CAPA

MINISTÉRIO DAS CIDADES

SECRETARIA EXECUTIVA
Assessoria de Relações Internacionais

SECRETARIA NACIONAL DE SANEAMENTO AMBIENTAL
Diretoria de Articulação

SECRETARIA NACIONAL DE PROGRAMAS URBANOS

LEGISLAÇÃO E SANEAMENTO BÁSICO

ESTATUTO DA CIDADE
Lei Nº. 10.257 de Julho de 2.001

SANEAMENTO BASICO
Lei Nº. 11.445 de 05 de Janeiro de 2.007

CONSÓRCIOS PÚBLICOS
Lei Nº. 11.107 de 06 de Abril de 2.005
Decreto Nº. 6.017 de 17 de Janeiro de 2.007

Brasília, abril de 2.007

CONTRACAPA

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NOTA: a tradução da Lei Nº. 10.257 de Julho de 2.001 em sua versão para a língua inglesa e espanhola foram extraídas dos documentos: THE STATUTE OF THE CITY new tools for assuring the right to the city in Brasil e EL ESTATUTO DE LA CIUDAD:nuevas herramientas para garantizar el derecho a la ciudad en Brasil, elaborados pelo INSTITUTO PÓLIS Acesso em www.polis.org.br

APRESENTAÇÃO

"A integração é a ferramenta que nos permitirá conquistar a independência. Tal como já conquistamos a independência política, a integração permitirá nosso desenvolvimento e crescimento (...) Não existe a possibilidade de que apenas um país encontre as soluções para o crescimento e o desenvolvimento"
Luis Inácio Lula da Silva

Entre os objetivos, dentre as múltiplas finalidades que se propõe a Política Nacional de Saneamento Básico, podem -se destacar dois (02) deles: o primeiro é contribuir para a transparência das ações, baseada em sistemas de informações; o segundo é a possibilidade dos entes da Federação poderem se organizar administrativamente sob forma de consórcios públicos.

Nesse sentido, a divulgação em escala cada vez mais ampla dos direitos e deveres dos cidadãos e do Estado constitui, por certo, um dos alicerces mais sólidos para a democratização cada vez maior do país, e, consequentemente, a reafirmação da cidadania.

De outro lado, a gestão associada entre os entes federativos indica a introdução de novas posturas no setor saneamento, facilitando a implementação desta política no interior do país, principalmente naqueles municípios de pequeno porte e de poucos recursos financeiros.

Agregado a estes objetivos, destaca-se também a necessidade de aperfeiçoar o funcionamento das cidades, bem como as relações diplomáticas entre os dez (10) países vizinhos do continente Sul Americano, principalmente no que diz respeito à implementação da política de saneamento básico e o uso comum dos recursos hídricos fronteiriços e transfronteiriços.

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Considerando que, em nosso país, a região de fronteiras apresenta-se como pouco desenvolvida e marcada pela dificuldade de acesso aos bens e serviços públicos, o fortalecimento da política urbana na região, principalmente no que diz respeito à implantação e/ou implementação dos Planos Diretores, da política de habitação e de saneamento, constituem ferramentas que se articulam aos esforços governamentais para a universalização das ações de saneamento e ao mesmo tempo, para a integração social entre os países do continente sul americano. Neste contexto, o Estatuto da Cidade, Lei Nº.10.257, de 10 de julho de 2001, traz a possibilidade de introduzir mudanças no cenário urbano definindo sua função social e da propriedade.

Daí, a preocupação do Ministério das Cidades em uma publicação estruturada, atualizada e traduzida da legislação brasileira sobre a política urbana e de saneamento básico, para orientar e fundamentar os profissionais ligados à área e de informação para os demais cidadãos, afim de que possam obter os equacionamentos jurídicos para suas dúvidas seja elas no âmbito interno ou externo ao país.

LAW No 10.257, OF JULY 10, 2001

This law regulates arts. 182 and 183 of the Federal Constitution, it establishes general guidelines for urban policy and other measures.

THE PRESIDENT OF THE REPUBLIC
I proclaim that the National Congress decrees and I sanction the following Law:

CHAPTER I
GENERAL GUIDELINES

Art. 1o The provisions of this law will be applied in the execution of urban policy, which is the subject of arts. 182 & 183 of the Federal Constitution. Sole paragraph. For all effects, this Law, known as the City Statute, establishes norms for public order and social interest which regulate the use of urban property in favor of the common good, safety and well-being of citizens,
as well as environmental equilibrium.

Art. 2o The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:
I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations;
II - democratic administration by means of participation of the population and of the representative associations of the various segments of the community in the formulation, execution and monitoring of urban development projects, plans and programs;
III - cooperation between governments, private initiative and other sectors of society in the urbanization process, in service of the social interest;
IV - planning of the development of cities, of spatial distribution of the population and of the economic activities of the Municipality and of the territory under its area of influence, in order to avoid and correct the distortions of urban growth and its negative effects on the environment;
V - supply of urban and community equipment, transportation and public services adequate for the interests and needs of the population and the local characteristics;
VI - ordering and control of land use, in order to avoid:

a) the improper use of urban real estate;
b) the proximity of incompatible or inconvenient uses;
c) the sub-division of land, construction or excessive or improper use in relation to urban infra-structure;
d) the installation of developments or activities that could become centers that generate traffic, without a prevision for corresponding infrastructure;
e) the speculative retention of urban real estate, which results in its under utilization or non-utilization;
f) the deterioration of urbanized areas;
g) pollution and environmental degradation;

VII - integration and complementarity between urban and rural activities, considering social economic development of the Municipality and of the territory under its area of influence;
VIII - adoption of production and consumption standards of goods and services and of urban expansion compatible with the limits of environmental, social and economic sustainability of the Municipality and of the territory under its area of influence;
IX - fair distribution of the benefits and burdens resulting from the urbanization process;

X - adaptation of tools of economic, tax and financial policy and of public spending to the objectives of urban development, in order to give priority to investments that generate general well-being and the fruition of the goods by different social segments;
XI - recovery of government investments that have caused an appreciation in the value of urban real estate;
XII - protection, preservation and recovery of the natural and built environment, and of the cultural, historic, artistic, landscape and archeological heritage;
XIII - a hearing with municipal government and the population interested in the processes of implantation of developments or activities with potentially negative effects on the natural or built environment, the comfort or safety of the population;
XIV - regularization of land ownership and urbanization of areas occupied by low income populations through the establishment of special urbanization norms, and for land use and occupation and building, considering the social economic situation of the population and environmental norms;
XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;
XVI - equality of conditions for public and private agents in the promotion of developments and activities related to the urbanization process, serving the social interest.

Art. 3º It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

I - to establish legislation concerning general norms of urban law:
II - to establish legislation about norms for cooperation between the Federal government, the States and the Federal District and the municipalities in relation to urban policy, considering the equilibrium of development and of well being on a national level;
III - promote, through its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;
IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;
V - prepare and execute national and regional plans to order territory and economic and social development.

CHAPTER II
THE TOOLS OF URBAN POLICY
Section I
The instruments in general

Art. 4º For the purposes of this Law, the following – and other – tools will be used:

I - national, regional and state plans, for organization of territory and economic and social development;
II - planning of the metropolitan regions, urban and micro-regional conglomerations;
III - municipal planning, in particular:

a) master plan;
b) disciplining of sub-divisions, of land use and occupation;
c) environmental zoning;
d) multi-annual plan;
e) budget regulations and annual budget;
f) participative budget management;
g) sectoral plans, programs and projects;
h) economic and social development plans;

IV - financial and tax institutes:
a) taxes on built property and urban land – IPTU;
b) improvement fees;
c) fiscal and financial incentives and benefits;
V - legal and political institutes:
a) appropriations;
b) administrative right-of-ways;
c) administrative limits;
d) landmarking of buildings or urban real estate;
e) establishment of conservation districts;
f) establishment of special social interest zones;
g) concession of real right to use;
h) concession of special use for housing purposes;
i) compulsory sub-division, building or utilization;
j) special usucapion for urban property;
l) right to the surface;
m) right to preemption;
n) award with costs of the right to build or change of use;
o) transfer of the right to build;
p) urban operations through consortiums;
q) land ownership regularization;
r) free technical and legal assistance for less favored
communities and social groups;
s) popular referendum and plebiscite;

VI - Pre-project Environmental Impact Statement and Neighborhood Impact Statements.

§ 1º The instruments mentioned in this article are governed by specific legislation, observing that
established by this Law.

§ 2º In the cases of social interest housing programs and projects developed by government entities that operate specifically in this area, the concession of the real right to use public real estate can be collectively contracted.

§ 3º The tools called for in this article that require expenditure of municipal government funds should be the object of social control, guaranteeing the participation of communities, movements and entities of civil society.

Section II
Of the sub-division, building or compulsory use

Art. 5º Specific municipal law for areas included in the master plan can determine the sub-division, building upon or compulsory use of non-built, under utilized or not utilized urban land, and should establish conditions and deadlines for the implementation of the referred to obligations.

§ 1º Real estate is considered under utilized if:

I - the utilization is lower than the minimum defined in the master plan or in related legislation;
II - (VETOED)

§ 2º The owner will be notified by the Municipal Administration to comply with the requirement, and the notification should be registered in the local real estate deed office.

§ 3º The notification will be conducted as follows:

I - by employee of the responsible Municipal Government agency, to the owner of the real estate, or, if the owner is a company, to whomever has general administrative or managerial responsibility;
II - by public notice when there were three unsuccessful attempts to notify the owner in the form called for in item I.

§ 4º The deadlines referred to in the caput cannot be less than:

I - one year, from the moment of notification, for the project to be registered in the relevant municipal agency;
II - two years, from the approval of the project, to initiate work at the development.

§ 5º In large scale developments, in exceptional cases, a specific municipal law which is referred to in the caput can call for the conclusion in phases, assuring that the approved development includes the project as a whole.

Art. 6º The transmission of the property, inter vivos or upon death, after the date of notification, transfers the obligations for sub-division, construction or use called for in art. 5º of this Law, without interruption of any deadlines.

Section III
Property Taxes (IPTU) that are progressive over time

Art. 7º In case of noncompliance with the conditions and deadlines established in the form of the caput of art. 5º of this Law, or if the steps called for in § 5º of art. 5º of this law are not obeyed, the Municipality can proceed to apply taxes over the built property and urban land (IPTU) that are progressive over time, through the increase of the tax rate for the period of five consecutive years.

§ 1º The value of the tax rate to be applied for each year will be fixed in specific law referred to in the caput of art. 5º of this Law and will not exceed twice the value referred to the previous year, respecting a maximum rate of fifteen percent.

§ 2º In case the obligation to sub-divide, build or use is not met in five years, the Municipality will maintain the taxes at the maximum rate, until the referred to obligation is met, to guarantee the prerogative called for in art. 8.
§ 3º The concession of exemptions or of an amnesty relative to the progressive taxation determined by this article is prohibited.

Section IV
For appropriation with payment in bonds

Art. 8º Five years after the charging of progressive IPTU, if the property owner has not complied with the obligation to sub-divide, build or use the property, the Municipality can proceed towards a appropriation of the property with payment in public debt notes.

§ 1º The public debt notes must be previously approved by the Federal Senate and will be paid back in a period of ten years, in annual, equal, and successive installments, guaranteed by the real value of the indemnity and of legal interest rates of six percent per year.

§ 2º The real value of the indemnity:

I - will reflect the base value for calculation of the IPTU, discounting the total incorporated, due to the work conducted by the government in the area where the property is located after the notification mentioned in §2º art. 5º of this Law;
II - expectations of gains, ceased profits and compensatory interest will not be computed.

§ 3º The bonds mentioned in this article cannot be used to pay taxes.

§ 4º The Municipality will proceed to the suitable use of the property in a maximum of five years, counting from the time it became incorporated to the public patrimony.

§ 5º The use of the property can be made effective directly by the government or by means of alienation or concession to third parties, observing in these cases, the proper public bidding process.

§ 6º The party acquiring the real estate under the terms of § 5º is subject to the same obligations for sub-division,building or use called for in art. 5º of this Law.

Section V
Special usucapion rights for urban property

Art. 9º Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

§ 1º The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.

§ 2º The rights granted in this article will not be recognized to the same possessor more than once.

§ 3º For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

Art. 10. Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

§ 1º The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.

§ 2º The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.

§ 3º In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4º The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5º The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

Art. 11. While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

Art. 12. Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;
II - the possessors, in a state of co-possession;
III - as a processsual substitute, an association of community residents, duly established, with legal standing, as long as it is e xplicitly authorized by those it represents.

§ 1º In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2º The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

Art. 13. Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

Art. 14. In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.

Section VI
Concerning special use concessions for housing purposes

Art. 15. (VETOED)
Art. 16. (VETOED)
Art. 17. (VETOED)
Art. 18. (VETOED)
Art. 19. (VETOED)
Art. 20. (VETOED)

Section VII
Concerning surface rights

Art. 21. The urban property owner will concede to another party the right to the use of the surface of their land, for a specified or unspecified time, through public deed registered in the public deeds office.

§ 1º The surface right includes the right to utilize the land, the sub-soil, or the aerial space related to the land, in the form established in the respective contract, meeting the urban legislation.

§ 2º The surface rights can be offered for free or at cost.

§ 3º The person receiving the surface rights will respond wholly for the fees and taxes on the surface of the property, also accepting responsibility proportional to their effective share of occupation, with the fees and taxes on the area that is object of the concession of the surface rights, except for any contrary disposition in the respective contract.

§ 4º The surface right can be transferred to third parties, obeying the terms of the respective contract.

§ 5º Upon death of the person receiving the surface rights, their rights are transferred to their inheritors.

Art. 22. In case of alienation of the land, or of the surface right, the party receiving the surface rights and the property owner respectively, will have the right of preference, in equal conditions, to the offer of third parties.

Art. 23. Surface rights are terminated:

I - by the expiration of the deadline;
II - by the failure to comply with the contractual obligations assumed by the person assuming the surface rights.

Art. 24. Upon termination of the surface rights, the property owner will recover the full domain over the land, as well as the accessions and improvements made to the real estate, independent of indemnification, if the parties have not stipulated otherwise in the respective contract.

§ 1º Before the final termination of the contract, the surface rights are terminated if the person receiving the surface rights give to the land a use distinct from that for which it was conceded.

§ 2º The extinction of the surface rights will be registered in the real estate deed office.

Section VIII
The right to preemption

Art. 25. The right to preemption confers to the municipal government preference in the purchase of urban real estate subject to alienation at cost between private parties.

§ 1º Municipal law based on the master plan will establish areas in which will apply the right to preemption and will establish a period of enforcement, not greater than five years, renewable from one year after the duration of the initial period of enforcement.

§ 2º The right to preemption is assured during the period of enforcement established in the form of § 1º, independent of the number of alienations of the real estate in question.

Art. 26. The right to preemption will be exercised whenever the government needs areas for:

I - regularization of land ownership;
II - execution of social interest housing programs and projects;
III - establishment of a land reserve;
IV - ordering and guidance of urban expansion;
V - implantation of urban and community equipment;
VI - creation of public spaces for leisure and green areas;
VII - creation of conservation districts or protection of other areas of environmental interest;
VIII - protection of areas of historic, cultural or landscape interest;
IX - (VETOED)

Sole paragraph.
The municipal law called for in § 1º of art. 25 of this Law should include each area in which the right to preemption will be applied for one or more of the purposes indicated by this article.

Art. 27. The owner should notify of his intention to alienate the property so that the Municipality, within a maximum period of 30 days, manifests by writing its interest in purchasing it.

§ 1º The notification mentioned in the caput will be annexed to the proposal to purchase signed by the third party interested in purchasing the real estate, on which will be indicated the payment terms and period of validity.

§ 2º The municipality will publicize, in an official journal and in at least one local or regional newspaper of wide circulation, an official statement of notification received in terms of the caput and of the intention to acquire the real estate under the conditions presented in this proposal.

