

(H. B. 1909)

**(No. 120-2014)**

(Approved July 31, 2014)

## **AN ACT**

To create the “SMBs Job Generation and Retention Act,” which establishes a tax and/or wage incentive program for small- and medium-sized businesses (SMBs) to promote the development and expansion of this sector, as well as the creation of new jobs and the retention of jobs in SMBs having serious financial difficulties; establish eligibility requirements for businesses or entrepreneurs to avail themselves of the benefits provided in this Act; define the powers and responsibilities of the Puerto Rico Trade and Export Company in the administration of this Act; appropriate funds for the implementation thereof; and for other related purposes.

### **STATEMENT OF MOTIVES**

Small- and medium-sized businesses (SMBs) are a critical factor in Puerto Rico’s economic development. Specifically, SMBs in Puerto Rico with less than fifty (50) employees constitute ninety-five percent (95%) of business, and almost half of the jobs in the private sector. However, particular financial circumstances of the last years have pose a great challenge for SMBs. In light of the foregoing, the Government of the Commonwealth of Puerto Rico has been promoting and implementing measures and programs aimed at incentivizing the development of businesses placing emphasis on job creation. Thus, Act No. 1-2013, as amended, known as the “Jobs Now Act” has been a cardinal incentive law for this Administration. The Jobs Now Act has made thousands of new jobs feasible, mainly in the SMBs sector, thanks to several incentives granted under said Act to participating businesses. However, the availability of benefits under the Jobs Now

Act expired on June 30<sup>th</sup>, 2014. The purpose of this Bill which is solely intended for SMBs is to provide continuity beyond the Jobs Now Act to the incentives that have proved effective in helping participating businesses to progress and create new jobs. Additionally, this measure contributes to achieve job retention in existing SMBs.

The Puerto Rico Trade and Export Company (PRTEC) is the public corporation entrusted with promoting the wellbeing and development of SMBs in the Island. Among the tools and resources provided by the PRTEC to businessmen and entrepreneurs in Puerto Rico are: advisory services for the development of businesses, skill-building programs through the Foreign-Trade Entrepreneurship Development Institute, Certification of Voluntary Chains, lease of commercial facilities, export support, and access to a Foreign Trade Zone, among other initiatives.

Thus, a new incentive program is hereby established to be administered by PRTEC. This legislation is directed to promoting the wellbeing and development of SMBs and the creation of new enterprises in this sector, which would in turn, lead to the creation of new jobs in SMBs experiencing serious financial difficulties. Likewise, job creation is made feasible through the following incentives available to eligible SMBs as certified by PRTEC under this program that enter into a job creation or retention Agreement, to wit: (i) wage subsidy for every new job created or for job retention in eligible SMBs that have suffered operating losses for two (2) consecutive years; (ii) preferential income tax rates; (iii) a staggered incentive for the payment of the Christmas Bonus similar to that implemented under the Jobs Now Act; (iv) real and/or personal property tax partial exemption; (v) municipal license tax partial exemption; and (vi) State Insurance Fund Corporation Premiums partial exemption.

As stated in this Act, all the incentives herein shall be available for eligible new SMBs that enter into a job creation agreement with PRTEC. Furthermore, this Act also provides incentives to existing eligible SMBs that increase their number of employees by twenty percent (20%), as well as to those that have suffered net operating losses for two (2) consecutive years and have retained all their employees.

In brief, just as Act No. 73-2008, known as “the Economic Incentives Act for the Development of Puerto Rico,” which is specifically directed to the industrial sector, this Act promotes an entrepreneurial environment as well as optimum economic opportunities for the development of local businesses, recognizing that SMBs are the cornerstone of Puerto Rico’s present and future economic development. Furthermore, this Act recognizes that the wellbeing of SMBs is critical for Puerto Rico’s economy. For such reason, incentives under this Act are directed to SMBs, and the scope of the eligible SMB definition is broad, since it comprises different production sectors of our economy and offers incentives to both new and existing SMBs. To avoid challenges to the constitutionality of this Act, it does not include foreign SMBs. However, this Act requires a fifteen-percent (15%) minimum local capital investment or in lieu thereof, that at least twenty percent (20%) of the gross sales generated in Puerto Rico be deposited and maintained every month in local banks and/or cooperatives for a period of not less than three (3) years. Moreover, to ensure the continuity and effectiveness of this Act, it does not establish an expiration date and provides that PRTEC shall require reports from eligible SMBs. Through said reports, PRTEC shall oversee eligible SMBs’ compliance with the terms and conditions they agree upon in relation to the incentives granted under this Act.

