

(Senate Substitute for
S. B. 1067)

(No. 158-2015)

(Approved September 24, 2015)

AN ACT

To enact the “Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office Act”; create the Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office, which shall have financial, structural, and leadership independence, as well as autonomy to carry out its oversight duties and establish its organizational structure; create the office of Advocate for Persons with Disabilities, and establish the duties, powers, authorities, and responsibilities thereof; repeal Act No. 78-2013, known as the “Commonwealth of Puerto Rico Ombudsman for Persons with Disabilities Act”; and for other related purposes.

STATEMENT OF MOTIVES

Section 1 of Article II of the Constitution of the Commonwealth of Puerto establishes that “the dignity of the human being is inviolable” and that “all men are equal before the law.” In acknowledging the equality of all human beings, the Constitution imposes on the Government of the Commonwealth of Puerto Rico the non-delegable responsibility of protecting, promoting, defending, developing, and creating the specific circumstances that seek the achievement of an equal quality of life for all Puerto Rican men and women.

According to data gathered in the 2010 Census, a significant number of the population of Puerto Rico has one or more disabilities. Approximately 900,000 individuals older than five (5) years of age suffer from some kind of disability. This means that more than one-fourth (1/4) of the general population needs special attention to achieve full quality of life and to fully develop their capabilities.

Act No. 238-2004, better known as the “Bill of Rights of Persons with Disabilities,” defines “persons with disabilities” as any person who has a physical, mental, or sensory disability that substantially limits one or more of the essential activities in his/her life; has a medical record or history of physical, mental, or sensory disability, or is considered as having a physical, mental, or sensory disability.

Over the last few decades significant initiatives have been undertaken to address the particular needs of persons with disabilities, guarantee their equality, and eliminate barriers that keep them from attaining a basic education, productive jobs, and a full life. Among these are the “Office of the Disabled Persons Investigating Official,” Act No. 2 of September 27, 1985, as amended; the “Equal Employment Opportunity for Persons with Disabilities Act,” Act No. 81-1996, as amended; and the “Integral Educational Services for Persons with Disabilities Act,” Act No. 51-1996, as amended.

The Office of the Disabled Persons Investigating Official was created by virtue of Act No. 2 of September 27, 1985, as amended, for the purpose of serving as a coordinating instrument to address the needs and solve the issues of persons with disabilities in the fields of education, health, employment, free entrepreneurial or business initiative, civil and political rights, transportation, housing, and recreational and cultural activities. Likewise, it sought to establish the necessary rules and assurances to encourage a sense of belonging to a society that does not impose physical or attitudinal barriers, thus ensuring the attainment of the goals of persons with disabilities.

The Office of the Ombudsman for Persons with Disabilities (OOPD) received federal funding amounting to nearly \$2,017,000 in Fiscal Year 2014-2015. It is quite alarming that the Administration on Intellectual and Developmental Disabilities (AIDD), the agency responsible for allotting federal

funds to OOPD, has determined that the latter has failed to prove to have the capacity to properly administer said funds. Thus, AIDD has placed OOPD on high risk status and, if the measures set forth in this Act are not implemented, federal funding will be cancelled. As recently as February 2, 2015, the Administrator of the federal program notified the current Ombudsman that they intend to terminate the PADD award if the following findings are not corrected:

- OOPD has requested reimbursements amounting to less than ten percent (10%) of the federal funds available and has failed to provide the necessary supporting documents for the expenses thus claimed.
- AIDD's monitoring on OOPD federal programs in 2012 revealed that OOPD's staff was unaware of their authority to access and conduct on-site monitoring visits of any individual with developmental disabilities where services are provided.
- OOPD has limited understanding of the differences between developmental disabilities and other types of disabilities.
- OOPD has over 50 administrative staff whose roles are not clearly defined.
- OOPD has failed to demonstrate to AIDD that it has sufficient operations, independence, staff, and expertise to exercise the authorities necessary and required for the proper administration of funds awarded to protect and advocate for the legal rights of persons with disabilities. Furthermore, OOPD has failed to demonstrate that it is pursuing the legal and administrative remedies, as well as other appropriate remedies, such as individual legal advocacy, to ensure the protection of the rights of persons with disabilities.

At present, the U. S. Department of Health and Human Services is holding an Administrative Hearing to terminate OOPD's award. Said Department agreed to postpone such Hearing until July 6, 2015, awaiting for the approval of this legislation.

Furthermore, during the hearings held after the introduction of this measure, the lack of effective communication between OOPD and AIDD was evidenced. Moreover, it is worth noting that the Secretary of Justice of the Commonwealth of Puerto Rico appeared at said hearing where he stressed that: the measures provided in this Act were critical to ensure OOPD's compliance with its federal responsibilities; that were consulted with AIDD; and that, in a letter received on February 10, 2015 from the Regional Administrator of AIDD's Regional Support Center, she expressed that this legislation provides the best solution to restore OOPD's capacity to fulfill its commitments with the federal agency. As stated before, this measure is critical to restore OOPD's credibility among federal agencies, to safeguard the federal funding that benefits persons with disabilities in the Island, and promote the best services that this population deserves.

Regarding OOPD's performance, AIDD has emphasized on the need to protect OOPD's structural, financial, and leadership independence to adequately provide services to persons with disabilities. We recognize that such independence should arise from the Advocacy Office's internal organization. For such reason, OOPD shall have a Director's Council composed of nine (9) members, one third (1/3) of which shall be appointed by the Governor and two thirds (2/3) shall be appointed by the NGOs that serve the population in question. Said Council shall be the governing body responsible for ensuring compliance with the public policy. The Council shall also be responsible for selecting an Advocate—who shall be entrusted with the implementation of the public policy—and for ensuring that said Advocate fulfills his/her duties.

To conform this legislation to other Federal legal requirements, the Persons with Disabilities Protection and Advocacy Division is hereby created attached to the Persons with Disabilities Advocacy Office, attached to the Advocacy Office [sic]. The creation of this Division responds to the need of ensuring that the duty to provide legal representation to the elderly [sic] is separated from the quasi-judicial duties that the Advocacy Office would have.

This Act is hereby enacted by virtue of the power vested on the Legislative Assembly under Section 16 of Article III of the Constitution of the Commonwealth of Puerto Rico, which states that: “the Legislative Assembly shall have the power to create, consolidate, or reorganize executive departments and to define their functions.” In accordance with this constitutional provision, this Legislative Assembly has the power to restructure the government as appropriate to guarantee the adequate operations of the Government and the rendering of essential services to the population in the best manner possible.

It is worth mentioning that the United States Court of Appeals for the First Circuit held in Díaz-Carrasquillo v. García-Padilla, No. 13-2277 of April 16, 2014 (available on www.ca1.uscourts.gov) that, “In [...] or competent government, there must exist a general power to enact and to repeal laws; and to create and change or discontinue, the agents designated for the execution of those laws.” See, Butler v. Pennsylvania, 51 U.S. 402, 416-17 (1850). In doing so, the Federal Court validated the legislative action of approving Act No. 75-2013, which, as mentioned above, repealed Reorganization Plan No. 1-2011. Likewise, said Court stated that the Constitution embodies no Federal constraint on the ability of the Legislative Assembly to restructure its workforce. Therefore, the Federal Court reasserted the power of the Legislative Assembly of Puerto Rico to approve legislative measures that at pleasure create, abolish, or merge government entities.

The United States District Court for the District of Puerto Rico also certified to the Supreme Court of Puerto Rico the question regarding the Governor's power to remove a public official with quasi-judicial and quasi-executive functions. See, Iván Díaz-Carrasquillo v. Hon Alejandro García-Padilla, 2014 T.S.P.R. 75. The Opinion of the Court reasserted that, when the Legislative Assembly abolishes a public office and creates another with a different name, preserving the duties and obligations of the former, the official who held such office does not lose property interest on said office. *Id.*, on page 2. It also held that to apply the legislative immunity provided in Section 16 of Article II of the Constitution, *supra*,

[...] we must consider the nature of the dispute, because only that which is intended for the establishment of public policy and is consistent with the legislative process is thus protected. We cannot grant the same protection to any other dispute of administrative nature that has the purpose of affecting a specific individual. *Id.*, on page 29.

