

(S. B. 1159)

(No. 74)

(Approved June 3, 2002)

AN ACT

To amend Section 9 of Act No. 97 of June 10, 2000, as amended, known as the “Puerto Rico Vocational Rehabilitation Act,” in order to provide that the appointment of the Administrator shall be made by the Governor, with the advise and consent of the Senate of the Commonwealth of Puerto Rico.

STATEMENT OF MOTIVES

On August 16, 1936, the Vocational Rehabilitation Program was established in Puerto Rico as a Unit of the Vocational Education Division of the Department of Education. This promoted vocational education of the population with disabilities.

Nine years later, on May 14, 1947, Act No. 414, known as “Puerto Rico Rehabilitation Act,” reorganized the Vocational Rehabilitation Program and made it part of Insular Board of Vocational Education of the Department of Public Education.

On June 30, 1968, through Act No. 171, the Program became part of the Social Services Department. Later, on July 28, 1995, through Reorganization Plan No. 1, it became the Vocational Rehabilitation Administration (ARV Spanish Acronym), a component of the Department of the Family.

Since the goals and purposes of the ARV are addressed to achieve the employment of persons with disabilities, Act No. 97 of June 10, 2000, known as “Puerto Rico Vocational Rehabilitation Act,” authorized the

transfer of the Vocational Rehabilitation Administration from the Department of the Family to the Department of Labor and Human Resources.

Section 6 of Act No. 97, *supra*, establishes the administrative and fiscal autonomy of the Vocational Rehabilitation Administration, even when it was transferred as an operational component of the Department of Labor and Human Resources. The purpose of this autonomy is so that the Administration can operate effectively, pursuant to the federal laws, which provide that the agency that is the designated state unit shall be bound to determine the use and disbursement of the funds destined to the program.

According to the Vocational Rehabilitation Administration, they currently render services to some 24,678 persons with disabilities who require rehabilitation in order to obtain a resulting employment. At present, the Administration has 1,548 employees, distributed in 1,260 regular jobs, 147 transitory jobs, 2 confidential positions, 26 as irregular personnel, and 113 teachers. Of the total employees of the Vocational Rehabilitation Administration, 242 are Rehabilitation Counselors who hold different positions in the rendering of services.

Both, Section 16 of Article III, and Section 6 of Article IV of the Constitution of the Commonwealth of Puerto Rico, recognize the power of the Legislature to create, reorganize, and consolidate executive departments of the government, as well as to define their functions. Furthermore, Section 5 of Article IV establishes that “for the purpose of exercising the Executive Power; the Governor shall be assisted by Government Secretaries whom he shall appoint with the advice and consent of the Senate.”

As we can see, there is no legal and much less a constitutional impediment to establish as a requirement that the appointment of the Administrator of the Vocational Rehabilitation Administration be confirmed by the Senate of Puerto Rico. There is no invasion whatsoever of the Legislative Power on the powers of the Executive, since the Constitution of the Commonwealth itself establishes that the Secretaries of the Government shall be confirmed by the Senate. For all legal and government purposes the Vocational Rehabilitation Administration is a government agency,¹ as the Office of the Investigating Official of Persons with Disabilities, the Office for Youth Affairs, Family and Children Administration, the Child Support Administration which are among others, directed by an Executive Director, who in some cases, keeps said title, and in other cases is denominated as Secretary, Executive Director, President, Advocate, Administrator, among others.

As an example, it is important to mention that the enabling legislation of some government bodies attached to other government agencies has been incorporating the requirement that the appointment of their Directors be subject to the consent and confirmation of the Senate of Puerto Rico, as a mechanism to give greater pureness to the designation of the candidate to said government position. Section 5 of Act No. 34 of July 13, 1978, as amended, created the Youth Affairs Office directed by an Executive Director, attached to the Governor's Office. Section 6 of said Act provides in its first paragraph that "the Governor, with the advice and consent of the

¹ Government Agency – Government Instrumentalities: A creature subordinated to the Sovereign created to carry out a government function. Rivera García, I., *Diccionario de Términos Jurídicos*, 2nd Edition. Revised, Michie, Oxford, New Hampshire, USA., 1989, Pages 8 and 138.

