

(H. B. 891)

**(No. 80-2013)**

(Approved July 24, 2013)

## **AN ACT**

To amend Sections 3, 4, repeal Section 5 and create a new Section 5 in Act No. 113-2011, known as the “Puerto Rico Cruise Ship Industry Promotion and Development Act,” in order to modify certain provisions regarding the incentives granted by the Ports Authority; repeal Section 6 of Act No. 113-2011, and renumber Sections 7 through 15 as Sections 6 through 14, respectively; amend renumbered Sections 6 and 11; provide for the consolidation of the Fund balance between the Ports Authority and the Tourism Company; extend the effective term of the incentives to Fiscal Year 2017-2018; direct the Office of Management and Budget to update the pending balances and to proceed with the payment of the funds destined to the Ports Authority Fund; and for other related purposes.

### **STATEMENT OF MOTIVES**

Act No. 113-2011, known as the “Puerto Rico Cruise Ship Industry Promotion and Development Act,” was created to safeguard the interest of the Commonwealth of Puerto Rico to develop and strengthen the cruise ship industry on the Island. For such purposes, the Government developed several key elements that have served as the basis to promote said interest. The key elements that have been established as public policy under the Act are the following: (a) to reaffirm and strengthen the importance of Puerto Rico as a regional and world cruise ship home port; (b) to increase the number of cruise ships arriving in Puerto Rico; (c) to increase the stay of cruise ship passengers in lodgings throughout all the regions and municipalities of Puerto Rico, as well as on the islands that comprise its archipelago (Vieques, Culebra, and others); (d) to increase the number of visits and the volume of

passengers in the cruise ships that visit Puerto Rico; (e) to increase consumption in the Island by passengers and crew, including expenses related to the acquisition of supplies and other operating expenses of those cruise ships arriving to the Island; (f) to generate and increase profits for the different economic segments of Puerto Rico connected directly or indirectly with the cruise ship industry; and (g) to offer incentives on equal terms to all cruise lines so as to maximize the promotion of Puerto Rico as a tourist destination and improve the relationship with the cruise ship industry in general.

In accordance with said criteria, a series of incentives were created to be administered simultaneously by the Ports Authority and the Tourism Company of Puerto Rico. These incentives were directed, among other things, to encourage the different cruise ship lines to increase the number of passengers that visited our Island, to increase the number of visits to Puerto Rico using our ports as home port, to promote cruise ships to stay in Puerto Rico for a period of at least 8 hours and to incentivize cruise ship lines to dock in our piers, as well as to acquire supplies, and contract maintenance and repair services for their ships on the Island.

On the other hand, the Act provides that the incentives to be granted would be administered by two different government entities through funds created thereunder. The Ports Authority Fund was created in Section 3 and was nourished during Fiscal Year 2011-2012, by a five-million dollar (\$5,000,000) and a four-million dollar (\$4,000,000) allocation from the Puerto Rico Tourism Company and from the Office of Management and Budget, respectively, totaling nine million dollars (\$9,000,000). For Fiscal Years 2012-2013 and 2013-2014, said Section provided that the Fund would be nourished by a four-million dollar (\$4,000,000) and a five-million five hundred thousand dollar (\$5,500,000) allocation from the Puerto Rico Tourism Company and the Office of Management and Budget, respectively, for a total of nine million five hundred thousand dollars (\$9,500,000). It was also established that said

fund could receive allocations from the Legislative Assembly and from any other agency of the Federal, State, or Municipal Governments, or from private entities or persons, including the Budgetary Fund created by virtue of Act No. 147 of June 18, 1980, as amended.

With respect to the Puerto Rico Tourism Company, Section 4 creates a different fund known as the Tourism Company Fund that is nourished by one million five hundred thousand dollars (\$1,500,000.00) from the Puerto Rico Tourism Company's own funds. Said fund has an identical strategy for other possibilities of collecting funds to that used to nourish the Ports Authority Fund.

