

(S. B. 1501)  
(Conference)

**(No. 14-2016)**

(Approved March 3, 2016)

## **AN ACT**

To amend Section 8.016 of Act No. 81-1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991,” in order to clarify that, except as otherwise expressly provided in the Act, the power to execute contracts on behalf of a Municipality shall be exercised solely by the Mayor; and for other purposes.

### **STATEMENT OF MOTIVES**

Act No. 81-1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991” (hereinafter the “Municipalities Act”), was created, among other things, to thwart the structure of control existing at that time which had contributed to a great extent to the high degree of bureaucracy of our Central Government, thus affecting the quality of the services received by the citizenry. For such reason, the Municipalities Act sets forth as the public policy of the Commonwealth of Puerto Rico to grant to the municipalities the maximum degree possible of autonomy and provide them with the financial tools, as well as the powers and faculties needed to assume a central and fundamental role in their urban, social, and economic development.

The Municipalities Act guarantees broad contracting powers to the municipalities. Specifically, subsection (n) of Section 2.001 sets forth, among other things, that the municipalities shall be empowered to “contract professional, technical and consulting services that may be necessary to carry out the activities, programs and operations of the municipality, or to comply with any public purpose

authorized by this Act or by any other Act that applies to the municipalities.” Section 2.004 grants the municipalities the powers needed to order, regulate, and resolve whatever is necessary and convenient to address its local needs and for its greater prosperity and development. Moreover, subsection (r) of Section 3.009 empowers mayors to “contract professional, technical, and consulting services that are necessary, convenient, or useful for the performance of his powers, duties, and functions and for the affairs and activities of municipal competence or jurisdiction.” Therefore, the contracting powers granted are broad and pursue the rendering of useful and necessary services to the People.

In accordance with the foregoing, the Office of the Commissioner of Municipal Affairs (OCAM) has issued a circular letter whereby the requirements and formalities of municipal contracts have been analyzed, among other issues. OCAM has determined that the Mayor is the official authorized to appear in legal transactions on behalf of the municipality. OCAM likewise construed that the power to execute contracts belongs to the Mayor and cannot be delegated.

Despite the existence of case law that supports the broad power delegated under the Municipalities Act to the Mayor in the best public interest, some forums have interpreted that, in addition to pro forma requirements, to wit, that a written contract is submitted; that an accurate record be kept, in order to establish *prima facie* evidence of its existence; that a copy is filed with the Office of the Comptroller as a means of double record of its execution, terms, and existence; and that its effectiveness is certified, that is, that it has been executed and granted fifteen (15) days before, Ocasio v. Alcalde Municipio Maunabo, 121 DPR 37 (1988), for the service, technical, and consulting contracts to be valid, the approval of the Municipal Legislature is warranted.

This interpretation is inconsistent and incompatible with the legislative intent and the public policy set forth in the Municipalities Act, since it establishes bureaucratic requirements that hinder the functions of the Municipal Executive, and adversely affect technical and consulting services contracts, thus jeopardizing the health, stability, and public welfare of the public in general. For all of the foregoing, this Legislative Assembly deems it imperative to clarify the language on contracts provided in the Municipalities Act.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 8.016 of Act No. 81-1991, as amended, is hereby amended to read as follows:

“Section 8.016.– On Contracts

The municipality may contract whatever professional, technical, and advisory services that are necessary to carry out municipal activities, programs, and operations or to comply with any other public end authorized by this Act, or by any other applicable statute. Nevertheless, any contract executed or subscribed in contravention to the provisions of this Section shall be deemed to be null and ineffective, and the public funds invested in its administration or execution shall be recovered on behalf of the municipality through the proper action filed to such effect.

...

The authority to execute contracts by virtue of the powers and faculties granted to municipalities under Sections 2.001 and 2.004 of this Act, and to execute contracts for services, as well as for professional, technical, and consulting services, shall be exercised solely by the Mayor, except as otherwise expressly provided in this Act. The Mayor shall not be required to submit such contracts to the Municipal Legislature in order to exercise the powers and authorities granted to municipalities



under Sections 2.001 and 2.004 of this Act, except as otherwise expressly provided by the law, or when the intervention of the Municipal Legislature is expressly required by the law.”

Section 2.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 14-2016 (S. B. 1501) (Conference)** of the **7<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico:**

**AN ACT** to amend Section 8.016 of Act No. 81-1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991,” in order to clarify that, except as otherwise expressly provided in the Act, the power to execute contracts on behalf of a Municipality shall be exercised solely by the Mayor; 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 10<sup>th</sup> day of June, 2016.

Juan Luis Martínez Martínez  
Director