

(S. B. 2046)

**(No. 1)**

(Approved January 3, 2012)

**AN ACT**

To adopt the Puerto Rico Government Ethics Act of 2011; to incorporate definitions; to establish the mission, autonomy, and exemptions of the Office of Government Ethics; to establish the process for the appointment to the office of Executive Director, the term, requirements, salary, restrictions of such office, the procedure for the selection, separation, and removal from the office of Executive Director; to establish the powers and authorities of the Office of Government Ethics and the Executive Director, and access to information and services; to establish provisions regarding the Ethics Committees, their composition and swearing into office, their duties and responsibilities, and sanctions and penalties; to establish provisions regarding the Center for the Development of Ethical Thought, its policy on prevention, its powers and duties, continuing education, and sanctions; to adopt the Code of Ethics for public servants and former public servants of the Executive Branch, general ethical prohibitions; prohibitions related to other employment, contracts or business; prohibitions related to representation of private interests in conflict with official duties; to establish the duty to inform any possible unethical action or conflict of interests; to establish restrictions for the actions of former public servants; to establish sanctions and penalties for violations of the Code of Ethics, whether criminal, civil, administrative or judicial, and other sanctions; to adopt provisions with regard to financial reports, their applicability, the frequency and the scope of the financial reports of the Executive, Legislative, and Judicial Branches, the filing and swearing of such reports, the contents of the reports, the term to audit, and actions related to such financial reports, prohibitions related to financial reports, and the sanctions and penalties applicable to public servants of the Executive Branch, whether criminal, civil, administrative or judicial and other sanctions; to provide for the public inspection of and access to financial reports, access to overseeing entities, actions to be taken against anyone who furnishes unauthorized information, and the custody of financial reports; to adopt provisions with regard to the

financial reports of the Legislative and Judicial Branches; to adopt provisions with regard to candidates and appointees to elective offices, the statements of financial solvency and absence of conflict of interests, and education; to adopt provisions with regard to the investigation, adjudication, and judicial review with regard to public servants of the Executive Branch; to establish general provisions on the appropriation of funds, severability of provisions, effectiveness, and repealing clause whereby Act No. 12 of July 24, 1985, as amended, shall be repealed; to provide on regulation; and for other related purposes.

### **STATEMENT OF MOTIVES**

Twenty-five years after the creation of the Office of Government Ethics of Puerto Rico, there is no doubt about its dynamic participation in the development of excellence in public service. This was made possible through the approval of its Enabling Act in 1985, and its subsequent thirty-three amendments. In keeping with such experiences and knowledge, we hereby propose the approval of a comprehensive and intelligent reform that addresses the challenges of achieving integrity in public service, where the personal interests of public servants do not supersede those of the people.

The main purpose of the Puerto Rico Government Ethics Act of 2011 established herein is to renew and reassert the preventive and overseeing duties of the Office. Its policy on prevention enables us to identify, analyze, and provide education on values such as trustworthiness, caring, fairness, citizenship, respect, and responsibility, which make feasible the attainment of the highest levels of honesty, conscientiousness, and efficiency in the performance of public servants. Furthermore, the Office oversees—through the vehicles and resources provided by the Act—the conduct of public servants and penalizes all those who infringe the code of ethics, which incorporates values into public service.

In order to temper this Act with the present needs and the experiences acquired throughout our journey, the Office hereby reviews and reforms both its preventive and overseeing duties. Consequently, audit and investigation processes carried out by the Office are optimized, while services are streamlined and efficiency and effectiveness are provided to meet the People's expectations about fighting corruption and abating the effect of any new corruption modalities thereof should they arise.

The body of laws that establishes this statute seeks to formulate a Code of Ethics that regulates the conduct of active and former public servants of the Executive Branch and constitutes the guiding principle of this legislation to prohibit actions that endanger the stability of the moral integrity of the State. To such ends, various vehicles are hereby presented, whose main objective is to prevent the undermining of the purity of the responsibilities corresponding to the office held, be it by injurious actions or by conflict of interests.

In addressing the claim of the People for public officers-elect or other public servants whose office by nature requires them to maintain an image beyond reproach and free from conflict regardless of the branch of government on which they serve, these public servants have been required since 1985, and later reiterated in 1996, to file reports on their personal finances with the Office. In order to streamline the filing and evaluation process of such financial reports, the Office shall develop and implement an electronic system for filing financial reports. Such reports shall include pertinent information for a proper evaluation of the financial status of public servants. In tune with the principle of separation of powers, the Judicial Branch shall determine the contents of the financial reports of its respective members.

It is hereby established that certified candidates to elective office in both general and special elections must file a sworn financial solvency statement with the Office. Likewise, those nominated by the Governor shall submit a financial solvency statement whereby they shall attest to the absence of possible conflict. Such vehicles enable us to have a reliable profile of persons who aspire to hold office in public service.

This Legislative Assembly is committed to serving the People and recognizes the need to promulgate legislation that makes available to the Office of Government Ethics the vehicles to enable the establishment of the highest standards of integrity within public service to safeguard trust in our institutions and ensure transparency in the discharge of official duties.

This Act embodies the commitment and duty of this Legislative Assembly to maintain the ethical responsibility of our public servants under strict scrutiny and to answer to the claims of the People.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

## **CHAPTER I – TITLE AND DEFINITIONS**

### **Section 1.1.- Title.-**

This Act shall be known as the Puerto Rico Government Ethics Act of 2011.

### **Section 1.2.- Definitions.-**

For the purposes of this Act, the following terms or phrases shall have the meaning stated below, unless the context clearly indicates otherwise:

(a) **Official Action.-** action related to the functions and duties of a public servant or within the scope of the authority delegated to the agency, such as rendering advisory services, conducting investigations, filing charges, auditing, adjudicating, and rule making on specific areas. It also includes any procedure related to orders, authorizations, exemptions, resolutions, contracts, granting of permits, franchises, accreditations, privileges, and licenses.

(b) Political Activity.- an event in which one or more persons promote in favor of or against a certain candidacy, political party or matter to be considered by the voters.

(c) Agency.- instrumentalities of the Executive Branch of the Government, public corporations, municipalities and the legislatures thereof, special corporations for municipal development, municipal consortia, boards, and those entities under the jurisdiction of the Executive Branch.

(d) Promotion.- any appointment to an office or position with higher financial compensation or ranking.

(e) Matter.- an issue that involves specific parties in which a public servant participates, personally and substantially, and that requires his/her decision, approval, recommendation or investigation. This term does not include the intervention or participation of a public servant in the promulgation of norms or regulations of general application or of abstract directives and instructions that do not pertain to particular situations or cases.

(f) Audit.- procedure that initiates with the electronic filing of the financial report, in which a financial solvency analysis is conducted.

(g) Forensic Audit.- a specialized audit based upon a financial solvency analysis that encompasses techniques to prevent and detect any conducts that are contrary to public function.

(h) Appointing Authority.- the person or persons whose inherent duty is to appoint, promote, compensate or contract.

(i) Benefit.- any advantage, use, profit or gain, without limiting such term to a monetary or material gain, but denoting any form of reward.

(j) Candidate.- any person who publicly announces his/her intent to seek an elective public office or who, without being the candidate of a political party, publicly announces his/her intent to seek an office or who appears on the ballot for any election.

(k) Case.- any action or controversy before the consideration of any Branch of the Government, in order for a decision to be rendered.

(l) CDET.- the Center for the Development of Ethical Thought.

(m) Committee.- the Government Ethics Committee.

(n) Conflict of Interests.- a situation in which personal or financial interests are or could be reasonably inconsistent with public interest.

(ñ) Contract.- any covenant or juridical business, whether to do or not to do a specific act, executed with the consent of the contracting parties, with regard to a certain object and by virtue of the established cause. This term includes, but is not limited to, any good, work or service agreement, and any purchase and service order.

(o) Control.- authority to manage the assets, liabilities, revenues, and expenditures of a person.

(p) Executive Director.- the Executive Director of the Office of Government Ethics of Puerto Rico.

(q) Former Public Servant.- any person who has worked as a public servant.

(r) Government.- the Government of Puerto Rico.

(s) Confidential Document or Information.- that which is defined as confidential by law; that which is protected under any of the privileges of Evidence Law; that which, if disclosed, could harm the fundamental rights of third parties or the right to privacy and the private life of public servants; the disclosure of which could constitute a violation of the executive privilege; when the document or

information is part of a deliberation process when drafting public policy and, if disclosed, may endanger the life or bodily integrity of a public servant or another person, the security of the Island or may impair any business transactions or official efforts of the State in progress when requesting such information. This term includes reports, memoranda or any written document drafted by a public servant in discharging the duties of his/her office or job for his/her superior or in connection with internal decisions and actions of the department.

