

(H. B. 2717)  
(Conference)

**(No. 211-2015)**

(Approved December 8, 2015)

## **AN ACT**

To create the “Voluntary Pre-Retirement Program Act,” to establish a program whereby eligible employees of the Government of the Commonwealth of Puerto Rico may voluntarily separate from service by receiving incentives until they meet the requirements for retirement; provide for the requirement of credited years of service needed to qualify for this Program; establish the timeframe for employees to exercise their option to avail themselves of the Voluntary Pre-Retirement Program; provide the special incentives that shall be granted to employees who avail themselves of the Program; provide the requirements needed to implement the Program; and for other related purposes.

### **STATEMENT OF MOTIVES**

It is a well-known fact that Puerto Rico is facing one of its worst fiscal and economic crisis. This crisis affects the Central Government, public corporations, and municipalities equally. Access to financial markets is extremely difficult, which aggravates the operations of the Commonwealth of Puerto Rico. For such reason, this Administration continues making accurate decisions aimed at guaranteeing the sound use and administration of public funds and evaluating a Government reorganization thus guaranteeing essential services to the people.

Act No. 66-2014, known as the “Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act,” took effect on June 17, 2014, by virtue of the power of reason of State and in accordance with Article II, Sections 18 and 19, and Article VI, Sections 7 and 8 of the Constitution of the Commonwealth of Puerto Rico. Act No. 66-2014 declared a state of fiscal and

economic emergency in the Island, which called for the approval of a special law of socioeconomic nature. Said law is enabling the Commonwealth to have sufficient liquidity to cover public employee payroll payments and essential services offered to the citizenry. Moreover, such legislation implemented measures to cut back on spending and provide fiscal stability to achieve the economic recovery of Puerto Rico, without resorting to the dismissal of career public employees or affecting critical functions of government agencies that provide security, education, healthcare, or social work services.

It is the public policy of this Administration to oversee that all of its agencies, public corporations, instrumentalities, and municipalities have fiscal solvency. For such purposes, the Governor of the Commonwealth of Puerto Rico created the Working Group for the Fiscal and Economic Recovery of Puerto Rico through Executive Order and entrusted it to create the five-year Fiscal and Economic Growth Plan for the Commonwealth of Puerto Rico for the purpose of reorganizing the operations of the Government of the Commonwealth of Puerto Rico and stabilizing the fiscal situation. In accordance with this policy, this Act creates a Voluntary Pre-Retirement Program for employees covered under the provisions of Act No. 447 of May 15, 1941, as amended, known as the “Retirement System for Employees of the Government of the Commonwealth of Puerto Rico.” This Voluntary Pre-Retirement Program shall achieve significant savings for the Government of the Commonwealth of Puerto Rico.

We are aware of the fact that we must continue to work until the full transformation of the Commonwealth of Puerto Rico is achieved. The current government structure is not in tune with the needs of modern Puerto Rico. One of the components identified to improve our fiscal capacity entails a reduction in the number of employees that currently compose the workforce of the Commonwealth

of Puerto Rico, which payroll payment requires a substantial monthly outlay amounting to millions of dollars. However, consistent with the public policy not to resort to the dismissal of career public employees because of the negative impact that this type of decision would have on our weak economy, we have determined to reduce the workforce progressively and voluntarily, thus allowing for the economy to undergo a transition process.

For such purposes and also to provide public servants who have served our Island for years with the opportunity to end their public service career with dignity, the Voluntary Pre-Retirement Program is hereby created.

This Program seeks to offer incentives to employees who have been working for the Commonwealth of Puerto Rico and enrolled in the Retirement System before April 1<sup>st</sup>, 1990, or who enrolled after said date and have paid creditable services prior to April 1<sup>st</sup>, 1990, without having received any reimbursement of their contributions and have a at least twenty (20) years of services credited under the benefit structure of Act No. 447, *supra*. These incentives include a compensation equal to sixty percent (60%) of the employees' average compensation as of December 31<sup>st</sup>, 2015, while they participate in the Program; the payout of unused vacation and sick leaves, taking into account the limit established in Act No. 66-2014 and exempt from taxation, and the payment of employer contributions on account of Social Security and Medicare, and to keep their health insurance coverage or to continue receiving their employer contribution for the health insurance under the same terms and conditions as if he/she were an employee, for a term of two (2) years. Moreover, this Program provides for the employer to continue making both individual and employer contributions to the Retirement System for Employees of the Government of the Commonwealth of Puerto Rico, thus guaranteeing an increase in their future retirement annuity, which shall never be less than fifty percent (50%) of their average compensation as of

