

To Establish the Bases on which the Public Policy of Puerto Rico Regarding the Energy Problem shall be Framed

Act No. 128 of June 29, 1977, as amended

(Contains amendments incorporated by:
Act No.135 of August 8, 2002)

To establish the bases on which the Public Policy of Puerto Rico regarding the energy problem shall be framed, to create an Advisory Committee on Energy and to set forth its objectives, to create the Energy Office, to define its purposes' powers, organization and its interaction with the other government organizations, to authorize the Governor to take the necessary measures to protect the health of the People of Puerto Rico in a state of emergency, to transfer equipment, materials and personnel, to impose penalties to enforce the law, to appropriate funds, to repeal Act No. 4 of July 9, 1973, as amended, and for other purposes.

STATEMENT OF MOTIVES

Of all the primary sources of energy, oil has constituted the basis of our energy system. At present, Puerto Rico has no other source of energy which can contribute substantially to its social and economic development. As a result, imports of oil and its byproducts continue playing a fundamental role in our economy. However, the most recent development in the energy field, at the United States as well as at the international level, points to the real and effective possibility of developing alternate sources of energy which may provide significant quantities to satisfy our energy needs. It is desirable, on behalf of our security as a people, that we explore and exploit these new possibilities to the greatest possible extent. At the same time, it is necessary that we implement optimization and conservation policies of all energy resources.

To attain this purpose, Puerto Rico should have an institution to integrate and coordinate at government level, all those functions related to the energy problem which are at present scattered throughout different government agencies and dependencies. Besides channelling the maximum efforts in such direction, this institution could consider our energy situation in an integral context, as well as its particular interrelation with our social and economic development.

It is imperative for Puerto Rico to formulate and maintain a public policy on energy that may be coherent and based on medium and long-term perspectives covering the whole energy sector and relating to it to the socioeconomic development goals of the country.

Although marketing mechanisms may be basic elements of the energy policy of a country, whether it has natural resources or not, the vital importance of energy supplies and the structural changes of the relationship between the supply and demand thereof, have induced the governments not to depend exclusively on these mechanisms, and they have had to participate,

directly and indirectly, to obtain, attend to and guarantee the most desirable development of the energy sector within reason, thus achieving the goals of their public policy on this matter.

In view of this situation, the Legislature of the Commonwealth of Puerto Rico has decided to create, attached to the Office of the Governor, the Puerto Rico Energy Office, which shall integrate at government level, all those programs related to energy matters, and shall be empowered to carry out studies, research, compilation and coordination of information on the energy fossil-fuel sector, as well as on alternate energy sources to satisfy the needs of our people and to regulate, whenever necessary, those relevant aspects which may adversely affect the Island's energy supplies. This Office shall be the Governor's principal advisory body on energy matters.

An Energy Advisory Committee is also provided, which shall serve conjointly with this Office as liaison with the different sectors of our society, providing independent technical advice.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — Public Policy on Energy. — (23 L.P.R.A. 1061-1061o note)

The Commonwealth's Public Policy on Energy shall be based on the following basic principles, among others:

- (a) To guarantee the availability of energy supplies to the country at all times.
- (b) To obtain the lowest possible energy costs for our society.
- (c) To minimize any unfavorable effects that marketing and international energy problems may have on the country.
- (d) To reconcile environmental factors and the generation and use of energy, pursuant to the provisions of the Environmental Public Policy Act, as amended.
- (e) To minimize inequities or injustices which may arise as a result of economic or regional factors in terms of costs and availability of energy sources.
- (f) To adopt a "Puerto Rico Energy Conservation Plan". This plan shall be established pursuant to applicable federal regulations.
- (g) To promote, in coordination with the agencies mentioned in Section 9, scientific studies to provide Puerto Rico with alternate energy sources which may conform to its geographic and climatic conditions, which will contribute substantially to our economic growth by helping us to obtain a greater degree of self-sufficiency in energy matters. Special attention shall be given to solar energy and its associated sources, among others.

Section 2. — Development and Execution of the Energy Policy; Responsible Entity. — (23 L.P.R.A. 1061-1061o note)

The Energy Office, created hereby, shall formulate and maintain a document which shall state in full the Energy Policy of Puerto Rico and the specific measures for its implementation. The document shall be worked out in harmony with the Planning Board's Integral Development Plan and the provisions of Act No. 75 of June 24, 1975.

