(H. B. 1617) (Conference)

(No. 149-2014)

(Approved September 5, 2014)

AN ACT

To amend Section 2 of Act No. 109 of June 28, 1962, as amended, known as the "Puerto Rico Public Service Act," in order to modify the definitions of "public service company" and "gas company," eliminate subsection (o) and renumber subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), (nn), and (oo), as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively; amend Section 407 of the Political Code of 1902, as amended, to delegate to the Secretary of Transportation and Public Works the administrative powers related to the regulation of pipeline and natural gas companies; amend Sections 2, 3, 12, 16, 17, 18, 19, and 21 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavation and Demolition Coordination Center Act," in order to transfer from the Public Service Commission to the Department of Transportation and Public Works the Excavation and Demolition Coordination Center, as well as the powers and duties of the Public Service Commission and its President in relation to said Center; and for other related purposes.

STATEMENT OF MOTIVES

The Public Service Commission is responsible for regulating a wide range of industries and services that, on occasion, are not interrelated. For instance, said agency is entrusted with regulating public service companies and contract carriers, which include a vast array of companies ranging from air transportation, gas companies, dock operators, moving companies, pipeline companies, toll bridge companies to electric power companies. In order for said public instrumentality to carry out its legal duties, it has been compelled to develop, subject to budget

limitations and limited resources, specialized knowledge in multiple technical fields which has, in turn, prevented it from conducting its operations swiftly and efficiently.

In view of such challenges and limitations, Act No. 148-2008, as amended, transferred from the Public Service Commission to the Department of Transportation and Public Works the competence of the planning and regulation of collective transportation provided by public vehicles. At that time, the Legislative Assembly took this course of action given the need to organize and coordinate all of Puerto Rico's collective transportation means "closely within a philosophical frame, administrative structure and the adequate operational criteria. It is only through said organization that there shall be an increase in the use of collective transportation, its quality shall be improved and its users shall be satisfied."

This Legislative Assembly has initiated a process to reevaluate the government's organizational structures so that public instrumentalities may operate efficiently and transparently, and offer the best quality services to the people. Section 16 of Article III of the Constitution of the Commonwealth of Puerto Rico grants the Legislative Assembly one of the most important powers for the operation of the State, that is: "to create, consolidate, or reorganize executive departments and define their functions." It is the power to determine how the government entities that are responsible for managing public resources and provide services to the people shall be organized.

As an essential part of the economic development plan, this Legislative Assembly is committed to reducing our dependence on oil and aggressively replacing our spending on fuel import, while identifying alternatives to offer electric power service to the people of Puerto Rico at a lower and reasonable cost. To achieve this, a public policy directed to aggressively promoting and facilitating

the development of renewable sources to generate electric power has been adopted. In our effort to execute these plans, we have identified natural gas as the most feasible means to achieve an orderly transition to renewable energy.

Naturally, the plan to achieve an orderly transition to renewable energy through natural gas requires the creation of a duly regulated natural gas market in Puerto Rico that is compatible with the renewable energy transition plan and the best interests of the Island and its inhabitants. It also requires us to ascertain full compliance with the federal regulations on the transmission and management of natural gas and other products or materials by pipeline. This, in turn, enables us to comply with the safety requirements and standards for the protection of the inhabitants of Puerto Rico. Public Law 112-90, known as the "Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011," approved by the Government of the United States of America on January 3, 2012, is an essential part of such regulations. Said statute authorized the continuity through Fiscal Year 2015 of the Federal Government's pipeline safety programs; ensured a well-balanced approach to the regulations to improve safety parameters vis à vis the observance of costefficiency principles; and clarified and established the regulations needed for devising and implementing plans to invest in infrastructure and create jobs in the industry.

In the United States of America, unlike the government of the Commonwealth of Puerto Rico, the U.S. Department of Transportation, through the Pipeline and Hazardous Materials Safety Administration (PHMSA), is the administrative agency charged with regulating the transmission or transportation of gases and other materials or products by pipeline, as well as the management and movement of such materials by other modes or forms. Currently, the Public Service Commission is the agency in charge of regulating the transmission, import, production, supply, and distribution of natural gas in Puerto Rico, the transmission,

storage, distribution, and delivery of products by pipeline; and overseeing compliance with Federal regulations on natural gas and the transportation of products by pipeline, in addition to the many other tasks it was entrusted by law to regulate and address.