[Our translation]

The Court further concluded that,

[...] a public official cannot claim property interest on an office he/she held when said office has been abolished by the Legislative Assembly. This applies insofar as such action is not a subterfuge to remove an employee from office, which is the case when immediately after the office is abolished, another office is created with the same duties and obligations of the former, but with a different name. *Id.*, on page 32.

This Act introduces a government structure to satisfy the needs of persons with disabilities, thus contributing to improve the quality of life of and the provision of services to such population. This measure also establishes a public

policy focused on ensuring accountability, broadening independence and oversight, and protecting the rights of persons with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

CHAPTER I.- TITLE AND DEFINITIONS.-

Section 1.01.- Short Title.-

This Act shall be known as the “Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office Act.”

Section 1.02.- Definitions.-

The following terms shall have the meaning stated below:

A. “Agency” - means any department, board, commission, division, office, bureau, administration, public corporation or a subsidiary thereof, municipality or instrumentality of the Commonwealth of Puerto Rico, including any officials, employees, or members thereof when discharging or appearing to be discharging his/her official duties.

B. “Advocate” - means the Advocate for Persons with Disabilities, a position created by virtue of this Act.

C. “Advocacy Office” - means the Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office.

D. “Private Entity or Interests” - means any association, organization, institute, or natural or juridical person that renders, offers, or provides any service or activity or that administers or develops a program that satisfies the needs of the population served by the Advocacy Office. In addition, it shall include any association, organization, institution, or natural or juridical person where a member of the population served by the Advocacy Office works.

E. “Commonwealth” - means the Commonwealth of Puerto Rico.

F. “*Bona Fide* Organizations” - means any nongovernmental entity engaged in, or whose main purpose is, advocating for or protecting the rights of

persons with disabilities in the Commonwealth of Puerto Rico. *Bona fide* organizations shall be deemed to be those nongovernmental entities that render services aimed at preserving and promoting the social welfare of the population served by the Advocacy Office. No political organization shall be deemed to be a *bona fide* organization for purposes of this Act. Organizations must provide documentary evidence attesting to the work performed in favor of the rights of persons with disabilities. Such evidence shall be examined by the Director's Council before considering any candidate or recommendation of an organization.

G. "Person with Disability" - means any person who has a physical, cognitive, mental, or sensory disability that substantially limits one or more of the essential activities in his/her life; or has a medical record or history of physical, mental, or sensory disability; or is considered to have a physical, mental, or sensory disability in accordance with Act No. 238-2004, known as the "Bill of Rights of Persons with Disabilities Act." Furthermore, it shall mean any person who has a physical, mental, sensory, or any other disability included in Public Law 106-402, as amended, known as the "Developmental Disabilities Assistance and Bill of Rights of 2000," Public Law 93-112, as amended, known as the "Rehabilitation Act of 1973," or any other federal or state regulation created in the future through federal or state law.

H. "Complainant" - means any natural or juridical person, including government agencies, that files a complaint with the Advocacy Office under the belief that there has been a violation or infringement of a right recognized under the laws and regulations administered by the Advocacy Office. This includes, but is not limited to, any person whose rights, as recognized under the Constitution of the United States of America, the Constitution of the Commonwealth of Puerto Rico, or the laws and regulations administered by the Advocacy Office, have been violated; including, but not limited to, persons with disabilities, parents, legal

or actual custodians, tutors, guardians, spouses, children, relatives, legal representatives, and conservators, among other relatives and persons responsible for assisting and guaranteeing the interests of persons whose rights under the Constitution of the United States of America, the Constitution of the Commonwealth of Puerto Rico, or the laws and regulations administered by the Advocacy Office, have been violated.

CHAPTER II.- PERSONS WITH DISABILITIES ADVOCACY OFFICE.-

Section 2.01.- Persons with Disabilities Advocacy Office.-

The Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office is hereby created as a juridical entity independent and separate from any other public agency or entity. Said Advocacy Office shall oversee and promote advocacy for the rights of persons with disabilities. Through educational and oversight mechanisms, this Office shall ensure that discrimination based on physical or mental disability is eradicated; take actions against any abuse, negligence, or any other form of rights violation; and guarantee that suitable practices and conditions are established and implemented in any institution, hospital, or program serving persons with disabilities. It shall also oversee compliance with Act No. 238-2004, as amended, known as the “Bill of Rights of Persons with Disabilities Act.”

The Advocacy Office shall be directed by the Advocate for Persons with Disabilities, who shall be appointed and have the powers and responsibilities established further below. Moreover, the Advocacy Office shall have a Director’s Council for the Protection of Persons with Disabilities, which shall assist the Advocate in carrying out his/her duties; oversee compliance with the public policy set forth in this Act, the Bill of Rights of Persons with Disabilities, and the implementation of strategic plans geared toward safeguarding the rights of persons with disabilities.

Likewise, the Advocacy Office shall have a Persons with Disabilities Protection and Advocacy Division under the direction of an Executive Director who shall have the authorities provided further below.

The Advocacy Office shall be exempt from the payment of taxes, permit fees, duties, tariffs, charges, or levies established by the Government of the Commonwealth of Puerto Rico or the municipalities thereof on the properties of which the entity is an owner, lessor, or lessee, and on the income derived from any activity in which the Advocacy Office engages, including but not limited to, municipal license fees imposed in accordance with Act No. 113 of July 10, 1974, as amended, known as the "Municipal License Tax Act," municipal construction excise taxes imposed in accordance with Act No. 81-1991, as amended, known as the "Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991." Likewise, the Advocacy Office shall be exempt from the payment of any charges, internal revenue stamps and vouchers, fees, or duties required by law in judicial proceedings; as well as from the payment of any fees on account of certifications from any office or instrumentality of the Government of the Commonwealth of Puerto Rico; as well as for the execution of public documents and the filing and recording thereof in any public register.

Section 2.02.- Director's Council for the Protection of Persons with Disabilities.-

The Director's Council for the Protection of Persons with Disabilities is hereby created which shall be responsible for, in conjunction with the Advocate, establishing bylaws and strategic plans relating to the advocacy for the rights of persons with disabilities. Likewise, the Council shall oversee the governance, independence, transparency, and accountability of the Advocacy Office. Moreover, it shall appoint an Advocate and oversee his/her performance and compliance with the public policy on the rights of persons with disabilities, as provided in this Act.

The Director's Council shall be composed of nine (9) members who shall be appointed as follows:

A. Governor's Appointments.-

1. The Governor shall, without prejudice to his/her constitutional prerogatives, request and receive recommendations from the government sector and from nongovernmental groups concerned with rights of persons with disabilities, prior to making any appointment to the Director's Council. Subsequently, the Governor shall appoint, with the advice and consent of the Senate, three (3) persons to the Director's Council, to wit:

a. One (1) person with developmental disabilities or his/her mother, father, relative, guardian, tutor, conservator, or legal representative. This person, in turn, shall be a member of the State Council on Developmental Disabilities.

b. One (1) person with experience working with persons with developmental disabilities. This person shall, in turn, represent the Institute on Developmental Disabilities of the Medical Sciences Campus of the University of Puerto Rico, created by virtue of Public Law 101-496, as amended, known as the "Developmental Disabilities and Bill of Rights Act of 2000."

c. One (1) person with a physical disability, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative.

2. For the first designations, one (1) appointment shall be made for a term of three (3) years, one (1) appointment shall be made for a term of two (2) years, and the remaining appointment shall be made for a term of one (1) year, as established by the Governor. Every subsequent appointment shall be made for terms of three (3) years. All appointments may be renewed for one (1) additional term. The members of the Director's Council shall hold office until their terms expire and their successors are appointed.

