

“Puerto Rico Aqueduct and Sewer Authority Act”

Act No. 40 of May 1, 1945, as amended

(Contains amendments incorporated by:

Act No. 163 of May 3, 1949
Act No. 8 of May 16, 1958
Act No. 76 of June 24, 1965
Act No. 22 of May 10, 1973
Act No. 31 of May 22, 1973
Act No. 1 of November 11, 1978
Act No. 148 of June 18, 1980
Act No. 47 of May 23, 1995
Act No. 227 of December 5, 1995
Act No. 19 of March 26, 1996
Act No. 232 of September 16, 1996
Act No. 210 of December 30, 1997
Act No. 328 of December 28, 1998
Act No. 406 of December 29, 2000
Act No. 95 of June 30, 2002
Act No. 92 of March 31, 2004
Act No. 494 of September 29, 2004
Act No. 275 of December 21, 2006)

Creating the Puerto Rico Aqueduct and Sewer Authority; Defining its status, powers, and duties and providing for transfer thereto and ownership, possession, operation, and development thereby, of all the public aqueduct and sewer systems in Puerto Rico; to appropriate funds therefor and for other purposes.

Be it enacted by the Legislature of Puerto Rico :

Section 1. — Short Title of the Act; Definitions. (22 L.P.R.A. § 141)

This act may be cited under the name of "Puerto Rico Aqueduct and Sewer Authority Act".

The following terms and words, as used in this Act, shall have the meanings stated below, unless the context indicates any other or a different meaning or intent:

(a) [Omitted.]

(b) Authority. — Shall mean the Puerto Rico Aqueduct and Sewer Authority created by Section 2 of this Act or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Act to the

Authority shall be given by law, and if no successor board, body or commission shall be created, then the Department of Transportation and Public Works of Puerto Rico.

(c) Commonwealth Aqueduct System. — Shall mean all the plants, systems, facilities or properties that are used or usable, or having the present capacity for future use in connection with the supplying or distribution of water, or any integral part thereof, which are owned, operated or controlled by the Authority and it shall embrace water supply systems, water distribution systems, reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filter stations, purification plants, hydrants, meters, valves and equipment, improvements (as hereinafter defined) to any of such properties heretofore or hereafter constructed or acquired, and all properties, rights, easements and franchises relating to such facilities and deemed necessary or convenient by the Authority for the operation thereof, as distributed throughout the various regions (Metro, North, South, East and West), into which its operations are divided.

(d) Commonwealth Sewer System. — Shall mean all the plants, systems, facilities or properties that are used or usable, or having the present capacity for future use in connection with the collection, treatment or disposal of sewage, which are owned, operated or controlled by the Authority, including wastes resulting from any processes of industry, manufacture, trade or business or from the development or utilization of any natural resources, or any integral part thereof, and shall embrace treatment plants, pumping stations, intercepting sewers, collecting sewers, lateral sewers, pressure lines, mains and all necessary appurtenances and equipment, improvements (as hereinafter defined) of any such properties, rights, easements and franchises relating to such facilities and deemed necessary or convenient by the Authority for the operation thereof, as distributed throughout the various regions (Metro, North, South, East and West), into which its operations are divided.

(e) Improvements. — Shall mean any and all replacements, additions, extensions and betterments of and to the Commonwealth Water System or the Commonwealth Sewer System, whether acquired or constructed as an integral part of the Commonwealth Water System or the Commonwealth Sewer System, or otherwise.

(f) Cost. — As applied to improvements shall mean the cost of acquiring or constructing improvements as hereinabove defined and shall embrace:

(1) The amount required to be paid for any improvement acquired by purchase, transfer, or condemnation, the cost of all labor, materials, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction or reconstruction and for one year after completion of construction or reconstruction, fund for working capital, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of legal and engineering services, and all other expenses necessary or incident to determining the feasibility or practicability of such acquisition or construction, administration expenses and such other expenses as may be necessary or incident to the financing herein authorized;

(2) any obligation or expense heretofore or hereafter incurred with the approval of the Authority, by the Commonwealth of Puerto Rico, or any department, agency or instrumentality thereof, for surveys, borings, preparation of plans and specifications, and other engineering or professional services in connection with the operation of the Commonwealth Water System, the Commonwealth Sewer System, or such systems in combination, the maintenance thereof or improvements thereto, and the amount of such

obligation or expense may be reimbursed to the Commonwealth of Puerto Rico or to such department, agency, or instrumentality thereof, as the case may be, out of the proceeds of revenue bonds hereinafter authorized, and

(3) any amount necessary to be provided by the Authority for the purpose of paying or discharging any outstanding notes or other obligations issued or assumed by it or payable in whole or in part from the revenues of the Commonwealth Water System, the Commonwealth Sewer System, or such systems in combination.

(g) Bonds. — Shall mean the revenue bonds, temporary bonds, interim certificates, refunding bonds, notes, certificates, or other evidences of obligations which the Authority is empowered to issue or incur under this Act.

(h) Controller. — For the purposes of this Act, shall mean the Internal Controller of the Authority.

(i) Executive Director or Executive President. — Means the Executive President of the Authority, appointed pursuant to the provisions of Section 3 of this Act.

(j) Independent director. — Means each one of the five (5) private citizens who are members of the Board of Directors of the Authority, appointed pursuant to the provisions of Section 3 of this Act.

(k) Government director. — Means each of the two (2) representatives of the municipalities, which shall be the Executive Director of the Mayors Association and the Executive Director of the Mayors Federation, as well as each of the two (2) directors that hold the position of ex officio members of the Board of Directors of the Authority by virtue of holding the office of President of the Planning Board and Executive Director of the Electric Power Authority, pursuant to the provisions of Section 3 of this Act.

(l) Board. — Means the Board of Directors of the Authority established pursuant to the provisions of Section 3 of this Act.

(m) Private operator. — Means any entity, that could be a natural person, contracted by the Authority to administer and operate the Commonwealth Aqueducts System or the Commonwealth Sewer System or a portion thereof or both.

(n) Executive employees. — Means the executive officers identified in Section 3 of this Act, their assistants, the support personnel of said executive officers and any other employee of the Authority appointed by the Board who is classified as a confidential employee by the Board.

(o) Executive officers. — Means the persons who hold positions is identified in Section 3 of this Act or any other executive officer positions created by the Board.

(p) Administration contract. — Means the contract between the Authority and the private operator for the administration and operation of the Commonwealth Aqueducts System or the Commonwealth Sewers System or a portion thereof or both.

(q) Infrastructure Executive Director. — Shall mean the person that holds the office of Infrastructure Executive Director pursuant to the provisions of Section 3 of this Act.

(r) Regional Executive Director. — Shall mean the person that holds the office of Regional Executive Director pursuant to the provisions of Section 3 of this Act.

(s) Executive offices. — Shall mean all offices, positions and former or present employees appointed as of July 1, 2002, for the supervision of the private operator pursuant to Act No. 95 of June 30, 2002.

Section 2. — Creation and Composition of the Authority. (22 L.P.R.A. § 142)

There is hereby created a public corporation and an autonomous government instrumentality of the Commonwealth of Puerto Rico by the name of "Puerto Rico Aqueduct and Sewer Authority", said corporation being referred to herein as the "Authority".

The exercise by the Authority of the powers conferred by this Act shall be deemed and held to be an essential government function.

Section 3. — Governing Board, Executive Officers;Private Operators. (22 L.P.R.A. § 143)

The powers of the Authority shall be exercised and its general policy shall be determined by a Governing Board, hereinafter the Board, which shall be composed of nine (9) members, of which five (5) shall be private citizens, who shall hold office as Independent Directors, and two (2) shall be the Executive Director of the Mayors Association and the Executive Director of the Mayors Federation. Independent directors shall be appointed by the Governor with the advice and consent of the Senate. The persons selected to occupy the position of independent director shall be persons with a good reputation and of renowned experience in business or professional matters, and except for the position of Executive President of the Authority, which may be filled by an independent director, said persons thus selected may not be employees or officials of the Authority or its Board, nor shall they be a person who is directly related to the unions of the Authority. The remaining two (2) members shall be the President of the Planning Board and the Executive Director of the Electric Power Authority, who shall be ex-officio members of the Board. Both the ex-officio members and the municipal representatives shall hold office as Government Director.

