines that a preliminary investigation is warranted, he shall complete said preliminary investigation within a term that shall not exceed ninety (90) days counted from the date on which the Secretary determined that the preliminary investigation was in order. In the event that the Department of Justice believes that given the nature and complexity of the preliminary investigation it is impossible to complete it within the prescribed term, the Department may request the Panel, which may exercise its discretion to grant an additional term that shall not exceed ninety (90) days.

(5) During the course of a preliminary investigation, the Secretary shall not grant immunity to the officials or persons covered by this Act and who are under investigation, except when the principal or accessory becomes a witness for the prosecution.

(6) The Panel shall review any recommendation of the Secretary and shall determine whether or not a Special Prosecutor shall be designated to investigate and prosecute as necessary in order to address said complaint.”

Section 5.- Section 9 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 9.- Non-compliance with the Terms by the Secretary of Justice

If the Secretary of Justice, after receiving a complaint or accusation against any of the officials or persons under the jurisdiction of this Act, fails to act thereon within a term of ninety (90) days, or one hundred eighty (180) days, if the Panel has granted him an extension, the Secretary shall be divested of jurisdiction over the investigation and shall forward the entire investigation file to the Panel for the intervention therewith. For such purposes, the Secretary shall have a term not to exceed ten (10) days.

Section 6.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were to be held to be null or unconstitutional, the holding to such effect shall not affect, impair, nor invalidate the remainder of this Act. The effect of such holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, or part thereof thus held to be null or unconstitutional.

Section 7.- Repealing Clause

Any Act or part thereof that is in conflict with the provisions of this Act is hereby repealed.

Section 8.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 2-2012 (H. B. 2512) (Conference)** of the **2nd Special Session** of the **16th Legislative Assembly of Puerto Rico:**

AN ACT to amend Sections 4, 6, 7, 8, and 9 of Act No. 2 of February 23, 1988, as amended, known as the “Special Independent Prosecutor’s Panel Act,” in order to establish a term for the Department of Justice to notify the Special Independent Prosecutor’s Panel the date of receipt of the information on the commission of acts that may be subject to investigation and subsequent referral to guarantee the full exercise of its jurisdiction; extend the jurisdiction of said Act over other public officials; expressly provide the power of the Secretary of Justice and the Special Independent Prosecutor’s Panel to receive referrals from the Governor of Puerto Rico and from other similar entities with investigative powers, such as the Legislative Bodies, the Office of the Comptroller of Puerto Rico, the Office of Government Ethics, or an agency of the Government of the United States of America; establish that a request for investigation or a report referred by said officials or entities shall constitute sufficient grounds for investigation; and for other purposes.

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

In San Juan, Puerto Rico, on this 12th day of February, 2018.

Orlando Pagán-Ramírez
Acting Director