

(H. B. 1595)

(No. 162-2013)

(Approved December 24, 2013)

AN ACT

To amend Sections 2, 4, 4-A, 6, 7, 8-A, 9, and 10, and add Sections 4-C, 4-D, 10-A, and 10-B to Act No. 12 of October 19, 1954, as amended, known as the “Judiciary Retirement Act”; amend Section 1 of Act No. 98 of June 4, 1980, as amended; amend Section 1 of Act No. 37-2001, as amended; amend Section 3 of Act No. 155-2003, as amended; and amend Section 1 of Act No. 59 of June 10, 1953, as amended, known as the “Reciprocity Act”; to make prospective changes to the legal framework of the Judiciary Retirement System and establish a defined benefit and contribution Hybrid Program that shall apply to future judges of the General Court of Justice of the Commonwealth of Puerto Rico in order to preserve the fiscal stability of the Puerto Rico Judiciary Retirement System and reduce its current actuarial deficiencies; and for other related purposes.

STATEMENT OF MOTIVES

The retirement system for the judges of the General Court of Justice of the Commonwealth of Puerto Rico was established on the basis of Section 10 of Article V of the Constitution. Such section provides that: “The Legislative Assembly shall establish a retirement system for judges. Retirement shall be compulsory at the age of seventy years.” Puerto Rico Const. Art. V, §10, 1 L.P.R.A. We should always bear in mind the purpose of the Constitutional Convention of guaranteeing the independence of the judiciary and the separation of powers. *García-Martínez v. the Governor*, 109 D.P.R. 294, 297-298 (1979). Ernesto Ramos-Antonini, chair of the Committee on the Judicial Branch of the Constitutional Convention, stated that “[the] independence of the judiciary is guaranteed... through [different] characteristics included in the bill[;] [among which there is one] that establishes that the Legislative Assembly of Puerto Rico

shall approve a retirement system for judges. This tends to provide a sense of stability to judges in the performance of their functions, which are critical to our society.” *Journal of Sessions of the Constitutional Convention of Puerto Rico 452-453 (1961)*.

This Legislative Assembly approved Act No. 12 of October 19, 1954, as amended, known as the “Judiciary Retirement Act,” to fulfill its constitutional obligation of establishing an efficient and economically sound means of providing pensions and other benefits through the setting up of a system under which the judges of the Commonwealth of Puerto Rico would accumulate reserves for their old age, disability, separation from service or death. Today, sixty years after the approval of said Act, such retirement system is facing an economic crisis that affects its very existence. Hence, we are compelled to make reforms to the same.

This Legislative Assembly acknowledges that any reform to the pensions of the judges’ retirement system must achieve two main objectives: to prevent the Judiciary from being subject to retaliation, pressure, or improper influence that are contrary to the principles of judicial independence and separation of powers; and to preserve the System’s solvency because, otherwise, it would be impossible to fulfill the constitutional obligation of providing judges with a retirement system.

To preserve the solvency of the aforementioned Judiciary Retirement System of Puerto Rico, by providing it with greater financial stability and reducing its current actuarial deficiencies, this Legislative Assembly deems it necessary to make substantial changes to the legal framework of the Judiciary Retirement System and establish a defined benefit and contribution Hybrid Program that shall apply to future judges of the General Court of Justice of the Commonwealth of Puerto Rico. The measures adopted herein are necessary and reasonable to properly address the financial crisis that threatens the System’s actuarial solvency. Furthermore, these measures are in the public interest because they seek to

preserve the financial solvency of the Judiciary Retirement System while benefiting all of its members and addressing the fiscal crisis that the Island is undergoing, thus the welfare of the People of Puerto Rico will be safeguarded. *See, Trinidad-Hernández v. E.L.A.*, 2013 T.S.P.R. 73 (June 24, 2013); *see also, Bayrón-Toro v. Serra*, 119 D.P.R. 605 (1987).

