

(H. B. 719)

(No. 15-2013)

(Approved May 6, 2013)

AN ACT

To amend Sections 1 and 3 of Act No. 40 of May 1, 1945, as amended, known as the “Puerto Rico Aqueduct and Sewer Authority Act,” in order to restructure and reorganize the organization and structure of the Aqueduct and Sewer Authority; and modify the term of appointment of its members.

STATEMENT OF MOTIVES

The Puerto Rico Aqueduct and Sewer Authority was created in order to provide citizens with adequate water and sewer services, in addition to any other incidental service. The services provided by this public corporation are of vital importance to the wellbeing and health of the people living in Puerto Rico. Thus, it is essential for the Government of the Commonwealth of Puerto Rico to watch over the proper operation of this instrumentality and ensure that its operations are consistent with the public policy of transparency, responsiveness, effectiveness and openness with regards to the needs and demands of the People. This Legislative Assembly has made a commitment to the People of Puerto Rico to reexamine the government structures for the purpose of ensuring proper representation; that public instrumentalities operate in an efficient and transparent manner; and that the services rendered to citizens are of the best quality possible.

Public corporations are fundamental pieces for an efficient Government. For such reason, these corporations have attributes such as their own juridical personalities and various degrees of autonomy in their functioning and operations. The governing bodies of public corporations perform a significant role in these

entities, since they have authorities and powers necessary for the public corporation to fulfill its duty to serve the People of Puerto Rico. These powers shall be exercised bearing in mind the socioeconomic impact of its determinations.

Act No. 40 of May 1, 1945, as amended, known as the “Puerto Rico Aqueduct and Sewer Authority Act,” does not provide the necessary specifications in terms of qualifications, education, experience, and representativeness of the members of its governing body. For such reason, said governing body currently lacks a representative and balanced composition that can efficiently address the challenges faced by this government entity in its administration and in the rendering of services to the Island. Therefore, it is necessary to adjust the provisions of the “Puerto Rico Aqueduct and Sewer Authority Act” to restructure and reorganize the composition of the governing body in order to ensure that this body is composed, at all times, of members that are representative of the people who are affected by the policies implemented by this public corporation, and who have the appropriate education or professional experience so that the public corporation can fully discharge its public and legal responsibilities. The restructuring and reorganization of the governing body of the Puerto Rico Aqueduct and Sewer Authority under the parameters established in this Act is hereby directed, in accordance with the power vested in the Legislative Assembly by the Constitution of the Commonwealth of Puerto Rico in Article III, Section 16.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (l) of Section 1 of Act No. 40 of May 1, 1945, as amended, is hereby amended to read as follows:

“ ...

(l) Board.- means the Governing Board of the Authority established in accordance with the provisions of Section 3 of this Act.

...”

Section 2.- Section 3 of Act No. 40 of May 1, 1945, as amended, is hereby amended to read as follows:

“Section 3.- Governing Board

The powers of the Authority shall be exercised, and its general policy shall be determined by a Governing Board, hereinafter ‘the Board.’ Said Board shall be comprised of nine (9) members of which, two (2) shall be *ex officio* members; one (1) shall be an engineer authorized to practice engineering in Puerto Rico; one (1) shall be an attorney with at least seven (7) years of experience in the practice of said profession in Puerto Rico; one (1) shall be a person with vast knowledge and experience in corporate finances; two (2) shall be customer representatives and two (2) shall be the Executive Director of the Mayors’ Association and the Executive Director of the Mayors’ Federation. The two (2) *ex officio* members shall be the Secretary of the Department of Transportation and Public Works and the Chair of the Puerto Rico Planning Board.

(a) Except for the two (2) *ex officio* members, the two (2) customer representatives, the Executive Director of the Mayors’ Association and the Executive Director of the Mayors’ Federation, the remaining members of the Board shall be appointed by the Governor with the advice and consent of the Senate. The members that are customer representatives shall be elected in an election to be supervised by the Department of Consumer Affairs (DACO, Spanish acronym) and held in accordance with the procedure established in this Section. The Aqueduct and Sewer Authority shall provide the financial resources and facilities to hold said election.

