

## ***“Puerto Rico Infrastructure Financing Authority Act”***

Act No. 44 of June 21, 1988, as amended,

(Contains amendments incorporated by:

Act No. 32 of July 7, 1997

Act No. 92 of June 24, 1998

Act No. 421 of October 17, 2000

Act No. 111 of August 7, 2002

Act No. 119 of July 9, 2006

Act No. 3 of January 14, 2009

Act No. 8 of January 9, 2009)

(Amendments non-incorporated:

Act No. 96 of June 16, 2011)

To create the Puerto Rico Infrastructure Financing Authority for the purpose of establishing a mechanism to provide financial, administrative or other types of assistance to public corporations and instrumentalities of the Commonwealth of Puerto Rico, authorized by law to develop infrastructure facilities, and to establish an alternate means for the financing of infrastructure facilities; provide for the organization of the Authority; define its powers, authority and functions; authorize it to issue bonds; grant it tax exemption; authorize the transfer or assignment of property; authorize a special deposit for the corporate purposes of the Authority; establish the Puerto Rico Water Pollution Control Revolving Fund under the provisions of Title VI of the Federal Clean Waters Act as amended; provide for the administration of said Fund by the Authority, and establish penalties.

### STATEMENT OF MOTIVES

The government's investment in infrastructure is a basic link for the promotion of the economic development of any country. This public investment in infrastructure not only generates an immediate flow of economic activity, in itself, but also is indispensable for the influx of new private investment which use the facilities established by the public sector, without which it would be difficult to attract this private capital. Classic examples of such investment in infrastructure are roads, dams, electric power systems, the aqueduct, sewer, and waste treatment plants systems, telephone facilities, and many others of a similar nature which result in our collective well-being.

The development of this infrastructure involves a substantial investment of resources. The corporations and public instrumentalities which are responsible for the development and operation of the various elements of the infrastructure frequently, have financial limitations

which prevent them from carrying out their infrastructure investment programs. A good example of a public instrumentality which has an urgent need of resources for a massive program for the improvement and development of new infrastructure, is the Puerto Rico Aqueduct and Sewer Authority. The Aqueduct and Sewer Authority's capital improvements program for the coming years requires an investment of over one billion (1,000,000,000) dollars.

In view of the fundamental importance of the government's investment in the infrastructure, it is necessary to create a specialized body with two cardinal functions. The first consists of providing financial, administrative, and any other type of assistance to public enterprises that undertake such capital improvements, to expedite their corresponding programs and maintain a constant and uninterrupted flow of infrastructure investment. The second shall be to provide an alternate means to finance the infrastructure needs of our public sector directly.

The body created hereunder shall be known as the "Puerto Rico Infrastructure Financing Authority" (the "Authority"). This Authority is created as a body corporate and politic which is a public corporation and an instrumentality of the government of the Commonwealth of Puerto Rico, with sufficient authority to exercise its powers independently from any other public entity.

The Authority shall have a Board of Directors constituted by the members of the Board of Directors of the Government Development Bank and the Secretary of the Treasury in his capacity as such, who shall preside.

The main reason to identify the Authority's Board of Directors with that of the Government Development Bank is that the Bank is the Fiscal Agent of the Government of Puerto Rico and its agencies municipalities and instrumentalities, and in the performance of this function, coordinates, obtains and provides financing for the capital improvements of the public sector, which is a very similar function to that of the Authority.

The Authority shall have all the powers which are necessary and convenient to execute and put into effect the purposes and provisions of this Act. Specifically, it shall have the power to negotiate and execute assistance contracts with other public corporations and instrumentalities with the purpose of providing financial, administrative and other assistance and produce the financing programs needed for the development of infrastructure. The government entity that receives financial assistance from the Authority shall have to meet all the operational, administrative and budgetary requirements, and comply with the filing of reports as required by the Authority in said assistance contract. Likewise, such contracts can include clauses that grant the Authority the power to declare special periods during which the entity that receives these benefits may be required to comply with the conditions established by the Authority.

The Authority shall be empowered to borrow money and issue bonds for any of its corporate purposes, including the financing of the construction, rehabilitation, purchase, repair, conservation and replacement of any part of the Commonwealth's infrastructure. The Authority may also provide consulting, technical, administrative and advisory assistance to public corporations and instrumentalities in all matters related to the operation, maintenance, and improvement of their physical structure.

With the purpose of endowing the Authority with the needed resources to ensure the payment of the principal and interest on bonds and any other obligations which it shall issue

at a given time, as well as the bonds and obligations which other public entities which receive the Authority's financial assistance may issue, a special fund designated as the "Puerto Rico Infrastructure Fund" is hereby created.

This Fund shall be nourished annually for the next thirty (30) fiscal years, with thirty (30) million dollars for the 1988-89 fiscal year, and forty (40) million dollars for each one of the following twenty-nine (29) fiscal years, from the first proceeds received by the Department of the Treasury from federal excise taxes on rum and tobacco shipments, which the Federal Government imposes and collects, and are then returned to the Treasury of Puerto Rico once the administrative costs have been deducted.

In order to continue receiving Federal Government assistance under the provisions of the Federal Clean Water Act, a revolving fund is hereby established pursuant to the provisions of said Act, and its administration by the Authority is hereby provided.

To ensure the most effective compliance of all the provisions of this Act, the Authority is required to submit reports on the development of all its affairs and the progress of its financings and activities, to the Legislature and the Governor, in the manner provided herein.

*Be it enacted by the Legislature of Puerto Rico :*

**Section 1. — Title.** (3 L.P.R.A. § 1901 note)

This Act shall be known as the “Puerto Rico Infrastructure Financing Authority Act”.

**Section 2. — Purpose.** (3 L.P.R.A. § 1901)

The construction, rehabilitation, acquisition, repair, preservation and replacement of the infrastructure of the Commonwealth, or any part thereof, is essential to the general welfare. It is a fact that it is occasionally necessary for the Commonwealth to give financial, administrative, or other assistance to public corporations and instrumentalities of the Commonwealth, to allow them to fulfill their public purpose to provide, preserve, operate, maintain, repair, replace, and improve parts of the infrastructure of Puerto Rico. It is hereby stated that the people of Puerto Rico shall benefit by providing an alternate method of financing our infrastructure needs. It is necessary to immediately establish a Water Pollution Control Revolving Fund and a Commonwealth Potable Water Revolving Fund, and the special standards and provisions that are essential for their administration, so that the Commonwealth may benefit from the Federal Capital Grants program established under Title VI of the Federal Clean Water Act, as amended, and Title I of the Federal Clean Water Act, as amended, or any other similar or related Federal legislation or regulations. It is the firm intent of the Legislature of Puerto Rico to adopt whatever measures are necessary and convenient to fulfill the abovementioned needs and purposes, and to do so, it hereby creates the Puerto Rico Infrastructure Financing Authority, as a public corporation and instrumentality of the Commonwealth, which is an independent body corporate and politic, and establishes the Water Pollution Control Revolving Fund and the Commonwealth Potable Water Revolving Fund.

**Section 3. — Definitions.** (3 L.P.R.A. § 1902)

The following words and terms when used or referred to in this Act, shall have the meaning indicated unless it is otherwise clearly construed from the context:

(a) *Authority*. — Shall mean the Puerto Rico Infrastructure Financing Authority established by this Act, or if said Authority should be abolished or otherwise divested of its functions under this Act, the public body or entity which succeeds it in its main functions or in which the rights, powers and duties conferred by this Act to the Authority, are vested.

(b) *Benefited Entity*. — Shall mean every municipality, public corporation, political subdivisions or instrumentality of the Commonwealth to which financial, administrative, consulting, technical, advisory or other assistance is provided, pursuant to the provisions of this Act.

(c) *Board*. — Shall mean the Board of Directors of the Authority created hereby and if said Board is abolished, whatever Board or entity that succeeds it in the performance of its main functions.

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

(e) *Clean Water Act*. — Shall mean the 1972 Water Pollution Control Act, P.L. 92-500 as amended and the regulations promulgated thereunder.

(f) *Commonwealth*. — Shall mean the Commonwealth of Puerto Rico.

