

(Substitute to  
S.B. 47)

**(No. 103)**

(Approved August 24, 1997)

**AN ACT**

To add subsections (x), (y) and (z) to Section 1; amend Section 2; add a new Section 2-A; amend Section 4; add clauses 3 and 4 to subsection (b) of Section 6; amend Section 9; add a new Section 11-A and amend Sections 12, 15 and 17 of Act No 19 of May 8, 1973, as amended, known as the "Fertilizer Act of Puerto Rico", in order to add new definitions and clarify terms; fix new responsibilities on the manufacturers, distributors and importers of commercial fertilizers or soil additives; require a certificate of sterilization for any fertilizer filler introduced to Puerto Rico; require additional information in the labeling of fertilizers or soil additives; require that the regulations adopted be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedure Act" and increase the taxes and penalties established in said Act.

**STATEMENT OF MOTIVES**

In order to achieve the successful operation of any agricultural enterprise it is necessary to have access to diverse good quality supplements. Only thus can a profitable agricultural enterprise with good yield be maintained. Fertilizer is one of these supplements.

The purpose of Act No. 19 of May 8, 1973, as amended, is to establish supervise the manufacture, importing and distribution of fertilizer in Puerto Rico. Likewise, this Act imposes sanctions on the manufacturers of fertilizer should deficiencies be found in any of its components after the corresponding analysis has been made.

Said Act also authorizes the Secretary of Agriculture to impose administrative fines up to two hundred and fifty (250) dollars, should the manufacturer of fertilizer violate any of the provisions regarding the labeling, inspection, analysis, manufacture, importing and distribution of commercial fertilizer and soil additives.

Act No. 19, *supra*, sets forth certain requirements regarding the sale of fertilizers. It specifically requires that all fertilizers offered for sale in Puerto Rico be given a formula number and that their grade be determined. However, the aforementioned Act is rather vague in indicating who, specifically, shall be responsible for complying with said requirement.

Another aspect pertaining to the Fertilizer Act of Puerto Rico, concerns the provisions which allow the importing of sand, earth, soil and vegetable matter as a component part of fertilizers. It is important to point out that such ingredients may be carriers of pathogens and other diseases which could cause severe losses agriculture of Puerto Rico. It is therefore necessary to establish a mechanism so as to guarantee that the entrance of any imported fertilizer whose components contain earth, soil, sand or vegetable matter shall in no way entail a threat of introducing diseases to the Island.

Furthermore, the penalties and special taxes fixed by the Fertilizer Act of Puerto Rico have not been revised since the approval of the latter, a fact which in itself, lacks the dissuasive effect the legislator intended when approving the latter.

It is therefore necessary to amend the Fertilizer Act of Puerto Rico in order to add new responsibilities upon the manufacturers, distributors and importers of fertilizer so that they, before offering fertilizer for sale, shall be bound to request from the Department of Agriculture the grade and the formula number of the same, require that all fertilizer filler be certified as being sterilized before entering Puerto Rico, and adjust the taxes and penalties fixed by said Act to the present cost of living. Thus will

the interests of our formers be better protected under said Act.

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

Section 1.- Subsections (x), (y) and (z) are hereby added to Section 1 of Act No. 19 of May 8, 1973, as amended, known as the "Fertilizer Act of Puerto Rico", to read as follows:

"Section 1.- Short Title; Definitions

This Act may be cited as the "Fertilizer Act of Puerto Rico". For the purposes of this Act, the following definitions shall govern:

.....

x) Filler: a dry, inert substance added to the raw fertilizer matter in order to dilute its concentration, provide volume, prevent compacting or lumping or to serve any further purpose other than providing essential plant nutrients.

y) Nutrient: an element recognized as being essential to the growth and development of plants. For the purposes of this Act said term does not include carbon, hydrogen or oxygen since these three elements are obtained by the plants from the water and the air.

z) Micronutrient: a chemical element used by plants in minute quantities which is essential for their growth and development. The known micronutrients are boron, chlorine, copper, iron, manganese, molybdenum and zinc."