B. Nongovernmental Organizations' Appointments.-

1. The Director's Council shall issue a call for nominations so that nongovernmental organizations concerned with the protection of the rights of persons with disabilities nominate candidates for the following six (6) positions within the Director's Council:

a. One (1) person with developmental disabilities or his/her mother, father, relative, tutor, guardian, conservator, or legal representative.

b. One (1) person with any physical disability, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative.

c. One (1) person with any cognitive disability, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative.

d. One (1) person with any sensory disability, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative.

e. One (1) person with any neurological illness, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative. Any person with a neurological illness elected to the Director's Council shall be able to discharge his/her duties and responsibilities in said Council, regardless of his/her illness.

f. One (1) person with a mental illness, or his/her mother, father, relative, guardian, tutor, conservator, or legal representative. Any person with a mental illness elected to the Director's Council shall be able to discharge his/her duties and responsibilities in said Council, regardless of his/her illness.

The call for nominations shall be issued within at least sixty (60) days before the term of each of the six (6) positions above expires. The call for nominations shall be posted on the webpage of the Advocacy Office and published in one (1) newspaper of general circulation. Every nongovernmental organization may nominate up to three (3) candidates for each of the six (6) positions mentioned

in this subsection. When nominating candidates, organizations shall provide evidence attesting to the fact that their nominees meet all the requirements of this Section.

2. Nongovernmental organizations that wish to nominate candidates for membership in the Director's Council shall provide evidence attesting that they are *bona fide* organizations, as provided in this Act, with at least three (3) years of recognized and proven experience concerning the protection of the rights of persons with disabilities. Alternatively, nongovernmental organizations may provide evidence attesting that they have been incorporated in the Department of State for at least three (3) years and that the main purpose of the organization is the protection of the rights of persons with disabilities.

3. Nongovernmental organizations shall submit their nominations to the Director's Council at least forty (40) days before the expiration of the term of office for which the nominations are made.

4. Within a term that shall not exceed five (5) days after the forty (40)-day term provided above has elapsed, the Director's Council shall publish the names of the nominees of nongovernmental organizations on the webpage of the Advocacy Office; any person who wishes to file a complaint or objection regarding the nominees shall have a term that shall not exceed ten (10) days to do so.

5. Once the term to file complaints or objections elapses, the Director's Council shall select the persons from among the nominees, within a term that shall not exceed fifteen (15) days and shall refer such appointments for advice and consent of the Senate of Puerto Rico. If such appointments are confirmed, said persons shall hold the positions set aside for nongovernmental organizations within said Council.

6. Each of the six (6) members representing nongovernmental organizations shall be elected by a simple majority vote of the membership of the Director's Council. Any person whose term of office has expired shall not participate in the process to select the person who shall fill the vacancy left after his/her term has expired.

7. After the first staggered appointments expire, in accordance with the provisions of Chapter IV of this Act, subsequent appointments to the Director's Council shall be made for terms of three (3) years. Each member may be nominated and appointed for one (1) additional term. Members of the Director's Council shall hold office until their terms expire and their successors are appointed.

C. The eligibility criteria to be selected as a member of the Director's Council are the following:

1. Meet all the requirements established in this Section. Provided that, when work experience is requested, it shall mean having worked for not less than two (2) years in the promotion and protection of the rights of persons with disabilities.

2. Show commitment to the advocacy for the rights of persons with disabilities and its different populations.

3. Show availability, time, and commitment to work as a team and to discharge the duties delegated as a member of the Director's Council.

4. Persons with disabilities appointed to the Director's Council shall be persons who receive, are eligible to receive or have received services through the Persons with Disabilities Protection and Advocacy Division.

Membership of Director's Council shall be geographically representative of all regions of Puerto Rico, including Vieques and Culebra.

D. Once five (5) out of the nine (9) members are appointed, the Director's Council shall be deemed to be constituted. Five (5) members of the Director's Council shall constitute a quorum to hold meetings, and agreements shall be reached by a majority of the members present.

E. In case of a vacancy, the new person designated by the Governor or the Director's Council, as the case may be, shall discharge the duties of the office for the remainder of the unexpired term. Said person shall meet the requirements established in subparagraphs (a) and (b) of this Section.

F. The members of the Director's Council shall not receive compensation for their services, but shall be entitled to request reimbursement for transportation and other expenses as provided by regulations to be approved for such purposes by the Council; such regulations shall be consistent with the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act."

G. The Director's Council shall establish a policy that defines potential conflicts of interests and provides procedures to manage apparent, actual, and potential conflicts.

H. The Director's Council shall have exclusive jurisdiction to address the removal of any of the members of the Council, except for the three (3) members appointed by the Governor. The removal process shall be carried out in accordance with this Act.

I. No nongovernmental organization that is part of the membership of the Director's Council shall receive additional federal and state funds administered by the Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office for the term during which nominated candidates hold office in the Director's Council.

Section 2.03.- Organization of the Director's Council.-

A. The Director's Council shall create committees as appropriate to carry out its tasks. The following shall be mandatory committees:

1. The Committee on Federal and State Laws; and
2. The Committee on Governance and Accountability.

B. If the provisions of Section 2.04 so warrant, an Adjudication Committee shall be constituted to be composed of one (1) retired superior judge who shall be the chair of the Committee, one (1) member of the Director's Council, and one (1) member elected by the Director's Council from among the persons recommended by nongovernmental groups concerned with rights of persons with disabilities.

C. An Executive Committee shall be constituted to be composed of one Chairperson, one Vice-Chairperson, and one Secretary. Members of the Executive Committee shall be elected by a simple majority of the Director's Council members. Each of the persons elected shall hold office in the Director's Council until their terms expire or, until an absolute majority of the remaining members of the Director's Council determines that they shall be removed from office in the Executive Committee.

D. The Director's Committee shall meet as many times as needed, but not less than once (1) every three (3) months. A simple majority of members of the Director's Committee may call a meeting. Meeting hours shall be agreed upon by the members of the Director's Council.

E. The Director's Council may delegate to the Advocate such actions or duties germane to the Director's Council when it deems appropriate.

F. The Advocate shall provide the Director's Council with the facilities, equipment, supplies, and human resources needed to discharge the duties imposed by this Act.

Section 2.04.- Removal of Director's Council Members.-

The Governor may, on his/her own motion or by filing a complaint with the Director's Council through the Advocate, and upon previous notice and hearing, remove the three (3) members of the Director's Council who were appointed by the Governor, when there is just cause for such removal.

The remaining members of the Director's Council may be removed by filing a complaint with the Advocate establishing just cause therefor. The Advocate shall refer the complaint to the consideration of the Adjudicatory Committee.

Any of the following grounds shall be considered just cause for removal of a Director's Council member:

A. Failing to comply with the public policy set forth in this Act and the Bill of Rights of Persons with Disabilities.

B. Engaging in actions or omissions that adversely affect the populations or sectors of persons with disabilities that are a priority for the work of the Advocacy Office.

C. Failing to comply with accountability standards.

D. Engaging in political-partisan activities while discharging his/her duties as part of the Director's Council.

E. Being found guilty of a misdemeanor or a felony.

F. Failing to attend more than three (3) consecutive meetings unjustifiably.

G. Failing to comply with any law or public policy relating to the rights of persons with disabilities.

H. Having a mental or physical disability that prevents him/her from fully discharging the duties of the office.

I. Being negligent while carrying out or discharging his/her duties.

Section 2.05.- Duties and Responsibilities of the Director's Council.-

The Director's Council shall have the following duties and responsibilities:

A. To ensure that needs assessments are conducted regarding the rights of persons with disabilities to identify and address discrepancies in access and services.

B. To guarantee that methods are established for the participation and inclusion of persons with disabilities in order to gather information about their needs and priorities.

C. To establish, in conjunction with the Advocate, the priority with which the needs identified shall be addressed and the actions to satisfy such needs shall be taken.

D. To devise an integrated strategic plan every five (5) years based on the rights of persons with disabilities relating to health, policy, housing, educational, labor, economic, and cultural issues, among others, as well as discrimination, oppression, or marginalization of persons with disabilities.

E. To evaluate and make recommendations, through the Advocate, regarding public policy on education and skill-building, employment, self-management, economic development, housing, and health, among others, to ensure the participation of persons with disabilities in every aspect of life, whether it is social, political, economic, or cultural.

F. To guarantee that studies are conducted and indicators are identified regarding persons with disabilities and ensure their incorporation in the social and economic development plans of the Commonwealth of Puerto Rico.