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

**CHAPTER I.- PRELIMINARY PROVISIONS.-**

**Section 1.1- Title.-**

This Act shall be known as the “SMBs Job Generation and Retention Act.”

**Section 1.2.- Declaration of Public Policy.-**

Exercising its regulatory power and complying with its duty to ensure the wellbeing of the Island’s economy and to promote the mechanisms that are appropriate and necessary to develop the same, the Legislative Assembly of the Commonwealth of Puerto Rico hereby declares as public policy to promote the creation and retention of jobs by small- and medium-sized businesses (SMBs) through incentives, exemptions, subsidies and other measures.

**Section 1.3.- Definitions.-**

For purposes of this Act, the following terms, phrases and words shall have the meaning and scope stated below:

(a) **Job Creation and Retention Agreement.-** An Agreement by and between an Eligible SMB and the Government, whereby the Eligible SMB commits to create and retain jobs and other conditions, as appropriate, in exchange for the applicable benefits provided in this Act that are specifically listed in said Agreement. Agreements shall state their effective term and shall expire upon expiration of the benefits granted thereunder, as provided in this Act or the Agreement itself, and subject to the availability of funds for the award of such benefits by the Company.

(b) **SMBs -** Includes the following types of businesses: (i) microbusiness – generate an annual gross income of less than five hundred thousand dollars (\$500,000) and have seven (7) employees or less; (ii) small-sized business - generate an annual gross income of less than three million dollars (\$3,000,000) and have twenty-five (25) employees or less on a full-time basis or its equivalent, as

such term is defined in this Act; and medium-sized business - generate an annual gross income of less than ten million dollars (\$10,00,000) and have fifty (50) employees or less or its equivalent, as such term is defined in this Act.

(c) **Eligible SMB** - Any natural or juridical person, including corporations, partnerships, limited liability companies or any other entity or organization doing business or considering to do business in Puerto Rico, regardless of their place of organization; that is a SMB as such term is defined in this Act; that is not receiving payments, subsidies, refunds, or incentives of any kind by the Government for job creation and retention; and that meets all other requirements of this Act and the regulations thereof to receive benefits thereunder in relation to Eligible Incremental Jobs created by the SMB. In addition, it must have a fifteen-percent (15%) minimum local capital investment or deposit and maintain at least twenty percent (20%) of the gross sales generated in Puerto Rico every month in local banks and/or cooperatives for a period of not less than three (3) years.

(d) **Eligible New SMB** - An Eligible SMB as provided in subsections (b) and (c) of this Section that has not begun its main business operations (although organized) at the time the Job Creation Agreement was executed. No business that has been operating through affiliates or resulting from a reorganization, as defined in Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” shall be considered an Eligible New SMB.

(e) **Eligible Expanding SMB** - An Eligible SMB as provided in subsections (b) and (c) of this Section operating as of January 1<sup>st</sup>, 2014, that, on the filing date of the application for incentives under this Act, has retained the total number of employees thereof during the six (6) months preceding the filing date of the application; and that, (i) is considering to increase the number of full-time employees (forty (40)-hour workweek) by at least twenty percent (20%) on or

before six (6) months as of the execution of the Agreement; or (ii) has made changes in its operations (such as adding products or a line of business) that, in the judgment of the Executive Director, constitute an expansion of the Eligible SMB that shall lead to the creation of new jobs and yield other financial benefits for the community where the Eligible Expanding SMB operates, without impairing the competitiveness of other existing SMBs. For purposes of this definition, the voluntary resignation of an employee shall not be considered a reduction in the number of employees of an Eligible Expanding SMB. Moreover, the dismissal of an employee for just cause who is replaced by another employee with a similar salary and position shall not be considered a reduction in the number of employees of an Eligible Expanding SMB.

