

(S. B. 28)

(No. 48-2018)

(Approved January 22, 2018)

AN ACT

To create the Joint Committee on Administrative Regulations Review and Implementation; provide for its operation; establish its composition, duties, powers, and responsibilities; amend Act No. 38-2017, known as the “Government of Puerto Rico Uniform Administrative Procedure Act,” for the purposes of conforming it to these new provisions; and for other related purposes.

STATEMENT OF MOTIVES

It is a well-known fact that the Legislative Assembly occasionally delegates to the administrative agencies of the Executive Branch (hereinafter, agency), the authority to adopt certain rules of substantive and procedural law. This is done for various reasons, but mainly because of the agencies’ expertise in their respective field and the flexibility of the process to amend regulations vis-à-vis the legislative process. Regarding this matter, the Supreme Court of Puerto Rico has reiterated that the law is the legal source that empowers an agency to act in conformity with the purpose of said law. Thus, a regulation promulgated by an administrative agency cannot be inconsistent with its enabling Act. When a regulation is in conflict with the law that provides for and promotes its creation, the legislative mandate prevails over the regulatory provision.

Furthermore, there is the procedural element in our code of laws for the adoption of regulations. Except as otherwise provided, the procedural requirements established in Act No. 38-2017 as amended, known as “Government of Puerto Rico Uniform Administrative Procedure Act,” must be met. Thus, Act No. 38-2017, provides that:

[w]henver the agency intends to adopt regulations, it must meet the minimum requirements of the informal rulemaking procedure. Thus, to be valid, the regulations adopted by administrative agencies must meet two core procedural requirements: (1) that the public be notified of the regulations to be adopted, and (2) that the citizens be given an opportunity to comment on the regulations to be promulgated.¹

Although these provisions ensure public participation in the rulemaking process, on occasions, the final rule is not consistent with the lawmaker's intent. The procedural vehicle to contest a rule or regulation of this nature is by bringing an action with the Court, which shall evaluate if the agency exceeded the powers delegated to it by the lawmaker. However, this mechanism does not provide enough safeguards to ensure that the regulations adopted by the agencies are in conformity with the legislative intent. There are also too many instances in which agencies ignore the legislative rulemaking mandate without facing consequences therefor, as there is no true oversight by the Government Branch that delegated said authority.

This Act seeks to address these situations by creating a Committee tasked with reviewing administrative regulations, as well as ensuring that they fully comply with the text and spirit of their enabling Acts. In addition, it seeks to ensure compliance with all the rulemaking mandates.

The review of administrative regulations by the Legislative Assembly is a common practice in the United States of America. Many states understand that the rulemaking process is one that needs to be carefully observed by the Legislative Assembly. In some jurisdictions, Legislatures also have the power to adopt or disapprove agency regulations, as is the case of the United States Congress.

The Congressional Review Act, which empowers the United States Congress to review some of the rules promulgated by federal agencies, requires the Federal

¹ *González Fuentes et al v. E.L.A 167DPR400* (2006)

agency promulgating such rule to submit to each House of the Congress and to the Comptroller General a report before such rule can take effect. The report shall contain: (1) a copy of the rule; (2) a concise general statement relating to the rule; and (3) the proposed effective date of the rule. 5 U. S. C. § 801 (a)(1)(A). If Congress disapproves a rule, such rule shall not have force or effect. 5 U.S.C. §802 (a).

Since the Legislative Assembly has the inherent power to disapprove administrative regulations through the approval of laws or joint resolutions, this Act, unlike the aforesaid federal statute, does not provide a period therefor. Nonetheless, it creates and delimitates the operations of the Committee on Administrative Regulations Review and Implementation. This Act seeks to ensure that agencies comply with the legislative mandate to adopt regulations that are in conformity with legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the “Administrative Regulations Review and Implementation Act.”