(t) Financial Report.- official electronic form adopted and provided by the Office, and in the case of the Judicial Branch, the official form adopted by the Supreme Court, as well as any additional information required by the Office or furnished by the public servant or former public servant. The term includes the annual financial statement, the induction statement, and the termination of tenure statement.

(u) Income.- everything received from any source, whether lawful or unlawful, exempted or taxable.

(v) Electoral Interest.- the platform, agenda, ideal, formulas or tendencies of a political party or candidate.

(w) Appointment.- official designation of any kind to carry out certain functions.-

(x) Office.- The Office of Government Ethics of Puerto Rico.

(y) Relative.- the grandparents, parents, children, grandchildren, uncles, aunts, siblings, nephews, nieces, first cousins, spouse, father-in-law, mother-in-law, brother-in-law, and sister-in-law of a public servant, as well as the children and grandchildren of his/her spouse.

(z) Political Party.- a group, entity or organization governed by the Puerto Rico Electoral Law, as amended, or any succeeding law.

(aa) Private Person.- a natural or juridical person, without including public entities.

(bb) Executive Branch.- all the agencies of the Government.

(cc) Judicial Branch.- the judges or justices of the Court of First Instance, the Court of Appeals, and the Supreme Court, and any other office or agency attached to this Branch.

(dd) Legislative Branch.- the House of Representatives, the Senate of Puerto Rico, the Office of the Comptroller of Puerto Rico, the Office of the Ombudsman, and any other office or agency attached to this Branch.

(ee) Gift.- any money, assets or objects, financial opportunity, gratuities, discounts or benefits.

(ff) Compensation.- payment or remuneration received for carrying out a job. This shall include the improvement of the financial conditions of the job such as raises, merit-based promotions or salary differentials, among others.

(gg) Public Servant.- a person in the Government who may or may not be involved in the drafting and implementation of public policy and carries out his/her duties permanently or temporarily, whether for pay or not. The term also includes freelance contractors whose contract equals a job position or office or whose responsibilities include being directly involved in the drafting and implementation of public policy.

(hh) Family Unit.- those whose financial affairs are under the control of the public servant.

## **CHAPTER II – OFFICE OF GOVERNMENT ETHICS**

**Section 2.1.-** The Office of Government Ethics of Puerto Rico is hereby created, and its administration shall be carried out pursuant to the provisions of this Act. The Executive Director of the Office shall be appointed and confirmed as provided in this Act and be guided by the principles of public policy stated below.



(a) Mission and Autonomy

The main purpose of the Office is to educate public servants in order for these to carry out their duties observing values such as caring, trustworthiness, fairness, responsibility, respect, and citizenship, which govern public administration. The Office's educational initiatives shall be directed to encouraging public servants to incorporate such values into their mindset, thus contributing to the development of Puerto Rican society. This mission and vision shall require the Office to assume an active role within the amplest venues of public discussion, in order to stimulate active collaboration so as to encourage the joining of efforts of all agencies, nonprofit entities, businesses, and citizens.

Furthermore, the Office shall oversee the conduct of public servants and penalize all those who infringe the code of ethics that integrates public service values through the mechanisms and resources provided for by this Act.

The Office is hereby created with the clear legislative intent to operate with full autonomy and independence and at full capacity on a continuing basis, without external interventions, thus allowing it to carry out its ministerial functions efficiently and effectively, without the influence of any public servant subject to its jurisdiction. This administrative and fiscal autonomy is essential to carry out the delicate function entrusted to the Office.

The Office shall have the capacity to sue and be sued.

(b) Exemptions from the Law

Since its creation, the Office was exempted from the application of several laws to reinforce its autonomy as public policy. Consequently, throughout time, it has been exempted from the application of other laws, executive orders, and determinations, which recognizes its endeavor and enables it to carry out its duties independently.

The Office shall be exempted from the payment of taxes, licenses, duties, tariffs, costs or levies imposed by the Government or its municipalities, on the property of the Office or on those in which it is lessor or lessee, and on the income derived from any activity of the Office, including but not limited to municipal license taxes under Act No. 113 of July 10, 1974, as amended, known as the “Municipal License Tax Act”; municipal taxes on construction, under Act 81-1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991.” The Office is also exempted from any kind of fees, internal revenue stamps, and vouchers, costs or taxes required by law in judicial proceedings; from the payment for certifications issued by any office and agency of the Government, and the execution of public documents and the filing and registration thereof in any public register of the Government.

Furthermore, the Office shall be excluded from the application of Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico”; Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act”; Act No. 25 of December 8, 1989, as amended, known as the “Act to Establish a Down Payment System for Government Purveyors of Goods and Services”; Reorganization Plan No. 3-2011, known as the “Reorganization Plan of the General Services Administration of 2011,” as well as the exclusive Register of Bidders attached to the General Services Administration; Act 45-1998, as amended, known as the “Puerto Rico Public Service Labor Relations Act”; Act No. 5 of December 8, 1955, as amended, known as the “Public Documents Administration Act”; Act 197-2002, as amended, known as the “Act to Regulate the Transition Process of the Government of Puerto Rico”; Act 265-2003, known as the “Act for Regulating Certain Government Financing and Personal Property Leasing Contracts”; Act No. 147 of June 18, 1980, as amended, known as the

“Management and Budget Office Organic Act”; Act 209-2003, as amended, known as the “Puerto Rico Institute of Statistics Act”; Act 151-2004, as amended, known as the “Electronic Government Act”; Act 148-2006, as amended, known as the Electronic Transactions Act; Act 42-2010, as amended, known as the “Inspector General of the Government of Puerto Rico Act”; Act 80-1991, as amended, known as the “Municipal Revenues Collection Center Act”; Act 6-2010; and Act 155-2010.

Notwithstanding the foregoing, the fiscal operations of the Office shall be audited and examined by the Office of the Comptroller of Puerto Rico at least once every two (2) years.

**Section 2.2.- Executive Director.-**

(a) Appointment and Term

The Office shall be administered by an Executive Director, who shall be appointed by the Governor with the advice and consent of the Senate and the House of Representatives, for a term of ten (10) years or until his/her successor is appointed and takes office. The person designated to hold such office shall not be appointed for more than one term. In the event that the office of Director is left vacant before the expiration of the ten-year term provided herein, the new appointment shall be extended for ten (10) years.

(b) Requirements and Salary

The office of Executive Director may only be held by a person of legal age who is a United States citizen, and citizen and *bona fide* resident of Puerto Rico, of recognized professional capacity, moral integrity, and knowledgeable in public administration and government endeavors.

The person could not have been a candidate in a primary or in a general or special election process during the last four (4) years immediately preceding his/her appointment.

The Executive Director shall draw an annual salary equal to one hundred and five thousand dollars (\$105,000) or a salary equivalent to that of a Judge of the Court of Appeals, whichever is greater.

The Executive Director shall have the option of joining, withdrawing from or rejoining the Retirement System and the Savings and Loan Fund in effect.

The Executive Director may enjoy an annual vacation leave of thirty (30) days, at his/her discretion, taking into account the best interests of the Office.

(c) Restrictions of the Office

The Executive Director may not:

(1) Contribute money directly or indirectly to political parties or organizations;

(2) Hold or campaign to hold any office whatsoever in the direction or organization of a political party or run for elective public office;

(3) Participate or collaborate directly or indirectly in any political campaign whatsoever;

(4) Endorse a candidate for an elective office.

(d) Selection Procedure

The Secretary of Justice shall convene all former justices of the Supreme Court of Puerto Rico to recommend to the Governor a list of at least three possible candidates for holding the office of Executive Director.

In the event that there are no former justices of the Supreme Court available, or whenever these cannot constitute a panel of at least five members, the Secretary of Justice shall convene former judges of the Court of Appeals to complete the panel. In the event that the panel fails to submit to the Governor a list of the candidates within thirty (30) days after having been convened by the Secretary of Justice, the Governor may designate the person who shall hold the office of Executive Director.

Nothing provided herein shall be construed as a limitation to the constitutional power of the Governor to exercise with absolute discretion his/her appointing authority.

(e) Separation from Office

The Executive Director may be separated from his/her office only if the Governor brings charges against him/her before the Supreme Court of Puerto Rico. The Supreme Court shall pass judgment on the evidence produced based on the criteria of a clear, strong, and convincing proof to determine whether or not to find the Executive Director to be mentally unfit to carry out his/her duties.

For all legal purposes, separation from office shall be deemed to be a voluntary resignation.

(f) Removal from Office

The Executive Director may be removed from his/her office only if charges are brought against him/her for the following reasons:

1. Immoral or illegal conduct or violations of the prohibitions related to this office or the Code of Ethics as established by this Act;
2. Gross negligence in the discharge of his/her duties; and
3. Conviction for any felony or misdemeanor that implies moral turpitude.

The action must be initiated in the House of Representatives, in which charges shall be pressed with the approval of 2/3 of the total number of its members. Once the process concludes, the Senate shall have the exclusive power to judge and pronounce sentence, which shall only be limited to the removal from office, with the consent of 3/4 of the total number of its members.

