

(H. B. 3045)

(No. 275)

(Approved December 21, 2006)

AN ACT

To amend subsection (k) of Section 1 of Act No. 40 of May 1, 1945, as amended, known as the “Aqueduct and Sewer Act of Puerto Rico,” to amend the definition of Government Director in order to reflect the amendment made through Act No. 92 of March 30, 2004, through which the President of the Government Development Bank and the Secretary of the Department of Transportation and Public Works, were substituted as ex officio members of the Board of Directors of the Aqueduct and Sewer Authority (AAA), by two (2) private citizens to represent the municipalities; to amend subsection (b) of Section 3 for the purpose of clarifying that the only Directors members of the Board of Directors, who shall not receive compensation or per diems for the Board meetings they attend or for conducting the business entrusted to them by the Board are the ex officio Directors; and to amend Section 11 in order to increase the maximum limit for the acquisition or performance of works to one hundred thousand (100,000) dollars, without notice of bid.

STATEMENT OF MOTIVES

The Aqueduct and Sewer Authority of Puerto Rico (hereinafter the Authority/AAA, Spanish acronym), is a public corporation created by virtue of Act No. 40 of May 1, 1945, as amended, for the purpose of providing adequate water and sewer services to the citizens, as well as any other service or installation incidental or associated thereto. The commitment of the Authority is to provide these services in the most efficient, economic and reliable manner possible in harmony with the environment, health and safety of the People of Puerto Rico.

On March 31, 2004, Act No. 92, which amended the Organic Act of the AAA, was approved with the main purpose of modifying the administrative structure of the Authority in view of the government's retaking of the operation and maintenance of the Commonwealth Aqueduct and Sewers System. The regionalization of the Authority was formalized as a result of these changes.

The work performed by this public corporation is complex, because it serves drinking water to some 3.8 million people in Puerto Rico, of which 1,100,000 are residential clients, 77,300 commercial or government clients, and approximately 1,500 are industries. With respect to the treatment of used water, the sanitary sewer systems serve, among residential, commercial, and industrial clients, more than fifty percent (50%) of the population. This service is made possible through an integrated system of 130 filtration plants, 60 sewer plants, 12,000 linear miles of drinking water, and 6,000 linear miles of sewers.

According to this frame of reference, the experience gained after the retaking by the government of this utility dictates that it is necessary and important to temper the faculties and powers conferred by law with respect to acquisitions and contracting, specifically, the parameters of the requirement of bids under the prevailing goods and services market conditions. At present, there is a maximum limit of twenty thousand (20,000) dollars as to the power of the Authority for purchases and contracts for supplies and construction without notice of bid. This maximum limit was established more than twenty-five (25) years ago by Act No. 148 of June 18, 1980, which increased said maximum from ten thousand (10,000) to twenty thousand (20,000) dollars. The cost of raw materials, labor and construction materials has increased substantially in these twenty-five (25) years, rendering this legislative provision ineffective. Most of the projects, works and improvements carried out by the Authority, regardless of how small and simple they may be, exceed twenty thousand (20,000) dollars, causing the efforts of the

Authority to be delayed and become more expensive, since almost all of its contracting and purchases must go through the bidding process.

This situation becomes even more serious in the technological area since the changes produced by modernization, as well as the new efficiency practices, have resulted in the design and implementation of complex high technology systems and equipment. It should be mentioned that the Aqueduct and Sewers Authority is at the vanguard in the use of technological developments to improve the rendering of the services. The billing and claims systems, as well as various components of the infrastructure of the Commonwealth Aqueduct and Sewers System operate or shall operate in a mechanized manner through high technology equipment. The costs related to the maintenance and repair of this equipment have increased in the last few years, exceeding the margin for acquisitions without notice of bid provided by law. This limitation in the immediate acquisition of technological equipment, typical of maintenance and ordinary repairs, threatens the uninterrupted rendering of the services.

This Legislature has recognized the importance of extending the power for the purchase of goods and services by government entities in view of the economic situation of the Island, in order for the same to achieve their purposes. In the case of the municipal governments, through of Act No. 27 of October 7, 2005, the margins for the purchase of goods and services without notice of bid were increased. With respect to public construction or improvement works, this margin was increased from forty thousand (40,000) to one hundred thousand (100,000) dollars. It arises from the Statement of Motives of said Act, that the increase in the cost of construction and articles of consumption are parameters that respond to the economic reality the Island is going through and which make this legislative action necessary.

