



AUTORIDAD DE
**ASESORÍA FINANCIERA
Y AGENCIA FISCAL**
DE PUERTO RICO

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Poderes Específicos de la Junta de Supervisión y Administración Financiera para Puerto Rico (JSF)

Secciones 204, 205 y 207 de PROMESA • 20 de mayo de 2021

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INTRODUCCIÓN

Razones principales para la aprobación de PROMESA

DISCIPLINA FISCAL

- Secciones 201-205

RECUPERACIÓN ECONÓMICA

- Sección 205
- Título V: Revitalización de Infraestructura

TRATAMIENTO/RESTRUCTURACIÓN DE LA DEUDA

- Título III: proceso similar a la quiebra
- Título VI: modificación consensual
- Sección 207



INTRODUCCIÓN

¿Por qué el Congreso puede legislar de esta manera?

- Sección 101: Cláusula territorial
- PROMESA establece específicamente una JSF para Puerto Rico, pero construye las bases legales para que otros territorios también las soliciten.
- **FOMB v. Aurelius**, 140 S.Ct. 1649 (2020)



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PODERES ESPECÍFICOS DE LA JSF

Las siguientes secciones aplican a Puerto Rico, independientemente de que se haya iniciado un proceso similar a la quiebra bajo el Título III de PROMESA.

Sección 204

- poderes sobre nueva legislación, revisión de contratos, reglamentos, otras acciones administrativas y reasignaciones presupuestarias.

Sección 205

- poderes para hacer recomendaciones de política pública.

Sección 207

- poderes sobre reestructuración y emisión de deuda.



SECCIÓN 207 | TEXTO ESTATUTARIO

Oversight Board authority related to **debt issuance**

For so long as the Oversight Board remains in operation, no territorial government may, **without the prior approval of the Oversight Board, issue** debt or guarantee, **exchange, modify, repurchase, redeem**, or enter into similar transactions with respect to **its debt**.



SECCIÓN 207 | PROCESO

- JSF aprobó una “Política” el 3 de diciembre de 2017 para el Gobierno central e instrumentalidades
- JSF aprobó una “Política” el 21 de noviembre de 2019 para los municipios.
- No define “Debt Transaction”
- JSF tomará en consideración:
 - *No Debt Transaction shall be valid and enforceable if not approved in writing in advance by the FOMB. To determine whether a Debt Transaction should be approved under Section 207 of PROMESA, the FOMB will consider **the amount, terms and conditions, anticipated use of funds, purpose of the transaction, impact on applicable fiscal plans and budgets, any alternative transactions, and any other relevant factors.** Each Debt Transaction must be **advisable** for the entity entering into it and for Puerto Rico.*



SECCIÓN 207 | PROCESO

- Gobierno (AAFAF) debe enviar lo siguiente:
 - I. The **term sheet** or similar documents evidencing the proposed Debt Transaction
 - II. A **letter from the head of the entity** seeking to enter into the Debt Transaction explaining the purpose of the transaction, **the anticipated use of funds**, the efforts used to procure the best possible terms, any alternative transactions, and why the transaction is in the best interest of the entity
 - III. A **letter from AAFAF** explaining the proposed transaction's impact on the entity's compliance with applicable fiscal plans and budgets, why the transaction is in the best interest of Puerto Rico and stating whether AAFAF endorses the transaction
 - IV. A **letter from the Governor** endorsing the transaction and the rationale for endorsing it



SECCIÓN 207 | PROCESO

- JSF puede:
 - ✓ Aprobar
 - ✓ Requerir más información
 - ✓ Aprobar condicionalmente
 - ✓ Rechazar



SECCIÓN 207 | EJEMPLOS

- Transacciones Municipales
- Deuda federal PRASA

Casos y Controversias

- Ley 29



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José B. Carrión III
Chair

BY ELECTRONIC MAIL

July 8, 2020

Mr. Omar J. Marrero Díaz
Executive Director
Fiscal Agency and Financial Advisory Authority (“AAFAF”)

Dear Mr. Marrero Díaz:

Pursuant to Section 207 of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) must approve certain debt transactions by the Government of Puerto Rico or its instrumentalities. In connection with this responsibility, the Oversight Board is in receipt of a letter, dated June 19, 2020, from AAFAF (the “Supporting Letter”), requesting approval for the debt transaction described therein (the “Debt Transaction”). The Oversight Board has also been provided representations from AAFAF in connection with the Oversight Board’s due diligence into the Debt Transaction (together with the Supporting Letter, the “Supporting Materials”).