**Section 2.3.- Powers and Authorities of the Office and the Executive Director.-**

The Office and the Executive Director shall have the following powers and authorities:

A. To promote and formulate the ethical and moral conduct policies and programs intended for public servants, directed to attain the following objectives:

1. The establishment of criteria of excellence, personal integrity, honesty, responsibility, and truthfulness in public endeavors, in order to build, promote, and retain the people's trust in government institutions.

2. The commitment of public servants that personal interests shall not supersede public interests and that any practice which may result in illegality, discrimination, fraud or administrative malpractice shall be eliminated.

3. The continuous support and the holding of workshops and training programs to promote compliance with the merit system and to achieve excellence and professionalism in public service.

4. The demeanor of all public servants with an attitude of respect, courtesy, and concern for the citizens' needs beyond their personal convenience.

5. The motivation in all public servants to exercise the maximum allowable discretion to promote the public interest and government efficiency.

B. To promote the publication and understanding of ethical standards and values in public service and among the people, as well as the ethical development in all areas of social coexistence.

C. To interpret, apply, and enforce the provisions of this Act and the rules and regulations thereunder that establish specific prohibitions with regard to the conduct of public servants or that govern questions of ethics, conflicts of interests, and filing of financial reports.

D. To promulgate any regulations, norms or directives that may be necessary and convenient to achieve the purposes of this Act.

E. To issue opinions on the provisions of this Act.

F. To issue any orders that may be necessary and convenient to comply with its functions, responsibilities, and duties under this Act.

G. To resort to the Court of First Instance to compel compliance with any order issued by the Office.

H. To conduct audits and forensic audits on financial reports and recommend the action to be taken to correct, process or refer any detected violations.

I. To summon, examine, order, require, and obtain a copy of any document or proof related to any matter under investigation or in controversy before the Office.

J. To administer oaths or delegate such authority to any public servant in his/her Office.

K. To request from agencies any reports or data deemed necessary.

L. To evaluate the reports of the Office of the Comptroller of Puerto Rico and the Joint Committee on Special Reports of the Comptroller that contain findings on any potential violation of the provisions of this Act.

M. To settle any controversy that may arise from the application of this Act.

N. To designate examining officials or administrative judges to preside over any adjudication proceeding initiated as a result of the filing of a complaint. Such examining officials or administrative judges shall be empowered to issue any orders that may be necessary to guarantee the parties due process.

Ñ. To establish and administer procedures to identify violations of government ethics, to prevent conflicts of interest, and to take or direct the disciplinary, administrative, or civil measures authorized by this Act, after having duly conducted investigations and hearings where the parties involved have an adequate opportunity to be heard and defend themselves.

O. To authorize the disclosure of information related to the operations or activities of this Office.

P. To refer to Federal or State overseeing agencies, such as the Department of Justice, the Office of the Panel of the Special Independent Prosecutor, the Federal Bureau of Investigations, among others, any findings that may point to potential violations of the laws.

Q. To issue to the Department of the Treasury, the Retirement Systems of the Employees of the Government and the Judiciary and any other Public Retirement System, the Association of Employees of the Government of Puerto Rico and to the appointing authority, an order to withhold and deduct against any funds accrued by the public servant or former public servant who fails to comply with a final and binding administrative fine.

To likewise notify the public servant or former public servant within at least thirty (30) days in advance, that his/her noncompliance shall be referred to said agencies for the appropriate discount or the applicable action. The agency shall determine, in accordance with the regulations adopted for such purposes, the manner in which the withholding shall be made, and so notify the public servant or former public servant.

In the case of a withholding or deduction against funds accrued in any of the aforementioned entities, such entities shall remit to the Office, payable to the Secretary of the Treasury, the deduction made from the funds of the public servant or former public servant. If the total amount to be paid for the fine is not available



upon receipt of the withholding and deduction order, the aforementioned entities shall so report to the Office. In this case, the withholding and deduction order shall remain in effect until the fine is paid in full or the Executive Director of the Office requires it to be rendered ineffective.

The Office may resort to the Court of First Instance, San Juan Part, to file a petition to compel compliance with the administrative resolution thus issued or a demand for payment in order for the fine to be paid in full.

The Office shall remit to the Secretary of the Treasury any debts on account of administrative fines on which the Office has made the appropriate collection efforts, the amount of which shall be covered into the General Fund of the Government.

R. To organize the Office and appoint or contract personnel as necessary to carry out the duties and functions established in this Act in accordance with the criteria that will ensure the rendering of high quality services, without being subject to personnel laws.

S. To delegate, when necessary, any power or authority onto any public servant of the Office, except for the rulemaking authority.

T. To enter into collaboration agreements with public or private entities, within or without Puerto Rico, to achieve the purposes of this Act.

U. To solicit, accept, and receive funds, goods or services from any agency or person that is not subject to its jurisdiction. The Office may use such funds, goods, services, or gifts subject to the regulations adopted for such purposes.

V. To assign or donate funds or property to any agency, private person, or nongovernment, nonprofit entity which promotes and observes the values identified by the Office and the activities of which encourage community participation. The norms relative to all that pertains to any donations and assignments made by the Office shall be adopted.

W. To acquire by means of purchase, assignment, exchange, or any other lawful means, any necessary real property to house the headquarters of the Office; contract construction, repair, improvement, or extension works for such facilities; regulate such processes; and finance such transactions through the Government Development Bank, any of its subsidiaries or affiliates, or through a public or private banking institution, with the assistance and authorization of the Government Development Bank, in its capacity as fiscal agent of Government agencies or institutions, as provided by Act No. 17 of September 23, 1948, as amended. Repayment of any obligation incurred for such purposes shall originate from the annual budget appropriations received by the Office.

The Executive Director shall have the power to reserve, encumber or pledge, in whole or in part, the budget appropriations, to make payments to service the debt of any financing incurred under this provision. Likewise, the Executive Director shall be empowered to mortgage the real property, the acquisition of which is authorized herein, to answer for the financing debt; and to mortgage, sell, exchange or otherwise dispose of the same with the assistance and authorization of the Government Development Bank, in its capacity as fiscal agent of the agencies or the Government.

The Executive Director shall be empowered to lease or assign the use of part of the facilities to public or private agencies, provided that he/she certifies that the leased or assigned part is not necessary for the operations of the Office; and that the lease or assignment shall yield benefits that are necessary or convenient for the operations of the Office.

The money generated by such lease shall be deposited into a special fund to be administered by the Office.

X. To take any other action or measure that may be necessary and convenient to achieve the purposes of this Act.

**Section 2.4.- Access to Information and Services.-**

(a) At the request of the Executive Director, all agencies shall:

1. put at his/her disposal, to the greatest extent possible, their services, staff, and facilities to carry out the provisions of this Act;
2. furnish him/her with all the information in their power and provide him/her with access to, including, but not limited to, their information systems and databases, whenever it is necessary to carry out the duties of the Office; and
3. review personnel regulations in effect whenever it is necessary to prevent conflicts of interest by public servants; to classify the conduct that shall constitute a violation of the regulations in effect, and to establish the appropriate administrative sanctions.

(b) The Office shall make available for the public for their review the following public documents:

1. Complaints;
2. Resolutions;
3. Opinions;
4. Dispensations;

## **Section 2.5.- Government Ethics Committees.-**

### **(a) Composition and Swearing-in.**

Every agency shall create a Government Ethics Committee composed of the following public servants:

1. The head of the Office of Human Resources;
2. The head of the Office of Finances; and
3. Three public servants in the career service, selected by the vote

of the personnel of the agency. Two of the members shall be appointed for a term of three years, and the third member, for a term of five years.

During special circumstances, the Executive Director may authorize a modification of the composition of the Ethics Committees.

The appointing authority shall inform the Executive Director the names of the members of its Committee. Should any change or vacancy arise in the Committee, the Executive Director must be informed within thirty (30) days as of the date in which any change was made.

Agencies composed of different regions shall have one Committee for each one of the regions.

The members of the Committee shall be sworn in by the Office and responsible for their decisions as a whole. Once it is constituted, a Liaison Officer shall be chosen from among them.

In the event that one of the members, who is a career employee, is removed from the Committee, the established procedure shall be followed.

### **(b) Duties and Functions.**

The Committees shall have, among others, the following duties and functions:

1. To keep the appointing authority informed of the work carried out by the Committee.

2. To follow up and verify compliance with the corrective measures established to address findings included in any report of the internal and external audits conducted in their agencies.

3. To verify the establishment of and compliance with administrative controls to prevent and discourage their personnel from incurring in violations of this Act, the regulations approved thereunder and any other law directed to fight corruption in the public service.

4. To coordinate their activities in accordance with the norms established by the Office.

5. To keep and update the records of the works conducted every fiscal year and have such records available for review by the staff designated by the Office.

