

(Substitute to  
H.B. 36)

**(No. 61)**

(Approved February 17, 2006)

To amend Sections 1, 2 and 3; add new Sections 4, 5, 6 and 7 and renumber the existing Section 5 as Section 8 of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” in order to provide the procedure to be followed by the agencies, municipalities and public corporations which applies for filing and processing a complaint for claims against another government entity; to amend Section 8.003 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act,” to provide that the municipal governments shall appeal to the Commission to Resolve Controversies over Payments and Debts Between Government Agencies to collect debts from other public entities; to amend subsection (a) of Section 1.3 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” so as to exclude the Commission from said statute; and for other related purposes.

### **STAMENT OF MOTIVES**

The Commission to Resolve Controversies over Payments and Debts between Government Agencies,” (“Commission”) was created by virtue of Act No. 80 of June 3, 1980, as amended, for the purpose of helping government agencies to reach agreements as to the amounts and the means for paying the debts from which a controversy may arise when a government instrumentality renders its services to another. The purpose was to create a speedy mechanism that would allow for an easy solution to the controversies

regarding debts between public instrumentalities. The Commission has fulfilled its purpose of providing an agile and easily accessible process for solving the petitions presented.

Over twenty (20) years have passed since the creation of the Commission and in that time the administrative process has evolved and been polished. The statute which created the Commission has suffered few amendments which have failed to adjust the same to the new trends in the field of administrative law. However, our Supreme Court has adjusted the processes of the Commission through rulings. Through the ruling pronounced in the case Municipio de Arecibo v. Municipio de Quebradillas, 2004 T.S.P.R. 10, and the ruling pronounced in reconsideration of that same case, 2004 T.S.P.R. 181, it may be concluded that the law which created the Commission requires substantial changes that specifically set forth the procedure to which the agencies, the municipalities and the public corporations shall be subject when appealing to said forum.

In the first place, it must be recognized that the Commission is not an agency, as that term is defined in Act No. 170 of August 12, 1988, as amended, better known as the “Uniform Administrative Procedures Act” (L.P.A.U., Spanish acronym), since what it does is handle controversies between public instrumentalities. The Commission is rather a committee of the Executive charged with investigating and solving specific differences of criteria concerning inter-government accounts. As may be seen, the Commission is a body of an exceptional nature called to handle controversies with given facts that indicate that the financial solvency or the essential services rendered by the agencies are being undermined. Solving said controversies forcibly entails a purely administrative determination as to which priorities the Executive Power is going to channel its resources when

a debt between agencies exists. It is for this reason and in recognition of the particular nature of the controversies handled by the Commission that its composition includes those agencies that determine the budgetary matters of the Executive Power.

In the view of the above, it needs to be established, underlining the legislative intention that originally permeated the creation of Act No. 80, *supra*, that the Commission is the forum with exclusive jurisdiction for attending to the controversies regarding claims between agencies. In view of this, the determinations of the Commission concerning controversies among agencies of the Executive Power must not be subject to the process of judicial review established in the Uniform Administrative Procedures Act.

However, the procedure before the Commission must not ignore the principles set forth in the Uniform Administrative Procedures Act which allows for the parties to be guaranteed the due process of law. To those ends, the present measure provides the terms and guarantees applicable to the procedures before the Commission.

In the second place, Section 8.003 of Act No. 81 of August 30, 1991, as amended, known as the "Autonomous Municipalities Act," recognized that the mayors had the power to resort to all those measures authorized by the Act for collecting the debts of natural or juridical persons registered in the books of the municipality. One of the forums the mayors may turn to in order to collect the debts of government agencies and other municipalities is the Commission.

The desirability of having the municipalities turn to the Commission as an exclusive primary forum to file their claims against government instrumentalities has been mentioned. That way the costs associated with litigious procedures would be avoided and it would be the agencies in charge

of budgetary matters that would then be allowed to initially determine whether their claim has a legal basis or not. To those ends, the present bill amends Act No. 80 and Act No. 81 to provide the exclusive primary jurisdiction of the Commission when one of the parties is a municipality. However, recognizing the principle of municipal autonomy, the municipalities are thus acknowledged to have the power to seek a judicial review of the determinations of the Commission.

