

“Puerto Rico Ports Authority Act”

Act No. 125 of May 7, 1942, as amended,

(Contains amendments incorporated by
Act No. 435 of April 25, 1946
Act No. 27 of April 21, 1948
Act No. 463 of May 14, 1952
Act No. 464 of May 14, 1952
Act No. 74 of June 13, 1953
Act No. 17 of April 19, 1955
Act No. 85 of June 26, 1959
Act No. 55 of May 22, 1968
Act No. 47 of May 22, 1968
Act No. 31 of June 18, 1971
Act No. 46 of June 4, 1982
Act No. 65 of August 17, 1989
Act No. 33 of August 9, 1990
Act No. 28 of July 26, 1991
Act No. 29 of July 26, 1991
Act No. 243 of August 14, 1998
Act No. 128 of May 15, 2003)

Be it enacted by the Legislature of Puerto Rico :

Section 1. — [Short title] (23 L.P.R.A. § 331)

This Act shall be known as the Puerto Rico Ports Authority Act.

Section 2. — Definitions. (22 L.P.R.A. § 332)

The following terms, wherever used or referred to in this Act shall have the following meanings except where the context clearly indicates otherwise:

- (a) *Authority*. — Means the Puerto Rico Ports Authority created by this Act.
- (b) *Bonds*. — Means the bonds, temporary bonds, refunding bonds, debentures, notes, provisional or interim bonds, receipts, certificates, or other evidences of indebtedness or obligations which the Authority is authorized to issue pursuant to this Act, but shall not include the debts or accounts incurred in the usual course of business for expenses of the Authority.
- (c) *Executive Director*. — Shall mean the Executive Director of the Authority.
- (d) *Board or Board of Directors*. — Shall mean the Board of Directors of the Authority.
- (e) *Undertaking*. — Means any piece or pieces of property, or combination thereof, whether real, personal or mixed, owned, operated, managed, controlled or used by the Authority, or intended

to be so owned, operated, managed, controlled or used, in connection with any of its activities, including, but without limitation, any system or systems, ships and aircrafts, offices, equipment, supplies, fuel, energy, services, facilities, structures, plants, vehicles and rolling stock, together with all parts and appurtenances thereof, that are or may be used, useful or convenient in conducting any of the activities or services usually performed by public carriers and shipping and aircraft enterprises devoted to the transportation of persons or cargo or activities or services auxiliary or supplemental thereto.

The word "undertaking" shall also mean air and marine terminals as hereinafter defined:

- (1) Air terminal. Shall mean a development consisting of runways, hangars, control towers, ramps, quays, bulkheads, buildings, structures, parking areas, improvements, facilities, or other real property necessary, suitable, or desirable for the landing, taking off, accommodation, and servicing of aircraft of all types, including airplanes, dirigibles, helicopters, gliders, amphibians, seaplanes, or any other contrivance now or hereafter used for the navigation of or for the flight in space, operated by public carriers engaged in the transportation of passengers or cargo; or for the loading, unloading, interchange or transfer of such passengers or their baggage or of such cargo; or otherwise for the accommodation, use or convenience of such passengers, or of the said carriers or their employees, or of persons visiting the airport; or for the landing, taking off, accommodation, and servicing of aircraft owned or operated by persons other than carriers.
- (2) Marine terminals. Means developments consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargo and passengers.
- (f) *Federal agency*. — Means the United States of America, the President or any department thereof, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.
- (g) *Holder of bonds or bondholder or any similar term*. — Means any person who is 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 the time are registered other than to bearer.
- (h) Words importing the singular number include the plural number and vice versa, and words importing persons shall include firms, partnerships of all kinds and corporations.
- (i) *Emergency*. — Shall mean a situation which involves nondeferrable, unexpected, and unforeseen public needs that are caused by tragic and unfortunate events or circumstances beyond human control, which require immediate action because the life or health of one or more than one person is in danger, because public property is in danger of being damaged or lost or because public services could be suspended or adversely affected. Said situation must be established through a resolution approved by the Board of Directors of the Authority indicating the nature of said emergency and providing evidence thereof.

Section 3. — Creation of Puerto Rico Ports Authority. (23 L.P.R.A. § 333)

- (a) A body corporate and politic is hereby created constituting a public corporation and government instrumentality of the Commonwealth of Puerto Rico, with the name of the Puerto Rico Ports Authority. The Puerto Rico Ports Authority shall be the successor of the Puerto Rico

Transportation Authority for all effects, including, but without it being understood as a limitation, the collection and payment of debts and obligations pursuant to the terms thereof.

