

(H. B. 3175)
(Reconsidered)

(No. 58-2012)

(Approved March 19, 2012)

AN ACT

To amend Sections 1 and 8 of Act No. 9 of July 24, 1952, as amended; amend Sections 2, 3, 9, and 10 of Act No. 230 of July 23, 1974, as amended, known as the “Government of Puerto Rico Accounting Act”; and amend Section 4(a)(7) of Act No. 147 of June 18, 1980, as amended, known as the “Office of Management and Budget Organic Act,” in order to authorize the Office of the Comptroller to exercise custody and control over its funds and public property; design and establish its own fiscal organization and accounting systems and procedures to carry out its financial transactions; clarify the scope of the provisions of law applicable to the Office of the Comptroller and provide for the implementation of regulations as are necessary to achieve the purposes of this Act.

STATEMENT OF MOTIVES

The Constitution of Puerto Rico adopted a republican system of government divided into three powers, to wit: the Executive, the Legislative, and the Judicial. The theory of separation of powers on which this division is based entails a constitutional delegation of functions distributed among these three government branches and provides the scope of action of each one. Through this tripartite division a balance and counterbalance system is established in order to strike a balance among the powers of equal rank, while at the same time safeguarding the independence of each government branch.

The office of Comptroller of Puerto Rico is of constitutional rank. Said figure was adopted by the Constitutional Convention as part of a series of measures directed to providing a sound administration of the treasury funds. Specifically, Article III, Section 22 of the Constitution of Puerto Rico establishes that the

Comptroller shall oversee the accounts, incomes, and disbursements of the Government of Puerto Rico, its agencies and instrumentalities, and its municipalities in order to determine if the same were made in accordance with the law. Since said task corresponds to the oversight function of the Legislative Branch, the Office of the Comptroller was attached to such Branch. (*Asociación de Alcaldes de Puerto Rico v. El Contralor de Puerto Rico*, 2009 T.S.P.R. 102, Opinion of June 12, 2009).

In order to implement the aforesaid constitutional mandate, Act No. 9 of July 24, 1952, as amended, created the Office of the Comptroller and granted it investigative powers and mechanisms to conduct investigations on the accounts and disbursements of public funds. Furthermore, said Act empowered the Comptroller to promulgate regulations as necessary to carry out its functions more thoroughly. Therefore, by virtue of the constitutional and legal powers conferred, the Office of the Comptroller has the prerogative to create the rules needed for its internal government, including its fiscal organization.

The Legislative Assembly enjoys autonomy to prepare and administer its budget. However, the Office of the Comptroller does not have the same budgetary and fiscal flexibility that the Legislative Assembly enjoys. Act No. 147 of June 18, 1980, as amended, known as the “Office of Management and Budget Organic Act,” requires the Office of the Comptroller to submit its budget petition to the Legislative Assembly together with a copy to the Office of Management and Budget. This provision of law empowers said agency, which is attached to the Executive Branch, to advise the Legislative Assembly in all that pertains to the accuracy, appropriateness, correction, need, and legality of the requests for funds to defray regular operating expenses of the Office of the Comptroller. Furthermore, Act No. 230 of July 23, 1974, as amended, known as the “Government of Puerto Rico Accounting Act,” provides that the Department of the Treasury shall have custody and control of the funds appropriated to the Office of the Comptroller. These controls

in the appropriation and custody of the funds appropriated to such Office limit its power to manage its accounts and financial transactions, which is contrary to the independence envisioned by the framers of our Constitution, and limits its capacity to develop programs and fully achieve its objectives under its constitutional duties.

The importance of the administrative, budgetary, and fiscal independence of the Office of the Comptroller lies on the delicate oversight task it has been entrusted. It is indispensable for guaranteeing an effective exercise of said functions. This autonomy constitutes an essential element to prevent undue interference of factors that are foreign to the oversight function of said Office by preventing the use of a budget appropriation as a means to advance or hinder particular interests. In this manner, the oversight function of the Office of the Comptroller shall be kept separate from any possible external influence that could be exercised over said Office.