G. To propose to the Governor and the Legislative Assembly, through the Advocate, legal, regulatory, and administrative initiatives regarding matters within its jurisdiction.

H. To evaluate, in terms of participation and inclusion, the efficiency and effectiveness of bylaws and administrative procedures regarding the diligence with which the needs of persons with disabilities, in all of its variations, are satisfied and the efficient allocation of funds.

I. To appoint the Advocate, in accordance with the provisions of this Act, evaluate his/her performance annually and report any findings. Likewise, it may remove the Advocate from office in accordance with the grounds and procedure established therefor in this Act.

J. To appoint the Executive Director of the Persons with Disabilities Protection and Advocacy Division in accordance with the provisions of this Act and evaluate his/her performance annually.

K. To hold an annual national accountability summit, whether simultaneously or regionally, whereby the public is able to receive an annual report of the status of the rights of persons with disabilities and has the opportunity to voice their points of view regarding the status, needs, and issues of the served population. To such effects, the Director's Council shall publish the corresponding public notice in at least two (2) newspapers of general circulation not less than ten (10) days before the holding thereof, as well as in the media, as necessary and reasonable. Furthermore, it shall notify in writing any group, organization or coalition concerned with persons with disabilities, not later than thirty (30) days before the holding of the summit to guarantee the access and participation of persons with disabilities and all the different related organizations, including from other geographic locations. The Council may enter into collaboration agreements

with Municipalities in order to disseminate the information about the summit and achieve maximum attendance. The Director's Council shall keep a record of attendees and the recommendations they made.

L. To approve the annual plans of the Director's Council committees.

Section 2.06.- Advocate for Persons with Disabilities.-

There is hereby created the position of the Advocate for Persons with Disabilities, who shall direct the Advocacy Office, supervise its operations, and approve the regulations that shall include the criteria and rules that shall govern the functions thereof. The Director's Council shall designate an Advocate by a simple majority vote of its members. The person designated as such must be a person of recognized professional capability and independent judgment, with at least five (5) years of work experience and commitment to the protection of the rights of persons with disabilities and the fight against the eradication of every manifestation of oppression and marginalization, and who is aware of the need to continuously analyze the situation of persons with disabilities in Puerto Rico. The Director's Council shall request and receive recommendations from groups concerned with the rights and welfare of persons with disabilities regarding potential candidates to hold the office of the Advocate.

The Advocate shall hold office for six (6) years until his/her successor is appointed and takes office. In the event of a vacancy, the Director's Council shall designate a substitute, who shall hold such office for the remainder of the unexpired term. The Advocate may be nominated for an additional six (6)-year term. The Advocate shall earn a salary that shall not exceed seventy thousand dollars (\$70,000).

Section 2.07.- Removal of the Advocate.-

The Advocate may be removed on the following grounds:

A. For being found guilty of a misdemeanor or a felony.

B. For failing to comply with the public policy set forth in this Act and the Bill of Rights of Persons with Disabilities.

C. For failing to comply with the duties and tasks delegated to him/her by the Director's Council to ensure compliance with this Act and the public policy set forth herein.

D. For engaging in actions or omissions that adversely affect the populations or sectors of persons with disabilities that are a priority for the work of the Advocacy Office.

E. For failing to comply with accountability standards.

F. For engaging in political-partisan activities while discharging his/her duties as Advocate.

G. For being absent for more than fifteen (15) consecutive working days unjustifiably.

H. For failing to comply with any law or public policy relating to the rights of persons with disabilities.

I. For having a mental or physical disability that prevents him/her from fully discharging the duties of the office.

J. For being negligent while carrying out or discharging his/her duties.

K. For failing to meet the reporting requirements established in this Act.

The Director's Council may, on its own motion or by filing a complaint, and upon previous notice and hearing, remove the Advocate from office on any of the aforementioned grounds.

Section 2.08.- Duties, Powers, and Responsibilities of the Advocate.

The Advocate shall have the following duties, powers, and responsibilities, in addition to any others provided in this Act or those laws or programs whose administration or implementation is delegated to him/her:

A. To develop, execute, and maintain a national action strategy to incorporate, through policies, programs, and projects, international standards to eradicate any form of discrimination against persons with disabilities and guarantee their right to full development as human beings.

B. To propose temporary measures, plans, and programs that provide real advantages for persons with disabilities or that prevent or compensate for the disadvantages that may affect this population regarding public, political, labor, social, economic, or cultural issues.

C. To promote the empowerment of persons with disabilities, so that they are aware and capable of effectively claiming their rights.

D. To foster the creation and strengthening of service programs for persons with disabilities in both the government and the nonprofit organizations' sector, in the following areas: labor and economic development, empowerment, political participation, education, recreation, and health, among others.

E. To monitor compliance with provisions relating to persons with disabilities in accordance with the standards approved nationally, regionally, and internationally.

F. To coordinate works between Government agencies and the private sector to take, improve, and maintain joint actions in benefit of persons with disabilities.

G. To oversee the implementation of and compliance with the public policy on persons with disabilities by government agencies. For such purposes, the Advocate shall oversee, investigate, regulate, plan, and coordinate with different government agencies and private entities the design and development of projects and programs geared toward satisfying the needs of persons with disabilities in accordance with the public policy set forth in this Act, Federal laws, and in any other special law empowering the Advocate to do so, for the purpose of enabling

them to enjoy a full and productive life, as well as achieving broader participation of this population within the community. Likewise, the Advocate shall enforce the provisions of Act No. 44 of July 2, 1985, as amended, which prohibits discrimination against persons with disabilities in public agencies and private entities whether or not they are funded by the Commonwealth of Puerto Rico.

H. To promote legislation and public policy as are necessary for the development and safety of persons with disabilities in areas such as abuse, economic development, education, political participation, recreation, and health, among others.

I. To administer and allocate state and federal funds set aside for service rendering, in accordance with the applicable regulations. Provided that, the Advocate shall not interfere with the administration of any state or federal funds allocated or administered by the Persons with Disabilities Protection and Advocacy Division.

J. To hire personnel, contract services as appropriate, as well as to lease and acquire goods and supplies to achieve the purposes of this Act.

K. To encourage community and citizen mobilization in favor of the rights, development, and safety of persons with disabilities through educational campaigns geared to such effects.

L. To provide training on subjects related to persons with disabilities and offer technical assistance to community organizations and government agencies.

M. To advise the population served on their rights and responsibilities under federal and state laws.

N. To collaborate and provide advice to entities and instrumentalities of the Government of the Commonwealth of Puerto Rico relating to any changes in the different laws that provide for rights and benefits of the population served.

O. To establish communication among groups, service providers, and organizations concerned with the population served to improve and facilitate access to services.

P. To draft annual reports on the status of the rights of persons with disabilities. These reports shall be published on the webpage of the Advocacy Office.

Q. To promote the incorporation of the needs and goals of persons with disabilities in the policies, plans, and programs aimed at guaranteeing their rights. Likewise, the Advocate shall oversee their implementation in order to ensure that objectives are achieved.

R. To file quarterly reports with the Director's Council on the progress of his/her performance and the implementation of the integrated plan, as determined by the Director's Council. These reports shall be published on the webpage of the Advocacy Office.

S. To provide assistance to nongovernmental organizations that offer services to persons with disabilities to solicit the disbursement of allocated funds from the corresponding government agencies.

T. To address, investigate, process, and adjudicate complaints for actions or omissions resulting in violations of the rights of persons with disabilities, in denial of benefits and opportunities to which they are entitled, and affecting benefit programs for persons with disabilities; award the appropriate remedies in accordance with the law, as well as to order any natural or juridical persons to take corrective actions in the event that such persons have denied, impaired, violated, or hindered the rights and benefits of persons with disabilities.

U. To conduct investigations, on his/her own motion or in conjunction with other government entities, on education, labor, housing, and health issues, among others, affecting or relating to persons with disabilities, in order to make

recommendations to the Legislative Assembly regarding related legislation. Likewise, the Advocate may conduct investigations on the complaints under his/her consideration, obtain information as deemed pertinent, hold administrative hearings, and carry out on-site inspections. Hearings held by the Advocacy Office shall be public unless by reason of public interest a private hearing is so warranted.

