

(H. B. 22)

(No. 222-2010)

(Approved December 30, 2010)

AN ACT

To amend Section 4 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” in order to clarify the terms thereof and establish the procedure whereby the two (2) consumer representatives to the Governing Board of the Electric Power Authority shall be elected.

STATEMENT OF MOTIVES

The powers of the Electric Power Authority (PREPA) are exercised by the Governing Board which is composed of nine (9) members, seven (7) of which are appointed by the Governor with the advice and consent of the Senate of Puerto Rico.

The other two (2) members of the Board are elected by means of a procedure known as a referendum, supervised by the Department of Consumer Affairs (DACO, Spanish acronym), pursuant to the regulations such Department approves for such purposes in accordance with the Governing Board of PREPA.

Section 4 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” provides that these two (2) members shall represent the consumers’ interests. They shall not be PREPA employees or officials, members of a local or central directing body of a political party, which includes all persons working actively for the party, or be directly connected to the Authority’s labor unions.

DACO was directed to adopt regulations for the election of the two (2) consumer representatives to the Governing Board of PREPA, but it failed to do so. Instead, it is using the procedure established in Regulations No. 1957, which governed the election of consumer representatives to the Governing Board of the Puerto Rico Telephone Authority.

Regulations No. 1957 was filed with the Department of State on June 27, 1975, and was promulgated in accordance to the provisions of Act No. 25 of May 6, 1974.

The two (2) consumer representative positions on the Governing Board of the Telephone Authority were eliminated under Section 3 of Act No. 215 of September 12, 1996.

When a portion of a statute is amended and another portion is unchanged, both should be construed together and harmonized. If it is not possible, the new provisions should prevail as the latest declaration of the legislative will. A.J. Tristani v. Municipio, 76 P.R.R. 765, 766 (1954). If the provisions of a later statute are so inconsistent with the provisions of a prior statute that they cannot stand together, the implicit repeal of the prior statute prevails. Pérez v. Succession of Collado, 19 P.P.R. 1061 (1933[sic]); Guardiola Pérez v. Morán, 114 D.P.R. 477 (1983).

Under Administrative Law, regulations lawfully established and promulgated by an administrative body must be observed until modified or superseded by subsequent legislation. Willapoint Oysters v. Ewing, 174 F2d 676 (1949, 9th Circuit).

It is a rule of hermeneutics that repealing Acts may not only be express, but also implicit; that is, if the provisions of the amended Act are in irreconcilable conflict with an amendatory Act, they are impliedly repealed. In this case, the rule sets forth that the earlier Act must be construed as implicitly repealed by the later

one. Sands, Sutherland Statutory Construction, Sec. 23.12; Norris v. Croker, 14 L.Ed. 210 (1851); United States v. Tynen, 20 L.Ed. 153 (1870). There must be no doubt that a regulation dies with the statute from which it gains its life. United States v. Hawthorne, 31 F.Supp. 827 (1940, N.D. Texas).

Therefore, we must conclude that Regulations No. 1957 is invalid because the provisions of Section 4 of Act No. 25 of May 6, 1975, under which Regulations No. 1957 gained life, has been repealed.

Furthermore, we must also bear in mind that, under the procedure established in said Regulations, candidates are selected on a random basis; therefore, it depends on chance. In order to select the five (5) candidates that will ultimately be presented to the customers, fifty (50) candidates are initially selected at random and, out of these, five (5) candidates are also randomly selected.

The procedure for selecting consumer representatives to the Governing Board of the Electric Power Authority must be well-thought, serious, and reliable so that duly qualified candidates may compete in a transparent and efficient election process.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 4 of Act No. 83 of May 2, 1941, as amended, is hereby amended to read as follows:

“Section 4.-The powers of the Authority shall be exercised, and its general policy shall be determined, by the Governing Board, to be known hereafter as “the Board.

A. Appointment and Composition of the Board: The Governor of Puerto Rico, with the advice and consent of the Senate, shall appoint six (6) of the nine (9) members who shall compose the Board, one of whom shall be appointed for two (2) years, two (2) for three (3) years, and three (3) for four (4) years. As the terms of office of the members of the Board so appointed expire, the Governor shall

appoint their successors for a term of four (4) years. Any vacancy in such offices shall be filled by an appointment made by the Governor for the unexpired term thereof, within a term of sixty (60) days from the date the vacancy occurs. With regard to the other three (3) members of the Board, one shall be the Secretary of Transportation and Public Works, and an election shall be held, which shall be supervised by the Department of Consumer Affairs and held according to the procedure determined by this Section to select the remaining two (2) members. The Authority shall provide the facilities and economic resources needed therefor. These two (2) members shall represent the consumers' interest, and shall not be Authority employees or officials, members of a local or central directing body of a political party, which includes all persons actively working for the party, or any person who is directly connected to the Authority's labor unions.