(f) Eligible SMB with Net Operating Losses - An Eligible SMB as provided in subsections (b) and (c) of this Section operating as of January 1<sup>st</sup>, 2014, that has had net operating losses during each one of the last two (2) taxable years preceding the filing date of the application for incentives under this Act, and has retained the total number of employees thereof during the six (6) months preceding the filing date of the application. For purposes of this definition, the voluntary resignation of an employee shall not be considered a reduction in the number of employees of an Eligible SMB with Net Operating Losses. Moreover, the dismissal of an employee for just cause who is replaced by another employee with a similar salary and position shall not be considered a reduction in the number of employees of an Eligible SMB with Net Operating Losses.

(g) Eligible Incremental Job - The increase in the number of Eligible Employees, as such term is defined in this Section, hired by an Eligible SMB under a Job Creation Agreement as of the effective date of this Act and the execution of the Agreement pursuant to which it is applying for the benefits thereunder.

(h) Eligible Job or Employee - A regular, full-time employee (or its equivalent), as defined in this Section. It shall not include employees working under contract who are recruited through employment agencies.

(i) Regular Job or Employee - An individual who is a resident of Puerto Rico and is included in the Eligible SMBs' payroll shall be counted as a regular employee. The number of regular employees shall include the number of individuals who work a full-time shift for the Eligible SMB and/or "the number equivalent to full-time employees." The number equivalent to full-time employees shall be calculated by adding the hours worked by employees who are not hired on a full-time basis and dividing the sum by five hundred and twenty (520) to determine the quarterly Eligible Incremental Job, and by one hundred and sixty-two (162) to determine the monthly Eligible Incremental Job.

(j) Definitions of other terms:

(1) Government - The Government of the Commonwealth of Puerto Rico and all its municipalities, instrumentalities, political subdivisions, agencies, and public or quasi-public corporations.

(2) Code - Act No. 1-2011, as amended, known as the "Internal Revenue Code of 2011," or any subsequent law that supersedes it.

(3) Company or "PRTEC" - the Puerto Rico Trade and Export Company.

(4) Executive Director - The Executive Director of the Puerto Rico Trade and Export Company.

(5) Secretary of the Treasury - The Secretary of the Department of the Treasury of Puerto Rico.

(6) Act - The "SMBs Job Generation and Retention Act."

Section 1.4.- Powers and Duties of the Trade and Export Company.-

PRTEC shall be the entity responsible for carrying out the purposes of this Act. Thus, it shall have, among others, the following powers and responsibilities:

(a) To promote the public policy promulgated in this Act and the SMBs participation in the job creation and retention incentive program provided thereunder.

(b) To certify SMBs as eligible to receive the incentives provided under this Act.

(c) To advise Eligible SMBs on the availability and function of the incentives to be granted before applying for the same.

(d) To coordinate and administer the incentives under this Act.

(e) To prescribe by Regulations the procedures that shall govern the incentive program provided in this Act.

(f) To ensure that all procedures are carried out in accordance with the applicable rules and regulations.

(g) To impose sanctions and other applicable measures in the event of noncompliance by participating Eligible SMBs as provided in this Act.

(h) To collect data, prepare and publish statistics, studies and reports as provided in this Act.

## CHAPTER II.- JOB CREATION AND RETENTION INCENTIVES.-

### Section 2.1.- Job Creation and Retention Incentives in General.-

Eligible SMBs that enter into a Job Creation or Retention Agreement with PRTEC may apply for the incentives corresponding to their specific classification under this Act, whether as an Eligible New or Expanding SMB or as an Eligible SMB with Net Operating Losses. The sum, duration, and other terms, and conditions and requirements related to such job creation and/or retention benefits and incentives shall be governed by the provisions of this Act or the regulations

thereunder and by the specific terms of each Job Creation or Retention Agreement entered into with PRTEC by every participating Eligible SMB.