It must be stressed that, although the Ports Authority is required by law to administer and grant the incentives so ordered, the funds it uses proceed entirely from external sources, that is, the Puerto Rico Tourism Company and the Office of Management and Budget, which are the main recurring sources of income for the administration of said incentives. The aforesaid has posed a substantial effort for the Ports Authority to be able to fully comply with the provisions of law of Act No. 113-2011, *supra*.

Furthermore, the transfer of funds by the Puerto Rico Tourism Company and the Office of Management and Budget to the Ports Authority entails certain bureaucratic transactions that prevent the Ports Authority from promptly complying and paying cruise lines the amount of funds equivalent to the incentives claimed.

This situation destabilizes the finances of the Ports Authority, a public corporation that is currently facing a dire fiscal situation.

Section 5 of Act No. 10 of June 18, 1970, known as the "Puerto Rico Tourism Company Act," provides that said public corporation "shall have and may exercise all the rights, powers, and duties that are necessary and convenient to promote, develop, or improve the tourism industry (...)." The Puerto Rico Tourism Company offers countless incentives to the different sectors of the tourism industry, therefore,

it has the resources and experience to offer, manage, and grant incentives to the cruise ship industry. For such reason, it is deemed necessary to amend Act No. 113-2011, *supra*, in order to modify the provisions that direct the Ports Authority to administer and grant the funds needed to comply with the incentives provided thereunder. In order to simplify and expedite said administration and granting process, it shall be consolidated in the Puerto Rico Tourism Company.

This Legislative Assembly also deems it pertinent to extend the effective term of the provisions of Act No. 113-2011, *supra*, to 2018. This extension is appropriate since negotiations with cruise ship lines are made at least two years before said ship's scheduled visit. That is to say, the negotiations made in 2013, 2014, and 2015 will generate visits mainly in the 2015-2018 period. This extension shall provide a degree of certainty to the world cruise ship industry when negotiating incentives with Puerto Rico and shall make our ports competitive with those in other parts of the world. Therefore, this Legislative Assembly deems it convenient to extend the effective term of Act No. 113-2011 for five fiscal years, through fiscal year 2017-2018.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

**Section 1.-** Section 3 of Act No. 113-2011 is hereby amended to read as follows:

“Section 3.- Ports Authority Fund - Creation

It is hereby created in the books...

(a) ...

(b) During Fiscal Years 2012-2013 and 2013-2014, four million dollars (\$4,000,000) from the funds of the Puerto Rico Tourism Company and five million five hundred thousand dollars (\$5,500,000) annually from funds earmarked by the Office of Management and Budget in the General Budget, subject to compliance with Section 5 of this Act.

At the end of Fiscal Year 2012-2013, the balance in the Ports Authority Fund, if any, shall be consolidated and remitted to the Puerto Rico Tourism Company on or before July 31<sup>st</sup>, 2013 or within one (1) month after the effective date of this Act. Said funds shall be remitted thereafter in their entirety to be administered by the Puerto Rico Tourism Company, which shall be in charge of granting the incentives provided in Section 5 of this Act.

- (c) ...
- (d) ...
- (e) ...”

**Section 2.-** Subsection (a) is hereby amended and a new subsection (e) is hereby added to Section 4 of Act No. 113-2011 to read as follows:

“Section 4.- Tourism Company Fund - Creation

[...]

(a) During Fiscal Year 2011-2012 and Fiscal Year 2012-2013, one million five hundred thousand dollars (\$1,500,000) annually from the funds of the Puerto Rico Tourism Company. During Fiscal Year 2013-2014, five million five hundred thousand dollars (\$5,500,000) from the funds of the Puerto Rico Tourism Company and five million five hundred thousand dollars (\$5,500,000) earmarked by the Office of Management and Budget as part of the General Budget, subject to compliance with Section 5 of this Act. During Fiscal Years 2014-2015, 2015-2016, 2016-2017, and 2017-2018, six million two hundred fifty thousand dollars (\$6,250,000) from the funds of the Puerto Rico Tourism Company, and six million five hundred thousand dollars (\$6,500,000) earmarked by the Office of Management and Budget as part of the General Budget, subject to compliance with Section 5 of this Act.

