

(H. B. 4346)

(No. 234)

(Approved August 9, 2008)

## AN ACT

To amend Section 1-105 of Act No. 447 of May 15, 1951, as amended, known as the “Employees Retirement System of the Government of the Commonwealth of Puerto Rico,” for the purpose of granting all persons who were receiving a pension or benefits, or have vested rights that entitle them to receive a deferred pension under Act No. 447 of May 15, 1951, from the Puerto Rico Telephone Authority, and who were participants of the Government Retirement System at the time of the sale of said company in 1998, the right to obtain credit for any years of service left to be eligible for a pension for merit, whether such years have been already worked or are to be worked in any government branch, including the “Puerto Rico Telephone Company,” “Verizon,” or “Claro,” or the right to have their pension recalculated under the same terms; in the event that any such participants had withdrawn all their contributions, they may return the same so that they may avail themselves of the retirement benefits to which they were entitled under Act No. 447 of May 15, 1951; any interest on account of uncredited years in service and returned contributions shall be payable at a special simple interest rate, which shall not be greater than two and a half (2 ½) annual percentage rate; such participants opting to avail themselves of the payment plan benefit granted under Section 1 of this Act, may have not more than twenty (20) years of service left to be eligible for a pension for merit pursuant to Act No. 447, *supra*, which years of service may be creditable pursuant to the provisions of this Act; to avail themselves of the payment plan, participants shall pay in full the principal and interests on the contributions due for a term of five (5)-years or the term during which they pay through the Retirement System or the notice of the costs of the uncredited years in service; such participants shall not pay the employer contribution, in as much as a large portion of the proceeds from the sale of the Puerto Rico Telephone Company were deposited in the Retirement System to cover its actuarial deficit.

## **STATEMENT OF MOTIVES**

This Legislature is moved to serve justice to pensioners.

The Retirement System of public employees is of utmost importance for all government employees. Most of our public officials depend on such system as their sole support for their elderly life. At present, the Retirement System has approximately one hundred thousand (100,000) pensioners. Therefore, when the Puerto Rico Telephone Company was sold in 1998, the sales contract allotted two hundred million (200,000,000) dollars in order to protect the vested rights of employees in the various Retirement Plans of such company.

When the Puerto Rico Communications Corporation was dissolved in 1994, around one thousand (1,000) employees had accrued benefits under the Retirement System Administration of the Employees of the Government and the Judiciary. These employees were given the opportunity to choose if they wanted either to continue to be credited under the Retirement System Administration of the Employees of the Government and the Judiciary or to start participating in the PRTC plans.

Act No. 54 of August 4, 1997, authorized the process to sell the property of the Authority and its subsidiaries, as well as the procedures and public policy that would govern such sale. The sales contract approval process was also established by the Governor and the Legislature.

Through Joint Resolution No. 209 of June 24, 1998, the Legislature authorized the negotiating committee and the Board to execute the sales contract.

When PRTC was sold in 1999, the group of employees from PRTC who had continued to be credited under the Retirement System Administration of

the Employees of the Government and the Judiciary was constituted by nearly five hundred and twelve (512) employees. During the sales process, the Replacement Plans were amended so that the service accrued by participants of the Commonwealth Retirement System was acknowledged under the Replacement Plans.

Such sales contract provided in Article IX on Employees Benefits, Section 9.04(a), Capital Contributions by the Authority, that:

“(a) The Authority shall make capital contributions to the New Company, with respect to the Assets of the new Company owned by the former and without an increase in the outstanding assets of the New Company, in an aggregate sum of two hundred million (200,000,000) dollars (the ‘Capital Contribution’). The parties agree that considering the Capital Contribution to be made, neither the Authority nor any other Authority of the Government of Puerto Rico shall have any responsibility whatsoever with respect to (i) the increased liability under the Substitute Plan attributable to credit granted for past years of service to Participants of the Retirement System, nor (ii) any of the liabilities of unsubsidized pensions under the Plans, nor any of the liabilities of post-employment health and life insurance benefits as of the Closing Date (as a whole, the ‘Unsubsidized Liabilities’), even if it were to be determined that the actual Unsubsidized Liabilities of such employee plans exceed such aggregated Capital Contributions; further, the Authority shall not be entitled to any reimbursement or liquidation if the Unsubsidized Liabilities amount to a sum lesser than that of the aggregate Capital Contributions.