§ 3º Once the deadline mentioned in the caput has expired without any declaration of interest, the property owner is authorized to undertake alienation to third parties, in the conditions presented in the proposal.
§ 4º Once the sale to third parties is realized, the owner will be required to present to the Municipality, within a period of thirty days, a copy of the public real estate transaction deed.

§ 5º An alienation processed in conditions different than the proposal presented is void of complete rights.

§ 6º If the hypothesis presented in § 5º takes place, the Municipality can acquire the real estate for the base appraised value of the IPTU or by the value indicated in the proposal presented, if this is inferior.

Section IX
Award with costs of the right to build

Art. 28. The master plan can establish areas in which the right to build can be exercised above the basic floor area ratio adopted, through a compensation to be offered by the beneficiary.

§ 1º For the purposes of this Law, floor area ratio is the relationship between the built area and the lot size.

§ 2º The Master Plan can establish a single basic floor area ratio for the entire urban zone or one that is differentiated by a specific area within the urban zone.

§ 3º The Master Plan will define the maximum limits to be reached by the floor area ratio, considering the proportion between the existing infrastructure and the increased
density expected in each area.

Art. 29. The master plan can establish areas in which can be permitted alterations in land use, through a counterpart offered by the beneficiary.

Art. 30. A specific municipal law will establish the conditions to be observed for the award with cost of the right to build and the alteration in use established:

I - the formula for calculation of the charge;
II - the cases that can be exempt for payment of the award;
III - the counterpart issued by the beneficiary.

Art. 31. The resources received from the adoption of the award at cost of the right to build and the alteration in use will be applied for the purposes established in lines I to IX of art. 26 of this Law.

Section X
Of consortial urban operations

Art. 32. Specific municipal law, based on the master plan, can limit the area for application of the consortial operations.

§ 1º A consortial urban operation is the totality of the interventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors, with the objective of undertaking structural urban transformations, social improvements and environmental benefits in a given area.

§ 2º Urban consortial operations can include:

I - the modification of rates and characteristics for the sub-division, use and occupation of land, as well as the alterations of building norms, considering the environmental impacts that stem from them;
II - the regularization of construction, reform or expansion not executed in violation of current legislation.

Art. 33. The specific law that approves the urban consortial operation will include the plan for urban consortial operation, containing, in the minimum:

I - the definition of the area to be affected;
II - the basic program for occupation of the area;
III - the program for economic and social servicing of the population directly affected by the operation;
IV - the finalities of the operation;
V - a neighborhood impact study conducted before construction;
VI - compensation to be demanded from the owners, permanent users and private investors due to the use of the benefits established in inserts I and II of § 2º of art. 32 of this Law;
VII - the form of control of the operation, which must be shared with representatives from civil society.

§ 1º The resources obtained by the municipal government in the form of insert VI of this article will be exclusively invested in the consortial urban operation itself.

§ 2º Based on the approval of the specific law indicated in the caput, any licenses and authorizations issued by the municipal government in violation of the consortial urban operation are null.

Art. 34. The specific law that approves the consortial urban operation can call for the issue by the Municipality of an established number of certificates for potential additional construction, which will be alienated at auction or used directly in payment for work required for the operation
itself.

§ 1º The certificates for potential additional construction will be freely traded, but convertible to the right to build solely in the area that is the object of the operation.

§ 2º Once the request for the license to build is presented, the certificate for additional potential will be used in payment for the area of construction that exceeds the standards established by the land use and occupation legislation, until the limit fixed by the specific law that approves the urban consortial operation.

Section XI
Of the transfer of the right to build

Art. 35. Municipal law, based on the master plan, can authorize the owner of urban real estate, whether public or private, to exercise in another location, or alienate, through public deed, the right to build established in the master plan or in related urban legislation, when the referred to property is considered necessary for purposes of:

I - implantation of urban and community equipment;
II - preservation when the real estate considered is of historic, environmental, landscape, social or cultural interest;
III - serve programs for land ownership regularization, urbanization of areas occupied by low-income population and social interest housing.

§ 1º The same possibility can be conceded to the owner who donates his real estate to the government, or part of it, for the purposes called for in items I to III of the caput.

§ 2º The municipal law referred to in the caput will establish the conditions relative to the application of the transfer of the right to build.

Section XII
Concerning the Neighborhood Impact Study

Art. 36. Municipal law will define the private and public developments and activities in urban areas that will require the previous preparation of a Neighborhood Impact Study (EIV) to obtain the licenses or authorizations to build, expand or operate from the municipal government.

Art. 37. The EIV will be executed in such a way as to consider the positive and negative effects of the development or activity concerning the quality of life of the population residing in the area and its proximities, including the analysis, at least, of the following questions:

I - population density;
II - urban and community equipment;
III - land use and occupation;
IV - real estate appreciation;
V - generation of traffic and demand for public transportation;
VI - ventilation and illumination;
VII - urban landscape and natural and cultural heritage.

Sole paragraph.
The documents that comprise the EIV will be publicized and will be made available for public consultation, by the competent municipal government agency to anyone interested.

Art. 38. The preparation of the EIV will not substitute the preparation and approval of the previous environmental impact statement required under the terms of environmental law.

CHAPTER III
THE MASTER PLAN

Art. 39. Urban property fulfills its social function when it meets the basic requirements for establishing order for the city expressed in the master plan, assuring attending the needs of the citizens concerning quality of life, social justice and development of economic activities, respecting the rights established in art. 2º of this Law.

Art. 40. The Master Plan, approved by municipal law, is the basic instrument of urban development and expansion policy.

§ 1º The master plan is an integral part of the municipal planning process, and the multi-year plan, the budget guidelines and the annual budget should incorporate the rights and priorities established in the plan.

§ 2º The master plan should encompass the Municipal territory as a whole.

§ 3º The law that institutes the master plan should be revised, at least, every 10 years.

§ 4º In the process of preparation of the master plan and in the monitoring of its implementation, the municipal

Legislative and Executive powers will guarantee:

I - the promotion of public hearings and debates with the participation of the population and associations that are representative of the various segments of the community;
II - publicity concerning the documents and information produced;
III - access to the documents and information produced for anyone interested.

§ 5º (VETOED)

Art. 41. The master plan is mandatory for cities:

I - with more than 20,000 inhabitants;
II - members of metropolitan regions and urban conglomerations;
III - where the municipal government will intend to use the instrument established in § 4º of art. 182 of the Federal Constitution;
IV - members of special tourist interest areas;
V - inserted in the area of influence of developments or activities with significant environmental impact in the regional or national domain.

§ 1º In the case of the realization of developments or activities included in item V of the caput, the technical and financial resources for the preparation of the master plan will be inserted among the compensatory measures adopted.

§ 2º In the case of cities with more than 500,000 inhabitants, an integrated urban transport plan should be prepared, compatible with the master plan or inserted within it.

Art. 42. The Master Plan should minimally contain:
I - the delimitation of the urban areas where sub-divisions, building or compulsory use are applied considering the existence of infrastructure and demand for use, according to art. 5º of this Law;
II - dispositions required by arts. 25, 28, 29, 32 and 35 of this Law;
III - system of oversight and control.

CHAPTER IV
DEMOCRATIC ADMINISTRATION OF THE CITY

Art. 43. To guarantee the democratic administration of the city, the following, and other, instruments should be utilized:

I - urban policy counsels, at the national, state and municipal levels;

II - debates, hearings and public consultations;
III - conferences about subjects of urban interest, at the national, state and municipal level;
IV - popular initiative for proposed laws and plans, programs and urban development projects;
V - (VETOED)

Art. 44. Within the municipal realm, participative budget management indicated in line f of item III of art. 4º of this law will include conducting debates, hearings, and public consultations about the proposals of the multiannual plan, the budget guidelines law and the annual budget, as a mandatory condition for their approval by the City Council.

Art. 45. The administrative entities of metropolitan regions and urban conglomerations must include the significant participation of the population and of associations that represent various segments of the community, in order to guarantee the direct control of their activities and the complete exercise of citizenship.

CHAPTER V
GENERAL MEASURES

Art. 46. The municipal government can extend to the owner affected by the obligation determined by the caput of art. 5º of this Law, the creation of a real estate consortium as a way to establish financial viability for the real estate.
§ 1º The real estate consortium is considered a way to make viable the implantation of urban infrastructure or building plans by means of which the owner transfers his real estate to the municipal government, and after the realization of the work, receives, as payment, real
estate units, with suitable urban infrastructure or actually built.

§ 2º The value of the real estate units to be delivered to the owner will correspond to the value of the real estate before the execution of the work, observing the determinations of § 2º of art. 8 of this Law.

Art. 47. The taxes on urban real estate, as well as the fees related to public urban services, will be distinguished as a function of their social interest.

Art. 48. In the case of social interest housing programs and projects, developed by Public organs or entities with specific activity in this area, the concession contracts of the real right to use public real estate:

I - will have for all legal purpose, be considered as public register, and the requirements of item II of art. 134 of the Civil Code do not apply;
II - will constitute a title of mandatory acceptance in a guarantee of for housing financing contracts.

Art. 49. The States and Municipalities will have a period of 90 days, from the moment this law takes force, to establish deadlines for the issue of guidelines for urban developments, the approval of projects for sub-division and building, the realization of inspection and issue of a term of verification and conclusion of construction.

Sole paragraph.
If the determinations of the caput are not complied with, a period of 60 days will be established for
the realization of each one of the said administrative acts, which will be in vigor until the States and Municipalities have established them by law in another form.

Art. 50. The Municipalities that fit into the requirement called for in items I and II of art. 41 of this Law that do not have a master plan approved at the time this law comes into force, should approve one within five years.

Art. 51. For the effects of this Law, the dispositions relative to the Municipality and the Mayor, apply respectively to the Federal District and its Governor.

Art. 52. Without interference with the punishment of other public agents involved in the application of other applicable sanctions, the Mayor will be held responsible for administrative impropriety, in the terms of Law nº 8.429, of June 2, 1992, when:

I - (VETOED)
II - within five years there is a lack of compliance with the suitable use of the real estate incorporated in the public heritage, according to the terms of § 4º of art. 8º of this Law;
III - areas obtained by means of the right to preemption are used in violation of the terms of art. 26 of this Law;
IV - the resources garnered with the award with cost of the right to build and to alter usage are spent in violation of that called for in art. 31 of this law;
V - the resources obtained with consortial operations is spent in violation of that called for in § 1º of art. 33 of this law;
VI - the mayor impedes or fails to guarantee the requirements found in items I to III of § 4º of art. 40 of this Law;
VII - there is a failure to take the necessary measures to guarantee the observance of the terms of § 3º do art. 40 and art. 50 of this Law;
VIII - a property is acquired under the right to preemption, under the terms of arts. 25 – 27 of this Law, by the value of the proposal presented, if this proves to be higher than the market rate.

Art. 53. Art. 1º of Law nº 7.347, of July 24, 1985, will now be in vigor with the addition of a new item III, renumbering the current item II and the following ones:

Art.1º .....
.....
III - to the urban order;
.....

Art. 54. Art. 4º of Law nº 7.347, of 1985, will now be in vigor with the following language:

Art. 4º A warning action can be issued for the purposes of this Law, in order to avoid environmental damage, or harm to the consumer, urban order, or to the property and rights of artistic, aesthetic historic, tourist and landscape value (VETOED).

Art. 55. Art. 167, item I, item 28, of Law n6.015, of December 31, 1973, altered by Law nº 6.216, of June 1975, comes into vigor with the following language:

Art.167. .....
I - .....
.....
28) of the declaratory sentences of usucapion, independent of the regularity of the sub-division of the land or building;
.....

Art. 56. Art. 167, item I, of Law nº 6.015, of 1973, comes into vigor with the addition of items 37, 38 and 39:

Art.167. .....

I - .....
37) of the administrative terms or of the declaratory sentences for concession of special use for the purposes of housing, independent of the regularity of division of land or building;
38) (VETOED)
39) of the constitution of the right to the surface of the urban real estate;

Art. 57. Art. 167, item II, of Law nº 6.015, of 1973, comes into vigor with the addition of the following items 18, 19 and 20:

Art.167. .....
II - .....
18) of the notification of the sub-division, building or compulsory use of the urban real estate;
19) of the termination of the special use concession for housing purposes;
20) of the termination of the right to the surface of urban real estate.

Art. 58. This law comes into vigor 90 days after its publication.

Brasilia, July 10, 2001; 180th since Independence and 113th of the Republic.

PROVISIONAL MEASURE Nº 2.220, SEPTEMBER 4, 2001

Regulates the concession of special use established by § 1º of art. 183 of the Constitution, creates the National Urban Development Counsel – CNDU and other measures. The PRESIDENT OF THE REPUBLIC, with the power granted to him by art. 62 of the Constitution, adopts this Provisional Measure, which has the power of law:

CHAPTER I
OF THE SPECIAL USE CONCESSION

Art. 1º Whomever, until June 30, 2001, possesses as his or her own, for five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for their own residence or that of their family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.

§ 1º The concession for special use for housing purposes will be conferred free of charge to the man or woman, or both, independent of their marital status.

§ 2º The right established by this article shall not be recognized to the same concessionaire more than once.

§ 3º For the purposes of this article the legitimate heir, can continue, with complete rights, on the possession of his or her predecessor, as long as he or she resided in the property since the time of the opening of the succession.

Art. 2º In the properties indicated in art. 1º, with more than 250 square meters, which, until June 30, 2001, were occupied by a low income population for housing purposes, for five years, uninterruptedly and without opposition, where it was not possible to identify the land occupied by each possessor, the special use concession for housing purposes will be conferred in a collective form, as long as the possessors are not property owners or concessionaires, in any way, of other
urban or rural property.

§ 1º The possessor can, in order to calculate the period required by this article, add to their possession that of their predecessor, as long the contact was continuous to both.

§ 2º In the special use concession established by this article, an equal ideal fraction of land will be attributed to each possessor, independently of the size of the land that each occupies, unless there is a written accord among the occupants, establishing distinct ideal fractions.

§ 3º The ideal fraction attributed to each possessor cannot be superior to two hundred and fifty square meters.

Art. 3º The option to exercise the rights established in arts. 1º and 2º will also be guaranteed to the occupants, regularly inscribed, in public real estate, of up to two hundred and fifty square meters, of the Federal government, the States, the Federal District and the municipalities, which are located in an urban area, as determined by the regulation.

Art. 4º In a case where the occupation involves a risk to the lives or to the health of the occupants, the government will guarantee the possessor the exercise of the right established by arts. 1º and 2º in another location.

Art. 5º The Government is responsible for assuring the exercise of the rights established in arts. 1º and 2º in another location in the case of occupation of the real estate:

I - for common use of the people;
II - destined for an urbanization project;
III - of interest for national defense, environmental preservation and protection of natural ecosystems;
IV - reserved for construction of reservoirs and related works; or
V - located in a communication route.

Art. 6º The title for special use concession for housing purposes will be obtained by the administrative route through the competent Public Administrative organ, or, in case of its refusal or omission, by judicial decree.

§ 1º The Public Administration will have a maximum period of 12 months to determine the request, counting from the date it is received.

§ 2º In the case of a real estate property of the federal government or the states, the interested party must instruct the requirement for special use concession for housing purposes with a certificate issued by the municipal government, which attests that the real estate is located in an urban area and is destined for the housing of the occupant or his or her family.

§ 3º In case of legal action, the special use concession for housing purposes will be declared by a judge, through a sentence.

§ 4º The title issued by administrative procedure or judicial sentence will serve for the purpose of the registration in the real estate deeds office.

Art. 7º The right to special use concession for housing purposes is transferable inter vivos or because of death.

Art. 8º The right to special use concession for housing purposes is extinguished in the case:

I - the concessionaire uses the real estate for a purpose other than for housing for themselves or for their family; or
II - the concessionaire acquires the property or the use concession of another urban or rural real estate.

Sole paragraph.
The termination indicated in this article will be recorded in the real estate deed office, by means of a declaration of the issuing public authority.

Art. 9º It is the responsibility of the competent public authority to authorize the use to whom, until June 30, 2001, possesses as his own, for five years uninterruptedly and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for commercial purposes.

