

(H. B. 3417)

(No. 113-2011)

(Approved July 4, 2011)

AN ACT

To set forth the new Puerto Rico Cruise Ship Industry Promotion and Development Act; create the Ports Authority Cruise Ship Incentive Fund, to be attached to the Ports Authority and the Tourism Company Cruise Ship Incentive Fund, to be attached to the Tourism Company, in order to create and strengthen an incentive program to stimulate the arrival of more cruise ships to the Island, increase the number of passengers, promote the acquisition of supplies and the contracting of services with local businesses, provide assurance and stability to this important tourist sector of Puerto Rico; create various new strategic incentives to strengthen Puerto Rico's position with respect to the worldwide cruise ship industry; create an Internship Program; appropriate funds; terminate the incentive program adopted under Act No. 76 of August 25, 2005, as amended; and for other purposes.

STATEMENT OF MOTIVES

The tourist industry is an integral part of Puerto Rico's economy and its development is a priority for this Administration. Tourism represents approximately \$3,600,000,000 annually for our economy or approximately 6% of the National Gross Product. It is a source of much economic activity and jobs for Puerto Ricans. Puerto Rico is located in the Caribbean, where the tourist market competition is vast with various competitors. Therefore, we have the duty of staying at the forefront of the tourist industry so that Puerto Rico continues to be an attractive destination not only due to its features, but also to the new initiatives that attract to the Island more tourists from around the world.

The cruise ship industry is one of the main sectors of tourism and of Puerto Rico's economy, not only due to its economic impact, but also to the image of the Island it projects to the world. In fact, Puerto Rico is perhaps one of the most important locations for the cruise ship industry. The arrival of such ships to Puerto Rico has a direct economic impact of over two hundred and forty five million dollars (\$245,000,000) every year, given that approximately 1.2 million tourists visit Puerto Rico every year through such means, thus allowing for the creation of over four thousand (4,000) direct and indirect jobs.

One of the programmatic commitments of this Administration is to make cruise ship tourist visits more attractive and to promote them, in coordination with cruise ship companies. Tourism is also an integral part of the economic and strategic plan of our Administration: the Strategic Model for a New Economy (MENE, Spanish acronym). The MENE has been praised by renowned economists in Puerto Rico, and its goal is to strengthen Puerto Rico as a home port destination and to improve its relationship with cruise ship companies.

In view of the significant economic impact of the cruise ship industry on the economy, the Government of Puerto Rico has traditionally created incentives to retain and incentivize such industry. For such reason in 1985, the Government of Puerto Rico established the first incentive program and built new port facilities. In 1988, agreements were entered into between the Puerto Rico Ports Authority and Puerto Rico Tourism Company, whereby two types of incentives were agreed upon with cruise lines to stimulate their permanence in Puerto Rico, mainly as home port. The first of these incentives consisted of a head passenger tax, should the cruise line bring more than a certain number of passengers a year. The second incentive consisted of a credit per passenger, which was retroactive to the first trip of the year, provided that the ships visit the Island more than forty (40) times a year.

After a tax review process conducted by the Puerto Rico Ports Authority, the head passenger tax was significantly increased by 30%, to \$13.25, effective on July 1, 2004. To ensure that such increase would not adversely affect the tourist industry, Act No. 76 of August 25, 2005 was adopted to create new incentives for cruise ship companies. Act No. 76-2005 extended the previously established head passenger tax and the home port incentives and added incentives to cruise ships that would remain in port for over eight (8) hours, incentives for the number of passengers, and refunds for purchasing supplies in Puerto Rico. Later, Act No. 99 of June 21, 2008 amended Act No. 76-2005 to extend its effective term to Fiscal Year 2011, extend the application of some incentives to all ports within the jurisdiction of Puerto Rico, and clarify technical issues within the Act. That is to say, the effective term of the existing incentives ends on June 30, 2011.

The Port of San Juan and of other towns throughout the Island are part of a highly competitive sector, mainly due to the fact that new and attractive destinations continue to emerge in other parts of the world, such as the Mediterranean Sea, Asia, and Latin America, and in other cities of the continental United States. For such reason, it is imperative for the Government of Puerto Rico to ensure that the ports of the Island continue to be regarded as ideal destinations for the cruise ship industry, which is growing and becoming increasingly competitive. Thus, it shall be necessary to ensure that the cost of arriving to and using our ports be reasonable, providing continuity to the traditional incentive program through a new law.

