

(H. B. 1055)

(No. 27-2013)

(Approved June 17, 2013)

AN ACT

To establish a Voluntary Early Retirement Program for the employees of the Ports Authority of the Commonwealth of Puerto Rico; provide for the requirement of years of service needed to qualify for this Program; fix the minimum percent for average compensation to be used to calculate the pension; provide for the payment of the actuarial cost of said Program; establish the timeframe for employees to exercise their option to avail themselves of the Voluntary Early Retirement Program; provide the special incentives to be granted to employees who avail themselves of this Program; and for other purposes.

STATEMENT OF MOTIVES

The Ports Authority of the Commonwealth of Puerto Rico is a public corporation created by virtue of Act No. 125 of May 7, 1942, as amended, known as the "Puerto Rico Ports Authority Act." Under the provisions of Act No. 29-2009, as amended, known as the "Public-Private Partnership Act," said public corporation executed a lease contract with Aerostar Airport Holdings for the facilities of the Luis Muñoz Marín International Airport. Said contract was approved by the Federal Aviation Administration. As a result of said transaction, the Ports Authority received a specific sum as part of the agreements established in the contract. By virtue of the funds received as part of said contract, the Authority reserved the sum of fifty million dollars (\$50,000,000) to defray the expenses that would be incurred by opening an incentivized retirement window proposed in the Work Plan formulated by said Authority. Said sum of money is presently under the custody of the Government Development Bank in an exclusive account directed towards complying with the Retirement Program provided in this Act.

It is the public policy of this Administration to ensure that all of its agencies, public corporations, and instrumentalities have fiscal solvency. Thus, we have directed all efforts towards achieving such goal, making specific decisions that shall guarantee the proper use and efficient management of public funds. In that sense, the Ports Authority intends to formulate a Work Plan to reorganize its operations and stabilize its fiscal situation. Thus, it has created a Voluntary Early Retirement Program for the employees of the Authority covered under the provisions of Act No. 447 of May 5[sic], 1951, as amended, known as the “Employees Retirement System of the Government of the Commonwealth of Puerto Rico Act.” This Retirement Program represents twelve (12) to fourteen (14) million-dollars in savings for the Authority.

Following the principles of sound public administration, and in hopes that the Ports Authority of the Commonwealth of Puerto Rico becomes a self-sustainable public corporation, we have devoted our efforts to reduce recurring expenses by implementing different austerity measures. One of these measures consists of reducing the number of employees that constitute the workforce of the Authority, whose payroll requires a substantial monthly outlay amounting to millions of dollars.

Furthermore, it is a well-known fact that the Retirement System is facing an unprecedented fiscal crisis in our modern history. For such reason, the Executive Branch, as well as the Legislative Assembly, have considered different alternatives to alleviate the Retirement System crisis and guarantee its existence.

Aware of this, the Ports Authority has evaluated and identified the necessary amounts of money to avoid affecting the funds of the Retirement System when implementing the provisions of this Act. That is to say, the implementation of this Act shall not erode the delicate finances of the Retirement System since the disbursement entailed by the implementation of said Voluntary Early Retirement

Program shall be made, in whole, from the items earmarked and set aside for such purposes by the Ports Authority.

It is our intention to promote the Voluntary Early Retirement Program provided in this Act. The implementation thereof shall not only provide employees who enrolled in the System prior to April 1st, 1990, with a retirement opportunity, but shall also achieve an organizational and systematic turnaround that shall allow us to allocate resources to maximize the services offered by the Authority.

The Voluntary Early Retirement Program to be implemented by this legislation provides incentives to employees of the Ports Authority who have twenty (20) or more years of creditable services under the benefit structure of Act No. 447, *supra*. These incentives range from a minimum pension equal to fifty percent (50%) of the employees' average pay, a minimum retirement bonus of nine hundred dollars (\$900) for every year of service, the payout of vacation and sick leave, and a health insurance coverage exclusively for the participant for a term of five (5) years. If the participant dies, his surviving spouse and beneficiaries shall be entitled to receive the benefits provided in Act No. 105 of June 28, 1969, as amended.

For all of the foregoing, this Legislative Assembly deems it meritorious to approve legislation to reform the organizational and financial structure of the Ports Authority of the Commonwealth of Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.— The Ports Authority of the Commonwealth of Puerto Rico, in its capacity as a public corporation, shall implement a Voluntary Early Retirement Program, which shall apply to all career service employees, whether union or managerial, regardless of age, who hold a position in this Authority, who enrolled in the System prior to April 1st, 1990, and who as of June 30th, 2013, have rendered a minimum of twenty (20) years of creditable service as participants of the Commonwealth of Puerto Rico Government Employees Retirement System

pursuant to the provisions of Act No. 447 of May 15, 1951, as amended, and who have been employees of the Ports Authority for at least six (6) months before June 30th, 2013.

