

(H. B. 1045)

(No. 32-2013)

(Approved June 25, 2013)

AN ACT

To amend Section 4-109 of Act No. 447 of May 15, 1951, as amended, renumbered as Section 4-111 as of July 1, 2013 by Act No. 3-2013, in order to provide that any payment to be made by a municipality on account of employer and individual contributions, triennial increases, medication bonus, summer bonus, Christmas bonus, and any other benefit legislated in favor of a pensioner, as well as any deduction from the employees' salary for the payment of loans or any other debt outstanding in the System shall be guaranteed, in the case of municipalities, by the revenues of the Municipal Revenues Collections Center, and in the case of agencies, public corporations, and instrumentalities, by the revenues of the Department of the Treasury; establish responsibilities for payments in arrears; provide that the Retirement System may deduct any amount owed by the agencies, public corporations, and instrumentalities from the payments made by the System to the Department of the Treasury; repeal Section 11 of Act No. 116-2011; add a new Section 5-116 to Act No. 447 of May 15, 1951, as amended, in order to provide the manner in which the cost of early retirement windows shall be defrayed; and for other purposes.

STATEMENT OF MOTIVES

Act No. 116 was approved on July 6, 2011, to amend various provisions of Act No. 447 of May 15, 1951, as amended. Act No. 116-2011, *supra*, increased employer contributions in a staggered manner and established the sources from which employer and individual contributions in the case of municipalities, agencies, public corporations, and instrumentalities would be collected. Act No. 116-2011 provided that, if municipalities fail to remit such payments, the Administrator of the Retirement Systems would issue a certificate of debt to the Municipal Revenues Collection Center (hereinafter the CRIM), which shall

immediately remit a payment in the amount owed to the System. In the case of agencies, public corporations, and instrumentalities, such certificate of debt shall be issued to the Department of the Treasury, which shall remit a payment in the amount owed to the Retirement System.

Under Act No. 116-2011, only employer and individual contributions were included as part of the certified amounts to be collected from the CRIM or the Department of the Treasury. However, other amounts owed by employers to the System, such as payroll deductions for the payment of loans, payment plans of participants, payments under special laws, and any other debt that the participant or the employer may have with the Retirement System, were not included. Therefore, Section 4-111 of Act No. 447 of May 15, 1951, as amended, is hereby amended to include such amounts among those to be collected from the CRIM and the Department of the Treasury.

On the other hand, the sums paid by Retirement System on account of pensions exceed the sums that it receives on account of employer and individual contributions and other income. The Department of the Treasury makes the payment of pensions, and during different periods of the fiscal year, the System sells its securities to pay the difference between the income and the payment of pensions to the Department of the Treasury. Thus, this Act provides that the Retirement System may deduct any amount owed by the agencies, public corporations, and instrumentalities from the payments it remits to the Department of the Treasury. In this manner, it will not be necessary for the System to sell its securities in order to remit a payment to Department of the Treasury to cover the debts that government employers have with the System.

Likewise, Section 11 of Act No. 116-2011 is hereby amended to clarify that the payment of early retirement windows shall always be made in advance and that the cost thereof shall consist of the difference between the current value of the accelerated pension established by the early retirement window and the current value of a pension for years of service under the provisions of Act No. 447. The costs of pensions for a period of three (3) years counted from the date the participant attains the age and years of service to be eligible for a pension under Act No. 447 shall be added to such amount.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 4-109 of Act No. 447 of May 15, 1951, as amended, is hereby amended and renumbered as Section 4-111 as of July 1, 2013 by Act No. 3-2013, to read as follows:

“Section 4-109.- Penalties.-

(a) Any head of an agency, public corporation, or municipality who fails to deduct his/her employees’ contributions and loan payments to the System, or fails to remit his/her employees’ contributions and loan payments to the System, or fails to make the appropriate employer contributions to the System, shall be so notified by the Administrator, by certified mail, return receipt requested, requiring him/her to remit such funds immediately.

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) Any debt payable by a municipality on account of individual or employer contributions, triennial increases, medication bonus, summer bonus, Christmas bonus, the two thousand dollar (\$2,000) contribution legislated under

Act No. 3-2013, and any other benefit legislated in favor of a pensioner, as well as any deduction from employees' salaries for the payment of loans, payment plans of participants or employers or any municipal debt that has been in arrears for over thirty (30) days, shall have priority over any other outstanding debt of the municipality or municipal entity having participants in the Retirement System. If the municipality or municipal entity fails to remit to the Retirement System the aforementioned funds and amounts owed within thirty (30) days following the withholding thereof, the Administrator shall issue a certificate of debt to the CRIM, which shall immediately remit a payment in the amounts owed to the System following the same payment schedule used to remit payments to municipalities, that is, on or before the fifteenth (15) day of each month. In addition, before the CRIM makes any payment in advance to a municipality, such municipality shall request and obtain from the System a certificate stating that the obligations of the municipality to the Retirement System are up to date. The certificate of debt issued to the CRIM shall include the payment of interests at a rate to be determined by the Board for the return that such money would have realized, should it had been promptly received and invested by the System. Such debt may not be cancelled by the Administrator or the Board of the System.

