

Section 5.—The provisions of this Act shall take effect July 1, 1996, for teachers who receive their salary on a calendar-month basis, and on the first day of the school month of July for those teachers who receive their salary on a school-month basis.

*Approved August 11, 1996.*

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**Commonwealth of Puerto Rico Employee's Association—  
Amendments**

(H.B. 2426)

[No. 123]

[*Approved August 11, 1996*]

AN ACT

To add Sections 36, 37, 38, 39 and 40 to Act No. 133 of June 28, 1966, as amended, known as the "Commonwealth of Puerto Rico Employees' Association Act"; to insert new text and a final paragraph to Section 1.070 of Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code", to provide that the Insurance Commissioner shall have jurisdiction and exercise the powers conferred by law over the operations related to the insurance business performed by the Commonwealth of Puerto Rico Employees' Association; to add clause (18) to subsection (g) of Section 4 and subsection 15 to Section 10 of Act No. 4 of October 11, 1985, as amended, for the Commonwealth of Puerto Rico Employees' Association to be under the jurisdiction and subject to the powers of the Office of the Commissioner of Financial Institutions; to add a Section to Act No. 133 so that the Commonwealth of Puerto Rico Employees' Association shall be under the jurisdiction and subject to the powers of the Office of the Controller of Puerto Rico; to amend Section 3.1 of Act No. 12 of July 24, 1985, as amended by Act No. 150 of December 22, 1994, known as the "Government Ethics Acts," to regulate the transactions and businesses and the

behavior of its executive officers and members of the Board of Directors of the Commonwealth of Puerto Rico Employees' Association; to add a paragraph to Section 5(a) of Act No. 133 of June 28, 1966, as amended by Act No. 142 of December 21, 1994, in order to acknowledge those employees of each government agency who are members of the Commonwealth of Puerto Rico Employees' Association to be represented before the Assembly of Delegates of said entity by those delegates elected by each agency, through the exercise of their right to vote in the General Election of Delegates of the Commonwealth of Puerto Rico Employees' Association (AEELA), and to clarify, for the purposes of said section, what the term or period of time is for the elected delegates to perform their functions; and to provide penalties.

#### STATEMENT OF MOTIVES

The Commonwealth of Puerto Rico Employees' Association is an entity created by Act No. 133 of June 28, 1966, as amended. According to the resolution of the Supreme Court of Puerto Rico, the Employees' Association "is an entity created by the Government for public interest purposes, such as the protection of no less than the government employees themselves." *Berrios Miranda v. Asoc. de Empleados*, 88 D.P.R. 809 (1963). Moreover, in *First Federal v. Secretario de Hacienda*, 86 D.P.R. 56, 70 (1962), the Employees' Association was described as a "public institution", due to its public purposes, such as being the custodian of the proprietary interest of the public servants, who are bound to contribute three (3) percent of their salary each month.

Section 1 of Act No. 133, *supra*, expressly provides that some of the Employees' Association's main purposes are: to stimulate savings among the employees and the pensioned members covered by the association; to establish insurance plans, including death insurance; and to make loans and promote the betterment and the individual and collective progress of all employees and covered pensioned members. Recently, the Commonwealth Employees' Association developed an aggressive campaign to market credit cards, car loans,

mortgage loans, and IRA accounts, and to encourage the development of housing among its associates.

The Legislature of Puerto Rico considers that the government has a compelling interest to safeguard the public servants' proprietary interest in matters of the Employees' Association. In order to comply with this responsibility, it is necessary to include the Commonwealth Employees' Association among the institutions subject to the main responsibilities of the Office of the Commissioner of Financial Institutions and the Office of the Insurance Commissioner, to inspect and supervise them within the framework of their ministerial tasks.