(b) The Authority which is created hereby is and should be a government instrumentality and public corporation with a legal existence and personality separate and apart from those of the Government and any officials thereof. The debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, undertakings and properties of the Authority, its officers, agents or employees, shall be deemed to be those of said government controlled corporation, and not those of the Commonwealth of Puerto Rico, or any office, bureau, department, commission, dependency, municipality, branch, agent, officials or employees thereof.

Section 4. — Executive Powers. (23 L.P.R.A. § 334)

The Ports Authority shall be governed by a Board of Directors composed of the Secretary of Transportation and Public Works, the Economic Development Administrator, the Secretary of Commerce, the Executive Director of the Tourism Company and one private citizen representing the public interest. The latter shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years, and until his successor is designated. Subject to prior filing of charges, notice and hearing, the Governor may remove the representative of the public interest from office for negligence in the performance of his/her duties, conviction of a felony or a misdemeanor that implies moral turpitude, repeated and unjustified absences from Board meetings, conflicts of interest or total and permanent disability to perform the functions of the office. A vacancy of the member representing the public interest that arises before the term expires, shall be filled through a new appointment for the unexpired term. The Governor shall fill the vacancy of the member representing the public interest within a period that shall not exceed sixty (60) days, after it has occurred. A majority of the members of the Board of Directors shall constitute a quorum for all purposes and its agreements shall be by a majority of those present.

The member of the Board that represents the public interest shall be entitled to receive compensation of fifty dollars (\$50) per day, or fraction thereof, that he attends a duly summoned meeting.

The Secretary of Transportation and Public Works shall be the Chairperson of the Board. The Board of Directors shall elect the other officers that it deems are needed from among its members. It shall meet at least once a month in a regular meeting, and may meet as many times as it deems pertinent in special meetings upon prior summons by the Chairperson.

In exceptional cases or those of force majeure, the Economic Development Administrator, the Secretary of Commerce and the Executive Director of the Tourism Company may delegate their representation on the Sub-Administrator of Economic Development, the Under-Secretary of Commerce and the Sub-Director of the Tourism Company, respectively. In no case should the absences of the agency chiefs who compose the Board exceed four (4) times a year.

Provided That, no person who has an indirect or direct economic interest in any private industry engaged in the transportation business or in any business whose primary activities are auxiliary to the same, may hold office as a Board member. When such incompatibility affects a Board member other than the representative of the public interest, the vacancy so created shall be filled for the duration of such incompatibility, by the official that is next in hierarchy in that

agency. The above shall not constitute a limitation to the Governor's power to remove the public interest representative from office, subject to the causes established in this section.

The Board created by virtue of this Act shall have, without its being construed as a limitation, the following duties and faculties:

- (a) To establish the general policy to comply with the objectives of this Act.
- (b) To authorize the Authority's annual working plan and budget.
- (c) To appoint the Authority's Executive Director, establish his/her duties in harmony with what is provided by this Act, and fix his/her compensation.
- (d) To adopt and approve regulations that govern its internal operation, as well as those that are needed to carry out the faculties and powers that have been conferred to it by this Act.
- (e) To require any reports and statistical data that it deems necessary from the Executive Director or any other official or employee of the Authority.
- (f) Delegate on the Executive Director whatever powers and faculties are needed to carry out the objectives provided by this Act.
- (g) To perform any act that is convenient or necessary in order to carry out the objectives provided in this Act.

Section 5. — Executive Director. (23 L.P.R.A. § 335)

The Authority shall operate under the direction of an Executive Director who shall be appointed by the Board and shall hold office at the will of the latter. His/her functions shall be the following, without being limited thereto:

- (a) To be the Authority's chief executive officer.
- (b) To prepare and present the Authority's annual working plan and budget to the Board of Directors.
- (c) To authorize and supervise every contract that is needed for the Authority's operation, subject to the norms established by the Board.
- (d) To attend all Board meetings, but shall not be entitled to vote.
- (e) To establish, organize, direct and supervise the Authority's administrative structure.
- (f) To establish the functional levels of the Authority's operations, including the power to recruit and contract any of the officers and employees under his/her supervision, subject to the norms that the Board may establish.
- (g) To carry out all functions that are assigned to him/her by the Board.