As part of the process of formulation, every entity or organization, as well as the general public, shall be given the opportunity to comment on the proposed document. For such purposes, copies thereof shall be printed and available for inspection and study, prior to the holding of public hearings. Any recommendation and observation received shall be considered at the time the document is drafted.

The document shall be submitted to the Governor's consideration not later than twelve (12) months from the date this act becomes effective. The Governor shall approve and enforce the same by Executive Order to that effect, or return it to the Office with his objections within thirty (30) days after the aforesaid document is submitted to him. After the Governor approves the document and issues the Executive Order enforcing the same, it shall have force of law and shall be binding and enforceable within every government program of the Executive Branch, as well as the government instrumentalities. The Energy Office shall be responsible for the coordination and supervision of the implementation of the public policy thus established.

The document thus adopted shall be brought up to date at least every four (4) years from its effective date onwards. Any proceedings to update this document shall require the holding of public hearings and shall be worked out in coordination with the Planning Board's Integral Development Plan.

Section 3. — Annual Reports on the Energy Situation. — (23 L.P.R.A. 1061-1061o note)

The Governor shall submit a report on the energy situation to the Legislature in February of each year, which shall contain the energy situation in detail in Puerto Rico at that time, conclusions and recommendations of legislative and/or administrative actions leading to the solution of problems connected with said situation.

Section 4. — Advisory Committee on Energy; Creation, Constitution; Objectives; Meetings and Reports. — (23 L.P.R.A. 1061-1061o note)

(A) *Creation and Constitution:* An Energy Advisory Committee is hereby created which shall be composed of one (1) president appointed by the Governor, the Secretary of Natural and Environmental Resources, the Executive Director of the Electric Power Authority, the Secretary of the Department of Consumer Affairs, the President of the University of Puerto Rico, the Chairperson of the Environmental Quality Board, the Chair of the Planning Board, the Administrator of the Energy Affairs Administration, and five (5) citizens designated by the Governor. The heads of agencies or public bodies that compose the Committee may delegate their appearance or participation through the representation of the Deputy Secretary, Deputy Director or Vice President, as the case may be, or on the person who, by provision of the corresponding organic act replaces him/her in office.

Two (2) of the members appointed by the Governor shall be for a term of two (2) years, and the three (3) remaining ones for a term of four (4) years. Subsequent appointments shall be for terms of four (4) years. The Chairperson of the Committee shall be appointed for a four (4) year term.

The members of the Committee who are not public officials, shall be entitled to a per diem of fifty (50) dollars for each day in which they perform their duties as members.

(B) *Objectives*: The main objectives of the Committee shall be the following:

- (1) To contribute to the development of a public policy on energy and to advise in the creative search for alternatives and solutions to the energy problem of Puerto Rico.
- (2) To cooperate with industry, with public agencies and instrumentalities, and with the political subdivisions of the Government in the solution of technical problems which may affect our supplies of energy sources.

(C) *Meetings and Reports*: The Committee shall meet at the call , of its Chairman, at least once (1) every ninety (90) days. It shall study and render reports containing conclusions and recommendations on those specific tasks assigned to it-by the Energy Office Director. It shall also be empowered to study, on its own initiative, any matter relevant to our energy problem and to render the corresponding study or report.

Section 5. — Creation of the Puerto Rico Energy Office; Status. — (23 L.P.R.A. 1061-1061o note)

The Puerto Rico Energy Office attached to the Office of the Governor is hereby created. It shall be the duty of this office to serve as an effective instrument to frame and implement Puerto Rico's public policy on energy, under the principles stated in this act, and to promote studies and research, and perform tests, prepare publications, statistical, economic and planning programs and any other thing that may be needed to comply with the purposes established herein. The office shall be headed by a Director, appointed by the Governor, who shall be remunerated as established by the latter, which amount shall be included in the Expense Budget of said Office.

The Office herein created shall be classified as Individual Administrator for the purposes of Act No. 5 of October 14, 1975, known as the "Puerto Rico Public Service Personnel Act".

