

(S. B. 2181)
(Reconsidered)
(Conference)

(No. 144-2012)

(Approved July 22, 2012)

AN ACT

To amend Sections 2, 3, 4, and 5; add a new Section 5A; amend Sections 6, 7, 8, and 9; repeal Sections 10, 11, 12, and 17; amend and renumber Sections 13 and 14 as new Sections 10 and 11, respectively; renumber Section 15 as the new Section 12; amend and renumber Section 16 as the new Section 13; add a new Section 14; amend and renumber Sections 18 and 19 as new Sections 15 and 16, respectively, of Act No. 42-2010, known as the “Inspector General of the Government of Puerto Rico Act,” in order to render ineffective the creation of the Governor’s Committee on Government Integrity and Efficiency, define terms, specify and clarify the duties and powers of the Office of the Inspector General and of the Governor’s Committee on Government Integrity and Efficiency, designate the head of the Office as the “Inspector General” in lieu of Director of the Office of the Inspector General; limit the rendering of services by personnel of the Office of the Inspector General within twelve (12) months after ceasing to hold office in public entities where they have conducted audits; authorize the collection and administration of state and federal funds; exempt the Office of the Inspector General from Act No. 5 of December 8, 1955, Act No. 170 of August 12, 1988, Act No. 230 of July 23, 1974, Act No. 147 of June 18, 1980, Act No. 45-1998, Act No. 197-2002, Act No. 265-2003, and Act No. 148-2006, as amended; repeal Section 10.06 of Act No. 149-1999, as amended, to transfer the personnel, equipment, property, records, and any fund balance from the “Auditing Committee of the Department of Education” to the Office of the Inspector General; and repeal Sections 63 and 64 of Act No. 205-2004, as amended, in order to transfer the personnel, equipment, property, records, and any fund balance from the Internal Audit Office to the Office of the Inspector General; and for other related purposes.

STATEMENT OF MOTIVES

Different bodies have been created over the years at both the executive and the legislative levels geared towards overseeing and promoting the optimization of public administration. Nevertheless, such efforts have not been sufficient to achieve the expected results. In order to address this situation, this Legislative Assembly created the Office of the Inspector General of the Government of Puerto Rico through Act No. 42-2010.

In general terms, the Office of the Inspector General is responsible for coordinating and strengthening government efforts to promote integrity and efficiency as well as to prevent and detect any fraudulent activity in connection with the management of state or federal public funds.

Act No. 42-2010, *supra*, also created the Governor's Committee on Government Integrity and Efficiency ("Committee"). We believe that the Committee's intervention constitutes a duplication of efforts in view of the duties assigned to the Office of the Inspector General. Thus, this legislative measure shall render ineffective the creation of the Governor's Committee on Government Integrity and Efficiency.

The main duty of the Inspector General is to prevent misappropriation or misuse of government funds, properties, or assets in order to ensure that administrative and contractual practices are consistent with the best and most effective standards, through objective evaluation mechanisms, determination of efficiency and effectiveness, and the establishment of adequate procedures to strengthen its functions. The Inspector General shall serve as a medium and advisor to agencies by keeping direct communication with heads of agencies in order to correct any practice that departs from those acceptable in the Government.

Furthermore, this measure incorporates technical amendments which include changing the designation of the head of the Office to “Inspector General” in lieu of the Director of the Office of the Inspector General, and clarifying the powers of this new position.

Moreover, the Office of the Inspector General is hereby granted the operational and administrative autonomy needed to carry out the duties established by law. It must be noted that given its oversight duties, this Office shall be fully independent from all other Government agencies, especially from the agencies that it will be auditing. In addition, it is necessary to state that this amendment shall not have a fiscal impact, since all existing positions are being reclassified to establish its administrative structure.

Lastly, Section 10.06 of Act No. 149-1999, as amended, known as the “Organic Act for the Department of Education of Puerto Rico,” which created the “Auditing Committee of the Department of Education,” is hereby repealed, and Sections 63 and 64 of Act No. 205-2004, as amended, known as the “Department of Justice Organic Act,” are hereby repealed, since its purposes shall be well served through the Office of the Inspector General.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (c) is hereby eliminated and subsequent subsections of Section 2 of Act No. 42-2010 are hereby renumbered to read as follows:

“Section 2.- Declaration of Public Policy and Responsibility of the Heads of Government Entities.