The Debt Transaction, as described and represented in the Supporting Materials, consists of the issuance by the Municipality of San Juan of a \$24,085,728 Series D Municipal General Obligation Note (the “New Note”) to the Authority for the Recovery of the Debt of the Government Development Bank, represented by AmenNational Community Services, Inc. (“AmenNat”). The purpose of the New Note is to refinance the \$24,085,728 balloon payment of San Juan’s Municipal General Obligation Refinancing Note of 2013 (the “Original Note”).

Based on the representations and information in the Supporting Materials, the Oversight Board, after careful consideration, approves the Debt Transaction on the terms as described in the Supporting Materials pursuant to Section 207 of PROMESA.

Sincerely,

Natalie A. Jaresko
Natalie A. Jaresko

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO

Members

Andrew G. Biggs
Carlos M. Garcia
Arturo J. González
José R. González
Ana J. Matosantos
David A. Skeel, Jr.

Natalie A. Jaresko
Executive Director

SECCIÓN 205 | TEXTO ESTATUTARIO

- **(a) In general**

The Oversight Board may at any time **submit recommendations to the Governor or the Legislature** on actions the territorial government may take to ensure compliance with the Fiscal Plan, or to otherwise promote the **financial stability, economic growth**, management responsibility, and service delivery efficiency of the territorial government, including recommendations relating to—

1. the management of the territorial government's financial affairs, including economic forecasting and multiyear fiscal forecasting capabilities, information technology, placing controls on expenditures for personnel, reducing benefit costs, reforming procurement practices, and placing other controls on expenditures;
2. the structural relationship of departments, agencies, and independent agencies within the territorial government;



SECCIÓN 205 | TEXTO ESTATUTARIO

3. *the modification of existing revenue structures, or the establishment of additional revenue structures;*
4. *the establishment of alternatives for meeting obligations to pay for the pensions of territorial government employees;*
5. *modifications or transfers of the types of services that are the responsibility of, and are delivered by the territorial government;*
6. *modifications of the types of services that are delivered by entities other than the territorial government under alternative service delivery mechanisms;*
7. *the effects of the territory's laws and court orders on the operations of the territorial government;*



SECCIÓN 205 | TEXTO ESTATUTARIO

8. *the establishment of a personnel system for employees of the territorial government that is based upon employee performance standards;*
9. *the improvement of personnel training and proficiency, the adjustment of staffing levels, and the improvement of training and performance of management and supervisory personnel; and*
10. *the privatization and commercialization of entities within the territorial government.*



SECCIÓN 205 | PROCESO

- JSF envía carta con recomendación (¿a quién?);
- Gobierno tiene 90 días para evaluar y contestar;
- Si determina **aceptar** la recomendación:
 - Debe contestar solo a la JSF e *“include in the statement a written plan to implement the recommendation that includes—*
 - A. *specific performance measures to determine the extent to which the territorial government has adopted the recommendation; and*
 - B. *a clear and specific timetable pursuant to which the territorial government will implement the recommendation.”*



SECCIÓN 205 | PROCESO

- Si el Gobierno determina **rechazar** la recomendación:
 - Debe notificar a la JSF, al Presidente de EEUU y al Congreso.
 - Explicar las razones para rechazar.

¿Qué pasa si el Gobierno no contesta o contesta fuera del término de 90 días?



SECCIÓN 205 | EJEMPLOS Y CONTROVERSIAS

Ejemplos

- WIPR
- Cuentas de retiro empleados públicos
- Reforma de Transportación en Puerto Rico
- Creación de Oficina del CFO

Controversias

- ¿Puede la JSF incluir en el Plan Fiscal una recomendación que el Gobierno rechazó y “obligar” al Gobierno a acatarla?
- **Vázquez Garced v. FOMB**, No. 19-1305



SECCIÓN 204

Sección 204 (a)

- Revisión de ciertos actos legislativos

Sección 204 (b)

- Revisión de ciertos contratos y actos administrativos

Sección 204 (c)

- Restricciones a ciertas reasignaciones presupuestarias



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | TEXTO ESTATUTARIO

- (a) *In general*

Submission of legislative acts to Oversight Board

1. **Submission of acts**

- **Except to the extent that the Oversight Board may provide otherwise in its bylaws, rules, and procedures, not later than 7 business days** after a territorial government duly enacts any law during any fiscal year in which the Oversight Board is in operation, **the Governor shall** submit the law to the Oversight Board.