- (b) ...
- (c) ...
- (d) ...

(e) The consolidated balance, if any, of the Ports Authority Fund, as provided in Section 3(b) of this Act.”

**Section 3.-** Section 5 is hereby repealed and a new Section 5 is hereby added to Act No. 113-2011 to read as follows:

“Section 5.- Establishment of Incentives for Cruise Ship Companies or Operators

(a) Cruise ship companies or operators that visit any port in the jurisdiction of Puerto Rico may be eligible for the following benefits:

1. Cruise Ship Company Incentive:

i. For cruise ships that dock in a port in the jurisdiction of Puerto Rico through June 30, 2018, four dollars and ninety-five cents (\$4.95) shall be deducted from the thirteen dollars and twenty-five cents (\$13.25) tax imposed per passenger as fixed by the head or administrative authorities of the ports of Puerto Rico. This incentive shall apply to the first one hundred forty thousand (140,000) passengers arriving to any port of Puerto Rico in the company’s cruise ships within the twelve (12)-month period of the fiscal year, beginning Fiscal Year 2011-2012. Likewise, seven dollars and forty-five cents (\$7.45) per passenger shall be deducted when the company has exceeded such number of passengers. If the port tax is less than the thirteen dollars and twenty-five cents (\$13.25)-tax, four dollars and ninety-five cents (\$4.95) shall be deducted from the tax applicable to said port. If there is any reduction in the official fixed taxes, the incentive herein provided shall be reduced in the same proportion.

ii. The funds required to grant the incentives hereunder shall originate from the Authority Fund and shall be administered by the Ports Authority until Fiscal Year 2012-2013. Beginning Fiscal Year 2013-2014, and in fiscal years thereafter, the Office of the Management and Budget shall remit the funds indicated in Section 4(a) above, within the first sixty (60) days of each fiscal year. These

incentives shall be administered by the Puerto Rico Tourism Company as provided in Section 3 of this Act.

(2) Home Port Frequent Visit Incentive:

i. The following amounts shall be contributed:

1. One dollar (\$1.00) per passenger shall be contributed to cruise ship companies or operators that use any port in the jurisdiction of Puerto Rico as home port.

2. Two dollars (\$2.00) per passenger after the twenty-first (21st) visit of the cruise ship company within a fiscal year period. As of the fifty-third (53rd) visit of the cruise ship company within a fiscal year period, the cruise ship company shall receive a contribution of three dollars (\$3.00) per passenger.

3. An additional contribution to those indicated above of fifty cents (\$0.50) per passenger shall be granted to cruise ship companies or operators that use any port in the jurisdiction of Puerto Rico as home port from Monday through Friday, inclusively.

4. In addition to the incentives indicated above, any cruise ship that uses any port in the jurisdiction of Puerto Rico as home port, and also visits one or more ports in the jurisdiction of Puerto Rico in the same week, shall receive fifty cents (\$0.50) in addition to any of the incentives provided in this subsection.

5. Any cruise ship that uses any port in the jurisdiction of Puerto Rico as home port, and departs two times per week from the same port shall receive fifty cents (\$0.50) in addition to any of the incentives provided in this subsection.

6. Every home port cruise ship that departs from the Port of San Juan before 4:00 PM shall receive an incentive of one dollar and fifty cents (\$1.50) per passenger.

7. The total contributions contained in this Act shall never exceed thirteen dollars and twenty-five cents (\$13.25). Any balance in excess of said amount shall not be paid. If there is a reduction or increase in this tax, the maximum contribution shall be proportionally adjusted.

ii. The funds for the incentives to be provided hereunder shall originate from the Authority Fund and be administered by the Ports Authority until Fiscal Year 2012-2013.

iii. Beginning Fiscal Year 2013-2014, and in fiscal years thereafter, the Office of the Management and Budget shall remit the funds indicated in the above Section 4(a) within the first sixty (60) days of each fiscal year. These incentives shall be administered by the Puerto Rico Tourism Company as provided in Section 3 of this Act.