Section 2.- Creation of the Committee

There is hereby created a Standing Joint Committee of the Legislative Assembly to be denominated as the “Joint Committee on Administrative Regulations Review and Implementation.”

Section 3.- Definitions

For the purposes of this Act, the definitions of Act No. 38-2017, known as the “Government of Puerto Rico Uniform Administrative Procedure Act” or successor law are hereby adopted.

Section 4.- Composition of the Committee

The Committee shall consist of five (5) Senators, one of whom shall be the Chair of the Committee on Government of the Senate of Puerto Rico and five (5) Representatives, one of whom shall be the Chair of the Committee on Government of the House of Representatives of Puerto Rico.

The remaining members shall be appointed by the Presiding Officers of each Legislative Body. Membership shall include two (2) members from the minority parties to be appointed by their respective minority leaders.

Any vacancy in the Committee shall not affect its authority and shall be filled by appointment of a legislator from the same Legislative Body as the original appointment, who shall be appointed in the same manner as the original member.

Initially, the Committee shall be chaired by one of the Senators appointed by the President of the Senate. Said appointment shall be made every alternate four (4) years with the House of Representatives.

Section 5.- Powers of the Committee

The Committee shall have the power to:

(a) Examine a rule proposed or adopted by any Executive Branch Entity for the purpose of determining whether:

(i) it is consistent with the legislative intent of the enabling statute;

or

(ii) the Executive Branch Entity can adopt the proposed rule in accordance with the applicable laws; or

(iii) the rule is onerous.

(b) Ensure compliance with the legislative mandate of adopting rules to discharge this delegated function in the absence of bylaws.

Section 6.- Notice

The Committee shall establish a notification procedure in the event it determines that a proposed or adopted rule is contrary to the legislative intent as expressed in the statute which the rule implements, that the Executive Branch Entity cannot adopt the proposed rule in accordance with the applicable laws, or that the regulation is onerous. This procedure includes, but is not limited to:

(a) The Committee shall give written notice of its decision to the Executive Branch Entity and the Legislative Assembly;

(b) Notice shall be given at least five (5) days prior to any public hearing scheduled by the Executive Branch Entity for consideration of the proposed rule, or in case of a rule that has already been adopted, notice shall be given immediately upon entry of the corresponding resolution; and

(c) The notice shall include a statement of the review committee's findings and the reasons therefor.

The affected Executive Branch Entity shall notify the Committee and the Legislative Assembly of its intended action on a rule which the Committee has objected. Likewise, the entity shall notify if it does not intend to make any changes and the reasons therefor. In both instances the entity shall provide written notice within ten (10) days of receiving notice of the Committee's resolution.

Section 7.- Final Determination

The Committee shall file a report with its final objection and the reasons therefor with the Secretary of the Senate and the Clerk of the House of Representatives when it determines by a majority vote of its members, that:

i. the Executive Branch Entity in question has not modified, amended, withdrawn, or repealed the proposed rule so as to conform with legislative intent; or

ii. an existing rule was not adopted in accordance with all the applicable legal rules.

Said report shall be sent immediately to the Executive Branch Entity. The objection shall be made part of the rule's record in accordance with the Government of Puerto Rico Uniform Administrative Procedure Act or its successor.

In addition, the Committee shall introduce legislation as appropriate to amend or repeal a rule through Joint Resolution; or amend any law deemed necessary to ensure compliance with the legislative intent.

If the Committee finds that an Executive Branch Entity has failed to comply with the rulemaking mandate within the term prescribed in the applicable law, it shall notify the Legislative Assembly, the Governor of Puerto Rico, and the affected Executive Branch Entity of such noncompliance. It shall schedule a public hearing or executive hearing, as soon as practicable, to address such noncompliance. In addition, the Committee shall take any additional steps as are necessary to ensure compliance with the Legislative mandate, including recommending the Legislative Assembly to reduce the budget of the Entity for the following Fiscal Year.