It is the public policy of the Government of Puerto Rico:

- a) To achieve the highest levels of integrity, honesty, transparency, effectiveness, and efficiency in public service;
- b) To repudiate and reject any act, conduct, or sign of corruption by public officials or employees;

c) To establish controls, as well as to take any appropriate actions and measures to detect, prevent, and act proactively, in order to prevent corruption in government entities; and

d) To deter misappropriation, misuse, fraud, and mismanagement of public funds.

It shall be the responsibility of each Secretary, Executive Director, Head of Agency, or governing body to observe and ensure compliance with this public policy in every Government entity. In addition, they shall provide adequate facilities for the implementation of the public policy set forth in this Act. Likewise, they shall establish adequate controls and mechanisms to guarantee compliance therewith. It shall also be the duty of each and every one of them, as well as of all other public officials and employees, to enforce the rules, practices, and standards promulgated by the Office of the Inspector General of the Government of Puerto Rico created herein, as well as the recommendations, measures, and corrective action plans that stem from the evaluations of the Office of the Inspector General of the Government of Puerto Rico.”

Section 2.- Subsection 1 is hereby eliminated; subsections 2, 3, 4, 5, and 6 are hereby renumbered as 1, 2, 3, 4, and 5; subsection 5, as renumbered herein, is hereby amended and a new subsection 6 is hereby added; subsections 8 and 11 of Section 3 of Act No. 42-2010, are hereby amended to read as follows:

“Section 3.- Definitions.

For purposes of this Act, the following terms shall have the meaning stated hereinbelow:

- (1) ...
- (2) ...
- (3) ...
- (4) ...

(5) Government Entities – Means the agencies, departments, offices, and instrumentalities of the Executive Branch, including public corporations. The University of Puerto Rico, the Government Ethics Office, the Municipal Revenues Collection Center, the Office of the Election Comptroller, the State Election Commission, and the municipalities are excluded from this definition.

(6) Nonprofit Entities - Any partnership, association, organization, corporation, foundation, institution, company, or religious or non-religious group constituted and organized under the laws of Puerto Rico that functions and operates as a nonprofit organization and receives contributions or public funds.

...

(8) Public Official - Any person who holds an office or carries out a duty or task, whether or not for compensation, permanently or temporarily, by virtue of any type of appointment, contract, or designation for the Executive Branch of the Government of Puerto Rico. This term includes persons who represent the public interest and are designated to hold office in any board, public corporation, instrumentality, and subsidiaries thereof.

...

(11) Office of the Inspector General of the Government of Puerto Rico - Entity created by virtue of this Act to strengthen the prevention, oversight, investigation, and auditing mechanisms in the government; hereinafter, referred to as ‘OIG’.

...”

Section 3.- Section 4 of Act No. 42-2010 is hereby amended to read as follows:

“Section 4.- Creation of the Office of the Inspector General of the Government of Puerto Rico

The Office of the Inspector General of the Government of Puerto Rico is hereby created, attached to the Office of the Governor, in order to coordinate and improve government efforts to promote integrity and efficiency in the use and management of public funds, to prevent fraud and corruption. The main function of the Inspector General is to prevent misappropriation or misuse of government funds, properties, or assets in order to ensure that administrative and contractual practices are consistent with the highest and most effective standards, through objective evaluation mechanisms, the determination of efficiency and effectiveness, and the establishment of adequate procedures to strengthen its duties. The Inspector General shall serve as a medium and advisor to agencies keeping direct communication with heads of agencies in order to correct any practice that departs from those acceptable in the Government.

Due to the sensitive nature of its functions, OIG shall be independent and have operational and administrative autonomy from all other government entities.

OIG shall have access to information and documents related to the budget of all government entities, as defined in this Act. OIG shall not have jurisdiction over the Legislative and the Judicial Branches. OIG shall not intervene either with the University of Puerto Rico, the Office of Government Ethics, the Municipal Revenues Collection Center, the Office of the Election Comptroller, the State Election Commission, and the municipalities.”