The term of appointment or election of the members shall be four (4) years or until their successors take office, except for elected consumer representatives, who shall hold office for six (6) years. Any vacancy in the Board shall be filled by appointment by the Governor, with the advice and consent of the

Senate, except for elected consumer representatives, for the unexpired term of the original appointment. Any vacancy in the office of members elected as customer representatives shall be filled in accordance with the election process established in this Section.

No person may become a member of the Board (including the members representing customer interests) if he: (i) is an employee, retiree, or has a direct or indirect substantial financial interest in any private company with which the Authority has any contracts or with whom it engages in transactions of any kind; (ii) within two (2) years before holding office, has had a business relationship with or any interest in any private company with which the Authority has any contracts or with whom it engages in transactions of any kind; (iii) has been a member of a local or central directing body of a political party registered in the Commonwealth of Puerto Rico during the year immediately preceding his appointment; (iv) is an employee or official of the Authority or an employee, member, advisor, or contractor of the Authority's labor unions; or (v) has failed to provide the certification of having filed income tax returns during the five (5) preceding taxable years, the no debt certification issued by the Department of the Treasury, the certification of having no debts outstanding with the Authority, the Criminal Record issued by the Puerto Rico Police, as well as negative certifications from the Child Support Administration (ASUME, Spanish acronym), and the Municipal Revenues Collections Center (CRIM, Spanish acronym).

(b) Procedure to elect the three (3) customer representatives:

(1) DACO shall approve regulations to implement the election procedure provided in this Section.

(2) On or before one hundred twenty (120) days prior to the expiration of the term of each representative of customer interests in the Governing Board of the Aqueduct and Sewer Authority, the Secretary of DACO shall issue a

notice of elections, in which the requirements to be nominated as a candidate shall be specified. The notice of election shall be published by means of media advertisement, on the Authority's webpage, and mailed to customers along with the Authority's bill.

(3) The Secretary of DACO shall design and distribute the Request for Nomination form, in which every person aspiring to become a candidate shall state under oath, his name, personal circumstance, street and mailing address, telephone number, place of work, profession, education, and the Authority account number. The request for nomination shall include the signature of at least fifty (50) customers who endorse the nomination of the aspirant, together with their names, addresses, and their Authority account numbers. The request form shall be available to be filled out on digital format by aspirants on the Authority's webpage.

The Secretary of DACO shall include in the regulations a mechanism to validate endorsements, pursuant to the purposes of this Section. Likewise, such regulations shall include the requirements to be met by candidates in accordance with applicable laws.

(4) On or before ninety (90) days prior to the expiration of the term of office of the customer representatives, the Secretary of DACO shall certify as candidates the seven (7) nominees who have submitted the highest number of endorsements and have met all other requirements established in this subsection.

(5) On or before sixty (60) days prior to the expiration of the term of office of the customer representatives, the Secretary of DACO, in consultation with the Secretary of the Authority's Governing Board, shall continue with the design and printing of ballots, which shall specify the due date to receive ballots in order to begin the vote count.

(6) Ballots shall only be distributed by mail along with the water bill to each customer.

(7) Each one of the seven (7) candidates selected shall designate one person to represent him during the process, and such seven (7) persons, together with a representative of the Secretary of DACO and a representative of the Secretary of the Board shall compose the Election Committee which shall be chaired and directed by the representative of the Secretary of DACO.

(8) The Election Committee shall prepare and prominently post on the Authority's webpage any candidate information that enables customers to pass judgment on such candidates' abilities.

(9) The Election Committee shall enter into public service collaboration agreements with the different mass media outlets in Puerto Rico to promote the election process among the Authority's customers and to introduce all candidates under equal conditions.

(10) The Election Committee, within ten (10) days after the due date to receive ballots, shall begin the vote count and notify the results thereof to the Secretary of DACO, who shall certify the candidates-elect and notify such certification to the Governor of the Commonwealth of Puerto Rico and the Chair of the Board in order for the Governor to proceed with the appointment.

(c) The duties of Board members shall not be delegated. The Board shall meet as frequently as the Board determines, which shall never be less than once a month. Board members shall not receive compensation for their services.