Likewise, and in deference to the fiscal autonomy of the public corporations and the particular characteristics with which this juridical entity is invested, it is hereby established that the Commission shall have exclusive primary jurisdiction when these are part of the procedure, recognizing the right to judicial review in such cases. However, there shall be excluded from the application of this Act those public corporations which by virtue of their organic charter are empowered to regulate their collection processes, or to impair prior contractual obligations between said public corporation and a third party.

In the case of the agencies of the Executive, the determinations of the Commission shall be final and firm and unappealable. This is so in order that the controversies may be resolved in the speediest and most expeditious manner.

In keeping with the preceding, this Legislature believes it necessary to amend, in general terms, Act No. 80, *supra*, so as to adjust the same to present public administration needs.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.-Section 1 of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over

Payments and Debts between Government Agencies,” is hereby amended to read as follows:

“Section 1.-Creation and composition of the Commission

A Commission to Resolve Controversies over Payments and Debts between Government Agencies is hereby created, attached to the Department of Justice, which shall be composed of the following three (3) members: the Secretary of the Department of Justice, who shall preside, the Secretary of the Department of the treasury and the Director of the Office of Budget and Management, or their designated representatives who shall have the capacity, knowledge and decisional power to effectively represent the executive officer they substitute. Those designated shall answer directly to the Head of the Agency, who, at the same time, shall be responsible for the determinations made by the Commission.

The members shall hold office for the term of their appointments. Two (2) members shall constitute quorum and the determinations shall be made by a majority. In case a controversy may arise to which one or more members are interested parties, these shall inhibit themselves from the deliberative process and the remaining members shall designate unanimously and with the consent of the Governor, a Special Substitute Commissioner who shall be a secretary of the constitutional cabinet, and they shall decide the case in controversy. In case the Secretary of Justice is the interested party and needs to inhibit him/herself, the chair of the Commission shall correspond to the Secretary of the Treasury.

For the purposes of Sections 1 *et. seq.* of this Act, the term “government agencies” shall mean any department, board, body, court of examiners, commission, committee, independent office, divisions, administration, bureau, authority, official, officer, person, entity or any

instrumentality of the Commonwealth of Puerto Rico or administrative body authorized by law to carry out regulatory or investigative functions or able to issue a decision or with the power to issue licenses, certificates, permits, concessions, accreditations, privileges, franchises and to accuse or adjudicate, except:

- (1) The Senate and the House of Representatives of the Legislature;
- (2) The Judicial Branch;
- (3) The municipal governments or their entities or corporations;
- (4) The Public Corporations.”

Section 2.-Section 2 of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” is hereby amended to read as follows:

“Section 2.-Duties and powers of the Commission

The Commission shall have the following duties and powers:

- (1) It shall have exclusive jurisdiction to investigate controversies between government agencies over payments and debts between said agencies and determine the manner in which the amount owed and how much must be paid, if this matter is in controversy. Provided further, that the Commission shall have primary exclusive jurisdiction in the case of controversies whereby one of the parties is a municipal government or a public corporation, excepting those which in virtue of the their organic charter is authorized to regulate its collection processes or whose prior contractual obligations are impaired.

In order to conduct said investigations, the Commission may require the presentation of books, documents or any other necessary evidence and to question witnesses under oath.

In case they should refuse to submit their books or any other documents required by the Commission or in case the person duly summoned to have his/her sworn statement taken refuses to appear before the Commission, the latter may appear before any part of the Court of First Instance and request that said Court order compliance with the request to submit books or any other type of document or any sworn statement or summons. The Court of First Instance shall have jurisdiction to issue judicial orders making mandatory the appearance of witnesses or the presentation of any documentary or any other kind of evidence which the Commission has previously required. The Commission shall likewise have the power to punish for contempt for disobeying said orders.