At present, the Public Service Commission is in charge of the management and administration of the Excavation and Demolition Coordination Center. Said Center was created upon the approval of Act No. 267-1998, as amended, known as the "Puerto Rico Excavation and Demolition Center Act," to coordinate excavation and demolition works and protect underground facilities. Even then, the Legislative Assembly was well aware already that most of the essential public services, such as electric power, fuel, gas, and aqueduct and sewer are provided through underground facilities.

The creation and operation of the Excavation and Demolition Coordination Center resulted from an initiative of the United States Department of Transportation and the National Transportation and Safety Board to promote programs to reduce accidents in underground facilities, reduce any harm to the people's life and property resulting from such accidents, and safeguard public safety. By virtue of the foregoing, Act No. 267-1998, as amended, imposed on the Excavation and Demolition Coordination Center the duty of implementing a uniform program for the identification and demarcation of underground infrastructure in Puerto Rico, and of complying with the Regulations for Pipeline Safety Programs of PHMSA. Certainly, underground infrastructure as well as excavation and demolition works, have a direct impact on the thoroughfare, transportation, and public works network administered by the Department of Transportation and Public Works.

For all of the foregoing, this Legislative Assembly deems it necessary to transfer from the Public Service Commission to the Department of Transportation and Public Works the power to regulate and enforce compliance with local and Federal regulations in relation to the management of natural gas and transportation of products by pipeline in Puerto Rico, as well as the power to regulate the coordination of excavations and demolitions, and to manage, operate, and administer the Excavation and Demolition Coordination Center. In this Act, the Legislative Assembly provides for the transfer of said administrative powers and duties for the purpose of: (i) continuing the process of reconceptualizing the administrative framework of the Public Service Commission in order to render it swifter and more efficient; (ii) achieving that the agencies of the government of the Commonwealth of Puerto Rico operate in concert and interwoven with the agencies of the government of the United States of America, specifically the Department of Transportation and Public Works and the U. S. Department of Transportation; (iii) preventing that excavation and demolition works unreasonably affect the proper use and administration of public thoroughfares; and (iv) ensuring the creation in Puerto Rico of an industry, infrastructure, and market for natural gas and other products capable of being transmitted, stored, distributed, and delivered by pipeline that are duly regulated and compatible with the renewable energy transition plan, the development plan, and the best interests of the Island and its people.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsections (c) and (p) are hereby amended, and subsection (o) of Section 2 of Act No. 109 of June 28, 1962, as amended, known as the "Puerto Rico Public Service Act," is hereby repealed to read as follows:

"Section 2.- Terminology.-

For purposes of this part, unless the context clearly states otherwise:

(a) ...

. . .

- (c) Public Service Company.- Includes any public carrier, gas company, electric power company, graving dock company, transportation broker, dock operator, warehouse company, toll bridge company, nuclear power company, liquefied petroleum gas cylinders packaging, sales, repair, and reconstruction company, service and sale of meters for taxis and other public vehicles companies, and moving companies that offer or render their services or offer delivery services or deliver products for pay, to the public in general or a part thereof, in Puerto Rico. It does not include persons rendering service for their exclusive use or that of their tenants.
 - (d) ...

. .

(p) Gas Company.- Includes any person who owns, controls, operates, exploits, or manages as a public service company any plant or business in Puerto Rico for the import, production, generation, transmission, delivery, supply, or distribution of propane gas, processed or derived, or any liquid capable of being converted into propane gas and distributed by cylinders or any type of container for residential, commercial, and industrial purposes. Be it understood that gas "production" and "import" business are, among others, those refineries, import companies, distribution-wholesale companies and/or seaport terminals engaged in the import, production, generation, traffic, storage, distribution, or sale of liquefied petroleum gas or any other hydrocarbon mixture known as refinery gas, regardless of whether they sell or serve their product to a limited number of persons and/or wholesalers. However, the import, production, generation, transmission, delivery,

supply, or distribution of natural gas, processed or derived, or any other liquid capable of being converted into natural gas, and distributed by pipeline, cylinder, or any type of container, whether for residential, commercial or industrial purposes are hereby excluded from this definition.

(q) ...

Section 2.- Section 2 of Act No. 109 of June 28, 1962, as amended, known as the "Puerto Rico Public Service Act," is hereby amended to renumber subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), (nn), and (oo), as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk) (ll), (mm), and (nn), respectively.