(d) Five (5) members of the Board or, in the event of any vacancy in the Board, the majority of the Board members shall constitute quorum for the transaction of its business and any other purpose, and every decision shall be made by the affirmative vote of not less than five (5) Board members.

However, the following actions shall be approved by not less than six (6) Board members:

- (1) The selection and appointment of the chair and vice-chair of the Board;
- (2) The appointment, removal, and determination of compensation of the Executive President of the Authority; provided, that the Executive President that holds the office of director, should that be the case, shall not intervene in these matters;
- (3) The appointment, upon prior recommendation from the Executive President of the Authority, and the removal and determination of compensation of any executive officer of the Authority in accordance with the provisions of this Act;
- (4) The approval or termination of any administration contract with a private operator or any amendment thereto;
- (5) The approval of any collective bargaining agreement or any amendment thereto;
- (6) The authorization for exemption from the bidding requirement for construction and procurement contracts, or other contracts, pursuant to the provisions of Section 11 of this Act;
- (7) The approval of rate structures or changes thereto it and the imposition of fees, rents, and other charges for the use of the facilities or services of the Authority; and
- (8) The approval of the long term Capital Improvements Plan.

Unless prohibited or restricted by the regulations of the Authority, any action needed to be taken at any Board meeting or any committee thereof, except for the actions that shall require the approval of not less than six (6) Board members, may be authorized without having to hold a meeting, as long as all the members of the Board or committee thereof, as the case may be, give their written consent for such action, which document shall be part of the minutes of the Board

or committee thereof, as the case may be. Unless otherwise provided by the regulations of the Authority, the members of the Board or of any committee thereof may participate, by telephone conference or other means of communications, through which all the participants may listen simultaneously, in any meeting of the Board or of any committee thereof, where no actions specifically provided in clauses (1) through (9) of this subsection are taken. The participation of any member of the Board or any committee thereof in the foregoing manner shall constitute attendance to said meeting. Regular, special, and committee meetings of the Board shall be private. However, the agendas and minutes of the special and regular meetings shall be posted on the Authority's webpage once they have been approved by the Board in a subsequent meeting. Prior to the publication of the meeting minutes, the Board must also approve the versions of the minutes to be published which shall suppress any (i) confidential information in accordance with the Rules of Evidence; (ii) information related to the negotiation of collective bargaining agreements; (iii) ideas discussed regarding the negotiation of potential contracts of the Authority; (iv) information about strategies regarding Authority lawsuits; (v) information regarding the Authority's internal investigations while these are being conducted; (vi) aspects regarding the intellectual property of third parties; and (vii) trade secrets of third parties. The Secretary shall propose, for the Board's approval, the text of the minutes and the text to be deleted from the version to be published. It shall be understood as 'minute' a written account of the matters transacted, addressed, or agreed on by the Board.

(e) The provisions of Act No. 1-2012, known as the "Puerto Rico Government Ethics Act," shall apply to directors.

Without impairing the rights that directors may have under the provisions of the "Act on Claims and Suits against the Commonwealth," the

members of the Board shall not incur civil liability for any act or omission in the performance of their duties, provided there has been no conduct that constitutes a crime or gross negligence.

(f) The Board shall appoint an Advisory Committee to be constituted by seven (7) members and shall include, among others, persons who represent the interests of the communities lacking adequate aqueduct and sewer services, the special communities of Puerto Rico, the interests of the labor sector, and the interests of the environmental sector. The members appointed by the Board shall serve for a term of four (4) years.

The Advisory Committee shall meet with the Board as a whole at least three (3) times a year, and with the executive officers of the Authority as often as the Board or the Executive President deems convenient to offer suggestions, discuss the quality of the services rendered by the private operator, the needs of the communities, the Capital Improvements Program, and any other matter that the Board, the Executive President, or the Advisory Committee deems necessary. The Board shall adopt the norms for the operation of the Advisory Committee.

The members of the Advisory Committee shall not intervene in the formulation and implementation of public policy and shall therefore not be considered public officials for the purposes of Act No. 1-2012, known as the “Puerto Rico Government Ethics Act.”

