

(S. B. 2)

(No. 1-2017)

(Approved January 11, 2017)

AN ACT

To amend Section 2 by adding new subsections (a) and (u) and renumber all other subsections; amend the first paragraph of Section 3; add a paragraph (vi) to subsection (b) of Section 6; add paragraphs (xii) and (xiii) to subsection (b) of Section 7; amend paragraph (ii) of subsection (b) of Section 9; amend subsection (d) of Section 10; add a new subsection (e) to Section 17; amend Section 22 of Act No. 29-2009, as amended, known as the “Public-Private Partnership Act,” in order to include greater participatory elements by incorporating the concept of Participatory Public-Private Partnerships; define and authorize Pre-Development Agreements and Unsolicited Proposals; ensure greater oversight of the fulfillment of Partnership contracts; contribute to the capitalization of the retirement systems of the Government of Puerto Rico; and for other related purposes.

STATEMENT OF MOTIVES

Pursuant to the commitment made in the Plan for Puerto Rico, this Administration introduces this legislation in order to improve the legal framework that promotes Public-Private Partnerships. The Plan for Puerto Rico, pp. 44 and 45, establishes, to some extent, that Puerto Rico must seek ways to revitalize its infrastructure, including the development of new projects through partnerships with the private sector. This Act honors a commitment and furthers an important cause to lead Puerto Rico on the right path.

Public and private sector collaboration is critical to transform Puerto Rico into a global competitor in the goods and services industry and, in turn, to guarantee a better quality of life, with better services for the citizens of our Island. Likewise, collaboration between these two sectors is key to achieve the constant and sustainable economic development that Puerto Rico needs.

According to data provided by the Department of the Treasury, Puerto Rico is suffering a 14.6% economic contraction in the Gross State Product (actual GSP) with a forecast of an additional 3% contraction in the next two years. For years, the Government has operated with a structural deficit that has been financed with bond issues and loans from the Government Development Bank. The Government has been lacking liquidity for over a year, and the tax refunds, the payments to contractors, the money of pensioners, and intra-governmental loans have been used as a substitute for sources of liquidity.

Access to the Government's financial information as well as the making of adequate predictions have been affected by a divided government structure and obsolete government systems. Revenues are constantly overestimated and continue to decrease despite the imposition of many new taxes. The Government Development Bank has failed to meet its obligations to bondholders since May 1, 2016, and is no longer fulfilling its duty to provide liquidity. Puerto Rico's obligations portfolio amounts to \$66 billion and includes 18 different issuers whose financial situation is precarious. Debt service amounts to an average \$3.5 billion and uses more than one-fourth of the sources of income. Retirement systems are practically insolvent with a \$50 billion debt. All of the foregoing is worsened by a decrease in population caused by the emigration wave that began in 2006 and that is becoming one of the challenges to overcome on our path to recovery.

Taking into account this dismal state of affairs, it is time to leave behind the philosophy of "*me vale*," [I couldn't care less] roll up our sleeves and work hard for the wellbeing of Puerto Rico. It is our duty to build a new Puerto Rico and to set in motion an administration that does not improvise on the implementation of public policy nor manages the Island's finances on a year-to-year basis, but that rather strikes a balance between the Government's income and expenses with a long-term goal. Our commitment under the Plan for Puerto Rico is to address these situations

responsibly and restore the Island's credibility. We must look into the future and anticipate the challenges ahead, rather than simply survive the next crisis. The leaders and officials of the Government of Puerto Rico should concentrate on balancing income and expenditures, reducing the level of government intervention in Puerto Rico's economy, and creating a competitive business environment governed by good faith, so that investors as well as local and foreign business people may lead the way towards an economic recovery.

The policies of the past led the United States Congress to adopt PROMESA, delegating to a Fiscal Oversight Board (FOB) the power to work with the Government of Puerto Rico to help Puerto Rico overcome the crisis it is currently facing. Our commitment is to work hand in hand with the FOB to push Puerto Rico forward. Thus, on December 20th, the FOB requested that Puerto Rico's priorities include a plan and a commitment to implement significant changes directed to:

- Restoring economic growth and creating a more competitive economy. In the short-term, the labor market and social programs should be liberalized, energy costs should be lowered, taxation should be rationalized and optimized, and the permit process should be improved to promote investment.
- Restructuring the Government to achieve balanced budgets, while preserving essential services for the People of Puerto Rico.
- Restructuring the pension systems in accordance with PROMESA and reestablishing access to capital markets.