(a) Two (2) of the independent directors shall be appointed for an initial term of one (1) year; two (2) shall be appointed for an initial term of two (2) years; and one (1) shall be appointed for an initial term of three (3) years. The two representatives from the municipalities shall be appointed, one (1) for a term of four (4) years, and the other for a term of five (5) years. As the initial term of each Independent Director expires, his/her successor shall be appointed pursuant to the provisions of this section for a term of five (5) years. As of the end of the first appointment term of five (5) years of the Independent Directors and the Directors who represent the municipalities, inclusion shall be made or representatives for each of the five (5) regions recognized in this Act. The independent director and the municipal representatives whose term expires, shall continue in office until his/her successor is appointed and takes office, which appointment shall be effected within ninety (90) days from the expiration date of the appointment of the predecessor.

(b) The duties of the members of the Board shall not be delegated. The Board shall meet as often as it is determined by the Board, which shall never be less than once a month. The Board members who are not ex officio directors shall receive compensation or per diems for each Board meeting they attend or when executing tasks entrusted by it. The compensation or per diems they shall receive for each Board meeting they attend or when executing tasks entrusted by it shall be determined by the Board through regulation. The ex officio directors and the independent director who hold the office of Executive President of the Authority, if

this should be the case, shall not receive remuneration or per diems for attending Board meetings or for other services rendered to the Board.

(c) Five (5) of the Board members or, in the event there are vacancies in the Board, a majority of the Board members shall constitute a quorum to conduct its business, and for any other end, and any agreement of the Board shall be reached by the affirmative vote of not less than five members.

However, the following actions must be approved by not less than six (6) Board members:

(1) The selection and appointment of the chairperson and vice president of the Board.

(2) The appointment, removal, and determination of compensation of the Executive President of the Authority; Provided, That the Executive President who holds the office of Independent Director, should that be the case, shall not intervene in these matters.

(3) The appointment, with the previous recommendation of the Executive President of the Authority, and the removal and determination of the compensation of any executive officer of the Authority, pursuant to the provisions of this Act.

(4) The recommendation of the Governor for the removal, for cause, of an independent director.

(5) The approval or termination of any administration contract with a private operator or any amendment to it.

(6) The approval of any collective bargaining agreement or any amendment to it.

(7) The authorization for exemption from the bidding requirement for construction contracts, purchasing or other contracts pursuant to the provisions of Section 11 of this Act.

(8) The approval of rate structure or changes to it and the imposition of fees, rents and other charges for the use of the facilities or services of the Authority.

(9) The approval of the long term capital improvements plan.

Unless prohibited or restricted by the regulations of the Authority, any action needed to be taken at any Board meeting or any committee thereof, except for the actions that shall require the approval of not less than six (6) Board members, may be authorized without having to hold a meeting, as long as all the members of the Board or committee thereof, as the case may be, give their written consent to said action, which document shall be part of the minutes of the Board or committee thereof, as the case may be, give their written consent to said action, which document shall be part of the minutes of the Board or of the committee thereof, as the case may be. Unless otherwise provided by the regulations of the Authority, the members of the Board or of any committee thereof may participate, by telephone conference or other means of communications, through which all the participants may listen simultaneously, in any meeting of the Board or of any committee thereof, where no actions specifically provided in the preceding paragraph of this subsection are taken. The participation of any member of the Board or any committee thereof in the abovementioned manner shall constitute attendance to said meeting.

(d) Act No. 12 of July 24, 1985, as amended [3 L.P.R.A. §§ 1801 et seq.] shall apply to the independent directors, with the exception of the requirements of Section 4.1 of said Act.

Without impairment to the rights of the directors pursuant to the provisions of Act No. 104 of June 29, 1955, as amended [32 L.P.R.A. §§ 3077--3092a], the members of the Board shall not incur civil liability for any act or omission in the performance of their duties, provided there has been no conduct that constitutes a crime or gross negligence.

(e) The Board shall appoint an advisory committee to be constituted by seven (7) members and shall include, among others, persons who represent the interests of the communities lacking the adequate aqueduct and sewer services, the special communities of Puerto Rico, the interests of the labor sector, and the interests of the environmental sector. Two (2) of the seven (7) members shall be elected as representatives of the consumers' interest, through a referendum to be held according to the procedure to be determined by the Secretary of the Department of Consumer Affairs, in coordination with the Board of Directors of the Authority. The Authority shall provide the facilities and resources needed for such purpose. The Authority shall conduct the referendum according to the established procedure. These two (2) members shall not be employees or officials of the Authority, nor members of a central or local directing body of a political party, which includes all persons who actively work for the party, or any person who has a direct relationship with the labor unions of the Authority. The term of the members appointed by the Board as well as that of those elected by referendum shall be of five (5) years.

The Advisory Committee shall meet with the Board in full at least three (3) times a year, and with the executive officers of the Authority as often as the Board or the Executive President deems convenient to present suggestions, discuss the quality of the services rendered by the private operator, the needs of the communities, the Capital Improvements Program, and any other matter that the Board, the Executive President or the Advisory Committee deems necessary. The Board shall adopt the norms for the operation of the Advisory Committee.

The members of the Advisory Committee shall not intervene in the formulation and implementation of public policy, and therefore, shall not be considered public officials for the purposes of Act No. 12 of July 24, 1985, as amended [3 L.P.R.A. §§ 1801 et seq.].

(f) The Authority shall have the positions of executive officers that the Board creates. The executive officers of the Authority shall be those appointed by the Board to hold office as executive officers. Executive officers shall include an Executive President, who shall be the chief executive officer of the Authority; an Infrastructure Executive Director; and the five (5) Regional Executive Directors, from the Metro, North, South, East and West Regions, whose main functions are established hereinafter, in addition to those delegated by the Board, and shall be appointed by the Board and supervised by the Executive President. The Board may in the future create additional Authority executive officer offices, in function of the decentralized managerial structure adopted by this Act and as the needs of the Authority may so require. The appointment and removal conditions for the Executive President, the Regional Executive Directors, and the Infrastructure Executive Director, are provided for hereinafter, as well as the term of said appointments, which shall be for six years. These conditions and terms exclude the Executive President in office as of the date of approval of this act. The appointments of the Executive President (excluding the Executive President holding office as of the approval of this act), of the Regional Executive Directors, and the Infrastructure Executive Director, may provide, not to be construed as a limitation, the following:

(1) The duties, functions, obligations and powers delegated by the Board to each one, in addition to those provided for hereinafter; Provided, That the Board may not delegate the function of approving all or part of any collective bargaining agreement with the unions

representing the employees of the Authority, nor the remaining functions listed in subsections (c), (k), or (n) of this section;

(2) a term of six (6) years, subject to the removal or cancellation before the expiration date of said term by reason of noncompliance with his/her obligations or for any other causes whereby he or she may be removed from office, as provided for hereinafter, and

(3) the financial compensation to be paid during the term of his/her appointment, which may include fringe benefits and bonuses that facilitate the recruitment of professionals of the highest caliber.

(g) Functions of each Regional Executive Director

(1) To be responsible for administering and supervising all of the assets and employees of the Commonwealth Aqueduct System and the Commonwealth Sewer System within his/her region.

(2) To design and present for the evaluation and approval of the Executive President and then of the Board, the annual budget for his/her region. Once approved, he/she shall be in charge of managing said budget in coordination with the Executive President.

(3) To submit to the Infrastructure Executive Director, through the Executive President, the needs for capital improvements he or she identifies in his/her region, in order of priority, so that said needs be incorporated into the Capital Improvement Program for the short and the long term.