Section 6. — Powers of the Authority. (23 L.P.R.A. § 336)

The purposes of the Authority shall be to develop and improve, own, operate, and manage any and all types of air and marine transportation facilities and services, as well as to establish and manage mass marine transportation systems in, to and from the Commonwealth of Puerto Rico on its own, or in coordination with other government, corporate or municipal entities, and make available the benefits thereof in the most extensive and least costly manner, thereby promoting the general welfare and increasing commerce and prosperity; and the Authority is granted, and shall have and may exercise all rights and powers that are necessary or convenient to carry out the aforesaid purposes, including the following, but not without limiting the generality of the foregoing:

- (a) To have perpetual existence as a corporation.
- (b) To adopt, alter, and use a corporate seal, which shall be judicially noticed.
- (c) 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.
- (d) To have complete control and supervision of any undertaking constructed or acquired by it 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 without regard to the provisions of any laws governing the expenditure of public funds, and such determination shall be final and conclusive upon all officers of the Commonwealth of Puerto Rico, and to prescribe, adopt, amend, and repeal such rules and regulations as may be necessary or proper for the exercise and performance of its powers and duties or to govern the rendering, sale, or exchange of transportation service or facilities.
- (e) To sue and be sued.
- (f) To make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers.
- (g) To prepare, or cause to be prepared, plans, designs, and estimates of costs for the construction, reconstruction, extension, improvement, enlargement, or repair of any undertaking or any part or parts thereof, and from time to time to modify such plans, designs, or estimates.
- (h) To acquire in any lawful manner including, but without limitation, acquisition by purchase, whether by agreement or by the exercise of the power of eminent domain, lease, bequest, devise, gift, and to hold, maintain, use and operate any undertaking or part or parts thereof.
- (i) To acquire in the manner set forth in subsection (h) hereof, produce, develop, manufacture, hold, conserve, use, distribute, supply, exchange, sell, rent and otherwise dispose of any and all equipment, supplies, services, goods, and such other property real and personal as the Authority shall deem necessary, proper, incidental, or convenient in connection with its activities.
- (j) To acquire in the manner set forth in subsection (h) of this section hereof and to hold and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, deemed by it to be necessary or convenient for carrying out the purposes of the Authority, and (subject to the limitations contained in this Act) to lease as lessor, or exchange, any property or interest therein at any time acquired by it.
- (k) To construct, reconstruct, and operate any undertaking or any part or parts thereof, and any additions, improvements, and extensions to any undertaking of the Authority by contract or contracts, or under, through, or by means of its own officers, agents, and employees.
- (l)
 - (1) To determine, fix, alter, impose and collect rates, fees, rents and other charges for the use of the facilities or services of the Authority, or other commodities sold, rendered, or furnished by the Authority, which shall be fair and reasonable. Said rates, fees, rents and other charges, shall be sufficient, at least to:
 - (A) Cover the expenses incurred by the Authority for the preservation, development, improvement, extension, repair, conservation and operation of its installations, facilities, properties and services;
 - (B) pay principal and interests on any of the Authority's bonds and to comply with the terms and provisions of the agreements made with, or for the benefit of the purchasers or holders of said bonds, and

(C) encourage the use of the Authority's facilities and services in the most ample and varied manner that is financially feasible.

The Board may make changes to the general rate structure and if it deems that their immediate effectiveness is necessary in case of a temporary or emergency increase, it will file the rate regulations at the Department of State in accordance with the provisions of Act No. 170 of August 12, 1988 [3 L.P.R.A. §§ 2101 et seq.] and will hold a hearing within thirty (30) days of their filing.

(2) To determine, fix, alter, impose and collect rates, fees, rentals and other charges for the use of the facilities owned and the services in the International Airport and the other airports owned and operated by the Ports Authority, as well as the maritime and port facilities owned or operated by the Authority, all the standards established in subsection (I) (1) of this Section shall be met. Without it being construed as a limitation of said standards, the following criteria shall be also be followed as discretionary guidelines which can be used to determine the reasonability of said rates, fees, rentals and other charges:

(A) Any fee or charge on aviation fuel which the Authority may receive shall not be taken into account for the purpose of compensating the expenses thus producing some kind of reduction in the rates, fees, rentals and other charges that the users should pay to the airports.

(B) The income of the Authority by reason of a grant, lease or other similar service in the airports shall not be taken into account for the purpose of compensating the expenses thus producing some reduction in the rates, fees, rentals and other charges that the users thereof must pay.

(C) Through the general structure of rates, fees, rentals and other charges, the Authority shall recover:

(i) A reasonable portion of the expenses of the Central Office of the Authority, after deducting the reasonable proportion that may correspond to the Isla Grande Division.

(ii) The expenses of the Aviation Department of the Authority, including the management, operation and maintenance expenses.

(iii) The interest on the total of the investment of the Commonwealth of Puerto Rico and of the Authority, including both the depreciable assets and nondepreciable assets.

(iv) Charges for depreciation on all depreciable assets existing in airports as a result of the investments made therein by the Commonwealth of Puerto Rico and by the Authority.

(D) In the landing strips, in the passenger and freight terminals and in the other facilities of each airport there shall be established divisions and subdivisions separated from costs for the purpose of determining what should reasonably be collected for the use of the facilities or services of each one of said divisions and subdivisions.

