

(H. B. 2513)
(Conference)

(No. 3-2012)

(Approved January 3, 2012)

AN ACT

To amend Section 5 of Act No. 2 of February 23, 1988, as amended, known as the “Special Independent Prosecutor’s Panel Act,” in order to provide that the Special Independent Prosecutor’s Panel shall have the prerogative to decide whether or not the investigation and prosecution of the principal or accessory shall be included in any of the crimes against public function or the treasury of which public officials under its jurisdiction are accused; and for other purposes.

STATEMENT OF MOTIVES

Act No. 2 of February 23, 1988, as amended, known as the “Special Independent Prosecutor’s Panel Act,” created the Office of the Special Independent Prosecutor’s Panel (OPFEI, Spanish acronym) as a neutral and independent entity to investigate and criminally prosecute actions that constitute felonies and misdemeanors or offenses against civil rights, public function, and the treasury of which high-ranking officials and former officials of the Government specifically mentioned in said Act are accused.

Said Act empowers the OPFEI to designate a Special Prosecutor to criminally prosecute current and former public officials. It is a special and unique authority granted to OPFEI, because the Secretary of Justice cannot appear as the legal counsel of 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. See *Pueblo v. Adaline Torres-Santiago*, 2008 TSPR 184.

In order to carry out the aforementioned public policy, Act No. 2, *supra*, empowered the Secretary of Justice to promptly conduct a preliminary investigation, before forwarding the record to OPFEI, 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.

Moreover, the jurisdiction of OPFEI is limited by the classification of the officials and the seriousness of the crimes. Therefore, the Act does not grant it jurisdiction over officials, former officials, employees, former employees, or individuals who have participated, conspired, abetted, or otherwise are the principals or accessories in the commission of the crime of which the officials under the jurisdiction of Act No. 2, *supra*, were accused.

The aforementioned juridical reality has caused certain inconveniences during the prosecution of a high-ranking official, when the evidence gathered in the investigation shows that there is a principal or accessory over which the Special Independent Prosecutor lacks jurisdiction. In those circumstances, the prosecution and intervention of the Special Independent Prosecutor and the Department of Justice takes place. According to experience, this situation has posed the following challenges: it has caused situations that are not easily understood by the jury; an adequate coordination and cooperation between the Special Independent Prosecutor and the Prosecutors of the Department of Justice has not been present at all times; and, since the Special Independent Prosecutor has no authority over the Prosecutors of the Department of Justice, in some cases the litigation strategies and determinations in areas such as the gathering and presentation of evidence, the time to file complaints, and the granting of immunity have not been in tune to obtain an adequate outcome for the State.

The preceding circumstances fail to contribute to the public policy of processing the cases under Act No. 2 promptly, efficiently, and effectively.

In view of the aforementioned circumstances, Act No. 2, *supra*, is hereby amended to provide that the Secretary of Justice may receive information and conduct a preliminary investigation of public officials, former public officials, or individuals who may be principals or accessories in the crime of which officials under the jurisdiction of Act No. 2, *supra*, are accused, and shall render a report on the same to OPFEI. It is further provided that the Panel shall have the prerogative of determining whether the investigation and prosecution of a principal or accessory shall be included as part of the Special Independent Prosecutor's assignment, in accordance with Section 11(2) of this Act, only in those cases where public officials under its jurisdiction are charged with offenses against the public function or the treasury. If the Panel decides not to include the principal or principals, accessory or accessories in the Special Independent Prosecutor's assignment, the Secretary of Justice shall assume jurisdiction over them.

This amendment shall achieve a distinction between the figure of principal or accessory and that of the public official subject to Act No. 2, *supra*, without having their levels of preference under said Act overlapping. This amendment shall also allow OPFEI, in its discretion and according to the particularities of each investigation assigned thereto, to determine whether or not to extend the scope of the assignment to the Special Independent Prosecutor to include principals and accessories. It also allows the Department of Justice to maintain jurisdiction over cases where OPFEI expressly determines not to assume it. This shall prevent OPFEI from having to obligatorily include an accessory in an investigation of a public official conducted by a Special Independent Prosecutor upon receipt of a referral, when it shall be detrimental to the course of the investigation of the public official.

For all the foregoing, this Legislative Assembly believes that this jurisdictional balance shall contribute to avoid duplication and the disintegration of efforts in the exercise of the jurisdiction granted to each of the Institutions that play a fundamental role in guaranteeing the integrity in the discharge of public duties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 5 of Act No. 2 of February 23, 1988, as amended, is hereby amended to read as follows:

“Section 5.- Preliminary Investigation in the Case of other Officials, Employees or Individuals

(1) Whenever the Secretary of Justice receives information under oath that, in his judgment, constitutes sufficient cause to investigate whether any official, former official, employee, former employee, principal, accessory, or individual not listed in Section 4 of this Act has committed any of the crimes referred to in Section 4 of this Act, the Secretary of Justice shall carry out a preliminary investigation and request the appointment of a Special Prosecutor whenever he determines that should the investigation be conducted by the Secretary of Justice, it may result in a conflict of interests.

(2) ...

(3) Whenever the Secretary of Justice receives information under oath that, in his judgment, constitutes sufficient cause to investigate whether an official, former official, employee, former employee, or individual not listed in Section 4 of this Act participated, conspired, abetted, encouraged, induced, aided, or otherwise was the principal or accessory in any of the crimes referred to in Section 4 of this Act, the Secretary shall conduct a preliminary investigation and shall file a report according to the criteria established in Section 4 of this Act, on whether or not the appointment of a Special Independent Prosecutor is in order. Upon filing the Report, the Panel shall be empowered to determine whether or not the principal or

accessories should be investigated as part of the Special Independent Prosecutor's assignment, in accordance with Section 11(2) of this Act, but only in the event that public officials under his jurisdiction are charged with offenses against public function or the treasury. If the Panel determines that the appointment of a Special Independent Prosecutor is not in order, said determination shall be final and binding, and a new complaint based on the same facts may not be filed.

Section 2.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were 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 3.- Repealing Clause

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

Section 4.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 3-2012 (H. B. 2513) (Conference)** of the **2nd Special Session** of the **16th Legislative Assembly of Puerto Rico:**

AN ACT to amend Section 5 of Act No. 2 of February 23, 1988, as amended, known as the "Special Independent Prosecutor's Panel Act," in order to provide that the Special Independent Prosecutor's Panel shall have the prerogative to decide whether or not the investigation and prosecution of the principal or accessory shall be included in any of the crimes against public function or the treasury of which public officials under its jurisdiction are accused; 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 21st day of December, 2016.

Juan Luis Martínez Martínez
Director