

## ***“Puerto Rico National Guard Institutional Trust Act”***

Act No. 23 of July 23, 1991, as amended

(Contains amendments incorporated by:

Act No. 29 of July 22, 1992

Act No. 33 of July 22, 1992

Act No. 193 of August 12, 1995

Act No. 8 of January 1, 2003

Act No. 112 of June 6, 2006)

To create the Puerto Rico National Guard Institutional Fund (FIGNA), which shall be empowered to acquire, lease and/or cede the use and administer the properties of the concessionaire who operates post exchanges, canteens and similar services pursuant to the provisions established in the Act. It shall provide additional resources to the National Guard, life insurance and funeral benefits to the active members of the Puerto Rico National Guard, financial aid for the payment of educational expenses to the active members of the Puerto Rico National Guard, their spouses and descendants, and shall provide cash annuities to the retired members of the Puerto Rico National Guard who meet specific requirements; to define its powers, faculties and functions; authorize it to issue bonds; grant it tax exemptions; authorize it to make and receive contributions from any source, including those from Municipalities, Public Corporations, Agencies of the Commonwealth of Puerto Rico and from the private sector, whether from individual, estates, foundations, companies, for profit or nonprofit corporations and other sources. To repeal Section 236 of Act 62 of June 23, 1969, (Military Code) and to transfer the authority to operate Post Exchanges to FIGNA, and to impose penalties.

### STATEMENT OF MOTIVES

The Military Code of Puerto Rico, Act 62 of June 23, 1969, as amended, authorizes the Adjutant General of Puerto Rico to operate post exchanges, canteens and services of similar nature in the armories of the Puerto Rico National Guard and to cede said authority to third persons through cession and lease contracts.

Since the date of approval of said Act, the only operator of post exchanges has been the nonprofit corporation, Post Exchange of the Puerto Rico National Guard, originally incorporated under the name of National Guard Fund, Inc.

By virtue of the provisions mentioned in the Military Code and other provisions of the Excise Act, the operation of the Post Exchanges of the National Guard has become a solid commercial business. In view of this situation, part of its resources could be destined to supplement the small budget of the Puerto Rico National Guard, and provide benefits to the

members who help in the recruiting and retention of these persons at the service of the country.

The provisions of the Military Code establish that the profits from the operation of the military stores shall be used to promote and develop activities directed to fostering, directly or indirectly, the "esprit de corps" friendship of the Military Forces of Puerto Rico, which it has been doing in a consistent manner, but with no long term planning.

The construction of facilities, improvements, reconstruction, and rehabilitation of the general headquarters of the Puerto Rico National Guard, the armories and other facilities, are covered by appropriations of federal funds, through the National Guard Bureau, and legislative appropriations from the General Fund of the Commonwealth of Puerto Rico. However, the limitation of resources of the General Fund has not allowed it to appropriate the funds needed to put these facilities in adequate conditions. On the other hand, the General Fund also provides, through annual legislative appropriations, the operating and maintenance expenses of the general headquarters, the office of the Adjutant General and other employees and officials. The legislative appropriations received for such purposes in recent years have not been sufficient to cover such expenses, thus it is necessary to seek mechanisms to complement the funds received annually for capital improvements and for operating and maintenance expenses which would allow the enjoyment of facilities worthy of the Puerto Rico National Guard and the high morale which has always distinguished our military forces.

The active members of the Puerto Rico National Guard who work in compliance of their duty as citizens, derive their main income from other permanent sources of employment, receiving a modest complementary remuneration from the National Guard. This institution also offers jobs to our youngsters while in high school, and in the universities of Puerto Rico. These Puerto Rican youths are the first to be called to active duty in cases of emergencies and for many of them, the National Guard represents their only source of income.

The Puerto Rico National Guard promotes the education of its active members, their spouses and dependents in order to have a military force, that they are proud to be a part of the same, and that at the same time, have the capacity to hold, well-remunerated jobs that promote the economic development of Puerto Rico in civilian life.

The promotion system of the National Guard requires that its members study and qualify in order to hold positions of a higher rank and responsibility. Once the active member of the National Guard shows lack of progress in his/her work and civil and military academic studies, and has completed 20 years of service, the person is subject to [retirement]. In addition to these cases, many active members are forced to leave the Guard for reasons beyond their control, prior to attaining 60 years of age but with more than 20 years of service, when they are entitled to receive a small portion of their regular pay as a pension. As a result, during the period which includes the date he/she leaves the Puerto Rico National Guard, and the date on which he/she attains 60 years of age, they lose that income that complemented the family budget, and at the age he/she usually [retires], as a general rule, it is practically impossible to get a part-time job that would replace the income they no longer receive from the National Guard.

In order to improve the situation stated above somewhat, and provide an instrument that would seek such remedies in a creative manner, the action of this honorable legislative body is essential.

The present Act has as its objective, to establish an Institutional Trust that shall operate as a public corporation and shall have three funds in trust for the benefit of the Puerto Rico National Guard and its members. These are the Educational Fund, the Annuities, Life and Funeral Insurance Fund, and the Fund to Complement the Annual Legislative Appropriations of the General Fund, for capital improvements, operation, maintenance and other general purposes that propitiate the strengthening of the *esprit de corps* of members of the Puerto Rico National Guard, their spouses and children, and their welfare.

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

**Section 1. — Title.** (25 L.P.R.A. § 2911 note)

This Act shall be known as "Puerto Rico National Guard Institutional Trust Act".