(4) To meet with the elected officials of his/her region to address the claims and needs of the citizens.

(5) To submit a report to each mayor of his/her region and to the Legislature on or before February 15 and August 15 of each year.

(6) To also have all the duties, powers and faculties that the Board delegates to him/her, in function of the decentralized managerial structure being adopted in this Act and as the needs of the Authority so require, except that the Board may not delegate the functions listed in subsection (f)(1) of this section.

(h) Functions of the Infrastructure Executive Director

(1) To prepare, in coordination with the Regional Executive Directors, a Capital Improvement Program that addresses the needs of the system on the short and the long term, and through the Executive Director, he/she shall present said Program for the approval of the Governing Board.

(2) To administer and execute said Capital Improvement Program according to the priorities established by the Board and as provided by the budget and schedule for each work under this Program.

(3) To meet with the elected officials to address the claims and needs of the citizens.

(4) To submit a report to the Legislature on or before February 15 of each year and August 15 of each year.

(5) To also have all the duties, powers and faculties delegated to him/her by the Board, in function of the decentralized managerial structure being adopted in this Act and as the needs of the Authority so require, except that the Board may not delegate the functions listed in subsection (f)(1) of this section.

(i) The remaining executive officers of the Authority shall exercise the duties and obligations inherent to their offices and those other duties that the Board may establish. Unless the Board determines otherwise, the executive officers appointed by the Board may delegate to other

persons the power of substituting for them during any period of justified absence, as this concept is defined by the Board through regulations.

(j) The Executive President, the Infrastructure Executive Director and the Regional Executive Directors of the Authority may not:

- (1) Contribute money directly or indirectly to any political parties, candidates, or organizations;
- (2) perform or campaign to hold any office in the direction or organization of a political party, nor run for an elective public office;
- (3) participate or collaborate directly or indirectly in a political campaign of any kind, or in events of a political-partisan nature.

The Executive President, the Infrastructure Executive Director and the Regional Executive Directors of the Authority may be removed from office by the Board only for the following causes:

- (1) Immoral or unlawful conduct, or conduct which violates the prohibitions provided for in this Act;
- (2) incompetence, manifest professional inability or negligence in the performance of their functions and duties;
- (3) a conviction for any felony or misdemeanor that implies moral turpitude;
- (4) manifest abuse of authority or of the discretion conferred to them by this or other laws, or
- (5) dereliction of duty.

They may also be severed from office for reason of physical or mental disability to exercise their essential functions. This severance due to the inability to perform the essential functions of the position shall not be considered a removal from office.

(k) When the Governing Board evaluates the composition or modification of the initial regions provided for in this Act, concerning the delimitations thereof or the creation of new regions, it shall take into account the following elements in said analysis and shall be taken into account altogether, within the circumstances, at the time of making the final determination:

- (1) The connectivity of the water transmission systems, the location of hydrographical basins and the analysis of the best use of said resources;
- (2) the assets and the state of said assets in the Commonwealth Aqueduct System and the Commonwealth Sewer System;
- (3) the needs for improvements in the Commonwealth Aqueduct System and the Commonwealth Sewer System;
- (4) the length of the network and the size of the service area that comprises the region under analysis;
- (5) the population density and the number of current and projected clients at the short, the medium and the long term within the region;
- (6) the projects proposed for the region within the Capital Improvements Program and all other strategic plans developed by the Board;
- (7) the findings of noncompliance and orders of the environmental and health regulatory agencies, and

(8) the analysis of the cost-effectiveness of operating the region as is and the cost-effectiveness of operating the potential region being studied under the proposed modification.

The Board shall determine the relevance that will confer upon each of the above criteria, or others that in its judgment it should ponder, at the time of making decisions concerning the delimitations of the regions. Once the Board concludes any evaluation concerning modifications to the regions, it shall submit for the approval of the Legislature the determinations together with a report that proves the study conducted upon which the Board has based its conclusions. The determination of the Board regarding the new composition of the regions shall be understood to have been approved if the Legislature, through a Joint Resolution, approves it as submitted by the Board. The Legislature shall approve or reject through a Joint Resolution within a term not greater than ninety (90) days of Regular Session. Should no action be taken within said term, the determination of the Board shall be considered as approved. The Authority shall submit its first regional reorganization plan to the Legislature on or before June 1, 2004, for its consideration and approval pursuant to the above provisions. The five (5) initial regions that are hereby created are the Metro Region, North Region, South Region, East Region, and West Region. The study to be presented to the Legislature on June 1, 2004, shall include the proposed delimitation of said regions.

(l) Subject to the provisions of subsection (c) of this section, all executive employees of the Authority shall be appointed, removed and their compensation determined by the Board of Directors, upon prior recommendation of the Executive President. All executive employees shall be deemed as such for the purposes of Act No. 130 of May 8, 1945, as amended [29 L.P.R.A. §§ 61 et seq.]. Executive employees shall not be subject to the general administrative control of the private operator provided in subsection (q) of this section.

(m) The Board shall appoint an internal auditor who shall be attached and respond to it, and shall have the power to monitor all income, accounts and disbursements of the Authority to determine if they have complied with the Act and the determinations of the Board.

(n) The Board may delegate part of its faculties, other than those listed in subsections (c), (l) and (o) of this section, on the Executive President, who shall be the Chief Executive Officer of the Authority, and shall respond to the Board for the execution of its general policy and the general supervision of the operational phases of the Authority. The Board may also delegate any of its powers, other than those listed in subsections (c), (l) and (o) of this section on one or more of its committees or any other executive officer of the Authority.

(o) The Board shall not delegate on any committee, executive officer, or private operator, the powers listed in this subsection and subsections (c) and (l) of this section, nor any of the following powers:

- (1) The approval of the budget of the Authority;
- (2) the approval of any financing for the Capital Improvements Program;
- (3) the contracting of auditing firms;
- (4) the contracting of external consultants of the Authority when the amount of the contract exceeds the amount determined by regulations of the Board;
- (5) the approval of the sale or alienation on any other real property or real rights; Provided, That the Board may delegate on the Executive President or on any other Executive Officer of the Authority the granting of title deeds or alienation of real property or real rights;

(6) the approval of the regulations of the Authority and any change or repeal thereof, including the determination of what constitutes just cause to remove an independent director, and

(7) the appointment of the internal auditor.

(p) The Board, at its option, may grant one or more administration contracts to one or several private operators, which may be natural or juridical persons that the Board determines are qualified to assume, in whole or in part, the administration and operation of the Commonwealth Aqueducts System, the Commonwealth Sewers System and all those properties of the Authority, as provided in this Act. In the contracts with one or several private operators, the Board may delegate on the private operator any of the powers that it may delegate on the Executive President, except those listed in subsections (c), (l) and (o) of this section.

(q) Regarding the administration contracts. -

(1) A director of operations, who shall be an employee or agent of the private operator, shall be designated for each administration contract with a private operator. The director of operations of each private operator shall be the person responsible for supervising and administering all the duties agreed upon with the private operator in the administration contract. Furthermore, he/she shall be in charge of the general supervision of the operational phases of the Authority agreed upon in said contract, and of those additional functions that the Board agrees upon with said operator, by contract.

(2) The private operator(s), through their respective directors of operations, shall have all the duties, functions, obligations and powers that, subject to the limitations described in this section, are established in the administration contract with the Authority, including the following:

(A) General administrative control of all the employees of the Authority.

(B) Negotiation of the collective bargaining agreement with the labor unions that represent the employees of the Authority and the duty and power to appoint, dismiss, and determine the compensation of all employees and agents of the Authority.

(C) Legal responsibility for all their actions in accordance with the duties, functions, obligations and powers set forth in the contract with the Authority and the laws of Puerto Rico.

(D) Approve changes to the organizational structure of the Authority provided it does not affect executive employees and the structure provided in this section.

