

(S. B. 466)

**(No. 8)**

(Approved March 9, 2009)

## **AN ACT**

To amend Section 4 of Act No. 44 of June 21, 1988, as amended, known as the “Puerto Rico Infrastructure Financing Authority Act,” in order to provide that the Board of Directors of the Authority shall be constituted by five members of the Board of Directors of the Government Development Bank for Puerto Rico, the Secretary of the Treasury, and an additional member, to be appointed by the Governor of Puerto Rico, and that the Chair of the Board of the Authority shall be appointed by the Governor of Puerto Rico from among the members of the Board of Directors of the Authority; to add a new Section 33, in order to authorize the Infrastructure Financing Authority to receive, administer, and disburse the funds appropriated to Puerto Rico by virtue of the American Recovery and Reinvestment Act of 2009 (Federal Economic Stimulus Act) insofar as it is not incompatible with the Federal Economic Stimulus Act or with interagency norms or agreements with the Federal Government; to coordinate and assist all agencies, public corporations, municipalities and all other instrumentalities of the Government of Puerto Rico in the identification, programming, development, and supervision of such funds and the projects wherein they shall be used; to entrust the Authority with gathering information and producing reports and warrantable disclosures, as well as discharging all other tasks as necessary or convenient to maximize the funds received and to comply with the terms and conditions imposed by the said Federal Economic Stimulus Act, in order to institute greater transparency as regards such effort; to authorize the Authority to enter into Assistance Contracts, in order to expedite and further the purposes of this Act and to promptly channel the federal aid thus received; to declare special terms for Benefited Entities executing Assistance Contracts and to provide for the conditions and requirements that the Authority may impose by virtue of such special terms; to authorize the charging of

fees for services and the repayment thereof; to authorize the Government Development Bank for Puerto Rico to grant a loan to the Authority to defray the costs of implementing this Act as well as the Federal Economic Stimulus Act; and to provide for the separation of accounts and investment of the funds thus received; and for other related purposes.

### **STATEMENT OF MOTIVES**

The Commonwealth of Puerto Rico is at present experiencing its worst fiscal crisis ever since the Great Depression of the '30s, with a budgetary deficit for fiscal year 2008-2009 that, on the date of this Act, has been estimated to amount to at least three point two (\$3.2) billion dollars. This budgetary deficit equals forty percent (40%) of the recurring revenues of the Government of Puerto Rico. So as to put our fiscal situation into perspective, the states of the United States of America with the highest deficits in relation to their revenues are the state of Nevada and the state of Arizona, whose deficits represent thirty percent (30%) of their recurring revenues. It is estimated that, under the current revenue and expenditure structure, the next three (3) fiscal years shall also reflect budgetary deficits of over three (\$3) billion dollars per year.

In addition to the fiscal crisis of the government, the economy of Puerto Rico has been in recession since 2007, when it experienced a one point nine percent (1.9%) contraction, followed by a two point five percent (2.5%) contraction in 2008. It is expected that the recession shall persist until the year 2011, with an estimate three point four percent (3.4%) contraction for 2009 and a two point zero percent (2.0%) contraction for 2010. The economic situation worldwide is equally precarious. The United States, Europe, and Japan are experiencing a recession that portends to be the worst one since the Great Depression of the United States in the '30s.

The World Bank estimates that 2009 could well be the first year since 1982 in which global trade downturns, with an expected two point one percent (2.1%) contraction. The crisis in the credit and capital markets worldwide has affected our economy, the availability of financing for new private and government investments, and the liquidity of our Government and the local financial system.

For the past 8 years, the public debt of the Government of Puerto Rico has almost doubled, from \$25.2 billion in 2001 to \$46.7 billion in 2008. A significant share of the debt issued for these past 8 years has been used to pay for operating expenses and to finance low economic impact projects. Due to the budgetary deficit and the lack of fiscal responsibility of the past administration, the general obligation bonds of Puerto Rico have the lowest rating ever in their history. At present, the general obligation bonds of Puerto Rico are at the minimal investment grade level, and degradation by an additional grade would place such bonds below the minimal investment grade and turn them into junk bonds. If the government does not take immediate action to address the fiscal situation, credit rating agencies shall downgrade the credit of Puerto Rico's bonds to junk status, which would have a catastrophic effect on our fiscal and economic situation.