Section 2.2.- Incentives Available for Eligible New SMBs that enter into an Agreement.-

Eligible New SMBs that have entered into a Job Creation Agreement may choose to avail themselves of the following incentives, provided they meet the requirements of said Agreement and this Act:

(a) Partial Wage Refund.- Eligible New SMBs may apply for a refund equal to fifty percent (50%) of the minimum federal wage of \$7.25 per hour, up to a maximum of \$3.625 per hour, paid for completing a regular work schedule (without including overtime) to individuals hired to hold the new jobs created by an Eligible New SMB in compliance with the Agreement entered into with the Company. Said refund shall apply for a maximum of fifteen (15) full-time employees or the equivalent thereof to wages paid during the twelve (12)-month period of the eligible employee recruitment with respect to Eligible Employees who have been recruited after a Eligible New SMB has filed an application under Section 3.5 of this Act, and not later than six (6) months after the execution of the Agreement; provided it is established, to the satisfaction of the Executive Director, that jobs for which benefits are granted constitute Eligible Incremental Jobs for the Eligible New SMB. The incentive shall be processed through the Job Promotion Bureau of the Department of Labor and Human Resources through the mechanisms provided under Act No. 52-1991, as amended.

(b) Preferential Income Tax Rates.- The net income subject to normal tax of the Eligible New SMB during the first year of operations pursuant to an Agreement shall be subject to a fixed five percent (5%) income tax or the lowest applicable rate under the Code, at the option of the taxpayer. This tax rate shall apply retroactively to the first day of the taxable year in which the Agreement is

executed. The tax rate applicable to the second taxable year following the year in which the Agreement is executed shall be ten percent (10%), and for the third taxable year, the tax rates shall be fifteen percent (15%) or the lowest applicable rate under the Code, at the option of the taxpayer. The alternative minimum tax or any other additional tax rate under the Code shall not apply during the effective term of this incentive.

(c) Temporary Partial Municipal License Tax Exemption.- Eligible New SMBs that enter into an Agreement under this Act and choose to avail themselves of this incentive shall enjoy a fifty percent (50%)-exemption from the payment of municipal licenses, excise taxes, and other municipal levies imposed by any municipal ordinance during the two (2) fiscal years following the execution of the Agreement. Eligible New SMBs shall attach a copy of the Agreement along with the declaration of volume of business for the years to which the exemption apply.

(d) Partial Real and/or Personal Property Tax Exemption.- Partial exemption from real and/or personal property taxes during the two (2) fiscal years following the execution of the Agreement by an Eligible New SMBs that choose to avail themselves of this incentive, in accordance with the terms and conditions provided hereinbelow. Eligible New SMBs shall attach a copy of the Agreement along with the property tax return for the years to which the exemption apply.

(1) The personal property of an Eligible New SMB that enters into an Agreement under this Act, used in the development, organization, construction, establishment, or operation of the business activity of the Eligible New SMB shall enjoy a fifty percent (50%)-exemption from municipal and state taxes on personal property during the exemption period provided in this Act.

(2) The real property of an Eligible New SMB that enters into an Agreement under this Act, used in the development, organization, construction, establishment or operation of the business activity of the Eligible New SMB shall

enjoy a fifty-percent (50%) exemption from municipal and state taxes on real property during the exemption period provided in this Act. Real property taxes shall be appraised, imposed, notified, and administered as provided in Act No. 83-1991, as amended, known as the “Municipal Property Tax Act of 1991.”

(e) Discount on Premiums of the State Insurance Fund Corporation.- Eligible New SMBs that have enter into a Job Creation Agreement under this Act and choose to avail themselves of this incentive shall enjoy a fifty-percent (50%) exemption discount on premiums payable to the State Insurance Fund Corporation for two (2) years after the execution of the Special[sic] Agreement in relation to Eligible Incremental Jobs agreed upon in the Agreement.