§ 1º The authorization for use determined by this article is conferred free of charge.

§ 2º The possessor can, for the purpose of counting the period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.

§ 3º The authorization for use called for in the caput of this article, is subject to the dispositions of arts. 4º and 5º of this Provisional Measure.

CHAPTER II
OF THE NATIONAL URBAN DEVELOPMENT COUNCIL

Art. 10. Be it created, The National Urban Development Council – CNDU, a deliberative and consultative body, within the structure of the Presidency of the Republic, with the following responsibilities:
I - propose guidelines, instruments, norms and priorities for national urban development policy;
II - accompany and evaluate the implementation of the national urban development policy, in particular the policies regarding housing, basic sanitation and urban transport and recommend the necessary measures for compliance with their objectives;
III - propose the preparation of general norms of urban law and express opinions about the proposals for alterations in relevant urban development legislation;
IV - issue guidelines and recommendations about the application of Law no10.257, of July 10, 2001, and other normative acts related to urban development;
V - promote the cooperation between the federal, state and municipal governments and that of the Federal District, and civil society in the formulation and execution of national urban development policy; and VI - prepare the council's by-laws.

Art. 11. The CNDU is composed of its President, by the Assembly and by an Executive Secretary, whose responsibilities will be defined by decree.
Sole paragraph.
The CNDU can institute technical committees for assistance as determined by the by-laws.

Art. 12. The President of the Republic will determine the structure of the CNDU, the composition of its Assembly and the designation of the members of the Counsel and their substitutes and of its technical committees.

Art. 13. Participation in the CNDU and its technical committees will not be remunerated

Art. 14. The functions of the members of the CNDU and of the technical committees will be considered a public service and the absence from work caused by participation in the CNDU will be reimbursed and computed as an effective work shift, for all legal purposes.

CHAPTER III
FINAL DISPOSITIONS

Art. 15. Item I of art. 167 of Law no. 6.015, of December 31, 1973, comes into vigor with the following alterations:
"I - .....
.....
28) of the declaratory sentences for usucapion;
.....

37) of the administrative terms or of the declaratory sentences for special use concession for housing purposes;
.....
40) of the contract for concession of real right to use of public real estate.” (NR)

Art. 16. This Provisional Measure takes force on the date of its publication.

Brasilia, Sept. 4, 2001; 180th of Independence and 113th of the Republic.

LAW Nº 11.445, OF 5 JANUARY, 2007.

Veto message

Establishes national guidelines for basic sanitation; alters Laws No. 6766, of 19 December 1979, 8036 of 11 May 1990, 8666 of 21 June 1993, 8987 of 13 February 1995; revokes Law 6528 of 11 May 1978; e sets forth other provisions.

THE PRESIDENT OF THE REPUBLIC. I hereby make it known that the National Congress promulgates and I sanction the following Law:

CHAPTER I
FUNDAMENTAL PRINCIPLES

Art. 1 The present Law establishes the national guidelines for basic sanitation and for the federal basic sanitation policy.

Art. 2 Public basic sanitation services shall be delivered in accordance with the following fundamental principles:

I - universal access;

II - integrality, to be understood as the whole set of activities and components of the several basic sanitation services, providing the population with access, according to its needs, with maximum efficacy of actions and results;

III - water supply, sanitary sewage, urban garbage collection and solid waste management, performed in a manner appropriate to public health and to the protection of the environment;

IV - availability, in all urban areas, of rainwater drainage and management services, as appropriate to public health and to public and private safety and wealth;

V - adoption of methods, techniques and processes that take into account local and regional peculiarities;

VI - articulation with policies for urban and regional development, housing, poverty mitigation and eradication, environmental protection, health promotion and other policies of relevant social interest aimed at improving quality of life, for which basic sanitation plays a determinant role;

VII - economic efficiency and sustainability;

VIII - use of appropriate technologies, considering the payment capacity of users and the adoption of gradual and progressive solutions;

IX - transparency of actions, based on institutionalized information and decision making processes;

X - social control;

XI - safety, quality and regularity;

XII - integration of infrastructure and services with the efficient management of water resources.

Art. 3 For the purposes of this Law, the following are to be considered:

I - basic sanitation: set of services, infrastructure and operational installations for:

a) supply of drinking water: represented by the activities, infrastructure and installations required for the public supply of drinking water, from the collection to the building connections and the corresponding metering devices;

b) sanitary sewage: represented by the activities, infrastructure and operational installations for the collection, transportation, treatment and the appropriate final disposal of sanitary sewage, from the building connections to their final discharge into the environment;

c) urban garbage collection and solid waste management: set of activities, infrastructure and operational installations for the collection, transportation, transfer and final disposal of domestic waste and of the garbage generated by the sweeping and cleaning of public sites and roads;

d) urban rainwater drainage and management: set of activities, infrastructure and operational installations for the drainage of urban rainwater; transportation, detention or retention for reducing the impact of floods; treatment and final disposal of rainwater drained from urban areas;

II - associate management: voluntary association of federate entities, by means of a cooperation agreement or public consortium, as established by art. 241 of the Federal Constitution;

III - universal access: progressive expansion of access to basic sanitation by all occupied households;

IV - social control: set of mechanisms and procedures that assure access by society to information, technical representations and participation in policy formulation, planning and evaluation processes associated to public basic sanitation services;

V - (VETOED);

VI - regionalized delivery: when one single provider serves 2 (two) or more holders;

VII - subsidies: economic social policy tool for assuring universal access to basic sanitation, especially for low income populations and localities;

VIII - small locality: villages, rural agglomerates, settlements, nuclei and localities, defined as such by the Brazilian Institute for Geography and Statistics - IBGE.

§ 1 (VETOED).

§ 2 (VETOED).

§ 3 (VETOED).

Art. 4 Water resources do not integrate the public basic sanitation services.

Sole paragraph. The use of water resources for the delivery of public basic sanitation services, including for the disposal or dilution of sewage and other liquid waste, is subject to the granting of user rights, according to Law no. 9433 of 8 January 1997, its regulations and to state-level legislations.

Art. 5 Sanitation actions carried out by means of individual solutions do not constitute public service, as long as the user does not depend on third parties for operating the service, as well as basic sanitation actions and services under private responsibility, including the management of waste that is the responsibility of the generator.

Art. 6 Waste originated by commercial, industrial and service activities, the management of which is the responsibility of the generator may, upon decision of the public authority, be considered solid urban waste.

Art. 7 For the purposes of this Law, the public urban garbage collection and urban solid waste management services are made up by the following activities:

I - collection, transfer and transportation of waste related to literal c of numeral I of the caption to art. 3 of this Law;

II - sorting for reuse or recycling, treatment and composting purposes, and for the final disposition of waste associated to literal c of numeral I of the caption to art. 3 of this Law;

III - sweeping, weeding and pruning of trees on public roads and sites and other eventual services associated to public urban cleaning.

CHAPTER II
THE PRACTICE OF OWNERSHIP

Art. 8 The holders of public basic sanitation services may delegate the organization, regulation, inspection and delivery of such services, in accordance with art. 241 of the Federal Constitution and to Law no. 11107, of 6 April 2005.

Art. 9 The service holder shall draft the corresponding public basic sanitation policy, and, for that end, shall:

I - draft basic sanitation plans, in accordance with this Law;

II - either provide it directly or authorize the delegation of services, and define the entity responsible for its regulation and inspection, as well as procedures for action;

III - adopt benchmarks for assuring essential public health services, including the minimum per capita volume of water for public supply, in compliance with national rules regarding water potability;

IV - establish user rights and duties;

V - establish mechanisms for social control, as established under numeral IV of the caption to art. 3 of this Law;

VI - establish an information system for the services, in articulation with the National Sanitation Information System;

VII - intervene and take back the operation of delegated services, upon recommendation of the regulatory entity, in those cases and conditions foreseen by law and by contract documents.

Art. 10. The delivery of public basic sanitation services by an entity that is not a member of the holder's administration depends on the celebration of a contract; it cannot be disciplined by means of agreements, partnerships or other instruments of precarious nature.

§ 1 Shall be exempt from the provisions of the caput to this article:

I - public basic sanitation services, the delivery of which the public authority, as established by law, grants to users organized as cooperatives or associations, as long as these are restricted to:

a) a certain condominium;

b) a small locality, predominantly occupied by low income population, where other forms of delivery present operation and maintenance costs that are not compatible with the users' payment capacity;

II - agreements and other delegation acts celebrated until 6 April 2005.

§ 2 The authorization foreseen under literal l of § 1 of this article shall foresee the obligation to transfer to the holder all assets associated to the services by means of a specific term, with the corresponding technical registrations.

Art. 11. The following are conditions for validity of contracts on the delivery of public basic sanitation services:

I - the existence of a basic sanitation plan;

II - the existence of a proven technical and economic-financial feasibility study of the universal and integral delivery of services, in accordance with the corresponding basic sanitation plan;

III - the existence of regulation rules that establish means for compliance to the guidelines of this Law, including the appointment of the regulatory and inspection entity;

IV - holding a previous public hearing and consultation about the bidding announcement, in case of concession, and on the draft contract.

§ 1 The investment plans and the projects associated to the contract shall be compatible with the corresponding basic sanitation plan.

§ 2 In the case of services provided by means of concession or program contracts, the rules foreseen under numeral III of the caption to this article shall foresee:

I - authorization for the hiring of services, establishing timeframes and the area to be served;

II - inclusion in the contract of progressive and gradual targets for service expansion, quality, efficiency and for the rational use of water, energy and other natural resources, according to the services to be delivered;

III - priorities for action, compatible with the targets established;

IV - conditions for economic-financial sustainability and balance of service delivery, in terms of efficiency, including:

a) the billing system and the composition of fees and tariffs;

b) readjustment and revision procedures for fees and taxes;

c) the subsidy policy;

V - social control mechanisms for service planning, regulation and inspection activities.

VI - hypotheses for intervention and for the resuming of services.

§ 3 Contracts may not include clauses that jeopardize regulatory and inspection activities or access to information on the contracted services.

§ 4 In regionalized service delivery, the provisions of numerals I to IV of the caption and under §§ 1 and 2 of the present article may refer to the whole set of municipalities covered by the service delivery.

Art. 12. In public basic sanitation services in which more than one provider carries out an interdependent activity with another, the relationship between them shall be ruled by a contract and one single entity shall be in charge of regulatory and inspection functions.

§ 1 The regulatory entity shall define, at least:

I - the technical standards for quality, quantity and regularity of services provided to users and among the several different providers involved;

II - the economic and financial rules regarding tariffs, subsidies and payments for services rendered to users and among the several different providers involved;

III - guarantees for payment of services delivered among the several different service providers;

IV - mechanisms for the payment of differences related to user default, commercial and physical losses and other receivables, whenever the case;

V - a specific accounting system for providers that are active in more than one municipality.

§ 2 The contract to be celebrated among the service providers regarding the caption to this article shall contain clauses that establish, at least:

I - the contracted activities or inputs;

II - the reciprocal conditions and guarantees for supply and access to activities or inputs;

III - the duration, compatible with the need for investment amortization, and hypotheses for extension;

IV - procedures for the implementation, expansion, improvement and operational management of activities;

V - rules for the establishment, readjustment and revision of fees, tariffs and other public dues applicable to the contract;

VI - payment conditions and guarantees;

VII - subrogated rights and duties or that authorize subrogation;

VIII - hypotheses for extinction, one-sided administrative alteration and rescission not being admitted;

IX - penalties to which the parties are subject to, in case of default;

X - appointment of a body or entity responsible for the regulation and inspection of the contracted activities or inputs.

§ 3 Included in the guarantees foreseen under numeral VI of § 2 to this article are the contracting party's obligation to highlight, in the billing documents to users, the value of the remuneration for services rendered by the contracted party and to carry out the corresponding collection and delivery of the collected values.

§ 4 In the case of execution by means of concession of interdependent activities referred to under the caption to this article, the rules and tariff values and other public dues to be paid to other providers must be stated in the corresponding bidding announcement, as well as the obligation and form of payment.

Art. 13. The federate entities, either individually or united as public consortia, may establish funds, to which parts of the revenues obtained from services, among other resources, may be destined to, with the purpose of funding universal access to public basic sanitation services, in compliance to the provisions of the respective basic sanitation plans.

Sole paragraph. The resources of the funds referred to under the caption to this article may be used as sources or guarantees in credit operations for the funding of investments required for providing universal access to public basic sanitation services.

CHAPTER III
REGIONALIZED DELIVERY OF PUBLIC BASIC SANITATION SERVICES

Art. 14. The regionalized delivery of public basic sanitation services is characterized by:

I - one single service provider for several municipalities, either contiguous or not;

II - uniform inspection and regulation of services, including its remuneration;

III - planning compatibility.

Art. 15. In the regionalized delivery of public basic sanitation services, regulation and inspection activities may be carried out:

I - by a body or entity of a federate entity to which the holder has delegated the performance of such competencies by means of a cooperation agreement among federate entities, observing the provisions of art. 241 of the Federal Constitution;

II - by a public consortium subject to public law, integrated by the service holders.

Sole paragraph. For the performance of the planning activities of the services referred to under the caption to this article, the holder may receive technical cooperation from the corresponding State and may base its actions on studies provided by the service providers.

Art. 16. The regionalized delivery of public basic sanitation services may be carried out by:

I - a body, government agency, public law foundation, public consortium, public enterprise or a mixed economy society of the state, of the Federal District, or municipality, as established by the legislation;

II - a company to which the services have been attributed.

Art. 17. The regionalized basic sanitation service may follow the basic sanitation plan designed for the whole set of municipalities served.

Art. 18. Service providers acting in more than one municipality or rendering different public basic sanitation services in one single municipality shall maintain an accounting system that allows the separate registration and demonstration of costs and revenues for each service in each one of the municipalities served and, whenever the case, in the Federal District.

Sole paragraph. The regulation entity shall establish rules and criteria for the structuring of an accounting system and of the corresponding account plan, in order to assure that the appropriation and distribution of service costs may comply with the guidelines established under the present Law.

CHAPTER IV
PLANNING

Art. 19. The delivery of public basic sanitation services shall comply with a plan, which may be specific for each service, and shall cover, at least:

I - a baseline assessment and the impact of present conditions on living conditions, using a system of sanitary, epidemiological, environmental, social and economic indicators, and pointing out the causes of weaknesses identified;

II - short, medium and long term goals and targets for universal access, admitting gradual and progressive solutions, observing their compatibility with the other sectoral plans;

III - programs, projects and actions required for achieving goals and targets, in a manner compatible with the corresponding pluriannual plans and with other associated government plans, identifying eventual funding sources;

IV - actions for emergencies and contingencies;

V - mechanisms and procedures for the systematic assessment of the efficiency and efficacy of actions scheduled.

§ 1 The basic sanitation plans shall be edited by the holders, and may be drafted based on studies provided by the providers of each service.

§ 2 The consolidation and compatibilization of the specific plans for each service shall be carried out by the respective service holders.

§ 3 Basic sanitation plans shall be compatible with the river basin plans in which they are inserted.

§ 4 Basic sanitation plans shall be periodically reviewed, within a term no longer than 4 (four) years, prior to the preparation of the Pluriannual Plan.

§ 5 The widespread dissemination of proposals for basic sanitation plans and of the studies in which they are based shall be assured, including the realization of public hearings or consultations.

§ 6 The delegation of the basic sanitation service does not exempt the service provider from compliance to the corresponding basic sanitation plan in force at the time of the delegation.

§ 7 Whenever they involve regionalized services, basic sanitation plans must be issued in compliance with the terms of art. 14 of this Law;

§ 8 Except when referring to a regional regional, the basic sanitation plan must fully cover the territory of the federate entity that has designed it.

Art. 20. (VETOED).

Sole paragraph. The regulatory and inspection entity shall be responsible for checking the service providers' compliance to the sanitation plans, as established by legal, regulatory and contractual provisions.

CHAPTER V
REGULATION

Art. 21. The regulatory function shall attend the following principles:

I - decision-making interdependence, including administrative, budgetary and financial autonomy of the regulatory entity;

II - transparency, technicity, swiftness and objectivity in decision-making.

