

***“Puerto Rico Industrial, Tourist, Educational, Medical, and Environmental
Control Facilities Financing Authority Act”***

Act No. 121 of June 27, 1977 as amended

(Contains amendments incorporated by:

Act No. 102 of July 12, 1985

Act No. 139 of July 28, 1988

Act No. 79 of September 10, 1993

Act No. 61 of August 11, 1994

Act No. 111 of September 27, 1994

Act No. 195 of August 12, 1995

Act No. 333 of December 10, 1999

Act No. 68 of January 4, 2003

Act No. 163 of December 16, 2009)

(Amendments non-incorporated:

Act No. 180 of December 16, 2009)

To create the Puerto Rico Industrial, Medical, Educational, and Environmental Pollution Control Facilities Authority; to define its duties, powers and responsibilities; to authorize the Authority hereby created to finance, acquire, construct, improve and otherwise carry out and provide industrial or commercial development projects, and medical and educational facilities, including projects for environmental pollution control and solid-waste disposal and to cause such projects to be operated and maintained; to provide for the issuing of bonds, as well as the terms, security and payment thereof, and to exempt the property, income and bonds of such Authority from taxation.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — Short Title. — (12 L.P.R.A. § 1251)

This Act shall be known as the "Puerto Rico Industrial, Tourist, Educational, Medical, and Environmental Control Facilities Financing Authority Act".

Section 2. — Public Policy. — (12 L.P.R.A. § 1252)

The Legislature concludes and determines that the development and expansion of commerce, industry, health services and education within the Commonwealth of Puerto Rico are essential elements to the economic growth of the country and to attain full employment

and preserve the health, welfare, safety and prosperity of all its citizens. It also concludes and determines that industry needs and requires new methods to finance the capital investments needed to acquire the devices, equipment and facilities necessary for its operations, including environmental pollution control; that it is necessary to provide adequate, modern and efficient medical facilities to improve the medical-hospital care and services received by the citizens of the Commonwealth of Puerto Rico to the utmost; that it is necessary to provide adequate higher education facilities for the academic training and improvement of the citizens of the Commonwealth of Puerto Rico: that the aid provided in this chapter, including financial assistance, is therefore in the public interest and serves a public purpose in promoting the economic development, the health, education, welfare and safety of the citizens of the Commonwealth of Puerto Rico. It is the purpose of this chapter to carry out and make effective the findings of the Legislature and, to that end, to provide the industry of Puerto Rico with an alternate method of financing so as to promote, enlarge and establish facilities for its operations, including environmental pollution control, and provide alternate methods for the acquisition and construction of medical and education facilities.

Section 3. — Definitions. — (12 L.P.R.A. § 1253)

The following words and terms, whenever used or referred to in this chapter, shall have the meanings set forth hereinafter, unless the context clearly indicates otherwise:

(a) *Authority.* — Shall mean the Puerto Rico Industrial, Medical, Education and Environmental Pollution-Control Facilities Financing Authority established by this chapter, or, should said Authority be abolished or otherwise divested of its functions under this chapter, the public body or agency succeeding it in its principal functions, or that in which the rights, powers and duties hereby given to the Authority are vested by law.

(b) *Board.* — Shall mean the Governing Board of the Authority created by this chapter and if abolished, the Board or body succeeding it in the performance of its principal functions.

(c) *Bonds.* — Shall mean bonds, temporary bonds, refunding bonds, obligations, notes, interim receipts or provisional bonds, certificates, or other evidences of indebtedness of the Authority issued under the provisions of this chapter.

(d) *Costs.* — When applied to any project, shall mean all costs incurred in the acquisition and construction, or those otherwise incurred to provide any project. These shall include, without being limited to: the cost of construction, the cost of acquisition of all property, including rights to land and other property, both real and personal, improved or unimproved; the cost of demolishing, removing and relocating any buildings or structures on the land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all machinery, furnishings and equipment; the payment or provision to pay, totally or partially, the existing debt incurred by or on behalf of a debtor or user to provide funds for the payment of the costs of a project or projects; financing charges, and any other charges, and interest incurred prior to, or during construction, and if deemed advisable by the Authority, and for the period it may determine after the completion of construction; debt service reserves; or any other reserve required by the Tourist Development Company as a condition to secure a bond issue, the cost of studies, market analysis, surveys, plans and specifications; the cost of legal advisors; accountants, engineers, environmentalists and other

professionals, it shall likewise include the cost of health service consultants, financial advisors and other special services, and other necessary or incidental expenses to determine the feasibility or practicality of the project; the cost of site preparation, development and landscaping; the initial cost of occupancy of the project or any part thereof; administrative and other expenses necessary or incidental to the financing and establishing of the project, including reimbursement to any government agency or to any debtor or user with respect to such project for such expenditures incurred with the prior approval of the Authority that would have been costs of the abovementioned project had they been incurred directly by the Authority, and any administrative or financing fees or charges imposed by the Authority; and the payment or reimbursement to any debtor or user prior to the closing date of the financing to be granted by the Authority or by a financial institution that has obtained the funds from the Authority to finance projects, but said prior term shall not exceed the term allowed by any federal law or regulation applicable to said payment or reimbursement, or if there is no applicable federal law or regulation, the term determined by the Authority which shall not exceed two (2) years.

