

(S. B. 1626)
(Conference)

(No. 179)

(Approved August 16, 2002)

AN ACT

To adopt the regulation on appropriation of public funds of legislative origin product of the Issuance of Bonds and the General Fund for the construction of permanent (pork barrel) and non-permanent works such as the acquisition of equipment, purchase of materials and other activities of social interest (small pork barrel); to establish the requirements, norms and procedures for the granting of these donations; to establish the information that shall include all Joint Resolutions of appropriations of the referred public funds; to establish the requirements to request funds; to establish the obligations of the applicant for these funds, legislators and legislative bodies with respect to these funds; and to establish the procedures which guarantee the supervision and monitoring of the provisions herein provided by the Legislature.

STATEMENT OF MOTIVES

The Legislature annually appropriates, in the extent that the fiscal resources allow it, state funds to construct diverse permanent and provisional works such as the acquisition of equipment, purchase of materials and other activities of social interest. These funds are known as “pork barrel” and “small pork barrel”.

In the beginnings of the “pork barrel” the funds were assigned for the construction projects that were sponsored by the members of the House of Representatives. In recent years, as the fiscal situation has allowed, during

the same fiscal year there is approved a “pork barrel” for projects sponsored by the members of the House of Representatives and another one for projects sponsored by the members of the Senate.

Until 1981, the joint resolutions of this kind specified in detail the works to be performed in each municipality, charged to the funds appropriated, with a description of the work to be performed, with the funds appropriated to the municipality or the state agency which would be responsible for the construction, and a fixed amount that was appropriated for same.

In the same year, through the passing of Joint Resolution Number 23 of July 2, 1981, the text of these joint resolutions was substantially amended, so that in lieu of containing the description of the work, the appropriated amount and the municipality or agency to which the funds were destined, the Municipal Services Administration was appropriated with \$3,670,000, of which 183,000 corresponded to each one of the twenty representative districts included in said Joint Resolution.

The referred Joint Resolution Number 23, authorized the district representatives to submit to the Municipal Services Administration a description, of the manner which they wished these funds to be distributed in the different precincts of their representative districts.

In 1989, through the opinion of the Secretary of Justice, Opinion of the Secretary of Justice No. 25-1989 of August 16, 1989, it was determined that the mechanism established in these joint resolutions to appropriate state funds for the construction of works and projects in the municipalities was unconstitutional.

In the same year, in the case of *David Noriega vs. Rafael Hernández Colón*, 135 DPR 406, the constitutionality of these appropriations of funds

was questioned for violating the separation of powers between the government branches. On October 24, 1989, the Superior Court ruled declaring unconstitutional the legislative practice of “pork barrel”, appropriation of funds, according to the established mechanism.

On March 18, 1994, the Supreme Court of the Commonwealth of Puerto Rico confirmed the ruling of the Court of First Instance, which declared unconstitutional the appropriation of pork barrel funds as it was being carried out. Nevertheless, the High Forum recognized the authority of the legislative power to determine the form and the manner in which joint resolutions regarding the pork barrel should be written.

The appropriation of public funds of legislative origin for the construction of permanent works (pork barrel), the acquisition of equipment, purchase of materials and other activities of social interest (small pork barrel) is hereby regulated; the requirements, norms and procedures to grant such funds, the information which shall be included in every joint resolution for the appropriation of the referred public funds, the requirements for the request of funds and the obligations of the applicants, legislators and legislative bodies related to these funds, and the procedures to guaranteeing the supervision and monitoring by the Legislature are hereby established.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- This Act shall be known as the “Act to Regulate the Appropriation of Resources for the Construction of Permanent Works (Pork Barrel) and the Acquisition of Equipment, Purchase of Materials and Other Activities of Social Interest (Small Pork Barrel).”

Section 2.- For the purposes of this Act, the following terms and phrases shall have the meanings stated hereinbelow:

- (a) “Entities” - means any natural person or public, semipublic, or private institution having no pecuniary interest.
- (b) “Permanent Work” means any type of construction, reconstruction, alteration, extensions or improvements which remain in place after the execution of the said works.
- (c) “Agency” means any department, program, bureau, office, board, commission, company, public corporation and subsidiary thereof, and instrumentality of the Commonwealth of Puerto Rico, including its Judiciary Branch and its municipalities.
- (d) “Designated Agency” means any agency which executes, implements, or is directly related to the public policy related to the activity or public function which is carried out by the entity receiving a legislative donation, and under whose administrative responsibility the legislative donation is appropriated.
- (e) “Beneficiary” means any natural or juridical person who receives legislative donations from the funds known as pork barrel and small pork barrel.

Section 3.- Every joint resolution which appropriates public funds for the construction of permanent works, the acquisition of equipment, the purchase of materials and other activities of social interest shall contain specific and detailed information which allows the evaluation, supervision and follow-up of the disbursements authorized, thus assuring compliance with the legislative intent.

Section 4.- Every joint resolution which appropriates public funds for the construction of permanent works (pork barrel) shall contain the following information:

- a) Description of the work or improvement to be performed.
- b) Total amount appropriated and an estimate of the work or improvement to be performed.
- c) Specific location where the work or improvement shall be performed, stating:
 1. Senate District or Representative District;
 2. The corresponding municipality; and
 3. The ward, sector or urbanization;
- d) The government entity or municipality which shall be directly in charge of the performance or supervision of the work or improvement;
- e) The government entity or municipality which shall be directly in charge of the custody and disbursement of the funds appropriated; and
- f) Any other information deemed necessary by the legislator.