2. **Cost estimate**

- *certification of compliance or noncompliance*



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | TEXTO ESTATUTARIO

- The Governor **shall** include with each law submitted to the Oversight Board under paragraph (1) the following:
 - A. A **formal estimate** prepared by an appropriate entity of the territorial government with expertise in budgets and financial management of the impact, if any, that the law will have **on expenditures and revenues**.
 - B. If the appropriate entity described in subparagraph (A) finds that the law is **not significantly inconsistent with the Fiscal Plan** for the fiscal year, it shall issue a certification of such finding.
 - C. If the appropriate entity described in subparagraph (A) finds that the law **is significantly inconsistent with the Fiscal Plan** for the fiscal year, it shall issue a certification of such finding, together with the entity's reasons for such finding.



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | TEXTO ESTATUTARIO

3. Notification

The Oversight Board **shall** send a notification to the Governor and the Legislature if—

- A. the Governor submits a law to the Oversight Board under this subsection **that is not accompanied by the estimate** required under paragraph (2)(A);
- B. the Governor submits a law to the Oversight Board under this subsection that is not accompanied by either a certification described in paragraph (2)(B) or (2)(C); or
- C. the Governor submits a law to the Oversight Board under this subsection that is accompanied by a certification described in paragraph (2)(C) that the **law is significantly inconsistent with the Fiscal Plan.**



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | TEXTO ESTATUTARIO

4. Opportunity to respond to notification

Failure to provide estimate or certification

A. After sending a notification to the Governor and the Legislature under paragraph (3)(A) or (3)(B) with respect to a law, the Oversight Board **may** direct the Governor to provide the missing estimate or certification (as the case may be), in accordance with such procedures as the Oversight Board may establish.

▪ (b) Submission of certification of significant inconsistency with Fiscal Plan and Budget

*In accordance with such procedures as the Oversight Board may establish, after sending a notification to the Governor and Legislature under paragraph (3)(C) that a law is significantly inconsistent with the Fiscal Plan, the Oversight Board **shall** direct the territorial government to—*

- I. correct the law to eliminate the inconsistency; or*
- II. provide an explanation for the inconsistency that the Oversight Board finds reasonable and appropriate.*



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | TEXTO ESTATUTARIO

5. *Failure to comply*

If the territorial government fails to comply with a direction given by the Oversight Board under paragraph (4) with respect to a law, the Oversight Board **may take such actions as it considers necessary**, consistent with this chapter, to ensure that the enactment or enforcement of the law will not adversely affect the territorial government's compliance with the Fiscal Plan, **including preventing the enforcement or application of the law**.

6. *Preliminary review of proposed acts*

At the request of the Legislature, the Oversight Board may conduct a preliminary review of proposed legislation before the Legislature to determine whether the legislation as proposed would be consistent with the applicable Fiscal Plan under this subtitle, except that any such preliminary review shall not be binding on the Oversight Board in reviewing any law subsequently submitted under this subsection



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | EJEMPLO CERTIFICADO

Ejemplo Certificado 204: (PRE LITIGIO)



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OGP



DEPARTAMENTO DE HACIENDA
GOBIERNO DE PUERTO RICO

FAFAA

Certificate of New Law Pursuant to 48 U.S.C. §2144(2)(B)

Legislative Measure Number:

- Joint Resolution 36-2020 ("JR 36"), herein attached.
- JR 36 requires the Puerto Rico Highway Transportation Authority ("HTA") the correction of faults in the following roads and kilometers:
 - PR-2, km s. 36.3-36.8
 - PR-160, km s. 13.4-13.7
 - PR-646, km . 1
 - PR-676, km . 6.9 & 7.2
 - PR-688, km . 3.6

Estimate of Impact of the Legislative Measure on Expenditures and Revenues for the covered years of the Fiscal Plan:


- The improvements are part of projects currently being implemented by HTA and funded using budgeted and/or available resources from federal allocations. In the event that an internal reprogramming of budgeted resources is needed, HTA will submit to the Financial Oversight and Management Board for Puerto Rico a formal request in accordance with the pertinent provisions of PROMESA.
- JR 36 has no impact on revenues.

Determination of the Legislative Measure's Compliance with the Fiscal Plan:

- JR 36 is not significantly inconsistent with the 2020 HTA Fiscal Plan.

SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS | EJEMPLO CERTIFICADO

Ejemplo Certificado 204: (POST LITIGIO)

 GOVERNMENT OF PUERTO RICO
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY

Section 204(a) Certificate for Act 1-2021

I. Introduction

This document should be considered for all intent and purposes under Section 204(a) of PROMESA 48 U.S.C. § 2104(2)(B).