(e) *Current expenses.* — Shall mean the amount of reasonable and necessary current expenses incurred by the Authority in connection with any project as the same may be more fully defined in the project's trust agreement or financing agreement.

(f) *Federal agency.* — Shall mean the United States of America, the President of the United States of America and any department, corporation, agency or instrumentality designated or established by the United States of America.

(g) *Financing agreement.* — Shall mean the agreement or agreements between the Authority and any debtor or guarantor in relation to a project or projects, whether directly or indirectly, under which the payments to the Authority in their entirety shall be sufficient to pay all of the principal and interest and any redemption premium, and to provide and maintain any reserves for the bonds to be issued by the Authority to pay the cost of such project or projects, and to pay in its entirety the expense incurred by the Authority in connection therewith; it shall also mean, but without being limited to, lease, installment sale, purchase, conditional sale, sale and lease-back loan mortgage or lease contracts or any other financing agreement or combination of the above that the Authority may determine.

(h) *Guarantor.* — Shall mean any person, directly or indirectly liable under the provisions of a financing agreement for the unpaid portion of the debtor's obligations, whether he is designated a guarantor, surety, endorser, accommodation party, insurer or any other designation.

(i) *Industrial facilities.* — Shall mean any structure, equipment, improvement, or facility or system, and any land, and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction; and any real or personal property deemed necessary, or related to, or intended for:

- (i) The manufacturing, processing, assembling, or warehousing of goods or materials for sale or distribution, but not including raw materials, goods in process or stock-in-trade;
- (ii) use by or for the benefit of local agencies;
- (iii) use by mercantile or commercial service enterprises;
- (iv) use for research and or development activities;
- (v) use as the national or regional headquarters of a multistate business enterprise;

- (vi) used for tourist or recreational purposes;
- (vii) agricultural purposes, or
- (viii) any combination of the abovementioned activities, or purposes.
- (j) *Local agency*. — Shall mean any municipality or political subdivision, or an agency, department or instrumentality of the Commonwealth, or a nonprofit corporation or association, created under the laws of the Commonwealth of Puerto Rico.
- (k) *Debtor*. — Shall mean the party under a financing agreement (with the exception of the guarantor but including a financial institution), whether he/she be designated lessee, sublessee, purchaser, borrower, mortgager, or has any other designation.
- (l) *Person*. — Shall mean any natural or [juridical] person, including, but without being limited to, any local agency, or any individual, firm, partnership, joint venture, trust, joint stock company, association or public or private corporation, organized or existing under the laws of the Commonwealth of Puerto Rico, the United States of America or any state, any agency or instrumentality of the United States, or any combination of the above.
- (m) *Pollutant*. — Shall mean any waste from liquid, gaseous or solid substances, as well as thermal or radioactive contaminants, or noise resulting from any agricultural, industrial, commercial, or manufacturing process, a trade or business, or from the development, processing, extraction or recovery of any natural resource found in and on the land, water or air of, or adjacent to the Commonwealth of Puerto Rico.
- (n) *Pollution*. — Shall mean the depositing of any pollutant in and on the land, air or water of or adjacent to the Commonwealth of Puerto Rico or which affects the physical, chemical or biological properties of the land, air or water of or adjacent to the Commonwealth of Puerto Rico in a manner and to a degree which renders or is likely to render such land, air or water harmful or inimical to the public health, safety and welfare, to the flora, the fauna and to domestic, industrial, agricultural or recreational uses of such land, water or air.
- (o) *Environmental control facility* Shall mean any structure, equipment, improvement, facility or system, and any land or any building, structure, facility or improvement thereon, or any combination thereof, whether or not in existence or under construction, or personal or real property deemed necessary or related to the control abatement, or prevention of pollution, and in the case of water pollution control facilities, such property shall include facilities for the treating, neutralizing, stabilizing, cooling, segregating or holding waste or polluted waters, and the sewers, pumps, power plants and other equipment, and devices needed to intercept such waters.
- (p) *Project*. — Shall mean such industrial, medical or educational or pollution-control or solid-waste disposal facilities whose cost or any part thereof has been financed or refinanced with the product of the bonds issued under the provisions of this chapter.
- (q) *Recycling*. — Shall mean the reuse of substances recovered in manufacturing, agriculture, energy production or any other process.
- (r) *Resources recovery* Shall mean the processing of solid wastes in such a way as to produce materials or energy which may be used in manufacturing, agriculture, energy production, or for other processes.
- (s) *Sewage* Shall mean any substance that contains any of the wastes or excrement or other discharges from the bodies of human beings or animals, together with such ground water

infiltration or surface water as may be present; and the admixture of sewage with industrial wastes or other wastes shall also be considered as sewage.

