

(S.B. 1513)

(No. 233)

(Approved October 31, 2006)

## **AN ACT**

To amend Section 21 of Act No. 70 of June 23, 1970, as amended, known as the “Puerto Rico Solid Waste Authority Act,” in order to clarify and broaden its scope and ratify the public policy as defined by the Solid Waste Authority in its work plan in relation to the management of solid waste.

### **STATEMENT OF MOTIVES**

The use of fossil fuels, carbon, natural gas and petroleum for the production of electric power constitutes one of the main sources of environmental pollution in Puerto Rico. Burning said products for generating energy is responsible for producing solid waste known as critical pollutants such as CO<sub>2</sub>, NoX, SO<sub>2</sub>, PM<sub>10</sub> and Mercury. Likewise, the energy generated from fossil fuels constitutes the greatest source of the industrial chemical waste included in the “Toxic Release Inventory.” Said TRI Chemicals, as denominated by the Federal Environmental Protection Agency (EPA), constitute the carcinogenic chemical waste that represents the greatest risk to the health and the environment. For example, every 1,000 (Kwh.) of electric power produced by burning fossil fuels generates an emission of 2,200 lbs. of CO<sub>2</sub>, 15 lbs. of SO<sub>2</sub>, NoX and PM<sub>10</sub>, 3.5 oz. of Mercury, 440 pounds of trash and almost an ounce of TRI Chemicals.

When the solid waste produced by generating energy is discharged in gaseous form - as denominated by the EPA, solid waste includes gaseous

waste - it becomes very difficult to recover or recollect said waste. It is then that, regarding the emissions of solid waste in gaseous form, the most effective and cost efficient way of protecting the natural resources and the health of the population is to avoid and decrease the burning of fossil fuels.

Scientific studies clearly evidence the environmental benefit of substituting the generation of electric power with petroleum with clean energy methods. In the matter of generating energy, 1,000 Kwhr produced with wind or solar power would prevent and eliminate the emission of 1.5 tons of solid waste.

Besides the environmental benefits, generating energy with renewable sources guarantees the stabilization of electric power costs. In the first place, the production of electric power through renewable means is not subject to the high market prices of its raw material. Contrary to the case of generating electric power with fossil fuels, whose cost increases every day and which is subject to market fluctuations, the sources of renewable energy are free of cost. Furthermore, it can be foreseen that in the future the production of energy by burning fossil fuels shall be subject to an additional federal tax of two cents per kilowatt/hour, a fact which will make the production of energy with renewable sources more cost-effective.

The policy of the Commonwealth of Puerto Rico is and has been to foster the development of industries for the management of pollutant solid waste. To those effects, Act No. 70 of June 23, 1970, known as the "Puerto Rico Solid Waste Authority Act," provides that a tax credit of 50% shall be granted on the investment in those facilities for the treatment and/or recovery of solid waste. The present Act is hereby approved and the public policy of the Government of Puerto Rico ratified for the purpose of broadening the scope of Act No. 70 of June 23, 1970, and declare that its

provisions shall include investments in projects that seek to reduce or eliminate pollutant solid waste, including investments in the production of energy with clean renewable sources.

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

Section 1.-Section 21 of Act No. 70 of June 23, 1970, as amended, known as the “Puerto Rico Solid Waste Authority Act,” is hereby amended to read as follows:

“Section 21.-Tax Credit for Investment in Solid Waste *Reduction*, Disposal and/or Treatment Facilities. Subject to the provisions of subsection (c) of this Section, any investor, including a participant, as defined in subsection (i) of this Section, shall be entitled to a credit for his/her investment in solid waste *reduction*, disposal and or treatment facilities as this term is defined in subsection (g) of this Section and hereinafter denominated ‘Exempt Facilities,’ equal to fifty percent (50%) of his/her eligible investment as defined in subsection (j) of this Section of his/her investment in Securities of a Securities Fund or Funds, as this term is defined in subsection (h) of this Section, to be taken in two (2) installments: the first half of said credit during the year in which the *reduction*, disposal and/or treatment facility obtained the needed financing for the total construction of the *reduction*, disposal and/or treatment facility and the balance of said credit in the following year. If an escrow account is established and it is dissolved because the financing needed for the total construction of the *reduction*, disposal and/or treatment facility, the participants shall not be entitled to the credit. Any eligible investment made prior to the date for filing the income tax return, as provided in Act No. 91 of June 29, 1954, as amended, known as the ‘Income Tax Act,’ shall qualify

for the tax credit of this Section in the tax year for which said income tax return is filed, provided it meets all the requirements of this Section.

