

TITLE 4: ECONOMIC RESOURCES
DIVISION 10: COMMONWEALTH ECONOMIC DEVELOPMENT AUTHORITY

§ 10603. CEDA-CUC Loan Principal and Interest Write-off.

The Commonwealth Economic Development Authority (CEDA) is hereby authorized to waive the sum of \$45,500,000.00 of the principal amount owed by the Commonwealth Utilities Corporation (CUC), such amount being the aggregate sum of all outstanding sewer and water project loans given to CUC and referenced in the Amended Memorandum of Agreement between CEDA and CUC executed on January 13, 2004 and January 17, 2004, by each respective public corporation. Pursuant to the same Amended Memorandum of Agreement, CEDA is hereby authorized to waive any and all accrued interest owed by CUC on all outstanding loans in accordance with the terms and conditions of the Amended Memorandum of Agreement, such terms and conditions being incorporated herein by reference. However, in the event that CUC's power division or any section thereof is privatized, fifty percent or \$22,750,000.00 of the principal amount of \$45,500,000.00 shall be rebated to the residential power consumers and the remaining fifty percent shall be waived. The said rebate shall be subject to review and approval by the Public Utilities Commission upon privatization.

Source: PL 15-12, § 2; amended by PL 15-44, § 2; PL 22-1, § 3 (June 7, 2021).

Commission Comment: PL 15-12 was enacted on June 6, 2006, and contained the following findings in addition to a repeal of 4 CMC § 8123(p), severability, and savings provisions:

Section 1. Findings. The Legislature finds that the Commonwealth Development Authority (CDA) and the Commonwealth Utilities Corporation (CUC), formerly a public corporation and now allocated to the Department of Public Works by Executive Order No. 2006-1, have been involved in a legal dispute regarding loans extended to CUC by CDA in the Superior Court of the Commonwealth. The parties have attempted to resolve their dispute numerous times but to no avail and the Superior Court has stated that both parties are government agencies and could resolve their differences without court intervention. In January 2004, CUC and CDA executed an Amended Memorandum of Agreement (AMOA) setting forth the terms of their agreement. The Legislature, however, finds that CUC is in a state of severe financial crisis and is unable to make payments pursuant to the said AMOA. At this time, CUC's main struggle surrounds its fuel cost payment every month, costs which continue to rise each month.

Moreover, the Legislature finds that the funds provided to CUC by CDA were from a \$140 million direct grant assistance to the CNMI from the federal government without any repayment requirement. The Legislature further finds that CDA acted as a conduit for the distribution of the said funds which was to be used for infrastructure development in the CNMI. CDA distributed the said funds to various government agencies, other than CUC, without requiring the said agencies to pay back the funds given to them. Arguably, CUC, too, should not have to pay back the funds given to it by CDA and the funds were used for infrastructure development,

TITLE 4: ECONOMIC RESOURCES
DIVISION 10: COMMONWEALTH ECONOMIC DEVELOPMENT AUTHORITY

i.e. power, water, and sewer projects. Accordingly, the Legislature further finds that it is in the best interest of the CNMI to write off in full CUC's loans from CDA in order to promote the stability of CUC and to secure the continuity of public utility services to the people of the CNMI.

Furthermore, the Legislature further finds that Public Laws 12-1 and 13-36 are impediments in the way of rehabilitating and reorganizing the Commonwealth Utilities Corporation. Accordingly, the legislature finds that it is in the best interest of the people of the Commonwealth to repeal the above-referenced public laws.

PL 15-44 took effect on January 23, 2007, and contained the following findings and purpose in addition to severability and savings provisions:

Section 1. Findings and Purpose. To further the purpose of Public Law 15-12 to remove impediments to rehabilitating and reorganizing the Commonwealth Utilities Corporation, the legislature finds that Section 2 of said law must be amended due to potential, inadvertent consequences that may result. Section 2 of Public Law 15-12 provides, in part, that:

... in the event that the power generation system for the CNMI is privatized and controlled by an independent power producer, fifty percent of the principal amount of \$45,500,000.00 shall be paid by the independent power producer to the Commonwealth Development Authority. Such payment shall be reserved and used for loan programs administered by the Commonwealth Development Authority or its successor agency.

The Legislature finds that the above language not only impedes the likelihood of privatization of the Commonwealth Utilities Corporation but also heightens the risk that the cost to the independent power producer who takes control of the CNMI's power generation system might be borne ultimately by Commonwealth consumers should the above-cited language remain in the statute. Either result is not in the best interest of the CUC and the already suffering people of the CNMI. Therefore, the purpose of this act is to ensure that privatization is unimpeded and no financial burden because of privatization is placed on Commonwealth consumers.