(g) The Authority shall have the executive officers positions that the Board creates. The executive officers of the Authority shall be those appointed by the Board to hold office as executive officers. Executive officers shall include an Executive President, who shall be the chief executive officer of the Authority; an Infrastructure Executive Director; and the five (5) Regional Executive Directors, from the Metro, North, South, East, and West Regions, whose main functions are established hereinafter, in addition to those delegated by the Board, and shall be

appointed by the Board and supervised by the Executive President. The Board may, in the future, create additional Authority executive officer offices, in accordance with the decentralized managerial structure adopted in this Act and as the needs of the Authority may so require. No person may become an executive officer if he: (i) is an employee, retiree, or has any direct or indirect substantial financial interest in any private company with which the Authority has any contracts or with whom it engages in transactions of any kind; (ii) within two (2) years before holding office, has had a business relationship with or any interest in any private company with which the Authority has any contracts or with whom it engages in transactions of any kind; (iii) has been a member of a local or central directing body of a political party registered in the Commonwealth of Puerto Rico during the year immediately preceding his appointment; (iv) is an employee, member, advisor, or contractor of the Authority's labor unions; or (v) has failed to provide the certification of having filed income tax returns during the five (5) preceding taxable years, the no debt certification issued by the Department of the Treasury, the certification of having no debts outstanding with the Authority, the Criminal Record issued by the Puerto Rico Police, as well as negative certifications of the Child Support Administration (ASUME, Spanish acronym) and the Municipal Revenues Collections Center (CRIM, Spanish acronym). The Executive President and the Infrastructure Executive Director shall hold office for a term of six (6) years, while they maintain the Board's trust. Regional Executive Directors shall hold office for a term of five (5) years. Regarding the appointments of the Executive President, the Regional Executive Directors, and the Infrastructure Executive Director, the Board may provide, not to be construed as a limitation, the following:

(1) The duties, functions, obligations, and powers delegated by the Board to each one, in addition to those provided for hereinafter; provided, that the Board may not delegate the function of approving all or part of any collective bargaining agreement with the unions representing the employees of the Authority, nor the remaining functions listed in subsections (d), (l), and (o) of this Section; and

(2) The financial compensation to be paid during the term of his appointment, which may include fringe benefits and bonuses that facilitate the recruitment of professionals of the highest caliber.

(h) Functions of each Regional Executive Director.-

(1) To be responsible for administering and supervising all of the assets and employees of the Commonwealth Aqueduct System and the Commonwealth Sewer System within his region;

(2) To design and submit for the evaluation and approval of the Executive President and then of the Board, the annual budget for his region. Once approved, he shall be in charge of managing said budget in coordination with the Executive President;

(3) To submit to the Infrastructure Executive Director, through the Executive President, the needs for capital improvements he identifies in his region, in order of priority, so that said needs be incorporated into the Capital Improvement Program for the short- and the long-term;

(4) To meet with the elected officials of his region to address the claims and needs of citizens;

(5) To submit a report to each mayor of his region and to the Legislative Assembly on or before February 15 and August 15 of each year; and

(6) To also have all the duties, powers, and authorities that the Board delegates to him, in accordance with the decentralized managerial structure being adopted in this Act and as the needs of the Authority so require, except that the Board may not delegate the functions listed in subsection (g)(1) of this Section.

(i) Functions of the Infrastructure Executive Director.-

(1) To prepare, in coordination with the Regional Executive Directors, a Capital Improvement Program that addresses the short- and long-term needs of the system and he shall submit said Program through the Executive Director for the approval of the Governing Board;

(2) To administer and execute said Capital Improvement Program according to the priorities established by the Board and as provided by the budget and schedule for each work under this Program.

(3) To meet with the elected officials to address the claims and needs of citizens;

(4) To submit a report to the Legislative Assembly on or before February 15 of each year and August 15 of each year; and

(5) To also have all the duties, powers, and authorities delegated to him by the Board, in accordance with the decentralized managerial structure adopted in this Act and as the needs of the Authority so require, except that the Board may not delegate the functions listed in subsection (g)(1) of this Section.

(j) The remaining executive officers of the Authority shall exercise the duties and obligations inherent to their offices and those other duties that the Board may establish. Unless the Board determines otherwise, the executive officers appointed by the Board may delegate to other persons the power of substituting for them during any period of justified absence, as this concept is defined by the Board through regulations.

