

(H. B. 4245)  
(Conference)

**(No. 255)**

(Approved September 7, 2004)

**AN ACT**

To repeal Section 22 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” to establish a new Section 22, which shall provide a new formula to determine the contribution to compensate the effect of tax exemptions.

**STATEMENT OF MOTIVES**

At present, Section 22 of the “Electric Power Authority Act,” specifically Section 22(b)(1), establishes that the Authority shall set aside from its net revenues a sum equal to five (5) percent of its gross income derived from the sale of electric power to consumers during the current fiscal year. Of this sum, corresponding to five (5) percent of its gross income, the Authority shall pay the Secretary of the Treasury one fifth of the sum set aside and shall distribute the same among the municipalities in proportion to the electric power billing for public lighting and public facilities of each municipality during the preceding fiscal year.

Likewise, Section 22(b)(2) establishes that the Authority shall pay to the Secretary of the Treasury from its net revenues and as a contribution to compensate the tax exemption effect, to be credited to each municipality, a sum equal to six (6) percent of the gross revenues from the sale of the Authority’s electric power throughout Puerto Rico, adjusted at an average annual price of fuel not to exceed thirty (30) dollars per barrel during the

preceding fiscal year. The Authority may modify the average annual price of fuel of thirty (30) dollars per barrel up to a higher level, which shall provide sufficient funds to the municipalities to absorb the billing for electric power consumption, plus a sufficient amount to fulfill its obligations with the Authority. The contribution to be distributed among the municipalities is annually apportioned in proportion to the electric power billing for public lighting and public facilities in every municipality during the preceding fiscal year.

The separated amounts pursuant to the above are calculated by using as a basis the gross income earned from the sale of energy. As a result, the amount to be separated imposes a contribution to the Authority without considering the results of its operational and maintenance expenses, which are necessary for its financial stability.

During the last ten years, the Authority could not separate the total contribution in lieu of taxes, pursuant to Sections 22(b)(1) and (b)(2), since its net income was not sufficient to cover the corresponding amount.

As provided in both sections, the Authority has the power to separate a lower amount to meet its contractual responsibilities with priority over said contribution. However, the separated amount, pursuant to the abovementioned Section, covered the electric power consumption of the municipalities. As a consequence, this insufficiency caused controversies between the municipalities and the Authority regarding the interpretation of the Act as to the calculation of the contribution in lieu of the taxes that the Authority is bound to pay to the municipalities. It is therefore necessary to amend the present statute to establish an accurate calculation formula, in harmony with the laws in effect and realistic in terms of the financial

capacity of the Authority and the legitimate claims of the municipal governments.

The Authority, committed to the welfare of the municipalities and with the intention to harmonize and address the needs thereof, as well as meeting its responsibilities, hereby proposes an amendment to its organic Act to modify the calculation of the contribution in lieu of taxes.

To such purposes, the Authority shall separate, on account of the contribution in lieu of taxes to the municipalities, a sum equal to (i) the actual electric power consumption of each municipality, or (ii) the average contribution in lieu of taxes paid by the Authority to the municipalities during the five (5) fiscal years preceding the year in which the contribution in lieu of the corresponding taxes was made, (iii) at twenty (20) percent of the sum remaining after deducting from its net income, as defined in the Trust Agreement of 1974, the costs of the current residential subsidy, rural electrification subsidy, public irrigation systems, and the programs or subsidies granted by the laws in effect, whichever is higher.

The Authority understands that, in this manner, in addition to responsibly ensuring its financial stability, it can guarantee the municipalities, with more certainty, an estimate of the amount to be distributed on behalf of the contribution in lieu of taxes, which shall help them in the drafting of the operational budget.

On the other hand, calculating the contribution in lieu of taxes on the basis of the net income, as defined in the Trust Agreement, leaves no room for interpretations as to the amount corresponding to the municipalities as such contribution. However, the amendment herein proposed expressly recognizes the guarantee of payment of the contractual obligations before

separating the contribution in lieu of taxes for the municipalities, for the authority to comply with its Trust Agreement.

