



AMERICAN
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Puerto Rico: The View from the Inside

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WHAT'S UP WITH PROMESA

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DRAFT PURPOSES ONLY

ACT 66-2014 FISCAL EMERGENCY DECLARED

- Declares a fiscal emergency for the country so that an economic recovery may commence
- Factors that were considered:
 - Downgrade of Puerto Rico's credit
 - Reduction in collections
 - Constitutionally mandated debt payments that were

ACT NO. 71 OF 2014 - PUERTO RICO PUBLIC
CORPORATION DEBT ENFORCEMENT AND
RECOVERY ACT

Mechanism to adopt a recovery program and to seek a
market debt solution base on the recovery program

Puerto Rico v. Franklin Cal. Tax-Free Tr.,
136 S. Ct. 1938 (2016)

- Puerto Rico is not considered a state for consideration of who may be a Debtor under Section 109(c) of the Bankruptcy Code.
- Puerto Rico is a state for consideration under Section 903(1) of the Bankruptcy Code and as such Law 71 is preempted by the Bankruptcy Code.

Puerto Rico v. Sánchez Valle,
136 S. Ct. 1863 (2016)

- Certiorari from the Puerto Rico Supreme Court.
- As such a secondary criminal prosecution by the Puerto Rico Government after a Federal criminal prosecution did constitute a violation of the Double Jeopardy Clause of the Constitution
- Impact on PROMESA
 - Puerto Rico is a Territory of the United States
 - Congress has power over Puerto Rico under the territorial clause of the Constitution

The Puerto Rico Oversight,
Management, and Economic Stability
Act (“PROMESA”), 130 Stat. 549 (2016)

- Creates the Puerto Rico Financial Oversight and Management Board for Puerto Rico
- Overview



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Debt Restructuring Process Under Puerto Rico Oversight,
Management and Economic Stability Act
(PROMESA)

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- I. BACKGROUND
- II. PROMESA
- III. POWERS OF OVERSIGHT BOARD
- IV. DEBT ADJUSTMENT
- V. CREDITOR COLLECTIVE ACTION



Commonwealth of Puerto Rico et al. v. Franklin California Tax Free-Trust et al. Case No. 15-233 (U.S. Sup. Ct. June 13, 2016).

- On June 13, 2016, the Supreme Court of the United States decided *Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*, holding that Chapter 9 of the federal bankruptcy code preempts Puerto Rico's municipal debt restructuring law.
- The Supreme Court ruled that Puerto Rico's instrumentalities are ineligible for municipal debt adjustment under Chapter 9 of the Bankruptcy Code, and that Puerto Rico cannot adopt local laws dealing with the insolvency of its units, such as municipal power and water companies.
- In 2014, Puerto Rico enacted a law allowing its public utilities to restructure its debts.
- The Supreme Court held that because the definition's exception "unmistakably" exempts Puerto Rico from the definition of a "State" only for purposes of allowing it to define which municipalities may be a debtor, it does not exempt Puerto Rico for any other purpose. Had Congress intended to exclude Puerto Rico from preemption, it would have said so. Congress does not "hide elephants in mouseholes".



Commonwealth of Puerto Rico et al. v. Franklin California Tax
Free-Trust et al. Case No. 15-233 (U.S. Sup. Ct. June 13, 2016).

- Section 903(i) of the Bankruptcy Code, which pre-empts state bankruptcy laws that enable insolvent municipalities to restructure their debt over the objections of creditors and instead requires municipalities to restructure such debts under chapter 9 of the bankruptcy code, pre-empts the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was enacted to enable the Commonwealth's public utilities to implement a recovery or restructuring plan for their debt.
- The Supreme Court held that Puerto Rico is a "State" for purposes of chapter 9's preemption provision.



PROMESA

- On June 30, 2016 Congress adopted the "Puerto Rico Oversight, Management and Economic Stability Act" (PROMESA), which was immediately signed into law by President Obama.
- PROMESA creates a mechanism for debt adjustment proceedings and to generate the meaningful fiscal reforms that Puerto Rico needs while improving efficiency, transparency and internal control;
- PROMESA provides a framework for restructuring instrumentalities by incorporating provisions from Bankruptcy Code, other protocols used in restructuring sovereign debt.
- According to section 101 of PROMESA, the purpose of the Act is to provide a method for Puerto Rico to achieve fiscal responsibility and access to the capital markets.



Powers of Oversight Board

Composition of the Board (§ 101(c))

- Pursuant to section 101(c) of the Act, the Board shall consist of seven (7) members appointed by the President of the United States. The Board will be composed of two (2) members selected from the list submitted by the Speaker of the House of Representatives; two (2) members selected from the list submitted by the Senate Majority Leader; one (1) member selected from the list submitted by the Minority Leader of the House of Representatives; and one (1) member selected from the list submitted by the Senate Minority Leader.
- The Act provides that the governor shall be an ex officio member of the board without voting rights.
- Each member of the Board shall be appointed for three-year terms, but may be reappointed. The president may remove a member for cause.
- The members of the Board shall serve without pay and the Board shall have an office in the Commonwealth and an additional one as it deems necessary (§ 101 (g))



Oversight Board

- On August 24, 2016, President Obama appointed the following persons to serve on the Board:
 - [Arthur Gonzalez](#), senior fellow at New York University's school of Law and former Chief Judge of the U.S. Bankruptcy Court for the Southern District of New York
 - [Carlos Garcia](#), former president of Puerto Rico's Government Development Bank and Chief Executive officer of BayBoston Managers, LLC
 - [Andrew Biggs](#), resident scholar at the American Enterprise Institute
 - [David Skeel](#), University of Pennsylvania law professor
 - [Jose Carrion III](#),
 - [Jose Ramon Gonzalez](#), president and chief executive officer of the Federal Home Loan Bank of New York
 - [Ana Matosantos](#), served as California's budget director from 2009 to 2013
- The president appointed the members of the Board from lists provided by congressional leaders from both parties.
- In making the appointments, President Obama stated that "[w]ith a broad range of skills and experiences, these officials have the breadth and depth of knowledge that is needed to tackle this complex challenge and put the future of the Puerto Rican first".

Bylaws for Conducting Business of Oversight Board (§101(h))

- ▶ As soon as practicable after the appointment of all members and appointment of the chair, the Board shall adopt bylaws, rules and procedures governing its activities under this Act, including procedures for hiring experts and consultants.
- ▶ Under the bylaws which will be adopted, the Board may conduct its operations under such procedures as it considers appropriate, except that an affirmative vote of a majority of the members of the Board's full appointed membership shall be required in order for the Board to approve a fiscal plan, approve a budget, cause a legislative act not to be enforced, or designate an infrastructure project as a critical project.



Operations of the Board

- ▶ On September 30, 2016, the Board held its first meeting to elect a chairman and to address other organizational matters.
- ▶ The members of the Board elected José B. Carrión as the chairperson at the meeting.
- ▶ The Board also requested from the Governor of Puerto Rico a fiscal plan as required by the Act, and addressed other organizational matters, such as:
 1. Adoption of the Board's bylaws
 2. Initial designation of covered entities under the Act
 3. Request of a Fiscal Plan and other information from the Governor of Puerto Rico
 4. Establish a process for the search of the Board's executive director and certain key personnel
 5. Other administrative matters
- ▶ The Board indicated that it expected to hold a meeting in mid-October and another in Puerto Rico in mid-November.



Operations of the Board

- ▶ On October 14, 2016, the Board held its second meeting.



- ▶ Even if Puerto Rico's 3.4 million residents keep tightening their belts, and even if the creditors who lent it \$74 billion agree to less than full repayment, the island will still "need the assistance of the federal government to bring this economic and humanitarian crisis to an end," said Gov. Alejandro García Padilla, addressing the panel that the Obama administration set up to handle the territory's staggering debt.
- ▶ He urged the board's seven members to join him "in one voice before Congress" to seek help.
- ▶ Twenty floors below the room in Lower Manhattan where the governor made his remarks, protesters chanted their opposition to colonialism — which is how they view the power that the panel holds to make decisions about Puerto Rico's future.
- ▶ It was the first substantive meeting of the board, known in Spanish as the junta, the Spanish word for political group, that Congress created this year to direct Puerto Rico's financial affairs. The group is similar to the control boards that have led other distressed American jurisdictions, like New York City in the mid-1970s. But because of heightened sensitivities about Puerto Rico's colonial history, Congress gave Puerto Rico's governor, and not the board, the authority to draft the 10-year fiscal plan that will become the basic road map for moving Puerto Rico out of its financial troubles.



- ▶ Most of Friday's meeting was devoted to the governor's delivery of his fiscal plan and questions from the board. Next, the board will review the plan and decide whether amendments are needed.
- ▶ Puerto Rico has stopped paying its bondholders and would be mired in creditors' lawsuits by now if Congress had not proscribed most creditors from enforcing their claims for a few months. Lawsuits by creditors could resume as soon as February, which is one reason the governor urged the board to move quickly.
- ▶ "Puerto Rico needs a plan in place immediately," he said.
- ▶ But the board members seemed inclined to proceed cautiously. Puerto Rico's debt structure is dauntingly complex. And all board members are aware that their decisions could set a precedent: The arrangements they make for Puerto Rico could be sought in the future by severely troubled states such as Illinois, Pennsylvania or New Jersey. These states have some of the same problems as Puerto Rico — in particular, unfunded pension promises to retired public workers that are rising so fast that they are crowding out other essential government services and making it more expensive to borrow.



- ▶ Like Puerto Rico, America's states are barred from seeking help under Chapter 9 of the bankruptcy code, the chapter that distressed cities and other local governments can use. But the law that gave rise to the oversight board and the stay on lawsuits, known as Promesa, also gives Puerto Rico certain debt-restructuring powers that are normally available only in bankruptcy. Puerto Rico can use those powers only if a majority of the board members agree.
- ▶ During the meeting, Andrew G. Biggs, a board member who is a resident scholar at the American Enterprise Institute, seemed to be trying to figure out where Puerto Rico's cash had been moved to as the island's troubles accelerated last spring. He asked how much money the government had parked in commercial banks and how far it had fallen behind on paying its vendors.
- ▶ Juan Zaragoza, Puerto Rico's treasury secretary, gave a detailed description of how revenue arrives at the island's treasury and what the government is doing to collect more taxes. He said there were about \$1 billion worth of unpaid bills outstanding, and that the government had written about \$350 million in checks but had not yet sent them — a practice that could make it look as though the bills had been paid, even though vendors have not received their money.
- ▶ That prompted another board member, Carlos M. García, the head of a private equity firm in the Boston area, to question the governor's fundamental premise that Puerto Rico's government lacked enough money to govern.
- ▶ "You're currently at high tax collections, and you're currently not paying debt service," he said. "Why does the government not have enough money to pay vendors or provide essential services?"



- ▶ Mr. García was a president of the Government Development Bank for Puerto Rico under a previous administration, which was led by a rival political party. He seemed skeptical in general of the governor's description of the island's problems and what had caused them.
- ▶ Mr. García Padilla did not waver. He said his fiscal plan called for Puerto Rico to improve its financial reporting, to merge branches of government to end duplication, to ease certain regulations and to court investors, especially those interested in financing infrastructure and energy projects.
- ▶ The governor also said that current efforts to collect more tax revenue and reduce government spending would continue, but he pleaded with the board not to "double down on austerity."
- ▶ "You will soon realize that any reduction in spending implies intolerable effects in aggregate demand, and will further throw Puerto Rico into a death spiral that will directly affect creditors' recoveries across the board," Mr. García Padilla said.
- ▶ Without help from Washington, he warned, the government could end up with a total accumulated debt of \$59 billion over the next 10 years.
- ▶ Federal assistance, Mr. García Padilla suggested, could take the form of improved Medicare and Medicaid programs, and tax measures that could help Puerto Rico become more competitive as an offshore manufacturing site for United States companies.



Board's Personnel: Appointment of Executive Director and the staff of the Oversight Board (\$103)

- ▶ At the second meeting, the Board noted that it expects to appoint its executive director by mid-January 2017.
- ▶ The Act also provides for the appointment of a revitalization coordinator. The staff may include private citizens, employees of the federal government or employees of the Commonwealth's government.
- ▶ The executive director and staff of the Board may be appointed and paid without regard to any provision of the laws of the Commonwealth or the federal government governing appointments and salaries, or procurement laws.



Powers of the Board (§104)

- The Board may hold hearings, take testimony and receive evidence as it considers appropriate. It may also obtain official data from the federal government and the Commonwealth's government.
- The Board has subpoena power.
- The Board has jurisdiction to compel the attendance of witnesses and the production of materials.
- If a person refuses to obey a subpoena, the board may apply to the Commonwealth's court of first instance. Failure to obey the court order may be punished by the court in accordance with civil contempt laws of the Commonwealth. The subpoena shall be served in the manner provided by the Commonwealth's Rules of Civil Procedure.



Approval of Fiscal Plans (§201)

- ▶ Pursuant to the Act, the Board shall deliver a notice to the governor providing a schedule for the process of development, submission, approval and certification of fiscal plans, as soon as practicable after all of the members and the chair have been appointed.
- ▶ It is important to note that the governor submitted the CW's fiscal plan at the second meeting held on October 14, 2016.
- ▶ A fiscal plan developed shall endeavor to provide a method to achieve fiscal responsibility and access to the capital markets, and provide for estimates of revenues and expenditures in conformance with agreed-upon accounting standards, and be based on applicable laws or specific bills that require enactment in order to reasonably achieve the projections of the fiscal plan.
- ▶ The Board shall ensure that assets, funds or resources of a instrumentality are not loaned to, transferred to or otherwise used for the benefit of the Commonwealth or an instrumentality, unless permitted by the Constitution or agreed to by a certified voluntary agreement under § 104(i), an approved adjustment plan under title III, or a qualifying modification approved under title VI; and *respect the relative lawful priorities or lawful liens, as may be applicable, in the Constitution, other laws or agreements in effect prior to the date of enactment of this Act.*



Fiscal Plan

- ▶ The fiscal plan developed and approved by the Board must, among other things:
 - Ensure that assets, funds, or resources of an instrumentality are not loaned to, transferred to, or otherwise used for the benefit of Puerto Rico or another instrumentality, unless permitted by Puerto Rico's constitution, an approved plan of adjustment, or an approved "Qualifying Modification" (as defined under PROMESA)
 - Respect the relative lawful priorities or lawful liens in the constitution, other laws, or agreements of Puerto Rico or a covered instrumentality.
- ▶ PROMESA purportedly does not discharge obligations of Puerto Rico or its instrumentalities or release, invalidate or impair any security interest or lien securing such obligations.
- ▶ Puerto Rico and its instrumentalities must make interest payments on outstanding debt when such payments become due during the length of the automatic stay, to the extent the Oversight Board determines that making such payments is feasible.
- ▶ PROMESA is not intended to impair or affect the implementation of a restructuring support agreement executed by Puerto Rico or its instrumentalities prior to enactment of PROMESA or to impair or affect the obligations of Puerto Rico or its instrumentalities to proceed in good faith as set forth in such restructuring support agreement. (§ 405)
- ▶ Secured creditors may bring an action to challenge inter-debtor transfers that violate applicable law (§ 407).



Effect of Finding of Noncompliance with Budget (\$103)

- ▶ The Board shall deliver a notice to the governor and legislature providing a schedule for developing, submitting, approving and certifying budgets for a period of not less than one fiscal year following the fiscal year in which the notice is delivered.
- ▶ If the governor develops an instrumentality budget that is a compliant budget by the day before the first day of the fiscal year for which the instrumentality budget is being developed, the Oversight Board shall issue a compliance certification to the governor for such budget.
- ▶ Within 15 days from the last day of each quarter, the governor shall submit to the Board a report with the actual cash revenues, cash expenditures and cash flows from the preceding quarter as compared with the projected revenues, expenditures and cash flows included in the certified budget for such preceding quarter.
- ▶ If the Board determines that such information is not consistent with the certified budget for such quarter, the Board shall require the Commonwealth to provide additional information and (2) correct the inconsistency by taking remedial action.
- ▶ If the Board determines that the governor and legislature have failed to correct the inconsistencies identified by the Board, the Board shall (1) make appropriate reductions in debt expenditures to ensure that the actual quarterly revenues and expenditures are in compliance with the certified budget; (2) institute automatic hiring freezes; (3) prohibit the Commonwealth from entering into any contract or engaging in any financial or other transactions, unless the contract or transaction was previously approved by the Board.



Review of Activities to Ensure Compliance with Fiscal Plan, Financial Stability and Management Responsibility (§204)

- The Act includes restrictions on budgetary adjustments.
- The Act specifically states that the legislature shall not adopt a reprogramming, and no officer or employee of the territorial government may not carry out any reprogramming, until the Board has provided the legislature with an analysis that certifies that such reprogramming will not be inconsistent with the fiscal plan and budget.
- The Act provides that *during the period prior to the appointment of all members and the chair of the Board, the Commonwealth shall not enact new laws that either permit the transfer of any funds or assets outside the ordinary course of business or that are inconsistent with the Constitution or laws of the territory as of the date of enactment of this Act, provided that any executive or legislative action authorizing the movement of funds or assets during this time period may be subject to review and reversal by the board upon appointment of the board's full membership.*



Review of Activities to Ensure Compliance with Fiscal Plan, Financial Stability and Management Responsibility (§204)

- ▶ The Board may, at any time, submit recommendations to the governor or the legislature, including recommendations relating to modifications of the types of services that are delivered by entities other than the Commonwealth government under alternative service delivery mechanisms, and the privatization and commercialization of entities within the territorial government.



Oversight Board Duties Related to Restructuring (§206)

- ▶ Prior to issuing a restructuring certification regarding an entity, the Board shall determine, in its sole discretion, that (1) the entity has made good-faith efforts to reach a consensual restructuring with creditors; and (2) *the entity has adopted procedures necessary to deliver timely audited financial statements, and made public draft financial statements and other information sufficient for any interested person to make an informed decision with respect to a restructuring.*
- ▶ The issuance of a restructuring certification under this section requires a vote of no fewer than five (5) Board members in the affirmative, which shall satisfy the requirement set forth in § 302(2) of this Act.



Debt Issuance (§207)

- ▶ During the operations of the Board, the Commonwealth or its instrumentalities may *not*, without the Board's approval, issue debt or guarantee, exchange, modify, repurchase, redeem or enter into similar transactions with respect to its debt.



Adjustment of Debts

- ▶ The Act provides a mechanism for debt restructuring proceedings:
 - Puerto Rico or the covered instrumentality, with the approval of the Oversight Board, may file a petition with the federal district court seeking to restructure its debts.
- ▶ Cases will be similar but to a chapter 9 case, with some distinctions.



Who May Be a Debtor (§302)

- ▶ Puerto Rico entities are considered debtors if (1) a territory that has requested the establishment of an Oversight Board or has had a board established for it by the U.S. Congress; (2) a covered territorial instrumentality of a territory; (3) the Board has issued a restructuring certification under § 206(b) for such entity; and (4) the entity desires to effect a plan to adjust its debts.
- ▶ The issuance of restructuring certificate requires that:
 - ▶ The Commonwealth has completed the process set forth in Title VI;
 - ▶ the entity has adopted procedures necessary to deliver audited financial statements;
 - ▶ the entity has adopted or is subject to a certified fiscal plan;
 - ▶ the entity is insolvent;
 - ▶ and appropriate consideration has been given to the relative priority of claims as established by law so that no one group or class of creditors gain an advantage that did not exist prior to the Board's determination.
- ▶ The approval of at least five (5) of the seven (7) members of the Board.



Eligibility Requirements

- ▶ The entity is Puerto Rico or one of its covered instrumentalities;
- ▶ The Board has issued a certification for such entity;
- ▶ The entity desires to affect a plan to adjust its debts.
- ▶ Prior to permitting an entity to commence a Title III case, the Board, in its sole discretion, must certify that:
- ▶ The entity has made good-faith efforts to reach a consensual restructuring with its creditors;
- ▶ The entity has adopted procedures necessary to deliver timely audited financial statements and has delivered draft financial statements and other information sufficient for an interested person to make an informed decision;
- ▶ The entity has a fiscal plan in place;
- ▶ No order approving a "qualifying modification" (as provided in section 601 of PROMESA) is in place.



Petition and Proceedings Relating to Petition (§304)

- ▶ The Board, on behalf of debtors, may file petitions or submit or modify adjustment plans jointly if the debtors are affiliates, provided, however, that nothing in this title shall be construed as authorizing substantive consolidation of the cases of affiliated debtors.
- ▶ If the Board, on behalf of a debtor and one or more affiliates, has filed separate cases and the Board, on behalf of the debtor or one of the affiliates, files a motion to administer the cases jointly, *the court may order a joint administration of the cases.*



Petition and Proceedings Relating to Petition (§304)

- ▶ The Act provides that it may not be construed to permit the discharge of obligations arising under federal police or regulatory laws, including laws relating to the environment, public health or safety or territorial laws implementing such federal legal provisions. This includes compliance obligations, requirements under consent decrees or judicial orders, and obligations to pay associated administrative, civil or other penalties.
- ▶ The Act specifically states that nothing in this section shall prevent the holder of a claim from voting on or consenting to a proposed modification of such claim.



Automatic Stay Precludes Most Creditor Remedies

- ▶ Creditors who hold liability claims (generally, bonds, notes and other financial debt obligations) are automatically stayed, or prevented, from taking action against Puerto Rico, its instrumentalities or its property *to collect debts that could have been commenced before the date of enactment*.
- ▶ By its terms, the automatic stay operates as a general moratorium and court-ordered injunction, and no court order is necessary as the injunction is automatically triggered by the enactment of PROMESA.
- ▶ The automatic stay can be enforced by court order if necessary, and violators risk the assessment of damages, costs, and attorneys' fees incurred in defending any action taken in violation of the automatic stay.
- ▶ Unless modified by the federal district court, the automatic stay remains in effect until the later of *February 15, 2017 or six months after the establishment of the Oversight Board for Puerto Rico, subject to extension as provided in section 405(d) of PROMESA*.



Types of action covered by the automatic stay include, but are not limited to, the following:

- ▶ commencing or continuing lawsuits against Puerto Rico, its instrumentalities or its officers;
- ▶ obtaining possession of the property of Puerto Rico or its instrumentalities or exercising control over property of Puerto Rico or its instrumentalities;
- ▶ creating, perfecting or enforcing most liens against property of Puerto Rico or its instrumentalities;
- ▶ setting off any debt owed to Puerto Rico or its instrumentalities against any liability claim owed to such creditor that arose prior to the enactment of PROMESA.
- Any party in interest may ask the district court to relieve it from the automatic stay "for cause". In order to obtain relief, the party in interest will need to show that the hardship to the party in interest will significantly outweigh the hardship to Puerto Rico if the stay remains in place.



Powers of Federal District Court are Limited

- ▶ Section 305 of PROMESA provides that, **absent consent by the Oversight Board or a provision in the entity's debt adjustment plan, the federal district court may not, interfere with:**
- ▶ Any of the political or governmental powers of the debtor; or any of the property or revenues of the debtor; or the debtor's use or enjoyment of any income-producing property.
- ▶ Thus, the debtor, maintains control of most of its financial affairs and operations to operate and to provide services.



Limitations on Power of Federal District Court

- ▶ The federal district court may not do the following, absent consent by the Board:
 - ▶ take over debtor's operations;
 - ▶ remove members of debtor's governing board or appoint a trustee or receiver;
- ▶ Federal district court powers are generally limited to:
 - ▶ approving the petition (finding that eligibility criteria have been met);
 - ▶ permitting the assumption or rejection of executor contracts and unexpired leases, including collective bargaining agreements;
 - ▶ approving compensation of professionals;
 - ▶ allowing or disallowing claims; confirming a plan of adjustment; and
 - ▶ monitoring implementation of the plan.



Actions Not Requiring Court Approval

- ▶ Puerto Rico may do the following without court approval (but subject to Board approval):
 - ▶ Spend money, use, sell or lease property, including cash collateral (Bankruptcy) Code section 363 is not incorporated into a Title III debt adjustment case under PROMESA);
 - ▶ Pay debt incurred prior to enactment of PROMESA, if it chooses; and
 - ▶ Pay expenses in connection with the operation of the debtor's affairs; and o retain professionals.



Jurisdiction and Venue (§§ 306 & 307)

- ▶ The district courts shall have original and exclusive jurisdiction of all cases under this title; except in those cases where an Act of Congress confers exclusive jurisdiction on a court or courts other than the district courts.
- ▶ The district court, in which a case under this title is commenced or is pending, shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the case.
- ▶ The district court in which a case under this title is pending shall have personal jurisdiction over any person or entity.
- ▶ A party may remove any claim or cause of action in a civil action, other than a proceeding before the U.S. tax court or a civil action by a governmental unit to enforce the police or regulatory power of the governmental unit, to the district court for the district in which the civil action is pending, if the district court has jurisdiction of the claim or cause of action under this section



Jurisdiction and Venue (§§ 306 & 307)

- ▶ The district court to which the claim or cause of action is removed may remand the claim or cause of action on any equitable ground.
- ▶ A district court shall transfer any civil proceeding arising under this title, or arising in or related to a case under this title, to the district in which the case under this title is pending.
- ▶ An appeal shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district court.
- ▶ The court of appeals for the circuit in which a case under this title has venue pursuant to § 307 of this title shall have jurisdiction of appeals from all final decisions, judgments orders and decrees entered under this title by the district court.
- ▶ If the Oversight Board determines, in its sole discretion, that venue shall be proper in the district court for the jurisdiction in which the board maintains an office located outside of Puerto Rico.



Selection of a Presiding Judge (§308)

- ▶ For cases in which the debtor is the Commonwealth, the Chief Justice of the United States shall designate a district court judge to sit by designation to conduct the case.
- ▶ For cases in which the debtor is not the Commonwealth, and no motion for joint administration of the debtor's case with the case of the Commonwealth has been filed, the chief judge of the court of appeals for the circuit shall designate a district court judge to conduct the case.



Applicable Rules of Procedure (§310)

- ▶ The Federal Rules of Court Procedure shall apply to a case under the title and to all civil proceedings arising in or related to cases.
- ▶ The Board may take any action necessary on behalf of the debtor to prosecute the case of the debtor.
- ▶ The Board is the only one that can, after the issuance of a certificate pursuant to § 104(j) of this Act, file an adjustment plan of the debts of the debtor.
- ▶ If the Board does not file an adjustment plan with the petition, the Board shall file an adjustment plan at the time set by the court



Leases (§311)

- ▶ The Act provides that a lease to the Commonwealth or its instrumentalities shall not be treated as an executory contract or unexpired lease for purposes of § 365 or 502(b)(6) of the Bankruptcy Code, solely because the lease is subject to termination in the event that the Commonwealth fails to appropriate rent.



Filing an Adjustment Plan (§312)

- ▶ The Board is the only entity that may file an adjustment plan of debts.
- ▶ If it does not file the plan with the petition, the Board shall file the same at the time set by court.



Plan Exclusivity

- ▶ The Board is the one (not the debtor) may file a plan for adjustment of the debts of the debtor.
- ▶ Creditors may not file competing plans.
- ▶ PROMESA does not fix a specific deadline by which the Oversight Board must file a plan. Section 312 provides that if a plan for adjustment of debts is not filed with the petition, the Oversight Board shall file such plan at such later time as.



Confirmation of Plan

The federal district court may confirm a debt adjustment plan if it meets the following requirements:

- ▶ Complies with the provisions of the Bankruptcy Code made applicable to a Title III case under PROMESA;
- ▶ complies with the provisions of PROMESA;
- ▶ the debtor is not prohibited by law from taking any action necessary to carry out the plan;
- ▶ any legislative, regulatory, or electoral approval necessary under applicable law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval;
- ▶ provides that on the effective date, each holder of an administrative claim will receive on account of such claim cash equal to the allowed amount of such claim;
- ▶ is in the best interests of creditors and is feasible; and
- ▶ is consistent with the applicable fiscal plan certified by the Board.



Confirmation (§314)

- ▶ For confirmation purposes, the plan *shall be feasible and in the best interests of creditors*, which shall require the court to consider whether available remedies under the non bankruptcy laws and constitution of the Commonwealth would result in a greater recovery for the creditors than is provided by such plan; and be consistent with the applicable fiscal plan.
- ▶ Although the Act incorporates the requirements of § 1129(a) of the Bankruptcy Code, it states that if a case includes only one class of impaired claims that has not accepted the plan, the court may confirm the same notwithstanding the requirements of such § 1129(a)(8) *if the plan is fair and equitable and does not discriminate unfairly with respect to such impaired class.*



Role and Capacity of the Board (§315)

- ▶ The Board may take any action necessary to prosecute the case including (1) filing the petition; (2) submitting or modifying an adjustment plan; and (3) submitting filings in relation to the case with the court.
- ▶ The Board is the representative of the debtor.



Compensation of Professionals and Interim Compensation (§316)

- ▶ After notice to the parties in interest and the U.S. Trustee and a hearing, the court may award to a professional person employed by the debtor (in the debtor's sole discretion), the Board (in the Board's sole discretion), a committee under § 1103 of title 11, U.S. Code, or a trustee appointed by the court under § 926 of title 11, U.S. Code –
 1. reasonable compensation for actual, necessary services rendered by the professional person, or attorney and by any paraprofessional person employed by any such person; and
 2. reimbursement for actual, necessary expenses.
- ▶ The court may, on its own motion or on the motion of the U.S. Trustee or any other party-in-interest, award compensation that is less than the amount of compensation that is requested.



Post petition Financing

PROMESA incorporates Bankruptcy Code sections 364(c) and (d) into a Title III debt adjustment case to enable Puerto Rico or its covered instrumentality to borrow such post petition credit can be incurred on one of three bases

- ▶ An unsecured "super-priority" basis with priority over all priority claims for administrative expenses;
- ▶ Secured but subject to existing liens;
- ▶ Secured by a lien equal or senior to existing lien, if the debtor cannot otherwise obtain credit and if the existing lien holder receives "adequate protection."
- ▶ Administrative expenses that are subordinate to the post petition financing are those expenses incurred directly in connection with the Title III case itself, such as court costs, attorneys' fees, costs of distribution of the plan and solicitation of acceptances



Creditor Collective Action

- ▶ **Consensual Modification of Bond Claims?**
 - Sections 601 and 104(i) of PROMESA provide a process for submission and approval of a voluntary agreement modifying Bond Claims. The modification may be proposed by the issuer of the Bond or by one or more holders of the right to vote the issuer's outstanding Bonds. If proposed by one or more holders of the right to vote, the Board may accept the proposed modification on behalf of the issuer.
- ▶ Pursuant to the Creditor Collective Action provisions of PROMESA two thirds majority of creditors could agree to a restructuring plan that would bind all creditors including those that did not agree to the restructuring.
- ▶ These collective action clauses were incorporated from sovereign debt insurances in Europe to address hold-out creditors in restructuring.
- ▶ These collective action provisions would work parallel to the bankruptcy provisions and would be voluntary. They can retroactively change or alter creditor's rights.
- ▶ Modification is Binding on all Holders. A qualifying modification will be conclusive and binding on all holders of Bonds whether or not they have given consent, and on all future holders of those bonds.



The proposed modification also must be approved by the Board, which must determine and certify that it complies with the conditions in section 104(i)(1) of PROMESA:

- ▶ **Certified by the Board.** If an applicable fiscal plan has been certified, the voluntary agreement with holders of the affected Bond Claims provides for a sustainable level of debt for Puerto Rico or the related issuer, as applicable, and is in conformance with the applicable certified fiscal plan
- ▶ **Not Certified by the Board.** If an applicable fiscal plan has not been certified by the Board, the voluntary agreement provides, in the Board's sole discretion, for a sustainable level of debt for Puerto Rico or the related issuer, as applicable; or
- ▶ The voluntary agreement is limited solely to an extension of applicable principal maturities and interest on Bonds issued by Puerto Rico or the related issuer, as applicable, for a period of up to one year during which no interest will be paid on the Bond Claims affected by the voluntary agreement.
- ▶ Voting requirements set forth in section 601 of PROMESA have been satisfied;
- ▶ PROMESA provides for certification by the Board of a modification of Bond Claims pursuant to a pre-existing voluntary agreement if the modification is consistent with a restructuring support or similar agreement executed prior to May 18, 2016 by the issuer and holders of a majority in amount of Bond Claims that are to be affected by such modification.



Determination of Pools for Voting and Information Delivery Requirement (§601(d))

- The Act provides that the administrative supervisor, in consultation with each issuer, shall establish pools according to the following principles:
 1. Not less than one pool shall be established for each issuer;
 2. A pool that contains one or more bonds that are secured by a lien on property shall be a secured pool;
 3. For each issuer that has issued multiple bonds that are distinguished by specific provisions governing priority or security arrangements, including bonds that have been issued as general obligations of the Commonwealth to which the Commonwealth pledged the full or good faith, credit and taxing power of the Commonwealth, separate pools shall be established corresponding to the relative priority or security arrangements of each holder of bonds against each issuer.
- Notwithstanding the foregoing, a pre-existing voluntary agreement may classify insured bonds and uninsured bonds in different pools and provide different treatment thereof so long as the pre-existing voluntary agreement has been agreed to by (1) holders of a majority in amount of all uninsured bonds outstanding in the modified pool; and (2) holders (including insurers with power to vote) of a majority in amount of all insured bonds.



Qualified Modification (§601(g))

- ▶ A modification is a qualifying modification if:
 1. The issuer proposing the modification has consulted with holders of bonds in each pool of such issuer prior to soliciting a vote on such modification; or
 2. The modification is certified by the administrative supervisor as being consistent with the requirements set forth in § 104(i)(1) and is in the *best interests of the creditors and is feasible*.



Solicitation (§601(h))

- ▶ Upon receipt of a certification from the administrative supervisor under the subsection, the information agent shall submit to the holders of any outstanding bonds of the relevant issuer information in order to solicit the vote of such holders to approve or reject the qualifying modification.



Who May Propose a Modification (§601(i))

- ▶ For each issuer, a modification may be proposed to the administrative supervisor by the issuer by one or more holders of the right to vote on the issuer's outstanding bonds.
- ▶ To the extent that a modification proposed by one or more holders of the right to vote outstanding bonds, the administrative supervisor may accept such modification on behalf of the issuer.



Voting (§601(j))

- ▶ Requires two-thirds (2/3) majority of the outstanding principal amount of the bonds in each pool.
- ▶ Note: In the case of those outstanding bonds that are insured bonds, the monoline insurer insuring such insured bond shall have the right to vote.

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- ▶ The requisite majorities of Holders of the Bonds in the affected pool of the issuer have consented to or approved the modification;
- ▶ **Cramdown.** With respect to a Bond Claim that is secured by a lien on property and with respect to which the holder of such Bond Claim has rejected or did not consent to the qualifying modification, the holder of such Bond retains the lien securing such Bond Claims or receives on account of such Bond Claim, through deferred cash payments, substitute collateral, or otherwise, at least the equivalent value of the lesser of the amount of the Bond Claim or of the value of the collateral securing such Bond Claim;
- ▶ The federal district court, on motion of the applicable issuer, enters an order that the requirements of section 601 have been satisfied. **The voluntary modification may be approved by the federal district court and made binding on all holders only where at least 50% of the principal amount of the affected Bond in the particular pool vote or consent to the voluntary modification and, of those who cast a vote, at least 2/3rds of the aggregate principal amount of the affected Bonds in the particular pool approves the proposed modification.** If so approved by the holders and the federal district court, the modification will bind all affected holders within the applicable pool.

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Judicial Review (§601(n))

- ▶ The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over civil actions arising under this section.
- ▶ The district court shall nullify a modification and any effects on the rights of the holders of bonds resulting from such modification if and only if the district court determines that such modification is *manifestly inconsistent with this section*



Binding Effect (§601(m))

A qualifying modification will be conclusive and binding on all holders of all series of bonds whether or not they have given such consent if –

1. the holders of the right to vote the outstanding bonds in each pool of the issuer have consented to or approved the qualifying modification; and
2. the administrative supervisor certifies that:
 - A. the voting requirements of this section have been satisfied (that is, the modification obtained two-thirds (2/3) of the votes);
 - B. the qualifying modification complies with the requirements set forth in § 104(i)(1); and
 - C. except for such conditions that have been identified in the qualifying modification as being non-waivable, any conditions on the effectiveness of the qualifying modification have been satisfied or, in the administrative supervisor's sole discretion, satisfaction of such conditions has been waived with respect to a bond claim that is secured by a lien on property and with respect to which the holder of such bond claim has rejected or not consented to the qualifying modification, the holder of such bond –
 - i. retains the lien securing such bond claims; or
 - ii. receives on account of such bond claim, through deferred cash payments, substitute collateral, or otherwise, at least the equivalent value of the lesser of the amount of the bond claim or of the collateral securing such bond claim.



Thank You

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(H. B. 1922)

(No. 66-2014)

(Approved June 17, 2014)

AN ACT

To create the “Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act,” in order to declare a state of fiscal emergency; devise a plan to deal with the consequences of the fiscal and economic crisis of the downgrading of Puerto Rico’s credit rating; establish a structured management to address this situation; provide for the supremacy of this Act and the applicability thereof; establish the fiscal sustainability tests set as goals and provide for the filing of quarterly reports; establish measures to cut back on spending in the Executive Branch such as reductions in the contracting of professional and purchased services, adjustments of purchased and professional service rates, cuts in trust employees payroll expenses, establish controls for filling vacancies, and to render the government’s authority to make transfers and details due to service needs more flexible, establish rules and restrictions on increasing economic benefits and special monetary compensations, provisions on the negotiation of collective bargaining agreements and forums to settle disputes, provisions on school transportation; a prohibition on budget overdrafts; provide for fiscal controls in government corporations; provide for the budget of the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Office of the Special Independent Prosecutor’s Panel; set forth prohibitions on protective detail, traveling, and contracting of services, among others; establish an expenditure and lease agreements reduction plan; provide for an energy and aqueduct and sewer service use reduction plan; provide budget measures for the Judicial Branch, the Legislative Branch, and other government entities; set forth plans for final and binding judgments pending payment; establish the prohibition on claims in relation to obligations temporally suspended under this Act; provide on the responsibilities, powers, and duties of the Office of Management and Budget; provide for immunity from lawsuits and forums; and for other related purposes.

STATEMENT OF MOTIVES

For the first time in our constitutional history, despite all the measures taken by the government to address the finances of the Island, the credit of the Commonwealth of Puerto Rico has been compromised due to the downgrade of the Commonwealth's general obligation bonds to speculative grade by the major credit rating agencies. *See, Credit Rating Reports on Commonwealth of Puerto Rico bonds of the Government Development Bank for Puerto Rico.*

This Legislative Assembly has the constitutional duty to “maintain public credit, which is necessary for the economic improvement of the people.” 4 *Journal of the Constitutional Convention* 2587 (1952). *See, also, Trías Monge, 3 Historia Constitucional de Puerto Rico* 224-225 (1982). Furthermore, this Legislative Assembly is duty bound to oversee the economic wellbeing of Puerto Rico [our translation]. *See, Domínguez Castro v. E.L.A.*, 178 D.P.R. 1, 15 (2010).

The loss of investment grade ratings of the public debt jeopardizes the fiscal and economic health of the people of Puerto Rico, unduly compromising the credit rating of the Island. Our economy has been severely damaged and adversely affected by such downgrading, thus resulting in the devaluation of outstanding bonds, losses in the investment portfolios of institutional and individual bondholders in the island, the difficulty in tapping into municipal bond markets to finance public works, and the contraction of economic activity in Puerto Rico, which has caused a marked reduction in the revenues of the Government, and, consequently, in the State's capacity to fulfill the needs of the Island. *See, Commonwealth of Puerto Rico Quarterly Report (February 18, 2014); Official Statement, Commonwealth of Puerto Rico General Obligation Bonds of 2014, Series A. See, also, Domínguez Castro v. E.L.A., supra*, p. 53-55.

Moreover, the downgrading of the Island's credit could result, and in some cases resulted in, the acceleration of certain Commonwealth obligations, the termination of lines of credit, or the need to pledge cash collateral to guarantee the payment of certain bonds that could amount to nearly \$900 million. See, Commonwealth of Puerto Rico Quarterly Report, pp. 4-6. There are also other obligations that are close to reaching their maturity date, thus limiting dramatically the liquidity of the State and its ability to fully defray all budget appropriations for this and the next fiscal year. *Id.* This means that the State needs sufficient liquidity to continue operating, that is, to have the necessary cash to meet its obligations as they become due. If the government does not have enough money to meet such obligations, the public employees' payroll, as well as other money disbursements that are essential to provide services to the people, will be in jeopardy.

The most recent credit ratings of Commonwealth General Obligations, issued by the three main credit rating agencies, Standard & Poor's Rating Services, Moody's Investors Service, and Fitch Ratings, have identified the extent of Puerto Rico's indebtedness, its lack of liquidity and difficult access, as well as the budget deficits of the last 7 years, as the reasons for the downgrading of its bonds. See, Standard & Poor's report on February 4, 2014, Moody's Investors Service report on February 7, 2014, and Fitch Ratings report on February 11, 2014.

However, such rating is not lower due to the efforts made by this Administration to reduce the size of the deficit, and its commitment to approve a balanced budget for Fiscal Year 2015. To such effects, Standard & Poor's stated the following in their February 4, 2014 report:

That the rating is not lower is due to the progress the current administration has made in reducing operating deficits, and what we view as recent success with reform of the public employee and teacher pension systems, which had been elusive in recent years. We view the reform as significant and could contribute to a sustainable path to fiscal stability. We view the current administration's recently announced intent to further reduce appropriations in fiscal 2014 by \$170 million and budget for balance operations in fiscal 2015 as potentially leading to credit improvement in the long run, but subject to near-term implementation risk that could lead to further liquidity pressure to the extent deficits continue.

Likewise, Moody's Investors Service stated in its February 7, 2014 report that:

The problems that confront the Commonwealth are many years in the making, and include years of deficit financing, pension underfunding, and budgetary imbalance, along with seven years of economic recession. These factors have now put the Commonwealth in a position where its debt load and fixed costs are high, its liquidity is narrow, and its market access has become constrained. In the face of these problems, the administration has taken strong and aggressive actions to control spending, reform the retirement systems, reduce debt issuance, and promote economic development. Despite these accomplishments, however, in our view the commonwealth's credit profile is no longer consistent with investment grade characteristics.

Lastly, Fitch Ratings noted in its February 11, 2014 report that:

FISCAL MANAGEMENT EFFECTIVE AND COMMITTED: The Commonwealth's management has responded quickly and decisively to challenges that have arisen in recent years and the current administration has made significant progress in addressing longstanding credit issues. Fitch believes the commitment of management to achieving fiscal balance and honoring commitments to bondholders remains strong, and the governor recently announced a plan to balance the budget next year, one year earlier than previously expected.

Since the Commonwealth of Puerto Rico made a commitment to credit rating agencies of taking affirmative action to face the fiscal issues and propose a balanced budget for Fiscal Year 2015, said agencies have resolved to downgrade our credit only to one level below investment grade. To such effect, the Investor Webcast of February 18, 2014, as well as the presentation made to investors on May 2, 2014, included representations on behalf of the Commonwealth of Puerto Rico stating that the proposed budget for Fiscal Year 2015 will be balanced.

In accordance with the foregoing, by virtue of the State's police power, and pursuant to Sections 18 and 19 of Article II, and Sections 7 and 8 of Article VI of our Constitution, a serious economic and fiscal emergency is hereby declared in Puerto Rico, which renders necessary the approval of this special Act of socioeconomic nature to provide the State with the tolls to meet both its liquidity needs and the payroll of public employees, as well as to cover the costs of essential services offered to the people. This will be attained through the implementation of measures to cut back on spending and provide fiscal stability to achieve the economic recovery of Puerto Rico, without resorting to the dismissal of career public employees or affecting critical functions of government agencies that provide security, education, healthcare, or other social work services; and most

importantly safeguarding the constitutional mandate for the payment of interest and amortization of the public debt. In fact, we are exercising such police power, as stated by the Supreme Court of Puerto Rico: “that power inherent to the State which is used by the Legislative Assembly to prohibit and regulate certain activities for the purpose of promoting and safeguarding the public peace, the morale, health, and general welfare of the community, which power can be delegated to the municipalities.” (Our translation) *Domínguez Castro v. E.L.A.*, *supra*, p. 36.

Furthermore, the Legislative Assembly exercises such power taking into account the most recent statements of the Supreme Court of Puerto Rico with respect to the use of the State’s police power at times of crisis. In this sense, said Forum held that the imminent fiscal crisis declared under Act No. 7-2009, known as the “Special Act Declaring a State of Fiscal Emergency and Establishing a Comprehensive Fiscal Stabilization Plan to Salvage the Credit of Puerto Rico,” was evidenced in the Statement of Motives. Said Act stated that the Island’s credit was “on the verge of downgrading to junk status,” which “would be catastrophic for Puerto Rico,” and its “impact would be massive at all levels of our society [...] dragging Puerto Rico into a deep economic depression never before seen in our history,” whose impact “would be unimaginable.” Statement of Motives, Act No. 7-2009. After evaluating the information furnished in said statement of motives, the Court validated said Act and held that the measures therein were necessary and reasonable to further the compelling government interest sought with the approval of Act No. 7-2009 of bringing said crisis to a halt. See, *Domínguez Castro v. E.L.A.*, *supra*, pp. 88-89. Likewise, it recognized that “our precarious economy is a reality that of necessity carries weight on the definition of the scope of governmental actions under the police power” and that, in exercising said power, “the Legislative Assembly is fully empowered to approve

economic regulations geared towards promoting the welfare of the community.” (Our translation) *Id.*, p. 37. The Court further stated that “it had taken judicial notice of the precarious economic situation of the Island and of how such economic situation is reflected thus producing a serious crisis in the Government’s finances”. *Id.*, p. 50.

Subsequently, in *Trinidad-Hernández v. E.L.A.*, 188 D.P.R. 828 (2013) our Highest Court validated Act No. 3-2013, which reformed the Retirement System for Employees of the Government, holding that the Legislative Assembly had exercised its police power to address the insolvency issue of the Retirement System for Employees of the Government. The Statement of Motives of said statute showed that the retirement system was on the verge of an imminent fiscal crisis to the extent that, if no action was taken, the net assets of the system will be in negative numbers and, for Fiscal Year 2018-2019, the retirement system would be left without sufficient funds to meet its obligations, such as the pension payments for the system’s retirees. *Id.*, pp. 836-837. Just as in *Domínguez Castro*, *supra*, the Supreme Court held that “the statement of motives... explains that the measures adopted are necessary and reasonable to properly address the financial crisis that threatens the actuarial solvency of this system.” Moreover, “this certainly is in the public interest since, by guaranteeing the economic solvency of the system, all of the participants will benefit therefrom and the Island’s fiscal crisis will be addressed, to some extent, thus safeguarding the welfare of the people of Puerto Rico.” *Trinidad Hernández*, *supra*, p. 837. The Court concluded that said statute is consistent with the Constitution in that “even though there is a substantial impairment of the contractual obligations in dispute, the measures implemented are reasonable and necessary to safeguard the actuarial solvency of the Retirement System, and there are no less burdensome measures to attain this goal.” *Id.*, p. 839.

Recently, in *Asociación de Maestros de Puerto Rico v. Sistema de Retiro de Maestros de Puerto Rico*, 2014 T.S.P.R. 58, the Supreme Court analyzed the measures approved through Act No. 160-2013 to address the crisis of the Teacher's Retirement System and determined that the said Act did not furthered the State's fundamental interest as required by our Constitution in the event of retirement system reforms: to guarantee the system's solvency. Hence, the Court held that Act No. 160-2013, in relation to the impairment of contractual obligations, is unreasonable and, therefore, unconstitutional. *Id.*, p. 12. On such occasion, the Court emphasized that the measures approved shall be deemed to be constitutional, provided that they are reasonable and necessary "to further the actuarial solvency and that there are no less burdensome measures to attain this goal." *Id.*, p. 8.

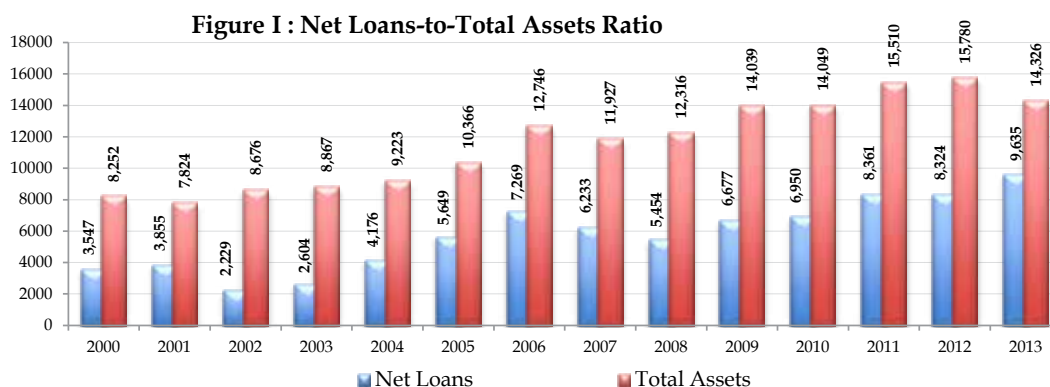
Certainly, the measures adopted up to that time were not sufficient to address the economic and fiscal issues of Puerto Rico. For such reason, we are once again required to exercise our police power to address this crisis, which has become more serious. As discussed further on, for years, the net income of the General Fund has not been sufficient to cover the recurring operating expenses chargeable thereto. In the past, money was taken on loan to make up any deficit between the revenues and the expenditures of the General Fund. At the same time, public corporations have experienced a similar situation and, consequently, most of them have reported annual million-dollar operating losses. Moreover, taking money on loan without a source of repayment therefor has also contributed to this situation.

The practice of financing operating expenses by taking money on loan is the reason why we are facing today a serious liquidity issue that is jeopardizing the resources of the government used to defray public employees' payroll, and its operating expenses. Hence, it is necessary to take measures to ensure that the government has the resources needed to defray the costs of the services provided to the people.

Liquidity of the Government Development Bank for Puerto Rico

The Government Development Bank for Puerto Rico (GDB or the Bank) is the fiscal agent of the Commonwealth that has traditionally provided internal financing to the government and its instrumentalities as it happened prior to the long-term debt issued in the municipal bond market. The GDB has also provided financing for the operating deficits of government agencies and public corporations, thus becoming the greatest short-term financing source for the government. For such reason, the liquidity and financial stability of the GDB is essential to guarantee its effectiveness as the government financing source and as the Island's economic development facilitator.

After evaluating the audited financial statements of the Bank for fiscal years ending between June 30, 2000, and June 30, 2013, it is evident that there was a substantial increase with respect to the outstanding loans and the total assets of the Bank, which is an indicator of how the liquidity of this institution has been compromised. Figure I shows this ratio for the last thirteen years (in millions).



As shown, outstanding loans and the net reserve for uncollectible loans, which included money lent to government agencies, public corporations, municipalities, and private entities significantly increased by \$6.088 billion in 13 years. The practice of lending money to make up the operating deficits of the General Fund and of public entities without a source of repayment has adversely affected the liquidity and financial stability of the Bank. An example of this situation was the pattern followed in the past of making up operating deficits of the Highways and Transportation Authority (HTA) with GDB advances. As of June 30, 2013, and according to the financial statements audited by Ernst & Young, LLP, the outstanding balance of HTA's line of credit with the Bank was \$2.043 billion. In addition to compromising the GDB's capital, this requires that future government administrations increase the rates and impose new taxes and fees to pay off debts incurred by past administrations. In addressing this issue, and aware of its responsibility to pay off the Commonwealth's debts, this Administration passed Act No. 30-2013 and Act No. 31-2013, which provided additional income for the HTA to pay off its outstanding debt with the GDB.

In detail, for Fiscal Year 1999-2000, GDB's loan portfolio amounted to \$3.547 billion or 43% of its total assets. For Fiscal Year 2000-2001, such amount increased by \$308 million and so did the balance, which totaled \$3.855 billion or 49% of its total assets. For Fiscal Year 2001-2002, there was a reduction of nearly \$1.6 billion. This reduction resulted from the trading in the capital market, in accordance with Act No. 164-2001, of loans granted to public corporations and agencies without sources of repayment. This transaction reduced the net loans-to-total assets ratio by 26%. Fiscal Year 2002-2003 ended with a \$2.604-billion loan portfolio or 29% of the GDB's total assets. Fiscal Year 2003-2004 saw an increase of nearly \$1.570 billion in the GDB's loan portfolio, thus the balance amounted to \$4.176 billion or 45% of the Bank's total assets. For Fiscal Years 2004-2005 and 2005-2006 the balance increased by \$1.472 billion and \$1.620 billion, respectively. These increases were mainly due to the loans granted by the Department of the Treasury. At the close of Fiscal Year 2004-2005, the total loan balance accounted for 57% of the Bank's total assets.

At the close of Fiscal Year 2006-2007, the loan balance was reduced by \$1.036 billion. This reduction was mainly due to the refinancing and repayments through bond issues, namely, \$580 million for the Aqueduct and Sewer Authority; \$301 million for the Ports Authority; and \$107 million for the Electric Power Authority. As of June 30 of Fiscal Year 2007-2008, there was an additional \$835 million reduction in the public sector; however, the municipal loan item increased as a result of the creation of the Municipal Redemption Fund which, in turn, increased the borrowing margin for municipalities. Fiscal Years 2008-2009 and 2009-2010 showed a significant increase in the municipal loan item of \$174 million and \$291 million, respectively.

There was a significant \$1.411-billion increase in Fiscal Year 2010-2011. In said fiscal year, the (net) loan portfolio reached \$8.360 billion or 54% of the Bank's total assets. Even though (net) loans remained virtually stable in Fiscal Year 2011-2012, there was a \$1.311-billion balance increase during Fiscal Year 2012-2013. As of June 30, 2013, the loan total amounted to \$9.635 billion out of the \$14.326 billion of the Bank's total assets, or 67% thereof.

During Fiscal Year 2013-2014, the GDB has granted the Commonwealth nearly \$1.2 billion in loans for the payment of financial obligations that came due this fiscal year. As of April 30, 2014, there is still an outstanding \$623-million loan debt. Furthermore, the Commonwealth has a \$1.2 billion debt in Tax Revenue Anticipation Notes, of which \$900 million will mature this fiscal year, and \$300 million will mature early in Fiscal Year 2014-2015. The renewal of most of such notes is expected, in order to provide liquidity to the Central Government for the upcoming fiscal year.

The Authorized Public Accountants firm, KPMG LLP, audited the GDB's financial statements for the fiscal year ending on June 30, 2013. In its report, auditors stressed that, according to the financial statement as of June 30, 2013, the total amount of outstanding loans granted by GDB to the Commonwealth and its public corporations is \$6.9 billion or 48% of the GDB's total assets. Moreover, the outstanding loans of the municipalities amounted to \$2.212 billion or 15% of the GDB's total assets. The information shown in Table 1 was gathered from note 7 of the GDB's audited financial statements as of June 30, 2013. This table shows a detailed account of outstanding loans (in thousands):

Table 1: Statement of Outstanding Loans

	<u>Operating Fund</u>	<u>Tourist Development Fund</u>	<u>Housing Finance Authority</u>	<u>Development Fund</u>	<u>Total</u>
Public Corporations and Agencies	\$6,889,134				\$6,889,134
Municipalities	2,212,481				2,212,481
Reserve	<u>(4,000)</u>				<u>(4,000)</u>
Sub-Total	<u>9,097,615</u>				<u>9,097,615</u>
Private Sector	39,935	376,361	360,014	21,259	797,569
Reserve	(264)	(178,721)	(37,742)	(16,937)	(233,664)
Deferred Income	-	-	<u>(26,430)</u>	-	<u>(26,430)</u>
Sub-Total	<u>39,671</u>	<u>197,640</u>	<u>295,842</u>	<u>4,322</u>	<u>537,475</u>
Total	<u>\$9,137,286</u>	<u>\$197,640</u>	<u>\$295,842</u>	<u>\$4,322</u>	<u>\$9,635,090</u>

Note 4 of the audited financial statements shows that the loans granted to the Commonwealth and its public entities account for a large portion of the Bank's assets. Consequently, the liquidity and financial situation of the Bank greatly depends on the repayment capacity of the Commonwealth and its public corporations.

However, most public corporations are facing great challenges, both fiscal and financial. Hence, any situation that prevents these entities from generating the resources needed to repay their loans will ultimately have an adverse effect on GDB's liquidity and financial stability. Not to mention the fact that the bank's liquidity has been significantly affected, as a result of the limited market access, and significantly reduced in the local capital market.

The notes of the GDB's financial statements even define "liquidity risk" as the ability to generate funds when necessary to meet obligations as they become due, at a reasonable cost and with minimum losses.

As a result of the credit downgrading, the cost of issuing debt has increased thus limiting the capacity to tap into the market. These situations have hindered GDB's capacity to generate cash, thus affecting its liquidity. At the same time, said situations will adversely affect the Commonwealth and its corporations, since they

will impair the Bank to provide internal financing to such agencies and instrumentalities.

On that same topic, this Administration took several measures to improve GDB's liquidity. For instance, a historic issue of Commonwealth general obligation bonds in the amount of \$3.5 billion was made in March 2014. The net proceeds of such bond issue were used mainly for the repayment of Commonwealth obligations to the GDB. Act No. 24-2014 was also enacted to enable the GDB to require certain government entities to transfer the balance in their cash accounts from private institutions to the Bank. Furthermore, such Act bans the GDB from granting loans to public corporations that are unable to prove to have sufficient sources of income to pay the debt service of the new financing. Thus, this Act seeks to establish financial discipline on public entities and maintain the liquidity and financial stability of the GDB. Even though these measures, coupled with other efforts, have proven to be successful in increasing the Bank's liquidity, the latter has yet to regain the necessary financial stability to satisfy by itself the current financial needs of the Government of the Commonwealth and its public corporations, even more so when these entities' access to the market is limited.

GDB's adverse condition also affects the Island's banking industry in general by imposing serious restrictions on the granting of loans to the Government. Both local and international private financial institutions, which in the past have served as temporary sources of liquidity for the government, have significantly reduced and continue reducing the credit granted to the Commonwealth and other public instrumentalities. Consequently, they are no longer a temporary financing option. Interest rates have also experienced some increase which, in turn, have risen the cost of capital for the Commonwealth, thus reducing the government's capacity to issue new debt. The limitation in the access

to capital markets and credit granted by private financial institutions has also limited the volume of debt that can be issued; therefore, the government is forced to depend on financing to defray its operations.

Even though the recent issue of general obligation bonds improved GDB's liquidity since it generated \$3.2 billion net proceeds, said transaction was used mainly for the refinancing of short-term debt with private institutions and the GDB. For such reason, the net proceeds thereof are not available to provide temporary financing to the government without affecting once again the Bank's liquidity. This issue prevented a potential noncompliance with certain financial obligations and provided the Commonwealth with some room to finish and implement its fiscal adjustment plan aimed at balancing the budget, without resorting to financing the deficit or refinancing the debt. Such issue was possible thanks to the significant steps taken by this Administration as of today to close the budget gap and, particularly, to its commitment to approve a balanced budget for Fiscal Year 2014-2015. It is important to stress that capital markets do not regard very well that the General Fund's budget has been balanced by incurring more debt. Also, the bonds of the Commonwealth or its instrumentalities lack market appeal, including the bonds of the Dedicated Sales Tax Corporation (COFINA, Spanish acronym), which is a vehicle used by the past Administration to refinance the General Fund's deficits, unless the appropriate measures are taken to mitigate the burden that the General Fund's deficit represents to the Department of the Treasury and the GDB.

After said bond issue on March 11, 2014, in the amount of \$3.5 billion, Standard & Poor's, in a report dated on March 14, 2014, stated that: "In our opinion, the sale will relieve near-term liquidity pressure on the Commonwealth"; and added:

While we have removed the CreditWatch designation, we have assigned a negative rating outlook, reflecting long-term economic and financial trends we see over the next two years. These include the potential for a larger deficit in fiscal 2014 than the \$650 million that Puerto Rico now projects after passage of \$170 million of mid-fiscal 2014 budget adjustments, and the potential for general fund operating deficits in fiscal 2015. There also remain potential ongoing working-capital liquidity needs for fiscal 2015 and plans by the commonwealth for additional bond sales in fiscal 2015. Puerto Rico will also need to start paying interest on the 2014 bonds in fiscal 2016.

Credit rating agencies are aware of and have consistently recognized that Puerto Rico's Treasury has a persistent liquidity problem which can only be addressed with the implementation of aggressive measures aimed at making up the budget deficit that repeats every year. The Island has made a commitment to do this before the global market and, as shown in the comments made by credit rating agencies, the efforts made to face this crisis are helping us to establish credibility. The improvement in Puerto Rico's credit rating depends on these efforts. This Act is a fundamental step towards achieving financial stability and a balanced budget, as well as to restore the credibility of the Island. But this is not our last challenge. As noted by Fitch Ratings on the report dated April 15, 2014, there are still challenges that need to be addressed regarding the budget for Fiscal Year 2015 and the recent decision of the Supreme Court on Act No. 160-2013, and they reminded us:

In the coming weeks the governor is expected to release his budget proposal for the fiscal year beginning July 1, which he has announced will be balanced. The court decision has no direct negative impact on the near-term budget, but the commonwealth has stated in the past that

without reform the teachers' retirement system would confront an annual cash flow deficit beginning in ...

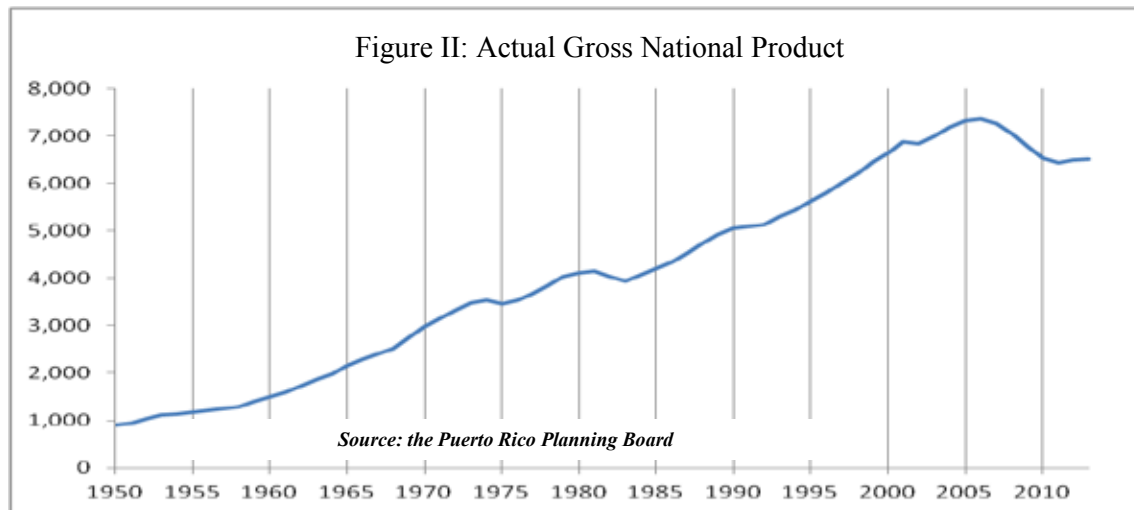
The recent transaction of general obligation bonds of the Commonwealth used a significant portion of the Commonwealth's constitutional margin, thus limiting the use of this mechanism in the near future. Our Constitution sets forth that the Commonwealth's public debt shall never exceed 15% of the average income from State sources during the two immediately preceding fiscal years. According to the Official Statement, Commonwealth of Puerto Rico General Obligation Bonds of 2014, Series A, after the aforementioned bond issue, the constitutional limit is 14.2%. Moreover, the resistance from capital markets to make up the deficits of the General Fund also limits GDB's financing capacity because it will remain in its loan portfolio and will, eventually, hinder its ability to fulfill its institutional role as a temporary or last-resource creditor.

In summary, the Commonwealth needs to approve a budget where revenues equal expenditures, not only because a balanced budget is an indicator of sound public administration and our responsibility to future generations, but because the mechanisms that the Commonwealth has used in the past are no longer available. Capital markets are not willing to finance budget deficits; neither does the private banking, because they do not have the capacity or the will to do so, and the liquidity of the GDB is compromised. In view of this situation, the Commonwealth has a strong interest in cutting back on public spending immediately, significantly, and conclusively in order to defray the expenditures of the General Fund without resorting to using debt as a source of income. Given the seriousness of this situation, it is necessary to explain the economic background that brought us to this situation.

Puerto Rico's Economic Condition

The Island's economic situation must be the starting point to determine the type of fiscal measures that are to be taken and the impact that such measures will have on macroeconomic terms. In order to understand this legislative piece, Puerto Rico's current historical juncture and history must be evaluated. We must bear in mind that the current fiscal situation not only reflects the lack of caution of past administrations in managing the State's resources, but also the inability of the Island's economy to increase production, create jobs, and generate income. The State's capacity to collect revenues is limited by the Island's unemployment rates. Taxes and other levies paid by individuals and business are directly related to the level of economic activity and the amount of income and profit that such economic agents may generate.

The Island's economy experienced the longest and most serious recession in its recent history during Fiscal Years 2006 to 2011. As shown in Figure II, this period of economic constraints was by far worse in length and severity, than the four recessions that took place between 1974-75, 1981-83, 1990-91, and 2001-03.



This last recession lasted six years and the Actual Gross National Product (AGNP) showed a 12.5% accrued reduction, while the worst recessions, 1974-75 and 1981-83, lasted between 1 to 2 years and the AGNP was reduced only by 1.91% and 5.13%, respectively. Moreover, the AGNP average annual growth rate was -2.1% during the recession of 2006-11, and 1.91% and 2.60% in the recessions of 1974-75 and 1981-83, respectively. These recessions were mainly the result of factors related to the economic cycle of the U.S. economy and the world's economy, as well as the impact of the increase in the price of oil on our economy.

Our first recession in recent times was from 1974-75 when the oil embargo of the Organization of the Petroleum Exporting Countries (OPEC) caused a global recession that adversely affected the Island, as previously stated. The Government of Puerto Rico commissioned a study to James Tobin, a well-known economist and Nobel laureate in economics. Many recommendations were made in this study, both economic and fiscal. However, some of them were implemented and others were not. If the recommendations regarding the economy and the management of fiscal issues had been implemented, it is very likely that the current fiscal situation of the Island would have never happened. It is worth noting that during such time, the Government had difficulty in accessing capital in the market and meeting its obligations. However, the approval of Section 936 of the U.S. Internal Revenue Code helped the Island overcome this crisis.

The 1982-83 recession was the result of the contraction of the U.S. economy, the increase in the oil price, and the decrease in Federal transfers. All these factors combined to cause our economy to fall into a serious recession.

The 1990-91 recession has been the shortest one thanks to the buffering effect of the funds that the Island received for the damages caused by hurricane Hugo. Between FEMA funds and the compensation money paid by insurance companies, the Island received nearly \$5 billion. This injection of funds prevented the recession from extending or aggravating.

Until now, it is evident that the economic recessions experienced by the Island prior to Fiscal Year 2006 coincided with the periods of contraction of the U.S. economy and the oil price increase worldwide. The close relation between our economy and that of the U.S.A. and our vulnerability to the changes in the oil price are the reasons why recessions have a particularly deep impact on the Island. However, once the U.S. economy and the oil price stabilized our economy experienced a growing trend. Furthermore, the recession that started in Fiscal Year 2006 had some specific internal causes such as:

- The end of the Section 936 phase out which entailed the loss of more than 150,000 direct and indirect jobs in the manufacturing sector;
- The government shutdown during the Fiscal Year 2006 crisis; and
- The negative effects of Act No. 7-2009 which aggravated the recession during Fiscal Years 2009, 2010, and 2011.

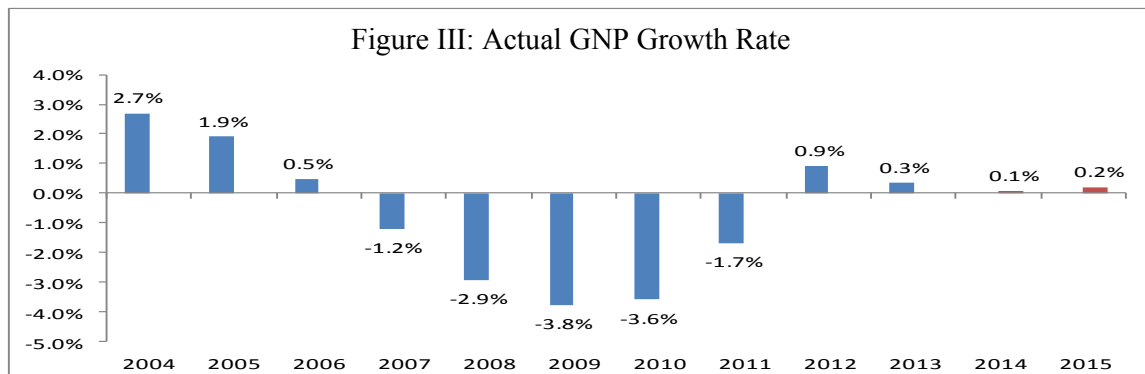
Table 2 shows a comparative analysis of Puerto Rico's economic recessions from 1974-1975 to 2006-2011.

Table 2: Comparative Analysis of Economic Recessions in Puerto Rico

Period	Duration	Accrued AGNP Growth Rate	Annual AGNP Growth Rate
1974-75	1 year	-1.91%	-1.91%
1981-83	2 years	-5.13%	-2.60%
1990-91	7 months	+0.9%	+0.9
2001-02	1 year	-0.3%	-0.3
2006-11	6 years	-12.50%	-2.1%

Source: the Puerto Rico Planning Board

For Fiscal Years 2012 and 2013, the AGNP showed positive values, 0.9% and 0.3%, respectively (See Figure III). Recently, the Puerto Rico Planning Board presented its economic forecasts for Fiscal Years 2014 and 2015 where the projections for the AGNP show minor increases, that is, 0.1% and 0.2%, respectively. Figure III shows a very weak stabilization.



Source: the Puerto Rico Planning Board

This laggardly recovery of Puerto Rico's economy is mostly due to the effect that an injection of nearly \$7 billion of funds appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA) had during the last 3 years. However, this source of income was depleted just as other sources of income from the issue of government and public corporations bonds, which translated into public investment. This means that the Island's possibility of economic growth for the coming years will depend exclusively on private investment and the export of goods and services.

Therefore, the apparent recovery of Puerto Rico's economy that began in Fiscal Year 2012 will continue to be too slow to confidently state that we have overcome the crisis. The situation worsens even more when the Economic Activity Index (EAI) published by the GDB, as of now, shows negative values for Fiscal Year 2014. As shown in Table 3, the average EAI value from July 2013 to April 2014 was 127.1. This information shows a 4.3 point reduction from the 131.4

points reported for the same period in Fiscal Year 2013, and constitutes a 3.3% reduction in such indicator.

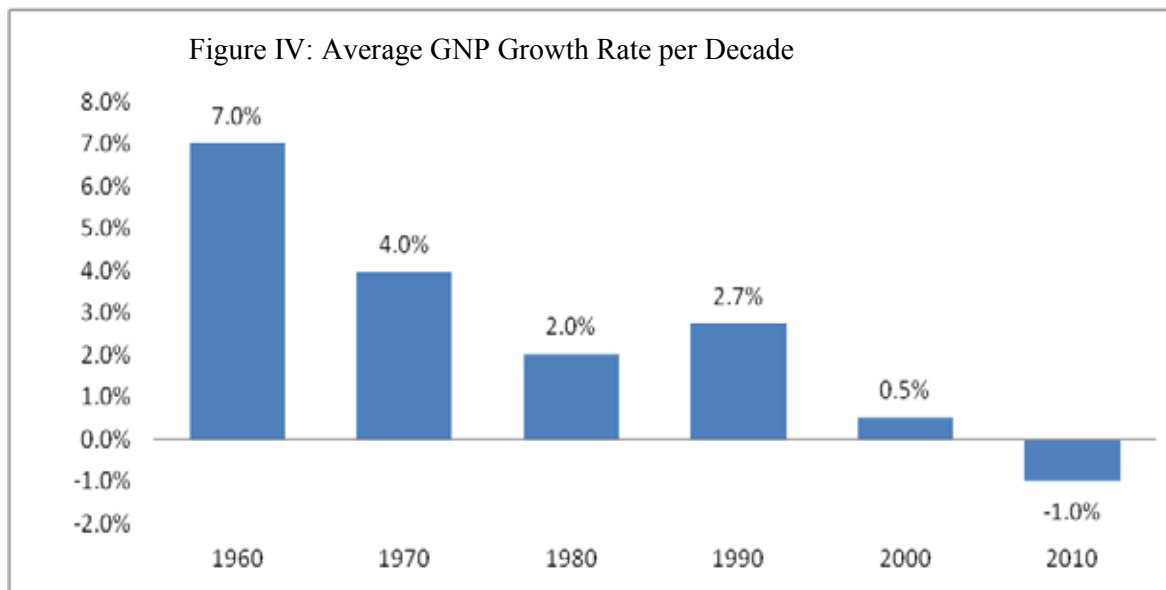
Table 3: Economic Activity Index (EAI)

Fiscal Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Annual Average	154.6	155.0	152.9	149.1	141.7	134.7	130.8	130.9	130.8	
Difference	2.4	0.4	-2.1	-3.8	-7.4	-7.0	-4.0	0.2	-0.1	
% Change	1.6	0.3	-1.3	-2.5	-4.9	-4.9	-2.9	0.1	-0.1	
July-April Annual Average	154.3	155.3	155.3	149.6	142.6	135.1	131.0	130.8	131.4	127.1
Difference	2.1	1.2	-2.0	-3.6	-7.0	-7.5	-4.1	-0.2	0.6	-4.3
% Change	1.4	0.6	-1.3	-2.4	-4.7	-5.2	-3.1	-0.1	0.5	-3.3

Source: the Government Development Bank

In view of this situation, there is major concern about the possibilities of having a steady economic recovery process in Puerto Rico that provides for the generation of substantial additional income for the treasury and allows the government to improve its liquidity. Consequently, the most recent trends shown by the Island's economy prove that there is still a lack of activity and production capacity.

In analyzing the economic performance of the Island within a historical context, it can be noticed that the 7% growth rate seen in the 1960s has turned into negative numbers. Our economy has experienced a structural change whereby it has lost its competitive capacity and that, coupled with the instability of Section 936, have limited its economic growth capacity. For example, during the last four decades, the local economy has been losing its capacity to grow and create jobs. The reduction in the investment rate (Total Gross Investment/GNP), from 30% in the 1970s to 13% in recent years, is the best indicator of how our economy has lost its future productive capacity, as shown in Figure IV.



Source: Puerto Rico Planning Board

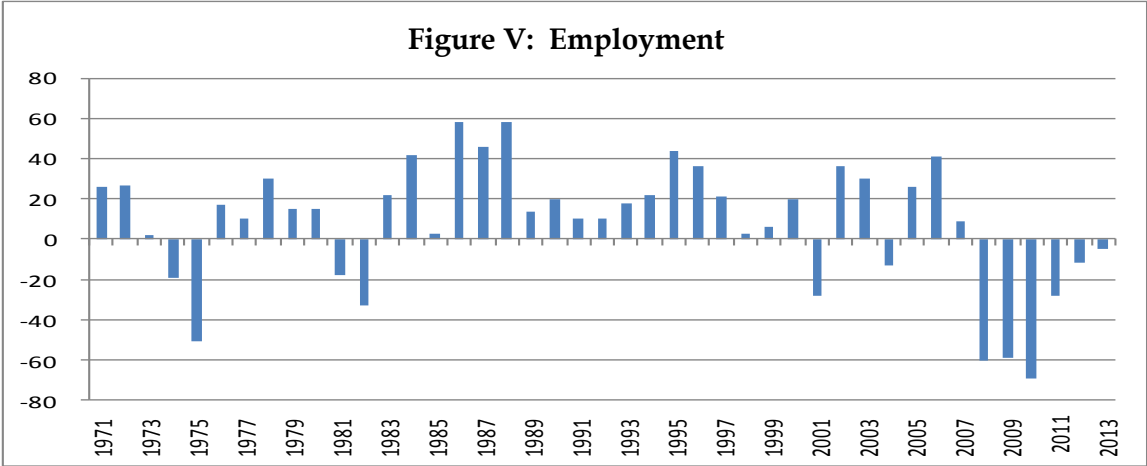
The moderate growth rates reported in the 1980s and 1990s, and part of the 2000s were due to the following factors:

- The activity generated by the 936 Corporations manufacturing sector, mainly by the chemical and pharmaceutical industries.
- The flow of Federal government payment transfers.
- The compensating effect of public jobs.
- The excessive use of debt issue to finance public investment projects and government spending.
- The impact of the housing bubble on the construction sector.
- The indebtedness of Puerto Rican consumers.
- The expansion of the U.S. economy.

Undoubtedly, the elimination of Section 936 aggravated the structural issues of the Island's economy which began to show in the 1970s.

Employment

The total employment indicator specifically reflected the seriousness of the economic recession that affected Puerto Rico from 2006 to 2011. As shown in Figure V, Fiscal Years 2008, 2009, and 2010 had the largest job loss in the recent history of the Island’s economy. Since Fiscal Year 2006, Puerto Rico’s economy has lost a total of 207,000 jobs, which represents a 16.6% aggregate loss.



Source: Department of Labor and Human Resources: Housing Survey

Table 4 shows a summary of the employment status among persons 16 years of age or older during the last 10 years. After analyzing this data, it is noticeable that total employment values have steadily decreased from 2006 to 2013. The slight economic recovery shown since 2012 has yet to be translated into a decreasing trend within the total employment variable.

Table 4: Employment Status Among Persons 16 Years of Age or Older: Fiscal Years (in thousands).

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Persons 16 years or older	2,884	2,886	2,899	2,906	2,908	2,910	2,914	2,920	2,921	2,906
Working Group	1,339	1,357	1,410	1,413	1,355	1,325	1,285	1,249	1,221	1,197
Employed	1,187	1,213	1,254	1,263	1,203	1,144	1,075	1,047	1,035	1,030
Unemployed	152	144	156	150	152	181	210	202	185	167
Participation Rate	48.4	47.0	48.6	48.6	46.6	45.5	44.1	42.8	41.8	41.2
Unemployment Rate	11.4	10.6	11.0	10.6	11.2	13.7	16.3	16.2	15.2	14.0
Employment Rate	41.2	42.0	43.3	43.5	41.4	39.3	36.9	35.9	35.4	35.4

Source: Department of Labor and Human Resources, Labor Statistics Bureau, Housing Survey

On the other hand, the unemployment rate has shown some improvement and has remained unchanged at 14%. However, persistent factors such as the reduction in labor participation and the increase in the population older than 65 years of age affect the Island's capacity for economic recovery.

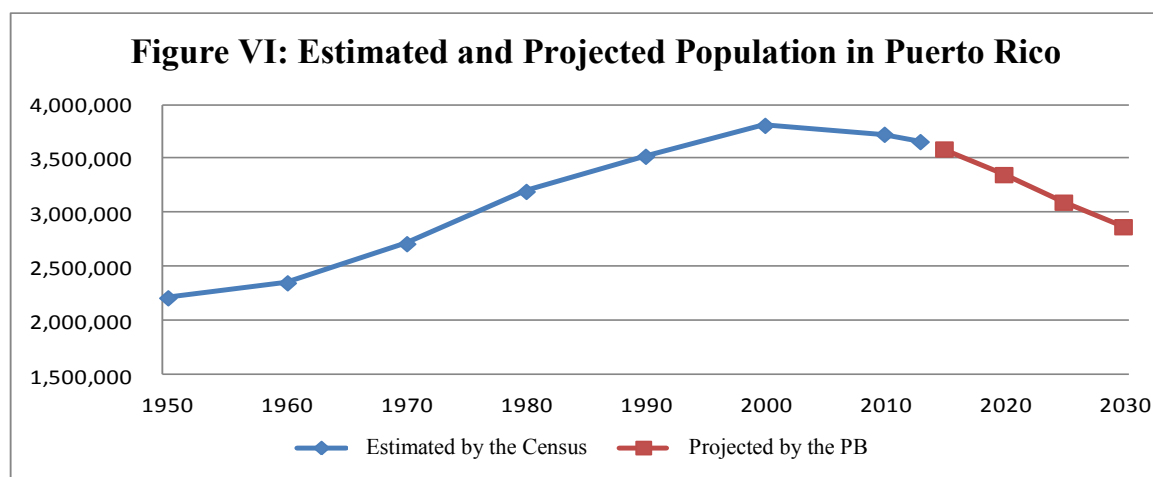
Demographic Trends

Puerto Rico is experiencing for the first time an absolute population loss. According to the United States Census Bureau, the population of Puerto Rico decreased by 2.2% from 2000 to 2010. However, the projections of the Planning Board show that this decreasing trend in population shall continue through at least 2030. The estimated reduction in population from 2000 to 2013 was of 150,442 individuals, which constitutes a nearly 4% decrease of the population residing in the Island. As shown in Table 5 and Figure VI, the projected reductions in population for 2020 and 2030 constitute a 10.0% and 14.4% decrease, respectively.

Table 5: Estimated and Projected Population in Puerto Rico

Year	No. of Persons	% of Change per Decade
1950	2,210,703	18.3%
1960	2,349,544	6.3%
1970	2,712,033	15.4%
1980	3,196,520	17.9%
1990	3,522,037	10.2%
2000	3,808,610	8.1%
2010	3,725,789	-2.2%
2020	3,352,315	-10.0%
2030	2,869,462	-14.4%

Source: United States Census Bureau, Population Division



Source: United States Census Bureau, Population Division; and the Planning Board, Census Office

As shown in Table 6, the reported reduction in the population has a demographic component since it comes as a result of the reduction in births for every one thousand inhabitants, and a decrease in deaths for every one thousand inhabitants. The combination of these factors is translated into an ongoing reduction in the natural population increase rate, which in 2013 was estimated at 2.5 persons for every one thousand inhabitants.

Table 6: Selected Demographic Statistics (Fiscal Years)

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Population as of July 1st (in Thousands)	3,827	3,821	3,805	3,783	3,761	3,740	3,722	3,687	3,652	3,615
Births (in Thousands)	51	51	49	47	46	45	42	42	41	39
Deaths (in Thousands)	30	30	29	29	29	29	29	29	30	30
Births for every 1,000 inhabitants	13.4	13.3	12.8	12.4	12.1	12.0	11.4	11.4	11.2	10.8
Deaths for every 1,000 inhabitants	7.7	7.8	7.5	7.8	7.7	7.8	7.9	7.9	8.2	8.3
Natural increase for every 1,000 inhabitants	5.7	5.4	5.3	4.6	4.4	4.2	3.5	3.5	3.0	2.5

Source: United States Census Bureau, Population Division; Puerto Rico Department of Health; and the Planning Board, Census Office

However, this factor alone does not explain the population decrease between 2000 and 2010. The trend needs to include the impact of the massive migration of Puerto Ricans who relocate abroad in search for better economic opportunities.

This situation brings to the table the issue of talent flight, the loss of working-age human resources, and the negative impact thereof on the treasury revenues. No reduction in the cost of the services rendered by the Government to these citizens can compensate for such revenues in the short- or long-term.

Table 7: Selected Population Data

		Population 65 Years or Older		
	Total Population	Number of Persons	%	Median Age
1950	2,210,703	85,578	3.9%	18.4
1960	2,349,544	122,207	5.2%	18.5
1970	2,712,033	177,077	6.5%	21.6
1980	3,196,520	252,569	7.9%	24.6
1990	3,522,037	340,884	9.7%	28.5
2000	3,808,610	425,137	11.2%	32.1
2010	3,725,789	541,998	14.5%	36.9

Source: United States Census Bureau, Population Division

On the other hand, the impact of the population challenge worsens as a result of our increasingly aging population. As shown in Table 7, the number of persons age sixty-five (65) or older has both in absolute terms and in its proportion to the total population continued its growing trend. The 2010 Census reported more than half a million people within this age bracket, which represents 14.5% of the total population. An interesting fact is that the median age of our population has increased rapidly, from 18.5 years in 1960 to 36.9 years in 2010.

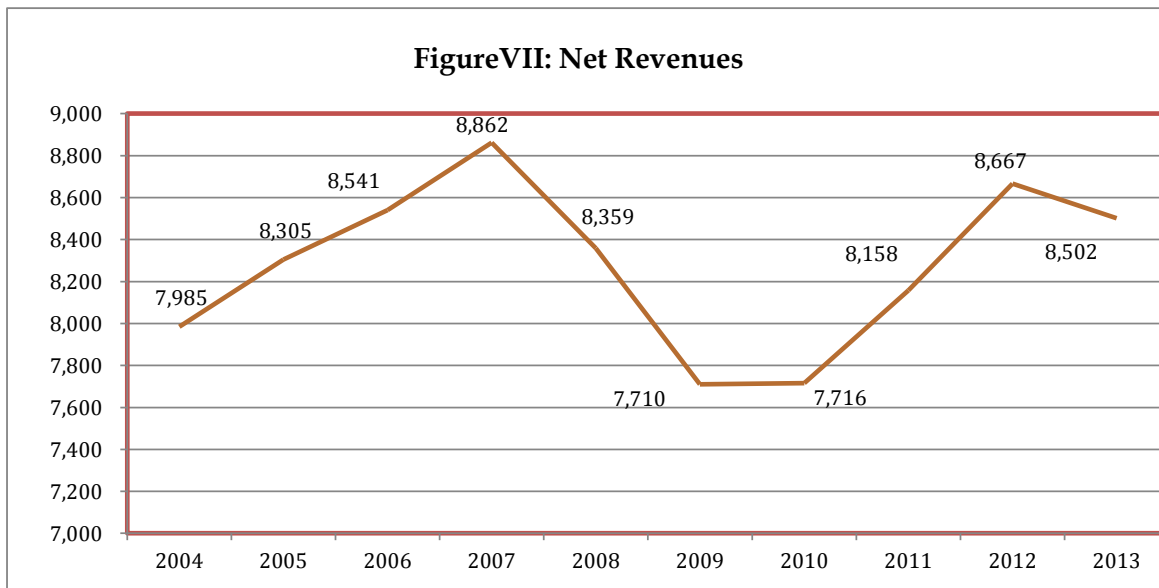
The aforementioned demographic dynamics show an imminent increase in the demand for healthcare services and other services necessary to provide older persons with the adequate care. Inevitably, this situation would eventually require increasing public spending and poses an additional challenge to the attainment of a balanced budget.

As shown below, the population trend, the reduction in labor participation, and the Island's difficult economic situation adversely affect the net revenues of the General Fund.

General Fund Net Revenues

An analysis of the report of the General Fund Net Revenues drafted by the Department of the Treasury for Fiscal Years 2003-2004 to 2012-2013, shows that for Fiscal Year 2003-2004, the General Fund net revenues amounted to \$7.985 billion. Meanwhile, for Fiscal Year 2012-2013 (9 years later) such amount totaled \$8.502 billion. This means that resources from State sources, such as income taxes, sales and use tax, and excise taxes, among others, increased only by \$517 million in almost one decade.

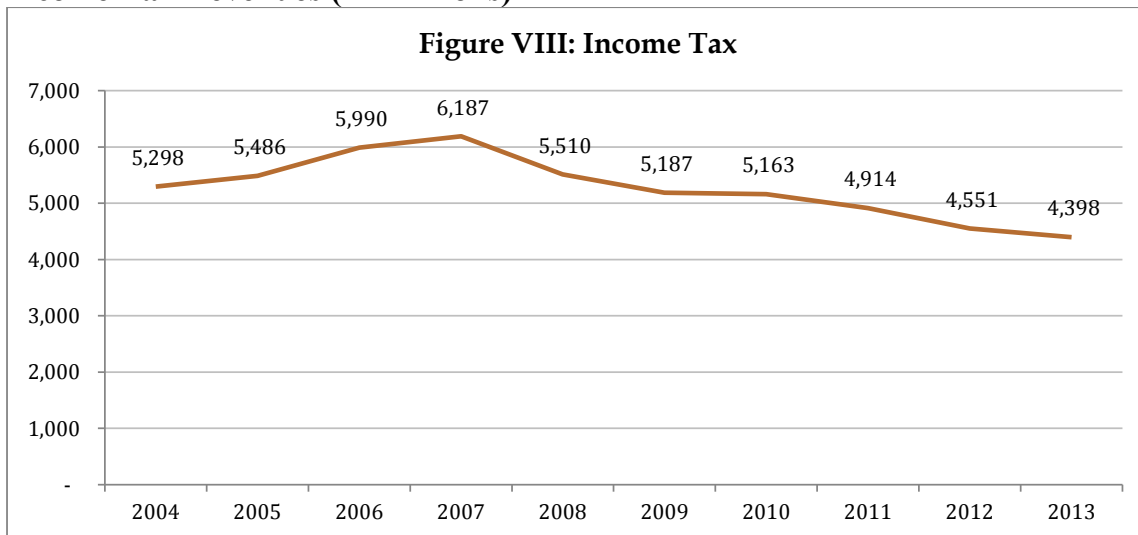
Figure VII shows the General Fund net revenues from Fiscal Year 2003-2004 to 2012-2013 (in millions).



Source: Department of the Treasury: General Fund Net Revenues Report

The analysis below shows the net revenues of the General Fund according to its main sources, as included in the aforementioned report:

Income Tax Revenues (In Millions)



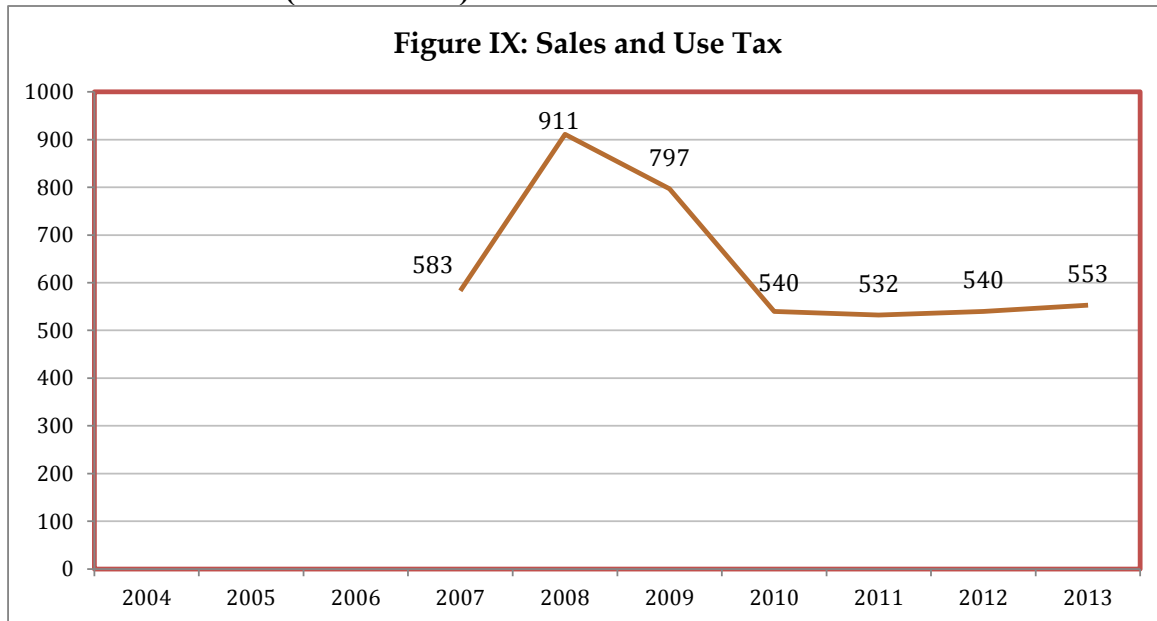
Source: Department of the Treasury: General Fund Net Revenues Report

As shown in Figure VIII, the income item that includes income taxes on individuals, corporations, partnerships, withheld to nonresidents, taxes on interest, dividends, and tollgate taxes experienced an annual increase from 3% to 9% during Fiscal Years 2003-2004 to 2006-2007. Since then, it had been spiraling down, but in Fiscal Year 2007-2008, it was more evident with an 11% reduction compared to the previous fiscal year. The second steepest reduction was reported in Fiscal Year 2011-2012 with a 7% reduction.