(k) The Executive President, the Executive Director of Infrastructure, and Regional Executive Directors of the Authority may not:

(1) Contribute money, directly or indirectly, to political organizations, candidates, or parties;

(2) Hold or campaign to hold any office whatsoever in the management or organization of a political party or run for an elective public office; or

(3) Participate or collaborate, directly or indirectly, in any political campaign of any kind or in events of a political-partisan nature.

The Regional Executive Directors of the Authority may only be removed from office by the Board for the following causes:

(1) Immoral or unlawful conduct or violations of the prohibitions established by this Act;

(2) Incompetence, clear professional inability, or gross negligence in the discharge of their functions and duties;

(3) Conviction for any felony or misdemeanor that implies moral turpitude;

(4) Clear abuse of the authority or discretion bestowed upon him under this or any other Act; or

(5) Abandonment of duties;

(6) Failure to comply with the established work plan or with Board guidelines.

In addition, Regional Executive Directors may be removed from office by reason of a physical or mental disability which prevents them from performing essential duties. This removal from office due to their inability to perform essential duties shall not be considered a dismissal. These officials shall be evaluated by the Board through the use of performance standards.

(1) When the Board evaluates the composition or modification of initial regions, as provided in this Act, in connection with the delimitation thereof or the creation of new regions, the Board shall take into account the following elements in said analysis and shall be taken into account altogether, within the circumstances, at the time of making the final determination:

(1) The connectivity of the water transmission systems, the location of hydrographical basins, and the analysis of the best use of said resources;

(2) The assets and the state of said assets in the Commonwealth Aqueduct System and the Commonwealth Sewer System;

(3) The need for improvements to the Commonwealth Aqueduct System and the Commonwealth Sewer System;

(4) The length of the network and the size of the service area that comprises the region under analysis;

(5) The population density and the number of current and projected region customers in the short-, medium-, and long-term;

(6) The projects proposed for the region within the Capital Improvements Program and all other strategic plans developed by the Board;

(7) The findings of noncompliance and orders of the environmental and health regulatory agencies, and

(8) The cost-effectiveness analysis of operating the region as is and the cost-effectiveness analysis of operating the potential region being studied under the proposed modification.

The Board shall determine the relevance that it shall confer upon each of the above criteria, or upon others that in its judgment it should ponder, at the time of making decisions concerning the delimitations of the regions. Once the Board concludes any evaluation of the region modifications, it shall submit, for the approval of the Legislative Assembly, the determinations together with a report

demonstrating the study conducted upon which the Board has based its conclusions. The determination of the Board regarding the new composition of the regions shall be understood to have been approved if the Legislative Assembly, through a Joint Resolution, approves it as submitted by the Board. The Legislative Assembly shall approve it or reject it through a Joint Resolution within a term not to exceed than ninety (90) days of Regular Session. If no action is taken within said term, the determination of the Board shall be deemed approved. The Authority shall submit its first regional reorganization plan to the Legislative Assembly on or before June 1, 2004, for its consideration and approval pursuant to the foregoing provisions. The five (5) initial regions that are hereby created are the Metro Region, North Region, South Region, East Region, and West Region. The study to be submitted to the Legislative Assembly on June 1, 2004, shall include the proposed delimitation for said regions.

(m) Subject to the provisions of subsection (d) of this Section, all executive employees of the Authority shall be appointed, removed, and have their compensation determined by the Board, upon recommendation from the Executive President. All executive employees shall be deemed as such for the purposes of the Puerto Rico Labor Relations Act. Executive employees shall not be subject to the general administrative control of the private operator provided in subsection (r) of this Section.

(n) The Board shall appoint an internal auditor who shall be attached and answer to said Board, and shall have the power to oversee all income, accounts, and disbursements of the Authority to determine if they are compliant with the Act and the determinations of the Board.

(o) The Board may delegate part of its powers, other than those listed in subsections (d), (m), and (p) of this Section, to the Executive President, who shall be the chief executive officer of the Authority, and shall answer to the Board for

the execution of its general policy and the general supervision of the operational phases of the Authority. The Board may also delegate any of its powers, other than those listed in subsections (d), (m), and (p) of this Section to one or more of its committees or to any other executive officer of the Authority.