Section 6. — Powers and Duties of the Office. — (23 L.P.R.A. 1061-1061o note)

In order to fulfill the objectives and provisions of this act, the Office shall be empowered:

- (a) To make surveys and research that will enable it to determine Puerto Rico's energy resources requirements during any period of time.
- (b) To compile timely and reliable information on imports, manufacture, production, distribution, processing, storage, transportation, utilization and consumption in Puerto Rico of fossil-fuel and/or its by-products, as well as of any other energy resource.
- (c) To carry out continuing surveys and research that may allow it to follow-up imports, distribution, production, processing, storage, transportation, utilization and consumption as well as exports of fossil-fuel and/or its by-products, and of any other energy resource.
- (d) To require persons engaged in the importation, distribution, manufacture, production, processing, storage, transportation and exportation of fossil-fuel and/or its by-products, as well as of any other energy resource, to keep and preserve such records and any other documents as may be necessary to accomplish the purposes of this act.
- (e) To require importers, dealers, manufacturers, producers and exporters to submit periodic reports on imports, distribution, manufacture, production, processing, storage, transportation, utilization, consumption and exportation of fossil-fuel and/or its by-products, as well as on any other energy resource.

- (f) To inspect records, inventories, documents and physical facilities of corporations or legal entities with regard to the importation, distribution, manufacture, production, processing, storage, transportation, utilization, consumption and exportation of all energy resources subject to regulation under the provisions of this act.
- (g) To institute any legal remedy which may be needed to accomplish the purposes of this act, and to enforce the rules, regulations, orders and determinations issued by the Office.
- (h) To adopt rules and regulations and to issue orders to insure compliance with the powers granted hereunder, and for the enforcement of this act. These rules and regulations shall be adopted pursuant to Act No. 112 of June 30, 1957, as amended, known as the "Puerto Rico Rules and Regulations Act" except when the Governor declares "a state of emergency" as provided in Section 8 of this act.
- (i) To promote studies of scientific research, experiments and /or evaluation of fossil-fuel and its by-products as well as alternate energy sources, including their adaptation to general use and ways of optimizing their yield, particularly in relation to solar, thermal and nuclear energy.
- (j) To determine, on a priority basis the importance of our energy needs. .
- (k) To integrate energy matters directly related to scientific, technical and socio-economic aspects, and in particular, to coordinate generally-applicable policies which may be established as part of the Energy Policy Document and/or the Energy Conservation Plan for Puerto Rico.
- (l) To develop, propose and implement policies related to energy source planning.
- (m) To advise the Governor, agencies, public instrumentalities and political subdivisions of the Government, institutions and the general public, on technological, scientific, socio-economic and legal aspects related to energy matters.
- (n) To prepare and submit a detailed annual report to the Governor on the energy situation of the country and the long- and short-term projections on future needs; recommendations on possible actions to be taken by the Government to insure adequate supplies of the resource, and any other information deemed pertinent and necessary.
- (o) To establish and develop statistical, economic, and planning programs needed to fulfill the purposes of this act; to prepare publications for public distribution on statistics, economics and other matters related to energy.
- (p) To develop short- and long-term energy conservation plans for Puerto Rico and to regulate their development and implementation, including the development and recommendation by the agencies concerned of such measures as may be needed to induce the maximum possible uses of insulation and other construction methods and designs including natural ventilation, which may reduce to a minimum the need to use mechanical air conditioning in private and government buildings.
- (q) To encourage educational and training programs in highly specialized fields related to the needs of the Office.
- (r) To serve as the liaison and coordination agent with the Federal Energy Administration and/or any other Federal agency that integrates energy matters at the Federal level.
- (s) To develop and recommend the necessary procedures to the agencies concerned for the preparation of energy impact surveys similar to the environmental impact surveys, to develop a true consciousness of the energy problem and stimulate the proper and optimum use of limited energy resources at all levels.

Section 7. — Director: Powers. — (23 L.P.R.A. 1061-1061o note)

The Director shall have the following powers among: others:

- (a) To appoint such officers and employees as he may deem necessary to fulfill the purposes of this act.
- (b) To determine the salary of said personnel.
- (c) To contract all such professional and consultant services he may need without licitation, pursuant to the pertinent laws.
- (d) To adopt, amend and repeal regulations for the internal functioning of the Office.
- (e) To delegate to his subordinates the powers which are granted to him by law whenever he deems it prudent and necessary, except the power to regulate, when such regulations do not apply to the internal functioning of the Office.
- (f) To take depositions under oath.
- (g) To issue subpoenas and summons for the appearance of witnesses and the production of documents and/or information.
- (h) To execute contracts and /or agreements with other Commonwealth or Federal government agencies and private entities, for research projects and/or services in the energy field and to contribute or receive such projects or services.