(E) Obligation to render reports on the operational and financial conditions and activities of the Authority required by law and the administration contract with the Authority.

(F) Obligation to appear personally to render a semiannual report before the commissions to be designated by each of the Legislative Bodies.

(3) Private operators and their respective directors of operations shall not be deemed a public entity, public employer or public employee, as defined in this Act or in any other law or regulations.

(4) The administration contract with the private operator(s) shall require the private operator to post a bond in favor of the Authority. The Board shall establish the criteria to determine the amount of the bond, with the recommendation of the Insurance Commissioner.

(5) The administration contracts signed by the Authority with one or several private operators shall expressly indicate that all documents, such as registers, bank accounts and other documents germane to the operation of the Authority, shall be kept in the jurisdiction of the Commonwealth of Puerto Rico and shall be property of the Authority.

(6) Every administration contract granted by the Board with one or several private operators shall require that said operator(s) have no debts with government entities; and that if there were debts, they must have availed themselves of a payment plan. They shall also be required to have their accounts and obligations with government entities up to date. Compliance of their tax responsibility with the Commonwealth of Puerto Rico shall also be required.

Section 3-A. — Authorization of the Governor and of the Legislature. (22 L.P.R.A. § 143a-1)

If upon expiration or cancellation of the current contract, the Board decides to once again contract the administration and the operation of all or part of the Commonwealth Aqueducts System, the Commonwealth Sewers System or any other property of the Authority, the validity of said contract shall be subject to the approval of the Governor and the Legislature. If the Governor of Puerto Rico approves the negotiation under the same terms and conditions that were approved by the Board, and incorporated to the documents of the contract signed by the parties, the Governor shall remit a report, to the Legislature, together with an analysis of the objective criteria used by the Board to evaluate the contracting offers, for its approval. The Legislature shall have access to all documents and information considered by the Board in the selection process of the proposal under the same terms and conditions enjoyed by the Board. The granting of the contract shall be deemed authorized if the Legislature, through a joint resolution, approves the contracting with the same terms and condition that were approved by the Board and the Governor. The Legislature shall approve the joint resolution in a term of not more than sixty (60) days. If no action is taken within said term, the transaction shall be deemed as approved. Any modification that does not constitute a renewal of any administration contract must be notified to the Legislature not less than five (5) days before it takes effect.

Section 4. — Purposes and Powers (22 L.P.R.A. § 144)

The Authority is created for the purpose of providing and helping to provide for the citizens an adequate drinking water, sanitary sewage service and any other service or facility proper or incidental thereto. The Authority shall have and may exercise all rights and powers necessary or convenient to carry out such purposes, including, but without limitation to, the following:

- (a) To have perpetual existence as a corporation.
- (b) To adopt, alter and use a corporate seal which shall be judicially noticed.
- (c) To sue and be sued in its corporate name, except that it may not be sued for damages arising from the real or alleged impurity, irregularity, or insufficiency of the water supplied by it and except that judicial sale of properties of the Authority shall not be permitted.

(d) To make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers including, but without limitation, contracts for the management of its properties or any part thereof.

(e) To acquire real, personal or mixed, tangible or intangible property (including, but without limitation, its own obligations and those of other corporations) through any lawful means (including, but without limitation, the exercise by the Authority directly and on its own behalf of the power of eminent domain or by its request as provided in Section 9 of this Act), hold, operate, and administer said property and to dispose of any part thereof that the Authority shall find to be surplus to its purposes.

(f) To appoint officers, agents and employees and to fix for them such powers and duties as the Authority may determine and, without limitation, to employ by contract or otherwise such consulting engineers, superintendents, managers and such other engineers, construction and accounting experts, attorneys and other employees and agents as may be necessary in the judgment of the Authority.

(g) To borrow money and to issue revenue bonds for any of its corporate purposes, including without limitation the purpose of funding, refunding or purchasing with or without premium, paying or discharging any outstanding bonds or other obligations issued or assumed by it, the principal of or the interest upon which is payable in whole or in part from revenues of the Authority.

(h) To accept grants of any kind from any source.

(i) To determine, fix, alter, charge or collect, as provided herein, reasonable rates, fees, rents and other charges for the use of the facilities of the Authority, or for the water and sewage services, and other products or services sold, rendered or furnished by it. The Authority shall have a maximum term of one hundred and twenty (120) days counting from the issue of water use or sanitary sewage service bills to notify residential and small business customers of any miscalculation of charges. Once said term concludes, the Authority may not claim retroactive charges for such miscalculations, such as those of an administrative, or operating nature, or reading of water meters which register water usage, which were not detected by said customers and notified to the Authority at the time they occurred. It shall be understood that the miscalculation could have been detected by the customer if there is a reduction in the use as [it] appears in his/her bill or if the amount thereof is at least fifty percent (50%) or less compared to the bill immediately proceeding the miscalculation, without there being a reason that justifies said reduction. It shall be the responsibility of the customer who alleges a different reason, to furnish evidence to support the occurrence and how it affected his/her water consumption. For the purposes of this Act, small businesses shall be considered all those non-residential customers, except the Government, whose average water consumption, based on the six months before any irregularity, damage or error, which has affected the water consumption recording, does not exceed one hundred and ten (110) cubic meters in a monthly reading period or of two hundred and twenty (220) cubic meters in a bimonthly reading period. Monthly and bimonthly periods shall have the same number of billing days cycles in the Authority.

(j) To have complete control and supervision of its properties and activities, including the power to make and enforce such rules and regulations for the maintenance and operation thereof, as in the judgment of the Authority may be necessary or desirable for the efficient operation thereof and for accomplishing the purposes of this Act, and including the power to

determine the character of and necessity for all its expenditures and the manner in which they shall be incurred, allowed and paid and such determination shall be final and conclusive.

(k) To prescribe, adopt, amend, and repeal bylaws governing the manner in which its general business may be conducted and the powers and duties granted to and imposed upon it by law may be exercised and performed.

(l) To enter on any lands, waters, or premises, after notifying the owners or holders thereof, or their representatives, for the purpose of making surveys, soundings, and examinations.

(m) To improve and extend the water and sewer facilities under its jurisdiction and to provide additional facilities of the same character.

(n) To do all acts or things necessary or convenient to carry out the purposes of this Act.

(o) [Omitted.]

(p) Enter into agreements and execute plans, projects, including delegation and co-management agreements, among others, with federal and local environmental and health regulatory agencies, including the U.S. Environmental Protection Agency.

(q) When grave circumstances of administration, operation, of financial nature, or difficulty to comply with environmental and health regulations so require in the judgment of the Board, it shall make a declaration of a State of Emergency of the entire or part of the aqueduct and sewer system through a resolution to that effect, and once said resolution has been ratified by the Governor, the Board may take all the measures that in the judgment of the Board are necessary to bring the Aqueduct and Sewer Authority or part thereof out of such a state of emergency as soon as possible. This procedure to declare a State of Emergency shall not be necessary to determine an operational emergency by the management for the purposes of Section 11 of this Act, even though a declaration of a State of Emergency under this subsection would indeed constitute a cause to activate the procedures allowed under said Section 11.

(r) To repair hydrants (fire hydrants) identified by the Puerto Rico Firefighters Chief, as provided in subsection (u) of Section 6 of Act No. 43 of June 21, 1988, as amended. For such purposes, it shall coordinate a work plan with the Chief of the Firefighters Corps that shall take the following aspects into consideration:

(1) The development of an interagency structure;

(2) the continuous evaluation, revision and update of the information and of the inspection, operations and preventive maintenance procedures in effect;

(3) the development of a plan for citizen awareness on the importance of protecting fire hydrants, and

(4) the evaluation of new ideas whose purpose is to help fire hydrant conservation.