Precisely, in 2006, as a result of the fiscal crisis undergone by the Government, the Executive Branch unilaterally attempted to reduce the operating expense and payroll budget of the Office of the Comptroller by twenty-five percent of that projected for May and June of said year. Said issue was taken to Court. The Executive Branch, however, did not implement the proposed cuts; therefore, the issue became academic. Nevertheless, this does not guarantee that the same controversy will not arise again. Thus, in order to achieve a greater development and strengthening of the Office of the Comptroller, it is indispensable to provide it with true budgetary and fiscal autonomy. This requires amending those laws that affect said autonomy, as well as broadening its capacity to generate its own income or establishing new sources of income that would allow it to reduce its dependence on the General Fund.

Therefore, this Legislative Assembly deems it imperative to expressly reassert the independence of the Office of the Comptroller, clarify the non-applicability of certain fiscal, budgetary, and administrative laws; and to authorize the Office of the Comptroller to exercise custody and control over its funds and public property; design and establish its own fiscal organization and accounting systems and procedures to carry out its financial transactions; clarify the scope of the provisions of law applicable to the Office of the Comptroller; and provide for the implementation of regulations as are necessary to achieve the purposes of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 1 of Act No. 9 of July 24, 1952, as amended, is hereby amended to read as follows:

“Section 1.- Office of the Comptroller – Creation.

The Office of the Comptroller of the Commonwealth of Puerto Rico is hereby created, the head of which shall be the Comptroller, who shall be principally responsible to the Legislative Assembly. The Office of the Comptroller shall enjoy full administrative, budgetary, and fiscal autonomy, without it being understood as a limitation, to exercise custody and control of its funds and public property; design and establish its own fiscal organization and accounting systems and procedures to carry out its financial transactions; prepare, request, administer, and oversee its budget; and to reprogram allocated funds and savings in accordance with the priorities of the functions carried out by said Office, among other matters.”

Section 2.- Section 8 of Act No. 9 of July 24, 1952, as amended, is hereby amended to read as follows:

“Section 8.- Application of Other Laws; Budget and Accounting.

In order to promote the administrative, budgetary, and fiscal independence, which is critical to exercise the constitutional function of overseeing the use of public property and funds, the Office of the Comptroller shall be excluded from the

application of Act No. 230 of July 23, 1974, as amended, known as the ‘Government of Puerto Rico Accounting Act’; Act No. 147 of June 18, 1980, as amended, known as the ‘Office of Management and Budget Organic Act,’ and Act No. 184-2004, as amended, known as the ‘Commonwealth of Puerto Rico Public Service Human Resources Administration Act.’

The Office of the Comptroller shall submit its own request for funds to cover its regular operating expenses directly to the Legislative Assembly on or before June 30th of the fiscal year preceding that for which it is petitioned. The Legislative Assembly shall review the petition submitted by the Office of the Comptroller to such effects and may accept or modify the same.

The Comptroller shall also be the official in charge of the custody and accountability of all of the public property and funds that are appropriated thereto by the Legislative Assembly for its use. The Comptroller’s jurisdiction over the accounts, vouchers, records, other documents, and fiscal transactions shall be exclusive. Pursuant to the provisions of Section 14 of this Act, the Office of the Comptroller shall prescribe the rules and procedures it deems pertinent to implement the powers conferred thereto it under this Act.”

Section 3.- Section 2 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” is hereby amended to read as follows:

“Section 2.- Declaration of Policy.

The policy of the Commonwealth of Puerto Rico in relation to the control and accounting of the public funds and property is declared to be:

(a) ...

...

(j) that all Government revenues be covered into the General Fund of the State Treasury in order to defray government programs to the limit and extent that the Legislative Assembly may deem necessary.

However, the Office of the Comptroller of Puerto Rico is hereby excluded from the application of this Act.”

Section 4.- Subsections (c) and (f) of Section 3 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” are hereby amended to read as follows:

“Section 3.- Definitions.

When used in this Act, the following terms shall mean:

(a) ...

...

(c) Legislative Branch - The House of Representatives and the Senate of Puerto Rico which shall approve and adopt their own rules and regulations for the custody and control of their funds and public property. For purposes of this definition, the Office of the Superintendent of the Capitol of the Commonwealth of Puerto Rico, the Office of Legislative Services, and the entities attached to the Legislative Assembly of Puerto Rico are also included for being entities thereof, whose funds, rules, and regulations to exercise their functions shall be approved by the President of the Senate and the Speaker of the House of Representatives, as provided by law. The Secretary of the Treasury shall exercise, with respect to the funds and financial transactions of the Legislative Bodies and the entities thereof, the functions expressly delegated in this Act. However, this term shall not include the Office of the Comptroller of the Commonwealth of Puerto Rico which, as provided in Section 2 of this Act, enjoys administrative, budgetary, and fiscal autonomy.