This requires making unprecedented changes to render the government more efficient and fiscally responsible. In fact, the Plan for Puerto Rico endorsed by the People on November 8, 2016, includes measures to achieve fiscal responsibility and develop the Island's economy.

We recognized this as our guiding principle and, in 2009, we approved Act No. 29-2009, better known as the “Public-Private Partnership Act.” Pursuant to this Act, Puerto Rico has been able to use Public-Private Partnerships as a tool to accelerate infrastructure projects and obtain cost-effective results for the taxpayers. These Partnerships have also been utilized to promote economic development and foster private investment in infrastructure. Given its focus and scope, Act No. 29-2009 has been recognized as an innovative law and has been used as an example in many jurisdictions, as it is considered to be one of the most comprehensive laws in the field. Unfortunately, from 2013 to 2016 no Private-Public Partnerships were formed, thus, contributing to the fiscal and economic crisis that we are currently undergoing.

Although we recognize that the Public-Private Partnership Act has achieved positive results, there is room for improvement, especially when considering the current economic crisis and the approval of Public Law 114-187 of June 30, 2016, entitled the Puerto Rico Oversight, Management and Economic Stability Act, known as PROMESA. The Fiscal Oversight Board, created pursuant to said Act, recognized the Public-Private Partnership model as an important factor for the improvement of the economy and infrastructure. However, these challenges require that the Public-Private Partnership Act be adjusted so that it can continue to be a useful tool in our economic revitalization process.

This Administration is committed to bringing the legal framework that promotes the Public-Private Partnership to perfection. For such reason, the concept of Participatory Public-Private Partnerships is hereby created to strengthen citizen and local business participation, as well as facilitate private investment through mechanisms such as Pre-Development Agreements and Unsolicited Proposals. Furthermore, we recognize the need to ensure that we reap the benefits that Participatory Public-Private Partnerships entail for us all. In order to do so, this Act

introduces additional elements to thoroughly oversee the fulfillment of the terms of Partnership contracts.

In conclusion, this Legislative Assembly deems it necessary to amend Act No. 29-2009, as amended, for the purpose of conforming the same to the best practices developed in the past years in the continental United States and worldwide. In addition to increase citizen and local business participation in the process of establishing Participatory Public-Private Partnerships, this Act maximizes the contribution of ideas and capital from the private sector, creates opportunities for local investors, and strengthens the oversight of Public-Private Partnership contracts in order to ensure the fulfillment thereof. In this manner, we shall continue improving the services offered to the People and revitalizing Puerto Rico's economy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. – Section 2 of Act No. 29-2009, as amended, is hereby amended by adding new subsections (a) and (u) and renumbering all other subsections to read as follows:

“Section 2. – Definitions.

The following words or terms shall have the meaning stated hereinbelow, except when the context clearly indicates otherwise, and the words used in the singular form shall include the plural form and vice versa:

(a) Pre-Development Agreements: A mechanism whereby a private entity agrees to assess the viability and pre-development of a specific or priority project. The result thereof is a Pre-Development Report that shall allow the Government to gain a detailed understanding of the technical and financial viability of a specific project without having to employ major resources.

(b) Federal Agency:...

(c) Public-Private Partnership or Partnership:...

(d) Authority:...

- (e) GDB or Bank:...
- (f) Partnership Committee:...
- (g) Standing Committee on Small Scale Partnerships:...
- (h) Conflict of Interests:...
- (i) Partnership Contract:...
- (j) Contractor:...
- (k) Government Entity:...
- (l) Partnering Government Entity:...
- (m) Municipal Entity:...
- (n) Function(s):...
- (o) Facility(ies):...
- (p) Public Interest:...
- (q) Board:...
- (r) Person:...
- (s) Property:...
- (t) Proponent:...
- (u) Unsolicited Proposal: A written proposal prepared by a Proponent for projects that have not been selected for a request for proposals, but that meet the applicable legal requirements.
- (v) Small Scale Projects:...
- (w) Priority Projects:...
- (x) Services(s):...
- (y) Family Unit:...
- (z) Small Scale Project Subdivision:...”

Section 2. – The first paragraph of Section 3 of Act No. 29-2009, as amended, is hereby amended to read as follows:

“Section 3. – Public Policy.