The employees of the Puerto Rico Telephone Authority, who were participants in the Government Retirement System at the time such company was sold in 1998, reaped the benefits of the two hundred million (200,000,000) dollars in terms of the “increased liability under the Substitute Plan attributable to the credit granted for past years in service to Retirement System participants.”

The contribution to the accrued retirement benefits was regulated by Section 6 of Act No. 54, *supra*. Such Section provided that:

No employee or former employee who is a participant of the Retirement System or his/her beneficiaries, shall lose the retirement benefits accrued as of the date of the sale. The buyer shall not have to make contributions to the Retirement System for the employees or former employees who participate in the same and shall not be liable for the obligations the Retirement System has with said persons. The buyer shall not reduce the accrued retirement benefits over which the employees have accrued vested benefits as of the date of the sale, and shall not reduce the pensions granted as of the date of the sale, under the P.R.T.C. retirement programs. The Authority and the buyer shall decide on a plan for compliance with this provision.

The Replacement Plans were created for these employees whereby eligible participants shall be reduced for the total of accrued benefits under the Retirement System Administration of the Employees of the Government and the Judiciary when such employees start to receive the benefits under the eligibility criteria of the Replacement Plans. Hence, employees who participated in the Retirement System Administration of the Employees of the Government and the Judiciary and are now participants of the Replacement Plans, upon retirement, would receive benefits from two plans:

the Retirement System Administration of the Employees of the Government and the Judiciary and the Replacement Plans, without having benefit duplication. The pension that employees would receive upon retirement under Replacement Plans parameters would be equal to that of any other employee under the same conditions, however, except that their full payment would be a combination of the contribution made to the Retirement System Administration of the Employees of the Government and the Judiciary and the contribution made to the applicable Replacement Plan.

The contribution of two hundred million (200,000,000) dollars established in the Agreement has been distributed between five thousand, three hundred and ninety-two (5,392) participants of the PRTC Pension Plan for Hourly Employees; five thousand, six hundred and thirty-nine (5,639) participants of the Retirement Plan for Salaried Employees of PRTC; and seven thousand, seven hundred and thirty (7,730) participants of the PRTC Lump Sum Retirement Plan among which were the five hundred and twelve (512) employees from the CCPR who, as of the date of the sale, were participants of the Commonwealth Retirement System.

However, PRTC employees and former employees are not satisfied with the retirement plans offered by such corporation, because if they had continued to have their services credited under the Retirement System of the Government, they would have received higher pensions at the time of their retirement. They were excluded against their will from the right to continue to have their services credited under the Commonwealth Retirement System. On the other hand, CCPR employees have not benefited at all from the two hundred million (200,000,000)-dollar fund and, even when they are eligible on account of years of service, such employees have not been able to avail themselves of the early retirement that PRT has granted to PRT Retirement

System employees, since they have not been credited for the years accrued in the government retirement system to be considered for retirement windows.

On one occasion, House Bill 2934 (1999), approved by the Legislature, but vetoed by the Governor, was proposed for this group of employees, so as to enable them to continue participating in the Commonwealth Retirement System after the sale, while keeping the same rights and benefits they had prior to the sale if they continued to work until they reached fifty-five (55) years of age, in order to obtain a pension based on seventy-five percent (75%) of their average income. Regarding pensions, both PRT and the Commonwealth Retirement System take into account the years credited into their respective systems; thus, employees would never have full pension benefits, because in order to receive such benefits, they need to be credited in just one retirement system, something that not only the PRT pension plan but also the Commonwealth Retirement System has prevented them from doing. Hence, the combination of both systems never fulfills vested rights in order to obtain a pension based on seventy-five percent (75%) of the average income. Therefore, employees are experiencing a decrease in their pensions, when as part of the sale, there was a two thousand million (200,000,000) fund destined to cover the Retirement plans and actuarial adjustments for its participants.