(g) *Revolving Fund*. — Shall mean collectively, the Puerto Rico Water Pollution Control Fund and the Commonwealth Potable Water Revolving Fund, each of which shall be constituted independent and separate from any other Commonwealth fund, and in accordance with the provisions and purposes of Title VI of the Clean Water Act and Title I of the Federal Clean Water Act, respectively, or any other similar or related Federal legislation or regulations.

(h) *Government Development Bank*. Shall mean the Government Development Bank for Puerto Rico, created by Act No. 17 of September 23, 1948 [7 L.P.R.A. §§ 551 et seq.].

(i) *Infrastructure*. — Shall mean those capital works and facilities of substantial public interest, such as aqueduct and sewer systems, including all water supply, treatment and distribution systems, and waste water treatment and disposal systems, improvements financed under the provisions of the Federal Clean Water Act and the Federal Drinking Water Act, or any other similar or related federal legislation or regulations, solid and hazardous waste disposal systems, resource recovery systems, electric power systems, expressways, highways, pedestrian walkways, parking facilities, airports, convention centers, bridges, maritime ports, tunnels, transportation systems including mass transit systems, communication systems including telephones, industrial facilities, land and natural resources, public housing projects and all other tourist, medical and agro-industrial infrastructure facilities.

(j) *Development Fund*. — Shall mean the Infrastructure Development Fund created under Section 25-A of this Act, pursuant to the provisions of Act No. 54 of August 4, 1997.

(k) *Assistance Contract*. — Shall mean any contract, including a lease, sublease, or other type of agreement, contract or written instrument, executed between the Authority and a benefited agency, whereby the Authority agrees to provide to said entity financial,

administrative, consulting, technical, advisory or any other type of assistance, pursuant to the provisions of this Act.

(l) *Person*. — Shall mean any individual, corporation, partnership, joint venture, association, stock company, trust or unincorporated organization, or any agency, department, instrumentality, or political subdivision of the Government of the Commonwealth of Puerto Rico, or any other entity created, organized or existing under the laws of the latter or of the United States or any of its states or of any foreign country or any combination of the above.

(m) *Clean Water Act*. — Shall mean the 1944 Clean Water Act, as amended, and regulations promulgated thereunder.

(n) *Fees for Benefits*. — Shall mean the fees imposed on the real property of a special improvements district which is exclusively and substantially benefited by the improvement, construction or repair of infrastructure carried out or being carried out in said district, to defray the cost and maintenance of said improvement, construction or repair. The amount to be imposed on each property shall be based solely on the profit or utility said particular property receives. The fees for benefits shall constitute a tacit legal lien security for the payment of the fees for benefits described in the resolution issued by the Authority pursuant to the provisions of this Act.

(o) *Special Improvements District, District(s)*. — Shall mean that geographical area established pursuant to the procedures provided by this Act, which benefits particularly and substantially by the improvement, construction or repair of infrastructure carried out or being carried out in said district pursuant to the provisions of this Act.

(p) *Planning Board*. — Shall mean the Puerto Rico Planning Board created by virtue of Act No. 75 of June 24, 1975, as amended [23 L.P.R.A. §§ 62 et seq.].

(q) *United States*. — Shall mean the United States of America.

(r) *Corpus Account*. — Shall mean the account of the corpus of the Development Fund as established in subsection (a) of Section 25-A of this Act. The capital yield generated by this account must be used exclusively to provide infrastructure facilities related to aqueduct and sewer systems, including all water supply, treatment and distribution systems and waste water treatment and disposal systems and improvements financed under the provisions of the Federal Clean Water Act and the Federal Drinking Water Act, or any other similar or related Federal legislation or regulations.

(s) *Additional Accounts*. — Shall mean accounts created within the Development Fund, in addition to the Corpus Account, that are needed to carry out the purposes of this Act, as established in subsection (a) of Section 25-A of this Act.

#### **Section 4. — Creation of the Authority. (3 L.P.R.A. § 1903)**

A public corporation and instrumentality of the Commonwealth is hereby created which constitutes an independent body corporate and politic, which shall be known as the Puerto Rico Infrastructure Financing Authority, which shall exercise its powers independently from any other person. The Authority's powers shall be exercised by the Board which shall be composed of the members of the Board of Directors of the Government Development Bank and by the Secretary of the Treasury of the Commonwealth in the event he is not a member of the Board of Directors of the Government Development Bank. When the Secretary of the Treasury is not a member of the Board of Directors of the Government Development Bank,

the Board shall be composed of the Secretary of the Treasury and six (6) members of the Board of Directors of said Bank designated by the Governor.

No member of the board of directors or officer of a benefited entity shall be a member of the Board of the Authority. The Authority thus constituted shall exercise public and essential government functions.

The Secretary of the Treasury of the Commonwealth shall be the Chairman of the Authority's Board. The Board shall elect the officers it deems are necessary or convenient to execute the public purposes for which the Authority is created.

The members of the Board of the Authority shall receive no compensation whatsoever for their services. The Authority shall reimburse the members of the Board who are not public officials or employees for the necessary expenses incurred in the performance of their duties.

A majority of the Board shall constitute a quorum and the affirmative vote of at least a majority of the members present shall be needed for any action the Board may take. No absence or vacancy on the Board shall prevent it, once there is a quorum, from exercising all its rights and performing all its duties.

The Board and its individual directors, and the officers, agents or employees of the Authority shall not incur civil liability for any action taken in good faith in the performance of their duties and responsibilities pursuant to the provisions of this Act, and they shall be indemnified for any costs incurred in connection with any claim for which they enjoy immunity as provided hereunder. The Board and its individual directors, and officers, agents or employees of the Authority shall be fully indemnified for any civil liability adjudicated under the laws of the United States of America.

**Section 5. — Authorization to Grant Assistance.** (3 L.P.R.A. § 1904)

The Authority may grant assistance to any public corporation, government instrumentality, political subdivision or municipality authorized by law to provide infrastructure facilities.

**Section 6. — Assistance Contracts with Benefited Entities.** (3 L.P.R.A. § 1905)

Any public corporation, government instrumentality, political subdivision or municipality shall be empowered to execute assistance contracts with the Authority, and any public corporation, government instrumentality, political subdivision or municipality which executes said agreement is hereby authorized and bound to comply with the provisions of said contracts and with the actions taken by or on behalf of the Authority under said contracts; provided, that said benefited entity would have been able to take such actions without violating any laws, contracts and agreements in effect.

The Authority shall execute the necessary assistance contracts with any benefited entity to which it provides assistance pursuant to the provisions of this Act. Said contracts shall include all the provisions the Authority deems pertinent to achieve the purposes of said assistance, subject to the provisions of this Act and any other acts, agreements and contracts of the Authority or the benefited entity which are in effect. Said contracts shall include, without it being understood as a limitation, provisions under which:

(a) The benefited entity is bound to comply with all operational, administrative and budget requirements and the drafting and manner of presenting reports, or those of any other nature that the Authority may impose as a condition to provide assistance.

(b) The benefited entity agrees to:

(1) File with the Authority budgets, capital improvement plans, reports of engineers, consultants and financial statements with the frequency and on such dates as may be required by the Authority.

(2) Employ consulting engineers, auditors and any other professionals and technical personnel that the Authority may require.

(3) Proceed promptly with the development of the project or projects, if any, for which assistance is being provided and assume the operation of such project immediately after the construction has been completed.

(4) Continue the operation and maintenance of the project or projects, if any, for which assistance is being provided, until the Authority determines otherwise.

(5) Provide resources and establish a fund for renewals, replacements or other permanent improvements, pursuant and subject to the requirements of any trust agreement or other loan instrument of the benefited entity, and establish said fund with the Government Development Bank or any other institution authorized by law to receive deposits of public funds, determined by the Authority.

(c) The Authority may declare special periods during which it can require the benefited entity to comply with certain conditions, or to perform or adopt those actions or measures that the Authority deems necessary and convenient to guarantee that said benefited entity shall comply with the provisions of the assistance contract and with its purposes and establish, in the corresponding assistance contract, the conditions under which said special periods shall begin and end, the measures which the Authority may implement during said periods, and the remedies available to the Authority when the benefited entity does not comply with the provisions of the assistance contract.