V. To adopt rules and regulations as needed to attain the purposes of this Act. Provided, that the duties and obligations, as well as the rights of the served population, whose noncompliance or violation provides the basis for filing a complaint or conducting an investigation under the provisions of this Act, shall be stated in detail in the regulations to be approved by the Advocate for such purposes.

W. To administer oaths and take statements by him/herself or through his/her authorized representatives.

X. To examine the records, documents, inventories, and facilities of public agencies and of private persons and entities when deemed pertinent and relevant to an investigation or complaint under his/her consideration.

Y. To summon witnesses to appear or make a statement, require the presentation or the reproduction of any documents or other evidence pertaining to an investigation or complaint under his/her consideration. Any person summoned shall be advised of his/her right to refuse to provide any evidence or give testimony that may be self-incriminating. In the event that such person refuses to appear, testify, or provide evidence so requested, based on the fact that it will be self-incriminatory or expose him/her to a criminal, civil or administrative proceeding, or that it will entail his/her removal or suspension from employment, profession, or occupation, or his/her imprisonment, the Advocate shall determine if the situation warrants granting immunity to the person summoned using the criteria and legal rules applicable to the granting of immunity. The Advocate may, on his/her own

motion or by resorting to any part of the Court of First Instance, obtain the required assistance, statement, reproduction, or examination. The Secretary of Justice shall provide the Advocate with the necessary legal assistance for such purposes when requested in accordance with the applicable regulations and rules. However, and in the event of conflict when the Secretary of Justice is required to represent a government entity before the Court of First Instance, the Advocate shall appear *pro se* or may enter into a legal representation agreement for such purposes. Testimonies and inspections shall be subject to the provisions of Act No. 27 of December 8, 1990, as amended, known as the “Act for the Proceedings and Granting of Immunity to Witnesses.”

Z. To impose and collect administrative fines up to a maximum of five thousand dollars (\$5,000) for actions or omissions in violation of the rights of persons with disabilities provided under the Constitution and the laws of the Commonwealth of Puerto Rico, or the Constitution of the United States of America and federal laws. The Advocate may impose fines on natural or juridical persons, as well as on public agencies. Payment of such fines shall be covered into the Special Fund for the Persons with Disabilities Advocacy Office.

AA. To notify public agencies when fines are imposed on their employees or public officials. Likewise, the Advocate may notify agencies, upon request, of any issue pending before the Advocacy Office regarding an employee of said agency.

BB. To impose on a non-prevailing party in a quasi-judicial proceeding the obligation to pay attorney fees and expenses, when applicable in accordance with the law.

CC. To promote actions that contribute to solve negligence, abuse, mistreatment and discrimination issues against persons with disabilities in all of its variations.

DD. To ensure that public agencies and entities receiving state or federal funding do not discriminate against persons with disabilities by reason of their conditions.

EE. To evaluate and analyze international agreements, rules, and standards relating to the rights of persons with disabilities, and investigate any statements made as part of specific disputes insofar as these shed light on general issues, and recommend remedies geared to guarantee the participation of persons with disabilities in every aspect of their social, educational, recreational, political, economic, and cultural life.

FF. To be a member of and represent Puerto Rico in the different national and international organizations of advocates for or defenders of persons with disabilities or equivalent government entities, and those that promote the rights of persons with disabilities, as well as specific actions to effectively eradicate discrimination against this population.

GG. To keep an updated catalog or manual of all the programs, benefits, services, activities, and facilities available for persons with disabilities, in government agencies and nonprofit private entities. Such catalog or manual must be available in electronic and printed format. Said catalog must include an overview, with the corresponding citation of state or federal laws, regulations, orders, norms, procedures, resources, media, mechanisms, and requirements necessary to be eligible for and to receive any benefit, service, right, or privilege. For such purposes, the Advocate shall establish by rules or regulations a reasonable fee for the reproduction of this manual or catalog and the corresponding exception from the payment thereof for persons with disabilities or those persons whom the Advocate believes that should be exempt from such payment.

Section 2.09.- Investigations.-

Any complaint filed in accordance with the provisions of this Act shall be processed as provided in the regulations to be adopted for such purposes. The Advocate shall notify the complainant about his/her decision to investigate the facts stated in the complaint and, on the same date on which the corresponding notice is issued, the Advocate shall also notify the agency, person, or private entity, as the case may be, including a statement of the facts alleged on the complaint and a citation of the law that empowers him/her to conduct such investigation. Furthermore, the Advocate shall notify the complainant about his/her decision not to investigate the complaint in question, as appropriate, stating the grounds therefor and apprising him/her of his/her right to request reconsideration and review of such determination.

However, the Advocate shall not investigate complaints when:

- A. The complaint refers to a matter outside his/her scope of jurisdiction.
- B. The complaint lacks merit.
- C. The complainant voluntarily dismisses the complaint.
- D. The complainant lacks standing to file a complaint;
- E. The complaint is under investigation by another agency and, in the judgment of the Advocate, it would result in a duplication of efforts.

In those cases in which the complaint filed does not involve any dispute that can be adjudicated or refers to an issue outside the scope of jurisdiction of the Advocacy Office, the Advocate shall advise the complainants and, if necessary, refer them to the pertinent agency.

Section 2.10.- Hearing Officers.-

In the exercise of his/her adjudicative powers under this Act, the Advocate shall designate hearing officers to preside over administrative hearings held in accordance with the regulations adopted by the Advocate for such purposes.

Section 2.11.- Bylaws.-

The Advocate is hereby empowered to adopt the bylaws of the Advocacy Office, as well as the regulations that shall govern the operations of the activities and services established in accordance with the provisions of this Act. To receive information and data about the studies and general research relating to persons with disabilities conducted by the Advocacy Office, the aforementioned regulations shall provide all that is necessary to meet the following procedural requirements:

A. The holding of public hearings; the advocate's duty to hear testimonies or receive any other evidence for the Advocacy Office may be delegated to one or more officials or employees.

B. Notices of public hearing shall be published at least ten (10) days in advance in at least two (2) newspapers of general circulation or regional newspapers circulating in the specific region or area comprised in the study or research. In addition, hearings may be notified through other medium of communication if it is deemed necessary and reasonable for a more efficient dissemination. Such notices shall include detailed descriptions of the purposes and the agenda of the hearings.

C. All oral statements shall be heard in public sessions. However, if the Advocate believes that the evidence or testimony at a hearing may tend to defame, degrade or incriminate any person or violate such persons' privacy, to protect his/her identity, or if circumstances so warrant, the Advocate may make an exception and receive such testimony in private session.

D. Every witness may, if he/she deems it convenient, be advised by legal counsel. Such witness shall also have the right to not be photographed without his/her consent, to be examined by his/her attorney within the rules of the hearing and their application by the Advocacy Office, submit brief written statements

under oath to be included in the record of the hearing, and to request, in accordance with the rules to be established by the Advocacy Office and upon payment of the corresponding fees, a copy of the transcript of his/her oral testimony.

E. If the Advocate determines that any evidence tends to defame, degrade, or incriminate any person, the Advocate will provide him/her the opportunity to appear in person or in writing.

F. The Advocate shall determine all other rules of procedure for public hearings, including those relating to the admissibility of evidence and the exclusion of persons who violate the rules that govern hearings.

Section 2.12.- Services and Facilities.-

The Advocate may request private persons or institutions, as well as government agencies, any services and facilities available to achieve the purposes of this Act.

For purposes of this Act, the Advocate may request the transfer of any official or employee of the Commonwealth of Puerto Rico or the agencies thereof, with the authorization of the appointing authority of the government entity where the official or employee renders services. In such case, the appointing authority shall not be required to keep such official or employee's office or job vacant.

To achieve the purposes of this Act, the Advocate is further authorized, without being subject to the provisions of Section 177 of the Political Code of Puerto Rico, as amended, to hire the any public official or employee and pay such official or employee for the additional services rendered to the Advocacy Office outside his/her regular working hours.

The Advocate may request any agency to conduct a study or research, or any stage or part thereof, or to do any kind of work as necessary to discharge its duties, to which priority shall be given. If the agency deems it necessary, it may request the Advocacy Office, and obtain, a fund transfer in a reasonable amount.