(3) Cruise Ship Home Port Bilateral Marketing Program:

i. A Bilateral Marketing Program between the Puerto Rico Tourism Company and the eligible cruise ship company (hereinafter the Marketing Program) shall be created for the purpose of placing Puerto Rico as the home port of the Caribbean and incentivize its worldwide demand. To each Marketing Program, the sum of one dollar (\$1.00) shall be contributed per passenger in cruise ships departing from any port of the jurisdiction of Puerto Rico during the fiscal year period beginning in Fiscal Year 2011-2012; provided, that to qualify for such incentive, the cruise ship company shall contribute to its Marketing Program a portion of the amount of the incentive claimed, as prescribed through regulation by the Tourism Company pursuant to this Act.



ii. The funds required to grant the incentives provided hereunder shall originate from the Company Fund, and the Marketing Program shall be administered by the Puerto Rico Tourism Company.

(4) Port of Call Incentive:

i. The sum of one dollar and fifty cents (\$1.50) per passenger shall be contributed to ships docking at any port of the jurisdiction of Puerto Rico for at least eight (8) hours and pay the applicable tax to said port during a fiscal year period. This incentive shall require the cruise ship to dock before 11:00 AM. If it docks after 11:00 AM, one dollar (\$1.00) shall be contributed; provided, that the cruise ship is docked for eight (8) hours in the port.

ii. The funds required to grant the incentives provided hereunder shall originate from the Authority Fund, and shall be administered by the Ports Authority until Fiscal Year 2012-2013.

iii. Beginning Fiscal Year 2013-2014, and in fiscal years thereafter, the Office of Management and Budget shall remit the funds indicated in the above Section 4(a), within the first thirty (30) days of each fiscal year. These incentives shall be administered by the Puerto Rico Tourism Company as provided in Section 3 of this Act.

(5) Supplies and Services Incentive:

i. Every cruise ship that docks in any port within the jurisdiction of Puerto Rico shall be eligible to receive an incentive equal to ten percent (10%) of the expenses incurred in the purchase of supplies and/or contracting maintenance or repair services for the cruise ship in Puerto Rico, excluding materials, goods, or equipment installed as a result of such service, as specified in the regulations adopted by the Tourism Company. An additional five-percent (5%) shall be offered for the acquisition of goods manufactured in Puerto Rico as certified

by the Puerto Rico Industrial Development Company, or agricultural products of Puerto Rico as certified by the Department of Agriculture.

ii. The services contemplated herein shall exclude docking services required by the cruise ships in each port of call.

iii. Cruise ship owners or operators that comply with these provisions shall receive these benefits after presenting evidence, to the satisfaction of the aforementioned agencies, that the purchases were made from companies in which fifty percent (50%) or more of their shareholders or owners reside in Puerto Rico or that said companies manufactured fifty percent (50%) or more of the sold goods. In the case of companies engaged in the rendering of services, as defined in the regulation of the Trade and Export Company, the employees rendering such services shall reside in Puerto Rico. Transshipment or transfer of goods directly to cruise ships from ports where ships carrying food or beverages dock shall not constitute an activity incentivized or eligible for this incentive. Vendors and service providers shall also be certified by the Puerto Rico Trade and Export Company and shall comply with all applicable circular letters, administrative orders, and regulations.

iv. The funds required to grant the incentives provided hereunder shall originate from the Company Fund.

(b) To ensure the fiscal soundness and reliability of the incentives program, it shall be in effect until Fiscal Year 2017-2018.

(c) It is hereby expressly provided that the incentives listed herein shall apply exclusively to eligible cruise ships that use any port within the jurisdiction of Puerto Rico.