(f) Christmas Bonus Staggered Payment.- Eligible New SMBs that enter into an Agreement under this Act shall not be subject to the minimum Christmas Bonus payment established in Act No. 148 of June 30, 1969, as amended. In lieu thereof, any Eligible New SMB that has twenty-five (25) full-time employees or the equivalent thereof as such term is defined in this Act, shall pay a minimum Christmas Bonus of two hundred dollars (\$200) in the first year as of the execution of the Agreement; four hundred dollars (\$400), in the second year; and six hundred dollars (\$600), in the third year. Any Eligible New SMB that is a microbusiness or small-sized business as such terms are defined in subsection (d) of Section 1.3 of this Act that has twenty-five (25) full-time employees or the equivalent thereof, as such term is defined in this Act, shall pay a minimum Christmas Bonus of one hundred seventy-five dollars (\$175) in the first year as of the execution of the Agreement; two hundred and twenty-five dollars (\$225), in the second year; and two hundred seventy-five dollars (\$275), in the third year. Any other exemptions and terms provided under Act No. 148, *supra*, shall apply to Eligible New SMBs that avail themselves of this incentive, provided that they are not contrary to the minimum amounts fixed in this subsection. Such Eligible SMB may not apply to

the Secretary of Labor and Human Resources for a Christmas Bonus payment exemption as provided in Act No. 148, *supra*, while availing themselves of the benefits of this Act.

Eligible New SMBs shall have a maximum of six (6) months to create the jobs object of the Agreement as of the execution date thereof and in relation to which they may apply for the incentives provided herein.

Section 2.3.- Incentives Available for Eligible Expanding SMBs that enter into a Job Creation Agreement.-

Eligible Expanding SMBs that have entered into a Job Creation Agreement whereby they commit to create Eligible Incremental Jobs as defined in this Act may choose to avail themselves of the following incentives, provided they meet the requirements of said Agreement and this Act:

(a) Partial Wage Refund.- Eligible Expanding SMBs may apply for a refund equal to fifty percent (50%) of the minimum federal wage of \$7.25 per hour, up to a maximum of \$3.63 per hour, paid for completing a regular work schedule (without including overtime) to individuals hired to hold the new jobs created by an Eligible Expanding SMBs in compliance with the Agreement entered into with the Company. Said refund shall apply for a maximum of ten (10) full-time employees or the equivalent thereof to wages paid during the twelve (12)-month period of the Eligible Employee recruitment with respect to Eligible Employees that have been recruited after a Eligible Expanding SMB has filed an application under Section 3.5 of this Act and not later than six (6) months after the execution of the Agreement; provided it is established, to the satisfaction of the Executive Director, that jobs for which benefits are granted constitute Eligible Incremental Jobs for the Eligible Expanding SMB. The incentive shall be processed through the PRTEC in compliance with the regulatory requirements and mechanism issued for the administration thereof.

The incentive shall be processed through the Job Promotion Bureau of the Department of Labor and Human Resources under the mechanisms provided in Act No. 52-1991, as amended.

(b) Discount on Premiums of the State Insurance Fund Corporation.- Eligible Expanding SMBs that have entered into a Job Creation Agreement under this Act and choose to avail themselves of this incentive shall receive a fifty percent (50%)-discount on premiums payable to the State Insurance Fund Corporation for two (2) years after the execution of the Special [sic] Agreement in relation to Eligible Incremental Jobs agreed upon in the Agreement.

Eligible Expanding SMBs shall have a maximum of six (6) months to create the jobs object of the Agreement as of the execution date thereof and in relation to which they may apply for the incentives provided herein.

Section 2.4.- Incentives Available for Eligible SMBs with Net Operating Losses that enter into a Job Retention Agreement.-

Eligible SMBs with Net Operating Losses that have entered into a Job Retention Agreement as such term is defined in this Act may choose to avail themselves of the following incentives, provided they meet the requirements of said Agreement and this Act:

