

(S. B. 1953)

**(No. 32)**

(Approved March 14, 2011)

## **AN ACT**

To amend Section 12 of Act No. 76 of May 5, 2000, in order to provide that the Governor may, through an Executive Order, authorize the continuation of the State of Emergency during the term of his/her tenure; and for other related purposes.

### **STATEMENT OF MOTIVES**

The availability of energy and fuel is essential for the development and sustainment of modern economies. Electric power is an essential service that Government provides. It is thus recognized by the United Nations Organization by establishing that the availability of these resources is an essential requirement for achieving the eight (8) Millennium Development Goals, directed to eradicate poverty worldwide.

The Executive Order of the Governor of Puerto Rico signed December 28, 1993, (Administrative Bulletin No. OE-1993-57) sets forth as the public policy on energy of the Government of Puerto Rico what was stated by the Committee on Energy Co-generation and Generation in its report entitled "Puerto Rico Public Policy on Energy." In brief, this public policy is based on the intent to promote a future for energy use that is more efficient, less vulnerable, more economical, and environmentally sustainable. Likewise, Act No. 82 of July 19, 2010, sets forth the public policy of seeking the diversification of energy sources and energy technology infrastructure through green energy.

Act No. 73 of May 28, 2008, the Economic Incentives Act for the Development of Puerto Rico, created the Energy Affairs Administration (EAA), attached to the Department of Economic Development and Commerce of Puerto Rico. Furthermore, Act No. 73, *supra*, granted and transferred all powers, duties, functions, and authorities of the former Energy Affairs Administration to the EAA. Among the goals set in its public policy on energy and work program, the EAA has established various initiatives to reduce dependence on fuels derived from oil for generating electricity in Puerto Rico by replacing them with alternative energy sources, such as renewable energy sources, among others.

As provided in the legal bases of the two instrumentalities of the Government of Puerto Rico, the EAA is responsible for setting forth the public policy on energy, whereas PREPA is responsible for the implementation and execution of such public policy due to the current design and nature of the electric power system.

Historically, the PREPA has greatly relied on fuels derived from oil for the generation of electric power. Our unfortunate dependence on fuels derived from oil is so excessive that approximately seventy percent (70%) of the electric power produced by the PREPA in Puerto Rico is generated from oil-derived fuels. This is a dramatic contrast when compared to the rest of the United States. Seventy percent (70%) of the electric power produced in Puerto Rico is derived from oil; conversely, only one percent (1%) of the electric power generated in the continental United States is derived directly from oil, according to the U.S. Energy Information Administration. The excessive reliance on fuels derived from oil poses a threat to the life, health, and safety of all Puerto Ricans. There is no doubt that Puerto Rico is undergoing an energy infrastructure crisis. We can no longer postpone the urgent renovation of our infrastructure if we are to generate

environmentally-friendly energy and place Puerto Rico on the right track toward reducing its dependence on oil-derived fuels.

Currently, Puerto Rico is extremely vulnerable to the fluctuations in the cost of oil, for which reason, immediate action should be taken to address this situation. We cannot afford to sit idly by and continue down the path of nonaction that has prevailed in the past.

The excessive and unpredictable rise in the cost of oil-derived fuels has affected and risen the cost of electric power in Puerto Rico, and is greatly affecting our economic development for the worse. Moreover, all of the foregoing affects and rises the cost of living of Puerto Rican families—it is estimated that every Puerto Rican spends about twelve percent (12%) of his/her personal income in energy (i.e., electric power, gasoline, and others) and that this expense rises every year—as well as the cost of manufacture, industry and commerce, which renders us less competitive in a global economy. This oil dependence has placed Puerto Rico at a very vulnerable position with respect to the international market, which poses a threat to our safety.

It is also worth mentioning that Puerto Rico is governed by the Federal Clean Air Act, the requirements of which become more rigorous every day and call for substantial reductions in the amount of pollutants allowed in fuels in order to protect the environment and improve the health and quality of life of our citizens. In fact, this Act and the regulations promulgated thereunder require a substantial reduction in the amount of pollutants emitted to the environment, which must be achieved gradually by 2020. Therefore, it is necessary to effectively implement a public policy for the protection of the environment and the health of our citizens. The use of oil byproducts to generate electric power harms the environment and the health of Puerto Ricans.

