

(H. B. 1252)

(No. 34)

(Approved June 13, 2001)

AN ACT

To direct and regulate an electoral referendum process in the Municipality of Vieques under the provisions of the Puerto Rico Electoral Act, Act No. 4 of December 20, 1977, as amended, in order to ascertain the sense of the residents of Vieques regarding the military exercises and bombings of the Navy of the United States of America on said island-municipality; to enable the vote of the duly registered and active electors of the Municipality of Vieques so that they may state in a free and democratic manner, and free from coercion, in the exercise of their electoral prerogative, on the options provided in this Act; authorize the Commonwealth Elections Commission of Puerto Rico to carry out said referendum pursuant to the terms provided in this Act; to appropriate the needed funds; and for other purposes.

STATEMENT OF MOTIVES

The Municipality of Vieques is constituted by the Island of the same name. It is part of the territorial extension of the Commonwealth of Puerto Rico. According to the official census figures, there are 9,106 citizens of Puerto Rico and the United States of America residing on this Island-municipality.

For over sixty years, the Navy of the United States of America has been using a large part of the territory of the Island of Vieques for military practices, exercises, bombings and maneuvers. On the other hand, for the past two years, an extended public debate has developed on the effect that these activities have had on the residents and the environment of Vieques. It

has also been argued that the actions of the Navy constitute a violation of the civil rights of its residents.

On January 31, 2000, the President of the United States of America issued directives on the military exercises and bombings by the Navy on Vieques. Among other things, it was provided that the future of the training of the Navy on Vieques would be determined through a referendum submitted to the consideration of the registered and active voters of said island-municipality. Pursuant to these directives, this Legislature passed legislation to enable said referendum.

The presidential directives and subsequent legislation of the Congress of the United States establish that the referendum would include only two options. The first option or choice provides for the Navy to cease its training no later than May 1, 2003. The second option or choice allows the permanent continuation of training, including the use of live shelling or fire, under the terms proposed by the Secretary of the Navy. Both alternatives correspond to the provisions of Public Law 106-398, P.L. 160-398 [*sic*], known as the “Floyd D. Spence National Defense Authorization Act For Fiscal Year 2001”. In the referendum herein provided, a third option that proposes the immediate and permanent ceasing of military training in the island-municipality is also included.

Should the majority of the voters favor the option proposing the immediate and permanent termination of the military practices and bombings conducted by the Navy in Vieques, the people of Vieques shall be clearly expressing their democratic will and their desire for all manner of military training in the island-municipality to permanently cease. Should the option proposing the continuation of the military exercises and bombings conducted by the Navy in Vieques, using inert ordnance, until their

termination not later than May 1, 2003, the people of Vieques shall be in favor of having the United States Navy continue using the training areas in the island-municipality employing inert ordnance until May 1, 2003. In case the option proposing the permanent continuation of the military practices and bombings conducted by the Navy in Vieques with the alternative use of live ordnance, the people of Vieques shall be accepting that the United States Navy remain in Vieques indefinitely and conduct its training including the use of live ordnance.

On November 7, 2000, our people, in the free exercise of their democratic volition, endorsed the holding of a referendum of the people of Vieques regarding their opinion on the military activities and bombings of the United States Navy on that island-municipality, which would take place, regardless of the referendum scheduled for November 2001. The referendum that through this Act is directed and regulated has the purpose to allow the exercise of that will.

In accordance with all that has been stated above, it is the intention of this Legislature to authorize the holding of a referendum on the island-municipality of Vieques pursuant to the Constitution and Laws of the Commonwealth of Puerto Rico as soon as possible.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Purpose

This Legislature recognizes the right of the residents of Vieques to freely and democratically state their will with regard to the use of the land of Vieques for military exercises and bombings by the Navy of the United States of North America. These exercises have been carried out in a sustained manner for the past sixty years. With the passing of time, it has been found that this military activity has had noxious effects on the

environment, and even more important, on the health and welfare of the residents of that Island. It has also disturbed their tranquility, as well as their peaceful and safe community living. The accidents that have occurred as a result of these activities have caused physical harm and the deaths of citizens of Vieques. As a result of the above, a persistent debate has flared up in Vieques and throughout Puerto Rico during the past few years as to whether the Navy should or should not insist on conducting its military practices on said Island. Multitudinous marches and demonstrations are only two of the means of expression employed by the residents of Vieques and Puerto Rico who have labeled the situation in Vieques as a matter of great transcendence both for the island-municipality and for the Island.