The credit for investment in reduction, disposal and/or treatment facilities allowed by this Section shall neither apply nor be available in the event that the participant acquires securities from a Securities Fund or Funds in a primary issue, to substitute other securities from a fund that were sold, exchanged or transferred in any manner by said participant and with respect to which the participant shall neither acknowledge, in whole or in part, the profit derived from said sale, exchange or transfer, nor the participant who is the developer of the reduction, disposal and/or treatment facility in which the fund made an eligible investment.

(a) Credit Carry Over – Any credit for investment in reduction, disposal and/or treatment facilities not used in a tax year may be carried over to subsequent tax years until it is used in its totality.

(b) Maximum Amount of Credit – The maximum amount of credit for investment in reduction, disposal and/or treatment facilities for each project that shall be available to investors and participants shall be of fifty percent (50%) of the cash contributed by the investors and the participants through the Fund, to the Exempted Facilities in exchange for shares or stock in said Exempt Facilities, whichever is less. The maximum amount of credit available shall be distributed among the investors and the participants in the proportion determined by them. The Exempted Facility shall notify the distribution of the credit to the Director of the Authority, to the Secretary of the Treasury and its stockholders on or before the date provided by the Income Tax Law for filing the income tax return for its first operational year, including any extension granted by the Secretary of the Treasury for

filing the same. The eligible distribution shall be irrevocable and obligatory for the Exempted Facility and for the investors and participants.

(c) Adjustment of the Base and Recovery of the Credit

(1) The base of any eligible investment shall be reduced by the amount taken as credit for investment in reduction, disposal and/or treatment facilities, but shall never be reduced to less than zero.

(2) The Exempted Facility shall render an annual report to the Director of the Authority and to the Secretary of the Treasury with a breakdown of the total investment made in the project by the date of said annual report, within the term of three (3) years from the date of the notice related to the distribution of credit as described in subsection (b) of this Section.

(3) Once the term of three (3) years from the date of the notices described in subsection (b) of this Section has elapsed, the Director of the Authority shall determine the total investment made by the Exempted Facility. Should the credit for investment in the reduction, disposal and/or treatment facility taken by the investors exceeds the credit computed by the Director of the Authority based on the total investment made by the Exempted Facility in the project, said excess shall be owed as income tax to be paid by the investors in two installments beginning on the first tax year following the date of expiration of the aforementioned term of three (3) years. The Director of the Authority shall notify the Secretary of the Treasury about the excess credit taken by the investors.

The three (3) year term may be postponed by the Director of the Solid Waste Authority through an order issued by the latter, but never for an additional period of more than two (2) years.

(4) The provisions on the recovery of credit for investment in the reduction, disposal and/or treatment facilities of the above clause (3) shall not apply to the participants and investors that are not developers.

(d) Credit for loss – Any loss suffered from the sale, exchange or other manner of disposal of an eligible investment or the securities of a fund by an investor or participant that is not a developer, shall be deemed to be a capital loss, but said investor or participant, by choice, may take said loss as a credit against the tax determined in the tax year of said loss and in the following four (4) tax years. The amount of the loss that may be taken as credit in any of the aforementioned years may not exceed one third (1/3) of the loss. Any loss taken as credit against the income tax shall reduce the base of the eligible investment or of the securities of a fund in the same amount as the credit taken, but said base shall never be reduced to less than zero. The option of taking the loss as credit against the income tax shall not be allowed if the base of the eligible investment or of the securities of a fund equals zero. For the purposes of determining the amount of the credit for loss, the base of the shares in a special partnership shall not be adjusted to show the increases to such a base calculated according to Supplement P of the Tax Law. On the other hand, any reduction in the base determined according to said Supplement P shall be acknowledged for the purpose of computing the credit for loss but only up to the total tax benefit derived by the investor or the participant in the transaction or event that led to the reduction in the base under Supplement P.

The total amount of the credit for loss may not exceed ten percent (10%) of the total cost of the solid waste reduction, disposal and/or treatment facility. The investors and participants who obtained, or otherwise transferred credits for investment in a solid waste reduction, disposal and/or

treatment facility as a result of their eligible investment or their investment in securities of a Fund, shall distribute among themselves the right to benefit from the credit using the mechanism provided in Section 21(b) of this Act.

Any excess in the credit so granted on the tax determined for the aforementioned five (5) tax years may not be taken as a deduction nor may a credit be carried back or carried over to another tax year.