The Authority shall have no power at any time or in any manner to pledge the credit or taxing power of the Commonwealth of Puerto Rico or any of its other political subdivisions. The bonds and other obligations issued by the Authority shall not be a debt of the Commonwealth of Puerto Rico nor of any of its municipalities nor of its other political subdivisions and neither the Commonwealth of Puerto Rico nor any such municipalities nor its other political subdivisions shall be liable thereon, nor shall such bonds or other obligations be paid out of any funds other than those of the Authority.

Section 5. — Transfers of Properties. (22 L.P.R.A. § 145)

There are hereby transferred, conveyed, and delivered unto the Authority:

(a) All of the property, real, personal, and mixed, tangible and intangible, of whatsoever nature and wheresoever located, owned, operated or controlled by the Insular Sewerage Service, created by Act No. 16, approved November 21, 1941 and the Puerto Rico Aqueduct Service, a subsidiary corporation of the Puerto Rico Electric Power Authority, organized under the Corporation Law of Puerto Rico pursuant to Act No. 39 approved November 21, 1941, as amended by Act No. 29 approved April 13, 1942, together with:

(b) All of such property, owned, operated or controlled by the Commonwealth of Puerto Rico or any of its political subdivisions, agencies, municipalities, or instrumentalities, which is used or useful primarily for the disposal of sewage or for the supplying of water for domestic, industrial or commercial use. There shall be used for the purposes of these transfers and there shall be transferred all the maps, plans, projects, designs, data related to the construction, maintenance, improvement, or extension of the aqueduct or sewer systems, and all the accounting books, records, files and equipment used in the operation, maintenance and administration of such aqueduct and sewer systems. The properties hereby transferred shall include (but without limitation) all water franchises granted to the Puerto Rico Aqueduct Service, or which are owned by the Commonwealth of Puerto Rico or its political subdivisions, agencies, municipalities or instrumentalities which are used, useful or appropriate or necessary to be used in connection with the powers and purposes of the Authority. Said transfers shall be effective, with regard to the various parts or items of the property hereby transferred, on such dates as may be fixed from time to time by the Governor or the officer or agency designated by him after consultation with the Executive Director and upon notification to the official or officials, or organizations having custody of said property, and after due consideration of the public interest. The descriptions of the properties contained in the resolutions of the Governor or the officer or agency designated by him fixing the effective date of the transfers herein provided shall be conclusive for the purposes of identification of the property so transferred. Upon the adoption of any such resolution the officials in charge of the property therein described shall deliver said property to the Authority.

Upon the effective date of the transfer provided for herein, the Authority shall assume all of the contracts and obligations of the Puerto Rico Aqueduct Service organized under the Corporation Law of Puerto Rico, and said contracts and obligations shall inure to the benefit and profit of the Authority. Upon the effective date of the transfer to the Authority of any municipal properties, the Authority shall assume all obligations which constitute a lien upon said properties or the revenues therefrom and the Authority may assume such other current debts as may in the opinion of the Governor or the officer or agency designated by him, be just and proper for such unpaid salaries and other expenses as would ordinarily be paid out of the revenues of said property.

If the mayor of any municipality affected by the transfer shall deem the interests of the municipality represented by him to be aggrieved by the resolution providing the date of said transfer, he may ask to be heard at a public hearing thereon by filing a petition therefor within ten (10) days after service on him of notice of said resolution. In said public hearing, the mayor of the municipality affected shall have an opportunity to show that it is more

desirable in the public interest for the sewerage or aqueduct properties of said municipality to continue under the administration of said municipality, and upon finding to that effect by the Governor or the officer or agency designated by him, the resolution providing the date of said transfer shall be vacated and set aside. Upon said public hearing and within ten (10) days after the decision of the Governor or the office or agency designated by him adverse to any of the parties, the mayor or the Authority may obtain a review of the same by the Court of First Instance, San Juan Part, which shall have power and authority to make a decree affirming, or reversing the decision of the Governor or the officer or agency designated by him. When the review of a decision adverse to the municipality is petitioned, the original resolution of the Governor or the officer or agency designated by him shall be stayed during the pendency of the review.

Section 6. — Appropriations: Appropriations in Force Confirmed and Transferred.
(22 L.P.R.A. § 146)

All appropriations made by the Legislature of Puerto Rico for any of the purposes set forth in this Act are hereby approved, ratified and confirmed and all sums so appropriated and all sums set aside or required to be set aside for said purposes by any law of Puerto Rico are hereby transferred to the Authority.

This section refers particularly, but without limitation, to any sum set aside by order of the Public Service Commission of Puerto Rico for maintenance and operation of waterworks systems; to any sum remaining in the appropriation to the Commissioner of Health of Puerto Rico, the Puerto Rico Electric Power Authority and the Governor of Puerto Rico under Act No. 29 of April 13, 1942, and to any other appropriation heretofore made to the Insular Sewerage Service or to the Department of the Interior of Puerto Rico for construction of sewers or waterworks systems.

Section 7. — Moneys. (22 L.P.R.A. § 147)

All moneys of the Authority shall be deposited in qualified depositaries for funds of the Commonwealth Government, or the instrumentalities thereof, but they shall be kept in a separate account or accounts in the name of the Authority. Disbursements shall be made by it pursuant to regulations and budgets approved by the Board.

Section 8. — Audit. (22 L.P.R.A. § 148)

The accounts of the Authority shall be kept in such manner as appropriately to segregate, insofar as advisable, the accounts in respect of the different classes of operations, projects, undertakings and activities of the Authority, and shall include complete accounts of the costs of production and distribution of water and of the sewer service and of the total costs of water and sewerage works constructed or otherwise acquired by the Authority and a description of the major components of said costs, together with records of such other physical data and operating statistics as may be helpful in determining the actual cost and value of the services.

Section 9. — Acquisition of property; declaration of public utility. (22 L.P.R.A. § 149)

When the Board deems it convenient, the Authority shall exercise the power of eminent domain by initiating the procedure directly and on its own behalf, or by its request, pursuant to the procedure described in subsection (b) of this Section, when deemed convenient by the Board. Any action of eminent domain initiated by the Authority shall be processed in the manner provided in this Act, and pursuant to the procedures provided by the laws of the Commonwealth of Puerto Rico on eminent domain.

Upon application of the Authority, the Governor of Puerto Rico or the Secretary of Transportation and Public Works shall be empowered to acquire by agreement or eminent domain or by any other lawful means, in the name and on behalf of the Commonwealth of Puerto Rico, title to any property or interest thereon, which the Board shall deem necessary or convenient for its own purposes. The Authority may make available to those funds, in advance, to said officers that may be needed for the payment of said property, and upon acquisition thereof, may reimburse the Commonwealth of Puerto Rico for any amount paid that had not been previously advanced. Upon such reimbursement to the Commonwealth of Puerto Rico (or, if the total cost or price has been advanced by the Authority within a reasonable period to be determined by the Governor) the title to the property so acquired shall pass to the Authority. The Secretary of Transportation and Public Works of Puerto Rico shall make the arrangements for the operation and control of said property by the Authority on behalf of the Commonwealth of Puerto Rico during the period intervening before said title has passed to the Authority. The power conferred hereby shall not limit or restrict in any manner or to any extent the inherent power of the Authority to acquire properties through eminent domain initiated by the Authority directly and on its behalf, under the power conferred by this Act. All properties, whether real or personal and rights or interests thereon, that the Authority deems necessary for its corporate purposes, which may be condemned or used by the same are hereby declared of public utility, without the prior declaration of public utility provided in the Act of March 12, 1903 [32 L.P.R.A. §§ 2901--2913].

Section 10. — Assignment of Public Assets. (22 L.P.R.A. § 150)

The title deed of any property of the Commonwealth of Puerto Rico, as well as of any municipality, agency, or instrumentality thereof, which has been acquired before the date of effectiveness of this act or that is acquired in the future, which is deemed to be necessary or convenient for the purposes of the Authority, may be transferred to this Authority by the official in charge of said property or who has jurisdiction thereon, pursuant to the terms and conditions that the Council of Secretaries determine.