(h) Any debt payable by an employer on account of individual or employer contributions, triennial increases, medication bonus, summer bonus, Christmas bonus, two thousand dollar (\$2,000) contribution legislated under Act No. 3-2013, and any other benefit legislated in favor of a pensioner, as well as any deduction from employees' salaries for the payment of loans, payment plans of participants or employers or any other obligations to the Retirement System that has been in arrears for over thirty (30) days, shall have priority over any other outstanding debt of an agency, public corporation, or entity having participants in the Retirement System. If an agency, public corporation, or any entity having

participants in the Retirement System fails to remit to the Retirement System the employer or individual contributions withheld from the Retirement System participants within thirty (30) days following the withholding thereof, the Administrator shall issue a certificate of debt to the Secretary of the Treasury and immediately remit a payment in the amount owed to the System. The certificate of debt issued to the Department of the Treasury shall include the payment of interests at a rate to be determined by the Board for the return that such money would have realized, should it had been promptly received and invested by the System. Such debt may not be cancelled by the Administrator or the Board of the System.

Furthermore, the Retirement System may deduct the aforementioned amounts from the payments made by the System to the Department of the Treasury for the difference between employer and individual contributions and the income it receives from the payment of pensions and benefits it makes to such Department.

Section 2.- Section 11 of Act No. 116-2011 is hereby repealed.

Section 3.- A new Section 5-116 is hereby added to Act No. 447 of May 15, 1951, as amended, to read as follows:

“Section 5-116.- If an early retirement window is approved, that is to say, any measure intended to accelerate retirement for public employees or officials, reducing the years of service or age required to retire under a special legislation or the Autonomous Municipalities Act, the actuarial cost of the retirement window to be determined by the Administrator of the Retirement Systems for Government Employees shall be paid in advance by the employer to the Retirement System Administration for the Employees of Government and the Judiciary. The actuarial cost shall consist of: (i) the difference between the current value of the accelerated pension established by the early retirement window and the current value of a pension for years of service under the provisions of Act No. 447 of May 15, 1951,

as amended; and (ii) employer and individual contributions corresponding to three (3) years after the participant has reached the retirement age required under the plan.

Provided further, that employers shall compensate the Retirement System Administration for the Employees of Government and the Judiciary for the costs incurred in the implementation and administration of the early retirement window and all the actuarial studies requested by the employer.”

Section 4.- A new Section 5-117 is hereby added to Act No. 447 of May 15, 1951, as amended, to read as follows:

(a) In order to make up the System’s cash flow deficit, every fiscal year, beginning on fiscal year 2013-2014 and ending on fiscal year 2032-2033, the System shall receive a contribution equal to the Additional Uniform Contribution.

(b) For each fiscal year, the Retirement System Administration for the Employees of Government and the Judiciary shall: (i) determine the portion of the Additional Uniform Contribution corresponding to every employer participating in the System based on the percentage of the total employer contributions corresponding to such employer during the current fiscal year, and (ii) send to the Director of the Office of Management and Budget and each public corporation and municipalities whose employees are covered under this Act, a certificate stating the amount corresponding to such employer.

(c) The Office of Management and Budget shall earmark the resources to cover the contribution of the Central Government described in Section 5-117(b) in the Recommended General Budget of the Commonwealth of Puerto Rico. Each public corporation and municipality whose employees are covered under this Act shall be directly responsible for covering the certified contribution corresponding to such employer pursuant to Section 5-117(b). Notwithstanding the foregoing, the Office of Management and Budget shall earmark in General Budget of the

Commonwealth of Puerto Rico, for any fiscal year, sufficient resources to cover, in whole or in part, the portion of the Additional Uniform Contribution corresponding to any public corporation, municipality or government instrumentality, including the Judicial Branch, whose operating expenses are not included either in whole or part in the General Budget Joint Resolution, to be subsequently determined by Office of Management and Budget at its absolute discretion during such fiscal year, which does not have the financial capacity to assume such obligation.

Section 5.- Section 1-104 of Act No. 447 of May 15, 1951, as amended, is hereby amended to read as follows:

“Section 1-104.- Definitions.-

The following terms and phrases as used in this Act, unless the context clearly indicates otherwise, shall have the following meanings:

(1) Board ...

...

(41) Retirement Age for Participants ...

(42) Additional Uniform Contribution.- shall mean (a) for purposes of fiscal year 2013-2014, one hundred forty million dollars (\$140,000,000), and (b) for purposes of every fiscal year, beginning on fiscal year 2014-2015 and ending on fiscal year 2032-2033, the uniform contribution certified by an external actuary of the System within at least one hundred twenty (120) days prior to the beginning of said fiscal year, as necessary to prevent the value of the projected gross assets of the System from falling below one billion dollars (\$1,000,000,000) during any subsequent fiscal year. If, for any reason, the certificate of the Additional Uniform Contribution for any fiscal year is not available within at least one hundred twenty (120) days prior to the beginning of a fiscal year, or within a shorter term as authorized by the Office of Management and Budget, the Additional Uniform

Contribution for said fiscal year shall be the Additional Uniform Contribution applicable to the immediately preceding fiscal year.

The masculine gender of the pronoun, wherever it is used, shall encompass both genders.”

Section 6.- Separability Clause.-

If any clause, paragraph, subparagraph, article, provision, section, subsection or part of this Act were held to be unconstitutional by a competent court, such holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of such holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part thereof thus held to be unconstitutional.

Section 42.- Effectiveness.-

This Act, including the amendment set forth in Section 3, shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 32-2013 (H. B. 1045)** of the **1st Session of the 17th Legislature** of Puerto Rico:

AN ACT to amend Section 4-109 of Act No. 447 of May 15, 1951, as amended, renumbered as Section 4-111 as of July 1, 2013 by Act No. 3-2013, in order to provide that any payment to be made by a municipality on account of employer and individual contributions, triennial increases, medication bonus, summer bonus, Christmas bonus, and any other benefit legislated in favor of a pensioner, as well as any deduction from the employees' salary for the payment of loans or any other debt outstanding in the System shall be guaranteed, in the case of municipalities, by the revenues of the Municipal Revenues Collections Center, etc.

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