(d) The incentives herein provided shall be granted by the Puerto Rico Tourism Company or the Puerto Rico Ports Authority, as the case may be, to the appropriate company, operator or agent within a term that shall not exceed thirty

(30) days after submitting the invoices, according to the corresponding regulation, claiming the incentives listed herein; Provided, that should the Puerto Rico Tourism Company or the Puerto Rico Ports Authority be in disagreement with regard to any invoice item, such disagreement shall not prevent the payment of any other item in the invoice that has not been objected. Likewise, the Puerto Rico Tourism Company or the Puerto Rico Ports Authority shall be responsible for notifying the entity that submitted the invoice within said thirty (30)-day period about any objection to any invoice item stating the reasons that support the objection.”

**Section 4.-** Section 6 of Act No. 113-2011 is hereby repealed.

**Section 5.-** Sections 7 through 15 are hereby renumbered as Sections 6 through 14, respectively, of Act No. 113-2011, as amended.

**Section 6.-** Renumbered Section 6 of Act No. 113-2011 is hereby amended to read as follows:

“Section 6.- Establishment of Incentives for Organizations Authorized by the Tourism Company to Offer Tourist Transportation in Piers

(a) Any tour company authorized by the Puerto Rico Tourism Company to offer tours or tourist transportation in the piers of Puerto Rico in which it collects and drops off passengers, shall be entitled to provide its services and contract directly with cruise ship companies and may receive a basic one dollar (\$1.00) contribution per cruise ship passenger that purchases a tour in the cruise ship in which he travels. Tour companies may receive a special four dollar (\$4.00) contribution for each cruise ship passenger that purchases a tour in the cruise ship in which he travels; provided, such tour includes a visit to the municipalities of Vieques and/or Culebra. The special contribution for tours to Vieques and Culebra shall be in addition to the basic contribution. The Puerto Rico Tourism Company may change the contribution per passenger, according to the need to incentivize the purchase of these tours and

the market competitiveness. The incentives described in this subsection shall be in effect until Fiscal Year 2017-2018, inclusively.

(b) ...

(c) ...”

**Section 7.-** Renumbered Section 11 of Act No. 113-2011 is hereby amended to read as follows:

“Section 11.- Appropriation of Funds

During Fiscal Years 2011-2012 to 2017-2018, the Office of Management and Budget shall earmark in the Joint Resolution of the Budget of the Commonwealth of Puerto Rico the sum appropriated under this Act to nourish such Funds. Within the first thirty (30) days of each fiscal year, the Office of Management and Budget shall remit the total amount corresponding to the Fund created by this legislation.”

**Section 8.-** The Office of Management and Budget (MB) is hereby directed to update all pending balances and to proceed with the payment of the funds destined to the Authority to nourish the Ports Authority Fund, as provided in Section 3 of Act No. 113-2011, within a term that shall not exceed sixty (60) days as of the approval of this Act.

**Section 9.-** Severability Clause

If any clause, paragraph, article, section, title, or part of this Act were held to be null or unconstitutional by a competent court, the holding to such effect shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be exclusively limited to the clause, paragraph, article, section, title, or part thereof thus held to be null or unconstitutional.

**Section 10.-** This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 80-2013 (H. B. 891)** of the **1<sup>st</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Sections 3, 4, repeal Section 5 and create a new Section 5 in Act No. 113-2011, known as the “Puerto Rico Cruise Ship Industry Promotion and Development Act,” in order to modify certain provisions regarding the incentives granted by the Ports Authority; repeal Section 6 of Act No. 113-2011, and renumber Sections 7 through 15 as Sections 6 through 14, respectively; amend renumbered Sections 6 and 11; provide for the consolidation of the Fund balance between the Ports Authority and the Tourism Company; [...]

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

In San Juan, Puerto Rico, on this 4<sup>th</sup> day of September, 2018.

Orlando Pagán-Ramírez  
Director