

“Citizens' Investigating Official (Ombudsman) Act”

Act No. 134 of June 30, 1977, as amended

(Contains amendments incorporated by:

Act No. 6 of March 16, 1987

Act No. 10 of May 1, 1997

Act No. 48 of July 25, 1997

Act No. 128 of October 31, 1997

Act No. 432 of December 21, 2000

Act No. 454 of December 28, 2000

Act No. 15 of January 1, 2003)

To create the Office of Ombudsman; to provide for and functioning; to establish its duties, powers its organization and procedures for the implementation of this act; to fix penalties and to appropriate funds to carry out the purposes thereof.

STATEMENT OF MOTIVES

Modern society demands its government to render multiple and varied services. The modern state has become an active guide and regulator of the economic and social processes which has led to the creation of large and complex administrative bodies.

Faced with this multiplicity of functions the citizens become confused. When a citizen is adversely affected by administrative rulings, he usually does not know where to appeal and at times is not even aware that he has suffered any wrong.

In several countries, the Ombudsman is the answer to the problems that arise in democratic societies which have become complicated and bureaucratized.

In addition to Sweden, where it originated, this institution exists in Denmark, Finland, Norway, New Zealand, England and Guyana. In several countries such as India, the United States, Canada, Holland and Ireland the possibility of establishing such a system is being considered. The states of Hawaii, Iowa and Nebraska have already adopted this institution.

This all shows that in recent years the Office of "Ombudsman" which originated in the Scandinavian countries has drawn much attention and has been found to be an effective instrument to control bureaucratic excesses.

From the experience obtained in the countries and states where the "Ombudsman" is operating, it has been seen that he has helped to improve government procedures, protect legitimate interests which, intentionally or not, may be ignored or harmed, and has found very effective means to use the resources and time of government agencies to the maximum. Likewise, he has tended to increase the people's confidence in their own government.

In general terms, Puerto Rico is a country that has a modern public administration system and honest officials; consequently we are qualified to establish an Institution of this nature.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — Title. — (2 L.P.R.A. § 701)

This Act shall be known as the "Citizens' Investigating Official (Ombudsman) Act".

Section 2. — Definitions. — (2 L.P.R.A. § 702)

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

(a) *Agency.* — Shall mean any entity, department, board, committee, division, bureau, office, public corporation or government institution of the Executive Branch of the Commonwealth of Puerto Rico and any official, employee or member of this branch who acts or seems to act in the discharge of his official duties except:

(1) The Office of the Governor.

(2) Property Registrars in regard to their power of qualification.

(3) The University of Puerto Rico with respect to its teaching functions.

(b) *Administrative act.* — Shall mean any action, omission, decision, recommendation, practice or procedure of an agency, as it has been defined in subsection (a) of this section. It shall not include, however, the functions inherent to the study, language, and approval of rules and regulations.

(c) *Ombudsman.* — Shall mean the Citizens' Investigating Official, created herein.

(d) *Special Ombudsman.* — Shall mean the Official appointed by the Ombudsman to handle any claim arising in specific areas of public endeavor.

(e) *Small Businesses Ombudsman.* — Is the official to be appointed by the Ombudsman to handle the claims that arise in the areas referred to in the Small Business Administrative and Regulatory Flexibility Act, [3 L.P.R.A. §§ 2251 et seq.].

Section 3. — Creation of Office. — (2 L.P.R.A. § 703)

The Office of the Citizens' Investigating Officer, which shall be attached to the Legislative Branch, is hereby created. It shall be directed by the Ombudsman pursuant to the provisions of this Act and the rules and regulations approved by him for its internal operation.

Section 4. — Appointment of the Ombudsman. — (2 L.P.R.A. § 704)

The Governor, with the advice and consent of the majority of the total number of members composing each House, shall appoint the Ombudsman, who shall hold office for a term of ten (10) years until his successor is appointed and takes office. The person designated to hold said office shall not have been previously appointed to said position.

Section 5. — Qualifications and salary. — (2 L.P.R.A. § 705)

The office of Ombudsman shall only be held by a person of legal age, who has resided in Puerto Rico for five (5) years preceding the date of his/her appointment and who also enjoys recognized professional capacity and moral probity and is knowledgeable and experienced in the field of public administration and government undertakings.

The Ombudsman shall earn an annual salary equal to seventy-five thousand dollars (\$75,000), or equal to that of a judge of the Circuit Court of Appeals, whichever is greater.