(a) Partial Wage Refund.- Eligible SMBs with Net Operating Losses that prove having net operating losses during each one of the most recent taxable years as of the filing date of the application for the benefits and incentives of this Act and that, as of the filing date of said application, have retained the total number of employees thereof during the six (6) months preceding the filing of the application, may apply for a refund equal to fifty percent (50%) of the minimum federal wage of \$7.25 per hour, up to a maximum of \$3.625 per hour, paid for completing a regular work schedule (without including overtime) for a maximum of ten (10) full-time employees or the equivalent thereof. Such refund shall apply to wages

paid during the first twelve (12) months of effectiveness of the Agreement with respect to Eligible Employees that are on payroll as of the date of execution of the Agreement and that are retained in their jobs. The incentive shall be processed through the PRTEC in compliance with the regulatory requirements and mechanism issued for the administration thereof. In addition, as a condition to receive a partial wage refund for job retention, the eligible SMB shall complete an entrepreneurial training program to be offered by the Trade and Export Company.

The incentive shall be processed through the Job Promotion Bureau of the Department of Labor and Human Resources under the mechanisms provided in Act No. 52-1991, as amended.

(b) Discount on Premiums of the State Insurance Fund Corporation.- Eligible SMBs with Net Operating Losses that have entered into a Job Retention Agreement under this Act and choose to avail themselves of this incentive shall receive a fifty percent (50%)-discount on premiums payable to the State Insurance Fund Corporation for two (2) years after the execution of the Special [sic] Agreement in relation to Eligible Jobs retained as provided in the Agreement.

Section 2.5.- Created or Retained Job Continuity Requirement.-

Eligible New or Expanding SMBs that enter into a Job Creation Agreement and receive incentives under this Act shall maintain an average of Eligible Jobs during the first three (3) calendar years as of the execution date of the Agreement equal to or greater than the number of Eligible Jobs they had as of the execution date of the Agreement, plus the number of Eligible Incremental Jobs for which they had claimed incentives under this Act. In addition, every Eligible SMBs with Net Operating Losses that enters into a Job Retention Agreement and receives incentives under this Act shall maintain the total number of employees it had as of the filing date of the application for incentives under this Act for a term of not less than two (2) years as of the execution of the Agreement. Any business that applies

for incentives to create jobs in substitution for a job within the Eligible SMB or jobs transferred to another Eligible SMB as a result of a transfer of assets or line of business shall not be eligible to receive benefits under this Act. On the other hand, the voluntary resignation of an employee shall not be considered a reduction in the number of employees of an Eligible SMB for purposes of this Section.

Section 2.6.- Financing by the Economic Development Bank.-

Subject to the eligibility criteria provided by the Economic Development Bank for Puerto Rico, the Bank is hereby directed to give priority to the financing applications filed by Eligible SMBs covered by this Act. To achieve such purpose, said institution may establish new financing programs or use existing ones. It may also enter into agreements with other financial institutions to offer financing, either by providing securities and/or shares. Furthermore, it may implement attractive programs to provide short-, medium-, or long-term financing, including, but not limited to lines of credit, insofar as they facilitate the immediate establishment of Eligible SMBs with capacity to create jobs immediately.

CHAPTER III.- PROCEDURAL PROVISIONS.-

Section 3.1.- Authorization to Enter into Job Creation or Retention Agreements.-

The Executive Director shall execute Job Creation or Retention Agreements, in representation of the Government, with Eligible SMBs that meet the criteria and comply with the procedures established in this Act.

Section 3.2.- Public Notice.-

The Company shall issue a notice to the public stating the procedure to enter into Job Creation or Retention Agreements within thirty (30) days after the approval of this Act.

Section 3.3.- Job Creation or Retention Agreements.-

An Eligible SMB shall execute a Job Creation or Retention Agreement with the Government whereby it shall commit to increase the number of jobs in its

business operations to avail itself of any benefit provided in this Act. In the case of an Eligible SMB with Net Operating Losses, it shall commit to retain the total number of employees it has as of the filing date of the application with the Company in accordance with Section 3.5 of this Act.

The Job Creation Agreement shall establish the following:

(a) the number of Eligible Incremental Jobs that the Eligible SMB commits to create or the number of jobs the Eligible SMB agrees to retain in exchange for receiving the benefits provided under Chapter II of this Act;

(b) the specific incentives to be enjoyed by the Eligible SMB, as provided in this Act; and

(c) other terms and conditions that the Company may deem necessary to attain the objectives of this Act.