On the other hand, the success achieved with cruise ships is an opportunity to promote other tourist areas in Puerto Rico. The offer of incentives must be broadened, providing the industry with incentives for the sale of travel deals that include a cruise trip and a stay in a hotel of Puerto Rico, providing incentives not only for the purchase of products in Puerto Rico, but also for the contracting of

ship maintenance and repair services, and providing incentives geared toward promoting the offering of tours to cruise ships. Likewise, we deem it convenient to promote the creation of an Internship Program, so that our students in the tourism field may have the opportunity to train through direct experiences in cruise ships. Furthermore, the cruise ship industry has confirmed that most cruise ship tourists worldwide usually resort to travel agencies to obtain information and decide their cruise destination. In light of the foregoing, we must create the necessary mechanisms to take advantage of this reality as an opportunity to nourish the local cruise ship industry, by creating a new incentive for travel agencies through this Act.

In brief, this Legislative Assembly deems it necessary to strengthen the competitiveness of Puerto Rico in the cruise ship industry, by extending the scope of the law so that it includes key segments within the industry as a chain of distribution, service providers, and tour companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Short Title.-

This Act shall be known as the “Puerto Rico Cruise Ship Industry Promotion and Development Act.”

Section 2.- Public Policy.-

Through the adoption of this new Puerto Rico Cruise Ship Industry Promotion and Development Act and the new incentives for the cruise ship industry, the Government of Puerto Rico seeks the following primary objectives: 1) to reaffirm and strengthen the importance of Puerto Rico as a regional and world cruise ship home port; 2) to increase the number of cruise ships arriving in Puerto Rico; 3) to increase the stay of cruise ship passengers in lodgings throughout all the regions and municipalities of Puerto Rico, as well as in the islands that comprise its archipelago (Vieques, Culebra, and others); 4) to increase the number

of visits and the volume of passengers in the cruise ships that visit Puerto Rico; 5) 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; 6) to generate and increase profits for the different economic segments of Puerto Rico connected directly or indirectly with the cruise ship industry; 7) to offer incentives on equal terms to all cruise lines and establish partnerships with every cruise line so as to maximize the promotion of Puerto Rico as a tourist destination and improve the relationship with the cruise ship industry in general.

Section 3.- Creation of the Ports Authority Fund.-

A special fund to be denominated as the “Ports Authority Cruise Ship Industry Incentive Fund” (the “Authority Fund”), is hereby created in the books of the Puerto Rico Ports Authority, to be attached to the Puerto Rico Ports Authority, which shall not have a specific fiscal year. The Authority Fund shall be kept separate from other public funds under the custody of the Puerto Rico Ports Authority. The Authority Fund shall be nourished by the following appropriations:

(a) During Fiscal Year 2011-2012, five million dollars (\$5,000,000) from the funds of the Puerto Rico Tourism Company and four million dollars (\$4,000,000) to be identified by the Office of Management and Budget as part of the General Budget, subject to compliance with Section 5 of this Act.

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

(c) The appropriation of funds provided in this Act and those to be appropriated in the future by the Legislative Assembly to the special fund herein created.

(d) Any other funds donated, transferred, or assigned by the Federal or State government, municipalities, or private entities or persons, including the Budgetary Fund created by virtue of Act No. 147 of June 18, 1980, as amended.

(e) The balance in the Authority Fund at the close of each fiscal year shall remain therein and may be used to attain the purposes of this Act in subsequent fiscal years.

Section 4.- Creation of the Tourism Company Fund.-

A special fund to be denominated as the “Tourism Company Cruise Ship Industry Incentive Fund” (the “Company Fund”), is hereby created in the books of the Puerto Rico Tourism Company, to be attached to the Puerto Rico Tourism Company, which shall not have a specific fiscal year. The Tourism Company Fund shall be kept separate from other public funds under the custody of the Puerto Rico Tourism Company. The Company Fund shall be nourished by the following appropriations:

(a) From Fiscal Year 2011-2012 to Fiscal Year 2013-2014, one million five hundred thousand dollars (\$1,500,000) annually from the funds of the Puerto Rico Tourism Company.

(b) The appropriation of funds provided in this Act and those to be appropriated in the future by the Legislative Assembly to the special fund herein created.

(c) Any other funds donated, transferred, or assigned by the Federal or State government, municipalities, or private entities or persons, including the Budgetary Fund created by virtue of Act No. 147 of June 18, 1980, as amended.