6. To carry out any other function that, in the judgment of the Executive Director, is necessary to achieve the objective of preventing government corruption.

(c) Sanctions and Penalties.

The Executive Director may impose administrative sanctions on the members of the Committee if they fail to comply with any of the duties and functions established in this Act, after following an administrative procedure.

Any member of the Committee, who intentionally destroys, alters, loses or conceals any kind of information, document, file or record, including those in electronic format, shall be guilty of a felony.

Any person convicted of this offense shall be punished by imprisonment for a fixed term of one (1) year and a fine of two thousand dollars (\$2,000). The Court may also impose community service.

## **CHAPTER III – CENTER FOR THE DEVELOPMENT OF ETHICAL THOUGHT**

### **Section 3.1.- Prevention as Public Policy.-**

For the purpose of extending and strengthening the public policy for prevention through education delegated to this Office, the Center for the Development of Ethical Thought is hereby created.

The mission of the Center for the Development of Ethical Thought is to attain the following objectives, among others:

1. To design and develop training initiatives regarding ethics, values, and integral development for the entire society.
2. To provide public servants with training that promotes an adequate academic and practical formation on values, government ethics, and the sound administration of public resources.
3. To offer a formative program of courses, whose objective is to study the substantive, procedural, and general aspects of this Act.
4. To examine corruption from an interdisciplinary approach that explains the economic, political, and socio-cultural components thereof.
5. To promote the study of all aspects of ethics, among them, the influence of the ethical factor on internal state works and its pertinence and impact on global relations.
6. To disclose by means of publications the findings of any academic research study on the public-ethical social process.

Government radio and television stations, operated by the Puerto Rico Public Broadcasting Corporation, shall allocate airtime permanently, free of charge, of at least two (2) hours every month for broadcasting programs, projects, and initiatives that promote ethics, values, and the public policy of the Office.

### **Section 3.2.- Powers and Duties.-**

The Center for the Development of Ethical Thought shall be responsible for designing, providing, and coordinating training courses.

To achieve such task, the Executive Director shall be empowered to:

1. Require of every government entity any technical assistance as necessary, property, staff, technology, and any other resources to provide these training courses.

2. Contract services, trainings, and workshops of private persons or organizations within or without Puerto Rico, for the purposes of attaining the objectives of the Center for the Development of Ethical Thought.

### **Section 3.3.- Continuing Education.-**

Any public servant in the Executive Branch must complete every two (2) years at least twenty (20) contact hours of ethics-related courses, of which ten (10) hours must be completed through the trainings or any other method developed by the Center for the Development of Ethical Thought.

The Center for the Development of Ethical Thought shall determine an equivalency and validate to the appropriate biannual period any training provided by other public or private entities.

The appointing authority shall grant time, without charge against any leave, to its public servants to comply with the obligation imposed under this Act.

### **Section 3.4.- Sanctions.-**

The Executive Director may impose administrative sanctions on any public servant who fails to comply with the continuing education requirement established in this Chapter, after following the administrative procedure set forth by regulations for such purposes.

Those public servants who fail to comply with the continuing education requirement shall be referred to the appointing authority concerned for the latter to take the appropriate disciplinary measures.

**CHAPTER IV – CODE OF ETHICS FOR PUBLIC SERVANTS  
AND FORMER PUBLIC SERVANTS IN THE EXECUTIVE  
BRANCH; PROVISIONS APPLICABLE TO PUBLIC SERVANTS  
AND FORMER PUBLIC SERVANTS IN THE JUDICIAL  
AND LEGISLATIVE BRANCHES**

**Section 4.1.- Jurisdiction and Scope.-**

This Code regulates the conduct of public servants and former public servants in the Executive Branch.

**Section 4.2.- General Ethical Prohibitions.-**

(a) No public servant shall solicit any benefit for his/her agency, whether directly or indirectly, from a private person, business or public entity regulated or contracted by the former, nor carry out actions conducive to obtaining a contract.

A public servant may only accept a benefit for his/her agency from a private person, business or public entity that is neither regulated nor contracted by the former, or that does not carry out actions leading to obtaining a contract, provided that he/she complies with the regulations adopted for such purposes.

(b) No public servant shall exploit the duties and powers of his/her office or public property or funds to directly or indirectly obtain any benefit not permitted by law for him/herself or a private person or business.

(c) No public servant shall accept or solicit from a private person or business, whether directly or indirectly, a benefit as a compensation for carrying out, expediting, delaying, or not discharging the duties and responsibilities of his/her office.



(d) No public servant shall accept or solicit from a private person or business, whether directly or indirectly, benefits for him/herself or a person, business or entity in exchange for carrying out actions that are biased to favor him/her or another private person or business.

(e) No public servant shall ensure that he/she may or purport to have influence over another public servant in carrying out his/her functions, in exchange for obtaining or attempting to obtain a benefit.

(f) No public servant shall reveal or use confidential information or documents obtained as a result of his/her employment to obtain, directly or indirectly, any benefit for him/herself or any other private person or business.

(g) No public servant shall intervene, either directly or indirectly, in any matter in which he/she has a conflict of interests that may result in his/her benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of his/her family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the aforementioned.

In the case that any of the aforementioned relationships has ended during the two years preceding the appointment of the public servant, he/she shall not intervene, either directly or indirectly, in any matter related to them until two (2) years have elapsed after his/her appointment.

This prohibition shall remain in effect insofar the beneficial ties with the public servant exist. Once the beneficial ties end, the public servant shall not intervene, either directly or indirectly, in such matter until two (2) years have elapsed.

(h) Neither the appointing authority nor the public servant with influence on the appointing authority shall intervene, either directly or indirectly, in the appointment, promotion, compensation or contracting of his/her relative. It shall be understood that a public servant has the power to decide or exert influence when a

law, regulation, description of duties or designation so provides. This prohibition shall not apply when, in the discretion of the Executive Director, there are special circumstances that have been taken into account before the appointing authority or the public servant with influence exercise his/her power.

This shall not apply to a career position when the merit principle is met; advancements or personnel-related transactions required by law; general revisions of a classification plan; Section 8 benefits received; public bids in which all the requirements set forth in this Act concur; participation in summer programs; the obtainment of services, loans, sureties or incentives granted under the terms of a State, Federal or Municipal program. Provided, that under the aforementioned exceptions, general applicable rules are complied with and the appointing authority or the public servant with authority to decide or exert influence does not intervene and so certifies through a formal disqualification statement.

(i) No public servant shall use, on any real or personal property of the Government, any symbol, slogan, image, picture, pin, logo, sticker, label, sign, insignia, technological application, written message or any other paraphernalia that may identify or promote directly or indirectly the electoral interests of any political party or candidate.

(j) No public servant shall, while carrying out the duties of his/her office, wear or use on his/her person, in his/her property or in any other property under his/her care, any symbol, slogan, image, picture, pin, logo, sticker, label, sign, insignia, technological application, written message or any other paraphernalia that may identify or promote directly or indirectly the electoral interests of any political party or candidate.

(k) No public servant shall, while carrying out the duties of his/her office, lead or promote activities that directly or indirectly promote the electoral interests of any political party or candidate.

(l) No public servant shall, while carrying out the duties of his/her office, make monetary contributions or use his/her time to carry out or participate in a political activity.

(m) No public servant shall, while carrying out the duties of his/her office, demand or request other public servants to make monetary contributions or devote their time to carry out or participate in a political activity.

(n) No public servant shall solicit or accept him/herself or through a private person or business any benefit from a contractor or an agency regulated by his/her agency for a political activity.

(ñ) The provisions of Section 4.2, subsections (i), (j), (k), (l), (m), and (n) shall not apply to public servants in the Commonwealth Election Commission.

(o) No public servant shall usurp an office or task to which he/she has not been appointed or designated nor discharge the same without being duly qualified to do so.

No public servant shall persist in obstinately discharging the duties of his/her office or tasks entrusted to him/her, once his/her term has concluded or after having received an official communication ordering the termination or suspension of his/her duties.

(p) No public servant shall alter, destroy, mutilate, remove or conceal, in whole or in part, public property under his/her custody.

(q) No public servant authorized by law to issue certifications and other documents shall knowingly issue a certification or document containing false statements.

(r) No public servant shall fail to comply with any of his/her duties as provided by law or regulations, if such action shall result in the loss of public funds or cause damages to public property.

(s) No public servant shall carry out any action that may call the impartiality and integrity of the government endeavor into question.

**Section 4.3.- Prohibitions Related to Other Employment, Contracts or Business.-**

(a) No public servant shall accept or keep a job or contractual or business relations or responsibilities in addition to those of his/her public office or employment, whether it is in the Government or in the private sector, which, although legally permitted, may have the effect of impairing his/her freedom of judgment in the performance of his/her official functions.

(b) No public servant shall accept or keep a job or contractual relations from which he/she obtains undue advantage with a private person or business that is regulated by or has contractual business or financial relations with the government agency for which he/she works, when the public servant is empowered to decide or influence the official actions of the agency with regard to such private person or business.