There are several factors that influence the behavior of this important item of General Fund net revenues. Some of these factors are the economic recession, which began in late 2006, and the reduction in the working-age population. Moreover, as part of the tax reform resulting from the enactment of Act No. 1-2011 tax rates on individuals and corporations were reduced, thus worsening the decrease in income tax revenues. The tax rates approved under Act No. 154-2010 sought to somehow compensate this decrease; this issue will be discussed further on.

This Administration enacted Act No. 40-2013 and reestablished the maximum 39% tax rate on corporations and introduced a surtax on gross income (National Fee) with the intent to increase revenues from income taxes on corporations by Fiscal Year 2013-2014. However, as of April 30, 2014 such revenues fell short of the expected amount by nearly \$380 million.

The economic projections of the Planning Board, as well as the Island's population trends, provide no basis to foresee a significant increase in income tax revenues in the near future.

Sales and Use Tax (In Millions)

Source: Department of the Treasury: General Fund Net Revenues Report

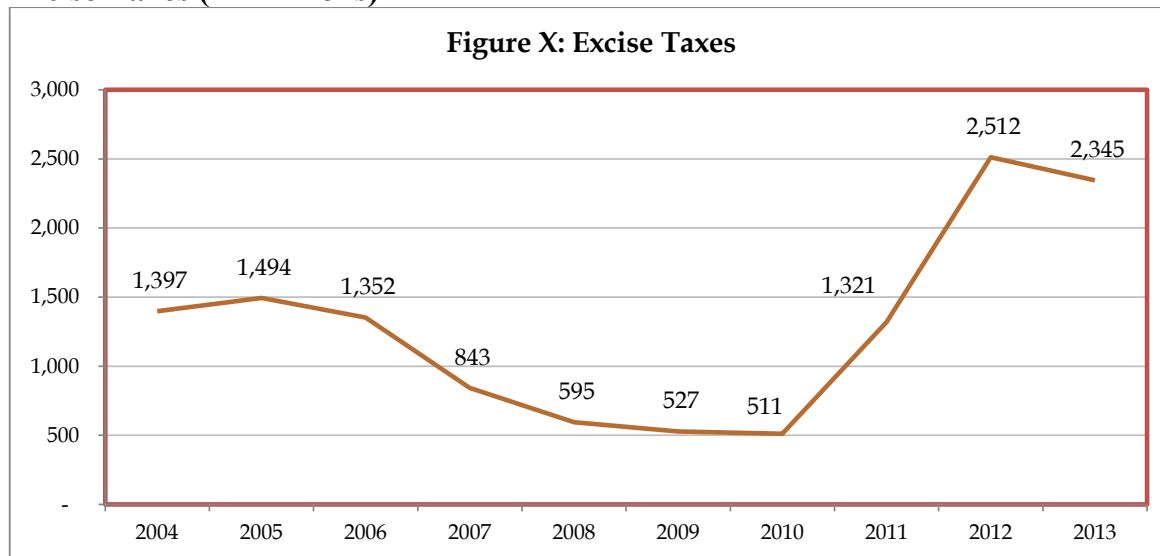
In November 2006, in accordance with Act No. 117-2006, the new 5.5% state sales and use tax took effect. This tax substituted the 5% general excise tax. By Fiscal Year 2006-2007, the revenues from the collections of such tax amounted to \$583 million. Fiscal Year 2007-2008 represented the first full year of revenues which amounted to \$911 million. As seen in Figure IX, after this, revenues dropped to \$797 million and \$540 million for Fiscal Years 2008-2009 and 2009-2010, respectively. Ever since, revenues have kept a lineal pattern.

The main reason for the reduction in the revenues on account of the sales and use tax covered into the General Fund is that, as a result of the enactment of Act No. 1-2009 and Act No. 7-2009, the portion of this tax allocated to the Dedicated Sales Fund was increased in order to pay the debt to COFINA. Likewise, Act No. 91-2006 must be considered since it provided for an automatic 4% annual increase in the monies covered into the Dedicated Sales Fund until reaching the sum of \$1.850 billion by 2041. This means that if the total revenues

on account of such taxes remain stable and do not increase, the portion of such revenues that is covered into the General Fund shall be lower every year.

Act No. 40-2013, as amended by Act No. 117-2013, modifies the way in which the sales and use tax is collected and remitted to the Department of the Treasury. According to the estimates of the Department of the Treasury, it is expected that revenues on account of said tax increase to nearly \$170 million by Fiscal Year 2014-2015. However, because of the economic situation of the Island and the automatic 4% increase in the sales and use tax covered into the Dedicated Sales Fund for the payment of debt, it is not reasonable to conclude that revenues on account of such tax shall have a significant increase in the near future.

Excise Taxes (In Millions)



Source: Department of the Treasury: General Fund Net Revenues Report

This source of funds includes excise taxes on alcoholic beverages, tobacco products, oil products, motor vehicles, horse races, insurance premiums, concrete, and slot machines. Likewise, it included the general 5% excise tax (substitute for the sales and use tax) until Fiscal Year 2006-2007. Moreover, it included the tax on foreign corporations and partnerships imposed under Act No. 154-2010 since Fiscal Year 2010-2011. As seen in Figure X, revenues on account of excise taxes

show a \$552 million or 32% reduction from Fiscal Year 2005-2006 to Fiscal Year 2006-2007 mainly as a result of substituting the sales and use tax for the general excise tax. Fiscal Year 2007-2008 shows an additional \$258 million or 23% reduction, given that this was the first year that experienced the full effect of the change between income sources.

The substantial increase seen in Fiscal Year 2010-2011 is mainly a result of the new excise tax on foreign corporations and partnerships (Act No. 154-2010) which totaled \$678 million in revenues for such Fiscal Year. This new excise tax generated revenues amounting to \$1.876 billion and \$1.667 billion for Fiscal Years 2011-2012 and 2012-2013, respectively. The main reason for the increase or decrease in excise tax collections for such fiscal years was the imposition of this new excise tax.

It must be noted that Act No. 154-2010 represented a substitution and redistribution of the sources of income of the General Fund with the aggravating circumstance that the collections on account of the enactment of such Act for Fiscal Year 2012-2013, which constituted nearly 20% of the General Fund's income, originated from 27 groups of affiliates, out of which 6 groups were responsible for 75% of such income. The special temporary excise tax that expires in 2017 must be added to the number of risks ran by the General Fund's income. The modified source of income rule takes effect in 2017. The form in which this new rule will be finally implemented is yet to be determined. For such reason, it cannot be estimated nor guaranteed whether the current level of revenues will be achieved. We must also consider the actions taken by the U.S. Treasury with respect to tax treatment that affects the credit currently available at the Federal level on account of the excise tax paid in Puerto Rico. Another challenge faced by Act No. 154-2010 is that some patents of products manufactured in Puerto Rico will expire within the next years.

This Administration approved Act No. 2-2013 to amend Act No. 154-2010 establishing a four percent (4%)-tax and extending it to 2017. Some sectors have stated that the possibility of increasing this excise tax and making it permanent should be considered. However, there are determining factors surrounding it that cannot guarantee a level of revenues on account of this excise tax since the decision depends mainly on the Federal government (tax treatment) or on business decisions of the group of affiliates that paid such tax and some of which have patents expiring within the next years.

Net Income Summary

Revenues from income taxes, the sales and use tax, and excise taxes account for nearly ninety percent (90%) of the General Fund's net income. As previously stated, these three sources of income are facing great challenges, to wit, the Island's prolonged economic recession, the decline in the working-age population, the amount of income derived from the sales and use tax that is allocated to the payment of debt, and the fact that nearly twenty percent (20%) of the General Fund's income derives from Act No. 54-2010, specifically from 27 affiliate companies. In addition, such excise tax is temporary and expires in 2017. These challenges increase the level of uncertainty as to the amount of resources that the Commonwealth will have available to continue providing services to its People.

Audited Financial Statements

Table 8 shows the General Fund's revenues and expenditures for Fiscal Years 1999-2000 to 2011-2012, as stated in the audited financial statements of the Commonwealth, specifically in the "Statement of Revenues and Expenditures-Budget and Actual Budget Basis-General Fund" (in millions).

Table 8: General Fund's Revenues and Expenditures for Fiscal Years 1999-2000 to 2011-2012

<i><u>Fiscal Year</u></i>	<i><u>Revenues</u></i>	<i><u>Expenditures</u></i>	<i><u>Loan Payments and other Transfers</u></i>	<i><u>Total</u></i>	<i><u>Deficit</u></i>
1999-2000	\$7,003	\$5,346	\$2,231	\$7,577	(\$574)
2000-2001	6,872	5,302	2,820	8,122	(1,250)
2001-2002	7,186	8,542	584	9,126	(1,940)
2002-2003	7,341	7,366	677	8,043	(702)
2003-2004	7,834	7,942	981	8,923	(1,089)
2004-2005	8,603	8,908	809	9,717	(1,114)
2005-2006	8,423	9,461	936	10,397	(1,974)
2006-2007	8,718	8,786	921	9,707	(989)
2007-2008	8,207	8,809	515	9,324	(1,117)
2008-2009	7,584	9,927	963	10,890	(3,307)
2009-2010	7,593	9,640	728	10,368	(2,775)
2010-2011	7,994	9,075	1,548	10,623	(2,360)
2011-2012	<u>8,573</u>	<u>9,911</u>	<u>2,055</u>	<u>11,966</u>	<u>(3,393)</u>
<i>Total</i>	<u>\$101,929</u>	<u>\$109,105</u>	<u>\$15,768</u>	<u>\$124,783</u>	<u>(\$22,854)</u>

As shown, expenditures exceeded the General Fund's net revenues in every fiscal year. The total deficit for these 13 years amounted to \$22.854 billion. The average net revenues of the fund for the period between Fiscal Year 1991-2000 and Fiscal Year 2011-2012 were \$7.841 billion, whereas average expenditures (including debt payment) were \$9.559 billion. This means that, on average, the expenditures chargeable to the General Fund exceed its revenues by \$1.758 billion. It is worth mentioning that, since Fiscal Year 2008-2009, the total amount of expenditures consistently exceeded \$10 billion, nearing \$12 billion in Fiscal Year 2011-2012.

As shown in Table 9, to make up the deficits for such years \$8.256 billion were borrowed from the GDB and \$8.521 billion from COFINA between Fiscal Years 2008-2009 and 2011-2012. This means that, in 13 years, \$16.777 billion were borrowed to make up budget deficits. Moreover, there were \$4.954 billion on account of non-tax income and other transfers, which resulted in an uncovered net deficit of \$1.123 billion.

Table 9: Loans to Make up Deficits from Years 1999-2000 to 2011-2012.

<i><u>Fiscal Year</u></i>	<i><u>Deficit</u></i>	<i><u>Loans</u></i>	<i><u>COFINA Loans</u></i>	<i><u>Lottery and other Transfers</u></i>	<i><u>Net</u></i>
1999-2000	(\$574)	\$55	\$-	\$574	\$55
2000-2001	(1,250)	662	-	462	(126)
2001-2002	(1,940)	1,932	-	268	260
2002-2003	(702)	424	-	263	(15)
2003-2004	(\$1,089)	695	-	286	(108)
2004-2005	(1,114)	756	-	433	75
2005-2006	(1,974)	1,345	-	168	(461)
2006-2007	(989)	340	-	145	(504)
2007-2008	(1,117)	290	-	152	(675)
2008-2009	(3,307)	172	3,328	127	320
2009-2010	(2,775)	148	2,688	350	411
2010-2011	(2,360)	560	1,552	862	344
2011-2012	<u>(3,393)</u>	<u>877</u>	<u>953</u>	<u>864</u>	<u>(699)</u>
<i>Total</i>	<u>(\$22,854)</u>	<u>\$8,256</u>	<u>\$8,521</u>	<u>\$4,954</u>	<u>(\$1,123)</u>

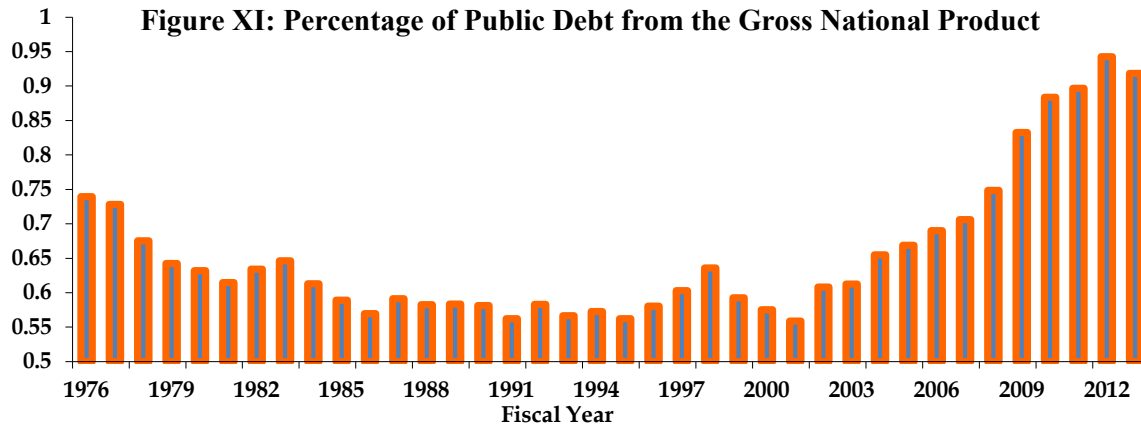
It can be concluded that the level of expenditures and obligations of the General Fund has been consistently higher than the net income it generates. This gap has been narrowed with loans from both the GDB and COFINA. As previously explained, the issue of GDB's liquidity and the Island's level of indebtedness

prevented the use of this strategy to balance the General Fund. Furthermore, said practice is inconsistent with the public policy of sound and responsible fiscal administration.

Public Debt

The Island's total public debt reached \$64.957 billion in Fiscal Year 2013. This level of public debt accounted for ninety one point eight percent (91.8%) of the Gross National Product in Fiscal Year 2013 (see Figure XI). The rapid growth of the public debt during the last years was mainly a result of debt issues made by past government administrations, specifically the previous one. From 2009 to 2012, the total debt increased by \$17.828 billion, that is, by 38%. This debt increase included nearly \$9 billion in COFINA bond issues to finance government operating costs. Needless to say that this amount does not include around \$5 billion in GDB notes issued to also finance government operations. In considering the notes issued by the previous Administration, public debt increased by nearly \$23.828 billion.

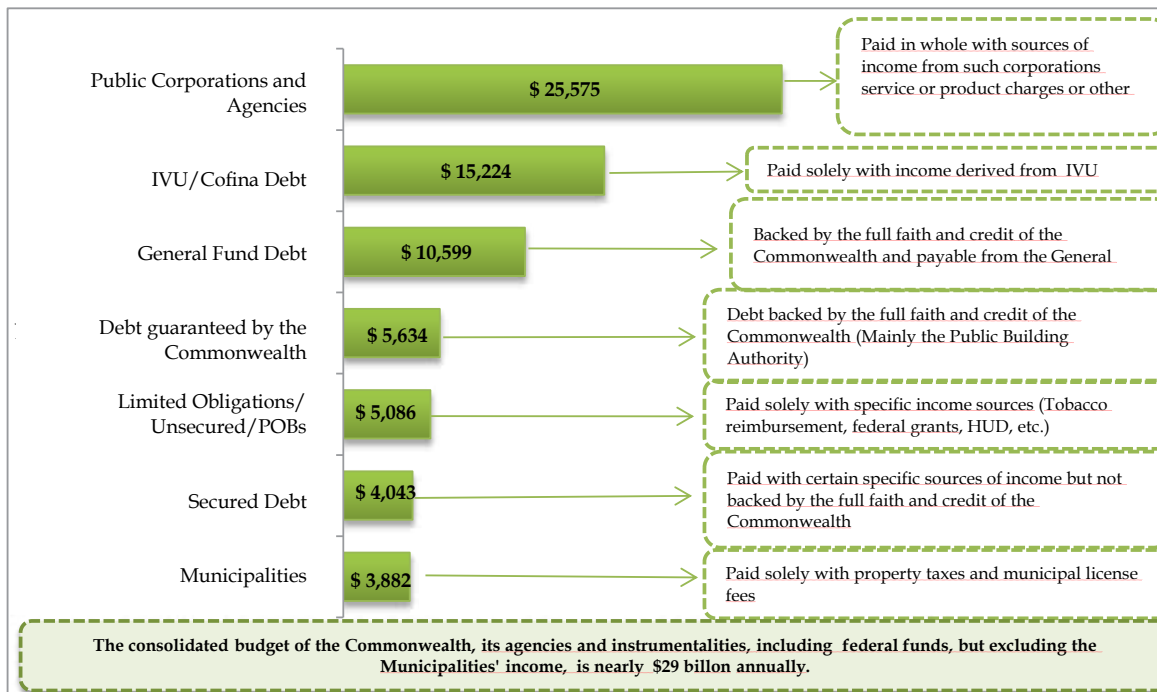
Hence, the historical increase in the public debt during the past four-year term caused the level of debt to account for 94.3% of the GNP for Fiscal Year 2012, compared to 74.8% in Fiscal Year 2008. There is no doubt that the level of indebtedness of the Island for which the previous Administration is responsible, significantly contributed to the downgrading of Commonwealth bonds to junk status, as well as to the economic and liquidity crisis currently undergone by the Island.



Source: Government Development Bank and Planning Board

Figure XII includes in the total of the public debt the \$5.086 billion in debt that does not encumber the public treasury. At present, the sources of payment for this debt come from specific income sources such as the tobacco tax refund and Federal grants, among others. If such sum is taken into consideration, the total amount of the public debt reached \$70.043 billion in Fiscal Year 2013.

Figure XII: Total Outstanding Debt in Puerto Rico as of June 30, 2013 (In millions)



Source: Government Development Bank

As shown in the above figure, the Central Government's debt accounts for 15.1% of the total debt for Fiscal Year 2012-2013. However, public corporations and COFINA debts account for 36.6% and 21.7% of the total debt, respectively.

Public Corporations

It is well known that the fiscal crisis of the Island directly and indirectly affects all sectors, including public corporations. Several public corporations carry over million-dollar deficits given that their operating expenses exceed the revenues generated on account of the services they render. In the past, money was taken on loan from the GDB, regardless of whether sources of repayment were identified to make up their operating deficit.

Today, some of these corporations lack the cash flow needed to meet their obligations, including the repayment of the GDB debt. An example of this, and as stated before, is the case of the HTA whose line of credit with the Bank has an unpaid balance of \$2.045 billion according to its financial statements as of June 30, 2013, audited by Ernst & Young LLP.

Likewise, the financial statements of the Medical Services Administration (MSA) as of June 30, 2013, audited by FPV & Galíndez, PSC, show that MSA's line of credit with the Bank has an unpaid balance of \$273 million. In the case of the Health Insurance Administration (ASES, Spanish acronym), its financial statements as of June 30, 2013, also audited by FPV & Galíndez, PSC, show that the line of credit with the Bank has an unpaid balance of \$171 million.

Furthermore, the Aqueduct and Sewer Authority (ASA) has an outstanding debt with the Bank. According to ASA's financial statements as of June 30, 2013, audited by the public accountants firm Ernst & Young LLP, ASA's line of credit with the Bank has an unpaid balance of \$90 million. Moreover, the financial statements of the Ports Authority as of June 30, 2013, audited by Nieves Velázquez

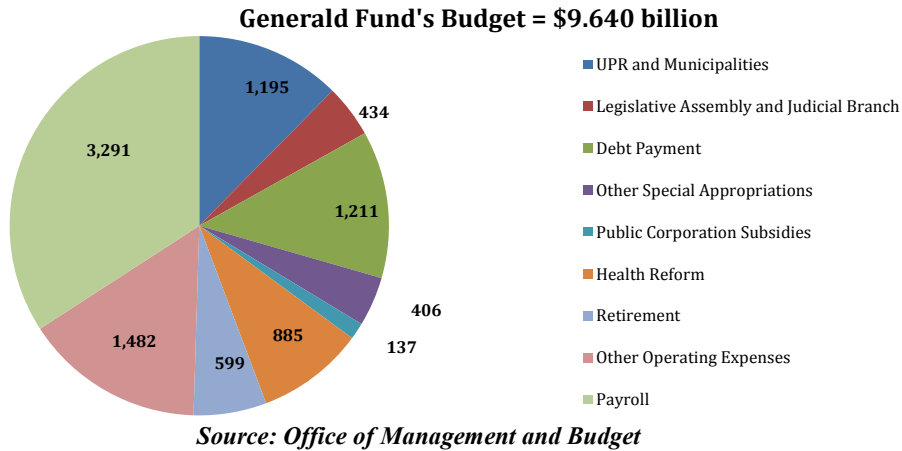
& Co, PSC, show that the Authority's line of credit with the Bank has an unpaid balance of \$216 million.

The outstanding debt of these five public corporations on account of lines of credit with the Bank amounts to \$2.795 billion as of June 30, 2013. This amount accounts for forty-one percent (41%) of the \$6.889 billion in loans pending payment from public corporations, as shown in the audited financial statements of the Bank.

2014-2015 BUDGET

Figure XIII shows the recommended General Fund's budget for Fiscal Year 2014-2015 which amounts to \$9.640 billion and are allocated as follows:

Figure XIII



It is evident that the main areas of expenditure in the Government's budget chargeable to the General Fund are the budget formulas for the University of Puerto Rico, the Municipalities, and the Judicial Branch; the debt payment; Retirement Systems' contributions and special laws; and Health Reform contributions. Budget allocations under these items amount to \$4.213 billion or 44% of the recommended budget.

The other portion of the recommended budget is allocated primarily to cover payroll and other operating expenses such as rents, utilities, transportation, and procurements for the Department of Education, the Puerto Rico Police Department, the Department of Corrections, and the Department of the Family. It also includes subsidies for public corporations related to healthcare and public transportation.

Our challenge is to achieve a balanced budget for Fiscal Year 2014-2015, when the current fiscal year deficit is significantly high. This deficit is a result of automatic increase in budget items, namely the appropriation formulas for the University, Municipalities, and the Judicial Branch; pre-negotiated collective bargaining agreements; the increase in the amortization of general obligations; and the increase in interest rates; the increase in employer contributions to retirement systems; government lawsuits; and others that will significantly increase the expenditures and obligations chargeable to the General Fund. Table 10 below shows the changes in the budget for Fiscal Year 2014-2015 if measures are not taken to adjust the obligations chargeable to the General Fund to the resources that the Commonwealth has available to meet them (in millions):

Table 10: Changes for the Budget of Fiscal Year 2014-2015

Current Budget (fiscal year 2013-2014)	\$9,770
Increase in debt service	648
Increase in collective bargainings	181
Increase in the formulas for the UPR, Judicial Branch, and Municipalities	132
Increase in legislated and new appropriations	35
Increases in Retirement System special laws	29
Increases in Education, Corporations, and others	202
Total	\$10,997

Source: Office of Management and Budget

Note that the increase in the General Fund would exceed \$1.2 billion and the budget of expenditures will near \$11 billion. For such reason, the Commonwealth is bound to seek mechanisms to cutback on spending and have a budget that is consistent with its level of income.

As previously explained, the alternative of increasing the income is limited. This Administration has been consistent with its fiscal policy of not increasing taxes that directly affect taxpayers. Said fiscal policy was set forth recognizing the impact that it could potentially have on our economy's already slow recovery. An increase in the taxes imposed on individuals will reduce their personal income and, therefore, their level of consumption. According to the Planning Board, the economy will indirectly lose around \$0.92 for every dollar reduction of total consumption. For such reason, should the Government decide to increase Puerto Rico income taxes by \$100 million the economy could lose around \$192 million, either directly or indirectly. The Government needs to increase its revenues in order to overcome its fiscal challenges. However, the alternative of increasing taxes will adversely affect the Island's economic growth and, in turn, medium- and long-term revenues. Hence, the measures to be implemented to improve the Commonwealth's cash flow must consist of cutting back on spending.

The corrective measures considered within the recommended budget for Fiscal Year 2014-2015 to reduce the budget deficit and the criteria used for the adoption thereof are stated below.

Savings Measures for the Non-Operating Budget

Debt Payment

The item allocated for debt payment in the recommended budget for Fiscal Year 2014-2015 amounts to \$1.211 billion or 12.6% of the total recommended budget. The amount allocated to debt payment should not be reduced, since it is precisely the practice of refinancing the constitutional debt that has led Puerto Rico

to its current situation. Of Fiscal Year 2012-2013's budget, the sum of \$775 million was refinanced through general obligation bonds of the Commonwealth and the Public Buildings Authority, which are guaranteed by the Commonwealth and mostly paid out of the rent paid by the Central Government to the Authority. In the budget of Fiscal Year 2013-2014, this practice was reduced and the sum of \$575 million was refinanced through general obligation bonds of the Commonwealth. The recommended General Fund's budget for Fiscal Year 2014-2015 halts the practice of refinancing through general obligation bonds of the Commonwealth. The recommendations for this fiscal year include an increase of \$745 million for debt payment, the elimination of the refinancing practice, the increase in GDB's debt, and the general obligation bonds amortization, higher rates for short-term TRANs, and other effects.

Retirement System Payments

Special Laws Acts and other appropriations to the Retirement System, beyond the basic employer contribution, amount to \$599 million or 6.2% of the recommended budget for Fiscal Year 2014-2015. The Retirement System's situation is uncertain and reducing the additional employer contribution would affect the basis of the Reform established under Act No. 3-2013. The recommended budget takes into account a 1% increase in the State's employer contributions, for both the Retirement System for Employees of the Government and the Teacher's Retirement System, in accordance with Acts No. 114-2011 and 116-2011. Regarding the Uniform Additional Contribution of \$120 million granted in Fiscal Year 2013-2014, and established under Act No. 3-2013, the recommended budget includes an approximate \$90 million reduction. Considering the short-term crisis of the General Fund and the importance of having liquidity to carry out the basic operations of the State, this Legislative Assembly

believes that a further reduction would compromise even more the fiscal health of both retirement systems in the medium- and long-term.

Mi Salud Program Grants (“Health Reform”)

The General Fund’s appropriation for the Health Reform amounts to \$885 million in the recommended budget for Fiscal Year 2014-2015 and remains unchanged at 9.2% of the total. The fiscal situation of the Health Reform is uncertain. No proposals were received in the Request for Proposals to select the insurance companies that shall render services for Fiscal Year 2014-2015, since there were no providers willing to offer services in all the regions and under the terms, including costs, deemed acceptable by the ASES and its Board of Directors. The current contract was extended until April 30, 2015, with the consent of the Federal government, when an increase in the cost of the Health Reform is expected. For the next fiscal year, ASES currently projects a \$37.3 million deficit and it is already devising a plan to take corrective action. The cost of the Health Reform is somewhat discretionary, since 89% of the population served participates in highly regulated Federal programs. The Health Reform program has projected to use a substantial amount of nonrecurring funds from the American Affordable Care Act of 2010. Once those funds are depleted, and the United States Congress takes no further action, the Health Reform will have to reduce costs and increase income to compensate for the loss of such nonrecurring funds. In view of this situation, this Legislative Assembly does not deem it wise to reduce the appropriation of the Health Reform and implement legislation to reduce Health Reform expenditures.

Special Appropriations – Subsidies to Public Corporations

Subsidies to public corporations in the fields of healthcare and mass transportation services amounted to \$137 million or 1.4% of the budget, and accounts for a \$47 million increase compared to the budget for the previous fiscal year. This increase seeks to reduce the operating deficit of said public corporations

as part of the process to render their operations more efficient. It is worth noting that there have been substantial cutbacks in the Maritime Transport Authority, the Metropolitan Bus Authority, and the Medical Services Administration. For such reason, the scope of action to carry out further cutbacks in this area is limited.

Contributions to the University of Puerto Rico and Municipalities

The operating expenses of the University of Puerto Rico have remained at \$834 million, that is, 8.7% of the recommended budget for Fiscal Year 2014-2015. The operating expenses of municipalities remain at \$228 million for the Matching Fund, established under Act No. 80-1991, and at \$133 million for the Exoneration Fund established under Act No. 83-1991; these two funds combined account for 3.8% of the recommended budget for Fiscal Year 2014-2015. This Act freezes the formulas that would otherwise determine the budget of these autonomous entities.

Even though the University of Puerto Rico would have been entitled to a \$70-million budget increase, such amount is hereby frozen as a result of the Island's fiscal crisis. However, this Legislative Assembly believes that an additional reduction in the net budget of the University of Puerto Rico, consistently with the reductions in the three Government Branches, would cause an irreparable harm to the University, including its enrollment, the discharge of its educational duty, and above all, to its fiscal soundness. Our recent experience with the latest budget reductions and higher costs imposed on students, which has had serious consequences on the institution, has led us to arrive at such conclusion. Considering the particularities of the University, this Legislative Assembly understands that a reduction in the budget thereof would be financially counterproductive and detrimental to the economy of the Island. For such reason, this Act does not include the University of Puerto Rico in the uniform cut that includes the three Government Branches.

Although the Municipalities would have been entitled to a \$13-million budget increase (\$10 million for the Exemption Fund and \$3 million for the Matching Fund), such amount is hereby frozen as a result of the Island's fiscal crisis. However, this Legislative Assembly believes that an additional reduction in the net budget of the Municipalities would place them in a precarious financial situation that would eventually lead to layoffs, partial shifts, and deficit financing, which is precisely what this Act is attempting to prevent. Municipalities have taken drastic measures, in many cases, to reduce their operating expenses, but they do not have the same tools as the Central Government. The bankruptcy of a significant number of Municipalities would adversely affect the Island's economy, the treasury, and the services offered to the people.

Appropriations to the Legislative Assembly, the Judicial Branch, and Autonomous Entities

Special appropriations for the operations of the Judicial Branch total \$323 million or 3.4% of the recommended budget for Fiscal Year 2014-2015; recommended appropriations for the General Budget of the Legislative Assembly amount to \$110 million or 1.1% of the recommended budget. In both cases, this Act freezes any increase and provides for a 7.4%-reduction in its budget for Fiscal Year 2014-2015. This cut is equal to a reduction in the total budget of the General Fund between Fiscal Year 2013-2014 and the recommended budget for Fiscal Year 2014-2015, if the repayment of the constitutional debt and the budget of autonomous entities, such as the State Election Commission, the Office of the Comptroller, the Office of Government Ethics, the Office of the Special Independent Prosecutor's Panel, and the Office of the Ombudsman are excluded from both years. In this manner, the budget autonomy is observed —i.e., the form in which each entity administers its budget resources— but budgets are adjusted to the fiscal reality of the government in general. Moreover, this does not entail a

discretionary evaluation of the total budget of each entity whose favorable or unfavorable result may be understood as an attempt to exert some sort of influence on said entities. It must be noted that the operating expenses of the Executive Branch, once nonoperational elements, such as the Payment of the Debt, Retirement Contributions, Health Reform Contributions, and Contributions made according to Formula are excluded, are progressively reduced by a higher percentage of approximately 10.5%.

Other Special Appropriations

All other Special Appropriations total nearly \$406 million or 4.2% of the recommended budget for Fiscal Year 2014-2015. This represents a \$177-million or 30%-reduction in relation to Fiscal Year 2013-2014. These appropriations include different items, to wit, contributions to third parties such as foundations and museums, legal contingency funds, and government agencies' programs. The cuts in this item were substantial, emphasizing on those appropriations that do not affect the direct services to the people.

Savings Measures in the Operating Budget

The operating expenses of the Government amount to \$4.773 billion or 50% of the General Fund's budget. The payroll paid directly from the accounting system accounts for nearly \$2.471 billion of said expenses, and the payroll paid from the resources of the Schoolwide Program of the Department of Education accounts for \$820 million and is shown as "Global Appropriations" in the budget's accounting.

Payroll

As a starting point, it is important to mention that during Fiscal Year 2013-2014, the number of employees in agencies whose operating expenses are defrayed in whole or in part from the General Fund was substantially reduced. From December 2012 to April 2014, the number of employees in these agencies

was reduced by 9,607 or 8.45%, mainly through the practice of rehiring employees. If we only consider the payroll of those employees that is directly defrayed from the General Fund —excluding those defrayed from Federal funds, special funds, or own income— the net reduction would be 7,849 or 7.92%. The practice of rehiring employees was one of the main reasons that made possible a mid-year (in February) \$170 million budget amendment for Fiscal Year 2013-2014, and, if we continue doing this, next year's budget appropriations may be adjusted by an estimated \$116 million.

This Administration has thoroughly analyzed the alternatives available to promote cutbacks on government spending. The measures implemented under Act No. 7-2009 that included the layoff of Central Government employees, which, at that time, was estimated to generate \$30,000 in savings per dismissed employee, were included as part of the analysis. The effect on the government operations of the massive layoff of government employees under Act No. 7-2009 resulted in serious harm to the government services offered to the people in sectors such as: child protection, the elderly, social welfare programs, services of the Department of Transportation and Public Works, and the internal revenue collections centers of the Department of the Treasury, to name a few. Not to mention the adverse impact that the layoff of over 20 thousand government employees had on our already weak economy; this situation is analyzed further on. We cannot repeat past mistakes and resort to massive layoffs as a mechanism to cut back on spending without considering the consequences of such action from all aspects.

Since the beginning, this Administration has been clear that laying off employees is not an option given the serious consequences resulting from the implementation of Act No. 7-2009.

Impact of the Employee Layoff under Act No. 7-2009.

Studies conducted by a Retired Professor of the University of Puerto Rico, Dr. Ángel Ruiz in 2009, and by Dr. José I. Alameda in 2012, showed that if the Government decides to implement the public employee layoff mechanism as a basic strategy to balance the budget of the Central Government, it would have to layoff more than 30,000 employees.

According to Dr. Ruiz's analysis, the layoff of 30,000 employees would result in an initial loss of over \$1.002 billion in wages, the loss of \$2.796.7 billion in direct, indirect, and induced intersectoral production; of 55,764 direct, indirect, and induced jobs (30,000 direct jobs and 25,764 indirect and induced jobs) as well as the loss of \$1.384.8 billion in wages (of which \$1.002 billion are direct and the difference are indirect and induced). Of the total direct and indirect jobs, the manufacturing sector would lose 3,379 employees; the trade and the business service sectors would lose 4,304 and 1,604 employees, respectively; and other professional services sector would lose 6,157. The government would experience the greater loss, that is, 36,245 employees, as a result of the initial impact caused by the layoff of 30,000 public employees. It is important to point out that, in estimating induced impacts, the wholesale and retail trade sectors suffer a significant job loss.

Even though all the estimates included in Dr. Ruiz's report date back to 2009, they are still in effect, because his methodology was based on the Island's economic structure as of said date, which has not experienced significant changes as of recently.

On the other hand, Dr. Alameda's study revealed that the impact was based on the layoff of 17,147 employees and a payroll reduction of \$647.9 million, which caused a 0.7%-reduction in the Gross National Product for Fiscal Years 2009 and 2010. In addition, the effect of Act No. 7-2009 increased the unemployment rate

by 3.1% in Fiscal Year 2010. This represented a total of 37,000 additional unemployed individuals. A reduction of 30,000 employees and a payroll reduction of over \$1 billion are expected to have a greater impact on the economy and unemployment rates.

Loss in Tax Revenues

With regard to fiscal impact, Dr. Ruiz states the following in his study:

The significant loss in tax revenues is worrisome, since it tends to reduce any positive impact on any savings that the government may have achieved with the layoff of public employees. The study estimates reveal that a reduction of 30,000 employees would result in a total tax revenue loss of \$317.8 million. That is, for every job lost in the government there will be a \$10,600 loss in tax revenues. This reduction in tax revenues would aggravate even more the government's fiscal situation thus adversely affecting public services.

[Our translation] See: *Boletín de Economía, Unidad de Investigaciones Económicas, Departamento de Economía, Universidad de Puerto Rico, Recinto de Río Piedras, Vol. X, Núm. 1, enero-junio 2009*, p. 4.

Dr. Ruiz concludes his study by stating that:

The policy of laying off employees has both direct and indirect adverse economic impacts. These impacts exacerbate even more in times of recession. These impacts not only affect the economy, but also society. These impacts entail tax revenues losses. Implementing such policy without first conducting a careful and thorough analysis jeopardizes the rendering of critical public services, as well as the social and political stability. With regard to society, unemployment

strongly affects the emotional stability and the health of unemployed individuals and their families. Lastly, it is important to note that, under the current economic situation, this kind of policy worsens the recession phase of the economic cycle, thus delaying the recovery period and affecting the depth of the cycle.

In light of the fiscal crisis, work-shift reduction has been proposed as an alternative. However, the effects of a partial shift may have adverse consequences on the economy and the services offered to the people. For such reason, less burdensome measures such as those proposed herein and that are consistent with the public policy of this Administration must be implemented.

Other Measures to Reduce Payroll Expenses

This Act establishes corrective measures in the area of important payroll.

First, payroll expenses on account of employees in trust positions are reduced by an additional 10% through provisions that shall strengthen the existing restrictions that prohibit the hiring of additional employees until payroll expenses are reduced by 20% compared to December 2012.

Second, hiring is froze and limited mainly to critical positions that render direct services that are defrayed with own income or Federal funds, and in response to a judicial order, among others.

Third, increases of economic benefits are hereby prohibited. This includes increases in salary or contributions to all groups of employees, including those holding trust positions. The first action to be taken is to freeze any increase in payroll costs. It must be mentioned that this determination has a less burdensome impact on employees, the services rendered by the government, and the economy.

Fourth, special economic benefits are hereby prohibited. These include: a Christmas Bonus in excess of \$600 (private sector cap); a Summer Bonus in excess of \$200, and other bonuses. These bonuses are granted by virtue of law or

regulations, but are not part of the employee's basic salary. This Legislative Assembly believes that the basic salary of employees must be protected over any fringe benefit, particularly those that are atypical of the labor sector in general.

Fifth, a reorganization of the teaching staff of the Department of Education is hereby contemplated. The student population of the public education system has decreased from 730 thousand in the 1980s to 430 thousand at present; it is expected to continue decreasing to 300 thousand in the next 5 years. The teacher-to-student ratio, however, has not remained even. The restructuring of the Department of Education, including the consolidation of approximately 80 schools, as well as the retirement of a significant number of teachers, will provide the opportunity to reduce the total number of teachers, without layoffs, and reinforce direct services provided to students.

This Act clearly recognizes the value of public employee's labor unions and the legal framework that applies to them. For such reason, a mandate is hereby established to provide for an alternative negotiation process aimed at achieving comparable savings and at modifying the legal provisions regarding incremental economic benefits and special compensations.

In general, these payroll-related measures are less burdensome than the layoff of public employees and even the reduction of work-shifts; these measures however, achieve savings that, along with the set of measures contemplated herein, correct next year's operating deficit.

Other Operating Expenses

This Act establishes several measures aimed at reducing operating expenses, including payroll expenses. These constitute \$1.482 billion or 31.0% of the operating budget and 15.4% of the total General Fund's recommended budget for Fiscal Year 2014-2015. This item includes not only services, but also the payment of utilities and rents to public corporations such as the Aqueducts and Sewers

Authority, the Electric Power Authority, and the Public Buildings Authority, among others.

The measures aimed at reducing operating expenses are focused on reducing service rates and fees.

First, a reduction in purchased and professional services rates without the need to execute a bilateral written agreement is hereby authorized. Most purchased and professional services in the General Fund are geared toward offering essential services to the people. For example, the top five programs with the highest budget appropriations for purchased and professional services are, in order: Community Schools of the Department of Education (\$82 million); Healthcare Services to the Penal Population (\$24 million); Integral Educational Services for Persons with Disabilities (\$19 million); Inmate Services including food (\$19 million); and Mental Disabilities Healthcare Services (\$16 million). Given this concentration of essential direct services, we are compelled to develop mechanisms to expedite the renegotiation of rates.

Second, the regulatory and fiscal structure of school transportation programs is hereby modified. School transportation programs are governed by a geographic monitoring and regulatory structure that impairs dynamic competition among suppliers. School transportation expenditures have risen from approximately \$120 million in Fiscal Year 2010-2011 to a projected \$185 million in Fiscal Year 2013-2014, mainly due to rate agreements revised in calendar year 2012. Given the essential nature of this service, and the costs and regulatory structure thereof, the Department of Education needs additional tools to achieve cost efficiency promptly.

Third, new management-related measures are hereby implemented to achieve a sound fiscal administration in expenditure control and financial management areas. This includes new budget rules such as prohibition on budget overdrafts, certification of funds in projected overdrafts, transactions not authorized by the Office of Management and Budget, or the Office of the Governor, and others. It also includes a plan to achieve savings in energy use and leasing of facilities. The reduction in expenses that have a minor impact, such as protective detail, traveling, and use of electronic devices, shall be required by law. This will prove the government's commitment to lead by example. In general, the Legislative Assembly considers this Act to be a vehicle not to provide additional flexibilities in public administration, but to reinforce fiscal control structures.

Lastly, this Act provide spending control measures such as limiting hiring, reducing service-related expenses, and budget management measures, among others, that shall apply to public corporations. There is no doubt that public corporations' decentralized governance model, particularly in infrastructure, has resulted in unsustainable cost structures and in the corresponding deficits and financing of the GDB that have aggravated the General Fund's situation due to the fiscal interconnection of the Government.

During the last two years, budget appropriations for purchased and professional services were reduced by \$103 million, that is, from a \$447-million appropriation in Fiscal Year 2012-2013 to \$344 million in Fiscal Year 2014-2015. Although the measures contemplated herein will result in savings, the size of the gap and the limited operating expenses basis after excluding the payroll and payments to public corporations, call for a broad and comprehensive reduction program, including the impact on the payroll, appropriations by formula, and all those actions that may be taken without affecting essential healthcare, security and welfare services provided to the people.

Other Savings Measures

A wide range of spending cutbacks have been considered but were not included in this Act because they do not require any action by the Legislative Assembly or because they have been addressed in other legislations. This includes (i) the consolidation of schools in the Department of Education; the reduction in the number of agencies and public corporations to improve the effectiveness and cost-efficiency of the public sector; (iii) the reduction in special appropriations from the General Fund to defray the operating or programmatic expenses of public corporations (e.g. the reduction in the Tourism Company of incentives granted to the cruise industry); (iv) contributions from Special State Funds and from financially solvent public corporations, with sufficient balance, so that it does not affect the programs or operations of the corresponding agencies; and others.

Table 11 summarizes the corrective actions, which amount to \$1.357 billion:

Payroll expenses, including the no increase in economic benefits or special compensation; reduction in the payroll expenses on account of employees in trust positions and no recruiting to fill vacancies.	\$337
Freeze pay raises based on formulas in the UPR, the Judicial Branch and the Municipalities	132
Reduction in the Department of Education, including a reduction in school transportation expenses, payroll savings on account of teacher's retirement system and no contracting to fill vacancies other than for essential positions and the reduction of operating costs by relocating students to schools with broader services, better physical facilities, and academic achievements.	296
Reduction of special appropriations	100
Reduction in the budgets of the Judicial Branch, the Legislative Assembly, and autonomous entities	45
Reduction in professional and purchased services expenses	26
Reduction in utility costs, including consumption savings	37
Modifications to additional contributions to the Retirement System	92
Reallocation of Special State Funds to Government Agencies for the payment of lawsuits against the Commonwealth	59
Adjustments in public corporations, including a reduction in payroll, professional service contracts, and procurement expenses; the reallocation of the resources of public corporations to meet similar obligations in the General Fund; the elimination of certain subsidies to programs or operations; and additional measures to generate income and achieve savings in ASEM.	233
Total	\$1,357

Employees and public corporations in general are included in this Act because they are part of the Commonwealth, thus its fiscal health affects the fiscal health of the Central Government. Therefore, whether its is because this Act improves the unstable situation typical of corporations or because it enables corporations to directly or indirectly contribute to the General Fund's situation, it is necessary to include them within the scope of this Act. In order for the Island to continue achieving its social and economic objectives, it is necessary for the whole government to be fiscally sustainable.

Moreover, this Act includes provisions that change how the lawsuits against the Commonwealth are billed. The number of judgments and lawsuits against the Commonwealth at a late stage amount to hundreds of millions of dollars and the code of laws in effect does not provide for an orderly payment system that allows for the matching of the sums to be paid with the available resources, always bearing in mind that there are obligations to be met. The recommended budget for Fiscal Year 2014-2015 only includes an \$84 million fund to pay for judgments, settlements, and stipulations, an additional appropriation of nearly \$16 million to payoff the fines imposed in the Morales-Feliciano Federal case, and nearly \$18 million for the repayment of a line of credit to pay for judgments. The State is committed and willing to pay, but it is of utmost importance that an orderly and structured payment process is established therefor.

In view of the fund insufficiency, the Office of Management and Budget Organic Act, Act No. 147 of June 18, 1980, as amended, establishes that the Governor or the Director of the OMB shall act, pursuant to Section 8, Article VI of the Constitution of the Commonwealth of Puerto Rico, according to the following priority guidelines for the disbursement of public funds, when the available funds for a specific fiscal year are not sufficient to cover the appropriations approved for that year.

(1) Direct the payment of interest and amortizations corresponding to the public debt.

(2) Direct that the commitments entered into by virtue of legal contracts in force, judgments of the courts in cases of condemnation under eminent domain, and binding obligations to safeguard the credit, reputation and good name of the Government of the Commonwealth of Puerto Rico, be met.

(3) Order that preference be given to disbursements charged to appropriations for regular expenses connected with the:

(A) Conservation of public health,

(B) Protection of persons and property,

(C) Public education programs,

(D) Public welfare programs,

(E) Payment of employer contributions to retirement systems and payment of pensions to individuals granted under special statutes; and then, the remaining public services in the order of priority determined by the Governor; provided that the disbursements related to the services listed hereunder shall not have preference among themselves but shall be handled simultaneously; provided, further, that any adjustments due to reductions may be made in any of the appropriations for regular expenses, including the service areas indicated in this subparagraph.

(4) Order the construction of capital works or improvements with duly executed contracts; provided that priority shall be given to emergency works caused by catastrophes or acts of nature, acts of God; and then, to those works that are most responsive to the development of the normal and economic life of Puerto Rico.

(5) Order that the payment of contracts and commitments contracted under special appropriations for operations be honored, and then, that special preference be given to those phases of the programs that are in the process of development or in a stage of planning which, if postponed, would affect the interests of the clients served by the program, directly or indirectly.

In accordance with this constitutional mandate, public debt has absolute priority; this means only for general obligation bonds and debt expressly guaranteed by the Commonwealth. It does not include, for instance, the debt of public corporations, municipalities, or debt contingent on legislative appropriations. The second priority includes, among others, “the binding obligations to safeguard the credit, reputation, and good name of the Government of the Commonwealth of Puerto Rico.”

If the expenditure control measures introduced in this special law are not adopted, the operating costs of the Government will exceed the economic resources available. The mandatory order of priority prescribed under the Constitution will render the government inoperative. This would result in an even more burdensome situation for the Island. After careful analysis of this foreseeable reality, and given the fact that there are no less burdensome alternatives to obtain the resources needed by the government, it can be concluded that the measures adopted herein are the less onerous alternatives to guarantee the continuity of operations and prevent a government shutdown that will result in the loss of wages for public employees and sink us deeper into recession. Taking more money on loan to finance the deficit is not an option at this time, since capital markets do not trust that Puerto Rico will be able to straighten out its finances (let’s not forget that, for over ten years, Puerto Rico has been claiming that it will make up the structural deficit in two years). Moreover, increasing taxes is not an option either since such action will worsen the recession.

For all of the foregoing, this Legislative Assembly deems it necessary to approve this Act in order to guarantee the continuity of government operations and the general well-being of the Island, thus ensuring that essential services are provided to the people regardless the fiscal emergency undergone by the Island. Furthermore, it is hereby stated that these are the least burdensome measures to attain this goal. With regard to measures that promote the legitimate interest of safeguarding general well-being, the Supreme Court of Puerto Rico has recognized that our precarious economy is a reality that of necessity carries weight on the definition of the scope of governmental actions under the police power. *See, Domínguez Castro v. E.L.A., supra*. Therefore, this Legislative Assembly is fully empowered to adopt the socioeconomic measures herein in order to cut back on spending and, thus, prevent a government shutdown and guarantee essential services to the people.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

CHAPTER I.- INITIAL PROVISIONS

Section 1.- Title.

This Act shall be known as the “Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act.”

Section 2.- Declaration of Public Policy.

A state of emergency is hereby declared to attain Puerto Rico’s fiscal and economic recovery after the downgrading of its credit rating and decrease in revenues that affect the Commonwealth’s liquidity, thus safeguarding the constitutional mandate for the payment of interest and amortization of the public debt. Furthermore, a plan is hereby devised to deal with the consequences thereof and to establish a structured management that allows the Island to meet its obligations. This shall guarantee the continuity of public efforts in essential areas such as health, security, education, social work, and development, among others,

as well as the provision of necessary and essential services for the people. The public policy set forth in this Act is aimed at restoring the credit of the Commonwealth of Puerto Rico by eliminating the General Fund's deficit within a short timeframe and improving the fiscal condition of public corporations, without resorting to the layoff of career or regular employees, affecting critical functions of government agencies that provide security, education, healthcare, or social work services. This structured plan is necessary to protect the cash availability of the Commonwealth of Puerto Rico without affecting essential services provided to the people. This plan considers the challenges faced by Puerto Rico to restore public credit rating and address the uncertainty as to the length, magnitude, and cost of tapping into capital markets absent an investment-grade rating.

Thus, in the exercise of the State's police power, the Legislative Assembly has the authority to adopt measures to preserve the health, safety, and welfare of the people in a structured manner while addressing the fiscal crisis faced by the Island. To such purposes, the Legislative Assembly is empowered to enact statutes to address social and economic issues, as well as emergency situations. Section 19 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico provides that the enumeration of rights in Article II shall not be construed as to restrict "the power of the Legislative Assembly to enact laws for the protection of the life, health, and general welfare of the people." Likewise, Section 18 of the Bill of Rights grants the Legislative Assembly the power to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.

Section 3.- Supremacy of this Special Law.

This Special Law is hereby enacted by virtue of the State's police power and the constitutional authority conferred on the Legislative Assembly under Article II, Sections 18 and 19 of the Constitution of the Commonwealth of Puerto Rico to

enact laws for the protection of the life, health, and general welfare of the people”; as well as under Sections 7 and 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico. Therefore, this Act shall have supremacy over any other law.

Section 4.- Fiscal Sustainability Tests and Quarterly Reports.

In order to promote the public policy set forth in this Act, the measures provided in Chapters II and III shall be in effect through July 1st, 2017, or if accomplished before, through July 1st of any fiscal year for which, as part of their respective recommendation process of the General Expense Budget submitted by the Governor to the Legislative Assembly, a certification signed by the corresponding official has been included, and whereby:

(a) The Chair of the Planning Board certifies that the actual growth of the Gross National Product projected for said fiscal year is equal to or higher than one point five percent (1.5%);

(b) The President of the Government Development Bank certifies that a credit rating agency in capital markets has rated, as of the certification date, the creditworthiness of the general obligations of the Commonwealth of Puerto Rico as investment grade; and

(c) The Secretary of the Treasury and the Director of the Office of Management and Budget certify that, the fiscal year ending before the date on which the certification is submitted, closed, or is estimated to close without refinancing general obligations of the Commonwealth of Puerto Rico or public or private financing used to cover gaps between projected income or expenditures in excess of the corresponding appropriations.

Every Entity of the Executive Branch shall have the ministerial duty to draft and file with the Governor and with the Secretary of the Senate and the Clerk of the House of Representatives a quarterly report within ninety (90) days after the approval of this Act and during the effective term thereof, stating in an itemized and detailed manner the measures taken, as well as the results and any other pertinent information to show and assess compliance with the provisions of this Act.

CHAPTER II.- MEASURES TO CUT BACK ON SPENDING IN THE EXECUTIVE BRANCH

Section 5.- Applicability.

The provisions of this Chapter shall apply to every Entity of the Executive Branch of the Commonwealth of Puerto Rico. For purposes of this Chapter, “Entity of the Executive Branch” shall be deemed to include all agencies, instrumentalities, and public corporations of the Commonwealth of Puerto Rico, notwithstanding their degree of fiscal or budget autonomy otherwise conferred to them under their organic act or any other applicable legislation. However, the provisions of this Chapter shall not apply to the State Election Commission, the Office of Government Ethics, the Office of the Special Independent Prosecutor’s Panel, and the Office of the Election Comptroller unless otherwise expressly provided. For purposes of this Chapter, the University of Puerto Rico, its branches, and the Municipalities shall not be deemed to be Entities of the Executive Branch.

Section 6.- Reduction in the Contracting of Professional and Purchased Services of the Executive Branch.

The annual expenditures incurred in purchased or professional services by each Entity of the Executive Branch shall be reduced by at least ten percent (10%) *vis-à-vis* the expenditures incurred in Fiscal Year 2014, and shall remain below said level during the effectiveness of this Chapter.

This reduction shall apply to all purchased and professional services, contracted through all sources of funds, and apply independently to the total annual expenditure incurred in purchased or professional services chargeable to the General Fund. The implementation of this measure may be carried out through any of the following options or a combination thereof:

- (i) the renegotiation of rate structure, costs, or sum of existing contracts or to be renewed, with the appropriate documentation;
- (ii) limiting the award of contracts for essential services;
- (iii) the cancellation or nonrenewal of nonessential contracts;
- (iv) the reduction in the scope or service hours included in contracts.

Purchased or professional services shall include, but are not limited to, liability insurance, property insurance, or other type of insurance that is not related to the rendering of medical or healthcare services; technological support services; technical support services; professional services requiring State-issued licenses such as engineers, attorneys, certified public accountants, architects, surveyors, appraisers, among others; technical services requiring license such as expert electricians, master plumbers, auto technicians, among others; consulting or advisory services; advertising services; public relations or representation services; payment of advertisements or spots in mass media; communications and telecommunications services; customer or subscriber services; billing or collection services; lobbying services; security services; cleaning or maintenance services; infrastructure repair or maintenance services; public buildings or structures repair or maintenance services; landscape maintenance services; human resources or management consulting services; and miscellaneous services. Purchased or professional family or healthcare services geared to provide direct services to children and the elderly and to children with special education needs, among other essential services of this kind are hereby excluded. The Entities of the Executive

Branch and the Office of Management and Budget shall implement the necessary safeguards to ensure that the provisions of this Section do not result in a loss of Federal funding.

Every Entity of the Executive Branch shall be required to submit within ninety (90) days a report to the Legislative Assembly including and itemizing any executed purchased or professional services contracts to which the expenditure reduction provided for in this Section shall apply, including contracts that are not under said category, but the services provided thereunder include professional and purchased services. Every Entity of the Executive Branch shall annually certify to the Office of Management and Budget, on or before July 31st, 2014, and every subsequent July 31st, the expenditures incurred in purchased or professional services; expenditure shall be understood as the sums of the contracts entered into or purchases made during the preceding fiscal year, regardless of the amount billed or paid for such services, including an itemization per source of funds, to wit, Federal, special, own income, General Fund, or other. On July 31st, 2014, expenditures incurred in both Fiscal Year ending on June 30th, 2013 and in Fiscal Year ending on June 30th, 2014 shall be certified.

On or before August 30th, 2014, and every August 30th thereafter, the Office of Management and Budget shall file with the Legislative Assembly and the Office of the Governor a report of the certifications received. If the head of an Entity of the Executive Branch fails to submit the required certification as of the corresponding July 31st, the Office of Management and Budget shall issue a notice of noncompliance in an amount that shall be equal to an expenditure of twenty-five percent (25%) over the preceding year level. The Office of Management and Budget shall send a letter stating the over-expenditure to the head of those Entities of the Executive Branch whose reports show a noncompliance in the previous year. For those Entities of the Executive Branch whose operating expenses are covered

under the Operating Expenses Joint Resolution, the Office of Management and Budget shall transfer, on or before September 30th, 2014, or every September 30th thereafter, from the operating expenses account, the amount overspent in the previous year, which shall be covered into the Budget Fund to be used as provided in this Act. The Entities of the Executive Branch that have their own budget, the appointing authority or his/her representative shall be authorized and required to make a payment to the Secretary of the Treasury in the amount of the notified over-expenditure to be covered into the Budget Fund. Said payment may be made on equal installments for the remainder of the fiscal year; however, the first payment shall be made not later than thirty (30) days after the date of the Office of Management and Budget notice. Entities of the Executive Branch shall not deduct any valuable consideration or obligation that the State may owe to them or that they have in their favor from the payment of the amount of the over-expenditure stated in the notice.

Notwithstanding the foregoing, the Office of Management and Budget may deduct any State's debt from the over-expenditure notified to an Entity of the Executive Branch in accordance with this Act.

The Office of Management and Budget shall issue the rules that shall govern this requirement.

Section 7.- Adjustment of Purchased or Professional Service Rates.

Pursuant to the public policy set forth in this Act, the Entities of the Executive Branch shall have the authority to reduce on their own motion purchased or professional service rates within the effective term of an agreement or other acquisition document. To exercise said authority, the appointing authority or the authorized representative of the Entity of the Executive Branch shall notify the contractor or supplier, in writing, within at least ten (10) days in advance, about the following: its intent to modify the financial terms, the effective date, and the

modifications to be made. The contractor or supplier shall have ten (10) calendar days to accept the modifications or terminate the agreement in writing. Once such term elapses, the appointing authority or the authorized representative of the Entity of the Executive Branch at his/her discretion may make the reduction so notified. If, once said term has elapsed, the contractor or supplier continues providing services, it shall be deemed that the contractor or supplier has accepted the proposed reduction and shall not be required to submit a written acceptance or take additional steps. The modification of the terms of the contractual obligation shall be notified, once it takes effect, by letter and signed only by the appointing authority or the authorized representative of the Entity of the Executive Branch, to the Office of the Comptroller, which shall attach the same to the contractor's hard copy and electronic files. In addition, a copy thereof shall be sent to the contractor or supplier, the Governor or the person to whom he/she delegates, and the Director of the Office of Management and Budget. Reductions under this Section shall not require an additional authorization of the Governor, the person to whom he/she delegates, or the Office of Management and Budget; however, said reduction shall not be deemed to waive, relieve, or exempt from, the filing of the initial authorization of the agreement or other document subject to the modification.

Reductions authorized under this Section shall not be retroactive, that is, applicable to services that have already been rendered on the effective date of the modification. The provisions of this Section do not provide the contractor or supplier with the unilateral, independent, and separate right to terminate an agreement. Notices to contractors or suppliers in accordance with this Section shall be delivered by certified mail return receipt requested or personally to an agent of the contractor or supplier or to the address of record included in the agreement or acquisition document.

The provisions of this Section shall also apply to the State Election Commission, the Office of Government Ethics, the Office of the Special Independent Prosecutor's Panel, and the Office of the Election Comptroller.

The Office of Management and Budget shall implement regulatory provisions as are necessary to enforce the provisions of this Section.

Nothing provided in this Section shall apply to purchased and/or professional services defrayed by Federal funds, including the matching thereof with State funds.

Section 8.- Reduction of Payroll Expenses in Connection with Employees Holding Trust Positions.

Every Entity of the Executive Branch shall reduce payroll expenses on account of employees in trust positions by twenty percent (20%) effective June 30th, 2012, and keep such reduction for subsequent fiscal years.

Every appointing authority or the authorized representative of the Entity of the Executive Branch shall submit, within sixty (60) days, beginning on July 1st, 2014, a report to the Office of Management and Budget stating on detail the number of employees holding trust positions as of June 30th, 2014 *vis-à-vis* the number of employees holding such positions as of June 30th, 2012, including salaries, job classification and other information.

The Office of Management and Budget shall issue rules setting forth the format of the information to be provided, and the manner in which such information shall be considered by comparing elements such as the officials who were or are rendering services in detail; changes in job classifications from trust to career positions, and vice versa; the granting of salary differentials; and any other element that is relevant to make a fair and equitable comparison between the levels of expenditures.

The Office of Management and Budget, based on the rules thus issued, shall send a letter to the appointing authority or authorized representative of the Entity of the Executive Branch stating their compliance with this Section. Any appointing authority or authorized representative of the Entity of the Executive Branch that fails to comply with this Section, as notified in their corresponding communication, shall receive a letter directing it to make the necessary adjustments to its payroll of employees holding trust positions to comply with this Section. In addition, no appointing authority or authorized representative of the Entity of the Executive Branch shall hire employees to hold trust positions, including replacements, while such noncompliance persists. Any appointment to a trust position inconsistent with these provisions shall be null. Notwithstanding the provisions of this paragraph, an official may be appointed regardless of the payroll grade established in this Section, if he/she, for the same or lower salary, replaces another official holding a trust position who has resigned, ceased duties, or been dismissed, and: (i) provides, within the organizational structure of the Entity of the Executive Branch, direct supervision to two or more career employees; (ii) directs an operational area that is critical to the agency's operations, such as Legal, Human Resources, or Technology; or (iii) is critical to the agency services or operations, as stated in detail by the appointing authority of the Entity of the Executive Branch. The exceptions of individual appointments provided under this paragraph shall require the specific authorization of the Governor or the person to whom he/she delegates, regardless of the proposed compensation.

Section 9.- Filling of Vacancies.

No Entity of the Executive Branch shall appoint regular or career, transitory or irregular employees after July 1st, 2014 and during the effective term of this Act. Excepted from this prohibition are appointed employees that: (i) provide essential services directly to the people; (ii) are essential and indispensable to assure

compliance with the ministerial duties of the agency; (iii) directly generate revenues for the Government; (iv) replace services provided by subcontractors as of June 30th, 2014, when it may prove to achieve net savings, taking into account all relative costs between the two options; (v) hire transitory employees to carry out duties in the same position; (vi) fifty percent (50%) or more are defrayed by Federal funds or its own income; (vii) are necessary for the matching of Federal funds or a requirement to obtain such funds; or (viii) respond to a specific and direct requirement of a competent court or administrative forum to fill the position. Furthermore, in the event it is necessary to fill a vacancy, the first option would be to transfer or detail regular and transitory employees. New appointments shall, including those subject to exception, require the authorization of the Office of Management and Budget prior to filling the position. Appointments with a proposed salary higher than seventy thousand dollars (\$70,000) shall also require the authorization of the Governor or person to whom he/she delegates. Requests to fill vacancies made to the Office of Management and Budget shall include a certification signed by the appointing authority attesting to the existence and applicability of the exception under which such request is being submitted, a detailed statement of the basis thereof, and a confirmation of the inability to fill the position by means of transfer or detail. In the case of appointments defrayed solely by Federal funds, the Office of Management and Budget shall obtain an authorization within a term that shall not exceed thirty (30) days after the date of the request to fill a vacancy.

Any provision or rule of an agreement, law, regulation, or administrative provision that is contrary to or inconsistent with the provisions of this Section shall be deemed to be suspended. The foregoing includes, but is not limited to, any provision or rule requiring or seeking to require the filling of additional vacancies, the conditions under which employees are replaced, and the classification of filled

positions; or impairing or seeking to impair in any way, the power of the Government to determine the number or type of employees needed to operate and provide services to the people.

In their appointment process, the Entities of the Executive Branch shall include as part of the documents required to execute the same, in addition to the appointment affidavit and letter, an additional document whereby the head of the Entity of the Executive Branch or delegated official authorized to make appointments shall certify compliance with the provisions of this Section, and the candidate to be appointed recognizes the risk of nullity for noncompliance and his/her right to demand a copy of the authorizations required under this Section. The Office of Management and Budget shall establish by rules the format of the document to be completed by the parties, the contents and format of which shall be reproduced and used. Every appointment made in contravention with the provisions of this Section shall be null.

Public corporations whose operating expenses are defrayed, in whole or in part, from the General Fund shall follow the same procedure and require the same authorizations as those agencies or instrumentalities whose operating expenses are defrayed from the General Fund including the authorizations of the Office of Management and Budget and the Governor or his/her authorized representative. Public corporations whose operating expenses are defrayed in whole from their own funds or other sources shall follow the same procedure and require the same authorizations, except that, as a prerequisite for submitting a request for the approval of an appointment with the Office of Management and Budget, of the Governor or his/her authorized representative, as the case may be, such corporations shall obtain a written endorsement from the Government Development Bank.

Section 10.- Transfers and Administrative Details.

In order to ensure the continuity, cost efficiency, and quality of government services, during and until the effective term of this Act, upon previous authorization of the Office of Management and Budget, the transfer and administrative detail of regular and transitory employees between positions, job classifications and levels, group of employees, appropriate units, union units and nonunion units and vice versa, among Entities of the Executive Branch shall be allowed; provided, that employees on detail or transferred shall meet the minimum requirements of education and experience needed to hold the position; moreover, details and transfers under this Section shall not be used as a punitive measure, be made arbitrarily, or be burdensome for the employee. Details and transfers within the same Entity of the Executive Branch shall be made by the appointing authority or his/her authorized representative without the previous or subsequent authorization of the Office of Management and Budget.

These personnel actions shall entail a reduction of the employees' salaries or fringe benefits. Any provision of law, regulation, covenant, agreement, or precept that is contrary to the provisions of this Chapter shall be suspended during the effective term thereof; provided that there shall be full flexibility to make transfers and administrative details.

The Office of Management and Budget may implement regulatory provisions as are necessary to enforce the provisions of this Section.

Section 11.- Increase of Economic Benefits or Special Monetary Compensations.

(a) As of the effective date and during the effectiveness of this Act, the economic benefits or special monetary compensations granted to the employees of the Entities of the Executive Branch shall not be increased, except as provided in subsection (d) of this Section.

- (b) An increase of economic benefits shall be deemed to be the following:
 - (i) Salary raises for years of service, merit pay, additional compensation for skills or competency, and general raises.
 - (ii) Increase of employer contributions for fringe benefits such as health, life, and other insurance.
 - (iii) Increase of retirement plan contributions beyond those provided by law for government retirement systems.
 - (iv) Increase of Christmas, summer or other bonuses.
 - (v) Raises for promotions or transfers, unless such promotion or transfers results in net savings for the Entity of the Executive Branch, thus satisfying the need to recruit an additional net employee; provided that such recruitment meets the requirements to fill vacancies provided in Section 9 of this Chapter.
 - (vi) Raises for reinstated employees.
 - (vii) Payment of salary differentials due to special circumstances or due to acting assignments, unless said differential results in net savings, thus satisfying the need to recruit an additional net employee; provided that such recruitment meets the requirements to fill vacancies provided in Section 9 of this Chapter.
- (c) A special monetary compensation shall be deemed to be the following:
 - (i) Cash liquidations of vacation leave accrued in excess in the case of final liquidations upon the employee's separation from public service. Provided, that during the effectiveness of this Act, the maximum of days subject to liquidation upon separation from service shall be sixty (60) days. Likewise, during the effectiveness of this Act, any public employee who accrues more than sixty (60) days at the end of each calendar year shall use such excess within the nearest

date on or before the next six (6) months of the following calendar year. Provided further that every Entity of the Executive Branch shall pay, on or before August 31st of each year, any excess accrued as of the effective date of this Act and during the effectiveness thereof, when the employee has been unable to use such leave within the term provided herein due to special service circumstances beyond his/her control. All that pertains to vacation leave, in the case of public corporations, shall be addressed as provided in Section 17 of this Act.

(ii) Cash liquidations for sick leave accrued in excess in the case of liquidations upon the employee's separation from public service. Provided, that during the effectiveness of this Act, the maximum of days subject to liquidation upon separation from service shall be ninety (90) days. The employee shall keep the balance accrued as of the effective date of this Act, but accrual over such maximum balance shall be eliminated during the effective term of this Act. Provided further that, during the effectiveness of this Act, any excess annual accrual not used on or before December 31st of the corresponding year shall be forfeited. All that pertains to sick leave, in the case of public corporations, shall be addressed as provided in Section 17 of this Act.

(iii) Christmas Bonus in excess of six hundred dollars (\$600).

(iv) Summer Bonus in excess of two hundred dollars (\$200).

(v) Payment of bonuses in any amount due to productivity, performance, attendance, punctuality, retirement, special holiday, ratification or anniversary of ratification of collective bargaining agreements, or any other payment of bonuses for any other reason or account other than the Christmas or Summer bonus within the limits of this Section.

(vi) Paid leaves and time off without charge to any leave.

(vii) Paid leaves that are not statutorily established.

(d) The following shall not be deemed as an increase of economic benefits or special monetary compensation:

(i) Paid leaves to pursue education, attend seminars, courses, or workshops, provided that an agreement is executed whereby the benefited employee commits to provide services for twice the time it takes him/her to complete education, seminars, courses, or workshops and to return any paid leave in the event of noncompliance;

(ii) Employee Scholarship Programs;

(iii) Employee Assistance Programs;

(iv) Child care programs;

(v) Training, skill-building, and development plans up to a maximum of six hundred dollars (\$600) per employee.

Notwithstanding the foregoing, except for the Employee Assistance Programs and the training provided by the Training and Labor Affairs Advisory and Human Resources Administration Office (OCALARH, Spanish acronym), the appointing authority or his/her authorized representative shall consider that the aforementioned situations constitute an increase of economic benefits or special monetary compensation when they are necessary to adjust the expenditures of the Entity of the Executive Branch to the approved budget or to deal with a projected operating deficit.

(e) If the Entity of the Executive Branch has questions as to whether or not the granting or continuance of an economic benefit or special monetary compensation constitutes an increase of economic benefits or special monetary compensation, the appointing authority or authorized representative of the Entity of the Executive Branch shall submit a consultation to the Office of Management and Budget, which shall reply to the same within sixty (60) days or less; the reply to

the consultation shall be binding for the Entity of the Executive Branch submitting the same.

(f) The limitations established in this Section shall apply to all employees of the Entities of the Executive Branch, regardless of their classification as a trust, regular, career, transitory or irregular employee; and regardless of their specific duties within the Entity of the Executive Branch.

(g) The limitations established in this Section shall apply to all employees of the Entities of the Executive Branch, regardless of any provision to the contrary of any law, standard, regulations, collective bargaining, policy, employee handbook, circular letter, contract letter, certifications, regulations, employment rules and conditions, policy letters, classification, or compensation plans. This includes, but is not limited to, Act No. 184-2004, as amended, known as the “Public Service Human Resources Administration Act”; and the regulations issued and adopted in the case of public corporations, by the corresponding board of directors or appointing authority; or in the case of other public entities, by the corresponding board of governors or appointing authority.

(h) The Office of Management and Budget may implement regulatory provisions as are necessary to enforce the provisions of this Section.

(i) Recognizing the importance of public employees union affiliation, not only in representation of the economic wellbeing of workers, but also in taking public service to its highest level and keeping labor peace, an alternative and uniform participatory process is hereby established to achieve the goals of the public policy set forth in this Act, including the necessary savings within the parameters set forth in subsections (j) and (k), as the case may be, following collective bargaining as guiding principle. The agreements reached by the authorized representatives of union employees, and ratified in writing by the members of the corresponding labor union and the authorized representative of the

Entity of the Executive Branch through and in accordance with the collective bargaining parameters allowed herein, shall replace the provisions of subsections (a), (b), (c), and (d) of this Section and any other pertinent provision of this Act and that have been object of the bargaining. For every alternative participatory process recognized under this Act leading to a bargaining between Entities of the Executive Branch and labor unions, any necessary information, such as a report of audited financial statements of the Entity of the Executive Branch, a report of all contracts and the sums thereof, a report of all trust positions and the sums thereof, among other pertinent data shall be provided. The Entities of the Executive Branch shall agree to a labor union's request to begin the alternative participatory process.

Once the period of the participatory process provided in this Act concludes, the Entity of the Executive Branch and the labor union shall notify the Secretary of Labor and Human Resources of any impasse reached, if any, during the bargaining process. The Secretary shall grant the parties fifteen (15) additional days to conclude the bargaining efforts.

(j) In the case of Entities of the Executive Branch subject to Act No. 45-1998, as amended, the Governor or the person to whom he/she delegates, and the Director of the Office of Management and Budget and the Secretary of the Department of Labor and Human Resources are hereby authorized to enter into, beginning on or before July 1st, 2014, one or various negotiations, personally or through their authorized representatives, to amend by mutual agreement the collective bargaining agreements in effect establishing modifications to the financial job conditions that replace the provisions of subsections (a), (b), (c), and (d) of this Section, but that achieve an average savings per union employee comparable to the savings that would have been achieved should the aforementioned subsections had been applied, as estimated at the discretion and in the judgment of the Office of Management and Budget. The negotiated

amendments shall take effect only for appropriate units that adopt and ratify the same and, in any case, shall take effect retroactively to July 1st, 2014. The provisions of subsections (a), (b), (c), and (d) of this Section shall apply retroactively to July 1st, 2014 and be final and binding for any appropriate unit that fails to adopt and ratify any amendment under this subsection on or before August 31st, 2014. The appointing authority or authorized representative of an Entity of the Executive Branch is hereby authorized to make the corresponding payroll adjustments to enforce this subsection.

(k) In the case of Entities of the Executive Branch with union employees that are not subject to Act No. 45-1998, as amended, the appointing authority or authorized representative of an Entity of the Executive Branch may negotiate amendments to collective bargaining agreements in effect establishing modifications to the financial job conditions that replace the provisions of subsections (a), (b), (c), and (d) of this Section, provided that such amendments are approved and ratified by all the parties on or before July 31st, 2014; that are retroactive to July 1st, 2014; and that the average savings achieved per union employee by implementing said amendments are comparable to the savings that would have been achieved should the aforementioned subsections had been applied.

The savings goal of the negotiation, as well as the achievement thereof as a result of the proposed amendments, shall be determined by the Board of Directors or other governing body of the Entity of the Executive Branch concerned, whose final approval shall be necessary to prevent subsections (a), (b), (c), and (d) of this Section from being applied. If the amendments are not signed and ratified by August 31st, 2014, the provisions of subsections (a), (b), (c), and (d) of this Section shall apply retroactively to July 1st, 2014. The appointing authority or authorized

representative of an Entity of the Executive Branch is hereby authorized to make the corresponding payroll adjustments to enforce this subsection.

Section 12.- Expired Collective Bargaining Agreements.

The non financial clauses and other clauses of the collective bargaining agreements that have not been affected by this Act, but which have expired as of the effective date of this Act or shall expire during the effective term of this Chapter II, shall be extended until the expiration of the effective term of this Chapter. Said extension shall impair the presentation and holding of representative's elections.

Once the effective term of this Chapter II expires, labor unions that as of July 1st, 2014 represented union employees of every Entity of the Executive Branch may begin to negotiate new collective bargaining agreements, including financial and non financial clauses, and the Entities of the Executive Branch shall negotiate the same in accordance with the applicable rules and law, taking into account the realities of the economic and financial conditions of the Entity of the Executive Branch and the Government in general.

Section 13.- Unlawful Practices.

The implementation of any measure authorized under this Chapter, whether by the Office of Management and Budget, the Entities of the Executive Branch and their respective officials, the Governor, or any representative thereof, shall not constitute a violation of the existing collective bargaining agreements nor constitute an unlawful practice.

The provisions of this Section shall also apply to the State Election Commission, the Office of Government Ethics, the Office of the Special Independent Prosecutor's Panel, and the Office of the Election Comptroller.

Section 14.- Forum to Settle Disputes.

The Public Service Appellate Commission (PSAC) or its successor, in all that pertains to labor or that would otherwise be under the jurisdiction of PSAC, shall have exclusive primary jurisdiction to address appeals arising as a result of actions taken or decisions made in accordance with this Chapter filed by employees covered or not covered by the provisions of Act No. 45-1998, as amended, known as the Public Service Labor Relations Act, as well as those filed by nonunion employees of the Entities of the Executive Branch excluded from the application of the provisions of Act No. 184-2004, as amended, known as the Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico, and employees of the Entities of the Executive Branch that do not have labor unions, but to whom the provisions of Act No. 184-2004 apply.

Furthermore, the Labor Relations Board, or its successor, shall have exclusive primary jurisdiction to address appeals arising as a result of actions taken or decisions made in accordance with this Chapter filed by employees covered by Act No. 130 of May 8, 1945, as amended. Provided, that pursuant to the provisions of this Act, no action taken hereunder shall constitute a violation of existing collective bargaining agreements, or a refusal to negotiate in good faith, or an unlawful practice.

Section 15.- School Transportation.

The Secretary of Education is hereby authorized and directed to establish alternative measures and strategies to maximize the efficiency and cost effectiveness of school transportation, particularly in connection with the direct or indirect subcontracting with the Municipalities, as well as with any Entity of the Executive Branch or private entity that guarantees savings in the cost of providing such services. Likewise, the Secretary of Education is hereby directed, in conjunction with the Office of Management and Budget, to devise a plan for the

adequate control of the payments made for rendered services and for the evaluation of documents that validate the rendering thereof. Said control plan shall be promulgated within a term that shall not exceed sixty (60) days after the approval of this Act, and filed with the Secretary of the Senate and the Clerk of the House not later than thirty (30) days after the adoption thereof. The Department of Education shall not spend, on account of school transportation, an amount of Commonwealth funds exceeding the amount set aside therefor in the General Budget Joint Resolution or, if such Joint Resolution does not specifically provide for such allocation, the amount budgeted and accounted for at the beginning of the fiscal year in its approved budget. Neither the Secretary of Education nor the Office of Management and Budget may transfer additional funds during a fiscal year to cover expenditures that exceed the budget or potential overruns on this account. The Secretary of Education is hereby authorized and empowered to take the necessary measures to renegotiate, restructure, or modify contracts with carriers in order to comply with the mandate of austerity and expenditure control, as provided above. Notwithstanding the provisions of any other law, the Secretary is hereby empowered to execute, modify, or cancel the service contract or legal agreement entered into with any carrier to provide school transportation services in the service zones and under the conditions that he/she may determine. Likewise, the Secretary is hereby empowered to either recover the money paid, or to not pay, for school transportation services charged for an enrolled student, but not rendered due to absenteeism, transfers, or dropouts.

Section 16.- Prohibition to Overspend Budget.

The provisions of Section 8 of Act No. 103-2006, as amended, which prohibit spending in excess of budget appropriations is herein reasserted. Every public employee who, knowing that the Entity of the Executive Branch is projected to overspend its appropriations chargeable to the General Fund, certifies or

provides incorrect information to be incorporated in such certification to the Governor, or the person to whom he/she delegates, or to the Office of Management and Budget, about the availability of the funds to carry out a transaction, including appointments or the execution of contracts; or carries out said transaction without the appropriate authorizations, shall be subject to a fine of two hundred dollars (\$200) per incident, and up to a maximum of five thousand dollars (\$5,000), in the aggregate for all the incidents that take place within the same calendar year. The official may rely on amended projections that make up for such over-expenditures, provided that said projections are sent to the Governor or to the person to whom he/she delegates, or to the Office of Management and Budget, together with or prior to the request for authorization. Provided, that prior to imposing the aforementioned sanction on a public employee, the latter shall be guaranteed due process of law, whether through an informal hearing or any other administrative procedure, or as provided in a collective bargaining agreement. The Office of Management and Budget shall be responsible for regulating and implementing the provisions of this Section, including all that pertains to the imposition of administrative fines.

The provisions of this Section shall also apply to the State Election Commission, the Office of Government Ethics, the Office of the Special Independent Prosecutor's Panel, and the Office of the Election Comptroller.

Section 17.- Fiscal Control in Public Corporations.

During the effective term of this Act, all public corporations shall suspend the financial terms negotiated under collective bargaining agreements in effect having a direct or indirect economic impact on the operations of the public corporation that aggravate the budget situation thereof or whose suspension is warranted to improve its budget situation. The non financial terms that could have a direct or indirect economic impact include, but are not limited to, the following:

(a) Training, skill-building, and development plans, except for those circumstances in which it is extremely necessary, and in accordance with the criteria established in this Chapter II;

(b) Paid leaves to pursue education, attend seminars, courses, or workshops that are inconsistent with the criteria established in this Chapter II;

(c) Paid leave and time off without charge to any leave;

(d) Any provision that prevents assigning or reassigning tasks to employees, group of employees, job classification, level or appropriate unit in order to render the administration and operation of the public corporation more cost efficient and meet the criteria of this Chapter II;

(e) Any provision that prevents the subdivision of tasks or assignment of work schedules to employees, group of employees, job classification, level or appropriate unit in order to render the administration and operation of the public corporation more cost efficient and meet the criteria of this Chapter II;

(f) Any provision that prevents the subcontracting of tasks assigned to employees, group of employees, job classification, level or appropriate unit in order to render the administration and operation of the public corporation more cost efficient and meet the criteria of this Chapter II;

(g) Provisions regarding the limitations on management or administrative rights of the employer in order to render the administration and operation of the public corporation more cost efficient and meet the criteria of this Chapter II;

(h) Provisions or terms compelling the employer to faithfully comply with what has been agreed or accepted, regarding matters that are in conflict with the provisions of this Chapter II;

(i) Requirements to use seniority, to the extent the provisions on seniority are contrary to the provisions of this Chapter II or constitute a limitation to change duties, promotions, demotions, relocations, transfers, details, or other transactions

needed to prevent services from being affected, in order to render the administration and operation of the public corporation more cost effective and meet the requirements of this Chapter II.

If any questions arise as to whether a specific provision of a collective bargaining agreement has a direct or indirect economic impact on a public corporation that aggravates its budget situation or that must be suspended to improve the budget situation, a consultation shall be submitted to the Government Development Bank, which shall reply to the same within a term not to exceed sixty (60) days. The reply to said consultation shall be binding for the public corporation submitting the same.

Provided, further, that public corporations shall recognize to both union and nonunion employees their vacation leaves accrued as of the effective date of this Act; however, the excess thereof accrued before and during the effective term of this Act shall not be liquidated in cash. Public corporations shall establish a plan whereby both union and nonunion employees shall exhaust the leaves accrued in excess so that no excess is carried over after the effective term of this Act.

Provided, further, that sick leaves accrued in excess by union or nonunion employees of the public corporations before the effective date of this Act shall be frozen at the pay rate in effect as of June 30th, 2014, and the liquidation thereof in cash shall only be made in the event of separation from public service. Any sick leaves accrued in excess after the effective date of this Act, as well as that accrued as of December 31st of each year, shall be used on or before June 30th of the year following the year in which it was accrued; after said date such balance shall be forfeited.

Beginning on the first year of the effectiveness of this Act, and annually for the next three (3) years, every public corporation shall establish a process whereby the Executive Director of the Entity and the representatives of their respective

unions shall assess, in a transparent manner, the financial situation and the fiscal reality of their respective public corporation. If, in light of the assessment, in accordance with the mechanism adopted, it is established that the public corporation does not have an operating deficit, but a stable financial situation, and does not depend on the General Fund for its operation, it may begin negotiating the terms of the collective bargaining agreement that had been frozen under the provisions of this Section. Once the effective term of this Act expires, the collective bargaining agreement in effect at the time of the approval of this Act shall be reestablished for the remainder of its effective term, if any, and shall apply prospectively.

Section 18.- Contribution of Savings of Public Corporations in Health-related Fields to the General Fund's Deficit.

The savings generated by the Automobile Accidents Compensation Administration and the State Insurance Fund Corporation as a result of the implementation of the provisions of Section 11 of this Chapter, shall be contributed to the "Special Education Student Services and Therapies Fund," under the custody of the Department of Education, created through special legislation specifically for said purposes. This would reduce the General Fund's fiscal burden, which requires the rendering of adequate services to the special education population, in accordance with Federal legislation, the public policy, and the existing legal framework.

On or before July 31st, 2014, both entities shall certify to the Office of Management and Budget the number of employees on their payrolls as of June 30th, 2014, and the sums paid during the fiscal year ending on said date to cover the following items: Christmas Bonus; Summer Bonus; other general bonuses, including, but not limited to, ratification of collective bargaining agreements, attendance, punctuality, productivity, or retirement; liquidation of sick

and vacation leaves accrued in excess. In the case of the Christmas Bonus and the Summer Bonus, the certification of the sums paid shall be reduced by an amount equal to the number of employees who received the Christmas Bonus, multiplied by six hundred dollars (\$600), plus the number of employees that received the Summer Bonus, multiplied by two hundred dollars (\$200). The information to be provided shall separate union employees from nonunion employees.

The corresponding amounts certified by June 30th, 2014, shall be considered conclusively as the savings generated under this Act for the following Fiscal Year 2015, and shall be transferred to the Department of the Treasury by the Automobile Accidents Compensation Administration and the State Insurance Fund Corporation beginning on or before July 31st, 2014. The funds thus transferred shall be deemed allocated to the Special Education Student Services and Therapies Fund. Said transfers may be made in equal installments for the remaining months of the fiscal year, but must be completed before June 30th, 2015. The Automobile Accident Compensation Administration and the State Insurance Fund Corporation shall continue to make their respective additional transfers in an amount equal to that paid during Fiscal Year 2015, beginning on July 31st, 2015; for Fiscal Year 2016 and every July 31st thereafter, during the effective term of this Act.

Section 19.- Contribution of Savings of Public Corporations in Economic Development-related Fields to the General Fund's Deficit.

The savings generated by public corporations related to the promotion of economic development, and some other corporations designated in this Section, as a result of the implementation of the provisions of Section 11 of this Chapter, shall be deposited in the "Employment Promotion and Economic Activity Fund," under the custody of the Puerto Rico Trade and Export Company, created through special legislation specifically for such purposes. This would reduce the burden

currently imposed on the General Fund by the appropriations for job promotion and business incentives.

For purposes of this Section, public corporations related to the economic development promotion field are the following: the Land Administration, the Lands Authority of Puerto Rico, the Puerto Rico Convention Center District Authority, the Puerto Rico Infrastructure Financing Authority, the Housing Financing Authority, the Puerto Rico Economic Development Bank, the Government Development Bank for Puerto Rico, the Development [sic] and Export Company, the Industrial Development Company, the Tourism Company, the Agricultural Insurance Corporation, and the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico. Furthermore, instrumentalities not directly related to economic development shall also contribute to the Employment Promotion and Economic Activity Fund, to wit: the Governing Board of the 9-1-1 Service and the Puerto Rico and the Caribbean Cardiovascular Center Corporation.

On or before July 31st, 2014, each one of these entities shall certify to the Office of Management and Budget the number of employees on their payrolls as of June 30th, 2014, and the sums paid during the fiscal year ending on said date to cover the following items: Christmas Bonus; Summer Bonus; other general bonuses, including, but not limited to, ratification of collective bargaining agreements, attendance, punctuality, productivity, or retirement; liquidation of sick and vacation leaves accrued in excess. In the case of the Christmas Bonus and the Summer Bonus, the certification of the sums paid shall be reduced by an amount equal to the number of employees who received the Christmas Bonus, multiplied by six hundred dollars (\$600), plus the number of employees that received the Summer Bonus, multiplied by two hundred dollars (\$200). The information to be provided shall separate union employees from nonunion employees.

The corresponding amounts certified by June 30th, 2014, shall be considered conclusively as the savings generated under this Act for the following Fiscal Year 2015, and shall be transferred to the Department of the Treasury by each of the corresponding public corporations, beginning on or before July 31st, 2014. The funds thus transferred shall be deemed to be allocated to the Employment Promotion and Economic Activity Fund. Said transfers may be made in equal installments for the remaining months of the fiscal year, but must be completed before June 30th, 2015. Public corporations required to make contributions under this Section shall continue to make their respective additional transfers in an amount equal to that paid during Fiscal Year 2015, beginning on July 31st, 2015 for Fiscal Year 2016, and on every July 31st thereafter during the effective term of this Act.

Section 20.- Budget of the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Special Independent Prosecutor's Panel.

For any fiscal year ending during the effective term of this Chapter, the budget of the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Special Independent Prosecutor's Panel shall be equal to their respective budgets for the previous fiscal year adjusted by the reduction percentage or global increase in the General Budget of Expenses chargeable to the General Fund, included in the budget recommended by the Governor. Said adjustment shall be calculated excluding the proposed appropriations to service the constitutional debt chargeable to the General Budget of Expenses of both the basis of the previous year and the recommended amount for the fiscal year under consideration. Likewise, said adjustment shall exclude from both basis for comparison the budgets corresponding to the Judicial Branch, the Legislative Assembly, the Office of the Comptroller, the Ombudsman, the

Civil Rights Commission, the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Special Independent Prosecutor's Panel.

Section 21.- Prohibitions on the Use of Protective Detail, Traveling, and Contracting of Services, Among Others.

(a) The use of public funds for the payment of protective detail for the heads of the Entities of the Executive Branch is hereby prohibited. As an exception, and due to the nature of the functions they perform, this prohibition shall not apply to the Secretary of State, the Secretary of Justice, the Secretary of Corrections and Rehabilitation, and the Police Superintendent. Likewise, the Governor of Puerto Rico may authorize protective detail when necessary to protect the health, safety, and welfare of any government official who is affected as a result of decisions made in the performance of his/her duties.

(b) The use of public funds for traveling outside of Puerto Rico by the heads of the Entities of the Executive Branch or officials in trust positions is hereby prohibited, except when said trips are essential for the performance of their official duties and have been previously approved by the Governor or by the person to whom he/she delegates. In the case of officials other than employees holding trust positions or heads of the Entities of the Executive Branch, the authorization of the Governor or of the person to whom he/she delegates shall be required in the event that: (i) more than two employees are traveling for the same purpose at the same time; or (ii) the cost of accommodations per night exceeds two hundred fifty dollars (\$250).

(c) The contracting of professional or purchased services in Entities of the Executive Branch in excess of one hundred thousand dollars (\$100,000) within the same fiscal year is hereby prohibited without the previous written authorization of the Governor or the person to whom he/she delegates. Any contract executed in

violation of this requirement shall be null. This authorization requirement is in addition to, and does not substitute any other applicable rules, including those set forth by the Governor or the person to whom he/she delegates pursuant to the Executive Orders to cut back on spending or rule of the Office of Management and Budget.