(E) Upon fixing rates and other charges at passenger terminals, the costs of the waiting and public circulation space shall be distributed among the lessees who occupy the rentable area.

(F) Upon fixing rentals and other charges in the passenger terminals the costs of the baggage-claim area and adjacent areas for baggage cars shall be distributed exclusively among the airlines using said areas.

(G) Upon fixing the rates and other charges for the use of landing strips there shall be used as a unit of measurement the maximum gross weight authorized to the airplane for the taking off, and there shall not be granted deduction for quantity.

(H) Upon fixing the rates and other charges for the use of landing strips as concerns air carriers operating in Puerto Rico or between Puerto Rico and the Virgin Islands showing higher operation costs or a capacity to pay less than those carriers operating between Puerto Rico and the Continental United States or between Puerto Rico and foreign countries, there shall be established a reasonable differential for the "local" flights, that is, flights to points located in Puerto Rico and in the Virgin Islands, so that for said flights the rates, fees and charges be proportionally lower than the rates, fees and charges applicable to flights to the Continental United States or foreign countries.

(I) Through the general structure of rates, fees, rentals and other charges, the Authority shall recover any other increases as may be necessary or convenient to allow or facilitate the issuance of the bonds that the Authority may from time to time determine to authorize, issue, sell or have in circulation in accordance with the provisions of this Act.

(J) Upon fixing the rentals and other charges that the Authority shall impose upon, and collect from the users who are not air carriers, there shall be taken into consideration that such users must pay such rates, fees, rentals and other charges so as to render the maximum economic yield to the Ports Authority.

(3) The Authority's administrative procedures shall be governed by Act No. 170 of August 12, 1988 [3 L.P.R.A. §§ 2101 et seq.], and by the regulations adopted by the Board thereunder.

(m) To appoint such officers, agents, and employees and vest them with such powers and duties, and to fix, change, and pay such compensation for their services as the Authority may determine.

(n) To borrow money, make and issue bonds of the Authority for any of its corporate purposes or for the purpose of financing, refinancing, paying or discharging any of the outstanding or assumed bonds or obligations and to secure payment of its bonds and of any and all other obligations by pledge or mortgage of any other lien on all or any of its contracts, revenues, income or property.

(o) To make and issue bonds for the purpose of funding, refunding, purchasing, paying, or discharging any of the outstanding bonds or obligations issued or assumed by it or any bonds or obligations the principal or interest of which is payable in whole or in part from its revenues.

(p) To accept grants from, and enter into contracts, leases, agreements, or other transactions with, any federal agency, the Commonwealth of Puerto Rico, or political subdivisions of the Commonwealth of Puerto Rico, and to expend the proceeds of any such grants for any corporate purposes.

(q) To sell, or otherwise dispose of any real, personal or mixed property or any interest thereon, that in the judgment of the Board is no longer needed for the Authority's business or to carry out the purposes of this Act.

(r) 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, or examinations.

(s) To acquire, hold and dispose of stock, membership rights, contracts, bonds or other interest in other corporations and to exercise any and all powers and rights related to them and obtain the organization in accordance with the law and exercise partial or complete control over subsidiary, affiliated or associate corporations provided that, in the Board's opinion, such an arrangement is

necessary, appropriate or convenient to carry out the purposes of the Authority or the exercise of its powers; and sell, lease, donate or otherwise grant any of the Authority's property, or delegate or transfer any of its rights, powers, functions or duties to any of these corporations that are subject to its control. The aforementioned power to delegate or transfer shall not be extended to the right to expropriate or fix rates which must be exercised directly by the Authority.

(t) All grants of franchises, rights and privileges of public or quasi-public nature to public carriers of persons or property made by the Public Service Commission shall contain provisions requiring the grantee thereof to comply with the regulations of the Authority and providing for the termination of said franchise upon failure so to comply.

(u) The Authority shall obtain, by electronic or manual means, the necessary statistical data regarding the number of travelers, expenses incurred, satisfaction and interests of same, among others, from the air and marine transport companies that use its facilities, to develop a data base for effective planning and marketing of tourism activities, and such data shall be confidential in nature, and the detailed, aggregated figures shall be available to students, universities, press, government agencies, and the tourism businesses that supply same, as well as to potential investors, with prior request submitted to the Authority. This provision shall not diminish the powers granted to other agencies, dependencies, or instrumentalities of the Commonwealth of Puerto Rico that handle matters of this same sort.

The Authority shall approve a regulation to ensure compliance with this subsection within a term of ninety (90) days after the approval of this act.