The Association's membership includes all covered employees, former employees and public servants of the now-existing government agencies, including the municipalities that withhold insurance premiums, personal loans and fees provided by law from their employees' salaries. Since the purpose of the Association is essentially of a public nature, and with the commendable objective of improving the administration of the public servants and pensioners' funds, which they have earned with so much effort and self-sacrifice, the Legislature proposes to add a section to the Association's disbursements and income belonging to or which are in custody of the Commonwealth of Puerto Rico Employees' Association.

The membership of the Assembly of Delegates is constituted by public officers or employees of the three branches of Government as well as municipal employees, and from the covered former employees' sector. The Delegates select among themselves the members of the Board of Directors of the Association and Subsidiary Corporations created by the AEELA.

The application of the Ethics Act has the purpose of avoiding, or at least, reducing the conflicts of interest of the officers and public employees in the performance of their official functions. The majority of the Association's Delegates are public employees.

Conflicts of interest are not exclusive to the public service. There shall be no question, for example, that an AEELA's supplier should not make any personal financial transactions

with the employees of said entity. No action is enough, when the purpose is to strengthen those institutions that are created with the law's solid support and with which a fiduciary relationship is established.

The Government Ethics Act does not represent an impediment in its application to the Directors and Executive Officers of the AEELA, as well as to the members of the Board of Directors, since as an entity with its own juridical personality, none of the responsibilities and duties provided by law and the regulations adopted thereby would be affected in any way.

It is in the interest of the Legislature to protect the proprietary interests of the public employees and ensure that the same are cared for with the greatest prudence a good head of a household could have. The Legislature of Puerto Rico deems that the government has a compelling interest to watch for the public servants' proprietary interest in the Employees' Association's affairs. In order to comply with this responsibility, it is necessary to include the Employees' Association of the Commonwealth among the institutions subject to the main responsibility of the Office of Government Ethics to inspect and supervise it within the framework of its ministerial duties. The Office of Government Ethics regulates the conduct of the employees and officials of the Commonwealth of Puerto Rico Executive Branch, including its public corporations and the agencies under the control of said Branch, its municipalities, corporations, and municipal consortiums.

The intention of the Legislature upon promulgating Act No. 142 of December 21, 1994, which amended Section 5(a) of Act No. 133 was to recognize and give an opportunity to the members of the individual agencies to chose their representatives before the Assembly of Delegates. In advance of said purpose, it was essential to endow Act No. 133 with a mechanism to enable that recognition of the rights of those chosen in representation of the members of an agency or sector. As of the election of April 22, 1995, several of the elected delegates have not been able to take their representative offices, which were consigned through the democratic suffrage

of their fellow workers, thus, they have not been able to watch over their interests before the Association. In the election of these delegates, the individual is not only vested with the representation of the members of his/her respective agency before the Assembly of Delegates and watch over the Association's proper functioning, but the election is also a reaffirmation of trust toward said individual in the discharge of the fiduciary functions vested on the Association's delegates, directors and employees.

This fact places the members of an entire agency at a great disadvantage, which is not the intention of Act No. 133. On the contrary, its intention has always been that the person elected shall hold office until the resources provided by law are exhausted.

Currently, the employees of the following agencies are not represented in the Association: the Puerto Rico Police, University of Puerto Rico, Mayagüez Campus, Juvenile Institutions Administration, Department of Labor, Sports and Recreation Department, Telephone Authority, Automobile Accident Compensation Administration, Puerto Rico Industrial Commission and the Senate of Puerto Rico.

The fact that an election is challenged does not impair the right of the person who is certified by an agency as elected to take a seat in the Assembly of Delegates and enjoy the privileges and obligations vested thereby. After elections are held, the President of the Assembly of Delegates has the obligation to summon the new Assembly of Delegates, be it understood as all those who were elected and certified by the agencies, even though they have been challenged or a proceeding is carried out to such effects. Act No. 133 did not intend to authorize the Association's governing bodies or its officers to certify individuals as delegates who had not been duly certified by the agencies. The delegate shall hold the position for which he/she was elected until the challenge is resolved in the corresponding forums.