(d) The use of public funds for the payment of cellular phones, personal digital assistants (PDAs), personal Internet service devices or other technological services for the exclusive use of heads of agencies, employees and officials of the Entities of the Executive Branch of the Commonwealth of Puerto Rico is hereby prohibited. As of the approval of this Act, all contracts for the aforementioned services shall be cancelled. The Governor or the person to whom he/she delegates may grant waivers to this requirement.

Section 22.- Expenditures and Lease Agreement Reduction Plan.

Within a period of thirty (30) days as of the approval of this Act, the Entities of the Executive Branch shall submit to the Office of Management and Budget a list of all their lease agreements in effect, the amount thereof, and a summary of the reason for the execution thereof. Those lease agreements that must be kept by mandate of law or to meet an obligation not subject to discretion, or to preserve an essential service for the citizenry shall be specified.

The Office of Management and Budget may direct not to renew or modify said leasing agreements upon their expiration and subsequent execution, except when such action is detrimental to an essential service or entails a greater financial burden. In said analysis, the Office of Management and Budget may also consider the possibility of consolidating some operations of several agencies in the same location and renegotiate the terms and amount of the lease agreements in order to attain more favorable conditions.

Furthermore, all lease agreements or lease letter of intent shall adhere to the following guidelines:

(a) No agreement may be renewed nor a new agreement may be executed, nor the amount paid for a lease may be increased without the previous authorization of the Office of Management and Budget.

(b) Every Entity of the Executive Branch, with the assistance of the Office of Management and Budget, shall analyze the alternative of not renewing lease agreements upon their expiration, when it is feasible for such entity to consolidate the operations of the activities conducted in a leased building within their existing facilities or in any other available public facility.

(c) Every Entity of the Executive Branch that has a lease agreement in effect and is considering the renewal thereof, or that intends to execute a lease agreement, shall request a lease proposal from the Public Buildings Authority and/or any other Entity of the Executive Branch, municipalities, or other Government Branch that could have space available in order to evaluate the cost-effectiveness of entering into a new agreement with the government entity. It shall be deemed to be cost-effective to enter into a new lease agreement with a government entity when:

(i) a constant and continuous reduction for such operating expense greater than fifteen percent (15%) is projected;

(ii) moving the operations of the agency is not detrimental to the rendering of the services; and

(iii) there is no legal impediment therefor.

(d) Every lease agreement entered into in contravention with these provisions shall be null.

The Office of Management and Budget shall have discretion to make exceptions to the provisions herein in all lease agreements, when so required by Federal or State law or a court order; it is essential to protect the health, safety, and welfare of the citizenry and/or public employees; and when it is necessary to carry out a ministerial duty of the agency in question to prevent any impairment to the public service.

Section 23.- Energy Consumption Reduction Plan and Provision on the Consumption of Aqueduct and Sewer Services.

The Entities of the Executive Branch shall promote the wise and efficient use of public utilities. In order to achieve the objectives and meet the requirements of the current fiscal emergency which demands the responsible and effective use of the limited government resources, the duty of all the Entities of the Executive Branch of reducing the consumption of public utility services such as electric power, as well as aqueduct and sewer, is hereby reasserted.

Regarding the efficient use of electric power, it is hereby provided that all the Entities of the Executive Branch shall faithfully meet the energy conservation requirements established in Sections 4.1, 4.2, and 4.3 of Act No. 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” The Entities of the Executive Branch are hereby authorized to request to the Commonwealth Energy Public Policy Office (CEPPO) an adjustment in the energy baseline consumption, according to the consumed kilowatt-hour, in light of the additional burden entailed by new facilities or buildings, or improvements to existing buildings, provided that CEPPO certifies that the additional burden entailed by new facilities or buildings or improvements has been certified as efficient in accordance with the parameters established by CEPPO through regulations. CEPPO shall adopt regulations as are necessary to enforce these requirements.

During the effective term of this Chapter, with respect to the Entities of the Executive Branch whose operating expenses are defrayed totally or partially from the General Fund, the base rate of aqueduct and sewer services in effect on July 1st, 2014, shall not be increased, unless modified by subsequent legislation. The rate provided in Section 8 of Joint Resolution No. 16-2013, whose terms are hereby reasserted and ratified retroactively to the effective date thereof, shall be deemed to be the rate in effect as of July 1st, 2014.

Furthermore, with respect to aqueduct and sewer consumption, the Entities of the Executive Branch whose operating expenses are defrayed totally or partially from the General Fund, shall reduce their expenditures in connection with aqueduct and sewer consumption costs by five percent (5%) annually for the years 2014-15, 2015-16, and 2016-17 to show a total reduction of fifteen percent (15%) in those three (3) years. The reduction percentage shall be computed using as a basis the aqueduct and sewer consumption for 2012-13. The Office of Management and Budget shall oversee faithful compliance with the reduction of aqueduct and sewer spending established for the Entities of the Executive Branch. For those Entities of the Executive Branch that fail to comply with the percentage rate reduction of aqueduct and sewer spending, the Office of Management and Budget may reduce their operating expense budget for the following fiscal year, which shall be equal to the monetary value of the consumption in excess of the reduction rate established.

CHAPTER III.- BUDGET MEASURES FOR THE JUDICIAL BRANCH, LEGISLATIVE BRANCH AND OTHER GOVERNMENT ENTITIES

Section 24.- Budget of the Judicial Branch.

For any fiscal year ending during the effective term of this Chapter, the budget of the Judicial Branch shall be equal to its respective budget for the previous fiscal year, adjusted by the reduction percentage or global increase in the

General Budget of Expenses chargeable to the General Fund, stated in the budget recommended by the Governor. Said adjustment percentage shall be calculated excluding the proposed appropriations to service the constitutional debt of the General Budget of Expenses chargeable to the General Fund, both on the basis of the previous year and on the recommended amount for the fiscal year under consideration. Likewise, said adjustment shall exclude from both basis for comparison the budgets of the Judicial Branch, the Legislative Assembly, the Office of the Comptroller, the Ombudsman, the Civil Rights Commission, the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Special Independent Prosecutor's Panel.

For the fiscal year immediately beginning upon the expiration of the effective term of this Chapter, the recommendation and approval of the budget of the Judicial Branch shall be once again governed by the regularly applicable legislation. No debt, obligation, or pledge for future appropriations or payments whatsoever shall be issued for any gap existing between the budget actually appropriated during the effective term of this Act, and what would have been the budget resulting from the application of formulas or other rules established in the laws that would otherwise have governed the drawing up of the budget.

The Judicial Branch, in the exercise of the powers conferred thereto by the Constitution of the Commonwealth of Puerto Rico, may adopt any of the spending reduction and/or control measures provided in this Act as may be necessary to address any budget deficit projected during the effective term of this Act.

Section 25.- Budget of the Legislative Assembly and Attached Entities.

For any fiscal year ending during the effective term of this Chapter, the budget of the Legislative Assembly and each one of its attached entities, to wit, the Office of the Comptroller, the Ombudsman, and the Civil Rights Commission shall be equal to its respective budget for the previous fiscal year, adjusted by the

reduction percentage or global increase in the General Budget of Expenses chargeable to the General Fund, stated in the budget recommended by the Governor. Said adjustment percentage shall be calculated excluding the proposed appropriations to service the constitutional debt of the General Budget of Expenses chargeable to the General Fund, both on the basis of the previous year and on the recommended amount for the fiscal year under consideration. Likewise, said adjustment shall exclude from the basis for comparison the budgets of the Judicial Branch, the Legislative Assembly, the Office of the Comptroller, the Ombudsman, the Civil Rights Commission, the State Election Commission, the Office of Government Ethics, the Office of the Election Comptroller, and the Special Independent Prosecutor's Panel.

For the fiscal year immediately beginning upon the expiration of the effective term of this Chapter, the recommendation and approval of the budget of each entity affected by this Section shall once again be governed by the regularly applicable legislation. No debt, obligation, or pledge for future appropriations or payments whatsoever shall be issued for any gap existing between the budget actually appropriated during the effectiveness of this Act, and what would have been the budget resulting from the application of formulas or other rules established in the laws that would otherwise have governed the drawing up of the budget.

The Legislative Assembly and its attached entities, in the exercise of the powers conferred to them by the Constitution of the Commonwealth of Puerto Rico, may adopt any of the spending reduction and/or control measures provided in this Act as may be necessary to address any budget deficit projected during the effective term of this Act.

Section 26.- Budget of the University of Puerto Rico and Certain Appropriations for the Operation of Municipalities.

For any fiscal year ending during the effective term of this Chapter, any operating subsidy of government entities that are not part of the Central Government shall be equal to their respective operating subsidy for Fiscal Year 2013-2014. For purposes of this Section, the term government entities that are not part of the Central Government, refers to the University of Puerto Rico and the Municipalities. For purposes of this Section, the term operating subsidy with respect to the University of Puerto Rico, refers to the appropriation provided in subsection (a) of Section 3 of Act No. 2 of January 20, 1966, as amended; and with respect to the Municipalities, it refers to the appropriations provided in Section 2.06 of Act No. 83-1991, as amended (Exoneration Fund), and in subsection (c) of Section 16 of Act No. 80-1991, as amended (Matching Fund).

For the fiscal year immediately beginning upon the expiration of the effective term of this Chapter, the recommendation and approval of the budget of each entity affected by this Section shall once again be governed by the regularly applicable legislation. No debt, obligation, or pledge for future appropriations or payments whatsoever shall be issued for any gap existing between the budget actually appropriated during the effective term of this Act, and what would have been the budget resulting from the application of formulas or other rules established in the laws that would otherwise have governed the drawing up of the budget.

Section 27.- Energy and Aqueduct and Sewer Services Consumption Reduction Plan in the Legislative Branch, the Judicial Branch, and the University of Puerto Rico.

No electric power service special or preferential rates shall be established for the Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico. They shall promote the wise and efficient use of public utilities. In order to achieve the objectives and meet the requirements of the current fiscal emergency which demands the responsible and effective use of the limited government resources, the duty of all the Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico of reducing the consumption of public utilities services such as electric power, as well as aqueduct and sewer, is hereby reasserted. The term Entities of the Legislative Branch and the Judicial Branch shall include every agency or body attached thereto or that is part of the Legislative Branch or the Judicial Branch, respectively.

Regarding the efficient use of electric power, it is hereby provided that all Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico shall faithfully meet the energy conservation requirements established in Sections 4.1, 4.2, and 4.3 of Act No. 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” The Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico are hereby authorized to request to the Commonwealth Energy Public Policy Office (CEPPO) an adjustment in the energy baseline consumption, according to consumed kilowatt-hour, in light of the additional burden entailed by new facilities or buildings, or improvements to existing buildings, provided that CEPPO certifies that the additional burden entailed by new facilities or buildings or improvements has been certified to be efficient under the parameters established by CEPPO through regulations. CEPPO shall adopt regulations as are necessary to enforce these requirements.

During the effective term of this Chapter, with respect to the Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico, whose operating expenses are defrayed totally or partially from the General Fund, the base rate of aqueduct and sewer services in effect on July 1st, 2014, shall not be increased, unless modified by subsequent legislation. The rate provided in Section 8 of Joint Resolution No. 16-2013, whose terms are hereby reasserted and ratified retroactively to the effective date thereof, shall be deemed to be the rate in effect as of July 1st, 2014.

Furthermore, with respect to aqueduct and sewer consumption, the Entities of the Legislative Branch, the Judicial Branch, and the University of Puerto Rico, whose operating expenses are defrayed totally or partially from the General Fund, shall reduce their expenditures in connection with aqueduct and sewer consumption by five percent (5%) annually for the years 2014-15, 2015-16, and 2016-17 to show a total reduction of fifteen percent (15%) in those three (3) years. The reduction percentage shall be computed using as basis the aqueduct and sewer consumption for the year 2012-13. By petition of the Entities of the Legislative Branch, the Judicial Branch, or the University of Puerto Rico, the Aqueduct and Sewer Authority may authorize a variation in the baseline consumption of aqueduct and sewer in light of the additional demand of new facilities and buildings.

CHAPTER IV.- PLANS FOR FINAL AND BINDING JUDGMENTS PENDING PAYMENT

Section 28.- Applicability and Payment Plans.

In view of the negative impact on the fiscal and operational stability of the Commonwealth of Puerto Rico and the municipal governments that the payment of a lump sum would entail, the provisions of this Chapter shall apply to all final and binding judgments, except for those related to eminent domains that, on the date of

approval of this Act, are pending payment and those issued during the effective term of this Act, whereby the agencies, instrumentalities, public corporations, municipalities, or the Commonwealth of Puerto Rico are compelled to make a disbursement of funds chargeable to the General Fund, the fund of the public corporation in question, or chargeable to the municipal budget, as the case may be.

In the event that the agencies, instrumentalities, public corporations, municipalities, or the Commonwealth of Puerto Rico, or officials who have availed themselves of the benefits of this Act, are required to make a disbursement of funds chargeable to the General Fund, the fund of the public corporation in question, or chargeable to the municipal budget, as the case may be, and there is no payment plan previously agreed on in writing and approved by the Court, the provisions of this Section shall apply, regardless of the nature of the judgment or in the case of an administrative, extrajudicial or judicial transaction. The Secretary of Justice shall evaluate the applicable payment plan in accordance with the amount of the judgment, upon which he/she shall request a certification of the availability of funds to the Director of the Office of Management and Budget, the Board of Directors or the governing body of the public corporation in question, or of the Mayor of the corresponding Municipality. Only for purposes of the application of this Section, the term Commonwealth shall include the Commonwealth of Puerto Rico, its agencies and instrumentalities, public corporations, and municipalities. Payment plans shall be established in accordance with the following terms:

(a) If the amount owed by the Commonwealth, a public corporation or municipality is equal to or less than one hundred thousand dollars (\$100,000), it may be paid off through a one (1) to three (3) year payment plan from the time the payment obligation becomes final and binding.

(b) If the amount owed by the Commonwealth, a public corporation, or municipality exceeds one hundred thousand dollars (\$100,000), but does not exceed one million dollars (\$1,000,000), it may be paid off through a three (3) year and one (1) day to four (4) year payment plan from the time the payment obligation becomes final and binding.

(c) If the amount owed by the Commonwealth, a public corporation, or municipality exceeds one million dollars (\$1,000,000), but does not exceed or is equal to seven million dollars (\$7,000,000), it may be paid off through a four (4) year and one (1) day to seven (7) year payment plan from the time the payment obligation becomes final and binding.

(d) If the amount owed by the Commonwealth, a public corporation, or municipality exceeds seven million dollars (\$7,000,000), but does not exceed twenty million dollars (\$20,000,000), it shall be paid off through a seven (7) year and one (1) day to ten (10) year payment plan from the time the payment obligation becomes final and binding.

(e) If the judgment owed by the Commonwealth, a public corporation, or municipality exceeds twenty million dollars (\$20,000,000), the payment plan applicable thereto shall be fixed during the drawing up of the budget following the date on which the payment obligation becomes final and binding, taking into consideration the fiscal situation, and said payment plan shall never exceed an annual sum of three million dollars (\$3,000,000).

(f) In order to determine the applicable payment plan, the judgment shall not be divided by claimant, but rather the total thereof shall be considered as the item value.

(g) If there were no funds available to honor the payment plan during a specific fiscal year, it shall be postponed for the following fiscal year, thus said payment plan shall be automatically extended for the number of unpaid installments.

(h) If the Director of the Office of Management and Budget determines that the budget of the agency may cover the payment plan arising from a judgment issued against it, he/she shall thus notify the agency, which shall make the adjustments and negotiations needed to defray the same from its own budget, without the need for an additional appropriation of funds. In these cases, the filing of a request for additional funds with the Office of Management and Budget shall not be allowed.

(i) The Commonwealth, a public corporation or municipality shall not make any payment whatsoever unless the creditor of the judgment provides an official certification issued by the pertinent agency stating that the creditor has no outstanding debt with the Department of the Treasury, the Municipal Revenues Collection Center, and the Child Support Administration. In the event that the creditor of the judgment has an outstanding debt with any agency, entity or public corporation of the Commonwealth, or with a municipality, the amount of said debt shall be deducted from the total amount to be paid. In the event that the creditor of the judgment has requested an administrative review of the debt, the Government of the Commonwealth of Puerto Rico, the public corporation or the municipality, as the case may be, shall refrain from making any payment whatsoever until the review process has concluded. If the existence of the challenged debt is confirmed, the amount thereof shall be deducted from the total amount to be paid.

These provisions shall apply to the Municipalities, which shall establish through a municipal ordinance the adequate parameters for the implementation thereof, in accordance with the provisions of subsections (a), (b), (c), (d), (e), (f), (g), and (i) of this Section.

The payment plans for judgments issued by virtue of this Section, as well as the provisions thereof, shall remain in effect for the time frame established in the payment plan, and shall not be affected or invalidated by the expiration of the effectiveness of this Act.

Section 29.- Actions against the Commonwealth, Municipalities, and Officials.

No agency or instrumentality of the Commonwealth, or public corporation or municipality, official or employee shall be compelled to make any payment whatsoever with respect to a previously authorized judgment or payment plan, when there are no funds available therefor when the legislative appropriation for such purposes has been exhausted; therefore, the garnishment of funds to enforce a judgment issued against the Commonwealth is hereby prohibited. The determination of lack of funds to make said payment shall be certified by the agency or instrumentality of the Commonwealth, public corporation or municipality in question and, in the event that such funds are appropriated by the Legislative Assembly, including those from the General Fund, it shall be confirmed by the Office of Management and Budget, whose determination with regard thereto shall be final.

The remedy available when there are no funds available for the payment of judgments shall be the payment of interest on the amount owed pursuant to the provisions of the Rules of Civil Procedure and the applicable special laws.

The provisions of this Section shall also apply to Municipalities.

Section 30.- Substantive Rights.

The provisions of this Chapter shall not create substantive rights or any causes for action not existing prior to its approval.

CHAPTER V.- FINAL PROVISIONS**Section 31.- Prohibition on Retroactive Claims upon the Expiration of the Effective Term of this Act.**

Except as provided in Section 11(c) on cash liquidations of vacation and sick leaves accrued in excess, any commitment or obligation that has been temporarily suspended during the effective term of this Act shall not be retroactively claimed, nor shall constitute any credit whatsoever, once the same becomes ineffective.

Section 32.- Implementation and Rulemaking Authority.

In view of the fiscal emergency, and to enable the implementation of the purposes of this Act, the Office of Management and Budget shall have all the powers necessary and convenient to discharge the duties herein entrusted thereto, including but not limited to promulgating regulations; conducting or directing the agencies or departments under its custody to conduct studies as may be needed; requiring from the Entities of the Executive Branch the information needed to carry out its duties; advising the Governor and the Entities of the Executive Branch on all that pertains to spending control and reduction measures, labor and/or fiscal impact measures of the Entities of the Executive Branch; and evaluating, approving, or denying requests for transfers and details, among others.

Except as provided in Section 17, it is hereby provided as the intent of this Legislative Assembly that the powers conferred to the Office of Management and Budget by virtue of this Special Act shall have priority over the respective organic acts of the Entities of the Executive Branch, as defined herein, whether agencies, instrumentalities, or public corporations. For such purposes, inasmuch as it is pertinent and necessary, it shall be construed that during the effectiveness thereof,

this Special Act modifies, adjusts, or conditions any provision of the respective organic acts of the Entities of the Executive Branch in order to comply with the mandates of this Act.

Therefore, the Office of Management and Budget may establish regulations as are necessary geared to the Entities of the Executive Branch, whether agencies, instrumentalities, or public corporations to implement the provisions of this Act. Any regulations implemented by the Office of Management and Budget by virtue of this Act shall be mandatory. The absence or lack of any regulations authorized hereunder shall, in no case, be grounds for invalidating or failing to apply the provisions of this Act.

Section 33.- Immunity from Lawsuits and Forums.

This Act shall not affect the immunity of the Commonwealth of Puerto Rico, and its employees, or officials with respect to lawsuits and forums. None of the provisions herein authorizes actions for damages against the Commonwealth of Puerto Rico, its employees, or officials for acts or omissions of the latter, resulting from compliance with this Act. None of the provisions of this Act shall be construed as to constitute a waiver to the sovereign immunity of the Commonwealth of Puerto Rico.

Section 34.- Separability.

If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act were held to be unconstitutional by a competent court, the holding to such effect shall not affect, impair, nor invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part thereof thus held to be unconstitutional.

Section 35.- Effectiveness.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 66-2014 (H. B. 1922)** of the **7th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act,” in order to declare a state of fiscal emergency; devise a plan to deal with the consequences of the fiscal and economic crisis of the downgrading of Puerto Rico’s credit rating; establish a structured management to address this situation; provide for the supremacy of this Act and the applicability thereof; etc.

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

In San Juan, Puerto Rico, on this 24th day of October, 2014.

Juan Luis Martínez Martínez
Acting Director

(P. del S. 1164)

**LEY NUM. 71
28 DE JUNIO DE 2014**

Para crear la “Ley para el Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas de Puerto Rico” a los fines de establecer las normas que aplicarán al cumplimiento, repago y restructuración de las deudas de las corporaciones públicas y otras instrumentalidades del Estado Libre Asociado de Puerto Rico durante una emergencia fiscal; crear el Capítulo 1 de la Ley titulado Disposiciones Generales, el Capítulo 2 titulado Alivio de Deuda Consensual, el Capítulo 3 titulado Cumplimiento con la Deuda y el Capítulo 4 titulado Vigencia; establecer las definiciones, interpretación y estándar probatorio aplicables a la Ley; establecer disposiciones sobre Jurisdicción y Procedimiento, incluyendo la creación de la Sala de Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas del Tribunal de Primera Instancia, Sala de San Juan, las responsabilidades y poderes de dicha Sala, los parámetros que regirán la Elegibilidad para procesos a través del Capítulo 2 y Capítulo 3 de la Ley y disposiciones sobre Emplazamiento, Aplicabilidad de las Reglas de Procedimiento Civil, Objeciones y Apelaciones, entre otros; establecer disposiciones sobre Protecciones de los Acreedores y Gobernanza, incluyendo Limitaciones a Traspasos Preferentes, Recobro de Traspasos Preferentes y Nombramiento de un Administrador de Emergencia, entre otros; disponer las reglas que regirán el Capítulo 2 de Alivio de Deuda Consensual, incluyendo los objetivos de una Transacción Consensual de Alivio de Deuda, la creación de una Comisión de Supervisión con el fin de supervisar el cumplimiento de la corporación pública con el programa de recuperación, la Aprobación Judicial de la Transacción Consensual de Alivio de Deuda, la Suspensión de Remedios durante el período de suspensión y el financiamiento de la corporación pública durante dicho período, entre otros; disponer las reglas que regirán el Capítulo 3 de Cumplimiento con la Deuda, incluyendo la Petición de Alivio, la Paralización Automática, la Vista de Elegibilidad, el Cumplimiento de Reclamaciones por Transferencia Judicial, los Requisitos de Confirmación del Plan, la creación del Comité de Acreedores y distintas disposiciones adicionales relacionadas con los Activos, Pasivos, Contratos y Poderes del Peticionario, entre otros; y para otros fines.

EXPOSICIÓN DE MOTIVOS

A. Estado de Emergencia Fiscal

La situación fiscal del Gobierno del Estado Libre Asociado de Puerto Rico durante los últimos seis años ha sido la más crítica que ha atravesado el país en su historia. En enero de 2013 se proyectaba que el déficit del Fondo General para el año fiscal 2012-2013 sobrepasaría los \$2,200 millones. Mediante distintas medidas llevadas a cabo, se logró reducir dicho déficit a aproximadamente \$1,290 millones al 30 de junio de 2013. Para el presente año fiscal 2013-2014, esta Asamblea Legislativa aprobó varias medidas de disciplina fiscal que

permitieron una reducción, con aprobación legislativa, de asignaciones por una cantidad por \$170 millones por debajo de lo presupuestado. No obstante, como fue informado por el Departamento de Hacienda, al 10 de junio de 2014, los recaudos proyectados para el presente año fiscal estaban por debajo de la cifra estimada por \$320 millones, para lo cual se han tomado medidas que puedan cerrar dicha brecha y logren alcanzar la meta de cerrar el presente año fiscal con un déficit de \$650 millones.

La situación encontrada en enero de 2013 en las corporaciones públicas no era distinta, pues el déficit combinado de las principales tres corporaciones públicas del país (la Autoridad de Energía Eléctrica (en adelante la “AEE”), la Autoridad de Acueductos y Alcantarillados (en adelante la “AAA”) y la Autoridad de Carreteras y Transportación (en adelante la “ACT”)) para el año fiscal 2012-2013 fue de aproximadamente \$800 millones, todas con un nivel de deuda combinado que alcanza los \$20,000 millones. Para asistir a las corporaciones públicas en convertirse nuevamente en entidades financieramente autosuficientes, esta Administración tomó varias medidas para mejorar sus finanzas.

Por ejemplo, el 27 de febrero de 2013, esta Administración completó la transacción que involucraba la Concesión Administrativa del Aeropuerto Internacional Luis Muñoz Marín a través de una Alianza Público Privada, la cual fortaleció la posición fiscal de la Autoridad de los Puertos y redujo las dificultades financieras de dicha corporación pública y del Banco Gubernamental de Fomento para Puerto Rico (en adelante, “BGF”) al repagarse sobre \$490 millones adeudados a, o garantizados por, el BGF; el 25 de junio de 2013, fueron aprobadas las leyes 30-2013 y 31-2013 que aumentaron los ingresos de la ACT por aproximadamente \$270 millones y permitieron que dicha corporación pública comenzara a amortizar todas las líneas de crédito que adeuda al BGF, actualmente ascendentes a aproximadamente \$1,800 millones, y a cubrir gastos operacionales; en julio de 2013, la Junta de Gobierno de la AAA implementó un aumento promedio de 60% en la tarifa del servicio de agua que había aprobado la administración anterior para cubrir gastos operacionales y mejorar la cubierta del servicio de deuda, lo que le ha permitido a dicha corporación pública no continuar dependiendo de subsidios del Fondo General para cubrir sus déficits operacionales; y, a pesar de los pronósticos, en agosto de 2013, la AEE logró colocar una emisión de bonos por \$673 millones que le permitió parcialmente financiar su programa de mejoras capitales.

No obstante todo lo anterior, las medidas tomadas hasta el momento, tanto con el Fondo General, como con las corporaciones públicas, no han sido suficientes para solucionar el problema económico y fiscal de Puerto Rico. Como es de conocimiento público, por primera vez en nuestra historia constitucional, el crédito público del Estado Libre Asociado se ha visto comprometido a raíz de la degradación a nivel especulativo de sus bonos de obligación general por las principales agencias clasificadoras de crédito, ello a pesar de todas las medidas gubernamentales antes mencionadas. La pérdida del grado de inversión de la deuda pública pone en peligro la salud fiscal y económica del pueblo de Puerto Rico, y compromete indebidamente el crédito del Gobierno Central y las corporaciones públicas.

A lo anterior se añade que durante el año fiscal 2013-2014, la liquidez del gobierno y del BGF se vio afectada adversamente por varios factores que limitaron significativamente los recursos disponibles y la flexibilidad financiera del gobierno para sufragar sus operaciones

gubernamentales. Estos factores incluyen un incremento significativo en las tasas de interés y el rendimiento en el mercado de las obligaciones del gobierno, sus instrumentalidades y corporaciones públicas, el acceso limitado de estas entidades a los mercados de capital estadounidenses y una reducción marcada en la liquidez del mercado de capital de la isla. Esta crisis, además, limitó la capacidad del BGF de proveer financiamiento interino a corporaciones públicas y otras entidades. Ante este marco, las instituciones financieras privadas, locales e internacionales, las cuales en el pasado sirvieron también como fuente de liquidez interina para el Gobierno Central y las corporaciones públicas, han reducido y continúan reduciendo de manera significativa el crédito extendido al Estado Libre Asociado y a las corporaciones públicas, dejando de ser una opción viable de financiamiento interino. La reducción en el acceso a los mercados de capital y al crédito provisto por instituciones financieras privadas, también limita el volumen de la deuda que puede ser emitida y, por lo tanto, imposibilita al gobierno a depender de financiamiento para sufragar el costo de sus operaciones gubernamentales.

El BGF quien tiene la función estatutaria de servir como asesor financiero y agente fiscal del Gobierno del Estado Libre Asociado, sus instrumentalidades, municipios y corporaciones públicas, y además, ha servido también como fuente de financiamiento interino para todo el aparato gubernamental, ha visto su liquidez afectada por, precisamente, financiar déficits operacionales en varias de las corporaciones públicas. En los estados financieros del BGF para el año fiscal terminado el 30 de junio de 2013, los auditores enfatizan que el BGF tiene préstamos por cobrar al Estado Libre Asociado y a sus corporaciones públicas por \$6,900 millones o el 48% de los activos totales del BGF. Por otro lado, los préstamos por cobrar a los municipios totalizaron \$2,212 millones o el 15% de los activos totales del BGF. Por lo tanto, la liquidez y condición financiera del BGF depende significativamente de la capacidad del Estado Libre Asociado y sus corporaciones públicas para repagar su deuda, la cual como hemos indicado anteriormente, está severamente afectada.

En el marco de lo anterior, la presente Administración tomó varias medidas para mejorar la liquidez del BGF. Por ejemplo, en marzo de 2014 se realizó una histórica emisión de bonos de obligaciones generales del Estado Libre Asociado por la cantidad de \$3,500 millones, cuyo producto neto fue utilizado, principalmente, para el repago de obligaciones del Estado Libre Asociado con el BGF. También, se aprobó la Ley Núm. 24-2014 para que el BGF pueda, entre otros, requerir a ciertas entidades gubernamentales que transfieran al BGF el balance de sus cuentas de efectivo que mantienen en instituciones del sector privado. Además, dicha Ley, le prohíbe al BGF aprobar préstamos a corporaciones públicas que no puedan demostrar que cuentan con las fuentes de ingresos suficientes para cubrir el servicio de la deuda del nuevo financiamiento. Así, dicha ley tiene el propósito de imponer disciplina fiscal a las entidades públicas y preservar la liquidez y situación financiera del BGF. Aunque estas medidas, junto a otros esfuerzos, han logrado aumentar la liquidez del Banco, este aún no tiene la solidez financiera suficiente como para satisfacer por sí solo las necesidades de financiamiento actuales del Gobierno del ELA y, especialmente, de sus corporaciones públicas, máxime con el acceso limitado al mercado de estas entidades.

Como consecuencia de esta situación de liquidez que ha recrudecido el difícil panorama fiscal y financiero del país, esta Administración ha propuesto aprobar un

presupuesto balanceado para el Estado Libre Asociado sin financiamientos de déficits operacionales ni refinanciamientos de deuda para el año fiscal 2014-2015. Además, ya se han tomado varias medidas de reducción de gastos y de reorganización operacional a nivel de agencias y de corporaciones públicas, incluyendo la promulgación de la Ley Especial de Sostenibilidad Fiscal y Operacional del Gobierno del Estado Libre Asociado de Puerto Rico, la Ley 66-2014, de modo que tanto el Gobierno Central como las corporaciones públicas puedan cubrir sus gastos operacionales con los ingresos recaudados por dichas entidades y no mediante fondos no recurrentes, como lo son préstamos o refinanciamientos de deuda. La Ley 66-2014 declaró una emergencia fiscal en el país para:

La recuperación fiscal y económica, tras la degradación del crédito de Puerto Rico y la disminución de recaudos que afecta la liquidez del Estado, salvaguardando el mandato constitucional para el pago de intereses y amortización de la deuda pública, se adopta un plan para manejar las consecuencias de la misma y establecer una gerencia estructurada que permita cumplir con los compromisos del País. De igual manera, se garantiza la continuidad de la gestión pública en áreas esenciales de salud, seguridad, educación, trabajo social y desarrollo, entre otros, así como la prestación de los servicios necesarios e indispensables para la ciudadanía. Esta Ley tendrá como política pública la restauración del crédito público del Estado Libre Asociado de Puerto Rico mediante la eliminación a corto plazo del déficit del Fondo General y mejoras en la condición fiscal de las corporaciones públicas, sin recurrir al despido de empleados públicos de carrera o regulares, ni afectar las funciones esenciales de las agencias de gobierno que brindan servicios de seguridad, educación, salud o de trabajo social. Este plan estructurado resulta indispensable para proteger la disponibilidad de efectivo del Estado Libre Asociado de Puerto Rico de forma tal que no se afecte la prestación de los servicios indispensables que recibe la ciudadanía. Este plan considera los retos que Puerto Rico enfrenta para restaurar el crédito público y atender la incertidumbre sobre la duración, magnitud y costo del acceso a los mercados de capital en ausencia de una calificación de grado de inversión.

Aunque la implantación de la Ley 66-2014 redundará en aproximadamente \$230 millones en ahorros combinados para todas las corporaciones públicas, dichas medidas de control fiscal no serán suficientes para solucionar la situación fiscal inmediata de muchas de las corporaciones públicas del país. Corporaciones públicas del Estado Libre Asociado que proveen servicios públicos esenciales, siendo la AEE el ejemplo más dramático, enfrentan hoy día retos operacionales, fiscales y financieros significativos. Durante los pasados años, estas corporaciones públicas han recurrido a financiamientos, en forma de emisiones de bonos en los mercados de capital o mediante la obtención de préstamos, garantías u otro apoyo financiero del BGF o instituciones financieras privadas, para cubrir déficits presupuestarios recurrentes. Estas condiciones fiscales y financieras han sido exacerbadas, además, por la necesidad de estas corporaciones públicas de invertir cantidades sustanciales en su plan de mejoras de capital, muchas veces requerido por la reglamentación federal aplicable. Como resultado de lo anterior, algunas de estas corporaciones públicas también cargan con un alto

nivel de obligaciones financieras en relación a la disponibilidad de recursos para cubrir el servicio de deuda de las mismas.

Al presente, según discutido anteriormente, estas corporaciones públicas tienen acceso limitado a los mercados de capital y su habilidad para repagar sus deudas a corto plazo está severamente comprometida. Al mismo tiempo, y a diferencia de las malas prácticas anteriores, el Gobierno de Puerto Rico ha implantado políticas públicas responsables por lo que el BGF ya no proveerá financiamiento para cubrir los déficits operacionales de las corporaciones públicas, así como tampoco lo hará el Departamento de Hacienda del Estado Libre Asociado debido a que, además de que se trata de prácticas que no son financieramente saludables, el BGF y el Gobierno Central no están en condición de cubrir dichos déficits. Como se ha indicado anteriormente, las corporaciones públicas bajo esta Administración han estado tomando las medidas necesarias para lograr su autosuficiencia económica, pues alcanzar dicha autosuficiencia es fundamental en la nueva política de responsabilidad que exigen los puertorriqueños. Ahora bien, la falta de acceso a financiamiento público o subsidios para cubrir estos déficits podría resultar en que algunas corporaciones públicas advengan incapaces de pagar sus deudas a su vencimiento, honrar sus otras obligaciones contractuales y continuar realizando funciones públicas importantes, y a la vez proveer mantenimiento y mejoras adecuadas a infraestructura existente o hacer nuevas inversiones necesarias para poder continuar brindando servicios vitales y cumplir con requisitos reglamentarios.

Como fue reconocido por esta Asamblea Legislativa al momento de la aprobación de las Leyes Núm. 30 y 31 de 2013 que, como se indicó anteriormente, asignaron nuevos recaudos a la ACT, dicha corporación pública desde hace algunos años atraviesa una situación precaria debido a la merma general de sus ingresos exacerbado por aumentos en el costo de su operación. Basado en los estados financieros auditados de dicha corporación para los años fiscales 2010 al 2013, la ACT tuvo pérdidas operacionales acumuladas (antes de depreciación) por \$349 millones. Estas deficiencias fueron subsanadas por el BGF durante los pasados años, de modo que dicha corporación continuara manteniendo su operación y realizando sus pagos a sus principales acreedores. **Durante el pasado cuatrienio 2009-2012, el panorama fiscal de la ACT se recrudeció ante un patrón severo de subsanar su desfase operacional mediante líneas de crédito del BGF, que durante dicho periodo totalizaron \$2,113 millones, sin que se identificaran fuentes de repago para cumplir con dichas obligaciones.**

De otra parte, la Asamblea Legislativa también ha reconocido, a través de la Ley de Transformación y ALIVIO Energético de Puerto Rico, Ley 57-2014, que los altos costos energéticos, que a finales de 2012 alcanzaron su máximo histórico de 31 centavos el kilovatio-hora, han detenido nuestro desarrollo económico y que estos altos costos son resultado de la dependencia de la AEE en el petróleo para la generación de electricidad y su alto nivel de deuda, la cual ha dificultado durante varios años su capacidad de implantar mejoras de capital necesarias para sus sistemas de generación, transmisión y distribución de energía. La ACT y la AEE ejemplifican la naturaleza y el alcance de la crisis que varias de nuestras corporaciones públicas enfrentan actualmente, que las pudiese llevar a una situación sin precedentes en la cual éstas se vean impedidas de continuar proveyendo servicios

gubernamentales esenciales que promueven el bienestar público, mientras honran sus deudas y sus otras obligaciones.

Los retos financieros que enfrentan algunas de las corporaciones públicas se han agravado aún más por los propios retos fiscales y económicos del Gobierno Central, según mencionado anteriormente. Los déficits presupuestarios por décadas, la recesión económica prolongada (desde el 2006), el alto nivel de desempleo que en el año 2010 alcanzó el 16%, la disminución de la población y los altos niveles de deuda y obligaciones de pensiones han contribuido a los problemas financieros de las corporaciones públicas. Todos estos factores han llevado a la ampliación del diferencial crediticio (*credit spread*) de la deuda del sector público y a la degradación de la clasificación crediticia, según discutido anteriormente. Esto, a su vez, ha comprometido la liquidez del Estado Libre Asociado y de sus corporaciones públicas y ha afectado adversamente su acceso a los mercados de capital y a fuentes privadas de financiamiento, así como el costo de tomar dinero prestado.

Esta Asamblea Legislativa ha demostrado reiteradamente su voluntad de actuar responsablemente para enfrentar los retos económicos y financieros del Estado Libre Asociado y sus corporaciones públicas. Se han aprobado reformas integrales al Sistema de Retiro de Empleados del Gobierno del Estado Libre Asociado a través de la Ley Núm. 3-2013, según enmendada; al Sistema de Retiro de Maestros, a través de la Ley Núm. 160-2013, y al Sistema de Retiro de la Judicatura, a través de la Ley Núm. 162-2013, para asegurar que los retirados continúen recibiendo sus pensiones mientras se atienden las necesidades de flujo de efectivo del Estado Libre Asociado. También se ha aprobado legislación para una reforma integral de energía, Ley 57-2014, para promover el desarrollo económico y el bienestar de los ciudadanos del Estado Libre Asociado.

A la luz de la situación financiera actual y el objetivo de la Administración de balancear el presupuesto del Estado Libre Asociado, el Gobernador Alejandro García Padilla recientemente anunció que se le requeriría a las corporaciones públicas del Estado Libre Asociado alcanzar auto-suficiencia financiera. Esta auto-suficiencia, sin embargo, no debe alcanzarse a través de aumentos en las tarifas básicas, las cuales obstaculizan y deprimen la actividad y el desarrollo económico. Dado que las corporaciones públicas ya no pueden depender de préstamos del BGF, subsidios del Estado Libre Asociado o aumentos en las tarifas para cubrir sus gastos operacionales, éstas podrían no ser capaces de pagar sus deudas según éstas vencen y honrar sus otras obligaciones contractuales, mientras tratan al mismo tiempo de cumplir con sus obligaciones de proveer servicios a nuestra ciudadanía. Si las corporaciones públicas dejaran de pagar sus obligaciones y sus acreedores ejercitaran sus remedios, la falta de una estructura eficaz y un proceso ordenado para manejar los intereses de los acreedores y de los consumidores, impediría al Gobierno del Estado Libre Asociado proteger los intereses de la ciudadanía de continuar recibiendo servicios públicos esenciales y promover el bienestar general del pueblo de Puerto Rico.

Los retos aquí descritos no son asuntos que se pueden atender en un futuro de manera gradual durante un periodo prolongado de tiempo, los hemos heredado y están con nosotros hoy, constituyen una amenaza real y palpable para la habilidad del gobierno de proteger y

promover el bienestar general del pueblo de Puerto Rico. Puerto Rico se encuentra en un estado de emergencia fiscal.

B. Insuficiencia de las Leyes Locales Actuales e Inaplicabilidad de la Ley Federal

Al presente, no hay una ley local que establezca un procedimiento ordenado de recuperación para las corporaciones públicas que pudiesen llegar a estar insolventes. Las leyes orgánicas de la AEE y la AAA, por ejemplo, contienen disposiciones que, en el contexto de un incumplimiento de sus obligaciones, contemplan la designación por un tribunal de un síndico que, sujeto a la dirección del tribunal, se haría cargo de las operaciones de la corporación pública y distribuiría sus ingresos según ordenase el tribunal. El síndico permanecería a cargo de la corporación pública hasta que se hayan subsanado todos los incumplimientos de dicha corporación pública. Estas disposiciones generales son inapropiadas para atender las complejidades involucradas en un proceso de recuperación en caso de insolvencia; carecen de las normas y procedimientos necesarios para administrar de manera apropiada y equitativa el proceso de recuperación de una corporación pública para beneficio y protección de todas las partes interesadas.

Al mismo tiempo, las disposiciones de las leyes federales aplicables a corporaciones en estado de insolvencia, no aplican a las corporaciones públicas del Estado Libre Asociado.

Esta Ley está dirigida a resolver la brecha legal existente de una manera que sea consistente con los requisitos constitucionales del Estado Libre Asociado y federales aplicables, permitiendo que las corporaciones públicas del Estado Libre Asociado puedan atender sus emergencias fiscales y financieras en una manera que maximice el valor para los acreedores mientras protege funciones públicas importantes para la salud, seguridad y bienestar público, colocando al Estado Libre Asociado en posición de hacer crecer su economía para el beneficio colectivo de todas las partes afectadas. Esta Ley toma en cuenta la complejidad de estos procedimientos y provee procedimientos especiales a través de los cuales la Jueza Presidenta del Tribunal Supremo de Puerto Rico puede designar a jueces a supervisar estos procedimientos, los cuales, a su vez, podrán nombrar comisionados especiales con la experiencia necesaria para asistir en el manejo de dichos procedimientos. Esta no es una ley de quiebras, sino una ley para lograr el cumplimiento ordenado de las deudas de una corporación pública elegible.

C. Base Constitucional

Las normas esbozadas en esta ley son consistentes con la jurisprudencia del Tribunal Supremo de los Estados Unidos con relación a las reglas y procedimientos apropiados para la recuperación fiscal de las entidades que no son elegibles para alivio bajo las leyes federales aplicables.

Según se discute a continuación, el Estado Libre Asociado tiene el poder de promulgar legislación que permita que una corporación pública modifique los términos de su deuda con el consentimiento de un número sustancial de acreedores afectados o a través de un

procedimiento supervisado por un tribunal, debido a que el Tribunal Supremo de los Estados Unidos ha reconocido el poder de los estados para establecer sus propias leyes para entidades que el Congreso no ha hecho elegibles para solicitar protección bajo las leyes federales aplicables como lo es el caso de Puerto Rico. Además, Puerto Rico tiene el poder de razón de estado (*police power*) para aprobar leyes para el repago ordenado de las deudas cuando enfrentan una emergencia económica, pues el Congreso promulgó legislación en 1950 y en 1952 otorgando al Estado Libre Asociado el poder de gobernar bajo su propia constitución.

Siendo esas las circunstancias, los estados tienen el poder de promulgar sus propias leyes estableciendo un proceso para ajustar deudas. También se han validado leyes promulgadas con el propósito de permitir que compañías aseguradoras y bancos, ambos inelegibles bajo disposiciones como por ejemplo los Capítulos 9 y 11 del título 11 del Código de los Estados Unidos, ajusten sus deudas.

Los estados también pueden promulgar su propio estatuto de ajuste y cumplimiento con sus deudas en virtud de su poder de razón de estado (*police power*). El tribunal de Faitoute Iron & Steel Co. V. City of Asbury Park, 316 U.S. 502 (1942), explicó que el estado retiene su poder con relación al bienestar económico del estado: “Si un estado retiene poder de razón de estado (*police power*) en relación a sus asociaciones de construcción y préstamos... debido a la relación de estas con el bienestar económico del Estado, y si puede autorizar la reorganización de un banco insolvente tras la aprobación del superintendente estatal de bancos y de un tribunal,... a un Estado ciertamente no debería negársele un poder similar para el mantenimiento de sus subdivisiones políticas y la protección no sólo de su crédito, sino de todos los acreedores...”. Faitoute Iron & Steel Co., 315 U.S. a las págs. 313-14. Este poder de razón de estado (*police power*) cubre tanto la promulgación del estatuto modificado donde el Congreso no ha actuado, como el uso del poder de razón de estado (*police power*) durante periodos de emergencia.

El Estado Libre Asociado tiene autoridad soberana para promulgar sus propias leyes, siempre y cuando la ley no esté en conflicto con nuestra Constitución, la Constitución de los Estados Unidos o con una ley federal aplicable. Con la aprobación de la Ley 600, el Congreso autorizó al Estado Libre Asociado a redactar su propia constitución. La legislación fue ofrecida en “carácter de un pacto para que el pueblo de Puerto Rico pueda organizar un gobierno en virtud de la adopción de una constitución propia”. Al aprobar el proyecto de Constitución, el Congreso señaló: “En este contexto, el pueblo de Puerto Rico ejercerá un autogobierno. En cuanto a los asuntos locales, la esfera de acción y los métodos del gobierno tienen un parecido a los de cualquier Estado de la Unión”.

Los tribunales han reconocido esta autoridad soberana del Estado Libre Asociado. El Tribunal Supremo de Estados Unidos declaró que el Estado Libre Asociado es “soberano sobre asuntos no basados en la Constitución”. El Tribunal ha reiterado esta posición en dos ocasiones. En particular, en Examining Board of Engineers v. Flores de Otero, 426 U.S. 572, 594 (1976), donde el Tribunal señaló que el “propósito del Congreso en la legislación de 1950 y 1952 fue conceder a Puerto Rico el grado de autonomía e independencia normalmente asociado con un estado de la unión”. En Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982), el Tribunal explicó, además, que “...Puerto Rico, . . . , es una entidad política

autónoma, soberana con relación a asuntos no regidos por la Constitución”. Más aún, en Córdova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, 649 F.2d 36, 41 (1st Cir. 1981), caso que fue citado con aprobación por el Tribunal Supremo de los Estados Unidos en U.S. v. Lara, 541 U.S. 193, 204 (2004), el Tribunal de Apelaciones de Estados Unidos para el Primer Circuito concluyó que:

In sum, Puerto Rico’s status changed from that of a mere territory to the unique status of Commonwealth. And the federal government’s relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

La Constitución del Estado Libre Asociado reconoce expresamente el poder de razón de estado (*police power*) del Estado Libre Asociado. En virtud del Artículo II, Sección 18, los ciudadanos del Estado Libre Asociado tienen derecho a organizarse y a negociar colectivamente. Ese derecho, sin embargo, no afecta el poder de razón de estado (*police power*) del Estado Libre Asociado: “Nada de lo contenido en esta sección menoscabará la facultad de la Asamblea Legislativa de aprobar leyes para casos de grave emergencia cuando estén claramente en peligro la salud o la seguridad públicas, o los servicios públicos esenciales”. Además, el Artículo II, Sección 19, reconoce explícitamente el poder de razón de estado (*police power*) del Estado Libre Asociado: “Tampoco se entenderá como restrictiva de la facultad de la Asamblea Legislativa para aprobar leyes en protección de la vida, la salud y el bienestar del pueblo”.

Igualmente, la Asamblea Legislativa tiene el poder para crear los tribunales del Estado Libre Asociado desde 1950 y 1952, cuando se aprobó legislación otorgándole a Puerto Rico el estatus de Estado Libre Asociado y el poder para gobernar bajo su propia constitución. La Sección 2 del Artículo V de la Constitución del Estado Libre Asociado le otorga a la Asamblea Legislativa autoridad para crear los tribunales del Estado Libre Asociado. Por lo tanto, la Asamblea Legislativa tiene el poder de promulgar, y un tribunal de Puerto Rico tiene el poder de hacer valer, un estatuto para el cumplimiento ordenado de las deudas.

D. Propósitos y Objetivos de la Ley

Esta Asamblea Legislativa considera que la situación actual de emergencia fiscal requiere legislación que permita a las corporaciones públicas, entre otras cosas, (i) ajustar sus deudas en el interés de todos los acreedores afectados por dicho ajuste, (ii) establecer procedimientos para el cumplimiento ordenado y, si fuera necesario, la reestructuración de la deuda de manera consistente con la Constitución del Estado Libre Asociado y la Constitución de los Estados Unidos, y (iii) maximizar los valores que pueden recibir las partes interesadas, proporcionándoles el valor corriente a base de la capacidad de pago de cada deudor. Además, esta Asamblea Legislativa cree que las corporaciones públicas pueden regresar a una posición de solvencia y buen crédito al posponer o reducir el servicio de la deuda con el

consentimiento de la gran mayoría de los acreedores, como parte del programa de recuperación, según se contempla en el Capítulo 2 de esta Ley.

La Asamblea Legislativa reconoce que, si las corporaciones públicas no utilizan los ingresos que se han comprometido para el pago del servicio de la deuda para mantener los servicios públicos básicos que son necesarios para preservar la salud, la seguridad y el bienestar público de nuestros ciudadanos, probablemente no podrán honrar sus deudas. Esta Ley también reconoce que la ausencia de un proceso ordenado para el cumplimiento con la deuda y la recuperación de las corporaciones públicas tendría como consecuencia probable que no puedan balancear de manera justa los intereses de todas las partes interesadas. Para atender estos retos de manera que se trate a los acreedores de manera justa y se balanceen los intereses de los acreedores con el interés del Estado Libre Asociado de proteger a la gente y crecer y desarrollarse para el beneficio de sus residentes, esta Asamblea Legislativa ha decidido promulgar una Ley que es consistente con los preceptos dispuestos por los tribunales de Puerto Rico y de los Estados Unidos.

E. Resumen de la Ley

La Ley contempla dos tipos de procedimientos para atender el alto nivel de deuda de las corporaciones públicas. El primero es un procedimiento consensual de modificación de deuda que culmina con un programa de recuperación (Capítulo 2 de esta Ley) y el segundo es un procedimiento supervisado por el tribunal que culminaría en un plan ordenado de cumplimiento con las deudas (Capítulo 3 de esta Ley). Una corporación pública puede solicitar alivio bajo el Capítulo 2 o el Capítulo 3, o bajo ambos de forma consecutiva o concurrente. Esta Ley está diseñada en muchos aspectos para que refleje ciertas disposiciones claves del título 11 del Código de los Estados Unidos, y tanto el Tribunal como las partes interesadas deben revisar y considerar el precedente existente al amparo del título 11 del Código de Estados Unidos, de ser aplicable, al momento de interpretar e implementar esta Ley.

Elegibilidad

Las siguientes entidades no son elegibles para solicitar alivio bajo esta Ley: el Estado Libre Asociado (para evitar cualquier duda, se aclara que las disposiciones de esta Ley no son aplicables a la deuda de obligación general del Estado Libre Asociado ni a la deuda garantizada por el Estado Libre Asociado), los setenta y ocho (78) municipios del Estado Libre Asociado, el BGF y sus subsidiarias, afiliadas y las entidades adscritas al BGF; el Fideicomiso de Niños, el Sistema de Retiro de Empleados del Estado Libre Asociado de Puerto Rico y sus instrumentalidades, el Sistema de Retiro de la Judicatura, la Agencia para el Financiamiento Municipal, la Corporación de Financiamiento Municipal, la Corporación para el Financiamiento Público de Puerto Rico, la Autoridad para el Financiamiento de Facilidades Industriales, Turísticas, Educativas, Médicas y de Control Ambiental; la Autoridad para el Financiamiento de la Infraestructura de Puerto Rico, la Corporación del Fondo de Interés Apremiante (COFINA), el Sistema de Retiro para Maestros, y la Universidad de Puerto Rico.

Resumen del Capítulo 1 de la Ley

El Capítulo 1 de la Ley establece las disposiciones generales de la misma e incluye tres Subcapítulos, el primero titulado “Título, Propósito, Terminología e Interpretación”, el segundo titulado “Jurisdicción y Procedimiento” y el tercero titulado “Protecciones de los Acreedores y Gobernanza”. El Subcapítulo I incluye disposiciones relacionadas con, entre otros, definiciones, estándares de interpretación y probatorios, cláusula de separabilidad e inaplicabilidad de otras leyes. El Subcapítulo II establece las normas sobre jurisdicción, las responsabilidades y poderes del Tribunal, elegibilidad, emplazamiento y apelaciones, entre otros. El Subcapítulo III contiene disposiciones relacionadas a las garantías constitucionales de los acreedores, el rol del BGF en procedimientos bajo esta Ley, el poder del Gobernador de nombrar un administrador de emergencia y las herramientas básicas disponibles a una corporación pública elegible que se acoge a la Ley, tales como la continuación de las operaciones y el recobro limitado de compensaciones y traspasos preferentes.

Resumen del Capítulo 2 de la Ley

General. El Capítulo 2 provee un mecanismo para que una corporación pública adopte un programa de recuperación y busque una solución principalmente transaccional para el alivio de la deuda, basada en un programa de recuperación que vincule a todos los tenedores de deuda con el consentimiento de una súper mayoría de dichos tenedores. El programa de recuperación que se contempla en el Capítulo 2 tiene como objetivos: permitir que un deudor elegible logre la auto-suficiencia financiera; distribuir de forma equitativa entre todas las partes interesadas las cargas de cualquier programa de recuperación; y tratar a todos los acreedores por igual a menos que un acreedor acepte tratamiento menos favorable.

El Capítulo 2 fue diseñado a base de la jurisprudencia que ha determinado que no se viola la cláusula constitucional que prohíbe el menoscabo de las obligaciones contractuales al promulgar un régimen de ajuste de deudas cuando se cumple con las siguientes características principales: la existencia de una emergencia fiscal que hace necesaria la aprobación de legislación, el voto de una súper mayoría para vincular a la minoría, la creación de una junta supervisora imparcial que supervise el cumplimiento con el programa de recuperación, distribuciones proporcionales a los acreedores y aprobación del tribunal.

Inicio y Elegibilidad. El proceso del Capítulo 2 comienza cuando la junta de gobierno de la corporación pública y el BGF o el BGF a solicitud del Gobernador, según sea el caso, autoriza a la corporación pública a buscar alivio consensual de deuda con los tenedores de ciertos instrumentos de deuda (los que el Capítulo 2 identifica como instrumentos de deuda afectados). Cualquier entidad gubernamental, que no sea una de las que la Ley expresamente excluye, es elegible para comenzar un proceso de recuperación bajo el Capítulo 2 de esta Ley.

Alcance del Alivio. El alivio disponible bajo el Capítulo 2 consiste en cualquier combinación de enmiendas, modificaciones, relevos o intercambios (a los cuales se les llama colectivamente, enmiendas) a los instrumentos de deuda afectados, siempre que las enmiendas se combinen con el compromiso de la corporación pública de estar sujeta al plan de recuperación. Las enmiendas pueden incluir elementos diversos, tales como ajustes a las tasas

de interés, extensión del vencimiento, reducción de principal y otras revisiones a los instrumentos de deuda afectados.

Suspensión de los Remedios. Después del anuncio público del periodo de suspensión, todos los remedios que de otra manera tendrían los tenedores de, todas las partes interesadas en, y los fiduciarios (*trustees*) y fiduciarios de bonos (*indenture trustees*) y representantes similares relacionados con, los instrumentos de deuda afectados, se suspenderán temporalmente por un periodo de tiempo suficiente para permitir que la corporación pública pueda llevar a cabo discusiones con las partes interesadas, solicitar el consentimiento de los acreedores requerido y obtener la aprobación judicial de las enmiendas. La corporación pública tendrá el poder, a través de una orden del Tribunal, de hacer valer la suspensión temporal de los remedios.

Programa de Recuperación. Una corporación pública que solicita la aprobación de una transacción de alivio de deuda tiene que comprometerse a, y en efecto formular un, programa de recuperación. El programa de recuperación tiene que permitir que la corporación pública logre la auto-suficiencia financiera en base a los ajustes financieros y operacionales necesarios para distribuir la carga del alivio consensual de deuda equitativamente entre todas las partes interesadas. El programa de recuperación, el cual pudiese incluir objetivos de desempeño interinos, necesariamente requerirá que los acreedores afectados compartan la carga del mismo y puede también incluir medidas diseñadas para mejorar márgenes de operación; aumentar ingresos operacionales; reducir gastos operacionales; transferir o de otra forma disponer de activos operacionales existentes; adquirir activos operacionales nuevos; o cerrar o reestructurar operaciones o funciones existentes.

Consentimiento de Acreedores Requerido. Las enmiendas propuestas tienen que ser sometidas a los tenedores de los instrumentos de deuda afectados para su consentimiento o aprobación. Si los tenedores de al menos tres cuartas partes de la suma agregada de deuda que participa en la votación o solicitud de consentimiento aprueban las enmiendas, siempre que los tenedores de al menos la mitad de la cantidad de la deuda con derecho al voto o a consentir en una clase en particular hayan participado, la corporación pública podrá solicitar la aprobación judicial de las enmiendas con el fin de vincular a todos los acreedores de esos instrumentos de deuda afectados con dichas enmiendas.

Aprobación Judicial. El proceso judicial está diseñado para ser eficiente y práctico, a la luz de la naturaleza consensual de la transacción. La sala del tribunal creada por esta Ley, la cual formará parte del Tribunal de Primera Instancia, Centro Judicial de San Juan, tendrá jurisdicción original para resolver cualquier disputa relacionada a cualquier disposición al amparo del Capítulo 2, incluyendo la transacción consensual de alivio de deuda. Una vez la corporación pública solicite la aprobación de las enmiendas, el tribunal tendrá que determinar si (i) las enmiendas propuestas en esa transacción son consistentes con los objetivos del Capítulo 2 y si (ii) el procedimiento de votación se llevó a cabo de forma consistente con el Capítulo 2. Si el tribunal entiende que se cumplieron estos requisitos, el tribunal debe ordenar que las enmiendas propuestas sean efectivas inmediatamente y que todos los tenedores de los instrumentos queden vinculados por los nuevos términos del instrumento. Las enmiendas

serán vinculantes para la corporación pública y cualquier entidad ejerciendo reclamaciones u otros derechos, incluyendo a cualquier beneficiario, respecto a la deuda afectada.

Comisión de Supervisión. Con el fin de monitorear el cumplimiento de la corporación pública con el programa de recuperación, el Capítulo 2 establece una comisión de supervisión compuesta por tres expertos independientes nombrados por el Gobernador. La comisión también tiene la responsabilidad de proveer a los acreedores y al público informes periódicos sobre el cumplimiento con el programa de recuperación. Si la corporación pública no logra cumplir con sus objetivos interinos de desempeño, por ejemplo, la comisión podrá expedir unas determinaciones de incumplimiento y hacer recomendaciones para subsanar dichos incumplimientos.

Resumen del Capítulo 3 de la Ley

General. El Capítulo 3 atiende el problema de la deuda de las corporaciones públicas del Estado Libre Asociado a través de una solución judicial que exige los mismos requisitos de consentimiento que exigen, por ejemplo, los Capítulos 9 y 11 del título 11 del Código de los Estados Unidos. El Capítulo 3 permite que las corporaciones públicas que cualifiquen puedan aplazar el repago de su deuda y reducir el interés y el principal, según sea necesario, de modo que la entidad pueda continuar cumpliendo con sus funciones públicas vitales. Los convenios colectivos podrán ser modificados o rechazados bajo ciertas circunstancias y la deuda comercial podrá ser reducida cuando sea necesario. Al diseñar el Capítulo 3, esta Asamblea Legislativa ha adoptado un modelo similar al del Capítulo 9 del título 11 del Código de los Estados Unidos con el propósito de proveer un concepto familiar para los acreedores y así eliminar la incertidumbre. Como resultado, la Asamblea Legislativa expresa claramente su intención de que la jurisprudencia federal que interpreta las disposiciones del Capítulo 9 del título 11 del Código de los Estados Unidos sea utilizada, siempre que sea aplicable, para interpretar el Capítulo 3 de esta Ley.

Base Constitucional. A pesar de los conceptos comunes que tiene esta legislación con leyes federales análogas, como hemos dicho antes, esta no es una legislación de quiebras, sino un régimen para garantizar el cumplimiento ordenado con las deudas, a medida de la capacidad de cada corporación pública para así hacerlo. Para atender la preocupación del Tribunal Supremo de los Estados Unidos sobre que una municipalidad legisle los términos bajo los cuales las deudas de sus propias instrumentalidades serán manejadas, el Capítulo 3 adopta estándares económicos aún más estrictos que los que adoptó el Congreso para los Capítulos 9 y 11 del título 11 del Código de los Estados Unidos. De igual manera, la premisa que subyace al Capítulo 3 es que éste debe servir como un mecanismo ordenado para atender la deuda que coloque a los acreedores en una mejor posición que la que estarían si todos hicieran valer simultáneamente sus reclamaciones de manera inmediata. Principalmente, el Capítulo 3 logra esta encomienda requiriendo que cada acreedor reciba (i) al menos el valor que recibiría si a todos los acreedores se les permitiera poner en vigor simultáneamente sus respectivas reclamaciones contra la corporación pública y, donde fuere posible, el valor corriente (*going concern value*) más alto de la corporación pública, más (ii) un pagaré que proveerá valor adicional basado en la cantidad por la cual los resultados financieros futuros de la corporación produzcan un flujo de caja positivo. Este pagaré servirá como protección en

contra de que se le pague a los acreedores menos del valor corriente y como una representación del monto que cada acreedor pudiera recibir en el futuro en ausencia del Capítulo 3.

El Capítulo 3 fue diseñado a base del deseo de las corporaciones públicas del Estado Libre Asociado de satisfacer sus obligaciones contractuales en la medida mayor posible. Siempre que sea factible, el Capítulo 3 optará por maximizar las distribuciones a los acreedores de manera consistente con la ejecución de funciones públicas vitales, sin las cuales todos los acreedores estarían en una peor posición. Por ejemplo, en algunas circunstancias, si los recaudos pignorados se le entregasen a los acreedores y no se usaran para sostener la corporación pública, pudiera haber menores recaudos en el futuro para pagar a los acreedores. **Los activos que respaldan los planes de retiro y los planes de beneficios para empleados y ex-empleados siguen siendo inviolables bajo el Capítulo 3. Las obligaciones de sueldos y salarios a empleados, las obligaciones por bienes adquiridos o servicios rendidos por debajo de cierta cantidad (que no podrá ser menor de \$1 millón) y aquellas cantidades adeudadas a los Estados Unidos de América serán pagadas en su totalidad.**

Comienzo y Elegibilidad, Paralización de Acciones. Un caso bajo el Capítulo 3 comienza cuando se presenta una petición de alivio, según se define dicho concepto en el Capítulo 3. Para ser elegible para el Capítulo 3, un peticionario tiene que (i) ser actualmente incapaz o estar en serio riesgo de advenir incapaz de pagar sus deudas válidas según éstas vencen mientras continua realizando sus funciones públicas sin asistencia legislativa o financiera adicional, (ii) ser inelegible para un remedio bajo el Capítulo 11 del título 11 del Código de los Estados Unidos y (iii) estar autorizado a presentar una solicitud por su junta de gobierno y el BGF, o por el Gobernador solicitando a que el BGF lo haga en nombre de la junta de gobierno. La petición debe contener información de los tipos y montos de reclamaciones que el peticionario pretende afectar bajo su plan de reestructuración de deuda. Cualquier acción judicial para recuperar el pago de dichas reclamaciones será paralizada a la fecha en que se presente la petición, canalizando su adjudicación a un solo foro —la sala designada dentro del Tribunal de Primera Instancia, Sala de San Juan, establecida por esta Ley. Una notificación de la petición, de la identificación de las reclamaciones a ser afectadas y de la paralización automática deberá ser provista a los acreedores, junto con una notificación de la oportunidad de servir como voluntario en un comité general a ser nombrado por el tribunal. La notificación también contendrá una fecha establecida por el tribunal para una vista para determinar si el peticionario es elegible para alivio bajo el Capítulo 3 y las fechas límites para presentar cualquier objeción a la elegibilidad. La vista de elegibilidad debe celebrarse no más tarde de 30 días luego de que se presente la petición.

Pendencia de un Caso. Durante la pendencia de su caso bajo el Capítulo 3, un peticionario se mantiene en posesión y control de sus activos y operaciones. Luego de que se presenta la petición, cualquier gasto en que el peticionario incurra relacionado con dicha petición es un gasto administrativo, a ser pagado en su totalidad en el curso ordinario, y no quedará afectado por el plan del peticionario. El peticionario podrá obtener un crédito no colateralizado o incurrir en deuda en el curso ordinario como un gasto administrativo; si el peticionario no puede obtener un crédito o incurrir en deuda en esos términos, el Capítulo 3

provee al tribunal el poder de autorizar protecciones adicionales significativas para las entidades que estén dispuestas a extenderle crédito al peticionario.

Rechazo de Contratos. El peticionario también tendrá el poder de ceder o rechazar contratos en los que sea parte si el tribunal encuentra que esto adelanta el mejor interés del peticionario. Las contrapartes a los contratos rechazados tendrán reclamaciones de incumplimiento de contrato, a ser atendidas bajo el plan del peticionario. Los convenios colectivos no están sujetos a ser rechazados o modificados, a menos que el tribunal determine que, ausente un rechazo o modificación, el peticionario probablemente advendría incapaz de cumplir con sus funciones públicas. Esta determinación debe hacerse sólo a base del precedente del Tribunal Supremo de los Estados Unidos, luego de que la información subyacente a la petición de rechazo haya sido compartida con los representantes de la unión y los esfuerzos razonables de negociar una modificación voluntaria hayan fracasado.

Plan de Ejecución de Deuda. Sólo el peticionario o el BGF, a solicitud del Gobernador, pueden proponer un plan de ejecución de deuda bajo el Capítulo 3. Los acreedores deben dividirse en diferentes clases (a base de las diferentes garantías de colateral, prioridades o bases racionales para clasificar reclamaciones similares por separado) para trato bajo el plan. El trato bajo el plan debe ser uno en el que cada acreedor reciba pagos y/o propiedad con un valor presente de al menos el monto que las reclamaciones en un grupo hubieran recibido si a todos los acreedores de ese grupo que tuviesen reclamaciones contra el peticionario se les hubiera permitido hacerlas valer en la fecha en que la petición fue presentada y las distribuciones se maximizaran bajo las circunstancias. Bajo el plan, cada acreedor afectado también deberá recibir una nota que provea para un 50% del flujo de caja positivo del peticionario por diez (10) años luego de la fecha de efectividad del plan. Ningún plan puede ser confirmado a menos que al menos un grupo de deuda afectada vote para aceptar dicho plan, pero todas las reclamaciones de los otros grupos podrán ser tratadas de la manera que se describe arriba independientemente de si acepta el plan o no. Esto protege a la corporación pública de entrar en planes de repago que no puede costear.

F. Intención de que Controversias sean Resueltas por un Solo Tribunal

Esta Ley crea la Sala de Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas en el Tribunal de Primera Instancia, Centro Judicial de San Juan (en adelante la “Sala Especializada”), la cual tendrá jurisdicción y competencia exclusiva sobre todos los asuntos relacionados con esta Ley. Conforme a ello, es la intención de esta Asamblea Legislativa que todas las controversias que surjan sobre o relacionadas con esta Ley (o relacionadas con cualquier deuda afectada por esta Ley), donde sea que sean presentadas, sean dirigidas para ser resueltas por la Sala Especializada creada por esta Ley (o al Tribunal de Distrito de los Estados Unidos para el Distrito de Puerto Rico, de ser aplicable) y que los tribunales en los Estados de los Estados Unidos (y en cualquier tribunal federal localizado fuera del Estado Libre Asociado) declinen adjudicar dichas controversias de la misma manera en que esta Asamblea Legislativa entiende que los tribunales del Estado Libre Asociado se abstendrían de atender controversias en contra de Estados de los Estados Unidos y sus instrumentalidades que encaren una crisis fiscal y financiera similar a la del Estado Libre Asociado.

G. Conclusión

Como se ha demostrado anteriormente, esta Asamblea Legislativa tiene el poder de promulgar legislación que permita que una corporación pública modifique los términos de su deuda con el consentimiento de un número sustancial de acreedores afectados o a través de un procedimiento supervisado por un tribunal. Ciertas corporaciones públicas están operando bajo condiciones fiscales y financieras que, de no tomarse acción de emergencia para evitar su insolvencia, tendrían que someterse a un proceso de ajuste de deudas pues con su actual estructura de ingresos no serán capaces de pagar sus deudas según éstas vencen y honrar sus otras obligaciones contractuales, mientras continúan brindando servicios a la gente. La presente Ley provee el andamiaje necesario para establecer un proceso ordenado que permitiría a aquellas corporaciones públicas que así lo necesiten satisfacer sus deudas y otras obligaciones contractuales al máximo de sus habilidades, mientras garantizan la continuidad de las funciones gubernamentales en la provisión de servicios públicos esenciales.

A la luz de lo anterior, esta Asamblea Legislativa, al amparo del estado de emergencia fiscal declarado en la Ley 66-2014, confirma que la aprobación de esta Ley es esencial para asegurar que las corporaciones públicas del Estado Libre Asociado satisfagan ordenadamente sus deudas, de modo que puedan continuar brindando servicios indispensables al pueblo de Puerto Rico, de forma ininterrumpida.

DECRÉTASE POR LA ASAMBLEA LEGISLATIVA DE PUERTO RICO:

Capítulo 1: Disposiciones Generales

Subcapítulo I: Título, Propósito, Terminología e Interpretación

Sección 101.—Título Corto y Emergencia Fiscal.

(a) Esta ley se conocerá como la “Ley para el Cumplimiento de las Deudas y la Recuperación de las Corporaciones Públicas de Puerto Rico.”

(b) Bajo la Ley Núm. 66–2014, la Asamblea Legislativa ha declarado un estado de emergencia fiscal para el Estado Libre Asociado y sus instrumentalidades.

(c) La Asamblea Legislativa, en el ejercicio del poder de razón de Estado, está facultada para adoptar aquellas medidas que propendan a proteger la salud, la seguridad y el bienestar público, de forma estructurada mientras se atiende la situación fiscal por la que atraviesa el país y, en particular, sus corporaciones públicas. A tales efectos, es potestad de la Asamblea Legislativa aprobar leyes en aras de responder a intereses sociales y económicos, así como a situaciones de emergencia. La Sección 19 de la Carta de Derechos de la Constitución del Estado Libre Asociado de Puerto Rico dispone que la enumeración de derechos contenida en el Artículo II no “se entenderá como restrictiva de la facultad de la Asamblea Legislativa para aprobar leyes en protección de la vida, la salud y el bienestar del pueblo.” Asimismo, la Sección 18 de la Carta de Derechos le confiere la facultad a esta Asamblea Legislativa para aprobar leyes para casos de grave emergencia cuando estén claramente en peligro la salud, la seguridad pública o los servicios gubernamentales esenciales.

(d) Esta ley se aprueba en el ejercicio del poder de razón del Estado, así como en la facultad constitucional que tiene la Asamblea Legislativa, reconocida en el Artículo II, Secciones 18 y 19 de la Constitución del Estado Libre Asociado de Puerto Rico, de aprobar leyes en protección de la vida, la salud y el bienestar del pueblo, así como en casos de grave emergencia cuando estén claramente en peligro la salud, la seguridad pública o los servicios gubernamentales esenciales. Por estas razones, esta Ley tendrá primacía sobre cualquier otra ley.

(e) Esta Ley tendrá como política pública la restauración del crédito público de las corporaciones públicas del Estado Libre Asociado mediante mejoras en la condición fiscal de las corporaciones públicas, sin afectar las funciones esenciales de dichas entidades.

Sección 102.—Definiciones.

Los siguientes términos y frases, según se usan en esta Ley, tendrán los significados que se expresan a continuación:

(1) “acreedor” significa el tenedor de una reclamación contra cualquiera o ambos de:

(a) un deudor del sector público que solicite la aprobación de una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley; y/o

(b) un peticionario bajo el Capítulo 3 de esta Ley.

(2) “acreedor afectado” significa un acreedor tenedor de deuda afectada.

(3) “administrador de emergencia” significa una persona natural que sea nombrada como administrador de emergencia bajo la Sección 135 de esta Ley.

(4) “afiliada” significa, con relación a cualquier entidad, otra entidad que, directa o indirectamente, a través de uno o más intermediarios, controla, es controlada por, o está bajo control común junto a, la primera entidad especificada.

(5) “agente de notificación” significa el agente que un deudor elegible, un peticionario, o el BGF (a nombre del deudor elegible o el peticionario) puede contratar a costo de dicho deudor elegible o peticionario conforme a la sección 121 de esta Ley.

(6) “alegaciones” significa cualquier documento, incluyendo cualquier moción, radicado con la Sala Especializada en cualquier procedimiento bajo el Capítulo 2 o el Capítulo 3 de esta Ley.

(7) “BGF” significa el Banco Gubernamental de Fomento para Puerto Rico, incluyendo cualquier entidad sucesora o adicional creada o que sea creada para realizar cualquier función del Banco Gubernamental de Fomento para Puerto Rico.

(8) “caso” significa un caso comenzado bajo el Capítulo 3 de esta Ley.

(9) “colateral en efectivo” significa el dinero en efectivo o equivalente a dinero en efectivo de un peticionario en la medida que esté gravado por gravámenes mobiliarios u otros gravámenes válidos.

(10) “comité de acreedores” significa un comité nombrado por el Tribunal conforme a la Sección 318 de esta ley.

(11) “comité de supervisión” significa un comité integrado por tres (3) expertos independientes nombrados por el Gobernador bajo el Capítulo 2 de esta Ley, de los cuales no más de uno (1) puede ser residente del Estado Libre Asociado al momento de su nombramiento.

(12) “comité general” significa el comité creado conforme a la sección 318(a) de esta Ley.

(13) “Constitución del Estado Libre Asociado” significa la Constitución del Estado Libre Asociado de Puerto Rico, según enmendada.

(14) “Constitución de los Estados Unidos” significa la Constitución de los Estados Unidos de América, según enmendada.

(15) “contrato” significa cualquier contrato o acuerdo, incluyendo cualquier instrumento de deuda o arrendamiento vigente, cualquier convenio colectivo, plan de retiro o de beneficio para retirados o ex-empleados y cualquier otro acuerdo o instrumento que disponga cantidades o beneficios adeudados por el peticionario a cualquier retirado o empleado.

(16) “contrato de suplidor esencial” significa un contrato o tipo de contrato para proveer bienes o prestar servicios a un deudor del sector público que solicita alivio bajo esta Ley, cuyo contrato o tipo de contrato es necesario para que dicho deudor del sector público continúe realizando funciones públicas y según se identifican en—

(a) con relación a un deudor elegible, en una lista publicada en el portal electrónico en la fecha que se publica la notificación de suspensión; y

(b) con relación a un peticionario, en la lista descrita en la sección 302(a)(2) de esta Ley.

(17) “control”, incluyendo los términos “controlar”, “controlado por” y “bajo el control común de”, significa la posesión, directa o indirecta, del poder para dirigir o provocar la dirección del manejo y las políticas de una entidad, ya sea a través de la posesión de acciones con derecho al voto, por contrato, o de cualquier otra manera.

(18) “corporación pública” significa una entidad creada por Ley del Estado Libre Asociado como una corporación pública.

(19) “custodio” significa:

(a) un síndico o fiduciario de la propiedad de una entidad;

(b) un cesionario bajo una cesión general en beneficio de los acreedores de una entidad; o

(c) un fiduciario, síndico, custodio, o agente bajo cualquier ley aplicable, el derecho común, o bajo cualquier contrato, que sea nombrado o autorizado a hacerse cargo de la propiedad de una entidad con el propósito de hacer valer un gravamen contra tal propiedad, o con el propósito de la administración general dicha propiedad para beneficio de alguno o todos los acreedores de la entidad.

(20) “declaración de distribución”, “declaración de distribución enmendada” y “declaración final de distribución” tendrán los significados que se le asignan a estas frases en la sección 308 de esta Ley.

(21) “deuda” significa obligación bajo una reclamación.

(22) “deuda afectada” significa la deuda enumerada conforme a la sección 302(a)(2) de esta Ley.

(23) “deuda comercial especial” significa cualquier reclamación para proveer bienes o rendir servicios

(a) enumerada conforme a la sección 302(a)(2) de esta Ley, y

(b) que exceda una cantidad que será determinada por el peticionario a su discreción razonable; disponiéndose, sin embargo, que dicha cantidad no será menor de \$1 millón.

(24) “deuda de suplidor indispensable” significa deuda comercial especial pagadera a una entidad que acuerda, mientras esté pendiente un caso bajo el Capítulo 3 de esta Ley hasta la fecha de efectividad, continuar proveyendo bienes y servicios al peticionario

(a) bajo los mismo o mejores términos y condiciones para el peticionario que los prevalecientes durante los ciento ochenta (180) días anteriores a la radicación de una petición bajo el Capítulo 3 de esta Ley; y

(b) que el peticionario haya designado como indispensable a su capacidad de llevar a cabo su función pública.

(25) “deudor elegible” significa un deudor del sector público que cumpla con los requisitos de elegibilidad establecidos en la sección 113(a) de esta Ley, lo que lo hace elegible para solicitar alivio bajo el Capítulo 2 de esta Ley.

(26) “deudor del sector público” significa una Entidad del Estado Libre Asociado, excluyendo:

(a) el Estado Libre Asociado;

(b) los setenta y ocho (78) municipios del Estado Libre Asociado; y

(c) el Fideicomiso de Niños, el Sistema de Retiro de Empleados del Estado Libre Asociado de Puerto Rico y sus Instrumentalidades, el Sistema de Retiro de Maestros del Estado Libre Asociado de Puerto Rico, el Sistema de Retiro de la Judicatura, el BGF y sus subsidiarias, afiliadas y entidades adscritas al BGF, la Agencia para el Financiamiento Municipal, la Corporación de Financiamiento Municipal, la Corporación para el Financiamiento Público de Puerto Rico, la

Compañía de Fomento Industrial de Puerto Rico, la Autoridad para el Financiamiento de Facilidades Industriales, Turísticas, Educativas, Médicas y de Control Ambiental, la Autoridad para el Financiamiento de la Infraestructura de Puerto Rico, la Corporación del Fondo de Interés Apremiante (COFINA) y la Universidad de Puerto Rico.

(27) “entidad” incluye un individuo, una persona, una sucesión, un fideicomiso, una Entidad del Estado Libre Asociado, una unidad gubernamental que no sea una Entidad del Estado Libre Asociado, una corporación, una sociedad y una compañía de responsabilidad limitada.

(28) “Entidad del Estado Libre Asociado” significa el Estado Libre Asociado y cualquier departamento, agencia, distrito, municipio o instrumentalidad (incluyendo una corporación pública) del Estado Libre Asociado, incluyendo cualquier entidad sucesora o entidad adicional creada o que sea creada para realizar cualquier función de dicha Entidad del Estado Libre Asociado.

(29) “entidad enumerada” significa el deudor elegible y el peticionario, según sea aplicable, y cada uno de sus sucesores o cesionarios para todo o parte de sus negocios; el Estado Libre Asociado; el BGF; cualquier junta de gobierno de cualquiera de las anteriores; cualquier administrador de emergencia; cualquier oficial de un plan de beneficio de empleados al cual cualquiera de las anteriores haya contribuido en el pasado o contribuya en el presente y cualquier fiduciario u otro oficial de cualquier plan de pensión o plan de retiro o de beneficio para retirados o ex-empleados para el beneficio de cualquier empleado o ex-empleado de cualquiera de las anteriores; el comité de supervisión nombrado conforme a la sección 203 de esta Ley; cualquier miembro de dicho comité de supervisión; cualquier comité de acreedores; cualquier miembro de un comité de acreedores o su representante en el comité de acreedores; cualquier funcionario electo o cualquier entidad nombrada por un funcionario electo o cualquier otro funcionario público; cualquier profesional contratado por cualquiera de los anteriores; cualquier asesor, agente, consultor, persona con el control (si alguna), director, empleado, administrador, miembro, oficial, socio o accionista presente o pasado de cualquiera de las anteriores; y cualquier sucesor, cesionario y representante personal pasado o presente de cualquiera de los anteriores.

(30) “Estado Libre Asociado” significa el Estado Libre Asociado de Puerto Rico.

(31) “Estados Unidos” significa los Estados Unidos de América.

(32) “fecha de efectividad” de un plan tiene el significado que se le asigna a esa frase en la sección 315(l) de esta Ley.

(33) “financieramente auto-suficiente” significa, con relación a cualquier deudor del sector público, ser capaz de, cumplir con sus gastos operacionales, requisitos de inversión de capital (*capital expenditure*), requisitos de capital de trabajo (*working capital*) y costos de financiamiento proyectados de sus ingresos proyectados dentro del periodo de tiempo especificado en el programa de recuperación sin necesidad de alivio posterior bajo esta Ley o ayuda financiera de cualquier Entidad del Estado Libre Asociado.

(34) “gasto administrativo” significa un gasto del peticionario, incurrido o devengado desde y después de la fecha en que se radica su petición y hasta la fecha en que se confirmación un plan en su caso, con relación a la entrega de nuevo valor o a incurrir nuevas obligaciones, incluyendo los gastos necesarios para cumplir con las funciones públicas del peticionario.

(35) “Gobernador” significa la persona que funja como Gobernador del Estado Libre Asociado de Puerto Rico conforme el Artículo IV de la Constitución del Estado Libre Asociado.

(36) “insolvente” significa:

(a) actualmente incapaz de pagar sus deudas al vencimiento mientras continua realizando funciones públicas; o

(b) que advendrá incapaz o que está en serio riesgo de advenir incapaz, sin actos legislativos adicionales o sin asistencia financiera del Estado Libre Asociado o del BGF, de pagar sus deudas válidas según éstas vencen mientras continúa realizando funciones públicas.

(37) “instrumentalidad” significa una entidad creada por una ley del Estado Libre Asociado como una entidad autorizada a realizar funciones públicas para el Estado Libre Asociado.

(38) “instrumento de deuda” incluye cualquier documento o declaración para, utilizado con relación a, o relacionado a:

(a) cualquier obligación de pagar el principal de, la prima de, si alguna, cualquier interés, penalidad, reembolso, indemnización, cargo, gasto o cualquier otra cantidad relacionada a cualquier endeudamiento, y cualquier otra obligación, sea contingente o no,

i. por dinero tomado a préstamo,

ii. evidenciado por bonos, pagarés, fideicomisos (“indentures”), contratos, notas, resoluciones, contratos de préstamo o financiamiento, valores o cualquier instrumento similar, o

iii. por una carta de crédito o fianza de cumplimiento;

(b) cualquier obligación del, o relacionada al, tipo descrito en el inciso (a) para la cual se haya provisto una garantía o un seguro;

(c) cualquier obligación con relación a alguna aceptación bancaria (*bankers' acceptance*);

(d) cualquier obligación con relación a un acuerdo de intercambio de tasas de interés, contrato derivado o acuerdo relacionado, contrato de cobertura (*hedge agreement*), contrato de valores, contrato de entrega futura (*forward*), acuerdo de recompra, opción, promesa (*warrant*), contrato de materia prima (*commodity*) u otro instrumento similar;

(e) cualquier aplazamiento, renovación, extensión y reembolso de, o enmiendas, modificaciones o suplementos a, cualquier obligación de los tipos descritos en los incisos (a) al (d);

(f) cualquier obligación que surja de cualquier sentencia relacionada a cualquier obligación del tipo que se describe anteriormente en los incisos (a) al (e); o

(g) cualquier obligación que surja de una obligación de asegurar relacionada a cualquier obligación del tipo descrito en esta sección.

(39) “instrumento de deuda afectada” significa cada instrumento de deuda relacionado a una obligación identificada en una notificación de suspensión; disponiéndose, que ningún instrumento de deuda que evidencie una obligación incurrida conforme las secciones 206 o 322 de esta Ley cualificará como un instrumento de deuda afectada.

(40) “junta de gobierno” significa:

(a) la junta de directores de una corporación pública; y

(b) cualquier cuerpo deliberativo por medio del cual una instrumentalidad ejercita su autoridad, según se provee en la ley orgánica de dicha instrumentalidad.

(41) “Ley” significa esta Ley para el Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas de Puerto Rico.

(42) “Ley del Estado Libre Asociado” significa cualquier ley del Estado Libre Asociado o cualquier regla o reglamentación de cualquier Entidad del Estado Libre Asociado.

(43) “notificación de suspensión” significa la notificación publicada conforme la sección 201(d) de esta Ley.

(44) “orden de aprobación” significa una orden de la Sala Especializada bajo el Capítulo 2 de esta Ley proveyendo que:

(a) las enmiendas, modificaciones, exenciones, o cambios, según sea el caso, propuestos en una transacción consensual de alivio de deuda son consistentes con los requisitos del Capítulo 2 de esta Ley, incluyendo los objetivos establecidos en la sección 201(a) de esta Ley y los requisitos de las secciones 202(d)(1) a 202(d)(3) de esta Ley; y

(b) los procedimientos de votación efectuados con relación a una transacción consensual de alivio de deuda se llevaron a cabo de manera consistente con los requisitos del Capítulo 2 de esta Ley;

(45) “orden de transferencia” significa la orden aprobando una transferencia conforme a la sección 307 de esta Ley.

(46) “parte interesada” incluye un deudor del sector público que solicita alivio bajo el Capítulo 2 de esta Ley o que radica una petición bajo el Capítulo 3 de esta Ley, el Gobernador, el BGF, un acreedor de dicho deudor del sector público, un comité de acreedores, un fiduciario de bonos (*indenture trustee*) (o cualquier otra entidad que lleve a cabo funciones similares) actuando en el interés de uno o más de dichos acreedores de un deudor del sector público, o cualquier entidad que sea parte en un contrato celebrado conforme a la sección 302(a)(2) de esta Ley.

(47) “petición” significa el documento que radica un peticionario para comenzar un caso bajo el Capítulo 3 de esta Ley conforme la sección 301 de esta Ley

(48) “peticionario” significa un deudor del sector público que radica una petición—o en cuyo nombre el BGF, a solicitud del Gobernador, radica una petición—conforme a la sección 301 de esta Ley.

(49) “periodo de suspensión” significa el periodo de tiempo que comienza el día que se publica la notificación de suspensión, y que termina en lo que ocurra primero de

(a) el día que la orden de aprobación advenga final y firme; o

(b) el día que se cumpla cualquiera de las condiciones especificadas en la sección 205(e) de esta Ley.

(50) “plan” significa plan de cumplimiento con las deudas propuesto bajo el Capítulo 3 de esta Ley.

(51) “programa de recuperación” significa, para un deudor elegible, un programa de medidas de ajuste financiero u operacional consistente con la sección 202 de esta Ley.

(52) “realizando funciones públicas” o cualquier frase similar, incluyendo “cumpliendo funciones públicas” y “ejerciendo funciones públicas”, significa sirviendo un propósito gubernamental importante – incluyendo proveyendo bienes o servicios importantes o necesarios para la salud, seguridad o bienestar público (que incluyen la promoción de la actividad económica del Estado Libre Asociado) – independientemente de si dichas funciones públicas se realizan directamente, o indirectamente al facilitar o asistir a otra Entidad del Estado Libre Asociado a servir dicho propósito.

(53) “reclamación” significa:

(a) un derecho a un pago presente o futuro, esté vencido o no, sea contingente o no, esté en disputa o no, sea líquido o ilíquido; o

(b) un derecho a un remedio en equidad para el cual los daños monetarios no son un remedio bajo la ley aplicable.

(54) “reclamaciones de empleados contra un patrono sucesor” significa cualquier responsabilidad u obligación relacionada a los derechos de los empleados del peticionario bajo cualquier contrato o ley aplicable que no haya sido asumida expresamente en una transferencia bajo la sección 307 de esta Ley.

(55) “Sala Especializada” significa la Sala de Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas del Tribunal de Primera Instancia, Sala de San Juan, descrita en la sección 109 de esta Ley.

(56) “transacción consensual de alivio de deuda” tiene el significado que se le asigna a esta frase en la sección 201(b) de esta Ley.

(57) “Tribunal de Apelaciones” significa el Tribunal de Apelaciones del Estado Libre Asociado de Puerto Rico.

(58) “Tribunal de Primera Instancia” significa el Tribunal de Primera Instancia del Estado Libre Asociado de Puerto Rico.

(59) “Tribunal Supremo” significa el Tribunal Supremo del Estado Libre Asociado de Puerto Rico.

Sección 103.–Interpretación.

(a) Las disposiciones de esta Ley deberán ser interpretadas liberalmente con el fin de promover los objetivos de esta Ley.

(b) Las palabras en singular incluyen el plural.

(c) Cualquier pronombre de género neutro será considerado el pronombre personal femenino o masculino correspondiente, según requiera el contexto.

(d) La frase “previa notificación y celebración de vista” o cualquier frase similar significa luego de la notificación que sea apropiada en las circunstancias particulares, y luego de la celebración de una vista, según sea apropiada en las circunstancias particulares, disponiéndose, sin embargo, que una acción puede ser autorizada sin celebrar una vista si se provee una notificación adecuada según las circunstancias y si:

(1) la parte interesada no solicita una vista oportunamente, o

(2) no hay tiempo suficiente para iniciar la celebración de una vista antes de que dicha acción tenga que llevarse a cabo, y la Sala Especializada autoriza que se lleve a cabo dicha acción.

(e) La frase “en cualquier momento” significa en cualquier momento y de tiempo en tiempo.

(f) Una “reclamación contra el peticionario” incluye cualquier reclamación contra la propiedad del peticionario.

(g) Las palabras “incluye” e “incluyendo” no son limitativas.

(h) La frase “no podrá” es prohibitiva y no permite discreción.

(i) La palabra “o” no es excluyente.

(j) La frase “ley aplicable” incluye las leyes, reglas y reglamentación aplicables del Estado Libre Asociado y los Estados Unidos, incluyendo esta Ley.

(k) Una definición contenida en alguna sección de esta Ley que refiera a otra sección de esta Ley no afecta, para propósitos de esa referencia, el significado del término usado en esa otra sección.

(l) La palabra “contraparte” significa:

(1) con relación a un convenio colectivo, el sindicato encargado de la negociación bajo ese acuerdo, y no algún miembro individual de ese sindicato;

(2) con relación a un fondo para pensiones, el administrador de ese fondo para pensiones, y no algún beneficiario de ese fondo, y

(3) con relación a un plan de retiro o de beneficio para retirados o ex-empleados, el administrador de ese plan de retiro o de beneficio para retirados o ex-empleados, y no algún beneficiario de ese plan.