(p) The Board shall not delegate to any committee thereof, executive officer, or private operator, the powers listed in this subsection and subsections (d) and (m) of this Section, nor any of the following powers:

- (1) The approval of the budget of the Authority.
- (2) The approval of any financing for the Capital Improvements Program.
- (3) The contracting of auditing firms.
- (4) The contracting of external consultants of the Authority when the amount of the contract exceeds the amount determined by the Board through regulations.
- (5) The approval of the sale or alienation on any other real property or real rights; provided, that the Board may delegate to the Executive President or to any other executive officer of the Authority the granting of title deeds or the alienation of real property or real rights.
- (6) The approval of Authority regulations and any change or repeal thereof, including the determination of what constitutes just cause for removal of an independent director.
- (7) The appointment of the internal auditor.

(q) The Board, at its discretion, may grant one or more administration contracts to one or several private operators, which may be natural or juridical persons, that the Board determines are qualified to assume, in whole or in part, the administration and operation of the Commonwealth Aqueduct System, the Commonwealth Sewer System, and all those properties of the Authority, as

provided in this Act. In the contracts with one or several private operators, the Board may delegate to the private operator any of the powers that it may delegate to the Executive President, except those listed in subsections (d), (m), and (p) of this Section.

(r) Regarding the administration contracts.-

(1) A director of operations, who shall be an employee or agent of the private operator, shall be designated for each administration contract with a private operator. The director of operations of each private operator shall be the person responsible for supervising and administering all the duties agreed upon with the private operator in the administration contract. Furthermore, he shall be in charge of the general supervision of the operational phases of the Authority agreed upon in said contract, and of those additional functions that the Board agrees upon with said operator, by contract.

(2) The private operator(s), through their respective directors of operations, shall have all the duties, functions, obligations, and powers that, subject to the limitations described in this Section, are established in the administration contract with the Authority, including the following:

(A) General administrative control of all the employees of the Authority.

(B) Negotiation of the collective bargaining agreement with the labor unions that represent the employees of the Authority and the duty and power to appoint, dismiss, and determine the compensation of all employees and agents of the Authority.

(C) Legal responsibility for all their actions in accordance with the duties, functions, obligations, and powers set forth in the contract with the Authority and the laws of Puerto Rico.

(D) Approval of changes to the organizational structure of the Authority, provided, that it does not affect the executive employees and the structure provided in this Section.

(E) Duty to file reports on the operational and financial conditions and activities of the Authority as required by law and the management contract entered into with the Authority.

(F) Duty to appear personally to file a semiannual report with the committees appointed by each of the Legislative Bodies.

(3) Private operators and their respective directors of operations shall not be deemed to be a public entity, public employer, or public employee, as defined in this Act or in any other law or regulations.

(4) The management contract entered into with the private operators shall require the private operators to post a bond in favor of the Authority. The Board shall establish the criteria to determine the amount of the bond with the recommendation of the Insurance Commissioner.

(5) The management contract entered into by the Authority with one or several private operators shall expressly state that all documents, such as registers, bank accounts, and other documents germane to the operation of the Authority, shall be kept in the jurisdiction of the Commonwealth of Puerto Rico and shall belong to the Authority.

(6) Every management contract entered into by the Board with one or several private operators shall require that such operators have no debts with government entities; and if there were debts, they must have availed themselves of a payment plan. Moreover, private operators shall be required to have their accounts and obligations with government entities up-to-date. They shall also be required to fulfill their tax responsibilities with the Commonwealth of Puerto Rico.”

Section 3.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act were held to be unconstitutional by a Court with jurisdiction, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part thereof thus held to be unconstitutional.

Section 4.- Effectiveness

This Act shall take effect immediately after its approval. Once this Act becomes effective, the duties of the members of the Board shall cease when their successors take office. The organization, structure, and appointment of the members of the Governing Board shall commence immediately in accordance with the provisions of this Act. The provisions of this Act shall have the effect of modifying any provision of law or regulations in effect that make reference to the Board of Directors of the Aqueduct and Sewer Authority so that, in turn, it mentions and makes reference to the Governing Board of the Aqueduct and Sewer Authority.