II. Purpose of Legislation

Act 1-2021 ("Act 1") creates the "Enabling Act to implement the Ashanti Alert Plan" and amends certain provisions of Act 20-2017, as amended and known as the "Puerto Rico Department of Public Safety Act," and establishes the protocol to be followed by security agencies and other public entities of the Government of Puerto Rico in order to activate and alert plan regarding (i) the disappearance of a person over 18 years of age who suffers from a proven physical or mental disability, or (ii) in circumstances where it can be understood that the disappearance of the missing adult may be compromised, or (iii) that the disappearance of the adult was involuntary, including kidnapping. This alert plan shall be known as the Ashanti Alert Plan.

Act 1 provides that the Puerto Rico Police Bureau ("Police Bureau") will be the primary security agency responsible for operating the Ashanti Alert Plan, and that its protocol will also include the municipal police force, the Department of Transportation and Public Works ("DTOP," by its Spanish acronym), and the Bureau of Emergency Management and Disaster Administration ("NAEMAD," by its Spanish acronym). Furthermore, any other state, federal or municipal public entity, private company, or any other form of media or communication, may voluntarily participate and join in this collaborative effort.

In order to implement this emergency alert plan, Articles 2 and 3 of Act 1 enable the Police Bureau to activate the protocol and issue an alert if the criteria established therein is met and, if upon evaluation of such elements, the situation is indicative that the missing person is in danger of death or serious bodily harm. Pursuant Article 4 of Act 1, as soon as the Police Bureau submits the information regarding the missing or kidnaped person, the media and other voluntarily participating entities shall transmit emergency alerts to the public, which shall be disseminated as soon as possible and repeated frequently. These alerts must follow the Emergency Alert System (EAS) guidelines and will have to provide the necessary information pertaining to such person description, last known whereabouts and how the public may reach the authorities in order to provide helpful information.

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In addition to the foregoing, Article 5 of Act 1 orders the Police Bureau to create a Special Alert division that shall attend to all alerts, including the aforementioned Ashanti Alert, as well as AMBER, SILVER, Mayra Elias and ROSA alerts. Likewise, within 90 days of the approval of Act 1, the Police Bureau has to establish the necessary Ashanti Alert Plan norms, rules or regulations in compliance with Act No. 38-2017, as amended and known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico" and submit them to the Legislative Assembly.

In regards to DTOP, Act 1 provides that, once the Police Bureau activates the Ashanti Alert Plan, DTOP will make available electronic billboards located on public roads for the issuance of said alert. Also, DTOP is thereby authorized to receive, request, accept, and submit proposals for donations and contributions to resources from public and private sources, match any available funds with collaborative agreements with any entity, public or private, that is willing to participate or collaborate in financing, locating and maintaining new electronic billboards, as well as for maintenance of those already available.

Lastly, Article 9 of Act 1 provides that any person who, by means of a complaint or request, falsely declares or alleges that a kidnapping or disappearance has been committed, while having knowledge of its falsehood, which in result causes the activation of the Ashanti Alert Plan and of government resources, will incur in a misdemeanor crime and a fine of \$1,000 shall be imposed.

III. Analysis and Assumptions

Act 1 does not establish additional responsibilities for the government entities (as mentioned above) that may be considered outside the ordinary course of their operations or that may require additional funds

- The responsibilities established by Act 1 for each of the agencies mentioned therein are framed within the duties and functions that have been exercised prior to the enactment of said Act 1. In other words, Act 1 does not establish new functions that can be considered outside of the ordinary course of operations of each of the agencies. Consequently, it is reasonable to expect that the Police Bureau, DTOP and NAEMAD will implement Act 1 with funds previously budgeted in the Certified Budget dated June 30, 2020 ("Certified Budget").

Reasonably, Act 1 does not impose additional burdens on the Police Bureau, DTOP or NAEMAD.

- Act 1 does not impose additional burdens on the abovementioned entities, since similar alert plans, such as AMBER, SILVER, Mayra Elias, and ROSA alert plans, have been already implemented pursuant other legal

provisions. Therefore, other than the applicable criteria to determine activation of an alert plan, the Police Bureau, DTOP and NAEMAD already have these procedures and protocols in place.

Act 1 requires the Police Bureau to establish the necessary norms, rules or regulations in compliance with Act No. 38-2017, as amended and known as the Uniform Administrative Procedure Act of the Government of Puerto Rico.