Section 4.- Section 5 of Act No. 42-2010 is hereby amended to read as follows:

“Section 5.- Inspector General of the Government of Puerto Rico.

OIG shall be directed by the Inspector General who shall be appointed by the Governor with the advice and consent of the Senate and the House of Representatives of Puerto Rico, for the duration of the four (4)-year term for which he is appointed.

The Governor shall determine the compensation of the Inspector General taking into consideration the compensation established for the secretaries of the executive departments. The designated official shall be a person of proven professional capability, moral probity, and be knowledgeable in the fields of public administration and government management.

The person appointed as Inspector General shall not be a candidate for elective office while working for OIG, or even after the general election to be held after ceasing to hold office in OIG. Likewise, he shall not belong to any political committee or participate in political campaigns while discharging his duties.”

Section 5.- A new Section 5A is hereby added to Act No. 42-2010 to read as follows:

“Section 5A.- Rendering of Services in Government Entities Audited by OIG; Prohibition.

No OIG official or employee, whether regular, temporary, or under contract, shall, within twelve (12) consecutive months of the date on which he ceased to render services therein, on his own or through any juridical person, partnership, association, or entity of which he is an employee, partner, or shareholder, render services in any government entity, as defined in this Act, in which such official has conducted any audit related task, be it by directly participating in, or having supervised said audit, unless a dispensation has been issued by the Office of Government Ethics.

The prohibition established above shall apply when:

(a) The person has directly audited an agency or has supervised said audit in representation of OIG; or

(b) The audit has been conducted during the year preceding the date on which the person ceased to hold office or the expiration date of any service contract with OIG.

Any person who violates the provisions of this Act shall be guilty of a felony, and upon conviction, shall be punished by imprisonment for a term of one (1) year or by a fine of two thousand dollars (\$2,000), or both penalties at the discretion of the court. If there are aggravating circumstances, the court may increase the aforementioned punishment up to a maximum of two (2) years of imprisonment or a fine of up to three thousand dollars (\$3,000). If there are mitigating circumstances, the punishment may be reduced to a minimum of six (6) months and one (1) day of imprisonment or a fine of up to one thousand dollars (\$1,000). Likewise, the court may impose the obligation to pay the Government of Puerto Rico a sum equal to three (3) times the value of any financial benefit received or obtained as a result of the violation of the provisions of this Section. Furthermore, any person convicted of a violation of this Section shall be prevented from holding any government office or performing any government job, subject to the provisions of Act No. 184-2004, as amended, known as the ‘Public Service Human Resources Administration Act.’”

Section 6.- Section 6 of Act No. 42-2010 is hereby amended to read as follows:

“Section 6.- Duties and Powers of the Office.

OIG shall have the following duties and powers:

...

3. To ensure compliance with the public policy, laws, regulations, and any other rules established through objective efficiency and effectiveness evaluations to guarantee the sound administration of public resources and to strengthen the

functions and use of adequate procedures by government entities and those nonprofit entities that are appropriated funds from the Treasury to carry out programs or render public interest services.

...

7. To use the powers conferred under this Act to evaluate the use of state and federal funds appropriated to government entities as well as to nonprofit entities that receive public fund appropriations.

...

11. To work in conjunction with the Office of Management and Budget to refer thereto studies and evaluations deemed necessary to measure, improve, and increase efficiency and effectiveness in the performance of government entities, as well as to reduce unnecessary regulations, improve customer service, and eliminate inefficient and ineffective procedures.

...

13. To evaluate and verify allegations about possible irregularities in the operations of government entities.

14. To conduct any type of evaluation related to the issues and powers contained in this Act.

15. To evaluate the reliability and integrity of the financial and operational information, and the manner of identifying, measuring, classifying, and rendering reports thereon.

16. To establish uniform procedures for the evaluations, studies, and advisories on rule compliance conducted.

17. To establish procedures to devise corrective action plans upon deficiency findings in government entities and follow-up on said plans to achieve a sound public administration.

...

19. To advise the Governor and the Legislative Assembly on matters related to the duties and powers conferred to OIG by virtue of this Act.

...

21. To require from government entities all documentation of a programmatic, fiscal, managerial, and operational nature, among others, on any types of evaluations that are being carried out.