In *Bayrón-Toro, supra*, the Supreme Court of Puerto Rico upheld the validity of the actions taken by the Administrator of the Retirement Systems which impaired the contractual obligations of the plaintiffs, since it deemed they were reasonable for preserving the financial solvency of the plan. In such case, our highest Court refrained from ruling whether similar action would apply to other kind of pension, such as those created by constitutional mandate. *Bayrón, supra*, p. 615. The circumstances that prompted this Act provide a clear answer: this Legislative Assembly has the authority and capacity to make reasonable changes as may be necessary to address the crisis of a retirement system that is guaranteed under the Constitution, even if it impairs some of the contractual obligations of the System's participants. If we fail to make such necessary and reasonable changes to meet some obligations that were incurred in times of prosperity in the Island, the judiciary retirement system could cease to exist, thus violating the constitutional mandate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A new Subsection (13) is hereby added, Subsections (13) to (15) are hereby renumbered as Subsections (14) to (16), and paragraph (b) of renumbered Subsection (14) of Section 2 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 2.- The words or phrases as used in this Act shall have the following meanings, except when the context clearly indicates a different meaning:

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...
10. ...
11. ...
12. ...
13. Hybrid Program –

Shall mean the retirement program in which any employee who enrolls for the first time in the Judiciary Retirement System of the Commonwealth of Puerto Rico after July 1, 2014, shall participate. The Hybrid Program is a combined plan of defined benefits and contributions. As to defined benefits, upon retirement, hybrid program participants shall be entitled to receive an annuity computed in accordance with the provisions of Sections 4-C and 4-D of this Act. As to the defined contribution, upon retirement, these participants shall be entitled to receive an annuity in accordance with the provisions of Section 10-A and 10-B of this Act.

14. Services –

Shall mean the services rendered...

(a) ...

(b) the participant returns to the System the contributions refunded to him/her as of the effective date of this Act by any other Retirement System under which he/she has rendered services, including any interest that said contributions may have accrued up to the date of the refund at the rate prescribed by said System, except that, to be eligible for a non-occupational disability pension exclusively, services rendered to the Government in a capacity other than as a judge shall be credited at any time, subject to the provisions of this subsection. Provided, that the contribution established in Section 10 of this Act shall increase by one fourth of one percent (0.25%) for participants who have enrolled for the first time in the System on or before June 30, 2014, in order to cover the cost of said benefit on the effective date of this Act. The services rendered during any fraction of a month shall be considered as a whole month of service; however, no more than one month of service shall be credited for all the services rendered during any calendar month.

For any new participant who enrolls in the Judiciary Retirement System of the Commonwealth of Puerto Rico after July 1, 2014 and is a Hybrid Program participant, it shall mean the services rendered as of the first day in which a person is appointed for the first time as a Judge of the General Court of Justice. For new System participants, services rendered to the Government in any capacity other than as a judge shall not be credited.

15. System –

...

16. Salary –

...
...”

Section 2.- Section 4 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 4.- Any participant who has enrolled in the System for the first time on or before June 30, 2014, and for any cause other than dismissal involving moral turpitude, ceases in his/her functions as a judge, shall be entitled to a retirement pension which shall begin on the date he/she specifies on the written application for retirement, subject to the following provisions:

- (a) ...
- (b) ...
- (c) ...

Any participant whose separation occurs...

Those participants, who without having reached...

The retirement pension of any participant shall be equal to twenty-five percent (25%) of the highest salary earned as a judge, plus 25/60 of one percent (1%) of the highest salary earned as a judge for each month of creditable service in excess of ten (10) years of service. In such cases, the retirement pension shall not exceed sixty percent (60%) of the highest salary earned as a judge. Notwithstanding the foregoing, participants who are eligible to apply for a retirement pension on or before July 1, 2015, may receive a higher pension, but in no case such pension shall exceed seventy-five percent (75%) of the highest salary earned as a judge.

Separation from service...”