The implementation of the Voluntary Early Retirement Program for all of the aforementioned career service employees of the Authority, whether union or managerial, shall be executed in strict compliance with all labor laws, collective bargaining agreements in effect, and duly adhering to the Merit System Principles, the legal provisions that prohibit political discrimination, and the vested rights of the public officials who work in said public corporation.

Provided, however, that career service employees, whether union or managerial, who perform duties in key positions classified as such by the Authority, may not avail themselves of the Voluntary Early Retirement Program established in this Act.

It shall be understood as key position that whose duties are vital and essential for the proper administrative and operational functions of the Authority. Notwithstanding the foregoing, for the purposes of this Act, the following duties are hereby classified as critical: airport operations specialist; air search and rescue specialist; air search and rescue supervisor; air search and rescue chief; and air search and rescue deputy chief.

If a position were to be reopened or personnel were to be subcontracted to hold a key position classified as such by the Authority, priority shall be given to the employees of the Authority to fill such positions. The Authority shall train the employee who applies for a key position in order to meet the requirements thereof; provided, that it is not too onerous for the Authority. In addition, the Authority shall also take administrative and operational reorganization measures that allow it to eliminate any non-key position that becomes vacant. Provided, further, that the job

classification where the eliminated positions belong shall remain in effect in the Classification Plan of the Authority.

The transfer of any official from an agency or instrumentality of the Commonwealth of Puerto Rico, including public corporations and municipalities to the Authority with the intent to avail himself of the benefits of the Voluntary Early Retirement Program provided in this Act is hereby prohibited.

Section 2.— The compensation and benefits to which a career service employee is entitled, whether union or managerial, who enrolled in the System prior to April 1st, 1990, and who is eligible as provided in Section 1 of this Act shall be determined by taking into account the following factors:

a. Career service employee of the Authority, whether union or managerial, regardless of age, who has between twenty (20) and twenty-four (24) years of creditable service as a participant of the Commonwealth of Puerto Rico Government Employees Retirement System pursuant to the provisions of Act No. 447, *supra*, shall be entitled to fifty percent (50%) of his average compensation, pursuant to Act No. 447, *supra*.

b. Career service employee of the Authority, whether union or managerial, regardless of age, who has between twenty-five (25) and twenty-nine (29) years of creditable service as a participant of the Commonwealth of Puerto Rico Government Employees Retirement System pursuant to the provisions of Act No. 447, *supra*, shall be entitled to sixty-five percent (65%) of his average compensation, pursuant to Act No. 447, *supra*.

c. Career service employee of the Authority, whether union or managerial, regardless of age, who has thirty (30) or more years of creditable service as a participant of the Commonwealth of Puerto Rico Government Employees Retirement System, pursuant to the provisions of Act No. 447, *supra*, shall be

entitled to seventy-five percent (75%) of his average compensation, pursuant to Act No. 447, *supra*.

It is hereby provided that, up to one hundred percent (100%) of the period of military service rendered in the United States Armed Forces shall be credited if the employee was honorably discharged from said military service. In order to obtain credit for military service, the employee shall pay the Retirement System the corresponding contributions based on military earnings.

Section 3.— Additional incentives granted by the Authority to career service employees thereof, whether union or managerial, who qualify pursuant to the provisions of Sections 1 and 2 of this Act. Additional incentives shall be granted in accordance with the following factors:

a. Employees classified in Section 2(a) shall enjoy the following incentives:

1. To receive the appropriate retirement annuity or pension.
2. A retirement bonus of nine hundred dollars (\$900) for every year of service in the Authority and credited in the Retirement System up to a maximum of twenty-one thousand, six hundred dollars (\$21,600).
3. Health insurance for a term of five (5) years, only for the participant, equal to the amount of the contribution made by the Authority for such benefit.
4. Vacation and sick leave payout.

b. Employees classified in Section 2(b) shall enjoy the following incentives:

1. To receive appropriate retirement annuity or pension.
2. A retirement bonus of nine hundred dollars (\$900) for every year of service in the Authority and credited in the Retirement System up to a maximum of twenty six thousand, one hundred dollars (\$26,100).