- It may be assumed that a minimal impact on the expenditures of the Police Bureau is possible regarding the adoption of new regulations and/or amendments to existing regulations. These expenses, if any, shall be covered with "Other operating expenses assigned under the budgetary line identified as "Other operating expenses" in the Certified Budget.
- However, if a reprogramming of budgeted resources is needed, the Police Bureau shall submit to the Financial Oversight and Management Board for Puerto Rico ("Oversight Board") a formal request in accordance with the pertinent provisions of PROMESA and no disbursement will be made until the Oversight Board's approval is obtained.

Act 1 provides for the execution of collaborative agreements with any public or private entity.

- In regards to DTOP's responsibilities related to electronic billboards, which are a key component in issuing an alert, Act 1 authorizes said agency to (i) accept donations and contributions of public and private resources, (ii) match available funds with municipal, state, federal or private sector contributions, (iii) and execute collaborative agreements for the purpose of financing, locating and maintaining new electronic billboards, as well as for maintenance of those already available. It may be assumed that these agreements will not entail additional spending and may even represent savings to DTOP.

Act 1 enables potential income to the Government

- Pursuant Article 9 of Act 1, a false declaration or allegation, with knowledge of its falsehood, stating that a kidnapping or disappearance has been committed, which in effect causes the activation of the Ashanti Alert Plan and of the corresponding government resources, will result in the imposition of a criminal fine of \$1,000.

IV. Fiscal Impact

For the above stated reasons and as certified by the Department of Treasury and the Office of Management and Budget, the implementation of the Ashanti Alert Plan in accordance with Act 1 does not entail any impact on revenues of the Government of Puerto Rico or on the expenditures of the concerning entities for the pertinent fiscal years covered by the 2021 Certified Fiscal Plan ("Fiscal Plan").

Act 70-2008, Act 132-2009, Act 187-2014, and Act 149-2019, respectively.

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SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

A. CONTROVERSIAS - LEY 29

- El 17 de mayo de 2019, el Gobernador promulgó la Ley 29, que eliminó expresamente la obligación de los municipios de contribuir a ASES y PayGo. El Gobierno entregó un certificado a la Junta bajo la sección 204 (a), estimando que la Ley 29 “tiene un impacto en el presupuesto de [ASES] de aproximadamente \$ 119.7 millones para el año fiscal 2020 y \$ 161.6 millones para cada año fiscal de 2021 a 2024 . En cuanto al sistema [PayGo], la Ley 29 tiene un impacto de aproximadamente \$ 166 millones para el año fiscal 2020 ". Sin embargo, el certificado de la Ley 29 indicaba que la Ley 29 no era significativamente inconsistente con el plan fiscal certificado.
- Luego de que la JSF envió una notificación argumentando que el certificado no incluía el estimado formal requerido en cuanto al impacto en los ingresos y gastos, y luego que el Gobierno no respondiera a la notificación, la JSF presentó una demanda para prohibir la implementación de la Ley 29 y anular la ley.



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

- El Tribunal de Título III dictó sentencia sumaria a favor de la JSF, y anuló la Ley 29. El Tribunal resolvió que la JSF tiene el poder de impugnar los certificados y estimados del Gobierno; en otras palabras, un estimado en papel con membrete del Gobierno no protege de impugnación la legislación recientemente promulgada. Ver Ley 29 II, Caso No. 18-00393, ECF No. 107, en 16.
- El certificado bajo la sección 204 (a) de PROMESA debe incluir un “estimado formal y certificación” que cubra los cinco años del plan fiscal certificado. Id. en 16-17.
- Incluso sin un análisis detallado de la Ley 29, el Tribunal sostuvo que era “claramente obvio que la eliminación de la obligación de los municipios de reembolsar al Estado Libre Asociado las obligaciones de pensión es incompatible con el Plan Fiscal de 2019”. Id. en 17.



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

- El Tribunal también resolvió a favor de la JSF bajo la sección 108 (a) (2) porque “la Junta de Supervisión ha determinado que la Ley 29 menoscaba o anula los propósitos de PROMESA, afirmando que (i) la Ley 29 es significativamente inconsistente con la Ley Fiscal de 2019 Plan, (ii) la Ley 29 anula la responsabilidad fiscal. . . , (iii) La Ley 29 priva al Estado Libre Asociado de cientos de millones de dólares. . . y (iv) la Ley 29 viola el artículo 207 de PROMESA, y su promulgación e implementación viola los artículos 204 (a) y 204 (c) de PROMESA ”. (Id. En 23.)