Section 2.13.- Special Fund for the Persons with Disabilities Advocacy Office.-

The Secretary of the Treasury is hereby authorized to create a Special Fund for the Persons with Disabilities Advocacy Office where the monies received from legislative appropriations, fund transfers from other Government agencies or entities and donations of any kind by means of gifts or allocations shall be deposited. The Fund may receive donations from other agencies, public corporations, political subdivisions, the Federal Government, municipalities, and nonprofit entities. Furthermore, the Fund may be used to defray expenses relating to the operations and development of the Advocacy Office.

The Advocacy Office is hereby authorized to receive and administer funds from legislative appropriations, and transfers, allocations, contributions, and donations of any kind from the agencies, municipal governments and the Government of the United States of America, as well as from persons, nongovernmental organizations, and other private entities for drawing up and implementing projects and programs to be carried out by the Advocacy Office, by agencies, entities, and nongovernmental organizations, or the civil society. The funds thus received shall be held, controlled, and administered in accordance with the laws that regulate the use of public funds, the legal standards, rules or agreements by virtue of which the Advocacy Office receives such funds, and in accordance with the regulations adopted for such purposes. The Advocacy Office may also receive personal property from public agencies, on loan, as usufruct, or gift, and possess, administer, and use them to perform its functions under this Act.

Section 2.14.- Reports.-

The Advocate shall submit an annual written report, not later than January 31st of each year, as well as any special reports to the Governor and the Legislative Assembly, on the activities, operations, statistical data, complaints filed and

processed, achievements, and fiscal situation of the Advocacy Office, along with any recommendations he/she deems necessary for the ongoing and efficient protection of the rights of persons with disabilities. After submitting the first annual report, the Advocate shall include, at the end of the annual reports, a summary of recommendations previously made and a description of the actions taken in relation to said recommendations. The Advocacy Office shall publish such reports on its webpage after sending them to the Governor and the Legislative Assembly. The Advocacy Office may also publish studies and papers submitted by its consultants and advisors.

Section 2.15.- Accountability and Access to Information.-

The Advocate shall have the duty to publish on the Advocacy Office's webpage all the reports, studies, regulations, meeting minutes, circular letters, and executed contracts. In addition, all the resolutions of the Director's Council shall be published not later than one (1) week after the approval thereof. Third party's copyrights and trade secrets regarding published documents shall be protected.

The minutes of the meetings of the Director's Council and the committees thereof shall be approved by the Director's Council prior to their publication.

Section 2.16.- Penalties.-

Any person who voluntarily disobeys, prevents, or hinders the discharge of the duties of the Advocacy Office, or any of its authorized agents, as provided in this Act, or obstructs the holding of a hearing conducted pursuant to this Act, shall be guilty of a misdemeanor and punished by a fine that shall not exceed ten thousand dollars (\$10,000) or by imprisonment for a maximum of six (6) months or both penalties, at the discretion of the Court.

No evidence or testimony provided during an executive hearing shall be made public without the express consent of the Advocate or the person authorized by him/her. Any person who violates this provision shall be punished by a fine that shall not exceed five hundred dollars (\$500) or by imprisonment for a term that shall not exceed six (6) months or both penalties, at the discretion of the Court.

Section 2.17.- Persons with Disabilities Protection and Advocacy Division.-

The Persons with Disabilities Protection and Advocacy Division is hereby created as an independent division attached to the Persons with Disabilities Advocacy Office. Said Division shall be the entity designated to operate as the Protection and Advocacy System of Puerto Rico, in accordance with the applicable federal regulations in order to protect the rights of persons with disabilities. Said division shall be directed by an Executive Director, who shall be appointed as provided in this Act. The Executive Director shall establish the organizational structure of the Division, in accordance with the requirements of law and the applicable regulations issued by the United States Federal Government entities that administer any funds allotted to persons with disabilities protection and advocacy systems. Said Division shall have authority to provide legal assistance to persons with disabilities with respect to complaints for abuse, negligence, or any event adversely affecting the rights of persons with disabilities. For such purposes, the Division shall provide directly, through contracts or referrals, in its discretion, professional legal services, or appear by and on behalf of persons who qualify to obtain any benefit or right under the laws or regulations of the Commonwealth of Puerto Rico, municipal ordinances, and federal laws, before any court, administrative or mediation forum, board, commission, or office. Likewise, the Division shall have authority to bring actions against the Commonwealth of Puerto Rico in any of the aforementioned forums.

A. The Division shall have the following authorities:

1. To pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of persons with disabilities.

2. To provide information and refer persons with disabilities or their family members to adequate programs and services to address their needs.

3. To investigate incidents of abuse or neglect of persons with disabilities.

4. On an annual basis, provide to the public in general, including persons with disabilities or their representatives, and as appropriate, non-State agency representatives of the State Council on Developmental Disabilities the opportunity to comment on the goals and the activities performed by the Division.

5. To provide the services of the Division to persons with disabilities at reasonable times according to available resources.

6. To have access to all documents and records of any person with disabilities insofar as such person is a client of the Division, if such person or his/her legal guardian, conservator, or other legal representative authorized the Division to have access to such information. Likewise, the Division shall have access to the records of a person with disabilities in the following cases:

a. A person with disabilities, by reason of his/her mental or physical condition, is unable to authorize the Division to have access to his/her records; a person with disabilities does not have a legal guardian, conservator, or other legal representative, or the legal representative of said person is the Commonwealth of Puerto Rico; and the Division received a complaint about the person with disabilities with regard to his/her status or treatment or, as a result of monitoring or other activities, there is probable cause to believe that such person has been subject to abuse or neglect;

b. A person with disabilities has a legal guardian, conservator, or other legal representative; the Division received a complaint about the person with disabilities with regard to his/her status or treatment or, as a result of monitoring or other activities, there is probable cause to believe that such person has been subject to abuse or neglect; the Division contacted such legal guardian, conservator, or other legal representative, upon receipt of the contact information of such representative; the Division has offered assistance to such representative; and such representative has failed or refused to act on behalf of the person with disabilities.

7. To hire and maintain sufficient numbers and types of qualified personnel to perform the functions established in this Act and the applicable Federal laws. It is hereby provided that, in accordance with the applicable Federal and State rules, there shall not be established prohibitions or conditions on the hiring of personnel or prohibitions on travel, to the extent that such policies would impact the functions of the Division funded with Federal funds or would prevent the Division from performing the functions established under this Act. Any attorney hired by the Division must be admitted to practice his/her profession by the United States District Court for the District of Puerto Rico.

8. To educate policymakers in subjects related to the rights of persons with disabilities.

9. To file quarterly reports with the Director's Council on the activities performed and on any recommendations that promote the efficient operations of the Division. Said reports shall be published on the Advocacy Office's webpage.

B. The Division shall establish a grievance procedure to ensure that persons with disabilities have full access the services of the Division.

C. The Division shall operate with administrative and fiscal independence, and shall answer directly to the Director's Council. In addition, it shall operate independently from the Advocate.

D. A simple majority of members of the Director's Council shall designate and dismiss the Executive Director. The person appointed to such office shall have recognized professional capacity and independence of judgment, as well as work experience advocating for persons with disabilities. The Director's Council shall fix the salary of the Executive Director, which shall never be higher than the salary of the Advocate.

E. In order to promote an adequate administration of the federal and state funds specifically appropriated to the Division, the Secretary of the Treasury is hereby authorized to create the Special Fund for the Persons with Disabilities Advocacy Office where the monies received from legislative appropriations, fund transfers from other Government agencies or entities and donations of any kind by means of gifts or allocations shall be deposited. The Fund may receive donations from other agencies, public corporations, political subdivisions, the Federal Government, municipalities, and nonprofit entities. Furthermore, the Fund may be used to defray expenses relating to the operations and development of the Division. The Division is hereby authorized to receive and administer funds from legislative appropriations, and transfers, allocations, contributions, and donations of any kind from the agencies, municipal governments, and the Government of the United States of America, as well as from persons, nongovernmental organizations, and other private entities for drawing up and implementing projects and programs to be carried out by the Division, by agencies, entities, and nongovernmental or civil society organizations. The funds thus received shall be held, controlled, and

administered in accordance with the laws that regulate the use of public funds, the legal standards, rules, or agreements by virtue of which the Division receives such funds.

