

(Substitute for S. B. 2656)
(Conference)

(No. 185)

(Approved August 3, 2004)

AN ACT

To transfer the legal entitlement of the “José Miguel Agrelot Coliseum” to the Convention Center District Authority; to amend Section 1.04 of Act No. 351 of September 2, 2000, as amended, known as the “Puerto Rico Convention Center District Authority Act”, to amend subsections (a), (b), (d), (e) and (g) of Section 2.01 thereof; to amend subsections (m) and (n) of Section 2.02 of said Act; to add a Section 6.14 thereto; and for other purposes.

STATEMENT OF MOTIVES

Article VI of Section 19 of the Constitution of the Commonwealth of Puerto Rico contemplates the importance of the cultural and historic patrimony of Puerto Rico, consigning as the public policy of the Commonwealth of Puerto Rico the conservation and maintenance of the buildings and sites that are declared by the Legislature as having historic or artistic value.

Pursuant to this constitutional maxim, this Legislature has the duty to protect those buildings that have an artistic and/or cultural value for the Puerto Rican people, as in this case the Puerto Rico “José Miguel Agrelot Coliseum”. With regard to the Coliseum, although at present SMG Puerto Rico was contracted for the operational administration thereof, that does not prevent the Government from retaining the power to supervise and manage said installation. Otherwise, it would be to act in contravention of the duty of the State to see to it that its patrimony is not left at the mercy of private interests, but that will be available for of the Puerto Rican people, for it to have a space to enrich of its artistic and cultural assets.

Therefore, it is imperative that the supervision and administration of the public policy of the Puerto Rico “José Miguel Agrelot Coliseum” to be under the supervision of a public corporation that shall be aware that said installations will offer adequate services to the Puerto Rican people. Thus, we shall not only ensure that our citizenry shall have a space for the enjoyment of a series of events, but that our local artists and sportspersons are also guaranteed that they shall have a new place in which to present themselves before their people.

Therefore, this Legislature deems it warranted that the Convention Center District Authority should have the responsibility of establishing the public and administrative policies of the “José Miguel Agrelot Coliseum of Puerto Rico”.

Thus, taking into account that Act No. 351 of September 2, 2000, as amended, created a public corporation and government instrumentality with its own legal personality, known as the Puerto Rico Convention Center District Authority. Its purposes are, among others, to develop, operate, manage and promote the Puerto Rico Convention Center, and a District to support it in a coordinated, efficient and proper manner.

It must be stated that, once it is completed, the Convention Center shall become the most important facility of its kind in the Caribbean and of all the Americas. On the other hand, the José Miguel Agrelot Coliseum shall not only be the largest in size in the Americas, but also one of the most important in the United States and throughout the world. Both facilities are public entities and it is up to the State to establish the public policy for their use.

This Legislature is aware of the importance of both installations, and recognizes the need for the maximum use thereof, preventing that any competition between them will arise.

Thus, this Legislature, in keeping with its responsibility to the People of Puerto Rico and recognizing the need to draft a straight forward and practical public

policy, hereby provides that to enable the maximum yield of both facilities, it is prudent and reasonable that only one Board of Directors shall have the responsibility to establish the public policy for both installations. Of course, this entails making the pertinent modifications of the Act that governs the Convention Center, to ensure that the Board will have the necessary elements and components to properly administer both installations, which although with different peculiarities and purposes in their origin and by their nature, may in the future complement each other so that of their yield for the people of Puerto Rico will be positive and will not increase the burden of the public treasury, as the financial decisions that were made at the end of the 90s.

On the other hand, this Legislature shall take into account that the opening of this Coliseum will have an international impact that will place the Island on equal terms with cities through the world that have large installations.

In truth culture, referring to art and sports, at this time, to mention some of its expressions, is an unifying agent between different social sectors, thus it is the responsibility of this Legislature to propitiate that a location such as the “Puerto Rico José Miguel Agrelot Coliseum”, in which artistic and cultural events shall take place, will have the endorsement of a public corporation that shall assume the responsibility to have it serve the diverse cultural expressions of the Puerto Rican people. All of the above, for the sake of complying with the constitutional statement above mentioned that imposes on the State the unavoidable responsibility of protecting the artistic patrimony of Puerto Rico.

Therefore, this Legislature is interested in amending Act No. 351 of September 2, 2000, as amended, known as the “Puerto Rico Convention Center District Act”, to transfer the title of the “Puerto Rico José Miguel Agrelot Coliseum”, to the Convention Center District Authority and amend the Board of the Authority to such effects, among other purposes.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Transfer of Title

All the rights, the title and interests of the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority on the “Puerto Rico José Miguel Agrelot Coliseum” are hereby assigned, appropriated and transferred to the Convention Center Authority.