To be able to declare a special period, the Authority shall:

(1) Approve a resolution stating the need to put a special period into effect, in which it shall state in detail the grounds for declaring said period and the information furnished or recommendations made by consultants, officers or employees of the Authority on which said resolution is grounded.

(2) File with the Office of the Secretary of each Legislative Body, at least five (5) days prior to the effective date of the special period, a certified copy of the Board's resolution declaring a special period.

During a special period, and as the only exception to any public bidding requirement imposed by the organic act or by the regulations of a benefited entity, the Authority shall be empowered to require it not to conduct said procedure in the adjudication of construction or purchase contracts or any other type of service contract, under special circumstances.

The Authority may only require a benefited entity not to comply with any public bidding requirement when it has been so provided in the assistance contract and a resolution to that effect has been adopted by the Authority for each particular case.

In said resolution the Board shall state the special circumstances which justify that the benefited entity in that particular case not be required to comply with any public bidding requirements. A copy of the resolution shall be filed with the Office of the Secretary of each

of the Legislative Bodies no later than five (5) working days after the date the Board adopts its resolution.

**Section 7. — General Powers.** (3 L.P.R.A. § 1906)

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

- (a) Adopt bylaws for the administration of its corporate affairs and business and adopt the regulations and standards needed to exercise its functions and duties.
- (b) Adopt an official seal and alter it at will.
- (c) Maintain one or more offices in the municipality of San Juan or in any other place within or without Puerto Rico as it may deem necessary.
- (d) Sue and be sued in its own name, to implead and be impleaded.
- (e) Receive and administer any gift, grant, loan or donation of any property or money, including but without being limited to those made by the Commonwealth and the federal government or any agency or instrumentality thereof, and lend or expend the proceeds thereof for any of its corporate purposes and comply with all such conditions and requirements with respect thereto, including those for the administration of the Revolving Fund, under the Federal Clean Water Act, created in Section 26-A of this Act, and under the Federal Drinking Water Act, created in Section 26-A of this Act, and to take all steps to meet those conditions and otherwise exercise such powers as may be needed to obtain the benefits of the programs established pursuant to the Federal Clean Water Act and the Federal Drinking Water Act, or any other similar or related federal legislation or regulations, for the Commonwealth.
- (f) Provide any type of assistance to a benefited entity which is consistent with the purposes of this Act, such as (but without being limited to):
  - (1) Provide funds in the form of loans, grants or assignments, interest subsidies, credit backing, reserves for losses or transfer of financial resources.
  - (2) Pay or provide for the payment (all at once or from time to time) of any debt of the benefited entity, in full or in part.
  - (3) Assume all or part of the obligations of the benefited entity.
  - (4) Guarantee the payment of any debt of the benefited entity.
  - (5) Execute lease, sublease, loan or financing contracts with a benefited entity.
  - (6) Provide the assistance deemed necessary to obtain financial backing or letters of credit or similar credit backing.
- (g) Make and execute, with any person, contracts, leases, subleases and all such other necessary or convenient instruments and agreements to exercise the powers and functions conferred on the Authority by this Act and negotiate and execute assistance contracts with benefited entities.
- (h) Acquire in any lawful manner, including but not limited to, by purchase, eminent domain, lease, donation, or other legal means, real or personal property, improved or unimproved, encumbered or unencumbered, and property rights of land, as necessary or convenient, to exercise the powers and functions conferred on the Authority under this Act.



- (i) Sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any property. The Authority may also lease, reacquire or otherwise obtain title to, or hold any property which it has previously sold, leased or otherwise conveyed, transferred or disposed of.
- (j) Grant options for the purchase of any property or the renewal of any lease granted by it in connection with any of its properties, under such terms and conditions as it may deem advisable.
- (k) Pledge or assign any moneys, income, fees or any other revenues, as well as the proceeds from the sale of properties, and compensation under the provisions of insurance policies or condemnation awards.
- (l) Borrow money and issue bonds of the Authority for any of its corporate purposes, including, but not limited to, financing the construction, rehabilitation, purchase, repair, conservation and replacement of portions of the infrastructure of the Commonwealth, and for lending or otherwise providing funds to any benefited entity, including, without it being a limitation, for the payment of all or any part of any indebtedness of such benefited entity or for any other purposes authorized by this Act.
- (m) Mortgage or pledge any property for the payment of the principal of and interest on any bonds issued by the Authority, or bonds issued by a benefited entity, and pledge all or a portion of such revenues as the Authority may receive including, but not limited to, and subject to the provisions of § 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico, all or any portion of the federal excise taxes or other funds which should have been transferred by the Commonwealth to the Authority.
- (n) Commence any legal action, including, but not limited to, proceedings for writs of mandamus and injunctions, to protect or enforce any right conferred upon it by any law, contract or other agreement and, notwithstanding any provision of law to the contrary, exercise any remedy provided for breach under any contract or other agreement, as provided by such contract or agreement.
- (o) Appoint officers and hire agents and employees and fix their powers and duties as the Authority may determine and, without being a limitation, contract consulting engineers, architects, superintendents, general contractors, managers, attorneys, accountants and other consultants and contractors as determined by the Authority and delegate such functions and powers to such persons as the Authority may designate, and fix and pay the corresponding remuneration from funds available to the Authority therefor. The directors, officers and employees of the Authority shall be subject to the provisions of Act No. 12 of July 12, 1985, known as the "Ethics in Government Act of the Commonwealth of Puerto Rico".
- (p) Purchase insurance against loss in such amounts and from such insurers which it deems desirable which may include, without being limited to, civil liability insurance for directors, officers, agents and employees.
- (q) Invest its funds as authorized by a resolution of the Board, subject to any restrictions in trust agreements or resolutions authorizing bond issues.
- (r) Purchase bonds issued by the Authority, subject to the provisions of any contract with the holders of such bonds; and purchase any bonds or other obligations issued by municipalities, political subdivisions, public corporations and instrumentalities of the Commonwealth, and to sell without relation to cost such bonds or other obligations at such prices and in such manner as the Authority shall deem advisable.

(s) Construct, rehabilitate, repair, preserve, replace, extend, improve, renovate, furnish, equip, maintain and operate portions of the infrastructure and other property that are used or may be useful to provide portions of the infrastructure, or to cause them to be constructed, rehabilitated, repaired, preserved, replaced, extended, improved, renovated, furnished, equipped, maintained and operated and to pay all or any part of the costs thereof from the funds of the Authority available therefor, including those it may receive from any benefited entity.

The Authority shall be exempt from complying with any public auction and bidding requirement for the adjudication of construction, purchase, or any other types of contracts when it is deemed necessary and convenient to comply with the public purposes of this Act and is so authorized by the Board in each particular case, by a resolution to such effect. Said resolution shall state the circumstances which justify that the Authority may be exempted from the public bidding requirements. A copy of said resolution shall be submitted to the Office of the Secretary of each Legislative Body within five (5) working days after the Board adopts said resolution.

(t) Fix, impose and collect rentals, fees, rates and other charges for the use of any of its properties, including portions of the infrastructure, and for its services, without being subject to any limitations that would be applicable if such property were owned or operated or such services were provided by any other persons. The Authority shall not bind any benefited entity to increase any rent, charge or fee for its services, without complying with the provisions of Act. No. 21 of May 5, 1985 [27 L.P.R.A. §§ 261 et seq.], which provides a uniform procedure for the establishment of rates.

(u) Provide advisory, consulting, technical and administrative assistance to the municipalities, public corporations, political subdivisions and instrumentalities of the Commonwealth to enable them to provide, operate, maintain and improve the infrastructure.

(v) Propose to the Legislature the creation of companies, partnerships or subsidiary, affiliated or associated corporations, and acquire, hold, dispose of securities and shares, contracts, bonds, or other interests in other companies, entities or corporations and exercise each and every one of the powers and rights that such interest grants it, provided that in the judgment of the Board of Directors, said measure is necessary, proper or convenient to attain the purposes of the Authority or to exercise its powers, and sell, lease, cede, or otherwise transfer any property of the Authority, or to delegate or transfer any of its rights, powers, functions, or duties, except the power of eminent domain to any company, entity or corporation that may be under its entire or partial control; Provided, That the powers granted herein do not extend to the sale, lease, cession, or other form of transfer of the affiliates or subsidiaries to be created by this subsection but rather exclusively extend to the assets thereof. The affiliated or subsidiary corporations herein created shall render an annual report to the Legislature no later than February 28 of each year.