**Section 2. — Public Policy.** (25 L.P.R.A. § 2911 note)

The Legislature of Puerto Rico declares that the public policy of the Commonwealth of Puerto Rico is that, to the extent that its economic resources allow the Puerto Rico National Guard and its members shall enjoy adequate facilities and resources that contribute to maintain the high "esprit de corps" of said entity and its members; that the active members of the National Guard shall have assistance in the payment of their educational expenses; that upon retirement after 20 or more years of honorable and meritorious service, and having attained 55 years of age and until they are 60 years old, when they receive their regular annuity for years of service, active members shall receive a modest pension as a gesture of their country in gratitude for such services. To such effect, a public entity is hereby created with all legal powers to carry out the public policy established in this Act.

**Section 3. — Definitions.** (25 L.P.R.A. § 2911)

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

(a) *Administrator of the Assistance Program.* — Shall mean the official, officials or officers who, by regulations, are designated to administer and implement the program authorized by virtue of this Act.

(b) *Insured.* — Shall mean the active member of the National Guard or the retired member of the National Guard eligible for the Program, who has not attained sixty (60) years of age. Upon attaining sixty (60) years of age, the life and funeral insurance shall terminate.

(c) *Assistance.* — Shall mean the benefits to be received by the active members of the National Guard, their spouses and descendants, pursuant to the provisions of this Act.

(d) *Beneficiary.* — Shall mean the persons designated by the insured, or his/her heirs, as the case may be, entitled to receive the corresponding payment for life or funeral insurance.

(e) *Bonds.* — Shall mean the bonds, temporary bonds, refinancing bonds, obligations, notes, notes in advance of bonds, interim receipts or provisional bonds, certificates and other

evidence of indebtedness of the Puerto Rico National Guard Institutional Trust issued pursuant to the provisions of this Act.

(f) *Concessionaire*. — Shall mean the natural or juridical person who operates post exchanges, canteens or analogous services pursuant to the provisions of this Act.

(g) *Descendants*. — Shall mean the natural or adopted children of a member of the National Guard or of his/her spouse that are single, under twenty-one (21) years of age, and reside under the same roof, and single children up to twenty-three (23) years of age who are studying full-time in a duly accredited university institution.

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

(i) *Puerto Rico National Guard Institutional Trust*. — Shall mean the Trust, that is, the owner and administrator of the real property on which post exchanges, canteens and analogous services are operated pursuant to the Military Code of Puerto Rico, which, from time to time, are transferred by the Adjutant General of Puerto Rico, and administrator of the funds for annuities, education, and repairs and capital improvements and other purposes, as established by this Act. In case said National Guard Institutional Fund is abolished or otherwise removed from the functions described under this Act, [shall mean] the public body or entity that succeeds in its main functions, or that to which, the rights, powers and duties conferred by this Act to the Puerto Rico National Guard are assigned by law.

(j) *Educational Fund*. — Shall mean the fund for assistance in the payment of educational expenses for the active members of the Puerto Rico National Guard, their spouses and descendants, including university and post high school education expenses in duly-accredited vocational or technical institutions, as established in the regulations to be adopted pursuant to this Act for the administration of the Fund.

(k) *Annuities, Life and Funeral Insurance Fund*. — Shall mean the fund created by virtue of this Act to provide monthly payments for the members of the National Guard who retire, after twenty (20) years of honorable service in the Puerto Rico National Guard, have attained fifty-five (55) years of age and who, at the time of retirement, or on the date the program is implemented, January 1, 1992, have not attained sixty (60) years of age, as established in the regulations adopted pursuant to this Act.

(l) *Fund for Capital Improvements, Operation and Maintenance and other General Uses*. Shall mean the fund created pursuant to this Act to complement the local and federal legislative appropriations received annually by the Puerto Rico National Guard for the construction, reconstruction, rehabilitation and maintenance of facilities; to complement the legislative appropriations received annually by the Puerto Rico National Guard to attend to its administrative and operating expenses; to supplement the expenses of the Commonwealth Guard; to meet expenses that lead to bolstering the esprit de corps of the members of the Puerto Rico National Guard and the social well-being, enjoyment, recreation and other non-profit purposes thereof, and to cover the administrative expenses of the National Guard Institutional Trust, as established through regulations adopted to such effects by virtue of this Act.

(m) *United States Armed Forces*. — Shall mean the Army, Navy, Air Force, Marine Infantry Corp, and Coast Guard Corps, and the reserve forces thereof, and the personnel retired with pay from said forces.

(n) *Military Forces of Puerto Rico.* — Shall mean the members of the Puerto Rico National Guard and such other military forces organized pursuant to Act No. 62 of June 23, 1969, as amended, known as the Military Code of Puerto Rico.

(ñ) *Puerto Rico National Guard.* — Shall mean the subdivision of the Military Forces of Puerto Rico, organized pursuant to Section 201 of Act No. 62 of June 23, 1969, as amended, and in accordance with the corresponding federal contributions prescribed by the President of the United States from time to time, pursuant to the Laws of the U.S. Congress.

(o) *Board.* — Shall mean the Board of Directors of the National Guard Institutional Trust created by virtue of Section 4 of this Act.

(p) *Person.* — Shall mean any natural or juridical person, including, but not limited to, any municipality or political subdivision, agency, department or instrumentality of the Commonwealth, or any person, company, partnership, joint venture, trust, stock company, association or public or private corporation, organized or existing under the laws of the Commonwealth, of the United States of America or any state, any agency, municipality or instrumentality of the United States or any combination thereof.