In the United States, as a measure to try and remedy their economic recession and to provide relief for most states and their citizens due the dire fiscal situation, President Barack H. Obama enacted the law called the American Recovery and Reinvestment Act of 2009 (Federal Economic Stimulus Act) on February 13, 2009. The Federal Economic Stimulus Act seeks the creation or preservation of jobs and the promotion of economic recovery, as well as to provide assistance to those who have sustained the greatest impact of the recession, to provide the necessary investments to

increase economic efficiency by furthering technological advancements in the sciences and in health, to invest in projects relative to transportation, environmental protection, and other infrastructural issues so as to yield long-term economic benefits and to stabilize the budgets of the State and the municipal governments, in order to minimize or to prevent the downgrading of essential services and the increase in State and municipal taxes, which would be counterproductive vis-à-vis the recessionary economic situation. The Federal Economic Stimulus Act covers Puerto Rico.

In view of the foregoing, there is no doubt that the Government of Puerto Rico also has to take the necessary measures to recover its fiscal health, improve the credit rating of its bonds, and to promote the recovery of its economy. For this purpose, the Governor of Puerto Rico has acted promptly by signing various executive orders declaring a State of Fiscal Emergency in the Commonwealth of Puerto Rico, establishing measures to observe austerity and discipline and to cut back on government spending, and establishing new temporary measures to stimulate the economy.

As a consequent step, the Governor of Puerto Rico has created the Economic and Fiscal Reconstruction Plan. This Plan comprises a series of legislative measures with various purposes to address this crisis: first, controlling and cutting back on government spending; second, mustering additional resources for the General Fund; third, offsetting the recessionary impact of the fiscal control measures by means of economic stimulus measures; and fourth, promoting the creation of Public-Private Partnerships so as to create new economic activity, develop new infrastructure facilities, improve public utilities, create new jobs, and provide proper maintenance to the existing infrastructure. As an integral part of this plan, the Puerto Rican Domestic Stimulus Plan [Sp.: *Plan de Estímulo Criollo*] is also created, with

the objective of stimulating the economy of Puerto Rico through programs directed to diverse activities and sectors, in order to foster economic stimulus to the greatest extent possible and to offset the recessionary effect of the fiscal measures to be implemented.

Furthermore, as an integral part of the Reconstruction Plan, this Act is approved, with the purpose of laying the groundwork and providing the technical and administrative resources necessary to enforce in Puerto Rico of the Federal Economic Stimulus Act and to maximize the funds we can receive under said Act. For this purpose, it is necessary to confer stewardship onto a government entity that has the knowledge and powers necessary to act with efficiency and transparency and to achieve the goals of both the United States Government and the Government of Puerto Rico.

It is of the utmost importance for the Government of Puerto Rico that its citizens receive the economic benefits and relief provided for under the Federal Economic Stimulus Act as soon as practicable and as fairly and as equitably as possible. It is also of essential importance to meet all requirements as to data compilation and disclosure of reports on fund distribution and contracting, as required by the Federal Economic Stimulus Act, in order not to jeopardize the influx of these Federal contributions into our economy.

The Infrastructure Financing Authority (the “Authority”) already has ample experience in the identification, development, financing, and supervision of infrastructure projects, as well as in the management of Federal funds, which renders this entity the most suitable to assist other government entities in the employment of the funds thus received. The Authority operates under a flexible Organic Act that enables the same to enter into assistance contracts with other government entities, in which the

Authority has successfully engaged in the past. By means of these assistance contracts, the Authority and the Benefited Entities would define the particular purposes and scope of the assistance to each Benefited Entity, as well as the duties of each party, the mechanisms to achieve the goals of the contract, and the remedies in the event of a breach of contract.

In order to maximize the usefulness of assistance contracts and to benefit the largest number of private citizens, we are also including as possible Benefited Entities not only all government entities that need the Authority's assistance, but also, private entities who are eligible for receiving benefits under the Federal Economic Stimulus Act. In other words, the Authority shall be able to enter into assistance contracts with nonprofit entities, among other persons, as warrantable, to assist the latter as a liaison and facilitator in handling the funds to be received under the Federal Economic Stimulus Act.

Given the magnitude of the task entrusted onto the Authority and the need for the Authority to be able to defray related costs, the Authority is hereby authorized to charge reasonable fees to Benefited Entities for these services. Benefited Entities of the Government of Puerto Rico shall pay these fees from their resources available, including funds received under the Federal Economic Stimulus Act, within the parameters provided for thereby. While awaiting receipt of such Federal funds, the Government Development Bank for Puerto Rico (the "Development Bank") is hereby authorized to advance funds to the Authority to cover the costs of implementing the Federal Economic Stimulus Act in Puerto Rico pursuant to this Act.