June 30<sup>th</sup>, 2013, and in the case of the members of the Puerto Rico Police, as defined in Act No. 53-1996, as amended, it may reach up to sixty percent (60%) of the average compensation as of June 30<sup>th</sup>, 2013, by combining frozen contributions as of June 30<sup>th</sup>, 2013 and the annuity of the Defined Contribution Hybrid Program. In turn, it provides the participant with the opportunity to enjoy one hundred percent of his/her time with his/her family or pursue other educational or recreational activities, or may very well continue to contribute to the local economy. Pre-retirees may serve the community in many ways by working in the private sector, or rendering community services, participating in civic or nonprofit organizations, or contemplating new professional, human, advisory, and business development opportunities. Meanwhile, the Government will save forty percent (40%) of the salary of such employees plus most fringe benefits, as well as other items that the Government would otherwise be required to pay should pre-retirees remain as active employees.

Contrary to other previous incentivized retirement and retirement windows laws, the Voluntary Pre-Retirement Program is transparent for the Retirement System, because associated costs shall be paid by the pre-retiree's employer until the actual date of retirement.

The Voluntary Pre-Retirement Program takes into account the actuarial situation of the Commonwealth Retirement System. It is a well-known fact that the Retirement System is facing an unprecedented fiscal crisis. For such reason, the Governor and this Legislative Assembly have considered different alternatives to alleviate the crisis of the Retirement System and guarantee its existence. Hence, Act No. 3-2013 was approved, which increased the retirement age for a group of employees who did not meet the necessary criteria to retire on or before June 30<sup>th</sup>, 2013, among other things. The Supreme Court of Puerto Rico validated this reform to the Commonwealth Retirement System in Trinidad Hernández et al. v. ELA et

al., 188 DPR 828 (2013). It concluded that it was reasonable and necessary to ensure the actuarial solvency of the Retirement System, since there were no less burdensome options.

In view of all of the foregoing, it is worth noting that the implementation of the Voluntary Pre-Retirement Program shall not have an adverse impact on the treasury of the Commonwealth Retirement System or of the government entities that avail themselves of the Program. The government entity that is eligible for, or interested in availing itself of, the Program shall, first of all, apply therefor to the Office of Management and Budget (OMB). The OMB shall evaluate whether it is feasible for the employees of the government entity to avail themselves of the Program in coordination with the Retirement System Administration for the Employees of the Government of the Commonwealth of Puerto Rico and the Judiciary. Once the OMB certifies the eligibility of employees, it shall approve the application only, if it determines that this shall represent savings for the government entity. Once the government entity is qualified and the employees' applications are approved, the responsibility to pay the benefits provided in this Act shall not fall on the Commonwealth Retirement System, but rather on the government entity for which the employee works at the time of availing him/herself of the Program. In other words, any payments to be made as a result of such Program shall be disbursed in whole from the items earmarked and set aside by the different agencies of the Commonwealth of Puerto Rico for such purposes.

In sum, this Program shall have a positive impact on all of the elements that the Five-Year Fiscal Adjustment Plan, as well as the structural, fiscal, and institutional reform of the Commonwealth of Puerto Rico seek to address. Specifically, it cuts back on spending without affecting the services or the finances

of the Commonwealth Retirement System, all the while it represents across the board savings in our budget.

For all of the foregoing, this Legislative Assembly deems it necessary to promote the Voluntary Pre-Retirement Program provided in this measure. The implementation thereof shall not only provide employees who enrolled in the System prior to April 1<sup>st</sup>, 1990, with a pre-retirement opportunity, but shall also achieve an organizational and systematic turnaround that will allow us to allocate resources to maximize the services offered by the Commonwealth of Puerto Rico.

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

Section 1.- Title

This Act shall be known as the “Voluntary Pre-Retirement Program Act.”