(q) *Project.* — Shall mean any project that is developed under the Puerto Rico National Guard Institutional Fund created pursuant to the provisions of this Act, or whose development and administration is entrusted to it by the Commonwealth, its agencies, municipalities or public instrumentalities.

(r) *Funeral insurance.* Shall mean a life insurance policy which shall cover the funeral expenses, or three thousand dollars (\$3,000), whichever is less. The funeral policy shall be payable to the person who proves that he/she incurred the funeral expenses of the insured person.

(s) *Life Insurance.* — Shall mean a fixed term life policy for five thousand dollars (\$5,000) to be granted by the National Guard Institutional Fund, chargeable to the Annuities, Life Insurance and Funeral Insurance Fund, which is granted until the insured attains sixty (60) years of age. The life insurance policy shall be term insurance, [and] shall not accrue cash value. The life insurance policy shall be payable to the beneficiaries duly designated by the insured, or the heirs, as the case may be. The Puerto Rico National Guard Institutional Trust Board may vary the amount of said insurance when the solidity and solvency of the Annuities, Life Insurance and Funeral Insurance Fund allows it.

(t) *Post Exchanges.* — Shall mean the space within the premises of the Puerto Rico National Guard Quarters established to operate post exchanges, canteens and other services of a similar nature through the direct sale and resale of products for the benefit of authorized users.

(u) *Users.* — Shall mean the authorized persons privileged to use the post exchanges, as provided in Section 6 of this Act.

**Section 4. — Creation of the Puerto Rico National Guard Institutional Trust. (25 L.P.R.A. § 2912)**

A public corporation and instrumentality of the Commonwealth is hereby created, attached to the National Guard of Puerto Rico, which constitutes an independent corporate body to be known as the Puerto Rico National Guard Institutional Trust, to be the owner and administrator of the real property and other property in which the concessionaire who

operates the post exchanges conducts his commercial enterprise; which from time to time are transferred to it by the Adjutant General of Puerto Rico; as well as to provide assistance and benefits to the Puerto Rico National Guard, its members, spouses and descendants, and to administer the annuities, education and repairs funds, and which shall exercise its powers independently. The powers of the Puerto Rico National Guard Institutional Trust shall be exercised by a Board of Directors, which shall be composed of seven (7) members.

Three (3) of the components of the Board of Directors shall be members *ex officio*. The Adjutant General of Puerto Rico shall be its president, the President of the Government Development Bank for Puerto Rico, who will be its vice-president, and the Secretary of Justice, or those [whom] these public servants appoint, who must have the capacity, knowledge and decisional power to effectively represent the executive public servant that they replace. Those appointed shall report directly to the Agency Chief, who in his turn, shall be responsible for the determinations that are taken by the Board.

The remaining directors shall be appointed by the Governor for a four (4) year term. Of these, three (3) shall be from the Military Forces of Puerto Rico, at the suggestion of the Adjutant General, and the other shall be a representative of the community.

The person who fills a vacancy in the appointments referred to in the preceding paragraph shall be appointed in the same manner specified therein.

The Board may elect the officials that it deems necessary or convenient to carry out the public purposes for which the Puerto Rico National Guard Institutional Trust is created, and in the case of those officials who are not officers nor public employees, it shall establish their remuneration and other pertinent benefits.

The members of the Puerto Rico National Guard Institutional Trust Board shall not receive any compensation for their services as such. However, the Puerto Rico National Guard Institutional Trust shall reimburse the members of the Board of Directors who are not public officials or employees, the necessary expenses incurred while performing their duties.

Four (4) members of the Board shall constitute quorum and the affirmative vote of at least three (3) of the members present shall be necessary for any action taken by the Board, with the exception of adjournment. No absence or vacancy among the members of the Board shall prevent that [sic] the same, once there is a quorum, shall exercise all its rights and perform all its duties.

The Board and its individual directors and the officials, agents or employees of the Puerto Rico National Guard Institutional Trust shall not incur civil liability for any action taken in good faith in the performance of their duties and responsibilities, pursuant to the provisions of this Act, and shall be compensated for all costs incurred with respect to any claim for which they enjoy immunity pursuant to what is provided herein. The Board and its individual directors, and the officials, agents or employees of the Puerto Rico National Guard Institutional Trust shall be fully compensated for any civil liability adjudicated under the laws of the Commonwealth of Puerto Rico and the laws of the United States of America, provided their actions and decisions have been made in good faith within the scope of their functions.

**Section 5. — Source of Resources for the Puerto Rico National Guard Institutional Trust.** (25 L.P.R.A. § 2913)

The source of the resources from which the Puerto Rico National Guard Institutional Trust shall carry out the duties entrusted to it by this Act, are the following:

(a) *Initial resources.* The Puerto Rico National Guard Institutional Trust shall have an initial capital that shall originate from a contribution to be made by the concessionaire who operates the post exchanges, canteens and similar services.

(b) *Future resources.* The Puerto Rico National Guard Institutional Trust shall have the future resources that shall be provided by the following sources:

(i) The concessionaire shall make an annual contribution equal to three percent (3%) of its gross sales. The Board of Directors may vary said contribution subsequently, taking into consideration the financial situation of said concessionaire.

(ii) The concessionaire shall pay rent to the Puerto Rico National Guard Institutional Trust for the use of land, licenses and other facilities that are owned by, or that are or could be in the future, under the usufruct and control of the Trust, for those amounts to be determined by the Board of Directors of the Trust.