Section 3.- Section 407 of the Political Code of 1902, as amended, is hereby amended to read as follows:

"Section 407.-

The Secretary of Transportation and Public Works shall have the following duties:

- (1) To approve any and all projects devised for all public works, and no work shall be undertaken until this requirement is met.
- (2) To draft and sign, on behalf of the Commonwealth of Puerto Rico, all contracts and agreements entered into for carrying out the construction or repair of public works or for the purchase of materials. In this respect, the Secretary of Transportation and Public Works shall be the lawful successor of the Commissioner of the Interior and the Superintendent of Public Works in all contracts drafted and signed by the latter on behalf of the Commonwealth of Puerto Rico.

- (3) To approve the adjudication made by the Board of Awards.
- (4) To determine and approve the provisional and final liquidation of all works carried out; no contract shall be deemed completed or work accepted until this requirement is met.
- (5) To direct the construction of any public work by force account in accordance with the provisions of Sections 420 to 425 of the Political Code.
- (6) To regulate any company, natural person, juridical person, and business regardless of the manner in which it was constituted, that owns, controls, exploits, or administers any pipeline in Puerto Rico used in relation to, or to facilitate the transmission, storage, distribution or delivery of any product by pipeline.
- (7) To regulate the transmission, distribution, or delivery of natural gas by pipeline, as well as the import, production, generation, transmission, delivery, supply or distribution of natural gas, processed or derived, or any other liquid capable of being converted into natural gas, and distributed by pipeline, cylinder, or any other type of container. In addition, the Secretary shall oversee and enforce compliance by the companies, business, and natural or juridical persons regulated under this subsection with the rules and regulations he/she promulgates, as well as the rules and regulations of the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation or their successors, in accordance with the corresponding interagency agreements.
- (8) To carryout and fulfill any other duty of the Secretary of Transportation and Public Works that may be prescribed by law.
- (9) To prescribe any rules and regulations, not in conflict with Sections 393, 396, 397, 400, 403 to 405, 407 to 410 and 417 to 425 of the Political Code, as he/she may deem necessary for the performance of the duties of his/her office."

Section 4.- The Secretary of Transportation and Public Works shall establish through an Administrative Order, an office, section, division, or directorate, which may be established as an independent administrative unit attached to said Department or as part of any program or initiative within the same, to regulate pipeline and natural gas companies.

Section 5.- The Secretary of Transportation and Public Works shall also be empowered to grant permits, impose fines and administrative sanctions under the regulations adopted to implement the provisions of this Act; conduct investigations and interventions; settle any cases and disputes that may arise as a result of the implementation of the provisions of the regulations adopted under this Act; summon witnesses, conduct on-site inspections, administer oaths and take statements, order the production of books, documents and any other additional evidence of any nature for a complete knowledge of the matter before his/her consideration; grant permits; require the posting of bonds; require any kind of information that may be necessary to carry out his/her duties properly; issue cease and desist orders; resort to the court in aid of jurisdiction; impose and order the payment of attorney fees, costs, and expenses, as well as the payment of fees and costs for other professional and consulting services incurred in carrying out investigations, holding hearings and procedures before his/her consideration; and order any action to enforce compliance with the provisions of the regulations adopted under this Act.

Section 6.- Subsection (b) of Section 2 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 2.- Definitions.-

For purposes of this Act, the following terms and phrases shall have the meaning indicated hereinbelow:

- (a) Notice or notification.- Information to be furnished by excavators or wreckers to the Center in order to coordinate excavation or demolition works.
- (b) Excavation and Demolition Coordination Center.- Government agency or entity attached to the Department of Transportation and Public Works to coordinate excavations or demolitions under the One-Call System, denominated in this Act as 'the Center.'
 - (c) ...

Section 7.- Section 3 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 3.- Excavation and Demolition Coordination Center.- The Excavation and Demolition Coordination Center is hereby created, attached to the Department of Transportation and Public Works, to develop and implement coordination mechanisms to protect underground installations against damages caused by excavations or demolitions, and to establish the One-Call System for the prompt receipt of excavation or demolition notices and immediate transmission thereof to operators, pursuant to the provisions of this Act. The sole function of the Center is to develop and implement mechanisms to coordinate excavations and demolitions. It shall not issue excavation or demolition permits."

Section 8.- Section 12 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 12.- Fees.-

On or before sixty (60) days following the approval of this Act, each operator shall pay to the Public Service Commission a single, initial contribution fee which shall be distributed at the source by municipalities and public entities with facilities in operation areas to be served primarily for the establishment of the Excavation and Demolition Coordination Center.

The moneys collected under this Section shall be covered into a special fund in the Public Service Commission to defray the operating expenses of said agency, including the operating expenses of the Excavation and Demolition Coordination Center.