Art. 22. The objectives of regulation are:

I - establish standards and rules for the appropriate delivery of services and for the satisfaction of users;

II - guarantee compliance to the established conditions and targets;

III - prevent and repress abuse of economic power, respecting the competency of the bodies that are members to the national system for the defense of free competition;

IV - define tariffs that may assure both the economic and financial balance of contracts, as well as cost-effective tariffs, by means of mechanisms that induce the efficiency and efficacy of services and that allow for the social appropriation of productivity gains.

Art. 23. The regulatory entity shall issue rules regarding the technical, economic and social dimensions of service delivery, which shall cover, at least, the following aspects:

I - quality standards and indicators for service delivery;

II - operational requirements and requirements for system maintenance;

III - progressive targets for the expansion and quality of services and the corresponding timeframe;

IV - tariff regime, structure and levels, as well as procedures and schedules for their establishment, readjustment and revision;

V - measurement, billing and collection of services;

VI - cost monitoring;

VII - evaluation of the efficiency and efficacy of services rendered;

VIII - accounting plan and mechanisms for information, auditing and certification;

IX - tariff and non-tariff subsidies;

X - service standards and participation and information mechanisms;

XI - contingency and emergency measures, including rationing;

XII - (VETOED);

§ 1 The regulation of public basic sanitation services may be delegated by service holders to any regulatory entity established within the limits of the corresponding State, making explicit, on the occasion of the delegation of the regulation, the form of action and the coverage of the activities to be carried out by the parties involved.

§ 2 The rules referred to under the caption to this article shall establish terms within which service providers must inform users about the measures adopted as a consequence to complaints regarding the services.

§ 3 Inspection entities shall receive and express themselves in a conclusive manner on complaints that, according to the interested party, have not been sufficiently addressed by the service providers.

Art. 24. In case of associated management or regionalized delivery of services, holders may adopt the same economic, social and technical criteria established by the regulation throughout the whole coverage area of the association or of service delivery.

Art. 25. The basic public sanitation service providers shall provide the regulatory entity with all data and information required for the performance of its activities, as established by the legal, regulatory and contractual rules.

§ 1 The data and information referred to in the caption to this article shall include all those produced by companies or professionals hired for carrying out services or providing specific materials and equipment.

§ 2 The regulatory activities of the basic sanitation service shall comprehend the interpretation and establishment of criteria for the faithful execution of contracts, services and for the correct administration of subsidies.

Art. 26. Publicity shall be granted to reports, studies, decisions and equivalent instruments referring to the regulation or inspection of services, as well as to the rights and duties of users and service providers; anyone shall have access to them, irrespective of direct interest.

§ 1 Documents considered as being confidential due to relevant public interest shall be excluded from the provision of the caption to this article, upon previous and motivated decision.

§ 2 The publicity referred to under the caption to this article shall become effective, preferably, by means of a website on the world wide web - Internet.

Art. 27. Users of public basic sanitation services, in accordance to the legal, regulatory and contractual rules, are granted:

I - broad access to information on the services rendered;

II - previous knowledge of all their rights and duties and penalties to which they may be subject to;

III - access to a service delivery manual and user service manual, prepared by the service provider and approved by the corresponding regulatory entity;

IV - access to periodical reports on the quality of the services rendered.

Art. 28. (VETOED).

CHAPTER VI
ECONOMIC AND SOCIAL ASPECTS

Art. 29. Public basic sanitation services shall be granted economic and financial sustainability, whenever possible, by means of remuneration through the billing of:

I - water supply and sanitary sewage services: preferably in the form of tariffs and other public dues, which may be established for each of the services or for both, jointly;

II - urban cleaning services and the management of urban solid waste: fees or tariffs and other public dues, in accordance with the service delivery regime or of its activities;

III - urban rainwater management services: in the form of taxes, including fees, in accordance with the service delivery regime or its activities.

§ 1 In compliance with the provisions of numerals I to III of the caption to this article, the implementation of tariffs, public dues and fees for basic sanitation services shall observe the following guidelines:

I - priority to fulfilling essential functions associated to public health;

II - expansion of access to services for low income citizens and localities;

III - generation of resources required for the realization of investments, aiming at complying with service goals and targets;

IV - inhibit superfluous consumption and the wasting of resources;

V - recovery of costs incurred in the delivery of service, in an efficient manner;

VI - appropriate remuneration of the capital invested by service providers;

VII - to encourage the use of modern and efficient technologies, compatible with the required levels of quality, continuity and safety of service delivery;

VIII - to encourage efficiency by service providers.

§ 2 Tariff and non-tariff subsidies may be adopted for users and localities without enough payment capacity or economic scale for covering the integral cost of services.

Art. 30. In complying with the provisions of art. 29 of this Law, the remuneration structure and the collection of public basic sanitation services may take into account the following aspects:

I - user categories, distributed by groups or increasing volumes of use or consumption;

II - the use and quality standards required;

III - minimum amount of consumption or use of service, aiming at warranting the social objectives, such as the preservation of public health, appropriate service to low income users and the protection of the environment;

IV - the minimum cost required for making service available in an appropriate quantity and quality;

V - significant cycles of increase in the demand of services, during different periods; and

VI - the payment capacity of users.

Art. 31. The subsidies required for serving low income users and localities shall be, depending on the characteristics of the beneficiaries and on the origin of resources:

I - direct subsidies, whenever destined to certain users; or indirect, when destined to the service provider;

II - tariff subsidies, when they are integrated into the tariff structure; or fiscal subsidies, when deriving from the allocation of budgetary resources, including by means of subventions;

III - internal subsidies for each holder or among localities, in the hypotheses of associated management and regional delivery.

Art. 32. (VETOED).

Art. 33. (VETOED).

Art. 34. (VETOED).

Art. 35. The fees or tariffs deriving from the delivery of public urban cleaning and solid urban waste management services must take into account the appropriate destination of the collected waste and may take into consideration:

I - the income level of the population of the area served;

II - the characteristics of the urban lots and of the areas allowed for construction;

III - the average weight or volume collected per inhabitant or per household.

Art. 36. The billing for the delivery of public drainage and urban rainwater management services must take into account, on each urban lot, the percentage of imperviousness and the existence of impact absorbing or rainwater retention devices, and may consider as well:

I - the income level of the population of the area served;

II - the characteristics of the urban lots and of the areas allowed for construction;

Art. 37. Tariff readjustments for public basic sanitation services shall be carried out upon observing a minimum interval of 12 (twelve) months, in accordance with the legal, regulatory and contractual rules.

Art. 38. Tariff revisions shall comprehend the reassessment of the service delivery conditions and of the tariffs practiced and may be:

I - periodical, aiming at distributing productivity gains among users and the reassessment of market conditions;

II - extraordinary, whenever facts not foreseen under the contract and that are not in the control of the service provider take place, altering its economic and financial balance.

§ 1 The schedule for tariff reviews shall be defined by the corresponding regulatory entities, upon listening to service holders, users and service providers.

§ 2 Efficiency inducing tariff mechanisms may be established, including productivity factors, as well as for the anticipation of expansion and service quality targets.

§ 3 Productivity factors may be defined in accordance with indicators provided by other companies in the industry.

§ 4 The regulatory entity may authorize the delivery of services and transfer to users the costs and fiscal burdens not originally foreseen and not administered by it, in accordance with Law no. 8987 of 13 February 1995.

Art. 39. Tariffs shall be established in a clear and objective manner, and readjustments and revisions shall be publicized within a 30(thirty)-day term before their application.

Sole paragraph. The invoice to be delivered to the final user shall comply with a model established by the regulatory entity, which shall define the items and costs that must be made explicit.

Art. 40. Services may be interrupted by the service provider in the following hypotheses:

I - emergency situations that affect the safety of people and assets;

II - need to carry out repair, modifications or improvements of any kind in the systems;

III - refusal by the user to allow the installation of a metering device for consumed water, after having been previously notified about it;

IV - undue manipulation of any pipeline, metering device or any other installation belonging to the provider, by the user; and

V - user in default with payments for water supply services rendered, after formal notice.

§ 1 Scheduled interruptions shall be previously informed to the regulatory body and to users.

§ 2 The suspension of services foreseen under numeral III and V of the caption to this article shall be preceded by a prior notice to the user, within no less then 30 (thirty) days from the date foreseen for the suspension.

§ 3 The interruption or restriction of water supply due to default to health, educational and collective internment institutions and to low income residential users that benefit from social tariffs shall follow terms and criteria that preserve minimum health conditions for the people affected.

Art. 41. As long as foreseen under the regulatory rules, large users may negotiate tariffs with service providers, to be subject to a specific contract, upon consultation to the regulatory body.

Art. 42. The values invested in reversible assets by the providers shall constitute credits to the service holder, to be recovered through the exploration of services, according to the terms of the regulatory and contractual rules and, whenever the case, in compliance with the legislation on joint stock companies.

§ 1 Investments made without burden to the provider, such as those deriving from legal requirements applicable to the implementation of real estate enterprises and those deriving from subventions or voluntary fiscal transfers, shall not generate credit before the service holder.

§ 2 Investments made, amortized values, depreciation and the corresponding balances shall be annually audited and certified by the regulatory entity.

§ 3 Credits deriving from duly certified investments may constitute guarantee for loans to the delegated service provider, destined exclusively for investments in sanitation systems that are the object of the corresponding contract.

§ 4 (VETOED).

CHAPTER VII
TECHNICAL ASPECTS

Art. 43. Service delivery shall comply with minimum quality standards, including regularity, continuity and those associated to the products offered, to user service and conditions for system operation and maintenance, according to regulatory and contractual rules.

Sole paragraph. The Union shall establish minimum standards for water potability.

Art. 44. The environmental licensing of units for the treatment of sanitary sewage and effluents generated by water treatment processes shall consider efficiency stages, in order to progressively meet the standards established by environmental legislation, based on user payment capacity.

§ 1 The competent environmental authority shall establish simplified licensing procedures for those activities referred to under the caption to this article, based on the unit size and on expected environmental impacts.

§ 2 The competent environmental authority shall establish progressive goals so that the quality of effluents from sanitary sewage treatment units meets the standards set for the classes of the water bodies on which they are released, based on present levels of treatment and considering the payment capacity of the populations and users involved.

Art. 45. Except for opposing provisions established by the service holder, or the regulatory and environmental entities, every urban permanent building shall be connected to the public water supply and sanitary sewage systems available and shall be subject to the payment of tariffs and other public dues deriving from the connection to and use of these services.

§ 1 In the absence of public basic sanitation networks, individual solutions for water supply and transfer and final disposal of sanitary sewage shall be admitted, in compliance with the rules published by the regulatory entity and by the bodies responsible for environmental, sanitary and water resource policies.

§ 2 The building water installations connected to the public water supply network may not be fed by other sources as well.

Art. 46. Under critical conditions of scarcity or contamination of water resources that may require the adoption of rationing procedures, to be declared by the water resource management authority, the regulatory entity may adopt contingency tariff mechanisms, in order to cover additional costs deriving from such procedure, thus assuring the financial balance of service delivery and of supply management.

CHAPTER VIII
PARTICIPATION OF COLLEGIATE BODIES IN SOCIAL CONTROL

Art. 47. The social control over public basic sanitation services may include the participation of collegiate bodies with a consultative character, at the level of the states, the Federal District and municipalities, assuring representation by:

I - service holders;

II - governmental bodies related to the basic sanitation sector;

III - public basic sanitation service providers;

IV - basic sanitation service users;

V - technical entities, civil society and consumer defense organizations related to the basic sanitation sector.

§ 1 The functions and competencies of the collegiate bodies referred to under the caption to this article may be carried out by already existing collegiate bodies, with the due adaptation of the laws that established them.

§ 2 In the case of the Union, the participation referred to in the caption to this article shall take place in accordance with Law 10683 of 28 May 2003.

CHAPTER IX
FEDERAL BASIC SANITATION POLICY

Art. 48. The Union, in establishing its basic sanitation policy, shall observe the following guidelines:

I - priority to actions promoting social and territorial equity in access to basic sanitation;

II - the application of financial resources managed by the Union shall promote sustainable development, efficiency and efficacy;

III - promote the establishment of an appropriate regulation of services;

IV - use of epidemiological and social development indicators in the planning, implementation and evaluation of its basic sanitation actions;

V - improvement of quality of life, environmental and public health conditions;

VI - collaboration to urban and regional development;

VII - guarantee the availability of appropriate means for serving the rural scattered population, including specific solutions, compatible with their economic and social characteristics;

VIII - promote scientific and technological development, the adoption of appropriate technologies and the diffusion of generated knowledge;

IX - adoption of objective criteria for eligibility and priority-setting, taking into account aspects such as income level and coverage, the level of urbanization, populational concentration, water availability, sanitary, epidemiological and environmental risks;

X - adopting river basins as the reference unit for action planning;

XI - encourage the implementation of infrastructure and services that are common to (a group of) municipalities, by means of cooperation mechanisms among federate entities.

Sole paragraph. Union policies and actions on behalf of urban and regional development, housing, poverty mitigation and eradication, environmental protection, health promotion and

others of relevant social interest aimed at improving quality of life must consider the necessary articulation, including funding, with basic sanitation.

Art. 49. The objectives of the Federal Basic Sanitation Policy are:

I - to contribute to national development, to the reduction of social inequalities, to employment and income generation, and to social inclusion;

II - to set priorities for plans, programs and projects aiming at implementing and expanding basic sanitation services and actions in/to areas occupied by low income populations;

III - to provide for appropriate environmental health conditions for indigenous people and other traditional populations, through solutions that are compatible with their social and cultural characteristics;

IV - to provide for appropriate environmental health conditions for rural populations and small and isolated urban nuclei;

V - to assure that the application of financial resources managed by the public authority make take place in accordance with criteria for the promotion of environmental health, cost-effectiveness and greater social return;

VI - encourage the adoption of planning, regulatory and inspection mechanisms for the delivery of basic sanitation services;

VII - promote management alternatives that may enable the economic and financial self-sustainment of basic sanitation services, with emphasis on federative cooperation;

VIII - promote the institutional development of basic sanitation, establishing means for the unity and articulation of actions by several different agents, as well as the development of their organizations, their technical, managerial, financial and HR skills, taking into account their local specificities;

IX - promote scientific and technological development, the adoption of appropriate technologies and the dissemination of generated knowledge of interest to basic sanitation;

X - minimize environmental impacts related to the implementation and development of basic sanitation actions, works and services and assure that they are executed in accordance with standards for environmental protection, land use and occupation, and health.

Art. 50. The allocation of federal public resources and the financing through Union funds or funds either generated or operated by Union bodies or entities shall be made in conformity with the guidelines and objectives established under arts. 48 and 49 of this Law and with the basic sanitation plans, conditioned to:

I - the achievement of minimum standards for:

a) the service provider's technical, economic and financial performance;

b) service efficiency and efficacy, along the whole life cycle of the enterprise;

II - the appropriate operation and maintenance of undertakings that have been previously financed with funds mentioned under the caption to this article.

§ 1 In the application of non-onerous resources from the Union, priority shall be given to actions and undertakings that aim at serving users or municipalities that do not count with payment capacity compatible with the economic-financial self-sustainment of the services, its application in enterprises contracted in an onerous manner being vetoed.

§ 2 The Union may implement and guide the execution of incentive programs for the execution of social interest projects in the field of basic sanitation with the participation of private investors, through structured financing operations, carried out with private investments, capitalization or pension funds, in conditions compatible with the essential nature of public basic sanitation services.

§ 3 The application of budgetary Union funds in the administration, operation and maintenance of public basic sanitation services not administered by a federal body or entity is vetoed hereby, except for an established term in case of eminent risk to public health and to the environment.

§ 4 Non-onerous Union resources, for the subvention of basic sanitation actions promoted by the other federate entities, shall always be transferred to municipalities, the Federal District or the States.

§ 5 In promoting improvements in public basic sanitation service providers, the Union may grant benefits or budgetary, fiscal or credit incentives as a counterpart contribution to the achievement of previously established operational performance goals.