(c) No public servant who is authorized to contract or approve or recommend the execution of a contract in the name of the agency for which he/she works shall intervene or participate in the execution of a contract with a private person or business in which he/she, or any member of his/her family unit, relative, partner or housemate, has or has had directly or indirectly a monetary interest during the last two (2) years before his/her appointment.

In the event that any of the aforementioned relationships has concluded during the two years preceding the appointment of the public servant, the latter shall not intervene or participate in the execution of a contract until two (2) years have elapsed since his/her appointment.

This prohibition shall continue in effect while the beneficial ties with the public servant last. Once the beneficial ties end, the public servant shall not intervene or participate in the aforementioned contract until two (2) years have elapsed.

(d) The appointing authority shall not execute a contract in which a public servant of the agency or member of his/her family unit, relative, partner or housemate has or has had a direct or indirect monetary interest during the last two (2) years preceding his/her appointment. This prohibition shall not apply when, in the discretion of the Executive Director, there are special circumstances that have been taken into account before the appointing authority contracts with the public servant or a member of his/her family unit, relative, partner or housemate.

This shall not apply to the receipt of benefits under the Section 8 program; contracts executed with the Department of the Treasury to operate electronic lottery terminals; contracts executed for the acquisition of rights over intellectual property such as literary, artistic works or inventions; public bids in which all the requirements set forth by law concur; participation in summer programs; the obtainment of services, loans, sureties or incentives granted under the terms of a State, Federal or Municipal program. Provided, that under the aforementioned exceptions, general applicable rules regarding eligibility shall be observed.

(e) No public servant shall approve or authorize a contract with a private person or business knowing that such person or business is representing cases or matters which involve a conflict of interests between the contracting agency and the personal interests said private person or business is representing. To such effects, a contractual clause shall be included in which such private person or business certifies that it is not involved in a conflict of interest.

**Section 4.4.- Prohibitions Related to Representation of Private Interests in Conflict with Official Duties.-**

(a) No public servant shall represent any private person or business, either directly or indirectly, with respect to an official action, if he/she, a member of his/her family unit, relative, partner or housemate has participated, shall participate or will probably participate in the disposition of said official action. This prohibition shall not apply when the participation of the public servant is required by law.

(b) No public servant shall represent any private person or business before an agency with regard to any official action in which the appointing authority is his/her relative, member of his/her family unit, partner or housemate.

(c) No public servant shall, in his/her private capacity, represent or counsel, either directly or indirectly, a private person or business before any agency, in cases or matters involving a conflict of interests or public policy between the Government and the interests of such a private person or business.

(d) No full-time public servant shall, during working hours, represent, advise or serve as an expert for a private person or business in trials, public hearings or in any other case or matter before a court of justice, quasi judicial body or an agency.

**Section 4.5.- Duty to Report Situations Involving Potential Unethical Actions or Conflicts of Interest.-**

Any public servant who must take any official action that is contrary to the prohibitions established by Sections 4.2, 4.3, and 4.4 of this Act shall report it to the Office before taking such action. In his/her statement, the public servant may request to be relieved from intervening in such matter or participating in the agency's deliberations related to the official action.

The public servant shall deliver a copy of the statement filed with the Office to the appointing authority of his/her agency.

Once the situation is assessed, the Office shall notify the public servant and the appointing authority that there are no conflicts of interest, or, should there be, that the option to disqualify himself/herself is available.

**Section 4.6.- Restrictions to Actions by Former Public Servants.-**

(a) No former public servant shall provide information, intervene, cooperate, advise in any way or represent in any capacity, either directly or indirectly, a private person, business or public entity, in official actions or matters in which he/she intervened while working as a public servant.

(b) No former public servant shall, during the two (2) years following the date of termination of his/her employment with the government, provide information, intervene, cooperate, advise in any way or represent directly or indirectly a private person, business or public entity before the agency for which he/she worked.

(c) No former public servant shall, during the year following the date of termination of his/her employment with the government, hold an office, have monetary interest or contract, directly or indirectly, with an agency, private person or business, over which he/she has taken an official action during the year preceding the termination of his/her employment. Intergovernmental contracts shall be excluded from this prohibition.

This prohibition shall not apply to former public servants who wish to return to the specialized nongovernment sector for which he/she served; provided, that his/her official actions have not favored the entity where he/she intends to hold office, in which he/she has a monetary interest or with which he/she contracts. In

order for this exception to be valid, the Executive Director shall evaluate the situation before the former public servant takes office, holds monetary interest or executes the contract.

(d) The appointing authority shall not enter into a professional service contract with or for the benefit of a former public servant of his/her agency, until two (2) years have elapsed since the date of termination of his/her employment with the agency.

This prohibition shall not apply to *ad honorem* professional service contracts. It shall neither apply when, in the discretion of the Executive Director, there are special circumstances that have been evaluated before executing such contract.

If there are special circumstances and the Executive Director authorizes the contracting of a former public servant within two years following the date of termination of his/her employment, the professional service contract shall not establish compensation higher than that earned for carrying out the same duties when he/she was a public servant.

(e) No former public servant may use confidential or privileged information obtained while discharging the duties of his/her office for his/her own enrichment or the enrichment of a third party. It shall be understood that there has been enrichment not only when wealth has increased with money or property, but also when the liabilities affecting the person have been cancelled or extinguished.

#### **Section 4.7.- Sanctions and Penalties.-**

(a) Criminal Action.-

1. Any person who intentionally violates the prohibitions and provisions established in subsections (b), (c), (d), (e), (f), (m), (n), (o), (p), and (q) of Section 4.2 shall be guilty of a felony and punished by imprisonment for a fixed term of four (4) years, plus restitution for violations of subsection (b); by



imprisonment for a fixed term of eight (8) years and a ten thousand dollar (\$10,000) fine for violations of subsection (c); by imprisonment for a fixed term of ten (10) years and a ten thousand dollar (\$10,000) fine for violations of subsection (d); and by imprisonment for a fixed term of three (3) years and a five thousand dollar (\$5,000) fine for violations of subsections (e), (f), (m), (n), (o), (p), and (q). In addition to the penalties established for subsections (o), (p), and (q), the Court may impose community service and the suspension or revocation of any license, permit or authorization.

Violations of subsections (b), (c), (d), (e), (f), (m), and (n) of Section 4.2 of this Act shall not be eligible for suspended sentence.

2. Any person who intentionally violates the prohibitions and provisions established in subsections (b) and (c) of Section 4.3 shall be guilty of a felony and punished by imprisonment for a fixed term of three (3) years and a five thousand dollar (\$5,000) fine. In addition, the court may impose community service and the suspension or revocation of any license, permit or authorization.

3. The person thus convicted shall be disqualified to hold any public office or employment, subject to the provisions of Section 6.8 of Act 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico.”

4. The offenses set forth in this Chapter shall not prescribe.

(b) Civil Action.-

1. The Office shall be empowered to request the San Juan Part of the Court of First Instance to issue an injunction to prevent any violation of this Chapter and file the proper actions to recover the civil sanctions imposed on behalf of the state.

2. The Office may resort to the San Juan Part of the Court of First Instance to request that the execution of any official action which constitutes a violation of the prohibitions established by this Chapter be barred, suspended or stayed.

3. Any person who receives financial gain as a result of a violation of this Chapter shall be bound to pay the state, as civil sanction for noncompliance, a sum equal to three (3) times the value of the financial gain received.

(c) Administrative Action.-

Any person who violates the prohibitions and provisions established in this Chapter and in the regulations, orders, and norms promulgated thereunder may be sanctioned by the Executive Director by an administrative fine, which shall not exceed twenty thousand dollars (\$20,000) for each violation. The foregoing shall not limit the power of the Executive Director to impose a treble damages sanction, in addition to said administrative fine.

The Executive Director may impose for violations of any of the provisions of this Chapter, when applicable, the following administrative measures:

1. To declare null any contract executed or appointment made in contravention of the provisions of subsection (h) of Section 4.2 and subsection (d) of Section 4.6. Whenever a contract or appointment is declared null, the appointing authority concerned shall retribute from its own funds any income earned and profit obtained from such office or contract;

2. To order restitution;

3. To order the agency concerned to make deductions from the payroll of the public servant at fault until the fine imposed is paid, as provided in Section 2.3(Q) of this Act;

4. To consider recidivism when imposing a fine or the sanctions provided in Section 4.7(d) of this Act.

Any public servant or former public servant affected by any of these measures or administrative actions shall be entitled to request review, as provided in Section 4.2 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

(d) Other Sanctions.-

Any violations of the provisions of this Chapter may be punished, as applicable, by any of the following actions imposed by the appointing authority:

- a. Written reprimand
- b. Summary job suspension
- c. Suspension from job and pay
- d. Removal or discharge

(e) Judicial Action for Noncompliance with Administrative or Civil Sanctions.