It is hereby stated that the public policy of the Government of Puerto Rico is to favor and promote the establishment of Public-Private Partnerships for the creation of Priority Projects and, among other things, to further the development and maintenance of infrastructure facilities, to apportion between the Commonwealth and the Contractor the risk entailed by the development, operation, or maintenance of such projects, to improve the services rendered and the functions of the Government, to foster the creation of jobs, and to promote the socio-economic development and the competitiveness of Puerto Rico. It is further stated that the establishment of Public-Private Partnerships shall foster greater citizen and local business participation in project investment, as well as in the acquisition of goods and services from businesses located in Puerto Rico. Furthermore, Public-Private Partnerships shall promote the transfer of knowledge to our workforce and shall collaborate with local higher education institutions in the evaluation, oversight, and execution of projects.

...”

Section 3. – Paragraph (vi) is hereby added to subsection (b) of Section 6 of Act No. 29-2009, as amended, to read as follows:

“Section 6. – Authorities and Powers of the Authority.

- (a) General Powers...
- (b) Specific Powers...
 - (i) ...
 - ...

(vi) Evaluate, analyze, and contract, by itself or on behalf of Partnering Government Entities, projects presented through Unsolicited Proposals and Pre-Development Agreements, as provided in this Act. The Authority shall prescribe by regulations the process for the evaluation, analysis, and contracting of said projects, taking into account the public policy of the Government of Puerto Rico.

...”

Section 4. – Paragraphs (xii) and (xiii) are hereby added to subsection (b) of Section 7 of Act No. 29-2009, as amended, to read as follows:

“Section 7. – Project Inventory; Desirability and Convenience of a Partnership.-

(a) Project Inventory...

(b) Study on Desirability and Convenience...

(i) ...

(ii) Feasibility for local pension plans and other local funds to be able to participate as investors in Public-Private Partnership infrastructure projects based on their investment policies and risk profile. In addition, the Proponent shall show the actions taken to obtain investments from said pension plans and local funds as capital investors in the Public-Private Partnership.

(iii) An evaluation of potential modifications to the proposed Partnership as a result of citizen and local business participation. Said participation may be achieved in an informal manner and solely by written comments. When the Authority is in the process of conducting the study required by this Section, the Authority shall publish a notice to such purposes, in English and in Spanish, in at least one newspaper of general circulation in Puerto Rico and, in English and in Spanish, on the Internet. Said notice shall contain a summary or brief explanation of the proposed Partnership, a reference to the legal provisions that authorize said

action and the form, time, date, and place where the comments regarding the proposed Partnership may be submitted in writing or via electronic mail. Likewise, the Authority shall specify the physical facilities and the webpage where all documents that, by regulations, are deemed necessary for public comment regarding the proposed Partnership shall be made available to the public. When comments are received via electronic mail, the Authority shall acknowledge receipt of each electronic mail message within two (2) business days after the receipt thereof. The public comment period shall never be less than thirty (30) days. By public petition or *motu proprio*, the Authority may hold public hearings for the purpose of hearing the views of a particular industry, community or individual. The Authority shall prepare a summary of said comments as provided above. Both the comments submitted by the public or local industry and the summary prepared by the Authority shall be included in the record of the proposed Partnership. Citizen participation in this process shall not confer standing or allow an individual to become a party with the right to challenge a proposed Partnership, either judicially or administratively.

...”

Section 5. – Paragraph (ii) of subsection (b) Section 9 of Act. No. 29-2009, as amended, is hereby amended to read as follows:

“Section 9. – Procedure for the Selection of Proponents and Award of Partnerships.

(a) Applicable Requirements...

(b) Procedure for Selection and Award.

(i) ...

(ii) Without this being construed as a limitation to the provisions in subsection (b)(i) above, the Authority may negotiate Partnership Contracts without abiding by the procedures for requests for proposals in the following cases: (A) when there is only one source capable of providing the service required, such as services

that require the use of intellectual property, trade secrets or other licenses or rights which only certain persons own or hold exclusively; and (B) when a call to any pre-qualification procedure or any request for proposals conducted pursuant to the provisions of Section 6(b)(i) has been issued and there has been no participation or response, or the proposals submitted have failed substantially to meet the evaluation requirements provided for in the request for proposals, and if, in the judgment of the Authority, issuing a new request for qualification and for proposals would cause such a delay that it would render the possibility of selecting a Proponent and executing a Partnership Contract within the timeframe required, highly unlikely. In the cases mentioned in subparagraphs (A) and (B) of this Section, before executing a Partnership Contract, notice must be given to the Joint Committee on Public-Private Partnerships of the Legislative Assembly, created pursuant to this Act, for the appropriate action.