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

B. CINCO LEYES IMPUGNADAS

- Desde fines de 2019 hasta principios de 2020, la JSF rechazó varios certificados enviados por el Gobierno bajo Sección 204(a). La JSF cuestionó los estimados del Gobierno sobre el impacto fiscal y exigió un análisis fiscal y legal cada vez más oneroso. Para buscar certeza del Tribunal de Título III sobre los requisitos de PROMESA para la legislación recientemente promulgada, el 12 de junio de 2020, el Gobernador y la AAFAF presentaron cinco demandas para cuestionar estas acciones de la JSF para con la Ley 82, Ley 138, Ley 176, Ley 181, y Ley 47 (las “Cinco Leyes Impugnadas”).
- El Tribunal de Título III resolvió a favor de la JSF, basándose en su fallo de la Ley 29, y enfatizó que el Gobierno debe respaldar sus certificados bajo la sección 204 (a) con un análisis sustantivo de cualquier efecto fiscal de la legislación recientemente promulgada, incluso efectos secundarios. El Tribunal sostuvo que el requisito de PROMESA de un “certificado formal” no se satisface con la mera presentación de una cifra en papel con membrete oficial. Cinco Leyes, Caso No. 17-3283, ECF 15496, en 55.



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

- El certificado debe ser "suficientemente informativo y completo", id., y no puede ser "concluyente". id.. en 62. En la práctica, esto requiere que el Gobierno evalúe los efectos secundarios de la legislación recién promulgada. Incluso si la legislación no contempla mayores gastos o reducciones de ingresos, el Gobierno debe anticipar sus otros efectos. Por ejemplo, el Tribunal sostuvo que permitir que los empleados acumulen días adicionales por enfermedad y vacaciones aumentaría efectivamente el costo del Gobierno por hora o día de trabajo. Id. en 66-67.
- El Tribunal también sostuvo que las impugnaciones de la JSF a la suficiencia de los estimados y certificaciones del Gobierno en virtud del artículo 204 (a) se evalúan a base del estándar deferente "arbitrario y caprichoso". Id. en 62. En otras palabras, siempre que la JSF tenga alguna "base racional" para concluir que la legislación recientemente promulgada es significativamente incompatible con el Plan Fiscal, es probable que la JSF prevalezca.



SECCIÓN 204 (A): REVISIÓN DE ACTOS LEGISLATIVOS

- A diferencia de la Ley 29, el Tribunal no declaró nulas las Cinco Leyes impugnadas, sino que emitió un interdicto para impedir su implementación hasta que la JSF lo permita.
- En conjunto, el litigio de la Ley 29 y las Cinco Leyes Impugnadas dejan en claro que el Tribunal del Título III espera certificados sustantivos y razonados del impacto de nuevas leyes en los gastos e ingresos, respaldados por un análisis financiero. Si la JSF solicita más información, el Gobierno debe proporcionarla.
- Lo que NO puede hacer la JSF: el Tribunal fue enfático en que la JSF no puede declarar nulas leyes promulgadas por el Gobierno de manera unilateral. Por lo tanto, las leyes son válidas hasta tanto un Tribunal competente las declare nulas o impida su ejecución.



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS | TEXTO ESTATUTARIO

1. *TRANSPARENCY IN CONTRACTING - The Oversight Board shall work with a covered territory's office of the comptroller or any functionally equivalent entity to promote compliance with the applicable law of any covered territory that requires agencies and instrumentalities of the territorial government to maintain a registry of all contracts executed, including amendments thereto, and to remit a copy to the office of the comptroller for inclusion in a comprehensive database available to the public. With respect to Puerto Rico, the term "applicable law" refers to 2 L.P.R.A. 97, as amended.*
2. *AUTHORITY TO REVIEW CERTAIN CONTRACTS - The Oversight Board may establish policies to require prior Oversight Board approval of certain contracts, including leases and contracts to a governmental entity or government-owned corporations rather than private enterprises that are proposed to be executed by the territorial government, to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan.*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS | TEXTO ESTATUTARIO

3. *SENSE OF CONGRESS - It is the sense of Congress that any policies established by the Oversight Board pursuant to paragraph (2) should be designed to make the government contracting process more **effective, to increase the public's faith in this process**, to make appropriate use of the Oversight Board's time and resources, to make the territorial government a facilitator and not a competitor to private enterprise, and to avoid creating any additional bureaucratic obstacles to efficient contracting.*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS

- La JSF aprobó una “Política de Revisión de Contratos” el 6 de noviembre de 2017. Esta ha sido enmendada en varias ocasiones; la última vez el 30 de abril de 2021.