Section 2.- Section 2 of Act No. 19 of May 8, 1973, as amended, is hereby amended to read as follows:

"Section 2.- Procedures to Fix Grades and Formulas

a) The Secretary is hereby authorized to establish the number and the grades of all commercial fertilizer that may be manufactured, imported or sold for use in Puerto Rico. Except as provided below in subsection (c) of this Section, no commercial fertilizer whatsoever or soil additive may be imported, manufactured or

distributed for use in Puerto Rico, unless its grade and formula have been previously approved by the Secretary for each trademark of each product. The application for approval must be filed by the manufacturer or distributor of the commercial fertilizer or soil additive manufactured in Puerto Rico or, in the case of commercial fertilizer or soil additive imported or introduced into Puerto Rico from abroad, by the importer.

b) The regulations to be established by virtue of this Act shall provide the procedure to be followed for the establishing and amendment of said grades of commercial fertilizer. In order to establish said procedures, the Secretary shall constitute a board to be known as the Fertilizer Board which shall consist of nine (9) members, to wit: The Secretary or his/her representative, who shall be the Chairperson of the Fertilizer Board; a representative of the Agricultural Experimental Station and a representative of the Agricultural Extension Service appointed by the Dean and Director of the Agricultural Sciences College of the University of Puerto Rico; three representatives of the farmer, one of whom shall be appointed by the Farmers Association of Puerto Rico, another by the Farmers Federation and another by the Soil Conservation Districts Association; and a representative appointed by the Secretary and the Director of the Agrolological Laboratory as secretary of said Board, who shall submit agendas and draft the minutes of said Board and any correspondence generated during the meetings of the Board. Said Board shall make recommendations to the Secretary on the grades and formulas of commercial fertilizers to be authorized for each trademark of each product, and the raw materials or other substances that can be used in commercial fertilizers and soil additive authorized by the Secretary. Provided, that no materials other than those authorized by the Secretary shall be used in formulas for commercial fertilizers. The Secretary, with the advice of the aforementioned Board, may allow, whenever he/she deems it necessary and convenient, the manufacture or distribution in Puerto Rico of specific

commercial fertilizers such as specialized fertilizers and raw materials for fertilizers that may be considered as commercial fertilizers, although containing less than the total of twenty-four percent (24%) per weight of the nutrient substances: nitrogen (N), assimilable phosphoric acid (P<sub>2</sub>O<sub>5</sub>) and water soluble potash (K<sub>2</sub>O) required in clause 3 of Section 8 of this Act.

c) Approval of the grade and formula of any commercial fertilizer which has been prepared according to specifications provided by the consumer or user of the same before it has been mixed, shall not be required; provided, that such commercial fertilizer shall be labeled as provided in Section 4 of this Act.

d) The application for approval of the grade and formula of any commercial fertilizer or soil additive shall be submitted to the Secretary on a form provided by the latter.

e) Once a person has been given approval by the Secretary regarding the grade and formula of a certain commercial fertilizer or soil additive, said approval shall not be required for other persons who also distribute the same commercial fertilizer or soil additive, but they shall be required to remit a label to the Department."

Section 3.- A new Section 2-A is hereby added to Act No. 19 of May 8, 1973, as amended, to read as follows:

"Section 2-A.- Introduction or importing to Puerto Rico of commercial fertilizers with sand, earth, soil or vegetable matter as filler.

a) Except as provided in subsection (c) of this Section, the importing or introduction into Puerto Rico of any commercial fertilizer whatsoever which contains or may contain sand, earth, soil or vegetable matter as a filler, or whose filler contains or may contain any type of plant disease, as that term is defined in Act No. 93 of June 5, 1973, as amended, known as the "Plant Quarantine Act of Puerto Rico", is

forbidden.

b) The Secretary may allow the importing or introduction into Puerto Rico of any commercial fertilizer containing sand, earth, soil or vegetable matter as filler, provided that the lot of said commercial fertilizer is accompanied by an official inspection certificate issued by the Department of Agriculture of the United States, or the Department of Agriculture of any State of the United States, or any country from whence said commercial fertilizer comes, evincing that the sand, earth, soil or vegetable matter used as filler in said commercial fertilizer were duly sterilized immediately prior to being added to the commercial fertilizer to be imported or introduced into Puerto Rico.

c) Every lot of commercial fertilizer arriving in Puerto Rico from abroad shall be subject to inspection by the Secretary or his/her authorized representative, pursuant to the provisions of Section 7 of this Act, in order to verify that said commercial fertilizer complies with the applicable requirements of this Act.