Section 8. — Emergencies. — (23 L.P.R.A. 1061-1061o note)

When the Governor, by virtue of the information furnished by the Energy Office, determines that there is imminent danger of a shortage of any energy resource in Puerto Rico, because the basic needs for the subsistence of the country will not be or are not being supplied and the general welfare of the People of Puerto Rico could be affected, he may declare a state of emergency and issue such executive orders he deems necessary to insure the availability of the necessary amounts of such energy resources to whatever extent may be necessary for the subsistence of the people.

It is the public policy of the Government of Puerto Rico within the state of emergency that may be declared, that every importer, dealer, manufacturer, producer, carrier, and exporter of materials which constitute energy sources shall supply the needs of the people of Puerto Rico with priority.

The energy problem of the United States of North America and the international situation shall be taken into account in applying this section.

In the Executive Order issued, the Governor may:

- (1) Regulate the individuals and corporations engaged in the importation, distribution, manufacture, production, transportation and exportation of any energy resource for the purpose of enforcing the above-stated public policy.
- (2) Adopt rules and regulations and issue orders to enforce compliance with this act. Said rules, regulations and orders shall be published only once in two newspapers of general circulation.

Within fifteen (15) days after the promulgation of the rules, regulations or orders, the Director shall hold public hearings on said measures after due notice thereof. The rules and regulations adopted pursuant to the foregoing shall be in force only while the state of

emergency exists, and they may be amended or repealed after the pertinent public hearings are held. Said proposed amendments shall take effect upon publication for two (2) consecutive days in a newspaper of general circulation.

(3) Confer to the Office or any other government agency such powers and duties needed to implement the Executive Orders so issued.

(4) Require any Board, Department, agency or any public instrumentality or political subdivision of the Government, its officials and employees to give the Office the necessary assistance regarding the use of personnel, equipment, office space, materials and other available resources, to insure compliance with this act, and the regulations promulgated hereunder. Such government agencies shall give the assistance required, after being duly authorized to do so by the head, secretary or chief executive of the agency concerned.

Section 9. — Coordination. — (23 L.P.R.A. 1061-1061o note)

The Office shall exercise its powers and duties in coordination and harmony with the Water Resources Authority, the Board of Environmental Quality, the Department of Natural Resources, the Economic Development Administration, the Planning Board, the Department of Consumer Affairs and any other government agency or body concerned. Specifically, every research project shall be carried out in close coordination with the Energy and Environmental Research Center of the University of Puerto Rico.

Section 10. — Remedies. — (23 L.P.R.A. 1061-1061o note)

Any person affected adversely by the provisions of an Executive Order issued by reason of a state of emergency, or by any Executive Order, regulations, or ruling of the Energy Office created herein, may request the Director for a public hearing, stating his objections to said order or ruling. The Director, personally, or through an examiner designated to that effect, shall hold public hearings to hear the complainant's arguments and issue a report with findings of fact, findings of law and recommendations. The Governor' in the case of an Executive Order, and the Director, in the other cases shall issue a ruling on the matter, after considering the evidence admitted in said hearing.

This ruling may be reviewed in the Superior Court, San Juan Part, within fifteen (15) days following notice thereof. The order or ruling issued shall remain in force and may be affirmed or revoked by said Court.

Section 11. — Confidential Information, Penalties for Illegal Disclosure. — (23 L.P.R.A. 1061-1061o note)

The documents or information furnished to the Office, under this act, by persons engaged in the importation, distribution, transportation, manufacture, production, utilization, processing and exportation of fossil-fuels or other energy resources, which are related to trade or industrial secrets, data on volume, costs and prices, and others, which may affect its competitive position, shall only be for confidential use of the Office.

Any employee or agent of the Energy Office of Puerto Rico, who, without the authorization of the Director or his authorized representative, discloses any information classified as confidential which has been furnished at the request of the Office, pursuant to this act, shall be discharged from his employment after preferring charges and hearing.