22. To have access to all documents, electronic information systems, and/or any other material available in government entities that are related to government programs, processes, and projects being analyzed or evaluated.

...

25. To submit to the head of the government entity any finding or irregularity determined during its audits in order for the head of the government entity to take the pertinent action pursuant to the applicable laws and regulations.

26. To collect and administer any special state and federal funds to achieve the purposes of this Act.

...

29. To develop and promulgate regulations as are necessary and convenient to achieve the purposes of this Act.

30. To develop standards, policies, rules, and procedures to guide the agencies in establishing controls and in observing sound administration practices.

31. To develop and maintain in coordination with the Chief Information Officer a website and other electronic systems containing information about different issues concerning OIG available to government entities and the general public.

32. To contract managerial, administrative, professional, technical, or advisory personnel.”

Section 7.- Section 7 of Act No. 42-2010 is hereby amended to read as follows:

“Section 7.- Additional Powers and Duties of the Inspector General.

The Inspector General shall also have the following powers and duties:

1. To plan, organize, supervise, and direct the operations of OIG.
2. To draft the Annual Strategic Plan of OIG.
3. To submit the annual budget petition of OIG to the Office of Management and Budget.
4. To appoint the personnel he deems necessary to discharge the duties of OIG; as well as to hire the expert professional services he deems convenient, to collaborate in the evaluations of more complex areas.
5. To establish a professional training system aimed at increasing the effectiveness of OIG personnel through the adoption of policies, standards, and strategies that enable them to have a well-trained and skilled staff. Such system shall allow personnel to achieve planned progress at work or in their field in order to reach their professional goals.
6. To establish OIG internal organization with the advice and in conjunction with the Office of Management and Budget.
7. To establish the bylaws for the operation of OIG.
8. To issue reports on audits, consultations, advisory services, or the drafting of compliance plans conducted by OIG for a government entity or nonprofit entity that receives public funds. These reports shall contain findings and recommendations, including the corrective action plans to cure the deficiencies found, if any, and shall be submitted to the director of the concerned agency and the Governor.”

Section 8.- The second paragraph of Section 8 of Act No. 42-2010, is hereby amended to read as follows:

“Section 8.- Records.

In the course of business, no documentation or records may be inspected or reviewed by third parties. The results of the advisory services, studies, and evaluations shall be made public, unless the information included therein is either confidential or exempt from public disclosure by provision of law. OIG shall prescribe by regulations the form and manner in which these reports shall be published.

The Inspector General shall maintain the confidentiality of public records that need to be kept as such and shall be subject to the same penalties as the custodian of said documents should he violate the confidentiality statutes.”

Section 9.- The first paragraph of Section 9 of Act No. 42-2010, is hereby amended to read as follows:

“Section 9.- Reports to the Governor and the Legislative Assembly.

OIG shall prepare an Annual Report on the compliance evaluations, studies, and consultations conducted in government entities or nonprofit entities that receive contributions or public funds within three (3) months after the close of the fiscal year.

Said report shall contain findings and recommendations resulting from the audits, consultations, evaluations, and studies conducted in government entities, including corrective action plans to be implemented in view of any deficiencies found.”

Section 10.- Sections 10, 11, 12, and 17 of Act No. 42-2010, are hereby repealed.

Section 11.- Section 13 is hereby amended and renumbered as Section 10 of Act No. 42-2010, to read as follows:

“Section 10.- Responsibility of Government Entities.

Every Internal Auditor of government entities shall henceforth be under the supervision and authority of OIG, except for internal auditors attached to public corporations. However, their compensation shall be defrayed from the budget of the government entity to which they belong.”

Section 12.- Section 14 is hereby amended and renumbered as Section 11 of Act No. 42-2010, to read as follows:

“Section 11.- Transfers.

The personnel, budget, documents, records, materials, and equipment of the Auditing Area of the Office of Management and Budget are hereby transferred to OIG. Likewise, the personnel attached to the different internal auditing units of government entities, except for personnel from public corporations, are also transferred to OIG. Furthermore, any equipment, records, assets, contracts, properties, and files as well as any balance of funds allocated to the units, divisions, or other components of government entities subject to internal audit, including expenses for per diems and mileage incurred by the auditor annually, shall also be transferred.