As for any person that fails to comply with a final and binding administrative fine or sanction and/or with any final and binding civil sanction, the courts of justice may impose ten percent (10%) interest or interest at the prevailing legal rate, whichever is higher, on the amount owed, as well as the payment of attorneys fees in favor of the Government. The interest shall begin to accrue from the time the sanction becomes final and binding.

**Section 4.8.- Rules of Conduct Applicable to Public Servants and Former Public Servants in the Judicial and Legislative Branches.-**

The conduct of public servants and former public servants of the Judiciary and Legislative Branches shall be governed by the provisions of the laws in effect applicable to each one of said Government Branches and the regulations adopted by the same.

## CHAPTER V – FINANCIAL REPORTS

### Section 5.1.- Applicability.-

A. The provisions of this Act, which require the filing of financial reports, shall apply to the following public servants:

1. The Governor.
2. The Comptroller of Puerto Rico.
3. The Ombudsman.
4. The members of the Legislative Assembly, the Director of the Office of Legislative Services, and the Superintendent of the Capitol, as well as any other public servant in the Legislative Assembly required to do so by the regulations approved by the Legislative Assembly or any of the Bodies thereof.
5. The members of the Judiciary Branch and the Court Administrative Director.
6. The officials of the Executive Branch whose appointments require the advice and consent of the Senate or the Legislative Assembly. The members of the examining boards are excluded from this requirement.
7. Heads and deputy heads of agencies.
8. Chairs, vice chairs, executive directors and deputy directors, and members of the boards of directors of public corporations and other public entities. Representatives of the public interest, the private sector or the nongovernment sector serving on such boards are excluded from this requirement, unless otherwise provided by law.
9. Mayors, deputy mayors, and administrators of municipalities.
10. Chairs, vice chairs of special corporations for municipal development, and directors and deputy directors of municipal consortia.

11. The President of the Commonwealth Election Commission, the Administrator of the Employees Retirement System of the Government, the Judiciary and its Instrumentalities, or any Pension or Retirement plan established by the Legislative Assembly of Puerto Rico or implemented by Public Corporations.

12. The Board of Directors and the Executive Director of the Government of Puerto Rico Employee Association, as well as public servants in this Association empowered to execute contracts of any kind and to approve loans, disbursements, credit cards, IRAs, insurance, scholarships, and reservations for renting its vacations center.

13. The members of the Public Bids Board.

14. Public servants in the Executive Branch whose main duty is any of the following:

(a) Those issuing final determinations to issue, amend, stay or cancel permits, licenses, certifications, exemptions, accreditations, consultations, or endorsements required to: 1) operate an establishment; 2) make improvements on lands or works; 3) divide or develop a property; 4) build a structure or part thereof; 5) use real or personal property for a particular purpose;

(b) Those issuing final determinations regarding a land use consultation;

(c) Those issuing final determinations to fine persons or entities that depend on or require permits, licenses, certifications, exemptions, accreditations, consultations or endorsements issued by their agency to: operate an establishment; make improvements on lands or works; divide or develop a property; build a structure or part thereof; use real or personal property for a particular purpose;

(d) Those executing contracts of any kind, including purchase and service orders;

(e) Those issuing final determinations to settle or reach an agreement with regard to debts between private persons and any Government body;

(f) Those issuing final determinations to settle or reach an agreement with regard to actions brought before the courts or a quasi judicial body;

(g) Those directing the area in charge of administering financial resources and budget, issuing financial statements or reports, and ascertaining compliance with the public policy on administration of their agency;

(h) Those directing the area in charge of the study, acquisition of equipment, design, development, implementation, support, and administration of the information technology systems of an agency;

(i) Those empowered to make a final decision in the approval of loans, disbursements, subsidies or payment of disability compensation, among others;

(j) Those directing the area in charge of administering, appropriating, granting or distributing federal funds;

(k) Those in charge of raising, charging or collecting money through any payment method;

(l) Those directing the area in charge of receiving claims, statements or complaints and conducting investigations or proceedings;

(m) Those directing the area in charge of inventory, records, and disposition of public property, other equipment or assets in their agency;

(n) Those issuing a final determination regarding the acquisition or disposition of real or personal property in each agency;

(ñ) Those issuing a final determination regarding public work projects carried out by their agency;

(o) Those empowered to direct a region in their agency with autonomy or freedom of judgment to carry out one or more of the following functions: entering into contracts; making disbursements; allotting, appropriating, and using budget items; granting benefits; purchasing and selling assets; and disposing of property;

(p) Those directing the area in charge of auditing the financial reports and income tax returns filed in accordance with the Government Ethics Act or the Internal Revenue Code;

(q) Those making purchases on behalf of their agency.

B. The Governor of Puerto Rico may exempt those public servants of the Executive Branch who render services *ad honorem* or only receive per diems from the requirement of filing financial reports.

C. The Executive Director shall be empowered to modify or exempt from the requirement of filing financial reports for just cause.

**Section 5.2.- Frequency and Scope of the Financial Reports of the Executive Branch and the Legislative Branch.-**

Every public servant of the Executive Branch and the Legislative Branch who is required to file a financial report shall:

(a) File with the Office, within ninety (90) days of taking office, a detailed report containing all the information required by the Office, as provided in Section 5.4 of this Act. The first report shall include the calendar year immediately preceding the date on which the public servant took office.

(b) After filing the report required at the time of induction into office, he/she must file an annual report to be submitted not later than May 1<sup>st</sup> of each one of the years following the year in which he/she was inducted into office. The report shall include the preceding calendar year.

(c) If he/she renders *ad honorem* services or only receives per diems, he/she shall not be required to file annual reports. In these cases, he/she shall be required to file a financial report at the time of his/her induction into office and one when he/she ceases to hold such office. The financial report required at the time of induction into office shall include the calendar year preceding the induction into office and the time elapsed between the current year and the date of his/her nomination.

(d) Upon ceasing to hold office, every person shall be required to file a financial report within ninety (90) days after the separation from office, which includes all the information required by the Office, except when he/she shall hold an office that requires the filing of annual reports. In these cases, he/she shall continue to file such financial reports every year.

The report required at the time of ceasing to hold office shall include the preceding calendar year, if such report has not been filed, and the time elapsed between said year and the date on which he/she ceased to hold such office.

(e) Every public servant appointed by the appointing authority to provisionally hold an office or position that requires the filing of reports for a term greater than sixty (60) days, shall file a financial report at the time of induction into office within ninety (90) days following such period. Such public servant shall be required to file the corresponding reports while he/she continues to hold such office provisionally.



(f) The Office may grant an extension of time to file the financial reports under this Chapter.

### **Section 5.3.- Filing Sworn Financial Reports.-**

The financial reports required under this Act, except those required from the members of the Judicial Branch, shall be filed through the electronic filing system provided by the Office. By doing so, the public servant attests to the content of the furnished information and declares, under oath, that the same is true, correct and complete.

Such oath shall be a *prima facie* presumption that the public servant electronically filed and signed the report.

### **Section 5.4.- Content of Reports.-**

The Office shall design the official form, which shall contain the minimum information required, which shall be provided below in this Section, and the explanatory appendix that will be used to attach the information required that shall apply to the Executive Branch and the Legislative Branch.

Every financial report to be filed by the members of the Executive Branch and the Legislative Branch, for the period covered by the report regarding the person who files the report and his/her family unit, shall include the following information:

#### **A. General Information**

1. Name, address, office or position;
2. Name or names under which he/she is doing business;
3. Occupation, profession or trade;
4. Name and address of the main place of business or work;
5. All work or business relations;

6. Name, address, and name or names under which the members of his/her family unit are doing business, that have done business with the Government during the period covered by the report or that are partners, directors, or employees of business or entities that have done business with or rendered services to the Government during such period;

B. Income:

1. Income or interest earned by the public servant and his/her family unit on real or personal property and on any property in its broadest sense;

C. Assets:

1. Assets exceeding one thousand dollars (\$1,000), including, among others, bank accounts, stocks, mutual funds, options, insurance policies, household furniture and appliances, paintings, works of art, antiques, and collections, jewelry, and other ownership interest in enterprises or businesses;

2. Private and public business stocks and state, municipal or any other type of bond whose value exceeds one thousand dollars (\$1,000) and any transaction carried out during the period covered by the report.

3. Shares in trusts or estates;

D. Liabilities:

1. Debts with an outstanding balance of more than one thousand dollars (\$1,000) at any time during the period covered by the report, indicating the interest rate of each debt, including the full payment of any debt or reduction to one thousand dollars or less during the period covered by the report;

2. Debts with regard to which he/she is receiving any type of preferential or special treatment when compared to that received by other debtors of the same creditor under similar circumstances for the same type of debt;

E. Other Financial Transactions:

1. Transactions for the purchase, sale or exchange of real or personal property;
2. Agreements or arrangements for future compensation;
3. An account of every gift received, including among others, payment for transportation, meals, lodging and entertainment, indicating the name and address of the donor, when the total value per donor exceeds two hundred and fifty dollars (\$250) per year, and the donor is other than a relative;
4. Any other information that, in the judgment of the person filing the report, is deemed pertinent for the proper evaluation of his/her financial situation within the public interest context set forth by this Act.