(iii) The active National Guard members shall make an initial monthly contribution of one dollar and fifty cents (\$ 1.50) in order to be entitled to the assistance and benefits granted by this Act. The contributions shall be withheld from the salary they receive from the Puerto Rico National Guard. Said contribution may be adjusted by the Board of Directors as deemed necessary, after the Trust's fifth year of operation.

(iv) Income from the investment of the reserve funds of the Puerto Rico National Guard Institutional Trust;

(v) Gifts from any natural or juridical person, including the Commonwealth, its municipalities, public instrumentalities and its agencies, and the federal government.

**Section 6. — Operation of Post Exchanges or Canteens.** (25 L.P.R.A. § 2914)

The Puerto Rico National Guard Institutional Trust is hereby authorized to establish and operate post exchanges, canteens and other services through the direct sale and resale of products, in the spaces that are transferred from time to time, by the Adjutant General of Puerto Rico within the quarters and facilities of the Military Forces of Puerto Rico, for the benefit of:

(1) The members of said military forces, while in active Commonwealth Military Service, Active Federal Military Service or in the performance of any other active service, as defined in subsections (k), (l) and (m) of Act No. 62 of June 23, 1969, as well as the civilian employees of the National Guard, their spouses, and children until they attain legal age.

(2) The surviving spouse of any of said members, unless they remarry, and their dependents until they attain legal age.

(3) The members of said military forces who retire after twenty (20) or more years of honorable military service in the Armed Forces of the United States and/or of Puerto Rico.

(4) The members of the Puerto Rico Police, as defined in Section 2 of Act No. 26 of Act 26 of August 22, 1974, known as the "Puerto Rico Police Act of 1974", and while they are rendering active service as such.

- (5) The surviving spouse of any member of the Puerto Rico Police, unless he/she remarries.
- (6) The veterans of the Puerto Rico Police who retire from the force with twenty (20) years or more of honorable service.
- (7) The members of the Puerto Rico Firefighters Corps.
- (8) The honorably discharged veterans of the Armed Forces of the United States of America, who have attained the age of sixty (60) years.
- (9) All United States Armed Forces veterans who are one hundred percent (100%) disabled, even if the disability is non service connected, their spouses, their dependents until they reach legal age, and their surviving spouse, provided he/she does not remarry. This provision shall only apply to Puerto Rico National Guard post exchanges where there is no conflict with federal legislation.

All veterans shall present a disability certificate duly issued by any federal or state agency.

For purposes of this section, the term "veteran" shall mean any bona fide person from Puerto Rican [sic] who is a United States Armed Forces veteran pursuant to the federal laws in effect.

Provided, That [the Trust] is also hereby authorized to contract or grant the use or lease of such spaces by third parties for the operation of said establishments. The abovementioned operation of post exchanges, canteens and other services, or its assignment or lease to be operated by third parties, shall be conducted pursuant to the regulations prescribed to such effects by the Adjutant General and the Secretary of the Treasury. Said officials shall also jointly prescribe the corresponding regulations with respect to the control of the sale of alcoholic beverages and articles taxable under Act Oct. 8, 1987, No. 5, which are sold in the post exchanges and canteens and whose manufacturing cost, as such term is defined under said act, does not exceed five hundred dollars (\$500). Said post exchanges, canteens and other services shall enjoy the benefits in their operations granted to them by virtue of special laws. The Puerto Rico National Guard Institutional Trust is authorized to use the income from the leasing or concession of those spaces for the purposes authorized in this Act. Provided, That for the due protection of the public interest involved in granting said authorization in the contracts executed after the effectiveness of this act, the following safeguards are established in case the Trust decides to grant the use or lease of spaces for the operation of the post exchanges:

- (a) The publication of notices of intent to grant the operation of such post exchanges to third parties.
- (b) Those persons who wish to operate the post exchanges must establish their financial solvency and administrative competence.
- (c) No member of the Trust shall be an official, incorporator, partner or employee of the concessionaire.
- (d) Joint regulations between the Department of the Treasury and the Board of Directors of the Trust shall be approved and published, establishing the particular details of the contract with the concessionaire, the duration of said contracts control, measures, annual reports and auditing requirements, and any other details deemed recommendable by both agencies for this type of operation.



**Section 7. — Establishment of funds, reserves and accounts.** (25 L.P.R.A. § 2915)

The following funds and accounts are hereby designated:

- (a) The Puerto Rico National Guard Institutional Trust Educational Fund.
- (b) Annuities, Life and Funeral Insurance Fund of the Puerto Rico National Guard Institutional Trust.
- (c) Fund to complement other funds received by the Puerto Rico National Guard for constructions, improvements, administration, operating expenses, as well as other uses that lead to improving the esprit de corps and welfare of the members of the Puerto Rico National Guard and for operating expenses of the Puerto Rico National Guard Institutional Trust.

**Section 8. — Limits of use of the Educational Fund and the Annuities, Life and Funeral Insurance Fund.** (25 L.P.R.A. § 2916)

The Administrator of the Educational Fund and the Annuities, Life and Funeral Insurance Fund shall not encumber funds in excess of the annual projected income, for the initial resources contributed to the Puerto Rico National Guard Institutional Trust to maintain an adequate actuarial base taking into consideration an inflation factor equal to three percent (3%) per annum.