(t) *Solid waste*. — Shall mean garbage, refuse and other discarded solid materials, including, but not limited to, solid waste materials resulting from industrial, commercial, agricultural and residential activity.

(u) *Solid Waste Disposal Facility*. — Shall mean any facility for disposing of solid waste, the recycling of natural resources, or any plant which is designated primarily for the purpose of reducing the volume of waste which must finally be disposed of, including but not limited to resource recovery plants, incinerating, pulverizing, compacting, shredding and baling plants, transfer stations, compost plants, and any other plant which accepts and processes solid waste for recycling, or any other facility intended for recycling, or for the collection, storage, treatment, utilization, processing or final disposal of solid waste, including land used for the ultimate disposal of waste, as well as loading and transportation facilities and equipment used in connection with the processing of solid waste.

(v) *Trust agreement*. — Shall mean the written instrument establishing the rights and responsibilities of the Authority and of the holders of the bonds issued to finance one or more projects, including a trust agreement or the resolution providing for the bond issue.

(w) *Waste water*. — Shall mean any water containing sewage or industrial wastes or which is otherwise subject to pollution.

(x) *Health care consultant*. — Shall mean an independent person having a wide and favorable reputation for skill and experience in the operation of medical facilities.

(y) *Medical facilities*. — Shall mean any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or one contiguous to it (including existing facilities), machinery, equipment, furnishings or other real or personal property suitable for use in connection with the supplying of health or medical care, including, but without limitation to, general hospitals for chronic diseases, maternity, mental; tuberculosis sanatoriums and other specialized hospitals; facilities for emergency care, intensive care and self-care; sanitariums; housing for the aged or physically or mentally infirm; clinics; out-patient facilities; rehabilitation centers; alcohol and drug detoxification facilities; clinical, pathological and other laboratories; dialysis centers; hospital research facilities; extended care facilities; skilled nursing home facilities; nursing home facilities; convalescent centers; laundries; residences and training facilities for staff members, including nurses, interns, physicians, dentists, and employees; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire control facilities; pharmaceutical and recreational facilities; storage space, X-ray, radiotherapy, therapy and laser beams and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members, physicians and dentists; and such other health and medical facilities customarily under the jurisdiction of or provided by hospitals; and extended care, outpatient, and convalescent facilities, and facilities for the aged or physically or mentally infirm, or any combination of the foregoing, with all necessary, convenient and/or related interests in land, machinery, apparatus, electrical appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(z) *Educational facilities.* — Shall mean one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not they are located in the same place or next to it (including the existing facilities), machinery, equipment, furniture or other moveable or real property which is adequate to be used to provide education by an educational institution. In the case of higher education institutions, they shall be duly accredited by the Council on Higher Education under Section 3 of Act No. 1 of January 20, 1966, as amended, and in the case of pre-school, elementary, secondary, vocational, technical, high skills educational institutions, they shall likewise hold the authorization or renewal license issued by the Department of Education pursuant to Sections 1,2 and 3 of Act No. 2 of August 22 of 1958 as amended, and Section 1 of Act No. 31 of May 10, 1976.

(aa) *User.* — Shall mean any person who has obtained or is in the process of obtaining financing for a project, whether from the Authority or from a financial institution who has obtained or is in the process of obtaining funds from the Authority to grant loans to said person to be used for the total or partial payment of the costs of a project.

(bb) *Financial institution.* — Shall mean any bank, trust company, savings bank, financial institution, local agency or any other person approved by the Authority to participate in the financing of projects and who has agreed to grant loans to users for the financing of all or part of the costs of one or more projects.

Section 4. — Creation of the Authority. — (12 L.P.R.A. § 1254)

A corporate and politic body which constitutes a public corporation and instrumentality of the Commonwealth of Puerto Rico is hereby created and which shall be known as the Puerto Rico Industrial and Environmental Pollution Control Facilities Financing Authority. The governing body of the Authority shall be the Board, which shall consist of the following members: the Administrator of the Industrial Development Company, the President of the Government Development Bank for Puerto Rico, the Executive Director of the Environmental Quality Board, the Executive Director of the Puerto Rico Infrastructure Financing Authority, the Executive Director of the Puerto Rico Tourist Company, or their designated representatives, who must have capacity, knowledge, and decisional power to effectively represent the executive public servant that they substitute. Those shall respond directly to the agency chief, who in turn, shall be responsible for the determinations that are made by the Board. Additionally, two (2) private citizens appointed by the Governor for a term of four (4) years shall form part of the Board.

Members of the Board who are private citizens shall be eligible for reappointment and may be removed from office by the Governor for negligence in the performance of their duties, immoral conduct or for any other fair consideration, after due notice and hearing.