Transferred personnel shall retain all the rights, privileges, duties, and status with respect to the existing pension, retirement, or savings and loan fund systems to which they were affiliated at the time of the approval of this Act, insofar as they remain in the same position they held at the time of the transfer.

Insofar as the Inspector General does not relocate the foregoing personnel, said personnel shall remain in the government entities to which they have been appointed.”

Section 13.- Section 15 is hereby renumbered as Section 12 of Act No. 42-2010.

Section 14.- Section 16 is hereby amended and renumbered as Section 13 of Act No. 42-2010, to read as follows:

“Section 13.- Budget.

During Fiscal Year 2011-2012, OIG shall operate with the budget of the Operational Auditing Program of the Office of Management and Budget. For subsequent years, OIG budget shall be included in the General Operating Budget of the Government of Puerto Rico. To such effect, the Inspector General shall annually submit to the Office of Management and Budget the budget request for operating expenses.”

Section 15.- A new Section 14 is hereby added to Act No. 42-2010, to read as follows:

“Section 14.- Exemptions and Exclusions.

OIG shall be exempt from the payment of any taxes, licenses, duties, tariffs, costs, or levies imposed by the Government of Puerto Rico or its municipalities.

OIG shall be excluded from the application of Act No. 170 of August 12, 1988, as amended, known as the ‘Uniform Administrative Procedures Act’; 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 ‘Management and Budget Office Organic Act’; Act No. 45-1998, as amended, known as the ‘Puerto Rico Public Service Labor Relations Act’; Act No. 197-2002, as amended, known as the ‘Transitional Process of the Government Act’; Act No. 5 of December 8, 1955, as amended, known as the ‘Public Documents Administration Act’; Act No. 209-2003, as amended, known as the ‘Puerto Rico Institute of Statistics Act’; Act No. 265-2003, known as the ‘Act for Regulating Certain

Government Financing and Personal Property Leasing Contracts’; and Act No. 148-2006, as amended, known as the ‘Electronic Transactions Act.’”

Section 16.- Sections 18 and 19 are hereby renumbered as new Sections 15 and 16, respectively, of Act No. 42-2010.

Section 17.- Section 10.06 of Act No. 149-1999, as amended, known as the ‘Puerto Rico Department of Education Organic Act,’ is hereby repealed, and the personnel, equipment, property, records, and any balance in the ‘Auditing Committee of the Department of Education’ fund are hereby transferred to OIG.

Section 18.- Sections 63 and 64 of Act No. 205-2004, as amended, known as the “Department of Justice Organic Act,” are hereby repealed and the personnel, equipment, property, records, and any balance in the funds of the ‘Internal Audits Office’ fund are hereby transferred to OIG.

Section 19.- Severability.

If any clause, paragraph, article, chapter, or part of this Act were held to be unconstitutional by a Court with jurisdiction, such holding shall not affect any other parts of this Act. The effect of such holding shall be limited to the clause, paragraph, article, chapter, or part thus held to be unconstitutional.

Section 20.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 144-2012 (S. B. 2181) (Reconsidered) (Conference)** of the **7th Regular Session** of the **16th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 2, 3, 4, and 5; add a new Section 5A; amend Sections 6, 7, 8, and 9; repeal Sections 10, 11, 12, and 17; amend and renumber Sections 13 and 14 as new Sections 10 and 11, respectively; renumber Section 15 as the new Section 12; amend and renumber Section 16 as the new Section 13; add a new Section 14; amend and renumber Sections 18 and 19 as new Sections 15 and 16, respectively, of Act No. 42-2010, known as the “Inspector General of the Government of Puerto Rico Act,” in order to render ineffective the creation of the Governor’s Committee on Government Integrity and Efficiency, define terms, specify and clarify the duties and powers of the Office of the Inspector General and of the Governor’s Committee on Government Integrity and Efficiency, designate the head of the Office as the “Inspector General” in lieu of the Director of the Office of the Inspector General; [...]

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

In San Juan, Puerto Rico, on this 26th day of February, 2018.

Orlando Pagán-Ramírez
Director