**Section 9. — Distribution of Resources for the Respective Funds.** (25 L.P.R.A. § 2917)

The Puerto Rico National Guard Institutional Trust shall distribute the resources that are established in § 2913 of this title in the following manner:

- (a) Five hundred thousand dollars (\$500,000) shall be deposited in the Educational Fund from the initial resources provided in subsection (a) of the Section 5 of this Act, and ten percent (10%) of the future resources which the Trust shall have available, as provided in subsection (b)(i) of the Section 5 of this Act and the proceeds from the investment of funds and reserves deposited in the Educational Fund of the Trust.
- (b) A minimum amount of two million, five hundred thousand dollars (\$2,500,000) shall be covered into the Annuities, Life and Funeral Insurance Fund from the initial resources provided in subsection (a) of the Section 5 of this Act; fifty-two percent (52%) of the future resources available to the Trust according to subsection (b)(i) of the Section 5 of this Act, one hundred percent (100%) of the resources provided in subsection (b)(iii) of the Section 5 of this Act and the proceeds from the investment of the funds and reserves covered into the Annuities, Life and Funeral Insurance Fund of the Puerto Rico National Guard Institutional Trust.
- (c) Thirty-eight percent (38%) of the future resources available to the National Guard Trust provided by subsection (b)(i) of the Section 5 of this Act, one hundred percent (100%) of the resources provided by subsections (b)(ii) and (b)(v) of Section 5 of this Act, the proceeds from the investment of the funds and reserves deposited in the Fund for Capital Improvements, Operation, Maintenance and Other General Uses of the Puerto Rico National Guard and the Trust to be created by this Act, shall be covered into the Fund to complement the income received by the Puerto Rico National Guard for constructions, improvements, administration and for its operating expenses and other uses.

**Section 10. — General Powers.** (25 L.P.R.A. § 2918)

The Puerto Rico National Guard Institutional Trust shall have all the powers needed to carry out and implement the purposes and provisions of this Act, including, but without it being understood as a limitation, the powers to:

(a) Adopt bylaws for the administration of its affairs and business and prescribe rules, regulations and norms with respect to the exercise of its functions and duties, including, but without being limited to the establishment of mechanisms to grant assistance for the payment of educational expenses, annuities, life and funeral insurance to the eligible active and retired members of the National Guard; establish the criteria and priorities for the selection of the persons eligible for the benefits established by this Act and the reconstruction and rehabilitation projects, to be carried out or any other activity or purpose authorized by this Act, and to determine the administrative structure needed to implement and operate the Puerto Rico National Guard Institutional Trust.

(b) Adopt an official seal and alter the same at its convenience.

(c) Have an office in the municipality of San Juan and in any other place it deems necessary.

(d) To sue and be sued on its own behalf and to complain and be complained against.

(e) Receive, administer and comply with the conditions and requirements, with respect to any gift, concession or donation of any property or money.

(f) Negotiate, grant and receive through cession, financing, and leasing contracts, and other contracts and instruments necessary or convenient for the exercise of the powers and functions conferred to the Puerto Rico National Guard Institutional Trust under this Act, including contracts with persons, public corporations, municipalities and federal and Commonwealth government agencies. The local agencies are hereby authorized to execute contracts and, otherwise, cooperate with the Puerto Rico National Guard Institutional Trust to expedite the financing, acquisition, construction, leasing, cession, operation or maintenance of any project or activity.

(g) Acquire through purchase, lease, gift, or otherwise, obtain options for the acquisition or lease of any real or personal property, with or without improvements, encumbered or not, and rights on land, although inferior to the fee simple thereon for the construction, operation or maintenance of any project or activity that the Puerto Rico National Guard Institutional Trust deems necessary.

(h) Acquire and keep in effect, or cause the acquisition and effectiveness of adequate insurance to protect any project, including the operation thereof.

(i) Sell, lease, assign, transfer, convey, barter, mortgage or otherwise dispose of or encumber any project. It may likewise, lease, reacquire or otherwise obtain title or retain any project that the Puerto Rico National Guard Institutional Trust has previously sold, leased or otherwise transferred or conveyed or disposed of.

(j) Grant options for the purchase of any project or the renewal of any lease given by the Puerto Rico National Guard Institutional Trust with regard to any of its projects, under any advisable terms and conditions.

(k) Give as collateral or assign any moneys, revenues, rights or any other income and compensation pursuant to the provisions of the insurance policies or expropriations.

(l) Borrow money evidenced by bonds of the Puerto Rico National Guard Institutional Trust, in order to provide funds to pay all or any part of the cost of any project, any refinancing

bonds, and to provide funds for the financing of the projects and facilities operated by the Post Exchanges of the Puerto Rico National Guard, including, if necessary, the financing required to keep an adequate inventory in the post exchanges.

(m) Mortgage or give as security for the payment of principal and interest on any bonds issued, or of any financing agreement made with respect to the same, any or all of the projects that were owned by it at that time, or were acquired afterwards, and to encumber the proceeds and receipts of any of the same and to assign or give as security the financing contract or contracts related to any portion or the totality of a project and any type of securities, liens or contractual rights granted by or on behalf of the debtor or any guarantor under the financing contract, including bonds, unsecured bonds, notes, whether secured or not, stocks, a surety of the financing contract or any other security contract and to assign or encumber the income received by virtue of any financing agreement or agreements.