Before assuming their duties, each member of the Board appointed by the Governor shall swear under oath, that he will perform the duties of his position faithfully and impartially. A copy of said oath shall be filed in the offices of the Secretary of State. The Governor shall designate one of the seven (7) members of the Board of Directors of the Authority as Chairman thereof. The Chairman of the Board shall hold office until his tenure as a member of the Board of Directors of the Authority expires, or until he/she resigns as Chairman. The Board shall elect a vice president from among its members, annually. The Board of Directors

shall also elect or appoint any other official it deems necessary or advisable, including an Executive Director and a Secretary of the Authority, and shall prescribe the duties and fix the compensation of said officials.

The members of the Board of Directors of the Authority shall receive no compensation whatsoever for their services as such. The Authority shall reimburse them for necessary expenses incurred in the performance of their duties. In addition, the members of the Board who are private citizens shall be entitled to receive per diems pursuant to the established regulations of the Department of the Treasury and notwithstanding the above provisions, they shall also receive such additional compensation as the Board may determine.

The Executive Director shall administer and direct the affairs and business of the Authority, subject to the policies, control and direction of the Board of Directors. He shall be appointed by the Board and shall hold office at the latter's will. The Secretary of the Authority shall keep the record of the proceedings and actions of the Board of Directors and shall be the custodian of all books, documents and papers filed with the Authority, the minute book of the Board of Directors and the official seal of the Authority. He shall be empowered to direct that copies of the minutes and other records of the Board of Directors of the Authority be made and to certify under the official seal of the Authority that such copies are true and exact copies. All persons doing business with the Authority may rely upon such certificates.

Four members of the Board of Directors shall constitute a quorum and the affirmative vote of at least four members shall be needed for any action the Board may take, except to adjourn the session. No vacancy in the membership of the Board shall prevent it from exercising all its rights and performing all its duties, once there is a quorum.

Section 5. — General Powers. — (12 L.P.R.A. § 1255)

The Authority shall have all of the powers necessary and convenient to carry out and accomplish the purposes and provisions of this chapter including, but without being limited to, the power:

- (a) To adopt bylaws for the administration of its affairs and business and to prescribe rules, regulations and standards in connection with the performance of its functions and duties.
- (b) To adopt an official seal and alter the same at will.
- (c) To maintain an office in the municipality of San Juan and in any other place as it may deem necessary.
- (d) To sue and be sued in its own name, to plead and be impleaded.
- (e) To receive, administrate and comply with the conditions and requirements regarding any gift, grant or donation of any property or money.
- (f) To make and execute financing and lease agreements and other instruments necessary or convenient for the exercising of the powers and functions conferred on the Authority under this chapter, including contracts with persons, federal, and local agencies. Local agencies are hereby authorized to enter into contracts and otherwise cooperate with the Authority to facilitate the financing, acquisition, construction, operation or maintenance of any project.
- (g) To acquire by purchase, lease, donation, or otherwise obtain options for the acquisition or lease of any real or personal improved or unimproved, encumbered or unencumbered

property, and rights on land, even if inferior than the fee simple thereon, for the construction, operation or maintenance of any project as the Authority may deem necessary; Provided, however, That the Authority shall not be required to acquire any right on property in connection with the financing of any project.

(h) To require, when the Authority so deems it necessary, that arrangements or contracts be made in the projects with any municipality, local agency or instrumentality of the Commonwealth of Puerto Rico for the planning, replanning, construction, opening, grading and closing of streets, highways, roads, alleys or other places, or so that public utility services or goods or services in connection with any project be provided.

(i) To sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any project. It may also lease, reacquire or otherwise obtain, entitle or hold any project which the Authority has previously sold, leased or otherwise conveyed, transferred or disposed of.

(j) To grant options for the purchase of any project or the renewal of any lease entered into by it in connection with any of its projects, on such terms and conditions as it may deem advisable.

(k) To pledge or assign any moneys, rents, fees or any other revenues, as well as the proceeds derived from the sale of properties, and compensations under the provisions of insurance policies or condemnation awards.

(l) To borrow money and issue bonds of the Authority in evidence thereof for the purpose of providing funds to pay for all or any part of the cost of one or more projects and any refinancing bonds, and to grant loans to financial institutions under such terms and conditions that require that the product of said loans be used by said financial institutions to grant loans to users for the partial or total funding of the cost of one or more projects.

(m) To mortgage or pledge for the payment of the principal of and interest on any bonds issued or any financing agreement made in connection therewith, any or all the projects, whether owned then or acquired subsequently, and to pledge the revenues and receipts therefrom, and to assign or pledge the financing agreement or agreements in connection with any portion or all of said projects and any type of security, lien or contract rights given by or on behalf of the debtor or any guarantor under the financing agreement, including bonds, debentures, or notes, whether secured or unsecured, stock, a guaranty of the financing agreement, or any other security agreement, and to assign or pledge the income received by virtue of any financing agreement or agreements.