§ 6 The requirement foreseen under literal a of numeral I of the caption to this article does not apply to the destination of resources for institutional development programs of the public basic sanitation service operator.

§ 7 (VETOED).

Art. 51. The drafting and revision process of the basic sanitation plans must foresee its joint publicizing along with the studies that support them, the receiving of suggestions and criticism by means of public consultations or hearings and, whenever foreseen in the legislation of the service holder, an analysis and opinion by the collegiate body established in accordance with art. 47 of this Law;

Sole paragraph. The dissemination of proposals for basic sanitation plans and of the studies that support them shall take place by making its content fully available to all interested parties, including on the Internet, and by means of public hearing.

Art. 52. The Union shall prepare, under the coordination of the Ministry of Cities:

I - the National Basic Sanitation Plan - NBSP, containing:

a) short, medium and long term national and regional goals and targets for universal access to basic sanitation and for the achievement of increasing levels of basic sanitation within the national territory, observing their compatibility with the other Union plans and policies;

b) guidelines for addressing political-institutional, legal and juridical, economic-financial, administrative, cultural and technological conditionalities with impact on the achievement of the established goals and objectives;

c) the proposing of programs, projects and actions required for achieving the goals and targets of
the Federal Basic Sanitation Policy, with identification of the corresponding funding sources;

d) guidelines for the planning of basic sanitation actions in areas of special interest to tourism;

e) procedures for the systematic assessment of the efficiency and efficacy of actions carried out;

II - regional basic sanitation plans, prepared and executed in articulation with the States, the Federal District and the municipalities involved for the integrated regions of economic development or in those counting with the participation of a federal body or entity in the delivery of public basic sanitation services.

§ 1 The NBSP must:

I - cover water supply, sanitary sewage, solid waste management and the management of rainwater and other basic sanitation actions that are of interest to the improvement of environmental health, including the provision of toilets and sanitary units for low income populations;

II - specifically address Union actions related to basic sanitation in indigenous land, in extractive reserves of the Union and in quilombola communities.

§ 2 The plans referred to under numerals I and II of the caption to this article must be drafted with a 20-year timeframe, be submitted to annual evaluation and be revised every four years, preferably within periods that coincide with those of the pluriannual plans.

Art. 53. The National System for Information on Basic Sanitation - SINISA is established hereby, and its objectives are:

I - to collect and systematize data regarding the conditions of public basic sanitation service delivery;

II - to provide for statistics, indicators and other relevant information for characterizing the demand and supply of public basic sanitation services;

III - to allow and facilitate the monitoring and evaluation of the efficiency and efficacy of the delivery of basic sanitation services.

§ 1 All information available to SINISA shall be made public and accessible to all, and must be published on the Internet.

§ 2 The Union shall support service holders in setting up information systems on basic sanitation, in compliance with the provisions of numeral VI of the caption to art. 9 of this Law;

CHAPTER X
FINAL PROVISIONS

Art. 54. (VETOED).

Art. 55. § 5 of art. 2 of Law no. 6766, of 19 December 1979, from now on enters into force with the following reading:

Art. 2 .....
.....

§ 5 The basic infrastructure of the settlements shall be made up by urban equipment for rainwater drainage, public lighting, sanitary sewage, drinking water supply, access to public and residential electricity and roads.
..... "(NR)

Art. 56. (VETOED)

Art. 57. Numeral XXVII of the caption to art. 24 of Law no. 8666 of 21 June 1993, from now on enters into force with the following reading:

"Art. 24. .....
.....

XXVII - in contracting the collection, processing and commercialization of solid urban waste, either recyclable or reusable, in areas with selective garbage collection systems, carried out by associations or cooperatives formed exclusively by low income natural persons, recognized by

the public authority as waste scavengers for recyclable materials, with the use of equipment compatible with technical, environmental and public health standards.
..... "(NR)

Art. 58. Art. 42 of Law no. 8987 of 13 February 1995 from now on enters into force with the following reading:

"Art. 42. .....

§ 1 After completion of the term established in the contract or granting act, service may be delivered by a body or entity of the granting authority, or delegated to third parties, by means of a new contract.
.....

§ 3 The concessions referred to under § 2 of this article, including those that do not have a formal instrument or that count with a clause that foresees a term extension, shall be valid, at maximum, until December 31st, 2010, as long as the following conditions have been met, cumulatively, by June 30th, 2009:

I - a survey, as broad and retroactive as possible, on the physical elements that constitute the infrastructure of reversible assets and of financial, accounting and commercial data regarding the delivery of services, with a dimension required and sufficient for carrying out the calculation of an eventual compensation for the investments that have not yet been amortized by the revenues emerging from the concession, in compliance with the legal and contractual provisions that regulate the delivery of the service or those applicable to the 20 (twenty) year-period preceding the publication of this Law;

II - celebration of an agreement between the granting authority and the concessionaire about the criteria and the form of indemnity for eventually remaining credits from investments that have not yet been either amortized or depreciated, as identified on the surveys referred to under numeral I of this paragraph and audited by a specialized institution selected by common agreement of the parties; and

III - publication in the official press of a formal act by the granting authority, authorizing the precarious delivery of services for a 6-month period, renewable until December 31st, 2008, subject to the presentation of evidence on the compliance to the provisions of numerals I and II of this paragraph.

§ 4 In case the agreement foreseen under numeral II of § 3 of this article is not reached, the calculation of the indemnity of investments shall be made based on the criteria foreseen in the previously celebrated concession instrument or, in case such instrument has been omitted, by means of evaluation of its economic value or equity reassessment, depreciation and amortization of fixed assets defined by the fiscal and corporate legislation, carried out by an independent auditor selected by common agreement of the parties.

§ 5 In the case of § 4 of this article, the payment of an eventual indemnity shall be carried out through collateral, by means of 4 (four) annual, equal and successive installments, of those investments that have not been amortized yet and of other indemnities associated to the delivery of services, made with the concessionaire's own capital or that of his controller, or originated by financing operations, or obtained by means of issuing of shares, bonds and other securities, whereas the first installment shall have been paid until the last working day of the fiscal year in which the reversion takes places.

§ 6 In case an agreement is reached, the indemnity referred to under § 5 of the present article may be paid by means of revenues of the new contract that will govern the delivery of the service." (NR)

Art. 59. (VETOED).

Art. 60. Law no. 6528, of 11 May 1978, is revoked hereby.

January 5th, 2007; 186th year of the Independence and 119th year of the Republic.

LUIZ INÁCIO LULA DA SILVA
Luiz Paulo Teles Ferreira Barreto
Bernard Appy
Paulo Sérgio Oliveira Passos
Luiz Marinho
José Agenor Álvares da Silva
Fernando Rodrigues Lopes de Oliveira
Marina Silva

The present text does not substitute the one published in the Official Gazette (D.O.U.) on January 8th, 2007.

Presidency of the Republic
Office of the Chief of Staff
Office of the Deputy Head of Legal Affairs

LAW Nº 11.107, OF 6 APRIL, 2005.

Vetoe message

Provides for general rules for the contracting of public consortia and sets forth other provisions.

THE PRESIDENT OF THE REPUBLIC I hereby make it known that the National Congress promulgates and I sanction the following Law:

Art. 1 The present Law provides for general rules for the contracting of public consortia by the Union, the States, the Federal District and Municipalities for the achievement of common interest goals and sets forth other provisions.

§ 1 The public consortium will constitute a private law public association or legal entity.

§ 2 The Union only shall participate in public consortia if all the States that have Municipalities taking part in the consortia are members to the consortium as well.

§ 3 Public health consortia shall comply with the principles, guidelines and norms that rule the Unified Health System (*Sistema Único de Saúde* - SUS).

Art. 2 The objectives of public consortia shall be established by the federate entities that join the consortia, in compliance with existing constitutional limits.

§ 1 In order to comply with its objectives, a public consortium may:

I - establish covenants, contracts and agreements of any kind, receive support, contributions and social or economic subventions from other entities or governmental bodies;

II - under the terms of contracts for public law consortia, promote expropriations and establish easements in accordance with the terms of declaration of public utility or need, or social interest, established by the Public Authority; and

III - be contracted by the direct or indirect administration of associate federate entities, being exempt from bidding procedures.

§ 2 The public consortia may issue billing documents and carry out the collection of fees and other public dues for the delivery of services or for the use or grant over right to use public assets administered by them or, by means of a specific authorization, by the associate federate entity.

§ 3 Public consortia may grant concessions, permits or authorizations to carry out public works or services, subject to previous authorization, as foreseen under the public consortium contract, which shall specifically state the object of the concession, permit or authorization and the conditions it shall attend to, in compliance with the general rules in force.

Art. 3 The public consortium shall be established by a contract, whose celebration shall depend on the prior subscription to a protocol of intentions.

Art. 4 The mandatory clauses to the protocol of intentions shall establish:

I - the denomination, the purpose, the duration and the headquarters of the consortium;

II - the identification of the associate federate entities;

III - the statement of the consortium's field of action;

IV - that the public consortium shall be a non-profit private law public association or legal entity;

V – with reference to issues of common interest, the criteria for authorizing the public consortium to represent the associate federate entities vis-à-vis other spheres of government;

VI - the rules for the calling and functioning of the general assembly, including for the drafting, approval and modification of the by-laws of the public consortium;

VII - that the general assembly is the public consortium's highest authority and the number of votes required for its deliberations;

VIII - the form of election and the extension of the mandate of the legal representative of the public consortium who, obligatorily, shall be a Chief Executive of an associate federate entity;

IX - the number, the forms of provision and the remuneration of public servants, as well as the cases of fixed term contracts required for serving temporary needs of exceptional public interest;

X - conditions for the public consortium to celebrate a management contract or a term of partnership;

XI – an authorization for associated management of public services, making explicit:

a) the competences that have been transferred to the public consortium;

b) the public services that are the object of associated management and the field in which they are delivered;

c) authorization to offer for bidding or to grant a concession, permit or authorization for the delivery of services;

d) the conditions the program contract must comply with, in case the associated management also includes the delivery of services by a body or entity belonging to one of the associate federate entities;

e) technical criteria for the calculation of the value of tariffs and other public prices, as well as for their readjustment or revision; and

XII - the right of any of the contracting parties, upon payment of all its duties, to demand full compliance to the clauses of the public consortium contract.

§ 1 For the purposes of numeral III of the caption to this article, the field of action of the public consortium, irrespective of whether the Union is acting or not as an associate party, is considered as being the sum of the territories:

I - of the Municipalities, when the public consortium is constituted only by Municipalities or by a State and Municipalities within its territory;

II - of the States or of the States and the Federal District, when the public consortium is constituted, respectively, by more than 1 (one) State or by 1 (one) or more States and the Federal District;

III - (VETOED)

IV - of the Municipalities and the Federal District, when the consortium is constituted by the Federal District and the Municipalities; and

V - (VETOED)

§ 2 The protocol of intentions must define the number of votes that each associate federate entity has at the general assembly, 1 (one) vote being granted to each associate entity.

§ 3 Any clause to the consortium contract that foresees certain financial or economic contributions by a federate entity to the public consortium shall be considered null and void, except for the donation, destination or cession of use of movable or immovable assets and the transfer or cession of rights operated by means of associate management of public services.

§ 4 The associate federate entities, or those affiliated to them, may assign public servants, according to the form and conditions established by the legislation of each entity.

§ 5 The protocol of intentions shall be published in the official press.

Art. 5 The public consortium contract shall be celebrated through the ratification, by law, of the protocol of intentions.

§ 1 The public consortium contract, if established as such by its clauses, may be celebrated by only 1 (one) part of the federate entities that have subscribed the protocol of intentions.

§ 2 The ratification may be carried out with reservation which, if accepted by the other subscribing entities, will imply in a partial or conditional consortium.

§ 3 Any ratification carried out after 2 (two) years upon the subscription of the protocol of intentions shall depend on an homologation by the general assembly of the public consortium.

§ 4 The federate entity that disciplines its participation in the public consortium by law, prior to subscribing the protocol of intentions, shall be excused from the ratification foreseen under the caption to this article.

Art. 6 The public consortium shall become a corporate entity:

I - of public law, in the case it constitutes a public association, by means of the entry into force of the laws that ratify the protocol of intentions;

II - of private law, subject to compliance to the requirements of the civil legislation.

§ 1 The public consortium that becomes a public law corporate entity integrates the indirect administration of all associate federate entities.

§ 2 In case it becomes a private law corporate entity, the public consortium shall observe the rules of public law with regard to the performance of bidding procedures, the celebration of contracts, settlement of accounts and hiring of staff, which shall be governed by CLT - Consolidation of Labor Laws.

Art. 7 The by-laws shall provide for the organization and functioning of each of the bodies that constitute the public consortium.

Art. 8 The associate entities only shall deliver funds to the public consortium upon the signature of a pro-rate contract.

§ 1 The pro-rate contract shall be formalized on each fiscal year and its duration shall not be superior to the endowments that support it, except in the case of contracts whose sole object have been consistent projects, made up by programs and actions contemplated by the pluriannual plan or by the associated management of public services borne by tariffs or other public prices.

§ 2 The use of funds provided by a pro-rate contract for meeting generic expenditures, including transfers or credit operations, is vetoed hereby.

§ 3 The associate entities, either isolated or jointly, as well as the public consortium, are legitimate parts for demanding compliance to obligations foreseen under the pro-rate contract.

§ 4 In order to allow for compliance to the provisions of Complementary Law nº 101, of 4 May 2000, the public consortium must provide all necessary information so that all expenditures incurred in with resources provided by the pro-rate contract may consolidated, so that they may be accounted for under the accounts of each federate entity, in accordance with the economic elements and activities and projects served.

§ 5 An associate entity that does not consign, in its budgetary law or in additional credits, sufficient endowments for supporting the expenditures taken over under the pro-rate contract may be excluded from the public consortium, upon previous suspension.

Art. 9 The execution of revenues and expenditures of the public consortium shall comply with the rules of the financial law applicable to public entities.

Sole paragraph. The public consortium shall be subject to accounting, operational and equity inspection by the competent Court of Audit, for the appraisal of accounts of the consortium's legal representative or CEO, regarding the legality, legitimacy and cost-effectiveness of expenditures, acts, contracts and the waiving of revenues, without loss to the external control to be carried out as a consequence to each one of the pro-rate contracts.

Art. 10. (VETOED)

Sole paragraph. The public agents in charge of the management of the consortium shall not respond personally for the obligations contracted by the public consortium, but shall be responsible for acts that are not compliant with the law or with the provisions of the corresponding by-laws.

Art. 11. The withdrawal of a federate entity from a public consortium shall depend on a formal act by its representative at the general assembly, according to the form previously established by law.

§ 1 The assets destined to the public consortium by the party that is leaving the consortium only shall be reverted or ceded back in case such is expressly foreseen under the public consortium contract or in the transfer or alienation instrument.

§ 2 The withdrawal or the extinction of the public consortium shall not affect the obligations already established, including program contracts, whose extinction will depend on the previous payment of eventual indemnities.

Art. 12. The alteration or extinction of the public consortium contract shall depend on an instrument approved by the general assembly, ratified by law by all associated entities.

§ 1 The assets, rights, duties and obligations deriving from management associated to public services paid for by tariffs or any other kind of public dues shall be attributed to the titleholders of the respective services.

§ 2 Until a decision is taken regarding the appointment of those responsible for each obligation, the associate entities shall hold joint and several liability for the remaining obligations, assuring the right to return of the benefiting entities or of those that have caused the obligation.

Art. 13. The obligations that a federate entity establishes vis-à-vis another federate entity or public consortium within the scope of associated management in which the delivery of public services or the total or partial transfer of burdens, services, staff or assets is required for the continuity of services transferred shall be constituted and regulated by a program contract, as a condition for their entry into force.

§ 1 The program contract shall:

I - comply with the legislation on concessions and permits for public services and, especially with regard to the calculation of tariffs and other public dues, with the regulation of services to be delivered; and

II - foresee procedures that may assure transparency in the economic and financial management of each service vis-à-vis each one of its titleholders.