(n) Construct, acquire, own, repair, maintain, extend, improve, refurbish, renew, furnish, equip or provide financing for the construction, acquisition, repairing, maintaining, extension, improvement, restoring, renewing, furnishing, and equipping of any project and to pay, all or any part of the cost thereof from the proceeds of the Puerto Rico National Guard Institutional Trust bonds or from any contribution, gift or donation, or from any other funds provided for such purposes.

(o) Fix, impose and collect rents, duties and other costs for the use of any project.

(p) Contract the services of consulting engineers, architects, lawyers, accountants, financial consultants, appraisers, actuaries and any other consultants and employees which, in the judgment of the Puerto Rico National Guard Institutional Trust may be required, and fix and pay their remuneration from the funds available for such purposes.

(q) Make and receive gifts for those purposes that the Board of Directors deems adequate and necessary to achieve the objectives of this Act.

(r) Exercise the powers that have been conferred on it and perform any act or activity that is necessary, convenient or desirable to attain its purposes, including the transfer of resources between the three (3) funds, provided that it is needed to maintain its solvency and meet its obligations.

#### **Section 11. — Criterias and Requirements.** (25 L.P.R.A. § 2919)

In the performance of any project under the provisions of this Act, the Puerto Rico National Guard Institutional Trust shall be guided by, and shall observe the following criteria and requirements; Provided, That its determination with regard to compliance with said criteria and requirements shall be final and conclusive:

(a) No financing agreement shall be subscribed in regard to a project with persons or entities that are not financially accountable and are not fully qualified and ready to meet their responsibilities under the financing agreement, including the obligation to make payments in the amounts and on the dates required; to operate, repair, and maintain the project on their own account; pay the costs and expenses incurred by the Puerto Rico National Guard Institutional Trust with regard to the project; comply with the purposes of this Act, and perform any other duties that may be imposed on them under the terms of the financing and assistance agreement.

(b) The necessary provisions shall be made for the payment of principal and interest on the bonds, and to create and maintain the reserves required therefor, if any, that the Puerto Rico National Guard Institutional Trust may determine, and to pay the costs incurred with regard to the project.

(c) The necessary provisions shall be made for the payment of educational, annuity, life and funeral insurance expenses. Life insurance and funeral expenses shall be limited to active members and persons eligible to the annuities upon attaining the age of fifty-five (55) years and until they attain the age of sixty (60) years.

(d) The benefits granted by this Act shall only cover those active members of the Puerto Rico National Guard and retirees who have not yet attained the age of sixty (60) years. Funeral expense benefits shall be three thousand dollars (\$3,000) or the cost of the funeral, whichever is less. The annuity benefits shall commence with a minimum monthly annuity of one hundred dollars (\$100) at its source, and shall cover the attained age of fifty-five (55) years up to sixty (60) years of eligible National Guard retirees.

(e) The Board of Directors of the Puerto Rico National Guard Institutional Trust may increase the original benefits granted under subsection (c) of this section from time to time, to cover the effects of inflation, provided that an actuarial study is carried out and that the projected assets of the respective funds, excluding the Program's first five (5) years of operation, [are] at least equivalent to a sum equal to the initial resources of the respective funds, in which projection, an inflation rate of three percent (3%) per annum is included.

**Section 12. — Tax Exemption.** (25 L.P.R.A. § 2920)

(a) It is resolved and declared that the purposes for which the Puerto Rico National Guard Institutional Trust is created, and for which it shall exercise its powers, are of public nature for the benefit of the People of Puerto Rico. Therefore, it shall not be required to pay any taxes, or Commonwealth or municipal imposts on any of the properties acquired by the Puerto Rico National Guard Trust, or under the jurisdiction, power, control, dominium, possession, or supervision of the Puerto Rico National Guard Institutional Trust or on the earnings obtained from any of the firms or activities directly developed and operated by this Trust.

(b) To expedite the obtaining of funds to attain its corporate purposes, the bonds issued by the Puerto Rico National Guard Institutional Trust under the provisions of this Act, their transfer and proceeds derived therefrom (including any profits obtained from the sale thereof) shall be and shall remain exempt from the payment of income taxes by the Commonwealth of Puerto Rico or any of its political subdivisions, for all time.

(c) The Puerto Rico National Guard Institutional Trust is hereby exempted from the payment of all kinds of fees prescribed for the registration of documents and other operations in the Property Registry of Puerto Rico; Provided, further, That the exemption provided in this section, shall be extended to the Internal Revenue stamps for the original and certified copies of the deeds granted by this Trust.

**Section 13. — Conflict of Interest.** (25 L.P.R.A. § 2921)

No officer, member, agent or employee of the Puerto Rico National Guard Institutional Trust, or any public corporation, municipality, federal or Commonwealth government agency, may have a direct or indirect interest in any contract with this Institutional Trust, or in the sale of real property or chattels destined therefor or to be used in any project; if said official, member, agent or employee has an interest in the real property acquired prior to the determination of the location of any project, such interest shall be immediately reported to the Puerto Rico National Guard Institutional Trust and a reference thereto shall be left upon the minutes of the Board of Directors, and the official, member agent or employee who holds such interest shall not participate in representation of the Trust in the acquisition of said property.

Provided, further, That any official, member, agent, or employee of the Trust who violates the provisions of this section, shall be removed from office, and upon conviction shall be guilty of a felony, and subject to imprisonment for a fixed term of three (3) years. If there are aggravating circumstances, the fixed term may be increased to a maximum of five (5) years; if there were extenuating circumstances, the penalty may be reduced to one (1) year. The court, at its discretion, may impose an additional penalty of a fine that shall not exceed three thousand dollars (\$3,000).