Section 3.- Section 4-A of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 4-A.- Pension for Years of Service over Nineteen.-

Notwithstanding the provisions of the preceding Section 4, in the case of participants who have enrolled in the System for the first time on or before June 30, 2014, and without having reached the age of (60) have completed eight (8) years of service as a judge, have thirty (30) years or more of credited service and apply for a pension, said pension shall be equal to sixty percent (60%) of the highest salary earned as a judge. Participants who have completed eight (8) years of credited service as a judge and have reached the age indicated below, shall also be entitled to receive a pension:

Twenty ...

Twenty-one ...

Twenty-two ...

Twenty-three ...

Twenty-four ...

Twenty-five ...

Twenty-six ...

Twenty-seven ...

This annuity ...

Notwithstanding the foregoing, participants who are eligible to apply for a retirement pension as provided in this Section on or before July 1, 2015, may receive a pension equal to seventy-five percent (75%) of the highest salary earned as a judge.

The participants who...”

Section 4.- A new Section 4-C of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 4-C.- Computation of Average Compensation for New Participants.- The average compensation for new participants who enrolled for the first time in the System after July 1, 2014, shall be computed on the basis of the average salary of the participant during the last five (5) years of service. This five (5)-year period shall be the base period.”

Section 5.- A new Section 4-D is hereby added to Act No. 12 of October 19, 1954, as amended, to read as follows:

“Section 4-D.- Annuities for New Participants.-

A.- Annuity for Years of Service.- Employees who enrolled for the first time in the System after July 1, 2014 and are Hybrid Program participants may retire after the date on which they reach the age of sixty-five (65), have completed at least twelve (12) years of service as a judge, and have not requested or received a refund of accumulated contributions. The amount of the annuity to be received by Hybrid Program participants upon retirement shall be one point five percent (1.5%) of his/her average compensation multiplied by the number of years of credited services as a judge of the General Court of Justice.

B.- Early Retirement Annuity.- Employees who enrolled in the System for the first time after July 1, 2014, and separate from service after the date on which they reach the age of fifty-five (55) but before they reach the age of sixty-five (65), and have completed at least twelve (12) years of service as a judge shall be entitled to receive the annuity for years of service provided in Subsection (A) of this Section with an actuarial reduction which shall be computed based on the Actuarial Guidelines adopted by the Board of Trustees.

C.- Deferred Retirement Annuity.- Employees who enrolled in the System for the first time after July 1, 2014, and separate from service before reaching the age of sixty-five (65), and have completed at least twelve (12) years of service as a judge, and have not requested or received a refund of accumulated contributions shall be entitled to a deferred retirement annuity upon reaching the age of sixty-five (65). Such annuity shall be computed in accordance with the formula established in Subsection (A) of this Section.”

Section 6.- Section 6 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 6.- Disability Pensions.-

(A) ...

(B) ...

(C) ...

(D) Any participant who enrolls for the first time in the System after July 1, 2014 and is a Hybrid Program participant may be eligible to receive a disability pension, as provided in Subsections (A), (B), and (C) of this Section. However, the participant shall be eligible for the benefits established under this Section if he/she applies for disability before reaching the age of sixty-five (65), insofar as he/she has completed at least five (5) years of credited services. The amount of the disability pension whether occupational or not for Hybrid Program participants in no case shall be higher than the lesser of: (i) thirty-three percent (33%) of the average compensation computed on the basis of the salaries earned during the last five (5) years; or (ii) the sum of: (a) accumulated defined benefits up to the date of disability multiplied by the average compensation computed on the basis of the salaries earned during the last five (5) years, plus (b) an annuity for the disability period computed on the basis of the accumulated individual

contributions and the return thereon, divided by a factor to be determined by the actuaries of the System.

...”

