

(S. B. 1107)

(No. 68-2015)

(Approved May 18, 2015)

AN ACT

To add a new subsection (c), renumber subsections (c) through (n) as subsections (ch) through (o), respectively, and amend renumbered subsection (m) of Section 1.3 and add Section 2.20 to Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” in order to require public agencies subject to the provisions of said Act to publish their interpretive and general public policy statements within a reasonable timeframe; define such statements as “guidance documents,” clarify the definition of “rule or regulation,” establish the administrative process regarding such guidance documents and clarify the effect thereof in administrative adjudication; and for other purposes.

STATEMENT OF MOTIVES

Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” (LPAU, Spanish acronym) establishes the procedural criteria for the quasi-legislative and quasi-judicial functions of administrative agencies. In the discharge of their quasi-legislative duties, Government agencies may promulgate regulations to clarify or implement the duties delegated thereto by the Legislative Assembly. The rulemaking process entails publication and citizen participation elements that contribute to safeguard the due process of law to the concerned groups.

However, there are administrative determinations, such as interpretive and general public policy statements, that do not constitute regulations for the purpose of LPAU and are therefore excluded from the formal rulemaking process. Those determinations are excluded from said process due to efficiency and flexibility considerations. Nevertheless, such determinations bear consequences since they

establish rules accepted by the agency responsible for the implementation of the legislation. An interpretive statement sets forth the rule to be enforced by the agency to ascertain compliance with the criteria established by the Legislative Assembly and clarifies the provisions of a legislation. Individuals affected by a legislation rely on the interpretive statements made by the agencies responsible for the administration of the corresponding laws as well as the regulations promulgated thereunder. Moreover, courts show due deference to the interpretation made by an agency regarding the laws and regulations they were empowered to implement. (*Rivera Concepción v. ARPE*, 2000 TSPR 143). On the other hand, the Federal Administrative Procedure Act provides that all administrative determinations shall be published because otherwise they could adversely affect citizens.

In view of the importance of the interpretive and public policy statements made by administrative agencies, most of them are currently being published on the Internet. However, the Legislative Assembly believes that interpretive and general public policy statements made by these agencies must be published also within a reasonable timeframe. The newly added Section 2.20 provides for interpretive and general public policy statements to be published within thirty (30) days after the agency has made the determination. These provisions mirror those of the Model State Administrative Procedure Act approved by the U. S. Uniform Law Commission. To facilitate the implementation thereof, Agencies are granted a term of one hundred eighty (180) days to publish any statements issued prior to the approval of this Act.

For the purpose of providing for the content of the procedural safeguards herein, interpretive and public policy statements are defined as guidance documents. The binding nature of these documents upon third parties as well as the effect thereof in adjudicatory procedures of the agencies is further clarified.

Agencies may consider guidance documents to implement their public policies and interpret any pertaining legislation; however, they may not use them as if they had force of law nor may they disregard the content thereof arbitrarily. In this manner, our code of laws is tempered with the administrative reality of the Government, since a great deal of the adjudicative process in these agencies is governed by countless circular letters, policy letters, and internal memoranda. This measure does not demand a formal rulemaking process for guidance documents nor prevents any agency from the use thereof. It just simply recognizes its usefulness and clarifies the relevant juridical rules.

In order for the provisions herein to take effect, it is hereby further provided that no individual or entity may be affected by an administrative determination that has not been duly published within a term of one hundred eighty (180) days. In doing so, the transparency of the administrative procedure is fostered, thus upholding the constitutional right to the due process of law of each citizen.

By virtue of the constitutional right of the due process of law, every citizen has the right to be informed of any determinations made by the Government that may have an impact on his freedom or property. It is true that the interpretive and general public policy statements issued by agencies do not constitute the law. However, these are used as guidelines for the agency's staff and the judicial interpretation of the laws and regulations. Beyond the strict sense of what constitutes law and what does not, in practice, these statements have an actual effect on the residents of Puerto Rico. Therefore, the publication and disclosure provided for herein is essential.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A new subsection (c) is hereby added, subsections (c) through (n) are hereby renumbered as subsections (ch) through (o), respectively, and renumbered subsection (m) of Section 1.3 of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” is hereby amended to read as follows:

“Section 1.3.- Definitions.-

For purposes of this Act the following terms or phrases shall have the meaning stated hereinafter:

(a) ...