No natural or juridical person may refuse to comply with an order of the Commission or a judicial order thus issued by claiming that the testimony or the evidence required may be incriminatory or lead to the imposition of a penalty. But such testimony or evidence may not be used or introduced as proof in any criminal action against a natural person who may have testified or presented documentary or any other kind of evidence to the Commission in compliance with its order or summons or in compliance with any judicial order. Provided further, that any natural person may be prosecuted and convicted for perjury committed while testifying before the Commission.

The Examining Officer charged with holding the hearings and receiving evidence, on his/her own initiative or at the behest of a party, may order the party initiating an action or the respondent who fails to comply

with the rules and regulations or with any order, to show cause why no sanction should be imposed. The order shall set forth the rules, regulations or orders not complied with and a term of twenty (20) days, as of the date of issue of the order, shall be granted for showing cause. Should said order not be complied with, or if it is determined that there was no cause to justify noncompliance, a financial sanction in favor of the Special Fund created by the present law that shall not exceed two hundred (200) dollars for every separate imposition may be imposed to the party or his/her attorney, should the latter be responsible for the noncompliance.

The Examining Officer shall recommend that the Commission, through a report to that respect, dismiss the action in the case of the complainant, or the elimination of the allegations in the case of the respondent, if after having imposed financial sanctions and having notified the corresponding party, said party remains in noncompliance with the orders of the Examining Officer.

(2) Designate from among the agency personnel those needed to most efficiently fulfill the purposes of Sections 1 *et seq.* of this Act, especially the services of those persons who shall act as examiners and auditors who shall collect evidence to be used by the members of the Commission to issue its decision. The expenses incurred in the course of an investigation shall be prorated among the parties in controversy according to the percentage of liability corresponding to each party. If the commission resolves that one party has been totally responsible for the controversy, said party shall pay for the total expenses incurred. The Commission shall establish through regulations the manner in which the fees for administrative procedures and expenses for procedures shall be collected.

(3) Draft and adopt the regulations needed for performing its duties according to Sections 1 *et seq.* of Act No. 170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” in all matter not inconsistent with the present Act.”

Section 3.-Section 3 of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” is hereby amended to read as follows:

“Section 3.-Investigating procedure before the Commission

The investigating procedure may be initiated by petition of any of the parties or at the initiative of the Commission when the latter considers that the financial solvency or the essential services rendered by the agencies, municipalities or public corporations in controversy are being affected.

Any procedure shall be initiated by the presentation of a brief for filing a petition, accompanied by the evidence needed to be able to evaluate its validity. The Commission shall notify the agency, municipality or public corporation sued, with a copy of the petition attached.

The notice shall point out to the agency, municipality or public corporation sued that it has twenty (20) days to answer the brief and that it has the right to appear and defend itself before the Commission, on its own or through an attorney, to present any documentary or testimonial proof it deems pertinent and that it has the right to a public or private hearing. Said term shall be extended for an additional fifteen (15) days upon a motion of the agency, municipality or public corporation sued if so requested within the initial term.

Once the answer to the petition has been filed, the Commission, within the thirty (30) days following its receipt, shall study the file and be able to dismiss in those instances with a legal basis or call for a hearing to hear the controversies in question. When the Commission has dismissed the petition without having held a hearing, it shall notify its decision with copy of a resolution to that effect. Said resolution shall contain a breakdown of the facts, determinations and legal conclusions of the Commission.

When the Commission decides to hear the petition it shall hold those hearings deemed necessary, which may be public or private. The hearings must be notified to the complainant and to the respondent at least fifteen (15) days before the date they are held.

The hearings at which evidence is received shall be chaired by an Examining Officer, appointed by the President of the Commission. The Examining Officer may order an auditor to examine the evidence presented and to submit recommendations, or to directly investigate the agencies concerned, submitting afterwards a report that shall be part of the file of the case.

Once the Examining Officer has heard all parties and received all the necessary evidence, he/she shall submit a report to the Commission, including his/her determinations of fact, a breakdown of the evidence presented and admitted, his/her legal conclusions and any consideration pertinent to the case for the evaluation of the Commission in full. The Commission shall make and issue a decision as to the manner in which the amount owed shall be paid and the total of said amount, should this be in controversy, within ninety (90) days as of the date in which the Examining Official renders his/her report.