The elected delegates are officials of an agency who, in representation of its employees, perform a public function by watching over the proprietary interests of each public servant

who contributes three percent (3%) of his/her salary for the Association each month.

Currently, there is a situation in which the Association has not certified certain persons who have been elected as delegates, and has ratified others in their place.

This Legislature has also noticed the need to clarify Section 5(a) of Act No. 133, in order to establish that the term for which a delegate may be elected for the Assembly is of more than fifty percent or fraction thereof in excess of the period counted from the date of the election in the agency until the next election is held, and that a delegate shall not be reelected for more than two (2) consecutive periods, regardless of the government branch or sector he/she represents.

To such efforts, the present Legislature intends to clarify what in its day was the mechanism to acknowledge the rights of all the Association's members to be duly represented.

Therefore, it is imperative to clearly establish that the Commonwealth of Puerto Rico Employees' Association is one of the institutions subject to the primary responsibility to inspect and supervise of the Insurance Commissioner, as well as the Commissioner of Financial Institutions.

*Be it enacted by The Legislature of Puerto Rico:*

Section 1.—Sections 36, 37, 38, 39, and 40 are hereby added to Act No. 133 of June 28, 1966, as amended [3 L.P.R.A. §§ 863j-n], known as the "Commonwealth of Puerto Rico Employees' Association Act", which shall read as follows:

"Section 36.—The Commonwealth of Puerto Rico Employees' Association is under the jurisdiction and subject to the powers of the Office of the Insurance Commissioner, with regard to the insurance businesses which are under the Commissioner's duties to inspect and supervise, as established in Act No. 77 of June 19, 1957, as amended [26 L.P.R.A. §§ 101 et seq.], known as the 'Insurance Code'.

Section 37.—The Commonwealth of Puerto Rico Employees' Association is under the jurisdiction and subject to the powers of the Office of the Commissioner of Financial Institutions,

with regard to the businesses under the Office of the Commissioner's duties to inspect and supervise, as established in Act No. 4 of October 11, 1985, as amended [7 L.P.R.A. §§ 2001 et seq.].

Section 38.—The Commonwealth of Puerto Rico Employees' Association's assets, accounts, disbursements, funds and incomes shall be subject to the inspection and audits of the Office of the Controller of the Commonwealth of Puerto Rico, pursuant to Article III, Section 22 of the Constitution of the Commonwealth of Puerto Rico, and Act No. 9 of July 25, 1952, as amended.

Section 39.—The Commonwealth of Puerto Rico Employees' Associations is under the jurisdiction and subject to the powers of the Government Ethics Office, with regard to its transactions and businesses and to the behavior of its executive officers and members of the Board of Directors, who are under the Government Ethics Office Director's obligation to inspect and supervise, as established in Act No. 12 of July 24, 1985, as amended [3 L.P.R.A. §§ 1801 et seq.], known as the 'Government Ethics Act'. "Executive officer" shall be understood to be any official of the Association who directs any office, dependency, division or subsidiary; as well as all those who, as part of their regular or incidental duties, receive or are empowered to negotiate contracts or agreements on behalf of the Association.

Section 40.—Any violation of the provisions of this Act by the members of the Board of Governors of the Assembly of Delegates, the Board of Directors of Association, or of the Boards of Directors of the subsidiary or affiliated corporations created thereby or by its executive officers, shall constitute a felony.

Any persons convicted for the violation of the provisions of this Act, shall be sanctioned by imprisonment for a fixed term of two (2) years or a fine of three thousand (3,000) dollars, or both penalties at the discretion of the court.

Should aggravating circumstances exist, the established penalty of imprisonment may be extended to a maximum of

four (4) years or the fixed fine may be raised to five thousand (5,000) dollars; if there are extenuating circumstances, the established fixed penalty of imprisonment may be reduced to a minimum of one (1) year, or the fine established may be lowered to a minimum of two thousand (2,000) dollars.”