Without limiting the generality of the provisions of the preceding paragraph of this subsection (b)(ii), the Authority shall also be authorized to receive and consider Unsolicited or Voluntary Proposals. An Unsolicited or Voluntary Proposal shall include, at least: (1) an outline or summary of the proposal, (2) a description of how the proposal satisfies a government need, (3) the particular aspects of the proposal that differentiate it from other proposals or the traditional way of developing the proposed project, (4) the support required from the public sector and the direct and indirect costs of the project, including the cost of capital, (5) the financial viability, including but not limited to, the financial capacity of the proponent, the identified or suggested financing mechanisms, the sources of repayment or income related to the proposed function, service or facility object of the proposal, (6) the commercial aspects of the project, (7) the anticipated benefits for the public sector, including why the proposal is in the public's best interest, (8) the proposed method for developing the project, and (9) the intellectual property, if

any. An Unsolicited or Voluntary Proposal must be accompanied by a non-refundable evaluation fee of five thousand dollars (\$5,000) payable to the Authority; provided, that, to the extent said proposal results in the development of the proposed project, the Board may, in its sole discretion, credit said amounts to any payment required from the Proponent or may return to the Proponent fifty percent (50%) of said amounts if the Proponent is not selected to develop the project.

The Authority shall receive all Unsolicited or Voluntary Proposals and preliminarily evaluate them within a term of sixty (60) days, which term may be extended for an additional sixty (60) days.

Once the evaluation period has concluded, within a term not to exceed ten (10) business days, the Authority shall inform the voluntary Proponent whether the proposed project is considered as potentially beneficial to the public interest. If the project is considered as potentially beneficial to the public interest, the Authority shall instruct the voluntary Proponent to submit, to the extent not already submitted, as much information as may reasonably be obtained regarding the proposed project, to allow the Authority to fully evaluate the qualifications of the voluntary Proponent and the technical and economic feasibility of said project, as well as determining whether the project may be successfully implemented. Said additional information may include any technical and economic feasibility studies, environmental studies or information regarding the concept or technology contemplated in the proposal. In the process of considering a voluntary proposal, the Authority must observe the confidentiality of any intellectual property, trade secrets and any exclusive rights, that arise out of, or are referred to, in the voluntary proposal. The Authority shall not use the information submitted by or on behalf of the voluntary proponent relating to, or as a part of its voluntary proposal, for purposes other than the evaluation and study of said proposal, unless the Proponent consents to other uses. In addition, unless the parties agree otherwise, the Authority shall return to the voluntary proponent the

original and the copies of any documents furnished as part of the submitted Proposal if said proposal is rejected by the Authority. If the Authority decides to promote and implement the project received by means of an unsolicited proposal, the Authority may initiate a selection process in accordance with Section 9(b)(i), referring the Project to the corresponding Committee, if: (1) it determines that the project may be completed without using intellectual property, trade secrets or proprietary or exclusive rights or licenses held by the voluntary Proponent, or (2) the proposed technology or concept are not innovative. The Voluntary Proponent shall be invited to participate in the competitive selection process initiated, and shall be given advantage or other benefit in the selection process, as stated by the Authority in the request for proposals, in consideration of his development and submittal of the initial voluntary proposal. If the Authority determines that the conditions specified in clauses (1) and (2) of the preceding sentence are not present and/or there are reasons that justify such action, as determined by the Authority's Board, the Authority shall not be required to carry out a selection process under Section 9(b)(1), but must gather information to have all the elements necessary to evaluate the voluntary proposal in accordance with Section 9(c). In said cases, the Authority shall also informally verify whether other parties are interested in presenting similar or comparable proposals. To such effect, the Authority shall publish on its webpage a description of the essential elements of the voluntary proposal along with a request to other interested parties to submit informal proposals within the timeframe established therein by the Authority, and shall publish a notice in a newspaper of general circulation notifying said publication. If the Authority does not receive additional proposals within the timeframe established in the notice of request for proposals, it may initiate negotiations with the original voluntary proponent directly in accordance with the parameters previously established by the Authority. If the Authority receives proposals as a result of the notice of request for proposals referred to in this

paragraph, the Authority shall request the voluntary proponent, as well as those parties that answered the notice and met the standards and criteria specified in said notice, to submit proposals pursuant to Section 9(b)(i), in which case they shall be referred to the corresponding Committee, subject to any incentive or benefit granted to the voluntary proponent for its development and submittal of the initial voluntary proposal, in accordance with the parameters established by the Authority.

(iii) ...

...”