However, the Industrial Development Company and its Executive Director shall be responsible for evaluating, acquiring with title deed, selecting and developing the Transshipment Port Industrial Park and the added value industries and activities to be established in said area.

(w) Indemnify any of its directors, officers, agents or employees for any liability incurred in the performance of their duties and responsibilities as provided in Section 4 of this Act.

- (x) Exercise any additional powers and rights that have been granted or shall be legally bestowed on the benefited entities in the future.
- (y) Exercise all the powers inherent to the functions, prerogatives and responsibilities conferred to it by this Act and perform any act or activity which is necessary or convenient to carry out its purposes.

**Section 8. — Petition for the Establishment of Special Improvement Districts; Requirements.** (3 L.P.R.A. § 1906a)

The benefited entity may petition the Authority to create a special improvement district in a specific geographical area. Said districts shall constitute areas with common characteristics, interests and problems but may include adjacent or non-adjacent properties.

The benefited entity shall provide the Authority with information sustaining the need and convenience for establishing said special improvement district. Said information shall include, but not be limited to:

- (a) A detailed description of the proposed infrastructure and the reasons that make it necessary and justify the creation of the district;
- (b) a description of the geographical area which shall receive a specific and substantial benefit by the construction of said infrastructure, including a specific description of the benefits said area shall receive and the method used to determine said benefits;
- (c) the estimated cost of the infrastructure and its maintenance;
- (d) the estimated time for the termination of the proposed project;
- (e) an estimate of the percentage of the fees for benefits of the total cost of the project;
- (f) other sources of financing available, if any, to defray the cost of the construction, improvement or rehabilitation of the infrastructure; and
- (g) any other information which the Authority may request from the benefited entity which may be reasonably related to the establishment of said district and the imposition of the fees for benefits.

Should the Authority accept the petition, it shall determine in the resolution issued according to the provisions of Section 10 of this Act, whether the method used to determine the benefits is a fair mechanism to determine the specific benefit which each property within the special improvement district shall receive.

**Section 9. — Notice of Public Hearing; Elections; Requirements and Vote.** (3 L.P.R.A. § 1906b)

Should the Authority deem that the petition is meritorious, it shall call for a public hearing to be held in the area of the proposed district through an edict and shall request that the Municipal Revenues Collection Center, at least one hundred and twenty (120) days prior to the hearing, to serve notice of said hearing to all real property owners of the area by mail, to the address appearing in its records. Said edict shall be published at least two (2) times in a newspaper of general circulation at any time during the two (2) weeks prior to the date scheduled for the public hearing, but in any case before the third day prior to the date scheduled. The notices shall be mailed at least one hundred and twenty (120) days prior to the date scheduled for the hearing.

The edict and the mailed notices shall also inform the residents of the geographical area which comprises the proposed district, and that an election may be held regarding the establishment or non-establishment of the district, if a petition opposing the establishment of the district is signed by fifteen percent (15%) of the total of the real property owners and filed with the Authority within sixty (60) calendar days following the last publication of the edict.

If said petition is validly filed, the Authority shall call for a referendum among all owners of the real property included in the district so that they may decide whether the district should be established or not. The vote of the majority of the participants in favor of either one of the alternatives shall decide the election. In the event a majority vote of the participants for either of the alternatives is not reached, it shall be understood that the decision is in favor of creating the district. Every property shall entitle two (2) votes to be cast.

In case the owner is a married couple under the regime of community property, each spouse shall be entitled to cast one (1) vote, although one spouse may convey to the other spouse in writing the right to cast his/her vote.

When more than one person owns property included within the proposed district which is not community property, the owners of said property shall designate in writing which of them, up to a maximum of two (2), shall be the owners of the property for the purposes of the election mentioned in this section.

When the property belongs to a corporation, partnership or estate, the duly authorized representative thereof shall vote as its representative after providing evidence of his/her authority to represent it.

If after the referendum has been called among all owners of the real property included in the special improvements district, the majority vote of the participants goes against the creation of the special district, the benefited entity shall pay the Municipal Revenues Collection Center the expenses incurred for the process of giving notice of the public hearing for such purpose.

**Section 10. — Public Hearings on the establishment of Districts.** (3 L.P.R.A. § 1906c)

On the date scheduled for the public hearing, the official designated by the Board shall preside over the hearing and the interested persons may appear and provide information or introduce proposals or objections related to the establishment of the district. Upon the conclusion of the hearing, the official shall render a detailed report on the matters taken into consideration and issue a recommendation to the Board. The Board shall make its decision on the basis of the report, the information provided by the benefited entity and any other material made available or provided during the hearing, as to whether or not the district is to be established, through a written resolution which shall be issued not later than one hundred and twenty (120) days following the conclusion of the same unless a referendum is called pursuant to the provisions of this Act. In the event a referendum should be called, the term of one hundred and twenty (120) days shall be interrupted and resumed anew if the establishment of the district is approved in the referendum. Said resolution shall gather together all grounds on which the Authority based its decision to authorize the approval of the district and shall also establish the purpose for which the fees for benefits shall be used, the estimated cost of the infrastructure, the dates or periods on which the fees for benefits

shall be paid, the total amount of the funds to be raised through the fees for benefits to be imposed, the period for which said fees are to be imposed and an addenda stating the amount to be paid annually by each real property included in the district.

Said resolution shall also clearly establish the geographic boundaries of the district, which shall be drawn on a map to be attached to the resolution. The resolution may reduce or alter the proposed boundaries of the district but never increase the area of the proposed district. In case of inconsistencies between the map and the resolution, the map shall prevail.

Said resolution shall be published together with all its addenda in a newspaper of general circulation in the week after it is issued.

**Section 11. — Fees for Benefits; Their Nature and Uses.** (3 L.P.R.A. § 1906d)

The fees for benefits constitute a tacit legal charge and lien imposed on real property in proportion to the profits or the utility it receives or shall receive from an improvement, construction or repair of infrastructure. The fees for benefits shall never exceed the profit received by the real property.

The income proceeding from the collection of the fees for benefits, or from the bonds secured thereby, shall be used solely and exclusively to finance the infrastructure for which they were imposed, or to amortize the loan contracted to carry it out. However, the trust contract or the resolution providing for the bond issue, may provide for the income received to be invested pending its application, under the terms and conditions established by the resolution or trust contract.

**Section 12. — Petition for Exclusion from the Improvements District or Reduction of the Fees Imposed for Benefits.** (3 L.P.R.A. § 1906e)

Any owner or owners of real property which is totally or partially within the district established pursuant to the provisions of this Act, or their legal representatives, may file a petition with the Authority, individually or jointly, requesting that their real property be excluded from the district because the same will not benefit thereby, or that the fees for benefits be reduced because they exceed the real profits received by their property.

Said petition shall include the physical address of the property and the registry description of the same. The exact geographical location of the property shall be drawn on a map so that its location may be identified in relation to the district.

The petition shall also contain a statement setting forth the grounds sustaining said petition as well as a plea. The same must be sworn to by the owner or his/her legal representatives.

In those cases it may deem meritorious, the Authority shall summon the petitioners as well as a representative of the benefited entity to a hearing to consider the petition for exclusion or reduction. The Authority may consolidate all related cases presented individually to expedite their prompt solution.

**Section 13. — Hearing on the Petition for Exclusion or Reduction.** (3 L.P.R.A. § 1906f)

The hearing on the petition for exclusion or reduction shall be chaired by an examining official who shall give equal opportunity to all parties to introduce evidence or arguments upholding their claim.

At the conclusion of the hearing, the examining official may:

(1) Deny the petition because the petitioners failed to provide irrefutable proof that their property should be excluded because it receives no benefit whatsoever, or that the fees for benefits imposed by the resolution must be reduced because they exceed the benefits their property receives, or

(2) grant the petition to exclude the property from the district or reduce the fees for benefits because the petitioners provided irrefutable proof for their petition, in which case the examining official must issue one of the following orders:

(a) In case of exclusion, that the exclusion of all or part of the real property described in the petition be ordered based on the fact that the property does not benefit from the improvements made in the district.