In order to maintain future economic stability of the Authority and the development of Puerto Rico and to address the urgent need of the municipalities, Section 22 of “Puerto Rico Electric Power Authority Organic Act,” is hereby amended as provided below.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Section 22 of Act No. 83 of May 2, 1941, as amended, is hereby repealed and a new Section 22 is hereby established to read as follows:

“Section 22.- Tax Exemptions; Use of Funds

(a) (1) It is hereby found and declared that the purposes for which the Authority is created and shall exercise its powers are: the conservation of natural resources, the improvement of the general welfare, and the promotion of commerce and prosperity and are public purposes in all respects for the benefit of the Commonwealth of Puerto Rico, and therefore, the Authority shall not be required to pay any taxes or assessments on any property acquired by it or under its jurisdiction, control, possession, or supervision, or on its activities in the operation and maintenance of any undertaking; or on the income derived from any of its undertakings or activities. Persons who enter into contracts with the Authority shall not be subject to the government contract tax imposed by sections 1001 *et seq.* of the Internal Revenue Code of 1994, Act No. 223 of November 30, 1995, as amended.

(2) Natural or juridical persons who have signed contracts with the Authority for the purchase and sale of electric power through a

cogeneration plant or small producer of electric power shall be exempted from the payment of Internal Revenue stamps and registration fees in the granting and registration of public instruments in the Property Registry of Puerto Rico, including, but without being limited to, the sale, transfer, exchange, donation, usufruct and/or leasing of real property for the establishment of said cogeneration plant or small producer electric power, as well as the transfer, settlement, extension, modification, discharge of liens on real or personal property, for financing and refinancing of the establishment and operation of said plant. The Authority shall certify, in an authentic document, the capacity for appearing in any of said public instruments as a natural or juridical person who has signed a contract with the Authority for the purchase and sale of electric power through a cogeneration plant or of a small producer of electric power. This exemption shall be granted, provided that, proof that it is beneficial for the consumers is presented to the Electric Power Authority through an analysis.

(b) The Authority shall devote a sum equal to eleven (11) percent of its gross income, derived from the sale of electric power to consumers as a contribution from the current fiscal year, to offset of the tax exemption. Said sum shall be distributed as provided below:

1. The Authority shall cover the cost of the current residential subsidy, corresponding to fiscal years subsequent to fiscal year 1990-91, the sum resulting after making the contribution to its internal funds. Also, the Authority shall cover with this sum the subsidy or grant programs fixed by

the laws in effect as of June 30, 2003, rural electrification programs and public irrigation systems and any debt accrued on account of the subsidies mentioned in this paragraph.

2. Commencing on fiscal year 2002-2003, the Authority shall deduct from its net income, as defined in the Trust Agreement in effect, the costs of the subsidies or grants, in accordance with the provisions of the previous subsection 1. Of the remaining amount, the Authority shall distribute twenty (20) percent among the municipalities as contribution in lieu of taxes, or a sum equal to the actual electric power consumption of each municipality or the average paid by the Authority as contribution in lieu of taxes to the municipalities, in the five fiscal years preceding the fiscal year in which the corresponding payment of the contribution in lieu of taxes is made, whichever of the three (3) sums is higher. This shall be a moving average and shall be calculated annually. Said sum shall be paid to each municipality in which the Authority directly distributes electric power to the public. This contribution to be distributed among the municipalities shall be apportioned in proportion to the electric power billing for public lighting and public facilities of each municipality during said fiscal year. In the event the net income available of the Authority is not sufficient in any given fiscal year for the Authority to pay the total contribution in lieu of taxes, determined as provided herein, the insufficiency shall be paid within three years. The Authority may deduct from such payment any