(d) The balance in the Company Fund at the close of each fiscal year shall remain therein and may be used to attain the purposes of this Act in subsequent fiscal years.

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. Four dollars and ninety five cents (\$4.95) shall be deducted from the thirteen dollars and twenty-five cents (\$13.25) head passenger 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 and forty thousand (140,000) passengers arriving to any port of Puerto Rico in cruise ships of the company within the twelve (12) month period of the fiscal year, beginning in Fiscal Year 2011-2012. Likewise, the amount of seven dollars and forty-five cents (\$7.45) per passenger shall be deducted, when the company has exceeded such number of passengers. If the head passenger tax of a port is different from that of the incentive, the lower amount shall apply. If the fixed official head passenger tax is reduced, the incentive provided herein shall be reduced proportionately.

ii. The funds required to grant the incentives hereunder shall originate from the Authority Fund and shall be administered by the Ports Authority.

2. Home Port Frequent Visit Incentive:

i. 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. Two dollars (\$2.00) per passenger after the twenty-first (21st) visit of the cruise ship company within a fiscal year period, beginning in Fiscal

Year 2011-2012. Once the fiscal-year visits of the cruise ship company exceed one hundred and twenty (120) within a fiscal-year period, the cruise ship company shall receive a contribution of four dollars (\$4.00) per passenger after visit number sixty-one (61).

ii. The funds for the incentives to be provided hereunder shall originate from the Authority Fund and be administered by the Ports Authority.

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 percentage 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 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 (\$1.00) 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, beginning in Fiscal Year 2011-2012.

ii. The funds required to grant the incentives hereunder shall originate from the Authority Fund, and shall be administered by the Ports Authority.

5. Supplies and Services Incentive:

i. Every cruise ship that docks at 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 of the cruise ship in Puerto Rico, excluding materials, goods, or equipment installed as a result of such service, as specified in the regulation adopted by the Tourism Company. An additional five-percent (5%) tax 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 fifty percent (50%) or more of the sold goods are manufactured thereby. 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 comply with all the 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 effective for only three (3) years, until Fiscal Year 2013-2014, after which term it may be reevaluated and extended by means of legislation.

(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 6.- Establishment of Incentives to Entities Engaged in the Sale of Travel Deals.-

(a) The Puerto Rico Tourism Company shall also develop an incentive program for entities engaged in the sale of travel deals. An incentive shall be contributed to those entities making sales to persons other than residents of Puerto

Rico and acquire through qualified entities trips on cruise ships starting or ending in any port within the jurisdiction of Puerto Rico, combined with stays in hotels of Puerto Rico. The incentive shall be proportional to the number of reservations made in hotels of Puerto Rico. For purposes of this subsection, one (1) reservation shall mean one (1) night stay in any room of any hotel endorsed by the Puerto Rico Tourism Company.

(b) The incentives to be provided under this subsection shall be administered and provided for through regulations by the Puerto Rico Tourism Company. The funds and appropriations needed for the establishment of the incentive program for entities engaged in the sale of travel deals shall be identified by the Puerto Rico Tourism Company and originate from the Company Fund.

Section 7.- 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 one-dollar (\$1.00) contribution per cruise passenger that obtains a tour in the cruise ship where he/she travels during a fiscal year period beginning in Fiscal Year 2011-2012. The contribution per passenger shall be determined annually by the Tourism Company.

(b) Any tour company authorized by the Puerto Rico Tourism Company to offer tourist transportation in the pier area shall be eligible to receive the benefits of this subsection, provided, it complies with the provisions of this Act and the regulations approved thereunder.

(c) The funds and appropriations needed for the establishment of the incentive program for tour companies shall originate from the Company Fund and shall not exceed five hundred thousand dollars (\$500,000) per year. This program shall be administered by the Tourism Company.

Section 8.- Beneficiaries.-

Only cruise ship owners and operators, entities engaged in the sale of travel deals established in Puerto Rico or abroad, and organizations authorized by the Puerto Rico Tourism Company to collect passengers at piers, as the case may be, shall be entitled to apply for the incentives provided in this Act; provided, that the agencies or agents thereof in Puerto Rico shall have the authority to apply for, transact, and receive such benefits as a result of the business relationship with those they represent.

Section 9.- Fund Administration.-

(a) The Puerto Rico Ports Authority and the Puerto Rico Tourism Company shall prescribe by regulations to such effect, all that pertains to the manner and form in which the incentives shall be applied for and granted, in order to ensure a sound administration of public funds.