Section 6. — Vacancy. — (2 L.P.R.A. § 706)

The Legislature may declare the position of Citizens' Investigator vacant by a concurrent resolution approved by two thirds (2/3) of the total membership of each Legislative Body, after prior notice and hearing, if it determines that he is totally and permanently disabled, or that he has been guilty of negligence in the performance of his duty or improper conduct.

In case the office of Ombudsman becomes vacant due to illness, disability, temporary absence or for any other reason, his/her assistant shall assume the functions thereof until his/her successor is appointed and takes office. In such case the new appointment shall be for a term of ten (10) years.

Section 7. — Office personnel and delegation of powers. — (2 L.P.R.A. § 707)

The Ombudsman may delegate any of the duties provided herein, except those established in Sections 8, 17 and 18, to his Assistant or to any other designated official.

Notwithstanding [t]he above, the Assistant Ombudsman may perform the functions established in the abovementioned sections, when holding office as Acting Ombudsman.

The person designated as Assistant Ombudsman shall meet all the requirements stated in Section 5 of this Act for the office of Ombudsman.

The Ombudsman may avail himself of the benefits of the Retirement Act, Act No. 447 of May 15, 1951, as amended [3 L.P.R.A. §§ 761-788].

The Ombudsman may also recruit and appoint the personnel needed to carry out the provisions of this Act, which shall be excluded from the provisions of Act No. 5 of October 14, 1975, known as the "Public Service Personnel Act", and the Personnel Regulations of the Office of the Citizen's Investigating Official, duly approved by the Ombudsman for such purpose, shall be applicable to them. The personnel of the Office of the Ombudsman may avail themselves of the benefits of Act No. 447 of May 15, 1951, as amended, known as the "Public Employees Retirement System Act", and is also authorized to contract the technical and professional services deemed necessary to implement this Act.

The Ombudsman may appoint Special Ombudsmen or Citizen's Investigating Officials in those areas of public endeavor that need to be investigated with special emphasis on the way the services are rendered to the citizens. They shall bear the title of Ombudsman of their area.

The Special Ombudsmen shall report directly to the Ombudsman and shall be subject to the regulations established by the Ombudsman to perform their functions.

The Ombudsman shall provide all the resources the Special Ombudsmen need to perform their duties. When appointing a Special Ombudsman, the Ombudsman shall evaluate the

legislation or regulations in effect in other jurisdictions to establish the duties said official will perform, and the prevailing practices of their areas.

The Ombudsman shall appoint the Small Businesses Ombudsman. The Small Businesses Ombudsman shall answer directly to the Ombudsman and shall be subject to the regulations that the Ombudsman establishes for the performance of his/her duties.

The Ombudsman shall provide the necessary resources so that the Small Businesses Ombudsman may discharge his/her duties. On designating the Small Businesses Ombudsman, the Ombudsman shall evaluate the legislation or regulations in effect in other jurisdictions to establish the duties to be performed by said official.

The Ombudsman may appoint the administrative personnel needed to assist and support the duties of the Small Businesses Ombudsman.

The Ombudsman shall be empowered to implement and enforce the purposes of this Act in order to comply with its public policy.

Section 8. — Regulatory power. — (2 L.P.R.A. § 708)

The Ombudsman shall have the power to adopt and promulgate the rules and regulations needed to implement this Act, that are not incompatible with the laws in effect and the Constitution of the Commonwealth of Puerto Rico. The regulations adopted to such effect, including those applicable to internal procedures, shall not be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act", and shall have force of law when promulgated.

He is also authorized to establish, by regulations to such effect, the personnel administration of the Office, the pertinent procedure for the filing and handling of claims, carrying out investigations, and the manner of informing his conclusions. Said regulations shall have force of law once promulgated.

Section 9. — Imposition of fees and duties; billing of agencies. — (2 L.P.R.A. § 709)

No payment of fees, duties or taxes of any kind shall be required for the filing, handling and investigation of claims filed by individuals, groups or private juridical entities.

Section 10. — Jurisdiction. — (2 L.P.R.A. § 710)

The Ombudsman shall have jurisdiction to investigate the administrative acts of the agencies and he shall exercise the power and authority granted herein.

Section 11. — Investigation of claims. — (2 L.P.R.A. § 711)

The Ombudsman shall investigate any claim related to the areas of investigation established in Section 13 hereof.

Notwithstanding the above, no claim shall be investigated in such cases that, in the discretion of the Ombudsman:

- (a) There is an adequate remedy at law to repair the injury, offense or injustice presented as a claim;

- (b) the claim refers to a matter outside of the jurisdiction of this Act;
- (c) the claimant does not have sufficient personal interest in the matter presented as a claim;
- (d) the claim is frivolous or has been filed in bad faith, or
- (e) the claim is being investigated by another agency and to act thereon would be a duplication of efforts and resources, in the opinion of the Ombudsman.