(v) To do all acts or things necessary or convenient to carry out the powers granted to it by Sections 1 to 22 of this Act or by any other act of the Legislature of Puerto Rico, or by any act of the Congress of the United States; Provided, however, That 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 political subdivisions, nor shall the Commonwealth of Puerto Rico or any of its political subdivisions be liable for the payment of the principal or of interest on any bonds issued by the Authority.

Section 7. — Officers and Employees. (23 L.P.R.A. § 337)

(a) Appointments, removals, promotions, transfers, terminations, reinstatements, layoffs, leaves and changes in position, compensation or title of the officers and employees of the Authority will be made and allowed as provided by the norms and regulations prescribed by the Board, which must be in conformity with the merit principles established in Act No. 5 of October 14, 1975, known as the Public Service Personnel Act of Puerto Rico. The Executive Director and the Authority's officers and employees shall be entitled to reimbursement of necessary travel expenses, or in lieu of them, to the corresponding per diem as authorized or approved in accordance with the regulations adopted by the Board for the Authority. The officials and employees of any board, commission, agency or department of the Commonwealth of Puerto Rico who are appointed by the Authority and who prior to such an appointment were beneficiaries of any savings and loan fund system, shall continue to have after such appointment, the rights, privileges, obligations and status, with respect thereto that are prescribed by law for the officers and employees who hold similar positions in the Government of the Commonwealth of Puerto Rico, unless within a term of six (6) months after such an appointment said officers and employees or any of them, indicate an intention to relinquish them.

(b) No person who has a direct or indirect economic interest in any private industry engaged in the transportation business, or any business whose principal activities are auxiliary to it, shall hold office as an officer, employee or agent of the Authority.

Section 8. — Moneys and Accounts of the Authority. (23 L.P.R.A. § 338)

All monies of the Authority shall be deposited in qualified depositories for funds of the Government of the Commonwealth of Puerto Rico, but they shall be kept in a separate account or accounts registered in the name of the Authority. The disbursements shall be made by it pursuant to the regulations and budgets approved by the Board.

The Secretary of the Treasury, in consultation with the Authority, shall establish the accounting system that is required for the adequate statistical control and registration of all expenses and income belonging to, or managed or controlled by the Authority. The Secretary of the Treasury shall require that the Authority's accounts be kept in such a manner that the accounts related to the different types of operations, projects, enterprises and activities of the Authority can be appropriately segregated insofar as it is advisable. The Controller of Puerto Rico or his/her representative shall examine the Authority's accounts and books every three (3) years or in shorter periods when it is deemed necessary, including its income, disbursements, contracts, leases, sinking funds, investments and any other matters related to its economic situation and shall render a report thereof to the Board, the Governor of Puerto Rico and the Legislature.

Section 9. — Acquisition of Property by the Commonwealth for the Authority. (23 L.P.R.A. § 339)

By request of the Authority, the Governor of Puerto Rico or the Department of Transportation and Public Works through its Secretary, shall have the power to purchase in the name or on behalf of the Commonwealth of Puerto Rico any property title or interest thereon that the Board deems necessary and convenient for its purposes, either by agreement or by the exercise of the right to eminent domain, or by any other legal means. The authority may make available to said officers the funds that are needed to pay for said property in advance, and once it has been acquired it may reimburse the Government of the Commonwealth for any amount paid that was not previously delivered. Upon such reimbursement to the Commonwealth Government, (or within a reasonable time as determined by the Governor if the total cost or price has been previously advanced by the Authority), the title to the property so acquired will pass to the Authority. The Secretary of Transportation and Public Works, with the Governor's approval, may make those arrangements that he/she deems appropriate for the exploitation and control of said property by the Authority in benefit of the Commonwealth Government during the period that elapses before said title passes to the Authority. The power conferred hereby will not limit nor restrict in any manner or to any extent the power of the Authority itself to acquire property. The title of any property of the Commonwealth of Puerto Rico previously acquired or to be acquired in the future, and deemed necessary or convenient for the purposes of the Authority, may be transferred to it by the officer in charge or having custody of said property, under the terms and conditions to be fixed by the Governor of Puerto Rico.