...

(f) Legislative dependency - The Joint Committee on Special Reports of the Comptroller and the Office of the Ombudsman, whose funds must be, by law, under the custody and control of the Secretary of the Treasury of Puerto Rico.”

Section 5.- Subsections (c), (d), (h), and (k) of Section 9 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” are hereby amended to read as follows:

“Section 9.- Obligations and Disbursements.

(a) ...

...

(c) The Secretary is also authorized to appoint as paymaster any official or employee of any dependency or any private person, even though the latter may not be a public employee or official, that may be designated to carry out any official mission outside of Puerto Rico by the Governor or the official he may designate in the case of executive dependencies; by the Chief Justice of the Supreme Court or the official he may designate in the case of judicial dependencies; by the Director of the Office of the Ombudsman, or the officials they may designate regarding the respective Offices. Every person appointed as paymaster by the Secretary, pursuant to the provisions of this Section, shall be subject to the rules established by the Secretary. Provided, that the special paymaster appointed by the Secretary pursuant to subsection (b) for judicial dependencies shall be responsible and be authorized to disburse the payments for all the expenses that the General Courts of Justice should bring about, in relation to any official mission abroad that the judges, officials, and employees make. Traveling expenses and per diems for persons appointed to carry out missions entrusted to them by the judicial dependencies and the legislative bodies shall be governed by the rules established by the Chief Justice of the Supreme Court, and by the Office of the Ombudsman, regarding their Offices. The Legislative Bodies shall approve and adopt their own rules and procedures for appointing as

paymaster any official, employee, or private person designated to conduct any official mission outside of Puerto Rico. The regulations concerning travel expenses and per diems the President of the Senate or the Speaker of the House may approve and adopt to exercise control over this function shall apply to these officials, employees, or private persons. In the case of officials or employees of joint legislative bodies, it shall be necessary to obtain the approval of the President and Speaker for the corresponding travel vouchers. The rules concerning travel expenses and per diems agreed upon by the Presiding officers of both Legislative Bodies shall apply to these officials and employees.

...

(d) Traveling expenses and per diems, including trips outside of Puerto Rico of those persons appointed to conduct missions entrusted to them by the judicial, legislative, and municipal entities and by the Legislative Bodies, shall be governed by the rules established by the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House, regarding each Body, and the Director of the Office of the Ombudsman, regarding the Office thereof and by the Municipal Legislature regarding the municipalities. In the case of officials or employees of joint legislative entities, it shall be necessary to obtain the approval of the President and Speaker for the corresponding travel vouchers. The rules concerning travel expenses and per diems agreed upon by the Presiding Officers of both Legislative Bodies shall apply to these officials and employees.

...

(h) The Secretary may exempt any officer or employee of an executive dependency from pecuniary liability for any unlawful or incorrect payment, when from an investigation conducted by him, the Comptroller of Puerto Rico, or both jointly, it is determined that:

(1) the official or employee did not act intentionally to the prejudice of Government interest, and

(2) the Government received services or supplies which properly justified the payment.

The judicial and legislative dependencies shall be governed by the rules that the Chief Justice of the Supreme Court and the Director of the Office of the Ombudsman may establish, respectively, for such purposes, according to the legislation in effect. The President of the Senate and the Speaker of the House of Representatives shall approve and adopt the rules that shall govern the objectives sought by this subsection.

The provisions of this subsection do not limit the power conferred by other laws to the heads of government entities to take disciplinary action against officials and employees for unlawful or incorrect actions while discharging their official duties.

...

(k) No entity of the Executive Branch, to wit, departments, bureaus, administrations, boards, commissions, offices, agencies of the Executive Branch or Legislative Dependencies, including the House of Representatives, the Senate, and any other agency attached to the Legislative Branch to which Act No. 230 of July 23, 1974, known as the "Puerto Rico Government Accounting Act," applies may resort to issuing credit cards to any public official or employee for making disbursements on behalf of the said entity. In the specific case of the Office of the Comptroller, it shall promulgate the rules that shall govern the proper use of credit cards in said Office.