§ 2 In the case of associated management leading to the total or partial transfer of burdens, services, staff and assets essential to the continuity of the services transferred, the program contract - at risk of becoming null and void - shall contain clauses establishing:

I - the burdens transferred and the subsidiary responsibility of the entity that has transferred them;

II - penalties in case of default towards the burdens transferred;

III - the occasion for the transfer of services and duties associated to their continuity;

IV - the appointment of someone who shall take over the burdens and liabilities of transferred staff;

V - the identification of assets whose management and administration shall be transferred, as well as the price of all assets that will be effectively alienated to the contracted party;

VI - the procedure for the survey, registration and appraisal of reversible assets to be mortgaged against tariff revenues and other fees emerging from the delivery of services.

§ 3 Any program contract clauses attributing the exercise of planning, regulatory and inspection powers over the services delivered by it to the contracted party shall be null and void.

§ 4 The program contract shall continue in force, even if the public consortium or cooperation agreement that authorized the associated management of public services is called extinct.

§ 5 Whenever foreseen under the public consortium contract, or under a cooperation agreement, the program contract may be celebrated by public or private law entities integrating the indirect administration of any federate entity that is a member to the consortium or agreement.

§ 6 Any contract celebrated as foreseen under § 5 of the present article shall automatically be called extinct in case the contracted party no longer integrates the indirect administration of the federate entity that authorized the associated management of public services by means of public consortium or cooperation agreement.

§ 7 Are excluded from what is foreseen under the caption to this article all obligations whose non-compliance does not lead to any burdens, including financial ones, to the federate entity or public consortium.

Art. 14. The Union may celebrate agreements with public consortia, with the purpose of allowing for the decentralization and the delivery of public policies at an appropriate scale.

Art. 15. As long as there is no contradiction with the present Law, the organization and functioning of public consortia shall be disciplined by the legislation that governs civil associations.

Art. 16. Numeral IV of art. 41 of Law nº 10406, of 10 January 2002 - Civil Code, from now on shall be in force with the following reading:

"Art. 41. .....

.....

IV - governmental agencies (*autarquias*), including public associations;

....." (NR)

Art. 17. Arts. 23, 24, 26 and 112 of Law nº 8666, of 21 June 1993, from now on shall be in force with the following reading:

"Art. 23. .....

.....

§ 8 In the case of public consortia, an amount twice as high as the one mentioned in the caption to this article shall be applied, whenever formed by 3 (three) federate entities, and three times as high when formed by a larger number." (NR)

"Art. 24. .....

.....

XXVI - in celebrating a program contract with a federate entity or with an entity from its indirect administration, for the delivery of public services in an associated manner, according to the terms authorized in a public consortium contract or a cooperation agreement.

Sole paragraph. The percentages referred to under numerals I and II of the caption to this article shall be 20% (twenty per cent) for procurement, works and services contracted by qualified public consortia, mixed economy societies, public enterprises and by government agencies (*autarquias*) or foundations, as foreseen by law, as Executing Agencies." (NR)

"Art. 26. The waivers foreseen under §§ 2 and 4 of art. 17 and under numeral III and following of art. 24, the non-liability conditions referred to under art. 25, mandatorily justified, and the delay foreseen at the end of the sole paragraph to art. 8 of the present Law shall be communicated, within 3 (three) days time, to the higher authority, for ratification and publication in the official press, within 5 (five) days time, as a condition for the efficacy of the acts.

....." (NR)

"Art. 112. .....

§ 1 Public consortia may carry out bidding procedures for which, as per the announcement, administrative contracts may be celebrated by the bodies or entities of the associate federate entities.

§ 2 The interested party may follow-up on the bidding and contract execution procedures." (NR)

Art. 18. Art. 10 of Law nº 8429, of 2 June 1992, from now on shall be in force with the addition of the following numerals:

"Art. 10. .....

.....

XIV - celebrate contract or another instrument whose object is the delivery of public services by means of associated management, without compliance to the formalities foreseen by law;

XV - celebrate a pro-rate contract for a public consortium without sufficient and previous budgetary allotment, or without compliance to the formalities foreseen by law." (NR)

Art. 19. The provisions of the present Law are not applicable to cooperation agreements, program contracts for associated management of public services or similar instruments that have been celebrated prior to its entry into force.

Art. 20. The Executive Power of the Union shall regulate the provisions of this Law, including the general rules for public accounting to be observed by the public consortia so that its financial and budgetary management is carried out in compliance with the assumptions of fiscal responsibility.

Art. 21. The present Law enters into force on the date of its publication.

April 6th, 2005; 184th year of the Independence and 117th year of the Republic.

LUIZ INÁCIO LULA DA SILVA
Márcio Thomaz Bastos
Antonio Palocci Filho
Humberto Sérgio Costa Lima
Nelson Machado
José Dirceu de Oliveira e Silva

Presidency of the Republic
Office of the Chief of Staff
Office of the Deputy Head of Legal Affairs

LAW Nº 11.107, OF 6 APRIL, 2005.

Vetoe message

Provides for general rules for the contracting of public consortia and sets forth other provisions.

THE PRESIDENT OF THE REPUBLIC I hereby make it known that the National Congress promulgates and I sanction the following Law:

Art. 1 The present Law provides for general rules for the contracting of public consortia by the Union, the States, the Federal District and Municipalities for the achievement of common interest goals and sets forth other provisions.

§ 1 The public consortium will constitute a private law public association or legal entity.

§ 2 The Union only shall participate in public consortia if all the States that have Municipalities taking part in the consortia are members to the consortium as well.

§ 3 Public health consortia shall comply with the principles, guidelines and norms that rule the Unified Health System (*Sistema Único de Saúde* - SUS).

Art. 2 The objectives of public consortia shall be established by the federate entities that join the consortia, in compliance with existing constitutional limits.

§ 1 In order to comply with its objectives, a public consortium may:

I - establish covenants, contracts and agreements of any kind, receive support, contributions and social or economic subventions from other entities or governmental bodies;

II - under the terms of contracts for public law consortia, promote expropriations and establish easements in accordance with the terms of declaration of public utility or need, or social interest, established by the Public Authority; and

III - be contracted by the direct or indirect administration of associate federate entities, being exempt from bidding procedures.

§ 2 The public consortia may issue billing documents and carry out the collection of fees and other public dues for the delivery of services or for the use or grant over right to use public assets administered by them or, by means of a specific authorization, by the associate federate entity.

§ 3 Public consortia may grant concessions, permits or authorizations to carry out public works or services, subject to previous authorization, as foreseen under the public consortium contract, which shall specifically state the object of the concession, permit or authorization and the conditions it shall attend to, in compliance with the general rules in force.

Art. 3 The public consortium shall be established by a contract, whose celebration shall depend on the prior subscription to a protocol of intentions.

Art. 4 The mandatory clauses to the protocol of intentions shall establish:

I - the denomination, the purpose, the duration and the headquarters of the consortium;

II - the identification of the associate federate entities;

III - the statement of the consortium's field of action;

IV - that the public consortium shall be a non-profit private law public association or legal entity;

V – with reference to issues of common interest, the criteria for authorizing the public consortium to represent the associate federate entities vis-à-vis other spheres of government;

VI - the rules for the calling and functioning of the general assembly, including for the drafting, approval and modification of the by-laws of the public consortium;

VII - that the general assembly is the public consortium's highest authority and the number of votes required for its deliberations;

VIII - the form of election and the extension of the mandate of the legal representative of the public consortium who, obligatorily, shall be a Chief Executive of an associate federate entity;

IX - the number, the forms of provision and the remuneration of public servants, as well as the cases of fixed term contracts required for serving temporary needs of exceptional public interest;

X - conditions for the public consortium to celebrate a management contract or a term of partnership;

XI – an authorization for associated management of public services, making explicit:

a) the competences that have been transferred to the public consortium;

b) the public services that are the object of associated management and the field in which they are delivered;

c) authorization to offer for bidding or to grant a concession, permit or authorization for the delivery of services;

d) the conditions the program contract must comply with, in case the associated management also includes the delivery of services by a body or entity belonging to one of the associate federate entities;

e) technical criteria for the calculation of the value of tariffs and other public prices, as well as for their readjustment or revision; and

XII - the right of any of the contracting parties, upon payment of all its duties, to demand full compliance to the clauses of the public consortium contract.

§ 1 For the purposes of numeral III of the caption to this article, the field of action of the public consortium, irrespective of whether the Union is acting or not as an associate party, is considered as being the sum of the territories:

I - of the Municipalities, when the public consortium is constituted only by Municipalities or by a State and Municipalities within its territory;

II - of the States or of the States and the Federal District, when the public consortium is constituted, respectively, by more than 1 (one) State or by 1 (one) or more States and the Federal District;

III - (VETOED)

IV - of the Municipalities and the Federal District, when the consortium is constituted by the Federal District and the Municipalities; and

V - (VETOED)

§ 2 The protocol of intentions must define the number of votes that each associate federate entity has at the general assembly, 1 (one) vote being granted to each associate entity.

§ 3 Any clause to the consortium contract that foresees certain financial or economic contributions by a federate entity to the public consortium shall be considered null and void, except for the donation, destination or cession of use of movable or immovable assets and the transfer or cession of rights operated by means of associate management of public services.

§ 4 The associate federate entities, or those affiliated to them, may assign public servants, according to the form and conditions established by the legislation of each entity.

§ 5 The protocol of intentions shall be published in the official press.

Art. 5 The public consortium contract shall be celebrated through the ratification, by law, of the protocol of intentions.

§ 1 The public consortium contract, if established as such by its clauses, may be celebrated by only 1 (one) part of the federate entities that have subscribed the protocol of intentions.

§ 2 The ratification may be carried out with reservation which, if accepted by the other subscribing entities, will imply in a partial or conditional consortium.

§ 3 Any ratification carried out after 2 (two) years upon the subscription of the protocol of intentions shall depend on an homologation by the general assembly of the public consortium.

§ 4 The federate entity that disciplines its participation in the public consortium by law, prior to subscribing the protocol of intentions, shall be excused from the ratification foreseen under the caption to this article.

Art. 6 The public consortium shall become a corporate entity:

I - of public law, in the case it constitutes a public association, by means of the entry into force of the laws that ratify the protocol of intentions;

II - of private law, subject to compliance to the requirements of the civil legislation.

§ 1 The public consortium that becomes a public law corporate entity integrates the indirect administration of all associate federate entities.

§ 2 In case it becomes a private law corporate entity, the public consortium shall observe the rules of public law with regard to the performance of bidding procedures, the celebration of contracts, settlement of accounts and hiring of staff, which shall be governed by CLT - Consolidation of Labor Laws.

Art. 7 The by-laws shall provide for the organization and functioning of each of the bodies that constitute the public consortium.

Art. 8 The associate entities only shall deliver funds to the public consortium upon the signature of a pro-rate contract.

§ 1 The pro-rate contract shall be formalized on each fiscal year and its duration shall not be superior to the endowments that support it, except in the case of contracts whose sole object have been consistent projects, made up by programs and actions contemplated by the pluriannual plan or by the associated management of public services borne by tariffs or other public prices.

§ 2 The use of funds provided by a pro-rate contract for meeting generic expenditures, including transfers or credit operations, is vetoed hereby.

§ 3 The associate entities, either isolated or jointly, as well as the public consortium, are legitimate parts for demanding compliance to obligations foreseen under the pro-rate contract.

§ 4 In order to allow for compliance to the provisions of Complementary Law nº 101, of 4 May 2000, the public consortium must provide all necessary information so that all expenditures

incurred in with resources provided by the pro-rate contract may consolidated, so that they may be accounted for under the accounts of each federate entity, in accordance with the economic elements and activities and projects served.

§ 5 An associate entity that does not consign, in its budgetary law or in additional credits, sufficient endowments for supporting the expenditures taken over under the pro-rate contract may be excluded from the public consortium, upon previous suspension.

Art. 9 The execution of revenues and expenditures of the public consortium shall comply with the rules of the financial law applicable to public entities.

Sole paragraph. The public consortium shall be subject to accounting, operational and equity inspection by the competent Court of Audit, for the appraisal of accounts of the consortium's legal representative or CEO, regarding the legality, legitimacy and cost-effectiveness of expenditures, acts, contracts and the waiving of revenues, without loss to the external control to be carried out as a consequence to each one of the pro-rate contracts.

Art. 10. (VETOED)

Sole paragraph. The public agents in charge of the management of the consortium shall not respond personally for the obligations contracted by the public consortium, but shall be responsible for acts that are not compliant with the law or with the provisions of the corresponding by-laws.

Art. 11. The withdrawal of a federate entity from a public consortium shall depend on a formal act by its representative at the general assembly, according to the form previously established by law.

§ 1 The assets destined to the public consortium by the party that is leaving the consortium only shall be reverted or ceded back in case such is expressly foreseen under the public consortium contract or in the transfer or alienation instrument.

§ 2 The withdrawal or the extinction of the public consortium shall not affect the obligations already established, including program contracts, whose extinction will depend on the previous payment of eventual indemnities.

Art. 12. The alteration or extinction of the public consortium contract shall depend on an instrument approved by the general assembly, ratified by law by all associated entities.

§ 1 The assets, rights, duties and obligations deriving from management associated to public services paid for by tariffs or any other kind of public dues shall be attributed to the titleholders of the respective services.

§ 2 Until a decision is taken regarding the appointment of those responsible for each obligation, the associate entities shall hold joint and several liability for the remaining obligations, assuring the right to return of the benefiting entities or of those that have caused the obligation.

Art. 13. The obligations that a federate entity establishes vis-à-vis another federate entity or public consortium within the scope of associated management in which the delivery of public services or the total or partial transfer of burdens, services, staff or assets is required for the continuity of services transferred shall be constituted and regulated by a program contract, as a condition for their entry into force.

§ 1 The program contract shall:

I - comply with the legislation on concessions and permits for public services and, especially with regard to the calculation of tariffs and other public dues, with the regulation of services to be delivered; and

II - foresee procedures that may assure transparency in the economic and financial management of each service vis-à-vis each one of its titleholders.

§ 2 In the case of associated management leading to the total or partial transfer of burdens, services, staff and assets essential to the continuity of the services transferred, the program contract - at risk of becoming null and void - shall contain clauses establishing:

I - the burdens transferred and the subsidiary responsibility of the entity that has transferred them;

II - penalties in case of default towards the burdens transferred;

III - the occasion for the transfer of services and duties associated to their continuity;

IV - the appointment of someone who shall take over the burdens and liabilities of transferred staff;

V - the identification of assets whose management and administration shall be transferred, as well as the price of all assets that will be effectively alienated to the contracted party;

VI - the procedure for the survey, registration and appraisal of reversible assets to be mortgaged against tariff revenues and other fees emerging from the delivery of services.

§ 3 Any program contract clauses attributing the exercise of planning, regulatory and inspection powers over the services delivered by it to the contracted party shall be null and void.

§ 4 The program contract shall continue in force, even if the public consortium or cooperation agreement that authorized the associated management of public services is called extinct.

§ 5 Whenever foreseen under the public consortium contract, or under a cooperation agreement, the program contract may be celebrated by public or private law entities integrating the indirect administration of any federate entity that is a member to the consortium or agreement.

§ 6 Any contract celebrated as foreseen under § 5 of the present article shall automatically be called extinct in case the contracted party no longer integrates the indirect administration of the federate entity that authorized the associated management of public services by means of public consortium or cooperation agreement.

§ 7 Are excluded from what is foreseen under the caption to this article all obligations whose non-compliance does not lead to any burdens, including financial ones, to the federate entity or public consortium.

Art. 14. The Union may celebrate agreements with public consortia, with the purpose of allowing for the decentralization and the delivery of public policies at an appropriate scale.

Art. 15. As long as there is no contradiction with the present Law, the organization and functioning of public consortia shall be disciplined by the legislation that governs civil associations.

Art. 16. Numeral IV of art. 41 of Law nº 10406, of 10 January 2002 - Civil Code, from now on shall be in force with the following reading:

"Art. 41. .....

.....