Section 2.—To insert the following text and a final paragraph to Article 1.070 of Act No. 77 of June 19, 1957, as amended [26 L.P.R.A. § 107], known as the Insurance Code, which shall read as follows:

“Without affecting the generality of the foregoing provisions, this Code shall not cover or determine the existence of operations, contracts, officers, directors or representatives of any organization to the extent that its insurance operations are prescribed or permitted by any other law expressly enacted for the purpose, except the Commonwealth of Puerto Rico Employees’ Association Act, created by virtue of Act No. 133 of June 28, 1966, as amended [3 L.P.R.A. §§ 862 et seq.], nor the Accelerated Financing Project, an entity created through the order of April 28, 1988, issued by the United States District Court, for the District of Puerto Rico in the case of *Carlos Morales Feliciano, et al. v. Pedro Roselló González, et al.*, civil case No. 79A(PG), and as covered in Rule 220 of Appendix II of Title 34 of L.P.R.A., or of any relief or mutual assistance nonprofit society or Association founded in Puerto Rico prior to April 11, 1899, and which at present has established, and maintains and operates any medico-surgical and hospital services plan in Puerto Rico for its dues paying members on nonprofit basis. However, these excluded societies or associations which at present have established, and maintain and operate any hospital services plan in Puerto Rico, shall be bound to comply with sections 47, 48, and 50 of Title 6 of L.P.R.A., as heretofore or hereafter amended, and shall be bound to maintain the reserves required of the entities organized under sections 41 et seq. of said Title 6.

Provided that, in the case of the Commonwealth of Puerto Rico Employees’ Association, the Insurance Commissioner of the Commonwealth of Puerto Rico is hereby empowered to promulgate and carry out the regulatory provisions needed to



inspect and supervise the insurance activities thereof. Said regulatory provisions shall take into consideration the special nature of the Association, pursuant to the provisions of Act No. 133 of June 28, 1966, as amended [3 L.P.R.A. §§ 862 et seq.], and its insurance activities.”

Section 3.—Clause (18) is hereby added to subsection (g) of Section 4 of Act No. 4 of October 11, 1985, as amended [26 L.P.R.A. § 2004(g)], which shall read as follows:

“(18) The Commonwealth of Puerto Rico Employees’ Association, created by Act No. 133 of June 28, 1966, as amended [3 L.P.R.A. §§ 862 et seq.], with regard to the businesses under the Office of the Commissioner’s duty to inspect and supervise.”

Section 4.—Subsection (15) is hereby added to Section 10 of Act No. 4 of October 11, 1985, as amended [26 L.P.R.A. § 2010], to read as follows:

“(15) The Commissioner is hereby authorized to establish through regulations the provisions needed to comply with the duty to inspect and supervise the businesses carried out by the Commonwealth of Puerto Rico Employees’ Association that are under his/her jurisdiction.”

Section 5.—To amend Section 5(a) of Act No. 133 of June 28, 1966, as amended [3 L.P.R.A. § 862d], known as the “Commonwealth of Puerto Rico Employees’ Association Act”, to read as follows:

“Section 5(a) Assembly of Delegates.—The Association shall be governed by an Assembly of Delegates. The Assembly of Delegates shall be elected as follows:

The employees of each government agency who are members of the Association shall hold elections during the month of April, every four (4) years, commencing in April 1995, to elect delegates for a term of four (4) years each, in a proportion of one regular delegate and one alternate for every thousand (1,000) or fraction of a thousand (1,000) employees contributing to the Savings and Loan Fund. No government agency shall elect more than fifteen (15) regular delegates. Municipal

