

(H. B. 2878)

(No. 153-2010)

(Approved October 19, 2010)

AN ACT

To amend Section 19 of Act No. 103 of May 25, 2006, known as the “Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006,” in order to clarify the scope of the definition of “public interest information” provided in said Section, so as to guarantee effective implementation and compliance therewith by the Executive Branch and its agencies, the Legislative Branch, and the Judicial Branch of the Government of Puerto Rico.

STATEMENT OF MOTIVES

In order to prohibit Government spending in areas not directly related to its constitutional functions and responsibilities and to control the unchecked spending of the Government of Puerto Rico during the past two administrations, the Legislative Assembly approved Act No. 103 of May 25, 2006, known as the “Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006.” Among other purposes, Act No. 103 imposed limits on the Executive, Legislative, and Judicial Branches regarding media space and time purchasing expenses with the purpose of making its programs, projects, achievements, performance, projections, or plans public. The Act, however, exempts any announcements used to diffuse urgent, emergency, health-related, or public interest information from said prohibition. This legislative measure amends Act No. 103 in order to clarify the definition of “public interest information” included therein, so as to ensure faithful compliance with all its provisions.

On the subject of government announcements, our Supreme Court, through the expression of then Chief Justice, the Hon. José Andreu-García, recognized that Government statements of an educational and informational nature are indispensable for the People to be able to pass judgment on such Government's performance and demand redress for grievances. In said opinion, then Chief Justice Andreu-García stated that: "our case law reflects the trend followed in favor of disseminating public information, to the point of providing the freedom of speech enshrined in our Bill of Rights with an ample and robust dimension." [Translation supplied] *P.P.D. v. Gobernador I*, 139 D.P.R. 643, 680 (1995). The present Chief Justice of our Highest Forum, the Hon. Federico Hernández-Denton, made very similar statements when he said that: "in evaluating the controversies present in the cases at bar, we base ourselves on the premise that the State has the power to communicate with citizens to educate and inform them about government programs. We are also aware of the fact that all government administrations regularly develop campaigns in the communications media to promote tourism, attract industrial investments, and announce some of the most important services and products of the State. Likewise, we recognize that citizens are entitled to obtain information about the work of the government so as to judge its performance and to demand redress or repair for grievances." [Translation supplied] Concurring Opinion, *P.P.D. v. Gobernador I*, *supra*, p. 754.

Notwithstanding the foregoing, our case law has been consistent in prohibiting the use of the Government's power and duty to inform the People with the objective of furthering political-partisan agendas. According to our Highest Forum, to the extent that a political-partisan campaign is defrayed with public funds, the party in office gains an advantage that infringes upon the constitutional axiom of political party equality in terms of financial equality. [Translation supplied] *P.P.D. v. Gobernador I*, *supra*, p. 671. The Constitution

requires that all government expenses pursue a public end or interest in order to prevent the party in office from using the power to inform the People through announcements and notices as a pretext to further particular or political-partisan interests. To that effect, the Supreme Court resolved, through the expression of the Chief Justice, the Hon. Hernández-Denton, that public interest information is any information that: (a) inures to the benefit of the health, safety, morals, and general welfare of all citizens; (b) is destined to a public or semi-public activity; (c) promotes the interests and objectives of the government entity in a manner consistent with its duties and functions or the established public policy; (d) promotes programs, services, opportunities, and rights, or furthers social, civic, cultural, economic, or sports-related causes; or (e) promotes the establishment, modification, or change of a government policy. See, *Acevedo Vilá v. Comisión Estatal de Elecciones*, 172 D.P.R. 971 (2007); *P.P.D. v. Gobernador I*, *supra*, p. 691.

Although Act No. 103 exempts from the prohibition of broadcasting announcements that disclose programs, projects, achievements, performance, projections, or plans, such announcements used to provide information of public interest, it fails to define such concept. Therefore, for clarification purposes, this legislation amends Section 19 of said Act in order to expressly incorporate the criteria set forth by the Supreme Court of Puerto Rico to determine whether the information broadcast by the Government serves public interest. We thus seek to guarantee compliance with Act No. 103 and prevent public funds from being used to further political-partisan or individual interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.—Section 19 of Act No. 103 of May 25, 2006, known as the “Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006,” is hereby amended to read as follows:

“Section 19.—Government Public Broadcasting Expenses.—

It is hereby prohibited that the Executive Branch and its agencies incur expenses for the purchase of time and space in the public broadcasting media with the purpose of disclosing their programs, projects, achievements, performance, projections, or plans. Those notices and announcements expressly required and/or authorized by law are an exception. It is prohibited for the Legislative and Judicial Branches to incur expenses for the purchase of time and space in the public broadcasting media with the purpose of disclosing their programs, projects, achievements, performance, projections, or plans. Excepted from the above are the costs related to the establishment and maintenance of webpages usually established by the agencies, courts, and legislatures with information on the composition and operation of their structures and information on services, cases, or legislation, as it may apply, as well as any other means of providing information about legislative processes and activities and public interest information. Exception is also made of the purchase of time and space for the disclosure of legislative calendars that do not identify the name of a particular elected official, as well as the publication by obituaries or the payment of additional segments during the appearance of the Governor before the Legislative Bodies.

Likewise, exception is made of those announcements that are used to disclose urgent, emergency, health-related, or public interest information. For purposes of this Section, public interest information shall be that which:

(a) Inures to the benefit of the health, safety, morals, and the general well-being of all citizens;

- (b) Is destined to a public or semi-public activity;
- (c) Promotes the interests and objectives of the government entity in a manner consistent with its duties and functions or the established public policy;
- (d) Promotes programs, services, opportunities, and rights, or furthers social, civic, cultural, economic, or sports-related causes; or
- (e) Promotes the establishment, modification, or change of a government policy.

Under no circumstance shall public funds be used with the sole purpose of furthering individual or political-partisan interests.”

Section 2.—Effectiveness.—

The amendment incorporated by virtue of this Act in Section 19 of Act No. 103 of May 25, 2006, known as the “Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006,” serves for clarification purposes; therefore, this amendment shall be retroactive to the date of effectiveness of Act No. 103, *supra*.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 153-2010 (H. B. 2878)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend Section 19 of Act No. 103 of May 25, 2006, known as the “Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006,” in order to clarify the scope of the definition of “public interest information” provided in said Section, so as to guarantee effective implementation and compliance therewith by the Executive Branch and its agencies, the Legislative Branch, and the Judicial Branch of the Government of Puerto Rico.

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

In San Juan, Puerto Rico, on the 30th day of January, 2013.

Juan Luis Martínez Martínez
Acting Director