
FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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Executive Director

BY ELECTRONIC MAIL

January 28, 2022

Hon. Juan Zaragoza
Finance, Federal Affairs & Oversight Board Committee
Senate of Puerto Rico
El Capitolio
San Juan, Puerto Rico

Re: Preliminary Review of Proposed Legislation—House Bill 513

Dear Senator Zaragoza:

We write in response to your letter dated December 13, 2021 requesting the Oversight Board “analyze and evaluate” House Bill 513 (“HB 513” or the “Bill”). The Bill, among other things, seeks to establish a new base salary of \$2,700 per month for teachers employed by the Puerto Rico Department of Education (“PRDE”).

As you are aware, the Bill has been the subject of prior correspondence between the Oversight Board and the Legislature. In a previous letter to you dated November 30, 2021, which is attached for your convenience, the Oversight Board expressed its support for HB 513’s purpose and outlined the actions the Oversight Board has taken to ensure raises for PRDE teachers and directors. Notwithstanding the Oversight Board’s support for the Bill’s purposes, the Oversight Board determined the Bill as constituted would not be consistent with the 2022 Certified Commonwealth Fiscal Plan (the “Fiscal Plan”), because it proposes to increase base salaries for teachers in excess of the salary increases provided for in the Fiscal Plan without identifying the source of funding for the corresponding increase in expenses, and does so outside the overall civil service reform plan required by the Fiscal Plan. In FY 2023, teachers will receive an increase of \$470 per month in their base salary over two phases of implementation, pending successful completion of milestones as provided in the Fiscal Plan.¹ In our November 30, 2021 letter, we

¹ In Phase 1, all teachers will receive a \$235 per month increase on July 1, 2022, while in Phase 2, teachers could receive an additional \$235 per month, effective January 1, 2023, based on successful completion of milestones. See 2022 Certified Commonwealth Fiscal Plan at 223.

invited the Legislature to “discuss how the Bill could be modified to be consistent with the Fiscal Plan and compliant with PROMESA.” The Oversight Board received a request from Representative Díaz Collazo to discuss the Bill, and we are in the process of setting up a meeting.

We understand your December 13, 2021 letter requests a preliminary review pursuant to PROMESA section 204(a)(6).² We also understand the Bill has not changed since the Oversight Board conducted its prior preliminary review. As such, we refer you to our November 30, 2021 letter, which provides the basis for the Oversight Board’s conclusion that HB 513 is not consistent with the Fiscal Plan.

As noted in that letter and above, we would be pleased to discuss this matter further and to review any proposed amendments to the legislation.

* * *

We are pleased you have availed yourself of section 204(a)(6) of PROMESA, which provides a mechanism for the preliminary review of proposed laws.³ It is far more effective to engage on new laws during the legislative process to ensure the Government and the Oversight Board share their respective analyses before new laws creating new government obligations are enacted. Historically, the Government waiting until after laws were enacted to prepare and/or share its analysis of the laws led to deficient section 204(a)(2) estimates and erroneous certifications, creating avoidable complications and, on occasion, requiring resort to the Title III court.

The Oversight Boards looks forward to engaging with you regarding the Bill’s developments and any other legislation you believe may impact the Commonwealth’s expenditures, revenues, compliance with any Fiscal Plan, or PROMESA’s purposes.

Sincerely,



Natalie A. Jaresko

Attachment: Letter of November 30, 2021

² PROMESA section 204(a)(6) states the Oversight Board, at the request of the Legislature, 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.”

³ Should the Bill be enacted, the Governor will still be required to make a Section 204(a) submission and, as stated in PROMESA, the results of the Oversight Board’s preliminary review are not binding on the Oversight Board in its review of that submission.

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November 30, 2021

Honorable Pedro Pierluisi
Governor of Puerto Rico

Honorable José Luis Dalmau
President of the Senate of Puerto Rico

Honorable Rafael Hernández
Speaker of the House of Representatives of Puerto Rico

Dear Governor Pierluisi, President Dalmau, and Speaker Hernández:

The Oversight Board recently became aware that House Bill 513 (“HB 513” or the “Bill”) was approved by the House of Representatives. We write regarding our concerns about the Bill.

Summary of Proposed Legislation and the Oversight Board’s Preliminary Review

The Bill, among other things, seeks to establish a new base salary for the teachers employed by the Puerto Rico Department of Education (“PRDE”) of \$2,700 per month.

The Oversight Board understands and shares the belief that having competent, motivated, and high-performing teachers is critical to providing high-quality education. In fact, to support high-quality education, the Oversight Board has ensured raises for teachers and school directors over the past few year – the 2018 and 2019 Certified Commonwealth Fiscal Plans provided for a \$1,500 annual salary increase for all PRDE academic teachers in fiscal year 2019, a \$5,000 annual salary increase for all school directors in fiscal year 2019, and an additional \$500 annual salary increase for all teachers and school directors in fiscal year 2020.¹ These salary increases were the first increases awarded in over a decade. Overall, the cumulative \$2,000 annual salary increase for

¹ Certified 2019 Commonwealth Fiscal Plan at 12.

