

(S. B. 381)

(No. 155)

(Approved December 16, 2005)

AN ACT

To amend Section 4.003 of Act No. 81 of August 30, 1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act”, in order to clarify that the legislative intention, as outlined therein, has been that the Municipal Legislatures exercise their full powers until the newly elected members are sworn into office on the second Monday of the month of January following the general elections.

STATEMENT OF MOTIVES

As it appears in Act No. 81 of August 30, 1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act” in its Section 1.005, “the municipality is the juridical entity of local government, subordinated to the Constitution of the Commonwealth of Puerto Rico and its laws, whose purpose is the local common good, and within it, primarily, the handling of the affairs, problems and collective needs of the inhabitants thereof. Each municipality has legal capacity, which is independent and separate from the Government of the Commonwealth of Puerto Rico, with perpetual succession, and legislative, administrative and fiscal capacity in any matter of a municipal nature.”

Said Act No. 81, *supra* establishes that the legislative powers that are conferred to the municipalities by this Act shall be exercised by the Municipal Legislature, and it further establishes that its members shall be elected by the direct vote of the electors of the municipality to which they correspond in each general election, together with the election of the mayor,

for a term of four (4) years as of the second Monday of January of the year following the general elections.

There are doubts in many municipal legislatures as to the functions of the outgoing municipal legislature after general elections. The confusion specifically arises as to their legislative functions during the first two weeks of the month of January, prior to the swearing into office of the new municipal legislature.

With respect to the municipal executive power, being it understood, the mayor, the matter is clear. Section 3.002 of Act No. 81, *supra*, establishes that the mayor “shall exercise his office until his successor takes possession thereof.” In practice, the municipality is not left without exercising its executive power, since the outgoing mayor exercises his prerogatives until his successor takes over.

According to the laws in effect, the members of the Municipal Legislature, in spite of there being a specific date for taking the oath of office, shall only “hold office until their successors are sworn in. See Section 4.003 of Act 81, *supra*. This difference in wording “shall exercise the office” of mayor, and “shall hold office” in the case of municipal legislators, has created a confusion to the effect that it is the intention of the legislator to make a distinction in the exercise of the functions of the municipal legislators during the first two weeks of the month of January, after general elections. The truth is that the confusion has a logical base, since the terms “exercise” and “hold” are not synonyms, according to the *Diccionario de la Real Academia Española*.

In order to clarify that the legislative intention has been for the Municipal Legislature to fully exercise its functions until the new members take the oath of office on the second Monday of the month of January

following the general elections, this Legislature proposes an amendment to the first paragraph of Section 4.003 of Act No. 81, *supra*, and thus prevent the paralyzation of the legislative work of the municipalities during the above described period.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- The first paragraph of Section 4.003 of Act No. 81 of August 30, 1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act”, is hereby amended to read as follows:

“Section 4.003.- Election of the members of the Municipal Legislature.-

The members of the Municipal Legislatures shall be elected by the direct vote of the electors of the corresponding municipality in every general election for a term of four (4) years as of the second Monday of the month of January of the year following the general elections in which they are elected and shall exercise their functions of their offices until the second Monday of the month of January following the general elections.

In the case of a municipal legislator who, having been elected cannot be sworn in, and thus cannot take office on the second Monday of the month of January following the general elections, said office or seat shall remain vacant until the new municipal legislator can be sworn in.

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 155 (S.B. 381) of the 2nd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 4.003 of Act No. 81 of August 30, 1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act”, in order to clarify that the legislative intention, as outlined therein, has been that the Municipal Legislatures exercise their full powers until the newly elected members are sworn into office on the second Monday of the month of January following the general elections,

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

In San Juan, Puerto Rico, today 3rd of April of 2006.

Francisco J. Domenech
Director