The claims not investigated for the reason stated in subsection (e) above, may be considered by the Ombudsman when said case no longer exists. Likewise he may also carry out, on his own initiative, whichever investigations he deems proper, when there are sufficient reasons in his opinion, to give rise to an investigation pursuant to Section 13 of this Act.

Section 12. — Notice. — (2 L.P.R.A. § 712)

The Ombudsman shall notify the claimant of his decision to investigate the facts alleged in the claim. He shall also notify the latter of his decision not to investigate the complaint, if such is the case, stating the reasons therefor. In all the cases in which the Ombudsman decides to initiate an investigation, he shall so notify the agency concerned, except when the nature of the investigation requires that the notice be withheld, in which case it shall be notified as soon as the confidentiality of the investigation so permits.

Section 13. — Matters of investigation. — (2 L.P.R.A. § 713)

Matters liable to investigation shall be any administrative act which may be:

- (a) Contrary to law or regulations;
- (b) unreasonable, unjust, arbitrary, offensive or discriminatory;
- (c) based on an error of fact or on improper and irrelevant reasons;
- (d) not accompanied by an adequate statement of facts when the law or the regulations so require, or
- (e) executed inefficiently or erroneously.

The Ombudsman may perform the investigation for the purpose of recommending an adequate remedy.

Section 14. — Proceedings. — (2 L.P.R.A. § 714)

In performing any investigation, the Ombudsman may make inquiries and obtain the information he deems necessary for the purposes thereof. To such end, the agencies shall permit the officers and employees of the Office to examine all their files and documents. Likewise, for the purpose of the investigation, the Ombudsman shall hold such private hearings and on-the-spot inspections as he may deem pertinent.

Section 15. — Summons. — (2 L.P.R.A. § 715)

The Ombudsman shall have authority to administer oaths and take depositions, order the appearance and testimony of witnesses, and require the production of any papers, books, documents and other evidence.

When a duly summoned witness fails to appear to testify, or does not produce the evidence he is required to, or when he refuses to answer any question related to any study or investigation carried out pursuant to the provisions of this Act, the Ombudsman may appear before any part of the Court of First Instance of Puerto Rico, on his own or through the Secretary of Justice, to require the appearance and testimony of the witness or the production of the evidence required, as the case may be. Upon a request by the Ombudsman, the Secretary of Justice shall furnish the necessary legal assistance for such purposes.

No natural or [juridical] person shall refuse to comply with a subpoena issued by the Ombudsman or his representative, or to produce the evidence requested, or to refuse to answer any question with regard to any matter under study or investigation, or to refuse to obey a judicial order so issued, on the grounds that the testimony or the evidence required of him could incriminate him or expose him to a criminal prosecution or to be discharged or suspended from his employment, profession or occupation. Nonetheless, no person shall be prosecuted or subjected to any punishment or seizure as a result of any transaction, matter or thing in regard to which he may be bound, after having claimed his privilege of not testifying against himself, to give testimony or evidence, except that said person who so testifies, shall not be exempt from prosecution or punishment for perjury when so committing it.

Section 16. — Consultation with the agency. — (2 L.P.R.A. § 716)

Before entering a final opinion or recommendation which involves or affects an agency or person, the Ombudsman shall give the latter a reasonable opportunity to make a statement on the matter.

Section 17. — Procedures subsequent to investigation. — (2 L.P.R.A. § 717)

At the end of any investigation the Ombudsman shall inform the agency of his resolution and recommendations if he/she determines that:

- (a) The agency should give more ample consideration to the matter investigated;
- (b) an administrative act should be altered or set aside;
- (c) the law or regulations on which the administrative act is based should be modified;
- (d) the reasons justifying the administrative act should be given, or
- (e) the agency shall perform any other action.

The Ombudsman shall require the agency concerned to notify him, within a reasonable period of time, of any action performed pursuant to his resolution and recommendations. He shall also give opportune notice to the claimant of the actions performed by him and by the agency.

Section 18. — Appearance before courts. — (2 L.P.R.A. § 718)

The Ombudsman shall, in cases of civil or criminal violations of law, request the Secretary of Justice to appear before the courts of Puerto Rico to institute the proper legal proceedings.

Section 19. — Failure to comply with duties. — (2 L.P.R.A. § 719)

If the Ombudsman finds that any officer or employee of an agency has failed to comply with the duties inherent to his office or employment, or that he has been negligent in the discharge of his duties without just cause, he shall notify the authorities, organizations or competent administrative bodies so that they may act accordingly.