On August 28, 2009, the PREPA approved “Our Strategic Corporate Plan 2009-2012,” so as to stabilize and lower the high cost of electric power and comply with the purposes of the energy law and policy. This Plan, among others, includes the following parameters:

- Add alternative energy sources to lower the cost of fuel.
- Diversify energy sources to ensure the continuity of this essential service.
- Protect the environment.
- Collaborate with any efforts made to improve the quality of life in Puerto Rican society.

On his part, the Governor of Puerto Rico signed an Executive Order (Administrative Bulletin No. OE-2010-034) on July 19, 2010, and, in accordance with Act No. 76 of May 5, 2000, he declared a state of emergency regarding the electric power generating infrastructure in Puerto Rico. Therefore, the use of an expedited process was directed for the development of projects or programs that promote a new infrastructure for energy generation that uses sources other than oil-derived fuels, or alternative renewable energy sources in Puerto Rico. In this manner, the Government of Puerto Rico took a step in the right direction by seeking a public policy that safeguards the social well-being, safety, and health of all Puerto Ricans, while lowering the costs entailed by the generation of electric power. Our present energy crisis is due to the government’s inaction in past years to address this problem. For such reason, the Governor needs the appropriate tools and mechanisms to deal with this crisis.

Section 12 of Act No. 76 establishes that an Executive Order issued to declare a state or a situation of emergency shall be effective for no longer than six (6) months; it further provides that the Legislative Assembly may pass judgment over the contents thereof. This Legislative Assembly concurs with the Executive Power and believes that Puerto Rico is undergoing an energy crisis, and that our

current infrastructure for electric power generation (which dates back to the 1940s) depends excessively on oil. Burning oil, as well as other oil byproducts such as gasoline, which is used by motor vehicles (and Puerto Rico is one of the jurisdictions with the highest number of cars per square mile in the world), is a source of highly polluting gases. Traditional oil adversely affects the environment and the health of human beings. Therefore, the Legislative Assembly concludes that Puerto Rico is facing an energy crisis, which constitutes an emergency warranting immediate action.

On several occasions, the Supreme Court of Puerto Rico has addressed the concept “emergency” and has reasserted that said concept “includes an event or combination or accumulation of circumstances that require immediate action. “Emergency” is synonym with urgency, necessity, or hurry.” *San Gerónimo Caribe Project v. ARPE*, 2008 TSPR 130; *Meléndez Ortiz v. Valdejully*, 120 DPR 1, 22-23 (1987); A. López, *Diccionario de Sinónimos y Antónimos de la Lengua Española*, Valencia, Ed. A. Ortells, 1985, p. 390.

Expounding on the breadth of the concept, in *Meléndez Ortiz v. Valdejully*, *supra*, the Supreme Court clarified the following:

“The term or concept of emergency is almost always connected or associated with natural disasters or phenomena, such as hurricanes, storms, floods and others, as said term is defined, for example, in Act No. 22 of June 23, 1976, as amended, known as the “Puerto Rico Civil Defense Act,” 25 L.P.R.A. §§171 et seq., specifically sec. 3(b), 25 L.P.R.A. § 171b(b).

However, it is not necessarily its main nuance, rather it comprises an event or a combination of circumstances that require immediate action, as defined by the Supreme Court of Puerto Rico in *Ramos et al. v. Bakers’ Union of Guayama*, 32 [DPR] 321 (1923), definition or meaning that obliges us to adjust the same to the nature of the activity or to the situation involved...” *Id.* pages 20-21.

The efforts made to overcome the energy crisis in the past have been dangerously slow. We must not postpone this issue any longer, given that the amount of oil available in the world is finite and the supply lowers with each passing day. The U.S. Geological Survey (USGS) has estimated that the world crude oil production would peak in the next twenty-five (25) years, whereas the International Energy Agency (IEA) has predicted that a peak is approaching and that it will be reached at anytime between 2013 and 2037. Meanwhile, the global increase of oil demand has continued to cause substantial rises in oil prices and harm the environment, both in Puerto Rico and worldwide. All this poses an enormous risk to our people's health, quality of life, and safety.

In fact, the Federal Government has taken action to address the energy issue which, in the case of Puerto Rico, is crucial due to our excessive reliance on oil. See the "American Recovery and Reinvestment Act" (ARRA). Some of the incentives for renewable energy projects under ARRA expired at the end of 2010; therefore, it was necessary to take urgent action to benefit therefrom. In several states (i.e., California, Nevada, Oregon, and Wyoming) renewable energy projects were fast-tracked in order for them to benefit from those Federal incentives and, particularly, a reimbursement program from the United States Department of the Treasury (30% "the amount of the basis of the property" for wind energy projects). However, the Federal incentives program authorized under Section 1603 of the ARRA, despite the fact that the same expired in December 2010, was extended by Congress for an additional year. This provides more time for the development of green projects so as to achieve the goals of the ARRA.