(b) In case of reduction, that an order be issued changing the fees for benefits imposed on all or part of the property described in the petition.

Regarding those cases set forth in clauses (a) and (b) of this subsection, a copy of the resolution shall be forwarded to the Municipal Revenues Collection Center so that the corresponding changes may be made.

**Section 14. — Collection of fees by the Municipal Revenues Collection Center (CRIM, Spanish acronym); Lien on Property Subject to the Payment of Fees.** (3 L.P.R.A. § 1906g)

Once the amount of the fees for benefits to be imposed on each of the properties included in the district has been determined through a resolution to that effect, a certified copy of the latter shall be forwarded to the Municipal Revenues Collection Center, which shall proceed to impose, serve and collect the fees for benefits and remit the same to the Authority within the term provided in this section. All the provisions of Act No. 83 of August 30, 1991, as amended [21 L.P.R.A. §§ 5001 ], known as the "Municipal Property Tax Act of 1991", applicable to taxes on real property shall apply to the fees for benefits, except those provisions regarding exemptions, exonerations, discounts for prompt payment, dates of payment and penalties, and the provisions of Section 3.30.

The Municipal Revenues Collection Center shall have up to a maximum of one hundred and eighty (180) days from the date it receives the resolution of the Authority to notify to all owners of real property included in the district by regular mail, the amount of the fees for benefits to be paid and their due date. In subsequent years, and until the term during which the fees for benefits provided in the resolution of the Authority shall be imposed is concluded, the Municipal Revenues Collection Center shall annually notify all owners by regular mail the amount of the fees for benefits to be paid that year and their due date. Every notice shall inform the owners of all consequences should they fail to make the payment on the date provided for the payment of the fees for benefits.

A Special Fund in the Government Development Bank for Puerto Rico is hereby created, denominated "Special Districts Improvement Fund". The Municipal Revenues Collection Center shall deposit the fees for benefits collected pursuant to this Act in said fund, pending their forwarding to the Authority; provided that said Center shall forward the funds to the Authority within a term not greater than ninety (90) days from the date of their receipt.

The Municipal Revenues Collection Center shall withhold five percent (5%) of all fees for benefits collected, to cover the costs it incurs for the imposition, notification and collection of the fees for benefits.

The fees for benefits imposed on a property pursuant to the provisions of this act and the resolution to that effect, shall constitute a tacit legal lien on said property, which shall have priority over any other lien on the property, regardless of its nature, whether they are imposed on the property before or after the lien determined by the fees for benefits and on any other third acquirer even though the latter may have filed its rights in the Property Registry, except that it shall be less than:

- (a) The fiscal lien securing the tax debts in arrears transferred pursuant to the terms of Section 6 of Act No. 21 of June 26, 1997 [21 L.P.R.A. § 5924];
- (b) the lien related to the property taxes imposed by Act No. 83 of August 30, 1991 as amended [21 L.P.R.A. §§ 5001 et seq.], known as the "Municipal Property Tax Act of 1991", or any successorial or related chapter, and
- (c) any liens constituted prior to the effectiveness of this act.

Said tacit legal lien on fees for benefits received shall only guarantee the payment of the fees for benefits described in the resolution. In case an infrastructure project financed through fees for benefits is not executed, the entity shall return to the owners of the real property included in the special improvement district, the amount they have paid as fees for benefits.

**Section 15. — Date for the Payment of Fees for Benefits; Penalties for Delinquency; Maximum Amount of Fees for Benefits.** (3 L.P.R.A. § 1906h)

The fees for benefits imposed according to the terms of this act shall be payable annually to the Municipal Revenues Collection Center or its representative, on the date provided by the former in the notice it shall issue annually to that effect pursuant to the provisions of Section 14 of this Act. Said fees for benefits shall be deemed delinquent if they are not paid within the thirty (30) days following their due date. After said thirty (30) days have elapsed, the collectors or authorized representatives of the Municipal Revenues Collection Center shall collect, in addition to said late fees for benefits and as part thereof, the interest on the amount thereof, computed as of the date fixed for their payment at the rate of ten percent (10%) per annum.

Said additional sum for interest shall be collected together with the principal on the fees for benefits that originated the same, as well as the legal collection charges, if any. As soon as the fees for benefits become delinquent, the Municipal Revenues Collection Center, through its agents, shall proceed to attach real assets and chattels of the owner of the real property subject to the payment of the fees for benefits in arrears, in an amount sufficient to answer for their payment and shall immediately notify the owner of the encumbered real property of the attachment.

The owner of the real property may request a review before the competent Superior Part of the Court of First Instance of Puerto Rico if it believes that there has been some irregularity in the notice of the fees for benefits or in the attachment by the Municipal Revenues Collection Center. Should the owner of the property fail to request the aforementioned review, the Municipal Revenues Collection Center shall proceed, as soon as possible, to conduct a public auction of the attached assets in order to collect the fees for benefits, including honorariums, costs and interest, on the thirty-first (31st) day of the date of the notice of attachment. The sale shall be conducted in the manner prescribed in Sections 4.03 and 4.05 of Act No. 83 of August 30, 1991, as amended [21 L.P.R.A. §§ 5103 and 5105].

At no time shall property included in a district or in several districts, be imposed fees for benefits that, together with any other fees for benefits it is bound to pay, will amount to an annual sum greater than two percent (2%) of the appraised value or tax purposes of the real property located in residential and agricultural areas, or greater than four percent (4%) of the appraised value for tax purposes, of the real property located in commercial and industrial areas.

**Section 16. — Term to file lawsuits; procedure to refute the validity or legality of the establishment of the district; refutability clause.. (3 L.P.R.A. § 1906i)**

Any lawsuit or procedure to refute, question or deny the validity or legality of the establishment of a special improvements district, a bond issue executed pursuant to this Act, or any procedure related thereto, must be initiated within sixty (60) days following the publication of the resolution creating the district in a newspaper of general circulation; otherwise, the establishment of the district, the bond issue and any other procedure related thereto shall be in all aspects valid, legal and irrefutable. None of the provisions of this section shall affect the term provided in Section 15 for the owner of the real property to request the review of the notice of the fees for benefits or any attachment initiated in the competent Superior Part of the Court of First Instance of Puerto Rico.

**Section 17. — Contents of Deeds or Contracts . (3 L.P.R.A. § 1906j)**

Any sales contract or deed, land assignment or donation, of any type of building or apartment which is part of a special improvements district, shall contain a statement indicating that the purchaser, assignee or donor fully knows and observes the precepts of this Act and of the resolution which establish and impose the fees for benefits, as applicable.

**Section 18. — Bonds of the Authority. (3 L.P.R.A. § 1907)**

The Authority is hereby authorized to issue bonds from time to time for such principal amounts which, in the opinion of the Authority, are necessary to provide sufficient funds to finance infrastructure including, but not limited to, all costs of developing and designing infrastructure projects, for the repayment of obligations of, or provide financial assistance to public corporations, municipalities, political subdivisions and instrumentalities of the Commonwealth which provide infrastructure, to pay interest on its bonds for such a period as the Authority may determine, and to pay such other expenses of the Authority or such other



benefited entities, including, but not limited to, working capital, which are incidental, necessary or convenient to execute its or their corporate purposes and powers, and to pay any costs for their issue and to establish reserves to secure such bonds. The Authority may also issue bonds to acquire or refinance obligations of any benefited entity.