The employees have been appearing before this Legislature on countless occasions to express that the reduction of their pension when combining the two Retirement Systems, as established in the Puerto Rico Telephone sales agreement, and applying the formula under the PRT private retirement plan, leaves employees entitled to a maximum of fifty-seven percent (57%) upon having completed thirty (30) years of service and reached fifty-five (55)

years of age. Under the Retirement System, employees were entitled to a pension of seventy-five percent (75%) of their average compensation upon completing thirty (30) years of service and reaching fifty-five (55) years of age. It is a known fact that if an employee does not accrue the maximum years allowed within a retirement service, then his/her pension shall be much lower.

There are employees who have paid up to forty-three thousand (43,000) dollars for uncredited services in order to accrue more years in service under the Government Retirement System in the hope of receiving a pension of seventy-five percent (75%) of their average compensation upon completing thirty (30) years of service and reaching fifty-five (55) years of age.

With the approval of this measure, this Legislature aims to protect the vested rights of the Puerto Rico Telephone Authority employees, who were admitted into the Retirement System upon the sale of the Puerto Rico Telephone Company, in order to secure the protection of such employees.

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

Section 1.- Section 1-105 of Act No. 447 of May 15, 1951, as amended, is hereby amended, to read as follows:

“Section 1-105.- Membership

(A)...

(B)...

All persons who are receiving a pension, benefit or have vested rights that entitle them to receive a deferred pension under Act No. 447 of May 15, 1951, as amended, administered by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, who were working at the Puerto Rico Telephone Authority and were participants of the Government Retirement System at the time of the sale of such company in 1999, shall

have the right to obtain credit for the years in service required to be eligible for a pension for merit if such years have been already served or are being served in any government branch including the 'Puerto Rico Telephone Company,' 'Verizon' or 'Claro,' or the right to have the pension recalculated or readjusted under the same terms.

In the event that any such employee had withdrawn all his/her contributions, he/she may return the same in order to avail him/herself of the retirement benefits that he/she was entitled under Act No. 447 of May 15, 1951, as of the date in which such contributions were withdrawn and pursuant to the provisions of this Act.

The interest on account of uncredited years in service and returned contributions shall be payable at a special simple interest rate which shall not be greater than two and a half (2 ½) annual percentage rate .

Such participants, who opt to avail themselves of the payment plan benefit granted by this Act, may have not more than twenty (20) years of service left to be eligible for a pension for merit pursuant to Act No. 447, *supra*, which years in service may be credited according to the provisions of this Act and shall have ten (10) credited years in services within the system.

To be eligible to opt for the payment plan at a two and a half (2 ½) annual percentage rate accrued on the uncredited services or the return of withdrawn contributions, every participant must pay in full the amount due on principal plus interest on contributions owed after the PRTC Retirement Plan returns to the Retirement System any contributions held for each participant. To pay the amount due, the Participant shall have a five (5)-year period or the period of time left to complete thirty (30) years in service to be entitled to a pension for merit, whichever period is greater, to be counted as

of the date of approval of the payment plan by the Retirement System or the notice of the cost of uncredited services.

These participants shall not pay the employer's contribution, since a large portion of the proceeds of the sale of Puerto Rico Telephone were allotted to the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for cover its actuarial deficit.”

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. 234 (H. B. 4346)** of the **7<sup>th</sup> Session of the 15<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Section 1-105 of Act No. 447 of May 15, 1951, as amended, known as the “Employees Retirement System of the Government of the Commonwealth of Puerto Rico,” for the purpose of granting all persons who were receiving a pension or benefits, or have vested rights that entitle them to receive a deferred pension under Act No. 447 of May 15, 1951, from the Puerto Rico Telephone Authority, and who were participants of the Government Retirement System at the time of the sale of said company in 1998, the right to obtain credit for any years of service left to be eligible for a pension for merit, whether such years have been already, etc.

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

In San Juan, Puerto Rico, on the 30<sup>th</sup> day of April of 2010.

Solange I. De Lahongrais, Esq.  
Director