If upon inspection of commercial fertilizer imported or introduced into Puerto Rico, it is determined that the latter contains sand, earth, soil or vegetable matter as a filler, and that it does not include the certificate of inspection required under subsection (b) of this Section, or that said filler contains any plant disease, the lot of commercial fertilizer inspected shall at the option of the importer or consignee, be returned to the sender or destroyed without payment of any compensation whatsoever."

Section 4.- Section 4 of Act No. 19 of May 8, 1973, as amended, is hereby amended to read as follows:

"Section 4.- Labeling

a) It shall be the duty of every manufacturer or distributor of commercial fertilizers or soil additives to label each container thereof with the following printed

clearly legible information:

1. Name of the product in the container.
2. Name and address of the manufacturer.
3. Net weight in pounds of each bundle, and in the case of liquid fertilizers, also the volume in gallons and the liquid density at twenty-seven (27) degrees centigrade, expressed in pounds per gallon (ppg)
4. Distinctive name or trademark.
5. Minimum grade or guaranteed analysis.
6. Instructions for use. This requirement shall be necessary only in those products indicated under regulations by the Secretary.
7. Name of the material used as filler, in the case of products imported or introduced into Puerto Rico.
8. A statement indicating the sources of the raw material containing nitrogen (N), assimilable phosphoric acid (P<sub>2</sub>O<sub>5</sub>) and water soluble potash (K<sub>2</sub>O).

When the commercial fertilizer or soil additive is distributed in bulk, this information in printed or written form shall be included for each shipment or lot and a copy thereof shall be furnished to the buyer at the time of delivery.

b) The grade of a commercial fertilizer and the minimum guaranteed analysis of the raw material for fertilizers shall be stated as the percentage (%) per weight as follows:

1. percentage of nitrogen (N)
2. percentage of assimilable phosphoric acid (P<sub>2</sub>O<sub>5</sub>).
3. percentage of water soluble potash (K<sub>2</sub>O).

The guaranteed content of any other nutrient element or substance in a commercial fertilizer or raw material for fertilizers shall be stated in percentage by minimum guaranteed weight of said nutrient element or substance. In the case of bone, tankage or phosphated products for which ordinary laboratory methods are not applicable for the determination of assimilable phosphoric acid ( $P_2O_5$ ), the amount of phosphoric acid ( $P_2O_5$ ) shall be stated as total phosphoric acid ( $P_2O_5$ ), unless it is desired to also state the assimilable phosphoric acid ( $P_2O_5$ ) determined by the corresponding official laboratory method of the Official Analytic Chemists Association of the United States of America, and in this case, the corresponding guarantee shall be on the basis of the assimilable phosphoric acid ( $P_2O_5$ ).

The guaranteed analysis of a soil additive shall be labeled stating the minimum percentage by weight of the content of the active ingredient or ingredients and the percentages of guaranteed pulverization; provided, that the grade of pulverization and minimum analysis to be guaranteed in any soil additive shall be established by the Secretary through regulations.

c) Every lot of commercial fertilizer that has been prepared according to the specifications furnished by the consumer or user before being mixed shall be clearly and legibly labeled with the following information:

1. Name and address of the manufacturer.
2. Net weight in pounds of each container or bundle, and in the case of liquid fertilizers, the volume in gallons and the liquid density at twenty-seven (27) degrees centigrade, stated in pounds per gallon.
3. Minimum grade or guaranteed analysis stated in the manner indicated in subsection (b) of this Section.”

Section 5.- Clauses 3 and 4 are hereby added to subsection (b) of Section 6 of Act No. 19 of May 8, 1973, as amended to read as follows:

“Section 6.-Adulteration and Deficiencies

.....

b) A commercial fertilizer or soil additive shall be deemed adulterated of deficient:

.....

3. If it contains noxious substances in amounts that are harmful or prejudicial to the crops or plants on which it is used.
4. If it contains additional materials to those authorized by the Secretary for that formula.”