This distribution shall be as follows:

- (1) Aqueducts and Sewers Authority thirty thousand dollars (\$30,000)
- (2) Electric Power Authority thirty thousand dollars (\$30,000)
- (3) Puerto Rico Telephone Authority thirty thousand dollars (\$30,000)
- (4) Department of Transportation and Public Works thirty thousand dollars (\$30,000)
 - (5) Highways Authority thirty thousand dollars (\$30,000)
 - (6) Cable TV of Greater San Juan twenty thousand dollars (\$20,000)
 - (7) San Juan Gas twenty thousand dollars (\$20,000)
 - (8) Lambda Communications twenty thousand dollars (\$20,000)
 - (9) Century Cable TV twenty thousand dollars (\$20,000)
- (10) TCI Cablevision of Puerto Rico, Inc. twenty thousand dollars (\$20,000)
 - (11) Centennial de Puerto Rico, Inc. twenty thousand dollars (\$20,000)
 - (12) Municipality of San Juan twenty-five thousand dollars (\$25,000)
 - (13) Municipality of Bayamón twenty thousand dollars (\$20,000)

- (14) Municipality of Caguas twenty thousand dollars (\$20,000)
- (15) Municipality of Carolina twenty thousand dollars (\$20,000)
- (16) Municipality of Guaynabo twenty thousand dollars (\$20,000)
- (17) Municipality of Cataño ten thousand dollars (\$10,000)
- (18) Municipality of Toa Alta ten thousand dollars (\$ 10,000)
- (19) Municipality of Toa Baja ten thousand dollars (\$10,000)
- (20) Municipality of Trujillo Alto ten thousand dollars (\$ 10,000)

This rate shall not be prorated. Any new operator of underground installations in Puerto Rico that begins operations after this Act has been promulgated, shall be required to comply with the single, initial contribution fee provided in this Section, as established by the Secretary of the Department of Transportation and Public Works through regulations.

The Secretary of the Department of Transportation and Public Works shall be empowered to establish, through regulations, a rate for the services rendered to operators, excavators or wreckers.

The money collected under this Section shall be covered into a special fund to be immediately transferred to the Department of Transportation and Public Works and used exclusively to defray the operating expenses of the Excavation and Demolition Coordination Center and administrative expenses incurred by said Department in providing support to such Center."

Section 9.- Section 16 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 16.- Powers of the Secretary of Transportation and Public Works.-

The Secretary of Transportation and Public Works shall have the following powers, without it being understood as a limitation:

- (a) To be the official responsible for administering and supervising the Excavation and Demolition Coordination Center;
- (b) To negotiate and award professional and technical services contracts, and contract, in whole or in part, the services needed to comply with the provisions of this Act."

Section 10.- Section 17 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 17.- Powers of the Department of Transportation and Public Works.-

The Department of Transportation and Public Works shall have the following powers, without it being understood as a limitation:

- (a) To hold hearings, resolve disputes, summon witnesses, conduct onsite inspections, administer oaths and take statements, order the production of books, documents and any other additional evidence of any nature for a complete knowledge of the matter before its consideration;
- (b) To issue orders, and adopt the regulations and procedures necessary to carry out the provisions of this Act, and establish the applicable sanctions and administrative fines for violations thereof:
- (c) To issue cease and desist orders for violations of Section 6 of this Act."

Section 11.- Section 18 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 18.- Orientation and Education.-

The Department of Transportation and Public Works shall develop and enforce an educational and orientation program for public service companies (public or private), excavators or wreckers and the public to provide them with information about the prevention of damages caused by excavations or demolitions, the duties of the Center, and the duties and responsibilities imposed by this Act or through regulations to such effects."

Section 12.- Section 19 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 19.- Annual Report.-

On or before February 28 of each year, beginning in 2015, the Secretary of Transportation and Public Works shall render an annual report to the Legislative Assembly on the actions taken to enforce the provisions of this Act. Said report shall cover the calendar year immediately preceding that in which it is filed and shall include, among other matters, the number of excavation or demolition notices filed with the Center, an account of reported accidents and damages, and a detailed account of the measures taken for the effective compliance of this Act."

Section 13.- Section 21 of Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," is hereby amended to read as follows:

"Section 21.- Scope.-

The Public Service Commission shall devise a model plan which shall be implemented initially in the metropolitan area, and when deemed necessary, in all or part of the jurisdiction of Puerto Rico. Immediately after the approval of this Act, the President of the Public Service Commission shall provide the Secretary

of Transportation and Public Works with a copy of the implemented model plan, as well as of every document and information related to the process of devising and implementing said plan.