Due to the nature of their duties, excluded from this prohibition are the Governor of Puerto Rico, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Secretary of State, the

mayors, the President of the University of Puerto Rico, the appointing authorities and chief executives of the executive agencies, upon authorization of their respective presidents and officials or chief executive officers who are responsible for procurement in government entities.

With respect to procurement officials, the use of credit cards is hereby authorized for emergency procurement, travel tickets, trainings and, in cases where providers require immediate payment; provided, that the procurement rules and procedures established by the government entity are complied with.

The use of credit cards for purchasing alcoholic beverages, gifts, gambling, and personal transactions is hereby prohibited.

All public officials authorized to use credit cards shall provide the Office of Government Ethics with the same information required for personal credit cards in the annual report that they are required to submit pursuant to the provisions in the Ethics in Government Act.”

Section 6.- Subsection (e) of Section 10 of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act,” is hereby amended to read as follows:

“Section 10.- Custody, Control, and Accounting of Public Property.

(a) ...

...

(e) The central accounting of the public property of the judicial and legislative dependencies shall be carried out by the Secretary on the basis of the regulations established for such purposes by the Chief Justice of the Supreme Court and the Director of the Office of the State Ombudsman. The Legislative Bodies shall approve and adopt their own rules and regulations to carry out the accounting of their public property.

...”

Section 7.- Subsection (a)(7) of Section 4 of Act No. 147 of June 18, 1980, as amended, known as the “Management and Budget Office Organic Act,” is hereby amended to read as follows:

“(a) In tune with Article IV, Section 4 of the Constitution of the Commonwealth of Puerto Rico, the Governor shall submit to the Legislative Assembly at the beginning of each regular session, an Annual Budget for Capital Improvements and Operating Expenses of the Commonwealth, its Instrumentalities, and Public Corporations chargeable to the General Fund, Special Funds, grants from the United States Government, bond issues and loans, the public corporations’ own resources, and any other sources of income, stating the government’s programs and objectives proposed by the Chief Executive for the following fiscal year, based on the long-term orientation and goals of the Integral Development Plan, the Four-Year Investment Plan, and the Land Use Plan drafted and adopted by the Planning Board.

The budget shall contain the following information, in the form, extent, or detail the Governor deems convenient:

(1) ...

...

(7) The recommended or proposed appropriations and expenditures chargeable to all the projected resources, after due consideration of the Puerto Rico Integrated Development Plan, the Four-Year Investment Program, and the land-use plans prepared by the Planning Board for the following fiscal year, except for the Legislative Assembly and the Office of the Comptroller of the Commonwealth of Puerto Rico, which shall be exempt from submitting budget petitions, which the Governor shall include in the recommended budget, a budget for their regular operating expenses equal to the one in effect. The Office of the Comptroller shall submit its own request for funds to defray its regular operating expenses directly to the Legislative Assembly, on or before November 30th of the year preceding the year

for which the petition is made, and shall furnish the Office a copy of all the information it submits to the Legislative Assembly, so that said Office may advise the Legislative Assembly regarding the request for funds to defray the regular operating expenses of said body. Every two (2) years, the Office of the Comptroller of Puerto Rico shall submit to the Legislative Assembly a report with an external audit of its operating expenses...

...”

Section 9.- Severability Clause.

If any word, phrase, sentence, subsection, section, article of part of the present Act were challenged for any reason whatsoever, or held to be unconstitutional or null by a court with jurisdiction, such holding shall not affect the remaining provisions thereof.

Section 10.- This Act shall take effect July 1, 2012.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 58-2012 (H. B. 3175) (Reconsidered)** of the **7th Regular Session** of the **16th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 1 and 8 of Act No. 9 of July 24, 1952, as amended; amend Sections 2, 3, 9, and 10 of Act No. 230 of July 23, 1974, as amended, known as the "Government of Puerto Rico Accounting Act"; and amend Section 4(a)(7) of Act No. 147 of June 18, 1980, as amended, known as the "Office of Management and Budget Organic Act," in order to authorize the Office of the Comptroller to exercise custody and control of its funds and public property; design and establish its own fiscal organization as well as accounting systems and procedures to carry out its financial transactions; clarify the scope of the provisions of law applicable to the Office of the Comptroller and provide for the implementation of the necessary regulations to achieve the purposes of this Act.

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