Section 2.- Definitions

a. Agency.- Shall include every agency, department, office, commission, board, administration, bodies, and other government entities of the Commonwealth of Puerto Rico, whose budget is defrayed, in whole or in part, from the General Fund. Municipalities, agencies with special Commonwealth funds, public or public private corporations or instrumentalities that operate as a private venture or business with their own funds (except for those that have their own retirement system), the Judicial Branch (except for judges, who have their own retirement system) and the Puerto Rico Commonwealth Employees Association (AEELA, Spanish acronym) shall also be included in this definition and the application of this Act.

b. Appointing Authority.- Shall mean any head of agency with legal authority to make appointments for positions within the Government of the Commonwealth of Puerto Rico.

c. Commonwealth.- Shall mean the Government of the Commonwealth of Puerto Rico, including its three branches: the Executive Branch, the Judicial Branch, and the Legislative Branch.

d. Enrollment Date.- Shall mean the work day following the date on which the participant shall cease to hold office in an agency or municipality of the Government of the Commonwealth of Puerto Rico and enrolls in the Voluntary Pre-Retirement Program.

e. Municipality.- Shall mean a geographic demarcation including all of its wards, which has a specific name and is governed by a local government composed of a Legislative and an Executive Power.

f. OMB.- Shall mean the Office of Management and Budget attached to the Office of the Governor of the Commonwealth of Puerto Rico.

g. Election Period.- Shall mean a term of thirty (30) calendar days from the time the employee is notified of his/her eligibility to participate in the Program, during which the employee may irrevocably enroll in the Program.

h. Pre-retiree.- Shall mean any person enrolled in the Voluntary Pre-Retirement Program, as established in this Act.

i. Program.- Shall mean the Voluntary Pre-Retirement Program created in this Act.

j. System.- Shall mean the Retirement System for Employees of the Government of the Commonwealth of Puerto Rico.

k. Implementation Assessment.- Shall mean the mandatory evaluation that every agency or municipality shall conduct and submit to the OMB, within a term that shall not exceed sixty (60) days after the approval of this Act, to analyze the fiscal impact the adoption of the Voluntary Pre-Retirement Program would have on such agency or municipality, taking into account, among other factors, the

number of eligible employees according to the Program's criteria; the average compensation that would be applied to the compensation of the Program participants; the duties carried out by the employees who meet the eligibility criteria and which of those duties are critical; the manner in which employees who carried out critical duties and apply for enrollment in the Program may be substituted internally whether through transfer, internal hiring of career employees of the agency or municipality, or job openings for career public employees or the general public; which positions may be eliminated; whether the entity has the financial capacity to participate in the Program; and to estimate the estimated total savings or expenditures if it chooses to avail itself of the Program.

1. Pre-Retirement Employer Plan.- Shall mean the plan that must be designed by the employer to implement the Voluntary Pre-Retirement Program in his/her agency or municipality when the implementation assessment suggests that participation in the Program would result in savings in the average payroll and fringe benefit expenses defrayed by such agency or municipality.

m. Average Compensation.- Shall mean the highest average annual salary earned by a participant during any three (3) creditable service years.

### Section 3.- Creation of the Voluntary Pre-Retirement Program

The Voluntary Pre-Retirement Program is hereby created to offer a pre-retirement opportunity to Commonwealth of Puerto Rico employees who enrolled in the Retirement System before April 1<sup>st</sup>, 1990, or who began working in the Commonwealth of Puerto Rico before that date and were unable to contribute to the Retirement System due to their job status, but subsequently paid those previous years of service so that these could be credited retroactively to a date prior to April 1<sup>st</sup>, 1990, or those employees who opted out of the Retirement Savings Account Program and have at least twenty (20) years of credited services under the benefit structure provided in Act No. 447 of May 15, 1951, as amended. This Program was



created for the purpose of achieving significant savings in government expenditures on account of payroll and fringe benefits, as well as carrying out an organizational and systematic turnaround that will allow for the allocation of resources to maximize services offered by the Commonwealth of Puerto Rico.

The implementation of the Voluntary Pre-Retirement Program shall be carried out in strict compliance with all labor laws, collective bargaining agreements in effect, the Merit Principle, the legal provisions prohibiting political discrimination, and the vested rights of public employees. The option of an employee to avail him/herself of the Voluntary Pre-Retirement Program shall not disqualify him/her from receiving any fringe benefits to which he/she may have been entitled upon retirement by virtue of a collective bargaining agreement or any other type of agreement negotiated with his/her employer, and shall receive the same once his/her participation in the Program ends and he/she becomes a retiree, unless the employer decides, pursuant to the Pre-Retirement Employer Plan, to pay the retirement benefit in advance. All of the foregoing shall be subject to the provisions of Act No. 66-2014.