governments shall have, jointly, one delegate for every thousand (1,000) or fraction of one thousand (1,000) employees that contribute to savings, up to a maximum of fifteen (15) delegates. In the event that the regular delegate cannot be present, he/she shall choose an alternate delegate from among elected delegates in his/her own agency to substitute him/her, and in the absence of the latter, the alternate delegate-elect of the highest rank by vote available shall substitute him/her. In the event that the regular delegate ceases to belong to the agency he/she represented, or in the case of his/her death, disability, or resignation as a delegate, the alternate delegate shall substitute him/her for the remainder of the term for which he/she was designated. As soon as the election in each government agency has been held, the head of each agency shall notify the names of the elected persons to the Chairperson of the Assembly of Delegates within ten (10) days from the date of the election, and as soon as the delegates of at least seventy-five (75) percent of all government agencies with employees who contribute to the Savings and Loan Fund have been elected, the Chairperson of the Assembly of Delegates shall call the new Assembly of Delegates to meet on the appropriate date, hour and place.

Former employees covered thereunder shall be called by the Chairperson of the Board of Directors of the Employees' Association and they shall elect delegates in the same manner and proportion provided for the employees in active service.

Municipal government employees shall hold elections pursuant to the following:

(1) The head of each municipal government shall convoke to an election to elect, from among associated employees that contribute to the Savings and Loan Fund, a candidate as delegate for every one thousand (1,000) or fraction of a thousand (1,000) employees, who shall represent said municipal government in the election of delegates corresponding to municipal governments. The head of the municipal government shall notify the Association, in writing, of the candidate or candidates thus chosen.

(2) Once the election of seventy-five (75) percent of the candidates as municipal government delegates has been

certified, these candidates shall be summoned by the Chairperson of the Board of Directors of the Association, and they shall elect delegates as one single agency, in the same manner and proportion as the other government agencies.

Not more than one (1) delegate per municipality may be elected at the Assembly of candidates to elect the representatives for the municipalities.

The heads of government agencies shall be in charge of the organization of the elections provided herein. For these purposes, they shall create an Organizing Committee no later than sixty (60) days before the elections, to be composed of the Personnel Director of the agency, one representative from each labor organization certified by law in the agency, and of the employees of the respective agencies who contribute to the Savings and Loan Funds of the Association. The Heads of government agencies shall also appoint, as part of the Organizing Committee, a Voting and Canvassing Subcommittee and a Challenge Subcommittee, in which there shall be the representation of, without it being construed as a limitation, the Personnel Director of the Agency and one (1) Representative of the Labor Organizations certified by law within the agencies contributing to the Saving and Loan Fund of the Association. Said Committee shall resolve in ten (10) working days all complaints brought before it in writing, concerning the candidacy or election procedures.

The necessary measures shall be taken in these elections to give all members the opportunity to secretly and freely vote, in writing, for the candidate or candidates of their choice. The fact that some government agency does not hold elections shall not affect the legal status of the Assembly of Delegates, if the majority of said entities hold elections and elect delegates.

Employees' of government agencies attached to or forming part of another government body, who have availed themselves of the provisions of this Act, shall not elect delegates as separate entities of said instrumentality; they shall do so as part of the body to which they are attached or of which they form a part of. Should there be candidates of more than one agency attached to or forming part of the entity entitled to elect from four (4) to fifteen (15) delegates, the candidate obtaining

the most votes within his/her agency shall be certified as elected on the basis of the total number of votes obtained throughout the entire entity. The delegate elected and certified by the head of the agency, shall be summoned as one of the members of the Assembly of Delegates by the president of the Assembly, and shall perform the duties and privileges vested thereby. In the event the election procedure or the candidate elected is challenged, the President of the Assembly of Delegates shall be bound to summon or convoke him/her to the first general assembly of delegates or subsequent assemblies during the four-year term for which he/she was elected, whether they are regular or special assemblies, and shall recognize him/her as one of the members thereof, being able to exercise all his/her rights, responsibilities and privileges vested thereby, until the challenge is dilucidated and a decision is issued, ultimately providing the end of the controversy or affair. In case the decision is adverse to the challenged delegate, he/she shall immediately cease in his/her functions as a member of the Assembly of Delegates and of any office held on the Board of Directors of the Association or of the subsidiaries or nonprofit corporations created thereby, and shall be substituted by the agency's alternate delegate. No employee may be elected as a member of the Assembly of Delegates for more than two (2) consecutive terms. A term is that which is equal to more than fifty percent or fraction in excess of the time counted from the date of the election in the agency until the next elections are held, regardless of the government branch, municipality or sector in which he/she was elected. The portion of a term served by an alternate delegate as a substitute for a regular delegate shall not be deemed as a term, provided the substitution takes place after the first half of the term for which the regular delegate was elected, has elapsed.