Ensuring the opportunity for the People of Vieques to state, in a democratic manner, their sense with regard to these exercises, is a moral obligation of the State. Obligation, that, in turn, respects the right of the people to express their volition through the exercise of universal, equal, direct, secret and free suffrage.

The time has come for these electors, who are U.S. citizens, residents of Vieques to have the opportunity to state their will in a direct manner, and with the approval of the Commonwealth, which has the obligation to heed the clamor of its people.

Section 2.—Holding the referendum

The holding of a referendum in the Municipality of Vieques is hereby directed, in which all eligible electors of said municipality may participate, through universal, equal, direct, secret and free suffrage, in order to determine the sense of the people regarding the military exercises of the United States Navy in Vieques. This referendum shall be held on Sunday, July 29, 2001.

Section 3.—Applicable laws

The substantive and procedural law that shall govern the referendum directed by this Act to be conducted, shall be that which is provided in the Puerto Rico Electoral Act, the applicable regulations adopted by virtue thereof, as well as those regulations that are specifically approved to regulate the referendum process. The Commonwealth Elections Commission, through a Resolution, shall make the needed adjustments to the terms that these regulations provide, to temper them to the specific instances of this referendum.

Section 4.—Functions of the Commonwealth Elections Commission

The Commonwealth Elections Commission shall organize, conduct, implement and supervise the referendum process provided in this Act. In the event there is no unanimity among the Electoral Commissioners to adopt the norms, regulations or resolutions that are needed to implement this Act, the Chairman of the Committee shall decide, according to the provisions of Section 1.006 (e) of the Puerto Rico Electoral Act.

Section 5.—Design and printing of the ballots

The Commonwealth Elections Commission shall design and order the printing of the ballot to be used in this referendum which shall be uniform in size, printed in black ink, and on thick white paper, so that what is printed thereon cannot be seen on the back.

The ballot shall be designed in consideration of the following provisions:

- a) Along the width of the ballot and on the upper edge thereof, the following shall be printed: “REFERENDUM BY THE RESIDENTS OF VIEQUES ON THE MILITARY EXERCISES AND BOMBINGS OF THE NAVY OF THE

UNITED STATES OF AMERICA ON THAT ISLAND-MUNICIPALITY”. Next, the ballot shall have a column for each one of the following voting options. The position of the options in the respective columns shall be chosen by drawing.

- b) Printed on the upper part of one of the columns shall be:
“Immediate and permanent ceasing of the military exercises and bombings by the Navy on Vieques. The ouster of the Navy from Vieques, the cleaning and return of the land of Vieques to its people.”
- c) Printed on the upper part of another column shall be:
“Continuation of the military exercises and bombings by the Navy on Vieques, using inert ordnance, until their conclusion, no later than May 1, 2003. The ouster of the Navy from Vieques and the transfer of the land of the eastern part of Vieques to the Department of the Interior of the United States of America”.
- d) Printed on the upper part of another of the columns shall be:
“Permanently continue the military exercises and bombings of the Navy and the Armed Forces on Vieques with the option of using live ordnance”.
- e) Immediately below the text in each of the columns where specific choices or options are offered, there shall be a space for the voter to place his/her mark, using his/her own handwriting exclusively, except in those special cases that the Electoral Act allows a second person to assist the voter who is unable to make a mark when exercising his/her right to vote.

- f) The Commonwealth Elections Commission shall adopt the necessary measures to guarantee that those voters who do not know how to read and write can be informed of the options for which they shall vote. To achieve this purpose, the ballot shall have a number or some geometric design, to be assigned by drawing by the Commission, which will allow them to identify the preferred option.