#### Section 4.- Employer Eligibility to Participate in the Program

Every agency or municipality shall conduct and submit to the OMB, within a term not to exceed sixty (60) days after the effective date of this Act, a Voluntary Pre-Retirement Program implementation assessment. The agency or municipality may request free of charge the technical assistance of the OMB, as well as the advice of the Central Labor Advisory and Human Resources Administration Office (OCALARH, Spanish acronym) to conduct said assessment. If the assessment suggests that participation in the Program would result in savings in the average payroll and fringe benefit expenses of such Agency, the employer shall devise the Pre-Retirement Employer Plan.

The agency or municipality that wishes to participate in the Program must be up-to-date with any payments corresponding to the Retirement System Administration. In the event of any outstanding debt with the Retirement System Administration, the agency or municipality shall be required to enter into a payment plan in accordance with the terms and conditions established by the Retirement System Administration and shall include in the Plan that it would devote at least twenty-five percent (25%) of its savings for the payment of said debt.

#### Section 5.- Employees Eligible for the Voluntary Pre-Retirement Program

a. Any person who works for the Commonwealth shall be deemed to be eligible for the Voluntary Pre-Retirement Program, if he/she meets the following requirements:

1. To be a career employee, a trust employee entitled to be reinstated to a career position, or an employee appointed for a specific term in accordance with a law, such as the case of advocates, prosecutors, commissioners, etc.; provided, that the participant attains age sixty-one (61) before the date of expiration of his/her current term in order to retire;

2. To have enrolled in the Retirement System before April 1<sup>st</sup>, 1990, without having requested the reimbursement of his/her contributions, or have begun working for the Commonwealth of Puerto Rico before such date and were unable to contribute to the Retirement System due to his/her job status, but subsequently paid those previous years of service so that these could be credited retroactively to a date prior to April 1<sup>st</sup>, 1990, or those employees who opted out of the Retirement Savings Account Program.

3. As of the date on which enrollment in the Pre-Retirement Program is requested, to have at least twenty (20) years of credited services in the

Retirement System as provided in Act No. 447 of May 15, 1951, as amended by Act No. 3-2013, and other amending laws; and

4. Have not met the requirements to be eligible for retirement under Act No. 447 of May 15, 1951, as amended, on or before the effective date to enroll in the Voluntary Pre-Retirement Program; provided, that the members of the Puerto Rico Police who already meet the requirements to retire may enroll in the Program.

b. Commonwealth employees holding elective offices or discharging the duties as Appointing Authority as of the effective date of enrollment in the Program shall not be eligible to participate in the Program, unless they are entitled to be reinstated to a career position and are reinstated to such career position before the effective date of enrollment in the Program. Likewise, employees participating in other independent retirement systems, such as teachers, judges, and employees of the Electric Power Authority shall not be eligible to participate in the Program;

c. The provisions of this Act shall be extensive also to those employees who as of the effective date of this Act are on any type of leave by virtue of the applicable Regulations of the agencies and municipalities, collective bargaining agreements, or statutes, except in the case of persons on leave without pay, in which case the employer shall decide, in accordance with his/her Plan, if such employees shall be allowed to enroll in the Program under such status.

#### Section 6.- Benefits of the Voluntary Pre-Retirement Program.-

Pre-retirees shall receive the following benefits:

a. Sixty percent (60%) of their average compensation as of December 31<sup>st</sup>, 2015, until they attain age sixty-one (61). Payment shall be made by the employer with the same frequency as it would have been made if the employee had remained employed.