The order or resolution issued by the Commission shall advise the parties of their right to solicit a reconsideration or review of the same before the Commission, expressing the corresponding terms.

The Commission shall notify the parties and their attorneys, if any, by mail, about the order or resolution as soon as possible and file in the records of the case a copy of the final order or resolution and the evidence of said notice. A party may not be required to comply with a final order unless said party has been notified about the same. The terms for reconsideration or review mentioned above shall be in effect from the date in which the order or resolution has been filed in the records of the case. If the date of filing in the records of the case of the notice of the resolution or order is different from the date on which the notice was mailed the term shall be calculated as of the date of the mailing.

In the case of the government agencies as defined in Section 1 of the present Act, the determination of the Commission shall be final and firm and unappealable before any judicial or quasi-judicial body.”

Section 4.-A new Section 4 is hereby added to Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” to read as follows:

“Section 4.-Final orders or resolutions; reconsideration

1. When the procedure takes place between government agencies: The party adversely affected by a resolution or order may, within the term of twenty (20) days from the date the notice of the resolution or order was filed in the records of the case, file a motion for the reconsideration of the resolution or order with the Commission. The Commission must consider said motion within fifteen (15) days of being presented. Said resolution shall

be issued and filed in the records of the case within ninety (90) days after the motion for reconsideration has been filed. If the Commission accepts the motion for reconsideration and issues a resolution in reconsideration thereof, it shall be final and firm and unappealable before any judicial or quasi-judicial body. If the Commission accepts the motion for reconsideration but takes no action in relation to the motion within ninety (90) days after the same was filed, the initial resolution shall be final and firm and unappealable before any judicial or quasi-judicial body, except if the Commission, for just cause and within said ninety (90) days, extends the term for solving the matter for a period not to exceed thirty (30) additional days.

2. When a public corporation of those not excluded or a municipal government or their entities or corporations, are a party to the procedure before the Commission: The party adversely affected by a final resolution or order may, within the term of twenty (20) days from the date the notice of the resolution or order was filed in the records of the case, file a motion for the reconsideration of the resolution or order with the Commission. The Commission must consider said motion within fifteen (15) days of being presented. Should the Commission reject it outright or fail to act within the fifteen (15) days, the term to solicit a judicial review shall be in effect again from the moment said rejection is notified or from the time the term of fifteen (15) days expires, as the case may be. If any determination is made about the consideration, the term to solicit a judicial review shall be counted as of the date on which a copy of the notice of the resolution of the agency definitely resolving the motion for reconsideration is filed in the records of the case. Said resolution shall be issued and filed in the records of the case within ninety (90) days after the motion for reconsideration has been filed. If the Commission accepts the motion for reconsideration but fails to take

action in relation to the motion within ninety (90) days after the latter was filed, it shall lose its jurisdiction over the same and the term to solicit the judicial review shall be counted as of the date the term of ninety (90) days has expired except if the Commission, for just cause and within said ninety (90) days extends the term to resolve for a period not to exceed thirty (30) additional days.”

Section 5.-A new Section 5 is hereby added to Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” to read as follows:

“Section 5.-Protection orders

The Commission is hereby empowered to issue interlocutory protection orders, under warning of contempt, to protect the integrity of the procedures being conducted by the Commission and for the purpose of preventing any loss or misappropriation of funds and protect the public interest or for the purpose of safeguarding any document or evidence pertinent to the petition before its consideration.”

Section 6.-A new Section 6 is hereby added to Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” to read as follows:

“Section 6.-Judicial review for municipal governments and public corporations – Terms for presenting

When the party is a public corporation or municipal government or their entities or corporations that have been adversely affected by a final order or resolution of the Commission and that has exhausted all remedies provided by the Commission, it may present a petition for review before the

Court of Appeals within a term of thirty (30) days, beginning on the date on which the copy of the notice of the final order or resolution of the agency is filed in the records of the case or as of the applicable date of those provided in Section 4 of this Act, when the term for soliciting the judicial review has been interrupted through the timely presentation of a motion for reconsideration. If the date of filing in the records of the case of the notice of the resolution or order is different from the date on which the notice was mailed the term shall be calculated as of the date of the mailing. The party shall notify the presentation of the petition for review to the Commission and to all parties within the term to solicit said review which shall be of strict compliance. The term of thirty (30) days to appear for review shall have a jurisdictional character.”