(a) The bonds issued by the Authority may be payable from all or any part of the gross or net revenues and other income derived by the Authority which, subject to the provisions of § 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico, may include the proceeds of any tax or other funds which may be made available to the Authority by the Commonwealth as provided in the trust agreement or resolution whereby the bonds are issued. The principal of, and interest on, the bonds issued by the Authority may be secured by a pledge of all or part of any of its revenues which, subject to the provisions of § 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico, may include the proceeds of any tax or other funds which may be made available to the Authority by the Commonwealth, all as provided in the trust agreement or resolution under which the bonds are issued. Such pledge shall be valid and binding from the time it is made without the need for a public or notarized instrument. The revenues so pledged, including 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 against the Authority for damages, breach of contract or other reasons, regardless of whether such third party has been so notified. Neither the trust agreement, nor the bond resolution, nor any collateral agreement by which the Authority's rights on any revenues are pledged or assigned shall have to be presented or recorded in order to perfect the lien thereon against any third party except in the records of the Authority. 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 such resolution or resolutions or under such trust agreement regarding the pledge and creation of liens on the Authority's revenues and assets, the creation and maintenance of redemption and reserve funds, limitations concerning the purposes to which bond proceeds may be applied, limitations concerning the issuance of additional bonds, limitations concerning the introduction of amendments or supplements to such resolution or resolutions, or to the trust agreement, the granting of rights, powers and privileges and the imposition of obligations and responsibilities upon the trustee under any trust agreement or resolution, the rights, powers, obligations and liabilities that shall arise in the event of a default of any obligation under such resolution or resolutions or under such trust agreement, or in connection with any rights, powers or privileges conferred on the bondholders as security for the bonds in order to enhance their marketability.

(b) The bonds may be authorized by a resolution or resolutions of the Board. They may be serial bonds, bear such date or dates, mature at such a term or terms not to exceed fifty (50) years from the respective dates of issue and may accrue interest, if any, at such interest rate or rates (which may be fixed or variable) that do not exceed the maximum allowable legal rate at the time. The bonds may be payable in such place or places, whether within or outside the Commonwealth, may be of such a denomination or denominations, and in such a form, as coupon bonds or registered bonds, may have such registration or conversion privileges, may be issued in book-entry form, may be executed in such a manner, may be payable by such means of payment, may be subject to such redemption terms, with or without premiums, may

provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such a manner and upon compliance with such conditions, and contain such terms and conditions, and be issued in temporary form, pending the execution and delivery of final bonds as may be provided in the resolution or resolutions or the terms provided in the trust agreement. The bonds may be exchanged for obligations of the benefited entity or may be sold at public or private sales at the price or prices the Authority may determine; Provided, however, That refinancing bonds may be sold or exchanged for outstanding bonds of the Authority or the benefited entity on such terms as the Authority may deem are in its best interest. (c) The proceeds from the sale of each bond issue shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution or resolutions authorizing the bond issue or in the trust agreement securing such bonds.

(d) 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 any or all the officers whose signatures or facsimile signatures appear thereon have ceased as such officers of the Authority before the delivery and payment of said bonds. Any trust agreement or resolution securing the bonds shall provide that any such bonds may contain a statement to the effect that they were issued pursuant to the provisions of this Act, and any bond containing such statement under the authority of any such trust agreement or resolution shall be conclusively deemed to be valid and to have been issued pursuant to the provisions of this Act. Neither the members of the Board 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.

**Section 19. — Refunding Bonds.** (3 L.P.R.A. § 19)

The Authority is hereby authorized to issue refunding bonds of the Authority for the purpose of refunding those bonds in effect and outstanding at that time, which have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or accruing as of the redemption or maturity date of such bonds and, if deemed advisable by the Authority, for any of the purposes for which it may issue bonds. The issuance of such bonds, the maturities and other pertinent details, the rights of the bondholders, and the rights, duties and obligations of the Authority with regard thereto shall be governed by the provisions of this Act concerning the issuance of bonds insofar as such provisions shall be applicable.

Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Act, 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 in effect, and may be invested pending such application. Refunding bonds may be issued, at the Authority's discretion at any time on or before the date of maturity or maturities, or the date selected for the redemption of the bonds being refunded.

**Section 20. — Tax Exemption.** (3 L.P.R.A. § 1909)

(a) It is resolved and declared that the purposes for which the Authority is created and shall exercise its powers are public purposes for the benefit of the people of Puerto Rico, and the

exercise of the powers conferred under this Act constitutes the performance of essential government functions.

The Authority shall be exempt from the payment of all taxes, permits, fees or licenses imposed by the Commonwealth or its municipalities on the properties of the Authority and those under the jurisdiction, authority, control, domain, possession or supervision of the Authority and on the income derived from any of the Authority's undertakings or activities. The Authority shall pay excise taxes on articles subject to the provisions of Act Oct. 5, 1987, No. 5, known as the "Excise Tax Act of 1987 of the Commonwealth of Puerto Rico".

(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 Act, 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 all taxes, licenses or fees levied by the Commonwealth or any of its municipalities.

(c) The Authority or any benefited entity shall also be exempt from the payment of all kinds of charges, internal revenue stamps and receipts, fees or taxes required by law for the prosecution of judicial proceedings, the issuing of certifications in all offices and dependencies of the Commonwealth, and the execution of public documents and their registration in any public registry of the Commonwealth.

**Section 21. — Immunity from Liability.** (3 L.P.R.A. § 1910)

The bonds issued by the Authority shall not constitute an indebtedness of the Commonwealth nor of any of its political subdivisions, and neither the Commonwealth 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.

The Authority shall not be deemed to be acting on behalf of or to have incurred any obligation to the holders of any indebtedness of the Commonwealth or any benefited entity or to third parties, even when the Authority has taken any action under this Act which affects such benefited entity.

**Section 22. — Trust Agreement.** (3 L.P.R.A. § 1911)

In the discretion of the Authority, any bonds issued under the provisions of this Act shall be secured by a trust agreement by and between the Authority and any bank or trust company described in the following paragraph, which may be a bank or trust company within or without the Commonwealth. Notwithstanding any provision of law to the contrary, said trust agreement need not be constituted pursuant to a public deed in order to be a valid trust under the laws of the Commonwealth.

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

**Section 23. — Transfers, assistance and fees paid by other benefited entities.** (3 L.P.R.A. § 1912)

Subject to the provisions of trust agreements, resolutions or other agreements in effect on the effective date of this act, any benefited entity is authorized to:

- (a) Assign and transfer to the Authority, at its request and upon such terms and conditions as the parties may agree, any property or interest therein, including property already devoted to public use which the Authority may deem necessary or convenient to achieve its purposes. Every assignment or transfer of property pursuant to the provisions of this subsection shall be previously approved by the Governor of Puerto Rico and notified to the Legislature no later than five (5) working days after the date on which the Governor approves the assignment or transfer of the property in question, by filing with the Office of the Secretary of each Legislative Body a document certified by the Secretary of the Board containing a description of the assigned or transferred property and the reasons for such transfer or assignment.
- (b) Pledge its revenues and other property for the payment of bonds issued by the Authority.
- (c) Render all types of services to the Authority, including those of its officers, agents and employees to assist it in performing its functions and duties under this Act. In performing its functions as authorized under this Act, the Authority is empowered to set and charge fees for its services rendered to the benefited entity and the latter shall be responsible for the payment of such fees and the reimbursement of any costs incurred by the Authority in providing services to the benefited entity.

**Section 24. — Covenant of Commonwealth with bondholders.** (3 L.P.R.A. § 1913)

The Commonwealth pledges and agrees with the holders of any bonds issued under this Act and with those persons or entities that enter into contracts with the Authority, pursuant to the provisions hereof, that it shall not limit or alter the rights hereby conferred to the Authority until such bonds and the interest thereon are paid in full and such contracts are fully performed and honored on the part of the Authority; Provided, however, That nothing provided herein shall affect or alter such limitation if adequate measures are provided by law for the protection of said holders of the Authority's bonds or of those who have entered into such contracts with the Authority. The Authority, as an agent of the Commonwealth, is hereby authorized to include this pledge on behalf of the Commonwealth on such bonds or contracts.