(b) The Puerto Rico Ports Authority shall have the obligation to oversee that the funds appropriated to the Authority Fund are used as provided in the regulations adopted by the same. The Puerto Rico Tourism Company shall have the obligation to oversee that the funds appropriated to the Company Fund are used as provided in the regulations adopted by the same.

(c) On or before ninety (90) days as of the close of every fiscal year, the Puerto Rico Ports Authority and the Puerto Rico Tourism Company shall submit a report to the Governor and the Legislative Assembly of Puerto Rico on their compliance and administration of this Act.

Section 10.- Internship Program.-

The public policy of the Government of Puerto Rico is to develop the abilities of those students who are enrolled in academic programs related to the tourism industry. Thus, an Internship Program is hereby created to be regulated by the Puerto Rico Tourism Company to enable students of the universities of Puerto Rico to serve the internship required as part of their curricula in the cruise ships covered under this Act. The Puerto Rico Tourism Company shall have a term of one year as of the approval of this Act to establish said Program in coordination with cruise lines and universities of the Island.

Section 11.- Regulations in Effect.-

During the period beginning on the effective date of this Act until the effective date of any regulation to be promulgated thereunder, the incentives provided under this Act shall be subject to all the provisions of Regulation 7103 of March 10, 2006, known as the “Cruise Ship Incentive Regulation,” Regulation 7816 of December 14, 2009, known as the “First Amendment to the Cruise Ship Incentive Regulation,” as well as any administrative determination, circular letter, or other official communication of the Executive Director of the Puerto Rico Tourism Company, pursuant to Act No. 76 of August 25, 2005, or Act No. 99 of June 12, 2008, in all those provisions that are not inconsistent with the provisions of this Act. Furthermore, the regulations in effect in other agencies, including the Trade and Export Company, pursuant to Act No. 76 of August 25, 2005, as amended, shall continue in effect with respect to all those provisions that are not inconsistent with the provisions of this Act.

Section 12.- Consignation of Funds.-

During Fiscal Years 2011-2012 to 2013-2014, the Office of Management and Budget shall consign in the Joint Resolution of the Budget of the Government of Puerto Rico the amount appropriated under this Act to nourish such Funds.

Section 13.- Puerto Rico Cruise Ship Incentive Special Fund under Act No. 76 of August 25, 2005, as amended.-

It is hereby expressly provided that, as of the effective date of this Act, no new applications for benefits under Act No. 76 of August 25, 2005, as amended, shall be accepted. In addition, as of the effective date of this Act, no fund appropriations shall be made to the Puerto Rico Cruise Ship Incentive Special Fund created under Act No. 76 of August 25, 2005, as amended. Any surplus or balance in said fund shall be transferred to the Puerto Rico Tourism Company, without prejudice to any application for benefits already filed under the provisions of Act No. 76 of August 25, 2005, as amended, or under consideration as of the approval of this Act.

Section 14.-Savings Clause and Severability.-

If any provision, section, subsection, paragraph, subparagraph, chapter, clause, phrase or part of this Act were ruled invalid, null, or unconstitutional by any court with competent jurisdiction, such ruling shall not affect, impair or invalidate the remaining provisions of this Act, thus limiting the effect of the ruling to the section, subsection, paragraph, subparagraph, chapter, clause, phrase or part thus ruled invalid, null, or unconstitutional.

Section 15.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 113-2011 (H. B. 3417)** of the **5th Session of the 16th Legislature** of Puerto Rico:

AN ACT to set forth the new Puerto Rico Cruise Ship Industry Promotion and Development Act; create the Ports Authority Cruise Ship Incentive Fund, to be attached to the Ports Authority and the Tourism Company Cruise Ship Incentive Fund, to be attached to the Tourism Company, in order to create and strengthen an incentive program to stimulate the arrival of more cruise ships to the Island, increase the number of passengers, promote the acquisition of supplies and the contracting of services with local businesses, provide assurance and stability to this important tourist sector of Puerto Rico; create various new strategic incentives to strengthen Puerto Rico's position with respect to the worldwide cruise ship industry; create an Internship Program; appropriate funds; terminate the incentive program adopted under Act No. 76 of August 25, 2005, as amended; and for other purposes.

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

In San Juan, Puerto Rico, on the 3rd day of October, 2012.

María del Mar Ortiz Rivera