...

(c) ‘Guidance Document’.- Means a record, whether in electronic or paper format, of general applicability developed by an agency which lacks the force of law but states the agency’s current interpretation of law, or public policy, or describes how and when the agency shall exercise discretionary functions. It includes official interpretations as defined in this Act. This term does not include documents constituting regulations or rules as defined in this Act.

(ch) Record...

(d) Head of an Agency...

(e) Official Interpretation...

(f) Intervenor...

(g) Order or Resolution...

(h) Partial Order or Resolution...

(i) Interlocutory Order...

(j) Person...

(k) Party...

(l) Administrative Procedure...

(m) ‘Rule or Regulation’.- Means any rule or group of rules of an agency which is generally applied that executes or interprets public policy or the law or that regulates the requirements of the procedures or practices of an agency that has the force of law. The term includes the amendment, repeal, or suspension of an existing rule. The term does not include:

(1) Rules related to the internal management of an agency or intergovernmental or interagency communications that do not affect the rights or procedures or practices available to the public in general.

(2) Guidance documents as defined in this Act.

(3) Mandatory decrees approved by the Minimum Wage Board.

(4) Price decrees by the Department of Consumer Affairs and other similar decrees or orders that are issued or may be issued in the future by other agencies and which are merely a determination of one or several regulating parameters based on previously approved regulations which contain the issuing standards.

(5) Forms and instructions, provided they do not constitute a guideline.

(n) Regulation...

(o) Secretary...

...”

Section 2.- A new Section 2.20 is hereby added to Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” to read as follows:

“Section 2.20.- Guidance Document

(a) An agency may issue a guidance document without following the rulemaking process set forth in Sections 2.1 through 2.12 of this Act.

(b) An agency that proposes to rely on a guidance document to the detriment of a person in any administrative proceeding shall afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the document.

(c) A guidance document may contain binding instructions to agency staff members if, at an appropriate stage in the administrative process, the agency's procedures provide an affected person an adequate opportunity to contest the legality or wisdom of a position taken in the document.

(d) A guidance document may be considered by an Agency in an adjudication process, but it does not bind the agency. If an agency proposes to act in an adjudication at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance.

(e) Each Agency shall maintain a public and physical index of all of its effective guidance documents, publish the index on its Internet website in a conspicuous and permanent manner, and make all guidance documents readily available to the public continuously and free of charge. The Secretary shall coordinate the implementation of the provisions of this Section. The agency shall have thirty (30) days as of the approval of the guidance document to publish them.”

Section 3.- Within a term of one hundred eighty days (180) as of the approval of this Act, every agency shall publish the guidance documents issued before the effective date of this Act. Guidance documents issued after the effective date of this Act shall be published in accordance with Section 2.20 of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act.” Once this term has elapsed, the agency may not rely on a guidance document that has not been published on the Internet.

Section 4.- Any Act or part thereof, joint resolution, or administrative provision that is inconsistent with any provision of this Act shall be superseded by the same. Legal or common law rules that have not been specifically revoked or that are not inconsistent with the provisions of this Act shall continue to be in effect. However, this Section shall not apply to Act No. 236-2010, as amended.

Section 5.- This Act shall take effect thirty (30) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 68-2015 (S. B. 1107)** of the **5th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to add a new subsection (c), renumber subsections (c) through (n) as subsections (ch) through (o), respectively, and amend renumbered subsection (m) of Section 1.3 and add Section 2.20 to Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” in order to require public agencies subject to the provisions of said Act to publish their interpretive and general public policy statements within a reasonable timeframe; define such statements as “guidance documents,” clarify the definition of “rule or regulation,” establish the administrative process regarding such guidance documents and clarify the effect thereof in administrative adjudication; 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 25th day of May, 2016.

Juan Luis Martínez Martínez
Director