(n) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip any projects, or cause them to be constructed, acquired, repaired, maintained, extended, improved, rehabilitated, renovated, furnished or equipped, and to pay all or any part of the costs thereof, from the proceeds of bonds of the Authority, or from any contribution, gift or donation or other funds made available to the Authority for such purposes.

(o) To fix, impose and collect rents, fees and other charges for the use of any project.

(p) To contract the services of consulting engineers, architects, attorneys, accountants, health care consultants, financial advisors, appraisers, and such other consultants and employees as may be required, in the judgment of the Authority, and to fix and pay their remuneration from funds available to the Authority therefor.

(q) To contract the services of one or more financial institutions for the origination, service and administration of loans to be granted to users by said financial institutions to pay for the costs of projects with funds loaned by the Authority to said financial institutions.

(r) To exercise the powers vested in it and to perform any act or activity necessary, convenient or desirable to carry out its purposes.

Section 6. — Criteria and Requirements. — (12 L.P.R.A. § 1256)

In carrying out any project under the provisions of this chapter, the Authority shall be guided by and shall observe the following criteria and requirements; Provided, That the determination of the Authority as to its compliance with such criteria and requirements shall be final and conclusive:

(a) No financing agreement with respect to a project shall be subscribed if the debtor, together with his guarantor, is not financially responsible, fully capable, and willing to fulfill his obligations under the financing agreement, including the obligation to make payments in the amounts and on the dates required, to operate, repair, and maintain the project on his own account and expense, to pay the costs incurred by the Authority in connection with the project, and to comply with the purposes of this chapter and to fulfill such other responsibilities as may be imposed under the terms of the financing agreement.

(b) Adequate provisions shall be made for the payment of the principal of and the interest on the bonds, and to create and maintain the reserves required therefor, if any, as the Authority may determine, and for paying the costs incurred by the Authority in connection with the project.

(c) In the projects for medical facilities a determination by the Secretary of Health and/or the Secretary of the Family will be required in accordance with the applicability of said departments over the project, that there is a need for the proposed medical facilities in the area in which the project is to be located and the project will alleviate or satisfy said need. In the cases of facilities for alcohol or drug detoxification or mental health a similar determination by the Administrator of the Mental Health and Addiction Services administrator shall also be required. Such determinations shall be made pursuant to Section 7 of this Act.

Section 7. — Procedural Requirements. — (12 L.P.R.A. § 1257)

In addition to the projects initiated by the Authority, one or more local agency(ies) or any person may submit a proposal to the Authority for the financing of a project, using the forms and following the instructions prescribed by the Authority. Such proposal shall establish the type and location of the project and shall include any other information and data that are available to any local agency or person submitting the proposal and the prospective debtor, if any. The Secretary of Health, the Secretary of the Family or the Administrator of the Mental Health and Addiction Services Administration shall make the determination required in Section 6(c) of this Act with regard to any projects for medical facilities, and the Authority shall be bound by such determination. The Secretary of Health, the Secretary of the Family or the Administrator of the Mental Health and Addiction Services Administration, may also

request any local agency to provide any information and data that the Authority deems pertinent, and the local agencies are hereby authorized to provide any information and data they have available, and otherwise render to them the help and cooperation that they may need to carry out the purposes of this Section. The Secretary of Health or the Secretary of the Family, or the Administrator of the Mental Health and Addiction Services Administration, may also request any prospective debtor to furnish information and data regarding the project and said debtor. They are also authorized to conduct or cause to be conducted, in conjunction with the local agencies and to the maximum extent viable, such investigations, evaluations, studies, reports and reviews that may be necessary and desirable, in their judgment, to determine the feasibility and desirability of the project, the manner in which the project shall contribute to the safety, health and welfare of the inhabitants of the area in which it will be located, and, with respect to the prospective debtor, the experience, background, past and present financial situation, service record, and the integrity and capacity of said debtor's management team; the manner in which the project or the prospective debtor adjusts to the criteria and requirements of this section, and any other factors deemed relevant or convenient to ensure compliance with the purposes of this section. In making such determinations, they may rely on the findings of the health service consultants and financial advisors who have been contracted in connection with any proposed project to be financed by the Authority.

Section 8. — Tax Exemption. — (12 L.P.R.A. § 1258)

(a) It is hereby resolved and declared that the purposes for which the Authority is created and shall exercise its powers are the strengthening of industry and commerce, the promotion of economic development, the improvement of the public safety and health and education as well as the general welfare, all of which are public purposes for the benefit of the people of Puerto Rico, and the exercise of the powers vested under this chapter constitutes the performance of essential government functions. Therefore, the Authority shall not be required to pay taxes, excises or assessments on any of the properties acquired by the Authority or under the jurisdiction, authority, control, domain, possession or supervision of the Authority or on the revenues derived from any of the Authority's undertakings or activities.

(b) In order to facilitate the procurement of funds to enable it to carry out its corporate purposes, the bonds issued by the Authority under the provisions of this chapter, their transfer and the income therefrom (including any gains obtained from their sale) shall be and at all times remain exempt from the payment of income taxes levied by the Commonwealth of Puerto Rico or any of its political subdivisions.