Section 9-A. — Taking Possession of Property in Condemnation Proceedings. (23 L.P.R.A. § 339a)

When in the judgment of the Authority it be necessary to take immediate possession of the properties which are to be condemned, the Authority shall request from the Governor of Puerto Rico who, in behalf of the Commonwealth of Puerto Rico, acquires, and the latter shall have power to acquire by purchase, condemnation or by any other lawful means for the use and benefit of the Authority, the properties and real rights necessary and convenient to carry out the purposes and aims thereof. The Authority shall place in advance, at the disposal of the Commonwealth of Puerto Rico, the necessary funds that may be estimated as the value of the properties or of the rights to be acquired. The difference in value that the court may decree may be paid from the Commonwealth Treasury, but the Authority shall be under the obligation to reimburse said difference. After the totality of the reimbursement has been made the title of said property shall be transferred to the Authority by order of the court, by record substantiated to the effect, it being provided that in such cases where the Governor of the Commonwealth of Puerto Rico deems necessary and convenient that the property title and/or right so acquired should be recorded directly in behalf of the Authority to accelerate the fulfillment of the purposes and aims for which it was created, he may so request from the court at any time within the condemnation proceedings and is so ordered by the latter. In such cases, the registrar of property shall preferably proceed to make the recording of the property title or rights in question in behalf of the Puerto Rico Ports Authority, upon presenting for recording the pertinent instrument. The power hereby conferred, shall not limit, or restrict in any manner the power of the Authority itself to acquire property.

All personal and real properties and any right or interest thereon that the Authority deems necessary to acquire to carry out its purposes are hereby declared of public utility and same may be condemned by the Authority or at its request and for the use and benefit of the latter by the Commonwealth of Puerto Rico, represented by its Governor, without the previous declaration of public utility provided in Section 2 of the Eminent Domain General Act [32 L.P.R.A. sec. 2902]

Section 10. — Grant of Property by Municipalities and Political Subdivisions to the Authority. (23 L.P.R.A. § 340)

All municipalities and political subdivisions of Puerto Rico, notwithstanding any contrary provision of law, are authorized to grant and convey to the Authority, upon its request and upon reasonable terms and conditions, any property or interest therein (including property already devoted to public use) which the Authority may deem necessary or convenient to effectuate the purposes of the Authority. The Authority shall have the right and power to construct or place any part or parts of any of its undertakings across, in, over, under, through or along any street, public highway, or any lands which are now or may hereafter be the property of the Commonwealth Government or any municipality or political subdivision thereof, without obtaining any franchise or other permit therefor. The Authority shall restore any such street, highway, or lands, as nearly as may be, to their condition or state at the beginning of the work, and shall not use the same in a manner to impair unnecessarily their usefulness.

Section 11. — Construction and Purchase Contracts. (23 L.P.R.A. § 341)

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 after an advertisement for bids is issued sufficiently in advance of the opening of bids, so that the Authority may secure proper notice and opportunity for competition; Provided, That when the sum estimated for the purchase does not exceed ten thousand dollars (\$10,000), and when the value of the construction work does not exceed twenty-five thousand dollars (\$25,000), the aforesaid may be carried out without advertisement for bids. For purchases whose value fluctuates between one thousand [dollars] (\$1,000) and ten thousand dollars (\$10,000) and when the value of the construction work does not exceed twenty-five thousand dollars (\$25,000), the Authority shall solicit quotations from at least three (3) supply sources. On the other hand, neither advertisements for bids nor requests for quotations shall be required:

- (1) When immediate delivery of the materials, supplies and equipment, or performance of services or construction works are required, due to an emergency, as said term is defined in this Act;
- (2) when spare parts, accessories or supplementary equipment or services are required for supplies or services previously furnished or contracted;
- (3) when professional or expert services or work [is] required and the Authority deems that in the best interests of a good administration said services or works be contracted without said advertisements; or
- (4) when prices are non-competitive because there is only one source of supply or because they are regulated by law, or
- (5) when the Authority has called for two bids with identical specifications, terms and conditions within a six (6) month period from the opening date of the first, provided that no one participated in said bidding. In such cases, the purchase of materials, supplies, equipment or the procurement of such services may be made in the open market following the usual commercial practices. When comparing bids and granting awards, due consideration shall be given to such factors (in addition to whether the bidder has complied with the specifications) as the lowest price; the capacity of the bidder to perform construction work of the kind involved in the contract under consideration; the relative quality and adaptability of the materials, supplies and equipment used or the services provided; the financial responsibility of the bidder and skills, experience, and reputation for his/her integrity in doing business, and the capacity for providing repair and maintenance services; as well as the time of delivery and performance offered. The Authority may prescribe regulations for submitting bids.

Section 12. — Bonds of the Authority. (23 L.P.R.A. § 342)

- (a) By authority of the Government of Puerto Rico, granted hereby, the Puerto Rico Ports Authority may from time to time issue and sell its own bonds and have them outstanding.
- (b) The bonds may be authorized by resolution or resolutions of the Board approved by a majority vote of the members thereof and may be of such series, may bear such date or dates, may mature at such time or times not exceeding fifty (50) years from their respective dates; may bear interest at such rate or rates not exceeding the maximum rate allowed by the law at the time, may be in such denomination or denominations, may be in such form either coupon or registered;

may bear such registration or conversion privileges, may be executed in such manner, may be payable in such medium of payment and at such place or places; may be subject to such terms of redemption, with or without premium, may be declared due or become due at such time before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the Authority shall determine; Provided, That refunding bonds may be exchanged for outstanding bonds of the Authority on such terms as the Board may deem to be in the best interests of the Authority. Notwithstanding the form and tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds of the Authority shall at all times be, and shall be understood to be, negotiable instruments for all purposes.