Section 2.- Article 1.04 of Act No. 351 of September 2, 2000, as amended, is hereby amended to read as follows:

“Article 1.04.- Establishment of the District and the Puerto Rico José Miguel Agrelot Coliseum.

- (a) For the purpose of supporting that the Center and the Coliseum be developed, administered, operated and maintained pursuant to this Act by the Authority, the Puerto Rico Convention Center District, is created and established within the geographical area that shall be delineated in a map which shall be kept in the corporate offices of the Authority. Said geographic area shall consist of all the real property now owned or hereinafter acquired by the Authority that is in harmony with the purposes of this Act (which may or may not be sold, leased, subleased, or otherwise transferred to third parties as a Private Parcel), but excluding all real property acquired or leased by the Authority and designated by it at the time of its acquisition or lease as property that shall not constitute a part of the District. Included as part of the Puerto Rico Convention Center District Authority is the area where the Isla Grande Airport, known as *Aeropuerto Ribas Dominicci* is located, and it shall be redesignated as Ribas Dominicci Executive Airport. The District shall also include the geographic area in which the Center shall be developed.

After the effective date of this Act, no portion of the District shall be exempted from the jurisdiction of the Authority.

- (b) The installations that compose the “Puerto Rico José Miguel Agrelot Coliseum” are hereby attached to the Authority.

Section 3.- Subsections (a), (b), (d), (e) and (g) of Section 2.01 of Act No. 351 of September 2, 2000, as amended, are hereby amended to read as follows:

- “(a) Composition of the Board - The Board shall be composed of the following nine (9) members: the Secretary of the Department of Economic Development and Commerce; the Executive Director of the Puerto Rico Tourism Company; the President of the Government Development Bank; an official, employee or member of the public sector of a board, commission, agency or authority or municipality of the Government of Puerto Rico with experience in the areas of hotels, tourism, planning, marketing, engineering, real estate or convention centers, who shall be appointed by the Governor of Puerto Rico with the advice and consent of the Senate, and three (3) representatives of the private sector with experience in the areas of hotels, tourism, planning, marketing, engineering, real estate or convention centers, one of whom shall represent the working sector of the Center, and two representatives who shall be outstanding citizens in the sphere of sports, arts or culture, and shall be appointed by the Governor of Puerto Rico with the advice and consent of the Senate. The Secretary of the Department of Economic Development and Commerce shall be the Chairperson of the Board. The Vice Chairperson of the Board shall be the Executive Director of the Puerto Rico Tourism Company. However, no member of the private sector Board is allowed to

participate, vote or be involved in any way (including, but without being limited, to receive information or attend Board meetings) in any matter related to the selection, negotiation, development, design or construction of private parcels.

Two (2) Executive Committees shall be formed as part of the Board; one to address matters related to the District and the other Committee to deal with matters related to the “José Miguel Agrelot Coliseum”. The Executive Committee of the District shall be comprised of one (1), representative of the Government and two (2) representatives of the private sector. The Executive Committee of José Miguel Agrelot Coliseum shall be composed of one (1) representative of the Government and the two (2) new representatives from the sports, arts or cultural sphere. These Executive Committees shall be the bodies that shall establish the public policy of these two facilities.

- (b) Term of Office - The six (6) Board members appointed by the Governor of the Commonwealth of Puerto Rico, shall serve staggered six (6) year terms, with the exception of the first six (6) members appointed after the effective date of this Act. One of these members shall serve for a term of two (2) years and two (2) members shall serve for a term of three (3) years and two (2) members shall serve for a term of four (4) years as determined by the Governor as of the date of their appointment. The members of the private sector may be appointed to office for additional terms. The Secretary of Economic Development and Commerce, the Executive Director of the Tourism Company and the President of the Government Development Bank shall remain in office on the

Board for the duration of their term in office that entitles them to be members thereof. Any vacancy created by resignation, death, disqualification, or removal of an appointed Board member shall be filled by the Governor of Puerto Rico through the appointment of a successor Board member, within sixty (60) days as of the date on which the vacancy occurs, who shall serve for the remainder of the term of the replaced director.