Delegates of the present Assembly who have served their second term pursuant to the present Act shall not be candidates for the election to be held in March, 1995, nor before the four (4)-year term of the new Assembly has concluded.

Expenses related to the election of the delegates for each government agency shall be chargeable to the regular

appropriation of each government agency, but once the delegates are elected the expenses related to the Assembly of Delegates shall be charged to the Association's funds.

At its inaugural session, the Assembly of Delegates shall elect by secret ballot, a Chairperson, a Vice-Chairperson, a Secretary, and a Sergeant at Arms from among its members. The Assembly shall also elect the members of the Board of Directors of the Association. Members of the Boards of Directors of subsidiary corporations of the Association shall be elected at a special session of the Assembly of Delegates convened for these purposes. The date of the special session shall be set at the Assembly of Delegates inaugural session and shall be held no later than ninety (90) days after said inaugural session. The Chairpersons of both the Board of Directors and the Assembly of Delegates of the Association, shall be members with voice and vote on the Boards of Directors of subsidiary corporations. The chairperson of the Association's Fiscal Policy Committee shall have a voice but not vote on the Boards of Directors of subsidiary corporations. All members of the Boards of Directors of subsidiary corporations shall be elected by the Assembly of Delegates from among its members. No member of the Board of Directors of the Association shall be a member of the Boards of Directors of subsidiary corporations, except as provided above. These directors shall be elected initially, as follows:

1. One third (1/3) for a six (6)-year term.
2. One third (1/3) for a four (4)-year term.
3. One third (1/3) for a two (2)-year term.

Subsequent members of the Boards of Directors of subsidiary corporations shall be elected after two (2) years of the election, to serve for a six (6)-year term. Should a vacancy occur, the person elected to fill the vacancy shall serve for the remainder of the term."

Section 6.—If any part of this Act or Section is declared null for unconstitutionality, it shall not affect the effectiveness of the remaining sections of this Act.

Section 7.—This Act shall take effect immediately after its approval, but the faculties conferred by this Act to the

Commissioner of Financial Institutions, the Controller of Puerto Rico, the Office of Government Ethics and to the Insurance Commissioner shall include the inspection and supervision of activities carried out by the Commonwealth of Puerto Rico Employees' Association, as of January 1, 1995.

*Approved August 11, 1996.*

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**Electric Power Authority—Exemptions to Cogenerating Plants**

(H.B.2534)

[No. 124]

[*Approved August 11, 1996*]

**AN ACT**

To renumber subsection (a) as subsection (a)(1) and add subsection (a)(2) to Section 22 of Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act", in order to exempt the entities that develop cogenerating plants or small producers of electric power in Puerto Rico, from the payment of fees and duties required by the Property Registry and/or the Notarial Act, pursuant to the Federal "Public Utilities Regulatory Policies Act" of 1978, or PURPA, (English acronym).

**STATEMENT OF MOTIVES**

The Electric Power Authority is recognized as one of the foundations of Puerto Rico's industrial development and economic growth. It was created to preserve, develop and take advantage of Puerto Rico's energy sources to make them available to the people in the most extensive and less costly manner, without impairing the environment.

Pursuant to this end, it is the public policy of the Government of Puerto Rico to encourage the diversification of alternate sources of energy, which will allow the best use of the existing technology for a more efficient use of energy resources.