Section 7.- Section 7 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 7.- Refunds.-

Any participant who enrolled for the first time in the System on or before June 30, 2014, shall receive a refund of his/her contributions to the System, including interest thereon, upon his/her separation from service if such participant so requests and is not eligible for a retirement or disability pension. Every participant receiving a refund shall thereby forfeit and be understood as waiving all vested rights and credited service in the System. If such person is subsequently reemployed in the Judicial Branch of Puerto Rico, he/she shall become a participant of the Hybrid Program defined in Section 2 of this Act as if he/she has entered the Judicial Branch for the first time after July 1, 2014.”

Section 8.- Section 8-A of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 8-A.- Pension for the Surviving Spouse and Children.-

(A) ...

(B) ...

(C) ...

(D) Hybrid Program participants shall be excluded from the benefits granted under this Section and the contribution provided in Subsection (C). Such participants may choose to avail themselves of an annuity by transfer as provided in Section 5 of this Act.”

Section 9.- Section 9 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 9.- Administration.-

The System created by this Act shall be considered as a trust which is separate and distinct from any government entity and shall be maintained exclusively for the purpose of providing retirement or disability pensions and other benefits to participants, pensioners, and beneficiaries. The Board of Trustees of the Employees Retirement System of the Commonwealth of Puerto Rico, described in Section 15 of Act No. 447 of May 15, 1951, as amended, shall be the Board of Trustees of the Puerto Rico Judiciary Retirement System and shall be responsible for carrying out the provisions of this Act and establishing the rules that shall govern the administration of this System. The Administrator of the Retirement Systems of the Commonwealth of Puerto Rico shall be the Administrator of the Puerto Rico Judiciary Retirement System and shall administer this System in accordance with the provisions of this Act.

...”

Section 10.- Section 10 of Act No. 12 of October 19, 1954, as amended, is hereby amended to read as follows:

“Section 10.- Finances.-

The contribution of every Retirement System participant shall be nine point five percent (9.5%) percent of his/her compensation as of the operative date of the System or as of the date he/she became a judge if his/her appointment is subsequent thereto. The participant shall continue making such contribution for as long as he/she is in active service, regardless of whether or not he/she has accumulated enough credits to assure him/her the maximum retirement pension provided by this Act.

The contribution of every participant who enrolls for the first time in the System after July 1, 2014 shall be twelve percent (12%) of his/her compensation. The participant shall continue making such contribution for as long as he/she serves as a judge. Upon retirement, these participants shall be entitled to receive an annuity computed as provided in Sections 4-C and 4-D of this Act, as well as an annuity on the basis of the defined contribution as provided in Section 10-A of this Act.

The Government shall contribute...”

Section 11.- A new Section 10-A is hereby added to Act No. 12 of October 19, 1954, as amended, to read as follows:

“Section 10-A.- Establishment of Contribution Accounts for the Hybrid Program of the New Judiciary Retirement System of the Commonwealth of Puerto Rico.-

The Administrator shall establish and maintain in the System an account with the individual and employer contributions of each participant who enrolls in the System after July 1, 2014 and is a Hybrid Program participant. Such account shall be credited and debited in accordance with Section 10 of this Act.

The Courts Administration Office may make matching contributions to the System, at its discretion, from its budget appropriations and its own income for any fiscal year, in an amount that shall not exceed fifty percent (50%) of the contribution of each Hybrid Program participant while the participant is serving as a judge of the General Court of Justice. These contributions shall be deposited in the System to increase its level of assets, reduce its actuarial deficit, and strengthen its capacity to meet future obligations. These contributions shall be in addition to the corresponding employer contribution.

The Administrator shall credit to the account of every Hybrid Program participant the following items:

(1) Contributions of Hybrid Program Participants.- Contributions made by the Hybrid Program Participant.

(2) Employer Contributions.- Any matching contribution made by the Courts Administration Office, at its discretion, to the account of the any Hybrid Program participant.