3. Health insurance for a term of five (5) years, only for the participant, equal to the amount of the contribution made by the Authority for such benefit.

4. Vacation and sick leave payout.

c. Employees classified in Section 2(c) shall enjoy the following incentives:

1. To receive the appropriate retirement annuity or pension.

2. A retirement bonus of nine hundred dollars (\$900) for every year of service in the Authority and credited in the Retirement System up to a maximum of twenty-seven thousand dollars (\$27,000).

3. Health insurance for a term of five (5) years, only for the participant, equal to the amount of the contribution made by the Authority for such benefit.

4. Vacation and sick leave payout.

d. If the participant dies after availing himself of the Voluntary Early Retirement Program, his surviving spouse and beneficiaries shall be entitled to receive the benefits provided in Act No. 105 of June 28, 1969, as amended. It is hereby provided that the surviving spouse and the beneficiaries shall be entitled to receive a maximum pension or annuity pursuant to subsections (b) and (e) of Act No. 105, *supra*, equal to forty percent (40%) of the rate of pay earned by the participant at the time of his death.

Provided, further, that neither the surviving spouse nor the beneficiaries shall be entitled to receive any of the other incentives provided in this Section.

e. Every retirement annuity or pension provided for in this Act shall be paid bimonthly over the life of the participant. The same cannot be reduced, revoked, or repealed, unless it was granted erroneously. Under no circumstances shall it be understood that this annuity or pension shall be subject to the three percent (3%)

raises granted every three (3) years as provided in in Act No. 447, *supra*, or any other similar Special Law.

Section 4.— With the implementation of this Voluntary Early Retirement Program, the Authority shall eliminate positions that become vacant as a result of such implementation, except for key positions. The job classification of eliminated positions shall remain in effect in the Classification Plan of the Authority.

It is hereby provided that none of the positions held by the employees who avail themselves of the Voluntary Early Retirement Program shall be reopened. Moreover, there shall be no subcontracting to perform the tasks that would have been performed by the employees who availed themselves of retirement.

The Authority shall take the administrative and operational reorganization measures authorized by this Act to eliminate the positions that become vacant as a result of the implementation of the Voluntary Early Retirement Program herein established. Said reorganization shall be carried out in strict compliance with all labor laws, collective bargaining agreements in effect, and duly adhering to the Merit System Principles, and with the legal provisions that prohibit political discrimination, and the vested rights of the public officials that work in said entity.

Notwithstanding the foregoing, the Ports Authority reserves the right to retain in his position any employee eligible for the Voluntary Early Retirement Program during a term not to exceed two (2) years for the sole purpose of retraining personnel and/or when any job, task, or duty must be completed by an employee who avails himself of the Voluntary Early Retirement Program herein authorized, in no more than three (3) positions. All other employees shall immediately avail themselves of the Program, as provided in this Act. In such case, the employee who has availed himself of the Retirement Program shall receive no benefits under the Program during the term that the Authority deems convenient to use his services, which term shall not exceed two (2) years, as provided above.

Section 5.— No person who avails himself of the benefits of the Voluntary Early Retirement Program shall render services or be hired by any government agency, public corporation, and/or municipality within five (5) years after having availed himself of retirement.

No person who has availed himself of the benefits of the Voluntary Early Retirement Program shall accept a job offer or apply to become an employee of Aerostar Airport Holding, a company that operates under a lease contract at the facilities of the Luis Muñoz Marín International Airport, within five (5) years after having availed himself of retirement.

Section 6.— Every employee who complies with the provisions of Sections 1 and 2 of this Act shall notify his decision to avail himself of the Voluntary Early Retirement Program in accordance with the calendar established by the Ports Authority and the Government Retirement System Administration in order to comply with the provisions of this Act. In accordance with the foregoing, the Ports Authority shall prescribe the necessary regulations to comply with the purposes pursued by this Act.

Section 7.— Any election to participate in the Program shall be final and irrevocable and constitute a full and absolute release, and a waiver of any right to an actual or potential claim, based on: (i) the work relation and/or the termination thereof under any applicable law, and/or (ii) the actions, if any, that may be taken as a result of the implementation of this Act. This waiver of rights shall have the effect of fully settling, any action or right, actual or potential, known or unknown, that the employee has, may have, or has had relating to his employment and/or the termination thereof. The effect of this release and the corresponding waiver of rights shall be deemed to be *res judicata*.

Section 8.— The Authority shall be responsible for the payment of any new benefit granted by law to the employees who choose to avail themselves of this Voluntary Early Retirement Program.