The Authority shall have the right and the power to construct or locate any part or parts of any of its works, projects, enterprises, or property, and to operate, maintain, and extend the same, on, above, under, through and throughout any street, public thoroughfare or any lands that are at present, or could be in the future, property of the Commonwealth of Puerto Rico or any municipality or political subdivision thereof without obtaining a any franchise or any other permit whatsoever for that purpose, but it shall obtain the consent of the Secretary of Transportation and Public Works when dealing with constructions that affect public land whether these are or not under the jurisdiction of the Commonwealth or a municipal

government, so that it be left in the condition or state it was at the beginning of the works and shall not use the same in a way that undermines its usefulness unnecessarily.

When necessary to relocate Authority facilities located in the public thoroughfare or in any other place, by reason or as a result or consequence of the performance of a public work, of which the Department of Transportation and Public Works or any other government agency is in charge, the costs of said relocation shall be considered as part of the expenses entailed by such a public work and shall be satisfied or reimbursed to said Authority by the agency to which it corresponds, pursuant to the system in effect concerning the payments pertaining to the performance of a public work; Provided, That when the federal government is able to make a contribution to cover such relocation expenses, the requirements that enable such a contribution shall be met; and, Provided, also, That if the relocation is taken advantage from for an improvement or extension of the affected system, the Authority shall be responsible for the resulting additional costs.

The Authority shall establish and maintain at least one minor repairs brigade for each three (3) municipalities in each region, subject to the condition that its establishment and maintenance conforms the new Reclassification and Compensation to be adopted as of January 1, 2004.

The Authority and the municipalities of the Country shall be authorized to subscribe cooperation agreements for the latter to perform and finance, subject to reimbursement by the Authority, capital improvements that would become a part of the Aqueduct and Sewer system of the Authority. These agreements shall be effected taking as a basis the analysis of need and the scope determined by the Authority regarding the projects to be constructed by the municipalities, as well as the projects comprised in the Capital Improvement Plan and the conditions for the Authority to incorporate the project to its Commonwealth Aqueduct System or its Commonwealth Sewer System, as the case may be.

When a municipal government makes a written request for a declaration of a "state of limited emergency" on the potable water supply services in its municipal term, the Authority, within the following fifteen (15) working days, shall give notice of a declaration of approval or denial thereof. If said declaration is not issued within this term, it shall be construed as the recognition of the state of limited emergency. In the event that the it [sic] coincides with the municipal government's request or the state of limited emergency has been recognized, the Authority shall establish an Emergency Management Plan within the nondeferrable term of thirty (30) working days as of the date of acceptance by the Authority.

If the Authority fails to issue the corresponding management plan within the term provided for, the municipal governments of the Commonwealth are hereby empowered, subject to the terms contained herein, to perform limited infrastructure or repair and maintenance works to improve the aqueduct and sewer services in its municipal territory pursuant to the applicable environmental protection laws and regulations. The direct expenses incurred by the municipal governments in these works shall be reimbursed by the Authority.

For purposes of this Act, a "state of limited emergency" shall occur when a community or sector within a municipal term has not received water service or has received service interruptedly or uncleanly during a period of thirty (30) working days or more and the solution to the matter has not yet been initiated by the Authority.

In circumstances under which Authority facilities require repairs or other maintenance works, other than capital improvements, which are not considered a state of limited

emergency, and which are causing harm to citizens, the municipality thus affected may conduct the repair or the maintenance work necessary, without the need of the previous agreement with the Authority, only under the following circumstances:

(i) If after thirty (30) working days have elapsed from the date of written notice of the situation to the Executive President and the corresponding Regional Director, the Authority has not begun to repair or perform the works required.

In the case of urgent repair and maintenance works by the municipalities, as well as in cases in which there are agreements for the performance of capital works, as provided above, the municipalities may require from the Authority, and the same shall be under the obligation to pay, the reimbursement of the direct costs of the works performed.

In the case of repair and maintenance works, the Authority shall reimburse the direct expenses incurred by the municipal governments within forty-five (45) working days from the date of having certified the expense incurred by the municipal government.

The municipalities shall be responsible for complying with environmental and health laws in relation to the works and repairs they perform, as well as for any cost or damages claimed by third parties, or for the penalty imposed to the Authority for violations at the facilities or due to negligence in the performance of the works as a consequence of the works performed by the municipalities.

Section 11. — Purchases and Construction Contracts. (22 L.P.R.A. § 151)

All purchases and contracts for supplies or services, except personal services made by the Authority, including contracts for the construction of its works shall be made through public bid. Provided, That when the estimated cost of the purchase or performance of the work does not exceed one hundred thousand dollars (\$100,000), the expenditure may be carried out without notice of bid. However, competitive bidding shall not be required when:

- (1) An emergency requires the immediate delivery of materials, supplies or equipment, or the rendering of services; or
- (2) repair parts, accessories, or supplemental equipment or services are required for supplies or services previously furnished or contracted for; or replacements or additions to standard equipment belonging to the Authority; or
- (3) professional or expert services or work are required, and the Authority deems it in the best interests of administration that contracts therefor be made without such notice; or
- (4) prices are noncompetitive because there is only one source of supply, or they are regulated by law; or
- (5) the expenses are from the Capital Improvement Program or related with the operation and maintenance of treatment plants that do not exceed two hundred thousand dollars (\$200,000) in the case of acquisitions, or that do not exceed five hundred thousand dollars (\$500,000) in the case of the performance of works, in which cases the Authority shall request written quotes from at least three (3) supplying sources, previously qualified pursuant to Act No. 164 of July, 1974, as amended [3 L.P.R.A. §§ 931 et seq.], if any, or
- (6) when the Authority has conducted two (2) bids identical in specifications, terms and conditions within a period not greater than six (6) months and have been declared deserted for lack of participation.

In such cases, the purchase of such materials, supplies or equipment, or the procurement of such services, may be made in the open market in the usual and regular form it is made in business. The Authority shall reserve the right to award to a bidder at a public bid on the basis of other considerations other than the price.

The Authority shall be exempted from complying with the public bid requirement for the award of construction contracts, purchases, or other contracts when due to an emergency situation it is deemed necessary and convenient in order to protect the lives or the health of the residents of Puerto Rico, or to prevent noncompliance with environmental regulations that could lead to the imposition of fines, as well as to comply with the public purposes of this Act, and is so authorized by the Board in each particular case through a resolution to that effect. Said resolution shall state the circumstances that justify that the Authority be exempted from the bidding requirement. A copy of said resolution shall be presented at the office of the Secretary of the Senate and the Clerk of the House of Representatives of the Legislature within the five (5) working days following the approval of said resolution by the Board.

This section shall not apply to those purchases and contracts for supplies or services for the operation, maintenance, improvements and repairs of the Commonwealth Aqueducts System, the Commonwealth Sewers System or any other property of the Authority, performed by one or several private operators contracted by the Authority.

Section 12. — Revenue Bonds. (22 L.P.R.A. § 152)

(1) The Authority is hereby authorized to provide by resolution, from time to time, for the issuance of revenue bonds of the Authority for any of its corporate purposes including, but not limited to, the following purposes:

- (a) To pay all or any part of the cost, as herein defined, of improvements to the Commonwealth Water System, to the Commonwealth Sewer System, or to both such systems.
- (b) To pay all or any part of the cost, as herein defined, of improvements to the Commonwealth Water System and the Commonwealth Sewer System combined by the Authority as a single system for operating and financing purposes; and the Authority is hereby authorized and empowered to combine such systems for such purposes.
- (c) To provide funds for refunding any bonds (including refunding bonds) heretofore issued and outstanding under the provisions of this Act, including the payment of any premium and any interest accrued on the bonds to be refunded to the date of such refunding.

Such revenue bonds shall be payable solely from the revenues of the Authority as herein provided.