Senate, shall appoint and fix the salary of the Executive Director, who shall perform his duties at the will of the nominating authority.”

On the other hand, Act No. 5 of December 30, 1986, as amended, created the Child Support Administration, attached to the Department of the Family, “as one of its operational and programmatic components, under the coordination, supervision, evaluation, and inspection of the Secretary.” The Administrator of the Child Support Administration shall be appointed by the Governor, with the advice and consent of the Senate of Puerto Rico. Furthermore, Act No. 5, *supra*, in its Article 7B, provides that administrative judges shall be appointed by the Governor with the advice and consent of the Senate of Puerto Rico.

Act No. 7 of May 15, 1959, as amended, creates the office of the Attorney General, attached to the Department of Justice, appointed by the Governor with the advice and consent of the Senate of Puerto Rico. Said official, as provided by Section 2 of the Act, *supra*, shall represent the Commonwealth of Puerto Rico in all civil and criminal matters in which the government is a part or has interested in the same.

On the other hand, Act No. 23 of July 24, 1952, as amended, in its Section 1 provides for the creation of various assistant prosecutors and special prosecutors positions attached to the Department of Justice. In addition, Section 3 of this Act provides that the “Governor shall appoint, with the advice and consent of the Senate, the Assistant Prosecuting Attorneys III, Assistant Prosecuting Attorneys II, Assistant Prosecuting Attorneys I, District Attorneys and Special Prosecutors for Family Relations and the Prosecutors for Minors Affairs.”

We can see the most recent example in Act No. 1 of March 1, 2001, as amended, known as “Puerto Rico Special Communities Integral Development Act,” which creates the Office of the General Coordinator for Socio-Economic Financing and Self-Management, attached to the Office of the Governor of the Commonwealth of Puerto Rico, directed by the Coordinator, appointed by the Governor of Puerto Rico, with the advice and consent of the Senate of Puerto Rico.

Also, in the present Legislature both the Senate and the House of Representatives approved S.B. 285 in order for the Investigating Official of Persons with Disabilities, attached to the Office of the Governor, to be confirmed by the Senate of the Commonwealth of Puerto Rico.

In the specific case of the Department of Labor and Human Resources, it is important to mention that at the present, all directors and administrators of the components of the Department of Labor, including the Secretary of Labor, must pass through the process of designation by the Governor, with the advice and consent of the Senate of Puerto Rico.

Therefore, this legislation harmonizes, in terms of the process, the appointments of each one of the components of the Department of Labor and Human Resource. The components that we are referring to are the following: Right to Work Administration, Occupational and Human Resources Development Council, and the Administration for Future Workers and Entrepreneurs.

With this legislation, the citizens, especially those who shall receive the services, are given the opportunity to participate in the process of appointing the Administrator of the Vocational Rehabilitation Administration.

This Legislature, which is responsible for overseeing to the welfare and equality of all sectors of the population, recognizes the need to delegate to the Senate of the Commonwealth of Puerto Rico, the confirmation of the appointment of the Administrator of the Vocational Rehabilitation Administration. The screening for said appointment shall result in benefit of the hundreds of thousands of citizens with disabilities in our Island, who shall receive better services, more opportunities and have a more worthy and productive life.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 9 of Act No. 97 of June 10, 2000, as amended known as “Puerto Rico Vocational Rehabilitation Act,” is hereby amended to read as follows:

“Section 9.- Management of the Administration.-

The Governor shall appoint the Administrator, with the advice and consent of the Senate, and shall fix his/her salary or remuneration pursuant to the customary norms of the Government of Puerto Rico for positions of a like or similar nature. The Administrator shall answer directly to the Secretary.”

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. 74 (S.B. 1159) of the 3rd Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 9 of Act No. 97 of June 10, 2000, as amended, known as the “Puerto Rico Vocational Rehabilitation Act,” in order to provide that the appointment of the Administrator shall be made by the Governor, with the advise and consent of the Senate of the Commonwealth of Puerto Rico,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 6th of August of 2004.

Elba Rosa Rodríguez-Fuentes
Director