Section 6.—Local Election Commission

The Local Election Commission of the Vieques electoral precinct shall perform the functions that are pertinent to its responsibilities, adjusting them to the special characteristics of this strictly local referendum. The leave granted by Section 1.021 of the Puerto Rico Electoral Act to the Local Election Commissioners who are public employees, shall be for a term of thirty (30) days prior to this referendum. The payment of per diems is authorized for the purposes of this referendum, as provided in Section 1.020 of the Electoral Act, up to a maximum of four monthly meetings.

The Local Commission shall determine the location of the polling places within the geographic sector in which the voters who compose it reside, with the approval of the Commonwealth Elections Commission, no later than thirty (30) days prior to the referendum.

The Commonwealth Elections Commission shall distribute the model ballots no later than fifteen (15) days prior to the referendum.

Section 7.—Proclamation

The Commonwealth Elections Commission, shall announce the referendum by means of a proclamation, and to such effects, shall publish a notice of the holding thereof in the Spanish and English languages, in two

newspapers of general circulation in the Municipality of Vieques, no later than forty-eight (48) hours after the approval of this Act.

Section 8.—Eligible voters

Those electors who are duly registered and active in the Register of Electors of the Municipality of Vieques, thirty (30) days prior to the event, shall be entitled to vote in the referendum, pursuant to the Puerto Rico Electoral Act, and the applicable Regulations of the Commonwealth Elections Commission. The Commission shall include on the list of voting electors all those electors on the active records who are eighteen (18) years of age on the date of the referendum, and are part of the Register of Electors of the Vieques precinct. In order to exercise his/her right to vote, every elector shall present his/her Elector's Identification Card at the Polling Place.

The duly registered and active electors in the Register of Electors of the Municipality of Vieques that are confined in Federal or Commonwealth penal institutions in Puerto Rico shall have the right to vote in the referendum. The Commonwealth Elections Commission shall adopt the measures and establish the necessary procedures to guarantee that said electors exercise their right to vote.

Section 9.—Education, information and orientation campaign

The Commonwealth Elections Commission shall conduct an educational and orientation campaign on the referendum for the electors of Vieques, as well as on the manner that the elector should mark the ballot to consign his/her vote on it, and the wording of the alternatives or options that shall appear on the voters' ballot. It shall also urge the electorate to register and participate in it.

For this campaign, the Commission shall use every media and public information techniques available. The campaign shall start thirty (30) days before the date that the referendum will be held, with the exception of the orientation and information urging the electors to register and vote, which shall commence immediately after the approval of this Act.

To achieve its educational objective, the Commission shall publish all information related to the referendum on the Internet, and in the newspapers of local and general circulation in the Municipality of Vieques, on flyers 8.5” x 11” in size, in large posters of 22” x 28”, in the English and Spanish languages, which shall be displayed in public places, such as the bulletin boards in Government offices, in the Permanent Registration Board in Vieques, and in the voting centers of the Vieques electoral precinct.

Section 10.—Participation in the referendum

It is the legislative intention that there be a broad participation in this Referendum from the various sectors of social interest that wish to state and defend their views on the options to be presented to the electors of Vieques; therefore, the following is provided:

Duly constituted representative groups of the civilian population of Vieques may participate, provided they present their intention of participating before the Commonwealth Elections Commission, within the fifteen (15) days following the effective date of this Act. These groups of citizens residents of Vieques shall state in their document of introduction before the Commonwealth Elections Commission, the circumstances of their existence, the reasons that motivated their participation, and any other explanation that qualifies them as a *bona fide* entity, which shall all be stated in a sworn statement signed by the president, director, or chief executive of said civilian or community group.

Likewise, any *bona fide* group of citizens may participate as observers, provided they meet the requirements established by the Commonwealth Elections Commission through regulations, which, shall, in turn, state the degree of participation that these groups shall have in the referendum process. The citizens' groups who wish to participate as observers shall inform the Commonwealth Elections Commission of their intention within the fifteen (15) days following the effective date of this Act.