Aplicabilidad

- Todo contrato en el cual una “entidad cubierta” es parte.
- Cualquier “contrato”: incluye órdenes de compra y contratos pagos con fondos federales.
 - ✓ *“All contracts or series of related contracts, inclusive of amendments, modifications or extensions...”*
- Contratos de \$10 millones o más. JSF retiene discreción para requerir contratos menores a esa cuantía.



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS | PROCEDIMIENTO

- Agencia debe someter a JSF **antes de firmar el contrato**.
- Incluir ciertos documentos complementarios:
 - I. *a completed copy of the Contract Submission Questionnaire, Appendix A,*
 - II. *the Agency Certification Requirement, Appendix B,*
 - III. *the **Contractor Certification Requirement**, Appendix C:*
 - *Names of all the owners and/or principal stakeholders for each subcontractor, if any, under Item 1 of the document. For purposes of the Contractor Certification Requirement submission, "principal stakeholders" shall mean all entities or individuals with an ownership or membership interest, as the case may be, equal to or higher than ten percent (10%) in a subcontractor identified in the Contractor Certification Requirement. "Principals" shall mean persons and entities that have full authority to act on behalf of each subcontractor.*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS | PROCEDIMIENTO

- Contrato debe incluir las siguientes cláusulas:
 - ✓ **Warranties:** *a provision stating that the contractor represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the contract null and void and the contractor will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.*
 - ✓ **Transfer of Knowledge:** *All professional services contracts and amendments to existing professional services contracts for recurring professional services must include a provision requiring the transfer of skills and technical knowledge from the contractor to agency personnel. This requirement shall not apply to contracts for non-recurring or specialized professional services.*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS CONTRATOS | PROCEDIMIENTO

- Términos:
 - ✓ Contratos nuevos: **15 días laborables** antes de fecha de firma propuesta.
 - ✓ Enmiendas: **30 días calendarios** antes de fecha de firma propuesta.

**** JSF tiene **12 días laborables** para contestar si todos los documentos fueron enviados ****

OJO → si agencias no cumplen con términos aplicables, el término de aprobación de la JSF no aplicará.



SECCIÓN 204 (B): REVISIÓN DE CIERTOS ACTOS ADMINISTRATIVOS | TEXTO ESTATUTARIO

4. *AUTHORITY TO REVIEW CERTAIN RULES, REGULATIONS, AND EXECUTIVE ORDERS - The provisions of this paragraph shall apply with respect to a rule, regulation, or executive order proposed to be issued by the Governor (or the head of any department or agency of the territorial government) in the same manner as such provisions apply to a contract.*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS ACTOS ADMINISTRATIVOS

- La JSF emitió una “Política de Revisión de Reglas, Reglamentos y Órdenes, el 6 de agosto de 2018. La enmienda más reciente fue el 31 de octubre de 2019.

Aplicabilidad

- *Any rule, regulation, administrative order, or executive order that is proposed to be issued in connection with or that concerns financial aspects of the most recent Certified Fiscal Plan of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality (excluding municipalities) (the “applicable Certified Fiscal Plan”).*



SECCIÓN 204 (B): REVISIÓN DE CIERTOS ACTOS ADMINISTRATIVOS | APLICABILIDAD

This includes, but is not be limited to, the following areas:

1. Any rule, regulation, administrative order, or executive order **related to revenue generation** and/or **distribution, tax incentives or credits**, or any other fiscal plan compliance measure as it relates to either **revenue** or **expenses** included in the applicable Certified Fiscal Plan;
2. Any rule, regulation, administrative order, or executive order that is issued in connection with or that concerns **rightsizing** of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality (excluding municipalities), including without limitation any rule, regulation, administrative order, or executive order related **to employee compensation or benefits**; and
3. Fiscal Plan focused laws and related regulations, including, but not limited to, Act 26-2017, Act 257-2018, Act 60-2019, and Act 73-2019.