Reporting income and expenditures related to political campaigns shall not be necessary, as provided by the Election Code in effect.

The Office may request additional information in the financial report filed by public servants in the Executive Branch and the Legislative Branch that may be necessary to properly evaluate any angle related to the information required in this Section, within the public interest context set forth by this Act. Upon requesting such additional information, the Office shall state the reasons for making such request.

The content of the financial reports pertaining to the Judicial Branch shall be determined by such Government branch, as provided by its code of ethics and regulations.

**Section 5.5.- Term to Audit and Actions Related to the Financial Reports of the Executive Branch.-**

(a) Within ninety (90) days following the date of the filing of the financial report, the Office shall complete an audit thereof. If during the audit process, any unjustified information is detected, the Office shall initiate a forensic

audit, which shall conclude within two (2) years. These terms shall be strictly observed. If there is just cause, the Office may extend any of such terms for an additional term of ninety (90) days.

(b) Once concluded, the Office may reopen an audit when:

1. The public servant, *motu proprio*, amends his/her financial report;

2. Someone personally knows and provides new and essential information about the conducted audit, which, despite due diligence, could not be discovered or could not have been discovered before the end of the audit;

3. In an administrative or judicial proceeding, whether state or federal, the falseness of certain information furnished during the audit process was proved; provided, that such information has been the basis for the investigation;

If the Office reopens an audit, it must be completed within one (1) year. If a possible conflict is detected in the information provided in the financial report, the Office may require the elimination thereof.

The Office shall notify the person who filed the report about the conflict of interest and grant him/her a term to eliminate the same. If the person fails to eliminate the conflict within the term provided, the Office shall initiate the appropriate administrative procedure.

(c) If a possible conflict of interest is detected in the information provided in the financial report, the Office may require the elimination of the motive that creates such conflict of interest. The Office shall notify the person who filed the report about the conflict of interest and grant him/her a term to eliminate the same. If the person fails to eliminate the motive which creates such conflict of interests within the term provided, the Office shall initiate the appropriate administrative procedure.

### **Section 5.6.- Prohibitions Related to the Financial Report.-**

Prohibitions related to the financial report of a public servant or former public servant:

1. Increasing his/her wealth or that of a third party, when such enrichment has occurred after he/she took such office or job or was commissioned, until five years after termination of such office, and he/she is unable to justify such enrichment. It shall be understood that there has been enrichment, not only when his/her wealth has increased with money or property, but also when the liabilities affecting him/her have been cancelled.

2. Failing to file financial reports.

3. Failing to submit the information required within the term provided.

If criminal violations are found in the information provided in the financial report, the Executive Director shall refer the case to the Department of Justice, the Office of the Special Independent Prosecutor or the Federal Bureau of Investigations, among others.

### **Section 5.7.- Sanctions and Penalties Applicable to Public Servants in the Executive Branch.-**

(a) Criminal Action

1. Anyone who knowingly and willfully falsifies or fails to file or furnish any information required in the financial report or required by the Office during an audit, as provided in Section 5.4 of this Act, shall be guilty of a felony. Upon conviction, such person shall be punished by imprisonment for a fixed term of three (3) years and a five thousand dollar (\$5,000) fine. The Court may also impose community service.

2. Any public servant in the Executive Branch thus convicted shall be disqualified from holding any public office or job position, subject to the provisions of Section 6.8 of Act 184-2004, as amended.

3. The crime established in this Chapter shall not prescribe.

(b) Civil Action

1. The Office is hereby empowered to resort to the San Juan Part of the Court of First Instance to request an injunction in order to bar any violation of the provisions of this Chapter and to file any appropriate action to collect the administrative sanctions imposed on behalf of the Commonwealth.

2. The office may resort to the San Juan Part of the Court of First Instance to bar, suspend or stay the execution of any official action in violation of the prohibitions established in this Chapter.

3. Any person who obtains a financial gain as a result of a violation of the provisions of this Chapter shall be bound to pay the State a sum equal to three times the value of the financial gain received, as a sanction for his/her noncompliance.

(c) Administrative Action

Any person who violates the prohibitions and provisions established in this Chapter and in the regulations, orders, and rules promulgated thereunder may be sanctioned by the Executive Director by an administrative fine that shall not exceed twenty thousand dollars (\$20,000) for each violation. The foregoing shall not limit the power of the Executive Director to impose a sanction for treble damages in addition to said administrative fine. Furthermore, recidivism may also be taken into account at the time of imposing a fine under this subsection.

The Executive Director may impose, for violations of any of the provisions of this Chapter, if applicable, the following administrative measures:

1. To order restitution; or
2. To order the agency concerned to make deductions from the payroll of the public servant at fault until the fine imposed is paid in full, as provided in Section 2.3(Q) of this Act.

(d) Other Sanctions

The violation of any of the provisions of this Chapter may be punished, if applicable, by any of the following actions imposed by the appointing authority:

- a. Written reprimand
- b. Summary job suspension
- c. Suspension from job and pay
- d. Removal or discharge

(e) Judicial Action for Noncompliance with Administrative or Civil Sanctions.

As for any person that fails to comply with a final and binding administrative fine or sanction or with any final and binding civil sanction, the courts of justice may impose ten percent (10%) interest or interest at the prevailing legal rate, whichever is higher, on the amount owed, as well as the payment of attorneys fees in favor of the Government of Puerto Rico. The interest shall begin to accrue from the time the sanction becomes final and binding.

**Section 5.8.- Public Inspection and Access to Financial Reports Required under this Act.-**

(a) Access to a Summary of Financial Reports

The Office shall make available to the public a summary on the contents of the financial reports filed by the members of the Executive Branch through its webpage. The summary shall contain the following information:

1. Total income such as wages, compensations, transactions, own business, and other income, as provided in Section 5.4(B).
2. Total assets, including tangible and intangible property with monetary value, as provided in Section 5.4(C).

3. Total liabilities, including all obligations and commitments, as provided in Section 5.4(D).

4. All other financial transactions, as provided in Section 5.4(E).

(b) Review of Financial Reports

The Executive Director may authorize the review and access to the financial reports of the members of the Executive Branch filed, as provided in this Act, solely when such reports are final and when it is shown that the information is necessary to submit additional data revealing a possible violation of the provisions of this Act.

The partial or total review or access to these financial reports shall be authorized upon filing a sworn written application stating the following:

1. Name, address, and occupation of the applicant; the name and address of the public or private entity on whose behalf the report is requested.

2. That the applicant is aware of the prohibitions and restrictions on the use of the reports.

3. The data or information on which the applicant has based his/her reasons to belief that there is a possible violation of the provisions of this Act, which justifies the granting of access to such financial report.

Any person who, after having been granted authorization to review a financial report, in whole or in part, uses such information for purposes other than those authorized under this Act, shall be guilty of a felony. Upon conviction for this crime, such person shall be punished by imprisonment for a fixed term of three (3) years and a fine of five thousand dollars (\$5,000). In addition, the Court may impose community service.



(c) Access to Overseeing Entities

The Executive Director shall permit the review and may furnish a copy of these financial reports, in whole or in part, in favor of the following entities which investigate or prosecute corruption cases: the Department of Justice, the Office of the Special Independent Prosecutor's Panel, the U.S. Department of Justice, and the Federal Bureau of Investigations. Such entities must have filed beforehand a written request indicating the name and the job position of the person making such request and the name and address of the entity on whose behalf the request is made. These entities are exempted from the requirement of submitting a sworn request.

(d) Action Against any Person Providing Unauthorized Information

Any person who knowingly and willfully provides to an unauthorized third party any data contained in the financial reports or allows copies thereof to be made through any medium by any means, without the authorization of the Executive Director, shall be guilty of a felony. Upon conviction for this crime, such person shall be punished by imprisonment for a fixed term of three (3) years and a fine of five thousand dollars (\$5,000). In addition, the Court may impose community service.

(e) The Executive Director shall establish cyber security mechanisms to prevent identity theft and protect the confidential information contained in the financial reports for the purposes of safeguarding the right to privacy of the persons filing the reports and their family units.

(f) Public Review and Access to Financial Reports of the Judicial Branch and the Legislative Branch.

Public review of and access to financial reports pertaining to the members of the Judicial Branch shall be governed by the regulations adopted to such effect by the Supreme Court of Puerto Rico. As to the members of the

Legislative Branch, each House shall determine the Rules that shall govern public review of and access to the financial reports of the members thereof.