F. The Division shall be in charge of administering the following federal programs: “Protection and Advocacy for Developmental Disabilities” (PADD), created by virtue of Public Law 106-402, as amended, known as the “Developmental Disabilities Assistance and Bill of Rights Act of 2000”; Protection and Advocacy for Individuals with Mental Illness” (PAIMI), created by virtue of Public Law 106-310, as amended, known as the “Protection and Advocacy for Individuals with Mental Illness Act”; “Protection and Advocacy for Individual Rights” (PAIR), created by virtue of Public Law 93-112, as amended, known as the “Rehabilitation Act of 1973”; “Protection and Advocacy for Assistive Technology” (PAAT), created by virtue of Public Law 105-394, as amended, known as the “Assistive Technology Act of 1998”; “Protection and Advocacy for Individuals with Traumatic Brain Injury” (PATBI), created by virtue of Public Law 104-166, as amended, known as the “Traumatic Brain Injury Act of 1996”; “Protection and Advocacy for Beneficiaries of Social Security” (PABSS), created by virtue of Public Law 106-170, as amended, known as the “Ticket to Work Incentives Improvement Act of 1999”; “Client Assistance Program” (CAP), created by virtue of Public Law 93-112, as amended, known as the “Rehabilitation Act of 1973”; and any other related federal programs created in the future and as authorized by law.

CHAPTER III.- GENERAL PROVISIONS.-

Section 3.01.- General Provisions.-

A. The Advocacy Office shall not require persons with disabilities interested in filing a complaint to pay any amount, duty, or fee for the filing, processing, or investigation of any complaint or issue under its jurisdiction, or for

the rendering of assistance, orientation, and advisory services relating to the programs, services, or benefits to which persons with disabilities are entitled or for any orientation on the recourses, mechanisms, requirements, means, or procedures needed to participate in, benefit from, or obtain the same, or to exercise their rights.

B. Any public agency that offers, renders, administers, or has jurisdiction over any procedures, programs, funds, activities, benefits, or services for the population served by the Advocacy Office shall deliver to this such entity, and the latter shall be entitled to require the delivery of, not less than six (6) copies of all the regulations, standards, executive orders, decisions, opinions, manuals of procedures or services that govern, in accordance with the applicable local and federal laws, any matter relating to the population served by the Advocacy Office. Public agencies shall comply with these provisions within thirty (30) days following the date on which the Advocacy Office begins operations. Subsequently, and in the case that standards, rules, and procedures are approved or amended, modified or repealed, or new requirements are established, or the services or benefits offered by public agencies are broadened, eliminated, or altered, the latter shall deliver not less than six (6) copies each of these changes, amendments, or modifications, as the case may be, to the Advocacy Office within fifteen (15) days following the date on which such changes, amendments, or modifications are made.

C. The Advocacy Office, its officials, employees, and representatives shall not be held civilly or criminally liable for discharging their duties in good faith, as provided in this Act or any applicable state or federal statute, including Public Law 89-73 of July 14, 1985, as amended known as the “Old Americans Act of 1965.”

D. The Advocacy Office, its officials, employees, and representatives shall guarantee the confidentiality of any document examined and gathered in the course of the investigation and processing of a complaint filed under this Act and the provisions of the applicable federal and state laws. Complainants, witnesses, patients, or residents shall be guaranteed confidentiality until authorization from said complainants, witnesses, patients, residents, or their legal representatives is obtained. No official, employee, or representative of the Advocacy Office shall be compelled to testify regarding the information obtained in the course of an investigation, except in those cases where they can be legally compelled to do so by competent judicial forums.

E. The Advocacy Office, whether on its own motion or through collaboration agreements, shall establish and implement a plan approved by the Director's Committee[sic] for the establishment of regional, district, or municipal offices to facilitate and promote people's access to services, in order to achieve the purposes of this Act. Thus, the Advocacy Office shall promote the execution of collaboration agreements by and between the government and the private sector including, but not limited to, entering into agreements with municipal governments, entities, and corporations, as well as with nongovernmental organizations and entities concerned with the rights of persons with disabilities, insofar as said agreements make the discharge of their duties feasible and do not impair their authorities.

F. The Advocate shall not impose the payment of attorney fees on the Commonwealth of Puerto Rico.

G. The members of the Director's Council as well as all the employees of the Advocacy Office shall be subject to the provisions of Act No. 1-2012, as amended, known as the "Puerto Rico Government Ethics Act of 2011."

H. No person who holds an elective office may be nominated for membership of the Director's Council or to hold the office of Advocate.

I. No agency or instrumentality of the Government of the Commonwealth of Puerto Rico shall establish requirements or impose restrictions on the use or administration of federal funds allotted to the Advocacy Office. These funds shall be administered in accordance with the applicable federal laws and regulations.

J. Funds collected on account of administrative fines imposed by the Advocacy Office shall be deposited in the Special Fund for the Advocacy Office.

CHAPTER IV.- TRANSITORY MEASURES.-

Section 4.01.- Transfer of Employees.-

Every career and regular employee of the Office of the Ombudsman for Persons with Disabilities of the Commonwealth of Puerto Rico shall become employees of the Advocacy Office within ninety (90) calendar days after the last approval corresponding to the transfer of programs and activities. Career or regular employees thus transferred shall earn salaries and have benefits comparable to those they had while serving in the Office of the Ombudsman for Persons with Disabilities of the Commonwealth of Puerto Rico, but never reduced. The Advocate for Persons with Disabilities and the Director's Council shall take any action needed to carry out said transfer and transition.

The provisions of this Act shall not be used as grounds for dismissal of any employee holding a regular or career position or construed as a requirement or basis for reducing or raising the salary and fringe benefits received by the employees of the agency from which they were transferred. Until the new Classification Plan of the Advocacy Office is approved, the Classification Plan of the Office of the Ombudsman for Persons with Disabilities shall be used.

As of the effective date of this Act, the Advocacy Office shall recognize the labor unions representing union employees transferred to the Advocacy Office, if any. The Advocacy Office shall honor any collective bargaining agreement in effect at the time of the transition until the same expires, in accordance with the legal provisions applicable thereto. In these cases, personnel transferred between components or other government entities that are part of an appropriate collective bargaining unit shall keep said right and, as an exception, may continue to be an appropriate unit without being subject to the provisions of any preceding law.

No employee or former employee or his/her beneficiaries participating in the Retirement System shall lose any retirement benefits accrued as of the date of the creation of the Advocacy Office.

Section 4.02.- Transfer of Property.-

Any documents, records, materials, equipment, budget, and real or personal property belonging to the Office of the Ombudsman for Persons with Disabilities shall be transferred to the Advocacy Office within a term that shall not exceed sixty (60) calendar days after the date of approval of this Act.

The term provided above shall also apply to any actions to be taken, as are necessary, appropriate, and convenient by the Advocacy Office to achieve the purposes of this Act including, but not limited to, the creation of the internal, programmatic, and budgetary structure, as well as the accounting structure required for accounting the funds thereof and the relocation of offices to a single building.

The Advocacy Office shall assume and be liable for any debt, obligation, or financial responsibility of the aforementioned government entities and, in turn, shall assume and be the holder of any asset and rights thereon.

Section 4.03.- Budget.-

Any balance from preceding fiscal years of special appropriations made to the Office of the Ombudsman for Persons with Disabilities that are available as of

the effective date of this Act shall be accounted in favor of the Advocacy Office maintaining the use and balance thereof at the time of the transition. In addition, any funds generated by the Office of the Ombudsman for Persons with Disabilities shall be transferred to the Special Fund for the Persons with Disabilities Advocacy Office.

Likewise, as for the budget approved for the Office of the Ombudsman for Persons with Disabilities for Fiscal Year 2014-2015, whether from the operating budget allocated under the Joint Resolution on the General Budget or from appropriations allocated under the Joint Resolution on Federal Appropriations, the same shall be transferred to the Advocacy Office.