If the Secretary of Transportation and Public Works deems it necessary, he/she may modify the model plan devised or implemented by the Public Service Commission, or may devise a new model plan to take effect prospectively."

Section 14.- Transfer of Property.-

It is hereby transferred to the Department of Transportation and Public Works the budget, documents, records, materials, equipment, and any personal property of the Public Service Commission that is directly or indirectly related to the functions and powers herein transferred to said Department. The Department of Transportation and Public Works shall assume and be the creditor of any asset, right or power of the Public Service Commission in addition to those specifically listed in this Act that are directly or indirectly related to the functions and powers herein transferred to said Department. The Secretary of Transportation and Public Works is hereby authorized to establish through administrative order any rules he/she may deem necessary to ensure a swift transition process.

The transfer directed under this Section shall be completed within thirty (30) days after the approval of this Act.

Section 15.- Transfer of Employees.-

All employees of the Public Service Commission, who work, are assigned, or attached to the Excavation and Demolition Coordination Center shall become employees of the Department of Transportation and Public Works. However, within not more than sixty (60) days after the approval of this Act, the Secretary of Transportation and Public Works, in accordance with the applicable personnel rules, shall determine which of these employees shall or may return to the Public Service Commission. As part of this analysis, the programmatic needs, as well as

the abilities, expertise, and experience of the transferred employees and the needs of the Public Service Commission shall be taken into account. All employees transferred from the Public Service Commission to the Department of Transportation and Public Works shall hold positions with job classifications comparable to those held while serving in the Public Service Commission; their salary and benefits shall not be less than those enjoyed while serving in said Commission.

Section 16.- Rulemaking Authority.-

The Secretary of Transportation and Public Works shall adopt any regulations he/she may deem necessary for the implementation of the provisions of this Act, within a term that shall not exceed one hundred and twenty (120) days, in accordance with the rules established in Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act."

Section 17.- Separability.-

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

Section 18.- Transition.-

Until the Secretary of Transportation and Public Works adopts the substantive and procedural regulations in accordance with the provisions of this Act, the Secretary of Transportation and Public Works shall exercise the administrative powers, including adjudicative and permit-related procedures related to pipeline and gas companies pursuant to the regulations adopted by the Public Service Commission and that are in effect as of the effective date of this Act. Furthermore, until the Secretary of Transportation and Public Works adopts

the corresponding substantive and procedural regulations, the Secretary of Transportation and Public Works shall exercise, as of the effective date of Sections 6 to 12 of this Act, the administrative powers and duties in relation to Act No. 267-1998, as amended, known as the "Puerto Rico Excavations and Demolitions Center Act," in accordance with the regulations adopted by the Public Service Commission and that are in effect as of the effective date of Sections 6 to 12 of this Act.

Section 19.- Administrative Procedures.-

The administrative procedures carried out in accordance with this Act, Act No. 267-1998, as amended, and the regulations adopted thereunder shall be governed by the Uniform Administrative Procedures Act of Puerto Rico, Act No. 170 of August 12, 1988, as amended, unless any Federal legislation or regulations established the procedure to be followed.

Any final decision of the Secretary of Transportation and Public Works, the Department of Transportation and Public Works and the subdivisions thereof, and the Excavation and Demolition Coordination Center made by virtue of this Act, Act No. 267-1998, as amended, and the regulations adopted thereunder shall be subject to review by the Court of Appeals of Puerto Rico, in accordance with the Uniform Administrative Procedures Act of Puerto Rico, Act No. 170 of August 12, 1988, as amended, unless any Federal legislation or regulations established the procedure to be followed.

Section 20.- Effectiveness.-

Sections 1 to 5 and 13 to 19 of this Act shall take effect immediately after the approval of this Act, whereas Sections 6 to 12 shall take effect thirty (30) days after the approval of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 149-2014 (H. B. 1617)** (Conference) of the 4th Regular Session of the 17th Legislative Assembly of Puerto Rico:

AN ACT to amend Section 2 of Act No. 109 of June 28, 1962, as amended, known as the "Puerto Rico Public Service Act," in order to modify the definitions of "public service company" and "gas company," eliminate subsection (o) and renumber subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), (nn), and (oo), as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively; etc.

has been translated from Spanish to English and that the English version is correct. In San Juan, Puerto Rico, on this 30th day of September, 2014.

Juan Luis Martínez Martínez Acting Director