sum payable and owed to the Authority by any municipality at the end of the current fiscal year. The deducted sums may be applied for the payment of debts, according to their age, regardless of whether the debt is for electric power consumption or for other services. Provided that, in events of force majeure, such as: hurricanes, wars, or events that cause disproportionate fluctuations in the price of fuel, the Authority shall pay, on account of the contribution in lieu of taxes, an amount in accordance with its net income available. Provided further, that in the case of force major in which the federal government or private insurance companies compensate the Authority for income loss, such compensation shall be added to the gross income of Authority earned during the year such compensation is received for purposes of the computation of the contribution in lieu of taxes to be paid to the municipalities on said year. For the purposes of this contribution, net income is defined, as provided by the Trust Agreement of 1974 in effect, as gross income less current expenses, less subsidy or grant costs provided by the applicable laws in effect as of June 30, 2003. The Trust Agreement of 1974 defines the term current expenses, as, and we quote: “the Authority’s reasonable and necessary current expenses of maintaining, repairing, and operating the system and shall include, without limiting the generality of the foregoing, all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses

related to operation and maintenance, fees and expenses of the Trustee, the 1947 Trustee, the paying Agents, and of the paying agents under the 1947 Indenture, legal expenses, any payment to pension or retirement funds, and all other expenses required to be paid by the Authority under the provisions of the 1947 Indenture, this Agreement or by law, or permitted by standard practices for public utility systems, similar to the properties and business of the Authority and applicable in the circumstances but shall not include any deposits to the credit of the Sinking Fund, the Reserve Maintenance Fund, the Subordinate Obligations Fund, or the 1947 Sinking Fund or deposits under the provisions of Sections 511, 512, and 513 of the 1947 Indenture.”

Not later than April 30 of each fiscal year, the Authority shall notify to the municipalities the estimate of the contribution in lieu of taxes corresponding to the next fiscal year. Said estimate shall be subject to quarterly revisions of the Authority until March 31 of the year to which the payment of the contribution in lieu of taxes corresponds, provided that, such contribution in lieu of taxes shall be made directly to the municipalities not later than November 30 of the next fiscal year to which said payment corresponds. The Authority shall submit to the Office of the Commissioner of Municipal Affairs a thorough report on the application of the formula and copy of its financial statements or report to bondholders, including its gross income, deductions of current charges for determining the



net income subject to the calculation of the contribution in lieu of taxes and a certification in which external auditors of the Authority state the correctness of the calculation of the contribution in lieu of taxes of the municipalities. Likewise, it shall also inform the sum of the electric power billing of each municipality and the cost of the payment of subsidies and grants, among others.

3. As provided above, the Authority shall set aside the remaining of the separated sum as an internal funds contribution to finance the Capital Improvements Program and for corporate purposes thereof.

The obligations assumed by the Authority in the Trust Agreement in effect and any other that may be assumed in the future, which secures the bonds of the Authority shall have priority over any contribution granted in this Section. The Authority shall not be bound to make any payment in any fiscal year in excess of the amount of the net income available for such purposes, and shall not be required to repay any previous fiscal year's deficit for such payments, except as provided in the previous paragraph 2.

(c) A partial credit shall be granted in the bill of every consumer under a residential rate, who is eligible to receive said credit, pursuant to the regulations adopted from time to time by the Authority, and who has a maximum monthly consumption of up to 400 kwh or less; or a maximum bimonthly consumption of 800 kwh or less, which credit would be equal to the amount that, through regulations, the consumer would have had to pay in the

corresponding period indicated, as a result of the adjustment for the adjusted fuel price up to a maximum of thirty (30.00) dollars per barrel. Provided, that the adjustment for any excess in the cost of fuel above the maximum price adopted per barrel, shall be paid by the consumer, in addition to any other charge resulting from the increase in the price of fuel. Provided further, that those users who are entitled to said credit pursuant to the Authority's regulations in effect, and who have a maximum monthly consumption of up to 425 kwh, or a maximum bimonthly consumption of up to 850 kwh, shall be entitled to the aforesaid credit up to 400 kwh a month or 800 kwh bimonthly. It being understood that for the purposes of sections 1 through 27 of Act No. 83 of May 2, 1941, as amended, the monthly or bimonthly periods, as the case may be, shall have the number of days of the billing cycles of the Electric Power Authority.