Section 4.04.- Transitory Provisions.-

A. The Ombudsman for Persons with Disabilities shall prepare and make available to the Director's Council, within a term that shall not exceed thirty (30) calendar days after the constitution of the Transition Committee, a transition report which shall include, among other things, the following:

1. a report of the status of the cases pending before the agency;
2. a report of the status of any case to which it is a party before any state or federal Court, as well as any administrative forum;
3. a report of the status of administrative transactions;
4. an account statement including the balance of the agency's accounts and the balance of the budget appropriated for the current fiscal year;
5. an inventory of the real and personal property, resources, materials, and equipment of the agency;
6. a copy of the last reports filed as required by the different Government Branches;
7. a report of the personnel of the agency including positions, whether filled or vacant, of the agency, names of the person holding such positions, and the payroll expense entailed.
8. a report of the contracts in effect of the agency including any donation and the purpose thereof;
9. a report of the agreements or contracts entered into with state or federal public entities; and

10. any other information that the Transition Committee may require.

B. During the transition process, the Ombudsman for Persons with Disabilities shall make available to the Transition Committee any personnel deemed necessary by said body during the transition process. Likewise, the Director's Council shall have access to any record, file, or document generated or to be generated by the Office of the Ombudsman.

C. During the transition process, the Ombudsman for Persons with Disabilities shall request the Transition Committee's authorization for any disposition of funds required, in accordance with the transition measures provided herein and the applicable state and federal laws. The Transition Committee shall oversee that the Office of the Ombudsman for Persons with Disabilities continues providing services to the served population during the transition process and take the necessary measures to ensure that no service is affected.

D. All the regulations, orders, resolutions, circular letters, and other administrative documents of the Office of the Ombudsman shall remain in effect in all that pertains to the provisions of this Act, until the same are amended, supplemented, repealed, or rendered ineffective by the Advocate, as the case may be.

E. During the transition process, the Office of the Ombudsman for Persons with Disabilities shall continue operating regularly until the Advocacy Office begins operations. During said period, the Advocacy Office should have established its office; developed the regulations, bylaws, and procedures that shall govern its internal operations, and the discharge of its duties; and organized the transferred personnel in order to begin operations.

F. All the positions of the persons who, as of the effective date of this Act, hold office in the Advisory Committee of the Office of the Ombudsman for Persons with Disabilities shall be eliminated as of the approval of this Act. The members of the new Director's Council created by virtue of this Act for the Advocacy Office shall be appointed in accordance with the following procedure:

1. Appointments to the Director's Council by the Governor shall be made within a term that shall not exceed thirty (30) days after the approval of this Act. Such appointments shall require the advice and consent of the Senate. Once these three (3) appointees hold office, they shall also constitute the Transition Committee.

2. The Transition Committee shall issue a call for nominations within thirty (30) days after holding office to nongovernmental organizations wishing to make nominations for membership in the Director's Council of the Advocacy Office. Such call for nominations shall be published in at least two (2) newspapers of general circulation. The Transition Committee shall grant all entities twenty (20) days from the publication of the call for nominations to submit their nominees.

3. By submitting their nominations, entities shall certify that nominated individuals meet all the requirements of this Act. Likewise, nongovernmental organizations wishing to submit nominations for membership in the Director's Council shall attest to their *bona fide* status, as provided in this Act, with at least three (3) years of recognized and proven experience advocating for the rights of the population served by the Advocacy Office. In lieu thereof, nongovernmental organizations may provide evidence of their registration, for at least three (3) years, in the Department of State, and that the main goal of the organization is advocating for the rights of the population served by the Advocacy Office.

4. Once the period for submitting nominations concludes, the Transition Committee shall publish in at least two (2) newspapers of general circulation the names of the nominees and grant a ten (10)-day term to receive any comments or objections relating to said nominees.

5. Once the term to submit comments or objections concludes, the Transition Committee shall select, from among the nominees, the members that shall represent nongovernmental organizations.

6. Appointments to the Director's Council pursuant to the preceding paragraph shall be made for staggered terms, to wit: two (2) appointments shall be made for terms of three (3) years; two (2) appointments shall be made for terms of two (2) years; and two (2) appointments shall be made for terms of one (1) year. The members appointed by the Governor shall establish the terms of office of each person selected. Once the initial terms expire, the following appointments shall be made for terms of three (3) years, in accordance with the provisions of this Act.

H. The Committee shall have sixty (60) days after the constitution thereof to submit any proposal to the Office of Management and Budget in connection with the transfer of funds or any other transaction that may be necessary to implement the provisions of this Act and that, in the regular course of business, would require the approval of said Office.

I. Once the Director's Council is constituted, the members thereof shall elect the Advocate in accordance with the provisions of this Act and within ninety (90) days after the last approval corresponding to the transfer of programs and activities defrayed from federal funds allocated to the Office of the Ombudsman, the Advocacy Office shall begin regular operations; the position of the Ombudsman for Persons with Disabilities shall be eliminated and such officer shall cease to perform his/her functions.

J. If the Ombudsman is not available or fails to take the measures provided in this Section, the Committee shall designate a trust official to carry out all the duties assigned to the Ombudsman in this Section.

K. By virtue of this Act, the Commonwealth of Puerto Rico Persons with Disabilities Protection and Advocacy Office shall be the legal successor of the Office of the Ombudsman for Persons with Disabilities, which shall be eliminated.

Section 4.05.- Integration Report.-

The Advocate is hereby directed to file an Integration Report with the Governor, the Office of Management and Budget, and the Legislative Assembly stating in detail the results of the Advocacy Office, the reallocation of resources, and any other information requested by the Office of Management and Budget. Said Report shall be filed within thirty (30) days after the close of Fiscal Year 2015-2016.

Section 4.06.- Amending Clause.-

Any reference made to the Office of the Ombudsman for Persons with Disabilities or the Ombudsman for Persons with Disabilities in any other law, regulation, or official document of the Government of the Commonwealth of Puerto Rico shall be deemed to be amended so as to refer to the Persons with Disabilities Protection and Advocacy Office created in this Act or the Advocate for Persons with Disabilities, as the case may be.

Section 4.07.- Disclosure.-

This Act and the impact thereof constitute public interest information. Therefore, the Advocacy Office is hereby authorized to provide education and information about this Act and its implications, since it is of vital importance that the different populations are informed of the changes and duties of the entities concerned, the new services, as well as of the rights and obligations of the people and the Commonwealth of Puerto Rico.

Section 4.08.- Repeal and Transfers.-

Act No. 78-2013, known as the “Commonwealth of Puerto Rico Ombudsman for Persons with Disabilities Act,” is hereby repealed. All the programs, operations, and projects administered by said Office, created by virtue of the Act repealed in this Section, shall be transferred to the Advocacy Office in accordance with this Act.

Section 4.09.- Exclusion.-

This Act is hereby excluded from the provisions of Act No. 182-2009, as amended, known as the “Act for the Reorganization and Modernization of the Executive Branch of 2009.”

CHAPTER V.- EFFECTIVENESS.-

Section 5.01.- Incompatibility.-

If the provisions of this Act are incompatible with those of any other Act or Regulations, the provisions of this Act shall prevail.

Section 5.02.- Severability.-

If any clause, paragraph, subparagraph, article, provision, section, subsection, item, or part of this Act were held to be unconstitutional by a competent Court, the holding to such effect shall not affect, impair or invalidate the remaining provisions of this Act. The effect of such holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, item, or part of this Act thus held to be unconstitutional.

Section 5.03.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 158-2015 (Senate Substitute for S. B. 1067)** of the **6th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to enact the “Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office Act”; create the Commonwealth of Puerto Rico Persons with Disabilities Advocacy Office, which shall have financial, structural, and leadership independence, as well as autonomy to carry out its oversight duties and establish its organizational structure; create the office of Advocate for Persons with Disabilities, and establish the duties, powers, authorities, and responsibilities thereof; repeal Act No. 78-2013, known as the “Commonwealth of Puerto Rico Ombudsman for Persons with Disabilities Act”; and for other related purposes.

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

In San Juan, Puerto Rico, on this 30th day of September, 2015.

Juan Luis Martínez Martínez
Director