Section 9. — Construction Contracts. — (12 L.P.R.A. § 1259)

Contracts for the construction of any project, or any part thereof, may be awarded by the Authority through competitive bidding that will promote a free and open competition, including publication for competitive bids in a newspaper of general circulation in Puerto Rico. The Authority shall prescribe such bid surety requirements and other procedures in

connection with the award of such contracts, which, in its judgment, shall protect the public interest.

The Authority may provide by written contract that it or the trustee under a trust agreement may make advances or reimbursements to the debtor or prospective debtor, from the proceeds of bonds for the acquisition and construction of any project, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contracts, the inspection and supervision of the construction, the employment of engineers, architects, builders and other contractors, to cover the costs incurred, and it shall set forth the documents that said debtor or prospective debtor must submit to the Authority or the trustee, as well as the inspections, examinations and audits which shall be required in connection therewith to assure compliance with the provisions of this chapter and such contract.

Section 10. — Conflict of Interest. — (12 L.P.R.A. § 1260)

No official, member, agent or employee of the Authority, the Commonwealth of Puerto Rico or any local agency shall have any direct or indirect interest in any contract with the Authority, or in the sale of real or personal property to the Authority, to be used for any project; Provided, however, That this section shall not apply to any interest which the Authority may determine is so small as not to fall within the purview of the purpose of this section. If such official, member, agent or employee should have any interest in real property acquired prior to the determination of the location of any project, such interest shall be informed immediately to the Authority and evidence of it shall be set forth in the minutes of the Board of Directors of the Authority and the official, member, agent or employee having such interest therein should not participate in behalf of the Authority in its acquisition of said property.

Provided, That any official, member, agent or employee of the Authority who violates the provisions of this section shall be discharged from his position and, in addition, if found guilty and convicted of a felony, shall be subject to a fine that shall not exceed \$5,000 or imprisonment for a maximum term of five (5) years, or both penalties in the discretion of the court.

Section 11. — Commonwealth and Its Political Subdivisions Not Liable for Bonds. — (12 L.P.R.A. § 1261)

The bonds issued by the Authority shall not constitute an indebtedness of the Commonwealth of Puerto Rico nor of any of its political subdivisions, and neither the Commonwealth of Puerto Rico nor any of its political subdivisions shall be liable therefor, and such bonds shall be payable solely out of those funds pledged for the payment thereof.

Section 12. — Bonds of the Authority. — (12 L.P.R.A. § 1262)

(a) The Authority is hereby authorized to issue bonds from time to time in such principal amounts, as, in the opinion of the Authority, may be necessary to provide sufficient funds for

the total or partial payment of the cost of any project or projects, to grant loans to financial institutions so that said institutions may grant loans to users for the total or partial payment of the cost of one or more projects and to attain any of its other corporate purposes, including the payment of interest on the bonds of the Authority, for such period as the Authority may determine, the establishment of reserves to secure such bonds, and to pay such other expenditures of the Authority, including the costs of any project or projects, which are incidental, necessary or convenient to carry out its corporate purposes or powers.

The bonds issued by the Authority shall be payable out of all or part of the gross or net revenues and other income derived by the Authority under the clauses of one or more financing agreements, all as provided in the trust agreement under which the bond issue is authorized. The principal and interest on bonds issued by the Authority may be secured by a lien of all or part of any revenues of the Authority and may be secured by the assignment of one or more financing agreements. The resolution or resolutions authorizing the bond issue or the trust agreement securing the bonds may contain provisions which shall be part of the contract with the holders of the bonds issued under said resolution or resolutions, regarding the pledge and creation of a lien on the Authority's revenues and assets, the establishment and maintenance of sinking funds and reserves, limitations of the purpose for which bond proceeds may be applied, limitations as to the issue of additional bonds, limitations as to the introduction of amendments or supplements to such resolution or resolutions, or to the trust agreement, the vesting of rights, powers and privileges and the imposition of obligations and liabilities upon the trustee under any trust agreement, the operation and maintenance of projects, the fixing of fees, rents and other charges for the use and occupancy of any project, the acquisition of insurance with respect to any project or its operation, the rights, powers, obligations and liabilities that shall arise in the event of a default of any obligation under such resolution or resolutions or the trust agreement, or in connection with any rights, powers or privileges vested in the bondholders as security for the bonds in order to enhance their marketability.

(b) The bonds may be authorized by resolution or resolutions of the Board of Directors of the Authority. They may be of such series, bear such date or dates, mature at such time or times not to exceed fifty (50) years from their respective dates of issue and bear interest at such rate or rates not exceeding the maximum rate then permitted by law.