- (c) ...
- (d) A minimum of five (5) members of the Board shall constitute a quorum for purposes of holding any meeting of the Board and all actions of the Board shall be approved by an affirmative vote of the majority of the Board members that are present; provided, however, that (1) regarding to those matters in which five (5) or six (6) members of the Board have some conflict of interest in a specific matter or material, pursuant to the provisions of Section 4 of this Act, a minimum of three (3) members shall constitute a quorum and all actions related to said matters must be approved by the affirmative vote of at least these three (3) members, who shall constitute a majority of the Board for such matters; and of two (2) in the event that seven (7) or more members of the Board have any conflict of interest in a particular matter or material, pursuant to Section 4 of this Act, the Authority shall not be authorized to participate in said specific matter or event.

It is further provided that it is a *sine qua non* requirement for the constitution of quorum in any of the abovementioned instances the attendance to the Board meetings of the President or the Vice-President.

- (e) Executive Director.- The Board shall appoint an Executive Director who shall act as the Chief Executive Officer of the Authority for a term of six (6) years, renewable for additional terms and shall grant to him/her a compensation plan that shall be competitive with other jurisdictions where facilities are operated that are analogous to the Center, the District and the Coliseum. The Executive Director shall be in charge of the execution of the duties and powers that are delegated to him/her by the Board of the Authority, the general administration of the District and the Coliseum, and shall represent them in all acts and in the contracts that need to be granted in the practice of their functions and shall perform the duties and assume the responsibilities, powers and authority delegated by the Board. Likewise, by delegation of the Board, the Executive Director shall supervise all officials, employees, agents, contractors and subcontractors of the Authority. The Executive Director shall be selected based on his/her merits, to be determined taking into consideration the technical training, expertise, experience and other qualities that specifically enable him/her to execute the responsibilities imposed by this Chapter.

The duties of the Executive Director, shall be the following among others:

- (a) To draft a Five-Year Strategic Plan according to the public policy established by this Act, which shall be submitted to the Board for its evaluation, recommendations and approval.
- (b) To represent the Authority in the granting of all necessary contracts; perform the duties and assume the responsibilities, powers and authority delegated to him/her by the Board of

Directors.

- (c) To evaluate work plans and submit reports to the Board, along with his/her recommendations for their approval or rejection.
- (d) To coordinate the operation and proper administration of the Puerto Rico José Miguel Agrelot Coliseum and of the Center, respectively.
- (e) To organize the operations and proper administration of the Puerto Rico José Miguel Agrelot Coliseum and of the Center, respectively, pursuant to the Administrative Organization Plan approved by the Board.
- (f) To select the personnel deemed necessary to perform the functions of the Center and the Puerto Rico José Miguel Agrelot Coliseum and to appoint said personnel without being subject to Act No. 5 of October 14, 1975, as amended, known as the Puerto Rico Public Service Personnel Act, but subject to the rules and regulations adopted by the Board to such effects.
- (g) To submit, for the approval of the Board, the regulations needed to achieve the purposes of this Act.
- (h) To contract the professional, consulting and technical services that are needed to comply with the purposes of this Act, including the administration of the operations of the Puerto Rico José Miguel Agrelot Coliseum and the Convention Center.
- (i) To prepare and submit for the approval of the Board, the operating expense budget thereof and to administer it.
- (j) To keep a register and a complete, detailed accounting of all expenses, disbursements and income of the Puerto Rico José

Miguel Agrelot Coliseum and the Convention Center, respectively, pursuant to applicable laws and regulations.

- (k) To submit periodic reports to the Board of Directors of the work performed as provided by it in its Regulations.
- (l) To perform any other function assigned by the Board.
- (m) To designate the personnel needed to coordinate and supervise the contractors that provide services for the administration of operations and maintenance of the Puerto Rico José Miguel Agrelot Coliseum and the Convention Center.
- (n) To designate an Executive Assistant Director to address matters related to the Coliseum, which shall be selected based on his/her merits which shall be determined taking into consideration his/her technical training, expertise and experience in this type of facilities.

Section 4.- Conflict of Interest.- No member of the Board who has any personal or financial interest (as such terms are defined below) shall participate in any decision or have access to any information related to the matter or matters in which he or she may have a personal or economic interest. For the purposes of this subsection, the term “financial interest” shall mean the direct or indirect ownership, either by law or equity, of an individual, or of a member of his or her Family Unit (as defined below), of (1) at least ten percent (10%) of the outstanding stock of a corporation, (2) at least ten percent (10%) interest in any other entity, or (3) the ownership of sufficient stock or shares in an entity that grants such person an effective control of the decisions of said entity.

The term “personal interest” means any personal, family related or business relationships that could be construed to affect the objectivity of a member of the Board. The term “Family Unit” shall mean the spouse of a person, his or her

dependent children or those persons who share his or her legal residence or whose financial affairs are under *de jure* or *de facto* control of said person. The Authority may issue all rules, regulations or circular letters that it deems are necessary to implement the provisions of this subsection.