On the other hand, this Act permanently restructures the composition of the Board of Directors of the Authority. This new structure shall facilitate the implementation of the purposes of the Economic and Fiscal

Reconstruction Plan of the Governor of Puerto Rico and the Federal Economic Stimulus Act in Puerto Rico. In the new Board of Directors, the number of members from the Board of Directors of the Development Bank is reduced to five; it is established that the Chair of the Board of the Authority is to be appointed by the Governor; and the Governor is provided with the flexibility to appoint a seventh member who does not have to be a member of the Board of Directors of the Development Bank. Thus, relief is provided to the members of the Board of Directors of the Development Bank from their burdensome workload, and the enrollment of additional talent is allowed in order for the Authority to more actively discharge the new tasks entrusted thereto. The Secretary of the Treasury shall remain as a member of the Board. Furthermore, with the purpose of retaining talent and so as not to affect possible Benefited Entities receiving the benefits that the Authority shall provide under Assistance Contracts to implement the Federal Economic Stimulus Act, in the event that any members of the Board of the Authority should be the directors, officers or officials of any Benefited Entity, they shall not be absolutely impeded, as they are presently, from continuing to serve as directors at the Authority; however, they must disqualify themselves from participating in any issue of the Authority involving the Benefited Entity wherein they are directors, officers or officials. This is particularly relevant as of the approval of this Act, inasmuch as all government entities could become Benefited Entities during the course of implementing the Federal Economic Stimulus Act. Therefore, such absolute prohibition is rendered impracticable. Once a member of the Board of Directors disqualifies him/herself, the Benefited Entity is not impeded from receiving the Authority's assistance.

In the measure that the available resources of the Benefited Entities are not sufficient to repay all amounts advanced by the Bank or the fees for services charged by the Authority, these shall be repaid on a yearly basis by means of budgetary appropriations.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

**Section 1.**—Section 4 of Act No. 44 of June 21, 1988, as amended, is hereby amended to read as follows:

“Section 4.—Creation.—A public corporation and instrumentality of the Commonwealth is hereby created which constitutes an independent corporate and political entity, which shall be known as the Puerto Rico Infrastructure Financing Authority, which shall exercise its powers independently from any other person. The powers of the Authority shall be exercised by the Board, which shall be composed of five (5) members of the Board of Directors of the Government Development Bank appointed by the Governor of Puerto Rico, by the Secretary of the Treasury of the Commonwealth, and by one (1) additional member, appointed by the Governor of Puerto Rico. Such additional member shall serve at the volition of the Governor and may be removed or replaced by the Governor at any time, with or without cause.

Any member of the Board who, at the same time, is a member of the board of directors, an officer or an official of a Benefited Entity, must disqualify him/herself from participating in any Authority business involving the Benefited Entity wherein he/she is a director, an officer or an official. The Authority thus constituted shall discharge public and essential government functions.

The Governor shall appoint the Chair of the Board from among its members. The Board may elect officers as it may deem necessary or



convenient to serve the public purposes on account of which the Authority is created.

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

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

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

**Section 2.**—Act No. 44 of June 21, 1988, is hereby amended in order to add a new Section 33 and renumber current Section 33 as Section 34, to read as follows:

“Section 33.—Provisions for the Implementation in Puerto Rico of the Federal Economic Stimulus Act of 2009.—

**A) Definitions.—**

For the purposes of this Act, 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 number shall include the plural number, and vice versa:

(i) Authority.—The Infrastructure Financing Authority.

(ii) Bank.—The Government Development Bank for Puerto Rico.

(iii) Assistance Contract.—Any kind of agreement, covenant, or other written instrument executed between the Authority and a Benefited Entity, whereby the Authority pledges to lend assistance in financial, administrative, consultatory, technical or advisory issues, or assistance on project management, assistance relative to economic development and/or infrastructure construction, or assistance of any other nature, pursuant to the provisions of this Section.

(iv) Benefited Entity.—Any Person entitled to receive funds or any other kind of assistance under the Federal Economic Stimulus Act of 2009 and who executes an Assistance Contract with the Authority.

(v) Government of Puerto Rico.—The Government of the Commonwealth of Puerto Rico and the departments, agencies, boards, commissions, bodies, bureaus, offices, municipalities, political subdivisions, public corporations, and instrumentalities of the Commonwealth of Puerto Rico existing at present or to be created in the future.

(vi) Federal Government.—The United States of America, its President, any of its departments of the executive branch of the Government of the United States of America, or any corporation, agency, commission, board, or instrumentality created or to be created, appointed or established by the United States of America.

(vii) Federal Economic Stimulus Act of 2009.—The Act approved by the Congress of the United States of America on February 17, 2009, denominated the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder.

(viii) Organic Act of the Authority.—Act No. 44 of June 21, 1988, as amended.