(3) Return on Investment.- The return on investment shall be credited at the close of each semester of each fiscal year. The return on investment shall be computed the last business day of each semester of the fiscal year on the average monthly balance of the contributions account of the Hybrid Program participant, during the semester in question. The return on investment shall be determined by the Board and shall never be less than eighty percent (80%) of the System's portfolio net rate of return during each semester of each fiscal year, of the management fees such as, but not limited to, fees payable to portfolio managers, custody, and investment advice.

Hybrid Program participants shall always be entitled to at least one hundred percent (100%) of their contributions to the Hybrid Program account.”

Section 12.- A new Section 10-B is hereby added to Act No. 12 of October 19, 1954, as amended, to read as follows:

“Section 10-B.- Benefits Upon Separation from Service.-

(a) Retirement Benefit.- Upon permanent separation from service, when the separation is not due to death, destitution, or total and permanent disability, the balance of the contributions account of the Hybrid Program participant shall be distributed to the participant, if he/she has less than twelve (12) years of credited service.

(b) Date of Issue of Annuity Contract and Commencement of Distributions.- In the case that the participant (i) permanently separates from service after completing twelve (12) years or more of credited service as a judge, but the separation is not due to death, destitution, or total and permanent disability; and (ii) has reached the age of sixty-five (65), shall be entitled to a life annuity to be computed based on the balance of his/her contributions in accordance with Subsection (c) of this Section.

(c) Computation of Life Annuity.- The life annuity of each participant shall be computed upon retirement as follows: (i) the accumulated balance of all contributions to the account of the Hybrid Program participant on the date of retirement, shall be divided by (ii) a factor, established by the Board in consultation with its actuaries and to be determined on the basis of the actuarial life expectancy of the participant and a specific interest rate.

(d) An annuity issued under this Section shall be paid for life on a monthly basis and may not be increased, reduced, revoked, or repealed, unless it is issued by error, or as otherwise explicitly provided. The first annuity payment shall cover the fraction of the current month up to the end of the month; and the last payment shall cover up to the end of the month in which the participant dies.

(e) Death of Participant on Active Service.- Upon the death of any participant in active service who had accumulated contributions in the Hybrid Program, such contributions shall be refunded to the person or persons designated by the participant by a written order duly recognized and filed with the Administrator, or to his/her heirs, if such designation had not been made. The refund shall consist of the amount of the contributions made and the return thereon as of the date of the participant's death. The Administrator shall collect from such contributions any outstanding debt that the participant may have with the System.

(f) Death of a Pensioner.- In the event that, pursuant to this Act, an annuity by transfer is due upon the death of a Hybrid Program participant who was receiving a retirement annuity, the person or persons designated by the participant by a written order duly recognized and filed with the Administrator, or his/her heirs, if such designation had not been made, shall receive a death benefit in a lump sum payment. Such benefit shall consist of the excess, if any, of the contributions accumulated in favor of the participant in his/her Contribution Account until his/her retirement date, over the total amount of all retirement annuity payments that the participant received before his/her death. If a participant who is a pensioner dies within thirty (30) days after his/her retirement date, it shall be understood that, for purposes of any of the provisions of this Act, he/she died while in active service, notwithstanding any provision of this Act to the contrary.”

Section 13.- Section 1 of Act No. 98 of June 4, 1980, as amended, is hereby amended to read as follows:

“Section 1.- All persons who are receiving a pension or benefit under Act No. 12 of October 19, 1954, as amended, shall be entitled to receive a Christmas Bonus equal to five hundred dollars (\$500) beginning on December 2005; of five hundred fifty dollars (\$550) beginning on December 2006; and of six hundred dollars (\$600) beginning on December 2007, which shall be paid not later than December 20 of each year. Pensioners covered under Act No. 305 -1999, known as the ‘Retirement Savings Account Program,’ and those persons who retire under Chapter 5 of Act No. 447 of May 15, 1951, as amended, are excluded from the benefits granted under this Act. Likewise, the participants of the Judiciary Retirement System of the Commonwealth of Puerto Rico shall be excluded from the Christmas Bonus benefit granted under this Act.”