**Section 25. — Special Deposit.** (3 L.P.R.A. § 1914)

Beginning with fiscal year 1988-89, notwithstanding the provisions of Section 29-A of Act No. 143 of June 20, 1969, as amended, the first proceeds of the federal excise taxes remitted to the Department of the Treasury of Puerto Rico on each fiscal year, pursuant to Section 7652(a) (3) of the United States Internal Revenue Code of 1986, as amended, for up to a maximum amount of thirty million dollars (\$30,000,000), in the case of fiscal year 1988-89, for up to a maximum amount of forty million dollars (\$40,000,000), in the case of fiscal years 1989-90 to 1996-97, for up to a maximum amount of sixty million dollars (\$60,000,000), in the case of fiscal year 1997-98, for up to a maximum amount of seventy

million dollars (\$70,000,000), in the case of fiscal years 1998-1999 to 2005-2006, and up to a maximum amount of ninety million dollars (\$90,000,000), in the case of fiscal years 2006-07 to 2008-09, and in subsequent years until fiscal year 2056-57, the participation shall be for an amount of up to one hundred and seventeen million dollars (\$117,000,000), which when received by the Department of the Treasury of Puerto Rico, shall be covered into a Special Fund to be maintained by or on behalf of the Authority, designated as the "Puerto Rico Infrastructure Fund", and be used by the Authority for its corporate purposes, which shall include the development of the infrastructure necessary and convenient for holding the Mayagüez 2010 Central American and Caribbean Games. In case the funds collected from said federal excise taxes are insufficient to cover the amounts herein appropriated, the Secretary of the Treasury is authorized to cover said deficiency with any funds available and the Director of the Office of Management and Budget, at the request of the Puerto Rico Infrastructure Financing Authority shall include for the budget recommended for the corresponding fiscal year the appropriations needed to cover said deficiencies.

The Authority is hereby empowered to segregate a portion of said Funds into one or more sub-accounts, subject to the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico for the payment of the principal and interest on bonds and other obligations of the Authority, or for the payment of bonds and other obligations issued by a benefited entity, or for any other legal purpose of the Authority. The moneys of the Special Fund may be used for the payment of interest and for the amortization of the public debt of the Commonwealth, as provided in said Section 8, only when the other resources available referred to in said Section are insufficient for such purposes.

**Section 25-A. — Infrastructure Development Fund.** (3 L.P.R.A. § 1914a)

(a) A special, irrevocable and permanent public trust fund is hereby created within and under the control of the Authority, for the continued benefit of the people of Puerto Rico, to be known as the Infrastructure Development Fund. The Authority shall be empowered to make disbursements from said Development Fund according to the purposes of this Act and the provisions of Section 5 of Act No. 54 of August 4, 1997 [27 L.P.R.A. §§ 431 et seq.]. The Authority may grant assistance according to the provisions of this section to any public corporation, government instrumentality, political subdivision or municipality authorized by law to provide infrastructure facilities related to the aqueduct and sewer systems, including all water supply, treatment and distribution systems and waste water treatment and disposal systems and improvements financed under the provisions of the Federal Clean Water Act and the Federal Drinking Water Act, or any other similar or related federal legislation or regulations.

The Authority shall create within the Development Fund, an account to be known as the "Corpus Account", whose principal shall never be reduced for any reason; provided, that any income (including interest income) received from the investment of moneys deposited in said account may be covered into any of the additional accounts, as defined in this Act.

The Authority is also empowered to:

- (1) Create within the Development Fund any other accounts needed to carry out the purposes of this Act, henceforth to be known as the "Additional Accounts", and segregate a portion of the moneys deposited to the credit of the Development Fund in said accounts.

(2) Grant loans or concessions or provide any other financial assistance, as provided in subsections (c) to (f) of this section.

(3) Issue, for the purpose of providing funds to cover all or part of the cost of any necessary infrastructure development project, bonds or other obligations of the Authority, under the same terms and conditions and with the same rights and benefits provided in other provisions of this Act and with regard to the above.

(4) Pledge, with the same effect as provided in other sections of this Act, all or part of the moneys segregated in any of the additional accounts thus created for the payment of the principal of and interest on such bonds or other obligations.

(5) Pledge, with the same effect as provided in other sections of this Act, all or part of the moneys segregated in any of the additional accounts thus created for the payment (including the provision for payment until the expiration or resolution) or the refinancing of bonds or other obligations of the Authority or any other public corporation, municipality, political subdivision or government instrumentality, or

(6) use said moneys thus segregated in any of the additional accounts thus created, for any other legal purpose of the Authority.

Pending its use for the purposes of, and subject to the conditions specified in this Act, any amount of the money deposited to the credit of the Development Fund up to \$1,000 million [one billion dollars], shall be invested:

(1) In direct obligations of the United States.

(2) In obligations whose principal and interest are unconditionally secured by the United States.

(3) In certificates of deposit of any bank, national banking association or trust company organized and existing under the laws of Puerto Rico, the United States or any of its states and which are totally secured up to the amount not secured by federal deposit insurance for direct obligations of, or obligations whose principal and interest are unconditionally secured by the United States.

(4) In tax-exempted obligations of any state, instrumentality, agency or political subdivision of Puerto Rico or the United States whose corresponding principal and interest payments are totally secured by obligations such as those described in clauses (1) and (2) of this paragraph. The moneys of the Development Fund may be invested in any obligation or instrument approved by the Government Development Bank pursuant to Act No. 113 of August 3, 1995 [7 L.P.R.A. §§ 1261 et seq.]. Any amount of money deposited to the credit of the Development Fund in excess of \$1,000 million [one billion dollars] shall be invested in the abovementioned financial instruments or in any other financial instruments (including, but not limited to common or preferred stock quoted in the national or international stock markets); Provided, That the money deposited to the credit of the Development Fund shall not be invested in any stock or transactions expressly prohibited by any investment guides applicable to the Authority, promulgated by the Government Development Bank pursuant to Act No. 113 of August 3, 1995.

(b)

(1) The following shall be deposited to the credit of the Development Fund:

(i) The portion of the net product of the sale of the assets of the Puerto Rico Telephone Authority, which the Legislature of Puerto Rico authorizes for deposit to

secure the permanent capital base of the Development Fund, which shall be deposited and maintained intact in the Corpus Account.

(ii) All receipts, including principal and interest payments, of any loan agreement related to any loan made by the Authority with money deposited to the credit of the Development Fund, not belonging to the Corpus Account.

(iii) The total product of the assets of any nature received by the Authority as a result of noncompliance or delinquency with regard to loan agreements related to loans made with moneys deposited to the credit of the Development Fund, including the product of the sale, disposal or lease of real estate or chattels which the Authority may receive as a result of said noncompliance or delinquency.

(iv) Any appropriations of the Legislature of Puerto Rico or other appropriations, assignments, donations or contributions made by any person to the Development Fund.

(v) Any income (including income from interest) received from the investment of moneys covered into the Development Fund. However, any income of the Development Fund shall be used in the first place, to pay the principal, the premiums and the interest on any bonds issued or to be issued, as provided in subsection (a) of this section and that any surplus income which is not needed to cover the total amount of said payments be deposited in the Corpus Account up to the amount needed to preserve intact the capital base of the Corpus Account at its present value to the year 1999.

(2) Except for the provisions of subsection (b)(1)(i) Section 25-A, the Authority, subject to any legal or contractual obligation in effect at the time, shall determine into which accounts of the Development Fund shall all or part of said deposits be made.

(c) The Authority is hereby authorized to grant loans or concessions to, or [on] behalf of any public corporation, municipality, political subdivision or government instrumentality for the purpose of financing or facilitating the financing of infrastructure development projects, including loans and concessions to, or [on] behalf of infrastructure development projects with the purpose of providing access to or reducing the financing costs of other sources of financing whether by borrowing money from diverse sources, obtaining credit backing, shares or subsidies to cover financing costs.

(d) The Authority is hereby authorized to grant interest subsidies to any public corporation, municipality, political subdivision or government instrumentality which has successfully requested the financing of loans for infrastructure development projects from other federal and Puerto Rican financing intermediaries and programs. The Authority shall only grant interest subsidies to, or [on] behalf of an infrastructure development project when it has been determined that the interest subsidy is justified to permit the total financing of the project.

(e) The Authority is hereby authorized to grant loans and credit backing concessions to any public corporation, municipality, political subdivision or government instrumentality. Loans and credit backing concessions may be granted to public intermediaries of infrastructure financing in order to acquire letters of credit and other forms of credit backing to allow the recipient to expand the financing resources or reduce the cost of financing, available to any public corporation, municipality, political subdivision or government instrumentality to finance the necessary infrastructure development projects.