It is hereby prohibited for the company (or any of its affiliates), which is managing the operations of the Coliseum or the Center, respectively, upon the approval of this Act, and/or any company (or affiliate) whatsoever that manage the operation thereof in the future, if such were the case, to be the promoter or producer of public events in the facilities of the Puerto Rico José Miguel Agrelot Coliseum or the Center.

Section 5.- To amend subsections (m) and (n) of Section 2.02 of Act No. 351 of September 2, 2000, as amended, to read as follows:

“Section 2.02.- Specific Powers of the Authority

(a) ...

(m) To appoint and hire an Executive Director, who shall be the chief executive officer of the Authority, who shall receive the compensation determined by the Board based on salary competitiveness studies for similar positions in other jurisdictions and shall serve according to the parameters established by the Board. The Executive Director shall be recruited on the basis of his/her experience, knowledge and administrative and management capacity in the public installations managerial area related to the tourism industry, such as Convention Centers, Stadiums, Arenas and others.

(n) To adopt, promulgate and put into effect; such rules and regulations that are not in conflict with any other applicable laws, governing the use and operations of the Center, the District and the Puerto Rico

José Miguel Agrelot Coliseum, their installations, buildings, equipment, the private parcels and improvements thereon, as well as the conduct of its employees and the public, in order to promote the public safety in and around the Center, the District and the Puerto Rico José Miguel Agrelot Coliseum, to maintain order, and improve the international image, reputation and projection of the tourist facilities in Puerto Rico.

The Board is hereby entrusted to adopt a preferential public policy toward Puerto Rican producers and promoters duly registered pursuant to the applicable laws of the Government of Puerto Rico, with respect to engagements for the use of the Coliseum. Furthermore, the Board of Directors is entrusted to develop a definite preferential public policy for Puerto Rico professional sports team franchises (especially basketball and volleyball), to hold their respective Final Series and Championship games in the “Puerto Rico José Miguel Agrelot Coliseum”.

Section 6.- To add a Section 6.15 to Act No. 351 of September 2, 2000, as amended, to read as follows:

“Article 6.15.- Moneys and accounts of the Puerto Rico José Miguel Agrelot Coliseum

(a) Definitions

The following words and terms when used or referred to in this Act, shall have the meaning indicated below unless the context clearly indicates otherwise. Present tenses also include the future, and the masculine gender also includes the feminine, except in cases that such an interpretation would be absurd. The singular mode includes the plural and the plural includes the singular.

1. “AFICA”- means the Puerto Rico Industrial, Tourist, Educational,

Medical and Environmental Control Facilities Financing Authority, a legal entity and public corporation and instrumentality of the Commonwealth of Puerto Rico, duly constituted through Act No. 121, approved by the Legislature of the Commonwealth of Puerto Rico on June 27th, 1977, as amended.

2. “Authority”- means the Puerto Rico Convention Center District Authority, a public corporation and instrumentality of the Commonwealth of Puerto Rico, created by virtue of Act No. 351, approved by the Legislature of the Commonwealth of Puerto Rico on September 2nd, 2000, as amended, or any subsidiary corporation of the Authority created to comply with the purposes envisioned herein for the Authority.
3. “Bank”- means the Government Development Bank for Puerto Rico.
4. “Bonds”- means the bonds, notes and other obligations of the Puerto Rico Convention Center District Authority or the Corporation issued to finance the Project.
5. “Loan Contract”- means the Loan Contract or loan contracts between the Bank and the Debtor related to the financing of the Project.
6. “Corporation”- means the Puerto Rico Public Financing Corporation, a subsidiary corporation of the Bank.
7. “Debtor”- means the Authority.
8. “Loan”- means the loan between the Bank and the Debtor under the Loan Contract.
9. “Obligations”- means the obligations of the Debtor under its notes, agreements or financing contracts granted in behalf of the

Corporation with regard to the refinancing of the Loan and the financing of the Undisbursed Portion. In the event that the Authority is the issuer of the bonds, the term Obligations means the Bonds.