**Section 5.9.- Conservation of Financial Reports.-**

The Office shall be bound to keep the financial reports for a period of five (5) years after the audit has been completed or three (3) years after the public servant ceased to hold his/her office or job position. In cases in which a report is under audit, investigation or administrative or judicial procedure, it shall be kept until such process concludes.

**Section 5.10.- Financial Reports of the Legislative and Judicial Branches.-**

The financial reports of the persons listed in Section 5.1(A), subsection (4), shall be filed as provided in Section 5.3 through the electronic system provided by the Office. The financial reports of the persons listed in Section 5.1(A), subsection (5), shall be filed through the system determined by the Supreme Court of Puerto Rico. By doing so, the public servant attests to the content of the furnished information and declares, under oath, that the same is true, correct and complete. Such oath shall constitute *prima facie* presumption that the public servant electronically filed and signed the report.

Within ninety (90) days after filing the report, the Office shall evaluate and analyze the information contained therein, as provided in Section 5.4. If in the judgment of the Executive Director there is a possibility that a public servant of the Legislative or Judicial Branches has violated any of the provisions of this Chapter applicable to him/her, the Executive Director shall remit the financial report, together with the results of the conducted analysis, to the appropriate Legislative House or the Supreme Court of Puerto Rico, as the case may be, for appropriate action. In cases involving the Comptroller and the Ombudsman, the Executive Director shall remit such reports to both Legislative Houses for appropriate action.

In the case of the financial reports of the members of the Legislative Assembly, the Director of the Office of Legislative Services or the Superintendent of the Capitol, the Executive Director shall receive and evaluate such reports within ninety (90) days after the filing thereof to ascertain that the furnished information is complete. Once verified, he/she shall determine that the report is final and will remit such report with his/her determination to the presiding officers of each chamber. Public access to such reports shall be governed at all times by the provisions of the Code of Ethics of the Senate of Puerto Rico and the House of Representatives and the rules adopted by said Branch. When, in the judgment of the Executive Director, there is a possibility that an official or employee of the Legislative Branch has violated any of the provisions of this Act applicable to him/her, the Executive Director shall remit the financial report together with his/her findings to the appropriate Legislative House for appropriate action. If the Executive Director believes that the Director of the Office of Legislative Services or the Superintendent of the Capitol could have violated the applicable provisions of this Act, he/she shall so notify to both the Senate of Puerto Rico and the House of Representatives, by remitting the report in question.

In the case of the financial reports of the Judicial Branch, the Executive Director shall receive and evaluate such reports within ninety (90) days after the filing thereof to ascertain that the furnished information is complete. Once verified, he/she shall determine that the report is final and will remit such report with his/her determination to the Chief Justice of the Supreme Court. Public access to such reports shall be governed at all times by the provisions of the Code of Ethics of the Judicial Branch and the rules adopted by said Branch. When, in the judgment of the Executive Director, there is a possibility that a judge, Administrative Director or high-ranking official has violated any of the provisions of this Act applicable to

him/her, the Executive Director shall remit the financial report together with his/her findings to the Supreme Court for appropriate action, pursuant to the Code of Judicial Ethics and the appropriate rules.

It shall be the duty of the Supreme Court of Puerto Rico to establish and notify to the Executive Director the deadline for filing of financial reports upon induction into office and termination of tenure, as well as annual reports, respectively.

## **CHAPTER VI – CANDIDATES TO ELECTIVE OFFICES AND NOMINEES OF THE GOVERNOR**

### **Section 6.1.- Statement of Financial Solvency and Absence of Conflict of Interest.-**

(a) Every candidate certified by the Commonwealth Election Commission to an elective office in the general or a special election must file a sworn statement of financial solvency with the Office, within twenty (20) days after the candidate's certification.

(b) Any person nominated by the Governor to hold an office or job position that requires confirmation by the Senate or the Legislative Assembly must file a sworn statement of financial solvency and absence of conflict of interest with the Office, within thirty (30) days after the date of his/her nomination.

(c) Once such report is received the Office shall complete its evaluation and analysis within thirty (30) days after the filing thereof. The Office shall refer to the Commonwealth Election Commission the evaluation of statement of the candidates certified by the latter. In the case of the persons nominated by the Governor to hold an office or job position that requires confirmation by the Senate or the Legislative Assembly, the Office shall refer the results of the evaluation of such statements to the appropriate House of the Legislative Assembly.

(d) The Office shall design the aforementioned statement forms.

## **Section 6.2.- Education.-**

(a) Every candidate certified by the Commonwealth Election Commission to an elective office in the general or a special election must complete a 7.5 hours course on ethics offered by the Office.

(b) Any person nominated by the Governor to hold an office or job position that requires confirmation by the Senate or the Legislative Assembly must complete a 7.5 hours course on ethics offered by the Office.

(c) Such courses must be taken within thirty (30) days after the nomination or certification.

## **CHAPTER VII – INVESTIGATION, ADJUDICATION, AND JUDICIAL REVIEW**

### **Section 7.1.- Investigation Procedure Related to Public Servants in the Executive Branch.-**

(a) Any person may petition the Office to initiate an investigation under the provisions of this Act. Such petition may be presented by any means, including anonymously. The Office may also initiate an investigation on its own motion.

(b) Within ninety (90) days after the filing of the petition, the Office shall conduct a preliminary investigation. If, after concluding the preliminary investigation, the Office believes that an in-depth investigation is in order, the Office must conclude such investigation within one (1) year. These terms shall be strictly observed. If there is just cause, the Office may extend these terms up to ninety (90) days or one (1) year, respectively.

(c) In those cases in which the person making the petition provided an address, the Office shall notify him/her of the action taken.

(d) Any person who intentionally provides or publishes information or makes reports publicly on any investigation being conducted by the Office without having been authorized to do so by the Executive Director shall be guilty of a

felony. Upon conviction of this crime, such person shall be punished by imprisonment for a fixed term of three (3) years and a fine of five thousand dollars (\$5,000). The Court may also impose community service. If the aforementioned conduct is the result of carelessness or omission, such person shall be guilty of a misdemeanor. Upon conviction, such person shall be punished by imprisonment for a fixed term of six (6) months and a fine of one thousand dollars (\$1,000).

**Section 7.2.- Adjudication Procedure.-**

Once the investigation referred to in Section 7.1 is concluded and the Office believes that any provision of this Act, the regulations, orders or rules promulgated thereunder has been violated, the Office shall file a complaint and conduct an adjudicative procedure, pursuant to the Uniform Administrative Procedures Act, Act No. 170 of August 12, 1988, as amended.

**Section 7.3.- Judicial Review.-**

Any public servant affected in a proceeding carried out by the Office settling a matter shall be entitled to file for judicial review before the Court of Appeals, pursuant to the Uniform Administrative Procedures Act.

**CHAPTER VIII – FINAL PROVISIONS**

**Section 8.1.- Fund Appropriation.-**

Recognizing the fiscal, operating, and administrative autonomy of the Office to carry out the sensitive duties entrusted thereto, the Governor shall include the computation of the regular expenditures of the Office in the Budget, without reviewing them and in a consolidated manner.

**Section 8.2.- Severability of Provisions.-**

If any clause, paragraph, section, chapter or part of this Act were ruled unconstitutional by a Court with jurisdiction, such ruling shall not impair or invalidate the remaining provisions of the Act and the effect of such ruling shall be limited to the clause, paragraph, section, chapter or part ruled unconstitutional.

**Section 8.3.- Repealing Clause.-**

Act No. 12 of July 24, 1985, as amended, know as the “Ethics in Government Act of the Commonwealth of Puerto Rico,” is hereby repealed, except for the creation of the Office, the appointments, rights and privileges vested, and contracts, arrangements, and agreements entered thereunder. This repeal shall not affect any proceedings initiated or that may be initiated, pursuant to the provisions of the cited Act.

**Section 8.4.- Rulemaking Authority.-**

The Office shall repeal, modify or adopt regulations as necessary to implement this Act ninety (90) days after the approval thereof. The existing regulations shall remain in effect and the procedures of the Office shall be governed by such regulations until new regulations are adopted; provided, that such aforementioned regulations do not contravene the provisions of this Act.

**Section 8.5.- Effectiveness.-**

This Act shall take effect on January 1, 2012, except for Sections 2.5, 5.5(a), 5.8(a) and Chapter VI, which shall take effect one hundred and eighty (180) days after the effective date.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 1 (S. B. 2046)** of the **2<sup>nd</sup> Special Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to adopt the Puerto Rico Government Ethics Act of 2011; to incorporate definitions; to establish the mission, autonomy, and exemptions of the Office of Government Ethics; to establish the process for the appointment to the office of Executive Director, the term, requirements, salary, restrictions of such office, the procedure for the selection, separation, and removal from the office of Executive Director; etc.

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

In San Juan, Puerto Rico, on the 14<sup>th</sup> day of March, 2012.

María del Mar Ortiz Rivera