The bonds may be payable in such place or places, whether within or without the Commonwealth, they may be of such denomination or denominations, and in the form of coupons or registered; they may have registration or conversion privileges; may be executed in such manner, may be payable in such medium of payment, and be subject to such redemption terms, with or without premium; they may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner, comply with such conditions, and contain such terms and conditions, as may be provided in the resolution or resolutions. The bonds may be sold at public or private sale for such price or prices as the Authority may determine; Provided, however, That refunding bonds may be sold or exchanged for outstanding bonds of the Authority on such terms as the Authority may deem to be in the best interest thereof. Notwithstanding the form and tenor thereof, and in the absence of an express statement on the face thereof that the bond is not negotiable, all bonds of the Authority, including any coupons appertaining thereto, shall at all times have, and

shall be understood to have, all the qualities and incidents (including negotiability) of negotiable instruments under the laws of the Commonwealth of Puerto Rico.

(c) The proceeds from the sale of each bond issue shall be used solely for the payment of the cost of the project or projects, or portion or portions thereof for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the trust agreement securing such bonds. If the proceeds from any bond issue, by reason of increased construction costs or error in estimates or other reason, should be less than the cost, additional bonds may be issued in the same way to cover the amount of such deficiency, and, unless otherwise provided in the trust agreement, said bonds shall be deemed to be of the same issue and shall be paid from the same fund without preference or priority for the bonds issued initially.

(d) Bonds may be issued, under the provisions of this chapter, without obtaining the consent of any department, division, commission, body, bureau or agency of the Commonwealth, and without any other procedure, condition or thing, than those procedures, conditions, or things specifically required by this chapter and the provisions of the resolution authorizing the bond issue or the trust agreement securing the same; Provided, however, That the provisions of Act No. 272, approved May 15, 1945, shall be applicable [7 L.P.R.A. §§ 581-595].

(e) The bonds of the Authority bearing the signatures of the officers thereof who were in office on the date said bonds were signed shall be valid and binding obligations, even though before the delivery and payment thereof, any or all the officers whose signatures or facsimile signatures' appear thereon have ceased as such officers of the Authority. The validity of the authorization and issuance of the bonds shall not depend on or be affected in any way by any proceeding relative to the construction, acquisition, extension, or improvement of the project for which the bonds are issued, or by any contract made in connection with such project. Any trust agreement securing the bonds may provide that any such bonds may contain a statement to the effect that it was issued pursuant to the provisions of this chapter, and any bond containing such statement under the authority of any such trust agreement shall be conclusively deemed to be valid and to have been issued pursuant to the provisions of this chapter. Neither the members of the Board of Directors of the Authority nor any person executing the bonds shall be personally liable, nor shall they be subject to any civil liability for the issuance of said bonds. The Authority is hereby empowered to purchase any outstanding bonds issued or assumed by it with any funds available therefor.

Section 13. — Trust Agreement. — (12 L.P.R.A. § 1263)

In the discretion of the Authority, any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company within or without the Commonwealth of Puerto Rico.

It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth of Puerto Rico, the United States or any state of the United States which may act as depository of the proceeds of the bonds, revenues or other moneys, to furnish such indemnity bonds or to pledge such securities as may be required by the Authority. In addition to the foregoing, the trust agreement may contain all such provisions as the Authority may deem reasonable and proper for the protection of the bondholders.

Section 14. — Revenues. — (12 L.P.R.A. § 1264)

The fees, rents, charges and all other revenues derived by the Authority from the project, related to the bonds of any issue, except such part as may be necessary to pay the costs incurred by the Authority in said project and to provide such reserves, if any, as may be provided for in the trust agreement securing such bonds, shall be set aside regularly in a reserve fund for the payment of debt service, as may be provided in the trust agreement, which is hereby pledged as security for the payment of the principal and interest on such bonds as these become due and the redemption or purchase price of bonds withdrawn by redemption or purchase, as it has been provided.

The fees, rents, charges and other revenues and monies so pledged including those monies in any account or fund created under the trust agreement and those subsequently received by the Authority shall immediately be subject to said lien without the need of the physical delivery thereof or any other act, and said lien shall be valid and binding and shall prevail against any third party having any kind of claim for damages, breach of contract or other reason, against the Authority, the debtor or user, regardless of whether such third party has been notified or not on that matter. Neither the trust agreement nor the financing agreement by which a collateral contract is executed, or by which the Authority's rights on any revenues are assigned, shall have to be filed or recorded in order to perfect the lien therein against any third party, except in the records of the Authority. The use and disposition of monies to the credit of the sinking fund for debt service payment or any other reserve required by the Tourist Development Fund shall be subject to the provisions of such trust agreement. Except as otherwise provided in the trust agreement, such sinking fund for debt service payment shall be a fund for all such bonds without distinction or priority of one over another.