teachers represented approximately 7% of average salaries at the time, whereas the \$5,500 annual salary increase for school directors represented approximately 14%. However, the Bill calls for (1) spending of unbudgeted funds for the current fiscal year without identifying offsetting revenues or savings; and (2) salary increases outside an overall civil service reform plan, as required by the Fiscal Plan for the Commonwealth of Puerto Rico certified on April 23, 2021 (the “Fiscal Plan”).²

Accordingly, upon careful review and analysis, the Oversight Board finds the Bill as currently constituted would not be consistent with the Fiscal Plan. Putting aside the merits of the Bill’s purposes, any bill that proposes to spend money the Commonwealth does not have, without corresponding savings or new revenues is, by definition, inconsistent with the Fiscal Plan and in violation of PROMESA. If the Bill is a priority, the Oversight Board is willing to discuss how the Bill could be modified to be consistent with the Fiscal Plan and compliant with PROMESA.

The Oversight Board’s Preliminary Review of House Bill 513

The Bill, as drafted, would require the PRDE to incur unbudgeted expenditures to accomplish the purpose of the salary increase. However, SB 513 does not identify specific sources of funding or offsets to render the Bill revenue neutral. Accordingly, the Bill would appear to have a negative fiscal impact, which is contrary to the revenue neutral principles set forth in the Fiscal Plan.³

Further, laws that require the expenditure of funds unaccounted for in the fiscal plan or budget are contrary to PROMESA’s purposes, including its purpose of achieving fiscal responsibility for Puerto Rico. As such, it is likely the Oversight Board would find SB 513, should it be passed in its current form, to impair or defeat PROMESA’s purposes and therefore in violation of PROMESA section 108(a)(2).

The Oversight Board recognizes that a well-functioning and strong civil service is essential to effective governance and the delivery of quality services to the people of the Commonwealth. In particular, the recruitment, employment, and retention of experienced and talented teachers is essential to providing high-quality education, which is the foundation for creating economic opportunities for the residents of Puerto Rico. The Commonwealth has experienced numerous crises in recent years, including earthquakes in the southern part of the Island and the COVID-19 pandemic. These emergencies – and the Commonwealth’s responses – have disrupted the education system and called into question the Government’s ability to provide effective and timely services to its residents, including educating its youth. Without addressing the root causes of these failures, the Government will be unable to maximize its performance and improve services for the people of Puerto Rico.

² Certified 2021 Commonwealth Fiscal Plan at 162-67.

³ Section 204(c)(2) of PROMESA provides that no reprogramming may be effectuated without prior Oversight Board approval. The Legislature should not anticipate the Oversight Board will automatically approve a reprogramming request. Rather, to the extent the Legislature believes a wage increase is worth funding, it should identify the source of funds for such increase in cost.

The Fiscal Plan requires the Government to develop a comprehensive human capital plan with a focus on effective and timely financial reporting. This plan's data analysis will address areas such as strategic alignment, talent management, performance, and evaluation. Additionally, the Government has commenced a civil service reform program, which will start with a pilot program (the "Pilot Program") to develop an effective and sustainable strategy to meet future financial reporting challenges.⁴ Among the Pilot Program's stated objectives are enabling the Commonwealth to recruit and retain the right talent and redesigning performance management and succession planning to promote employee development.⁵

Given the number of administrative and political challenges in Puerto Rico, the Oversight Board recommends a gradual implementation process for the Pilot Program, focused on pressing human capital issues within key functions of government. This approach will enable government leadership to evaluate the new programs and adjust them as needed prior to implementing specific reforms on a larger scale.⁶

HB 513, however, proposes to pursue a piecemeal approach by seeking to increase base salaries for teachers without identifying the source of funding for the corresponding increase in expenses. The Fiscal Plan and certified Budget do not provide for the expenditure of funds required by the Bill, and the Bill identifies no offsetting revenues or savings to cover the additional cost of this increase. Moreover, the Bill proposes a boost in salaries without first implementing the civil service reform process required by the Fiscal Plan. By picking and choosing individual functions, HB 513 undermines comprehensive civil service reform and the Pilot Program and therefore is inconsistent with the Fiscal Plan's requirement for comprehensive civil service reform.

In light of the above, the Oversight Board finds the Bill, as proposed, is inconsistent with the Fiscal Plan and the certified Budget.

* * *

As mentioned above, although the Oversight Board has found the Bill, in its current form, inconsistent with the Fiscal Plan, we are also mindful that amendments could be introduced during the legislative process that may alter the Bill's initial language and we will consider any revisions. Should the Bill nevertheless be enacted, the Governor will be required to make a Section 204(a) submission and the results of this preliminary review are not binding on the Oversight Board in its review of that submission.

⁴ Certified 2021 Commonwealth Fiscal Plan at 164-65


⁵ *Id.*

⁶ *Id.* at 163.

Governor Pierluisi
President Dalmau
Speaker Hernández
November 30, 2021
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The Oversight Boards looks forward to engaging with you regarding the Bill's developments and any other legislation you believe may impact the Commonwealth's expenditures, revenues, compliance with any Fiscal Plan, or PROMESA's purposes.

Sincerely,



Natalie A. Jaresko

CC: Hon. José A. Díaz Collazo
Mr. Omar Marrero Díaz