**Section 14. — The Commonwealth and its Political Subdivisions shall not be liable for the Bonds.** (25 L.P.R.A. § 2922)

The bonds issued by Puerto Rico National Guard Institutional Trust shall not constitute a debt of the Commonwealth of Puerto Rico nor of any of its political subdivisions. Said bonds shall be payable only from those funds that have been encumbered by the Puerto Rico National Guard Institutional Trust for the payment thereof.

**Section 15. — Puerto Rico National Guard Bonds.** (25 L.P.R.A. § 2923)

This Trust is hereby authorized to issue bonds from time to time, for such principal amounts which, in the opinion of the Board of Directors, are needed to provide sufficient funds for the total or partial payment of the cost of any project or projects, and to achieve any of its other corporate purposes, including the payment of interest on the Trust's bonds, for such period as determined by said Board. It is also empowered to create reserves to secure such bonds and for the payment of such other necessary expenses of [t]he Trust, including incidental costs of the project that are necessary or convenient to execute its corporate purposes.

[(a)] The bonds issued by this Trust shall be payable in whole or in part from the gross or net income or other income derived by the Trust under the clauses of a financing agreement with regard to any project, as provided in the trust agreement or through which the bond issue is authorized. Principal and interest on the bonds issued by the Trust may be secured by encumbering all or part of any income of the Trust, or the assignment of any financing agreement regarding any project or part thereof. The resolution or resolutions authorizing the bond issue, or the trust agreement securing the same, may contain provisions which shall be

part of the agreement with the holders of the bonds issued under said resolution or resolutions. Said resolutions and provisions may cover aspects related to the surety and creation of a lien on the income and assets of the Puerto Rico National Guard Institutional Trust; the creation and maintenance of redemption funds and reserves; limitations regarding the purposes for which the proceeds of the bonds may be used; limitations with regard to the issuing of additional bonds; limitations regarding the introduction of amendments or supplements to the resolution or resolutions or the trust agreement; the concession of rights, faculties, and privileges and the imposition of obligations and responsibilities on the trustee under any trust agreement; the operation and maintenance of projects; the fixing of fees, rents and other charges for the use and occupancy of any project; the acquisition of insurance with regard to any project or its operation; the rights, faculties, obligations and responsibilities that shall arise in the event or default of any obligation under said resolution or resolutions or the trust agreement, or with regard to any rights, faculties and privileges conferred on the holders of the bonds as security thereof to increase the bond's market.

(b) Bonds may be authorized by a resolution or resolutions of the Board of Directors of the Trust, and may be issued in a serie [sic] or series, bear the maturity date or dates of each installment, provided such maturities do not exceed fifty (50) years from their respective dates of issue, and bear interest at rates that do not exceed the maximum rate allowed by law.

The bonds may be payable in the place or places within or outside the Commonwealth; may be of different denominations and issued as coupon or registered bonds; may have registration or conversion privileges; and may be granted, be payable and subject to redemption and payment terms as determined by the Board. Likewise, the replacement of bonds mutilated, destroyed, stolen or lost may be provided; may be authenticated in such a manner and meet those conditions; and may contain those terms and conditions that the resolution or resolutions may provide. The bonds may be sold in public or private sales, at the price or prices fixed by the Board; Provided, however, That the refinancing bonds may be sold or exchanged for outstanding Puerto Rico National Guard Institutional Trust bonds under such terms that respond to its best interests in the opinion of the Board. Nevertheless, the form and tenor thereof and in absence of an express warning on the face of the bond to the effect that it is not negotiable, all Puerto Rico National Guard Institutional Trust bonds, including any coupons belonging thereto, shall have at all times, and shall be understood to have all the characteristics and incidents (including negotiability) of negotiable instruments under the laws of the Commonwealth of Puerto Rico.

(c) Bonds may be issued under the provisions of this Act without having to obtain the consent of any department, division, joint commission, body, bureau, or agency of the Commonwealth, and without any other procedure, condition or circumstance that is not specifically required by this Act and by the provisions of the resolution that authorizes said bond issue, or the trust agreement that secures them; Provided, however, That the provisions of Act No. 272 approved May 15, 1945, as amended [7 L.P.R.A. §§ 581 et seq.], shall apply.

(d) The Puerto Rico National Guard Institutional Trust bonds that are subscribed with the signature of the Trust officials in the discharge of their duties and on the date of their signing, shall constitute valid and unavoidable obligations even when before the delivery and payment of said bonds, any or all of the officials whose signatures or the facsimiles thereof that appear thereon have ceased as such officials of the Trust. The validity of the authorization and issue of the bonds shall not depend on, or be affected in any way by any

procedure related to the construction, acquisition, extension or improvement of the project for which the bonds are issued, or by any contract signed with regard to said project. Any trust agreement that secures the bonds may provide for any of said bonds to contain a mention to the effect that it was issued in accordance with the provisions of this Act and any bond containing such mention under the authority of such trust agreement shall be deemed conclusively that it is valid and has been issued pursuant to the provisions of this Act. Neither the members of the Board of Directors of the Puerto Rico National Guard Institutional Trust, nor any person who grants the bonds shall be personally accountable for such bonds, nor shall be subject to civil liability for their issue. The Trust is empowered to purchase any bonds issued and outstanding or assumed by it, with any funds available for such purposes.