10. "Other Payment Obligations"- means the payments required pursuant to agreements of interest rate changes or agreements contracted with regard to the bonds, including liquidation payments, payments to credit purveyors or of liquidity issued with regard to the bonds, redemption fees payable with respect to the bonds, and any other payment required under the bonds or pursuant to any other trust agreement or contract related to the Bonds that the Debtor is bound to pay pursuant to an agreement with the Corporation, or for any other reason.
 11. "Undisbursed Portion"- means the undisbursed portion of the Loan.
 12. "Project"- means the development, construction, acquisition of equipment and furnishings of a new enclosed multiuse stadium to be located in San Juan, Puerto Rico;
- (b) Payment of the Financing and the Public Debt of the Coliseum:
- (1) The Commonwealth of Puerto Rico shall honor the payment of the principal and interest of the obligations and the payment of the other obligations for payment incurred by the Debtor upon refinancing the balance of the loan and financing the undisbursed portion, including the payment of the amount added to the principal of the obligations for transactional expenses and the cost of the bond issue, by means of budget appropriations approved by the Legislature for the operating budgets of each of the next thirty (30) fiscal years, commencing in Fiscal Year 2005-2006. For this

purpose, the Director of the Management and Budget Office shall include in each of the operating budgets of the Commonwealth of Puerto Rico submitted annually by the Governor of Puerto Rico to the Legislature, the amounts needed to meet the annual payment of the principal and interest of the obligations and to defray the other payment obligations during the next thirty (30) fiscal years, commencing in Fiscal Year 2005-2006 and ending in Fiscal Year 2035-2036. The budget appropriations authorized in this Act shall be used exclusively for the payment of the principal and interest of the obligations and to pay the other payment obligations, and for any other related expense, and shall not be used for any other purpose, nor shall they be subject to claims by any other creditors of the Debtor.

The principal amount of the obligations, excluding any reserve covered with the monies generated by the Bonds, shall not exceed two hundred million dollars (\$200,000,000). The obligations shall be payable no later than August 1st, 2036.

- (2) The Secretary of the Treasury shall deposit the funds appropriated under this Section annually on or before July 15th of each year on each of the years referred to in clause (1) of this Article into a special account in the Government Development Bank, or any other banking entity acting as trustee of the bonds. If necessary, the Secretary of the Treasury may advance those amounts necessary to defray the principal and interest of the obligations and the payment of the other payment obligations from any available funds.
- (3) The Authority shall deposit the annual net profits resulting from the operation of the Coliseum into a separate account to be used for

unforeseen repairs or replacements, expenses authorized by the Board, and transfers to the Department of the Treasury for the repayment of the bonds, as provided in this Section. No later than ninety (90) days from the end date of the financial statement of the operations of the Coliseum and once the balance of said account reaches or accumulates the amount of five hundred thousand dollars (\$500,000), the Authority shall remit to the Department of the Treasury the net profits in excess of five hundred thousand dollars (\$500,000) generated by said operation during the corresponding fiscal year. The stated amount of five hundred thousand dollars (\$500,000) or a lesser amount resulting before the account reaches or accrues said balance, shall be withheld in the account as a reserve for unforeseen repairs or replacements or expenses authorized by the Board. No later than ninety (90) days from the end date of the financial statement of the operations of the Coliseum, corresponding to each fiscal year subsequent to the fiscal year in which the balance of the account reaches the amount of five hundred thousand dollars (\$500,000), and until the year 2036, the Authority shall remit to the Department of the Treasury the net profits generated by said operations during the corresponding fiscal year, after retaining in the account the amount needed to replace any amount that may have been used from the five hundred thousand dollars (\$500,000) reserve so that at the beginning of each new fiscal year, the balance of the account shall not be less than five hundred thousand dollars (\$500,000). This five hundred thousand dollars (\$500,000) reserve shall be in addition to any reserve required by any contract for the

administration of the Coliseum or related to the bond issue. The amounts remitted by the Authority to the Department of the Treasury shall be used for the repayment of the bonds. The Department of the Treasury shall cover any operational deficiency of the Coliseum.”

Section 7.- No provision of this Act shall be understood to modify, alter or invalidate any accord, covenant or contract granted with regard to the administration or maintenance of the Puerto Rico José Miguel Agrelot Coliseum or the Convention Center which is in effect on the effective date of this Act.

Section 8.- If any Section of this Act is declared unconstitutional in whole or in part by a court with jurisdiction, such unconstitutionality shall not affect, prejudice or invalidate the remaining provisions of this Act.

Section 9.- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 185 (Substitute for S.B. 2656) (Conference) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to transfer the legal entitlement of the “José Miguel Agrelot Coliseum” to the Convention Center District Authority; to amend Section 1.04 of Act No. 351 of September 2, 2000, as amended, known as the “Puerto Rico Convention Center District Authority Act”, to amend subsections (a), (b), (d), (e) and (g) of Section 2.01 thereof; to amend subsections (m) and (n) of Section 2.02 of said Act; to add a Section 6.14 thereto; and for other purposes,

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

In San Juan, Puerto Rico, today 30th of August of 2005.

Francisco J. Domenech
Director