Section 6.- Section 9 of Act No. 19 of May 8, 1973 is hereby amended to read as follows:

“Section 9.- Penalties for deficiencies in the guaranteed analysis

In case any commercial fertilizer shows a deficiency in any of its elements or nutrients in a higher degree than that specified in the above Section, (it being understood that each unit shall correspond to one percent (1%) by weight) with in regard to the guaranteed analysis after the result of the inspection and analysis of the official sample is final and unappealable, the manufacturer of said commercial fertilizer shall be bound to pay as a penalty, the amounts the Secretary may impose on the basis of the scale provided below, if the official sample of said commercial fertilizer is taken from its original container, or at the manufacturer’s or distributor’s warehouses, or in the distribution or marketing channels of the commercial fertilizer, or when said fertilizer is delivered to the buyer.

The amounts to be paid as penalties in such cases shall be determined according to the following scale:

(1) Units or fraction of	Penalty to be paid for every one
unit of deficiencies in nitrogen (N),	hundred (100) pounds or

assimilable phosphoric acid (P<sub>2</sub>O<sub>5</sub>), or water soluble potash (K<sub>2</sub>O) higher than those permitted in each case in relation to the guaranteed analysis.

fraction thereof of commercial fertilizer found deficient in the lot inspected.

From 0.8 and up to 1.5

\$ 0.65

Over 1.5 and up to 2.5

1.30

Over 2.5 and up to 3.5

1.95

Over 3.5

2.25 plus 0.65

For each unit in excess of 3.5 units.

(2) In case the computation of the deficiency based on total phosphoric acid (P<sub>2</sub>O<sub>5</sub>) is necessary, and the deficiency is one percent (1%) or more in relation to the guaranteed analysis, the amount to be paid shall be determined according to the following scale:

Units or fraction of a unit of deficiencies in total phosphoric acid (P<sub>2</sub>O<sub>5</sub>) higher than is permitted in relation to the guaranteed analysis.

Penalty to be paid for every one hundred (100) pounds or fraction thereof of commercial fertilizer found deficient in the lot inspected.

From 1.0 and up to 2.0

\$ 1.10

Over 2.0 and up to 3.0

2.20

Over 3.0

2.50 plus \$ 1.10

For each unit or fraction thereof  
in excess of 3 units.

In no case shall the penalty to be paid shall be less than one hundred and fifty (150) dollars.

Payment for these penalties shall be made in cash or by check, money order or credit note payable to the farmer or to the Secretary of the Treasury of Puerto Rico as provided below. These payments shall be remitted to the farmer or to the Department of Agriculture within thirty (30) days after notice of the penalty is served. The manufacturer shall submit certifying evidence to the Secretary of having paid the penalty within the term prescribed; provided, that in those cases that the samples were taken, as is the case when samples not sold to the farmer are taken at the manufacturer's or distributor's level, said penalty shall be awarded to the Government of the Commonwealth of Puerto Rico. In all other cases payment of the penalty shall inure to the farmer. In the case of deficiencies in or violations in the analysis of specialized fertilizers, these shall be determined through an administrative hearing.  
.....”

Section 7.- Section 11 of Act No.19 of May 8, 1973, as amended, is hereby amended to read as follows:

“Section 11.- Taxes

An extraordinary tax of twenty (20) cents per ton or fraction of a ton of commercial fertilizer manufactured or distributed in Puerto Rico is hereby levied. In the case of liquid fertilizers, and for the purpose of levying the tax, the tons or fractions thereof shall be calculated on the basis of their densities at 27 degrees centigrade stated in pounds per gallon or volumes in gallons.

A tax of twenty (20) cents is likewise levied on each ton or fraction of a ton of

raw materials for fertilizers manufactured and/or distributed to be applied directly in the plantations or for use in Puerto Rico as such, that is, without having been previously used in the manufacture of commercial fertilizers.

An extraordinary tax of fifteen (15) cents for each ton or fraction thereof is also levied on all soil additive manufactured or distributed in Puerto Rico.

.....”