Section 14.- Section 1 of Act No. 37-2001, as amended, is hereby amended to read as follows:

“Section 1.- Every person who is receiving a pension or benefit under Act No. 12 of October 19, 1954, as amended, shall be entitled to receive a Summer Bonus equal to one hundred dollars (\$100), which shall be paid not later than July 15 of each year. If there were more than one beneficiary entitled to a pension upon the death of the active or retired participant, the Bonus shall be distributed, pro rata, among all the beneficiaries. The participants of the Judiciary Retirement System of the Commonwealth of Puerto Rico shall be excluded from the Summer Bonus benefit granted under this Act.”

Section 15.- Section 3 of Act No. 155-2003, as amended, is hereby amended to read as follows:

“Section 3.- Any person who is receiving a pension or benefit under the provisions of Act No. 305-1999, known as the ‘Retirement Savings Account Program,’ shall be expressly excluded from the provisions of this Act. Likewise, the participants of the Judiciary Retirement System of the Commonwealth of Puerto Rico shall be excluded from the Medications Bonus benefit granted under this Act.”

Section 16.- Section 1 of Act No. 59 of June 10, 1953, as amended, also known as the “Reciprocity Act,” is hereby amended to read as follows:

“Section 1.- There is hereby established a plan to guarantee the continuity of credited service, pursuant to the provisions of this Act, between the Employees Retirement System of the Government of Puerto Rico and its instrumentalities, the Annuity and Pension System for the Teachers of Puerto Rico, the Retirement System of the University of Puerto Rico, the Employees Retirement System of the Puerto Rico Electric Power Authority, and any other system hereafter created, whereby every employees participating in said systems will maintain the continuity

of all of their rights for all services rendered to the Commonwealth of Puerto Rico, its instrumentalities and agencies covered by any retirement system. Any employee who becomes a participant of the Judiciary Retirement System of the Commonwealth of Puerto Rico after July 1, 2014 shall be excluded from the reciprocity benefits granted under this Act.”

Section 17.- In order to make up the cash flow deficit, the System shall request an actuarial study to determine the amount of the additional contribution that the Government would be required to make to the System to prevent the value of the projected gross assets of the System from falling below twenty million dollars (\$20,000,000.00) during any subsequent fiscal year.

Section 18.- Any law or regulation that is contrary to this Act is hereby repealed. The provisions of any other laws that are not inconsistent with the provisions of this Act, to the extent applicable with regard to vested rights and benefits payable thereunder, shall continue in effect as of the effective date of this Act.

Section 19.- If any paragraph, section or part of this Act were held to be unconstitutional by a court with competence and jurisdiction, such holding shall not affect or invalidate the remaining provisions of this Act and the effect of such holding shall be limited only to the paragraph, section or part of this Act thus held to be unconstitutional.

Section 20.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 162-2013 (H. B. 1595)** of the **2nd Session of the 17th Legislature** of Puerto Rico:

AN ACT to amend Sections 2, 4, 4-A, 6, 7, 8-A, 9, and 10, and add Sections 4-C, 4-D, 10-A, and 10-B to Act No. 12 of October 19, 1954, as amended, known as the “Judiciary Retirement Act”; amend Section 1 of Act No. 98 of June 4, 1980, as amended; amend Section 1 of Act No. 37-2001, as amended; amend Section 3 of Act No. 155-2003, as amended; and amend Section 1 of Act No. 59 of June 10, 1953, as amended, known as the “Reciprocity Act”; to make prospective changes to the legal framework of the Judiciary Retirement System and establish a defined benefit and contribution Hybrid Program that shall apply to future judges of the General Court of Justice of the Commonwealth of Puerto Rico in order to preserve the fiscal stability of the Puerto Rico Judiciary Retirement System and reduce its current actuarial deficiencies; and for other related purposes.

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

In San Juan, Puerto Rico, on this 14th day of March, 2014.

Juan Luis Martínez Martínez
Acting Director