(m) La frase “final y firme” significa una orden, resolución, sentencia u otro pronunciamiento final y firme, que no esté sujeto a procedimientos de apelación o certiorari.

(n) La frase “usar o transferir” incluye un arrendamiento y una transacción de venta y alquiler posterior (*sale and lease back*).

(o) Cualquier referencia a “portal electrónico” con relación a un deudor elegible o peticionario significa el portal electrónico de dicho deudor elegible o peticionario, o el portal electrónico especificado en la sección 121 de esta Ley.

(p) La Sala Especializada deberá considerar, según aplique, la jurisprudencia interpretando el título 11 del Código de los Estados Unidos para propósitos de interpretar esta Ley.

(q) Las frases “bienes” o “servicios” no incluyen dinero prestado u otra deuda financiera incurrida.

Sección 104.—Aplicabilidad de la Ley.

Esta Ley aplica a todas las deudas – según las mismas existen antes, en y después de la fecha de efectividad de esta Ley – de cualquier deudor del sector público que solicite alivio bajo el Capítulo 2 de esta Ley o que radique una petición bajo el Capítulo 3 de esta Ley; disponiéndose, sin embargo, que algunas de las deudas del deudor del sector público pueden no resultar afectadas por esta Ley, según se dispone en esta Ley.

Sección 105.—Estándar Evidenciario.

A menos que expresamente se disponga lo contrario, el estándar de prueba que se requiere en cualquier procedimiento bajo esta Ley es preponderancia de la prueba.

Sección 106.—Cláusula de Separabilidad.

Esta Ley deberá ser interpretada de forma tal que pueda mantenerse su validez, en la medida en que esto sea posible, conforme a la Constitución del Estado Libre Asociado y la Constitución de los Estados Unidos. Si cualquier cláusula, párrafo, subpárrafo, artículo, disposición, sección, inciso, o parte de esta Ley fuese declarado inconstitucional por un tribunal con jurisdicción, la orden emitida por dicho tribunal a esos efectos no afectará ni invalidará el resto de esta Ley. El efecto de dicha orden estará limitado a la cláusula, párrafo, subpárrafo, artículo, disposición, sección, inciso o parte de esta Ley declarada inconstitucional.

Sección 107.—Conflicto por Idioma.

Esta Ley se adoptará en español y en inglés. Si surgiere algún conflicto en la interpretación o aplicación de esta Ley entre el texto en inglés y el texto en español de la misma, prevalecerá el texto en español. Se reconoce que ciertos términos y frases utilizados en la Ley provienen de términos y frases en inglés y utilizados en el contexto del título 11 del Código de los Estados Unidos.

Sección 108.—Inaplicabilidad de Otras Leyes.

(a) Cualquier otra ley del Estado Libre Asociado o cualquier certificado de incorporación, estatutos corporativos u otros instrumentos que gobiernen cualquier Entidad del Estado Libre Asociado será inaplicable en la medida en que el mismo sea inconsistente

con esta Ley. Todas y cada una de las reglas procesales aquí establecidas sustituyen cualquier otra ley del Estado Libre Asociado que sea inconsistente con esta Ley. Para evitar cualquier duda, se aclara que el Código de Comercio de 1932, según enmendado, y la Ley Núm. 60 de 27 de abril de 1931, según enmendada, no aplican a ningún deudor del sector público bajo esta Ley.

(b) Esta Ley deroga y anula cualquier disposición sobre insolvencia o custodia incluida en la ley orgánica o en cualquier otra ley de cualquier corporación pública, incluyendo la Sección 17 de la Ley Núm. 83 de 2 de mayo de 1941, según enmendada, y la Sección 13 de la Ley Núm. 40 de 1 de mayo de 1945, según enmendada.

(c) Cualquier contradicción entre la ley orgánica u otra ley de una corporación pública o cualquier otra ley del Estado Libre Asociado de alguna otra manera aplicable y esta Ley, se resolverá como si prevaleciera sobre aquellas. Para propósitos de la Sección 27 de la Ley Núm. 83 de 21 de mayo de 1941 y la Sección 21 de la Ley Núm. 74 de 23 de junio de 1965, esta Ley se interpretará como que específicamente enmienda dicha Ley Núm. 83 y Ley Núm. 74, respectivamente. Nada de lo dispuesto en la antes mencionada Ley Núm. 83, según enmendada, ni en las leyes orgánicas de cualquier otra Entidad del Estado Libre Asociado se considerará como que limita en forma alguna la aplicación de las disposiciones de esta Ley.

Subcapítulo II: Jurisdicción y Procedimiento

Sección 109.—La Sala Especializada.

(a) Se crea la Sala Especializada que estará localizada en y será parte del Tribunal de Primera Instancia del Estado Libre Asociado, Sala de San Juan. La Jueza Presidenta del Tribunal Supremo de Puerto Rico podrá designar un juez del sistema judicial de Puerto Rico para presidir la Sala Especializada.

(b) Un juez nombrado conforme al inciso (a) de esta sección podrá nombrar a un comisionado especial conforme a la Regla 41 de las Reglas de Procedimiento Civil de Puerto Rico. El comisionado especial deberá ser una persona de reconocida experiencia en asuntos financieros, incluyendo procedimientos de insolvencia. El comisionado especial podrá, simultánea o secuencialmente, presidir sobre múltiples procedimientos conforme a ambos o a cualquiera del Capítulo 2 y el Capítulo 3 de esta Ley.

(c) Un deudor elegible o un peticionario, según sea el caso, deberá reembolsar a la entidad apropiada de la Rama Judicial los costos relacionados a la administración de cualquier procedimiento bajo esta Ley, incluyendo los costos y gastos razonables y documentados del comisionado especial, si alguno. Si hubiese más de un deudor elegible y/o peticionario, los costos se repartirán entre todos ellos en la medida que dichos costos sean atribuibles al periodo durante el cual dicho deudor elegible o peticionario estuvo sujeto a cualquier procedimiento bajo esta Ley.

Sección 110.—Responsabilidades y Poderes de la Sala Especializada.

(a) Dentro de los términos establecidos en otras secciones de esta Ley, la Sala Especializada se esforzará para tramitar cualquier procedimiento bajo el Capítulo 2 de esta Ley o para resolver un caso bajo el Capítulo 3 de esta Ley con toda la eficiencia y la rapidez deliberada, cónsonas con el debido proceso, y tomando en consideración que la incertidumbre continua en cuanto al resultado del procedimiento es perjudicial para los acreedores, para la

viabilidad del deudor del sector público, para el crédito de las Entidades del Estado Libre Asociado y para el bienestar de los residentes y los negocios del Estado Libre Asociado.

(b) La Sala Especializada podrá emitir cualquier orden y celebrar cualquier procedimiento necesario o apropiado para llevar a cabo las disposiciones de esta Ley. Ninguna disposición del Capítulo 2 ni del Capítulo 3 de esta Ley que provea para que una parte interesada presente un asunto ante la Sala Especializada deberá interpretarse como que excluye que la Sala Especializada pueda, *sua sponte*, tomar cualquier acción o emitir cualquier determinación necesaria o apropiada para ejecutar e implantar órdenes o reglas de la Sala Especializada, o evitar que se abuse del proceso.

(c) Independientemente de lo que se dispone en otras leyes del Estado Libre Asociado o en cualquier contrato que vincule a cualquier Entidad del Estado Libre Asociado o a cualquier contrato al cual esté sujeta cualquier propiedad de dicha Entidad del Estado Libre Asociado, ningún tribunal establecido por el Estado Libre Asociado designará un custodio para el deudor del sector público durante el periodo de suspensión bajo el Capítulo 2 de esta Ley o en o durante su caso bajo el Capítulo 3 de esta Ley, bajo cualquier ley o contrato aplicable.

Sección 111.—Jurisdicción sobre la Materia, la Persona e *In Rem*.

(a) A menos que se disponga lo contrario en esta Ley, la Sala Especializada tendrá jurisdicción original—y jurisdicción exclusiva, excepto con relación a un tribunal federal ejerciendo jurisdicción federal—para considerar y adjudicar todas las disputas que surjan de, o estén relacionadas a esta Ley, incluyendo los siguientes asuntos:

(1) toda disputa que surja de, o relacionada a, un instrumento de deuda afectada durante el periodo de suspensión;

(2) toda disputa, ya sea antes o después de que se dicte una orden de aprobación, que surja bajo o esté relacionada al Capítulo 2 de esta Ley, que surja de cualquier procedimiento bajo el Capítulo 2 de esta Ley, o relacionada a una transacción consensual de alivio de deuda propuesta conforme el Capítulo 2 de esta Ley, incluyendo cualquier disputa relacionada a quien puede votar o consentir bajo esta Ley;

(3) toda disputa que surja bajo o esté relacionada al Capítulo 3 de esta Ley o que surja en, o relacionada a, un caso bajo el Capítulo 3 de esta Ley, incluyendo aquellos relacionados a deuda afectada; y

(4) todo procedimiento o asunto relacionado a los incisos (1) al (3) arriba, incluyendo procedimientos para interpretar o exigir el cumplimiento con una orden de aprobación, un plan confirmado, una orden de transferencia, una declaración final de distribución, o cualquier parte de esta Ley.

(b) La Sala Especializada tendrá jurisdicción sobre todas las entidades en la manera más amplia que permitan la Constitución del Estado Libre Asociado y la Constitución de Estados Unidos. La Sala Especializada tendrá jurisdicción *in rem* sobre la propiedad de cada deudor del sector público.

(c) La Sala Especializada retendrá su jurisdicción sobre la materia y su jurisdicción *in rem* para interpretar y exigir cumplimiento con:

- (1) una transacción consensual de alivio de deuda sobre la cual haya emitido una orden de aprobación bajo el Capítulo 2 de esta Ley, y
- (2) una orden de transferencia, una declaración final de distribución y un plan confirmado bajo el Capítulo 3 de esta Ley.

Sección 112.—Interacción entre el Capítulo 2 y el Capítulo 3.

Con el consentimiento del BGF, un deudor del sector público (o, a solicitud del Gobernador, el BGF a nombre del deudor del sector público) podrá solicitar alivio bajo el Capítulo 2 o el Capítulo 3 de esta Ley, o bajo ambos simultáneamente o consecutivamente, sujeto a la sección 113 de esta Ley y podrá, a su discreción, retirar una notificación de suspensión o cualquier obligación identificada en una notificación de suspensión, una propuesta para una transacción consensual de alivio de deuda o su solicitud para una orden de aprobación bajo el Capítulo 2 de esta Ley, antes de que la orden de aprobación haya advenido final y firme. El peticionario, con la aprobación del BGF (o, a solicitud del Gobernador, el BGF a nombre del peticionario), podrá retirar una petición bajo el Capítulo 3 de esta Ley.

Sección 113.—Elegibilidad.

(a) Un deudor del sector público es elegible para el Capítulo 2 de esta Ley si está autorizado a iniciar una transacción consensual de alivio de deuda conforme a las secciones 201(b)(1) o 201(b)(2) de esta Ley.

(b) Un peticionario es elegible para el Capítulo 3 de esta Ley si—

- (1) está insolvente;
- (2) ha sido autorizado para radicar una petición bajo el Capítulo 3 de esta Ley por su junta de gobierno y el BGF, o el BGF, a solicitud del Gobernador, presenta una petición en su nombre, y
- (3) no es elegible para solicitar alivio bajo el título 11 del Código de Estados Unidos, porque, entre otras razones:

(A) no es una “municipalidad” con permiso de un “estado” para presentar una petición bajo el capítulo 9, según se define cada uno de estos términos en el título 11 del Código de Estados Unidos, y

(B) es una “unidad gubernamental”, según se define esta frase en el título 11 del Código de Estados Unidos, que no puede solicitar alivio bajo el capítulo 11 del título 11 del Código de Estados Unidos.

Sección 114.—Naturaleza Vinculante de las Determinaciones Judiciales.

Cualquier determinación de la Sala Especializada será vinculante para el deudor elegible o el peticionario, para cualquier entidad que tenga reclamaciones u otros derechos, incluyendo un interés beneficiario, con relación a instrumentos de deuda afectados de ese deudor elegible o peticionario, cualquier fiduciario, cualquier agente de colateral, cualquier fiduciario de bonos (*indenture trustee*), cualquier agente fiscal, cualquier banco que reciba o custodie fondos del sector público relacionados a instrumentos de deuda afectados, y cualquier otra entidad que se identifique en dicha determinación de la Sala Especializada o en la orden emitida con relación a dicha determinación.

Sección 115.–Efecto de las Órdenes de Aprobación, Transferencia o Confirmación.

(a) Una orden de aprobación con relación a una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley y una orden de confirmación con relación a un plan u orden de transferencia o una declaración final de distribución bajo el Capítulo 3 de esta Ley deberán cada una ser tratadas como una sentencia para los propósitos de las leyes del Estado Libre Asociado, sujetas a apelación solamente según se provee en la sección 127 de esta Ley.

(b) Una vez se emita una orden de aprobación con relación a una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley:

(1) las enmiendas, modificaciones, exenciones o intercambios contenidos en dicha orden serán efectivos automáticamente y serán vinculantes para el deudor elegible que sea parte en el instrumento de deuda afectada, cualquier entidad reivindicando reclamaciones u otros derechos, incluyendo un interés beneficiario, con relación a instrumentos de deuda afectada de dicho deudor elegible, cualquier fiduciario, cualquier agente de colateral, cualquier fiduciario de bonos (*indenture trustee*), cualquier agente fiscal, y cualquier banco que recibe o custodia fondos de dicho deudor elegible o dicho peticionario relacionado a los instrumentos de deuda afectados o deuda afectada; y

(2) la Sala Especializada retendrá jurisdicción y, posteriormente, ninguna entidad reivindicando reclamaciones u otros derechos, incluyendo un interés beneficiario, con relación a instrumentos de deuda afectada de dicho deudor elegible, ningún fiduciario, ningún agente de colateral, ningún fiduciario de bonos (*indenture trustee*), ningún agente fiscal, y ningún banco que recibe o custodia fondos de dicho deudor elegible relacionado a los instrumentos de deuda afectada podrá presentar acción alguna o procedimiento de cualquier tipo para la ejecución de dicha reclamación o remedios con relación a dicho instrumento de deuda afectada, excepto con el permiso de la Sala Especializada y solamente para recobrar y hacer valer los derechos permitidos bajo las enmiendas, modificaciones, exenciones o intercambios y la orden de aprobación.

(c) Excepto cuando se provea de otra manera en un plan, en una orden de transferencia, o en una declaración de distribución, todos bajo el Capítulo 3 de esta Ley, una vez se emita una orden de confirmación, una orden de transferencia o una declaración de distribución:

(1) las disposiciones del plan confirmado y la orden confirmando dicho plan vinculan al peticionario y a todos los acreedores cuyos derechos se vean afectados por el plan;

(2) la orden de transferencia y la declaración final de distribución vinculan al peticionario y a todos los acreedores cuyos derechos se vean afectados por dicha orden de transferencia o declaración final de distribución; y

(3) a todos los acreedores afectados por el plan o la declaración final de distribución se les ordenará abstenerse de, directa o indirectamente, tomar cualquier acción inconsistente con el propósito de esta Ley, incluyendo presentar cualquier acción o procedimiento de cualquier tipo para exigir cumplimiento con dicha

reclamación o remedios con relación a deuda afectada, excepto según cada una ha sido afectada conforme al plan bajo el Capítulo 3 de esta Ley o la declaración final de distribución.

(d) Excepto si se provee expresamente de otra forma en una orden de aprobación bajo el Capítulo 2 de esta Ley, en un plan, en una orden confirmando un plan, o en una orden de transferencia o declaración final de distribución bajo el Capítulo 3 de esta Ley, una vez se emita cualquiera de estas órdenes o una declaración final de distribución, el deudor elegible o peticionario está autorizado a llevar a cabo todos los actos descritos en la transacción de alivio de deuda, la orden de aprobación, el plan, la orden confirmando dicho plan, la orden de transferencia o la declaración final de distribución, sin necesidad de autorizaciones posteriores por parte de cualquier Entidad del Estado Libre Asociado o la Sala Especializada.

(e) La Sala Especializada podrá dirigir al deudor elegible, al peticionario y a cualquier otra parte indispensable a ejecutar, entregar o a unirse en la ejecución o entrega de cualquier contrato requerido para efectuar la transferencia de propiedad con relación a una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley, una declaración final de distribución o un plan confirmado bajo el Capítulo 3 de esta Ley y a llevar a cabo cualquier otra acción, incluyendo satisfacer cualquier gravamen, necesaria para la consumación de la transacción consensual de alivio de deuda, la declaración final de distribución o el plan.

Sección 116.—Emplazamiento.

Excepto según ordene la Sala Especializada, el emplazamiento podrá hacerse de cualquiera de las maneras descritas en los incisos (a), (b) o (c) que aparecen a continuación:

(a) Sujeto a la sección 337 de esta Ley, las entidades podrán emplazar de la manera establecida en las Reglas 4.3 y 4.4 de las Reglas de Procedimiento Civil de Puerto Rico o mediante notificación por correo a la última dirección conocida del individuo o de la entidad que será emplazada.

(b) Mediante notificación por correo o entrega directa realizada de conformidad con las secciones 204(c)(2) y 338 de esta Ley o de cualquier otra manera que ordene la Sala Especializada.

(c) Emplazamiento por Edicto.

(1) La Sala Especializada podrá ordenar el emplazamiento mediante la publicación de un edicto si entiende que el emplazamiento por correo es impráctico o que es deseable suplementar el emplazamiento por correo.

(2) Conforme a la Regla 4.6 de las Reglas de Procedimiento Civil de Puerto Rico, o según se detalla a continuación, se requerirá la notificación mediante edicto, publicada al menos tres (3) veces, al menos catorce (14) días antes de una vista particular, en un periódico de circulación nacional en los Estados Unidos y en un periódico de circulación general en el Estado Libre Asociado, para suplementar la notificación de:

(A) la vista de aprobación conforme a la sección 204(b) de esta Ley con relación a una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley;

- (B) la vista de elegibilidad conforme a la sección 306 de esta Ley;
- (C) la vista sobre la transferencia de todos o sustancialmente todos los activos del peticionario conforme a la sección 307 de esta Ley; y
- (D) la vista de confirmación conforme a la sección 314 de esta Ley.

(3) Se requerirá la notificación mediante edicto, publicada al menos tres (3) veces durante los catorce (14) días posteriores a cada uno de los eventos especificados en las secciones (c)(3)(A) y (c)(3)(B) de esta sección, en un periódico de circulación nacional en los Estados Unidos y un periódico de circulación general en el Estado Libre Asociado, para suplementar la notificación de:

- (A) la presentación de una solicitud conforme la sección 204(a) de esta Ley; y
- (B) la radicación de una petición conforme la sección 301 de esta Ley.

Sección 117.—Aplicabilidad de las Reglas de Procedimiento Civil de Puerto Rico.

En la medida en que no sea inconsistente con esta Ley, las Reglas de Procedimiento Civil de Puerto Rico serán aplicables a cualquier procedimiento bajo el Capítulo 2 o el Capítulo 3 de esta Ley.

Sección 118.—Idioma.

(a) Todas las alegaciones, solicitudes y mociones bajo esta Ley se radicarán conforme la Regla 8.7 de las Reglas de Procedimiento Civil de Puerto Rico; disponiéndose, que todas las alegaciones, solicitudes y mociones radicadas en español estarán acompañadas de una traducción al inglés.

(b) Todas las vistas, opiniones y órdenes se harán en el idioma designado por el juez y conforme con las disposiciones de la Ley Núm. 1 de 28 de enero de 1993.

(c) Cada deudor del sector público que solicite alivio bajo esta Ley deberá publicar en su portal electrónico copias en inglés y español de cada transacción consensual de alivio de deuda propuesta de acuerdo con el Capítulo 2 de esta Ley y cada plan propuesto en cualquier caso bajo el Capítulo 3 de esta Ley.

Sección 119.—Notificación de Comparecencia y Requisitos de las Alegaciones.

(a) En la medida que sea aplicable bajo esta Ley, cualquier parte interesada puede radicar una notificación de comparecencia con la Sala Especializada solicitando que todas las notificaciones y alegaciones sean enviadas a dicha parte o a sus abogados al correo electrónico especificado en su notificación de comparecencia, o, si una dirección de correo electrónico no está disponible, a la dirección postal especificada en su notificación de comparecencia.

(b) Cada alegación radicada en un procedimiento o caso bajo esta ley incluirá la dirección postal y de correo electrónico, si alguna, de la entidad o las entidades a nombre de quien se radica la alegación.

(c) Cualquier entidad que radique una alegación con la Sala Especializada, incluyendo una notificación de comparecencia, enviará por correo electrónico una copia idéntica del documento radicado al agente de notificación, deudor elegible, o al peticionario que mantenga el portal electrónico contemporáneamente con la radicación del documento con la Sala Especializada o con el envío a la Sala Especializada para ser radicado. Cualquier entidad que no tenga la habilidad de enviar tal documento por correo electrónico se lo enviará por correo certificado al agente de notificación, deudor elegible o peticionario que mantenga el portal electrónico contemporáneamente con la radicación del documento con la Sala Especializada o con el envío a la Sala Especializada para ser radicado.

(d) Cada deudor elegible y peticionario debe incluir en cada una de sus alegaciones el siguiente texto en negrillas y en letra tamaño 12 punto: “Cada entidad que radique una alegación con la Sala Especializada bajo la Ley para el Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas de Puerto Rico” enviará por correo electrónico una copia idéntica del documento radicado a la entidad que mantenga el portal electrónico requerido por la sección 121 a la siguiente dirección de correo electrónico [insertar dirección de correo electrónico aquí], o si no tiene la habilidad de transmitir mediante correo electrónico enviará la copia por correo a la siguiente dirección [insertar dirección postal aquí]”.

(e) Las peticiones y documentos presentados al amparo de esta Ley se radicarán electrónicamente y se mantendrá un expediente judicial electrónico de los casos correspondientes conforme a lo establecido en la Regla 67.6 de Procedimiento Civil y la Ley 148-2013.

Sección 120.–Objeciones.

Siempre que una entidad objete o impugne el alivio solicitado bajo el Capítulo 2 o el Capítulo 3 de esta Ley, dicha entidad deberá proveer, dentro de cinco (5) días laborables contados desde la solicitud por escrito del deudor elegible o peticionario, todos los documentos en su posesión, custodia o control que apoyen, y todos los documentos en su posesión, custodia o control que se opongan a, la reclamación y objeción de la parte objetante. Esta producción será adicional a las respuestas a cualquier descubrimiento adicional que un deudor elegible o un peticionario válidamente solicite. Toda objeción deberá–

(a) radicarse por escrito ante la Sala Especializada, no más tarde de siete (7) días laborables antes de la vista relevante, a menos que la Sala Especializada ordene otro término o a menos que esta Ley disponga otra cosa;

(b) expresar claramente los fundamentos para la objeción, y

(c) estar acompañada por una declaración, bajo juramento, que incluya–

(1) el nombre de cada entidad objetante que tenga el control de, o un interés beneficiario en, un instrumento de deuda afectada del deudor elegible que busque alivio bajo el Capítulo 2 de esta Ley o en deuda afectada de un peticionario en un caso bajo el Capítulo 3 de esta Ley;

(2) una descripción del interés beneficiario poseído o controlado por dicha entidad objetante o cualquiera de las afiliadas que ésta controla (nombrando a dichas afiliadas) en cualquiera de los siguientes:

(A) el instrumento de deuda afectada o cualquier deuda afectada, incluyendo la cantidad de cualquier reclamación;

(B) cualquier interés, prenda, gravamen, opción, participación, instrumento derivado o cualquier otro derecho o derecho derivado concediendo a cualquiera de las entidades antes mencionadas un interés económico que se afecte por el valor, la adquisición o la disposición del instrumento de deuda afectada o la deuda afectada; y

(C) cualquier contrato derivado de incumplimiento de crédito (*credit default swap*) de una compañía aseguradora que asegure la obligación de cualquier Entidad del Estado Libre Asociado;

(3) una declaración que indique si cada interés divulgado conforme a las secciones 120(c)(2)(A) hasta la 120(c)(2)(C) de esta Ley se adquirió antes o después del comienzo del periodo de suspensión bajo el Capítulo 2 de esta Ley o antes o después de la fecha en la que se radicó la petición bajo el Capítulo 3 de esta Ley; y

(4) una declaración de si cada interés divulgado conforme a las secciones 120(c)(2)(A) hasta la 120(c)(2)(C) de esta Ley puede aumentar en valor si cualquier deuda de una Entidad del Estado Libre Asociado disminuye en valor.

Sección 121.—Agente de Notificación.

(a) Cada deudor elegible, el peticionario, o el BGF (a nombre del deudor elegible o el peticionario), llevará a cabo los procedimientos de divulgación y los requisitos de notificación provistos en esta sección, y, a esos efectos, podrá retener y contratar a una entidad para fungir como agente de notificación para:

(1) crear y mantener un portal electrónico, accesible libre de costo, que contenga todas las alegaciones, mociones, órdenes, opiniones y notificaciones debidamente radicadas bajo el Capítulo 2 o el Capítulo 3 de esta Ley, y un calendario que muestre todas las fechas límite y las vistas; y

(2) provea notificaciones de todas las vistas y fechas límite, y desempeñe todas las funciones relacionadas, incluyendo las de un agente de reclamaciones cuando sea aplicable.

(b) El agente de notificación deberá mantener en el portal electrónico una lista de todas las partes interesadas que radiquen notificaciones de comparecencia conforme la sección 119 de esta Ley, junto con los correos electrónicos o direcciones postales a los cuales cada parte interesada solicitó se le enviarán las notificaciones y alegaciones.

(c) El agente de notificación será compensado a una tarifa basada en la tarifa que factura normalmente por ese tipo de servicio a otros deudores en procedimientos para exigir cumplimiento con reclamaciones, tales como los casos bajo el capítulo 9 y el capítulo 11 del título 11 del Código de los Estados Unidos.

Sección 122.—Confidencialidad de Ciertas Radicaciones.

(a) La Sala Especializada, mediando causa, podrá proteger a un individuo respecto a los siguientes tipos de información siempre y cuando la Sala Especializada determine que divulgar cierta información conllevaría un riesgo indebido de robo de identidad u otro perjuicio ilegal al individuo o a la propiedad del individuo:

(1) cualquier medio de identificación (según definido en 18 U.S.C. § 1028(d)) contenido en un escrito presentado, o que será presentado, en un procedimiento o un caso bajo esta Ley, y

(2) otra información contenida en algún escrito descrito en el inciso (a)(1) de esta sección.

(b) Si se presentase una solicitud *ex parte* o una solicitud notificada que demuestre justa causa, la Sala Especializada deberá proveer acceso a la información protegida de acuerdo con el inciso (a) de esta sección a una entidad que esté actuando en virtud del poder de regulación o del poder de razón de estado (*police power*) de una Entidad del Estado Libre Asociado.

Sección 123.—Deliberaciones Confidenciales.

Independientemente de lo que disponga cualquier otra ley del Estado Libre Asociado de otro modo aplicable, incluyendo la Ley Núm. 159-2013, según enmendada, todas las deliberaciones relacionadas a la determinación de si se debe solicitar alivio bajo esta Ley, al plan o alivio a ser solicitado, o a otros asuntos relacionados con esta Ley, no se harán públicas, pero se mantendrán récords adecuados de dichas deliberaciones. Estas deliberaciones serán privilegiadas bajo la Ley del Estado Libre Asociado y no estarán sujetas a descubrimiento de prueba en cualquier proceso civil ni sujetas a divulgación, excepto según requiera la ley del Estado Libre Asociado o la ley aplicable de los Estados Unidos con relación a levantar capital o de cualquier otra forma vender o comprar valores.

Sección 124.—Inexistencia de una Causa de Acción Privada Implícita.

No hay causas de acción privadas implícitas bajo esta Ley.

Sección 125.—Representación Legal Especial, Divulgación Profesional y Anticipos.

(a) En la medida, si alguna, en que dos deudores del sector público solicitando alivio bajo esta Ley y representados por los mismos representantes legales tienen una o más disputas entre sí, o si un deudor del sector público solicitando alivio bajo esta Ley y el BGF están representados por los mismos representantes legales y el deudor del sector público y el BGF tienen una o más disputas entre sí, las disputas serán atendidas por abogados distintos a los abogados de record para cada una de las partes.

(b) Cada firma profesional contratada por o para el(los) deudor(es) del sector público solicitando alivio bajo esta Ley o por uno o más de los comités de acreedores presentará ante la Sala Especializada, en un término de catorce (14) días contados a partir de su contratación, una divulgación por escrito sobre su representación actual de entidades en asuntos relacionados o no, si esas entidades, según el conocimiento real del profesional, son (1) una Entidad del Estado Libre Asociado o, (2) si tras una revisión razonable de los libros y

registros del deudor elegible o el peticionario, se determina que estas entidades son tenedoras de una reclamación en contra o que tienen otros intereses económicos con relación a dicho deudor elegible o peticionario. Cada profesional deberá actualizar sus divulgaciones contempladas en este inciso (b) en la medida en que obtenga información adicional o que cambien los hechos.

(c) Independientemente de cualquier otra ley del Estado Libre Asociado, el deudor elegible, el peticionario y el BGF pueden hacer anticipos de honorarios a sus asesores legales y financieros.

(d) En caso de que las reglas sobre conflicto de intereses establecidas en el Canon 21 de los Cánones de Ética Profesional y su jurisprudencia interpretativa haga impráctico que un deudor del sector público obtener representación legal de la más alta competencia que le represente en los procedimientos bajo el Capítulo 2 o el Capítulo 3 de esta Ley que involucre más de cien (100) acreedores (incluyendo tenedores de un interés beneficiario de deuda que trafica en los mercados públicos) que no tenga un conflicto o un conflicto potencial, tal deudor del sector público podrá someter al Tribunal Supremo una solicitud de dispensa o de regla especial estableciendo los fundamentos para tal solicitud. En la consideración de esta solicitud y en el diseño de normas especiales aplicables al caso particular, el Tribunal Supremo podrá considerar las normas especiales sobre conflictos de interés establecidas en la sección 327 del título 11 del Código de los Estados Unidos y la Regla 2014 de las Reglas Federales de Procedimientos de Quiebra (*Federal Rules of Bankruptcy Procedure*), incluyendo, pero sin limitarse a, permitir la designación de uno o varios abogados de conflicto quienes representarán al deudor del sector público en aquellos asuntos que pudieren ser conflictivos a los abogados que representen al deudor del sector público en los procedimientos bajo el Capítulo 2 y el Capítulo 3 de esta Ley.

Sección 126.—Requisito de Fianza.

A discreción de la Sala Especializada o del Tribunal Supremo, a cualquier entidad se le puede ordenar prestar fianza por la cantidad que determine la Sala Especializada o el Tribunal Supremo cuando—

(a) dicha parte pretenda prohibir el cumplimiento con, o procedimientos conforme a, toda o parte de esta Ley; o

(b) se apele una decisión de la Sala Especializada y se solicite la paralización de la decisión tomada bajo esta Ley.

Sección 127.—Apelaciones.

(a) Cualquier apelación de una orden de aprobación, de una orden de transferencia, de una declaración final de distribución o de una orden de confirmación deberá presentarse en el Tribunal Supremo en un término de catorce (14) días contados a partir del archivo en autos de copia de la notificación de la orden de aprobación, la orden de transferencia, la declaración final de distribución o la orden de confirmación, respectivamente.

(b) Toda otra apelación será tramitada según dispone la Ley del Estado Libre Asociado, y sujeto al inciso (a) de esta sección, nada en esta Ley limitará la revisión por un tribunal apelativo de los asuntos decididos por la Sala Especializada.

Subcapítulo III: Protección de los Acreedores y Gobernanza

Sección 128.-Cumplimiento con la Constitución del Estado Libre Asociado y la Constitución de los Estados Unidos.

Si una parte en un contrato con un deudor elegible o un peticionario demuestra que su tratamiento bajo esta Ley sustancialmente o severamente menoscaba sus derechos bajo dicho contrato para propósitos de la Constitución del Estado Libre Asociado o la Constitución de Estados Unidos sin proveer un remedio adecuado para ello, dicho menoscabo sustancial o severo sólo será permitido si el deudor elegible, el peticionario, o BGF, según aplique, supera el peso que le impone la Constitución del Estado Libre Asociado o la Constitución de Estados Unidos con relación a demostrar el uso de medios razonables y necesarios para adelantar un interés gubernamental legítimo, y la parte agraviada no logra superar el peso de convencer de lo contrario.

Sección 129.-Protección Adecuada y Poder de Razón de Estado.

(a) Cuando el interés de una entidad sobre propiedad tiene derecho a protección adecuada bajo esta Ley, la misma se proveerá de cualquier manera razonable, incluyendo—

- (1) pago en efectivo o pagos periódicos en efectivo;
- (2) gravamen o gravámenes sustitutos (sobre ingresos futuros u otros); o
- (3) con relación a un caso bajo el Capítulo 3, reclamaciones administrativas, en cada caso, sólo en la medida que el periodo de suspensión, la paralización automática, el uso o transferencia de la propiedad gravada, o la constitución de un gravamen bajo esta Ley resulte en una disminución en el valor que tuviera al comienzo del periodo de suspensión o de un caso bajo el Capítulo 3 del interés de dicha entidad en la propiedad sujeta al gravamen.

(b) Sin limitar el inciso (a) de esta sección, protección adecuada del interés de una entidad en colateral en efectivo, incluyendo ingresos del deudor elegible o el peticionario, según sea el caso, puede incluir una prenda de los ingresos futuros de dicha entidad (neto de gastos ordinarios, operacionales u otros gastos incurridos por el deudor elegible o el peticionario bajo esta Ley) de dicho deudor elegible o peticionario si—

- (1) exigir el cumplimiento corriente del interés de dicha entidad podría sustancialmente menoscabar la habilidad de dicho deudor elegible o peticionario de descargar su función pública;
- (2) no hay alternativa práctica disponible para cumplir con dicha función pública a la luz de la situación; y
- (3) la generación de ingresos netos futuros para repagar las reclamaciones garantizadas de dicha entidad depende del desempeño corriente y continuo de sus funciones públicas y los ingresos netos futuros mejorarán como resultado del uso corriente de colateral en efectivo o ingresos para evitar un menoscabo corriente de funciones públicas.

(c) Sin limitar los incisos (a) y (b) de esta sección, un deudor elegible o un peticionario puede resarcirse de, o utilizar, propiedad garantizando un interés de una entidad para cubrir los costos y gastos razonables y necesarios para preservar, o disponer de, dicha propiedad hasta la cantidad del beneficio a dicha entidad, incluyendo el pago de gastos incurridos por el deudor elegible o el peticionario conforme a, o para adelantar los propósitos de, esta Ley.

(d) Independientemente de cualquier sección en esta Ley condicionando el uso o transferencia de la propiedad del deudor elegible o el peticionario a la protección adecuada del interés de una entidad en la propiedad, la Sala Especializada podrá aprobar dicho uso o transferencia sin protección adecuada cuando el poder de razón del estado (*police power*) justifique y autorice el uso o transferencia provisional o permanente de propiedad sin protección adecuada.

Sección 130.—Reservado

Sección 131.—Limitaciones a Traspasos Preferentes.

Ninguna persona podrá instar una acción por o en nombre de acreedores de un deudor elegible o un peticionario con relación a traspasos preferentes. Ninguna persona podrá instar una acción por o en nombre de los acreedores de un deudor elegible o un peticionario con relación a una transferencia fraudulenta, excepto por una transferencia, o el reconocimiento de una obligación, que se realizó con intención de obstaculizar, retrasar o defraudar a los acreedores. Cualesquiera y todas dichas acciones serán controladas e instadas exclusivamente por el Estado Libre Asociado, a discreción del Secretario de Justicia para el beneficio de los acreedores con derecho a traer dicha acción fuera de esta Ley.

Sección 132.—Recobro de Traspasos Preferentes.

(a) Excepto según se dispone en esta sección, en la medida que se limita un traspaso preferente conforme la sección 131 de esta Ley, un deudor elegible o peticionario puede recobrar la propiedad transferida, o, si la Sala Especializada así lo ordena, el valor de dicha propiedad, de—

(1) el tramitante inicial de dicha transferencia o la entidad para beneficio de la cual se hizo la transferencia; o

(2) cualquier tramitante mediano o inmediato de dicho tramitante inicial.

(b) Un deudor elegible o un peticionario no podrá recobrar conforme el inciso (a)(2) de esta sección de—

(1) un tramitante que adquirió por valor, incluyendo satisfaciendo o garantizando una deuda corriente o pasada, de buena fe, y sin conocimiento de la anulabilidad del traspaso preferente; o

(2) cualquier tramitante de buena fe mediano o inmediato de dicho tramitante.

(c) Un tramitante de buena fe del cual un deudor elegible o un peticionario puede recobrar conforme el inciso (a) de esta sección tiene un gravamen sobre la propiedad recuperada para asegurar lo menor de—

(1) el costo, a dicho tramitante, de cualquier mejora hecha después de la transferencia, menos la cantidad de cualquier ganancia realizada por o devengada por dicho tramitante de dicha propiedad; o

- (2) cualquier incremento en valor de dicha propiedad como resulta de dicha mejora de la propiedad transferida.
- (d) El deudor elegible o peticionario puede ejercer el derecho concedido por el inciso (a) de esta sección una sola vez.
- (e) En esta sección, “mejora” incluye:
 - (1) adiciones o cambios físicos a la propiedad transferida;
 - (2) reparaciones a dicha propiedad;
 - (3) pago de contribuciones sobre dicha propiedad;
 - (4) pago de cualquier deuda asegurada por un gravamen sobre dicha propiedad que es superior o de igual rango que los derechos del deudor elegible o el peticionario; y
 - (5) preservación de dicha propiedad.

Sección 133.—Derecho del BGF a Coordinar y Controlar los Procedimientos de Cumplimiento con la Deuda y Recuperación.

(a) El BGF tendrá, para consigo mismo y a nombre del deudor del sector público, en todas las etapas de los procedimientos incluyendo procedimientos apelativos y de certiorari, legitimación activa para levantar, comparecer, ser escuchado, exigir y defender contra todos y cualesquiera temas y solicitudes para alivio en una transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley o en un caso bajo el Capítulo 3 de esta Ley. El deudor elegible o el peticionario reembolsará al BGF todos los gastos y costos relacionados incurridos por el BGF.

(b) Todos los derechos de un deudor del sector público a tomar acción para solicitar aprobación y dirigir su transacción consensual de alivio de deuda bajo el Capítulo 2 de esta Ley o para iniciar y gestionar su caso bajo el Capítulo 3 de esta Ley se extenderán al BGF para actuar a nombre del deudor del sector público, en cuyo caso el BGF podrá actuar a través de sus asesores legales, o los asesores legales del deudor del sector público deberán seguir las instrucciones del BGF. Cada acción tomada por el BGF será obligatoria para el deudor del sector público.

Sección 134.—Reembolso al BGF.

(a) El deudor elegible o el peticionario, según sea aplicable, reembolsará o pagará al BGF la totalidad de los costos y gastos del BGF relacionados a cantidades pagadas en preparación para solicitar alivio bajo esta Ley, incluyendo el pago de asesores financieros y legales del deudor elegible, el peticionario y el BGF (incluyendo cualquier anticipo pagado a dichos asesores), antes del comienzo de un periodo de suspensión bajo el Capítulo 2 de esta Ley o de un caso bajo el Capítulo 3 de esta Ley, o relacionado a esta Ley.

(b) Además de la obligación de reembolso provista en el inciso (a) de esta sección, el deudor elegible o el peticionario, según sea aplicable, reembolsará o pagará al BGF la totalidad de lo siguiente—

- (1) costos y gastos (incluyendo pagos a asesores financieros y legales) por servicios provistos por el BGF al deudor elegible o al peticionario, tanto antes como después del comienzo del periodo de suspensión bajo el Capítulo 2 de esta Ley o de un caso bajo el Capítulo 3 de esta Ley, o relacionado con el procedimiento para exigir los

derechos del deudor elegible o peticionario bajo esta Ley cuando el BGF ha actuado mediante sus abogados conforme la sección 133(b) de esta Ley; y

(2) desembolsos hechos tanto antes como después del comienzo de un periodo de suspensión bajo el Capítulo 2 de esta Ley o la radicación de una petición bajo el Capítulo 3 de esta Ley, en cada caso, a nombre del deudor elegible o el peticionario por concepto de bienes y servicios pagados por el BGF y provistos y rendidos al deudor elegible o al peticionario, y cualesquiera fondos que el BGF proveyó o provea al deudor elegible o al peticionario, según sea aplicable, que el BGF entiende son necesarios para el desempeño de la función pública del deudor elegible o del peticionario.

(c) Independientemente de cualquier otra disposición en esta Ley, el deudor elegible o el peticionario, según sea aplicable, prontamente reembolsará o pagará al BGF la totalidad de las cantidades provistas en los incisos (a) y (b) de esta sección, pero no más tarde de diez (10) días después de la solicitud por escrito del BGF. Las cantidades adeudadas al BGF según se describen en esta Sección no podrán ser ajustadas como un instrumento de deuda afectada bajo el Capítulo 2 de esta Ley o como deuda afectada bajo el Capítulo 3 de esta Ley y deberán formalizarse e incurrirse conforme a la legislación vigente sobre contratación gubernamental, excepto según se disponga en esta Ley. Las disposiciones de la Ley Núm. 66-2014 no serán aplicables a los contratos relacionados con servicios provistos con relación a este Ley.

Sección 135.–Nombramiento del Administrador de Emergencia.

El Gobernador podrá nombrar un administrador de emergencia para el deudor elegible o el peticionario, según sea aplicable, en cualquier momento durante el periodo de suspensión bajo el Capítulo 2 de esta Ley o mientras esté pendiente un caso bajo el Capítulo 3 de esta Ley. El Gobernador podrá nombrar cualquier individuo para actuar como administrador de emergencia, incluyendo, sin limitación, un funcionario o ex-funcionario del deudor elegible o el peticionario. El Gobernador podrá autorizar al administrador de emergencia a presidir sobre múltiples deudores elegibles o peticionarios de manera simultánea o secuencial. El administrador de emergencia podrá, sujeto a las disposiciones aplicables y las obligaciones pactadas al amparo de la Ley 66-2014:

(a) poseer y ejercer de manera exclusiva todos los poderes de la junta de gobierno y del principal oficial ejecutivo del deudor elegible o el peticionario, según sea aplicable, y los poderes de la junta de gobierno del deudor elegible o el peticionario serán suspendidos mientras el administrador de emergencia esté en funciones;

(b) rendir informes periódicamente a dicha junta de gobierno sobre las operaciones del deudor elegible o el peticionario, según sea aplicable, el progreso del proceso de reestructuración bajo el Capítulo 2 de esta Ley o la implantación del plan del peticionario bajo el Capítulo 3 de esta Ley, y la junta de gobierno podrá asesorar al administrador de emergencia según este solicite;

(c) rendir informes al Gobernador, a la Asamblea Legislativa y al BGF según sea solicitado;

(d) estar en funciones mientras:

- (1) dure el periodo de suspensión y podrá continuar en funciones por un periodo de hasta tres (3) meses después de archivada la orden de aprobación, cuyo periodo podrá ser extendido por el Gobernador por tres (3) meses adicionales o según se disponga en el programa de recuperación;
- (2) dure el caso bajo el Capítulo 3, a menos y hasta tanto sea sustituido por el Gobernador, y continuar prestando servicios por un periodo de tres (3) meses después de la fecha de efectividad del plan y dicho periodo podrá ser extendido por tres (3) meses adicionales por el Gobernador; o
- (3) hasta tanto el Gobernador, en su entera discreción, determine, siempre y cuando no exceda los periodos provistos en los incisos (d)(1) y (d)(2) arriba; y
- (e) recibir compensación por el deudor elegible o el peticionario, según sea aplicable, conforme los términos de empleo aprobados por el Gobernador con la asesoría del BGF.

Sección 136.—Operaciones Corrientes.

- (a) Durante el periodo de suspensión bajo el Capítulo 2 de esta Ley o mientras un caso bajo el Capítulo 3 de esta Ley esté pendiente, un deudor elegible o un peticionario, según sea aplicable, (i) operará el negocio y tomará todas las decisiones relacionadas a su personal y toda otra determinación de negocios durante el periodo de suspensión y mientras un caso bajo el Capítulo 3 esté pendiente, en cada caso conforme con la ley aplicable, (ii) permanecerá en posesión y control de sus activos y, (iii) sujeto a las secciones 307 y 323 de esta Ley, estará autorizado a utilizar y transferir dichos activos sin la aprobación de la Sala Especializada.
- (b) El Gobernador podrá, en cualquier momento, de manera provisional durante un periodo de suspensión o mientras un caso bajo el Capítulo 3 de esta Ley esté pendiente, nombrar miembros nuevos de la junta de gobierno de cualquier deudor elegible o peticionario, según sea aplicable, con el consejo y consentimiento del Senado, para sustituir todos o algunos de aquellos miembros de la junta de gobierno existentes que hayan sido nombrados por el Gobernador.
- (c) El Gobernador podrá ejercer cualquiera, todos o ninguno de los poderes concedidos por el inciso (b) de esta sección y la sección 135 de esta Ley, simultánea o secuencialmente, según sea el caso.

Sección 137.—Cuasi-inmunidad del Deudor Elegible y el Peticionario, el Personal del Comité de Acreedores, y Funcionarios Gubernamentales.—

- (a) Las entidades enumeradas no le responderán a entidad alguna por acciones tomadas o no tomadas en su capacidad y dentro de su autoridad en relación a o que surja bajo esta Ley o según se permita bajo esta Ley, y serán exoneradas de responsabilidad sin necesidad de notificación adicional u orden, excepto si se prueba mediante sentencia final y firme que las entidades han llevado a cabo conducta dolosa y para beneficio propio o han incurrido en negligencia crasa que conlleve una indiferencia temeraria hacia sus deberes y la omisión de llevarlos a cabo.

- (b) Ninguna acción se presentará en contra de las entidades enumeradas respecto a sus actos u omisiones en relación a o que surja bajo esta Ley, excepto en la Sala Especializada. Ninguna causa de acción civil podrá surgir en contra de las entidades enumeradas y no se les impondrá responsabilidad civil si no se presenta prueba clara y convincente de conducta dolosa para beneficio propio o de negligencia crasa que conlleve una indiferencia temeraria hacia sus deberes y la omisión de llevarlos a cabo. Cualquier acción presentada por negligencia crasa será desestimada con perjuicio si un demandado, como oficial, director, miembro de comité, profesional u otra entidad enumerada, produce documentos que demuestren que dicho demandado recibió información sobre los hechos relevantes, participó en persona o por teléfono y deliberó de buena fe o recibió, y confió en el, asesoramiento de expertos respecto a cualquier acción u omisión que sea base para la demanda.

Capítulo 2: Alivio de Deuda Consensual

Sección 201.—Transacción Consensual de Alivio de Deuda.

- (a) Los objetivos del Capítulo 2 de esta Ley son los siguientes:
- (1) brindar tiempo a un deudor elegible para que logre ser financieramente auto-suficiente;
 - (2) distribuir de manera equitativa entre todas las partes interesadas las cargas del programa de recuperación, y
 - (3) proveer el mismo tratamiento a todos los acreedores que se encuentren dentro de una misma categoría (*class*) de instrumento de deuda afectada, a menos que un acreedor acepte un tratamiento menos favorable.
- (b) Un deudor elegible podrá solicitar alivio de deuda a sus acreedores, mediante una o más transacciones, a tenor con el Capítulo 2 de esta Ley (cada una denominada una “transacción consensual de alivio de deuda”), si así lo autoriza—
- (1) su junta de gobierno, con la aprobación del BGF; o
 - (2) el BGF, a solicitud del Gobernador, y a nombre del deudor elegible, si el deudor elegible no ha autorizado dicha acción y el Gobernador, con el consejo del BGF, determina que ello adelanta los mejores intereses del deudor elegible y del Estado Libre Asociado.
- (c) Para permitir que el BGF pueda coordinar el alivio solicitado en casos en que el Gobernador y el BGF autoricen la transacción consensual de alivio de deuda, el BGF tendrá la facultad de seleccionar y contratar, a nombre del deudor elegible y a costa del deudor elegible, los profesionales que el BGF considere necesarios para solicitar alivio conforme al Capítulo 2 de esta Ley.
- (d) Una vez el deudor elegible obtiene autorización conforme el inciso (b) de esta sección, el deudor elegible publicará en su portal electrónico un aviso que—
- (1) indique que el periodo de suspensión ha comenzado en la fecha del aviso; e
 - (2) identifique las obligaciones sujetas al periodo de suspensión.

(e) La notificación de suspensión puede enmendarse para añadir o eliminar obligaciones, pero el periodo de suspensión comenzará sólo desde el momento de la primera publicación de la notificación de suspensión conforme el inciso (d) de esta sección.

Sección 202.—Alivio y Compromiso.

(a) En una transacción consensual de alivio de deuda iniciada conforme a la sección 201 de esta Ley, un deudor elegible podrá solicitar que los tenedores de los instrumentos de deuda afectada aprueben cualquier enmienda a, o modificación, renuncia o intercambio de, esos instrumentos.

(b) Con relación a una transacción consensual de alivio de deuda, un deudor elegible tendrá que preparar un programa de recuperación y comprometerse con éste mediante actuación de su junta de gobierno (si es ésta quien lo autoriza conforme a la sección 201(b)(1) de esta Ley) o por el BGF, a solicitud del Gobernador (si es este quien lo autoriza conforme a la sección 201(b)(2) de esta Ley) a nombre del deudor elegible. El programa de recuperación deberá—

(1) permitir que el deudor elegible advenga financieramente auto-suficiente a base de aquellos ajustes financieros y operacionales que sean necesarios o apropiados para distribuir las cargas de dicho alivio de deuda consensual equitativamente entre las partes interesadas; y

(2) ser aprobado por escrito por el BGF.

(c) El programa de recuperación podrá incluir metas interinas y metas de desempeño y otras medidas para—

(1) mejorar márgenes operacionales;

(2) aumentar ingresos operacionales;

(3) reducir gastos operacionales;

(4) transferir o de alguna otra manera disponer de o transferir activos operacionales existentes;

(5) adquirir nuevos activos operacionales; y

(6) cerrar o reestructurar operaciones o funciones existentes.

(d) Con relación a cualquier transacción consensual de alivio de deuda, e independientemente de cualquier disposición al contrario contenida en el instrumento de deuda afectada o en otra ley que de otro modo sería aplicable, las enmiendas, modificaciones, exenciones, renunciaciones o intercambios propuestos en esa transacción serán efectivos y vinculantes para cualquier entidad reivindicando reclamaciones u otros derechos, incluyendo un interés beneficiario, con relación a instrumentos de deuda afectada, cualquier fiduciario, cualquier agente de colateral, cualquier fiduciario de bonos (*indenture trustee*), cualquier agente fiscal, y cualquier banco que recibe o custodia fondos de dicho deudor elegible relacionado a los instrumentos de deuda afectada, dentro de una categoría (*class*) especificado en la transacción consensual de alivio de deuda y todos los poseedores de esos instrumentos si—

(1) el BGF ha aprobado la transacción consensual de alivio de deuda por escrito;

(2) los acreedores de al menos:

- (A) cincuenta por ciento (50%) del total de la deuda de dicha categoría (*class*) participa en la votación o en la solicitud de consentimiento con relación a dichas enmiendas, modificaciones, renunciaciones o intercambios; y
- (B) setenta y cinco por ciento (75%) del monto total de la deuda en dicha categoría (*class*) que participa o vota aprueba las enmiendas, modificaciones, renunciaciones o intercambios propuestos;
- (3) cada categoría (*class*) contiene reclamaciones que son sustancialmente similares a las otras reclamaciones de ese grupo, disponiéndose, que la frase “sustancialmente similar” no requiere agrupación en base a fechas de vencimiento similares; y
- (4) la Sala Especializada emite una orden de aprobación respecto a la transacción consensual de alivio de deuda, de acuerdo con la sección 204 de esta Ley.

(e) Para propósitos del cálculo del porcentaje de votación establecido en esta sección, los instrumentos de deuda afectados que sean poseídos o controlados por cualquier Entidad del Estado Libre Asociado no contarán para dicho voto.

Sección 203.—Comisión de Supervisión.

(a) Se creará una comisión de supervisión para cada deudor elegible que esté sujeto a un plan de alivio no más tarde de diez (10) días después de que se emita una orden de aprobación. La identidad y afiliación(es) de las personas que formarán parte de dicho comité de supervisión se harán públicos antes del inicio de la vista de aprobación. Dicha comisión de supervisión tendrá la responsabilidad de monitorear el cumplimiento con cada programa de recuperación. El deudor elegible sujeto al programa de recuperación proveerá periódicamente a la comisión de supervisión información actualizada de su cumplimiento con los términos del programa de recuperación, pero no menos de una vez cada cuatro (4) meses.

(b) Si la comisión de supervisión, por voto mayoritario, determina que un deudor elegible no ha cumplido con una meta interina de desempeño u otro objetivo importante contenido en el programa de recuperación y que su incumplimiento ha durado al menos noventa (90) días después de dicho hallazgo, la comisión de supervisión emitirá un hallazgo de incumplimiento, que entregará al deudor elegible, al Gobernador y a la Asamblea Legislativa, con una copia para divulgación pública, y en el que explicará las razones del incumplimiento y hará recomendaciones para remediar ese incumplimiento. Esas recomendaciones podrán incluir el reemplazo de algunos o todos los miembros de la gerencia o la junta de gobierno del deudor elegible.

Sección 204.—Aprobación Judicial de la Transacción Consensual de Alivio de Deuda.

(a) Cualquier deudor elegible que interese que se dicte una orden de aprobación deberá solicitarlo al Tribunal en un término de treinta (30) días contados a partir de la fecha que se obtenga el consentimiento de los tenedores de instrumentos de deuda afectados, según se dispone en la sección 202(d)(2).

(b) La Sala Especializada deberá celebrar una vista para considerar si se dictará la orden de aprobación no más tarde de veintiún (21) días a partir de la fecha de radicación de la solicitud.

(c) Independientemente de cualquier disposición contractual o de cualquier ley aplicable al contrario, la notificación de una vista descrita en la sección 204(b) será razonable y apropiada si—

(1) la publicación de la notificación mediante edicto de la vista se realiza de acuerdo con lo dispuesto en la sección 116(c)(2) de esta Ley, y

(2) la notificación de la vista se envía a los tenedores de los instrumentos de deuda afectados al menos catorce (14) días antes de la vista, incluyendo a través de The Depository Trust Company o un depositario similar, o según ordene la Sala Especializada.

(d) Sujeto a los términos y condiciones del instrumento de deuda afectada (incluyendo cualquier limitación a demandas establecida en éstos), cualquier tenedor de un instrumento de deuda afectada puede objetar el alivio solicitado según el inciso (a) de esta sección mediante radicación de una objeción de conformidad con la sección 120 de esta Ley, disponiéndose, sin embargo, que ninguna entidad podrá objetar si no se ve afectada adversamente por las acciones tomadas con relación a esta Ley.

(e) Al determinar si se debe emitir una orden de aprobación, la Sala Especializada considerará únicamente si las enmiendas, modificaciones, renunciaciones o intercambios propuestos en esa transacción son consistentes con los requisitos del Capítulo 2 de esta Ley y los objetivos dispuestos en la sección 201(a) de esta Ley, y si el procedimiento de votación utilizado en relación con la transacción consensual de alivio de deuda, el cual debe incluir una notificación y un periodo de tiempo razonable para votar o consentir según requieran las circunstancias, se llevó a cabo de forma consistente con el Capítulo 2 de esta Ley. Si la Sala Especializada determina que cada uno de estos requisitos se satisfizo, deberá emitir la orden de aprobación.

Sección 205.—Suspensión de Remedios.

(a) Independientemente de cualquier disposición contractual o ley aplicable al contrario, durante el periodo de suspensión, ninguna entidad reivindicando reclamaciones u otros derechos, incluyendo un interés beneficiario, con relación a instrumentos de deuda afectada, cualquier fiduciario, cualquier agente de colateral, cualquier fiduciario de bonos (*indenture trustee*), cualquier agente fiscal, cualquier banco que recibe o custodia fondos de dicho deudor elegible relacionado a los instrumentos de deuda afectada, podrá ejercer o continuar ejerciendo, respecto a ese instrumento, remedio alguno bajo un contrato o ley aplicable:

(1) relacionado a la falta de pago del principal, prima de retención o los intereses;

(2) relacionado al incumplimiento de cualquier condición o convenio; o

(3) que esté condicionado a la condición financiera de, o al inicio de la reestructuración, insolvencia, quiebra u otros procedimientos (o un proceso similar o análogo) por, el deudor elegible concernido, incluyendo un incumplimiento o un evento de incumplimiento bajo éstos.

(b) El término “remedio” según se utiliza en el inciso (a) de esta sección se interpretará ampliamente, e incluirá cualquier derecho que exista en ley o contrato, y cualquier derecho a:

- (1) compensación;
- (2) aplicar o apropiarse de fondos;
- (3) solicitar la designación de un custodio;
- (4) solicitar el incremento de tarifas; y
- (5) ejercer control sobre propiedad del deudor elegible.

(c) Independientemente de cualquier disposición contractual o ley aplicable en contrario, un contrato del cual el deudor elegible es parte no puede ser terminado o modificado, y cualquier derecho u obligación bajo dicho contrato no puede ser terminado o modificado, en cualquier momento durante el periodo de suspensión sólo en base a una disposición en dicho contrato condicionada a—

- (1) la insolvencia o condición financiera del deudor elegible en cualquier momento antes del comienzo del periodo de suspensión;
- (2) el comienzo del periodo de suspensión o un proceso de reestructuración conforme al Capítulo 2 de esta Ley; o
- (3) un incumplimiento bajo un contrato separado a causa de, provocado por, o como resultado de, los sucesos o asuntos en los incisos (a)(1) o (a)(2) de esta sección.

(d) Independientemente de una disposición contractual en contrario, una contraparte a un contrato con el deudor elegible para la entrega de bienes o la prestación de servicios, a menos que el deudor elegible provea instrucciones escritas en contrario, continuará desempeñando todas sus obligaciones bajo, y cumplirá con todos los términos de, dicho contrato durante el periodo de suspensión, disponiéndose, que el deudor elegible no esté incumpliendo bajo dicho contrato excepto por—

- (1) como resultado de una condición especificada en el inciso (c) de esta sección; o
- (2) con relación a un contrato de proveedor esencial, como resultado de la falta de pago de cantidades que surgen antes del comienzo del periodo de suspensión.

(e) El periodo de suspensión terminará automáticamente, sin acciones adicionales, si—

- (1) se deniega una orden de aprobación para la transacción consensual de alivio de deuda y no se remedia dentro de un término de sesenta (60) días contados a partir de la denegatoria, a menos que se provea otra cosa en la orden denegando la solicitud para una orden de aprobación; o
- (2) no se presenta una solicitud de aprobación en la Sala Especializada dentro del término de doscientos setenta (270) días contados a partir del inicio del periodo de suspensión, disponiéndose que el periodo de suspensión puede ser extendido por un periodo adicional de noventa (90) días si el deudor elegible y los tenedores de al menos el veinte (20) por ciento de la suma agregada de los instrumentos de deuda afectada de al menos una categoría (*class*) de instrumentos de deuda afectada consienten a tal extensión.

(f) La Sala Especializada tendrá el poder de hacer cumplir el periodo de suspensión y cualquier entidad que se halle en violación de esta sección le responderá al deudor elegible por los daños, las costas y los honorarios de abogado en los que incurra el

deudor elegible para defenderse contra las acciones tomadas en violación de esta sección y por daños punitivos por violaciones intencionales y conscientes. Si se determina que el período de suspensión se ha violado, la Sala Especializada puede ordenar remedios adicionales apropiados, incluyendo que los actos que constituyeron dicha violación se declaren nulos.

Sección 206.–Financiamiento.

(a) Después del comienzo de un periodo de suspensión, un deudor elegible puede obtener crédito de la misma manera y bajo los mismos términos que un peticionario conforme la sección 322 de esta Ley.

(b) En la medida que sea requerido por cualquier entidad interesada en proveer financiamiento bajo el inciso (a), el deudor elegible puede, antes o después de radicar una solicitud para una orden de aprobación conforme la sección 204 de esta Ley, solicitar de la Sala Especializada, después de notificación y la celebración de una vista, una orden aprobando y autorizándolo a obtener dicho financiamiento.

(c) Financiamiento obtenido mediante el inciso (a) de esta sección no podrá tratarse como un instrumento de deuda afectada bajo el Capítulo 2 o como deuda afectada bajo el Capítulo 3 o evitado como un transferencia fraudulenta.

(d) Si el deudor elegible subsiguientemente solicita alivio bajo el Capítulo 3, el financiamiento provisto bajo esta sección tendrá derecho a la misma prioridad y garantías como si dicho financiamiento se hubiese provisto bajo el Capítulo 3,

(e) Sección 322(e) serán de aplicación a cualquier orden archivada en autos conforme el inciso (b) de esta sección.

Sección 207.–Protección Adecuada para el Uso de Propiedad Sujeta a una Prenda o Gravamen.

(a) Para continuar realizando funciones públicas y obtener una orden de aprobación o completar una transacción consensual de alivio de deuda, el deudor elegible puede utilizar propiedad, incluyendo colateral en efectivo, sujeta a una prenda, gravamen u otro interés de, o para el beneficio de, una entidad, disponiéndose que la entidad tendrá derecho a una vista, mediante notificación, para considerar una solicitud para protección adecuada de su prenda, gravamen u otro interés tan pronto permita el calendario de la Sala Especializada, en cuya vista la Sala Especializada podrá condicionar el uso de la colateral bajo aquellos términos, si algunos, que determine necesarios para proteger adecuadamente dicho interés.

(b) Independientemente de cualquier disposición en contrario en esta Ley, si los ingresos de un deudor elegible están sujetos a una prenda bajo la cual los gastos corrientes y operacionales se pueden pagar antes del pago de principal, intereses o cualquier otra cantidad adeuda a un acreedor, el deudor elegible no tendrá obligación alguna de proveer protección adecuada a dicho acreedor conforme esta sección, en la medida en que no hay suficientes ingresos disponibles para el pago de dicho principal, interés u otra cantidad después del pago total de dichos gastos corrientes u gastos operacionales.

(c) Si la entidad tenedora de la prenda, gravamen o interés en la colateral consiente a su uso, entonces se considerará que la entidad está protegida adecuadamente según los términos, si algunos, en dicho consentimiento y no se requerirá protección adecuada adicional.

Capítulo 3: Cumplimiento con la Deuda**Subcapítulo I: Petición y Anejos****Sección 301.-La Petición.**

(a) Un caso bajo el Capítulo 3 de esta Ley comienza con la radicación de una petición ante la Sala Especializada, ya sea:

(1) por un peticionario luego de la decisión de su junta de gobierno y la aprobación del BGF; o

(2) por el BGF a solicitud del Gobernador y a nombre del peticionario, si la junta de gobierno del peticionario no ha autorizado la petición, y el Gobernador determina que la petición adelanta los mejores intereses del peticionario y del Estado Libre Asociado.

(b) Para permitir al BGF coordinar el remedio solicitado en todos los casos presentados bajo el Capítulo 3 de esta Ley, el BGF tendrá la potestad de seleccionar y retener a profesionales financieros y legales para atender cada caso bajo el Capítulo 3, a nombre del peticionario y a su costa, sujeto a las secciones 125 y 134 de esta Ley.

(c) No se podrá comenzar un caso bajo el Capítulo 3 de esta Ley mediante petición involuntaria de acreedores u otras entidades.

(d) La petición dispondrá:

(1) las cantidades y tipos de reclamaciones contra el peticionario que el peticionario, sujeto a enmienda, prevé que se afectarán bajo el plan, con suficiente detalle para facultar al Tribunal a constituir un comité general conforme a la Sección 318(a) de esta Ley; disponiéndose que, si la lista de la sección 302(a)(2) se presenta junto con la petición, dicha lista satisfará el requisito de este inciso (1); y

(2) la apreciación de la entidad que radica la petición conforme a los incisos (a)(1) o (a)(2) de esta sección a los efectos de que el peticionario cumple con los requisitos de elegibilidad provistos en la sección 113(b) de esta Ley.

Sección 302.-Requisitos de Presentación de la Petición.

(a) Un peticionario radicará, junto con la petición de alivio bajo el Capítulo 3 de esta Ley, o tan pronto sea posible después de haber presentado la petición, o si la petición se presenta conforme la sección 301(a)(2) de esta Ley, no más de sesenta (60) días después de la fecha de presentación de la petición:

(1) una lista de acreedores que el peticionario o el BGF entienden serían acreedores afectados y de los cuales el peticionario tenga récords electrónicos internos inmediatamente accesibles con sus nombres y direcciones postales o electrónicas; y

(2) una lista de todas las reclamaciones contra el peticionario que existían el día de la radicación de la petición y que se pretenden afectar bajo el plan, mostrando:

(A) las cantidades adeudadas a la fecha que la petición es presentada;

- (B) cualquier rango o prioridad entre dichas reclamaciones;
- (C) la colateral que la garantiza, incluyendo la prenda de ingresos, para cada reclamación;
- (D) cuáles de estas reclamaciones el peticionario reconoce como permitidas y cuáles el peticionario disputa o aduce que son contingentes o ilíquidas; y
- (E) los contratos de suplidores esenciales.

(b) Un peticionario podrá enmendar su lista de acreedores afectados y su lista de reclamaciones en cualquier momento (1) al menos cinco (5) días laborables antes de que venza el término para objetar una transferencia de todos o sustancialmente todos los activos del peticionario o (2) antes de la fecha de registro de votación establecida por la Sala Especializada, y proveerá notificación de dichas enmiendas a todos los acreedores afectados por dichas enmiendas.

Sección 303.-Notificación de Comienzo.

(a) Prontamente luego de radicar la petición y obtener de la Sala Especializada una fecha para la vista especificada en el inciso (a)(2) de esta sección, un peticionario enviará a todos sus acreedores afectados y contrapartes contractuales para los cuales tenga récords internos de direcciones postales o electrónicas inmediatamente accesibles, y a todas las entidades que radiquen notificaciones de comparecencia conforme a la sección 119 de esta Ley, notificación de:

- (1) la radicación de la petición y de la paralización automática;
- (2) la fecha y hora de la vista sobre la elegibilidad del peticionario para el remedio bajo el Capítulo 3 de esta Ley conforme a la sección 306 de esta Ley;
- (3) la fecha en que las objeciones, si alguna, a la elegibilidad del peticionario deben ser radicadas;
- (4) la lista a la cual se hace referencia en la sección 302(a)(2) de esta Ley, o, si no está disponible, la lista a la cual se hace referencia en la sección 302(d)(1) de esta Ley;
- (5) el derecho de cada acreedor afectado a informar al Tribunal de su disposición a servir en el comité general a ser constituido conforme la sección 318(a) de esta Ley, cuya disposición estará evidenciada en la forma de una notificación radicada ante la Sala Especializada prominentemente identificada como una “Notificación de Disposición para Servir en el Comité General”, y claramente proveerá una descripción de los intereses económicos enumerados en las secciones 318(d)(1) y 318(d)(2) de esta Ley; y
- (6) el umbral para la deuda comercial especial.

(b) Un peticionario también proveerá notificación suplementaria, mediante edicto, de la información requerida conforme a la sección 303(a) de esta Ley, según especifica la

sección 116(c)(2) de esta Ley, y publicándolo en el portal electrónico para su caso bajo el Capítulo 3 de esta Ley.

Subcapítulo II: Paralización Automática

Sección 304.-Paralización Automática.

(a) Una vez radicada la petición, las siguientes acciones por todas las entidades, independientemente de donde estén localizadas, serán automáticamente paralizadas con relación a la deuda afectada:

(1) el comienzo o la continuación, incluyendo la expedición o el diligenciamiento de un emplazamiento, de una acción judicial, arbitral, administrativa u otra acción o procedimiento contra el peticionario o (en la medida que se relacionen a, o surjan de reclamaciones contra, el peticionario o la radicación de la petición) contra cualquier otra entidad enumerada:

(A) que fue o pudo haber sido iniciada antes de la radicación de la petición bajo el Capítulo 3 de esta Ley (incluyendo la solicitud para un custodio); o

(B) para recobrar sobre una reclamación contra el peticionario o (en la medida que se relacione a, o surja de reclamaciones contra, el peticionario o la radicación de la petición) contra cualquier entidad enumerada, por mandamus o de alguna otra manera, que haya surgido antes de la radicación de la petición bajo el Capítulo 3 de esta Ley;

(2) hacer valer contra el peticionario o (en la medida que se relacione a, o surja de reclamaciones contra, el peticionario o la radicación de la petición) contra cualquier entidad enumerada una sentencia obtenida antes de que se radicara la petición bajo el Capítulo 3 de esta Ley;

(3) cualquier acto para crear, perfeccionar o exigir cualquier gravamen contra la propiedad del peticionario;

(4) cualquier acto para cobrar, recaudar o recobrar con relación a una reclamación contra el peticionario que haya surgido antes de la radicación de una petición bajo el Capítulo 3 de esta Ley, incluyendo cualquier acción para obtener posesión o control de propiedad perteneciente al peticionario; y

(5) la compensación de cualquier deuda adeudada al solicitante que haya surgido antes de la radicación de la petición bajo el Capítulo 3 de esta Ley contra cualquier reclamación contra el peticionario.

(b) La paralización bajo esta sección se extenderá automáticamente a toda deuda afectada incluida en la lista descrita en la sección 302(a)(2) de esta Ley cada vez que se enmiende dicha lista.

(c) La petición no operará como una prohibición contra el ejercicio legal del poder de razón de estado (*police power*) de cualquier Entidad del Estado Libre Asociado, los Estados Unidos o un estado. Dicho ejercicio de poder de razón de estado (*police power*) no

incluirá el cobro de interés o principal en cualquier deuda adeudada al Estado Libre Asociado o al BGF.

(d) La paralización con respecto a la propiedad del peticionario terminará cuando el peticionario ya no tenga un interés legal o beneficiario en la propiedad.

(e) Salvo que sea terminada o modificada por la Sala Especializada conforme al inciso (g) de esta sección, la paralización de cualquier acción bajo esta sección continuará hasta lo que ocurra primero de:

- (1) la fecha de efectividad del plan; o
- (2) el momento en que el plan sea desestimado y que la desestimación sea final y firme.

(f) A solicitud del peticionario, la Sala Especializada podrá expedir una orden con relación a la aplicabilidad y el alcance de la paralización bajo el inciso (a) de esta sección, y puede emitir una orden para hacer cumplir la paralización.

(g) La Sala Especializada concederá a una entidad un alivio de la paralización, ya sea terminando, anulando, modificando o condicionando la paralización, en la medida que—

(1) el interés de la entidad en la propiedad del peticionario no esté protegido adecuadamente contra violaciones de la Constitución del Estado Libre Asociado o de la Constitución de Estados Unidos; o

(2) si—

(A) el valor de la propiedad del peticionario no excede el monto de la deuda garantizada por dicha propiedad; y

(B) ninguna parte de dicha propiedad es utilizada o se pretende utilizar para realizar funciones públicas, o para de otra manera fomentar empleos, el comercio o la educación.

(h) Si se objeta una moción que procura un alivio de la paralización, la Sala Especializada celebrará una vista no más tarde de treinta (30) días luego de la radicación de la moción que solicita alivio de la paralización, a menos que el peticionario y el acreedor afectado que solicita alivio de la paralización hayan acordado una fecha posterior. La oposición a la moción que procura un alivio de la paralización debe ser radicada dentro de catorce (14) días a partir de la radicación de dicha moción. El acreedor afectado que procure alivio de la paralización tendrá el peso de la prueba para demostrar que carece de protección adecuada y que el valor de la propiedad del peticionario es menor que la deuda sobre la misma. El peticionario tiene el peso de la prueba para demostrar los hechos relevantes para el remedio conforme la sección 304(g)(2)(B) de esta Ley.

Sección 305.-Remedios por Violar la Paralización Automática.

Cualquier entidad que se halle en violación de la sección 304 de esta Ley será responsable ante al peticionario, y cualquier otra entidad protegida por la paralización, por daños compensatorios, incluyendo cualesquiera costas, gastos y honorarios de abogados en los que hayan incurrido el peticionario o el BGF, según aplique, para defenderse contra una acción tomada en violación a esa sección, y por daños punitivos por violaciones intencionales y dolosas. Además, si se determina que la paralización impuesta por la sección 304 de esta

Ley se ha violado, la Sala Especializada puede ordenar remedios adicionales apropiados, incluyendo que los actos que constituyeron de dicha violación se declaren nulos o anulados.

Subcapítulo III: Vista de Elegibilidad

Sección 306.-Vista de Elegibilidad.

(a) No más tarde de treinta (30) días luego de radicada la petición, la Sala Especializada celebrará una vista, mediando notificación conforme a la sección 338 de esta Ley, para determinar si el peticionario es elegible para alivio bajo el Capítulo 3 de esta Ley.

(b) No más tarde de cuarenta y cinco (45) días luego de radicada la petición, la Sala Especializada expedirá una orden en la que determine si el peticionario es elegible para alivio bajo el Capítulo 3 de esta Ley, al concluir si el peticionario satisface, o no satisface, según sea el caso, los requisitos de elegibilidad de la sección 113(b) de esta Ley.

Subcapítulo IV: Cumplimiento de Reclamaciones por Transferencia Judicial

Sección 307.-Poder para Transferir.

(a) Sujeto a las siguientes disposiciones de esta sección y no obstante cualquier disposición contractual en contrario hecha inexigible por esta Ley, el peticionario, con la aprobación del BGF (o, a solicitud del Gobernador, el BGF a nombre del peticionario), sujeto a la aprobación de la Sala Especializada después de notificación y celebración de una vista, podrá(n) transferir todos o parte de los activos gravados del peticionario (cuya transferencia puede incluir, además, activos que no estén gravados) libres de todo gravamen, reclamación, interés y reclamaciones de empleados contra un patrono sucesor, por una contraprestación válida que consista de cualquier y todo dinero, acciones, notas, prenda de ingresos e interés parcial en los activos transferidos o en la empresa.

(b) Un peticionario no podrá transferir activos a una entidad que no sea una entidad del Estado Libre Asociado, incluyendo una transferencia de todos o sustancialmente todos los activos de dicho peticionario, a menos que concurran los siguientes requisitos—

(1) la ley aplicable (que no sea esta Ley) permita dicha transferencia;

(2) la Sala Especializada ordena que los gravámenes, reclamaciones e intereses gravarán el producto de la transferencia en el orden de su prioridad, con cada disputa sobre prioridades a ser resuelta, a discreción de la Sala Especializada, antes o después del cierre de la transferencia; disponiéndose, sin embargo, que en el caso de la transferencia de todos o sustancialmente todos los activos del peticionario, el peticionario puede recobrar los gastos administrativos razonables y necesarios incurridos en su caso bajo el Capítulo 3 de esta Ley para la preservación y disposición de los activos que se transfieren conforme a este inciso;

(3) la Sala Especializada ha determinado que el adquirente se encargará de realizar las mismas funciones públicas con la propiedad adquirida (ya sea solo o en conjunto con otra propiedad y/o entidad) que el peticionario estaba realizando, salvo que la Sala Especializada determine que cualesquiera funciones que no serán realizadas por el adquirente serán llevadas a cabo por otra entidad o que éstas ya no son necesarias;

- (4) la Sala Especializada determina que una transferencia a una entidad que no es una Entidad del Estado Libre Asociado es el producto de
 - (A) un proceso de transferencia adecuado y una negociación justa diseñada para obtener un precio que sea al menos un valor razonablemente equivalente al de los activos que se proponen transferir; o
 - (B) un proceso de subasta justo;
 - (5) en la medida que los ingresos brutos o netos, si alguno, del peticionario a ser transferidos hayan sido pignorados para colateralizar una deuda afectada, dichas prendas tendrán primer rango de prioridad contra todas las porciones del producto de dicha transferencia que no sean porciones atribuibles a otros activos a ser transferidos libres de gravámenes o gravámenes mobiliarios colateralizando reclamaciones permitidas; y
 - (6) en el caso de la transferencia de todos o sustancialmente todos los activos del peticionario, todas las reclamaciones no enumeradas conforme a la sección 302(a)(2) de esta Ley deben ser pagadas en su totalidad.
- (c) Para propósitos de aclaración, el inciso (b) de esta sección no le confiere a un peticionario poderes adicionales para transferir activos a una entidad que no sea una Entidad del Estado Libre Asociado que dicho peticionario no posea actualmente bajo la ley aplicable.
- (d) Un peticionario puede efectuar una transferencia de activos a una Entidad del Estado Libre Asociado, incluyendo una transferencia de todos o sustancialmente todos los activos de dicho peticionario, no obstante cualquier otra ley aplicable en contrario, sólo si—
- (1) la Sala Especializada ordena que los gravámenes, reclamaciones e intereses se constituirán sobre el producto de la transferencia en orden de prioridad, con cada disputa sobre prioridad a ser resuelta, en la discreción de la Sala Especializada, antes o después del cierre de la transferencia; disponiéndose, sin embargo, que si se transfieren todos o sustancialmente todos los activos del peticionario, el peticionario podrá recuperar los gastos administrativos razonables y necesario incurridos en su caso bajo el Capítulo 3 con relación a la preservación o disposición de dichos activos que se transfieren conforme este inciso;
 - (2) la Sala Especializada determinará que la tramitante se comprometió a desempeñar las mismas funciones públicas con la propiedad adquirida (por su cuenta o junto con otra propiedad y/o entidad) que el peticionario estaba desempeñando, a menos que la Sala Especializada determine que cualquier función pública que el tramitante no desempeñará será desempeñada por otra entidad o ya no son necesarias;
 - (3) la transferencia a la entidad que es una Entidad del Estado Libre Asociado es por un precio que por lo menos es el valor razonablemente equivalente de los activos a ser transferidos, tomando en consideración el requisito que se utilicen para desempeñar la función pública que el peticionario estaba desempeñando, a menos que la Sala Especializada determine que cualquier función pública que no desempeñe el tramitante será desempeñada por otra entidad o ya no son necesarias;

(4) en la medida, si alguna, que los ingresos brutos o netos del peticionario a ser transferidos se dieron en prenda para colateralizar cualquier deuda afectada, dichas prendas tendrán una prioridad de primer rango contra todo el producto de la transferencia excepto por aquellos atribuibles a otros activos a ser transferidos libre de gravámenes o gravámenes mobiliarios colateralizando reclamaciones permitidas; y

(5) en la eventualidad de una transferencia de todos o sustancialmente todos los activos del peticionario, todas la reclamaciones no listadas conforme la sección 302(a)(2) de esta Ley serán pagadas en su totalidad.

(e) El peticionario (o, a solicitud del Gobernador, el BGF a nombre del peticionario) puede transferir parte de, pero no todos o sustancialmente todos, los activos del peticionario no sujetos a gravamen o prenda sin la aprobación de la Sala Especializada, si dicha transferencia es independiente de cualquiera y de todas las transferencias de activos gravados.

(f) Todas las transferencias de propiedad gravada, no gravada o de ambas serán libres de cualquier responsabilidad como sucesor impuesta por alguna ley que de otra manera fuese aplicable.

(g) Ninguna transferencia deberá ser aprobada a menos que el peticionario, o el BGF a nombre del peticionario, haya incluido en su solicitud de aprobación las razones por las cuales es razonablemente probable que dicha transferencia propuesta maximice el valor para los acreedores, en general, mientras permite que el peticionario pueda continuar realizando sus funciones públicas, y la Sala Especializada determine que dichas razones son razonables.

Sección 308.-Distribución del Producto de la Transferencia de Sustancialmente Todos los Activos.

(a) En el caso de una transferencia de todos o sustancialmente todos los activos del peticionario conforme a la sección 307 de esta Ley, después del cierre de la transferencia, el peticionario, con la aprobación del BGF (o el BGF por solicitud del Gobernador y a nombre del peticionario), radicará una declaración de distribución estableciendo cómo se distribuirá el producto de la transferencia entre cada acreedor afectado o categorías (*classes*) de acreedores afectados, y cada acreedor afectado tendrá derecho a objetar la distribución radicando una objeción no más tarde de treinta (30) días después de que el peticionario radique su declaración de distribución. Cuando lo recibido por la transferencia incluye consideración que no sea dinero en efectivo o equivalentes de efectivo, la declaración de distribución deberá disponer sobre los tipos de consideración que se le distribuirán a las categorías (*classes*) particulares de reclamaciones, o si consideración que no sea efectivo deberá primero transferirse a cambio de efectivo y después distribuida.

(b) La Sala Especializada celebrará una vista para decidir sobre cada objeción. Cuando todas las objeciones hayan sido resueltas, el peticionario radicará una declaración de distribución del producto de la transferencia enmendada para que sea consistente con la decisión de la Sala Especializada sobre las objeciones presentadas. Los acreedores afectados tendrán catorce (14) días para radicar sus objeciones a la declaración de distribución enmendada del peticionario – disponiéndose, sin embargo, que dichas objeciones, si alguna, se limitarán solamente a argumentos que la declaración de distribución enmendada no refleja

correctamente la determinación de la Sala Especializada – después de los cuales la Sala Especializada celebrará una vista para resolver las objeciones, y emitirá una declaración final de distribución que vinculará al peticionario y a todos los acreedores. Si no se presenta objeción oportuna a la declaración de distribución enmendada del peticionario, la Sala Especializada ordenará que el producto neto de la transferencia se distribuya de acuerdo con la declaración de distribución enmendada del peticionario, sin necesidad de notificación o vista adicional.

(c) Si sustancialmente todos los activos del peticionario se transfieren conforme a la sección 307 de esta Ley, no se requerirá un plan para distribuir el valor de los activos no sujetos a dicha transferencia, pero dicho plan podrá ser presentado a discreción del peticionario, o por el BGF a nombre del peticionario. Si dicho plan se presenta, la declaración final de distribución deberá atribuir el valor de los activos no transferidos mediante contraprestaciones factibles y prácticas según las circunstancias.

Sección 309.-Protección al Adquirente de Buena Fe.

La revocación o modificación en apelación de una orden de transferencia no afectará la validez de dicha transferencia bajo dicha autorización a una entidad que adquirió dicha propiedad de buena fe, sin importar si dicha entidad tenía conocimiento de que la apelación estuviera pendiente, salvo que dicha autorización y dicha transferencia se hubiese paralizado mientras estaba pendiente la apelación.

Subcapítulo V: Requisitos de Confirmación

Sección 310.-Exclusividad del Peticionario.

Un peticionario podrá radicar una propuesta de un plan (y cualquier enmienda) o una propuesta para la transferencia de todos o sustancialmente todos los activos de un peticionario, si dichas propuestas han sido previamente aprobadas por escrito por el BGF. El BGF, a nombre del peticionario y con la aprobación del Gobernador, también podrá radicar una propuesta de un plan (y cualquier enmienda) o una propuesta para la transferencia de todos o sustancialmente todos los activos del peticionario. Ninguna otra entidad podrá radicar una propuesta de un plan ni una propuesta para la transferencia de cualquiera de los activos del peticionario.

Sección 311.-Divulgación del Plan.

La Sala Especializada no confirmará un plan salvo que el(los) comité(s) de acreedores y todos los acreedores afectados reciba(n), al menos cuarenta y cinco (45) días antes de la vista de confirmación del plan, una declaración de divulgación por escrito, aprobada por la Sala Especializada, que contenga:

(a) los hechos materiales que demuestran las razones del peticionario para sostener que el plan utiliza de manera justa el valor de los activos del peticionario o sus ingresos para maximizar el repago de las reclamaciones de manera consistente con el desempeño de las funciones públicas o de alguna otra manera fomentando la creación de empleos, el comercio o la educación. Cualquier información confidencial o propietaria podrá ser eliminada de cualquier divulgación que se haya hecho;

(1) el trato de cada grupo de acreedores afectados bajo el plan y cualquier información financiera material razonablemente necesaria para que los acreedores afectados entiendan cuál será su futuro recobro, si alguno, bajo el plan; y

(2) otra información, si alguna, necesaria para proveer información adecuada de cualquier tipo, y en suficiente detalle, hasta el punto que sea razonablemente factible a la luz de la naturaleza e historia del peticionario y la condición de los libros y récords del peticionario, que habilitarían a un acreedor hipotético en el grupo relevante para hacer un juicio informado sobre el plan, pero información adecuada no incluirá información sobre cualquier otro plan posible o propuesto.

Sección 312.-Deuda Afectada con Derecho al Voto.

Sujeto al derecho del peticionario de asumir que una categoría (*class*) rechazó el plan, un grupo de reclamaciones del peticionario está afectada para propósitos de votación bajo el plan salvo que, con respecto a cada reclamación de dicha categoría (*class*), el plan—

(a) deje inalterados los derechos legales, en equidad y contractuales de aquellas reclamaciones que le dan derecho al tenedor de dichas reclamaciones;

(b) pague dicha reclamación en su totalidad en efectivo; o

(c) a pesar de cualquier disposición o ley aplicable que le dé derecho al tenedor de dicha reclamación a solicitar o recibir el pago acelerado de dicha reclamación luego de un incumplimiento—

(1) subsane cualquier incumplimiento, ocurrido antes o después de la radicación de una petición bajo el Capítulo 3 de esta Ley, a menos que se trate de un incumplimiento que no requiera subsanación, que quede sin efecto bajo esta Ley o que no cree daños monetarios;

(2) restablezca el vencimiento de dicha reclamación según dicho vencimiento existía antes del incumplimiento;

(3) compense al tenedor de dicha reclamación por cualquier daño incurrido como resultado de la fe razonablemente depositada por el tenedor de la reclamación en dicha cláusula contractual o en dicha ley aplicable;

(4) si dicha reclamación surge de cualquier incumplimiento de una obligación no monetaria, compense al tenedor de dicha reclamación por cualquier pérdida real pecuniaria incurrida por dicho tenedor como resultado de dicho incumplimiento; y

(5) no afecte de otra manera los derechos legales, en equidad y contractuales que una reclamación le provee a su tenedor.

Sección 313. Enmiendas al Plan.

El peticionario o el BGF podrán enmendar el plan en cualquier momento antes de éste ser confirmado, pero no podrán enmendar el plan para que el plan según enmendado incumpla los requisitos del Capítulo 3 de esta Ley. Luego de que el peticionario radica una enmienda, el plan según enmendado se convierte en el plan. Modificaciones materiales adversas a los deudores afectados requerirán que se haga una nueva solicitud y aprobación conforme la sección 315(e) de esta Ley antes de la vista de confirmación.

Sección 314.-Vista de Confirmación.

(a) Luego de la notificación especificada en la sección 338 de esta Ley, la Sala Especializada celebrará una vista sobre la confirmación del plan.

(b) Cualquier comité de acreedores podrá objetar el trato dado a otras reclamaciones del mismo grupo bajo el plan y cualquier acreedor afectado podrá objetar el trato dado a sus reclamaciones bajo el plan y cada uno podrá ser escuchado en oposición o a favor del plan, si presentan una objeción o una moción apoyando el plan, por escrito, no más tarde de catorce (14) días antes de que comience la vista del plan.

Sección 315.-Estándares para la Confirmación del Plan.

La Sala Especializada confirmará un plan sólo si se cumplen todos los siguientes requisitos:

(a) el plan cumple sustancialmente con todas las disposiciones aplicables del Capítulo 3 de esta Ley;

(b) el plan separa la deuda afectada en categorías (*classes*) a base de:

(1) las diferencias en garantías y prioridades sobre la colateral de las reclamaciones, o

(2) justificaciones racionales de negocio para categorizar por separado reclamaciones similares, disponiendo que vencimientos diferentes no causará que una reclamación se considere como que no es similar;

(c) el plan provee el mismo trato para cada reclamación de una categoría (*class*) en particular, a menos que el tenedor de una reclamación en particular consienta a un trato menos favorable de dicha reclamación;

(d) el plan provee para que todo acreedor afectado en cada una de las categorías (*classes*) de deuda afectada reciba pagos y/o propiedad que tengan un valor presente de al menos el monto que habría recibido la deuda afectada en dicha categoría (*class*) si se le hubiese permitido a todos los acreedores que tienen reclamaciones contra el peticionario exigir el pago de dichas reclamaciones en la fecha en que la petición fue radicada;

(e) al menos una categoría (*class*) de deuda afectada ha votado a favor de aceptar el plan por una mayoría de todos los votos emitidos en dicha categoría (*class*) y dos terceras partes del monto total agregado de deuda afectada en dicha categoría (*class*) que votó;

(f) el plan no contiene disposición alguna que cause una violación de los derechos de una entidad bajo la Constitución del Estado Libre Asociado y la Constitución de Estados Unidos que no se remedie o de alguna manera se justifique conforme a la sección 128 de esta Ley;

(g) el peticionario podrá—

(1) hacer todos los pagos mandatorios provistos por el plan y

(2) realizar funciones públicas;

(h) no es probable que la confirmación del plan esté seguida por la necesidad de hacer una reorganización financiera adicional del peticionario, salvo que dicha reorganización esté propuesta en el plan, y todas las demás disposiciones del plan sean factibles;

(i) el plan ha sido propuesto de buena fe y no por medios prohibidos por ley, sujeto a lo que dispone la sección 108 de esta Ley;

(j) todos los gastos administrativos que se vayan acumulando antes de la fecha de efectividad del plan serán pagados en su totalidad de acuerdo a los términos o en la fecha de efectividad del plan, y toda reclamación no contingente, que no esté en disputa y que esté madura, que no haya sido alterada por el plan de acuerdo con la sección 327 de esta Ley, será pagada en su totalidad de acuerdo a sus términos; disponiéndose, sin embargo, que reclamaciones en disputa o contingentes serán resueltas en el curso ordinario y pagadas según las partes acuerden o según provea el plan;

(k) cada categoría (*class*) de reclamación de deuda afectada que no será satisfecha en su totalidad bajo el plan, en ausencia de la consideración adicional provista en este inciso, tendrá derecho a recibir anualmente, al finalizar cada año fiscal, su participación a prorrata de cincuenta por ciento (50%) del flujo de efectivo neto del peticionario, si hay alguno al final de cualquier año fiscal, después del pago de: (1) gastos operacionales, (2) inversiones de capital (*capital expenditures*) (incluyendo gastos capitalizados), (3) contribuciones, si alguna, (4) principal, intereses y otros pagos realizados con relación a deudas, (5) reservas, (6) cambios en el capital de trabajo (*working capital*), (7) pagos en efectivo relacionados a otras responsabilidades, y (8) otras partidas extraordinarias, en cada caso, incurridas, pagadas y registradas en dicho año fiscal; dichos pagos contingentes serán realizados por el peticionario, pero sólo hasta la cantidad en que esto sea necesaria para pagar cada reclamación en su totalidad, incluyendo intereses y cualquier otra cantidad requerida contractualmente, durante cada uno de los primeros diez (10) años fiscales después del primer aniversario de la fecha de efectividad del plan, disponiéndose que una vez cualquier reclamación haya sido pagada en su totalidad, la participación de esa reclamación en los pagos futuros contingentes se distribuirá a prorrata entre los otros acreedores afectados cuyas reclamaciones aún no hayan sido pagadas en su totalidad.

