(H. B. 2002)
(Conference)

(No. 235-2010)

(Approved December 30, 2010)

AN ACT

To amend subsection (m) of Section 1.03 of Act No. 255 of October 28, 2002, as amended, known as the "Cooperative Savings and Credit Association Act of 2002," in order to provide that General Assemblies of Delegates shall not be deemed to be part of the so-called "Governing Board".

STATEMENT OF MOTIVES

The situation that motivates and justifies this legislative action is related to the interpretations given to a legal concept included in the "Cooperative Savings and Credit Association Act of 2002" after its approval.

Specifically, the definition of the term "Governing Board" did not include the General Assembly of Delegates of Cooperative Savings and Credit Associations. Subsection (m) of Section 1.03 of said Act lists a series of components of the organizational structure of cooperatives and groups them in a broader legal concept, which it identifies as the "Governing Board" of the cooperative. The following are among the directive and supervisory bodies included under such definition: the Board of Directors, the Credit Committee, the Supervision Committee, the Education Committee, and any other committee that performs functions delegated by the Board of Directors.

Note that each one of the aforementioned components is constituted by voluntary cooperative leaders, who have been elected or designated by the General Assembly or the Board of Directors to carry out specific functions, which are listed in various subsequent Sections of the Act.

Also note that the Assembly of Delegates is not one of the bodies listed in the aforesaid definition of "Governing Body." The legal reason therefor is that the General Assembly, as defined in the Act, is a higher body, with greater hierarchy, composed of the members of the cooperative, which carries out an annual session to receive the reports of the leaders elected by said Assemblies.

Including or defining the General Assembly, which elects, designates, and passes judgment on the work of the leaders of the entity, as a "Governing Board" would be a contradiction because, due to the nature and operation of the cooperative, it is not.

However, the situation or difficulty that we are currently facing arises from a phrase included in the legal definition. The government entity in charge of the supervision and oversight of cooperative savings and credit associations, that is to say, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico (COSSEC, Spanish acronym), has issued a legal opinion concluding that such phrase has the effect of including the Assembly of Members of the cooperative within the definition of "Governing Board" established in subsection (m) of Section 1.03 of Act No. 255, *supra*.

The phrase in question ends the list of bodies elected or designated by the Assembly or the Board as follows: "and any permanent elected body duly instituted by law, regulations, or by general cooperative regulations."

On the one hand, there is no doubt that the Assembly of Delegates is composed of members that are elected by District Assemblies of each one of the Cooperative Districts of every cooperative organized in such manner, as provided by law and the general cooperative regulations. From this perspective, COSSEC's interpretation may seem reasonable when it applies the parameters of the definition to reach such conclusion. With such interpretation, COSSEC concludes that the Assembly of Delegates is a "Governing Board", even though such Assembly is not

included in the specific list of bodies mentioned in subsection (m) of Section 1.03 of Act No. 255, *supra*.

The problem arises when such interpretation is applied to the internal operations of cooperatives, since it causes serious difficulties that affect their organizational scheme and bring out unreasonable conduct and undue costs. This is so because, when other provisions of the law are applied to "Governing Boards," these acquire unwanted overtones when applied indiscriminately to the Assembly of Delegates.

One example of the situations that arise as a result of this administrative interpretation is the payment of per diems by cooperatives to the members of their Governing Boards, which is an issue regulated by law and the regulations promulgated by COSSEC itself. If such administrative interpretation continues to be applied, the thousands of members of the Assemblies of Delegates would be entitled to receive per diems and/or mileage allowances, which was unforeseen and unwanted when Act No. 255-2004 was approved.

This item alone would represent a large expenditure for cooperatives, thus increasing their operating expenses unjustifiably and unreasonably. This would also happen with the provisions related to the payment of insurance for the members of Governing Boards, as well as with those that authorize the reimbursement of expenses incurred in carrying out the official matters of the cooperative.

Another area that is significantly affected by COSSEC's administrative interpretation is the requirement set forth in Act 255-2004, that each member of a Governing Board shall present a negative criminal record certificate. This is a reasonable requirement when applied to voluntary leaders that would be having an active role in the direction and administration of the cooperative during the terms for which they are elected or designated. Such terms could last up to nine (9) years.

However, this requirement becomes unreasonable when applied to thousands of people who, according to the law, meet in regular session once a year and do not take part in the direction and administration of the cooperative. In fact, delegates are elected for a term of one (1) year. It has no legal purpose whatsoever to require each one of such delegates to submit a negative criminal record certificate to carry out their duties, which is a basic duty of all members of cooperatives under the law and the principles of the cooperative movement.

Delegates must currently meet this requirement by virtue of their inclusion— as a result of the administrative interpretation —in the "Governing Boards" concept.

We acknowledge that, on occasion, the text of the law may be confusing or subject to several interpretations, some of which may cause the affected parties to resort to adversarial reconsideration or judicial review processes that entail high non-budgeted costs for all the parties involved. These contentious situations would be unnecessary if we take a prompt and efficient legislative action. The costs of administrative or judicial review processes entail unforeseen high costs for the State agencies in charge of carrying out such functions. In turn, such costs entail an increase of non-budgeted expenses, in times when the State is protecting its treasury given the serious economic crisis faced by the Island.

We are confident that COSSEC could reconsider its decision and that, if it does not, it is probably because the text of the Law is still confusing and impairs it to make a different interpretation.

In light of this situation, it is appropriate, convenient, and desirable that this Legislative Assembly clarifies the legal framework in effect to foster an economy of financial and institutional resources, while regaining its interest in promoting the growth of cooperatives as entities that can encourage communities to participate in the social and economic development of Puerto Rico.

We reiterate that the cooperative movement is an integral part and a strong pillar of the economic and social development of the Island. Therefore, the growth and strengthening of cooperativism in Puerto Rico is highly vested with public interest. In recent years, legislation and regulations have been characterized by a tendency to lift restrictions or render them more flexible, so any interpretation of the law that is inconsistent with the objectives and public policy established by this Legislative Assembly must be addressed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (m) of Section 1.03 of Act No. 255 of October 28, 2002, as amended, is hereby amended to read as follows:

"Section 1.03.- Definitions.-

For purposes of this Act, the following terms shall have the meaning stated below:

(a) …

"Governing Board" means the Board of Directors, Credit Committee, Supervision Committee, Education Committee, any committee that performs functions delegated by the Board of Directors, and any permanent elected body duly instituted by law, regulations, or by general cooperative regulations. It is hereby expressly provided that the General Assembly of Delegates shall not be deemed to be part of a Governing Board.

…"

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. 235-2010 (H. B. 2002) (Conference)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend subsection (m) of Section 1.03 of Act No. 255 of October 28, 2002, as amended, known as the "Cooperative Savings and Credit Association Act of 2002," in order to provide that General Assemblies of Delegates shall not be deemed to be part of the so-called "Governing Board".

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

In San Juan, Puerto Rico, on this 2nd day of July, 2013.

Juan Luis Martínez Martínez
Acting Director