The income received by pre-retirees during their participation in the Pre-Retirement Program on account of the payment of sixty-percent (60%) of their average compensation as of December 31<sup>st</sup>, 2015 shall be considered, for tax purposes, as if it was received as a pension granted by the retirement systems or funds funded by the Government of Puerto Rico, in accordance with Section 1081.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” and subject to the limitations established in Section 1031.02 (a)(13) of Act No. 1-2011, as amended.

b. Payout of unused vacation and sick leaves accrued as of the time of enrollment in the Program, in accordance with the limits established in the applicable legislation or regulations, exempt from income taxes.

c. While the person is enrolled in the Program, his/her account under the Defined Contribution Hybrid Program shall continue receiving the total amount of the individual contribution that the pre-retiree would have contributed, paid in full by the employer, at a rate of ten percent (10%) of his/her average compensation as of December 31<sup>st</sup>, 2015.

d. Except for employees currently excluded from the payment of Social Security, during the time the participant is enrolled in the Program, the employer shall continue to make employer contributions on account of Social Security (6.2%) and Medicare (1.45%) corresponding to sixty percent (60%) of the participant’s gross income. However, equal percentages corresponding to individual contributions shall be deducted from the participant’s compensation.

e. Keep health insurance coverage or medical service program, or employer contribution for health insurance, that the employee enjoyed at the time of making an election to enroll in the Voluntary Pre-Retirement Program up to two (2) years, as of the enrollment date or until he/she enters the Retirement System, or until the participant is eligible to receive health insurance coverage in another

employment, or by any other source of coverage, whichever comes first. Provided, that if the two-year health insurance coverage ends and the Program participant has not entered the Retirement System or has not become eligible for another health insurance coverage, said pre-retiree may choose to avail him/herself of the health insurance coverage for public employees under Act No. 95 of June 29, 1963, as amended, known as the “Public Employees Health Benefits Act,” defraying the cost of the corresponding premium at his/her own expense.

f. May request the agency or the municipality to deduct and withhold from the sixty percent (60%) of the compensation they will receive, contributions on account of savings, loan payments, insurance premiums, or any other applicable payment at the time, as provided in Act No. 9-2013, as amended known as the “Commonwealth of Puerto Rico Employee Association Act of 2013,” but in no case the savings contributions shall be mandatory. Likewise, participants may choose to withdraw their savings from AEELA, insofar as they are not securing any debt with such entity.

g. If a pre-retiree dies while participating in the Program, his/her participation in the Program shall automatically end and his/her beneficiaries or heirs, as the case may be, shall receive the same benefits they would have received under Act No. 447 of May 15, 1951, as amended, and any other benefit to which they would have been entitled under any special law if the pre-retiree was an active employee of the Commonwealth of Puerto Rico; and

h. Once a pre-retiree attains age sixty-one (61), he/she shall enter the Retirement System and receive the benefits to which he/she is entitled as a pensioner of the Commonwealth of Puerto Rico, in accordance with Chapter 5 of Act No. 447 of May 15, 1951, as amended; provided, that Program participants shall be guaranteed, at the time of their retirement, a minimum benefit of fifty percent (50%) of their average compensation as of June 30<sup>th</sup>, 2013, if the

combination of annuities of the contributions frozen as of June 30<sup>th</sup>, 2013, and the contributions made to the Hybrid Program account do not reach such minimum percentage. In the case of the members of the Puerto Rico Police, said minimum benefit may represent up to sixty percent (60%) of their average compensation as of June 30<sup>th</sup>, 2013, if the Pre-Retirement Employer Plan of their agency contemplates additional contributions to the Hybrid Program to achieve a minimum benefit in excess of fifty percent (50%). System participants who, as of June 30<sup>th</sup>, 2013, were availing themselves of the Coordination Plan with Federal Social Security, shall have their accrued annuity benefits adjusted, as provided in subsection (e) of Section 2-101 of Act No. 447, *supra*; provided, that the participant may receive the annuity established in Section 5-103 of Act No. 447 of May 15, 1951, as amended, until he/she is entitled to avail him/herself of the Federal Social Security Benefits, and the combination of annuities shall never be less than fifty percent (50%) of their average compensation as of June 30<sup>th</sup>, 2013. The amount of the additional contribution to be injected into the Retirement System while the employee is availing him/herself of the Voluntary Pre-Retirement Program so that, upon retirement, he/she may receive a combination of benefits for retirement annuities that represents the minimum benefits provided above, shall be paid in full by the employer as part of its Pre-Retirement Employer Plan.