(l) la fecha de efectividad del plan será la primera fecha luego de la confirmación del plan en que la orden de confirmación no esté paralizada y el peticionario o el BGF radique una notificación ante la Sala Especializada informando que está preparado para comenzar a implantar el plan;

(m) con relación a reclamaciones garantizadas afectadas (representando la cantidad por la cual una reclamación por principal, intereses y cargos es asegurada por el valor de la colateral):

(1) el plan provee tanto que:

(A) los tenedores de dichas reclamaciones retengan los gravámenes asegurando dichas reclamaciones, sin importar que la propiedad sujeta a dicho gravamen sea retenida por el peticionario o transferida a otra entidad, hasta la cantidad permitida de dicha reclamación; y

(B) que cada tenedor de dicha reclamación reciba por dicha reclamación pagos en efectivo inmediatos o diferidos que totalicen al menos la cantidad permitida de dicha reclamación, con un valor, a la fecha de efectividad del plan, de al menos el valor de la participación de dicho tenedor en la participación del peticionario en dicha propiedad, dicho valor a ser

determinado por la Sala Especializada a base de la disposición de la propiedad o uso propuesto por el plan, incluyendo sus ingresos netos proyectados o el producto neto de la transferencia, si está contemplado en el plan; o,

(2) el plan provee para la transferencia de cualquier propiedad que esté sujeta a los gravámenes que aseguran dichas reclamaciones, libre de cargas y gravámenes, y dichas cargas y gravámenes gravarán el producto neto de dicha transferencia;

(n) con relación a reclamaciones de deuda afectada no colateralizadas (incluyendo reclamaciones de deficiencia, sujeto a la sección 331(d) de esta Ley, sobre deuda afectada asegurada que esté basada en una deficiencia que surja de gravámenes contra propiedad con un valor por debajo de los montos totales de la deuda afectada poseída por el acreedor afectado dueño de dicho gravamen), el plan será en el mejor interés de dichos acreedores y maximizará las cantidades distribuibles a dichos acreedores en la medida posible, sujeto a las obligaciones del peticionario de cumplir sus funciones públicas;

(o) el peticionario habrá probado al Tribunal que emprendió—antes o después de la radicación de la petición—un programa razonable de reducción de gastos e incremento de ingresos para intentar maximizar su repago de deuda afectada bajo el plan, sujeto a la limitación de que el peticionario debe cumplir con sus funciones públicas, y que algunas reducciones de gastos e incrementos de ingresos pueden ser contraproducentes si causan que individuos y negocios abandonen el Estado Libre Asociado o que reduzcan sus gastos en el Estado Libre Asociado, o que reduzcan el consumo de los servicios que provee el peticionario; y

(p) salvo en la medida que el deudor afectado consienta, el plan no provee para un trato materialmente diferente y adverso para dicha reclamación al compararla con el trato de reclamaciones en categorías (*classes*) diferentes bajo el plan que tengan la misma prioridad, a menos que el peticionario demuestre una base racional para permitir dicho trato desigual.

Sección 316.-Cumplimiento con la Declaración Final de Distribución y la Orden de Confirmación.

A pesar de cualquier otra ley aplicable, el peticionario y cualquier entidad organizada o a ser organizada para el propósito de llevar a cabo una declaración final de distribución emitida conforme la sección 308 de esta Ley o un plan llevará a cabo la declaración final de distribución o el plan y cumplirá con todas las órdenes de la Sala Especializada.

Subcapítulo VI: Manejo del Caso

Sección 317.-Poderes de la Sala Especializada.

La Sala Especializada, por iniciativa propia o a petición de cualquier parte interesada:

(a) celebrará conferencias de estatus según sea necesario para adelantar la resolución expedita y económica del caso;

(b) salvo que sea inconsistente con otra disposición del Capítulo 3 de esta Ley, no obstante las reglas de procedimiento civil, podrá expedir una orden estableciendo las limitaciones y condiciones que la Sala Especializada estime apropiadas para asegurar que el caso se maneja de manera expedita y económica, incluyendo una orden que—

(1) pauté la fecha en que el peticionario presentará una declaración de divulgación o plan o una propuesta transferencia de toda o sustancialmente toda la propiedad del peticionario; o

(2) fije fechas límites para mociones, respuestas, réplicas y otros asuntos.

(c) podrá emitir una orden estableciendo el término, alcance y formato de cualquier orden requerida bajo esta Ley.

Subcapítulo VII: Comité de Acreedores

Sección 318.-Creación de los Comités de Acreedores.

(a) Tan pronto sea factible luego de la radicación de la petición, pero no más tarde de catorce (14) días previo a la fecha de la vista de elegibilidad conforme a la sección 306 de esta Ley, la Sala Especializada nombrará un comité general compuesto de entidades que, basado en los Avisos de Disponibilidad para Formar Parte del Comité General recibidos, tengan la mayor cantidad de reclamaciones aseguradas y la mayor cantidad de reclamaciones no aseguradas identificadas en la lista de deudas afectadas presentadas conforme a la sección 301(d)(1) o 302(a)(2) de esta Ley. El comité general, que estará compuesto por al menos cinco (5) y no más de trece (13) miembros, en la medida que sea razonablemente factible, debe ser representativo de las categorías de reclamaciones a ser afectadas por el plan.

(b) La Sala Especializada podrá nombrar como comité general un comité de acreedores formado para negociar con el peticionario previo a la presentación de la petición, siempre y cuando los miembros del comité previo a la petición sean representativos de las categorías de reclamaciones a ser afectadas por el plan.

(c) A solicitud del peticionario o del BGF, la Sala Especializada nombrará uno o más comités adicionales, compuestos de tenedores de deuda afectada en manos de categorías (*classes*) de acreedores particulares e identificados por el peticionario, si se certifica por escrito que el peticionario o el BGF entienden que la formación de dicho(s) comité(s) facilitaría los esfuerzos para obtener una transferencia conforme a la sección 307 de esta Ley o la confirmación del plan. Dichos comités adicionales estarán compuestos por al menos tres (3) y no más de siete (7) miembros. Si un comité adicional se disuelve o el peticionario o el BGF certifican en un escrito presentado ante la Sala Especializada que entienden que un comité adicional previamente nombrado no facilitará una transferencia conforme a la sección 307 de esta Ley o la confirmación del plan o que los costos relacionados con dicho comité adicional son mayores que sus beneficios, el comité adicional ya no será elegible para reembolso de los gastos de sus miembros y de los honorarios y pagos a profesionales.

(d) Cada miembro de un comité de acreedores presentará ante la Sala Especializada, dentro de veintiún (21) días después de su nombramiento a un comité de acreedores, una declaración jurada declarando, a la fecha de su nombramiento al comité de acreedores, que:

(1) el integrante del comité de acreedores, la entidad actuando a su nombre en el comité de acreedores y cualquier afiliada de éstas que empleaba o está empleada por dicho miembro, tenía o controlaba, en la medida en que se establezca en dicha declaración, un interés beneficiario en:

(A) cualquier deuda afectada, especificando el valor de cualquier instrumento u otra reclamación;

(B) cualquier reclamación, interés, prenda, gravamen, opción, participación, instrumento derivado o cualquier otro derecho o derecho derivado concediendo a cualquiera de las anteriores un interés económico que se afecte por el valor, la adquisición o la disposición de la deuda afectada, especificando cada tipo de derecho;

(C) cada uno de cualquier otro interés económico que se relacione a cualquier Entidad del Estado Libre Asociado, especificando cada interés; y

(D) cualquier contrato derivado de incumplimiento de crédito (*credit default swap*) de una compañía aseguradora que asegura alguna obligación de una Entidad del Estado Libre Asociado, especificando cada tipo de interés; y

(2) ningún interés que un miembro de un comité de acreedores, dicha entidad que actúe en su nombre, o cualquier afiliada de ésta tenga o controle y que debió haber sido divulgado conforme a las secciones 318(d)(1)(A) a la 318(d)(1)(D) de esta Ley, puede aumentar en valor si cualquier deuda emitida por una Entidad del Estado Libre Asociado disminuye en valor.

(e) La tenencia o control en cualquier momento de cualquier interés que debió haber sido divulgado conforme a la sección 318(d)(2) de esta Ley por un miembro del comité de acreedores, una entidad que actúe en nombre del comité de acreedores o cualquier afiliada de ésta, descalificará a dicho acreedor de servir como miembro de cualquier comité de acreedores. Para evitar toda duda, la adquisición de un interés tal por un miembro de un comité de acreedores, una entidad que actúe en nombre del comité de acreedores, o cualquier afiliada de ésta, automáticamente despojará a dicha persona de la membresía del comité de acreedores.

(f) Cada miembro de un comité de acreedores actualizará su divulgación contemplada en los incisos (d) de esta sección en un escrito radicado ante la Sala Especializada dentro de tres (3) días laborables, de cualquier cambio en sus divulgaciones de tenencias previas.

(g) Solicitudes del peticionario, del BGF o de cualquier acreedor para cambios o adiciones a la membresía del comité de acreedores serán concedidas o denegadas a discreción de la Sala Especializada. Las determinaciones de la Sala Especializada sobre la membresía del comité de acreedores no serán apelables.

(h) Los miembros del comité de acreedores no tendrán derecho a recibir compensación por su tiempo y servicio como miembros del comité de acreedores ni reembolso por sus gastos incurridos al contratar profesionales para que los representen individualmente, pero el comité de acreedores tendrá derecho a recibir de parte del peticionario un pago por concepto de honorarios en la medida en que esto esté permitido bajo

la sección 333 de esta Ley, y los miembros del comité de acreedores tendrán derecho a que el peticionario les reembolse los gastos razonables, documentados y reales de viaje y hospedaje en los que incurran como resultado de sus funciones como miembros del comité de acreedores.

Sección 319.-Poderes y Deberes de los Comités Nombrados.

(a) En una reunión programada del comité de acreedores en la que una mayoría de los miembros de dicho comité de acreedores esté presente en persona o por teléfono, el comité de acreedores podrá seleccionar y autorizar la contratación de hasta dos (2) bufetes de abogados, uno de los cuales deberá ser residente en el Estado Libre Asociado, y un asesor financiero, para proveer servicios a dicho comité de acreedores, a ser pagados como gastos administrativos conforme a la sección 333 de esta Ley; disponiéndose, sin embargo, que luego de siete (7) días desde la notificación al peticionario y sujeto al derecho del peticionario a objetar, el comité general podrá contratar uno o más profesionales adicionales, incluyendo bufetes de abogados, en la medida que esto sea razonablemente necesario para representar grupos distintos del comité general con respecto a controversias materiales. Si el peticionario objeta a la retención de cualquier profesional adicional propuesta por el comité general, el peticionario no estará obligado a compensar a dicho profesional a menos que la Sala Especializada determine que su retención debe ser permitida.

(b) Un comité de acreedores sólo podrá:

(1) comparecer y ser escuchado sobre cualquier controversia—

(A) relacionada a la vista de elegibilidad conforme a la sección 306 de esta Ley;

(B) relacionada a protección adecuada;

(C) relacionada a un nuevo préstamo por el peticionario;

(D) relacionada a una transferencia conforme a la sección 307 de esta Ley o la distribución del producto de la transferencia conforme a la sección 308 de esta Ley; y

(E) con relación al plan, pero solamente respecto a asuntos relacionados a cómo el plan afecta a los grupos que componen el comité de acreedores;

(2) realizar una investigación razonable sobre la habilidad legal y financiera del peticionario para aumentar distribuciones bajo el plan para los grupos que componen el comité de acreedores; y

(3) negociar con el peticionario sobre el trato dado a los grupos que lo componen en el plan.

(c) Un comité de acreedores constituido conforme a la sección 318 de esta Ley o su agente autorizado debe recibir copia de las notificaciones relacionadas a las mociones y acciones tomadas por el peticionario (y cualquier objeción a esta) conforme a las secciones 307 y 308 de esta Ley y a las secciones 310 a la 316 de esta Ley.

(d) Un comité de acreedores puede solicitar descubrimiento de prueba conforme a las Reglas de Procedimiento Civil de Puerto Rico, pero sólo con relación a asuntos enumerados en los incisos (b)(1)(A) al (b)(1)(E) de esta sección.

(e) Sujeto a la supresión de información confidencial o propietaria, los acreedores afectados que no sean miembros del comité de acreedores pueden obtener el mismo descubrimiento de prueba producido al comité de acreedores y pueden obtener descubrimiento de prueba adicional sólo si, en cada caso, logran demostrar al Tribunal que hay justa causa para ello y la Sala Especializada emite una orden a esos efectos.

(f) El comité no será una entidad jurídica capaz de demandar y ser demandada.

Sección 320.-Limitaciones a los Comités.

(a) Un comité de acreedores nombrado bajo el Capítulo 3 de esta Ley no tendrá legitimación activa para comenzar una acción directamente a su nombre o de manera derivada a nombre del peticionario o a nombre de los acreedores del peticionario, y no podrá ser escuchado sobre ningún asunto salvo como expresamente se provee en esta Ley.

(b) Cada comité de acreedores podrá hacer recomendaciones a los grupos que representa con respecto al plan pero no podrá vincular a sus representados o a miembro alguno de éste a aceptar, rechazar, apoyar u objetar cualquier plan y no podrá consentir a ningún plan en nombre de un acreedor.

(c) Ningún miembro de un comité de acreedores nombrado conforme la sección 318 de esta Ley traficará reclamaciones contra, o valores emitidos por, cualquier Entidad del Estado Libre Asociado, a menos que el miembro:

(1) haya establecido y exige suficientes procedimientos de cumplimiento para evitar que dicho representante del miembro en el comité de acreedores comparta información obtenida como representante del miembro con cualquier entidad dentro o retenida por el miembro con relación al tráfico de reclamaciones contra o valores emitidos por cualquier Entidad del Estado Libre Asociado;

(2) haya radicado en la Sala Especializada una notificación de su intención de traficar y la notificación presenta los detalles de los procedimientos de cumplimiento del miembro a los que se refiere el inciso (c)(1) de esta sección;

(3) haya obtenido aprobación de sus procedimientos de cumplimiento de parte del peticionario, cuya aprobación, a discreción del peticionario, podrá estar basada en la recomendación de una entidad con experiencia en la industria de valores retenida por el peticionario; y

(4) no comparte información obtenida a través de su servicio en el comité de acreedores con entidad alguna dentro o retenida por el miembro con relación al tráfico de reclamaciones contra o valores emitidos por cualquier Entidad del Estado Libre Asociado.

Sección 321.-Disolución de Comités.

Todos los comités de acreedores serán automáticamente disueltos al ocurrir lo primero entre: la fecha en que la Sala Especializada emite una declaración de distribución final conforme a la sección 308 de esta Ley y la fecha en que confirma el plan del peticionario, a menos que la declaración final de distribución o el plan disponga otra cosa o la Sala

Especializada ordene otra cosa. El peticionario podrá disolver cualquier comité adicional nombrado conforme la sección 318(c) de esta Ley proporcionando aviso por escrito a dicho comité adicional y al Tribunal con siete (7) días de anticipación.

Subcapítulo VIII: Activos, Pasivos, Contratos y Poderes del Peticionario.

Sección 322.—Financiamiento.

(a) Un peticionario puede obtener crédito no garantizado e incurrir en deuda no garantizada.

(b) Si el peticionario no puede obtener crédito no colateralizado permitido como un gasto administrativo, la Sala Especializada, previa notificación y celebración de vista, puede autorizar la obtención de crédito o puede autorizar que el peticionario incurra en deuda—

(1) con prioridad sobre cualquier o todos los gastos administrativos del tipo especificado en la sección 333 de esta Ley;

(2) asegurada por un gravamen sobre la propiedad del peticionario que no esté de alguna otra manera gravada;

(3) colateralizada por un gravamen inferior en una propiedad del peticionario que está sujeta a otro gravamen; o

(4) cualquier combinación de los incisos (1), (2) y (3) arriba, además de permitirlo como un gasto administrativo.

(c) La Sala Especializada, previa notificación y celebración de vista, puede autorizar la obtención de crédito o puede autorizar que el peticionario incurra en deuda asegurada por un gravamen de igual o mayor rango sobre la propiedad del peticionario que está sujeta a un gravamen, sólo si—

(1) el peticionario no puede obtener ese crédito de ninguna otra manera; y

(2) si

(A) los fondos son necesarios para realizar funciones públicas y cumplir con los requisitos de la sección 128 de esta Ley; o

(B) hay una protección adecuada del interés del tenedor del gravamen sobre la propiedad del peticionario para la cual se propone concederse el gravamen de igual o mayor rango.

(d) En cualquier vista conforme esta sección, el peticionario tiene el peso de la prueba.

(e) La revocación o modificación en apelación de alguna autorización conforme esta sección para obtener crédito o incurrir en deuda, o la concesión de una prioridad o un gravamen bajo esta sección, no afectará la validez de ninguna deuda así incurrida, o de cualquier prioridad o gravamen así otorgado, a una entidad que otorgó dicho crédito de buena fe, independientemente de si dicha entidad conocía sobre la existencia de una apelación, a menos que se haya ordenado la paralización de dicha autorización y la asunción de dicha deuda, o la concesión de dicha prioridad o gravamen mientras se tramitaba la apelación.

Sección 323.—Uso o Arrendamiento de Propiedad No Sujeta a Aprobación de la Sala Especializada.

A menos que la Sala Especializada ordene lo contrario, sin necesidad de notificación ni celebración de una vista, el peticionario puede, a su entera discreción:

(a) Pagar:

(1) gastos acumulados después de la petición (excluyendo las cantidades relacionadas a la deuda incurrida antes de la petición, excepto según se dispone en el inciso (a)(2) de esta sección) y las costas y honorarios incurridos con relación al caso (incluyendo las costas y honorarios razonables de los profesionales contratados por o para el peticionario o el BGF y cualquier comité de acreedores constituido bajo el Capítulo 3 de esta Ley, sujeto a las secciones 318, 319 y 333 de esta Ley); y

(2) deuda incurrida antes de la petición que no está identificada para resultar afectada bajo el plan o que sea necesaria para salvaguardar la habilidad del peticionario para realizar sus funciones;

(b) efectuar transacciones, incluyendo el arrendamiento de propiedad, y usar su propiedad en sus operaciones, incluyendo el uso de ingresos; y

(c) utilizar el efectivo y otros recursos como sea necesario para realizar funciones públicas, sujeto a la sección 324(a) de esta Ley.

Sección 324.—Protección Adecuada para Uso de Propiedad Sujeta a un Gravamen o Prenda.

(a) Para continuar realizando funciones públicas y obtener una orden de aprobación o completar una transacción consensual de alivio de deuda, el peticionario puede utilizar propiedad, incluyendo colateral en efectivo, sujeta a una prenda, gravamen, u otro interés de, o para beneficio de, una entidad, disponiéndose que la entidad tendrá derecho a un vista, mediante notificación, para considerar una solicitud para protección adecuada de su prenda, gravamen u otro interés tan pronto permita el calendario de la Sala Especializada, en cuya vista la Sala Especializada podrá condicionar el uso de la colateral bajo aquellos términos, si algunos, que determine necesarios para proteger adecuadamente dicho interés.

(b) Independientemente de cualquier disposición en contrario en esta Ley, si los ingresos de un peticionario están sujetos a una prenda bajo la cual los gastos corrientes y operacionales se pueden pagar antes del pago de principal, intereses o cualquier otra cantidad adeuda a un acreedor, el peticionario no tendrá obligación alguna de proveer protección adecuada a dicho acreedor conforme esta sección, en la medida en que no hay suficientes ingresos disponibles para el pago de dicho principal, interés u otra cantidad después del pago total de dichos gastos corrientes u gastos operacionales.

(c) Si la entidad tenedora de la prenda, gravamen o interés en la colateral consiente a su uso, entonces se considerará que la entidad está protegida adecuadamente según los términos, si algunos, en dicho consentimiento y no se requerirá protección adecuada adicional.

Sección 325.—Cláusulas Ipso Facto Inejecutables; Cesión de Contratos.

(a) Independientemente de cualquier disposición contractual o ley aplicable en contrario, un contrato de un peticionario no podrá ser modificado o resuelto, y cualquier

derecho u obligación bajo dicho contrato no podrá ser modificado o resuelto, en ningún momento antes de la presentación de una petición bajo el Capítulo 3 de esta Ley sólo porque una disposición en dicho contrato está condicionada a—

(1) la insolvencia o condición financiera del peticionario en cualquier momento antes del cierre del caso;

(2) la presentación de una petición conforme a la sección 301 de esta Ley y cualquier otro alivio solicitado bajo esta Ley; o

(3) un incumplimiento bajo un contrato separado que se debe a, es activado por, o es el resultado de la ocurrencia de eventos o asuntos descritos en los incisos (a)(1) o (a)(2) de esta sección.

(b) Independientemente de cualquier disposición contractual en contrario, una contraparte a un contrato con el peticionario para la entrega de bienes o prestación de servicios deberá, a menos que el peticionario informe lo contrario por escrito, continuar cumpliendo con todas sus obligaciones bajo, y seguir cumpliendo con todos los términos de, dicho contrato, disponiéndose, que el deudor elegible no esté incumpliendo bajo dicho contrato, excepto—

(1) como resultado de una condición especificada en el inciso (c) de esta sección; o

(2) con relación a un contrato de proveedor esencial, como resultado de la falta de pago de cantidades que surgen antes de la fecha de radicación de la petición.

(c) Todas las reclamaciones que surjan del desempeño de una contraparte contractual conforme el inciso (b) de esta sección, después de la fecha de radicación de la petición, se considerarán gastos administrativos. El incumplimiento por dicha contraparte contractual con el requisito del inciso (b) de esta sección, resultará en la concesión de daños compensatorios al peticionario, en la cantidad determinada la Sala Especializada.

(d) Independientemente de cualquier disposición contractual en contrario, excepto por lo que se dispone en el inciso (e) de esta sección, previa notificación a la contraparte y aprobación de la Sala Especializada, un peticionario puede ceder un contrato si el peticionario subsana—o provee garantías razonables de que próximamente va a subsanar—cualquier incumplimiento bajo dicho contrato, a menos que el incumplimiento haya sido con relación a una disposición no exigible bajo la ley aplicable. Incumplimientos de obligaciones no monetarias que no puedan subsanarse razonablemente con acciones no monetarias podrán subsanarse con daños monetarios.

(e) Un peticionario no puede ceder un contrato suyo, independientemente de si dicho contrato prohíbe o restringe la cesión de derechos o la delegación de deberes, si —

(1) la ley aplicable excusa a una parte de dicho contrato, que no sea al peticionario, de aceptar el cumplimiento de, o cumplir con las obligaciones a, el peticionario o un cesionario de dicho contrato, y dicha parte no consiente a dicha asunción o cesión; o

(2) dicho contrato es un contrato para hacer un préstamo, o para otorgar otros acomodos financieros o de financiamiento de deuda, para el beneficio del peticionario, o para emitir un valor o algún otro instrumento del peticionario.

(f) Sólo una parte en un contrato que un peticionario pretende ceder, y que tenga derecho bajo dicho contrato a exigir el cumplimiento con dicho contrato, o el representante autorizado de dicha parte, tendrá legitimación activa para objetar y para ser escuchado en las reclamaciones del peticionario conforme esta sección.

Sección 326.—Rechazo, Menoscabo y Modificación de un Contrato.

(a) Sujeto al inciso (d) de esta sección y a la aprobación de la Sala Especializada, previa notificación y celebración de vista, y no obstante cualquier disposición contractual en contrario, un peticionario puede rechazar cualquier contrato vigente si dicho rechazo está en los mejores intereses del peticionario; disponiéndose, sin embargo, que un peticionario no puede rechazar un contrato (excepto convenios colectivos y planes de retiro o de beneficios para retirados o ex empleados) si el rechazo de dicho contrato produciría daños que no excederían el umbral para deuda comercial especial, según dicha frase se define en la sección 102(23) de esta Ley.

(b) Una contraparte a un contrato que el peticionario pretenda rechazar debe radicar en la Sala Especializada, al menos cinco (5) días antes de la vista en la que se considerará el rechazo, su cómputo de los daños que le ocasionaría el rechazo. Una contraparte que se oponga al rechazo debe radicar dicho cálculo con su objeción al menos siete (7) días antes de la vista sobre el rechazo. El peticionario puede objetar dichos daños propuestos en cualquier momento antes de la confirmación. Las disputas relativas al rechazo deben ser resueltas por la Sala Especializada.

(c) El rechazo de un contrato conforme al inciso (a) de esta sección se tratará como un incumplimiento material de dicho contrato.

(d) La Sala Especializada no debe aprobar el rechazo de un convenio colectivo o de un plan de retiro o de beneficio para retirados o ex-empleados a menos que el peticionario haya demostrado que:

(1) el balance de equidad favorece el rechazo de dicho convenio o plan. Al hacer dicha determinación, la Sala Especializada debe considerar el impacto de las disposiciones de la Ley 66-2014, incluyendo cualquier acuerdo entre el peticionario y sus empleados mediante negociaciones provistas bajo dicha ley, sobre dicho convenio o plan;

(2) sin el rechazo, el peticionario probablemente advendría incapaz de poder realizar funciones públicas; y

(3) el peticionario compartió con los representantes de los empleados y retirados, según sea el caso, la información que apoya su solicitud de rechazo al convenio o plan y consultó, en momentos razonables, de buena fe con los representantes para alcanzar modificaciones voluntarias a dichos acuerdos o planes, y dichos esfuerzos no fueron exitosos.

(e) La Sala Especializada, después de notificación y celebración de una vista, puede autorizar al peticionario a implantar cambios provisionales en los términos, condiciones, salarios, beneficios, o reglas de trabajo de un convenio colectivo, durante un periodo cuando el convenio colectivo sigue en vigor, si es esencial para la continuación de la función pública del peticionario, o para evitar daño irreparable al peticionario. Cualquier vista conforme este inciso deberá ser calendarizada de conformidad con las necesidades del

peticionario. La solicitud de rechazo no se tornará académica por virtud de la implantación de dichos cambios provisionales.

(f) Nada en esta Ley menoscabará el derecho, si alguno, bajo un convenio colectivo, plan de retiro o plan de beneficio para retirados o ex-empleados o ley aplicable, a resolver, modificar, enmendar o de alguna otra manera hacer cumplir las disposiciones de dicho convenio colectivo, plan de retiro o plan de beneficio para retirados o ex-empleados sin antes obtener el alivio del inciso (d) de esta sección.

(g) Sólo una parte en un contrato que el peticionario pretende rechazar en virtud de esta sección, y que tenga derecho bajo dicho contrato a exigir el cumplimiento de dicho contrato, o el representante autorizado de dicha entidad, tendrá legitimación para objetar a y ser escuchado en el reclamo del peticionario conforme esta sección.

(h) Sujeto al inciso (b) de esta sección y la sección 327 de esta Ley, cualquier daño derivado del rechazo de un contrato pre-petición que no sea una reclamación de prioridad ni una reclamación administrativa deberá ser tratado como una reclamación pre-petición para deuda afectada.

Sección 327.–Deuda No Afectada.

Los siguientes gastos y reclamaciones que surjan antes de que se presente una petición bajo el Capítulo 3 de esta Ley no constituirán deuda afectada bajo el plan y se pagarán al máximo que sea práctico, sin aceleración u otro remedio que surja de un incumplimiento ocurrido antes a la fecha de efectividad de un plan bajo el Capítulo 3, conforme a los términos de los contratos mediante los cuales se incurrió dicha deuda no afectada, y sujeto a la ley aplicable:

(a) reclamaciones de individuos permitidas y no colateralizadas por concepto de sueldos, salarios, comisiones, vacaciones, indemnización, licencia por enfermedad u otros beneficios similares para los empleados obtenidos por un individuo previo a la fecha de la petición, de acuerdo con las políticas de empleo del peticionario o la ley aplicable, excepto en la medida que dichas reclamaciones surgen de una transacción que es anulable bajo ley aplicable, incluyendo la sección 131 de esta Ley;

(b) excepto según se dispone en el inciso (c) de esta sección, reclamaciones por proveer bienes o rendir servicios, excepto por aquellas reclamaciones que surjan bajo un contrato rechazado o deuda comercial especial, disponiéndose, sin embargo, que cualquiera y todas las reclamaciones por proveer bienes o rendir servicios pueden ser deuda afectada si el tratamiento de dichas reclamaciones como deuda no afectada provocaría que otra deuda sea menoscabada sustancialmente o severamente, para propósitos de la Constitución del Estado Libre Asociado o la Constitución de los Estados Unidos, y que dicho menoscabo sustancial o severo no se remediaría o de alguna manera se justificaría conforme a la sección 128 de esta Ley;

(c) independientemente del inciso (b) de esta sección, deuda de suplidores indispensables según determine el peticionario;

(d) independientemente de lo provisto en el inciso (a) de esta sección, reclamaciones que surjan de un convenio colectivo o plan de retiro o de beneficio para retirados o ex-empleados, a menos que y hasta tanto las reclamaciones que surjan bajo dicho

convenio colectivo o plan de retiro o de beneficio para retirados o ex-empleados se consideren deuda afectada conforme a la sección 302(a)(2) de esta Ley o a menos que dicho convenio colectivo o plan de retiro o de beneficio para retirados o ex-empleados se rechace conforme a las disposiciones de esta Ley;

(e) reclamaciones pagaderas a otra corporación pública (pero sólo en la medida que dichas reclamaciones sean por bienes y servicios provistos por dicha corporación pública al peticionario) o a los Estados Unidos;

(f) reclamaciones a una Entidad del Estado Libre Asociado por dinero prestado, o cualquier asistencia financiera, al peticionario durante los sesenta (60) días antes de la radicación de la petición bajo el Capítulo 3 de esta Ley, o reclamaciones del BGF para reembolso conforme la sección 134 de esta Ley; y

(g) cualquier crédito incurrido o deuda emitida por un deudor del sector público entre el inicio del periodo de suspensión y la presentación de una petición bajo el Capítulo 3 de esta Ley, pero sólo si dicha petición bajo el Capítulo 3 de esta Ley se presenta no más de seis (6) meses después de que termine el periodo de suspensión.

Sección 328.—Bienes Entregados y Servicios Prestados dentro de los Treinta Días Anteriores a la Radicación de la Petición.

Toda cantidad valida pagadera por bienes recibidos y los servicios rendidos al peticionario dentro de los treinta (30) días antes de la radicación de una petición bajo el Capítulo 3 de esta Ley se considerará un gasto administrativo y se pagará en su totalidad, y conforme a los términos de los contratos mediante los cuales los bienes se proveyeron o los servicios fueron provistos a lo máximo que sea práctico. En la medida en que exista alguna disputa relacionada a la validez de la cantidad pagadera, la misma se resolverá conforme la sección 331(a) de esta Ley.

Sección 329.—Activos que Respaldan los Planes de Beneficio para Retirados.

Todos los activos que respaldan cualquier plan de pensión, plan de retiro o de beneficio para retirados o ex-empleados y cualquier otro plan de beneficio de empleados o retirados similar serán inviolables y no podrán ser considerados en el cálculo del valor de los activos del peticionario a ser distribuidos conforme a un plan bajo el Capítulo 3 de esta Ley o una declaración final de distribución conforme a la sección 308 de esta Ley.

Sección 330.—Subordinación.

(a) Un acuerdo de subordinación es exigible en un caso bajo el Capítulo 3 de esta Ley en la medida que dicho acuerdo sea exigible bajo cualquier otra ley aplicable.

(b) Para propósitos de la distribución bajo el Capítulo 3 de esta Ley, una reclamación que surja de una rescisión de la compraventa de un valor o pagaré al peticionario o a una afiliada del peticionario, por daños que surjan de la compraventa de dicho valor o pagaré, para el reembolso o contribución permitido a causa de dicha reclamación, se subordinará a todos los reclamos de igual o mayor rango al reclamo representado por dicho valor o pagaré.

Sección 331.—Reclamaciones Permitidas.

(a) Ningún acreedor (afectado o no afectado) tiene que presentar prueba de la reclamación para tener derecho a recibir pago por sus reclamaciones. En la medida en que hayan disputas entre el peticionario y los acreedores sobre las cantidades de sus reclamos, dichas disputas deben resolverse utilizando los mismos procedimientos aplicables como si no hubiese ningún caso bajo el Capítulo 3 de esta Ley; disponiéndose, sin embargo, que las objeciones a las reclamaciones conforme las secciones 330, 332 y 333 de esta Ley y las reclamaciones de daños por rechazo serán determinadas sólo por la Sala Especializada, sujeto a su poder de abstenerse cuando la determinación no se requiere antes de decidir si el plan debe ser confirmado.

(b) Una reclamación será una reclamación permitida si es válida bajo la ley aplicable, en la medida que—

- (1) No incluya intereses no vencidos a la fecha de la petición, y
- (2) No esté prohibida bajo alguna otra disposición de esta Ley.

(c) La afirmación de una reclamación en un caso bajo el Capítulo 3 no constituirá un procedimiento legal sujeto a los requisitos de divulgación para los proveedores y contratistas del gobierno sujeto a cualquier ley aplicable. La existencia de una reclamación bajo el Capítulo 3 de esta Ley no constituirá base para la descalificación de cualquier proceso de contratación o para no celebrar un contrato con el peticionario.

(d) Nada en esta Ley convertirá una reclamación sin recurso (*non-recourse*) en una reclamación con recurso (*recourse*).

Sección 332.—Reclamaciones para Reembolso, Contribución, Indemnización y Subrogación.

(a) Las reclamaciones para reembolso, contribución o indemnización no deberán ser permitidas en la medida en que su autorización provoque que un peticionario tenga que pagar la misma deuda más de una vez. En la medida en que dichas reclamaciones se relacionen a deudas que existan antes de que se presente una petición bajo el Capítulo 3 de esta Ley, dichas reclamaciones no se considerarán reclamaciones administrativas.

(b) La Sala Especializada debe subordinar al reclamo de un acreedor, y para beneficio de dicho acreedor un reclamo de subrogación permitido de una entidad que sea responsable con el peticionario en, o que haya asegurado, el reclamo del acreedor, hasta que el reclamo de dicho acreedor se pague en su totalidad, ya sea bajo pagos bajo el Capítulo 3 de esta Ley o de alguna otra manera.

Sección 333.—Pago de Gastos Administrativos en Espera de la Confirmación del Plan.

(a) Un peticionario debe pagar en su totalidad y en efectivo todos los gastos incurridos con relación a sus operaciones y su caso, incluyendo sueldos, salarios, comisiones por servicio, deuda comercial y peticiones mensuales de honorarios y reembolsos razonables de gastos incurridos por los profesionales contratados por el peticionario (o contratados por el BGF a nombre del peticionario, según se dispone en la sección 301(b) de esta Ley), el comité de acreedores y el agente de notificación.

(b) En la medida en que un peticionario o el BGF crea que gastos u honorarios de un profesional contratado son irrazonables, debe advertir al solicitante de su objeción y el peticionario deberá pagar la porción que no está en disputa. Si el peticionario o el BGF, según sea aplicable, y el solicitante no pueden llegar a un acuerdo sobre la porción que no está en disputa, cualquiera de las partes puede solicitar al Tribunal que se pronuncie sobre la razonabilidad de dichos gastos en disputa. El peticionario o el BGF, según sea aplicable, puede objetar los honorarios de un solicitante como irrazonables por cualquier razón legítima.

(c) Un peticionario o el BGF, puede, a su entera discreción, contratar a una entidad para que ejerza como examinador de honorarios para revisar todos los honorarios y desembolsos de todos los profesionales para el propio peticionario y el comité de acreedores. En la medida en que cualquier profesional solicite pagos en exceso de aquellos recomendados por el examinador de honorarios, el profesional debe procurar una orden de la Sala Especializada permitiendo dichas cantidades adicionales.

Sección 334.—Custodio.

(a) Un custodio con conocimiento de la radicación de una petición bajo el Capítulo 3 de esta Ley relativa al peticionario no puede hacer ningún desembolso de, o tomar cualquier acción en la administración de, la propiedad del peticionario, los ingresos, productos, rentas o ganancias de dicha propiedad en la posesión, custodia o control de dicho custodio, excepto por aquellas acciones necesarias para preservar la propiedad.

(b) Un custodio debe:

(1) Entregar al peticionario cualquier propiedad del peticionario en poder de o transferida a dicho custodio, o ingresos, productos, rentas o ganancias de dicha propiedad que estén en la posesión, custodia o control de dicho custodio a la fecha que dicho custodio adquiere conocimiento de la radicación de la petición; y

(2) Presentar un inventario de cualquier propiedad del peticionario, ingresos, productos, rentas o ganancias de dicha propiedad que, en cualquier momento, estuvo bajo la posesión, custodia o control de dicho custodio.

(c) La Sala Especializada, previa notificación y celebración de vista, debe:

(1) proteger todas las entidades con las cuales el custodio se ha obligado con relación a la propiedad o los ingresos, productos, rentas o ganancias de dicha propiedad;

(2) proveer para el pago de compensación razonable por los servicios brindados y los gastos incurridos por dicho custodio; y

(3) cobrarle a dicho custodio por cualquier desembolso impropio o excesivo, siempre y cuando dicho desembolso no se haya hecho en virtud de una ley o no haya sido aprobado, previa notificación y celebración de vista, por un tribunal con jurisdicción antes de la radicación de la petición.

Sección 335.—Entrega de la Propiedad del Peticionario.

(a) Excepto por la colateral asegurada y perfeccionada por la posesión, y excepto por lo que se provee en los incisos (c) y (d) de esta sección, una entidad, que no sea un custodio, y que esté en posesión, custodia o control, durante el caso, de propiedad que el

petionario puede utilizar o transferir conforme las secciones 307 y 323 de esta Ley, debe entregar al petionario, y dar cuenta de, dicha propiedad o el valor de dicha propiedad, a menos que dicha propiedad sea de valor y beneficio insignificante para el petionario.

(b) Excepto por lo que se dispone en esta sección, la entidad que tenga una deuda vencida con el petionario, pagadera a la presentación o pagadera a la orden, debe pagar dicha deuda a, o a la orden de, el petionario, excepto en la medida que dicha deuda pueda compensarse contra una reclamación del petionario.

(c) Excepto por lo que se dispone en la sección 304(a)(5) de esta Ley, una entidad que no haya recibido notificación ni tenga conocimiento de la radicación de una petición relativa al petionario, puede transferir la propiedad del petionario, o pagar la deuda que tenga con el petionario, a una entidad distinta al petionario, con el mismo efecto para la entidad, haciendo dicha transferencia o pago como si el caso bajo el Capítulo 3 de esta Ley con relación al petionario no hubiera comenzado.

(d) Sujeto a cualquier privilegio aplicable, previa notificación y celebración de vista, la Sala Especializada puede ordenar a un abogado, contable u otra entidad que tenga información gravada, incluyendo libros, documentos, récords y papeles, con relación a la propiedad o asuntos financieros de la petionaria, a entregar y divulgar dicha información gravada al petionario.

Sección 336.—Entrega de Valores.

Si un plan requiere la presentación o la entrega de cualquier valor o la realización de cualquier otro acto como condición a la participación en la distribución bajo el plan, dicha acción deberá ser tomada no más de cinco (5) años desde la fecha de expedición de la orden de confirmación o en la manera provista bajo el plan. Cualquier entidad que no haya, dentro de ese periodo, presentado o entregado los valores de dicha propiedad o que no haya tomado cualquier otra acción que el plan requiera no podrá participar en distribución alguna bajo el plan.

Sección 337.—Notificación de Mociones.

(a) La notificación de cualquier moción en un caso bajo el Capítulo 3 de esta Ley, que surja en un caso bajo el Capítulo 3 de esta Ley o que esté relacionada con un caso bajo el Capítulo 3 de esta Ley será suficiente si se realiza—

- (1) por correo, a la última dirección conocida o al abogado del acreedor afectado u otra parte interesada;
- (2) por correo electrónico, a la dirección provista por el acreedor afectado u otra parte interesada en cualquier caso, o
- (3) a través de The Depository Trust Company o un depositario similar.

(b) La notificación se puede realizar dentro del Estado Libre Asociado o de los Estados Unidos por correo primera clase con el franqueo prepagado o por correo electrónico de las siguientes maneras:

- (1) las notificaciones que se requiera que sean enviadas por correo al acreedor afectado o al fiduciario de bonos (*indenture trustee*) (o a la entidad que esté

desempeñando funciones comparables) deberán dirigirse según esa entidad o un agente autorizado haya instruido en su último escrito radicado en el caso particular;

(2) si el acreedor afectado o fiduciario de bonos (*indenture trustee*) (o la entidad que esté desempeñando funciones comparables) no ha radicado algún escrito en el que designe una dirección postal o de correo electrónico, las notificaciones deberán enviarse a la dirección de la entidad que aparezca en la lista de acreedores radicada por el peticionario, si alguna;

(3) si la lista de acreedores afectados radicada por el peticionario incluye el nombre y la dirección de un representante legal de un menor o de una persona incapaz, y una entidad diferente a ese representante radica un escrito en el que designa un nombre y dirección postal diferente al nombre y la dirección del representante incluido en la lista de acreedores afectados, las notificaciones deberán enviarse a ambos, al representante incluido en la lista o los planes y al nombre y dirección diferentes designados en el escrito, a menos que la Sala Especializada disponga algo distinto;

(4) una entidad y el agente de notificación pueden acordar que el agente de notificación le notifique a la entidad de la forma que acuerden y a la dirección o direcciones que la entidad provea al agente de notificación. Se presumirá que esa dirección es apropiada para la notificación. El hecho de que el agente de notificación no utilice la dirección provista no invalida notificación alguna que sea de otro modo efectiva de acuerdo con la ley aplicable;

(5) un acreedor afectado puede tratar una notificación como si no hubiese llegado a su atención solamente si, antes de la emisión de la notificación, el acreedor afectado radicó una declaración ante la Sala Especializada en la que designó el nombre y la dirección de la entidad o la subdivisión organizacional del acreedor afectado responsable de recibir notificaciones bajo el Capítulo 3 de esta Ley y describió los procedimientos establecidos por el acreedor afectado para que esas notificaciones fueran entregadas a la entidad o subdivisión designadas y la notificación no se ajusta a dicha designación; y

(6) si los escritos en el caso revelan una reclamación de los Estados Unidos que no sea por concepto de contribuciones, las copias de notificaciones que se requiere que se envíen a todos los acreedores afectados bajo esta Ley se le enviarán también al Fiscal de los Estados Unidos para el Distrito de Puerto Rico y al departamento, agencia o instrumentalidad de los Estados Unidos con el cual el peticionario tenga la deuda.

(c) Si, a solicitud del peticionario o de una parte interesada con legitimación para ser escuchada sobre un asunto, o por iniciativa propia de la Sala Especializada, la Sala Especializada entiende que una notificación enviada por correo dentro del tiempo establecido por estas reglas no será suficiente para proveerle una notificación adecuada a un acreedor afectado al cual las notificaciones bajo esta Ley se le envían por correo y cuya dirección sea fuera del Estado Libre Asociado y de Estados Unidos, según las circunstancias, la Sala Especializada podrá ordenar que la notificación por correo sea suplementada con una notificación por otro medio o que el periodo establecido para la notificación por correo se extienda. A menos que la Sala Especializada, por causa, ordene otra cosa, la dirección postal

de un acreedor afectado con dirección en el extranjero se determinará conforme los incisos (b)(1) y (b)(2) de esta sección.

(d) La Sala Especializada podrá, en su discreción, ordenar requisitos específicos de notificación para fechas límite específicas, vistas y mociones en el caso, y esas órdenes revocarán los requisitos de notificación del Capítulo 3 de esta Ley en lo que sean inconsistentes.

Sección 338.—Notificaciones Especiales.

(a) Además de todas las otras notificaciones requeridas a continuación, un peticionario proveerá notificaciones especiales sobre (1) la radicación de una petición, (2) una vista solicitada por el peticionario para la emisión de una orden que determine que el peticionario es elegible para alivio bajo el Capítulo 3 de esta Ley, (3) la vista sobre una transferencia conforme a la sección 307 de esta Ley, y (4) la vista de confirmación del plan propuesto. Esas notificaciones se publicarán en el portal electrónico para su caso bajo el Capítulo 3 de esta Ley y se publicarán conforme a la sección 116(c)(2) de esta Ley.

(b) La notificación será enviada a

(1) todas las partes interesadas (excepto los tenedores de reclamaciones no enumeradas conforme a la sección 302(a)(2) de esta Ley) para las cuales el peticionario tenga récords electrónicos internos accesibles con su dirección postal y dirección electrónica,

(2) todas las entidades que presenten mociones de comparecencia, y

(3) conforme al inciso (c) de esta sección, los tenedores de reclamaciones no enumeradas según la sección 302(a)(2) de esta Ley.

(c) Independientemente de cualquier disposición contractual o ley aplicable en contrario, la notificación de los eventos enumerados en el inciso (a) de esta sección a los tenedores de reclamaciones no enumeradas conforme a la sección 302(a)(2) de esta Ley será apropiada y razonable si la publicación de la notificación se hace conforme a la sección 116(c)(2) de esta Ley.

Sección 339.—Desestimación del Caso.

(a) Previo notificación y vista, la Sala Especializada puede desestimar un caso bajo el Capítulo 3 de esta Ley, por causa, incluyendo—

(1) una determinación legislativa de que el estado de emergencia fiscal subyacente necesario para el Capítulo 3 de esta Ley ha terminado, o

(2) una determinación judicial, estatal o federal, cuya sentencia sea final y firme, que decida que el peticionario es elegible para tramitar un caso bajo el título 11 del Código de los Estados Unidos.

(b) La Sala Especializada deberá desestimar un caso bajo el Capítulo 3 de esta Ley, y podrá condicionar dicha desestimación bajo aquellos términos que sean justos, si la petición se retira conforme a la sección 112 de esta Ley.

Sección 340.—Cierre de Caso.

(a) Luego de que un plan sea confirmado y sea efectivo, y todas las reclamaciones en disputa hayan sido resueltas, la Sala Especializada cerrará el caso.

(b) Un caso puede reabrirse en la Sala Especializada en el cual el caso se cerró para hacer valer el plan, acordar un alivio para el peticionario o por alguna otra razón.

Sección 341.—Reglas *Escheat* o de Reversión de Propiedad.

Cualquier depósito, dinero u otra propiedad que permanezca sin reclamar una vez expire el periodo permitido en un caso bajo el Capítulo 3 de esta Ley para la presentación de un depósito o para llevar a cabo cualquier otra acción como condición para la participación en la distribución bajo cualquier plan confirmado bajo el Capítulo 3 de esta Ley, o que permanezca sin reclamar tras la expiración del tiempo límite para reclamar dicha declaración final de distribución o dicho plan, según sea el caso, se convertirá en propiedad del peticionario o de la entidad que adquiera los activos del peticionario bajo el plan, según sea el caso.

Capítulo 4: Vigencia

Sección 401.—Efectividad de la Ley.

Esta Ley entrará en vigor inmediatamente después de su aprobación.

Parte II – English Version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act,”

To create the “Puerto Rico Public Corporation Debt Enforcement and Recovery Act,” in order to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico during an economic emergency; to create chapter 1 of the Act, titled General Provisions, chapter 2, titled Consensual Debt Relief, chapter 3, titled Debt Enforcement, and chapter 4, titled Effectiveness of the Act; to establish the definitions, interpretation and evidentiary standards applicable to the Act; to establish provisions regarding jurisdiction and procedure, including the creation of the Public Corporation Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, the powers and responsibilities of said court, the parameters that will govern eligibility for processes under chapter 2 and chapter 3 of the Act and to establish provisions on service of process, applicability of the rules of civil procedure, objections and appeals, among others; to establish provisions regarding creditor protection and governance, including limitations on avoidance actions, recovery on avoidance actions and the appointment of an emergency manager, among others; to establish the rules that will govern chapter 2, Consensual Debt Relief, including the objectives of a consensual debt relief transaction, the creation an oversight committee to monitor the public corporation’s compliance with the recovery program, the court approval of the consensual debt relief transaction, the suspension of remedies during the suspension period and the financing of the public corporation during said period, among others; to establish the rules that will govern chapter 3, Debt Enforcement, including the petition for relief, the automatic stay, the eligibility hearing, the enforcement of claims by foreclosure transfer, the confirmation requirements, the

creation of the creditors' committees and various additional provisions relating to the assets, liabilities, contracts and powers of the petitioner, among others; and to other ends.

STATEMENT OF MOTIVES

A. Current State of Fiscal Emergency

The fiscal situation of the Government of the Commonwealth of Puerto Rico for the last six years has been the most critical the country has undergone in its history. In January 2013, the General Fund deficit for fiscal year 2012-2013 was projected to surpass \$2.2 billion. By means of various measures implemented by this Administration, said deficit was reduced to approximately \$1.29 billion as of June 30, 2013. For the current fiscal year 2013-2014, this Legislative Assembly approved various measures of fiscal discipline that permitted a reduction, with legislative approval, of appropriations in an amount of \$170 million below budgeted amounts. Notwithstanding, and as informed by the Treasury Department, at June 10, 2014, the projected collections for the current fiscal year were \$320 million below the projected amount, for which measures have been implemented in order to close the gap and achieve the goal of closing the current fiscal year with a deficit of \$650 million.

The situation at the public corporations in January 2013 was no different, as the combined deficit of the country's three main public corporations (the Electric Power Authority (hereinafter "PREPA"), the Aqueduct and Sewer Authority (hereinafter "PRASA") and the Highways and Transportation Authority (hereinafter "PRHTA")) for fiscal year 2012-2013 was approximately \$800 million, all of them with a combined debt adding up to \$20 billion. This Administration implemented various measures in order to improve the finances of these public corporations in order to assist them in again becoming financially self-sufficient.

For example, on February 27, 2013, this Administration completed the transaction that involved the lease of the Luis Muñoz Marín International Airport by means of a public-private partnership, which strengthened the fiscal position of the Ports Authority and reduced the financial difficulties of said public corporation and Government Development Bank for Puerto Rico (hereinafter "GDB") by repaying in excess of \$490 million owed to, or guaranteed by, GDB; on June 25, 2013, acts 30-2013 and 31-2013 were approved increasing the revenues of the PRHTA by approximately \$270 million and allowing such public corporations to begin amortizing all of the lines of credit owed to GDB, currently in an amount of approximately \$1.8 billion, and cover operational expenses; in July 2013, the Governing Board of PRASA implemented an average increase of 60% in water rates, approved by the prior administration, to cover operational expenses and improve its debt service coverage, which has allowed that public corporation to stop depending on General Fund subsidies to cover its operational deficits; and, notwithstanding the predictions, in August 2013, PREPA was able to place a bond issue of \$673 million that allowed it to partially finance its capital improvement program.

Notwithstanding all of the foregoing, the measures taken with the General Fund, as well as with the public corporations, have not been enough to address the economic and fiscal problems of Puerto Rico. As the public is aware, for the first time in our constitutional

history, the credit of the Commonwealth has been compromised as a result of the downgrade to non-investment grade of its general obligation bonds by the principal rating agencies, notwithstanding all of the previously mentioned governmental measures. The three principal rating agencies downgraded below investment grade the Commonwealth's general obligation bonds, and the bonds of the majority of its instrumentalities and public corporations, including GDB, PREPA, PRASA, PRHTA, and the Public Buildings Authority. The public debt's loss of its investment grade rating places the economic and fiscal health of the people of Puerto Rico at risk, and improperly compromises the credit of the Central Government and its public corporations.

Also, during fiscal year 2013-2014, the liquidity of the government and GDB was adversely affected by various factors that significantly limited the available resources and financial flexibility of the government to cover its governmental operations. These factors include a significant increase in the interest rates and yields of both Commonwealth obligations and those of its instrumentalities and public corporations, limited access by these entities to the United States capital markets and a marked reduction in the island's capital markets. In addition, this crisis limited GDB's ability to provide interim financing to public corporations and other entities. In light of this, local and international private financial institutions, which in the past had served as a source of interim liquidity for the Central Government and the public corporations, have significantly reduced and continue to reduce the credit extended to the Commonwealth and its public corporations, and no longer are a viable alternative for obtaining interim financing. The reduction in capital market access and in the credit provided by private financial institutions, has also limited the volume of debt that can be issued and, as a result, makes it impossible for the government to depend on financings to cover the cost of its governmental operations.

GDB, which has the statutory role of serving as financial adviser and fiscal agent to the Government of the Commonwealth, its instrumentalities, municipalities, and public corporations, and has also served as a source of interim financing for all parts of the governmental apparatus, has seen its liquidity affected precisely by its financing of the operational deficits of various public corporations. In GDB's financial statements for the fiscal year ended June 30, 2013, the auditors emphasize that GDB has \$6.9 billion in loans to the Commonwealth and its public corporations, which constitutes 48% of GDB's total assets. On the other hand, loans to municipalities totaled \$2.212 billion, or 15% of GDB's total assets. Therefore, the liquidity and financial condition of GDB significantly depends upon the ability of the Commonwealth and its public corporations to repay their debt, which, as stated before, has been severely affected.

Based on this situation, the present Administration took various measures to improve GDB's liquidity. For example, in March 2014, the Commonwealth made a historic bond issue of its general obligation bonds in the amount of \$3.5 billion, the net proceeds of which were mainly used to repay the Commonwealth's obligations with GDB. Also, Act No. 24-2014 was approved so that GDB, among others, could require certain governmental entities to transfer the balance of cash accounts maintained at private sector institutions to GDB. Also, said Act prohibits GDB from approving loans to public corporations that are unable to show that they have the sources of revenue sufficient to cover the debt service of the new financing. As a result, that law has the effect of imposing fiscal discipline on public entities and

preserves the liquidity and financial situation of GDB. Although these measures, together with other efforts, have increased GDB's liquidity, it still lacks sufficient financial strength, on its own, to satisfy the current financing needs of the Government of the Commonwealth and, in particular, of its public corporations, especially with the limited market access of these entities.

As a result of this liquidity situation which has exacerbated the difficult fiscal and financial outlook of the country, this Administration has proposed the approval of a balanced budget for the Commonwealth, without the financing of operational deficits nor debt refinancing for fiscal year 2014-2015. In addition, various expense reduction and operational reorganization measures have been taken at the agency and public corporation level, including the enactment of the Special Law for the Fiscal and Operational Sustainability of the Government of the Commonwealth of Puerto Rico, Act 66-2014, so that the Central Government as well as the public corporations may be able to cover their operational expenses with revenues collected by such entities and not by means of non-recurring funds, such as loans and debt refinancing. Act 66-2014 declared a fiscal emergency for the country for:

the fiscal and economic recovery after the downgrade of Puerto Rico's credit and the reduction of collections that affects the liquidity of the State, safeguarding the constitutional mandate for the payment of interest and amortization of the public debt, it is hereby adopted a plan for the management of the consequences of the same and to establish a structured administration that will permit the country to meet its obligations. Similarly, the continuity of the public function is assured in essential areas of health, safety, education, social work and development, among others, as well as the rendering of those services necessary and indispensable for the populace. This law will have as its public policy the restoration of the public credit of the commonwealth of Puerto Rico through the elimination, in the short term, of the General Fund deficit and the improvement in the fiscal condition of the public corporation, without resorting to the dismissal of regular or career public employees, nor affecting the essential functions of the government agencies that provide security, education, health or social work. This structured plan is indispensable to protect the availability of cash to the Commonwealth of Puerto Rico in such a manner so that the provision of indispensable services the populace receives is not affected. This plan considers the challenges that Puerto Rico confronts to restore the public credit and address the uncertainty surrounding the duration, scope and cost of access to the capital markets in the absence of an investment grade rating.

Although the implementation of Act 66-2014 will result in approximately \$230 million in combined savings for all public corporations, such fiscal control measures will not be sufficient to address the immediate fiscal situation of many public corporations of the country. Public corporations of the Commonwealth of Puerto Rico that provide essential public services, PREPA being the most dramatic example, today face significant operational, fiscal, and financial challenges. During the past years, these public corporations have issued bonds in the capital markets or obtained loans, guarantees, or other financial support from the

Government Development Bank for Puerto Rico (“GDB”) or private financial institutions to cover recurring budget deficits as result of the prolonged weakness in the Commonwealth's macroeconomic conditions, their inefficiencies, and their high operating costs. These fiscal and financial conditions have also been exacerbated by the needs of these public corporations to invest substantial amounts in their capital improvement plans, in many instances required by applicable federal regulation. As a result of this, some of these public corporations are also burdened with a heavy debt load as compared to the resources available to cover the corresponding debt service.

At present, as previously discussed, these public corporations have limited access to the capital markets and their ability to repay outstanding financings is severely compromised. At the same time and contrary to past improper practices, the Government of Puerto Rico has implemented responsible public policies pursuant to which GDB will no longer provide financing to cover operating deficits of the public corporations, and neither will the Department of the Treasury of the Commonwealth because these are not financially sound practices, and GDB and the Central Government are not in a position to cover such deficits. As previously indicated, under this Administration, the public corporations have been taking the measures necessary to achieve economic self-sufficiency, because reaching such self-sufficiency is fundamental for the new policy of responsibility required by the people of Puerto Rico. That being said, the lack of access to financing and deficit funding may culminate in some public corporations becoming unable to pay their debts when due, honor their other contractual obligations, and continue to perform important public functions such as providing required maintenance and improvements to existing critical infrastructure or making new investments necessary to the continuation of these vital services and compliance with regulatory requirements.

As recognized by this Legislative Assembly upon the enactment of Act Nos. 30 and 31 of 2013, which, as previously indicated, assigned new revenues to PRHTA, that public corporation has been facing a precarious situation for some years now due to the general reduction of its revenues exacerbated by the increases in the costs of its operations. Based on that public corporation's audited financial statement for fiscal years 2010 through 2013, PRHTA had accumulated operational losses (before depreciation) of \$349 million. These deficiencies were covered by GDB during the past years in order for that public corporation to continue operating and making payments to its principal creditors. During the past four years from 2009-2012, PRHTA's fiscal outlook worsened due to a severe pattern of covering its operational mismatches with GDB lines of credit, that, during such period, added up to \$2.113 billion without having identified resources for the repayment of such obligations.

In a separate matter, this Legislative Assembly has also recognized, through the Puerto Rico Transformation and Energy RELEIF Act, Act 57-2014, that high energy costs, which reached their highest levels at the end of 2012 at \$0.31 per kilowatt hour, have crippled our economic development and that these high costs are a result of PREPA's dependence on oil for purposes of generating electricity and its highly leveraged structure, which for several years has created difficulties in its ability to implement necessary capital improvements to the power generation, transmission, and distribution systems. PRHTA and PREPA exemplify the nature and scope of the crisis that certain of our public corporations currently face that may lead to an unprecedented failure in the ability of some public corporations to safeguard the

public and promote the general welfare of the people by continuing to provide essential government services while at the same time honoring their debt and other obligations.

As previously mentioned the financial challenges facing some of the public corporations have been further exacerbated by the Central Government's own fiscal and economic challenges. The budget deficits incurred over decades, prolonged economic recession (since 2006), a high rate of unemployment that reached 16% in 2010, population decline, and high levels of debt and pension obligations, have contributed to the financial problems of the public corporations. All of these factors have led to widening of credit spreads for public sector debt and the ratings downgrades, all as previously discussed. This, in turn, has further strained the liquidity of the Commonwealth and its public corporations and adversely affected their access to the capital markets and private sources of financing, as well as their borrowing costs.

This Legislative Assembly has time and again demonstrated its willingness to act to address the financial and economic challenges of the Commonwealth and its public corporations. This Legislative Assembly has enacted comprehensive reforms of the Employees Retirement System through Act No. 3-2013, as amended, the Teachers Retirement System through Act No. 160-2013, and the Judiciary Retirement System through Act No. 162-2013 in order to ensure retirees will continue to receive their pensions while addressing the Commonwealth's cash flow needs. This Legislative Assembly also enacted comprehensive energy reform legislation, Act 57-2014, in order to promote the economic development and wellbeing of the people of the Commonwealth.

In light of the financial situation of the Commonwealth and the Administration's goal to balance the Commonwealth's General Fund, Governor Alejandro Garcia Padilla recently announced that the Commonwealth's public corporations would be required to achieve financial self-sufficiency in the near future. This self-sufficiency, however, may not be achieved through increases in basic rates, which are already excessively high, hinder and depress economic activity and development. Given that public corporations no longer can rely on GDB loans, Commonwealth subsidies, or rate increases to cover their operating deficits, they may be unable to pay their debts as they come due and honor their other contractual obligations, while at the same time trying to meet their obligations to provide services to our populace. If the public corporations were to default on their obligations in a manner that permits creditors to exercise their remedies in a piecemeal way, the lack of an effective and orderly process to manage the interests of creditors and consumers, would threaten the ability of the Commonwealth's government to safeguard the interests of the public to continue receiving essential public services and promote the general welfare of the people of Puerto Rico.

The challenges described herein are not issues that can be addressed in the future in a gradual and measured manner over an extended period of time. We have inherited them and they are with us today, constituting a real and palpable threat to the government's ability to protect and promote the general welfare of the people of Puerto Rico now, and therefore establish a current state of fiscal emergency.

B. Insufficiency of Current Commonwealth Laws and Inapplicability of Federal Law

At present, there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent. The enabling acts of PREPA and PRASA, for example, contain provisions that contemplate the appointment by a court of a receiver in the context of a default that, under the direction of a court, would take over the operations of the public corporation and apply its operating revenues in the manner ordered by the court. The receiver would remain in place until such time as all defaults of the public corporation are cured. These general provisions are inadequate to address the complexities involved in a recovery process in the event of an insolvency. They lack the rules and procedures necessary to properly and equitably manage the recovery process of a public corporation for the benefit and protection of all stakeholders.

At the same time, the provisions of the federal laws applicable to corporations in state of insolvency are inapplicable to the Commonwealth's public corporations.

This Act addresses the existing statutory gap, consistent with Commonwealth and federal constitutional requirements, and enables the Commonwealth's public corporations to address their particular fiscal and financial emergencies in a manner that maximizes value to creditors while protecting public functions important for the public health, safety and welfare, and positioning the Commonwealth to grow its economy for the benefit of all stakeholders collectively. This legislation acknowledges the complexity of these types of proceedings and provides special procedures by which the Chief Justice of the Puerto Rico Supreme Court may designate particular judges to oversee these types of proceedings who may, in turn, designate special commissioners with the required expertise to assist in their resolution. This is not a bankruptcy act, but an orderly debt enforcement act for the eligible public corporations.

C. Constitutional Basis

This legislation is consistent with guidance provided by the United States Supreme Court (the "U.S. Supreme Court") with respect to the proper rules and procedures for carrying out the financial recovery of entities ineligible for relief under the applicable federal laws.

As discussed below, the Commonwealth has the power to enact a statute that allows a public corporation to modify the terms of its debt with the consent of a substantial number of affected creditors or through a court-supervised proceeding because the U.S. Supreme Court has acknowledged the power of states to enact their own laws for entities Congress has not rendered eligible under applicable federal law. In addition, Puerto Rico has the police power to enact orderly debt enforcement and recovery statutes when facing an economic emergency, since Congress enacted legislation in 1950 and 1952 granting the Commonwealth the power to govern under its own constitution.

These being the circumstances, states have the power to enact their own laws to provide a process for adjusting debts. States have also enacted laws permitting insurance companies and banks ineligible under provisions like chapters 9 and 11 of title 11 of the United States Code to adjust their debts.

States are also able to enact their own enforcement and adjustment statute under their police power. In *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942), the U.S. Supreme Court explained the state retains police power with respect to the financial wellbeing of the state: "If a State retains police power with respect to building and loan

associations . . . because of their relation to the financial well-being of the State, and if it may authorize the reorganization of an insolvent bank upon the approval of a state superintendent of banks and a court, . . . a State should certainly not be denied a like power for the maintenance of its political subdivisions and for the protection not only of their credit but of all the creditors” *Faitoute Iron & Steel Co.*, 315 U.S. at pages 313–14. This police power extends not only to the enactment of an adjustment statute where Congress has failed to act, but also to the use of the police power during periods of emergency.

The Commonwealth has sovereign authority to enact its own laws, as long as the statute does not conflict with our own Constitution, the Constitution of the United States or applicable federal law. With the passage of Public Law 600, Congress authorized the Commonwealth to draft its own constitution. The legislation was offered in the “nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.” In approving the proposed constitution, Congress noted: “Within this framework, the people of Puerto Rico will exercise self-government. As regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union.”

Courts have recognized this sovereign authority of the Commonwealth. The U.S. Supreme Court has held that the Commonwealth is “sovereign over matters not ruled by the Constitution.” The Court has reiterated this holding on two occasions. Specifically, in *Examining Board of Engineers v. Flores de Otero*, 426 U.S. 572, 594 (1976), the Court stated that “The purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with a state of the union.” In *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982), the Court further explained: “. . . Puerto Rico . . . is an autonomous political entity, sovereign over matters not ruled by the Constitution.” Moreover, in *Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank*, 649 F.2d 36, 41 (1st Cir. 1981), a case that was cited positively by the U.S. Supreme Court in *U.S. v. Lara*, 541 U.S. 193, 204 (2004), the United States Court of Appeals for the First Circuit concluded that:

In sum, Puerto Rico’s status changed from that of a mere territory to the unique status of Commonwealth. And the federal government’s relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

The Commonwealth Constitution expressly recognizes the Commonwealth’s police power. Under Article II, Section 18, citizens of the Commonwealth are given the right to organize and bargain collectively. That right, however, does not impair the state’s police power: “Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.” In addition, Article II, Section 19 more explicitly recognizes the police power of the Commonwealth: “The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively.”

Similarly, the Legislative Assembly was given the power to create the Commonwealth courts by Congress in 1950 and 1952 when Congress enacted legislation granting Puerto Rico Commonwealth status and the power to govern under its own constitution. Section 2 of Article V of the Commonwealth Constitution grants the Legislative Assembly the authority to create the Commonwealth court. Therefore, the Legislative Assembly has the power to enact, and a Puerto Rico court has the power to enforce, an orderly debt enforcement statute.

D. Purpose and Objectives of the Act

This Legislative Assembly finds that the current fiscal emergency situation requires legislation that allows public corporations, among other things, (i) to adjust their debts in the interest of all creditors affected thereby, (ii) provides procedures for the orderly enforcement and, if necessary, the restructuring of debt in a manner consistent with the Commonwealth Constitution and the U.S. Constitution, and (iii) maximizes returns to all stakeholders by providing them going concern value based on each obligor's capacity to pay. It further believes that the public corporations can be restored to a position of solvency and creditworthiness by postponing or reducing debt service with the consent of a supermajority of the creditors as part of a recovery program, as contemplated by chapter 2 of this Act.

This Legislative Assembly recognizes that if the public corporations fail to use the revenues that have been pledged to the payment of debt service to maintain basic public services that are necessary to preserve the public health, safety, and welfare of our citizens, they will likely be unable to honor their debt. This Act also recognizes that if an orderly debt enforcement and recovery process is not in place, there will likely be outcomes that do not balance fairly the interests of all the stakeholders. To address these challenges in a manner that treats debt holders fairly and balances the best interests of creditors with the interest of the Commonwealth to protect its citizens and to grow and thrive for the benefit of its residents, this Legislative Assembly has decided to enact a law that is consistent with the precepts espoused by the courts of the Commonwealth and the United States.

E. Summary of the Act

The Act contemplates two types of procedures to address a public corporation's debt burden. The first is a consensual debt modification procedure that would culminate in a recovery program (chapter 2 of this Act) and the second is a court-supervised procedure that would culminate in an orderly debt enforcement plan (chapter 3 of this Act). A public corporation can seek relief under either chapter 2 or chapter 3 at the same time or sequentially. This Act is designed in many respects to mirror certain key provisions of title 11 of the United States Code, and courts and stakeholders are encouraged to review and consider existing precedent under title 11 of the United States Code, where applicable, when interpreting and applying this Act.

Eligibility

The following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary

Requirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.

Summary of Chapter 1 of the Act

Chapter 1 of the Act establishes the general provisions of the law and includes three subchapters, the first entitled “Title, Purposes, Nomenclature, and Interpretation,” the second “Jurisdiction and Procedure,” and the third “Creditors’ Protections and Governance.” Subchapter I includes provisions related to, among other things, definitions, standards of interpretation and evidence, a savings clause, and inapplicability of other laws. Subchapter II establishes the norms regarding jurisdiction, the powers and responsibilities of the Court, eligibility, service of process, and appeals, among others. Subchapter III contains provisions concerning constitutional safeguards for creditors, the role of GDB in proceedings conducted under the Act, the power of the Governor to appoint an Emergency Manager, and the basic tools available to an eligible public corporation availing itself of the Act, such as continued operations and limited recovery of setoffs and actual fraudulent transfers.

Summary of Chapter 2 of the Act

General. Chapter 2 provides a mechanism for a public corporation to adopt a recovery program and seek a market-led solution for debt relief, based on the recovery program, that binds all debt holders with the consent of a supermajority of debt holders. The recovery program contemplated by chapter 2 will have as its objectives: to enable an eligible obligor to become financially self-sufficient; to allocate equitably among all stakeholders the burdens of the recovery program; and to provide the same treatment to all creditors unless a creditor agrees to a less favorable treatment.

Chapter 2 was designed based on jurisprudence that has determined that no violation of the constitutional prohibition on the impairment of contracts exists upon the enactment of a debt adjustment regime that complies with the following principal characteristics: the existence of a fiscal emergency that necessitates the enactment of this legislation; a supermajority vote in order to bind the minority; the creation of an impartial oversight board to supervise compliance with the recovery program; ratable distributions; and court approval.

Commencement and Eligibility. The chapter 2 process begins when the governing body of a public corporation and GDB, or GDB upon the Governor’s request, as the case may be, authorize the public corporation to seek consensual debt relief from holders of specified debt instruments (which chapter 2 identifies as the affected debt instruments). Any government entity, other than those specifically excluded (see above), is eligible to commence a recovery process under chapter 2 of this Act.

Scope of Relief. The relief available under chapter 2 consists of any combination of amendments, modifications, waivers, or exchanges (collectively referred to as amendments) to the affected debt instruments, so long as the amendments are coupled with the public corporation’s commitment to be bound by the recovery program. Amendments may include

various features such as interest rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments.

Suspension of Remedies. After a public announcement of the suspension period is made, all remedies otherwise granted to holders of, parties with a beneficial interest in, and trustees and indenture trustees and similar representatives related to the affected debt instruments are temporarily suspended for a sufficient period of time to allow the public corporation to engage in discussions with stakeholders, seek the required consent from holders, and obtain court approval of the amendments. The public corporation shall have the power through court process to enforce the temporary suspension of remedies.

Recovery Program. A public corporation seeking approval of a consensual debt relief transaction must commit to and formulate a recovery program. The recovery program must allow the public corporation to become financially self-sufficient based on financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders. The recovery program, which may include interim milestones and performance targets, will necessarily require burden sharing by affected stakeholders and may also include measures designed to improve operating margins; increase operating revenues; reduce operating expenses; transfer or otherwise dispose of existing operating assets; acquire new operating assets; and close down or restructure existing operations or functions.

Required Consent of Debt Holders. Proposed amendments to the affected debt instruments must be submitted to the holders of such debt instruments for consent or approval. If holders of at least half of the amount of debt entitled to vote or consent in a particular class participate in the vote or consent process and holders of at least three-quarters of the aggregate amount of debt that participate in the vote or consent solicitation approve the amendments, the public corporation may then seek court approval of the amendments for the purpose of binding all holders of such affected debt instruments to the amendments.

Court Approval. The court process is designed to be efficient and expedient in light of the consensual nature of the transaction. The designated courtroom within the Court of First Instance, San Juan Part, established by this Act will have original jurisdiction to resolve any disputes relating to any provision under chapter 2, including a consensual debt relief transaction. Upon an application by the public corporation for approval of the amendments, the court will be required to determine whether (i) the amendments proposed in such transaction are consistent with the objectives of chapter 2, and (ii) that the voting procedure was conducted in a manner consistent with chapter 2. If the court is satisfied that these requirements have been satisfied, the court must order that the proposed amendments shall become effective immediately, and that all holders of such instruments shall be bound by the new terms of the instrument. The amendments shall be binding on the public corporation and any entity asserting claims or other rights, including anyone with a beneficial interest, in respect of affected debt instruments.

Oversight Commission. In order to monitor the public corporation's compliance with the recovery program, chapter 2 establishes an oversight commission comprised of three independent experts appointed by the Governor. The commission is also charged with the responsibility of providing periodic compliance updates to stakeholders and the public. If the

public corporation fails to achieve its interim performance targets, for example, the commission may issue non-compliance findings and make recommendations for curing such non-compliance.

Summary of Chapter 3 of the Act

General. Chapter 3 addresses the debt problem of the Commonwealth's public corporations through a judicial solution requiring the same consent required in, for example, chapters 9 and 11 of title 11 of the United States Code. Chapter 3 enables each qualifying public corporation to defer debt repayment and to decrease interest and principal to the extent necessary to enable each entity to continue to fulfill its vital public functions. Collective bargaining agreements may be modified or rejected under certain circumstances and trade debt can be reduced when necessary. In designing chapter 3, this Legislative Assembly has adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, this Legislative Assembly clearly expresses its intent that jurisprudence interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act.

Constitutional Basis. Notwithstanding the common concepts that this legislation shares with analogous federal law, as stated before, this legislation is not a bankruptcy statute. This legislation provides for a regime to guarantee the orderly enforcement of debts, to the extent of each such public corporation's ability to do so. To address the U.S. Supreme Court's concern about a municipality legislating the terms on which its own instrumentalities' debts can be handled, chapter 3 adopts even more stringent economic standards than Congress adopted for chapters 9 and 11 of title 11 of the United States Code. Accordingly, the underlying premise of chapter 3 is that it must serve as an orderly debt enforcement mechanism that makes creditors better off than they would be if they all simultaneously enforced their claims immediately. Primarily, chapter 3 accomplishes this task by requiring that each creditor receive (i) at least the value it would receive if all creditors were allowed simultaneously to enforce their respective claims against the public corporation, and, wherever possible, the higher going concern value of the public corporation, plus (ii) a note providing additional value based on the amount by which the public corporation's future financial results yield positive cash flow. This note serves as a protection against paying creditors less than the available value and as a proxy for the amount each creditor could receive in the future in the absence of chapter 3.

Chapter 3 was designed based on the desire of the Commonwealth's public corporations to satisfy their contractual obligations to the maximum extent possible. Wherever practicable, chapter 3 opts to maximize distributions to creditors consistent with the execution of vital public functions, without which all creditors would be worse off. For example, in some circumstances, if pledged revenues are turned over to creditors and not used to sustain a public corporation, there may be fewer revenues in the future to pay the creditors. Assets backing employee retirement or post-employment benefit plans remain inviolable under chapter 3. Obligations for employee wages and salaries, payment for the provision of goods and services under a certain threshold (not to be lower than \$1 million), and debts owing to the United States of America will be paid in full.

Commencement and Eligibility; Stay of Actions. A case under chapter 3 is commenced when a petition for relief is filed, as such concept is defined in chapter 3. To be eligible for chapter 3, a petitioner must be (i) currently unable or at serious risk of being unable to pay valid debts as they mature while performing its public functions without additional legislative or financial assistance, (ii) ineligible for relief under chapter 11 of title 11 of the United States Code and (iii) authorized to file a petition by its governing body and GDB or by GDB at the Governor's request on behalf the public corporation. The petition must contain information about the types and amounts of claims the petitioner intends to affect under its debt enforcement plan. Any actions for payment of such claims are stayed as of the date the petition is filed, channeling their adjudication into a single forum—the designated courtroom within the Court of First Instance, San Juan Part, established by this Act. Prompt notice of the petition, the claims to be affected, and the automatic stay must be furnished to creditors, along with notice of the opportunity to volunteer to serve on a general creditors' committee to be appointed by the Court. The notice shall also include a date set by the Court for a hearing to determine whether the petitioner is eligible for relief under chapter 3 and the deadlines for filing any objections to eligibility. The eligibility hearing must take place no more than 30 days after the petition is filed.

Pendency of Case. During its chapter 3 case, the petitioner remains in possession and in control of its assets and operations. After the petition is filed, any expense the petitioner incurs in exchange for new value is an administrative expense, to be paid in full in the ordinary course, and unaffected by the petitioner's plan. The petitioner may obtain unsecured credit or incur debt in the ordinary course as an administrative expense; if the petitioner is unable to obtain credit or incur debt on those terms, chapter 3 provides the Court with the power to authorize significant further protections for lenders willing to extend credit to the petitioner.

Rejection of Contracts. The petitioner also has the power to assign or reject contracts to which it is party if the Court finds it is in the petitioner's best interests. Counterparties to rejected contracts will be left with claims for breach of contract, to be treated under the petitioner's plan. Collective bargaining agreements are subject to rejection or modification, but only where the Court determines that absent rejection or modification the petitioner would likely become unable to perform public functions, which determination is to be made only, based on U.S. Supreme Court precedent, after the data underlying the request for rejection have been shared with union representatives and reasonable efforts to negotiate a voluntary modification have failed.

Debt Enforcement Plan. Only the petitioner or GDB, upon the Governor's request, may propose a debt enforcement plan under chapter 3. Creditors must be separated into different classes (based upon different collateral security, priorities, or rational bases for classifying similar claims separately) for treatment under the plan. Plan treatment must be such that every affected creditor receives payments and/or property having a present value of at least the amount the claims in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized under the circumstances. Under the plan, every affected creditor also must receive a note that provides for 50% of the petitioner's positive free cash flow for ten years following the plan effective date. No plan can be confirmed unless at least

one class of affected debt votes to accept the plan, but all other classes can have their claims treated as described above regardless of whether they accept the plan. This protects the public corporations from entering into debt repayment plans they cannot afford.

F. Desire for a Single Court

This Act creates the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, which will have exclusive competence and jurisdiction over all matters arising under or related to this Act. Accordingly, it is this Legislative Assembly's desire that all disputes arising under or related to this Act (or to any debt that is affected by it), wherever filed, be directed to and resolved by the Court established by this Act (or to the federal court located in the Commonwealth, if applicable) and that courts in States (and federal courts located outside the Commonwealth) decline to adjudicate such disputes in the same manner that this Legislative Assembly would expect Commonwealth courts to abstain from hearing disputes against States and their instrumentalities facing a similar financial crisis.

G. Conclusion

As previously demonstrated, this Legislative Assembly has the power to enact legislation that allows a public corporation to modify the terms of its debt with the consent of supermajority of its affected creditors or through a court supervised proceeding. Certain public corporations are operating under fiscal and financial conditions such that, if emergency action is not taken to prevent their insolvency, they will have to submit themselves to a debt adjustment process, because with their current revenue structures they will be unable to pay their debts as they become due and honor their contractual obligations, while continuing to provide services to the people. This Act provides the necessary regime to establish an orderly process that will allow those public corporations that so require to satisfy their debts and other contractual obligations to the best of their ability, while guaranteeing the continuity of the governmental functions in providing essential public services.

In light of the foregoing, this Legislative Assembly, relying on the state of fiscal emergency declared in Act 66-2014, confirms that the approval of this Act is of utmost importance to ensure that the public corporations of the Commonwealth satisfy their debts in an orderly fashion so that indispensable services to the people of Puerto Rico may continue uninterrupted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Chapter 1: General Provisions

Subchapter I: Title, Purpose, Nomenclature, and Construction

Section 101. —Short Title and Fiscal Emergency.—

(a) This Act shall be known and may be cited as the “Puerto Rico Public Corporation Debt Enforcement and Recovery Act.”

(b) Pursuant to Act No. 66-2014, the Legislative Assembly has declared a state of fiscal emergency for the Commonwealth and its instrumentalities.

(c) The Legislative Assembly, in the exercise of its police power, is empowered to adopt measures aimed at protecting the public health, safety and welfare in a structured manner, while addressing the current fiscal situation of the Commonwealth and, in particular, of its public corporations. To that end, the Legislative Assembly may adopt legislation in response to social and economic interests, as well as in emergencies. Section 19 of the Bill of Rights of the Commonwealth Constitution provides that the enumeration of rights contained in Article II shall not be construed as to restrict “[t]he power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people”. Similarly, Section 18 of the Bill of Rights of the Commonwealth Constitution gives this Legislative Assembly authority to enact laws to address grave emergencies that imperil the public health, safety or essential public services.”

(d) This Act is adopted in the exercise of the Commonwealth’s police power, as well as under the Legislative Assembly’s power to adopt laws for the protection of the life, health and welfare of the people, such as in emergencies where the health, public safety and essential government services are clearly endangered. For these reasons, this Act shall prevail over any other law.

(e) The public policy of this Act shall be to restore the credit of the public corporations of the Commonwealth by improving the fiscal condition of the public corporations without affecting the essential functions of such entities.

Section 102. —Definitions.—

The following words and terms, when used and referred to in this Act, shall have the meaning stated below:

(1) “Act” means this Puerto Rico Public Corporation Debt Enforcement and Recovery Act.

(2) “administrative expense” means an expense of a petitioner, incurred or accrued from and after the date its petition is filed up through the date a plan is confirmed in its case, in respect of new value provided or new obligations incurred, including any expenses necessary to fulfill the petitioner’s public functions.

(3) “affected creditor” means a creditor holding affected debt.

(4) “affected debt” means the debt scheduled pursuant to section 302(a)(2) of this Act.

(5) “affected debt instrument” means each debt instrument related to an obligation identified in a suspension period notice, provided that no debt instrument evidencing an obligation incurred pursuant to section 206 or section 322 of this Act shall qualify as an affected debt instrument.

(6) “affiliate” means, with respect to an entity, another entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity first specified.

(7) “approval order” means an order of the Court under chapter 2 of this Act finding that:

(a) the amendments, modifications, waivers, or exchanges, as the case may be, proposed in a consensual debt relief transaction are consistent with the requirements of chapter 2 of this Act, including the objectives stated in section 201(a) of this Act and the requirements of sections 202(d)(1) through 202(d)(3) of this Act; and

(b) the voting procedure followed in connection with the consensual debt relief transaction was carried out in a manner consistent with the requirements of chapter 2 of this Act.

(8) “case” means a case commenced under chapter 3 of this Act.

(9) “cash collateral” means a petitioner’s cash and cash equivalents to the extent encumbered by valid liens or security interests.

(10) “claim” means:

(a) a right to present or future payment, whether matured, unmatured, contingent, noncontingent, disputed, undisputed, liquidated, or unliquidated; or

(b) a right to an equitable remedy for which money damages are a remedy under applicable law.

(11) “Commonwealth” means the Commonwealth of Puerto Rico.

(12) “Commonwealth Constitution” means the Constitution of the Commonwealth of Puerto Rico, as amended.

(13) “Commonwealth Entity” means the Commonwealth and a department, agency, district, municipality, or instrumentality (including a public corporation) of the Commonwealth, including any successor entity or additional entity created or to be created to perform any function of such Commonwealth Entity.

(14) “Commonwealth law” means any law of the Commonwealth, or rule or regulation of any Commonwealth Entity.

(15) “consensual debt relief transaction” has the meaning given to that term in section 201(b) of this Act.

(16) “contract” means any contract or agreement, including any debt instrument or unexpired lease, any collective bargaining agreement, any retirement or post-employment benefit plan, and any other agreement or instrument providing for amounts or benefits due by the petitioner to any retiree or employee.

(17) “control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(18) “Court” means the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, described in section 109 of this Act.

(19) “Court of Appeals” means the Court of Appeals of the Commonwealth of Puerto Rico.

(20) “Court of First Instance” means the Court of First Instance of the Commonwealth of Puerto Rico.

(21) “creditor” means a holder of a claim against, either or both:

(a) a public sector obligor seeking a consensual debt relief transaction under chapter 2 of this Act; and

(b) a petitioner under chapter 3 of this Act.

(22) “creditors’ committee” means a committee appointed by the Court pursuant to section 318 of this Act.

(23) “critical vendor debt” means special trade debt owed to an entity that agrees to deliver, during the pendency of a case under chapter 3 of this Act and through the effective date, ongoing provision of goods and services to the petitioner—

(a) on the same or better terms for the petitioner than those in place during the one hundred and eighty (180) days preceding the filing of a petition under chapter 3 of this Act; and

(b) that the petitioner has designated as critical to its ability to perform public functions.

(24) “custodian” means:

(a) a receiver or trustee of any of the property of an entity;

(b) an assignee under a general assignment for the benefit of an entity’s creditors; or

(c) a trustee, a receiver, a conservator, or an agent under any applicable law, common law right, or under any contract, that is appointed or authorized to take charge of property of an entity for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of some or all of the entity’s creditors.

(25) “debt” means liability on a claim.

(26) “debt instrument” includes any document or statement for, used in connection with, or related to:

(a) any obligation to pay the principal of, premium of, if any, interest on, penalties, reimbursement or indemnification amounts, fees, expenses, or other amounts relating to any indebtedness, and any other liability, contingent or otherwise,

(i) for borrowed money,

(ii) evidenced by bonds, debentures, indentures, notes, resolutions, credit agreements, trade finance agreements, trade finance facility agreements, securities, or similar instruments, or

(iii) for any letter of credit or performance bond;

(b) any liability of, or related to, the kind described in the preceding clause (a), which has been guaranteed or insured;

(c) any obligation in respect of bankers' acceptances;

(d) any obligation in respect of a swap agreement, derivative contract or related agreement, hedge agreement, securities contract, forward contract, repurchase agreement, option, warrant, commodities contract, or similar document;

(e) any and all deferrals, renewals, extensions, and refunding of, or amendments, modifications, or supplements to, any liability of the kind described in any of the preceding clauses (a) through (d);

(f) any liability arising out of any judgment relating to any liability of the kind described in any of the preceding clauses (a) through (e); or

(g) any liability arising from an obligation of insurance relating to any liability of a kind described in this section.

(27) "effective date" of a plan has the meaning given to that term in section 315(l) of this Act.

(28) "eligible obligor" means a public sector obligor satisfying the eligibility criteria in section 113(a) of this Act, rendering it eligible to seek relief under chapter 2 of this Act.

(29) "emergency manager" means a natural person appointed as emergency manager pursuant to section 135 of this Act.

(30) "employee claims against a successor employer" means any liability or obligation relating to the petitioner's employees' rights pursuant to any contract or applicable law not expressly assumed in a transfer pursuant to section 307 of this Act.

(31) "entity" includes an individual, a person, an estate, a trust, a Commonwealth Entity, a governmental unit that is not a Commonwealth Entity, a corporation, a partnership, and a limited liability company.

(32) "enumerated entity" means the eligible obligor and the petitioner, as applicable, and each of their successors or assigns to all or part of their business; the Commonwealth; GDB; any governing body of any of the foregoing; any emergency manager; any official of an employee benefit plan to which any of the foregoing in the past contributed or now contributes and any trustee or other official of any pension fund or retirement or post-employment benefit plan for the benefit of any past or present employee of any of the foregoing; the oversight commission appointed pursuant to section 203 of this Act; any member of such oversight commission; any creditors' committee; any member of a creditors' committee or its representative on the creditors' committee; any elected official; any entity appointed by an elected official or any other public official; any professional retained by any of the foregoing; any past or present advisor, agent, consultant, controlling person (if any), director, employee, manager, member, officer, partner, or stockholder of any of the foregoing; and any successor, assign, and personal representative of any of the foregoing.

(33) "essential supplier contract" means a contract, or type of contract, for the provision of goods or services to a public sector obligor seeking relief under this Act, which contract or type of contract is necessary for such public sector obligor to continue performing public functions, and as identified—

- (a) with respect to an eligible obligor, on a schedule published on the website on the date the suspension period notice is published; and
 - (b) with respect to a petitioner, on the schedule specified in section [302(a)(2)] of this Act.
- (34) “financially self-sufficient” means, in respect of any public sector obligor, able to meet its projected operating expenses, capital expenditure requirements, working capital requirements, and financing costs out of its projected revenues within the period of time specified in the recovery program without the need for subsequent relief under this Act or financial support from any Commonwealth Entity.
- (35) “GDB” means the Government Development Bank for Puerto Rico, including any successor entity or additional entity created or to be created to perform any function of the Government Development Bank for Puerto Rico.
- (36) “general committee” means the committee formed pursuant to section 318(a) of this Act.
- (37) “governing body” means:
- (a) the board of directors of a public corporation; and
 - (b) any deliberative body by means of which an instrumentality exercises its authority, as provided in the particular instrumentality’s enabling act.
- (38) “Governor” means the person serving as the Governor of the Commonwealth pursuant to Article IV of the Commonwealth Constitution.
- (39) “insolvent” means:
- (a) currently unable to pay valid debts as they mature while continuing to perform public functions; or
 - (b) will be unable or at serious risk of being unable, without further legislative acts or without financial assistance from the Commonwealth or GDB, to pay valid debts as they mature while continuing to perform public functions
- (40) “instrumentality” means an entity created by Commonwealth law as an entity authorized to perform public functions for the Commonwealth.
- (41) “noticing agent” means the agent that an eligible obligor, a petitioner, or GDB (acting on behalf of the eligible obligor or petitioner) may retain at the expense of such eligible obligor or petitioner pursuant to section 121 of this Act.
- (42) “oversight commission” means a body composed of three (3) independent experts appointed by the Governor under chapter 2 of this Act, not more than one (1) of whom may be a resident of the Commonwealth at the time of appointment.
- (43) “party in interest” includes a public sector obligor that seeks relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act, the Governor, GDB, a creditor of such public sector obligor, a creditors’ committee, an indenture trustee (or entity performing comparable functions) acting in the interest of one or more of such public sector

obligor's creditors, and a party to a contract scheduled pursuant to section 302(a)(2) of this Act.

(44) “performing public functions” or other similar phrase including “fulfilling public functions” and “serving public functions” means serving an important government purpose—including providing goods or services important or necessary for the protection of public health, safety, or welfare (which include the promotion of the economic activity of the Commonwealth)—whether such public functions are performed directly, or indirectly by facilitating or assisting another Commonwealth Entity to serve such a purpose.

(45) “petition” means the document filed by a petitioner to commence a case under chapter 3 of this Act pursuant to section 301 of this Act.

(46) “petitioner” means a public sector obligor that files a petition—or on whose behalf GDB, upon the Governor's request, files a petition—pursuant to section 301 of this Act.

(47) “plan” means a debt enforcement plan proposed under chapter 3 of this Act.

(48) “pleading” means any document, including any motion, filed with the Court in any proceeding under chapter 2 or chapter 3 of this Act.

(49) “public corporation” means an entity created by Commonwealth law as a public corporation.