Section 3.4.- Term to Enter into a Job Creation or Retention Agreement and Incentives Availability.-

Eligible SMBs may enter into an Agreement with the Company at any time during the effectiveness of this Act, provided, that it complies with all the applicable procedures, terms, and conditions provided in this Act and the Regulations thereunder. The amount of incentives to be granted shall depend on the resources and funds available from appropriations of the Legislative Assembly for such purposes, whose final determination shall be made exclusively by PRTEC as administrator of the incentive program provided by this Act.

Section 3.5.- Incentive Application and Job Creation and/or Retention Agreement Execution Process.-

(a) An Eligible SMB that wishes to avail itself of the benefits of Chapter II of this Act shall file a sworn application with the Company including the following:

(1) A description of the business activity in which the Eligible SMB is engaged, or intends to engage.

(2) The address where operations are or shall be conducted.

(3) The name and address of the shareholders or owners of the Eligible SMB, as well as of any affiliate entities operating in Puerto Rico.

(4) The number of employees working at the Eligible SMB during the six (6)-month period preceding the filing date of the application for incentives under this Act.

(5) The incremental job projection or, in the case of an Eligible SMBs with Net Operating Losses, the total number of employees it commits to retain.

(6) The incentives of this Act that the Eligible SMB wishes to obtain.

(7) Evidence of its organization and of having its tax and employer obligations up to date.

(8) Any other reasonable information the Company may require.

(b) The Company shall have sixty (60) calendar days as of the date of receipt of a complete application to enter into an Agreement and shall not require endorsement from any other agency to enter into such Agreement. As necessary by virtue of the particular incentives under this Act that an Eligible SMB chooses to request, the Company shall deliver a copy of the Agreement to any other agency granting the requested incentives, such as the Municipal Revenue Collection Center of the municipality where the Eligible SMB operates and the Puerto Rico State Insurance Fund Corporation.

(c) Denial of Applications.- The Executive Director may deny an application if he/she deems that the granting thereof does not meet any of the requirements provided in this Act or is not in the best economic and social interests

of Puerto Rico after taking into consideration the nature of the physical facilities, the number of jobs to be created, the investment to be made, or other factors that, in his/her judgment, warrant such determination.

After being notified of the denial, the applicant shall have sixty (60) days to request the Executive Director to reconsider his/her application by stating any facts and arguments regarding the application that the applicant may deem pertinent, including offering any consideration in benefit of Puerto Rico that may warrant the reconsideration of his/her application.

Section 3.6.- Permissive and Mandatory Revocation Procedure.-

(a) Permissive Revocation-

(1) When an Eligible SMB fails to meet any of the obligations imposed thereon by this Chapter, the regulations adopted thereunder or by the terms of the Job Creation Agreement.

(2) When the Eligible SMB fails to comply with the creation of Eligible Incremental Jobs or the retention of the total number of employees, as established for such purposes in the Agreement.

(3) When the Eligible SMB fails to comply with its tax liability under the Code, any payment plan established, and other tax laws of Puerto Rico.

(b) Mandatory Revocation-

(1) The Executive Director shall revoke any Job Creation or Retention Agreement entered into under this Chapter when the same has been obtained by fraud or misrepresentation as to the nature of the Eligible SMB or the Eligible Incremental Jobs generated, the retention of the total number of employees or any other facts or circumstances that, wholly or partially, led to the execution of the Agreement.

(2) In the case of this revocation, the Eligible SMB shall be deemed to have filed a false or fraudulent return with the intent to evade taxes and, therefore, shall be subject to the penal provisions of the Code. Taxes owed, which were until then exempt and unpaid, shall become due and payable from the date they would have been due and payable were it not for the Job Creation and/or

Retention Agreement, and shall be assessed and collected by the Government official with authority to do so.

(c) Procedure – In case of revocation of an Agreement entered into as provided in this Chapter, the Eligible SMB shall have the opportunity to appear before and be heard by the Executive Director or any other person designated by the latter for such purpose who shall notify the Executive Director of his/her conclusions and recommendations.