SECCIÓN 204 (B): REVISIÓN DE CIERTOS ACTOS ADMINISTRATIVOS | APLICABILIDAD

In addition, the applicable Certified Fiscal Plan also provides for **improvements to fiscal governance, accountability, and internal controls**. Under this authority, FOMB may review any proposed rule, regulation, administrative order, or executive order that is issued which has the potential to impact fiscal governance, accountability, or internal controls under the applicable Certified Fiscal Plan. This includes, but is not be limited to, the following areas:

1. The PREPA Transaction, whether by the Public-Private Partnership Authority or the Partnership Committee, as contemplated by Act No. 120-2018;
2. Any rule, regulation, administrative order, or executive order that is issued, whether or not by the **Patient Advocate**, in connection with Act 47-2017;
3. Any rule, regulation, administrative order, or executive order that is issued in connection with the establishment, governance, management, or operation of the Office of the CFO; and
4. Any rule, regulation, administrative order, or executive order that is issued in connection with or related to **procurement, contracting policy, or outsourcing**.



SECCIÓN 204 (B): REVISIÓN DE CIERTOS ACTOS ADMINISTRATIVOS | PROCEDIMIENTO

- Procedimiento y Requisitos:
 - ✓ Enviar a la JSF **antes** de promulgar. (regs@promesa.gov)
 - ✓ Copia del propuesto acto administrativo **en inglés**.
 - ✓ Explicación de por qué el acto administrativo propuesto es consistente con el Plan Fiscal aplicable.
- Término:
 - ✓ JSF tiene que contestar en 5 días laborables.
 - ✓ Contestación puede ser “aprobada”, “rechazada” o “hace falta más información”.

**** Si JSF **no contesta** dentro del término, puede proceder a promulgarse el acto administrativo ****



SECCIÓN 204 (C): CONTROLES PRESUPUESTARIOS

Los casos *Rosselló, Ley 29* y el de *Cinco leyes impugnadas* han confirmado que el Tribunal de Título III considera que la JSF tiene poderes amplios para hacer cumplir el presupuesto al prohibir la reprogramación, incluso si la necesidad de reprogramación no es evidente a la luz de una ley.

- **Rosselló:** El Tribunal de Título III sostuvo que el Gobierno no puede gastar fondos no utilizados de años fiscales anteriores sin la autorización de la JSF.
 - *"No tiene razón, y sería contrario a los mandatos de confiabilidad y transparencia de PROMESA, suponer que un presupuesto para un año fiscal podría diseñarse para hacer algo menos que abarcar todos los ingresos y recursos financieros proyectados, y todos los gastos, para el año. Dado que un presupuesto certificado está en pleno efecto a partir del primer día del período cubierto, los medios y fuentes de gasto público necesariamente no estarán disponibles si no se prevén dentro del presupuesto". Rosselló, Caso No. 18-00080, ECF No. 33, en 31.*



SECCIÓN 204 (C): CONTROLES PRESUPUESTARIOS

- A. LEY 29:** El Tribunal del Título III sostuvo que incluso si una ley no reprograma los fondos, pero crea un déficit de gastos, contraviene la prohibición de la sección 204 (c) porque la ley inevitablemente requerirá una reprogramación.
- *“La Ley 106, el Plan Fiscal 2019 y los Presupuestos certificados contemplan la recepción de ingresos de los municipios. En ausencia de esos ingresos, los fondos comprometidos con otros fines por los Presupuestos necesariamente tendrán que ser redirigidos. La Ley 29 obviamente contempla la reprogramación”. Ley 29 I, Caso No. 19-00393, ECF No. 66, en 28.*
 - El Tribunal de Título III se negó a establecer una distinción entre un déficit de ingresos y una reprogramación formal, sosteniendo que la Ley 29 "constituye evidentemente una reprogramación" porque "requiere que el Estado Libre Asociado asuma cientos de millones de dólares en obligaciones de pensiones que de otro modo habrían sido asumidas por los municipios". Ley 29 II, Caso No. 18-00393, ECF No. 107, en 19-20.



SECCIÓN 204 (C): CONTROLES PRESUPUESTARIOS

- B. CINCO LEYES IMPUGNADAS:** El Tribunal del Título III amplió su interpretación de la reprogramación prohibida para cubrir no solo los déficits de gasto, sino incluso la creación y el gasto de nuevas fuentes de ingresos.
- El Tribunal determinó que la Ley 181, que promulgó un impuesto del 3% sobre ciertas líneas de seguro para financiar un aumento salarial a los bomberos, viola la sección 204 (c), "tanto porque probablemente requerirá reprogramación como porque pretende gastar fondos de una fuente no figura en ningún presupuesto certificado "mediante la creación del impuesto del 3%. Five Acts, Caso No. 17-3283, ECF No. 15496, en 69.
 - Según el fallo de la Corte, cualquier legislación que no sea fiscalmente neutral, incluso si se autofinancia con un nuevo impuesto, infringiría la sección 204 (c).