(c) The bonds of the Authority bearing the signature of the officers of the Authority in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the officers whose signatures or facsimile signatures appear thereon shall have ceased to be such officers of the Authority. The validity of the authorization and issuance of the bonds shall not be dependent on or affected in any way by any proceedings relating to the construction, acquisition, extension, or improvement of the undertaking for which the bonds are issued, or by any contracts made in connection with such undertaking. Any resolution authorizing the bonds may provide that any such bond may contain a recital that it is issued pursuant to this Act, and any bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this Act.

(d) Pending the execution and delivery of definitive bonds, temporary or interim bonds, receipts or certificates may be issued in such form and with such provisions, as may be provided in such resolution or resolutions.

(e) Any resolution or resolutions authorizing any bonds may contain provisions, which shall be a part of the contract with the holders of the bonds:

- (1) 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;
- (2) as to the rates to be charged, and the application, use, and disposition of the amounts that may be raised by the collection of such rates and from other receipts of the Authority;
- (3) as to the setting aside of reserves for amortization funds, and the regulation and disposition thereof;
- (4) as to limitations on the right of the Authority to restrict and regulate the use of any undertaking or part thereof;
- (5) as to limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;
- (6) as to limitations on the issuance of additional bonds;
- (7) as to the procedure by which the terms of any resolution authorizing bonds or any other contract with the bondholders may be amended or abrogated, and the amount of the bonds the holders of which must consent thereto, and the manner in which such consent may be given;

- (8) as to the amount and kind of insurance to be maintained on the undertakings of the Authority, and the use and disposition of insurance monies;
 - (9) 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;
 - (10) 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;
 - (11) as to the rights, liabilities, powers and duties arising upon the breach by the Authority of any of its covenants, conditions, or obligations;
 - (12) as to the investing a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the bonds; as to the powers and duties of each trustee or trustees, 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 covenants made under this Act or duties imposed hereby;
 - (13) as to the manner of collecting the rates, fees, rentals, or other charges for the services, facilities, or commodities of undertakings of the Authority, and the combining in one bill of the rates, fees, rentals, or other charges for the services, facilities, or commodities of any two or more of such undertakings;
 - (14) as to the discontinuance of the services, facilities, or commodities of any undertaking of the Authority, in the event that the rates, fees, rentals, or other charges for the services, facilities, or commodities of such undertaking are not paid, and
 - (15) 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.
- (f) Neither the members of the Authority nor the Economic Development Administrator, nor any person executing the bonds shall be liable personally on the bonds.
- (g) The Authority is authorized to purchase any outstanding bonds issued or assumed by it with any funds available therefor, at a price not more than the principal amount or the current redemption price thereof and the accrued interest.

Section 13. — Right to Receivership Upon Default. (23 L.P.R.A. § 343)

- (a) In the event that the Authority shall default in the payment of the principal of, or interest on, any of its bonds after the same shall become due, whether it be a default in the payment of principal and interest or in the payment of interest only at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the Authority or the officers, agents, or employees thereof 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 in an appropriate judicial proceeding to any court of competent jurisdiction in Puerto Rico for the appointment of a receiver of the undertakings, or parts thereof, the income or revenues of which are pledged to the payment of the bonds so in default, whether or not all the bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right or to exercise any remedy in connection with such bonds. Upon such application the court may appoint, and if the application is made by the holders of twenty-

five percent (25%) 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 such undertakings.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of such undertakings and each and every part thereof, and may exclude the Authority, its 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 such undertakings as the Authority itself might do. Such receiver shall maintain, restore, insure, and keep insured, such undertakings and from time to time shall make all such necessary or proper repairs as such receiver may deem expedient, shall establish, levy, maintain, and collect such rates, fees, rentals, and other charges in connection with such undertakings 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 manners as the court shall direct.

(c) Whenever all that is due upon the bonds, and interest thereon, and upon any other notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of such undertakings and under any of the terms of any covenants or agreements with bondholders 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 may, in its discretion and after such notice and public hearing as it deems advisable and proper, direct the receiver to surrender possession of such undertakings to the Authority, the same right 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 specifically 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 such undertakings, but the powers of any such receiver shall be limited to the operation and maintenance of such undertakings, and the collection and application of the income and revenues therefrom, 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 such assets.