Section 15. — Refunding Bonds. — (12 L.P.R.A. § 1265)

(a) The Authority is hereby authorized to issue refunding bonds of the Authority for the purpose of refunding those bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or accruing on the date of redemption or maturity of such bonds, and, if deemed advisable by the Authority, for either or both of the following additional purposes:

- (1) Constructing improvements, additions, extensions or enlargements of any project or projects in connection with which the bonds to be refunded shall have been issued, and
- (2) paying the total or partial cost of any additional project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority regarding the same shall be governed by the provisions of this chapter which relate to the bond issue insofar as such provisions may be applicable therefor.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this chapter, and, if sold, the proceeds thereof may be applied, in addition to any other authorized purpose, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, as the Authority may determine at any time, on or before the date of maturity or maturities or the date selected for the redemption of the bonds

being refunded. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the trust agreement securing such refunding bonds, such proceeds may be invested in direct obligations of, or obligations of which the principal of and the interest on are intentionally guaranteed by the United States of America and which shall mature or be subject to redemption by the holder thereof, at his option, no later than the respective dates when such principal, with the interest accrued thereon will be required, and be sufficient with other available funds, for the purposes they are intended.

Section 16. — Additional Powers. — (12 L.P.R.A. § 1266)

(a) The Authority is hereby authorized to acquire existing industrial, tourist, educational, medical and environmental control and solid waste disposal facilities, and to assume and use the proceeds from the sale of bonds and other funds, to pay whatever obligations and commitments related thereto, that the Authority deems necessary for the construction of improvements, additions or extensions to said facilities, or for the purpose of rehabilitating, remodeling or updating them.

(b) The Authority, after conducting a survey that shows that it is necessary or convenient to acquire any real property or other rights on lands, developed or undeveloped, encumbered or unencumbered, for its immediate or future use, may acquire any property in a lawful manner, including condemnation, notwithstanding the fact that such property may already be devoted to public use.

(c) The Authority is hereby authorized to purchase and keep in force, or to cause to purchase and keep in force, adequate insurance to cover any project or industrial, medical, for education, pollution-control or solid-waste disposal facilities owned by the Authority, including the operation thereof.

(d) The Authority is authorized to obtain to the fullest extent possible, contributions, loans, donations, mortgage insurance, guaranties and any other financial assistance that is or may be available from any federal agency, and in connection herewith, to execute contracts and comply with the requirements incidental to such assistance, and to fulfill and carry out the obligations as may be imposed thereunder. To be able to obtain any such assistance from any federal agency, or with regard to any project, the Authority is hereby authorized to act for and in behalf of the Commonwealth of Puerto Rico, to the extent required under any federal law or regulation promulgated hereon.

Section 17. — Covenant of Commonwealth with bondholders. — (12 L.P.R.A. § 1267)

The Commonwealth of Puerto Rico does hereby pledge to and agree with the holders of any bonds issued under this chapter, and with those persons or entities who may enter into contracts with the Authority, pursuant to the provisions hereof, that it shall not limit or alter the rights hereby vested in the Authority until such bonds and the interest thereon are fully met and discharged and such contracts are fully performed and fulfilled on the part of the Authority; Provided, however, That nothing herein contained shall affect or alter such

limitation if adequate measures are provided by law for the protection of said holders of the bonds of the Authority or of those who have entered into such contracts with the Authority. The Authority, as agent for the Commonwealth of Puerto Rico, is hereby authorized to include this pledge in behalf of the Commonwealth in such bonds or contracts.

Section 18. — Reports. — (12 L.P.R.A. § 1268)

The Authority shall submit to the Legislature and the Governor of Puerto Rico, after the close of each fiscal year of the Government of the Commonwealth of Puerto Rico, but prior to the end of the calendar year:

- (a) A financial statement and complete report of the business of the Authority for the preceding fiscal year, and
- (b) a complete report on the status and progress of all its financing and activities, from the creation of the Authority or the date of its last report.

Section 19. — Constitutional Construction. — (12 L.P.R.A. § 1251 note)

The provisions of this act are severable, and if any of its provisions is held unconstitutional by any court of competent jurisdiction, the judgment of such court shall not affect or impair the remaining provisions of this act.

Section 20. — Inconsistent Laws Inapplicable. — (12 L.P.R.A. § 1251 note)

Insofar as the provisions of this act are inconsistent with the provisions of any other law, or parts thereof, the provisions of this act shall prevail.

Section 21. — Liberal Construction. — (12 L.P.R.A. § 1251 note)

This act, being necessary for the welfare of the Commonwealth of Puerto Rico and its inhabitants, shall be liberally construed to achieve the purposes thereof.

Section 22. — Additional Method. — (12 L.P.R.A. § 1269)

The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for carrying out the acts authorized hereby and shall be regarded as supplementary or additional to the powers conferred by other laws and shall not be construed as if such sections repeal any power now existing; Provided, however, That to issue bonds or refunding bonds, as provided in this chapter, it shall not be required to comply with the provisions of any other law applicable to the issuance of bonds, other than those included in Act No. 272, approved May 15, 1945, as amended [7 L.P.R.A. §§ 581-595].

Section 23. — Effective Date. — This Act shall take effect immediately after its approval.

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