

Hon. Rafael Hernández Montañez
Presidente



Representante Distrito Núm. 11
Dorado - Vega Alta - Vega Baja

March 5, 2021

VIA EMAIL

Natalie A. Jaresko
Executive Director
Financial Oversight & Management Board
For Puerto Rico

Dear Ms. Jaresko:

We hope this letter finds you well. As you may have read from recent press reporting, the Puerto Rico Legislative Assembly is currently in the process of approving House Bill 21 (“HB21”, “P. de la C. 21” or “PC21”). This bill’s purpose is to repeal Acts 165-2020 and 167-2020. The proposed revocation of these unconstitutional and absurd statutes seeks to vindicate several of this Legislative Assembly’s constitutional powers, blatantly given away a few months ago. Both acts are two of many other acts that unconstitutionally delegated several inherent legislative prerogatives during the Rosselló-Vázquez administration, thereby essentially blurring the fine lines that delimit our democracy’s republican system of government.

We are aware that the *Puerto Rico Oversight Management, and Economic Stability Act*, 48 U.S.C.S. §§ 2101, *et seq.* (“PROMESA”), limits the Financial Oversight & Management Board’s (“Board” or “FOMB”) scope of intervention with the Commonwealth’s political and/or governmental powers over Puerto Rico or its instrumentalities.¹ We are also aware of the multiple limits it specifically imposes over such powers.²

To wit, Sections 201 and 2144 provide that certain interventions are required of the FOMB as part of a legislative bill’s enactment process. Most interventions are aimed at protecting the FOMB’s fiscal plans. Many others are directed to ensure compliance with PROMESA’s overall objectives. One *ex post facto* intervention, however, dictates any bill’s eventual legislative outcome.

¹ See 48 U.S.C.S. § 2163.

² See, for example, 48 U.S.C.S. §§ 2124, 2128 (a), 2141 (c), 2142-2145 (b)(3), 2163 and 2214 (d).

Pursuant to PROMESA, the FOMB's review of proposed legislation is allowed, but review of enacted legislation is expected. This review is a checkpoint where the Board analyzes an act and determines if it is significantly consistent or not with the Fiscal Plan for the fiscal year. If found significantly inconsistent, the FOMB may direct the Commonwealth to correct or eliminate the inconsistency, as well as to submit an explanation for such inconsistency. It may also prevent the enforcement or application of any enacted and significantly inconsistent law.

PROMESA also establishes fiscal plans' general and specific requirements. Section 201 (b) requires that fiscal plans (i) ensure the funding of essential public services, (ii) provide adequate funding for public pension systems; (iii) provide for the elimination of structural deficits; (iv) improve fiscal governance, accountability and internal controls; (v) ensure that funds of a territorial instrumentality are not used for the benefit of other instrumentalities unless permitted by, among others, an approved plan of adjustment; and additional related objectives.

We request that an analysis from the FOMB as to the financial impact of enacting the aforementioned statehood-only enabling acts is shared with us. Per your response to Senate President Dalmau's February 8, 2021 letter, Act 167's estimate was submitted to the FOMB "in compliance with PROMESA" on January 15, 2021, more than two weeks after its enactment on December 30, 2020. As stated in the letter, the Governor of Puerto Rico's formal estimated cost of Act 167-2020's implementation totals 8.9 million dollars.

Your letter also notifies that on February 3, the Governor requested a reprogramming in the amount of \$6,549,469.00, which is phrased as "below the ... estimated cost". Up until that moment, this Legislative Assembly was never informed of any such request. Up until this moment, we have no related requests from the Governor pending before us. The Legislature is the entity ultimately responsible for approving or adopting any reprogramming, after reviewing the FOMB's analysis regarding the reprogramming's consistency with the Fiscal Plan, as recognized by Section 204 of PROMESA.³

To better collaborate in urgent issues to improve the Commonwealth's fiscal governance, accountability, internal controls, funding of essential public services, and public pension systems, as sought by PROMESA's Fiscal Plan guidelines, we ask that the FOMB forward any reapportionment request made by the Governor for our review. This Legislative Assembly has the constitutional authority to approve or deny any budget reprogramming request, despite any impermissible delegations allowed by the past administration.⁴

³ 48 U.S.C.S. § 2144 (c).