Section 8.- Public Hearings

The Committee is hereby empowered to hold public hearings anywhere in Puerto Rico, receive oral or written testimony from stakeholders and summon the persons they consider should depose on the issue at hand.

Section 9.- Reports

(a) Within forty-five (45) days of taking office, the Committee shall prepare a report containing the following information:

i. Agreements entered into with the different accredited Law Schools in Puerto Rico;

ii. A workplan and estimated human resources and materials needed to fulfill the objectives of the Committee; and

iii. An estimate of the budget required for the current fiscal year and for the required period of the following fiscal year.

(b) Within one hundred eighty (180) days of taking office, the Committee shall file a report of its findings up to that time, regarding the instances in which the Executive Branch Entities have failed to comply requiring the adoption of rules.

(c) The Committee shall file a report for each regular session containing its findings on the Executive Branch Entity's compliance with the laws requiring the adoption of rules and the work performed by the Committee.

Section 10.- Executive Director

The Committee shall be directed by an Executive Director appointed by its Chair. The appointment of the Executive Director, who shall be an attorney-at-law with at least three (3) years of experience in legislative endeavors, shall be made within the first thirty (30) days of the constitution of the Committee. The salary or compensation of the Executive Director shall be fixed in accordance with the bylaws established by the Chair of the Committee.

The Executive Director shall exercise his administrative duties under the supervision and direction of the Chair of the Committee and shall receive administrative support services from the Chair and the members of the Committee, as well as from the Office of Legislative Services, the Legislative Library, and all other bodies comprising the Legislative Assembly.

The Executive Director shall organize the business of the Committee and take such administrative and managerial measures as are necessary for the conduct of its business. In addition, the Executive Director shall carry out any other duties of the office as assigned by the Chair and the Committee.

Section 11.- Legislative Staff of the Committee; Practical Training Programs

The Committee shall enter into agreements with the different accredited Law Schools in Puerto Rico to create practical training or legal practice programs.

Except for the Executive Director, and to the extent practicable, the legislative and legal staff of the Committee shall be composed of students participating in these practical training programs. Said rule shall not apply to the administrative and clerical staff of the Committee.

During periods in which the number of participating students is not sufficient for the sound operations of the Committee:

a. The Director may request the Presiding Officers of both Legislative Bodies to detail personnel from another Entity to assist the Committee in carrying out its duties.

b. The foregoing shall be in consultation with the Chair of the Committee.

c. Detailed personnel shall receive no additional compensation except for the compensatory time accrued.

Section 12.- Rulemaking Authority

The Committee is hereby empowered to prescribe rules and bylaws as are necessary to achieve the purposes of this Act and for its internal operation. The Committee shall meet on the call of either the Chair or an absolute majority of the Committee as often as necessary, by means of written notice. Nonetheless, the Committee shall meet at least once monthly.

Section 13.- Section 2.8 of Act No. 38-2017, known as the “Government of Puerto Rico Uniform Administrative Procedure Act,” is hereby amended to read as follows:

“(a) All regulations adopted by any Entity of the Government of Puerto Rico shall be filed with the Department of State, in Spanish together with the English translation thereof, if submitted simultaneously, in an original and three (3) copies. Once the regulations are received at the Department of State, said Entity shall be responsible for submitting a copy thereof to the Legislative Library of the Office of

Legislative Services, as well as a copy to the Joint Committee on Administrative Regulations Review and Implementation of the Legislative Assembly of Puerto Rico. The Director of the Office of Legislative Services shall prescribe by regulations, the format for filing documents, which may be in paper or electronic form. As a general rule, regulations shall become effective thirty (30) days after filing thereof, unless:

...”

Section 14.- Severability Clause

If any clause, paragraph, provision, or part of this Act were held to be void or unconstitutional, the holding to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of the holding shall be limited to the text of this Act held to be void or unconstitutional.

Section 15.- Effectiveness

This Act shall take effect upon its approval.