Section 20. — Publicity. — (2 L.P.R.A. § 720)

The Ombudsman may make [his] resolutions and recommendations, public, as well as the action taken by the agency, once the Governor and the Legislature have been informed of them.

In the cases that the resolution of the Ombudsman is contrary to the position assumed by the agency, he shall also state the reasons that the agency has given to justify the administrative act, unless the agency in question is opposed to it.

Section 21. — Immunity. — (2 L.P.R.A. § 721)

The Ombudsman shall enjoy immunity with regard to civil and criminal liability for the resolutions and recommendations issued as a result of any investigation performed in compliance with the provisions of this Act.

Section 22. — Inviolability of correspondence. — (2 L.P.R.A. § 722)

Any letter or correspondence of any kind addressed to the Ombudsman by a person under custody in any government institution shall be delivered to him, unopened, immediately.

Any person who violates the provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500), or imprisonment for a term of not more than six (6) months, or both penalties, at the discretion of the court.

Section 23. — Annual reports. — (2 L.P.R.A. § 723)

The Ombudsman shall submit annual reports to the Legislative Assembly and to the Governor during the second week of the month of January of each year, containing his undertakings, studies and investigations, and shall also submit such other special reports which he deems convenient or may be required by the Legislative Assembly and the Governor.

Provided, That the Office of the Controller of Puerto Rico shall annually review the reports and documents related to the management and use of public funds by the Ombudsman's Office.

Section 24. — Government resources, use. — (2 L.P.R.A. § 724)

In order to accomplish the purposes of this Act, the Office shall use the resources available within the agencies and public instrumentalities, such as information, offices, personnel, technicians, equipment, material and other facilities, and these agencies and instrumentalities are hereby authorized to make these resources available to the Ombudsman. In such cases the officers or employees shall function accordingly under the jurisdiction and direction of the Office, subject to the conditions agreed upon with the agency. Provided, however, That any officer or employee of an agency who is transferred to the Office of the Ombudsman pursuant to the provisions of this section shall retain the rights, benefits, and classification he has in his regular office, position or employment.

The Ombudsman may also commission any department, agency, instrumentality or other organization or political subdivision of the government to perform any study, investigation or work that may be necessary for the discharge of his duties.

Section 25. — Inapplicability of laws. — (2 L.P.R.A. § 725)

The Office of Ombudsman shall not be subject to the provisions of Act No. 164 of July 23, 1974, as amended [3 L.P.R.A. §§ 931-934d], on rental rates, nor Act No. 96 of June 29, 1954, known as the "Procurement and Supplies Act".

It is also exempted from the provisions of the Puerto Rico Government Accounting Act, Act No. 230 of July 23, 1974, [3 L.P.R.A. §§ 283-283p] the General Services Administration Act, Act No. 164 of July 23, 1974, [3 L.P.R.A. §§ 931-934d], and from the Section 3 of the Budget and Management Office Organic Act, Act No. 147 of June 18, 1980, as amended [23 L.P.R.A. § 103].

Section 26. — Penalties. — (2 L.P.R.A. § 726)

Any person who wilfully and maliciously prevents or obstructs the performance of the Ombudsman's or of the Office personnel's functions shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than five hundred dollars (\$500).

When the impediment or obstruction mentioned in the preceding paragraph is caused by intimidation, force or violence, this action shall constitute a felony and upon conviction, such person shall be subject to the penalties provided in Article 13 of the Penal Code.

Section 27. — Appropriation of Funds. — (2 L.P.R.A. § 701 note)

The Office of Ombudsman is hereby appropriated from unencumbered funds of the Commonwealth Treasury the sum of five hundred thousand (500,000) dollars, to implement this act during the fiscal year 1977-78.

For subsequent years the funds necessary to carry out the purposes of this act shall be included in the General Expense Budget of the Commonwealth of Puerto Rico.

Section 28. — International organizations. — (2 L.P.R.A. § 727)

The Citizens' Investigating Official (Ombudsman) of the Commonwealth of Puerto Rico may belong to and represent Puerto Rico in the different organizations of the United States of America, or international ones such as the Iberoamerican Ombudsman Federation. Such participation must be in harmony with the public policy of the Commonwealth of Puerto Rico and the Department of the State of the Commonwealth of Puerto Rico shall be informed.

Section 28. — Effectiveness. — This act shall take effect on July 1, 1977, for the sole purposes of the appointment of the Ombudsman, the organization of the Office, and the adoption of the necessary regulations to implement the same; but the remaining provisions shall take effect ninety (90) days following the approval of this act.

Note. This compilation was prepared by the Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.