#### Section 3.7.- Incentive Recovery Procedure.-

If a Job Creation or Retention Agreement is revoked pursuant to Section 3.6 of this Act, the sums equivalent to the benefits granted thereunder shall be deemed to be sums owed for the taxable year in which the revocation occurs, and shall be paid by the Eligible SMB affected by such revocation. The Executive Director shall hand over the file of the Eligible SMB to the Secretary of the Treasury as it appears in the records of the Company within ten (10) days of the revocation of the Agreement. The Eligible SMB shall file a report with the Secretary of the Treasury itemizing the benefits obtained under this Act, enclosed with the payment of such benefits, within ninety (90) days as of the revocation. The Secretary of the Treasury shall notify the Eligible SMB of any discrepancies in connection with the benefit report within one (1) year after such report is filed.

### CHAPTER IV.- FINAL PROVISIONS.-

#### Section 4.1.- Periodic Reports.-

The Company shall be responsible for requiring Eligible SMBs that enter into Agreements under this Act to file reports, as necessary, and to ensure that the terms and conditions set forth in the Agreements are fully met.

#### Section 4.2.- Nature of the Agreements.-

(a) A Job Creation or Retention Agreement issued by virtue of this Act shall be deemed to be a contract between the Government and the Eligible SMB, its shareholders, members, investors, partners, and/or owners. Such contract shall have force of law between the parties. It shall also be construed liberally, according to the purposes of this Act, in order to promote the public policy set forth herein. The Executive Director, on behalf and in representation of the Government, shall exercise discretion to include any terms and conditions, grants, and exemptions that are consistent with the purpose of this Act, which seeks to promote job creation and retention through the socioeconomic development of Puerto Rico, taking into consideration the nature of the petition or action requested, as well as the facts and circumstances that may apply in each particular case.

(b) The Agreement shall not be awarded if the Executive Director deems that granting the benefits of the Agreement would adversely affect market competition.

#### Section 4.3.- Forms and Regulations under this Act.-

The PRTEC shall prepare a form, for statistical purposes, to be submitted by every Eligible SMB when applying for the incentives provided in this Act. In addition, the Company shall promulgate regulations as are necessary to enforce the provisions and achieve the purposes of this Act and, in doing so, it may consult with the Secretary of the Treasury and any other pertinent agency with jurisdiction over the incentives provided in this Act. Such regulations shall also be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act for the Commonwealth of Puerto Rico." The absence of any regulations as proposed in this Act shall not impair the application thereof.

#### Section 4.4.- Funds.-

The funds to achieve the purposes of this Act shall derive from the Entrepreneurship Fund, and the Legislative Assembly shall also annually appropriate special funds for the PRTEC to enforce the job creation and retention mandates of this Act, as well as the use of funds under Act No. 52-1991, as amended, to defray the wage refunds provided under this Act through the mechanisms provided by the Job Promotion Bureau of the Department of Labor and Human Resources.

#### Section 4.5.- Severability.-

If any clause, paragraph, subparagraph, provision, section, or part of this Act were nullified or held to be unconstitutional, the holding to such effect shall not affect, impair, or invalidate the remainder thereof. The effect of such holding shall be limited to the clause, paragraph, subparagraph, provision, section, or part of this Act thus nullified or held to be unconstitutional.

#### Section 4.6.- Effectiveness.-

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 120-2014 (H. B. 1909)** of the **3<sup>rd</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to create the “SMBs Job Generation and Retention Act,” which establishes a tax and/or wage incentive program for small- and medium-sized businesses (SMBs) to promote the development and expansion of this sector, as well as the creation of new jobs and the retention of jobs in SMBs having serious financial difficulties; establish eligibility requirements for businesses or entrepreneurs to avail themselves of the benefits provided in this Act; define the powers and responsibilities of the Puerto Rico Trade and Export Company in the administration of this Act; appropriate funds for the implementation thereof; 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 15<sup>th</sup> day of April, 2016.

Juan Luis Martínez Martínez  
Director