(2) The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature in such period or periods of time not exceeding forty (40) years from their respective date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, as such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons attached thereto, the manner of execution of the bonds, and

shall fix the denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without Puerto Rico. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall have ceased to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Negotiable Instruments Act of Puerto Rico, [19 L.P.R.A. §§ 401 et seq.]. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and the Authority may sell such bonds in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interest of the Commonwealth of Puerto Rico, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at a rate of more than five per centum (5%) per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding however from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue or cause to be issued interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds mutilated, destroyed, stolen, or lost.

The proceeds of the sale of such bonds shall be used solely for the purpose or purposes for which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be insufficient for such purpose, additional bonds may in like manner be issued to provide the amount of such deficit and unless otherwise provided in the resolution authorizing such bonds, or in the trust agreement securing the same, said bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority as the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be paid into the fund provided under the provisions of this Act or provided by said resolution or trust agreement, for the payment of the principal of and the interest on such bonds.

Bonds may be issued under the provisions of this Act without any other proceedings or the compliance with any other conditions of the happening of any other things than those proceedings, conditions, or things which are specifically required by this Act.

(3) Any resolution or resolutions authorizing the issuance of revenue bonds, or the trust agreement securing such bonds, may contain provisions, which shall be a part of the contract

with the holders of the bonds authorized by such resolution or secured by such trust agreement.

- (a) As to the disposition of the entire gross or net revenues and present or future income of the Authority including the pledging of all or any part thereof to secure payment of the bonds;
- (b) as to the rates to be charged for the services rendered by the facilities of the Authority and the application, use and disposition of the amounts that may be received by the collection of such rates and from other receipts of the Authority;
- (c) as to the setting aside of reserves for amortization funds and the regulation and disposition thereof;
- (d) as to limitations on the right of the Authority to restrict and regulate the use of its properties or any part thereof;
- (e) as to limitations on the purposes to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied;
- (f) as to limitations on the issuance of additional bonds;
- (g) as to the procedure by which the terms of any resolution authorizing bonds or any trust agreement may be amended or abrogated, and as to the amount of the bonds the holders of which must consent thereto, and the manner in which such consent may be given;
- (h) as to the amount and kind of insurance to be maintained on the properties of the Authority and the use and disposition of insurance moneys;
- (i) as to covenanting against pledging all or any part of the revenues and income of the Authority to which its right then exists or the right to which may thereafter come into existence;
- (j) as to events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (k) as to the rights, liabilities, powers and duties arising upon the breach by the authority of any of its covenants, conditions or obligations;
- (l) as to the vesting in the trustee under the terms of any trust agreement the right to enforce any covenants made to secure, to pay, or in relation to the bonds; as to the powers and duties of such trustee, and the limitation of the liabilities thereof; and as to the terms and conditions upon which the holders of the bonds or any proportion or percentage of them may enforce any covenant made under this Act or duties imposed hereby;
- (m) as to the manner of collecting the rates, fees, rentals or other charges for the services, facilities or commodities of the Authority and the combining in one bill of the rates, fees, rentals or other charges for the different services, facilities or commodities of the Authority; as to the right of the Authority to discontinue furnishing water to any premises and to disconnect such premises from the Commonwealth Water System in the event bills rendered for water consumed on such premises shall not be paid; and as to the right of the Authority to disconnect premises from the Commonwealth Water System in the event bills for services furnished to such premises by the Commonwealth Sewer System shall not be paid;
- (n) as to the discontinuance of service, in the event that the rates, fees, rentals or other charges for the services of the Authority are not paid, and

(o) as to any other acts and things not inconsistent with this Act that may be necessary or convenient for the security of the bonds or as may tend to make the bonds more marketable.

In the discretion of the Authority any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the United States or Puerto Rico. Such trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage the property of the Authority, or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of laws; including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, reconstruction, improvement, maintenance, repair, operation and insurance of its properties in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with such construction, reconstruction, improvement, maintenance or operation. It shall be permissible for any bank or trust company incorporated under the laws of the United States or of any State of the United States or of Puerto Rico which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnity bonds or to pledge such securities as may be required by law. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operations of the Authority.

The bonds of the Authority shall be lawful investment, and may be accepted as security, in accordance with the laws regulating investments and sureties, for all fiduciary, trust and public funds the investment or deposit of which shall be under the control of the Commonwealth of Puerto Rico or any officer or officers thereof.

Section 13. — Right to Receivership Upon Default. (22 L.P.R.A. § 152a)

(a) In the event that there shall be a default in the payment of the principal of, or interest on, any of the bonds issued hereunder (which defaulted bonds are hereinafter referred to in this section as the bonds) after the same shall become due, whether it be a default in the payment of principal or interest or both, and such default shall continue for a period of thirty (30) days, or in the event that the Authority shall default in any agreement made with the holders of the bonds, any holder or holders of the bonds (subject to any contractual limitation as to a specific percentage of such holders) or trustee therefor, shall have the right to apply to the part of the Court of First Instance where the main office of the Authority is located or any other court of competent jurisdiction in Puerto Rico, in an appropriate legal proceeding, for the appointment of a receiver of the property or part thereof, the income or revenue of which is pledged to the payment of the bonds so in default (which property or properties are

referred to in this section as the property). Upon such application the court may appoint, but if the application is made by the holders of twenty-five (25) per centum or more in principal amount of such bonds then outstanding, or by any trustee for holders of bonds in such principal amount, shall appoint a receiver of said property.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, take possession of the said property of each and every part thereof, and may exclude the Authority, its board, officers, agents and employees, and all persons claiming under them, wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the Authority or otherwise, as the receiver may deem best, shall exercise all the rights and powers of the Authority with respect to the said property as the Authority itself might do and he will take into account the public interest and the public service character of the Authority. Such receiver shall maintain, restore, insure, and keep insured, such property and from time to time shall make all such necessary or proper repairs as such receiver may deem expedient, together with all such replacements of the property and such extensions thereto as may be necessary to maintain normal service, and shall establish, pursuant to the provisions of this Act, and shall levy, maintain, and collect, such rates, fees, rentals and other charges in connection with the said property as such receiver may deem necessary, proper and reasonable, and shall collect and receive all income and revenues and deposit the same in a separate account and apply the income and revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds, and interest thereon, shall have been paid or deposited as provided therein, and all defaults in consequence of which a receiver may be appointed shall have been cured and made good, the court shall, after notice and public hearing (if the court shall deem the same reasonable and proper) direct the receiver to surrender possession of said property to the Authority, the same rights of the holders of the bonds to obtain the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall act, in the performance of the powers hereinabove conferred upon him, under the direction and supervision of the court and shall at all times be subject to the orders and decrees of the court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of the court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions set forth in this Act.

(e) Notwithstanding anything in this section to the contrary, such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the Authority and useful for its corporate purposes, and the court shall not have jurisdiction to enter any order or decree requiring or permitting said receiver to sell, mortgage or otherwise dispose of any part of such assets.

Section 14. — Remedies of Bondholders. (22 L.P.R.A. § 153)

(a) As used in this Act, the term "holder of bonds" or "bondholders" or any similar term shall mean any person who shall be the bearer of any outstanding bond or bonds registered to bearer or not registered or the registered owner of any outstanding bond or bonds which at that time shall be registered otherwise than to bearer. Subject to any contractual limitations

binding upon the holders of any issue of bonds, or trustees therefor, including, but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or trustee herefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(1) By mandamus or other suit, action, or proceeding to enforce his rights against the Authority and its Board, officers, agents and employees to perform and carry out its and their duties and obligations under this Act and its and their covenants and agreements with bondholders;

(2) by civil action to require the Authority and the Board thereof to account as if they were the trustee of an express trust;

(3) by civil action to enjoin any act or things which may be unlawful or in violation of the rights of the bondholders, and

(4) to bring suit upon the bonds.

(b) No remedy conferred by this Act upon any holder of the bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting, and without regard to, any other remedy conferred by this Act or by any other law.