#### Section 7.- Obligations and Duties of the Agency or Municipality.-

The agency or municipality shall have the following obligations at the time a Pre-retiree enrolls in the Program:

a. To ensure that any person who enrolls in the Program meets the requirements of Section 5 of this Act.

b. Once a Pre-retiree enrolls in the Program and during his/her participation in the same, the agency or municipality commits to:

1. pay to every pre-retiree sixty percent (60%) of their average compensation as of December 31<sup>st</sup>, 2015, including the contributions to the Social Security and Medicare (except in the case of employees who were not contributing to Social Security prior to enrolling in the Pre-Retirement Program);

2. make the corresponding employer and individual contributions to the Retirement System, on the basis of one hundred percent (100%) of their average compensation as of December 31<sup>st</sup>, 2015;

3. keep pre-retirees in the health insurance plan or pay the corresponding employer contributions to the pre-retirees health insurance plans, according to the benefit enjoyed by them at the time of enrolling in the Pre-Retirement Program, for a term of two (2) years, as of their enrollment date, or until they enter the Retirement System, or until they are eligible to receive health insurance coverage in another employment, or by any other source of coverage, whichever comes first;

4. stop making contributions to the Unemployment Insurance of the Department of Labor and Human Resources and the State Insurance Fund corresponding to the employee from his/her enrollment in the Program; and

5. payout of unused vacation and sick leaves corresponding to each participant, in accordance with the limits established in the applicable legislation or regulations, on or before one hundred eighty (180) days after the participant's enrollment date.

#### Section 8.- Management of Vacant Positions and Achieved Savings.-

a. As a general rule, positions that become vacant upon the implementation of this Voluntary Pre-Retirement Program shall be eliminated, unless the OMB otherwise authorizes in accordance with the Plan submitted by the employer. Positions filled by the Governor shall not be eliminated. Agencies or municipalities shall take administrative and operational reorganization measures to

eliminate vacant positions, in strict compliance with all labor laws, collective bargaining agreements in effect, the Merit Principle, the legal provisions that prohibit political discrimination, and the vested rights of the public employees who work in said entity.



b. However, the agency or municipality may fill positions that become vacant and are certified to be critical for the operations of the agency or municipality, by transferring another employee in the public service. If a critical position cannot be filled by the transfer mechanism, a new recruitment shall be allowed, preferably through an internal job posting intended for other career employees of the Commonwealth of Puerto Rico; provided, that the cost related to said new recruitment, considered within the Plan, if it is shown that at least seventy percent (70%) of the annual savings resulting from the implementation of this Voluntary Pre-Retirement Program in said entity shall be maintained. Every agency or municipality shall reasonably establish, through an internal procedure, the necessary criteria to define what shall be considered critical public services for such agency or municipality.

1. In the case of agencies, every recruitment with the savings percentage established herein shall require the approval of the Office of Management and Budget, which shall establish the rules and criteria to enforce the provisions of this Section.

2. In the case of municipalities, every recruitment with the savings percentage established herein shall require the approval of the Office of the Commissioner of Municipal Affairs, which shall establish the rules and criteria to enforce the provisions of this Section.

c. Agencies or municipalities may use up to thirty percent (30%) of the savings achieved with the implementation of this Program to purchase technological equipment or to carry out initiatives that increase the efficiency of agencies.

1. In the case of agencies, any purchase of equipment with the savings percentage established herein shall require the approval of the Office of

Management and Budget, which shall establish the rules and criteria to enforce the provisions of this Section.

2. In the case of municipalities, any purchase of equipment with the savings percentage established herein shall require the approval of the Office of the Commissioner of Municipal Affairs, which shall establish the rules and criteria to enforce the provisions of this Section.

Section 9.- Irrevocability of Election to Participate in the Program.-

Any election of an employee 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 or termination thereof, under any applicable law, or (ii) the actions, if any, that may be taken as a result of the implementation of the Program. 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/he employment and/or separation therefrom. The effect of this release and the corresponding waiver of rights shall be deemed to be *res judicata*.

The form used for the implementation of the Program shall contain a warning statement to the Participant in readily legible and in bold type that his/her election to participate in the Program shall be final and irrevocable and constitutes a full and absolute release and a waiver of rights of any claim he/she may have for past, present or future actions, based on the employer-employee relationship, in accordance with the labor laws of Puerto Rico.