Section 7.-A new Section 7 is hereby added and the present Section 5 eliminated of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” to read as follows:

“Section 7.-Special Fund

A Special Fund is hereby created in the Treasury of Puerto Rico, with no specific fiscal year, that shall be under the administration of the Secretary of Justice, and into which shall be deposited all funds proceeding from the collection of the fees for the administrative procedures and the expenses incurred during the procedures before the Commission. The Commission shall use the resources of this Special Fund for the purposes and ends authorized in this Act.

The resources deposited in this Special Fund shall be entered in the books of the Secretary of the Treasury separately from any other funds from

other sources received by the Department of Justice so as to allow for their easy identification and use.”

Section 8.-Section 8.003 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act,” is hereby amended to read as follows:

“It shall be the obligation of the Mayor to make all necessary efforts to collect all debts of natural or juridical persons that are registered in the accounting books or records in favor of the municipality and to resort to all means authorized by law to collect said debts within the same fiscal year in which they are registered or up to the date they are due. Court action shall be taken in certain cases when necessary and when the municipality lacks sufficient funds to contract the required professional legal services it shall refer the cases to the Secretary of Justice. The Mayor shall resort to the Commission to Resolve Controversies over Payments and Debts between Government Agencies to take steps to collect debts against other government agencies, public corporations or municipal governments, pursuant to the provisions of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies.” When the debt, due to its nature or amount, or both, affects the budget estimates and/or the programmatic accounts for the appropriation of funds for a fiscal year, said situation shall be reported to the Commissioner.”

Section 9.-Subsection (a) of Section 1.3 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” is hereby amended to read as follows:

“Section 1.3

...

(a) “Agency” means any board, body, court of examiners, public corporation, commission, committee, independent office, division, administration, bureau, department, authority, officer, official, person, entity or any instrumentality of the Commonwealth of Puerto Rico or administrative body authorized by law to carry out regulatory or investigative functions or able to issue a decision or with the power to issue licenses, certificates, permits, concessions, accreditations, privileges, franchises and to accuse or adjudicate, except:

(1) The Senate and the House of Representatives of the Legislature;

(2) The Judicial Branch;

(3) The Office of the Governor and all its attached offices excepting those where the application of the provisions of this Act have been literally expressed.

(4) The Puerto Rico National Guard.

(5) The municipal governments or their entities or corporations.

(6) The Commonwealth Elections Commission.

(7) The Conciliation and Arbitration Bureau of the Department of Labor and Human Resources.

(8) The Advisory Board of the Department of Consumer Affairs on the Classification System of the Television Programs and Hazardous Toys.

(9) The Commission to Resolve Controversies over Payments and Debts between Government Agencies.

(b)”

Section 10.-This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No.61 (HB. 36) (Substitute) of the 3<sup>rd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** amend Sections 1, 2 and 3; add new Sections 4, 5, 6 and 7 and renumber the existing Section 5 as Section 8 of Act No. 80 of June 3, 1980, as amended, known as the “Act to Create the Commission to Resolve Controversies over Payments and Debts between Government Agencies,” in order to provide the procedure to be followed by the agencies, municipalities and public corporations which applies for filing and processing a complaint for claims against another government entity; to amend Section 8.003 of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act,” to provide that the municipal governments shall appeal to the Commission to Resolve Controversies over Payments and Debts Between Government Agencies to collect debts from other public entities; to amend subsection (a) of Section 1.3 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act,” so as to exclude the Commission from said statute; and for other related purposes,

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

In San Juan, Puerto Rico, today 14<sup>th</sup> of August of 2006.

Francisco J. Domenech  
Director