One (1) of those two (2) members shall hold office for a term of two (2) years, while the other shall hold office for a term of three (3) years, until their successors are elected and take office. As the terms of their offices expire, their successors shall be elected for a term of four (4) years.

Any vacancy in such offices shall also be filled for a term of four (4) years, within one hundred twenty (120) days after the date the vacancy occurred.

(b) Compensation: Members of the Board who are officials of the Government of the Commonwealth of Puerto Rico, including the instrumentalities, corporations, and municipalities thereof, shall not receive any compensation for their services. All other members shall be entitled to a reasonable per diem for each day of session they attend or for each day they perform duties entrusted to them by the Board or its Chairperson, which shall never exceed three hundred dollars (\$300) for each day they attend Regular or Special meetings, and two hundred dollars (\$200) for each day they perform duties entrusted to them by the Board or

its Chairperson. The Board is hereby empowered to establish per diems through regulations to such purposes without exceeding the limits herein specified. Compensation shall be one day's per diem notwithstanding the number of meetings, actions, or appearances attended on a day of mandatory activity.

(c) Organization of the Board; Quorum; Designation of the Executive Director: Within sixty (60) days after being appointed, the Board shall meet, organize itself, and select a Chairperson and Vice-Chairperson. At that same meeting, an Executive Director shall be appointed, his/her compensation shall be fixed, and a secretary shall also be appointed. Neither the latter nor the former shall be members of the Board. The Board may delegate such powers and duties as it may deem proper to an Executive Director or other officers, agents, or employees of the Authority. The Executive Director shall be the Authority's executive officer and be responsible for the execution of its policy and the general supervision of its operational phases. Five (5) members of the Board shall constitute a quorum for the transaction of its business and for any other purpose. Every agreement shall be reached by at least five (5) of such members.

The Executive Director shall be charged with the general supervision of the officials, employees, and agents of the Authority. The Executive Director may attend all Board meetings, but shall not be entitled to vote.

(d) Election of the two (2) representatives of the consumers' interest; Procedure:

(1) The Department of Consumer Affairs, in consultation with the Governing Board of the Electric Power Authority, shall approve regulations for implementing the election process provided in this subsection (d).

(2) On or before one hundred twenty (120) days of the expiration of the term of office of each representative of the consumers' interest in the Governing Board of the Electric Power Authority, the Secretary of the Department of Consumer Affairs shall issue a call for candidates stating the requirements for candidate nominations. The call for candidates shall be published through notices in the media and the Authority's electricity bills sent to customers.

(3) The Secretary of the Department of Consumer Affairs shall design and distribute a Request for Nomination form whereby every aspirant shall state, under oath, his/her name, personal information, street and mailing address, telephone, place of work, occupation, and account number with the Authority. The request shall be endorsed by the signatures of at least fifty (50) customers, along with their names, addresses, and account numbers with the Authority.

The Secretary of the Department of Consumers Affairs shall include an endorsement validation mechanism in the regulations pursuant to the purposes of this Act. Likewise, said regulations shall include the requirements that candidates must meet in accordance with applicable laws, including a certification of having filed Income Tax Returns for the five (5) preceding taxable years and a No Debt Certification issued by the Department of the Treasury. Furthermore, a no debt certification from both the Child Support Administration and the Municipal Revenue Collection Center, as well as any other document required by law, shall also be included in such regulations.

(4) On or before ninety (90) days of the date on which the term of each representative of the consumers' interest expires, the Secretary of the Department of Consumer Affairs shall certify as candidates the five (5) applicants who have submitted the highest number of endorsements and have met all other requirements established in this subsection (d).

(5) On or before sixty (60) days of the date on which the term of each representative of the consumers' interest expires, the Secretary of the Department of Consumer Affairs, in consultation with the the Secretary of the Authority's Governing Board, shall design and print the ballot stating the deadline for receiving the same in order to start counting the votes.

(6) Ballots shall be distributed by mail to each customer together with their electricity bill.

(7) Each one of the five (5) selected candidates shall designate a person who shall represent him/her in the process. Such five (5) persons, together with the Secretary of the Department of Consumer Affairs and a representative of the Secretary of the Authority's Governing Board, shall constitute the Selection Committee, which shall be presided by the representative of the Secretary of the Department of Consumer Affairs.

(8) During the ten (10) days following the deadline for receiving the ballots, the Election Committee shall start counting the votes and notify the results to the Secretary of the Department of Consumer Affairs who shall then certify the elected candidates and notify such certification to both the Governor of Puerto Rico and the Chairperson of the Board, so that the Governor may make the appointment.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 222-2010 (H. B. 22)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend Section 4 of Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act," in order to clarify the terms thereof and establish the procedure whereby the two (2) consumer representatives to the Governing Board of the Electric Power Authority shall be elected.

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

In San Juan, Puerto Rico, on this 17th day of January, 2014.

Juan Luis Martínez Martínez
Acting Director