Section 8.- A Section 11-A is hereby added to Act No. 19 of May 8, 1973, as amended, to read as follows:

“Section 11-A.- Penalties and Interest on Taxes in Arrears

Every manufacturer or distributor or commercial fertilizer or soil additives who fails to pay the extraordinary taxes established in Section 11 of this Act within the term fixed by this provision, shall the following surcharges in addition to said taxes:

- 1) Progressive Surtax – Five (5) percent of the total amount of the taxes when payment is made thirty (30) days after the date when payment was due and ten (10) percent of the total amount of the taxes when payment is made sixty (60) days after the date when payment was due.
- 2) Interest – Interest on the total amount of the tax computed at the rate of ten (10) percent per annum from the date fixed for payment.”

Section 9.- Section 12 of Act No. 19 of May 8, 1973, as amended, is hereby amended to read as follows:

“Section 12.- Regulations

The Secretary shall draft, with the advice of the Fertilizer Board, the corresponding regulations for commercial fertilizers and soil additives, in which all those rules for the inspection, analysis, manufacture, importing and distribution of commercial fertilizers and soil additives not in conflict with this Act shall be established, and which, in his/her judgment, may be necessary to achieve the best

enforcement thereof. Said regulations shall be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the 'Uniform Administrative Procedures Act', and shall have the force of law.”

Section 10.- Section 15 of Act No. 19 of May 8, 1973 is hereby amended to read as follows:

“Section 15.- Administrative Fines

After holding the corresponding administrative hearing, in which the person involved shall have the opportunity to be heard, according to the provisions of Act No. 170 of August 12, 1988, as amended, known as the 'Uniform Administrative Procedures Act', the Secretary is hereby empowered to impose administrative fines up to a sum of one thousand (1,000) dollars for any violation of the provisions of this Act or of the regulations promulgated thereunder.

The Secretary, at his/her discretion, may prosecute any violation of this Act through the administrative or judicial venue. The regulations to be established by virtue of the provisions of this Act shall provide the procedure to be followed in the imposition and collection of these fines, which shall be paid by certified check or money order payable to the Secretary of the Treasury and directed to the Department of Agriculture.

.....”

Section 11.- Section 17 of Act No. 19 of May 8, 1973, as amended, is hereby amended to read as follows:

“Section 17.- Penalties

Any person who manufactures or distributes any commercial fertilizer, raw material for fertilizer or soil additive in Puerto Rico without first having complied with the provisions of Sections 3 and 4 of this Act or with the regulations which by virtue of the latter have been established, or who alters or adulterates the contents of a

commercial fertilizer or soil additives to distribute it, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred (500) dollars nor more than one thousand (1,000) dollars, and in default of payment thereof, by imprisonment that shall not exceed three month, or both penalties at the discretion of the court.

Likewise, every violation of any other provision of this Act or of the regulations established thereunder shall be deemed as a misdemeanor and be punished by a fine of not less than three hundred (300) dollars nor more than five hundred (500) dollars, and in default of payment thereof, by imprisonment that shall not exceed one month. When the fines prescribed by this Section are imposed on juridical entities, collection may be made through the attachment of any real or personal property of the violator, as in the case of property taxes, through due process of law in court. Original jurisdiction to take cognizance of the offenses determined in this Act shall be vested in the first instance in the part of the Superior Court where the facts charged as such offenses occurred.”

Section 12.- This Act shall take effect thirty (30) days after its approval.

December 21, 1998

José A. Figueroa-Lugo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 103 (Substitute to S.B. 47) of the 1st Session of the 13th Legislature of Puerto Rico, entitled:

**AN ACT** to add subsections (x), (y) and (z) to Section 1; amend Section 2; add a new Section 2-A; amend Section 4; add clauses 3 and 4 to subsection (b) of Section 6; amend Section 9; add a new Section 11-A and amend Sections 12, 15 and 17 of Act No 19 of May 8, 1973, as amended, known as the "Fertilizer Act of Puerto Rico", in order to add new definitions and clarify terms; fix new responsibilities on the manufacturers, distributors and importers of commercial fertilizers or soil additives; require a certificate of sterilization for any fertilizer filler introduced to Puerto Rico; require additional information in the labeling of fertilizers or soil additives; require that the regulations adopted be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedure Act" and increase the taxes and penalties established in said Act,

and finds the same are complete, true and correct versions of each other.

José A. Figueroa-Lugo