Section 5.- The government entity or municipality which shall be directly in charge of the custody or disbursement of the funds appropriated for permanent works shall establish:

- a) A staggered system of payments based on the certification of the progress of the work or improvement;
- b) A checklist system to verify that the necessary auctions or quotations have been performed pursuant to the law;
- c) A system for the receiving and registration of documents, invoices and vouchers for every appropriation of funds;

- d) An easy access file where all documentation related to the performance of works or improvements may be verified.

Section 6.- Every joint resolution through which public funds are appropriated for the acquisition of equipment, purchase of materials and other activities of social interest (small pork barrel) shall contain the following information:

- a) Description of the equipment, materials to be acquired or the activities of social interest to be paid;
- b) Name of the institution, organization or person benefited with the funds appropriated;
- c) Purpose or reason for the appropriation; and
- d) Total amount appropriated.

In turn, the applicant shall be responsible for furnishing the information needed in order to comply with the purpose to set forth in this Section, and the estimate he/she furnishes, shall state the appropriation which shall be made by every participating component, if any, at the time of requesting the funds, such as governmental, individual, of private entities, and of any other kind.

Section 7.- Any request for public funds for the acquisition of equipment, purchase of materials and other activities of social interest (small pork barrel) made to any entity shall be accompanied by a certified form which shall be provided thereto by the Legislative Body. In the event the appropriation exceeds the amount of \$1,500, the applicant shall submit a statement sworn before a notary public or a judge of first instance in order to receive the funds requested. In said request, the applicant shall give evidence of his/her financial situation, the need for the legislative contribution, and shall consign whether or not he/she has a relationship, within the fourth

degree of consanguinity or second degree of affinity, with the legislator from which he/she is requesting the appropriation of public funds or with any of the legislator's employees. If the applicant has a relationship with any of the latter, he/she shall specify the degree of consanguinity. In the event there exists such degree of consanguinity, the Legislative Body Commission considering the joint resolution may recommend the approval of same with the consent of two thirds (2/3) of its members. In cases of juridical persons, the members of the Board of Directors of the entity requesting the funds shall comply with the requirements stated herein.

The beneficiary shall furnish a report detailing the use of the funds; such report shall include the receipts of the materials, equipment, services received, certification of works or improvements performed, as the case may be, to the designated agency, not later than ninety (90) days after the day of the last payment to the beneficiary. To these ends, the designated agency shall provide a sheet to the beneficiary which states the obligations which shall be complied in agreement with the provisions set forth in this Section and the beneficiary shall be warned that he/she shall comply with the laws of the Commonwealth of Puerto Rico.

The Clerk of the House and the Secretary of the Senate shall prepare and place at the disposal of the legislators and the persons who so request it, an application form for the legislative contributions pursuant to the requirements provided herein.

Section 8.- The governmental agencies, municipalities, as well as the entities receiving appropriations from public funds shall use the same for the purposes established in the corresponding Joint Resolution, and never shall dispose of the same for other purposes or ends which are not categorically and specifically set forth in the Joint Resolution approved.

Any change or modification of the purposes or ends established in the original Joint Resolution, shall require the Legislature to restart or repeat all the procedures.

The compliance with these Joint Resolutions, appropriating public funds, shall be made following the norms and procedures applicable to the municipalities and governmental entities. Except for natural persons, all contracts subscribed and any other legal document shall be subject to the laws of the Commonwealth of Puerto Rico and shall be interpreted in agreement to the same.

Section 9.- The natural persons who receive appropriations of public funds and who for any reason desist from the construction of the work, the acquisition of the equipment, or the development of the activity, shall inform the proposing legislator and the Treasury Committee of both Houses to reassign the use of the same.

Section 10.- The governmental entities, as well as those non-governmental, which receive these public funds, shall be bound to render in the Office of the Clerk of the House or the Secretary of the Senate a detailed quarterly report on the funds used, not later than July 31, and January 31 of the corresponding fiscal year. The granting of additional funds to the beneficiaries shall not be authorized under any circumstance until the beneficiary renders the corresponding report. In the case of the municipalities, these shall comply with Section 19.002 (u) of Act No. 81 of August 30, 1991, as amended known as the "Autonomous Municipalities of the Commonwealth of Puerto Rico Act of 1991." In this report it shall be stated how the purposes and ends established by the joint resolution have been complied with. On the other hand, the private entities shall render a sworn report.

Section 11.- No legislator or his/her assistants or employees may receive or hold any check issued by the designated agency. Any violation to this provision shall be sanctioned pursuant to the Code of Ethics of each Legislative Body.

Section 12.- The legislator shall keep a record of every appropriation made by him/her of public funds from the pork barrel and the small pork barrel. Such record shall contain all the documentation stipulated in Articles 4 and 6 of this Act, which originated such request and recommendation. The legislator shall keep the record for four (4) years, or until there is conducted an audit by the office of the Comptroller, whichever occurs first. Should the four (4) years elapse and the Office of the Comptroller has conducted no audit, or the legislator resigns his office, the record shall be transferred to the Office of the Clerk of the House or the Secretary of the Senate until the Comptroller's audit is conducted.

Section 13.- This Act shall take effect immediately after its approval and shall apply to all joint resolutions submitted after the approval of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 179 (S.B. 1626) (Conference) of the 3rd Session of the 14th Legislature of Puerto Rico:

AN ACT to adopt the regulation on appropriation of public funds of legislative origin product of the Issuance of Bonds and the General Fund for the construction of permanent (pork barrel) and non-permanent works such as the acquisition of equipment, purchase of materials and other activities of social interest (small pork barrel); to establish the requirements, norms and procedures for the granting of these donations; to establish the information that shall include all Joint Resolutions of appropriations of the referred public funds; to establish the requirements to request funds; etc.,

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

In San Juan, Puerto Rico, today 2nd of April of 2004.

Elba Rosa Rodríguez-Fuentes
Director