Upon request, an additional credit shall be granted, equal to the total consumption of the equipment used by a person to preserve his/her life. All requests shall include a certification issued by the Department of Health as to the need of the applicant to use the electrical equipment to preserve his/her life and the equipment needed by him/her. In addition, all requests shall include a certification of the Department of the Family to the effects that the applicant is an indigent person, as such term is defined by the Department. The Authority shall determine through regulations the methods for calculating the consumption of vital equipment and the Health and Family Departments shall regulate everything concerning the certifications which shall be issued pursuant to

Sections 1 through 27 of Act No. 83 of May 2, 1941, as amended. In cases in which the person who needs to use the electronic equipment to preserve his/her life is not the subscriber, said right shall be transferred to the subscriber in charge of paying the bill for the electric power consumed by person who needs the equipment.

The Electric Power Authority shall adopt through regulations, pursuant to the provisions of Section 1 *et seq.* of the “Uniform Administrative Procedure Act,” Act No. 170 of August 12, 1988, as amended all those provisions it deems pertinent, necessary with regard to the credit granted for fuel adjustment and for persons with disabilities, by virtue of Sections 1 through 27 of Act No. 83 of May 2, 1941, as amended. Provided, that the maximum cost of this credit shall not exceed \$100 million per year.

- (d) For the purpose of expediting the procurement of funds by the Authority, which allow it to attain its corporate purposes, the bonds issued by the Authority and the income earned therefrom shall always be and remain tax exempted.
- (e) Any provision in which reference is made to Section 22 of Act No. 83 of May 2, 1941, as amended, shall be deemed as amended by the provisions herein stated.

## Section 2.- Transitory Provisions

- (a) The Electric Power Authority may execute an accord and satisfaction agreement in those cases in which controversies with the municipalities have arisen with regard to the interpretation and implementation of the mechanism for the payment of the contribution in lieu of taxes. The accord and satisfaction

agreement shall a bargaining-type agreement through which the Authority, in fiscal year 2003-2004, is bound to contribute to the municipalities that enter into the same a maximum amount of cash; and commencing on fiscal year 2003-2004 up to a maximum amount of money for electrical infrastructure works, which shall be distributed as provided below:

- (1) The Authority shall designate a special contribution in lieu of taxes for an amount of up to sixty-eight (68,000,000) million dollars to be set aside in fiscal year 2003-2004 to be distributed in cash among the municipalities. The municipality entering into the accord and satisfaction agreement shall obtain its corresponding portion of the sixty-eight (68,000,000) million dollars, through the Government Development Bank for Puerto Rico. The Government Development Bank for Puerto Rico shall provide financing and the Authority shall pay and guarantee said financing with the moneys the Authority sets aside for the special contribution in lieu of taxes for an eight-year (8) term. The special contribution herein considered is additional to the contribution in lieu of taxes described in paragraph 2 of Section 1 of this Act.
- (2) The Authority shall set aside a budget, in its program of capital improvements, of up to fifty-seven (57,000,000) million dollars between fiscal years 2003-2004 through 2006-2007 for the execution of electrical infrastructure works in the municipalities.

For those municipalities that settle their claims against the Authority, the Authority shall distribute the corresponding portion of both amounts in proportion to the electric power consumption billing for public lighting and facilities during fiscal year 2001-2002 for each yielding municipality that settles.

- (b) The Authority shall pay the corresponding portion after executing a contract with the municipality, which shall require the approval of the Municipal Assembly. However, any provision to the contrary contained in Act No. 81 of August 30, 1991, as amended, known as the “Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991,” shall not affect any contract previously agreed upon for the purposes provided herein. Provided, that the accord and satisfaction agreement referred to in this Act shall be voluntary in nature for each municipality and those municipalities that do not enter into the same may continue with the corresponding action in a forum with jurisdiction and competence without being subject to the transactional terms authorized herein.

### Section 3.- Severability

If any provision of this Act is declared unconstitutional or null by a competent court, the remaining provisions shall remain in full force and effect.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 255 (H.B. 4245) (Conference) of the 7<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to repeal Section 22 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” to establish a new Section 22, which shall provide a new formula to determine the contribution to compensate the effect of tax exemptions,

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

In San Juan, Puerto Rico, today 25<sup>th</sup> of October of 2006.

Francisco J. Domenech  
Director