When notifying their intention of participating in the referendum, the groups representing the civilian society of Vieques, shall inform the Commonwealth Elections Commission which option or alternative they will support. All the citizens' groups that notify the Commonwealth Elections Commission of their intention to participate in the referendum, shall be entitled to the representation contemplated in the Puerto Rico Electoral Act, and any other that is provided through regulations pertinent to the implementation of this Act. In the case there are no persons to represent one of the options set forth in the referendum, the Commonwealth Elections Commissions shall appoint sufficient officials in order for all options to be represented during the same. The Commonwealth Elections Commissions shall establish in the Regulations mentioned in Section 14 of this Act, the manner and form in which said appointments shall be made.

A. Provided, however, that the Navy of the United States of America is authorized to appoint a non-uniformed observer, to stay at the Local Commission and observe the canvassing as established by this Act. A copy of the poll certificate and of any decision made by the Local Commission shall also be given to said observer.

Section 11.—Right to absentee vote

Those electors who are entitled to vote as absentee voters, as established in Section 5.035 of the Puerto Rico Electoral Act, shall present their absentee vote application, under oath, at least thirty (30) days before the referendum is to be held. A term of thirty (30) days from the date the ballots are sent to the voter by the Commonwealth Elections Commission shall be granted for the purpose of adjudicating the absentee votes received.

Section 12.—Advanced vote

The Commonwealth Elections Commission shall establish through a resolution, the maximum number of public officials or employees who, being voters of the electoral precinct of Vieques, will be assigned to work on the day of the referendum, that will be allowed to vote in advance, whether they are employees of the Commission or of any Commonwealth or municipal agency that provides emergency medical or public safety services.

Section 13.—Police surveillance during referendum

On the day of the referendum, the Puerto Rico Police shall provide sufficient regular personnel to see to the public order and safety in the Municipality of Vieques. The Municipal Police of Vieques shall collaborate with the Puerto Rico Police in this duty.

Section 14.—Rules for voting

The Commonwealth Elections Commission shall adopt the rules for the holding of the referendum no later than five (5) days after publishing of the proclamation provided in Section 7 of this Act. The rules shall be as simple as possible and shall contain all matters regarding the registration and challenging of electors, including the terms of time applicable.

Section 15.—Groups that chose to campaign for or against the options being consulted

The provisions of the Electoral Act regarding contributions of political parties and political action groups as established in Sections 3.005 to 3.020 of said Act, shall apply to the groups established pursuant to Section 10 of this Act, that chose to campaign for or against any of the options which shall be voted upon in the referendum.

Section 16.—Delivery of electoral lists and closing of Register of Electors

The Commonwealth Elections Commission shall determine the moment that the lists of electors shall be delivered to the groups representing the civilian society of Vieques constituted pursuant to Section 10 of this Act, who opt to campaign for or against any of the options which shall be voted on in the referendum. The closing of the Register of Electors shall take place no later than thirty (30) days prior to the holding of the referendum. The Commission shall provide measures and remedies in order to guarantee the right to vote of any elector who, for reasons that cannot be attributable to him/her, is improperly excluded from the lists of electors.

Section 17.—Duty to preserve ballots and poll certificates

The Commonwealth Elections Commission shall preserve all the ballots and poll certificates corresponding to the referendum for a term of one hundred and twenty (120) days from the certification of the results, and they shall then be destroyed, unless there is a judicial action pending, in which case, they shall be preserved until the judicial decision is firm and final.

Section 18.—Professional services and purchase or leasing of material and equipment

For the purposes of this Act, the Commonwealth Elections Commission is hereby authorized to contract those professional services and direct the purchase or lease of printed material, machinery and equipment directly from the suppliers, without the intervention of the Procurement Service of the General Services Administration. Likewise, the Commission is authorized to lease offices or spaces for the use of the Commission, and any place needed as a voting center.

It shall be the obligation of the Commonwealth of Puerto Rico, its agencies, departments, bureaus, offices, dependencies, instrumentalities, public corporations or subsidiaries thereof, and municipalities, to cede to the Commission the use of such office equipment and other mechanical, electronic, transportation equipment, personnel, and other available resources, which are needed to adequately perform the duties imposed by this Act to the Commission, free of charge, for a reasonable term, and provided that this will not unduly hinder the public activities they perform.