(50) “public sector obligor” means a Commonwealth Entity, but excluding:

(a) the Commonwealth;

(b) the seventy-eight (78) municipalities of the Commonwealth; and

(c) the Children's Trust; the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and its Instrumentalities; GDB and its subsidiaries, affiliates, and entities ascribed to GDB; the Judiciary Retirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Public Finance Corporation; the Puerto Rico Industrial Development Company, the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation (COFINA); the Puerto Rico System of Annuities and Pensions for Teachers; and the University of Puerto Rico.

(51) “recovery program” means, consistent with section 202 of this Act, for an eligible obligor, a financial and operational adjustment program.

(52) “special trade debt” means any claim for the provision of goods or services that

(a) is scheduled pursuant to section 302(a)(2) of this Act, and

(b) exceeds a threshold to be determined by the petitioner in its reasonable discretion, but not to be less than \$1 million;

(53) “statement of allocation,” “amended statement of allocation,” and “final statement of allocation” have the meanings given to those terms in section 308 of this Act.

(54) “Supreme Court” means the Supreme Court of the Commonwealth of Puerto Rico.

(55) “suspension period” means the period of time commencing on the date that the suspension period notice is published, and ending on the earlier of:

(a) the date that the approval order has become a final and unappealable order; and

(b) the date on which either of the conditions specified in section 205(e) of this Act has occurred.

(56) “suspension period notice” means the notice published pursuant to section 201(d) of this Act.

(57) “transfer order” means the order approving a transfer pursuant to section 307 of this Act.

(58) “United States” means the United States of America.

(59) “U.S. Constitution” means the Constitution of the United States, as amended.

Section 103. —Interpretation.—

(a) The terms of this Act shall be liberally construed in favor of furthering the legislative objectives of this Act.

(b) The singular includes the plural.

(c) Any neuter personal pronoun shall be considered to mean the corresponding masculine or feminine personal pronoun, as the context requires.

(d) The phrase “after notice and a hearing,” or other similar phrase means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances, provided, however, an act may be authorized without a hearing if notice is given properly under the circumstances and if—

(1) a hearing is not timely requested by a party in interest; or

(2) there is insufficient time for a hearing to be commenced before such act must be done, and the Court authorizes such act.

(e) The phrase “at any time” means at any time and from time to time.

(f) A “claim against the petitioner” includes any claim against property of the petitioner.

(g) The words “includes” and “including” are not limiting.

(h) The phrase “may not” is prohibitive, and not discretionary.

(i) The word “or” is not exclusive.

(j) The phrase “applicable law” includes applicable laws, rules, and regulations, including this Act.

(k) A definition contained in a section of this Act that refers to another section of this Act does not, for the purpose of such reference, affect the meaning of a term used in such other section.

(l) The phrase “counterparty” means:

(1) with respect to a collective bargaining agreement, the union that is a bargaining unit under such contract, and not any individual member of such union;

(2) with respect to a pension fund, the administrator of such pension fund, and not any beneficiary of such fund; and

(3) with respect to a retirement or post-employment benefit plan, the administrator of such retirement or post-employment benefit plan, and not any beneficiary of such plan.

(m) The phrase “final and unappealable” shall mean a final and unappealable order, resolution, judgment, or other ruling that is no longer subject to appeal or certiorari proceeding.

(n) The phrase “use or transfer” includes a lease and a sale and lease back transaction.

(o) Any reference to “website” with respect to an eligible obligor or a petitioner means either the website of such eligible obligor or petitioner, or the website specified in section 121 of this Act.

(p) For purposes of interpreting this Act, the Court shall consider to the extent applicable jurisprudence interpreting title 11 of the United States Code.

(q) The phrases “goods” or “services” do not include money loaned or other financial debt incurred.

Section 104. —Applicability of Act.—

This Act is applicable as to all debts—as they exist, prior to, on, and after the effective date of this Act—of any public sector obligor that requests relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act; provided, however, that some of a public sector obligor’s debt may remain unaffected by this Act as provided herein.

Section 105. —Evidentiary Standard.—

Unless expressly otherwise provided, the requisite standard of proof in any proceeding under this Act is proof by a preponderance of the evidence.

Section 106. —Savings and Severability Clause.—

This Act shall be interpreted in a manner to render it valid to the extent practicable in accordance with the Commonwealth Constitution and the U.S. Constitution. If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act, were to be declared unconstitutional by a competent court, the order to such effect issued by such court will neither affect nor invalidate the remainder of this Act. The effect of such an order shall

be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act declared unconstitutional.

Section 107. —Language Conflict.—

This Act shall be adopted both in English and Spanish. If in the interpretation or application of this Act any conflict arises as between the English and Spanish texts thereof, the English text shall govern. It is recognized that certain terms and phrases used in this Act are terms and phrases used in English in the context of Title 11 of the U.S. Code.

Section 108. —Inapplicability of Other Laws.—

(a) Any other Commonwealth law or any certificate of incorporation, bylaw, or other governing instrument of any Commonwealth Entity is superseded to the extent inconsistent with this Act. Any and all procedural rules herein shall supersede any other conflicting Commonwealth law to the extent inconsistent with this Act. For the avoidance of doubt, the Commerce Code of 1932, as amended, and Act No. 60 of April 27, 1931, as amended, do not apply to any public sector obligor under this Act.

(b) This Act supersedes and annuls any insolvency or custodian provision included in the enabling or other act of any public corporation, including Section 17 of Act No. 83 of May 2, 1941, as amended, and Section 13 of Act No. 40 of May 1, 1945, as amended.

(c) Any contradiction between the enabling or other act of any public corporation or otherwise applicable Commonwealth law and this Act shall be resolved as if this Act supercedes. For purposes of Section 27 of Act No. 83 of May 21, 1941 and Section 21 of Act No. 74 of June 23, 1965, this Act shall be interpreted as specifically amending such Act No. 83 and Act No. 74, respectively. Nothing contained in the aforementioned Act No. 83, as amended, nor in the enabling legislation of any other Commonwealth Entity shall be construed as limiting in any way the application of the provisions of this Act.

Subchapter II: Jurisdiction and Procedure

Section 109. —The Court.—

(a) The Public Sector Debt Enforcement and Recovery Act Courteoom is created herein, which shall be located in and be part of the Court of First Instance, San Juan Part. The Chief Justice of the Supreme Court may designate a judge of the Puerto Rico judicial system.

(b) A judge appointed pursuant to subsection (a) of this section may appoint a special commissioner in accordance with Rule 41 of the Puerto Rico Rules of Civil Procedure. The special commissioner must be a person of recognized expertise in financial matters, including insolvency proceedings. The special commissioner is empowered to oversee multiple proceedings under either or both chapter 2 and chapter 3 of this Act, either simultaneously or sequentially.

(c) An eligible obligor or a petitioner, as applicable, shall reimburse the appropriate entity within the Judiciary Branch for the costs of administering any proceeding under this Act, including the reasonable and documented costs and expenses of the special commissioner, if any, and, if multiple eligible obligors and/or petitioners exist, the incremental costs shall be allocated among them.

Section 110. —Responsibilities and Powers of the Court.—

(a) In keeping with the prescribed time periods in other sections of this Act, the Court shall endeavor to conduct any proceeding under chapter 2 of this Act or to resolve a case under chapter 3 of this Act with all deliberate speed and efficiency consistent with due process, and taking into account that continuing uncertainty about the resolution of the proceeding is harmful to creditors, to the viability of the public sector obligor, to the credit of the Commonwealth Entities, and to the well-being of the residents and businesses in the Commonwealth.

(b) The Court may issue any order and conduct any processes necessary or appropriate to carry out the provisions of this Act. No provision of chapter 2 or chapter 3 of this Act providing for the raising of an issue by a party in interest shall be construed to preclude the Court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement Court orders or rules, or to prevent an abuse of process.

(c) Notwithstanding any other Commonwealth law, or any contract that is binding on any Commonwealth Entity or to which any of its property is subject, no court established by the Commonwealth shall appoint a custodian with respect to the public sector obligor during the suspension period under chapter 2 of this Act or in or during its case under chapter 3 of this Act under any applicable law or contract.

Section 111. —Subject Matter, Personal, and In Rem Jurisdiction.—

(a) Unless otherwise provided for in this Act, the Court shall have original jurisdiction and exclusive jurisdiction, except in relation to a federal court exercising federal jurisdiction, to consider and adjudicate all disputes arising out of or related to this Act, including the following—

(1) all disputes arising out of or related to affected debt instruments during the suspension period;

(2) all disputes, whether prior to or after entry of an approval order, arising under or related to chapter 2 of this Act, arising in any proceeding under chapter 2 of this Act, or related to a consensual debt relief transaction proposed under chapter 2 of this Act, including any dispute as to who votes or consents under this Act;

(3) all disputes arising under chapter 3 of this Act or arising in or related to a case under or related to chapter 3 of this Act, including those related to affected debt; and

(4) all proceedings or matters related to the preceding clauses (1) through (3), including proceedings to interpret or enforce an approval order, a confirmed plan, a transfer order, a final statement of allocation, or any part of this Act.

(b) The Court shall have personal jurisdiction over all entities to the fullest extent permitted by the Commonwealth Constitution and the U.S. Constitution. The Court shall have in rem jurisdiction over the property of each public sector obligor.

(c) The Court shall retain subject matter and in rem jurisdiction to interpret and enforce:

(1) a consensual debt relief transaction as to which it has entered an approval order under chapter 2 of this Act; and

(2) a transfer order, a final statement of allocation, and a plan confirmed under chapter 3 of this Act.

Section 112. —Interaction of Chapter 2 and Chapter 3.—

A public sector obligor with the approval of GDB (or, upon the Governor’s request, GDB on the public sector obligor’s behalf) may seek relief under either chapter 2 or chapter 3 of this Act, or both simultaneously or sequentially, subject to section 113 of this Act, and may withdraw, in its discretion, a suspension period notice or any obligation identified in a suspension period notice, a proposal for a consensual debt relief transaction, or an application for entry of an approval order under chapter 2 of this Act, prior to entry of an approval order that has become a final and unappealable order. The petitioner, with the approval of GDB (or, upon the Governor’s request, GDB on the petitioner’s behalf), may withdraw a petition under chapter 3 of this Act.

Section 113. —Eligibility.—

(a) A public sector obligor is eligible for chapter 2 of this Act, if it is authorized to commence a consensual debt relief transaction pursuant to section 201(b)(1) or 201(b)(2) of this Act.

(b) A petitioner is eligible for chapter 3 of this Act, if it—

(1) is insolvent;

(2) is authorized to file a petition under chapter 3 of this Act by its governing body and GDB, or a petition is filed on its behalf by GDB, upon the Governor’s request; and

(3) is ineligible for relief under title 11 of the United States Code, because, among other reasons:

(A) it is not a “municipality” having permission of a “state” to file a chapter 9 petition, each as defined in title 11 of the United States Code; and

(B) it is a “governmental unit,” as defined in title 11 of the United States Code, that may not seek relief under chapter 11 of title 11 of the United States Code.

Section 114. —Binding Nature of Court Determinations.—

Any determination of the Court shall be binding on the eligible obligor or the petitioner, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments or affected debt of such eligible obligor or such petitioner, any trustee, any collateral agent, any indenture trustee, any fiscal agent, any bank that receives or holds funds from such eligible obligor or such petitioner related to the affected debt instruments or affected debt, and any other entity specifically identified in such determination by the Court or the order memorializing such determination.

Section 115. —Effect of Approval, Transfer, and Confirmation Orders.—

(a) An approval order in respect of a consensual debt relief transaction under chapter 2 of this Act and a confirmation order in respect of a plan or transfer order or final statement of allocation under chapter 3 of this Act shall each be treated as a judgment for the purposes of Commonwealth law, subject only to appeal as provided in section 127 of this Act.

(b) Upon entry of an approval order in respect of a consensual debt relief transaction under chapter 2 of this Act—

(1) the amendments, modifications, waivers, or exchanges contained therein automatically shall take effect and shall be binding on the eligible obligor that is party to the affected debt instrument, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments; and

(2) the Court shall retain jurisdiction, and thereafter no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, no trustee, no collateral agent, no indenture trustee, no fiscal agent, and no bank that receives or holds funds from such eligible obligor related to the affected debt instruments shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the Court and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order.

c) Except as otherwise provided in a plan, in the order confirming such plan, in a transfer order, or in a final statement of allocation, each under chapter 3 of this Act, upon entry of a confirmation order, a transfer order, or a final statement of allocation:

(1) the provisions of the confirmed plan and order confirming such plan bind the petitioner and all creditors whose rights are affected by the plan;

(2) the transfer order and final statement of allocation bind the petitioner and all creditors whose rights are affected by such transfer order or final statement of allocation; and

(3) all creditors affected by the plan or the final statement of allocation shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt, except as each has been affected pursuant to the plan under chapter 3 of this Act or the final statement of allocation.

(d) Except as expressly otherwise provided in an approval order under chapter 2 of this Act, or a plan, an order confirming a plan, a transfer order, or a final statement of allocation under chapter 3 of this Act, upon entry of any such order or final statement of allocation, the eligible obligor or the petitioner is authorized to perform all acts set forth in the debt relief transaction, the approval order, the plan, the order confirming such plan, the

transfer order, or the final statement of allocation, without any further authorization from any Commonwealth Entity or the Court.

(e) The Court may direct the eligible obligor, the petitioner, and any other necessary party to execute, to deliver, or to join in the execution or delivery of any contract required to effect a transfer of property dealt with by an approved consensual debt relief transaction under chapter 2 of this Act, or a final statement of allocation or a confirmed plan under chapter 3 of this Act, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the consensual debt relief transaction, the final statement of allocation, or the plan.

Section 116. —Service of Process.—

Except as otherwise ordered by the Court, service of process may be made by any of the means described in subsections (a), (b), or (c) below:

(a) Subject to section 337 of this Act, service of process may be made by the entities and in the manner prescribed by Rules 4.3 and 4.4 of the Puerto Rico Rules of Civil Procedure, or by notice by mail to the last known address of the individual or entity to be served.

(b) Notice by mail or direct transmission may be made in accordance with sections 204(c)(2) and 338 of this Act or as the Court otherwise orders.

(c) Notice by Publication.

(1) The Court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice by mail.

(2) Pursuant to Rule 4.6 of the Puerto Rico Rules of Civil Procedure, or as further detailed below, notice by publication, published at least three (3) times at least fourteen (14) days prior to a specified hearing, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the approval hearing pursuant to section 204(b) of this Act with regard to a consensual debt relief transaction under chapter 2 of this Act;

(B) the eligibility hearing pursuant to section 306 of this Act;

(C) the hearing on a transfer of all or substantially all assets of the petitioner pursuant to section 307 of this Act; and

(D) the confirmation hearing pursuant to section 314 of this Act.

(3) Notice by publication, published at least three (3) times during the fourteen (14) days after each event specified in subsections (c)(3)(A) and (c)(3)(B) of this section, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the filing of an application pursuant to section 204(a) of this Act; and

(B) the filing of a petition pursuant to section 301 of this Act.

Section 117. —Application of the Puerto Rico Rules of Civil Procedure.—

To the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act.

Section 118. —Language.—

(a) All pleadings, requests, and motions under this Act shall be filed in accordance with Rule 8.7 of the Puerto Rico Rules of Civil Procedure; provided, however, that all pleadings, requests, and motions filed in Spanish shall be accompanied by an English translation.

(b) All hearings, opinions, and orders shall be in the language designated by the presiding judge and in accordance with Act No. 1 of January 28, 1993.

(c) Each public sector obligor seeking relief under this Act shall post on its website copies in Spanish and English of each consensual debt transaction proposed under chapter 2 of this Act and each plan proposed in a case under chapter 3 of this Act.

Section 119. —Notice of Appearance and Pleading Requirements.

(a) To the extent applicable under this Act, any party in interest may file a notice of appearance with the Court requesting all notices and pleadings be transmitted to such party or its attorney at the email addresses specified in its notice of appearance, or, if an email address is not available, at the mailing address specified in its notice of appearance.

(b) Every pleading filed in a proceeding or case under this Act shall include the mailing address and email address, if available, of the entity or entities on behalf of which the pleading is filed.

(c) Any entity filing a pleading, inclusive of a notice of appearance, with the Court shall email an identical copy of the document filed to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing the document with the Court or sending it to the Court for filing. Any entity not having the ability to send such a document by email shall mail it by certified mail to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing it with the Court or mailing it to the Court for filing.

(d) Each eligible obligor and petitioner shall include on each of its pleadings in bold, 12-point font the following statement: “Every entity filing a document with the Court under the Puerto Rico Public Corporation Debt Enforcement and Recovery Act shall email an identical copy of the document filed to the entity maintaining the website required by section 121 hereof to the following email address [insert email address here], or if unable to transmit emails shall mail the copy to the following address [insert mailing address here].”

(e) All petitions and documents filed under this Act shall be filed electronically. An electronic judicial file shall be kept for corresponding cases pursuant to the provisions of Rule 67.6 of the Rules of Civil Procedure and Act 148-2013.”

Section 120. —Objections.—

Whenever an entity objects to or challenges the relief requested under chapter 2 or chapter 3 of this Act, such entity shall provide, within five (5) business days of an eligible

obligor's or a petitioner's written request, all documents in its possession, custody, or control supporting, and all documents in its possession, custody, or control opposing, the objecting party's claim and objection. This production shall be in addition to responses to any additional valid discovery requested by the eligible obligor or petitioner. Any such objection shall—

(a) be in writing and filed with the Court, no later than seven (7) business days prior to the relevant hearing unless the Court orders otherwise or as otherwise specified in this Act;

(b) articulate clearly the basis for the objection; and

(c) be accompanied by a statement, sworn under oath, that includes—

(1) the name of each objecting entity that holds or controls the beneficial interest in an affected debt instrument of the eligible obligor seeking relief under chapter 2 of this Act or an affected debt of a petitioner in a case under chapter 3 of this Act;

(2) a description of the beneficial interest that is held or controlled by such objecting entity or any of its controlled affiliates (naming such affiliates) in any of the following:

(A) the affected debt instrument or any affected debt, including the amount of any claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing entities or affiliates an economic interest that is affected by the value, acquisition, or disposition of the affected debt instrument or affected debt; and

(C) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity;

(3) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act was acquired before or after the commencement of the suspension period under chapter 2 of this Act or before or after the date the petition was filed under chapter 3 of this Act; and

(4) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act may appreciate in value if any debt issued by any Commonwealth Entity declines in value.

Section 121. —Noticing Agent.—

(a) Each the eligible obligor, the petitioner, or GDB (acting on behalf of the eligible obligor or the petitioner), shall carry out the disclosure mechanisms and noticing requirements provided in this section, and, to that end, may retain and employ an entity to serve as noticing agent to:

(1) create and maintain a website, accessible free of charge, containing all pleadings, orders, opinions, and notices properly filed under chapter 2 or chapter 3 of this Act, and a calendar showing all deadlines and hearings; and

(2) provide notices of all hearings and deadlines, and perform related functions, including those of a claims agent where applicable.

(b) The noticing agent shall maintain on the website a list of all parties in interest who file notices of appearance pursuant to section 119 of this Act, together with the email addresses or mailing addresses to which each party in interest requested that notices and pleadings be sent.

(c) The noticing agent shall be compensated at rates based on its normal charges for such services to other debtors in collective proceedings to enforce claims, such as cases under chapter 9 or chapter 11 of title 11 of the United States Code.

Section 122. —Confidentiality of Certain Filings.—

(a) The Court, for cause, may protect an individual with respect to the following types of information to the extent the Court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(1) any means of identification (as defined in 18 U.S.C. § 1028(d)) contained in a paper filed, or to be filed, in a proceeding or case under this Act; and

(2) other information contained in a paper described in subsection (a)(1) of this section.

(b) Upon ex parte or noticed application demonstrating cause, the Court shall provide access to information protected pursuant to subsection (a) of this section to an entity acting pursuant to the police or regulatory power of a Commonwealth Entity.

Section 123. —Confidential Deliberations.—

Notwithstanding any otherwise applicable Commonwealth law, including Act No. 159-2013, as amended, all deliberations regarding whether to seek relief under this Act, what plan or relief to propose, or other matters relating to this Act, shall not be made public, but adequate records of such deliberations shall be maintained. Such deliberations shall be privileged under Commonwealth law and shall neither be subject to discovery in any civil proceeding nor subject to disclosure, except as required by Commonwealth law or applicable U.S. law in connection with raising money or otherwise selling or buying securities.

Section 124. —No Implied Private Right of Action.—

There is no implied private right of action under this Act.

Section 125. —Special Counsel, Professional Disclosure, and Retainers.—

(a) To the extent, if any, that two public sector obligors seeking relief under this Act and represented by the same legal professionals have one or more disputes between such public sector obligors, or a public sector obligor seeking relief under this Act and GDB represented by the same legal counsel have one or more disputes between them, in each case, the disputes shall be handled by special counsel for each of the parties to the dispute.

(b) Each professional firm retained, respectively, by or for the public sector obligor(s) seeking relief under this Act or by one or more creditors' committees shall file with

the Court no later than fourteen (14) days after its retention a written disclosure of its then current representation of entities in related or unrelated matters, which entities, to the best of the professional's actual knowledge, are (1) a Commonwealth Entity or (2) based on a reasonable review of the books and records of the eligible obligor or petitioner, hold claims against or other economic interests in respect of such eligible obligor or petitioner. Each professional shall promptly update its disclosures contemplated by this subsection (b) as it obtains additional information or as facts change.

(c) Notwithstanding any other Commonwealth law, a retainer may be advanced to any financial and legal advisors of the eligible obligor, the petitioner, and GDB.

(d) In the event that the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics and its interpretative jurisprudence make it impractical for a public sector obligor to obtain legal representation of the highest level of competency to represent such public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act involving more than one hundred (100) creditors (including beneficial owners of publicly traded debt) that does not have a conflict or potential conflict, such public sector obligor may file a petition with the Supreme Court for a waiver of the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics or for the approval of a special rule, setting forth the reasons supporting the request. In considering the merits of any such petition, the Supreme Court may take into consideration the special rules and accompanying jurisprudence regarding conflicts of interest set forth in section 327 of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, including, but not limited to, those permitting the designation of one or more conflict counsel who would represent the public sector obligor in those matters that could represent a conflict for the attorneys representing the public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act.

Section 126. —Bond Requirement.—

In the discretion of the Court or the Supreme Court, any entity may be ordered to post a bond in the amount determined by the Court or the Supreme Court when—

(a) seeking to enjoin compliance with or proceedings pursuant to all or a portion of this Act; or

(b) appealing from a decision of the Court and requesting a stay of such decision under this Act.

Section 127. —Appeals.—

(a) Any appeal of an approval order, a transfer order, a final statement of allocation, or a confirmation order shall be filed with the Supreme Court no later than fourteen (14) days after the filing in the record of a copy of the notice of the approval order, the transfer order, the final statement of allocation, or the confirmation order, respectively.

(b) All other appeals shall be taken as provided by the law of the Commonwealth, and subject to subsection (a) of this section, nothing in this Act shall limit an appellate court's review of matters decided by the Court.

Subchapter III: Creditors' Protections and Governance

Section 128. —Compliance with Commonwealth Constitution and U.S. Constitution.—

If a party to a contract with an eligible obligor or a petitioner demonstrates that its treatment under this Act substantially or severely impairs its rights under such contract for purposes of the Commonwealth Constitution or the U.S. Constitution without providing an adequate remedy therefor, the substantial or severe impairment shall be allowed only if the eligible obligor, the petitioner, or GDB, each as applicable, carries the burdens imposed on it by the Commonwealth Constitution and the U.S. Constitution with respect to demonstrating its use of reasonable and necessary means to advance a legitimate government interest, and the aggrieved entity fails to carry the burden of persuasion to the contrary.

Section 129. —Adequate Protection and Police Power.—

(a) When an entity's interest in property is entitled to adequate protection under this Act, it may be provided by any reasonable means, including—

- (1) cash payment or periodic cash payments;
- (2) a replacement lien or liens (on future revenues or otherwise); or
- (3) in connection with a case under chapter 3, administrative claims, in each case, solely to the extent that the suspension period, the automatic stay, the use or transfer of property subject to a lien, or the granting of a lien under this Act results in a decrease in value of such entity's interest in property subject to the lien as of commencement of the suspension period or a chapter 3 case.

(b) Without limiting subsection (a) of this section, adequate protection of an entity's interest in cash collateral, including revenues, of the eligible obligor or the petitioner, as applicable, may take the form of a pledge to such entity of future revenues (net of any current expenses, operational expenses or other expenses incurred by the eligible obligor or the petitioner under this Act) of such eligible obligor or petitioner if—

- (1) the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions;
- (2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and
- (3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use of cash collateral or revenues to avoid then-current impairment of public functions.

(c) Without limiting subsections (a) and (b) of this section, an eligible obligor or petitioner may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner pursuant to or in furtherance of this Act.

(d) Notwithstanding any section of this Act conditioning the eligible obligor's or the petitioner's use or transfer of its property on adequate protection of an entity's interest in the property, if and when the police power justifies and authorizes the temporary or permanent use or transfer of property without adequate protection, the Court may approve such use or transfer without adequate protection.

Section 130. —Reserved. —

Section 131. —Limitations on Avoidance Actions.—

No preference action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted. No fraudulent transfer action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted except such actions for a transfer, or an incurrence of an obligation, that was made with actual intent to hinder, delay, or defraud creditors. Any and all such actions shall be controlled and prosecuted solely by the Commonwealth, in the discretion of its Attorney General, for the benefit of the creditors entitled to bring the action outside of this Act.

Section 132. —Recovery on Avoidance Actions.—

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided pursuant to section 131 of this Act, an eligible obligor or petitioner may recover the property transferred, or, if the Court so orders, the value of such property, from—

- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (2) any immediate or mediate transferee of such initial transferee.

(b) An eligible obligor or petitioner may not recover pursuant to subsection (a)(2) of this section from—

- (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
- (2) any immediate or mediate good faith transferee of such transferee.

(c) A good faith transferee from whom an eligible obligor or petitioner may recover pursuant to subsection (a) of this section has a lien on the property recovered to secure the lesser of—

- (1) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
- (2) any increase in the value of such property as a result of such improvement of the property transferred.

(d) The eligible obligor or petitioner is entitled to only a single satisfaction pursuant to subsection (a) of this section.

(e) In this section, the term “improvement” includes—

- (1) physical additions or changes to the property transferred;
- (2) repairs to such property;
- (3) payment of any tax on such property;
- (4) payment of any debt secured by a lien on such property that is superior or equal to the rights of the eligible obligor or petitioner; and
- (5) preservation of such property.

Section 133. —Right of GDB to Coordinate and Control Debt Enforcement and Recovery Procedures.—

(a) GDB shall have, on its own behalf and on behalf of the public sector obligor, at all stages of proceedings including appeals and certiorari proceedings, standing to raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief in a consensual debt relief transaction under chapter 2 of this Act or in a case under chapter 3 of this Act. The eligible obligor or the petitioner shall reimburse GDB for all its costs and expenses therefor.

(b) All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 of this Act or in commencing and prosecuting its case under chapter 3 of this Act shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or the public sector obligor's attorneys shall take instructions from GDB. Each action taken by GDB shall be binding on the public sector obligor.

Section 134. —GDB Reimbursement.—

(a) The eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, for GDB's costs and expenses for amounts paid or agreed to be paid, in preparation for seeking relief under this Act, including for the payment of financial and legal advisors of the eligible obligor, the petitioner, and GDB (including any retainer advanced to such advisors), before the commencement of a suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with this Act.

(b) In addition to its reimbursement obligations set forth in subsection (a) of this section, the eligible obligor or the petitioner, as applicable, shall reimburse GDB, in full, for GDB's—

(1) costs and expenses (including payments to financial and legal advisors) for services provided by GDB to the eligible obligor or the petitioner, each before and after the commencement of the suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with the prosecution of the rights of the eligible obligor or petitioner under this Act when GDB has acted through its own attorneys pursuant to section 133(b) of this Act; and

(2) outlays incurred each before and after the commencement of the suspension period under chapter 2 of this Act or the filing of a petition under chapter 3 of this Act, in each case, on behalf of the eligible obligor or petitioner for the provision of goods and services paid by GDB and delivered to the eligible obligor or petitioner,

and any funds GDB may have provided or provides to the eligible obligor or petitioner, as applicable, that GDB believes are necessary to the performance by the eligible obligor or petitioner of its public functions.

(c) Notwithstanding any other provision of this Act, the eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, pursuant to subsections (a) and (b) of this section promptly, but no later than ten (10) business days after GDB's written request. Amounts owing to GDB as described in this section may not be adjusted as an affected debt instrument under chapter 2 of this Act or be affected debt under chapter 3 of this Act and shall be formalized and incurred in accordance with laws regulating government contracting, except as provided in this Act. The provisions of Act 66-2014 shall not be applicable to contracts related to services provided in connection with this Act.

Section 135. —Appointment of Emergency Manager.—

The Governor may, at any time during the suspension period under chapter 2 of this Act or during the pendency of a case under chapter 3 of this Act, appoint an emergency manager for the eligible obligor or petitioner, as applicable. The Governor may choose any individual to serve as emergency manager, including, without limitation, a current or former officer of the eligible obligor or petitioner. The Governor may empower the emergency manager to oversee multiple eligible obligors or petitioners simultaneously or sequentially. The emergency manager shall subject to the applicable provisions and obligations entered into pursuant to Act 66-2014:

(a) exclusively possess and exercise all powers of the governing body and the principal executive officer of the eligible obligor or petitioner, as applicable, and the powers of the existing governing body of the eligible obligor or petitioner shall be suspended during the emergency manager's tenure;

(b) report periodically to such governing body regarding the operations of the eligible obligor or petitioner, as applicable, the progress of the restructuring process under chapter 2 of this Act or prosecution of the petitioner's plan under chapter 3 of this Act, and the governing body may provide advice to the emergency manager;

(c) report to the Governor, the Legislative Assembly and GDB upon request;

(d) serve:

(1) during the suspension period and may continue serving for a period of up to three (3) months after entry of the approval order, which period may be extended for three (3) additional months by the Governor or as otherwise provided for in the recovery program;

(2) during the chapter 3 case, unless and until replaced by the Governor, and shall continue serving for a period of three (3) months after the effective date of the plan, which period may be extended for three (3) additional months by the Governor; or

(3) until the Governor, in his absolute discretion, determines; provided, however, that the periods set forth in items (d)(1) and (d)(2) above shall not be exceeded; and

(e) be compensated by the eligible obligor or petitioner, as applicable, according to terms of employment approved by the Governor with advice of GDB.

Section 136. —Ongoing Operations.—

(a) During the suspension period under chapter 2 of this Act or the pendency of a case under chapter 3 of this Act, an eligible obligor or petitioner, as applicable, shall (i) operate the enterprise and make all personnel and other business determinations during the suspension period or the pendency of a case under chapter 3 of this Act, in each case in accordance with applicable law, (ii) remain in possession and control of its assets and, (iii) subject to sections 307 and 323 of this Act, shall be authorized to use and transfer such assets without Court approval.

(b) The Governor may at any time, on an interim basis during the suspension period or during the pendency of a case under chapter 3 of this Act, appoint new members of the governing body of any eligible obligor or petitioner, as applicable, with the advice and consent of the Senate, to substitute for some or all of those existing members of the governing body who had been appointed by the Governor.

(c) The Governor may exercise either, both, or neither of the powers granted by subsection (b) of this section and section 135 of this Act, sequentially or simultaneously, as the case may be.

Section 137. —Quasi-immunity of the Eligible Obligor and the Petitioner, Creditors' Committee Personnel, and Government Officials.—

(a) Except to the extent proven by final and unappealable judgment, to have engaged in willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties, the enumerated entities shall not have any liability to any entity for, and without further notice or order shall be exonerated from, actions taken or not taken in their capacity, and within their authority in connection with, related to, or arising under, or as permitted under this Act.

(b) No action shall be brought against any enumerated entity concerning its acts or omissions in connection with, related to, or arising under this Act, except in the Court. No civil cause of action may arise against and no civil liability may be imposed on such enumerated entities absent clear and convincing proof of willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties. Any action brought for gross negligence shall be dismissed with prejudice if a defendant, as an officer, director, official, committee member, professional, or other enumerated entity, produces documents showing such defendant was advised of relevant facts, participated in person or by phone, and deliberated in good faith or received and relied on the advice of experts in respect of whatever acts or omissions form the basis of the complaint.

Chapter 2: Consensual Debt Relief

Section 201. —Consensual Debt Relief Transactions.—

(a) The objectives of chapter 2 of this Act are the following:

(1) to enable an eligible obligor to become financially self-sufficient;

- (2) to allocate equitably among all stakeholders the burdens of the recovery program; and
 - (3) to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment.
- (b) An eligible obligor may seek debt relief from its creditors pursuant to one or more transactions in accordance with chapter 2 of this Act (each a “consensual debt relief transaction”) if so authorized by either—
- (1) its governing body, with the approval of GDB; or
 - (2) GDB, at the Governor’s request, and on behalf of the eligible obligor, if the eligible obligor has not authorized such action and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth.
- (c) To enable GDB to coordinate the relief requested in instances where the Governor and GDB authorize the consensual debt relief transaction, GDB shall be entitled to select and retain on behalf of the eligible obligor and at the eligible obligor’s expense, such professionals as GDB believes are necessary to seek relief under chapter 2 of this Act.
- (d) After the eligible obligor obtains authorization pursuant to subsection (b) of this section, the eligible obligor shall publish on its website a notice that—
- (1) the suspension period has commenced on the date of such notice; and
 - (2) identifies which obligations are subject to the suspension period.
- (e) The suspension period notice may be amended to add or eliminate obligations, but the suspension period shall commence only from the time the suspension period notice is first published pursuant to subsection (d) of this section.

Section 202. —Relief and Commitment.—

- (a) In a consensual debt relief transaction undertaken pursuant to section 201 of this Act, an eligible obligor may seek approval of any amendment, modification, waiver, or exchange to or of the affected debt instruments from the holders of such instruments.
- (b) In connection with a consensual debt relief transaction, an eligible obligor must prepare and commit itself by an act of its governing body (if authorized by it, pursuant to section 201(b)(1) of this Act) or by GDB, upon the Governor’s request (if authorized by it pursuant to section 201(b)(2) of this Act) on behalf of the eligible obligor to a recovery program that—
- (1) allows the eligible obligor to become financially self-sufficient based on such financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders; and
 - (2) GDB has approved in writing.
 - (3) The recovery program may include interim milestones, performance targets, and other measures to—

- (1) improve operating margins;
- (2) increase operating revenues;
- (3) reduce operating expenses;
- (4) transfer or otherwise dispose of or transfer existing operating assets;
- (5) acquire new operating assets; and
- (6) close down or restructure existing operations or functions.

(d) In respect of any consensual debt relief transaction, and notwithstanding anything to the contrary contained in an affected debt instrument or otherwise applicable law, the amendments, modifications, waivers, or exchanges proposed in such transaction shall become effective and binding for each affected debt instrument on any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments, within a class specified in the consensual debt relief transaction, if—

- (1) GDB has approved the consensual debt relief transaction in writing;
- (2) creditors of at least—

(A) fifty percent (50%) of the amount of debt of such class participates in a vote or consent solicitation with respect to such amendments, modifications, waivers, or exchanges; and

(B) seventy-five percent (75%) of the amount of debt that participates or votes in such class approves the proposed amendments, modifications, waivers, or exchanges;

(3) each class contains claims that are substantially similar to other claims in such class, provided that the term “substantially similar” does not require classification based on similar maturity dates; and

(4) the Court enters an approval order in respect of such consensual debt relief transaction pursuant to section 204 of this Act.

(e) For purposes of calculating the voting percentage set forth in this section, any affected debt instruments held or controlled by any Commonwealth Entity, shall not be counted in such vote.

Section 203. —Oversight Commission.—

(a) An oversight commission shall be established for each eligible obligor that is subject to a recovery program no later than ten (10) days after entry of the approval order. The identity and affiliation(s) of the persons who will serve on the oversight commission shall be disclosed publicly prior to the commencement of the approval hearing. Such oversight commission shall be responsible for monitoring compliance with the recovery program. The eligible obligor subject to the recovery program shall provide the oversight commission with regular updates, not less frequently than once every four (4) months, of its compliance with terms of the recovery program.

(b) If the oversight commission, by majority vote, finds that an eligible obligor has failed to meet an interim performance target or other milestone contained in the recovery program and such failure has continued for at least ninety (90) days thereafter, the oversight commission shall issue a non-compliance finding to the eligible obligor, the Governor and to the Legislative Assembly, with a copy to be made available publicly, explaining the reasons for such non-compliance and making recommendations for curing such non-compliance. Such recommendations may include the replacement of some or all of the management or the governing body of the eligible obligor.

Section 204. —Court Approval of Consensual Debt Relief Transactions.—

(a) Any eligible obligor seeking entry of an approval order shall file an application with the Court requesting such approval not later than thirty (30) days after obtaining the requisite consent of holders of an affected debt instrument set forth in section 202(d)(2).

(b) The Court shall conduct a hearing to consider entry of the approval order not later than twenty-one (21) days after the filing of the application.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the hearing described in section 204(b) shall be proper and reasonable if—

(1) publication notice of such hearing is made in accordance with section 116(c)(2) of this Act; and

(2) notice of such hearing is transmitted to the holders of the affected debt instruments at least fourteen (14) days prior to such hearing, including through The Depository Trust Company or similar depository, or as the Court otherwise orders.

(d) Subject to the terms and conditions of the affected debt instrument (including any limitations on suits prescribed therein), any holder of an affected debt instrument may object to the relief sought in subsection (a) of this section by filing an objection in accordance with section 120 of this Act, provided, however, that no entity may object if it is not adversely impacted by the actions taken in connection with this Act.

(e) In determining whether an approval order shall be entered, the Court shall consider only whether the amendments, modifications, waivers, or exchanges, as the case may be, proposed in such transaction, are consistent with the requirements of chapter 2 of this Act and the objectives set forth in section 201(a) of this Act, and whether the voting procedure followed in connection with the consensual debt relief transaction, which shall include a reasonable notice and period of time to vote or consent as the circumstances require, was carried out in a manner consistent with chapter 2 of this Act. If the Court determines that each of these requirements has been satisfied, it shall enter the approval order.

Section 205. —Suspension of Remedies.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, during the suspension period, no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, no trustee, no collateral agent, no indenture trustee, no fiscal agent, no bank that receives or holds funds from such eligible obligor related to the affected debt instruments, may exercise or continue to exercise any remedy under a contract or applicable law—

- (1) for the non-payment of principal or interest;
- (2) for the breach of any condition or covenant; or
- (3) that is conditioned upon the financial condition of, or the commencement of a restructuring, insolvency, bankruptcy, or other proceedings (or a similar or analogous process) by, the eligible obligor concerned, including a default or an event of default thereunder.

(b) The term “remedy” as used in subsection (a) of this section shall be interpreted broadly, and shall include any right existing in law or contract, and any right to—

- (1) setoff;
- (2) apply or appropriate funds;
- (3) seek the appointment of a custodian;
- (4) seek to raise rates; and
- (5) exercise control over property of the eligible obligor

(c) Notwithstanding any contractual provision or applicable law to the contrary, a contract to which the eligible obligor is a party may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time during the suspension period solely because of a provision in such contract conditioned on—

- (1) the insolvency or financial condition of the eligible obligor at any time before the commencement of the suspension period;
- (2) the commencement of the suspension period or a restructuring process under chapter 2 of this Act; or
- (3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(d) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the eligible obligor for the provision of goods or services shall, unless the eligible obligor advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract during the suspension period, provided that the eligible obligor is not in default under such contract other than—

- (1) as a result of a condition specified in subsection (c) of this section; or
- (2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the commencement of the suspension period.

(e) The suspension period shall terminate automatically without further action if—

- (1) an approval order for such consensual debt relief transaction is denied, and is not remedied within sixty (60) days after such denial unless otherwise provided for in an order denying the application for an approval order; or

(1) no approval application has been filed with the Court within two hundred and seventy (270) days after the commencement of the suspension period, provided that the suspension period may be extended for one additional period of

ninety (90) days if the eligible obligor and the holders of at least twenty (20) percent of the aggregate amount of the affected debt instruments in at least one class of affected debt instruments consent to such extension.

(f) The Court shall have the power to enforce the suspension period, and any entity found to violate this section shall be liable to the eligible obligor concerned for damages, costs, and attorneys' fees incurred by such eligible obligor in defending against action taken in violation of this section, and punitive damages for intentional or knowing violations. Upon determining that there has been a violation of the suspension period, the Court may order additional appropriate remedies, including that the act comprising such violation be declared void or annulled.

Section 206. —Obtaining Credit.—

(a) After the commencement of the suspension period, an eligible obligor may obtain credit in the same manner and on the same terms as a petitioner pursuant to section 322 of this Act.

(b) Prior to or after the filing of an application for an approval order pursuant to section 204 of this Act, the eligible obligor may, to the extent required by any entity seeking to extend credit pursuant to subsection (a), seek from the Court, after notice and a hearing, an order approving and authorizing it to obtain such credit.

(c) Credit obtained pursuant subsection (a) of this section may not be treated as an affected debt instrument under chapter 2 or as affected debt under chapter 3 or avoided as a fraudulent transfer.

(d) If the eligible obligor subsequently seeks relief under chapter 3, the credit extended pursuant to this section shall be entitled to same priority and security as if such credit had been extended in a case under chapter 3.

(e) Section 322(e) shall apply to any order entered pursuant to subsection (b) of this section.

Section 207. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain an approval order or consummate a consensual debt relief transaction, the eligible obligor may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of an eligible obligor are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the eligible obligor shall not be required to provide adequate protection pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Chapter 3: Debt Enforcement

Subchapter I: Petition and Schedules

Section 301. —The Petition.—

(a) A case is commenced under chapter 3 of this Act by the filing of a petition with the Court, either:

(1) by a petitioner upon the decision of its governing body and approval of GDB; or

(2) by GDB, upon the Governor's request, on behalf of a petitioner, if the petitioner's governing body has not authorized the petition and GDB determines that the petition is in the best interests of the petitioner and the Commonwealth.

(b) To enable GDB to coordinate the relief requested in all cases filed under chapter 3 of this Act, GDB shall be entitled to select and retain financial and legal professionals to prosecute each chapter 3 case on behalf of the petitioner and at the petitioner's expense, subject to sections 125 and 134 of this Act.

(c) A case may not be commenced under chapter 3 of this Act by any involuntary petition of creditors or other entities.

(d) The petition shall set forth:

(1) the amounts and types of claims against the petitioner that the petitioner, subject to amendment, contemplates being affected under the plan, sufficient to enable the Court to form a general committee pursuant to section 318(a) of this Act; provided that if the schedule in section 302(a)(2) of this Act is filed with the petition, such schedule will satisfy the requirement in this subsection (1); and

(2) the assessment of the entity filing the petition pursuant to subsection (a)(1) or (a)(2) of this section that the petitioner meets the eligibility requirements provided in section 113(b) of this Act.

Section 302. —Petition Filing Requirements.—

(a) A petitioner shall file with the petition for relief under chapter 3 of this Act, or as soon as practicable thereafter, or if the petition is filed pursuant to section 301(a)(2) of this Act, no more than sixty (60) days after the date the petition is filed—

(1) a list of creditors the petitioner or GDB intends to be affected creditors and for whom the petitioner has readily accessible internal electronic records of names and mailing addresses or email addresses; and

(2) a schedule of all the claims against the petitioner, which existed on the date the petition was filed, intended to be affected under the plan, showing:

(A) the amounts outstanding as of the date the petition is filed;

- (B) any seniorities or priorities among such claims;
- (C) the collateral security, including pledges of revenues, for each claim;
- (D) which of such claims the petitioner acknowledges as allowed and which claims the petitioner disputes or contends are contingent or unliquidated; and
- (E) the essential supplier contracts.

(b) A petitioner may amend its list of affected creditors and schedule of claims at any time (1) up to five (5) days before the deadline to object to a transfer of all or substantially all of the petitioner's assets or (2) before the voting record date established by the Court, and shall provide notice of such amendments to all creditors affected by such amendments.

Section 303. —Notice of Commencement.—

(a) Promptly after the filing of the petition and obtaining a date from the Court for the hearing specified in subsection (a)(2) of this section, a petitioner shall send to all the petitioner's affected creditors and contract counterparties for whom it has readily accessible internal electronic records of mailing addresses or email addresses and to all entities who file notices of appearance pursuant to section 119 of this Act notice of:

- (1) the filing of the petition and the automatic stay;
- (2) the date and time of the hearing on the eligibility of the petitioner for relief under chapter 3 of this Act pursuant to section 306 of this Act;
- (3) the date that objections, if any, to the petitioner's eligibility must be filed;
- (4) the schedule specified in section 302(a)(2) of this Act, or, if not available, the schedule specified in section 301(d)(1) of this Act;
- (5) the right of each affected creditor to advise the Court of its willingness to serve on the general committee to be appointed pursuant to section 318(a) of this Act, which advice shall be in the form of a notice filed with the Court prominently labeled as a "Notice of Willingness to Serve on General Committee," and shall clearly provide a disclosure of their economic interests as set forth in sections 318(d)(1) and 318(d)(2) of this Act; and
- (6) the threshold for the special trade debt.

(b) A petitioner also shall provide supplemental notice of the information required by section 303(a) of this Act by publication as specified in section 116(c)(2) of this Act, and by posting on the website for its case under chapter 3 of this Act.

Subchapter II: Automatic Stay

Section 304. —The Automatic Stay.—

(a) Upon the filing of the petition, the following actions by all entities, regardless of where located, automatically shall be stayed with respect to affected debt:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, arbitral, administrative, or other action or proceeding against

the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity that:

(A) was or could have been commenced before the filing of a petition under chapter 3 of this Act (including the request for a custodian); or

(B) is to recover on a claim against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity, by mandamus or otherwise, which claim arose before the filing of a petition under chapter 3 of this Act;

(2) the enforcement against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity of a judgment obtained before the filing of a petition under chapter 3 of this Act;

(3) any act to create, perfect, or enforce any lien against the petitioner's property;

(4) any act to collect, assess, or recover on a claim against the petitioner that arose before the filing of a petition under chapter 3 of this Act, including any act to obtain possession or control of property belonging to the petitioner; and

(5) the setoff of any debt owing to the petitioner that arose before the filing of a petition under chapter 3 of this Act against any claim against the petitioner.

(b) The stay in this section shall extend automatically to all affected debt added to the schedule described in section 302(a)(2) of this Act upon each amendment of such schedule.

(c) The petition shall not operate as a stay against the lawful exercise of police power by any Commonwealth Entity, the United States, or a state. Such exercise of police power shall not include the collection of interest or principal on any debt owed to the Commonwealth or GDB.

(d) The stay shall terminate with respect to property of the petitioner when the petitioner no longer has a legal or beneficial interest in the property.

(e) Unless terminated or modified by the Court pursuant to subsection (g) of this section, the stay of any act under this section shall continue until the earlier of:

(1) the effective date of the plan; or

(2) the time the case is dismissed and the dismissal is final and unappealable.

(f) Upon request of the petitioner, the Court may issue an order regarding the applicability and scope of the stay under subsection (a) of this section, and may issue an order enforcing the stay.

(g) The Court shall grant an entity relief from the stay, whether by terminating, annulling, modifying, or conditioning such stay, to the extent that—

(1) the entity's interest in property of the petitioner is not adequately protected against violations of the Commonwealth Constitution or the U.S. Constitution; or

(2) if—

(A) the petitioner does not have equity in such property; and

(B) no part of such property is used or intended to be used to perform public functions or otherwise foster jobs, commerce, or education.

(h) Upon objection to a motion seeking relief from the automatic stay, which objection shall be filed within fourteen (14) days of the filing of such motion, the Court shall commence a hearing no later than thirty (30) days after the motion for relief from the stay was filed unless a later date is otherwise agreed to by the petitioner and the affected creditor seeking relief from the stay. The affected creditor seeking relief from the stay shall have the burden to prove it lacks adequate protection, and the petitioner's lack of equity in the property. The petitioner has the burden to prove the facts relevant to relief pursuant to section 304(g)(2)(B) of this Act.

Section 305. —Remedies for Violating the Automatic Stay.—

Any entity found to violate section 304 of this Act shall be liable to the petitioner, and any other entity protected by the automatic stay, for compensatory damages, including any costs and expenses and attorneys' fees incurred by the petitioner in defending against action taken in violation of that section, and for punitive damages for intentional and knowing violations. Further, upon determining there has been a violation of the stay imposed by section [304] of this Act, the Court may order additional appropriate remedies, including that the acts comprising such violation be declared void or annulled.

Subchapter III: Eligibility Hearing

Section 306. —Eligibility Hearing.—

(a) No later than thirty (30) days after the petition is filed, the Court shall hold a hearing, on notice in accordance with section 338 of this Act, to determine whether the petitioner is eligible for relief under chapter 3 of this Act.

(b) No later than forty-five (45) days after the petition is filed, the Court shall enter an order determining that the petitioner is or is not eligible for relief under chapter 3 of this Act upon a finding that the petitioner satisfies, or does not satisfy, as the case may be, the eligibility requirements in section 113(b) of this Act.

Subchapter IV: Enforcement of Claims by Foreclosure Transfer

Section 307. —Power to Transfer.—

(a) Subject to the remaining provisions of this section 307 and notwithstanding any contrary contractual provision rendered unenforceable by this Act, the petitioner, with the approval of GDB (or GDB at the request of the Governor on the petitioner's behalf), subject to Court approval after notice and a hearing, may transfer all or part of the petitioner's encumbered assets (which transfer may also include unencumbered assets) free and clear of any lien, claim, interest, and employee claims against a successor employer, for good and valuable consideration consisting of any and all of cash, securities, notes, revenue pledges, and partial interests in the transferred assets or enterprise.

(b) A petitioner shall not effect a transfer of assets to an entity that is not a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, unless all the following requirements are met—

- (1) applicable law (other than this Act) permits such transfer;
- (2) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;
- (3) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;
- (4) the Court finds that a transfer to an entity that is not a Commonwealth Entity is the product of

(A) adequate marketing and arms-length bargaining designed to procure a price that is at least the reasonably equivalent value of the assets proposed to be transferred, or

(B) a fair auction process;

(5) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(6) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section 302(a)(2) of this Act shall be paid in full.

(c) For the avoidance of doubt, subsection (b) of this section does not confer any power on a petitioner to sell assets to a non-Commonwealth Entity that such petitioner does not currently possess under applicable law.

(d) A petitioner may effect a transfer of assets to a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, notwithstanding any other applicable law to the contrary, only if—

- (1) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative

expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(2) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(3) the transfer to an entity that is a Commonwealth Entity is for a price that is at least the reasonably equivalent value of the assets proposed to be transferred, taking into account the requirement that they be used to perform the public functions the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(5) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section [302(a)(2)] of this Act shall be paid in full.

(e) The petitioner (or GDB at the Governor's request on the petitioner's behalf) may transfer part, but not all or substantially all, of the petitioner's assets not subject to a lien or pledge without Court approval if such transfer is independent of any and all transfers of encumbered assets.

(f) All transfers of unencumbered property or encumbered property or both shall be free and clear of successor liability imposed by otherwise applicable law.

(g) No transfer shall be approved unless the petitioner, or GDB on behalf of the petitioner, shall have included in its request for approval the reasons why such proposed transfer is reasonably likely to maximize value for creditors, in the aggregate, consistent with enabling the continued carrying out of the petitioner's public functions and the Court shall have found such reasons plausible.

Section 308. —Distribution of Proceeds of Transfer of Substantially All Assets.—

(a) In the event of a transfer of all or substantially all of the petitioner's assets pursuant to section 307 of this Act, after the closing of the transfer, the petitioner, with the approval of GDB (or GDB, at the Governor's request, on behalf of the petitioner), shall file a statement of allocation setting forth how the proceeds of transfer shall be allocated among each affected creditor or classes of affected creditors, and each affected creditor shall be entitled to object to the allocation by filing an objection no later than thirty (30) days after the statement of allocation is filed. When the transfer proceeds include forms of consideration other than cash and cash equivalents, the statement of allocation shall provide which forms of

consideration shall be distributed to which classes of claims, or whether the non-cash forms of consideration shall first be sold for cash and then distributed.

(b) The Court shall hold a hearing to determine each objection. When all objections are resolved, the petitioner shall file an amended statement of allocation of the proceeds of transfer consistent with the Court's rulings on the objections. Affected creditors shall have fourteen (14) days to file objections to the petitioner's amended statement of allocation—provided, however, that such objections, if any, will be limited only to arguments that the amended statement of allocation does not accurately reflect the Court determination—after which the Court shall hold a hearing to resolve the objections and shall issue a final statement of allocation binding on the petitioner and all creditors. If there is no objection timely filed to the petitioner's amended statement of allocation, the Court shall order that the net proceeds of transfer shall be allocated in accordance with the petitioner's amended statement of allocation without further notice or hearing.

(c) If substantially all of the petitioner's assets are transferred pursuant to section 307 of this Act, a plan distributing the value of the assets not subject to such transfer shall not be required, but may be filed at the discretion of the petitioner, or by GDB on its behalf. If no such plan is filed, the final statement of allocation shall allocate the value of the assets that have not been transferred by means of such forms of consideration as are feasible and practicable under the circumstances.

Section 309. —Protection for Good Faith Acquirer.—

The reversal or modification on appeal of a transfer order shall not affect the validity of the transfer under such authorization to an entity that acquired such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such transfer were stayed pending appeal.

Subchapter V: Confirmation Requirements

Section 310. —Petitioner Exclusivity.—

A petitioner may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets if first approved by GDB, or GDB may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets on behalf of the petitioner with approval of the Governor. No other entity may file a proposed plan or file a proposed transfer of any of the petitioner's assets.

Section 311. —Plan Disclosure.—

The Court shall not confirm any plan unless the creditors' committee(s) and all affected creditors receive at least forty-five (45) days before the hearing on confirmation of the plan, a written disclosure statement, approved by the Court, containing:

(a) the material facts demonstrating the petitioner's reasons for contending the plan fairly uses the value of the petitioner's assets or operating revenues to maximize repayment of claims consistent with the performance of public functions or otherwise fostering a growing economy that will generate increasing revenues and enable greater claim repayment. Confidential or proprietary information may be redacted from any disclosure made;

(b) the treatment of each class of the petitioner's affected creditors under the plan and any material financial information reasonably necessary for such creditors to understand their future recoveries, if any, under the plan; and

(c) other information, if any, necessary to provide adequate information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the petitioner and the condition of the petitioner's books and records, that would enable a hypothetical creditor in the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

Section 312. —Affected Debt Entitled to Vote.—

Subject to the petitioner's right to deem a class to reject a plan, a class of claims of the petitioner is affected for purposes of voting under a plan unless, with respect to each claim of such class, the plan—

(a) leaves unaffected the legal, equitable, and contractual rights to which such claim entitles the holder of such claim;

(b) pays such claim in full in cash; or

(c) notwithstanding any contractual provision or applicable law that entitles the holder of such claim to demand or receive accelerated payment of such claim after the occurrence of a default—

(1) cures any such default that occurred before or after the filing of a petition under chapter 3 of this Act, other than a default of a kind that is not required to be cured or is unenforceable under this Act or a default creating no money damages;

(2) reinstates the maturity of such claim as such maturity existed before such default;

(3) compensates the holder of such claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(4) if such claim arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim for any actual pecuniary loss incurred by such holder as a result of such failure; and

(5) does not otherwise affect the legal, equitable, or contractual rights to which such claim entitles the holder of such claim.

Section 313. —Plan Amendments.—

The petitioner or GDB may amend the plan at any time before confirmation, but may not amend the plan so that the plan as amended fails to meet the requirements of chapter 3 of this Act. After the petitioner files an amendment, the plan as amended becomes the plan. Material modifications adverse to affected creditors shall require resolicitation and approval pursuant to section 315(e) of this Act prior to the confirmation hearing.

Section 314. —Confirmation Hearing.—

(a) After notice specified in section 338 of this Act, the Court shall hold a hearing on confirmation of the plan.

(b) Any creditors' committee may object to the treatment of its constituency's claims under the plan and any affected creditor may object to the treatment of its claims under the plan and each may be heard in opposition of or in support of the plan, by filing an objection or a pleading supporting the plan, in writing, no later than fourteen (14) days prior to commencement of the hearing on the plan.

Section 315. —Standards for Plan Confirmation.—

The Court shall confirm a plan only if all the following requirements are met:

- (a) the plan substantially complies with all applicable provisions of chapter 3 of this Act;
- (b) the plan separates affected debt into classes based on:
 - (1) differences in the claims' collateral security or priorities; or
 - (2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar;
- (c) the plan provides the same treatment for each claim of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such claim;
- (d) the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed;
- (e) at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted;
- (f) the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution that is not remedied or otherwise justified pursuant to section 128 of this Act;
- (g) the petitioner shall be able to—
 - (1) make all mandatory payments provided by the plan and
 - (2) perform public functions;
- (h) confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, unless such reorganization is proposed by the plan, and all other provisions of the plan must be feasible;
- (i) the plan has been proposed in good faith and not by any means forbidden by law, subject to section 108 of this Act;
- (j) all administrative expenses accruing prior to the effective date of the plan shall be paid in full according to their terms or on the effective date of the plan, and all

noncontingent, undisputed, and matured claims unaffected by the plan in accordance with section 327 of this Act shall be paid in full according to their terms; provided, however, that disputed or contingent claims shall be resolved in the ordinary course and paid as the parties agree or as the plan otherwise provides;

(k) each class of claims of affected debt that will not be satisfied in full under the plan absent the additional consideration provided in this subsection shall be entitled to receive annually in arrears its pro rata share of 50% of the petitioner's positive free cash flow, if any, at the end of any fiscal year, after payment of: (1) operating expenses; (2) capital expenditures (including capitalized expenses); (3) taxes, if any; (4) principal, interest, and other payments made in respect of financial indebtedness; (5) reserves; (6) changes in working capital; (7) cash payments of other liabilities; and (8) extraordinary items; in each case, incurred, expensed, and recorded in such fiscal year; such contingent payments to be made by the petitioner, but only to the extent necessary to pay each claim in full, including interest and any fees contractually required, for each of the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan, provided that once any claim is paid in full, its share of future contingent payments shall be ratably distributed to other affected creditors not yet paid in full;

(l) the effective date of the plan shall be the first date after confirmation of the plan that the confirmation order is not stayed and the petitioner or GDB files a notice with the Court that it is prepared to begin implementing the plan;

(m) with respect to affected secured claims (representing the amount by which a claim for principal, interest, and fees is secured by the value of the collateral security):

(1) both:

(A) the plan provides that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the petitioner or transferred to another entity, to the extent of the allowed amount of such claims; and

(B) each holder of such a claim receives on account of such claim immediate or deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the petitioner's interest in such property, with value being determined by the Court based on the plan's proposed disposition or use of the property, including its expected net revenues or net transfer proceeds if contemplated by the plan; or

(2) the plan provides for the transfer of any property that is subject to the liens securing such claims, free and clear of liens, and such liens attach to the net proceeds of such transfer;

(n) with respect to unsecured claims for affected debt (including deficiency claims, subject to section 331(d) of this Act, for secured affected debt that are based on a deficiency arising from liens against property having a value of less than the full amounts of the affected debt held by the affected creditor owning such liens), the plan shall be in the best interests of such creditors and shall maximize the amounts distributable to such creditors to the extent practicable, subject to the petitioner's obligations to fulfill its public functions;

(o) the petitioner shall have proved to the Court that it undertook—before or after the petition was filed—a reasonable program of cost reductions and income enhancements to try to maximize its repayment of affected debt under the plan, subject to the constraints that the petitioner must fulfill its public functions, and that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth, to reduce spending in the Commonwealth, or to reduce the consumption of services provided by the petitioner; and

(p) except to the extent agreed to by an affected creditor, the plan does not provide for a materially different and adverse treatment for such claim as compared to the treatment of claims in different classes under the plan having the same priority, unless the petitioner demonstrates a rational basis to permit such disparate treatment.

Section 316. —Compliance with Final Statement of Allocation and Confirmation Order.—

Notwithstanding any otherwise applicable law, the petitioner and any entity organized or to be organized for the purpose of carrying out a final statement of allocation issued pursuant to section 308 of this Act or a plan shall carry out the final statement of allocation or the plan and shall comply with all orders of the Court.

Subchapter VI: Case Management

Section 317. —Power of the Court.—

The Court, on its own motion or on the request of a party in interest—

(a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;

(b) unless inconsistent with another provision of chapter 3 of this Act, may issue an order, notwithstanding the rules of civil procedure, prescribing such limitations and conditions as the Court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(1) sets the date by which the petitioner shall file a disclosure statement and plan or a proposed transfer of all or substantially all the petitioner's property; or

(2) sets deadlines for pleadings, responses, replies, and other matters;

(3) may issue an order fixing the timing, scope, and format of any notice required under this Act.

Subchapter VII: Creditors' Committees

Section 318. —Formation of Creditors' Committees.—

(a) As soon as practicable after the petition is filed, but not later than fourteen (14) days prior to the first scheduled date of the eligibility hearing pursuant to section 306 of this Act, the Court shall appoint a general committee comprised of entities, based on the received Notices of Willingness to Serve on General Committee, holding the largest amount of secured claims and largest amount of unsecured claims identified in the schedule of affected debt filed pursuant to section 301(d)(1) or 302(a)(2) of this Act. The general committee shall be

comprised of at least five (5) and no more than thirteen (13) members, and, to the extent reasonably practicable, shall be representative of the categories of claims to be affected by the plan.

(b) The Court may appoint as the general committee a committee of creditors formed to negotiate with the petitioner prior to the filing of the petition; provided that the members of the prepetition committee are representative of the categories of claims to be affected by the plan.

(c) At the petitioner's or GDB's request, the Court shall appoint one or more additional committees, comprised of holders of affected debt held by particular creditor constituencies and identified by the petitioner in a written certification that the petitioner or GDB believes formation of such committee(s) would facilitate efforts to obtain a transfer pursuant to section 307 of this Act or confirmation of a plan. Such additional committee shall be comprised of at least three (3) and no more than seven (7) members. If and when an additional committee is disbanded or the petitioner or GDB certifies in a writing filed with the Court that it no longer believes an additional committee previously appointed will further facilitate a transfer pursuant to section 307 of this Act or confirmation of a plan or that the additional committee's costs outweigh its benefits, the additional committee no longer shall be eligible for reimbursement of its member expenses and its professionals' fees and disbursements.

(d) Each creditors' committee member shall file with the Court, within twenty-one (21) days after its appointment to a creditors' committee, a verified statement declaring, as of the date of its appointment to the creditors' committee, that:

(1) the creditors' committee member, the entity to be acting on its behalf on the creditors' committee, and any affiliate of the foregoing that employed or is employed by such member, held or controlled, to the extent set forth in such statement, a beneficial interest in:

(A) any affected debt, specifying the face amount of each security or other claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing an economic interest that is affected by the value, acquisition, or disposition of the affected debt, specifying each type of right;

(C) each other economic interest relating to any Commonwealth Entity, specifying each interest; and

(D) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity, specifying each type of interest; and

(2) no interest that the creditors' committee member, such entity to be acting on its behalf, or any such affiliate holds or controls and that should have been set forth pursuant to sections 318(d)(1)(A) through 318(d)(1)(D) of this Act may increase in value if any debt issued by any Commonwealth Entity declines in value.

(e) The holding or controlling at any time of any interest that should be set forth pursuant to section 318(d)(2) of this Act by the creditors' committee member, such entity that acts on its behalf, or any such affiliate shall disqualify such creditor from serving as a member of any creditors' committee. For the avoidance of doubt, the acquisition of such an interest by a creditors' committee member, such entity acting on its behalf, or any such affiliate, automatically shall divest the creditor of committee membership.

(f) Each creditors' committee member shall update its disclosure contemplated by subsection (d) of this section in writing filed with the Court within three (3) business days of each change in its previously disclosed holdings.

(g) Requests by the petitioner, GDB, or any affected creditor for changes or additions to creditors' committee membership shall be granted or denied in the Court's discretion. The Court's determinations of creditors' committee(s) membership shall not be appealable.

(h) Creditors' committee(s) members shall not be entitled to compensation for their time and service as creditors' committee members or to reimbursement of their expenses for retaining professionals to represent them individually, but the creditors' committee(s) shall be entitled from the petitioner to payment of fees to the extent permitted in section 333 of this Act, and creditors' committee(s) members shall be entitled to reimbursement of their actual, reasonable, and documented out-of-pocket expenses for travel and lodging arising from their function as creditors' committee members.

Section 319. —Powers and Duties of Appointed Committees.—

(a) At a scheduled meeting of a creditors' committee, at which a majority of the members of such creditors' committee is present in person or by phone, the creditors' committee may select and authorize the employment of up to two (2) law firms, one of which must be resident in the Commonwealth, and one financial advisor, to perform services for such creditors' committee to be paid as administrative expenses in accordance with section 333 of this Act; provided, however, upon seven (7) days' notice to the petitioner and subject to the petitioner's right to object, the general committee may retain one or more additional professionals, including law firms, when and if reasonably necessary to represent different constituencies of the general committee in respect of material issues. If the petitioner objects to the general committee's proposed retention of any additional professional, the petitioner shall not be obligated to compensate such professional unless the Court rules its retention should be permitted.

(b) A creditors' committee may only:

(1) appear and be heard on any issue—

(A) relating to the eligibility hearing pursuant to section 306 of this Act;

(B) relating to adequate protection;

(C) involving new borrowing by the petitioner;

(D) concerning a transfer pursuant to section 307 of this Act or the allocation of proceeds of transfer pursuant to section 308 of this Act; and

(E) in connection with the plan, but solely as to matters regarding how the plan affects the creditors' committee's constituents;

(2) conduct a reasonable investigation into the petitioner's legal and financial ability to increase distributions under the plan for the creditors' committee's constituents; and

(3) negotiate with the petitioner over the treatment of its constituents in the plan.

(c) A creditors' committee appointed pursuant to section 318 of this Act or its authorized agent shall receive copies of notices concerning motions and actions taken by the petitioner (and any objections thereto) pursuant to sections 307 and 308 of this Act, and sections 310 through 316 of this Act.

(d) A creditors' committee may request discovery in accordance with the Puerto Rico Rules of Civil Procedure, but only with respect to the matters enumerated in subsections (b)(1)(A) through (b)(1)(E) of this section.

(e) Subject to redaction of confidential or proprietary information, affected creditors who are not committee members may obtain the same discovery produced to the creditors' committee and may obtain other discovery only, in each case, upon order of the Court for good cause shown.

(f) The committee shall not be a juridical entity capable of suing and being sued.

Section 320. —Limitations on Committees.—

(a) A creditors' committee appointed under chapter 3 of this Act shall not have standing to commence an action either directly on its own behalf or derivatively on behalf of the petitioner or on behalf of the petitioner's creditors, and may not be heard on any matter except as expressly provided in this Act.

(b) Each creditors' committee may make recommendations to its constituents with respect to the plan but cannot bind its constituencies or any member thereof to accept, reject, support, or object to any plan, and may not consent to a plan on behalf of any creditor.

(c) No member of a creditors' committee appointed pursuant to section 318 of this Act shall trade in claims against or securities issued by any Commonwealth Entity, unless the member:

(1) has established and enforces sufficient compliance procedures to prevent such member's representative on the creditors' committee from sharing information obtained as the member's representative with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity;

(2) filed with the Court a notice of its intention to trade, which notice sets forth the details of the member's compliance procedures referenced in subsection (c)(1) of this section;

(3) obtained approval of its compliance procedures from the petitioner, which approval, in the petitioner's discretion, may be based on the recommendation of an

entity knowledgeable in the securities industry and retained by or for the petitioner; and

(4) does not share information obtained from its service on the creditors' committee with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity.

Section 321. —Disbanding Committees.—

All creditors' committees automatically shall be disbanded on the earlier of the date the Court issues the final statement of allocation pursuant to section 308 of this Act or confirms a plan for the petitioner, unless the final statement of allocation or plan provides otherwise or the Court orders otherwise. The petitioner may disband any additional committee appointed pursuant to section 318(c) of this Act by seven (7) days' written notice to such additional committee and the Court.

Subchapter VIII: Assets, Liabilities, Contracts, and Powers of the Petitioner

Section 322. —Obtaining Credit.—

(a) A petitioner may obtain unsecured credit and incur unsecured debt allowable under chapter 3 of this Act as an administrative expense.

(b) If the petitioner is unable to obtain unsecured credit allowable as an administrative expense, the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 333 of this Act;

(2) secured by a lien on property of the petitioner that is not otherwise subject to a lien;

(3) secured by a junior lien on property of the petitioner that is subject to a lien; or

(4) any combination of the preceding clauses (1), (2), and (3), in addition to allowance as an administrative expense.

(c) The Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the petitioner's property that is subject to a lien only if—

(1) the petitioner is unable to obtain such credit otherwise; and

(2) either

(A) the proceeds are needed to perform public functions and satisfy the requirements of section 128 of this Act; or

(B) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted.

(d) In any hearing pursuant to this section, the petitioner has the burden of proof.

(e) The reversal or modification on appeal of an authorization pursuant to this section to obtain credit or incur debt, or of a grant pursuant to this section of a priority or a

lien, shall not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, was stayed pending appeal.

Section 323. —Use or Lease of Property not Subject to Court Approval.—

Unless the Court orders otherwise, without notice or a hearing, the petitioner may, in its sole discretion:

- (a) pay on a current basis—
 - (1) its expenses accruing postpetition (exclusive of amounts related to prepetition indebtedness except as set forth in subsection (a)(2) of this section) and the costs and expenses incurred in connection with the case (including the reasonable fees and expenses of the professionals retained by or for the petitioner or GDB and any creditors' committee(s) formed under chapter 3 of this Act, subject to sections 318, 319 and 333 of this Act); and
 - (2) its prepetition debt not scheduled to be affected under the plan or that is necessary to pay to safeguard the petitioner's ability to perform its public functions;
- (b) enter into transactions, including the lease of property, and use its property in its operations, including the use of revenues; and
- (c) use cash and other resources as necessary to perform public functions, subject to section 324(a) of this Act.

Section 324. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain confirmation of a plan or approval of a statement of allocation, the petitioner may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of a petitioner are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the petitioner shall not be required to provide adequate protection to such creditor pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Section 325. —Unenforceable Ipso Facto Clauses; Assignment of Contracts.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under

such contract may not be terminated or modified, at any time after the filing of a petition under chapter 3 of this Act solely because of a provision in such contract conditioned on—

- (1) the insolvency or financial condition of the petitioner at any time before the closing of the case;
- (2) the filing of a petition pursuant to section 301 of this Act and all other relief requested under this Act; or
- (3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(b) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the petitioner for the provision of goods or services shall, unless the petitioner advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract, provided that the petitioner is not in default under such contract other than—

- (1) as a result of a condition specified in subsection (a) of this section; or
- (2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the date when the petition is filed.

(c) All claims against the petitioner arising from performance by a contract counterparty pursuant to subsection (b) of this section, after the date when the petition is filed, shall have the status of an administrative expense. Failure by such contract counterparty to satisfy the requirement of subsection (b) of this section shall result in compensatory damages to the petitioner, in an amount determined by the Court.

(d) Notwithstanding any contractual provision to the contrary, except as set forth in subsection (e) of this section, on notice to the counterparty under the contract and upon Court approval, a petitioner can assign any contract, if the petitioner cures—or provides adequate assurance it promptly will cure—any default under such contract, other than a default that is a breach of an unenforceable provision under applicable law. Defaults on nonmonetary obligations that cannot reasonably be cured by nonmonetary actions may be cured as best as practicable with money damages.

(e) A petitioner shall not assign a contract of the petitioner, whether or not such contract prohibits or restricts assignment of rights or delegation of duties, if—

- (1) applicable law excuses a party, other than the petitioner, to such contract from accepting performance from or rendering performance to the petitioner or to an assignee of such contract, and such party does not consent to such assumption or assignment; or
- (2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the petitioner, or to issue a security or other instrument of the petitioner.

(f) Only a party to a contract that a petitioner seeks to assign and having the right under such contract to enforce such contract, or such party's authorized representative, shall have standing to object to and be heard on the petitioner's requests pursuant to this section.

Section 326. —Contract Rejection, Impairment, and Modification.—

(a) Subject to subsection (d) of this section and Court approval, after notice and a hearing, and notwithstanding any contractual provision to the contrary, a petitioner may reject any contract if the rejection is in the petitioner's best interests; provided, however, that a petitioner may not reject a contract (except for collective bargaining agreements and retirement or post-employment benefit plans) where rejection of such contract would produce damages that would not exceed the threshold for special trade debt, as defined in section 102(52) of this Act.

(b) Any counterparty to a contract the petitioner seeks to reject shall file with the Court its calculation of rejection damages at least five (5) days prior to the hearing on rejection. A counterparty opposing rejection shall file such calculation with its objection at least seven (7) days prior to the hearing on rejection. The petitioner may object to such proposed damages at any time before confirmation. Disputes concerning rejection damages shall be resolved by the Court.

(c) Rejection of a contract pursuant to subsection (a) of this section shall be treated as a material breach of such contract.

(d) The Court shall not approve the rejection of a collective bargaining agreement or retirement or post-employment benefit plan unless the petitioner has demonstrated that:

(1) the equities balance in favor of the rejection of such agreement or plan. In making such determination, the Court shall take into consideration the impact of the provisions of Law 66-2014, including any agreements made by employees and the petitioner pursuant to negotiations provided thereunder, on such agreement or plan;

(2) absent rejection, the petitioner will likely become unable to perform public functions; and

(3) the petitioner shared with the representative(s) for employees and retirees, as applicable, the data underlying its request to reject the agreement or plan and conferred, at reasonable times, in good faith with the representative(s) to reach voluntary modifications to such agreements or plans, and such efforts did not succeed;

(e) During a period when a collective bargaining agreement continues in effect, if essential to the continuation of the petitioner's public functions, or in order to avoid irreparable damage to the petitioner, the Court, after notice and a hearing, may authorize the petitioner to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by such collective bargaining agreement. Any hearing pursuant to this subsection shall be scheduled in accordance with the needs of the petitioner. The implementation of such interim changes shall not render the application for rejection moot.

(f) Nothing in this Act impairs the right, if any, of the petitioner under a collective bargaining agreement, retirement or post-employment benefit plan, or applicable law to terminate, modify, amend, or otherwise enforce any of the provisions of such collective bargaining agreement or retirement or post-employment benefit plan without obtaining the relief in subsection (d) of this section.

(g) Only a party to a contract a petitioner seeks to reject hereunder and having the right under such contract to enforce such contract, or such entity's authorized representative, shall have standing to object to and be heard on the petitioner's request pursuant to this section.

(h) Subject to subsection (b) of this section and section 327 of this Act, any damages arising from the rejection of a prepetition contract shall be treated as prepetition claims for affected debt that are neither priority claims nor administrative claims.

Section 327. —Unaffected Debt.—

The following expenses and claims arising prior to filing of a petition under chapter 3 of this Act shall not constitute affected debt under the plan and shall be paid to the maximum extent practicable, without acceleration or other remedy arising from a default occurring prior to the effective date of a chapter 3 plan, according to the terms of the contracts pursuant to which the unaffected debt was incurred, and subject to applicable law:

(a) allowed unsecured claims of individuals for wages, salaries, or commissions, vacation, severance, and sick leave pay, or other similar employee benefits, earned by an individual prior to the petition date in accordance with a petitioner's employment policies or by applicable law, except to the extent that such claims arise out of a transaction that is avoidable under applicable law, including section 131 of this Act;

(b) except as provided in subsection (c) of this section, claims for the provision of goods or services other than claims arising under a rejected contract or special trade debt, provided, however, that any and all claims for provision of goods or services may be affected debt if the treatment of such claims as unaffected debt is a direct cause of other debt being substantially or severely impaired for purposes of the Commonwealth Constitution or the U.S. Constitution and such substantial or severe impairment is not remedied or otherwise justified pursuant to section 128 of this Act;

(c) notwithstanding subsection (b) of this section, critical vendor debt as determined by the petitioner;

(d) notwithstanding subsection (a) of this section, claims arising under a collective bargaining agreement or retirement or post-employment benefit plan, unless and until the claims arising under such collective bargaining agreement or retirement or post-employment benefit plan are scheduled as affected debt pursuant to section 302(a)(2) of this Act or such collective bargaining agreement or retirement or post-employment benefit plan is rejected;

(e) claims owed to another public corporation (but only to the extent such claims are for goods or services provided by such public corporation to the petitioner), or to the United States;

(f) claims of a Commonwealth Entity for money loaned, or other financial support, to the petitioner during the sixty (60) days before the filing of the petition under chapter 3 of this Act, or claims of GDB for reimbursement pursuant to section 134 of this Act; and

(g) any credit incurred or debt issued by a public sector obligor between the commencement of the suspension period and the filing of a petition under chapter 3 of this

Act, but only if such petition under chapter 3 of this Act is filed no more than six (6) months after the suspension period shall have elapsed.

Section 328. —Goods and Services Delivered within Thirty Days before the Petition is Filed.—

All valid amounts payable for goods received by or services rendered to the petitioner within thirty (30) days before the filing of a petition under chapter 3 of this Act shall have the status of an administrative expense and shall be paid in full, and according to the terms of the contracts pursuant to which the goods were provided or services were rendered to the maximum extent practicable. To the extent there is any dispute as to the validity of such amounts payable, it shall be resolved pursuant to section 331(a) of this Act.

Section 329. —Assets Backing Retirement or Post-Employment Benefit Plans.—

All assets backing any pension plan, any retirement or post-employment benefit plan, and any other similar funded retiree or employee benefit shall be inviolable and shall not be considered in the calculation of the petitioner's value to be distributed pursuant to a plan under chapter 3 of this Act or final allocation statement pursuant to section 308 of this Act.

Section 330. —Subordination.—

(a) A subordination agreement is enforceable in a case under chapter 3 of this Act to the same extent that such agreement is enforceable under other applicable law.

(b) For the purpose of distribution under chapter 3 of this Act, a claim arising from rescission of a purchase or sale of a security or note of the petitioner or of an affiliate of the petitioner, for damages arising from the purchase or sale of such a security or note, or for reimbursement or contribution allowed on account of such a claim, shall be subordinated to all claims senior to or equal to the claim represented by such security or note.

Section 331. —Allowed Claims.—

(a) No creditor (affected or unaffected) needs to file a proof of claim to be entitled to payments on its claims. To the extent there are disputes between the petitioner and creditors as to the amounts of their claims, such disputes shall be resolved using the same procedures applicable if there were no case under chapter 3 of this Act; provided, however, that claim objections pursuant to sections 330, 332 and 333 of this Act and rejection damage claims shall be determined only by the Court, subject to its power to abstain when the determination is not required prior to deciding whether a plan should be confirmed.

(b) A claim shall be an allowed claim if valid under applicable law to the extent—

(1) it does not include unmatured interest as of the petition date, and

(2) is not disallowed under another provision of this Act.

(c) The assertion of a claim in a chapter 3 case shall not constitute a legal proceeding subject to the disclosure requirement for government vendors and contractors pursuant to any applicable law. The existence of a claim under chapter 3 of this Act shall not constitute the basis for disqualification from any procurement process or for not entering into a contract with the petitioner.

(d) Nothing in this Act shall grant recourse status to non-recourse claims.

Section 332. —Claims for Reimbursement, Contribution, Indemnification, and Subrogation.—

(a) Claims for reimbursement, contribution, or indemnification shall not be allowed to the extent their allowance causes a petitioner to have liability to pay the same underlying debt more than once. To the extent such claims relate to debts in existence prior to the filing of a petition under chapter 3 of this Act, such claims shall not be deemed administrative claims.

(b) The Court shall subordinate to the claim of an affected creditor and for the benefit of such creditor an allowed subrogation claim of an entity that is liable with the petitioner on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under chapter 3 of this Act or otherwise.

Section 333. —Payment of Administrative Expenses Pending Plan Confirmation.—

(a) A petitioner timely shall pay in full and in cash all administrative expenses incurred in connection with its operations and its case, including wages, salaries, commissions for services, trade debt, and monthly requests for reasonable fees and reimbursement of expenses incurred by the professionals retained by the petitioner (or retained by GDB on behalf of the petitioner, as provided by section 301(b) of this Act) and the creditors' committee(s), and the noticing agent.

(b) To the extent that a petitioner or GDB believes fees and expenses of a retained professional are unreasonable, it shall advise the applicant of its objection and the petitioner shall pay the undisputed portion. If the petitioner or GDB, as applicable, and the applicant are unable to reach an agreement about the disputed portion, either party may request the Court to rule on the reasonableness of such disputed fees and expenses. The petitioner or GDB, as applicable, may object to any applicant's fees as unreasonable for any legitimate reason.

(c) A petitioner or GDB may, in its sole discretion, retain an entity to serve as a fee examiner to review all fees and disbursements of all professionals for the petitioner and the creditors' committee(s). To the extent any professional requests payments in excess of those recommended by the fee examiner, the professional must procure a Court order allowing such additional amounts.

Section 334. —Custodian.—

(a) A custodian with knowledge of the filing of a petition under chapter 3 of this Act concerning the petitioner may not make any disbursement from, or take any action in the administration of, property of the petitioner, proceeds, product, offspring, rents, or profits of such property, or property of the petitioner, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the petitioner any property of the petitioner held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the filing of the petition; and

(2) file an accounting of any property of the petitioner, or proceeds, product, offspring, rents, or profits of such property that, at any time, came into the possession, custody, or control of such custodian.

(c) The Court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian for any improper or excessive disbursement, other than a disbursement that has been made in accordance with any applicable law, or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the filing of the petition.

Section 335. —Turnover.—

(a) Except for collateral secured and perfected by possession, and except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the petitioner may use or transfer pursuant to sections 307 and 323 of this Act, shall deliver to the petitioner, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the petitioner.

(b) Except as provided in this section, an entity that owes a debt to the petitioner that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the petitioner, except to the extent that such debt may be offset against a claim against the petitioner.

(c) Except as provided in section 304(a)(5) of this Act, an entity that has neither actual notice nor actual knowledge of the filing of the petition concerning the petitioner, may transfer property of the petitioner, or pay a debt owing to the petitioner, to an entity other than the petitioner, with the same effect as to the entity making such transfer or payment as if the case under chapter 3 of this Act concerning the petitioner had not been commenced.

(d) Subject to any applicable privilege, after notice and a hearing, the Court may order an attorney, accountant, or other entity that holds recorded information, including books, documents, records, and papers, relating to the petitioner's property or financial affairs, to turn over or disclose such recorded information to the petitioner.

Section 336. —Surrender of Securities.—

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five (5) years after the date of the entry of the confirmation order or as otherwise provided under the plan. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in any distribution under the plan.

Section 337. —Notice of Pleadings.—

(a) Service of any and all pleadings in a case under chapter 3 of this Act, arising in a case under chapter 3 of this Act, or related to a case under chapter 3 of this Act shall be sufficient if provided—

- (1) by mail to the last known address or attorney of the affected creditor or other party in interest;
- (2) by email to the email address provided by the affected creditor or other party in interest in any of such cases; or
- (3) through The Depository Trust Company or similar depository.

(b) Service may be made within the Commonwealth and the United States and by first class mail postage prepaid or email as follows:

(1) notices required to be mailed to an affected creditor or indenture trustee (or entity performing comparable functions) shall be addressed as such entity or an authorized agent has directed in its last notice of appearance filed in the particular case;

(2) if an affected creditor or indenture trustee (or entity performing comparable functions) has not filed a notice of appearance designating a mailing address or email address, the notices shall be mailed to the entity's address, if any, shown on the list of affected creditors filed by the petitioner;

(3) if a list of affected creditors filed by the petitioner includes the name and address of a legal representative of a minor or incompetent person, and an entity other than that representative files a notice of appearance designating a name and mailing address that differs from the name and address of the representative included in the list of affected creditors, unless the Court orders otherwise, notices shall be mailed to the representative included in the list or schedules and to the name and address designated in the notice of appearance;

(4) an entity and the noticing agent may agree that the noticing agent shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the noticing agent. That address is conclusively presumed to be a proper address for the notice. The noticing agent's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law;

(5) an affected creditor may treat a notice as not having been brought to the affected creditor's attention only if, prior to issuance of the notice, the affected creditor has filed a statement with the Court that designates the name and address of the entity or organizational subdivision of the affected creditor responsible for receiving notices under chapter 3 of this Act, and that describes the procedures established by the affected creditor to cause such notices to be delivered to the designated entity or subdivision and the notice does not conform to such designation; and

(6) if the papers in the case disclose a claim of the United States other than for taxes, copies of notices required to be mailed to all affected creditors under this Act shall be mailed to the United States Attorney for the District of Puerto Rico and to

the department, agency, or instrumentality of the United States through which the petitioner became indebted.

(c) If, at the request of the petitioner, a party in interest with standing to be heard on a matter hereunder, or on its own initiative, the Court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give an affected creditor with an address outside the Commonwealth and the United States to which notices under this Act are mailed reasonable notice under the circumstances, the Court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. Unless the Court for cause orders otherwise, the mailing address of an affected creditor with such foreign address shall be determined pursuant to subsections (b)(1) and (b)(2) of this section.

(d) The Court may, in its discretion, order specific noticing requirements for specific deadlines, hearings, and motions in the case, which orders shall supersede the noticing requirements in chapter 3 of this Act to the extent inconsistent.

Section 338. —Special Notices.—

(a) In addition to all other notices required hereunder, a petitioner shall provide special notices of (1) the filing of a petition, (2) the hearing on a petitioner's request for entry of an order determining the petitioner is eligible for relief under chapter 3 of this Act, (3) the hearing on a transfer pursuant to section 307 of this Act, and (4) the hearing on confirmation of the proposed plan. Such notice shall be posted on the website for its case under chapter 3 of this Act and published in accordance with section 116(c)(2) of this Act.

(b) Notice shall be transmitted to

- (1) all parties in interest (except for holders of claims not scheduled pursuant to section 302(a)(2) of this Act) for whom a petitioner has readily accessible internal electronic records of mailing addresses or email addresses,
- (2) all entities that file notices of appearance, and
- (3) in accordance with subsection (c) below, holders of claims not scheduled pursuant to section 302(a)(2) of this Act.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the events set forth in subsection (a) of this section to holders of claims not scheduled pursuant to section 302(a)(2) of this Act shall be proper and reasonable if publication notice thereof is made in accordance with section 116(c)(2) of this Act.

Section 339. —Dismissal of Case.—

(a) After notice and a hearing, the Court may dismiss a case under chapter 3 of th1a) a legislative determination that the state of fiscal emergency underlying the need for chapter 3 of this Act has ended; or

- (1) a determination by the Court, or by a federal court whose judgment is final and unappealable, that the petitioner is eligible to prosecute a case under title 11 of the United States Code.

(b) The Court shall dismiss a case under chapter 3 of this Act, and may condition such dismissal on such terms as are just, if the petition is withdrawn pursuant to section 112 of this Act.

Section 340. —Closing of Case.—

(a) After a plan is confirmed and effective, and all disputed claims are resolved, the Court shall close the case.

(b) A case may be reopened in the Court in which such case was closed to enforce the plan, to accord relief to the petitioner, or for other cause.

Section 341. —Escheat Rules.—

Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 3 of this Act for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any final statement of allocation or any plan confirmed under chapter 3 of this Act, or remaining unclaimed after the expiration of a time limit for claiming distribution under such final statement of allocation or such plan, as the case may be, becomes the property of the petitioner or of the entity acquiring the assets of the petitioner under the plan, as the case may be.

Chapter 4: Effectiveness of the Act

Section 401.-Effective Date.

This Act will be effective immediately upon its approval.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMMONWEALTH OF PUERTO RICO ET AL. *v.*
FRANKLIN CALIFORNIA TAX-FREE TRUST ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 15–233. Argued March 22, 2016—Decided June 13, 2016*

In response to an ongoing fiscal crisis, petitioner Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act. Portions of the Recovery Act mirror Chapters 9 and 11 of the Federal Bankruptcy Code and enable Puerto Rico’s public utility corporations to restructure their climbing debt. Respondents, a group of investment funds and utility bondholders, sought to enjoin the Act. They contended, among other things, that a Bankruptcy Code provision explicitly pre-empts the Recovery Act, see 11 U. S. C. §903(1). The District Court enjoined the Act’s enforcement, and the First Circuit affirmed, concluding that the Bankruptcy Code’s definition of “State” to include Puerto Rico, except for purposes of defining who may be a debtor under Chapter 9, §101(52), did not remove Puerto Rico from the scope of the pre-emption provision.

Held: Section 903(1) of the Bankruptcy Code pre-empts Puerto Rico’s Recovery Act. Pp. 5–15.

(a) Three federal municipal bankruptcy provisions are relevant here. First, the “gateway” provision, §109(c), requires a Chapter 9 debtor to be an insolvent municipality that is “specifically authorized” by a State “to be a debtor.” Second, the pre-emption provision, §903(1), expressly bars States from enacting municipal bankruptcy laws. Third, the definition of “State,” §101(52), as amended in 1984, “includes . . . Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9.” Pp. 5–8.

*Together with No. 15–255, *Acosta-Febo et al. v. Franklin California Tax-Free Trust et al.*, also on certiorari to the same court.

Syllabus

(b) If petitioners are correct that the amended definition of “State” excludes Puerto Rico altogether from Chapter 9, then the pre-emption provision does not apply. But if respondents’ narrower reading is correct and the definition only precludes Puerto Rico from authorizing its municipalities to seek Chapter 9 relief, then Puerto Rico is barred from implementing its Recovery Act. Pp. 8–14.

(1) The Bankruptcy Code’s plain text supports respondents’ reading. The unambiguous language of the pre-emption provision “contains an express pre-emption clause,” the plain wording of which “necessarily contains the best evidence of Congress’ pre-emptive intent.” *Chamber of Commerce of United States of America v. Whiting*, 563 U. S. 582, 594. The definition provision excludes Puerto Rico for the single purpose of defining who may be a Chapter 9 debtor, an unmistakable reference to the §109 gateway provision. This conclusion is reinforced by the definition’s use of the phrase “defining who may be a debtor under chapter 9,” §101(52), which is tantamount to barring Puerto Rico from “specifically authorizing” which municipalities may file Chapter 9 petitions under the gateway provision, §903(1). The text of the exclusion thus extends no further. Had Congress intended to exclude Puerto Rico from Chapter 9 altogether, including Chapter 9’s pre-emption provision, Congress would have said so. Pp. 9–11.

(2) The amended definition of “State” does not exclude Puerto Rico from all of Chapter 9’s provisions. First, Puerto Rico’s exclusion as a “State” for purposes of the gateway provision does not also remove Puerto Rico from Chapter 9’s separate pre-emption provision. A State that chooses under the gateway provision not to authorize a municipality to file is still bound by the pre-emption provision. Likewise, Puerto Rico is bound by the pre-emption provision, even though Congress has removed its authority under the gateway provision to authorize its municipalities to seek Chapter 9 relief. Second, because Puerto Rico was not “by definition” excluded from Chapter 9, both §903’s introductory clause and its proviso, the pre-emption provision, continue to apply in Puerto Rico. Finally, the argument that the Recovery Act is not a “State law” that can be pre-empted is based on technical amendments to the terms “creditor” and “debtor” that are too “subtle” to support such a “[f]undamental chang[e] in the scope” of Chapter 9’s pre-emption provision. *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 575 U. S. ___, ___. Pp. 11–14.