(ix) Special Periods.—Periods that begin at the time an Assistance Contract is executed with a Benefited Entity. Such periods are to end when the purposes thereof are completed or the conditions set forth under such contract are met.

(x) Person.—Any natural or juridical person, including entities belonging to the Government of Puerto Rico. As an example, the term person shall include, but not be limited to, any government department, agency, instrumentality or municipality, or any individual, trust, firm, partnership, stock company, association, public or private corporation, cooperative association, or nonprofit entity.

**B) Designation and Authorization.—**

The Authority is hereby designated and authorized to act as the chief government entity in charge of the handling, receipt, custody, and administration of all resources, whether they be funds, grants, or any other kind of aids received by the Government of Puerto Rico for itself and for the residents of Puerto Rico under the Federal Economic Stimulus Act of 2009. As a part of these functions, the Authority shall coordinate all efforts and works between the Government of Puerto Rico and the Federal Government, as well as coordinate internally among the various entities that constitute the Government of Puerto Rico, as may be required or convenient for handling

and receiving said resources, as well as the maximization thereof. Furthermore, the Authority shall be the chief entity of the Government of Puerto Rico for the identification, programming, planning, development, channeling of resources, and supervision of projects, initiatives or programs that qualify for financing with these resources. The Authority shall also handle, gather, organize, analyze, submit for approval if necessary, and disclose information and reports as may be required pursuant to the Federal Economic Stimulus Act of 2009, in order to guarantee transparency as to their employment and administration.

From the funds to be received and administered by the Authority, the tax credits or incentives granted to the residents of Puerto Rico are hereby excluded; the latter are to be received, administered, and disbursed by the Secretary of the Treasury. Furthermore, all funds that, under the provisions of the Federal Economic Stimulus Act of 2009 or under the norms or rules of, or agreements existing with, the Federal Government, must be received, disbursed, or administered by any other entity of the Government of Puerto Rico, are hereby excluded. However, the Authority shall be responsible for discharging all other tasks hereby entrusted that are not incompatible with the provisions of the Federal Economic Stimulus Act of 2009 or with the norms or rules of, or the agreements existing with, the Federal Government.

In coordination with the Bank and the Secretary of the Department of the Treasury, and to the extent that it is not incompatible with the Federal Economic Stimulus Act of 2009 or with the norms or rules of the Federal Government or interagency agreements, the Authority shall invest the funds it receives as provided for under subsection (f) of this Section and shall make all payments from these funds as pertinent.

**C) Assistance Contracts.—**

In order to further and expedite the purposes of this Section and to expediently channel the federal assistance received and ensure compliance with the requirements set forth under the Federal Economic Stimulus Act of 2009, the Authority is hereby authorized, as well as each entity of the Government of Puerto Rico, to enter into Assistance Contracts. Benefited Entities shall be under the obligation to comply with the provisions of their Assistance Contracts and with the actions taken by or on behalf of the Benefited Entity or the Authority under such contracts, provided that such Benefited Entity is able to take such actions without infringing upon the laws, contracts, and agreements in effect. Subject to the provisions of this Section, the Federal Economic Stimulus Act of 2009, the Authority's Organic Act insofar as not incompatible with this Section, or any other law, agreement, or contract of the Authority or the Benefited Entity in effect, Assistance Contracts shall include all provisions as the Authority may deem pertinent to achieve the purposes of such assistance. Such contracts may include, not to be construed as a limitation, the terms listed in the Organic Act of the Authority, as well as all others as the Authority may deem necessary or convenient.

**D) Special Periods.—**

It is hereby declared that Benefited Entities who execute Assistance Contracts shall enter into Special Periods from the time the Assistance Contract is executed, until such Special Periods end at the time the purposes thereof are completed or the conditions provided under such contract are met. During such Special Periods, the Authority may require the Benefited Entity to meet certain conditions or to take or adopt actions or measures as the Authority may deem necessary and convenient to maximize the benefits

thus received for Puerto Rico as efficiently and expediently as practicable and to distribute them in the fairest and most equitable manner. Furthermore, it may establish in the corresponding Assistance Contract, the measures that the Authority may implement during such Periods and the remedies available to the Authority when the Benefited Entity fails to comply with the provisions of the Assistance Contract.