Section 14. — Remedies of Bondholders. (23 L.P.R.A. § 344)

(a) 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 therefor, 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 process of law or equity to enforce their rights against the Authority and the Board, their officers, agents and employees to perform and carry out their duties and obligations under this Act, as well as their agreements and contracts with the bondholders;

(2) by action or suit in equity, require that the Board and the Authority assume responsibility as if they were the trustees of an express trust;

(3) by action or suit in equity to enjoin any acts 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. No waiver of any default or breach of duty or contract, whether by any holder of the bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of the bonds, may be enforced or exercised from time to time and as often as may be deemed expedient. In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every such case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

Section 15. — Reports. (23 L.P.R.A. § 345)

The Authority shall submit to the Legislature and to the Governor of Puerto Rico, as soon as practicable after the close of each fiscal year of the Commonwealth Government but prior to the end of the calendar year: (1) a financial statement and complete report of the business of the Authority for the preceding fiscal year, and (2) a complete report on the status and progress of all its undertakings and activities since the creation of the Authority or the date of its last such report. The Authority shall also submit to the Legislature and to the Governor of Puerto Rico, at such other times as may be required, official reports of its business and activities under this Act.

Section 16. — Commonwealth and Political Subdivisions Not Liable on Bonds. (23 L.P.R.A. § 346)

The bonds and other obligations issued by the Authority shall not be a debt of the Commonwealth of Puerto Rico or any of its municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any such municipalities or other political subdivisions shall be liable thereon, nor shall such bonds or other obligations be payable out of any funds other than those of the Authority.

Section 17. — Bonds Legal Investments and Security for Deposits. (23 L.P.R.A. § 347)

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

Section 18. — Tax Exemptions. (23 L.P.R.A. § 348)

(a) It is hereby found and declared that the purposes for which the Authority is created and shall exercise its powers are the promotion of the general welfare, and the increase of commerce and prosperity, and all are public purposes for the benefit of the people of Puerto Rico, and that therefore the Authority shall not be required to pay taxes, excises 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 undertaking, or on the revenues derived from any of its undertakings and activities.

(b) The Authority shall also be exempt from the payment of all kinds of fees, taxes, or imposts heretofore or hereafter required by law for the prosecution of judicial proceedings, the issuing of certifications in all offices and dependencies of the Commonwealth of Puerto Rico, and the execution of public documents and their registration in any public registry of Puerto Rico.

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

Section 19. — Declaration of Public Utility. (23 L.P.R.A. § 349)

For the purposes of subdivision (h) of Section 6 and Section 9 of this Act, all works, projects, and property and their accessories, which the Authority may deem necessary and convenient to use in carrying out the purposes expressed in this Act are hereby declared of public utility.

Section 20. — Agreement of the Commonwealth Government. (23 L.P.R.A. § 350)

The Commonwealth Government does hereby pledge to, and agree with, any person, firm or corporation, or any federal, Commonwealth or state agency, subscribing to or acquiring bonds of the Authority to finance in whole or in part any undertaking or any part thereof, that it will limit or restrict the rights or powers hereby vested in the Authority until all such bonds at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth Government does further pledge to, and agree with, any federal agency that in the event that any federal agency shall construct, extend, improve, or enlarge, or contribute any funds for the construction, extension, improvement, or enlargement of, any project of the Authority or any portion thereof, the Commonwealth Government will not alter or limit the rights or powers of the Authority in any manner which should be inconsistent with the continued maintenance and operation of the said project or the extension, improvement, or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the Authority shall continue to have and may exercise all rights and powers herein granted so long as the same shall be necessary or desirable for the carrying out of

the purposes of this Act and the purpose of any federal agency in constructing, extending, improving or enlarging, or contributing funds for the construction, extension, improvement or enlargement of said project or any portion thereof.

Section 21. — Injunctions. (23 L.P.R.A. § 351)

An injunction shall not be granted to prevent the application of this Act or any part thereof.

Section 22. — Inconsistent Provisions of Other Acts Superseded. (23 L.P.R.A. § 352)

Insofar as 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 heretofore or hereafter passed 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.

Section 23. — Separability of Provisions. (23 L.P.R.A. § 331 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 24. — Appropriation. (23 L.P.R.A. § 331 note)

The sum of one million (1,000,000) dollars is hereby appropriated from any funds in the Treasury not otherwise appropriated, to carry out the provisions of this Act, and the Treasurer is authorized and directed to pay said sum to the Authority, or to the officer or agent thereof that the Board may designate for the purpose.

Section 25. — It is hereby declared that this Act is of an urgent and necessary character, and the same shall, therefore, 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.