Furthermore, it is known by all that the rise in the cost of petroleum and its by products has increased the cost of maritime-terrestrial transport, resulting in an increase in the cost of raw materials for construction products, as shown by the price of steel and other materials typical of the components of the Commonwealth Aqueduct and Sewers System. This amendment is developed on the basis of the current operating expenses and the value of the goods in the market, which shall expedite the public efforts made by the AAA for the benefit of the People.

On the other hand, through this legislative measure the definition of Government Director is amended so that is tempered to the most recent amendment to the Organic Act of the AAA, and to expressly provide that the government directors shall be the following members of the Board of Directors: the Executive Director of the Mayors Association and the Executive Director of the Mayors Federation; the President of the Planning Board of Puerto Rico, and the Executive Director of the Electric Power Authority. The Secretary of Transportation and Public Works and the President of the Government Development Bank for Puerto Rico are hereby removed from this definition.

Through this Act, it is clarified that the members of the Board of Directors of the Authority who are not ex officio directors shall receive compensation or per diems for each Board meeting they attend or when executing tasks entrusted by it. The standard in effect limits the compensation for "Independent Directors" and excludes the Executive Directors of the Mayors Federation and the Mayors Association, as well as other Government Directors from the right to receive compensation.

It must be mentioned that the Executive Directors of the Mayors Association and of the Federation are not public employees or officers by virtue of their positions as directors of the private entities that group the Mayors of Puerto Rico. Therefore, their functions do not originate from a public employment compensated

by the public treasury, which sets from aside from other Government Directors. Thus, the ethical principle that was to be to safeguarded by limiting the compensation of “Independent Directors” does not take effect with respect to them, who in all fairness, should be compensated in the same manner as the other Directors who are not public employees. In this manner, the legislative intention to reserve compensation for the members of the Board of Directors who do not earn a salary from the public treasury by virtue of their office is reiterated.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsection (k) of Section 3 of Act No. 40 of May 1, 1945, as amended, is hereby amended to read as follows:

“(k) Government Director. Means each of the two (2) representatives of the municipalities, which shall be the Executive Director of the Mayors Association and the Executive Director of the Mayors Federation, as well as each of the two (2) directors that hold the position of ex officio members of the Board of Directors of the Authority by virtue of holding the office of President of the Planning Board and Executive Director of the Electric Power Authority, pursuant to the provisions of Section 143 of this title.”

Section 2- Subsection (b) of Section 3 of Act No. 40 of May 1, 1945, as amended, is hereby amended to read as follows:

“....

(a) ...

(b) The duties of the members of the Board shall not be delegated. The Board shall meet as often as it is determined by the Board which shall never be less than once (1) a month. The Board members who are not ex officio directors shall receive compensation or per diems for each Board meeting they attend or when executing tasks entrusted by it.

The compensation or per diems they shall receive for each Board meeting they attend or when executing tasks entrusted by it shall be determined by the Board through regulation. The ex officio directors and the independent director who hold the office of Executive President of the Authority, if this should be the case, shall not receive remuneration or per diems for attending Board meetings or for other services rendered to the Board.”

Section 4.- Section 11 of Act No. 40 of May 1, 1945, as amended, is hereby amended to read as follows:

“Section 11.- Construction and Purchase Contracts

All purchases and contracts for supplies or services, except personal services made by the Authority, including contracts for the construction of its works shall be made through public bid. Provided, that when the estimated cost of the purchase or performance of the work does not exceed one hundred thousand (100,000) dollars, the expenditure may be carried out without notice of bid. However, competitive bidding shall not be required when:

...”

Section 5.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 275 (H.B. 3045) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (k) of Section 1 of Act No. 40 of May 1, 1945, as amended, known as the “Aqueduct and Sewer Act of Puerto Rico,” to amend the definition of Government Director in order to reflect the amendment made through Act No. 92 of March 30, 2004, through which the President of the Government Development Bank and the Secretary of the Department of Transportation and Public Works, were substituted as ex officio members of the Board of Directors of the Aqueduct and Sewer Authority (AAA), by two (2) private citizens to represent the municipalities; etc,

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

In San Juan, Puerto Rico, today 14th of December of 2007.

Francisco J. Domenech
Director