

(S. B. 619)

**(No. 135-2013)**

(Approved November 30, 2013)

## **AN ACT**

To amend subsections (c) and (d) of Section 4.6 of Act No. 1-2012, known as the “Puerto Rico Government Ethics Act of 2011,” in order to restructure the recruitment process of municipal governments, to authorize the hiring, on a part-time basis, of former public servants of a specific municipality, who have ceased their functions upon retirement by reason of age or years of service, without being subject to the terms provided in this Act; and for other purposes.

### **STATEMENT OF MOTIVES**

Act No. 81-1991 (hereinafter, Act No. 81), as amended, establishes the Commonwealth’s public policy to promote a managerial, fiscal, and administrative restructuring of our government system, which grants and provides each municipality with the resources, powers, and authorities needed to maximize their autonomous growth. In this manner, the decentralization of the powers, duties, and responsibilities inherent to the Central Government is thus promoted, and a regionalization of services geared towards the areas encompassing its organizational structure is thus guaranteed. All of this, for the purpose of ensuring that the decision-making over matters that affect the lives of the people falls on the levels, bodies, and persons that are able to render such services promptly.

Although Act No. 81, *supra*, is a forefront legislation in terms of the recognition of the powers and authorities inherent to each Municipal Government, the Legislative Assembly of Puerto Rico retains the responsibility to evaluate it continuously to guarantee its currentness and effectiveness.

One of the main deficiencies of said statute is the limitation it imposes regarding the recruitment of personnel that have ceased their functions in a municipality, but that have not satisfied the minimum waiting period established for reemployment within the municipality. Said limitation stems from subsections (c) and (d) of Section 4.6 of Act No. 1-2012, which provide the “Restrictions to Actions by Former Public Servants,” stating that:

(c) No former public servant shall, during the year following the date of termination of his/her employment with the government, hold an office, have monetary interest or contract, directly or indirectly, with an agency, private person, or business, over which he/she has taken an official action during the year preceding the termination of his/her employment. Intergovernmental contracts shall be excluded from this prohibition.

This prohibition shall not apply to former public servants who wish to return to the specialized nongovernment sector for which he/she served; provided, that his/her official actions have not favored the entity where he/she intends to hold office, in which he/she has a monetary interest, or with which he/she contracts. In order for this exception to be valid, the Executive Director shall evaluate the situation before the former public servant takes office, holds monetary interest, or executes the contract.

(d) The appointing authority shall not enter into a professional service contract with or for the benefit of a former public servant of his/her agency, until two (2) years have elapsed since the date of termination of his/her employment with the agency.

This prohibition shall not apply to *ad honorem* professional service contracts. It shall neither apply when, in the discretion of the Executive Director, there are special circumstances that have been evaluated before executing such contract.

If there are special circumstances and the Executive Director authorizes the contracting of a former public servant within two years following the date of termination of his/her employment, the professional service contract shall not establish compensation higher than that earned for carrying out the same duties when he/she was a public servant.

No former public servant may use confidential or privileged information obtained while discharging the duties of his/her office for his/her own enrichment or the enrichment of a third party. It shall be understood that there has been enrichment not only when wealth has increased with money or property, but also when the liabilities affecting the person have been cancelled or extinguished. (Emphasis added)

The above provision represents an extremely onerous burden for our municipalities which face obstacles when rehiring skilled and trained personnel that have ceased their functions in the municipality, regardless of whether they have been involved in the formulation and implementation of public policy or have done so temporarily. Furthermore, this prohibition includes independent contractors, whose contract is equivalent to a position or office within said municipality, or whose duties include to be directly involved in the formulation and implementation of public policy, among others.

Within our unavoidable agenda of achieving a decentralized government that is accessible and close to the people, we are compelled to correct this deficiency

and thus expedite the operations of municipalities. In this sense, the Legislative Assembly believes that the restructuring of the municipal governments' recruitment process should be promoted in order to authorize the hiring, on a part-time basis, of former public servants of a specific municipality, who have ceased their functions upon retirement by reason of age or years of service, without being subject to the terms provided in this Act. Thus, by overcoming the obstacles that prevent municipal governments from reaching their objectives the operations thereof are maximized.

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

Section 1.- Subsections (c) and (d) of Section 4.6 of Act No. 1-2012, as amended, are hereby amended to read as follows:

“Section 4.6.- Restrictions to Actions by Former Public Servants.

(a) ...

(b) ...

(c) No former public servant shall, during the year following the date of termination of his/her employment with the government, hold an office, have monetary interest, or contract, directly or indirectly, with an agency, private person, or business, over which he/she has taken an official action during the year preceding the termination of his/her employment. Intergovernmental contracts shall be excluded from this prohibition. Municipal governments shall also be excluded from the scope of this rule; therefore, a municipal government may hire, on a part-time basis, former public servants retired from said municipality; provided, that they have ceased their functions upon retirement by reason of age or years of service, without being subject to the terms provided in this Act.

This prohibition shall not apply to former public servants who wish to return to the nongovernmental sector; provided, that his official actions have not favored the entity where he intends to hold office, in which he has a monetary

interest or with which he contracts. In order for this exception to be valid, the Executive Director shall evaluate the situation before the former public servant takes office, holds monetary interest or executes the contract.

(d) The appointing authority shall not enter into a professional service contract for the benefit of a former public servant of his/her agency, until two (2) years have elapsed since the date of termination of his/her employment.

This prohibition shall not apply to *ad honorem* professional service contracts. It shall neither apply when, at the discretion of the Executive Director, there are special circumstances that have been evaluated before executing such contract. Furthermore, this prohibition shall not affect municipal governments, which are excluded from the scope of this rule; therefore, a municipal government may hire former public servants retired from said municipality, at any time; provided, that such employees are hired on a part-time basis and have ceased their functions upon retirement by reason of age or years of service, without being subject to the terms provided in this Act.

If there are special circumstances and the Executive Director authorizes the contracting of a former public servant within two years following the date of termination of his/her employment, the professional service contract shall not establish compensation higher than that earned for carrying out the same duties when he/she was a public servant.

No former public servant may use confidential or privileged information obtained while discharging the duties of his/her office for his/her own enrichment or the enrichment of a third party. It shall be understood that there has been enrichment not only when wealth has increased with money or property, but also when the liabilities affecting the person have been cancelled or extinguished.

(e) ...”

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. 135-2013 (S. B. 619)** of the **2<sup>nd</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend subsections (c) and (d) of Section 4.6 of Act No. 1-2012, known as the "Puerto Rico Government Ethics Act of 2011," in order to restructure the recruitment process of municipal governments, to authorize the hiring, on a part-time basis, of former public servants of a specific municipality, who have ceased their functions upon retirement by reason of age or years of service, without being subject to the terms provided in this Act; 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 16<sup>th</sup> day of November, 2016.

Juan Luis Martínez Martínez  
Director