805 F. 3d 322, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and KAGAN, JJ., joined. SOTOMAYOR, J.,

Cite as: 579 U. S. ____ (2016)

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Syllabus

filed a dissenting opinion, in which GINSBURG, J., joined. ALITO, J., took no part in the consideration or decision of these cases.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 15–233 and 15–255

COMMONWEALTH OF PUERTO RICO, ET AL.,
PETITIONERS

15–233

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

MELBA ACOSTA-FEBO, ET AL., PETITIONERS

15–255

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[June 13, 2016]

JUSTICE THOMAS delivered the opinion of the Court.

The Federal Bankruptcy Code pre-empts state bankruptcy laws that enable insolvent municipalities to restructure their debts over the objections of creditors and instead requires municipalities to restructure such debts under Chapter 9 of the Code. 11 U. S. C. §903(1). We must decide whether Puerto Rico is a “State” for purposes of this pre-emption provision. We hold that it is.

The Bankruptcy Code has long included Puerto Rico as a “State,” but in 1984 Congress amended the definition of “State” to exclude Puerto Rico “for the purpose of defining who may be a debtor under chapter 9.” Bankruptcy Amendments and Federal Judgeship Act, §421(j)(6), 98 Stat. 368, now codified at 11 U. S. C. §101(52). Puerto Rico interprets this amended definition to mean that

Opinion of the Court

Chapter 9 no longer applies to it, so it is no longer a “State” for purposes of Chapter 9’s pre-emption provision. We hold that Congress’ exclusion of Puerto Rico from the definition of a “State” in the amended definition does not sweep so broadly. By excluding Puerto Rico “for the purpose of *defining who may be a debtor under chapter 9*,” §101(52) (emphasis added), the Code prevents Puerto Rico from authorizing its municipalities to seek Chapter 9 relief. Without that authorization, Puerto Rico’s municipalities cannot qualify as Chapter 9 debtors. §109(c)(2). But Puerto Rico remains a “State” for other purposes related to Chapter 9, including that chapter’s pre-emption provision. That provision bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies.

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A

Puerto Rico and its instrumentalities are in the midst of a fiscal crisis. More than \$20 billion of Puerto Rico’s climbing debt is shared by three government-owned public utilities companies: the Puerto Rico Electric Power Authority, the Puerto Rico Aqueduct and Sewer Authority, and the Puerto Rico Highways and Transportation Authority. For the fiscal year ending in 2013, the three public utilities operated with a combined deficit of \$800 million. The Government Development Bank for Puerto Rico (Bank)—the Commonwealth’s government-owned bank and fiscal agent—has previously provided financing to enable the utilities to continue operating without defaulting on their debt obligations. But the Bank now faces a fiscal crisis of its own. As of fiscal year 2013, it had loaned nearly half of its assets to Puerto Rico and its public utilities. Puerto Rico’s access to capital markets has also been severely compromised since ratings agencies downgraded Puerto Rican bonds, including the utilities’, to

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noninvestment grade in 2014.

Puerto Rico responded to the fiscal crisis by enacting the Puerto Rico Corporation Debt Enforcement and Recovery Act (Recovery Act) in 2014, which enables the Commonwealth's public utilities to implement a recovery or restructuring plan for their debt. 2014 Laws P. R. p. 371. See generally McGowen, Puerto Rico Adopts A Debt Recovery Act For Its Public Corporations, 10 Pratt's J. Bkrcty. Law 453 (2014). Chapter 2 of the Recovery Act creates a "consensual" debt modification procedure that permits the public utilities to propose changes to the terms of the outstanding debt instruments, for example, changing the interest rate or the maturity date of the debt. 2014 Laws P. R., at 428–429. In conjunction with the debt modification, the public utility must also propose a Bank-approved recovery plan to bring it back to financial self-sufficiency. *Ibid.* The debt modification binds all creditors so long as those holding at least 50% of affected debt participate in (or consent to) a vote regarding the modifications, and the participating creditors holding at least 75% of affected debt approve the modifications. *Id.*, at 430. Chapter 3 of the Recovery Act, on the other hand, mirrors Chapters 9 and 11 of the Federal Bankruptcy Code by creating a court-supervised restructuring process intended to offer the best solution for the broadest group of creditors. See *id.*, at 448–449. Creditors holding two-thirds of an affected class of debt must participate in the vote to approve the restructuring plan, and half of those participants must agree to the plan. *Id.*, at 449.

B

A group of investment funds, including the Franklin California Tax-Free Trust, and BlueMountain Capital Management, LLC, brought separate suits against Puerto Rico and various government officials, including agents of the Bank, to enjoin the enforcement of the Recovery Act.

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Collectively, the plaintiffs hold nearly \$2 billion in bonds issued by the Electric Power Authority, one of the distressed utilities. The complaints alleged, among other claims, that the Federal Bankruptcy Code prohibited Puerto Rico from implementing its own municipal bankruptcy scheme.

The District Court consolidated the suits and ruled in the plaintiffs' favor on their pre-emption claim. 85 F. Supp. 3d 577 (PR 2015). The court concluded that the pre-emption provision in Chapter 9 of the Federal Bankruptcy Code, 11 U.S.C. §903(1), precluded Puerto Rico from implementing the Recovery Act and enjoined its enforcement. 85 F. Supp. 3d, at 601, 614.

The First Circuit affirmed. 805 F.3d 322 (2015). The court examined the 1984 amendment to the definition of "State" in the Federal Bankruptcy Code, which includes Puerto Rico as a "State" for purposes of the Code "*except* for the purpose of defining who may be a debtor under chapter 9." *Id.*, at 330–331 (quoting §101(52); *emphasis added*). The court concluded that the amendment did not remove Puerto Rico from the scope of the pre-emption provision and held that the pre-emption provision barred the Recovery Act. *Id.*, at 336–337. The court opined that it was up to Congress, not Puerto Rico, to decide when the government-owned companies could seek bankruptcy relief. *Id.*, at 345.

We granted the Commonwealth's petitions for writs of certiorari. 577 U.S. ____ (2015).*

*After the parties briefed and argued these cases, Members of Congress introduced a bill in the House of Representatives to establish an oversight board to assist Puerto Rico and its instrumentalities. See H. 5278, 114th Cong., 2d Sess. (2016). The bill does not amend the Federal Bankruptcy Code; it instead proposes adding a chapter to Title 48, governing the Territories. *Id.*, §6.

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II

These cases require us to parse three provisions of the Bankruptcy Code: the “who may be a debtor” provision requiring States to authorize municipalities to seek Chapter 9 relief, §109(c), the pre-emption provision barring States from enacting their own municipal bankruptcy schemes, §903(1), and the definition of “State,” §101(52). We first explain the text and history of these provisions. We then conclude that Puerto Rico is still a “State” for purposes of the pre-emption provision and hold that this provision pre-empts the Recovery Act.

A

The Constitution empowers Congress to establish “uniform Laws on the subject of Bankruptcies throughout the United States.” Art. I, §8, cl. 4. Congress first exercised that power by enacting a series of temporary bankruptcy Acts beginning in 1800, which gave way to a permanent federal bankruptcy scheme in 1898. See *An Act To Establish a Uniform System of Bankruptcy Throughout the United States*, 30 Stat. 544; *Hanover Nat. Bank v. Moyses*, 186 U. S. 181, 184 (1902). But Congress did not enter the field of municipal bankruptcy until 1933 when it enacted the precursor to Chapter 9, a chapter of the Code enabling an insolvent “municipality,” meaning a “political subdivision or public agency or instrumentality of a State,” 11 U. S. C. §101(40), to restructure municipal debts. See McConnell & Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 427, 450–451 (1993).

Congress has tailored the federal municipal bankruptcy laws to preserve the States’ reserved powers over their municipalities. This Court struck down Congress’ first attempt to enable the States’ political subdivisions to file for federal bankruptcy relief after concluding that it infringed the States’ powers “to manage their own affairs.”

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Ashton v. Cameron County Water Improvement Dist. No. One, 298 U. S. 513, 531 (1936). Congress tried anew in 1937, and the Court upheld the amended statute as an appropriate balance of federal and state power. See *United States v. Bekins*, 304 U. S. 27, 49–53 (1938). Critical to the Court’s constitutional analysis was that the State had first authorized its instrumentality to seek relief under the federal bankruptcy laws. See *id.*, at 47–49, 53–54.

Still today, the provision of the Bankruptcy Code defining who may be a debtor under Chapter 9, which we refer to here as the “gateway” provision, requires the States to authorize their municipalities to seek relief under Chapter 9 before the municipalities may file a Chapter 9 petition:

“§109. Who may be a debtor

“(c) An entity may be a debtor under chapter 9 of this title if and only if such entity —

“(1) is a municipality;

“(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter”

The States’ powers are not unlimited, however. The federal bankruptcy laws changed again in 1946 to bar the States from enacting their own municipal bankruptcy schemes. The amendment overturned this Court’s holding in *Faitoute Iron & Steel Co. v. Asbury Park*, 316 U. S. 502, 507–509 (1942) (rejecting contention that Congress occupied the field of municipal bankruptcy law). In *Faitoute*, the Court held that federal bankruptcy laws did not preempt New Jersey’s municipal bankruptcy scheme, which required municipalities to seek relief under state law before resorting to the federal municipal bankruptcy scheme. *Ibid.* To override *Faitoute*, Congress enacted a

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provision expressly pre-empting state municipal bankruptcy laws. Act of July 1, 1946, 60 Stat. 415.

The express pre-emption provision, central to these cases, is now codified with some stylistic changes in §903(1):

“§903. Reservation of State power to control municipalities

“This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

“(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

“(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.”

The third provision of the Bankruptcy Code at issue is the definition of “State,” which has included Puerto Rico since it became a Territory of the United States in 1898. The first Federal Bankruptcy Act, also enacted in 1898, defined “States” to include “the Territories, the Indian Territory, Alaska, and the District of Columbia.” 30 Stat. 545. When Congress recodified the bankruptcy laws to form the Federal Bankruptcy Code in 1978, the definition of “State” dropped out of the definitional section. See generally Bankruptcy Reform Act, 92 Stat. 2549–2554. Congress then amended the Code to reincorporate the definition of “State” in 1984. §421, 98 Stat. 368–369, now codified at §101(52). The amended definition includes Puerto Rico as a State for purposes of the Code with one exception:

“§101. Definitions

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“(52) The term ‘State’ includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.”

B

It is our task to determine the effect of the amended definition of “State” on the Code’s other provisions governing Chapter 9 proceedings. We must decide whether, in light of the amended definition, Puerto Rico is no longer a “State” only for purposes of the gateway provision, which requires States to authorize their municipalities to seek Chapter 9 relief, or whether Puerto Rico is also no longer a “State” for purposes of the pre-emption provision.

The parties do not dispute that, before 1984, Puerto Rico was a “State” for purposes of Chapter 9’s pre-emption provision. Accordingly, before 1984, federal law would have pre-empted the Recovery Act because it is a “State law prescribing a method of composition of indebtedness” for Puerto Rico’s instrumentalities that would bind non-consenting creditors, §903(1).

The parties part ways, however, in deciphering how the 1984 amendment to the definition of “State” affected the pre-emption provision. Petitioners interpret the amended definition of “State” to exclude Puerto Rico altogether from Chapter 9. If petitioners are correct, then the pre-emption provision does not apply to them. Puerto Rico, in other words, may enact its own municipal bankruptcy scheme without running afoul of the Code. Respondents, on the other hand, read the amended definition narrowly. They contend that the definition precludes Puerto Rico from “specifically authoriz[ing]” its municipalities to seek relief, as required by the gateway provision, §109(c)(2), but that Puerto Rico is no less a “State” for purposes of the pre-emption provision than the other “State[s],” as that term

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is defined in the Code. If respondents are correct, then the pre-emption provision applies to Puerto Rico and bars it from enacting the Recovery Act.

Respondents have the better reading. We hold that Puerto Rico is still a “State” for purposes of the pre-emption provision. The 1984 amendment precludes Puerto Rico from authorizing its municipalities to seek relief under Chapter 9, but it does not remove Puerto Rico from the reach of Chapter 9’s pre-emption provision.

1

The plain text of the Bankruptcy Code begins and ends our analysis. Resolving whether Puerto Rico is a “State” for purposes of the pre-emption provision begins “with the language of the statute itself,” and that “is also where the inquiry should end,” for “the statute’s language is plain.” *United States v. Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989). And because the statute “contains an express pre-emption clause,” we do not invoke any presumption against pre-emption but instead “focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.” *Chamber of Commerce of United States of America v. Whiting*, 563 U. S. 582, 594 (2011) (internal quotation marks omitted); see also *Gobeille v. Liberty Mut. Ins. Co.*, 577 U. S. ___, ___ (2016) (slip op., at 12).

The amended definition of “State” excludes Puerto Rico for the single “purpose of defining *who may be a debtor* under chapter 9 of this title.” §101(52) (emphasis added). That exception unmistakably refers to the gateway provision in §109, titled “who may be a debtor.” Section 109(c) begins, “An entity may be a debtor under chapter 9 of this title if and only if” §109(c). We interpret Congress’ use of the “who may be a debtor” language in the amended definition of “State” to mean that Congress intended to exclude Puerto Rico from this gateway provision delineat-

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ing who may be a debtor under Chapter 9. See, *e.g.*, *Sullivan v. Stoop*, 496 U. S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); see also *Northcross v. Board of Ed. of Memphis City Schools*, 412 U. S. 427, 428 (1973) (*per curiam*) (“[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*”). Puerto Rico, therefore, is not a “State” for purposes of the gateway provision, so it cannot perform the single function of the “State[s]” under that provision: to “specifically authoriz[e]” municipalities to seek Chapter 9 relief. §109(c). As a result, Puerto Rico’s municipalities cannot satisfy the requirements of Chapter 9’s gateway provision until Congress intervenes.

The amended definition’s use of the term “defining” also confirms our conclusion that the amended definition excludes Puerto Rico as a “State” for purposes of the gateway provision. The definition specifies that Puerto Rico is not a “State . . . for the purpose of *defining* who may be a debtor under Chapter 9.” §101(52) (emphasis added). To “define” is “to decide upon,” 4 Oxford English Dictionary 383 (2d ed. 1989), or “to settle” or “to establish or prescribe authoritatively,” Black’s Law Dictionary 380 (5th ed. 1979). As discussed, a State’s role under the gateway provision is to do just that: The State must define (or “decide upon”) which entities may seek Chapter 9 relief. Barring Puerto Rico from “*defining* who may be a debtor under chapter 9” is tantamount to barring Puerto Rico from “specifically authorizing” which municipalities may file Chapter 9 petitions under the gateway provision. The amended definition of “State” unequivocally excludes Puerto Rico as a “State” for purposes of the gateway provision.

The text of the definition extends no further. The exception excludes Puerto Rico *only* for purposes of the gateway provision. Puerto Rico is no less a “State” for purposes of

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the pre-emption provision than it was before Congress amended the definition. The Code's pre-emption provision has prohibited States and Territories defined as "States" from enacting their own municipal bankruptcy schemes for 70 years. See 60 Stat. 415 (overturning *Faitoute*, 316 U. S., at 507–509). Had Congress intended to "alter th[is] fundamental detai[l]" of municipal bankruptcy, we would expect the text of the amended definition to say so. *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001). Congress "does not, one might say, hide elephants in mouseholes." *Ibid.*

2

The dissent, adopting many of petitioners' arguments, reads the amended definition to say what it does not—that "for the purpose of . . . chapter 9," Puerto Rico is not a State. The arguments in support of that capacious reading are unavailing.

First, the dissent agrees with petitioners' view that the exclusion of Puerto Rico as a "State" for purposes of the gateway provision effectively removed Puerto Rico from all of Chapter 9. See *post*, at 7–8 (opinion of SOTOMAYOR, J.). To be sure, §109(c) and the surrounding subsections serve an important gatekeeping role. Those provisions "specify who qualifies—and who does not qualify—as a debtor under the various chapters of the Code." *Toibb v. Radloff*, 501 U. S. 157, 161 (1991). For instance, a railroad must file under Chapter 11, not Chapter 7, §§109(b)(1), (d), whereas only "family farmer[s] or family fisherm[e]n" may file under Chapter 12. The provision delineating who may be a debtor under Chapter 9 is no exception. Only municipalities may file under Chapter 9, and only if the State has "specifically authorized" the municipality to do so. §§109(c)(1)–(2); see also McConnell & Picker, 60 Chi. L. Rev., at 455–461 (discussing the gatekeeping requirements for Chapter 9).

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That Puerto Rico is not a “State” for purposes of the gateway provision, however, says nothing about whether Puerto Rico is a “State” for the other provisions of Chapter 9 involving the States. The States do not “pass through” the gateway provision. *Post*, at 8. The gateway provision is instead directed at the debtors themselves—the municipalities, in the case of Chapter 9 bankruptcy. A *municipality* that cannot secure state authorization to file a Chapter 9 petition is excluded from Chapter 9 entirely. But the same cannot be said about the *State* in which that municipality is located. A State’s only role under the gateway provision is to provide that “authoriz[ation]” to file. §109(c)(2). The pre-emption provision then imposes an additional requirement: The States may not enact their own municipal bankruptcy schemes. A State that chooses not to authorize its municipalities to seek Chapter 9 relief under the gateway provision is no less bound by that pre-emption provision. Here too, Puerto Rico is no less bound by the pre-emption provision even though Congress has removed its authority to provide authorization for its municipalities to file Chapter 9 petitions. Again, if it were Congress’ intent to also exclude Puerto Rico as a “State” for purposes of that pre-emption provision, it would have said so.

Second, both petitioners and the dissent place great weight on the introductory clause of §903. *Post*, at 6–7. The pre-emption provision cannot apply to Puerto Rico, so goes the argument, because it is a proviso to §903’s introductory clause, which they posit is inapplicable to Puerto Rico. The introductory clause affirms that Chapter 9 “does not limit or impair the power of a State to control” its “municipalit[ies].” §903. The dissent surmises that this clause “is irrelevant” and “meaningless” in Puerto Rico. *Post*, at 7. Because Puerto Rico’s municipalities are ineligible for Chapter 9 relief, Chapter 9 cannot “affec[t] Puerto Rico’s control over its municipalities,” according to

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the dissent. *Ibid.* In other words, “there is no power” for the introductory clause to “reserve” for Puerto Rico’s use. *Ibid.* Petitioners likewise contend that “it would be nonsensical for Congress to provide Puerto Rico with a shield against intrusion by a Chapter that, by definition, can have no effect on Puerto Rico.” Brief for Petitioner Commonwealth of Puerto Rico et al. in No. 15–233, p. 25. So “it follows” that the pre-emption provision, the proviso to that clause, cannot apply either. *Ibid.*

This reading rests on the faulty assumption that Puerto Rico is, “by definition,” excluded from Chapter 9. *Ibid.* For all of the reasons already explained, see Part II–B–1, *supra*, it is not. The amended definition of “State” precludes Puerto Rico from authorizing its municipalities to seek Chapter 9 relief. But Puerto Rico is no less a “State” for purposes of §903’s introductory clause and its proviso. Both continue to apply in Puerto Rico. They are neither “irrelevant” nor “meaningless.” *Post*, at 7. If, for example, Congress created a path for the Puerto Rican municipalities to restructure their debts under Chapter 9, then §903 would assure Puerto Rico, no less a “State” for purposes of this section, of its continued power to “control, by legislation or otherwise, [its] municipalit[ies] . . . in the exercise of the political or governmental powers of such municipalit[ies].”

Third, the Government Development Bank contends that the Recovery Act does not run afoul of the pre-emption provision because the Recovery Act does not bind nonconsenting “creditors,” as the Bankruptcy Code now defines that term. In 1978, Congress redefined “creditor” to mean an “entity that has a claim against the *debtor*” 92 Stat. 2550, now codified at §101(10) (emphasis added). A “debtor,” in turn, is a “person or municipality concerning which a case under this title has been *commenced*.” *Id.*, at 2551, now codified at §101(13) (emphasis added). In light of these definitions, the Bank contends

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that the Puerto Rican municipalities are not “debtor[s]” as the Code defines the term because they cannot “commenc[e]” an action under Chapter 9 without authorization from Puerto Rico. Brief for Petitioner Acosta-Febo et al. 31–33. And because respondents cannot be “creditors” of a nonexistent “debtor,” the Recovery Act is not a “State law” that binds “any creditor.” §903(1). *Id.*, at 31–33.

Tellingly, the dissent does not adopt this reading. The Bank’s interpretation would nullify the pre-emption provision. Applying the Bank’s logic, a municipality that fails to meet any one of the requirements of Chapter 9’s gate-keeping provision is not a “debtor” and would have no “creditors.” So a State could refuse to “specifically authoriz[e]” its municipalities to seek relief under Chapter 9, §109(c)(2), required to commence a case under that chapter. That State would be free to enact its own municipal bankruptcy scheme because its municipalities would have no “creditors” under federal law. The technical amendments to the definitions of “creditor” and “debtor” are too “subtle a move” to support such a “[f]undamental chang[e] in the scope” of Chapter 9’s pre-emption provision. *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 575 U. S. ___, ___ (2015) (slip op., at 9).

* * *

The dissent concludes that “the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences” of the Commonwealth’s fiscal crisis. *Post*, at 9. But our constitutional structure does not permit this Court to “rewrite the statute that Congress has enacted.” *Dodd v. United States*, 545 U. S. 353, 359 (2005); see also *Electric Storage Battery Co. v. Shimadzu*, 307 U. S. 5, 14 (1939). That statute precludes Puerto Rico from authorizing its municipalities to seek relief under Chapter 9. But it does not remove Puerto Rico from the scope of Chapter 9’s pre-

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emption provision. Federal law, therefore, pre-empts the Recovery Act. The judgment of the Court of Appeals for the First Circuit is affirmed.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of these cases.

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 15–233 and 15–255

COMMONWEALTH OF PUERTO RICO, ET AL.,
PETITIONERS

15–233

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

MELBA ACOSTA-FEBO, ET AL., PETITIONERS

15–255

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[June 13, 2016]

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG
joins, dissenting.

Chapter 9 of the Federal Bankruptcy Code allows States’ “municipalities”—cities, utilities, levee boards, and the like—to file for federal bankruptcy with their State’s authorization. But the Code excludes Puerto Rican municipalities from accessing federal bankruptcy. 11 U. S. C. §§101(52), 109(c)(2). Because of this bar, Puerto Rico enacted its own law in 2014—the Recovery Act—to allow its utilities to restructure their significant debts outside the federal bankruptcy process.

The Court today holds that Puerto Rico’s Recovery Act is barred by §903(1) of Chapter 9 of the Bankruptcy Code, which prohibits States from creating their own bankruptcy processes for their insolvent municipalities. §903(1). Because Puerto Rican municipalities cannot access Chapter 9’s federal bankruptcy process, however, a nonfederal bankruptcy solution is not merely a parallel option; it is

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the only existing legal option for Puerto Rico to restructure debts that could cripple its citizens. The structure of the Code and the language and purpose of §903 demonstrate that Puerto Rico's municipal debt restructuring law should not be read to be prohibited by Chapter 9.

I respectfully dissent.

I

The Commonwealth of Puerto Rico and its municipalities are in the middle of a fiscal crisis. *Ante*, at 2. The combined debt of Puerto Rico's three main public utilities exceeds \$20 billion. These utilities provide power, water, sewer, and transportation to residents of the island. With rising interest rates and limited access to capital markets, their debts are proving unserviceable. Soon, Puerto Rico and the utilities contend, they will be unable to pay for things like fuel to generate electricity, which will lead to rolling blackouts. Other vital public services will be imperiled, including the utilities' ability to provide safe drinking water, maintain roads, and operate public transportation.

When debtors face untenable debt loads, bankruptcy is the primary tool the law uses to forge workable long-term solutions. By requiring a debtor and creditors to negotiate together and forcing both sides to make concessions within the limits set by law, bankruptcy gives the debtor a "fresh start," discourages creditors from racing each other to sue the debtor, prohibits a small number of holdout creditors from blocking a compromise, protects important creditor rights such as the prioritization of debts, and allows all parties to find equitable and efficient solutions to fiscal problems. See *Marrama v. Citizens Bank of Mass.*, 549 U. S. 365, 367 (2007); *Young v. Higbee Co.*, 324 U. S. 204, 210 (1945).

These concerns are starkly presented in the context of municipal entities like public utilities. While a business

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corporation can use bankruptcy to reorganize, and, if that fails, fold up shop and liquidate all of its assets, governments cannot shut down power plants, water, hospitals, sewers, and trains and leave citizens to fend for themselves. A “fresh start” can help not only the unfortunate individual debtor but also—and perhaps especially—the unfortunate municipality and its people. See *United States v. Bekins*, 304 U. S. 27, 53–54 (1938).

Congress has excluded the municipalities of Puerto Rico and the District of Columbia from the federal municipal bankruptcy scheme in Chapter 9 of the Bankruptcy Code. See 11 U. S. C. §§101(52), 109(c). So, in 2014, the Puerto Rican Government enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (Recovery Act or Act). 2014 Laws P. R. p. 371. The Act authorizes Puerto Rico’s public utilities to restructure their debts while continuing to provide essential public services like electricity and water. Portions of the Act mirror Chapter 9 of the Bankruptcy Code and allow Puerto Rico’s utilities to renegotiate their debts with their creditors. See *ante*, at 3. Like a restructuring plan filed under Chapter 9, a restructuring plan under the Recovery Act that is approved by at least a majority of creditors and a court would be binding on all creditors, including objecting holdouts.

After the Recovery Act was signed into law, mutual funds and hedge funds holding bonds of the Puerto Rico Electric Power Authority filed two lawsuits seeking to enjoin Puerto Rico’s enforcement of the Act. The District Court held that the Recovery Act could not be enforced because, *inter alia*, it was prohibited by §903(1) of the Bankruptcy Code. The First Circuit agreed that §903(1) pre-empted the Act, and did not address whether some provisions of the Act might be unlawful for other reasons. This Court now affirms.

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II

Bankruptcy is not a one-size-fits-all process. The Federal Bankruptcy Code sets out specific procedures and governing law for each type of entity that seeks bankruptcy protection. To see how this approach works, consider the structure of the Code in more depth.

Chapter 1 is the starting point. It sets out how to read the Code. See 11 U. S. C. §101 *et seq.* For example, §101 sets out general definitions, and §102 provides rules of construction. Now skip ahead to §109, titled, “Who may be a debtor.” That section tells would-be debtors and the interested parties in their bankruptcy which specific bankruptcy laws apply to them. For example, §109 tells an ordinary person seeking to restructure her debts to do so using the rules outlined in Chapter 7, §109(b), or those enumerated in Chapter 13, §109(e). It tells a family farm or fisherman to use the rules outlined in Chapter 12, §109(f). Certain corporations can use Chapter 7, §109(b), or Chapter 11, §109(d). And a municipality’s bankruptcy is governed by the rules in Chapter 9, §109(c)(1).

Because §109 tells different kinds of debtors which bodies of bankruptcy law apply to them, the Court has described that section as a “gateway” provision. *Ante*, at 6. Once an entity meets the eligibility requirements for a specific “gateway” set out in §109 and elects to pass through that gateway, it becomes subject to the relevant chapter of the Code—7, 9, 11, 12, or 13. The debtor, its creditors, and any other interested parties are governed only by that chapter and the chapters of the Bankruptcy Code—like Chapter 1—that apply to all cases. See §103; 1 Collier Pamphlet Edition, Bankruptcy Code 2015, p. 59 (“[A]s a general rule, the provisions of the particular chapter apply only in that chapter”).

Interpreting statutory provisions in the context of the operative chapters in the Bankruptcy Code in which they appear is not unusual—it is how the Code is designed to

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work. For example, both Chapter 9 and Chapter 13 require the debtor to “file a plan” proposing how the court should reorganize its debts. Compare §§941–946 (“The Plan” under Chapter 9) with §§1321–1330 (“The Plan” under Chapter 13). But no bankruptcy court or practitioner would suggest that a Chapter 9 “plan” also has to satisfy the requirements of Chapter 13. The Code is read in context.

These cases concern §109’s “gateway” for municipalities. That provision says that a municipality may file for bankruptcy under Chapter 9 if and only if it meets five eligibility criteria. The debtor must (1) be “a municipality,” §109(c)(1); (2) be “specifically authorized . . . by State law” to seek bankruptcy restructuring, §109(c)(2); (3) be “insolvent,” §109(c)(3); (4) have a “desir[e] to effect a plan to adjust” its debts, §109(c)(4); and (5) have attempted to negotiate with its creditors, with some exceptions, §109(c)(5).

The second eligibility requirement is relevant here. Only a municipality “authorized . . . by *State* law” may pass through the “gateway” and file for bankruptcy under Chapter 9’s provisions. But Chapter 1’s definitional provision, which applies throughout the Code, provides that the “term ‘State’ includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.” §101(52). It is undisputed that the “except for the purpose of defining who may be a debtor under chapter 9” clause is referring to the second eligibility prerequisite in §109’s gateway provision. *Ante*, at 8. So, in short, Puerto Rico cannot “specifically authoriz[e]” any of its municipalities to apply for Chapter 9 bankruptcy. No Puerto Rican municipality will thus satisfy the state authorization requirement of §109’s gateway for municipalities, and so no Puerto Rican munic-

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ipality can access Chapter 9.¹

The question in these cases is whether §903(1), a pre-emption provision in Chapter 9, still applies to Puerto Rico even though its municipalities are not eligible to pass through the “gateway” into Chapter 9. It should not. Section 903 by its terms presupposes that Chapter 9 applies only to States who have the power to authorize their municipalities to invoke its protection.

Section 903 delineates the balance of power between the States that can authorize their municipalities to access Chapter 9 protection and the bankruptcy court that would preside over any municipal bankruptcy commenced under Chapter 9. To understand that interplay, and why §903(1) does not pre-empt the Recovery Act, it is important to consider that statutory provision in context.

Section 903, titled “Reservation of State power to control municipalities,” reads in full:

“This chapter [Chapter 9] does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

“(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

“(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.”

¹ Puerto Rico was initially included in the scope of Chapter 9. §1(29), 52 Stat. 842. But in 1984, Congress amended the Bankruptcy Code, without comment, to bar Puerto Rico and the District of Columbia from authorizing their municipalities to access Chapter 9. §421(j)(6), 98 Stat. 368, codified at 11 U. S. C. §101(52).

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This “reservation” of power to the States was added to the Code in response to this Court’s earlier recognition that States possess plenary control over their municipalities, particularly in fiscal matters. *Faitoute Iron & Steel Co. v. Asbury Park*, 316 U. S. 502, 509 (1942), overruled in part by Act of July 1, 1946, 60 Stat. 415. Section 903 says that States continue to possess those powers not implicated by the bankruptcy itself by noting that “[t]his chapter,” *i.e.*, Chapter 9, “does not limit or impair the power of a State to control” its municipalities. §903. For example, even if a municipality is in Chapter 9 bankruptcy, a State could still revoke its charter.

Section 903, however, also subjects that broad reservation to an exception articulated in the pre-emption provision that the Court now says bars Puerto Rico’s Recovery Act. States may control their municipalities, but they may not “prescrib[e] a method of composition of indebtedness of [a] municipality” that “bind[s] any creditor that does not consent to such composition.” §903(1).

But this distribution of power between the State and the bankruptcy court is irrelevant to Puerto Rico. Because Puerto Rico’s municipalities cannot pass through the §109(c) gateway to Chapter 9, nothing in the operation of a Chapter 9 case affects Puerto Rico’s control over its municipalities. The “reservation” preamble is therefore meaningless to Puerto Rico—there is no power to reserve from Chapter 9’s operation. And if this preamble does not and cannot apply to Puerto Rico, it follows that §903(1)’s proviso qualifying that reservation of power to the States does not apply to Puerto Rico either. See, *e.g.*, *United States v. Morrow*, 266 U. S. 531, 534–535 (1925).

This understanding of §903 is fundamentally confirmed by the careful gateway structure the Code sets out for understanding how its chapters work together. See *Utility Air Regulatory Group v. EPA*, 573 U. S. ___, ___ (2014) (slip op., at 15) (““[W]ords of a statute must be read in

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their context and with a view to their place in the overall statutory scheme”” (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000))). Chapter 1’s definitions section prevents Puerto Rico from defining “who may be a debtor under chapter 9” under §109(c)’s gateway. Because of the structure of the Code, that change to Chapter 1’s definition has ripple effects. By amending the definition of State to exclude Puerto Rico, the District of Columbia, and their municipalities from §109(c)’s gateway, Congress excluded Puerto Rico from Chapter 9 for all purposes—it shut the gate and barred it tight. And because Chapter 9’s process and rules by their terms can only affect municipalities and States eligible to pass through the gateway in §109(c), that must mean that none of Chapter 9’s provisions—including §903’s pre-emption provision—apply to Puerto Rico and its municipalities.

III

The Court rejects contextual analysis in favor of a syllogism. According to the Court, §903(1) pre-empts all “State” composition laws like Puerto Rico’s that bind nonconsenting municipal creditors. “State” includes Puerto Rico, “except for the purpose of defining who may be a debtor under chapter 9 of this title,” §101(52), which is a reference to §109(c). Thus, according to the Court, while the definition of “State” prevents Puerto Rico from authorizing its municipalities to seek Chapter 9 protection under §109(c), it has no effect on the pre-emption clause in §903(1).

The majority’s plain meaning syllogism is not without force. But it ignores this Court’s repeated exhortations to read statutes in context of the overall statutory scheme. *Utility Air*, 573 U. S., at ___ (slip op., at 15). In context, for the reasons discussed, §903 is directed to States that can approve their municipalities for Chapter 9 bankruptcy.

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Moreover, in an attempt to buttress its syllogism, the majority's analysis makes an additional critical misstep.

The majority argues that, in light of the longstanding nature of the §903(1)'s pre-emption provision to preclude state municipal bankruptcy laws, “[h]ad Congress intended to ‘alter this fundamental detail’ of municipal bankruptcy” to not apply to Puerto Rico, “we would expect the text of the amended definition to say so. Congress ‘does not, one might say, hide elephants in mouseholes.’” *Ante*, at 10–11 (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001); citation and brackets omitted). But the Court ignores that Congress already altered the fundamental details of municipal bankruptcy when it amended the definition of “State” to exclude Puerto Rico from authorizing its municipalities to take advantage of Chapter 9. Nobody has presented a compelling reason for why Congress would have done so, and the legislative history of the amendment is unhelpful.² Under either interpretation the scheme has been fundamentally altered by Congress. And, in context, the proper understanding of that alteration is that Puerto Rico and its municipalities have been removed entirely from Chapter 9—both from the benefits it provides and from the burden of the pre-emption clause in §903(1).

Pre-emption cases may seem like abstract discussions of the appropriate balance between state and federal power. But they have real-world consequences. Finding pre-emption here means that a government is left powerless and with no legal process to help its 3.5 million citizens.

²The only comment on excluding Puerto Rico from Chapter 9 came from Professor Frank Kennedy, former Executive Director of the Commission on Bankruptcy Laws, who said: “I do not understand why the municipal corporations of Puerto Rico are denied by the proposed definition of ‘State’ of the right to seek relief under Chapter 9.” Bankruptcy Improvements Act, Hearing on S. 333 et al. before the Senate Committee on the Judiciary, 98th Cong., 1st Sess., 326 (1983).

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Congress could step in to resolve Puerto Rico’s crisis. But, in the interim, the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences of unreliable electricity, transportation, and safe water—consequences that members of the Executive and Legislature have described as a looming “humanitarian crisis.” The White House, *Addressing Puerto Rico’s Economic and Fiscal Crisis and Creating a Path to Recovery*, p. 1 (Oct. 26, 2015) (*italics deleted*); Letter from Sen. Richard Blumenthal et al. to Charles Grassley, Chair, Senate Committee on the Judiciary (Sept. 30, 2015). Statutes should not easily be read as removing the power of a government to protect its citizens.

* * *

For the foregoing reasons, I would hold that §903(1) of the Bankruptcy Code does not pre-empt Puerto Rico’s Recovery Act. I respectfully dissent.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMMONWEALTH OF PUERTO RICO *v.* SANCHEZ
VALLE ET AL.

CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

No. 15–108. Argued January 13, 2016—Decided June 9, 2016

Respondents Luis Sánchez Valle and Jaime Gómez Vázquez each sold a gun to an undercover police officer. Puerto Rican prosecutors indicted them for illegally selling firearms in violation of the Puerto Rico Arms Act of 2000. While those charges were pending, federal grand juries also indicted them, based on the same transactions, for violations of analogous U. S. gun trafficking statutes. Both defendants pleaded guilty to the federal charges and moved to dismiss the pending Commonwealth charges on double jeopardy grounds. The trial court in each case dismissed the charges, rejecting prosecutors’ arguments that Puerto Rico and the United States are separate sovereigns for double jeopardy purposes and so could bring successive prosecutions against each defendant. The Puerto Rico Court of Appeals consolidated the cases and reversed. The Supreme Court of Puerto Rico granted review and held, in line with the trial court, that Puerto Rico’s gun sale prosecutions violated the Double Jeopardy Clause.

Held: The Double Jeopardy Clause bars Puerto Rico and the United States from successively prosecuting a single person for the same conduct under equivalent criminal laws. Pp. 5–18.

(a) Ordinarily, a person cannot be prosecuted twice for the same offense. But under the dual-sovereignty doctrine, the Double Jeopardy Clause does not bar successive prosecutions if they are brought by separate sovereigns. See, e.g., *United States v. Lanza*, 260 U. S. 377, 382. Yet “sovereignty” in this context does not bear its ordinary meaning. This Court does not examine the extent of control that one prosecuting entity wields over the other, the degree to which an entity exercises self-governance, or a government’s more particular ability to enact and enforce its own criminal laws. Rather, the test hinges

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on a single criterion: the “ultimate source” of the power undergirding the respective prosecutions. *United States v. Wheeler*, 435 U. S. 313, 320. If two entities derive their power to punish from independent sources, then they may bring successive prosecutions. Conversely, if those entities draw their power from the same ultimate source, then they may not.

Under that approach, the States are separate sovereigns from the Federal Government and from one another. Because States rely on “authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment,” state prosecutions have their roots in an “inherent sovereignty” unconnected to the U. S. Congress. *Heath v. Alabama*, 474 U. S. 82, 89. For similar reasons, Indian tribes also count as separate sovereigns. A tribe’s power to punish pre-existed the Union, and so a tribal prosecution, like a State’s, is “attributable in no way to any delegation . . . of federal authority.” *Wheeler*, 435 U. S., at 328. Conversely, a municipality cannot count as a sovereign distinct from a State, because it receives its power, in the first instance, from the State. See, e.g., *Waller v. Florida*, 397 U. S. 387, 395. And most pertinent here, this Court concluded in the early 20th century that U. S. territories—including an earlier incarnation of Puerto Rico itself—are not sovereigns distinct from the United States. *Grafton v. United States*, 206 U. S. 333. The Court reasoned that “the territorial and federal laws [were] creations emanating from the same sovereignty,” *Puerto Rico v. Shell Co. (P. R.), Ltd.*, 302 U. S. 253, 264, and so federal and territorial prosecutors do not derive their powers from independent sources of authority. Pp. 5–11.

(b) The *Grafton* and *Shell Co.* decisions, in and of themselves, do not control here. In the mid-20th century, Puerto Rico became a new kind of political entity, still closely associated with the United States but governed in accordance with, and exercising self-rule through, a popularly-ratified constitution. The magnitude of that change requires consideration of the dual-sovereignty question anew. Yet the result reached, given the historical test applied, ends up the same. Going back as far as the doctrine demands—to the “ultimate source” of Puerto Rico’s prosecutorial power—reveals, once again, the U. S. Congress. *Wheeler*, 435 U. S., at 320. Pp. 12–18.

(1) In 1950, Congress enacted Public Law 600, which authorized the people of Puerto Rico to organize a government pursuant to a constitution of their own adoption. The Puerto Rican people capitalized on that opportunity, calling a constitutional convention and overwhelmingly approving the charter it drafted. Once Congress approved that proposal—subject to several important conditions accepted by the convention—the Commonwealth of Puerto Rico, a new po-

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litical entity, came into being.

Those constitutional developments were of great significance—and, indeed, made Puerto Rico “sovereign” in one commonly understood sense of that term. At that point, Congress granted Puerto Rico a degree of autonomy comparable to that possessed by the States. If the dual-sovereignty doctrine hinged on measuring an entity’s self-governance, the emergence of the Commonwealth would have resulted as well in the capacity to bring the kind of successive prosecutions attempted here. Pp. 13–14.

(2) But the dual-sovereignty test focuses not on the fact of self-rule, but on where it first came from. And in identifying a prosecuting entity’s wellspring of authority, the Court has insisted on going all the way back—beyond the immediate, or even an intermediate, locus of power to what is termed the “ultimate source.” On this settled approach, Puerto Rico cannot benefit from the dual-sovereignty doctrine. True enough, that the Commonwealth’s power to enact and enforce criminal law now proceeds, just as petitioner says, from the Puerto Rico Constitution as “ordain[ed] and establish[ed]” by “the people.” P. R. Const., Preamble. But back of the Puerto Rican people and their Constitution, the “ultimate” source of prosecutorial power remains the U. S. Congress. Congress, in Public Law 600, authorized Puerto Rico’s constitution-making process in the first instance, and Congress, in later legislation, both amended the draft charter and gave it the indispensable stamp of approval. Put simply, Congress conferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges. That makes Congress the original source of power for Puerto Rico’s prosecutors—as it is for the Federal Government’s. The island’s Constitution, significant though it is, does not break the chain. Pp. 14–18.

Affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, and ALITO, JJ., joined. GINSBURG, J., filed a concurring opinion, in which THOMAS, J., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. BREYER, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined.

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 15–108

COMMONWEALTH OF PUERTO RICO, PETITIONER *v.*
LUIS M. SANCHEZ VALLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
PUERTO RICO

[June 9, 2016]

JUSTICE KAGAN delivered the opinion of the Court.

The Double Jeopardy Clause of the Fifth Amendment prohibits more than one prosecution for the “same offence.” But under what is known as the dual-sovereignty doctrine, a single act gives rise to distinct offenses—and thus may subject a person to successive prosecutions—if it violates the laws of separate sovereigns. To determine whether two prosecuting authorities are different sovereigns for double jeopardy purposes, this Court asks a narrow, historically focused question. The inquiry does not turn, as the term “sovereignty” sometimes suggests, on the degree to which the second entity is autonomous from the first or sets its own political course. Rather, the issue is only whether the prosecutorial powers of the two jurisdictions have independent origins—or, said conversely, whether those powers derive from the same “ultimate source.” *United States v. Wheeler*, 435 U. S. 313, 320 (1978).

In this case, we must decide if, under that test, Puerto Rico and the United States may successively prosecute a single defendant for the same criminal conduct. We hold

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they may not, because the oldest roots of Puerto Rico's power to prosecute lie in federal soil.

I
A

Puerto Rico became a territory of the United States in 1898, as a result of the Spanish-American War. The treaty concluding that conflict ceded the island, then a Spanish colony, to the United States, and tasked Congress with determining “[t]he civil rights and political status” of its inhabitants. Treaty of Paris, Art. 9, Dec. 10, 1898, 30 Stat. 1759. In the ensuing hundred-plus years, the United States and Puerto Rico have forged a unique political relationship, built on the island's evolution into a constitutional democracy exercising local self-rule.

Acting pursuant to the U. S. Constitution's Territory Clause, Congress initially established a “civil government” for Puerto Rico possessing significant authority over internal affairs. Organic Act of 1900, ch. 191, 31 Stat. 77; see U. S. Const., Art. IV, §3, cl. 2 (granting Congress the “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States”). The U. S. President, with the advice and consent of the Senate, appointed the governor, supreme court, and upper house of the legislature; the Puerto Rican people elected the lower house themselves. See §§17–35, 31 Stat. 81–85. Federal statutes generally applied (as they still do) in Puerto Rico, but the newly constituted legislature could enact local laws in much the same way as the then-45 States. See §§14–15, 32, *id.*, at 80, 83–84; *Puerto Rico v. Shell Co. (P. R.), Ltd.*, 302 U. S. 253, 261 (1937).

Over time, Congress granted Puerto Rico additional autonomy. A federal statute passed in 1917, in addition to giving the island's inhabitants U. S. citizenship, replaced the upper house of the legislature with a popularly elected

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senate. See Organic Act of Puerto Rico, ch. 145, §§5, 26, 39 Stat. 953, 958. And in 1947, an amendment to that law empowered the Puerto Rican people to elect their own governor, a right never before accorded in a U. S. territory. See Act of Aug. 5, 1947, ch. 490, §1, 61 Stat. 770.

Three years later, Congress enabled Puerto Rico to embark on the project of constitutional self-governance. Public Law 600, “recognizing the principle of government by consent,” authorized the island’s people to “organize a government pursuant to a constitution of their own adoption.” Act of July 3, 1950, §1, 64 Stat. 319. Describing itself as “in the nature of a compact,” the statute submitted its own terms to an up-or-down referendum of Puerto Rico’s voters. *Ibid.* According to those terms, the eventual constitution had to “provide a republican form of government” and “include a bill of rights”; all else would be hashed out in a constitutional convention. §2, 64 Stat. 319. The people of Puerto Rico would be the first to decide, in still another referendum, whether to adopt that convention’s proposed charter. See §3, 64 Stat. 319. But Congress would cast the dispositive vote: The constitution, Public Law 600 declared, would become effective only “[u]pon approval by the Congress.” *Ibid.*

Thus began two years of constitution-making for the island. The Puerto Rican people first voted to accept Public Law 600, thereby triggering a constitutional convention. And once that body completed its work, the island’s voters ratified the draft constitution. Congress then took its turn on the document: Before giving its approval, Congress removed a provision recognizing various social welfare rights (including entitlements to food, housing, medical care, and employment); added a sentence prohibiting certain constitutional amendments, including any that would restore the welfare-rights section; and inserted language guaranteeing children’s freedom to attend private schools. See Act of July 3, 1952, 66 Stat.

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327; Draft Constitution of the Commonwealth of Puerto Rico (1952), in Documents on the Constitutional Relationship of Puerto Rico and the United States 199 (M. Ramirez Lavandero ed., 3d ed. 1988). Finally, the constitution became law, in the manner Congress had specified, when the convention formally accepted those conditions and the governor “issue[d] a proclamation to that effect.” Ch. 567, 66 Stat. 328.

The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico—or, in Spanish, Estado Libre Asociado de Puerto Rico. See P. R. Const., Art. I, §1. Like the U. S. Constitution, it divides political power into three branches—the “legislative, judicial and executive.” Art. I, §2. And again resonant of American founding principles, the Puerto Rico Constitution describes that tripartite government as “republican in form” and “subordinate to the sovereignty of the people of Puerto Rico.” *Ibid.* The Commonwealth’s power, the Constitution proclaims, “emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States.” Art. I, §1.

B

We now leave the lofty sphere of constitutionalism for the grittier precincts of criminal law. Respondents Luis Sánchez Valle and Jaime Gómez Vázquez (on separate occasions) each sold a gun to an undercover police officer. Commonwealth prosecutors indicted them for, among other things, selling a firearm without a permit in violation of the Puerto Rico Arms Act of 2000. See 25 Laws P. R. Ann. §458 (2008). While those charges were pending, federal grand juries indicted Sánchez Valle and Gómez Vázquez, based on the same transactions, for violations of analogous U. S. gun trafficking statutes. See 18 U. S. C. §§922(a)(1)(A), 923(a), 924(a)(1)(D), 924(a)(2).

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Both defendants pleaded guilty to those federal charges.

Following their pleas, Sánchez Valle and Gómez Vázquez moved to dismiss the pending Commonwealth charges on double jeopardy grounds. The prosecutors in both cases opposed those motions, arguing that Puerto Rico and the United States are different sovereigns for double jeopardy purposes, and so could bring successive prosecutions against each of the two defendants. The trial courts rejected that view and dismissed the charges. See App. to Pet. for Cert. 307a–352a. But the Puerto Rico Court of Appeals, after consolidating the two cases, reversed those decisions. See *id.*, at 243a–306a.

The Supreme Court of Puerto Rico granted review and held that Puerto Rico’s gun sale prosecutions violated the Double Jeopardy Clause. See *id.*, at 1a–70a. The majority reasoned that, under this Court’s dual-sovereignty doctrine, “what is crucial” is “[t]he ultimate source” of Puerto Rico’s power to prosecute. *Id.*, at 19a; see *id.*, at 20a (“The use of the word ‘sovereignty’ in other contexts and for other purposes is irrelevant”). Because that power originally “derived from the United States Congress”—*i.e.*, the same source on which federal prosecutors rely—the Commonwealth could not retry Sánchez Valle and Gómez Vázquez for unlawfully selling firearms. *Id.*, at 66a. Three justices disagreed, believing that the Commonwealth and the United States are separate sovereigns. See *id.*, at 71a–242a.

We granted certiorari, 576 U. S. ____ (2015), to determine whether the Double Jeopardy Clause bars the Federal Government and Puerto Rico from successively prosecuting a defendant on like charges for the same conduct. We hold that it does, and so affirm.

II

A

This case involves the dual-sovereignty carve-out from

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the Double Jeopardy Clause. The ordinary rule under that Clause is that a person cannot be prosecuted twice for the same offense. See U. S. Const., Amdt. 5 (“nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb”).¹ But two prosecutions, this Court has long held, are not for the same offense if brought by different sovereigns—even when those actions target the identical criminal conduct through equivalent criminal laws. See, *e.g.*, *United States v. Lanza*, 260 U. S. 377, 382 (1922). As we have put the point: “[W]hen the same act transgresses the laws of two sovereigns, it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences.” *Heath v. Alabama*, 474 U. S. 82, 88 (1985) (internal quotation marks omitted). The Double Jeopardy Clause thus drops out of the picture when the “entities that seek successively to prosecute a defendant for the same course of conduct [are] separate sovereigns.” *Ibid.*

Truth be told, however, “sovereignty” in this context does not bear its ordinary meaning. For whatever reason, the test we have devised to decide whether two governments are distinct for double jeopardy purposes overtly disregards common indicia of sovereignty. Under that standard, we do not examine the “extent of control” that “one prosecuting authority [wields] over the other.” *Wheeler*, 435 U. S., at 320. The degree to which an entity exercises self-governance—whether autonomously managing its own affairs or continually submitting to outside direction—plays no role in the analysis. See *Shell Co.*, 302 U. S., at 261–262, 264–266. Nor do we care about a gov-

¹Because the parties in this case agree that the Double Jeopardy Clause applies to Puerto Rico, we have no occasion to consider that question here. See Brief for Petitioner 19–21; Brief for Respondents 20, n. 4; see also Brief for United States as *Amicus Curiae* 10, n. 1 (concurring).

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ernment’s more particular ability to enact and enforce its own criminal laws. See *Waller v. Florida*, 397 U. S. 387, 391–395 (1970). In short, the inquiry (despite its label) does not probe whether a government possesses the usual attributes, or acts in the common manner, of a sovereign entity.²

Rather, as Puerto Rico itself acknowledges, our test hinges on a single criterion: the “ultimate source” of the power undergirding the respective prosecutions. *Wheeler*, 435 U. S., at 320; see Brief for Petitioner 26. Whether two prosecuting entities are dual sovereigns in the double jeopardy context, we have stated, depends on “whether [they] draw their authority to punish the offender from distinct sources of power.” *Heath*, 474 U. S., at 88. The inquiry is thus historical, not functional—looking at the deepest wellsprings, not the current exercise, of prosecutorial authority. If two entities derive their power to punish from wholly independent sources (imagine here a pair of parallel lines), then they may bring successive prosecutions. Conversely, if those entities draw their power from the same ultimate source (imagine now two lines emerging from a common point, even if later diverging), then they

²The dissent, ignoring our longstanding precedent to the contrary, see *supra*, at 6–7; *infra*, at 7–11, advances an approach of just this stripe: Its seven considerations all go to the question whether the Commonwealth, by virtue of Public Law 600, gained “the sovereign authority to enact and enforce” its own criminal laws. *Post*, at 5 (opinion of BREYER, J.). Our disagreement with the dissent arises entirely from its use of this test. If the question is whether, after the events of 1950–1952, Puerto Rico had authority to enact and enforce its own criminal laws (or, slightly differently phrased, whether Congress then decided that it should have such autonomy), the answer (all can and do agree) is yes. See *infra*, at 13–17. But as we now show, that is not the inquiry our double jeopardy law has made relevant: To the contrary, we have rejected that approach again and again—and so reached results inconsistent with its use. See, e.g., *Heath v. Alabama*, 474 U. S. 82, 88–91 (1985); *Waller v. Florida*, 397 U. S. 387, 391–395 (1970); see *infra*, at 7–11.

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may not.³

Under that approach, the States are separate sovereigns from the Federal Government (and from one another). See *Abbate v. United States*, 359 U. S. 187, 195 (1959); *Bartkus v. Illinois*, 359 U. S. 121, 132–137 (1959); *Heath*, 474 U. S., at 88. The States’ “powers to undertake criminal prosecutions,” we have explained, do not “derive[] . . . from the Federal Government.” *Id.*, at 89. Instead, the States rely on “authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment.” *Ibid.*; see U. S. Const., Amdt. 10 (“The powers not delegated to the United States by the Constitution . . . are reserved to the States”); *Blatchford v. Native Village of Noatak*, 501 U. S. 775, 779 (1991) (noting that the States “entered the [Union] with their sovereignty intact”). Said otherwise: Prior to forming the Union, the States possessed “separate and independent sources of power and authority,” which they continue to draw upon in enacting and enforcing criminal laws. *Heath*, 474 U. S., at 89. State prosecutions therefore have their most ancient roots in an “inherent sovereignty” unconnected to, and indeed pre-existing, the U. S. Congress. *Ibid.*⁴

³The Court has never explained its reasons for adopting this historical approach to the dual-sovereignty doctrine. It may appear counter-intuitive, even legalistic, as compared to an inquiry focused on a governmental entity’s functional autonomy. But that alternative would raise serious problems of application. It would require deciding exactly how much autonomy is sufficient for separate sovereignty and whether a given entity’s exercise of self-rule exceeds that level. The results, we suspect, would often be uncertain, introducing error and inconsistency into our double jeopardy law. By contrast, as we go on to show, the Court has easily applied the “ultimate source” test to classify broad classes of governments as either sovereign or not for purposes of barring retrials. See *infra*, at 8–11.

⁴Literalists might object that only the original 13 States can claim such an independent source of authority; for the other 37, Congress played some role in establishing them as territories, authorizing or approving their constitutions, or (at the least) admitting them to the

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For similar reasons, Indian tribes also count as separate sovereigns under the Double Jeopardy Clause. Originally, this Court has noted, “the tribes were self-governing sovereign political communities,” possessing (among other capacities) the “inherent power to prescribe laws for their members and to punish infractions of those laws.” *Wheeler*, 435 U. S., at 322–323. After the formation of the United States, the tribes became “domestic dependent nations,” subject to plenary control by Congress—so hardly “sovereign” in one common sense. *United States v. Lara*, 541 U. S. 193, 204 (2004) (quoting *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831)); see *Santa Clara Pueblo v. Martinez*, 436 U. S. 49, 56 (1978) (“Congress has plenary

Union. See U. S. Const., Art. IV, §3, cl. 1 (“New States may be admitted by the Congress into this Union”). And indeed, that is the tack the dissent takes. See *post*, at 3–4 (claiming that for this reason the Federal Government is “the ‘source’ of [later-admitted] States’ legislative powers”). But this Court long ago made clear that a new State, upon entry, necessarily becomes vested with all the legal characteristics and capabilities of the first 13. See *Coyle v. Smith*, 221 U. S. 559, 566 (1911) (noting that the very meaning of “‘a State’ is found in the powers possessed by the original States which adopted the Constitution”). That principle of “equal footing,” we have held, is essential to ensure that the nation remains “a union of States[alike] in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States.” *Id.*, at 567; see *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U. S. 193, 203 (2009) (referring to the “fundamental principle of equal sovereignty” among the States). Thus, each later-admitted State exercises its authority to enact and enforce criminal laws by virtue not of congressional grace, but of the independent powers that its earliest counterparts both brought to the Union and chose to maintain. See *Coyle*, 221 U. S., at 573 (“[W]hen a new State is admitted into the Union, it is so admitted with all the powers of sovereignty and jurisdiction which pertain to the original States”). The dissent’s contrary view—that, say, Texas’s or California’s powers (including the power to make and enforce criminal law) derive from the Federal Government—contradicts the most fundamental conceptual premises of our constitutional order, indeed the very bedrock of our Union.

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authority to limit, modify or eliminate the [tribes'] powers of local self-government"). But unless and until Congress withdraws a tribal power—including the power to prosecute—the Indian community retains that authority in its earliest form. See *Wheeler*, 435 U. S., at 323. The "ultimate source" of a tribe's "power to punish tribal offenders" thus lies in its "primeval" or, at any rate, "pre-existing" sovereignty: A tribal prosecution, like a State's, is "attributable in no way to any delegation . . . of federal authority." *Id.*, at 320, 322, 328; *Santa Clara Pueblo*, 436 U. S., at 56. And that alone is what matters for the double jeopardy inquiry.

Conversely, this Court has held that a municipality cannot qualify as a sovereign distinct from a State—no matter how much autonomy over criminal punishment the city maintains. See *Waller*, 397 U. S., at 395. Florida law, we recognized in our pivotal case on the subject, treated a municipality as a "separate sovereign entit[y]" for all relevant real-world purposes: The city possessed broad home-rule authority, including the power to enact criminal ordinances and prosecute offenses. *Id.*, at 391. But that functional control was not enough to escape the double jeopardy bar; indeed, it was wholly beside the point. The crucial legal inquiry was backward-looking: Did the city and State ultimately "derive their powers to prosecute from independent sources of authority"? *Heath*, 474 U. S., at 90 (describing *Waller*'s reasoning). Because the municipality, in the first instance, had received its power from the State, those two entities could not bring successive prosecutions for a like offense.

And most pertinent here, this Court concluded in the early decades of the last century that U. S. territories—including an earlier incarnation of Puerto Rico itself—are not sovereigns distinct from the United States. In *Grafton v. United States*, 206 U. S. 333, 355 (1907), we held that the Philippine Islands (then a U. S. territory, also ac-

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quired in the Spanish-American War) could not prosecute a defendant for murder after a federal tribunal had acquitted him of the same crime. We reasoned that whereas “a State does not derive its powers from the United States,” a territory does: The Philippine courts “exert[ed] all their powers by authority of” the Federal Government. *Id.*, at 354. And then, in *Shell Co.*, we stated that “[t]he situation [in Puerto Rico] was, in all essentials, the same.” 302 U. S., at 265. Commenting on a Puerto Rican statute that overlapped with a federal law, we explained that this “legislative duplication [gave] rise to no danger of a second prosecution” because “the territorial and federal laws [were] creations emanating from the same sovereignty.” *Id.*, at 264; see also *Heath*, 474 U. S., at 90 (noting that federal and territorial prosecutors “d[o] not derive their powers to prosecute from independent sources of authority”).⁵

⁵The dissent’s theory, see *supra*, at 7, n. 2, cannot explain any of these (many) decisions, whether involving States, Indian tribes, cities, or territories. We have already addressed the dissent’s misunderstanding with respect to the States, including the later-admitted ones. See *supra*, at 8, and n. 4. This Court’s reasoning could not have been plainer: The States (*all* of them) are separate sovereigns for double jeopardy purposes not (as the dissent claims) because they exercise authority over criminal law, but instead because that power derives from a source independent of the Federal Government. See *Heath*, 474 U. S., at 89. So too for the tribes, see *supra*, at 9–10; and, indeed, here the dissent’s contrary reasoning is deeply disturbing. According to the dissent, Congress is in fact “the ‘source’ of the Indian tribes’ criminal-enforcement power” because it has elected not to disturb the exercise of that authority. *Post*, at 5. But beginning with Chief Justice Marshall and continuing for nearly two centuries, this Court has held firm and fast to the view that Congress’s power over Indian affairs does nothing to gainsay the profound importance of the tribes’ pre-existing sovereignty. See *Worcester v. Georgia*, 6 Pet. 515, 559–561 (1832); *Talton v. Mayes*, 163 U. S. 376, 384 (1896); *Michigan v. Bay Mills Indian Community*, 572 U. S. ___, ___–___ (2014) (slip op., at 4–5). And once again, we have stated in no uncertain terms that the tribes are separate sovereigns precisely because of that inherent authority. See *Wheeler*,

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B

With that background established, we turn to the question presented: Do the prosecutorial powers belonging to Puerto Rico and the Federal Government derive from wholly independent sources? See Brief for Petitioner 26–28 (agreeing with that framing of the issue). If so, the criminal charges at issue here can go forward; but if not, not. In addressing that inquiry, we do not view our decisions in *Grafton* and *Shell Co.* as, in and of themselves, controlling. Following 1952, Puerto Rico became a new kind of political entity, still closely associated with the United States but governed in accordance with, and exercising self-rule through, a popularly ratified constitution. The magnitude of that change requires us to consider the dual-sovereignty question anew. And yet the result we reach, given the legal test we apply, ends up the same. Puerto Rico today has a distinctive, indeed exceptional, status as a self-governing Commonwealth. But our approach is historical. And if we go back as far as our doctrine demands—to the “ultimate source” of Puerto Rico’s

435 U. S., at 328. Next, the dissent cannot (and does not even try to) explain our rule that a municipality is not a separate sovereign from a State. See *supra*, at 10. As this Court has explicitly recognized, many cities have (in the words of the dissent’s test) wide-ranging “authority to make and enforce [their] own criminal laws,” *post*, at 5; still, they cannot undertake successive prosecutions—because they received that power from state governments, see *Waller*, 397 U. S., at 395. And likewise (finally), the dissent fails to face up to our decisions that the territories are not distinct sovereigns from the United States because the powers they exercise are delegations from Congress. See *Grafton v. United States*, 206 U. S. 333, 355 (1907); *supra*, at 10–11. That, of course, is what makes them different from the current Philippines, see *post*, at 2–3, whose relevance here is hard to fathom. As an independent nation, the Philippines wields prosecutorial power that is not traceable to any congressional conferral of authority. And that, to repeat, is what matters: If an entity’s capacity to make and enforce criminal law ultimately comes from another government, then the two are not separate sovereigns for double jeopardy purposes.

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prosecutorial power, *Wheeler*, 435 U. S., at 320—we once again discover the U. S. Congress.

Recall here the events of the mid-20th century—when Puerto Rico, just as petitioner contends, underwent a profound change in its political system. See Brief for Petitioner 1–2 (“[T]he people of Puerto Rico[] engaged in an exercise of popular sovereignty . . . by adopting their *own* Constitution establishing their *own* government to enact their *own* laws”); *supra*, at 3–4. At that time, Congress enacted Public Law 600 to authorize Puerto Rico’s adoption of a constitution, designed to replace the federal statute that then structured the island’s governance. The people of Puerto Rico capitalized on that opportunity, calling a constitutional convention and overwhelmingly approving the charter it drafted. Once Congress approved that proposal—subject to several important conditions accepted by the convention—the Commonwealth, a new political entity, came into being.

Those constitutional developments were of great significance—and, indeed, made Puerto Rico “sovereign” in one commonly understood sense of that term. As this Court has recognized, Congress in 1952 “relinquished its control over [the Commonwealth’s] local affairs[,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States.” *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U. S. 572, 597 (1976); see *id.*, at 594 (“[T]he purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union”); *Rodriguez v. Popular Democratic Party*, 457 U. S. 1, 8 (1982) (“Puerto Rico, like a state, is an autonomous political entity, sovereign over matters not ruled by the [Federal] Constitution” (internal quotation marks omitted)). That newfound authority, including over local criminal laws, brought mutual benefit to the Puerto Rican people and the entire United States.

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See Brief for United States as *Amicus Curiae* 3. And if our double jeopardy decisions hinged on measuring an entity's self-governance, the emergence of the Commonwealth would have resulted as well in the capacity to bring the kind of successive prosecutions attempted here.

But as already explained, the dual-sovereignty test we have adopted focuses on a different question: not on the fact of self-rule, but on where it came from. See *supra*, at 7–8. We do not care, for example, that the States presently exercise autonomous control over criminal law and other local affairs; instead, we treat them as separate sovereigns because they possessed such control as an original matter, rather than deriving it from the Federal Government. See *supra*, at 8–9. And in identifying a prosecuting entity's wellspring of authority, we have insisted on going all the way back—beyond the immediate, or even an intermediate, locus of power to what we have termed the “ultimate source.” *Wheeler*, 435 U. S., at 320. That is why we have emphasized the “inherent,” “primeval,” and “pre-existing” capacities of the tribes and States—the power they enjoyed prior to the Union's formation. *Id.*, at 322–323, 328; *Heath*, 474 U. S., at 90; *Santa Clara Pueblo*, 436 U. S., at 56; see *supra*, at 8–10. And it is why cities fail our test even when they enact and enforce their own criminal laws under their own, popularly ratified charters: Because a State must initially authorize any such charter, the State is the furthest-back source of prosecutorial power. See *Waller*, 397 U. S., at 391–394; *supra*, at 10.

On this settled approach, Puerto Rico cannot benefit from our dual-sovereignty doctrine. For starters, no one argues that when the United States gained possession of Puerto Rico, its people possessed independent prosecutorial power, in the way that the States or tribes did upon becoming part of this country. Puerto Rico was until then a colony “under Spanish sovereignty.” Treaty of Paris,

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Art. 2, 30 Stat. 1755. And local prosecutors in the ensuing decades, as petitioner itself acknowledges, exercised only such power as was “delegated by Congress” through federal statutes. Brief for Petitioner 28; see *Shell Co.*, 302 U. S., at 264–265; *supra*, at 10–11. Their authority derived from, rather than pre-existed association with, the Federal Government.

And contrary to petitioner’s claim, Puerto Rico’s transformative constitutional moment does not lead to a different conclusion. True enough, that the Commonwealth’s power to enact and enforce criminal law now proceeds, just as petitioner says, from the Puerto Rico Constitution as “ordain[ed] and establish[ed]” by “the people.” P. R. Const., Preamble; see Brief for Petitioner 28–30. But that makes the Puerto Rican populace only the most immediate source of such authority—and that is not what our dual-sovereignty decisions make relevant. Back of the Puerto Rican people and their Constitution, the “ultimate” source of prosecutorial power remains the U. S. Congress, just as back of a city’s charter lies a state government. *Wheeler*, 435 U. S., at 320. Congress, in Public Law 600, authorized Puerto Rico’s constitution-making process in the first instance; the people of a territory could not legally have initiated that process on their own. See, e.g., *Simms v. Simms*, 175 U. S. 162, 168 (1899). And Congress, in later legislation, both amended the draft charter and gave it the indispensable stamp of approval; popular ratification, however meaningful, could not have turned the convention’s handiwork into law.⁶ Put simply, Congress con-

⁶Petitioner’s own statements are telling as to the role Congress necessarily played in this constitutional process. See, e.g., Reply Brief 1–2 (“Pursuant to Congress’ invitation, and with Congress’ consent, the people of Puerto Rico engaged in an exercise of popular sovereignty”); *id.*, at 7 (“The Commonwealth’s legal cornerstone is Public Law 600”); Tr. of Oral Arg. 19 (describing the adoption of the Puerto Rico Constitution as “pursuant to the invitation of Congress and with the blessing of

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ferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges. That makes Congress the original source of power for Puerto Rico's prosecutors—as it is for the Federal Government's. The island's Constitution, significant though it is, does not break the chain.

Petitioner urges, in support of its different view, that Congress itself recognized the new Constitution as “a democratic manifestation of the [people's] will,” Brief for Petitioner 2—but far from disputing that point, we readily acknowledge it to be so. As petitioner notes, Public Law 600 affirmed the “principle of government by consent” and offered the Puerto Rican public a “compact,” under which they could “organize a government pursuant to a constitution of their own adoption.” §1, 64 Stat. 319; see Brief for Petitioner 2, 29; *supra*, at 3. And the Constitution that Congress approved, as petitioner again underscores, declares that “[w]e, the people” of Puerto Rico, “create” the Commonwealth—a new political entity, “republican in form,” in which the people's will is “sovereign[.]” over the government. P. R. Const., Preamble and Art. I, §§1–2; see Brief for Petitioner 2, 29–30; *supra*, at 4. With that consented-to language, Congress “allow[ed] the people of Puerto Rico,” in petitioner's words, to begin a new chapter of democratic self-governance. Reply Brief 20.

All that separates our view from petitioner's is what that congressional recognition means for Puerto Rico's ability to bring successive prosecutions. We agree that Congress has broad latitude to develop innovative approaches to territorial governance, see U. S. Const., Art. IV, §3, cl. 2; that Congress may thus enable a territory's people to make large-scale choices about their own political institutions; and that Congress did exactly that in enacting Public Law 600 and approving the Puerto Rico

Congress”).

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Constitution—prime examples of what Felix Frankfurter once termed “inventive statesmanship” respecting the island. Memorandum for the Secretary of War, in Hearings on S. 4604 before the Senate Committee on Pacific Islands and Porto Rico, 63d Cong., 2d Sess., 22 (1914); see Reply Brief 18–20. But one power Congress does not have, just in the nature of things: It has no capacity, no magic wand or airbrush, to erase or otherwise rewrite its own foundational role in conferring political authority. Or otherwise said, the delegator cannot make itself any less so—no matter how much authority it opts to hand over. And our dual-sovereignty test makes this historical fact dispositive: If an entity’s authority to enact and enforce criminal law ultimately comes from Congress, then it cannot follow a federal prosecution with its own. That is true of Puerto Rico, because Congress authorized and approved its Constitution, from which prosecutorial power now flows. So the Double Jeopardy Clause bars both Puerto Rico and the United States from prosecuting a single person for the same conduct under equivalent criminal laws.

III

Puerto Rico boasts “a relationship to the United States that has no parallel in our history.” *Examining Bd.*, 426 U. S., at 596. And since the events of the early 1950’s, an integral aspect of that association has been the Commonwealth’s wide-ranging self-rule, exercised under its own Constitution. As a result of that charter, Puerto Rico today can avail itself of a wide variety of futures. But for purposes of the Double Jeopardy Clause, the future is not what matters—and there is no getting away from the past. Because the ultimate source of Puerto Rico’s prosecutorial power is the Federal Government—because when we trace that authority all the way back, we arrive at the doorstep of the U. S. Capitol—the Commonwealth and the United

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States are not separate sovereigns. That means the two governments cannot “twice put” respondents Sánchez Valle and Gómez Vázquez “in jeopardy” for the “same offence.” U. S. Const., Amdt. 5. We accordingly affirm the judgment of the Supreme Court of Puerto Rico.

It is so ordered.

GINSBURG, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 15–108

COMMONWEALTH OF PUERTO RICO, PETITIONER *v.*
LUIS M. SANCHEZ VALLE, ET AL.ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
PUERTO RICO

[June 9, 2016]

JUSTICE GINSBURG, with whom JUSTICE THOMAS joins, concurring.

I join in full the Court’s opinion, which cogently applies long prevailing doctrine. I write only to flag a larger question that bears fresh examination in an appropriate case. The double jeopardy proscription is intended to shield individuals from the harassment of multiple prosecutions for the same misconduct. *Green v. United States*, 355 U. S. 184, 187 (1957). Current “separate sovereigns” doctrine hardly serves that objective. States and Nation are “kindred systems,” yet “parts of ONE WHOLE.” The Federalist No. 82, p. 245 (J. Hopkins ed., 2d ed. 1802) (reprint 2008). Within that whole is it not “an affront to human dignity,” *Abbate v. United States*, 359 U. S. 187, 203 (1959) (Black, J., dissenting), “inconsistent with the spirit of [our] Bill of Rights,” Developments in the Law—Criminal Conspiracy, 72 Harv. L. Rev. 920, 968 (1959), to try or punish a person twice for the same offense? Several jurists and commentators have suggested that the question should be answered with a resounding yes: Ordinarily, a final judgment in a criminal case, just as a final judgment in a civil case, should preclude renewal of the fray anyplace in the Nation. See *Bartkus v. Illinois*, 359 U. S. 121, 150 (1959) (Black, J., dissenting); *United States v. All Assets of G. P. S. Automotive Corp.*, 66 F. 3d 483

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(CA2 1995) (Calabresi, J.); Franck, An International Lawyer Looks at the *Bartkus* Rule, 34 N. Y. U. L. Rev. 1096 (1959); Grant, Successive Prosecutions by State and Nation: Common Law and British Empire Comparisons, 4 UCLA L. Rev. 1 (1956); Grant, The *Lanza* Rule of Successive Prosecutions, 32 Colum. L. Rev. 1309 (1932). See also 6 W. LaFare, J. Israel, N. King, & O. Kerr, Criminal Procedure §25.5(a), p. 851 (4th ed. 2015) (“Criticism of *Abbate*’s separate sovereign exception] intensified after the Supreme Court held that the Double Jeopardy Clause of the Fifth Amendment was also applicable to the states” (citing, *inter alia*, Braun, Praying to False Sovereigns: The Rule Permitting Successive Prosecutions in the Age of Cooperative Federalism, 20 Am. J. Crim. L. 1 (1992))). The matter warrants attention in a future case in which a defendant faces successive prosecutions by parts of the whole USA.

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Opinion of THOMAS, J.

SUPREME COURT OF THE UNITED STATES

No. 15–108

COMMONWEALTH OF PUERTO RICO, PETITIONER *v.*
LUIS M. SANCHEZ VALLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
PUERTO RICO

[June 9, 2016]

JUSTICE THOMAS, concurring in part and concurring in the judgment.

The Court today concludes that the Commonwealth of Puerto Rico and the United States are not separate sovereigns because the Federal Government is the ultimate source of Puerto Rico’s authority to prosecute crimes. *Ante*, at 16. I agree with that holding, which hews to the Court’s precedents concerning the Double Jeopardy Clause and U. S. Territories. But I continue to have concerns about our precedents regarding Indian law, see *United States v. Lara*, 541 U. S. 193, 214–226 (2004) (opinion concurring in judgment), and I cannot join the portions of the opinion concerning the application of the Double Jeopardy Clause to successive prosecutions involving Indian tribes. Aside from this caveat, I join the Court’s opinion.

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 15–108

COMMONWEALTH OF PUERTO RICO, PETITIONER *v.*
LUIS M. SANCHEZ VALLE, ET AL.ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
PUERTO RICO

[June 9, 2016]

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR joins, dissenting.

I agree with the Court that this case poses a special, not a general, question about Puerto Rico’s sovereignty. It asks whether “the prosecutorial powers belonging to Puerto Rico and the Federal Government derive from wholly independent sources.” *Ante*, at 12. I do not agree, however, with the majority’s answer to that question. I do not believe that “if we go back [through history] as far as our doctrine demands” (*i.e.*, “all the way back” to the “furthest-back source of prosecutorial power”), we will “discover” that Puerto Rico and the Federal Government share the same source of power, namely, “the U. S. Congress.” *Ante*, at 12–13, 14. My reasons for disagreeing with the majority are in part conceptual and in part historical.

I

Conceptually speaking, the Court does not mean literally that to find the “source” of an entity’s criminal law, we must seek the “*furthest-back* source of . . . power.” *Ante*, at 14 (emphasis added). We do not trace Puerto Rico’s source of power back to Spain or to Rome or to Justinian, nor do we trace the Federal Government’s source of power back to the English Parliament or to William the Conqueror or to King Arthur. Rather the Court’s statement means that we

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should trace the source of power back to a time when a previously nonexistent entity, or a previously dependent entity, became independent—at least, sufficiently independent to be considered “sovereign” for purposes of the Double Jeopardy Clause.

As so viewed, this approach explains the Court’s decisions fairly well. The Federal Government became an independent entity when the Constitution first took effect. That document gave to the Federal Government the authority to enact criminal laws. And the Congress that the document created is consequently the source of those laws. The original 13 States, once dependents of Britain, became independent entities perhaps at the time of the Declaration of Independence, perhaps at the signing of the Treaty of Paris, perhaps with the creation of the Articles of Confederation. (I need not be precise.) See G. Wood, *Creation of the American Republic 1776–1787*, p. 354 (1969) (“The problem of sovereignty was not solved by the Declaration of Independence. It continued to be the most important theoretical question of politics throughout the following decade”). And an independent colony’s legislation-creating system is consequently the source of those original State’s criminal laws.

But the “source” question becomes more difficult with respect to other entities because Congress had an active role to play with respect to their creation (and thus congressional activity appears to be highly relevant to the double jeopardy question). Consider the Philippines. No one could doubt the Philippines’ current possession of sovereign authority to enact criminal laws. Yet if we trace that power back through history, we must find the “furthest-back” source of the islands’ lawmaking authority, not in any longstanding independent Philippine institutions (for until 1946 the Philippines was dependent, not independent), but in a decision by Congress and the President (as well as by the Philippines) to change the Philip-

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piners' status to one of independence. In 1934 Congress authorized the President to "withdraw and surrender all right of . . . sovereignty" over the Philippines. 48 Stat. 463, codified at 22 U.S.C. §1394. That authorization culminated in the Treaty of Manila, signed in 1946 and approved by Congress that same year, which formally recognized the Philippines as an independent, self-governing nation-state. See 61 Stat. 1174. In any obvious sense of the term, then, the "source" of the Philippines' independence (and its ability to enact and enforce its own criminal laws) was the U. S. Congress.

The same is true for most of the States. In the usual course, a U. S. Territory becomes a State within our Union at the invitation of Congress. In fact, the parallels between admission of new States and the creation of the Commonwealth in this case are significant. Congress passes a law allowing "the inhabitants of the territory . . . to form for themselves a constitution and state government, and to assume such name as they shall deem proper." Act of Apr. 16, 1818, ch. 67, 3 Stat. 428–429 (Illinois); see also Act of June 20, 1910, ch. 310, 36 Stat. 557 (New Mexico) ("[T]he qualified electors of the Territory . . . are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of New Mexico"). And after the Territory develops and proposes a constitution, Congress and the President review and approve it before allowing the Territory to become a full-fledged State. See, *e.g.*, Res. 1, 3 Stat. 536 (Illinois); Pub. Res. 8, 37 Stat. 39 (New Mexico); Presidential Proclamation No. 62, 37 Stat. 1723 ("I WILLIAM HOWARD TAFT, . . . declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of New Mexico to entitle that State to admission have been ratified and accepted"). The Federal Government thus is in an important sense the "source" of these States' legisla-

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tive powers.

One might argue, as this Court has argued, that the source of new States' sovereign authority to enact criminal laws lies in the Constitution's equal-footing doctrine—the doctrine under which the Constitution treats new States the same as it does the original 13. See *ante*, at 9, n. 4. It is difficult, however, to characterize a constitutional insistence upon equality of the States as (in any here relevant sense) the “source” of those States' independent legislative powers. For one thing, the equal-footing doctrine is a requirement imposed by the U. S. Constitution. See *Coyle v. Smith*, 221 U. S. 559, 566–567 (1911). For that reason, the *Constitution* is ultimately the source of even these new States' equal powers (just as it is the source of Congress' powers). This is not to suggest that we are not a “‘union of States [alike] in power, dignity and authority.’” *Ante*, at 9, n. 4 (quoting *Coyle, supra*, at 567). Of course I recognize that we are. It is merely to ask: without the Constitution (*i.e.*, a *federal* “source”), what claim would new States have to a lawmaking power equal to that of their “earliest counterparts”? *Ante*, at 9, n. 4.

For another thing, the equal-footing doctrine means that, going forward, new States must enjoy the same rights and obligations as the original States—they are, for example, equally restricted by the First Amendment and equally “competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.” *Coyle, supra*, at 567. But this current and future equality does not destroy the fact that there is a federal “source” from which those rights and obligations spring: the Congress which agreed to admit those new States into the Union in accordance with the Constitution's terms. See, *e.g.*, 37 Stat. 39 (“The Territor[y] of New Mexico [is] hereby admitted into the Union upon an equal footing with the original States”).

In respect to the Indian tribes, too, congressional action

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is relevant to the double jeopardy analysis. This Court has explained that the tribes possess an independent authority to enact criminal laws by tracing the source of power back to a time of “primeval” tribal existence when “the tribes were self-governing sovereign political communities.” *Ante*, at 9–10 (quoting *United States v. Wheeler*, 435 U. S. 313, 322–323 (1978)). But as the Court today recognizes, this prelapsarian independence must be read in light of congressional action—or, as it were, inaction. That is because—whatever a tribe’s history—Congress maintains “plenary authority to limit, modify or eliminate the [tribes’] powers of local self-government,” *Santa Clara Pueblo v. Martinez*, 436 U. S. 49, 56 (1978), and thus the tribes remain sovereign for purposes of the Double Jeopardy Clause only “until” Congress chooses to withdraw that power, *ante*, at 10. In this sense, Congress’ pattern of inaction (*i.e.*, its choice to refrain from withdrawing dual sovereignty) amounts to an implicit decision to *grant* such sovereignty to the tribes. Is not Congress then, in this way, the “source” of the Indian tribes’ criminal-enforcement power?

These examples illustrate the complexity of the question before us. I do not believe, as the majority seems to believe, that the double jeopardy question can be answered simply by tracing Puerto Rico’s current legislative powers back to Congress’ enactment of Public Law 600 and calling the Congress that enacted that law the “source” of the island’s criminal-enforcement authority. That is because—as with the Philippines, new States, and the Indian tribes—congressional activity and other historic circumstances can combine to establish a *new* source of power. We therefore must consider Public Law 600 in the broader context of Puerto Rico’s history. Only through that lens can we decide whether the Commonwealth, between the years 1950 and 1952, gained sufficient sovereign authority to become the “source” of power behind its

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own criminal laws.

II

The Treaty of Paris, signed with Spain in 1898, said that “[t]he civil rights and political status” of Puerto Rico’s “inhabitants . . . shall be determined by the Congress.” Art. 9, 30 Stat. 1759. In my view, Congress, in enacting the Puerto Rican Federal Relations Act (*i.e.*, Public Law 600), determined that the “political status” of Puerto Rico would for double jeopardy purposes subsequently encompass the sovereign authority to enact and enforce—pursuant to its *own* powers—its own criminal laws. Several considerations support this conclusion.

First, the timing of Public Law 600’s enactment suggests that Congress intended it to work a significant change in the nature of Puerto Rico’s political status. Prior to 1950 Puerto Rico was initially subject to the Foraker Act, which provided the Federal Government with virtually complete control of the island’s affairs. In 1917 Puerto Rico became subject to the Jones Act, which provided for United States citizenship and permitted Puerto Ricans to elect local legislators but required submission of local laws to Congress for approval. In 1945 the United States, when signing the United Nations Charter, promised change. It told the world that it would “develop self-government” in its Territories. Art. 73(b), 59 Stat. 1048, June 26, 1945, T. S. No. 993 (U. N. Charter). And contemporary observers referred to Public Law 600 as taking a significant step in the direction of change by granting Puerto Rico a special status carrying with it considerable autonomy. See, *e.g.*, Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1, 14–16 (1953); see also L. Kalman, *Abe Fortas: A Biography* 170–171 (1990) (“[After the 1950 ‘compact,’] Puerto Rico was self-ruling, according to [Fortas], although the federal government retained the same power it would have over states in a union”).

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Second, Public Law 600 uses language that says or implies a significant shift in the legitimacy-conferring source of many local laws. The Act points out that the United States “has progressively recognized the right of self-government of the people of Puerto Rico.” 64 Stat. 319. It “[f]ully recogniz[es] the principle of government by consent.” 48 U. S. C. §731b. It describes itself as being “in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.” *Ibid*. It specifies that the island’s new constitution must “provide a republican form of government,” §731c; and this Court has characterized that form of government as including “the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves,” *In re Duncan*, 139 U. S. 449, 461 (1891).

Third, Public Law 600 created a constitution-writing process that led Puerto Rico to convene a constitutional convention and to write a constitution that, in assuring Puerto Rico independent authority to enact many local laws, specifies that the legitimacy-conferring source of much local lawmaking shall henceforth be the “people of Puerto Rico.” The constitution begins by stating:

“We, the people of Puerto Rico, in order to organize ourselves politically on a fully democratic basis, to promote the general welfare, and to secure for ourselves and our posterity the complete enjoyment of human rights, placing our trust in Almighty God, do ordain and establish this Constitution for the commonwealth

“We understand that the democratic system of government is one in which the will of the people is the

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source of public power.” P.R. Const., Preamble (1952).

The constitution adds that the Commonwealth’s “political power emanates from the people and shall be exercised in accordance with their will,” Art. I, §1; that the “government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches . . . shall be equally subordinate to the sovereignty of the people of Puerto Rico,” Art. I, §2; and that “[a]ll criminal actions in the courts of the Commonwealth shall be conducted in the name and by the authority of ‘The People of Puerto Rico,’” Art. VI, §18.

At the same time, the constitutional convention adopted a resolution stating that Puerto Rico should be known officially as “‘The Commonwealth of Puerto Rico’” in English and “‘El Estado Libre Asociado de Puerto Rico’” in Spanish. Resolution 22, in Documents on the Constitutional Relationship of Puerto Rico and the United States 192 (M. Ramirez Lavandero ed., 3d ed. 1988). The resolution explained that these names signified “a politically organized community . . . in which political power resides ultimately in the people, hence a free state, but one which is at the same time linked to a broader political system in a federal or other type of association and therefore does not have independent and separate existence.” *Id.*, at 191.

Fourth, both Puerto Rico and the United States ratified Puerto Rico’s Constitution. Puerto Rico did so initially through a referendum held soon after the constitution was written and then by a second referendum held after the convention revised the constitution in minor ways (ways that Congress insisted upon, but which are not relevant here). See 66 Stat. 327; see also *ante*, at 3 (describing these revisions). Congress did so too by enacting further legislation that said that the “constitution of the Commonwealth of Puerto Rico . . . shall become effective when

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the Constitutional Convention of Puerto Rico shall have declared in a formal resolution its acceptance . . . of the conditions of approval herein contained.” 66 Stat. 327–328. And, as I have just said, the convention, having the last word, made the minor amendments and Puerto Rico ratified the constitution through a second referendum.

Fifth, all three branches of the Federal Government subsequently recognized that Public Law 600, the Puerto Rican Constitution, and related congressional actions granted Puerto Rico considerable autonomy in local matters, sometimes akin to that of a State. See, e.g., S. Rep. No. 1720, 82d Cong., 2d Sess., 6 (1952) (“As regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union”). Each branch of the Federal Government subsequently took action consistent with that view.

As to the Executive Branch, President Truman wrote to Congress that the Commonwealth’s constitution, when enacted and ratified, “vest[s] in the people of Puerto Rico” complete “authority and responsibility for local self-government.” Public Papers of the Presidents, Apr. 22, 1952, p. 287 (1952–1953). Similarly, President Kennedy in 1961 circulated throughout the Executive Branch a memorandum that said:

“The Commonwealth structure, and its relationship to the United States which is in the nature of a compact, provide for self-government in respect of internal affairs and administration, subject only to the applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act [*i.e.*, Public Law 600], and the acts of Congress authorizing and approving the constitution.

“All departments, agencies, and officials of the executive branch of the Government should faithfully

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and carefully observe and respect this arrangement in relation to all matters affecting the Commonwealth of Puerto Rico.” 26 Fed. Reg. 6695.

Subsequent administrations made similar statements. See Liebowitz, *The Application of Federal Law to the Commonwealth of Puerto Rico*, 56 Geo. L. J. 219, 233, n. 60 (1967) (citing message from President Johnson).

The Department of State, acting for the President and for the Nation, wrote a memorandum to the United Nations explaining that the United States would no longer submit special reports about the “economic, social, and educational conditions” in Puerto Rico because Puerto Rico was no longer a non-self-governing Territory. U. N. Charter, Art. 73(e) (requiring periodic reports concerning such Territories). Rather, the memorandum explained that Puerto Rico had achieved “the full measure of self-government.” Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information Under Article 73(e) of the Charter With Regard to the Commonwealth of Puerto Rico, in A. Fernós-Isern, *Original Intent in the Constitution of Puerto Rico* 154 (2d ed. 2002). The memorandum added that “Congress has agreed that Puerto Rico shall have, under [its] Constitution, freedom from control or interference by the Congress in respect to internal government and administration.” *Id.*, at 153.

The United Nations accepted this view of the matter, the General Assembly noting in a resolution that “the people of the Commonwealth of Puerto Rico . . . have achieved a new political status.” Resolution 748 VIII, in *id.*, at 142. The General Assembly added that “the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.”

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Ibid.; see also United Nations and Decolonization, Trust and Non-Self-Governing Territories (1945–1999), online at <http://www.un.org/en/decolonization/nonselfgov.shtml> (as last visited June 3, 2016) (noting that Puerto Rico underwent a “Change in Status” in 1952, “after which information was no longer submitted to the United Nations” concerning this former “[t]rusteeship”).

The Department of Justice, too, we add, until this case, argued that Puerto Rico is, for Double Jeopardy Clause purposes, an independently sovereign source of its criminal laws. See, e.g., *United States v. Lopez Andino*, 831 F. 2d 1164, 1168 (CA1 1987) (accepting the Government’s position that “Puerto Rico is to be treated as a state for purposes of the double jeopardy clause”), cert. denied, 486 U. S. 1034 (1988).

As to the Judicial Branch, this Court has held that Puerto Rico’s laws are “state statutes” within the terms of the Three-Judge Court Act. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974). In doing so, we wrote that the 1952 events had led to “significant changes in Puerto Rico’s governmental structure”; that the Commonwealth had been “‘organized as a body politic by the people of Puerto Rico under their own constitution’”; and that these differences distinguish Puerto Rico’s laws from those of other Territories, which are “‘subject to congressional regulation.’” *Id.*, at 672–673; see also, e.g., *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U. S. 572, 597 (1976) (Congress granted Puerto Rico “a measure of autonomy comparable to that possessed by the States”); *Rodriguez v. Popular Democratic Party*, 457 U. S. 1, 8 (1982) (“Puerto Rico, like a State, is an autonomous political entity, sovereign over matters not ruled by the [Federal] Constitution” (internal quotation marks omitted)).

Finally, as to the Legislative Branch, to my knowledge since 1950 Congress has never—I repeat, *never*—vetoed or

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modified a local criminal law enacted in Puerto Rico.