(f) The Authority is hereby empowered to grant reserves of funds in order to facilitate the access to, and the financing of costs through funds available by means of other public intermediaries of infrastructure financing. Said concessions may be granted only to public intermediaries of infrastructure financing authorized to provide financing to any public corporation, municipality, political subdivision or government instrumentality for the necessary infrastructure development projects. The product of said concessions may only be used by public intermediaries of infrastructure financing to establish reserves of funds for losses whose intention is to diversify the access and financing of infrastructure costs. The reserves of funds for losses shall be established according to a trust agreement granted for such a purpose by the grantee financing intermediary. The trust agreement shall limit the uses of the reserve of funds to pay for the losses which occur in the infrastructure financing program of the public intermediary of infrastructure financing, as specified in the concession agreement and to pay the fees and other administrative costs of the reserve funds for losses trust.

(g) The application for funds shall be done in the form and manner prescribed by the Authority. The Authority is hereby authorized to promulgate the necessary regulations in the opinion of the Authority that are not inconsistent with any of the provisions of this Act, to govern the application process and establish the criteria that the Authority deems necessary for each application to meet.

(h) The infrastructure loans and concessions granted by the Authority are subject to the following conditions:

(1) The financial assistance provided through loans and concessions must be used for the purposes specified in subsections (c) to (f) of this Section 25-A.

(2) For infrastructure loans the Authority must determine the interest rates, if any, including interest rates below those of the loan market. The Authority shall fix the terms and conditions for paying the loans.

(3) The payment of the principal and interest on the loans made and any funds received by the Authority as a result of noncompliance of the terms and conditions of a loan shall be covered into the Development Fund.

(i) The Authority is hereby authorized to take any action that is necessary or appropriate to protect the interests of the Development Fund in case of default, execution, or noncompliance with the terms and conditions of the loans or concessions granted under this Act, including the power to sell, dispose of or lease real property or chattels that the Authority may receive in said cases, under the terms and conditions the Authority deems appropriate.

(j) The Authority may use the revenues from the investment of the funds proceeding from the sale of the Puerto Rico Telephone Authority solely for aqueduct and sewer infrastructure projects.

**Section 26. — Water Pollution Control Revolving Fund.** (3 L.P.R.A. § 1915)

A revolving fund is hereby established with the Authority, to be known as the "Puerto Rico Water Pollution Control Revolving Fund", which shall be constituted separately and independently from any other funds or resources of the Commonwealth, in accordance with the provisions of, and for the exclusive purposes set forth by Title VI of the Federal Clean



Water Act. The Authority is authorized to assist the Environmental Quality Board in the administration of the Revolving Fund in accordance with Title VI of the Federal Clean Water Act, and in furtherance thereof, without it being understood as a limitation, the Authority shall be empowered to receive capitalization donations under said act from the Environmental Quality Board and the matching funds from the Commonwealth of Puerto Rico required under Title VI of the Federal Clean Water Act, deposit said donations and matched funds in the Revolving Fund, enter loan agreements and lend moneys deposited in the Revolving Fund to qualified borrowers under Title VI of the Federal Clean Water Act, or use said funds in any other way permitted by said act, structure any financing program and issue bonds to finance such programs, supervise the use and repayment by recipients of Revolving Fund monies and do anything else required by the Federal Clean Water Act in relation to the administration of the Revolving Fund pursuant to the provisions of any agreement executed by the Authority and the Environmental Quality Board in relation to the administration of the Revolving Fund.

**Section 26-A. — Fresh Water Control Revolving Fund.** (3 L.P.R.A. § 1915a)

A rotating fund which shall be known as the "Puerto Rico Potable Water Rotating Fund" is hereby created which shall be constituted independently and separately from any other fund or resource of the Commonwealth, or the Puerto Rico Infrastructure Financing Authority, according to the provisions of, and for the exclusive purposes established by Title I of the Federal Clean Water Act. The Authority is authorized to assist the Department of Health of Puerto Rico or the Environmental Quality Board in administering the Commonwealth Potable Water Rotating Fund, pursuant to Title I of the Federal Clean Water Act, and for that, without it being construed as a limitation, it shall have the power to receive from the Department of Health of Puerto Rico or from the Environmental Quality Board, capital grants under said act, and matching funds from the Commonwealth required under Title I of the Clean Water Act, deposit said grants and matching funds in the Commonwealth Potable Water Rotating Fund; execute loan contracts and lend the moneys deposited in the Commonwealth Potable Water Rotating Fund to qualified borrowers under Title I of the Federal Clean Water Act, or use said monies in any other way permitted by said act; structure any financing program and issue bonds for said programs; supervise the repayment by the recipients of the Commonwealth Potable Water Rotating Fund monies, and perform any other things required by the Federal Clean Water Act, with regard to the administration of the Commonwealth Potable Water Rotating Fund, as provided in any agreement signed by the Puerto Rico Infrastructure Financing Authority, the Department of Health and the Environmental Quality Board, regarding the administration of the Commonwealth Potable Water Rotating Fund

**Section 27. — Reports.** (3 L.P.R.A. § 1916)

The Authority shall render to the Legislature and the Governor of Puerto Rico a quarterly report which shall include the following:

- (a) A financial statement and complete report of the business of the Authority for the preceding quarter.

(b) A complete and detailed description of all its contracts and transactions for the quarter corresponding to the report.

(c) Complete information on the status and progress of all its financing and activities up to the date of its last report.

**Section 28. — Legislative Monitor.** (3 L.P.R.A. § 1917)

Due to the nature of the exceptional faculties and powers conferred upon the Authority by this Act and the pressing public interest of everything related to Puerto Rico's infrastructure facilities, the Legislature by agreement of the Presidents of each body thereof shall designate a qualified natural or juridical person to inform the Legislative Assembly of the progress and resolution of the problems which this Act attempts to address through the Authority's interaction with any benefited entity.

The Authority and each benefited entity shall be obligated to furnish to the Legislative monitor copies of the documents, registers, books or accounts concerning all matters leading to the Authority's intervention with the benefited entity. They will also allow the Legislative monitor, after due notice from the latter, to inspect the infrastructure facilities of the benefited entity or those under the Authority's control. Likewise, they will provide copies of the documents, registers, books or accounts he may request free of charge. The provisions of this section shall not be interpreted as a limitation of the broad investigative powers of the Legislature, and the specific functions, responsibilities and duties of the Legislative monitor shall be established by the Legislature.

**Section 29. — Funds and Accounts.** (3 L.P.R.A. § 1918)

All moneys of the Authority shall be deposited in depositories qualified to receive funds of the Commonwealth, but they shall be kept in a separate account or accounts in the name of the Authority. The disbursements shall be made by it pursuant to regulations and budgets approved by the Authority.

The Authority shall establish, pursuant to generally accepted accounting principles, the accounting system required for the proper statistical control and recording of all expenses and income belonging to, managed, or controlled by the Authority. The Authority's accounting records appropriately shall be kept in such manner so as to identify the accounts and maintain them separate, insofar as advisable, with regard to the different kinds of undertakings and activities of the Authority.

**Section 30. — Bonds, Legal Investments and Collateral.** (3 L.P.R.A. § 1919)

The bonds of the Authority shall be lawful investments and may be accepted as collateral for all fiduciary, trust, and public funds whose investment or deposit shall be under the authority or control of the Government of Puerto Rico or any officer or official thereof.

**Section 31. — Penalties.** (3 L.P.R.A. § 1920)

The directors, officers and employees of the Authority and of any benefited entity who, in the performance of their functions, duties and responsibilities under this Act are guilty of conduct classified as an offense against public office shall be subject to the applicable penalties established in Section Twelve of the Penal Code of the Commonwealth of Puerto Rico.

**Section 32. — Norms for the Interpretation of this Act.** (3 L.P.R.A. § 1921)

The powers and faculties conferred upon the Authority by this Act shall be interpreted liberally so as to propitiate the development and implementation of the public policy enunciated in this Act.

**Section 33. — Effective Date.**

This Act shall take effect immediately after its approval.

**Note. This compilation was prepared by 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.**