IV - governmental agencies (*autarquias*), including public associations;

....." (NR)

Art. 17. Arts. 23, 24, 26 and 112 of Law nº 8666, of 21 June 1993, from now on shall be in force with the following reading:

"Art. 23. .....

.....

§ 8 In the case of public consortia, an amount twice as high as the one mentioned in the caption to this article shall be applied, whenever formed by 3 (three) federate entities, and three times as high when formed by a larger number." (NR)

"Art. 24. .....

.....

XXVI - in celebrating a program contract with a federate entity or with an entity from its indirect administration, for the delivery of public services in an associated manner, according to the terms authorized in a public consortium contract or a cooperation agreement.

Sole paragraph. The percentages referred to under numerals I and II of the caption to this article shall be 20% (twenty per cent) for procurement, works and services contracted by qualified public consortia, mixed economy societies, public enterprises and by government agencies (*autarquias*) or foundations, as foreseen by law, as Executing Agencies." (NR)

"Art. 26. The waivers foreseen under §§ 2 and 4 of art. 17 and under numeral III and following of art. 24, the non-liability conditions referred to under art. 25, mandatorily justified, and the delay foreseen at the end of the sole paragraph to art. 8 of the present Law shall be communicated, within 3 (three) days time, to the higher authority, for ratification and publication in the official press, within 5 (five) days time, as a condition for the efficacy of the acts.

....." (NR)

"Art. 112. .....

§ 1 Public consortia may carry out bidding procedures for which, as per the announcement, administrative contracts may be celebrated by the bodies or entities of the associate federate entities.

§ 2 The interested party may follow-up on the bidding and contract execution procedures." (NR)

Art. 18. Art. 10 of Law nº 8429, of 2 June 1992, from now on shall be in force with the addition of the following numerals:

"Art. 10. .....

.....

XIV - celebrate contract or another instrument whose object is the delivery of public services by means of associated management, without compliance to the formalities foreseen by law;

XV - celebrate a pro-rate contract for a public consortium without sufficient and previous budgetary allotment, or without compliance to the formalities foreseen by law." (NR)

Art. 19. The provisions of the present Law are not applicable to cooperation agreements, program contracts for associated management of public services or similar instruments that have been celebrated prior to its entry into force.

Art. 20. The Executive Power of the Union shall regulate the provisions of this Law, including the general rules for public accounting to be observed by the public consortia so that its financial and budgetary management is carried out in compliance with the assumptions of fiscal responsibility.

Art. 21. The present Law enters into force on the date of its publication.

April 6th, 2005; 184th year of the Independence and 117th year of the Republic.

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Presidency of the Republic
Office of the Chief of Staff
Office of the Deputy Head of Legal Affairs

DECREE Nº 6017, OF 17 JANUARY, 2007.

Regulates Law no. 11107, dated 6 April 2007, which provides general rules for the contracting of public consortia.

THE PRESIDENT OF THE REPUBLIC, in the exercise of the powers vested in him by art. 84, numeral IV of the Contstitution, and considering the provisions of art. 20 of Law no. 11107, of 6 April 2005,

DECREES:

CHAPTER I

THE OBJECT AND DEFINITIONS

Art. 1 The present Decree sets rules for the execution of Law no. 11107, of 6 April 2005.

Art. 2 For the purposes of this Decree, the following shall be considered:

I - public consortium: legal entity formed exclusively by federate entities, as per Law nº 11107, of 2005, in order to establish federate cooperation relationships, including for the achievement of common interest goals, established as a public association, a public law legal entity with an autarchic nature, or as a private law legal entity without economic purposes;

II - area of action of the public consortium: area that corresponds to the sum of the following territories, whether the Union acts as a party to the consortium or not:

a) of the Municipalities, when the public consortium is constituted only by Municipalities or by a State and Municipalities within its territory;

b) of the States or of the States and the Federal District, when the public consortium is constituted, respectively, by more than one State or by one or more States and the Federal District; and

c) of the Municipalities and the Federal District, when the consortium is constituted by the Federal District and the Municipalities;

III - protocol of intentions: preliminary contract which, upon ratification by the interested federate entities, is converted into a public consortium contract;

IV - ratification: approval of the protocol of intentions or act of withdrawal of the public consortium by the federate entity, by means of a law;

V - reserve: act through which the federate entity does not ratify, or conditions the ratification, of a certain provision of the protocol of intentions;

VI - withdrawal: exit of a federate entity from the public consortium, by means of a formal act of will;

VII - pro-rate contract: contract through which the consortium entities commit themselves to providing financial resources for the realization of expenditures for the public consortium;

VIII - cooperation agreement among federate entities: contract subscribed exclusively by federate entities, with the purpose of authorizing the associated management of public services, subject to ratification or prior ruling by law to be issued by each federate entity;

IX - associated management of public services: carrying out of planning, regulatory or inspection activities for public services by means of a public consortium or cooperation agreement among federate entities, either followed or not by the delivery of public services or of the total or partial transfer of burdens, services, personnel or assets essential to the continuity of the services transferred;

X - planning: activities related to identification, qualification, quantification, organization and guidance regarding all actions, both public and private, through which a public service must be delivered or made available in an appropriate manner;

XI - regulation: any act, either normative or not, that governs or organizes a certain public service, including its characteristics, quality standards, socio-environmental impacts, rights and duties of users and of those responsible for their supply or delivery, and establishment and review of tariffs and other public dues;

XII - inspection: follow-up, monitoring, control or evaluation activities, aimed at assuring the use, either effective or potential, of the public service;

XIII - delivery of public service under an associated management regime: execution, by means of federate cooperation, of any activity or work with the objective of allowing users access to a public service with characteristics and quality standards established by regulation or by a program contract, including when operated by the total or partial transfer of burdens, services, personnel and assets essential to the continuity of the services transferred;

XIV - public service: activity or material commodity subject to being used directly by the user, which may be remunerated by means of a public fee or due, including tariffs;

XV - public service holder: federate entity responsible for providing the public service, especially by means of planning, regulation, inspection and direct or indirect delivery;

XVI - program contract: instrument that establishes and regulates the obligations of a federate entity, including its indirect administration, towards another federate entity, or towards a public consortium, within the scope of the delivery of public services by means of federative cooperation;

XVII - partnership term: instrument to be signed by the public consortium and entities qualified as Civil Society Organizations of Public Interest, for the constitution of a cooperative link among the parties for the promotion and execution of the public interest activities foreseen under art. 3 of Law no. 9790, dated 23 March 1999; and

XVIII - management contract: instrument signed by the public administration and the governmental agency (*autarquia*) or foundation that has qualified as an Executive Agency, as per art. 51 of Law no. 9649, dated 27 May 1998, by which the entity's goals, targets and the corresponding performance indicators are established, as well as the necessary resources and the criteria and instruments for the evaluation of its compliance.

Sole paragraph. The field of action of the public consortium mentioned under numeral II in the caption to the article refers exclusively to the territories of the federate entities that ratified the protocol of intentions by law.

CHAPTER II

THE ESTABLISHMENT OF PUBLIC CONSORTIA

Section I

Objectives

Art. 3 In compliance with constitutional and legal limits, the objectives of public consortia shall be established by the entities that are members to the consortium, the following being admitted, among others:

I - associated management of public services;

II - delivery of services, including technical assistance, execution of works and supply of goods to the direct or indirect administration of the consortium entities;

III - sharing or common use of instruments and equipment, including for management purposes, maintenance, IT, technical staff and bidding procedures and staff hiring;

IV - production of information or technical studies;

V - implementation and functioning of schools of government or similar institutions;

VI - promoting the rational use of natural resources and environmental protection;

VII - carrying out functions related with the water resource management system that have been either delegated or authorized to it;

VIII - the support and promotion of exchange of experiences and information among consortium entities;

IX - management and protection of common urban, landscape or tourism assets.

X - the planning, management and administration of social security services and resources of any of the federate entities that are members to the consortium. Funds raised in one federate entity may not be used for the payment of benefits to those insured under another entity, in compliance to the provisions of art. 1, numeral V, of Law no. 9717, of 1998;

XI - the provision of technical assistance, extension, training, research and urban, rural and agrarian development;

XII - urban, local and regional socio-economic development actions and policies; and

XIII - exercising competencies that belong to the federate entities, as established in the authorization or delegation terms.

§ 1 Public consortia may have one or more objectives and the consortium entities may associate themselves with all members of the consortium or only a part of them.

§ 2 The public consortia, or entities linked to them, may carry out health actions and services, in compliance with the principles, guidelines and rules that govern the Unified Health System - SUS.

Section II

Protocol of Intentions

Art. 4 The constitution of the public consortium shall depend on the prior celebration of a protocol of intentions signed by the legal representatives of the interested federate entities.

Art. 5 The protocol of intentions, at risk of becoming null and void, must contain, at minimum, clauses establishing:

I - the denomination, the purposes, the duration and the headquarters of the public consortium, the establishment of an undetermined term and the possibility of headquarter alterations being admitted, subject to decision by the General Assembly;

II - the identification of each of the federate entities that may integrate the public consortium, with the possibility of indicating a deadline for the signature of the protocol of intentions;

III - the statement of the consortium's field of action;

IV - the possibility of the public consortium being a public association, a corporate entity under public law with an autarchic nature, or a private law legal entity;

V - the criteria for authorizing the public consortium to represent the consortium federate entities vis-à-vis other spheres of government in regard to issues of common interest;

VI - the rules for the calling and functioning of the general assembly, including for the drafting, approval and modification of by-laws of the public consortium;

VII - that the general assembly is the public consortium's highest authority and the number of votes required for its deliberations;

VIII - the form of election and the extension of the mandate of the legal representative of the public consortium who, obligatorily, shall be the Head of the Executive of a federate entity that is a member to the consortium;

IX - the number, the forms of provision and remuneration of employees of the public consortium;

X - the cases of short term contracting intended to meet temporary needs of exceptional public interest;

XI - the conditions for the public consortium to celebrate management contracts, in accordance with Law no. 9649, of 1998, or terms of partnership, as per Law no. 9790, of 1999;

XI - authorization for the associated management of public services, making explicit:

a) the execution of competencies that shall be transferred to the public consortium;

b) the public services that are the object of associated management and the field in which they are delivered;

c) authorization to bid or contract the concession, permit or authorization for the delivery of services;

d) the conditions the program contract must comply with, in case the public consortium should stand as contracting party; and

e) the technical criteria for the calculation of the value of tariffs and other public dues, as well as the overall criteria to be observed for their readjustment or revision;

XIII - the right of any of the contracting parties, upon payment of all its duties, to demand full compliance to the clauses of the public consortium contract.

§ 1 The protocol of intentions must define the number of votes that each federate entity has at the general assembly, being at least one vote granted to each entity that is a member to the consortium.

§ 2 The following shall be admitted, except at the general assembly:

I - the participation of civil society representatives in collegiate bodies of the public consortium;

II - that the collegiate bodies of the public consortium be made up by civil society representatives or exclusively by representatives of those consortium entities that are directly interested in the issues that are the competence of such bodies.

§ 3 Public consortia shall comply with the principle of publicity, publicizing all decisions that may be of interest to third parties and all those of a budgetary, financial or contractual nature, including those referring to the hiring of personnel, also allowing anyone to have access to their meetings and to the documents they may produce, except for those considered confidential by means of previous and motivated decision, as established by law.

§ 4 The mandate of the legal representative of the public consortium shall be one or more accounting years and shall cease automatically in case the elected person no longer is the Head of the Executive Authority of the federate entity that he/she represents at the general assembly, in which case he/she shall be succeeded by a person that meets such condition.

§ 5 Except in cases for which the contrary is foreseen in the by-laws, the legal representative of the public consortium, in case of his/her impeachment or vacancy, shall be substituted or succeeded by whom, in these cases, substitutes or succeeds him/her as the Head of the Executive Authority.

§ 6 Any clause of the protocol of intentions that foresees certain financial or economic contributions by a federate entity to the public consortium shall be considered null and void, except for the donation, destination or cession of use of movable or immovable assets and the transfer or cession of rights operated by act of associated management of public services.

§ 7 The protocol of intentions shall be published in the official press.

§ 8 The publication of the protocol of intentions may take place in a summarized manner, as long as the publication indicates the place and the website on the Internet in which its integral text can be found.

Section III

Contracting

Art. 6 The public consortium contract shall be celebrated with the ratification, by law, of the protocol of intentions.

§ 1 Any refusal or delay to ratify shall not be penalized.

§ 2 Ratification may be carried out with reserve, which shall be clear and objective, preferably associated to the entry into force of a clause, paragraph, numeral or literal of the protocol of intentions, or imposing conditions for the entry into force of any such provisions.

§ 3 In case the law mentioned in the caption to this article foresees reserves, the entity's admission to the public consortium shall depend on the approval of each one of these reserves by the other subscribers to the protocol of intentions, or, in case the public consortium has already been established, by the general assembly.

§ 4 The public consortium contract, in case that is foreseen under the protocol of intentions, may be celebrated by just a part of its subscribers, without loss to the later integration of the other ones.

§ 5 In the case foreseen under § 4 of this article, any ratification taking place after two years after the first subscription to the protocol of intentions shall depend on the homologation of the other subscribers or, in case the consortium already has been established, by a decision of the general assembly.

§ 6 The inclusion of any federate entity not mentioned in the protocol of intentions as a likely member to the public consortium shall be subject to the alteration of the public consortium contract.

§ 7 The ratification foreseen under the caption to this article may be dismissed for those federate entities that, before subscribing the protocol of intentions, have disciplined their participation in the public consortium by law, being eligible for taking over all the obligations foreseen under the protocol of intentions.

Section IV

Corporate Entity

Art. 7 The public consortium shall become a corporate entity:

I - of public law, by means of the entry into force of the laws that ratify the protocol of intentions; and

II - of private law, by complying with the foreseen under numeral I and, also, with the requirements foreseen by civil legislation.

§ 1 The public consortia, even if invested with a private law corporate entity, shall observe public law rules regarding competitive bidding procedures, celebration of contracts, admission of personnel and settlement of accounts.

§ 2 In case all subscribers to the protocol of intentions match the condition foreseen in § 7 of art. 6 of this Decree, the improvements to the public consortium contract and the acquiring of a corporate entity by the public association shall depend exclusively on the publication of the protocol of intentions.

§ 3 In the hypothesis of creation, merger, incorporation or dismemberment affecting entities that are members of the consortium or subscribers of the protocol of intentions, the new federate entities, except if otherwise provided in the protocol of intentions, shall be automatically considered as parties or subscribers to the consortium.

Section V

By-Laws

Art. 8 The public consortium shall be organized by its by-laws whose provisions, under penalty of nullity, shall comply with all the clauses of the constitutive contract.

§ 1 The by-laws shall be approved by the general assembly.

§ 2 Regarding public employees of the public consortium, the by-laws may establish provisions over the use of disciplinary and regulatory power, administrative attributions, hierarchy, efficiency assessment, staff, working hours and position titles.

§ 3 The by-laws of the public law consortium shall enter into force upon their publication in the official press of each consortium member.

§ 4 The publication of the by-laws may take place in a summarized manner, as long as the publication indicates the place and the website on the Internet in which its integral text can be found.

CHAPTER III

THE MANAGEMENT OF PUBLIC CONSORTIA

Section I

General Provisions

Art. 9 The federate entities that are members of the public consortium are subsidiarily responsible for its obligations.

Sole paragraph. The heads of the public consortium shall be personally liable for the obligations contracted by the consortium in case they practice acts that are not in conformity with the law, the by-laws or the decisions of the general assembly.

Art. 10. For the fulfillment of its purposes, the public consortium may:

I - establish covenants, contracts and agreements of any kind, receive support, contributions and social or economic subventions;

III - be contracted by the direct or indirect administration of member federate entities, with the waiving of bidding procedures; and

III - if established as a public association, or if foreseen under the program contract, promote expropriations or establish easements in accordance with the terms of the declaration of public utility, public need, or social interest.

Sole paragraph. The contracting of a credit operation by the public consortium shall be subject to the limits and specific conditions established by the Federal Senate, in accordance to the provisions of art. 52, numeral VII, of the Constitution.

