

(H.B. 1845)

(No. 43)

(Approved January 27, 2006)

AN ACT

To amend Act No. 12 of July 24, 1985, as amended, better known as the Ethics in Government Act, in order to add a clause (5) and amend the last paragraph of subsection (e) of Section 3.3 to exempt public officials and employees, whether they are beneficiaries or owners of subsidized housing, from applying for a dispensation when contracting with an Executive Agency or Municipality under the Federal Government Subsidized Housing Program, better known as the Section 8 Program.

STATEMENT OF MOTIVES

Act No. 12 of July 24, 1985, as amended, better known as the Ethics in Government Act, hereinafter the Ethics Act, and its regulations, prohibit executive agencies from executing contracts in which any of its officials or employees, or member of their family units have, directly or indirectly, any monetary interest.

It is important to mention that the present rule of law allows contractual relations between an agency and its employees or officials through the granting of a dispensation, upon prior consultation with the Secretaries of Justice and of the Treasury, pursuant to the provisions of Section 3.3 (d) and (e) of the Ethics Act.

By virtue of the Executive Order of March 1, 1988, Administrative Bulletin No. OE-1998-06, the Governor of the Commonwealth of Puerto Rico delegated on the Department of State the power to grant dispensations. Among the dispensations granted by the Secretary of State are included

those related to the leasing of housing subsidized by the Federal Government, better known as the Section 8 Program.

The Department of State granted 33 dispensations in 2002; 217 dispensations in 2003; 319 dispensations in 2004, and 121 dispensations have been granted in 2005 to execute or renew contracts with the Department of Housing or the Housing Financing Authority. Said numbers show an increase in applications for and awarding of dispensations for the Section 8 Program. These do not include the Electronic Lottery or the Professional Services dispensations nor those granted by the Office of the Commissioner of Municipal Affairs (OCAM, Spanish acronym.)

The processing of these dispensations in the Department of State is governed by Code of Regulations No. 6497 of August 2, 2002. These Regulations requires the filing of an application for dispensation, a certification of absence of conflict of interests, and a preliminary certification of the Department of Housing, or the Housing Financing Authority or of the Department of the Family, as the case may be.

The purpose of the Ethics in Government Act is to promote and preserve the integrity of public officials and institutions. The existence of a dispensation mechanism has the purpose of not depriving the public interest from essential services, resources, or matters in those cases in which, the employee, official, or any member of his/her family unit in an agency is the only one who may render such services or renders the same most adequately.

The Department of Housing is the entity responsible for drafting and executing the public policy thus contributing to the social development of communities in Puerto Rico through the development of housing programs and the physical improvement of the communities.

The Public Policies of the Government of Puerto Rico and of the Federal Government establish that housing programs shall address not only housing problems, but also their social organization and empowerment. The Section 8 Program of the United States Department of Housing provides subsidies to low income families for the rental of appropriate housing.

The process for requesting the opinions of the Secretaries of the Treasury or Justice or of the Office of Government Ethics, and thus to grant the dispensations to public officials or employees to rent their property under the Section 8 Program takes approximately two (2) to three (3) months. During said long waiting period, our low income Puerto Rican families are deprived from having appropriate housing under reasonable living conditions.

The Government of Puerto Rico recognizes how important it is for every family to have appropriate housing. The government programs of the main political parties include initiatives to ensure of a home for every Puerto Rican to guarantee a better quality of life. One of the proposed measures is to strengthen the use of the Section 8 Program. As part of these initiatives to promote the use and enjoyment of these subsidies, it is necessary to expedite the procedure for obtaining these through amendments to the provisions of the Ethics in Government Act.

The Ethics in Government Act already establishes among its exceptions to the dispensation requirement the lease contracts for housing provided or to be financed by, or whose financing is guaranteed or secured by a government agency and by the benefit or the incentive programs sponsored by government agencies. In these cases, the contracting agency issues a certification to that effect when dealing with contracts accessible to any citizen. The eligibility requirements are of general application; the public

official who meets all the eligibility requirements does not receive preferential treatment and the public official does not participate in the decision-making process for awarding contracts.

This certification mechanism is adequate under the Ethics in Government Act for public employees who are lessees under the Housing Program subsidized by the Federal Government. Through this Act, the availability of said certification is extended to those public officials who are lessors under said program.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 3.3 of Act No. 12 of July 24, 1985, as amended is hereby amended to add a clause (5) and to amend the last paragraph of subsection (e) to read as follows:

“Section 3.3.- Related to other employment, contract, or business

(a) ...

...

(e) ...

(1) ...

....

(5) Lease Contracts under the Federal Housing Program known as the Section 8 Program executed between beneficiaries and owners and Executive Agencies or Municipalities that at present administer or that in the future may be authorized to administer said program. This exemption shall apply when any of the items of Section 3.2 of the Ethics in Government Act are not present.

In the cases specified in clauses (2) to (5) the contracting agency shall authorize the transactions, provided that the following requirements concur:

(A) ...

...”

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. 43 (H.B. 1845) of the 3rd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Act No. 12 of July 24, 1985, as amended, better known as the Ethics in Government Act, in order to add a clause (5) and amend the last paragraph of subsection (e) of Section 3.3 to exempt public officials and employees, whether they are beneficiaries or owners of subsidized housing, from applying for a dispensation when contracting with an Executive Agency or Municipality under the Federal Government Subsidized Housing Program, better known as the Section 8 Program,

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

In San Juan, Puerto Rico, today 1st of September of 2006.

Francisco J. Domenech
Director