Section 10.- Retention of Employee Eligible for the Program.-

Agencies and municipalities reserve the right to retain in their position any eligible employees that request to enroll in the Voluntary Pre-Retirement Program for a term not to exceed six (6) months, subject to an additional six (6)-month extension with the approval of the OMB, for the purpose of completing a job, task,

duty, or providing training. In these cases, the employee shall not be entitled to receive the Program's benefits during the time the agency or municipality deems convenient to use his/her services. The agency or municipality may compute the savings achieved by the enrollment of said employee in the Program once the retention period concludes. All other employees who enroll in the Voluntary Pre-Retirement Program shall do so immediately in accordance with the terms of this Act.

Section 11.- Limitation on the Services Rendered by the Pre-retiree to the Government.-

Any person who avails him/herself of the benefits of the Voluntary Pre-Retirement Program shall neither render services nor be hired by any agency or municipality while he/she is participating in the Program. Once the employee enters the System, he/she may render services to government agencies, public corporations, or municipalities in accordance with the requirements established in Act No. 447, supra, as well as in Act No. 1-2012, known as the "Puerto Rico Government Ethics Act of 2011." Agencies or municipalities participating in the Program shall send a list of persons enrolled in the same and who, consequently, shall be impaired, while they participate in the Program, from being hired in an agency or municipality as a career, trust, transitory, irregular employee, or under any other classification or as an independent contractor.

The election form to participate in the Program shall contain a warning statement in bold type regarding the participants' inability to reenter public service until their participation in the Voluntary Pre-Retirement Program concludes.

Section 12.- General Provisions.-

a. All the provisions of Act No. 447, as amended, that are not in conflict with this Act shall apply to the Voluntary Pre-Retirement Program.

b. The Director of the Office of Management and Budget shall have all the powers that are necessary and convenient to implement this Act. He/she may require agencies and municipalities to take any actions deemed necessary and convenient to implement this Program in their respective agencies or municipalities; and may require Appointing Authorities to submit all the information deemed necessary so that the former may evaluate every request to declare a position ineligible for participating in the Program. The Director of the Office of Management and Budget shall prepare the Election Form and establish the procedure for the implementation of the Program and the provisions of this Act, without being subject to Act No. 170 of August 12, 1988, as amended. It shall include, at least, the following:

1. Eligible government entities that are interested in participating in the Program shall submit a request to such effects to the Office of Management and Budget, including the implementation assessment and the Employer Pre-Retirement Plan.

2. The Office of Management and Budget shall evaluate within a term not to exceed sixty (60) days that may be extended for an additional thirty (30)-day term, whether or not the agency's participation in the Program is feasible and approve the request if he/she determines that it would represent savings for the government entity. If the request is not approved, the agency shall be granted a term that shall not exceed thirty (30) days to amend the Employer Pre-Retirement Plan, which shall be evaluated by the Office of Management and Budget within a term not to exceed sixty (60) days.

3. The Retirement System Administration for the Employees of the Government of the Commonwealth of Puerto Rico and the Judiciary shall certify the eligibility of employees who apply to the Program as to credited years of service.

4. Employees shall be notified of their eligibility to apply for the Program. Employees shall have thirty (30) calendar days as of the notice to make an election to participate in the Voluntary Pre-Retirement Program.

5. Agencies or municipalities, through their retirement coordinator and with the assistance of the OMB and the Retirement System Administration for the Employees of the Government of the Commonwealth of Puerto Rico and the Judiciary, shall provide all their employees who are eligible to participate in the Voluntary Pre-Retirement Program with an orientation of the benefits and criteria thereof. In addition, they shall provide orientation and education to promote the financial planning for their retirement, as provided in Act No. 126-2014, which created the “Commonwealth of Puerto Rico Public Employees’ Pre-Retirement Orientation and Planning Program.”

Section 13.- Severability Clause.-

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

Section 14.- Effectiveness.-

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 211-2015 (H. B. 2717) (Conference)** of the **6<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to create the “Voluntary Pre-Retirement Program Act,” to establish a program whereby eligible employees of the Government of the Commonwealth of Puerto Rico may voluntarily separate from service by receiving incentives until they meet the requirements for retirement; provide for the requirement of credited years of service needed to qualify for this Program; establish the timeframe for employees to exercise their option to avail themselves of the Voluntary Pre-Retirement Program; provide the special incentives that shall be granted to employees who avail themselves of the Program; provide the requirements needed to implement the Program; 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 this 5<sup>th</sup> day of February, 2016.

Juan Luis Martínez Martínez  
Director