Any person who reveals any information or evidence furnished at the request of the Office pursuant to this act without the proper authorization, in addition to the provisions of the preceding paragraph, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine not to exceed five hundred (500) dollars, or jail for a term not to exceed six (6) months, or both penalties in the discretion of the Court.

Section 12. — Remedies to Prevent Noncompliance. — (23 L.P.R.A. 1061-1061o note)

When the Director of the Office so requests, the Secretary of Justice, on behalf of the Commonwealth of Puerto Rico, shall, in addition to the other remedies provided by law, institute Petitions for Restraining Orders, Mandamus and Injunctions, or any other proper action to prevent noncompliance with any order, rule or regulation issued hereunder or any violation thereof. The Superior Court shall have jurisdiction in first instance to hear the cases so instituted.

Section 13. — Penalties for Violations of Orders, Rules or Regulations in States of Emergency. — (23 L.P.R.A. 1061-1061o note)

Any person who commits, aids or abets in the violation of any rule, regulation or order pursuant to an Executive Order issued by the Governor in a state of emergency shall be guilty of a felony and may be punished by a fine of not less than five thousand (5,000) dollars nor more than twenty-five thousand (25,000) dollars for each violation, or by imprisonment in jail for a period of not more than one (1) year, or both penalties, in the discretion of the Court. Violations of this act in normal situations shall be considered misdemeanors and shall be punished by the same penalties established in the present Penal Code for said offenses.

Section 14. — Appropriation of Funds. — (23 L.P.R.A. 1061-1061o note)

The amount of \$489,538 is hereby appropriated to the Office from unencumbered funds in the Commonwealth Treasury for Fiscal Year 1977-78. In subsequent years, the necessary amounts shall be included in the General Budget of the Treasury of the Commonwealth of Puerto Rico.

The necessary funds to implement this act shall be included annually in the General Expense Budget of the Energy Office of the Commonwealth of Puerto Rico.

Section 15. — Transfer of Programs and Functions. — (23 L.P.R.A. 1061-1061o note)

All personnel, equipment, material, records and property of the Oil Fuels Affairs Office is hereby transferred to the Energy Office created herein.

Within ninety (90) days after this act becomes effective, the Director of the Energy Office shall analyze the functions directly related with fossil-fuel affairs or any other energy source, and of the facilities or financial and human resources being used at present in the fulfillment of said

functions, attached by law and/or administratively to other organizations of the Government of Puerto Rico, and shall render a report to the Bureau of the Budget with his recommendations as to which of these are subject to be transferred by Executive Order to the Office created by this act. Said analysis will lead to the integration of all government resources related to energy matters from any source, insofar as it is compatible with the functions delegated herein and the purposes of this act and to avoid duplication of functions and budgetary appropriations. The Bureau of the Budget shall submit its recommendations to the Governor within thirty (30) days after receiving the report. The corresponding transfers shall be made effective by Executive Order.

Section 16. — Other Funds. — (23 L.P.R.A. 1061-1061o note)

The Energy Office of the Commonwealth of Puerto Rico shall be the government agency designated to accept, receive and administer donations or funds from natural or juridical persons, entities, instrumentalities, and public corporations of the Commonwealth of Puerto Rico or the United States of America to carry out the purposes of this act.

Section 17. — Vested Rights of Personnel. — (23 L.P.R.A. 1061-1061o note)

All employees rendering services in the Oil Fuels Affairs Office, and employees rendering services in other government agencies, who are transferred to the Energy Office of Puerto Rico created hereby, are guaranteed all rights acquired under the personnel laws and regulations and other applicable laws, as well as the rights, privileges and obligations, and status with regard to any existing pension, retirement, or savings and loan fund system or systems to which they may have been affiliated upon approval of this act.

Section 18. — Repeal. — Act No. 4 of July 9, 1979, as amended, creating the Oil Fuels Affairs Office is hereby repealed.

Section 19. — Separability Clause. — If any provision of this act were adjudged unconstitutional or void by a competent Court, said judgment shall not affect any other provision of this act.

Section 20. — Effectiveness. — This act, shall take effect immediately after its approval.

Note. This compilation was prepared by the Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.