Section 9.— If the employee needs to make a payment to the Retirement System in order to obtain credit for services and meet the years of service requirement set forth in Sections 1 and 2 of this Act, said employee shall submit the forms established by the Retirement Systems Administration for such purposes to the Coordinator for Retirement Affairs of the Ports Authority of the Commonwealth of Puerto Rico.

It is hereby provided that in order for employees to complete the time they may need to obtain credit for services and thus meet the retirement requirements set forth in this Act to avail themselves of the Voluntary Early Retirement Program, and upon request of the employees and as an exception to Section 1-107 of Act No. 447, *supra*, the Ports Authority shall be allowed to remit to the Retirement Systems Administration the sums of money needed to obtain credit for services from vacation and sick leave accrued up to the available balance of each employee, the bonuses granted by this Act, or any combination of the above. The Retirement Systems Administration shall certify to the employee and to the Ports Authority the amount due to obtain credit for services. Once the employee accepts to make the payment to obtain credit for services, the Ports Authority shall remit to the Retirement Systems Authority[sic] the payment for services not credited within a term of thirty (30) calendar days. It is hereby provided that if there is any difference in the amount due for unpaid creditable services that is not covered by the vacation and sick leaves accrued or the bonuses that each employee has available, said amount shall be paid in full by the latter.

A compound interest rate of nine point five percent (9.5%) is hereby established to calculate unpaid creditable services.

The Coordinator of Retirement Affairs of the Ports Authority of the Commonwealth of Puerto Rico shall certify to the Retirement System that the application regarding unpaid creditable services shall be made pursuant to the provisions established by the Retirement Systems Administration.

Section 10.— The actuarial cost of the pensions provided under this Act determined by the Government Employees and the Judiciary Retirement Systems Administrator, upon certification to such purpose, shall be paid in advance and in full by the Ports Authority of the Commonwealth of Puerto Rico to the Government Employees and the Judiciary Retirement Systems Administration from the funds specifically earmarked for the purposes set forth in this Act, which are under the custody of the Government Development Bank for Puerto Rico in account 25103988. Provided, that the cost shall consist of: the difference between the present value of the early pension established in the retirement window and the present value of a pension for years of service, pursuant to the provisions of Act No. 447, *supra*; and the employer and individual contributions for three (3) years, after having attained the age required to avail himself of retirement. Provided, further, that the Ports Authority shall compensate the Government Employees and the Judiciary Retirement Systems Administration in advance for the costs incurred in the implementation and administration of the retirement window and in the actuarial studies required to determine such costs.

If the payment made by the Authority exceeds the calculated cost, the Government Employees and the Judiciary Retirement Systems Administration shall refund the Authority, as the case may be, the amount paid in excess within a term not to exceed thirty (30) days as of the effective date of the Program. If, on the contrary, the payment made by the Authority were insufficient, said public

corporation shall issue a payment for the additional cost certified by the Administration within a term not to exceed thirty (30) days as of the effective date of the Program.

Section 11.— The provisions of this Act shall be extensive to those employees who, as of the effective date of this Act, are on any type of leave under the applicable Regulations of the Ports Authority of the Commonwealth of Puerto Rico, collective bargaining agreements, or statutes.

Section 12.— The Authority, in conjunction with the Government Employees and the Judiciary Retirement Systems Administration shall advise employees who are eligible for the Voluntary Early Retirement Program on the benefits and criteria of said Program. The cost shall be defrayed by the Authority.

Section 13.— Any provisions of Act No. 447, *supra*, that are not inconsistent with this Act shall apply to the Voluntary Early Retirement Program herein provided.

Section 14.— If any clause, paragraph, article, section, title, or part of this Act were held to be unconstitutional or defective by a competent Court, the holding to such effect shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, article, section, title, or part thereof thus held to be unconstitutional or void.

Section 15.— This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 27-2013 (H. B. 1055)** of the **1st Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to establish a Voluntary Early Retirement Program for the employees of the Ports Authority of the Commonwealth of Puerto Rico; provide for the requirement of years of service needed to qualify for this Program; fix the minimum percent for average compensation to be used to calculate the pension; provide for the payment of the actuarial cost of said Program; establish the timeframe for employees to exercise their option to avail themselves of the Voluntary Early Retirement Program; provide the special incentives to be granted to employees who avail themselves of this Program; and for other purposes.

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

In San Juan, Puerto Rico, on this 12th day of February, 2018.

Orlando Pagán-Ramírez
Acting Director