Section 19.—Closing of commercial establishments; penalties

The prohibition contained in Section 8.024 of the Electoral Act, as amended, on the opening or operation of commercial establishments that sell alcoholic beverages shall apply to the Municipality of Vieques on the day of the referendum, as established in Section 2 of this Act, during the period comprised from two o'clock in the morning (2:00 a.m.) and four o'clock in the afternoon (4:00 p.m.) of said day.

Any person who violates the prohibition contained in Section 8.024 of the Electoral Act, shall be punished with a fine of five thousand (5,000)

dollars for each infraction or the canceling of the alcoholic beverage license or permit, or both penalties, at the discretion of the Court.

Section 20.—Obligations of employers

Every employer is compelled to grant the necessary time off to its employees who serve as poll officials in the referendum and can provide evidence thereof, without pay, and without being charged to any leave so that they may perform their duties as poll officials. The officials shall be compelled to give evidence of their participation in the process through the pertinent certification by the Commission.

Section 21.—Prohibitions

- a) It is prohibited to keep political propaganda or persuasion centers in favor of or against the options proposed in the referendum, open to the public on the day of the referendum within a radius of one hundred (100) meters from any building or structure in which a polling place has been installed, or of the Permanent Registration Board; which distance shall be measured from the closest points between both structures.
- b) No propaganda or persuasion center for or against the options provided in the referendum, shall be installed within fifty (50) meters from another.
- c) In addition to the prohibitions provided in the above subsections, the provisions on prohibitions and crimes established in Sections 8.001 through 8.027 of the Electoral Act shall be in full force and effect.

Section 22.—Penalties

Any person who violates the provisions of this Act and is convicted thereof, shall be sanctioned with a term of imprisonment not greater than six

(6) months, or a fine that shall not exceed five hundred (500) dollars, or both penalties, at the discretion of the Court, except for the penalty established for the cases provided in Section 19 of this Act.

Section 23.—Certification of the results of the referendum

The Commonwealth Elections Commission shall remit a certification of the result of the referendum in the Spanish and English languages, to the Governor of the Commonwealth of Puerto Rico, and to the Secretary of State, no later than forty-eight (48) hours after the general canvassing of votes has concluded.

Section 24.—Notification of the results

Not later than ten (10) days after the results of the Referendum have been certified, the Secretary of State shall remit a copy of the official certification thereof to the President of the United States. Likewise, the Resident Commissioner of the Commonwealth of Puerto Rico in Washington shall forward a copy of the official certification of said results to the Speaker of the House of Representatives and to the Senate Majority Floor Leader of the Congress of the United States of America.

Section 25.—Funding for the electoral process

A maximum sum of five hundred thousand (500,000) dollars is hereby authorized from unencumbered funds in the General Fund of the Commonwealth of Puerto Rico to carry out this referendum. These funds shall be transferred to the Commonwealth Elections Commission within a term of ten (10) days from the approval of this Act. Within this same term, the Chairman of the Commonwealth Elections Commission shall itemize and certify in writing to the Office of Management and Budget the expense items needed to conduct said referendum. Any unused sum of money transferred to the Commonwealth Elections Commission for holding this

referendum, shall be returned to the General Fund of the Commonwealth of Puerto Rico within one hundred and twenty (120) days following the date on which said referendum is held.

The Commonwealth Elections Commission is hereby authorized to immediately initiate the education, information and orientation campaign required in Section 9 of this Act.

Section 26.—Severability

If any provision of this Act is found to be unconstitutional by a Court of competent jurisdiction, the judgment issued to such effect shall not affect nor invalidate the remaining provisions of this Act. The effect of said judgment shall be limited to the provision that has been declared unconstitutional.

Section 27.—Interpretation

The provisions of this Act shall be considered in relation to each other and shall not be taken individually for their interpretation, but in conjunction with each other.

Section 28.—Effectiveness

This Act shall take effect immediately after its approval.