The Government of Puerto Rico and the agencies concerned have worked tirelessly to address the energy crisis we are undergoing. The Executive Order of July 19, 2010, *supra*, establishes an expedited procedure to address the needs and the urgency of the energy situation in Puerto Rico. The effective term of said

Order is six (6) months. However, it is necessary for the effects of the Order to be extended for a longer period of time in order to carry out the planned and pending projects with the required speed, and to comply with the goal of the Order, which is to address the energy crisis. Due to the magnitude of the projects required to address states of emergency, the expiration of the six (6)-month period does not require the suspension of the projects under development for said period; it only affects the beginning of new projects or activities aimed at solving the crisis for which the Order was issued. The projects started while the Executive Order was in effect shall follow the procedure established in Act No. 76, *supra*. However, since the projects, works, and programs that have not yet started cannot be covered under the Executive Order yet, Act No. 76, *supra*, is hereby amended to authorize the Governor to extend and/or issue any executive orders he/she deems appropriate to address the energy crisis and any other crisis.

The Government of Puerto Rico plans to implement various sustainable renewable energy and alternative renewable energy projects. Among these are projects related to photovoltaic solar energy, wind energy, fuel substitution, landfill gas recovery and combustion, and municipal solid waste conversion to energy. Thus, the expedited processing of these and other projects that are being outlined to address the energy crisis with the required seriousness and swiftness is necessary.

Likewise, the combination of renewable energy projects built in Puerto Rico shall help tremendously in the long run but, by themselves, they cannot lower the high energy costs efficiently enough nor solve the problem of infrastructure that we currently have and that afflicts the people on the most immediate level. Furthermore, the environmental and health challenges for us in using oil should be addressed immediately, for which reason the actions taken by the Government must be combined, assertive, and diverse.

Therefore, in order to lower the cost of electric power for Puerto Ricans and the cost of infrastructure in the short term, the Governor has announced that the construction of the *Vía Verde* project is in progress. This is one of the most important infrastructure projects in this millennium that shall result in a significant lowering of energy costs through the use of natural gas—a cleaner, less expensive, and safer fuel. This Administration’s initiative is part of a comprehensive plan to promptly address the energy emergency declared by our Governor. Our government cannot just sit idly by since this crisis affects us all in Puerto Rico.

For all of the above, this Legislative Assembly deems it meritorious to provide the Governor with the proper and necessary tools to address the energy crisis by empowering him/her to resume started and pending projects by extending the effective date of Executive Orders or by issuing new orders, as provided in Act No. 76 of May 5, 2000. In this manner, we ensure that all permit applications for energy projects started during the effective term of an Executive Order and those that may arise during any extension thereof, may take advantage of the established expedited process, in benefit of the People of Puerto Rico. Hence, the energy emergency that we are facing would be properly addressed, thus effectively conserving existing resources and developing and making the most efficient use of them to protect and guarantee the health, public safety, and well being of the People of Puerto Rico. Finally, the text of Section 12 of Act No. 76, *supra*, shall be amended to set forth more clearly the intent of said Act.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 12 of Act No. 76 of May 5, 2000, is hereby amended to read as follows:

“Section 12.- The Executive Orders issued by the Governor under the provisions of this Act, to declare emergencies, shall be effective for no longer than six (6) months. The Governor may, through an Executive Order, authorize the



continuation of the state of emergency for the time deemed appropriate, without exceeding the term of his/her office. Any transactions, processes, projects, works or programs started during the effective term of an Executive Order under this Act, shall expire as provided in the process set forth in the same, regardless of the fact that the term provided in the Executive Order has expired, insofar that the Governor does not provide otherwise. During said period of time, the Legislature shall pass judgment on the content of the orders and may delimit their scope through the mechanism of the Concurrent Resolution.”

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. 32 (S. B. 1953)** of the **5<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Section 12 of Act No. 76 of May 5, 2000, in order to provide that the Governor may, through an Executive Order, authorize the continuation of the State of Emergency during the term of his/her tenure; and for other related purposes.

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

In San Juan, Puerto Rico, on the 9<sup>th</sup> day of May, 2011.

María del Mar Ortiz Rivera, Esq.  
Director