⁴ We are currently working to repeal unconstitutional delegations to realign our compromised, albeit briefly, checks and balance structure. Our republican government, as designed on Puerto Rico's Constitution, stems from the U.S. Constitution's design. See House Bill 500 ("P. de la C. 500"), approved by the Puerto Rico House of Representatives on February 23, 2021.

It is our legislative intention to deny any reprogramming request made to enable funding for pro-statehood-exclusive agendas. The enforcement of Acts 165 and 167 is contrary to specific Fiscal Plan guidelines, and their design defeats both PROMESA's and Puerto Rico's constitutional mandates. Our common ground is to avoid unnecessary litigation and its corresponding costs and delays. In this case, litigation is entirely avoidable. This Legislative Assembly seeks to reestablish legislative prerogatives to ensure that democracy survives PROMESA and, to do so, it must participate in processes such as this one.

The Board is not enjoined by Section 402 of PROMESA to deem that enforcement of Acts 165 and 167 are inconsistent with the Fiscal Plan's statutory objectives.⁵ Section 402 merely states that the legislative intent behind PROMESA is not to restrict Puerto Rico's right to determine its political status. It also points out that there is an existing allocation for an authorized plebiscite by virtue of Public Law 113-76 ("P.L. 113-76").⁶ They do not establish, however, that the Board is barred from deeming that any status-related actions from the Government of Puerto Rico are inconsistent with the Fiscal Plan. Acts 165-2020 and 167-2020 are not an objective, nonpartisan, voter-educated plebiscite, nor is it an inclusive or neutral democratic exercise, as P.L. 113-76 would encourage.

We are convinced that there are less expensive, more inclusive, and therefore democratic, ways to resolve Puerto Rico's status. For example, \$2,500,000 for federally approved alternatives is considerably less than almost \$7 million, and more so than \$9 million. This analysis does not consider the fiscal impact of enforcing Act 165-2020. Such an analysis would have to consider that this law deems actions taken to promote statehood as of the highest priority, bars the enforcement of any law that alters or postpones budgetary reprogramming or allocations, and empowers the Governor to order indefinite elections to promote statehood. In sum, it allows the Governor to announce and celebrate countless elections and incur in related costs. Act 165 also provides that the FOMB has no jurisdiction over it and may not be consulted nor considered by it due to its lack of authority.⁷

Notwithstanding our different stances on other issues, we urge you not to enable this unchecked spending by approving the Governor's request. The enforcement of both Acts 165 and 167 would be in clear violation of PROMESA and our Constitution, as would also be our exclusion from reapportionment procedures. Our reinsertion in these and other budgetary matters will only promote a timely and accurate analysis for this Legislature to ensure that the Government has sufficient funds to provide essential services to our People. Prior exclusion, as you note on your letter, failed to avoid legal conflicts and costly proceedings occurred during the last four years.

⁵ 48 U.S.C.S. § 2192.

⁶ This Act allocates "\$2,500,000 ... for objective, nonpartisan voter education about, and a **plebiscite on**, options that would resolve Puerto Rico's future political status, which shall be provided to the State Elections Commission of Puerto Rico." (Emphasis added).

⁷ See Article 1.8 of Act 165-2020.

We are available to discuss this matter as soon as necessary and look forward to continuing our mutual work for Puerto Rico.

A handwritten signature in blue ink, consisting of a large, teardrop-shaped loop at the top, a vertical line extending downwards, and a small circular flourish at the bottom.

Rafael Hernández Montañez
Speaker
Puerto Rico House of Representatives