Section II

Accounting and Financial Regime

Art. 11. The execution of revenues and expenditures of the public consortium shall comply with the rules of the financial law applicable to public entities.

Art. 12. The public consortium shall be subject to accounting, operational and equity inspection by the competent Court of Audit, for the appreciation of accounts of the consortium's legal representative, including as to the legality, legitimacy and cost-effectiveness of expenditures, acts, contracts and the waiving of revenues, without loss to the external control to be carried out as a consequence to each one of the pro-rate contracts.

Section III

Pro-Rate Contract

Art. 13. The entities that are members to the consortium only shall deliver financial funds to the public consortium upon the signature of a pro-rate contract.

§ 1 Pro-rate contracts shall be formalized for each fiscal year, while observing the budgetary and financial legislation of the contracting member entity and depending on budgetary forecasts that support the payment of the contracted liabilities.

§ 2 Shall be considered misconduct in office, under the provisions of art. 10, numeral XV, of Law no. 8429, dated 2 June 1992, the celebration of pro-rate contracts without the previous budgetary allotment or without complying to the formalities foreseen by Law.

§ 3 The clauses of the pro-rate contract may not include provisions that attempt to dismiss or hamper inspection carried out by the internal and external control bodies or by civil society of any of the federate entities that are members to the consortium.

§ 4 The consortium member entities, either isolated or jointly, as well as the public consortium, are legitimate parts for demanding compliance to obligations foreseen under the pro-rate contract.

Art. 14. If the consortium member entity faces restrictions in performing expenditures, pledges or financial movement, or any other restriction deriving from financial law rules, it shall inform the public consortium by means of written notice, pointing out the measures it has undertaken to settle the condition, so as to enable it to pay for the contribution foreseen in the pro-rate contract.

Sole paragraph. The eventual impossibility of a member entity to comply with budgetary and financial obligations established in the pro-rate contract forces the public consortium to adopt measures to adapt the budgetary and financial execution to the new limits.

Art. 15. The application of the resources provided by a pro-rate contract, including those deriving from transfers or credit operations, for meeting expenditures classified as generic, is vetoed hereby.

§ 1 Generic expenditures are those in which the budgetary execution takes place under an undefined application mode.

§ 2 Administration and planning expenditures shall not be considered as generic, as long as they have been previously classified by public accounting norms.

Art. 16. The ruling term of a pro-rate contract shall not be longer than the ruling of the allotments that support it, except for those whose exclusive object are consistent projects that are part of programs and actions contemplated by a pluriannual plan.

Art. 17. In order to allow for compliance to the provisions of Complementary Law no. 101, of 4 May 2000, the public consortium shall provide all financial information required for the consolidation, on the accounts of the member entities, of all revenues and expenditures paid in, so that they may be accounted for in the accounts of each federate entity, in accordance with the economic elements of the activities or projects served.

Section IV

Contracting of the Consortium by a Federate Entity

Art. 18. The public consortium may be contracted by a member entity, or by an entity that integrates the indirect administration of the latter, bidding under the terms of art. 2, numeral III, of Law no. 11107, of 2005 being excused.

Sole paragraph. The contract foreseen in the caption shall be celebrated, preferably, when the consortium supplies goods or provides services to a certain member entity, in order to avoid that they are borne by the others.

Section V

Shared Biddings

Art. 19. The public consortia, if established for that end, may carry out a bidding whose announcement foresees contracts to be celebrated by the direct or indirect administration of the member federate entities, under the terms of § 1 of art. 112 of Law no. 8666, of 21 April 1993.

Section VI

The Concession, Permission or Authorization of Public Services or Use of Public Assets

Art. 20. The granting of concessions, permits, authorizations and contracts for the provision of public works or services by means of associated management shall be subject to:

I - compliance to the legislation on general norms presently in force; and

II - the authorization foreseen under the public consortium contract.

§ 1 The authorization mentioned in numeral II of the caption shall indicate the object of the concession, permit or authorization and the conditions it shall meet, including performance targets and the criteria for the establishment of fees or other public dues.

§ 2 Public consortia may issue billing documents and carry out the collection of fees and other public dues for the delivery of services or for the use or grant over right to use public assets or, by means of a specific authorization, services or assets of a member entity.

Art. 21. A public consortium only shall contract a concession, permit or authorization for the delivery of public services by means of competitive bidding procedures.

§ 1 The provisions of this article shall apply to all adjustments of a contractual nature, irrespective of being called agreements, covenants or terms of partnership or cooperation.

§ 2 The provisions of this article do not apply to the program contract, which may be contracted without bidding, as per art. 24, numeral XXVI of Law no. 8666, of 21 June 1993.

Section VII

Public Servants

Art. 22. The creation of public jobs depends on previous estimates under the public consortium contract establishing the form and the requirements for the provision and its corresponding remuneration, including those regarding additional payments, gratifications, and any other remuneration or compensatory installments.

Art. 23. The federate member entities, or those associated to them, may assign servants to it, according to the form and conditions established by the legislation of each entity.

§ 1 Assigned servants shall remain under their original regime, and only shall be granted additional payments or gratifications in accordance with the terms and values foreseen under the public consortium contract.

§ 2 The payment of additional values or gratifications as foreseen under § 1 of this article will not represent a new contract with the assigned servant, including for the finding of labor or social security responsibilities.

§ 3 In the hypothesis of the taking over of burdens associated with the servant's cession by the federate member entity, such payments may be accounted for as credits qualified for operating compensations for obligations foreseen in the pro-rate contract.

CHAPTER IV

WITHDRAWAL AND EXCLUSION OF CONSORTIATED ENTITY

Section I

General Provision

Art. 24. No federate entity may be forced to enter or to remain in a consortium.

Section II

Recess

Art. 25. The withdrawal of a federate entity from a public consortium shall depend on a formal act by its representative at the general assembly, in accordance with the form previously established by law.

§ 1 The assets destined to the public consortium by the party that is leaving the consortium only shall be reverted or ceded back in case such is expressly foreseen under the public consortium contract or in the transfer or alienation instrument.

§ 2 The withdrawal shall not jeopardize the already constituted obligations between the departing member and the public consortium.

§ 3 The withdrawal of a federate entity from the public consortium established by only two entities shall imply in the extinction of the consortium.

Section III

Exclusion

Art. 26. The exclusion of a member entity only shall be admitted if there is just cause.

§ 1 In addition to those that are recognized under a specific procedure, the non-inclusion, by the member entity, in its budgetary law or in additional credits, of allotments sufficient for bearing the expenditures that, under the terms of the public consortium budget, are foreseen to being taken over by means of a pro-rate contract, qualifies as just cause.

§ 2 The exclusion foreseen under § 1 of this article only shall occur upon previous suspension, a period during which the member entity may rehabilitate itself.

Art. 27. The exclusion of a consortium member requires an administrative process and it shall be entitled to legal defense and adversary system.

Art. 28. Whenever foreseen under the public consortium contract, any entity that, without authorization from the other members to the consortium, subscribes the protocol of

intentions for the establishment of another consortium that is judged by the majority of the general assembly as being equal, similar or incompatible, may be excluded from the consortium.

CHAPTER V

ALTERATION AND EXTINCTION OF PUBLIC CONSORTIUM CONTRACT

Art. 29. The alteration or extinction of the public consortium contract shall depend on an instrument approved by the general assembly, ratified by law by all member entities.

§ 1 In case of extinction:

I - The assets, rights, duties and obligations deriving from the associated management of public services borne by tariffs or other types of public dues shall be attributed to the holders of the respective services.

II - Until a decision is taken regarding the appointment of those responsible for each obligation, the member entities shall hold joint and several liability for the remaining obligations, assuring the right of recovery to the benefiting entities or to those that have caused the obligation.

§ 2 Upon extinction, the staff assigned to the public consortium shall be returned to their original bodies, and the labor contracts of the public employees with the consortium shall be automatically rescinded.

CHAPTER VI

PROGRAM CONTRACT

Section I

Preliminary Provisions

Art. 30. Obligations contracted by a federate entity, including entities of its indirect administration, whose object is the delivery of services by means of associate management or the total or partial transfer of burdens, services, staff or assets required for the continuity of services transferred shall be constituted and regulated by a program contract, as a condition for their entry into force.

§ 1 For the purposes of this article, public service delivery by means of associated management is the one through which a federate entity, or an entity of its indirect administration, cooperates with another federate entity or with a public consortium, irrespective of the denomination it may adopt, except when the delivery takes place by means of a public service concession contract celebrated by means of a regular bidding procedure.

§ 2 Starting April 7th, 2005, the celebration of contracts or other instruments whose object is the delivery of public services by means of federate cooperation without the celebration of a program contract, or without complying with other formalities foreseen under the law, shall

constitute misconduct in office, according to the provisions of art. 24, numeral XIV, of Law no. 8429, of 1992.

§ 3 Are excluded from what is foreseen in this article all obligations whose non-compliance do not cause any burden, including financial ones, to the federate entity or public consortium.

Art. 31. If foreseen in the public consortium contract or in the cooperation agreement among the federate entities, the celebration of a program contract of a federate entity or of public consortia with a government agency (*autarquia*), public enterprise or mixed economy society shall be admitted.

§ 1 For the purposes of the caption, the governmental agency, public enterprise or mixed economy society shall integrate the indirect administration of the federate entity which, by means of a public consortium or cooperation agreement, has authorized the associated management of a public service.

§ 2 The contract celebrated as foreseen under the caption of the present article shall be automatically called extinct in case the contracted party no longer integrates the indirect administration of the federate entity that authorized the associated management of public services by means of a public consortium or cooperation agreement.

§ 3 In case of a program contract celebrated with a mixed economy society or with a public enterprise, the contracting party may receive equity with the special power to impeach the alienation of the company, in order to prevent the program contract from being called extinct, according with the foreseen in § 2 of this article.

§ 4 The cooperation agreement shall not produce effects among the cooperating federate entities that have not governed it by law.

Section II

Waiving of Bidding Procedures

Art. 32. The program contract may be celebrated with the waiving of competitive bidding procedures, in accordance with art. 24, numeral XXVI, of Law nº 8666, of 1993.

Sole paragraph. The competitive bidding waiving term and the program contract bidding shall be previously examined and approved by the Administration's legal advisor.

Section III

Necessary Clauses

Art. 33. Program contracts shall, whenever appropriate, comply with the legislation on concessions and permits for public services and shall contain clauses establishing:

I - the object, the area and the duration for the associated management of public services, including those operated by means of total or partial transfer of burdens, services, personnel and assets essential to the continuity of services;

II - the way, form and conditions for service delivery;

III - the criteria, indicators, formulas and benchmarks for service quality;

V - compliance to the regulatory legislation for the services that are the object of associated management, especially in regard to the establishment, review and readjustment of tariffs and other public dues and, if necessary, the complementary norms to this regulation;

V - procedures that guarantee the transparency of the economic and financial management of each service vis-à-vis each one of its holders, especially regarding the finding of how much was collected and invested in each one's territory, regarding each public service under associated management;

VI - the rights, guarantees and obligations of the service holder and provider, including those related to the foreseeable needs for future alteration and expansion of services and the corresponding modernization, improvement and expansion of equipment and installations;

VII - user rights and duties for obtaining and using services;

VIII - the form of inspection of installations, equipment, methods and practices of service execution, as well as the appointment of the competent bodies for carrying them out;

IX - contractual and administrative penalties to which the service provider is subject to, including when the latter is a public consortium, and its form of application;

X - the cases for extinction;

XI - the reversible assets;

XII - the criteria for the calculation and the form of payment of the indemnities due to the service provider, including when the latter is a public consortium, especially for the value of the reversible assets that have not been amortized by fees and other revenues emerging from service delivery;

XIII - the compulsory nature, the form and periodicity of settlement of accounts of the public consortium or any other service provider, regarding the delivery of public services by means of associated management;

XIV - the periodicity in which the services shall be inspected by a committee made up by representatives of the service holder, the contracted party and users, so as to comply with the provisions of art. 30, sole paragraph, of Law nº 8987, dated 13 February 1995;

XV - the requirement for periodical publication of financial statements related to the associated management, which shall be specific and segregated from other statements of the public consortium or of the service provider; and

XVI - the jurisdiction and the amicable form for solving contractual controversies.

§ 1 In the case of total or partial transfer of burdens, services, staff and assets essential to the continuity of the services transferred, the program contract also shall contain clauses establishing:

I - the burdens transferred and the subsidiary responsibility of the entity that has transferred them;

II - penalties in case of default towards the burdens transferred;

III - the occasion for the transfer of services and duties associated to their continuity;

IV - the appointment of who shall take over the burdens and liabilities regarding the transferred staff;

V - the identification of assets whose management and administration shall be transferred, as well as the price of those assets that will be effectively alienated to the service provider or to the public consortium; and

VI - the procedure for the survey, registration and assessment of reversible assets to be mortgaged against tariff revenues and other fees emerging from the delivery of services.

§ 2 Non-payment of the indemnities foreseen under numeral XII of the caption, including in cases when there are controversies regarding their value, shall not impeach the holder to resume services or adopt other measures in order to guarantee the continuity of appropriate delivery of public service.

§ 3 Any program contract clause attributing to the contracted party the exercise of planning, regulatory and inspection powers over the services delivered by him shall be null and void.

Section IV

Entry Into Effect and Termination

Art. 34. The program contract shall continue in force, even when the public consortium or cooperation agreement that authorized the associated management of public services has been called extinct.

Art. 35. The extinction of the program contract shall not affect the obligations already established, and shall depend on the previous payment of eventually due indemnities.

CHAPTER VII

NORMS APPLICABLE TO THE UNION

Art. 36. The Union only shall participate in a public consortium if all the States that have Municipalities taking part in the consortia are members to the consortium as well.

Art. 37. Federal granting bodies and entities shall give preference to voluntary transfers to States, the Federal District and Municipalities whose actions are carried out by means of public consortia.

Art. 38. Whenever required for achieving the appropriate scale, the execution of federal local programs may be delegated, totally or partially, by means of agreement, to public consortia.

Sole paragraph. The States and Municipalities may execute - through public consortia - actions and programs ??? from which they may benefit through voluntary transfers of the Union.

Art. 39. Starting January 1st, 2008, the Union only shall celebrate agreements with public consortia established as public associations or that have been converted into such form.

§ 1 The celebration of agreements for the transfer of resources from the Union is conditioned to each one of the member entities meeting the applicable legal requirements, its celebration being vetoed in case of default of any of the consortium member entities.

§ 2 The proof of compliance to the requirements for the realization of voluntary transfers or for the celebration of agreements for the transfer of funds, shall be provided by a statement issued by the Unified Registry of Requirements for Voluntary Transfers (*Cadastro Único de Exigências para Transferências Voluntárias* - CAUC) sub-system, regarding the status of each member entity, or by any other means to be established by a normative instruction of the Secretariat of the National Treasury.

CHAPTER VIII

FINAL AND TRANSITORY PROVISIONS

Art. 40. In order for the financial and budgetary management of public consortia to take place in conformity with the assumptions of fiscal responsibility, the Secretariat of the National Treasury of the Ministry of Finance:

I - shall establish rules for the realization of voluntary transfers or the celebration of financial or similar agreement between the Union and the other Federate Entities that involve actions carried out by public consortia;

II - issue general rules for the consolidation of accounts of public consortia, including:

a) criteria for their corresponding liabilities to be distributed among the member entities;

b) fiscal regularity rules to be observed by the public consortia.

Art. 41. The consortia established in disagreement with Law no. 11107 of 2005 may be transformed into public consortia either under public law or private law, subject to compliance to the requirements for the celebration of protocols of intention and their ratification by law to be enacted by each federate entity member to the consortium.

Sole paragraph. In case the transformation to take place is into public law consortium, the efficacy of the statutory alteration shall not depend on its enrollment in the civil registry of legal entities.

Art. 42. The present Decree enters into force on the date of its publication.

January 17th, 2007; 186th year of the Independence and 119th year of the Republic.

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