**Section 16. — Trust Agreement.** (25 L.P.R.A. § 2924)

At the discretion of the Board of Directors, any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the Puerto Rico National Guard Institutional Trust and a corporate trustee, which may be a trust company located within or outside of the Commonwealth of Puerto Rico.

It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth of Puerto Rico, the United States or any state of the United States, that acts as depositary of the proceeds of the bonds, income or other moneys, to grant such indemnity bonds or offer as security those assets required by the Puerto Rico National Guard Institutional Trust. In addition to the above, the trust agreement may contain all of those provisions that the Board of Directors of the Trust deems are reasonable and proper for the security of the bondholders.

Regardless of what is established in the Civil Code of Puerto Rico, the trust agreements granted between this Trust and a corporate trust, shall determine that the terms and conditions of the bond issues shall be met by granting affidavits. The trust agreements thus granted shall be lawful, valid and binding, and the funds that are deposited in said trusts shall be pignorated to the Trust at all times, and said funds shall not be attachable.

**Section 17. — Income.** (25 L.P.R.A. § 2925)

The rights, revenues, charges and any other income derived by the Trust from the project related to the bonds of any issue, except that part that may be needed to pay the costs incurred by the Puerto Rico National Guard Institutional Trust in said project, and to provide such reserves, if any, that may be provided in the trust agreement that secures said bonds, shall be deposited regularly in a reserve fund for the payment of debt service as provided in the trust agreement, for the payment of principal and interest on said bonds as they mature, and the redemption or purchase price of bonds retired by redemption or purchase as has been provided. The guaranty shall be valid and binding from the moment it is constituted.

**Section 18. — Refinancing.** (25 L.P.R.A. § 2926)

(a) The Puerto Rico National Guard Institutional Trust is hereby authorized to issue refinancing bonds with the purpose of refinancing those bonds that are in effect and outstanding at that time and have been issued under the provisions of this Act, including the payment of any redemption premium related thereto, and any interest accrued or to be accrued as of the date of redemption or maturity of said bonds, and if the circumstances do so warrant it.

(b) Refinancing bonds authorized to be issued under this section may be sold or exchanged for unexpired bonds issued under this Act, and if sold, the proceeds thereof may be destined to the purchase, redemption or payment of said outstanding bonds, in addition to any other authorized purpose. Refinancing bonds may be issued as determined by the Board of Directors, at any time on or before the date of maturity or maturities, or the date selected for the redemption of the bonds that are being refinanced. The use of the proceeds of said refinancing bonds, and any other funds available for the payment of principal and accrued interest, and any redemption premium of the bonds that are being refinanced, and, if so provided or permitted in the trust agreement securing the same, may be invested in direct obligations of, or obligations whose principal and interest is secured by the United States of America, and by any other obligation that is rated within the two highest ratings by the recognized bond rating agencies, provided that said obligations are subject to redemption by the holder thereof, at the option of said holder, no later than the respective dates that the principal and accrued interest on said principal are demanded and are sufficient, with other available funds, for the purposes to which they are destined.

**Section 19. — Agreement of the Commonwealth of Puerto Rico with the Bondholders.** (25 L.P.R.A. § 2927)

The Commonwealth of Puerto Rico is hereby committed and agrees with the holders of any bonds issued under this Act, and with the persons or entities that contract with the Puerto Rico National Guard Institutional Trust in accordance with the provisions of this Act, that it shall not limit nor alter the rights conferred herein until the principal and interest of said bonds are fully paid up, and that any other obligation under said agreements is met up by the Puerto Rico National Guard Institutional Trust; Provided, however, That nothing that has been provided herein shall affect or alter said limitation if adequate measures are provided by law for the protection of the Puerto Rico National Guard Institutional Trust bondholders, or persons or corporations that appear in said agreements with the Puerto Rico National Guard Institutional Trust.

**Section 20. — Liquidation.** (25 L.P.R.A. § 2928)

In the event that this Trust is abolished or that it is stripped of the functions described by this Act for just cause, without a public body or entity to succeed it in its functions, its real assets and chattels shall be removed to the control and custody of the National Guard, and its funds and securities to the control and custody of the Secretary of the Treasury, to be used for the benefit of the National Guard, as provided by law.



**Section 21. — Reports.** (25 L.P.R.A. § 2929)

The Puerto Rico National Guard Institutional Trust shall submit the following reports to the Legislature and to the Governor of Puerto Rico after the closing of each Government of the Commonwealth of Puerto Rico's fiscal year, but prior to the close of the calendar year:

- (1) A financial statement that clearly reflects the operations of the Trust for the previous year, and
- (2) a complete report of the status and the development of all its financings and activities from the creation of the Trust, or from the date of its last report.

As an additional safeguard, it shall be required that these reports cover in detail the use and control of funds so that the Legislature, as well as the Governor, can be in a position at all times to proceed or act in behalf of the best public interests.

**Section 22. — Constitutional Interpretation.** (25 L.P.R.A. § 2911 note)

The provisions of this act are separable and if any of its provisions is found to be unconstitutional by any court, it shall not affect or impair its other provisions.

**Section 23. — Inconsistent Statutes Inapplicable.** (25 L.P.R.A. § 2911 note)

To the extent that the provisions of this Act are inconsistent with the provisions of any other statute, or parts thereof, the provisions of this Act shall prevail.

**Section 24. — Repeal.**

Section 236 of Act No. 62 of June 23, 1969, as amended, is hereby repealed.

**Section 25. — Effective Date.**

This Act shall take effect immediately after its approval.

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