Section 6. – Subsection (d) of Section 10 of Act No. 29-2009, as amended, is hereby amended to read as follows:

“Section 10. – Partnership Contract

(a) ...

...

(d) Contract Oversight. - The Authority, with the assistance of the Partnering Government Entity and the Bank, shall oversee the performance and compliance of the Contractor under the Partnership Contract. To such effect, the Authority shall submit to the Governor of Puerto Rico and the Legislative Assembly an annual report on the development of projects and the compliance by Contractors with the Partnership Contracts in effect, as well as an oversight work plan for the following year. The budget request filed by the Authority with the Legislative Assembly shall show the actual efforts made to oversee said contracts, so as to show the relation between the requested budget and the efficiency thereof.

...”

Section 7. - Section 17 of Act No. 29-2009, as amended, is hereby amended to add clause (e), to read as follows:

“Section 17. – Use of Initial or Periodic Payments of a Partnership.

In the event that a Partnership Contract, after having defrayed the costs incurred by the Authority, the Partnering Government Entity or the Bank as part of the procedures to evaluate, select, negotiate, and execute such Partnership Contract, generate an initial payment or periodic payments to the Partnering Government Entity or the Government of Puerto Rico by the Contractor under the Partnership Contract, such payments may only be employed for any of the following uses: (a) to pay debts of any kind, even operational debts, of the Partnering Government Entity; (b) to pay debts of any kind, even operational debts, of the Government of Puerto Rico; (c) to create a capital investment fund for the capital improvement program of the Partnering Government Entity or the Government of Puerto Rico, in which case, such payment shall be remitted by such Partnering Government Entity to the Bank, which shall deposit such money into an account created for such purpose; (d) to create a fund whose purpose shall be to repay the line of credit granted by the Bank to the Authority to cover its operating expenses and to accomplish the purposes of this Act, pursuant to the provisions of clause (viii) of Section 6 thereof, and to refund or compensate the amounts expended, paid or advanced by the Bank to meet the obligations incurred by any Partnering Government Entity under a Partnership Contract; and (e) to contribute to the retirement systems of the Government of Puerto Rico, for the purposes of improving their level of capitalization through a contribution equal to twenty-five percent (25%) of the initial payment or periodic payments made to the Partnering Government Entity or to the Government of Puerto Rico by the Contractor under the Partnership Contract during five (5) fiscal years beginning in fiscal year 2017-2018. The Bank shall consult with the Office of Management and Budget and submit to the Governor its recommendations together

with those of the Office of Management and Budget concerning the best use of the initial payment or the periodic payments arising from the Partnership Contract. Such payment shall be used as finally approved by the Governor. In the case of a Small Scale Project that generates an initial payment or periodic payments, said payment shall be used as provided in this Section, but said use need only be recommended by the Bank and approved by the Boards of the Authority and the Partnering Government Agency. The use of the funds corresponding to the General Fund must be authorized by the Legislative Assembly.”

Section 8. – The first paragraph of Section 22 of Act No. 29-2009, as amended, is hereby amended to read as follows:

“Section 22. – Joint Committee on Public-Private Partnerships.

The first paragraph of Section 22 of Act No. 29-2009, as amended, is hereby amended to read as follows:[sic]

The Joint Committee on Public-Private Partnerships of the Legislative Assembly of Puerto Rico is hereby created, to be composed of six (6) senators and six (6) representatives. Among these, one (1) member of each minority party represented in each legislative house shall be appointed. Initially, the Committee shall be Chaired by one of the senators designated by the President. Said designation shall alternate every quadrennial with the House of Representatives.

...”

Section 9. – Severability

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or

part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, invalidates, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Article 10. – Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 1-2017 (S. B. 2)** of the **1st Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend Section 2 by adding new subsections (a) and (u) and renumber all other subsections; amend the first paragraph of Section 3; add a paragraph (vi) to subsection (b) of Section 6; add paragraphs (xii) and (xiii) to subsection (b) of Section 7; amend paragraph (ii) of subsection (b) of Section 9; amend subsection (d) of Section 10; add a new subsection (e) to Section 17; amend Section 22 of Act No. 29-2009, as amended, known as the “Public-Private Partnership Act,” in order to include greater participatory elements by incorporating the concept of Participatory Public-Private Partnerships; define and authorize Pre-Development Agreements and Unsolicited Proposals; ensure greater oversight of the fulfillment of Partnership contracts; contribute to the capitalization of the retirement systems of the Government of Puerto Rico; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 23rd day of January, 2017.

Roger J. Iglesias-Sepúlveda
Director