During the Special Period, and as an exception to any bidding requirement imposed under the organic act or the bylaws of a Benefited Entity of the Government of Puerto Rico, the Authority shall be empowered to require that any Benefited Entity not to observe such bidding procedure when awarding contracts for construction, procurement, or any other contract for services, unless the Federal Economic Stimulus Act of 2009, or other Federal law, rule or norm requires specific procurement and contracting procedures to be followed, in which case, the latter procedures shall be observed. The Authority may require a Benefited Entity not to observe the bidding procedures only when such provision has been set forth in the Assistance Contract and by means of a resolution of the Board of Directors of the Authority to that effect. The resolution shall provide for the manner in which procurement or contracting is to be carried out, while maintaining a balance between the promptness required and the mandatory transparency, fairness and equitability in the distribution of such benefits.

**E) Implementation Costs; Authorization for the Bank to Grant Loans.—**

The Bank is hereby authorized to grant a loan to the Authority to defray the costs of implementing the Federal Economic Stimulus Act of 2009 in Puerto Rico pursuant to the provisions of this subsection below, as well as to advance funds for projects that qualify for receiving funds under

such Act as a refund. Furthermore, the Authority is hereby authorized to charge reasonable fees to Benefited Entities on account of services provided under Assistance Contracts. Insofar as the Federal Economic Stimulus Act of 2009 allows, Benefited Entities may defray the share of service fees and repay the Bank loan in quantities as eligible from funds received under the Federal Economic Stimulus Act of 2009. All other implementation costs shall be payable from resources available to each Benefited Entity. Insofar as such available resources are not sufficient to repay all the amounts advanced by the Bank and the service fees charged by the Authority, these shall be repaid on a yearly basis by means of budgetary appropriations up to a sum equal to the amount of the loan granted by the Bank and the sums owed to the Authority. The Director of the Office of Management and Budget shall include in the operating budgets of the Commonwealth of Puerto Rico, submitted annually by the Governor to the Legislature, beginning in the fiscal year following the date on which the Bank has made a disbursement, the amounts necessary so as to allow the Bank to recover the principal of and interest on the loan disbursed and to allow the Authority to recover the service fees owed.

**F) Funds.—**

The funds received by the Government of Puerto Rico under the Federal Economic Stimulus Act of 2009 shall be kept in separate accounts and deposited in the Bank or in any other institution authorized by law to receive public fund deposits. These funds shall be accounted for, controlled, and administered by the Authority, subject to the applicable accounting laws, the requirements established under the Federal Economic Stimulus Act of 2009, and any other norm, rule, or agreement whereby such funds are received.

**G) Acceptance On Behalf of the Government of Puerto Rico.—**

The Authority, on its behalf and on behalf of the Government of Puerto Rico, shall be the entity authorized to accept the benefits available under the Federal Economic Stimulus Act of 2009. The Government of Puerto Rico hereby agrees to any requirement, condition, or term of any funds accepted by the Authority. The Authority may execute contracts and other documents with the Federal Government as necessary to accomplish the purposes of this Section and the Federal Economic Stimulus Act of 2009.

**H) Norms for Construing this Section.—**

It shall be understood that the provisions of this Section are to be construed in the most liberal manner possible in favor of the maximization of the funds that Puerto Rico may receive under the Federal Economic Stimulus Act of 2009; the expedient, fair and reasonable distribution of such assistance; the transparency and the timely, complete and clear disclosure of the funds to be distributed, and the procedures observed; the efficiency in project development; and the accomplishment of the purposes of the Federal Economic Stimulus Act of 2009 as set forth therein. Likewise, the powers and authorities conferred onto the Authority under this Section and under the Organic Act of the Authority shall be construed liberally, in order for the purposes of this Section to be attained.

**I) Provisions in Contravention Rendered Ineffective.—**

In the event that the provisions of this Section are in contravention with the provisions of any other law, the provisions of this Section shall prevail, unless the provisions of such other law specifically amend or repeal any or all the provisions of this Section.”

**Section 3.—Severability Clause.—**If any provision of this Act or the application of such provision to any person or under any circumstance



should be found to be unconstitutional or null, the remaining provisions of this Act and their application shall not be affected by such finding of unconstitutionality or nullity.

**Section 4.—Effectiveness.**—This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 8 (S.B. 466) of the 1<sup>st</sup> Session of the 16<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** amend Section 4 of Act No. 44 of June 21, 1988, as amended, known as the “Puerto Rico Infrastructure Financing Authority Act,” in order to provide that the Board of Directors of the Authority shall be constituted by five members of the Board of Directors of the Government Development Bank for Puerto Rico, the Secretary of the Treasury, and an additional member, to be appointed by the Governor of Puerto Rico, and that the Chair of the Board of the Authority shall be appointed by the Governor of Puerto Rico from among the members of the Board of Directors of the Authority; etc,

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

In San Juan, Puerto Rico, today 1<sup>st</sup> of April of 2009.

Solange I. De Lahongrais  
Director