Section 15. — Tax Exemptions (22 L.P.R.A. § 154)

(a) It is hereby found and declared that the purposes for which the Authority is created and shall exercise its powers are the preservation of public health, the promotion of the general welfare, and the increase of commerce and prosperity, that the same are public purposes in all respects for the benefit of the people of Puerto Rico, and that therefor the Authority shall not be required to pay any Commonwealth or municipal taxes or assessments on any of the property acquired by it or under its jurisdiction, control, possession, or supervision, or on its activities in the operation and maintenance of any property, or on the income derived from any of its properties and activities. Persons who enter into contracts with the Authority shall not be subject to the government contract tax imposed by § 16 of Act No. 85, approved August 20, 1925, as heretofore or hereafter amended. The Authority shall be exempt from the payment of all kinds of fees prescribed by laws in force for the execution of public documents and the registration thereof in any property registry of Puerto Rico.

(b) In order to facilitate the procurement of funds by the Authority to enable it to carry out its corporate purposes, the bonds and other obligations issued by the Authority and the income therefrom shall be and remain at all times exempt from taxation.

Section 16. — Water Supply to Governmental Organizations and Payments to Municipalities. (22 L.P.R.A. § 155)

The Authority shall not be required to make any payment to municipalities in lieu of taxes but the same shall continue to be governed by Act No. 470 approved May 15, 1947. [22 L.P.R.A. § 162]. Act No. 353, approved April 17, 1946, is hereby expressly repealed effective May 15, 1947.

Section 17. — Agreement of Commonwealth Government. (22 L.P.R.A. § 156)

The Commonwealth Government does hereby pledge to, and agree with, any person or persons subscribing to or acquiring bonds of the Authority that it will not limit or alter the rights or powers hereby vested in the Authority so as to impair the rights of the bondholders until all such bonds at any time issued, together with the interest thereon, are fully met and discharged.

Section 18. — Rates and Charges. (22 L.P.R.A. § 157)

The Board shall fix and from time to time shall revise the rates and charges to be collected for the commodities, services and facilities furnished by the Authority. Said rates and charges shall be just and reasonable. Said rates and charges shall be fixed and revised so as to provide funds at all times sufficient:

- (a) To pay the cost of maintaining, repairing and operating the Commonwealth Water System and the Commonwealth Sewer System, including reserves for such purposes, and for replacement and depreciation;
- (b) to pay the principal of and the interest on revenue bonds issued under the provisions of this Act as the same shall become due, and reserves therefor, and
- (c) to provide a margin of safety for making such payments.

The rates for water and sewerage service respectively shall be sufficient to cover the expenses necessary or properly attributable to the furnishing of the class of services for which said charges are made; Provided, however, That the Board may fix rates and charges for the services and facilities of the Commonwealth Water System sufficient to pay all or any of the cost of operating and maintaining the Commonwealth Sewer System and all or any of the principal of and the interest upon revenue bonds issued on account of such system, and to pledge for such purposes any surplus revenues of the Commonwealth Water System, subject to prior pledges thereof.

No change shall be made in said rates and charges, except for a temporary period or in cases of emergency, unless upon public hearing after publication of reasonable advanced notice of the time and place of said public hearing and of the charges and rates or changes in rates which will be considered for adoption.

The Authority shall render no free services. The charges for services rendered to the Government of Puerto Rico and to its municipalities (including the Government of the Capital) shall be deemed to be ordinary expenses of the Government of Puerto Rico and shall be paid from appropriations which shall be made for such purposes. In the event that no appropriation shall have been made in any fiscal year, then the funds to pay the cost of the services rendered shall be in the nature of a continuous appropriation. Such payments shall be made in accordance with the statutory provisions regulating the disbursement of public funds. As a safeguard for the holders of the bonds of the Authority, the good faith of the Government of Puerto Rico is hereby irrevocably pledged for the payment to the Authority of any obligation incurred or assumed by the Government of Puerto Rico for services rendered by the said Authority.

Section 19. — Rules and Regulations; Penalties. (22 L.P.R.A. § 158)

The Authority is hereby directed to make, amend and rescind, as it may deem necessary, rules and regulations concerning the use and conservation of water, disposal of sewage, the care and maintenance and protection of the facilities that are used or usable in the supply, distribution, consumption or use of water and disposal of sewage to the end that the purpose for which the Authority is created be attained, that the health of the inhabitants of the Island of Puerto Rico shall be protected, that the water available shall be utilized in the fullest measure possible and that it shall be made available to consumers with the greatest possible regularity and continuity. Such rules and regulations shall have the force of law and violation thereof shall be deemed to be a violation of this Act.

The Executive Director or his duly authorized representatives shall have access, when the circumstances require it, to any building or place, and the right to inspect the same to investigate whether or not violations of said rules and regulations are being or have been committed thereon, or for the purpose of correcting any deficiency which affects the service.

Any equipment, property, apparatus or thing which exists or is maintained in violation of the rules and regulations duly promulgated shall be deemed a public nuisance. In the event of the refusal of the owner, agent or tenant of any property where such a nuisance exists to remove or abate the same within a reasonable time after proper notification, the Authority is hereby authorized and empowered to remove or abate the nuisance at the expense of said owner, agent or tenant.

The owner, tenant or occupant of each lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer or which may be served by any sewage disposal system of the Authority and upon which lot or parcel a building for residential, commercial or industrial use shall exist, if so required by the rules and regulations of the Authority or by resolution, shall connect such building to such sanitary sewer, and shall cease to use any other method for the disposal of sewage, sewage waste, or other polluting matter; Provided, however, That the owner, tenant or occupant of any such lot or parcel having a method for the disposal of sewage, sewage waste and other polluting matter constructed and operated in accordance with standards prescribed or approved by the Secretary of Health as not detrimental to the public health shall not be required to make such connection. All such connections shall be made in accordance with such rules and regulations as may be adopted from time to time by the Authority.

Any person who violates or procures the violation of any of the provisions of this Act or of the rules or regulations issued hereunder shall be guilty of a misdemeanor.

Section 20. — Reports. (22 L.P.R.A. § 159)

The Authority shall submit to the Legislature and to the Governor, not later than six months after the close of the fiscal year, a financial statement of accounts and a complete report of the business and operations of the Authority during the fiscal year. The term herein provided shall not apply to the reports required by Section 3 of this Act.

Section 21. — Previous Legislation Repealed; Inconsistent Provisions of Other Acts Superseded. (22 L.P.R.A. § 160)

The following acts and resolutions are hereby repealed: Joint Resolution No. 28, approved April 25, 1929; Act No. 51, approved May 1, 1936; Act No. 256, approved May 15, 1938; Act No. 16, approved November 21, 1941; Act No. 39, approved November 21, 1941; and Act No. 29, approved April 13, 1942. In cases where the provisions of this Act are inconsistent with the provisions of any other act of the Legislature of Puerto Rico, the provisions of this Act shall be controlling and no law enacted governing the Administration of the Commonwealth Government or any parts, offices, bureaus, departments, commissions, dependencies, municipalities, branches, agents, officers or employees thereof shall be construed to apply to the Authority unless so specifically provided, but the affairs and business of the Authority shall be administered as provided herein; Provided, That notwithstanding the foregoing provision, the provisions of Act No. 213, approved May 12, 1942, as amended, Act No. 272 of May 15, 1945, as amended, [7 L.P.R.A. §§ 581--595], and Act No. 345 of May 12, 1947, as amended (except as the Board shall from time to time determine otherwise) shall be applicable to the Authority.

Section 22. — Separability of Provisions. (22 L.P.R.A. § 141 note)

If any provisions of this Act or the application of such provisions to any person or circumstance shall be held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it shall have been held invalid shall not be affected thereby.

Section 23. — All laws or parts or laws in conflict herewith are hereby repealed.

Section 24. — This Act, being of an urgent character, 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.