(e) Assignment of the credit

(1) After the date of the notice concerning the distribution of the credit for investment in reduction, disposal and/or treatment facilities provided in subsection (b) of this Section, the credit provided by this Section may be assigned, sold or otherwise transferred to any other person in its totality or partially by an investor or participant who is not the developer.

(2) The base of the eligible investment shall be reduced by the value of the assigned credit for investment in reduction, disposal and/or treatment facilities.

(3) The investor or participant who has assigned all or part of his/her credit for investment in reduction, disposal and/or treatment facilities, as well as the acquirer of said credit, shall notify the Secretary of the Treasury about the assignment through a statement to that effect that shall be included with his/her income tax return for the year in which the assignment of the credit for investment in reduction, disposal and/or treatment facilities is made. The statement shall contain that information that the Secretary may deem pertinent through Regulations promulgated to such effects.

(4) The money or the value of the property received in exchange for the credit for investment in reduction, disposal and/or

treatment facilities shall be exempt from taxation under the Income Tax Law, for up to an amount equal to the amount of the credit assigned.

(f) Tax on Profits in the Case of Sale – Any profit in the case of a sale, exchange or other disposition of an eligible investment or securities of a Fund or Funds, shall be deemed as capital gains and the excess in the long term net capital gains over the short term net capital losses shall be subject to taxation as provided by the Income Tax Law.

(g) Solid Waste Reduction, Disposal and/or Treatment Facilities – shall mean those businesses exempted under Section 2(e)(24) of Act No. 8 of January 24, 1987, as amended, known as the Puerto Rico Tax Incentives Act and under Sections 2(d)(9) and 2(e)(24) of Act No. 135 of December 2, 1998, as amended, known as the Tax Incentives Act of 1998, devoted to facilities for sanitary landfills, the production of energy with clean renewable sources and other technologies approved by the Authority that are environmentally safe.

(h) Securities Fund or Funds – shall mean any fund, corporation or partnership, including any partnership that has conducted an election under Supplement P of the Income Tax Act and that as an investment entity operates according to the purposes of and in compliance with the regulations established by the Executive Director of the Authority and the Secretary of the Treasury.

(i) Investors – shall mean any person who makes an eligible investment. When the person who makes the eligible investment is a Fund, the investors and not the Fund shall be deemed to be the participants in the Fund.

(j) Eligible investment shall mean:

(1) The cash amount that has been contributed to an exempt facility to be used in a solid waste reduction, disposal and/or treatment facility, in exchange for: (i) shares in the corporation, if the exempt facility is a corporation; or (ii) the participation or the increase in the participation in a common partnership or enterprise;

(2) The value of the land contributed to an exempt facility to be used in a solid waste reduction, disposal and/or treatment facility, in exchange for (i) shares in the corporation, if the exempt facility is a corporation; or (ii) the participation or the increase in the participation in a common partnership or enterprise, if the exempt facility is a common partnership or enterprise. The value of the land contributed shall be the fair market price, reduced by the balance of the mortgages that encumber the land at the moment of the contribution. The fair market price shall be determined in the basis of an assessment of said land conducted by one or more professional assessors duly licensed in Puerto Rico. The Director of the Authority shall approve the determined net value of the land before the same is contributed to the exempt facility;

(3) The cash contributions made by a fund to a public corporation of the Commonwealth of Puerto Rico or any of its subsidiaries in exchange for: (i) the shares or participations in an exempt facility that possesses said corporations or subsidiaries or, (ii) the subordinate debt of an exempted facility with said corporations or subsidiaries;

(4) only those investments whose funds are used in their totality solely and exclusively for the construction of a new solid waste reduction, disposal and/or treatment facility or for the substantial renovation or expansion of an existing solid waste reduction, disposal and/or treatment

facility, as defined in this Section, shall be deemed to be eligible investments. Any other investment whose funds are not used directly and in their totality for the substantial construction, renovation or expansion of an exempt facility, shall be excluded from the definition of eligible investment in this Section.

In case one of the contributions described in clauses (1) or (2) of this subsection (j) is made, said contribution shall be deemed to be an eligible investment only if said investment is made in the primary issue of the shares or participations.”

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. 233 (S.B. 1513) of the 4<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Section 21 of Act No. 70 of June 23, 1970, as amended, known as the “Puerto Rico Solid Waste Authority Act,” in order to clarify and broaden its scope and ratify the public policy as defined by the Solid Waste Authority in its work plan in relation to the management of solid waste,

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

In San Juan, Puerto Rico, today <sup>th</sup> of February of 2007.

Francisco J. Domenech  
Director