Sixth, Puerto Rico's Supreme Court has consistently held, over a period of more than 50 years, that Puerto Rico's people (and not Congress) are the "source" of Puerto Rico's local criminal laws. See, e.g., *Pueblo v. Castro Garcia*, 20 P. R. Offic. Trans. 775, 807–808 (1988) ("Puerto Rico's . . . criminal laws . . . emanate from a different source than the federal laws"); *R. C. A. Communications, Inc. v. Government of the Capital*, 91 P. R. R. 404, 415 (1964) (transl.) (Puerto Rico's "governmental powers . . . flow from itself and from its own authority" and are not "merely delegated by Congress"); *Ramirez de Ferrer v. Mari Bras*, 144 D. P. R. 141, ___, 1997 WL 870836, *4 (Westlaw transl.) (Puerto Rico's "governmental powers . . . emanate from the will of the people of Puerto Rico"); see also *Pueblo v. Figueroa*, 77 P. R. R. 175, 183 (1954) (finding that it was "impossible to believe that" the Puerto Rican Constitution is "in legal effect" simply "a Federal law"); cf. *Figueroa v. Puerto Rico*, 232 F. 2d 615, 620 (CA1 1956) ("[T]he constitution of the Commonwealth is not just another Organic Act of Congress" "though congressional approval was necessary to launch it forth").

Seventh, insofar as Public Law 600 (and related events) grants Puerto Rico local legislative autonomy, it is particularly likely to have done so in respect to local criminal law. That is because Puerto Rico's legal system arises out of, and reflects, not traditional British common law (which underlies the criminal law in 49 of our 50 States), but a tradition stemming from European civil codes and Roman law. In 1979 Chief Justice Trías Monge wrote for a unanimous Puerto Rico Supreme Court that the Commonwealth's laws were to be "governed . . . by the civil law system," with roots in the Spanish legal tradition, not by the "common-law principles" inherent in "'American doctrines and theories'" of the law. *Valle v. American Int'l Ins. Co.*, 8 P. R. Offic. Trans. 735, 736–738 (1979). Con-

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siderations of knowledge, custom, habit, and convention argue with special force for autonomy in the area of criminal law. Cf. *Diaz v. Gonzalez*, 261 U. S. 102, 105–106 (1923) (Holmes, J., for the Court) (cautioning that federal courts should not apply “common law conceptions” in Puerto Rico, because the island “inherit[ed]” and was “brought up in a different system from that which prevails here”).

I would add that the practices, actions, statements, and attitudes just described are highly relevant here, for this Court has long made clear that, when we face difficult questions of the Constitution’s structural requirements, longstanding customs and practices can make a difference. See *NLRB v. Noel Canning*, 573 U. S. ___, ___–___ (2014) (slip op., at 7–8) (“[I]t is equally true that the longstanding practice of the government can inform our determination of what the law is” (citation and internal quotation marks omitted)); see also, e.g., *Mistretta v. United States*, 488 U. S. 361, 401 (1989); *Dames & Moore v. Regan*, 453 U. S. 654, 686 (1981); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 610–611 (1952) (Frankfurter, J., concurring); *The Pocket Veto Case*, 279 U. S. 655, 689–690 (1929); *Ex parte Grossman*, 267 U. S. 87, 118–119 (1925); *United States v. Midwest Oil Co.*, 236 U. S. 459, 472–474 (1915); *McPherson v. Blacker*, 146 U. S. 1, 27 (1892); *McCulloch v. Maryland*, 4 Wheat. 316, 401 (1819); *Stuart v. Laird*, 1 Cranch 299 (1803). Here, longstanding customs, actions, and attitudes, both in Puerto Rico and on the mainland, uniformly favor Puerto Rico’s position (i.e., that it is sovereign—and has been since 1952—for purposes of the Double Jeopardy Clause).

This history of statutes, language, organic acts, traditions, statements, and other actions, taken by all three branches of the Federal Government and by Puerto Rico, convinces me that the United States has entered into a compact one of the terms of which is that the “source” of

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Puerto Rico's criminal law ceased to be the U. S. Congress and became Puerto Rico itself, its people, and its constitution. The evidence of that grant of authority is far stronger than the evidence of congressional silence that led this Court to conclude that Indian tribes maintained a similar sovereign authority. Indeed, it is difficult to see how we can conclude that the tribes do possess this authority but Puerto Rico does not. Regardless, for the reasons given, I would hold for Double Jeopardy Clause purposes that the criminal law of Puerto Rico and the criminal law of the Federal Government do not find their legitimacy-conferring origin in the same "source."

I respectfully dissent.



The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)

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Summary

Representative Duffy introduced H.R. 5278, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), on May 18, 2016. This bill is a revised version of H.R. 4900, introduced by Representative Duffy on April 12, 2016. The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016. Amendments include technical corrections and extensions of certain studies on the Puerto Rico government and economy. The major provisions of the bill were unaffected. The House passed an amended version of H.R. 5278, which is organized into seven titles, on June 9, 2016, (297-127). The Senate approved the measure (S. 2328) on June 29, 2016 (68-30). On June 30, 2016, President Obama signed the bill into law.

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) would create a structure for exercising federal oversight over the fiscal affairs of territories. PROMESA would establish an Oversight Board with broad powers of budgetary and financial control over Puerto Rico. PROMESA also would create procedures for adjusting debts accumulated by the Puerto Rico government and its instrumentalities and potentially for debts of other territories. Finally, PROMESA would expedite approvals of key energy projects and other “critical projects” in Puerto Rico.

The current version of PROMESA (H.R. 5278) differs from the previous version (H.R. 4900) in several ways, although most sections are similar or identical. Many changes clarified or modified existing provisions, although some provisions were added or altered and others were dropped. For instance, H.R. 4900 would have allowed other territories, through normal political processes, to request setup of an Oversight Board.

The structure and appointment process for the board was modified to allow the President to select one board member at his sole discretion. The process by which congressional leaders would submit lists of potential board members was specified in more detail. H.R. 5278 also specifies that the board could only begin to establish bylaws and take other major actions once all members were appointed. In H.R. 4900, by contrast, the board could act in certain ways, such as setting a schedule for formulation of Fiscal Plans, once four members were appointed. The powers of the board were also modified in some ways and the independence of the board was strengthened.

Other changes include a new provision that empowers the Chief Justice of the U.S. Supreme Court to appoint a presiding judge for Title III debt adjustment cases in which the territory is a party, while the chief judge of the applicable Court of Appeals would appoint the presiding judge for cases involving only the instrumentalities of the territory. The relationship between Title VI collective action procedures to reach debt modification agreements and the Title III debt adjustment process was also modified. A provision to allow a transfer of certain federally controlled parts of Vieques Island to Commonwealth control was dropped. The time period that the Puerto Rico governor could propose, subject to board approval, to set a training wage below the usual federal minimum wage but above a \$4.25/hour floor was shortened from five to four years, or when the Oversight Board terminates, if sooner. A public comment period provision was added to the Title V expedited approval process. Mandates for reports from a congressional task force and the Government Accountability Office (GAO) were also added.

The report presents a brief description of Puerto Rico, its relationship with the federal government, and its fiscal challenges. A short overview of the bill, along with a comparison with previous legislation involving control boards, follows. The body of the report provides a section-by-section description of H.R. 5278. **Appendix A** gives a background on Puerto Rico’s fiscal

situation and aspects relevant to H.R. 4900. **Appendix B** contains a summary of provisions of the federal Bankruptcy Code cited in H.R. 5278.

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This report provides a summary and analysis of H.R. 5278, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which Representative Duffy introduced on May 18, 2016.¹ This bill is a revised version of H.R. 4900, which Representative Duffy had introduced on April 12, 2016.² The House Committee on Natural Resources had circulated two discussion drafts in late March 2016 similar in structure to H.R. 4900 and H.R. 5278.³

The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016.⁴ Amendments agreed to include technical corrections and extensions of certain studies on the Puerto Rico government and economy, among others. The major provisions of the bill, however, were unaffected.⁵ Most sections are similar or identical. Many changes clarified or modified existing provisions, although some new provisions were added and other provisions were dropped. The measure is organized into seven titles, which are summarized below.

The House Rules Committee issued a rule (H.Res. 770) that made consideration of eight amendments in order.⁶ The House passed an amended version of H.R. 5278 on June 9, 2016, by a 297-127 vote. Seven amendments were agreed to, but a proposal to strike a minimum wage provision (§403) was not. According to that rule, the text of the measure was inserted into an unrelated Senate-passed bill (S. 2328) upon House passage. The Senate then concurred with the House amendment to S. 2328 on June 29, 2016, by a 68-30 vote, thus approving PROMESA. The President signed the bill on June 30, 2016.

A brief description of Puerto Rico, its relationship with the federal government, and its fiscal challenges is presented below. A short overview of the bill, along with a comparison with previous legislation involving control boards, follows. The body of the report provides a section-by-section description of H.R. 5278.

Appendix A also describes other measures introduced to address Puerto Rico's fiscal condition.

Appendix A gives a background on Puerto Rico's fiscal situation and aspects relevant to H.R. 4900.

Appendix B contains a summary of provisions of the federal Bankruptcy Code cited in H.R. 5278.

Brief Overview

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) would create a structure for exercising federal oversight over the fiscal affairs of territories. PROMESA would establish an Oversight Board with broad powers of budgetary and financial control over Puerto Rico. PROMESA also would create procedures for adjusting debts accumulated by the Puerto Rico government and its instrumentalities. PROMESA would also expedite approvals of key energy projects and other "critical projects" in Puerto Rico.

Changes in H.R. 5278 Compared to H.R. 4900

The current version of PROMESA (H.R. 5278) differs from the previous version (H.R. 4900) in several ways. The structure and appointment process for the board was modified to allow the President to select

¹ The word "promesa" means promise in Spanish.

² An earlier congressional distribution memorandum that analyzed H.R. 4900 is available upon request from the Coordinator.

³ One discussion draft was released on March 24, 2016, and the second was released on March 29, 2016.

⁴ U.S. Congress, House Committee on Natural Resources, Puerto Rico Oversight, Management, and Economic Stability Act, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016).

⁵ H.R. 5278 was referred to the House Committees on Natural Resources as well as the committees on Judiciary; Education and the Workforce; and Small Business. The latter committees could have considered provisions falling within each of their jurisdictions.

⁶ U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

one board member at his sole discretion. The process for nominating and appointing board members was modified and specified in greater detail.

The powers of the board were also modified in some ways. For example, H.R. 5278 specifies that the board could only begin to establish bylaws and take other major actions once all members were appointed. In H.R. 4900, by contrast, the board could take certain actions, such as setting a schedule for formulation of Fiscal Plans, once four members were appointed (§201). Other changes would strengthen the independence of the board. The board was also empowered to investigate how Puerto Rico government bonds were sold to small investors.⁷

Other changes include a new provision that empowers the Chief Justice of the U.S. Supreme Court to appoint a presiding judge to conduct Title III debt adjustment cases in which the territory is a party. For cases involving only the instrumentalities of the territory, the chief judge of the applicable Court of Appeals would appoint the presiding judge (§308). The relationship between Title VI collective action procedures to reach debt modification agreements and the Title III debt adjustment process was also modified. A provision to allow a transfer of certain federally controlled parts of Vieques Island to Commonwealth control was dropped. The time limit on a provision to allow a training wage below the usual federal minimum wage was changed from five to four years, or until the Oversight Board terminated. A provision (§407) was added to bar inter-debtor transactions that would violate applicable law.

H.R. 5278 also included provisions to study fiscal issues in federal territories. Mandates for a report from a congressional task force on economic growth in Puerto Rico and a report from the Government Accountability Office (GAO) on small business programs in Puerto Rico were added. A mandate for another GAO report on debt levels of territorial governments and of debt policy for subnational governments was added during the House Natural Resources Committee markup.⁸ Title VII, also added during that markup, expresses the sense of Congress that any solution to Puerto Rico's fiscal and economic crisis should include permanent, pro-growth fiscal reforms.⁹

Seven amendments were agreed to during House deliberations.¹⁰ An amendment offered by Representative Bishop, Chairman of the Committee on Natural Resources, made technical corrections; dropped a provision that would have allowed other territories to request establishment of an Oversight Board;¹¹ accelerated deadlines for appointment of Oversight Board members; modified the provision of funding for the Oversight Board; modified treatment of certain preexisting agreements with creditors; and would empower the Oversight Board to rescind laws enacted by the Puerto Rico government from May 4, 2016, until all members of the board were appointed. The latter provision would allow the board to rescind the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (PREMFRA; Act 21 of 2016).¹² An amendment offered by Representative Graves stressed the need to “preserve and maintain federally funded mass transportation assets,” such as San Juan's Tren Urbano. An amendment offered by

⁷ That provision was added by an amendment offered by Representative Graves and Representative Beyer at the House Committee on Natural Resources markup.

⁸ The mandate for that GAO report was added by an amendment offered by Representative Graves and Representative Polis.

⁹ Title VII was added by an amendment offered by Representative MacArthur.

¹⁰ For text of amendments see U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

¹¹ H.R. 4900 would have allowed other territories to request establishment of an Oversight Board through normal political processes. Inclusion of that provision appeared to reflect constitutional issues involving uniformity. The judicial remedy for such potential uniformity issues, according to Section 3 of H.R. 5278, would be to extend relevant provisions to other territories.

¹² See **Appendix A** for details.

Representative Byrne would require GAO to submit regular reports on debt levels and other fiscal information of territory governments.

CBO Cost Estimate

The Congressional Budget Office (CBO) judged that the Oversight Board that H.R. 5278 would establish should be considered part of the federal budget according to the “unified budget concept” set forth in the 1967 President’s Commission on Budget Concepts.¹³ CBO estimated that operating the Oversight Board for Puerto Rico would cost \$370 million over the period FY2017-FY2022. Section 107 of H.R. 5278 mandates that the territory’s government designate a dedicated funding source for the board, which (under the unified budget concept) would increase federal revenues by an estimated \$370 million. The net effect on the federal budget, therefore, is estimated to be zero.

Oversight Board

Title I of PROMESA would set up a Financial Management and Oversight Board with broad fiscal powers with seven voting members, along with the Puerto Rico governor (or designee) who would serve as an ex officio non-voting member. The President, as noted above, would appoint one member at his sole discretion. Congressional leaders would then each submit lists of candidates. The Speaker would submit two lists, with one restricted to candidates residing or doing business in Puerto Rico. The President would then choose members from those lists, although he could choose other candidates before September 1, 2016.¹⁴ Those candidates would be subject to Senate confirmation.

Title II charges the Oversight Board with powers to approve, for territory governments or instrumentalities of those governments (such as public corporations or municipal governments):

- Fiscal Plans;
- Budgets;
- Voluntary agreements with bondholders;
- Debt restructuring plans; and
- Critical projects eligible for expedited permitting processes.

The Oversight Board in some ways resembles the District of Columbia Financial Responsibility and Management Assistance Authority, more commonly known as the DC Control Board.¹⁵ The Oversight Board that PROMESA would establish, however, differs in many important aspects from the structure and responsibilities of the DC Control Board, which are spelled out in detail in the section-by-section analysis.

¹³ CBO, “H.R. 5278: Puerto Rico Oversight, Management, and Economic Stability Act, As ordered reported by the House Committee on Natural Resources on May 25, 2016,” June 3, 2016; <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr5278.pdf>. Also see President’s Commission on Budget Concepts, *Report*, (Washington, DC; October 1967), which stated (at p. 25) that “The budget should, as a general rule, be comprehensive of the full range of federal activities. Borderline agencies and transactions should be included in the budget unless there are exceptionally persuasive reasons for exclusion.”

¹⁴ This deadline was changed from September 30, 2016, by an amendment offered by Representative Bishop, Chairman of the Committee on Natural Resources, during House deliberations.

¹⁵ The DC Control Board was set up by the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (P.L. 104-8). The DC Control Board is currently dormant.

Adjustment of Debts

Title III of PROMESA would set up a process for adjustment of debts by a territorial government or an instrumentality of a territorial government. Eligibility for the restructuring process would first require approval of at least five of the seven voting members of the Oversight Board to issue a “restructuring certificate.”¹⁶ Under terms of H.R. 5278, the Oversight Board would take the place of a debtor government or instrumentality in the proceedings to adjust debts. Thus, the roles of filing the petition and proposing a plan would be taken by the Oversight Board, not the debtor.

The debt restructuring process, in general, is set up to ensure fair and equitable treatment of creditors. The treatment of public sector pensions is not addressed explicitly, although pensions are typically included when governments undergo debt restructuring processes.¹⁷ The Oversight Board may order a study of pension systems if it determines that they are underfunded.

Title VI would create a process for creditor collective actions, which resemble collective actions clauses (CACs) that are a common feature of sovereign debt contracts. CACs typically allow some subset of creditors holding a supermajority of the face value of a given debt category to enter into an agreement that would bind remaining creditors within that category. Title VI would require the Oversight Board, in consultation with the Puerto Rico government and its subunits that have outstanding debts, to set up voting pools for the CAC process. Separate pools, in general, would correspond to the relative priority or security arrangements of bondholders. Triggering the Title VI CAC provision for a voting pool would require a two-thirds vote (by value of eligible debt), in which holders of at least half of the eligible debt participated. Creditors in those voting pools not assenting to a modification agreement would retain certain rights, which might be affected by a subsequent Title III debt restructuring. Creditors agreeing to a Title VI CAC provision, in general, would then avoid Title III debt restructuring.

Other Provisions in H.R. 5278

Title IV of PROMESA includes several diverse provisions. Puerto Rico’s right to determine its future political status is affirmed (§402). The Governor, with board approval, could reduce the minimum wage for most workers in Puerto Rico under the age of 25 for a four-year period (§403). Title IV also includes an automatic stay on litigation (§405). H.R. 5278 lacks a provision in H.R. 4900 that would have allowed a transfer of certain parts of Vieques Island from federal to Commonwealth control.¹⁸

Title V provides for accelerated processes for the review and permitting of infrastructure projects designated as “Critical Projects.” A Revitalization Coordinator would be appointed by the Puerto Rico Governor from a list provided by the Oversight Board. The Revitalization Coordinator would oversee the selection and review of Critical Projects, in consultation with the Governor. H.R. 5278 includes a new provision for a public comment period. The Revitalization Coordinator would have to respond to those comments before proceeding with a project. A previous Puerto Rico Governor, Luis Fortuño Burset, invoked similar authorities in 2010 and 2011.¹⁹ Some contend that Puerto Rico has had difficulty in

¹⁶ By contrast, a municipality seeking protection under chapter 9 of the Bankruptcy Code would require approval by a state government and a federal judge.

¹⁷ Section 201 requires that a Fiscal Plan “provide adequate funding.”

¹⁸ Issues related to Vieques Island can be addressed by David M. Bearden, Specialist in Environmental Policy, 7-2390, dbearden@crs.loc.gov.

¹⁹ See Executive Order OE-2010-034, July 19, 2010: http://app.estado.gobierno.pr/Ordenes_Ejecutivas/2010/OE-2010-034.pdf; and Preamble of Act 32-2011, March 14, 2011; <http://www.oslpr.org/download/en/2011/A-0032-2011.pdf>.

completing major infrastructure projects in the past.²⁰ Others argued that environmental consequences of those projects were not evaluated with sufficient care.²¹

Section-by-Section Summary and Analysis of H.R. 5278

Basic Legal Information

The first seven sections set out basic legal information regarding H.R. 5278.

Section 1: Short Title²²

Section 1 of H.R. 5278 (hereinafter “bill”) provides that this bill may be cited as the “Puerto Rico Oversight, Management, and Economic Stability Act” or “PROMESA.” The bill contains seven titles: Title I (Establishment and Organization of Oversight Board), Title II (Responsibilities of Oversight Board), Title III (Adjustments of Debts), Title IV (Miscellaneous Provisions), Title V (Puerto Rico Infrastructure Revitalization), Title VI (Creditor Collective Action); and Title VII (Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms).

Section 2: Effective Date

Section 2 provides that the bill’s provisions shall take effect on the date of enactment, except that Title III (Adjustment of Debts) shall apply to cases commenced under that title on or after the date of enactment, and Title III and IV (Miscellaneous Provisions) shall apply with respect to debts, claims, and liens created before, on, or after such date.

Section 3: Severability

Section 3 contains a severability clause, which provides that if any provision of the bill is held invalid, the remainder of the bill or any application thereof will not be affected, except that Title III is not severable from Titles I or II, and Titles I or II are not severable from Title III. If any provision of the bill is held invalid on the ground that the provision fails to treat similarly situated territories uniformly, then the court shall, in granting a remedy, order that the provision of the bill or the application thereof be extended to any other similarly situated territory, provided that the legislature of that territory adopts a resolution signed by the territory’s governor requesting the establishment and organization of a Financial Oversight and Management Board pursuant to Section 101.

Sections 4 and 5: Supremacy and Definitions

Section 4 provides that the provisions of the bill will prevail over any general or specific provision of territorial law, state law, or regulation that is inconsistent with the bill, and Section 5 provides definitions for various terms used in the bill.²³

²⁰ For instance, a Puerto Rico Electric Power Authority (PREPA) document claimed that “Instability of board and management due to political cycles has complicated long-term planning required for key infrastructure projects that would have diversified PREPA’s fuel mix and facilitated environmental compliance.” Others contend that planning for some of those projects did not evaluate potential environmental consequences sufficiently carefully. See PREPA, PREPA’s Transformation: A Path to Sustainability, June 1, 2015; <http://www.gdb-pur.com/documents/PREPARecoveryPlan6-1-15.pdf>.

²¹ Carmelo Ruiz-Marrero, “Puerto Rico Divided Over Energy Future,” *Guardian*, January 26, 2012; <http://www.theguardian.com/environment/2012/jan/26/puerto-rico-clean-energy>.

²² Summary of Sections 1 through 7 was authored by Kenneth Thomas, Legislative Attorney, 7-5006, kthomas@crs.loc.gov.

Sections 6 and 7: Placements and Compliance with Federal Laws

Section 6 indicates where the bill language should be placed in the United States Code, while Section 7 provides that nothing in the bill should be construed as impairing or relieving a territorial government or instrumentality from compliance with federal laws or requirements or territorial laws and requirements implementing a federally authorized or federally delegated program, protecting the health, safety, or environment of persons in such territory.

Title I: Establishment and Organization of Oversight Board²⁴

Title I would create an oversight board for Puerto Rico and would allow for the creation of such boards in other territories.²⁵

Section 101: Territory Financial Oversight and Management Board

Section 101 of this title would establish a Financial Oversight and Management Board (Oversight Board) for the Commonwealth of Puerto Rico and would allow for the creation of such oversight boards in other U.S. territories only if enabling legislation is passed by the legislative body of that territory and is signed by the territory's governor. The act identifies Article IV, Section 3 of the Constitution as granting Congress plenary authority and power to "dispose of and make all needful Rules and Regulations respecting the Territory...." An oversight board established under H.R. 5278 would be an entity of the territorial government and not an agency, department, or instrumentality of the U.S. government. The bill would grant to an oversight board, established in accordance with its provisions, the power to designate any territorial instrumentality²⁶ as subject to the provisions of the act.

References to the Oversight Board below generally mean the board that H.R. 5278 would establish for Puerto Rico, although most provisions would also apply to oversight boards that might be set up in the future for other territories.

The bill would require the governor, at the discretion of the Oversight Board, to include the budget of any covered territorial instrumentality subject to legislative approval in the Territory Budget. The bill would also require the governor to submit to the Oversight Board monthly and quarterly reports regarding a covered territorial instrumentality. However, the bill would exclude any covered territorial instrumentality from inclusion in the Territory Budget if the applicable territory law does not require legislative approval of the budget of the covered territorial instrumentality.

The bill would require the governor of the territory to include certain territorial instrumentalities, whose budget is subject to review and approval by the territory's legislature, in its Fiscal Plan. Under provisions of the bill, the Oversight Board could require, at its discretion, the governor of a territory to develop separate budgets and fiscal plans for territorial instrumentalities whose budget is not subject to legislative approval. The Oversight Board, at its discretion, also may exclude any territorial instrumentality from requirements of this bill.

(...continued)

²³ Definitions relevant to other sections of the bill are discussed elsewhere in this report.

²⁴ Analysis of Title I was authored by Eugene Boyd, Analyst in Federalism & Economic Development Policy, 7-8689, eboyd@crs.loc.gov.

²⁵ The possibility of creating a process for establishing oversight boards for other territories, according to discussion at the May 25, 2016, markup, may reflect concern that a lack of uniformity might present constitutional issues.

²⁶ Section 5(19)(A) of the bill defines territorial instrumentality as "any political subdivision, public agency, instrumentality, or public corporation of a territory, and this term should be broadly construed to effectuate the purposes of this Act."

Term and Appointments

Under provisions of the bill, the members of the Board would serve concurrent three-year terms, but could continue to serve beyond the three-year period until a successor has been appointed. An oversight board created under the provisions of the bill would be comprised of seven (7) voting members with six (6) selected by the President from a list of recommendations submitted by House and Senate leadership. The President, if acting with sufficient promptness, could also select names not on those lists, although those nominees would be subject to Senate confirmation. If the President appointed an individual from a list, Senate confirmation would not be required.

- The Speaker of the House would submit two separate lists of at least three (3) names. One of the lists shall be comprised of individuals whose primary residence or primary business is in Puerto Rico.
- The Senate majority leader would submit the names of at least four (4) individuals.
- The minority leader of the House would submit the names of three (3) individuals; and
- The minority leader of the Senate would submit the names of at least three (3) individuals.²⁷

The President would select two individuals from the Senate majority leader's list and one individual from each of the other lists. The President could also name members not on those lists, although those appointments would have to be made with the advice and consent of the Senate. If all appointments were not made by September 1, 2016, however, then the President would be mandated to choose nominees to fill remaining vacancies from appropriate lists by September 15, 2016.²⁸

The governor of the territory or his designee shall serve as an eighth non-voting (*ex officio*) member of the Oversight Board. Thus, the governor could participate in deliberations, but would not vote on decisions of the board. The bill would allow the appointed members of the board, at their discretion, to conduct the business of the Oversight Board in executive session effectively barring the public and the governor from participating in such sessions.

The Oversight Board would select a chair from among the seven voting members. Members of the Oversight Board would serve without compensation, although they may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties. The President could only remove a member for cause. The Oversight Board would be charged with developing and approving its own bylaws, rules, and procedures needed to carry out its responsibilities under the bill. In order to meet this directive, the Oversight Board may hire professionals to assist in the process. The adopted bylaws, rules, and procedures are to be submitted to the governor, territorial legislature, the President, and Congress and are to be considered public documents. The bill would require an affirmative vote of the majority of the

²⁷ By contrast, the act (P.L. 104-8) that created the District of Columbia control board (formally known as the Financial Responsibility and Management Assistance Authority) required that the control board be comprised of five members appointed by the President after consulting with the chairs of the appropriation committees of the House and Senate and the Chair of the Committee on Government Reform and Oversight of the House of Representatives and the Chair of the Senate Governmental Affairs Committee. The President, in appointing members of the control board, was required to designate one of the five appointees, chair of the control board. Members of the initially appointed control board served three-year terms. Subsequently appointed board members served staggered terms with one member serving a one-year term, two members serving two-year terms, and two members serving three-year terms. The act creating the District's control board also included expanded responsibilities for the office of inspector general. The act established the office as an independent agency, responsible for identifying issues of waste, fraud and abuse, and included the powers to issue subpoenas and to refer findings of investigations and audits for criminal prosecution. H.R. 5278 includes no similar provision.

²⁸ An amendment offered by Representative Bishop during House deliberations changed the first deadline from September 30, 2016, and the second deadline from December 1, 2016.

members of the Oversight Board in order to (1) approve a fiscal plan under Section 201 of the bill; (2) approve a budget under Section 202 of the bill; (3) cause legislative acts not to be enforced under Section 204 of the bill; or (4) approve or disapprove an infrastructure project as a Critical Project as defined by Section 503 of the bill.

Qualifications of Board Members

The bill would require that the President appoint individuals who meet the following two qualifications. Each must

- have expertise in finance, municipal bond markets, management, law, or the organization and operations of business or government; and
- not be a candidate for elected office nor an elected or appointed official, nor an employee of the territorial government, nor a former elected official of the territorial government.²⁹

The latter qualification would prohibit a voting member of the Oversight Board from being a candidate for elected office, as an elected or an appointed official could be perceived as being in conflict with the provision designating the governor, or his designee, as an *ex officio* member of the Oversight Board. Although nonvoting, the governor, or his designee, could, at the discretion of the Oversight Board, participate in the deliberations of the board when the board is not in executive session.

Section 102: Location of Oversight Board

The bill would require that oversight boards, including the board to be established for Puerto Rico, maintain an office in the territory and such additional offices as it deems appropriate. The bill also would allow the board to request the use of the facilities of any department or agency of the United States. The head of each federal agency may set the terms and conditions allowing for the use of the agency's facilities by the Oversight Board.

Section 103: Executive Director and Staff of Oversight Board

The Chair of the Board, with the consent of Board members, would be charged with hiring an Executive Director (ED). The Board would be responsible for establishing salary compensation for the ED. The bill does not establish a ceiling or limits on the amount of compensation to be paid the ED. The bill conveys to the ED the power to hire and fix the pay of additional personnel employed by the Board. However, no one hired by the ED may be paid at a rate greater than the salary paid to the ED. The bill specifically identifies the position of Revitalization Coordinator, as identified in Title V, among the staff to be hired by the governor based on nominations submitted by the Oversight Board.

Section 104: Powers of the Board

The bill would exempt the Board and its staff from the laws of Puerto Rico governing procurement and allow for the detailing of employees of federal agencies and agencies of the Puerto Rico government to the Board on a reimbursable or non-reimbursable basis. The Board would have the power to

- hold hearings and seek testimony;

²⁹ The DC Control Board Act required that control board members: (1) maintain a primary residence or a primary place of business in the District of Columbia; (2) possessed expertise in finance, management, law, or the organization and operations of business or government; (3) did not provide goods or services to the government of the District of Columbia; and (4) was not an officer or employee of the District of Columbia.

- obtain information, including written and electronic documents and data from federal agencies (with the consent of the agency head) and agencies and entities of the government of Puerto Rico;
- accept, use, and dispose of gifts, bequests, and donations of real and personal property for the purpose of aiding the work of the board;³⁰
- issue subpoenas;
- request administrative support services from the U.S. General Services Administration (GSA);
- enter into contracts;
- enforce laws of Puerto Rico prohibiting public sector employees from participating in a labor strike or lockout;
- initiate civil actions to carry out its responsibilities; and
- investigate how Puerto Rico government bonds were sold to small investors.³¹

The bill would allow the Oversight Board to obtain information on the nature and aggregate amount of claims held by each creditor or organized group of creditors from those creditors seeking to participate in voluntary negotiations regarding debt restructuring.

Most importantly, the bill would grant an Oversight Board, at its sole discretion, the power to certify voluntary debt restructuring agreements entered into between the territory or territorial instrumentality and holders of its debt instruments. Upon review of such an agreement, the Oversight Board must certify that the agreement provides for a sustainable level of debt and is in conformance with the territory or territorial instrumentality's certified Fiscal Plan. The act would grandfather in voluntary agreements executed before its enactment.

Title I also includes a provision that would make it a misdemeanor to knowingly provide false and misleading information, including projections and estimates to the Board, or to refuse or fail to take any action ordered by the Board. Such violations are subject to a \$1,000 fine or one-year imprisonment or both, in addition to administrative disciplinary actions, which may include suspension from duty without pay or removal from office by order of the Governor or the Board. Should such a violation occur by an officer or employee of the government of Puerto Rico, the Governor would be required to report all pertinent facts to the Board, including a statement of actions taken.

Section 105: Exemption from Liability for Claims

Section 105 would shield the board and its employees from liability claims.

Section 106: Treatment of Actions Arising from Act

Section 106 would mandate that any legal actions against the board are to be brought before the U.S. District Court for the covered territory or the U.S. District Court for the District of Hawaii in instances where the covered territory does not have a district court. The bill would provide expedited judicial review by the courts, including the Supreme Court, of legal challenges to the act or the actions of an Oversight Board. The bill would prohibit any court orders providing declaratory judgment or injunctive

³⁰ The bill would require the Oversight Board to publicly disclose the identity of donors within 30 days of the receipt of a gift, bequest, or donation. P.L. 104-8, creating the District of Columbia control board, included similar language allowing for the acceptance of gifts, bequest, and donations; however, P.L. 104-8 did not require the public disclosure of the identities of donors.

³¹ This provision was added during the House Committee on Natural Resources markup.

relief against an Oversight Board from taking effect during the time the court challenge is pending before a court, or the period during which an appeal could be filed, or before a court may render a decision on appeal, except for court orders intended to remedy constitutional violations. The bill would exempt from judicial challenges Oversight Board certifications of voluntary debt restructuring agreements.

Section 107: Funding of Board Operations

Section 107 of the bill would require the Oversight Board to submit an annual budget to the President, the House Committee on Natural Resources, the Senate Committee on Energy and Natural Resources, and the legislature and governor of Puerto Rico or any covered territory. The bill would allow the Oversight Board to use its powers to ensure that there are sufficient funds to cover its operations. At its discretion, the Oversight Board could submit a budget to the governor and legislature of Puerto Rico. The bill would require the government of Puerto Rico, within 30 days of enactment of the bill, to designate a dedicated funding source for the operations of the Oversight Board. The source of funding for the operations of the Oversight Board, once initially approved, would not be subject to subsequent legislative appropriations.³²

Unlike the act creating the District of Columbia control board, which established target dates for the submission of proposed budgets to the President for transmittal to Congress for its approval, H.R. 5278 would convey to an Oversight Board for Puerto Rico the “sole and exclusive discretion” in determining its annual budget.

Section 108: Autonomy of the Oversight Board

Section 108 of the bill would prohibit the governor or the legislature of Puerto Rico from enacting any laws or taking any actions that would interfere with or attempt to nullify the actions or activities of the Oversight Board.

Section 109: Ethics

Section 109 of the bill would subject members of an Oversight Board and its staff to federal conflict of interest and financial disclosure requirements under 18 U.S.C. §208, which is the principal conflict of interest law for all executive branch officials. However, it is unclear if these provisions, as well as the financial disclosure provisions of the Ethics in Government Act of 1978, would apply to an oversight board since such a board would not be a federal agency and its members would not be federal officials for these purposes.

Title II: Responsibilities of Oversight Board³³

This title lays out the process for the submission, approval, and certification of fiscal plans and budgets for Puerto Rico and its territorial instrumentalities.

³² This provision is a significant departure from the provisions governing funding of operations of the District of Columbia control board. P.L. 104-8 required the District’s control board to submit an annual budget for its operations to the President for inclusion in the District’s annual budget, which must be approved by Congress, by a date certain (May1) prior to the first day the fiscal year. In the case of the FY1995 budget, the year in which the measure was enacted, no later than July 15, 1995.

³³ Analysis of Title II was authored by Eugene Boyd, Analyst in Federalism & Economic Development Policy, 7-8689, eboyd@crs.loc.gov.

Section 201: Approval of Fiscal Plans

The Oversight Board, upon the selection and appointment of all of its members and the chair of the board, shall submit to the Governor of Puerto Rico a notice delineating a schedule for the development, submission, approval, and certification of fiscal plans, including revisions to fiscal plans that had been previously certified. Although the Oversight Board may consult with the Governor regarding the schedule, it is the sole responsibility of the Oversight Board. Under provisions of the bill, a fiscal plan developed by the Oversight Board would cover, at minimum, a period of five fiscal years and would focus on improving the territory's access to capital markets. Section 201(b) identifies 14 specific components and objectives a fiscal plan should address.³⁴

The bill outlines three means by which a fiscal plan may be certified as compliant with the 14 requirements outlined in Section 201(b) of the bill. They include the following:

- **A fiscal plan submitted by the governor and approved by the Oversight Board.** If the fiscal plan meets the requirements outlined in the bill, as determined by the Oversight Board, then the board shall certify the fiscal plan as approved. If the fiscal plan is found to be deficient then the Oversight Board could issue a “notice of violation” which includes recommendations to correct the deficiencies.
- **A fiscal plan developed and approved by the Oversight Board.** Should the governor fail to take corrective action to address deficiencies identified by the Oversight Board within the timeframe specified by the Oversight Board, then the Oversight Board, at its sole discretion, could develop and submit a fiscal plan together with a compliance certificate to the governor and legislature of Puerto Rico and the plan would be considered approved.
- **Fiscal plan jointly developed by the Oversight Board and the Governor.** The bill would allow the Oversight Board and Governor to work collaboratively to develop a consensus fiscal plan.

Section 202: Approval of Budgets

Section 202 would mandate that the Oversight Board, upon the selection and appointment of all of its members and the chair, submit to the Governor of Puerto Rico a notice delineating a schedule for the development, submission, approval, and certification of proposed budgets to be submitted by the Governor and legislature for the Oversight Board approval. The Oversight Board, at its discretion, would be responsible for determining the number of fiscal years to be covered by the budget submission.

The Oversight Board would be responsible for submitting revenue estimates for the period covered by the proposed budgets to the Governor and legislature for use by the Governor in developing budgets to be submitted for review and approval to the Oversight Board.³⁵ The bill outlines three means by which a proposed budget could be approved.

- **Budget Submission by Governor.** If the Oversight Board determines that the proposed budget is compliant with the applicable fiscal plan then the bill would allow the

³⁴ This includes providing realistic revenue and expenditure estimates; funding essential public services, sufficiently funding public pension systems, eliminating structural deficits and providing sustainable debt service; improving financial controls and oversight; investing in capital projects that promote economic growth; adopting and implementing management reforms recommended by the oversight board; ensuring that assets of the covered territory or covered territorial instrumentality are not misused; and that a fiscal plan respect the lawful priorities and lawful liens in effect before the enactment of the bill.

³⁵ Under P.L. 104-8, it is the responsibility of the Chief Financial Officer to develop and submit revenue estimates to the mayor to assist in the formula of a budget.

Oversight Board to approve the proposed budget and submit it to the legislature for approval. If the proposed budget is found to be non-compliant with the applicable fiscal plan then the bill would allow the Oversight Board to issue a “notice of violation” which would include recommendations to correct the deficiencies.

- **Oversight Board Budget.** Should the governor fail to submit a compliant budget then the bill would permit the Oversight Board to develop and submit to the Governor and legislature a revised compliant budget for the territory, and only to the Governor in the case of a territorial instrumentality.
- **Budget Adopted by Legislature.** The bill would direct the territory’s legislature to adopt a proposed budget for submission to the Oversight Board. If the proposed budget is found to be non-compliant with the applicable fiscal plan then the Oversight Board may issue a “notice of violation” which includes recommendations to correct the deficiencies.
- **Oversight Board Budget.** Should the legislature fail to submit a compliant budget then the bill would allow the Oversight Board to develop and submit to the Governor and legislature a revised compliant budget for the territory.
- **Certification of Budget as Compliant.** Under provisions of the bill, if the Governor and legislature approve a territorial budget that is compliant, or if the Governor develops a budget for a territorial instrumentality that is compliant with the applicable fiscal plan then the Oversight Board could issue a certificate of compliance. If the Governor and legislature fail to develop and approve a territorial budget that would be compliant, then the Oversight Board could develop and submit a territorial budget to the Governor and legislature and such budget would be deemed approved by the Governor and the legislature. In the case of a territorial instrumentality, only the Governor could submit a proposed budget for review by the Oversight Board.
- **Budget jointly developed by the Oversight Board, the Governor, and Legislature.** The bill would allow the Oversight Board, the Governor, and the legislature to work collaboratively to develop a consensus budget for the territorial government. In the case of a territorial instrumentality, the bill would allow the Oversight Board and the Governor to work collaboratively to develop a budget.

Section 203: Effect of Finding of Noncompliance with Budget

Section 203 of the bill would establish requirements intended to identify and address inconsistencies in the projected and actual revenues and expenditures. The bill would require the Governor to submit quarterly financial reports to the Oversight Board that would identify actual cash revenues, cash expenditures, and cash flows as compared to projected cash revenues, cash expenditures, and cash flows identified in approved and certified budget. Inconsistencies in the actual and projected revenues and expenditures, if unexplained or inconsistent with the approved projections, could require the territorial government to take corrective action. If the territorial government fails to take corrective action then the Oversight Board would be required to notify House and Senate committees of jurisdiction (House Committee on Natural Resources and Senate Committee on Energy and Natural Resources), in addition to the Governor and legislature. Under provisions of the bill, the Board could direct the territorial government to take corrective action. If it failed to do so, the Oversight Board could take remedial actions designed to address the inconsistency, including reductions in nondebt expenditures, hiring freezes, and prohibiting the territorial government or territorial instrumentality from entering into any contract or financial transaction not previously approved by the board.

Section 204: Review of Activities to Ensure Compliance with Fiscal Plans

Section 204 of the bill would grant the Oversight Board the power to review any proposed legislation and all enacted laws passed by the territorial government for consistency with the budget and fiscal plan. If an enacted law is found to be inconsistent with or will interfere with the enactment of the fiscal plan and budget then the Oversight Board may take action to prevent the enforcement or application of the law. The bill would require the Oversight Board to maintain a registry of contracts and would grant the Oversight Board the power to review all contracts and rules for compliance with the approved fiscal plan. The bill would allow the Oversight Board to take any action necessary to ensure that any contract, rule, executive order, or regulation will not adversely affect compliance with the fiscal plan. In addition, the bill would prohibit a covered territory or covered territorial instrumentality from taking any action or enacting any law that would permit the transfer of funds or assets outside the normal course of business during the period following enactment of the bill but prior to the appointment of all Oversight Board members. Any action taken by the Governor or legislature authorizing the movement of assets during the interim period between the enactment of the bill and the appointment of all the members of the Oversight Board may be subject to review and reversal by the Oversight Board. The Oversight Board may not take any action that would impede the territory's ability to comply with court or administrative orders with respect to carrying out a federal program or implementing territorial laws that execute federal requirements and standards.

Section 205: Recommendations on Financial Stability and Management Responsibility

Section 205 would permit the Oversight Board to submit to the Governor and legislature recommendations intended to improve the delivery of services, to ensure compliance with the fiscal plan, and to promote financial stability and economic growth. If the territorial government rejects the management reform recommendations of the Oversight Board then the Governor or the legislature would be required to submit a statement to the President and Congress explaining why the recommendation was rejected.

Section 206: Oversight Board Responsibilities Related to Restructuring

Section 206 would mandate that the Oversight Board review and approve debt restructuring agreements, provided that the agreements meet certain requirements. The bill would also require that at least five of the six voting members of the Oversight Board approve a debt restructuring agreement.

Section 207: Oversight Board Authority Related to Debt Issuance³⁶

Section 207 would bar the government of Puerto Rico from issuing or guaranteeing debt, or taking other actions to restructure debts without the prior approval of the Oversight Board, as long as that body remains in operation. The Oversight Board would not be empowered to borrow on behalf of the Puerto Rico government.³⁷ The power to “contract and to authorize the contracting of debts,” according to Article VI, Section 2 of the Puerto Rico Constitution, is to be exercised by the Puerto Rico Legislature.³⁸

³⁶ This section authored by D. Andrew Austin, Analyst in Economic Policy, 7-6552, aaustin@crs.loc.gov.

³⁷ The March 29, 2016, House Natural Resources Committee discussion draft included a bracketed (i.e., not agreed to) provision that would have empowered the Oversight Board to borrow on behalf of the territorial government.

³⁸ Constitution of the Commonwealth of Puerto Rico; <http://welcome.topuertorico.org/constitu.shtml>. For more on legal and constitutional issues related to public debts of Puerto Rico, see Sergio Marxuach, “The Endgame: An Analysis of Puerto Rico’s Debt Structure and the Arguments in Favor of Chapter 9,” Center for a New Economy working paper, November 30, 2015.

Section 208: Required Reports

Section 208 of the bill would require the Oversight Board to submit annual reports to Congress, the President, the Governor, and the legislature describing (1) the progress made in meeting the objectives of this act; (2) assistance provided to the territorial government; and (3) recommendations that would assist the territorial government in complying with the fiscal plan for the year. In addition, the bill would require the Governor to submit to the Oversight Board, within six months of its establishment, a report documenting all existing tax abatement agreements. The Oversight Board would also issue quarterly reports, if feasible, on cash flows available to pay debt service affected by a stay or moratorium.

Section 209: Termination of Oversight Board

The Oversight Board would terminate when the Oversight Board finds that the territorial government has

- access to short-term and long-term credit markets at reasonable rates of interest; and
- achieved balanced budgets for four consecutive years.

Section 210: No Full Faith and Credit of the United States³⁹

Section 210 states that the “full faith and credit” of the U.S. government is not pledged to pay any obligation issued by a covered territory government or instrumentality; nor is the U.S. government responsible or liable for any such payment. If the United States were to be held liable for some claim, payment would be subject to appropriation. A provision was added during the House Natural Resources Committee markup to emphasize that the act would not authorize payment of federal funds for any liability of a territorial government or territorial instrumentality.⁴⁰

Section 211: Pensions⁴¹

Section 211 of H.R. 5278 would require the Oversight Board to conduct an analysis of any territorial pension system that the Oversight Board determines to be materially underfunded. The analysis would be conducted by an independent actuary. The analysis would include (1) a study of the pension plan’s benefit obligations and funding strategy over 30 years; (2) sources of funding to cover future benefit obligations; (3) a review of existing benefits and their sustainability; (4) a review of the system’s legal structure and operational arrangements; and (5) any other studies of the pension system that the Oversight Board deems necessary. Additionally, the bill would require the of future benefit obligation to be measured using an appropriate discount rate, as determined by the Oversight Board.⁴²

Section 212: Intervention in Litigation⁴³

Section 212 provides that the Oversight Board may intervene in any litigation filed against the territorial government, although the section is not intended to provide an independent basis for injunctive relief. A similar provision was included as Section 408 in H.R. 4900.

³⁹ This section authored by D. Andrew Austin, Analyst in Economic Policy, 7-6552, aaustin@crs.loc.gov.

⁴⁰ This provision was added by an amendment offered by Representative Graves.

⁴¹ This section authored by John J. Topoleski, Analyst in Income Security, 7-2290, jtopoleski@crs.loc.gov.

⁴² The Commonwealth of Puerto Rico and its instrumentalities operate several pension funds for its employees: The Employees Retirement System (for government employees); the Puerto Rico System of Annuities and Pensions for Teachers; the Commonwealth Judiciary Retirement System; the Retirement System of the University of Puerto Rico; and the Employees Retirement System of the Puerto Rico Electric Power Authority.

⁴³ This section authored by Kenneth Thomas, Legislative Attorney, 7-5006, kthomas@crs.loc.gov.

Title III: Adjustments of Debts⁴⁴

Although not included in the U.S. Bankruptcy Code⁴⁵ (Bankruptcy Code), the provisions of this title are, in many ways, similar to the chapters 9 and 11, two of the operative chapters of the Bankruptcy Code. Chapter 9 of the Bankruptcy Code governs adjustments of municipal debts. Chapter 11 governs reorganization of businesses and, in rare cases, certain individuals. Generally, such adjustment or reorganization is effectuated through a “plan” proposed by the debtor,⁴⁶ voted on by creditors, and confirmed by the court. Title III of PROMESA includes a provision for a plan of adjustment to be proposed by the debtor, voted on by the creditors, and confirmed by the court.

Section 301: Applicability of Other Laws; Definitions

Subsection (a) would make many sections of the Bankruptcy Code applicable to the process of adjusting debts under PROMESA. As a general matter, the Bankruptcy Code, in chapters 1, 3, and 5, establishes general procedures that are applicable to the operative chapters. The Bankruptcy Code sections made applicable to Title III of PROMESA are listed and described in **Appendix B**.

Section 302: Who May Be a Debtor

Neither a territory nor its instrumentalities would be eligible to be a debtor unless the territory had either requested that an Oversight Board be established or had had it established for it under Section 101 of PROMESA. The section uses the term “instrumentality” rather than “municipality”—the term used in the Bankruptcy Code. As used in the Bankruptcy Code, “municipality” includes an “instrumentality” as well as a political subdivision and a public agency.⁴⁷

Section 303: Reservation of Territorial Power to Control Territory and Territorial Instrumentalities

Section 303 is very similar to Section 903 of the Bankruptcy Code. It states that, except for some limitations in Titles I and II of PROMESA, Title III would not impair or limit the territory’s power to control itself or its instrumentalities. Similar to the Bankruptcy Code’s Section 903, this section would prohibit a territorial law that would bind a creditor to a method of composition of indebtedness unless the creditor consents to it, but only to the extent that the proposed modification prohibits the payment of principal or interest by an entity not described in Section 109(b)(2) of the Bankruptcy Code. These entities are generally domestic insurance companies, banks, savings banks, cooperative banks, and similar institutions.⁴⁸

The bill’s third subsection would preempt any “unlawful executive orders” altering, amending, or modifying the rights of those holding any debt of the territory or territorial instrumentality, or diverting funds from a territorial instrumentality to either the territory or another territorial instrumentality.

⁴⁴ This section authored by Carol A. Pettit, Legislative Attorney, 7-9496, cpettit@crs.loc.gov.

⁴⁵ 11 U.S.C. §101 *et seq.*

⁴⁶ In chapter 11 cases, creditors may propose a plan if the debtor has failed to do so within a prescribed period of time. Creditors do not have this option in chapter 9 or under Title III of PROMESA.

⁴⁷ 11 U.S.C. §101(40).

⁴⁸ It is currently unclear whether the Government Development Bank would be considered to be an entity described in Section 109(b)(2) of the Bankruptcy Code.

Section 304: Petition and Proceedings Relating to Petition

A voluntary case would begin when the Oversight Board filed a petition with the appropriate district court. The court may dismiss a petition, after notice and hearing, to which an objection has been filed. However, such dismissal cannot occur during the first 120 days after the petition has been filed. The commencement of the case would constitute an order for relief. An appeal from an order of relief would not authorize a court to delay any proceeding in the case nor to order a stay of the proceeding pending the appeal. Any debt incurred that was authorized by the court would remain valid even after a reversal on appeal.

This section would provide for joint filing of both petitions and plans as well as joint administration of affiliated cases when those cases are filed separately. Additionally, the section clarifies that PROMESA cannot be construed to permit discharge of various obligations arising under federal laws, including those related to the environment and public health or safety as well as to territorial laws enforcing federal regulations. Finally, the section clarifies that nothing in Section 304 would prevent claim holders from voting on or consenting to a proposed modification of their claim under title VI of PROMESA.

Section 305: Limitation on Jurisdiction and Powers of Court

Generally, the court would not be able to interfere in any way with any of the debtor's political or governmental powers; property or revenues; or use and enjoyment of any income-producing property unless the Oversight Board either consented to such interference or allowed it within the plan proposed by the Oversight Board. However, limitations in titles I and II of PROMESA may override this limitation.

Section 306: Jurisdiction

District courts would have original and exclusive jurisdiction of a case under Title III except:

- As provided in paragraph (2), which gives the district courts original but *not* exclusive jurisdiction of all civil proceedings arising under this title or arising in or related to cases under this title; and
- As provided in paragraph (b), which provides that the district court shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the case.

The section also would provide for removal, remand, and transfer of claims or cases,⁴⁹ as well as appeal⁵⁰ and reallocation of court staff to assure proper case management.⁵¹

Section 307: Venue

Generally, venue would be in the district court for the location of the territory or the covered territorial instrumentality. If the territory does not have a district court, venue would be proper in the U.S. District Court for the District of Hawaii. However, if the Oversight Board were to determine that those venues will not provide sufficiently for proper case management, venue would be proper in the jurisdiction outside the territory in which the Oversight Board maintained an office.

⁴⁹ H.R. 5278, §306(d).

⁵⁰ *Id.* at §306(e).

⁵¹ *Id.* at §306(f).

Section 308: Selection of Presiding Judge

For those cases in which the debtor is a territory, the Chief Justice of the U.S. Supreme Court would designate a district court judge to conduct the case. The chief judge of the court of appeals for the circuit would appoint a district court judge in other cases—other than those in which there is a motion for joint administration with the territory.

Section 309: Abstention

This section clarifies that a district court, in the interests of justice, may abstain from hearing a proceeding related to a case under title III.

Section 310: Applicable Rules of Procedure

The Federal Rules of Bankruptcy Procedure would apply to any case under Title III as well as to all related civil proceedings.

Section 311: Leases

Leases would not be treated as executory contracts or unexpired leases under Sections 365 or 502(b)(6) of the Bankruptcy Code simply because the lease is subject to termination if the debtor fails to appropriate rent.

Section 312: Filing of Plan of Adjustment

The Oversight Board would be the only party allowed to file a plan of adjustment, but only after the Oversight Board had issued certification. The court would set the time when the debtor would be required to file the plan if it was not filed with the petition.

Section 313: Modification of Plan

Section 313 of the bill describes the conditions under which a plan may be modified.⁵²

Section 314: Confirmation

This section closely mirrors Section 943 of the Bankruptcy Code.

A “special tax payer”⁵³ would be able to object to the confirmation of a plan. However, the court would have to confirm the plan if it complied with provisions of the Bankruptcy Code (made applicable here by Section 301 of Title III of PROMESA) and the provisions of Title III of PROMESA; the debtor would not be prohibited by law from taking any action necessary to carry out the plan; each holder of a priority claim for administrative costs and fees or charges assessed against the estate would receive full payment of the allowed amount of the claim unless the holder had agreed to different treatment; all legislative, regulatory, or electoral approval legally necessary to carry out any provision in the plan had been obtained or such provision was expressly conditioned on obtaining such approval; the plan was feasible and in the best interests of the creditors; the plan was consistent with the applicable Fiscal Plan certified by the

⁵² Notably, Section 301(a) of PROMESA makes Sections 942 and 1127(d) of the Bankruptcy Code, which also deal with modifications to a plan, applicable to Title III of PROMESA, and there is no indication of how these various provisions will be reconciled.

⁵³ “Special tax payer” is defined in 11 U.S.C. §902(3), which is applicable via §301 of Title III of PROMESA.

Oversight Board under Title II of PROMESA; and all amounts owed by the debtor or any person for services or expenses in the case or incident to the plan were reasonable and had been fully disclosed.

In considering whether a plan was feasible and in the best interest of creditors, the court would be required to consider whether other remedies available under the constitution and non-bankruptcy laws of the territory would provide greater recovery for creditors.

In cases where there was only one class of impaired creditors, the court would be permitted to confirm a plan even if that class had not accepted the plan. The general requirements for confirmation⁵⁴ would continue to apply, including the requirements that the plan is fair and equitable and does not discriminate unfairly with respect to the impaired class.

Section 315: Role and Capacity of Oversight Board

The Oversight Board would be the representative of the debtor. Generally, the Oversight Board could take any action necessary on behalf of the debtor to prosecute the debtor's case, including filing a petition, submitting or modifying a plan of adjustment, and submitting filings with the court.

Section 316: Compensation of Professionals

The court would be allowed to authorize reasonable payments to various professionals connected to a Title III proceeding.

Section 317: Interim Compensation

This section would provide the authority for the court to allow payments to professionals connected to a Title III proceeding while the case is pending.

Title IV: Miscellaneous Provisions

Section 401: Rules of Construction⁵⁵

Section 401 provides that nothing in the bill is intended, or may be construed, to limit the authority of Congress over the territories; to authorize the issuance of subpoenas by the Oversight Board to judicial officers or employees of territorial courts pursuant to Section 104(f) of the bill; to alter, amend, or abrogate the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States; or to alter, amend, or abrogate the treaties of cession regarding certain islands of American Samoa.

Section 402: Right of Puerto Rico to Determine Its Future Political Status⁵⁶

As with H.R. 4900, Section 402 of H.R. 5278 states that “nothing in this Act shall be interpreted to restrict Puerto Rico’s right to determine its future political status.” This includes a future plebiscite (popular vote), which Congress funded in the FY2014 omnibus appropriations law.⁵⁷ As noted above,

⁵⁴ These general requirements would not include those in Section 1129(a)(8) & (10), which require acceptance by either all of the classes of impaired creditors or at least one such class.

⁵⁵ This section authored by Kenneth Thomas, Legislative Attorney, 7-5006, kthomas@crs.loc.gov.

⁵⁶ This section authored by R. Sam Garrett, Specialist in American National Government, 7-6443, rgarrett@crs.loc.gov.

⁵⁷ P.L. 113-76; 128 Stat. 61.

Section 401 of the bill (and of H.R. 4900) also contains status provisions related to American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI).

Section 403: First Minimum Wage in Puerto Rico⁵⁸

Section 403 would amend the Fair Labor Standards Act of 1938 (29 U.S.C. 206(g)) to allow the Puerto Rico Governor, with the approval of the Oversight Board, to set a minimum wage less than the federal minimum wage of \$7.25 per hour for workers who are under the age of 25 and initially employed after enactment of the act for a period of four years or until the termination of the Oversight Board.⁵⁹ H.R. 4900 would have allowed for a five-year period with a minimum wage of \$4.25 per hour for workers who are under the age of 25. Puerto Rico enacted a minimum wage for women in 1919, although enforcement and coverage of that standard were uneven.⁶⁰ The Fair Labor Standards Act of 1938 (FLSA; 5 Stat. 1062) initially applied to Puerto Rico, but was soon supplanted by a system of Special Industry Committees that set industry-specific minimum wage levels.⁶¹ In the mid-1970s, Congress amended FLSA to bring Puerto Rico wage standards closer to mainland levels.⁶² In 1989, the special industry committee system was eliminated and a step-by-step transition process was established to bring minimum wage levels to federally established levels by April 1, 1996.⁶³ A report authored by three former International Monetary Fund (IMF) economists argued that the federal minimum wage was high relative to the local wage level and presented more of a binding constraint on employment than on the mainland.⁶⁴ In September 2015, the Working Group for the Fiscal and Economic Recovery of Puerto Rico proposed exempting workers aged 25 and younger from future increases in the federal minimum wage for a 10-year period.⁶⁵

Section 404: Application of Regulation to Puerto Rico⁶⁶

Section 404 would prevent the application in Puerto Rico of the Department of Labor's proposed July 6, 2015, overtime rule and any final rule that is subsequently issued until the Comptroller General completes a report that examines the economic conditions of the Commonwealth, and the Secretary of Labor indicates in a written determination to Congress that the application of the rule in Puerto Rico would not have a negative impact on its economy.⁶⁷ The Comptroller General would have to complete the report and transmit it to Congress within two years of PROMESA's enactment. Section 404 also expresses the sense of Congress that the Bureau of the Census should conduct a study to determine the feasibility of

⁵⁸ This section authored by D. Andrew Austin, Analyst in Economic Policy, 7-6552, aaustin@crs.loc.gov.

⁵⁹ The provision would those covered under 29 U.S.C. 206(a)), which are employees "engaged in commerce or the production of goods for commerce" or "employed in an enterprise engaged in commerce or in the production of goods for commerce."

⁶⁰ Lindley D. Clark, "Minimum-Wage Laws of the United States," *Monthly Labor Review*, vol. 12, no. 3, March 1921, pp. 1-20. Also see David Neumark and William L. Wascher, *Minimum Wages* (MIT Press: Cambridge, MA, 2008).

⁶¹ See archived CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker.

⁶² Fair Labor Standards Amendments of 1974 (P.L. 93-259) and 1977 (P.L. 95-151).

⁶³ P.L. 101-157, Section 4. See Whittaker, op. cit.

⁶⁴ Anne O. Krueger, Ranjit Teja, and Andrew Wolfe, *Puerto Rico: A Way Forward*, June 29, 2015, p. 6.

⁶⁵ Working Group for the Fiscal and Economic Recovery of Puerto Rico, *Puerto Rico Fiscal and Economic Growth Plan*, September 9, 2015, p. 23; <http://www.bgfpr.com/documents/PuertoRicoFiscalandEconomicGrowthPlan9.9.15.pdf>.

⁶⁶ This section authored by Jon Shimabukuro, Legislative Attorney, 7-7990, jshimabukuro@crs.loc.gov.

⁶⁷ See Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 80 Fed. Reg. 38,516 (July 6, 2015) (to be codified at 29 C.F.R. pt. 541). The Department of Labor's final overtime rule was published on May 23, 2016. See Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391 (May 23, 2016) (to be codified at 29 C.F.R. pt. 541).

expanding data collection to include Puerto Rico and the other U.S. territories in the Current Population Survey.

The Department of Labor's new overtime rule implements the Fair Labor Standards Act's exemption for bona fide executive, administrative, professional, computer, and outside sales employees. The new rule raises the salary threshold that must be met before an employee may be considered exempt from the statute's minimum wage and overtime requirements. Under the agency's old rule, an employee would have to be compensated on a salary basis at a rate of not less than \$455 a week and perform specified duties to be deemed exempt from the minimum wage and overtime requirements. The new rule raises the salary threshold to not less than \$913 a week.

Section 405: Automatic Stay upon Enactment⁶⁸

Unlike the automatic stay that is part of the Bankruptcy Code (and applicable to Title III as specified in Section 301), this stay would take effect upon enactment of PROMESA. In general, it would prevent

- the commencement or continuation of an action or proceeding against the Government of Puerto Rico⁶⁹ that was or could have been commenced before the enactment of PROMESA, or to recover a Liability Claim against the Government of Puerto Rico that arose before the enactment of PROMESA;⁷⁰
- enforcement of a judgment obtained before the enactment of PROMESA against the Government of Puerto Rico or its property;
- any act to obtain property of or from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico;
- any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico;
- any act to create, perfect, or enforce against property of the Government of Puerto Rico any lien to the extent that the lien secures a Liability Claim that arose before the enactment of PROMESA;
- any act to collect, assess, or recover a Liability Claim that arose before PROMESA's enactment; and
- setoff of any debt owed to the Government of Puerto Rico that arose before PROMESA's enactment against any Liability Claim against the Government of Puerto Rico.⁷¹

Generally,⁷² the stay would continue until the earlier of

- February 15, 2017, or six months after the Oversight Board is established for Puerto Rico, whichever is later; or

⁶⁸ This section authored by Carol A. Pettit, Legislative Attorney, 7-9496, cpettit@crs.loc.gov.

⁶⁹ The term "Government of Puerto Rico" includes all of Puerto Rico's instrumentalities. Section 5(11) of PROMESA. Additionally, for purposes of Section 405, the term includes the directors, officers, and employees of the Government of Puerto Rico who are acting in their official capacities on behalf of the Government of Puerto Rico, as well as the Oversight Board, and its directors, officers, and employees when acting in their official capacities on behalf of the Oversight board.

⁷⁰ Although Section 405 provides that the stay will be effective upon enactment of PROMESA, Section 405(c) provides that establishing an Oversight Board for the Commonwealth of Puerto Rico under Title I, Section 101 of PROMESA does not act as a stay of the continuation of an action against the Government of Puerto Rico that began on or before December 18, 2015.

⁷¹ The bill does not specify that the Liability Claim against the Government of Puerto Rico must have arisen before PROMESA's enactment; however, other provisions of this section require that.

⁷² Relief from the stay may be granted under Section 405(e)-(g).

- the date on which a case would be filed by or on behalf of the government of the Commonwealth of Puerto Rico or its applicable instrumentalities with respect to the entity filing a case.⁷³

However, if either the Oversight Board or the district court confirms that additional time is needed to complete a voluntary process under Title VI of the bill, the first date above⁷⁴ would be extended by 60 days if the extension is triggered by the district court or 75 days if triggered by the Oversight Board.

PROMESA would provide that the stay may not be treated as a default under existing contracts or laws. However, to the extent feasible—as determined by the Oversight Board—the Government of Puerto Rico would be required to make timely interest payments on outstanding debts throughout the duration of the stay. This section would also make void any act in violation of the stay.

The stay would not act to prevent any holder of a liability claim from voting on or consenting to any proposed modification of such claim under Title VI of PROMESA.

Section 406: Purchases by Territory Governments

Only federal agencies, organizations, and entities authorized to make purchases through the General Services Administration (GSA) are eligible to do so. Presently, the government of Puerto Rico is not authorized to make purchases using GSA's federal supply schedules (schedules),⁷⁵ or its other acquisition programs.⁷⁶

Section 406 would amend 48 U.S.C. §1469e by, among other things, adding the government of Puerto Rico to the list of territory governments authorized to make purchases through GSA.⁷⁷

Section 407: Protection from Inter-Debtor Transfers⁷⁸

While the Oversight Board is in operation, territorial instrumentalities would be barred from transferring property encumbered by liens or security interests in violation of applicable law. A transferee would be liable for the value of the property. A creditor could bring suit in U.S. District Court in Puerto Rico once the stay imposed by Section 405 expired or was lifted. No similar provision was included in H.R. 4900. Inclusion of this provision follows shortly after a bond insurer sued the Puerto Rico Highways and Transportation Authority after the latter extended a toll concession agreement for 10 years.⁷⁹ The Puerto

⁷³ Although the stay provided by PROMESA's Section 405 would end for a particular entity when a case was filed under Title III on behalf of that entity, the Bankruptcy Code's automatic stay provision, 11 U.S.C. §362, would go into effect immediately upon the filing of the petition. That section of the Bankruptcy Code is incorporated into Title III in Section 301 and is substantially similar to the stay described in PROMESA's Section 405.

⁷⁴ The later of February 15, 2017, or six months after the Oversight Board is established for Puerto Rico.

⁷⁵ GSA presently has 34 schedules. Each schedule is akin to an online catalogue and focuses on a particular category of goods or services (or both). Examples of schedules include schedule 23 V, Automotive Superstore; 58 I, Professional Audio/Video Telemetry/Tracking, Recording/Reproducing and Signal Data Solutions; 71, Furniture; 76, Publication Media; and 81 I B, Shipping, Packaging and Packing Supplies. The entire list of schedules is available at <http://www.gsaelibrary.gsa.gov/ElibMain/scheduleList.do>.

⁷⁶ Other GSA acquisition programs include GSA Global Supply, Assisted Acquisition, and a variety of technology products and services. U.S. General Services Administration, "How to Buy Through GSA," at <http://www.gsa.gov/portal/category/26760>.

⁷⁷ Section 406 also includes the governments of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

⁷⁸ Summaries of Sections 407, 408, 409, 410, and 411 were written by D. Andrew Austin, Analyst in Economic Policy, 7-6552, aaustin@crs.loc.gov.

⁷⁹ Amended Complaint, *Ambac Assurance Corp. v. P.R. Highways and Transp. Auth.*, 16-cv-1893 (JAG) (U.S.D.P.R. May 16, 2016).

Rico government stated that it used initial proceeds of \$100 million to pay for essential services “in consideration of the complicated situation of liquidity that confronts the Commonwealth.”⁸⁰

Section 408: GAO Report on Small Business Administration Programs in Puerto Rico

Section 408 would mandate the Government Accountability Office (GAO) to report to House and Senate committees with jurisdiction over small business policy within 180 days after enactment. The report would examine Administration contracting activities, including HUBZone programs, as well as any provisions in federal law that might hinder those activities.⁸¹ No similar provision was included in H.R. 4900.

Section 409: Congressional Task Force on Economic Growth in Puerto Rico

Section 409 would establish a Congressional Task Force on Economic Growth in Puerto Rico. The Task Force would have eight members. Two members would be appointed by the Speaker of the House in coordination with the chairman of the House Natural Resources Committee. Two members would be appointed by the House minority leader in coordination with the ranking Member of the House Natural Resources Committee. Two members would be appointed by the Senate majority leader in coordination with the chairman of the Senate Energy and Natural Resources Committee, and the remaining two members would be appointed by the Senate minority leader in coordination with the ranking Member of the Senate Energy and Natural Resources Committee. Appointments would be made within 15 days after enactment.

The Task Force would be charged with issuing a report by December 31, 2016, that would examine

- the relation of federal laws and economic growth in Puerto Rico;
- economic consequences of a Puerto Rico Department of Health Regulation 346,⁸² which relates to natural products, natural supplements, and dietary supplements;⁸³ and would
- recommend changes to federal laws to spur sustainable, long-term economic growth;
- recommend changes to federal law and programs that would reduce child poverty;⁸⁴ and
- include additional information as deemed necessary.

The Task Force would also provide Congress with a status update during the first half of September 2016.

The Task Force would be encouraged to reflect the shared views of all eight members to the greatest extent practicable. The Task Force would consult with the Puerto Rico legislature, the Puerto Rico Department of Economic Development and Commerce, and private sector participants. The Task Force would terminate once its report was issued. No similar provision was included in H.R. 4900.

⁸⁰ See P.R. Executive Order OE-2016-017, May 17, 2016, p. 4; <http://estado.pr.gov/es/ordenes-ejecutivas/>.

⁸¹ For a description of the HUBZone program, see CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

⁸² Puerto Rico Department of Health, Administrative Order 346; <http://www.salud.gov.pr/Estadisticas-Registros-y-Publicaciones/ordenes%20Administrativas/346-PARA%20ESTABLECER%20LA%20POLITICA%20PUBLICA%20EN%20TORNO%20A%20LA%20DISTRIBUCION%20DE%20PRODUCTOS%20NATURALES%20O%20SUPLEMENTOS%20NUTRICIONALES.pdf>. That regulation was issued under authorities granted in the Puerto Rico Pharmacy Act (Act 247 of 2004); <http://www.oslpr.org/download/en/2004/0247.pdf>.

⁸³ This provision was added by an amendment offered by Representative Zinke.

⁸⁴ This provision was added by an amendment offered by Representative Jolly and Representative Curbelo.

Several reports and studies have examined Puerto Rico's economic development since the island encountered a sharp slowdown of economic growth in the early 1970s. In 1974, then Governor Rafael Hernández Colón appointed a Committee to Study Puerto Rico's Finances headed by Yale economist James Tobin.⁸⁵ The U.S. Department of Commerce coordinated an economic study of the Puerto Rico economy that issued a report in December 1979.⁸⁶ The Brookings Institution and the San Juan-based Center for a New Economy together produced a set of papers on Puerto Rico's economy in 2006.⁸⁷ The Federal Reserve Bank of New York has issued a 2012 report and a 2014 update on the competitiveness of Puerto Rico's economy.⁸⁸ The current Puerto Rico government commissioned a report by three former International Monetary Fund (IMF) economists that described Puerto Rico's fiscal situation, along with issues presented by problems in its budget execution, public administration, and tax structure.⁸⁹

Section 410: Report

Section 410 would task the Government Accountability Office (GAO) to develop and submit a report to the House Committee on Natural Resources and to the Senate Committee on Energy and Natural Resources describing debt accumulations by territorial governments. The report would also assess the financial consequences of policies of those governments and would recommend actions to avert future indebtedness of subnational governments. As noted above, Puerto Rico's fiscal policies have been studied before.

Section 411: Report on Territorial Debt

Section 411 would require GAO to submit reports on debts of territorial governments and other fiscal data. The initial report would be due within a year of enactment and later reports would be issued at least every two years.⁹⁰

Puerto Rico, Guam, and the U.S. Virgin Islands once participated in the U.S. Census Bureau's Census of Governments.⁹¹ The Census of Governments, which takes place in years ending in "2" or "7", provides extensive data on government organization and finances. The Census Bureau also conducts a Survey of Governments in other years.

⁸⁵ Committee to Study Puerto Rico's Finances, *Report to the Governor*, December 11, 1975; <http://rafaelhernandezcolon.org/Libros%20Digitales/Report%20to%20the%20Governor/REPORTGOVERNOR.html>.

⁸⁶ U.S. Department of Commerce, *Economic Study of Puerto Rico: Report to the President*, December 1979; <https://catalog.hathitrust.org/Record/007413166>.

⁸⁷ Susan M. Collins, Barry P. Bosworth, and Miguel A. Soto-Class, eds., *The Economy of Puerto Rico: Restoring Growth* (Brookings: Washington, DC, 2006).

⁸⁸ Federal Reserve Bank of New York, *Report on the Competitiveness of Puerto Rico's Economy*, 2012. Available in English at <http://www.newyorkfed.org/regional/puertorico/index.html>. Federal Reserve Bank of New York, *An Update on the Competitiveness of Puerto Rico's Economy*, July 31, 2014; <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2014/Puerto-Rico-Report-2014.pdf>.

⁸⁹ Anne O. Krueger, Ranjit Teja, and Andrew Wolfe, *Puerto Rico: A Way Forward*, June 29, 2015, <http://recend.apextech.netdna-cdn.com/docs/editor/Informe%20Krueger.pdf>.

⁹⁰ This section was added by an amendment offered by Representative Byrne during House deliberations.

⁹¹ For instance, see U.S. Department of Commerce, Bureau of the Census, *1982 Census of Governments: Puerto Rico, Virgin Islands, and Guam*, Topical Studies, vol. 6, no. 2, October 1984; http://www2.census.gov/govs/pubs/cog/1982/1982_vol6_no2_fin_puerto_rico_vi_&_guam.pdf.

Title V: Puerto Rico Infrastructure Revitalization⁹²

Title V of the proposed legislation, the “Puerto Rico Revitalization Act,” would overhaul the processes for review and permitting of certain infrastructure projects within the Commonwealth. Title V would create the position “Revitalization Coordinator”; grant the Revitalization Coordinator a role in reviewing and permitting “Critical Projects”; establish an expedited review process for such projects; and add related provisions intended to ease the permitting process and increase the federal oversight role.

Section 501: Definitions

Section 501 sets out definitions used in Title V. Some of these definitions are described in the section summaries below.

Section 502: Position of the Revitalization Coordinator

Section 502 would establish a new position, the Revitalization Coordinator, to be appointed by the Governor of Puerto Rico from among a group of nominees selected by the Puerto Rico Financial Oversight and Management Assistance Board. Section 502 would direct the Oversight Board to select nominees with backgrounds in planning, financing, and development of infrastructure projects. Section 502 also would set forth a framework for support staff and compensation for the Revitalization Coordinator.

Section 503: Critical Projects

Section 503 would authorize Project Sponsors to submit applications to the Revitalization Coordinator and to “relevant Puerto Rico agencies” for consideration for classification as a “Critical Project.” Section 501(2) defines a “Critical Project” as one that is “intimately related to addressing an emergency whose approval, consideration, permitting and implementation shall be expedited and streamlined according to the statutory process provided by Act 76, or otherwise adopted pursuant to this title.” Act 76 is a Puerto Rico law that establishes a process by which Puerto Rico agencies may accelerate review and permitting of works and projects that are related to or respond to a declared emergency as defined by the act.

Section 503(a)(1) provides a number of criteria by which proposed Critical Projects would be evaluated,⁹³ including the impact the project would have on an emergency; the availability of funds to implement the project; the cost of the project (including the cost to the government of Puerto Rico); environmental and economic benefits provided by the project; the current status of the project; and additional criteria related to energy production and conservation that the Revitalization Coordinator deems appropriate.

Pursuant to Section 503(a)(3), Puerto Rico agencies that receive a Critical Project submission would be required to set forth an “Expedited Permitting Process.” This Expedited Permitting Process must be filed with the Revitalization Coordinator within 20 days of receipt of the project submission. Failure to do so would trigger a requirement that the Revitalization Coordinator consult with the Governor of Puerto Rico to develop such a process for the agency within 20 days. The section further instructs the Revitalization Coordinator to require the relevant Puerto Rico agencies to implement that Expedited Permitting Process. In addition, Section 503(a)(3) provides that “Critical Projects shall be prioritized to the maximum extent possible in each Puerto Rico Agency regardless of any agreements transferring or delegating permitting authority.”

⁹² The analysis of Title V was authored by Adam Vann, Legislative Attorney, 7-6978, avann@crs.loc.gov.

⁹³ Note that the bill initially categorizes the list found at Section 503(a)(1) as required items to be included in a submission, but subsequently references the items as criteria to be considered by the Revitalization Coordinator.

With respect to the Critical Project determination, Section 503(b) would require the Revitalization Coordinator to consult with the Puerto Rico agencies and develop a “Critical Project Report” within 60 days of submission that includes an assessment of how well the project meets the criteria for a Critical Project and a recommendation from the Governor regarding the Critical Project determination, as well as findings from the Planning Board regarding land use and/or from the Puerto Rico Electric Power Authority, where applicable. Once the Report is completed, the public would be given a 30-day period to submit comments, and the Revitalization Coordinator would have 30 days thereafter to respond to public comments. The Revitalization Coordinator would then submit the Report to the Oversight board within five days of the conclusion of the response to public comments. The Oversight Board would be required to take action within 30 days of receipt. An approval would classify the project as a Critical Project, while a vote of disapproval must be accompanied by a statement to the Revitalization Coordinator explaining the reasons for disapproval.

Section 504: Miscellaneous Provisions

Section 504(a) would establish the “Interagency Environmental Subcommittee” to “evaluate environmental documents required under Puerto Rico law for any Critical Project within the Expedited Permitting Process.” The subcommittee would consist of the Revitalization Coordinator along with representatives of various Puerto Rico agencies chosen by the governor in conjunction with the Revitalization Coordinator.

Section 504(b) is titled “Length of Expedited Permitting Process” and provides that for a Critical Project, Puerto Rico agencies would be required to operate as if there has been a declared emergency under Act 76. Section 504(b) also provides that “any transactions, processes projects, works or programs essential to the completion of the Critical Project” are to continue even if the Oversight Board is terminated pursuant to Section 209 of this act.

Section 504(c) would give the Oversight Board the power to take enforcement action upon complaint for the failure of a Puerto Rico agency or the Revitalization Coordinator to adhere to the Expedited Permitting Process.

Section 504(d) would require the Puerto Rico Governor to notify the Oversight Board of any duly enacted law that might “affect the Expedited Permitting Process.” The Oversight Board would then be required to review the law and, if it would “adversely impact” the process, the law would be deemed “significantly inconsistent with the applicable Fiscal Plan.”

Section 504(e) would bar Puerto Rico agencies from including terms or conditions in permits, certificates, or other authorizations for Critical Projects not required by applicable Puerto Rico law, if the Revitalization Coordinator determines that “the term or condition would prevent or impair the expeditious construction, operation or expansion of the Critical Project.”

Section 504(f) would require that all Critical Project reports and justifications for approval or denial of Critical Projects be made publicly available.

Section 505: Federal Agency Requirements

Section 505 would require, at the request of the Revitalization Coordinator, federal agencies with jurisdiction over permitting or administrative or environmental review for projects in Puerto Rico to name a “Point of Contact.” This requirement would not be limited to Critical Projects, but would apply to agencies with jurisdiction over any public and private projects in the Commonwealth. For Critical Projects, Section 505 would direct the Revitalization Coordinator to cooperate with the relevant Point of Contact concerning a pending or potential federal grant for the project. In addition, all reviews by federal agencies related to a Critical Project would be expedited so as to comply with the deadlines established by

the Expedited Permitting Process, although those deadlines would not be considered as binding on a federal agency.

Section 506: Judicial Review

Section 506 provides that claims arising under Title V would have to be brought no later than 30 days after the decision or action giving rise to the claim. If the claim is brought in the U.S. District Court for the District of Puerto Rico, the court would have to set any such action for expedited consideration.

Section 507: Savings Clause

Section 507 provides that Title V is not intended to change or alter any other federal legal requirements or laws. Savings clauses of this nature are common and are intended to provide insurance against unintended consequences with respect to interpretation and application of existing statutes.

Title VI: Creditor Collective Action⁹⁴

The first section of Title VI (§601) would establish a process for creditor collective action that could *retroactively* change individual creditor rights for a portion of Puerto Rico's outstanding bonded debt. "Collective action clauses" (CACs) are a feature of sovereign bonds that, while long-standing in London-issued sovereign debt, became more common for debt issued under New York law around 15 years ago.⁹⁵ The second section (§602) states that the process would be governed by U.S. law, without regard to any foreign or international law.

CACs have been used to expedite the restructuring of sovereign debt. CACs allow a supermajority of bondholders (usually 75%) to agree to a debt restructuring that is legally binding on all bondholders.

Without CACs, some bondholders may have incentives to try to hold out for better terms, slowing down the negotiations.⁹⁶ CACs describe a procedure a country may use once it decides it must restructure its debt. In general, CACs include:

- *A majority action clause.* This clause would allow a super-majority of creditors to change the terms of the contract, which is then binding on the minority. In this way, a small minority of creditors could not delay or disrupt a restructuring agreement.
- *A clause describing the process through which debtors and creditors come together to negotiate a restructuring.* This clause would specify how the creditors would be represented and the data that the debtor must provide to the creditors' representative. The creditors' representative would negotiate with the debtor and would have authority to initiate litigation (on instructions of a certain proportion of the creditors).

⁹⁴ Analysis of Title VI authored by Martin Weiss, Specialist in International Trade and Finance, 7-5407, mweiss@crs.loc.gov.

⁹⁵ for a discussion of the debates that lead to the proliferation of CACs in the early 2000s, see CRS Report RL31451, *Managing International Financial Crises: Alternatives to "Bailouts," Hardships and Contagion*, by Arlene E. Wilson and Martin A. Weiss. Also see Mitu Gulati and W. Mark Weidermaier, "A People's History of Collective Action Clauses," *Virginia Journal of International Law*, vol. 54, no. 1 (2013); and Anna Gelper, "Building a Better Seating Chart for Sovereign Restructurings," *Emory Law Journal*, vol. 53 (2004).

⁹⁶ See Federal Reserve Bank of San Francisco, "Resolving Sovereign Debt Crises with Collective Action Clauses," *Economic Letter*, No. 2004-06 (February 20, 2004); <http://www.frbsf.org/economic-research/files/el2004-06.pdf>. See also International Monetary Fund, *Sovereign Debt Restructuring—Recent Developments and Implications for the Fund's Legal and Policy Framework: Executive Summary*, April 26, 2013, pp. 27-28; <https://www.imf.org/external/np/pp/eng/2013/042613.pdf>.

- *A clause describing how the sovereign country would initiate the restructuring.* This clause would allow for a suspension of payments between the time the sovereign had requested a restructuring and the time the creditors' representative would be chosen.

H.R. 5278 loosely borrows the CAC model from recent sovereign debt experience and attempts to apply it toward Puerto Rico's outstanding bonded debt. In contrast to recent trends in sovereign CACs, which have been to create larger voting pools by allowing a vote to be aggregated across different series of bonds in to facilitate reaching consensus on a restructuring, H.R. 5278 Section 601(d) would establish separate voting pools corresponding to the relative priority (senior vs. subordinate lien, for example) or security arrangements (guaranteed vs. non-guaranteed debt, or debt with a dedicated revenue stream) of each holder of bonds against each issuer.⁹⁷ H.R. 5278 Section 601(j) specifies that a restructuring would require the support of two-thirds of the aggregate outstanding principal amount of the outstanding bonds in a pool.

Antonio Weiss, Counselor to the Treasury Secretary, criticized H.R. 4900's CAC language in an April 13, 2016, hearing before the House Committee on Natural Resources. According to his testimony, H.R. 4900, "imposes an unworkable, mandatory process that will only delay the ability to reach a comprehensive resolution. Under the proposed approach, all of Puerto Rico's numerous debtors would have to complete a complicated process before any single entity could begin to restructure."⁹⁸ Given the large size and complexity of Puerto Rico's outstanding bonded debt, H.R. 4900 would, Mr. Weiss argues, create a large number of voting pools, making it nearly impossible to reach the super-majority required for a restructuring. Other critics argue that H.R. 4900 provides insufficient protections for senior creditors and that the threshold for creditor acceptance of CACs should be increased from two-thirds to 85%.⁹⁹

Treasury Secretary Jacob Lew, in a statement released the day after H.R. 5278 was introduced, stated that "We are pleased the bill reintroduced in the House last night includes restructuring tools for Puerto Rico that are comprehensive and workable."¹⁰⁰

Title VII: Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms

Title VII's sole section (§701) expresses the sense of Congress that "any durable solution for Puerto Rico's fiscal and economic crisis should include permanent, pro-growth fiscal reforms that feature, among other elements, a free flow of capital between possessions of the United States and the rest of the United States."

⁹⁷ International Capital Markets Association, "Standard Aggregated Collective Action Clauses ("CACs") for the terms and conditions of sovereign notes governed by New York Law," May 2015. See also, Mark Sobel, "Strengthening Collective Action Clauses: Catalysing Change—the Back Story," *Capital Markets Law Journal*, January 2016.

⁹⁸ Testimony of Antonio Weiss, Counselor to the Treasury Secretary, in U.S. Congress, House Committee on Natural Resources, "The Puerto Rico Oversight, Management, and Economic Stability Act," hearings, 114th Cong., 2nd sess., April 13, 2016; <https://www.treasury.gov/press-center/press-releases/Pages/jl0417.aspx>.

⁹⁹ Conversation with Cate Long, Puerto Rico Clearinghouse, April 19, 2016.

¹⁰⁰ U.S. Department of the Treasury, "Statement From Secretary Lew on Puerto Rico Legislation," press release, May 19, 2016; <https://www.treasury.gov/press-center/press-releases/Pages/jl0461.aspx>.

Appendix A. Legislative Context

Representative Sean Duffy, as noted at the first section of this report, introduced the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) on May 18, 2016.¹⁰¹ This bill is a revised version of H.R. 4900, which Representative Duffy had introduced on April 12, 2016.¹⁰² The House Natural Resources Committee issued a discussion draft with the same title on March 24, 2016, and a revised discussion draft on March 29, 2016. The committee held a hearing and heard opening statements for a markup on H.R. 4900 on April 13, 2016. The continuation of the markup on the following day was postponed. The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016.¹⁰³ Amendments agreed to include technical corrections and extensions of certain studies on the Puerto Rico government and economy, among others. The major provisions of the bill, however, were unaffected. The House passed an amended version of H.R. 5278 on June 9, 2016, by a 297-127 vote. The Senate approved the measure (S. 2328) on June 29, 2016, by a 68-30 vote. President Obama signed the measure into law on June 30, 2016.

Other Proposals to Address Puerto Rico's Fiscal Crisis

In October 2015, the U.S. Department of the Treasury set out a reform framework and called on Congress to pass legislation to aid Puerto Rico. Resident Commissioner Pierluisi introduced H.R. 870 on March 16, 2015, that would restore the island's access to chapter 9 of the Bankruptcy Code. Senator Blumenthal introduced a similar measure (S. 1774) on July 15, 2015. Representative Duffy introduced H.R. 4199, a measure to provide fiscal oversight and a process for debt restructuring, on December 9, 2015. Senator Hatch introduced a similar measure (S. 2381) on the same day. On December 18, 2015, Representative Pelosi introduced H.R. 4290, a measure to stay debt-related litigation. Senator Warren introduced a companion measure (S. 2436) on the same day. On March 14, 2016, Senator Menendez introduced the Puerto Rico Recovery Act of 2016 (S. 2675) and the Puerto Rico Stability Act of 2016 (S. 2676). Both measures would create ways to adjust Puerto Rico's debt. On June 9, 2016, Senator Sanders introduced S. 3044, which would establish a Puerto Rico Reconstruction Finance Corporation, restore the island's access to chapter 9 of the Bankruptcy Code, and make changes in federal health care and economic development programs to benefit Puerto Rico. **Table A-1** summarizes measures introduced to address Puerto Rico's fiscal difficulties.

Several other measures have been introduced to alter federal programs' eligibility rules or levels of benefits available to Puerto Rico residents. For example, Resident Commissioner Pierluisi has also introduced several measures (including H.R. 1225, H.R. 1417, H.R. 1418, H.R. 1822, H.R. 2635, H.R. 3552, H.R. 3553, and H.R. 4163) that would remove various limitations on federal health care funding, refundable tax credits, and social insurance programs.¹⁰⁴ Increased federal funding for health or income security programs could mitigate the Puerto Rico government's fiscal pressures, although such funding would require an increase in federal revenues, reduction in other federal spending, or additional federal borrowing, or some combination of those means.

¹⁰¹ The word "promesa" means promise in Spanish.

¹⁰² An earlier congressional distribution memorandum that analyzed H.R. 4900 is available upon request from the Coordinator.

¹⁰³ U.S. Congress, House Committee on Natural Resources, *Puerto Rico Oversight, Management, and Economic Stability Act*, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016).

¹⁰⁴ See CRS Report R44275, *Puerto Rico and Health Care Finance: Frequently Asked Questions*, coordinated by Annie L. Mach.

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Table A-1. Selected Measures to Address Puerto Rico's Fiscal Situation

Sponsor	Measure	Title	Date	Summary
Res. Comm. Pierluisi	H.R. 870	Puerto Rico Chapter 9 Uniformity Act	March 16, 2015	Amends the Bankruptcy Code to treat Puerto Rico as a state under chapter 9.
Sen. Blumenthal	S. 1774	Puerto Rico Chapter 9 Uniformity Act	July 15, 2015	Amends the Bankruptcy Code to treat Puerto Rico as a state under chapter 9.
Rep. Duffy	H.R. 4199	Puerto Rico Financial Stability and Debt Restructuring Choice Act	December 9, 2015	Establishes the Puerto Rico Financial Stability Council, if enacted by the Puerto Rico Legislature Assembly and Governor. Council would approve financial plans, budgets, and borrowing. Amends Bankruptcy Code to treat Puerto Rico as a state, among other provisions.
Sen. Hatch	S. 2381	Puerto Rico Assistance Act	December 9, 2015	Establishes the Puerto Rico Financial Responsibility and Management Assistance Authority, which would approve financial plans and budgets, and could issue bonds. Also creates payroll tax holidays and requires reports on pension plans, among other provisions.
Rep. Pelosi	H.R. 4290	Puerto Rico Emergency Financial Stability Act	December 18, 2015	Grants a temporary stay until April 1, 2016, on litigation related to Puerto Rico's debts.
Sen. Warren	S. 2436	Puerto Rico Emergency Financial Stability Act	December 18, 2015	Grants a temporary stay until April 1, 2016, on litigation related to Puerto Rico's debts.
Sen. Menendez	S. 2675	Puerto Rico Recovery Act	March 14, 2016	Makes Puerto Rico residents eligible for earned income and child tax credits; removes certain limitations on federal health funding to territories, among other provisions.
Sen. Menendez	S. 2676	Puerto Rico Stability Act	March 14, 2016	Permits Puerto Rico to restructure its public debt through a Fiscal Stability and Reform Board, a Chief Financial Officer, and a fiscal plan. Amends Bankruptcy Code to treat Puerto Rico as a state under chapter 9, among other provisions.
Rep. Duffy	H.R. 4900	Puerto Rico Oversight, Management, and Economic Stability Act	April 12, 2016	A CRS memorandum that summarizes provisions of H.R. 4900 is available upon request from the coordinator.
Rep. Duffy	H.R. 5278	Puerto Rico Oversight, Management, and Economic Stability Act	May 18, 2016	See section-by-section summary above in this report.
Sen. Sanders	S. 3044	Puerto Rico Humanitarian Relief and Reconstruction Act	June 9, 2016	Establishes a Puerto Rico Reconstruction Finance Corporation, amends Bankruptcy Code to treat Puerto Rico as a state under chapter 9, removes certain limitations on federal health funding to territories, and expands economic development programs available to benefit Puerto Rico, among other provisions.

Source: CRS.

Brief Background on Puerto Rico and its Political Status¹⁰⁵

The United States acquired Puerto Rico from Spain in 1898, at the conclusion of the Spanish-American War.¹⁰⁶ The island is the largest of the five¹⁰⁷ major U.S. territories and lies approximately 1,000 miles southeast of Miami. The Territory Clause of the U.S. Constitution grants Congress plenary authority over Puerto Rico and other territories.¹⁰⁸ Specifically, this includes “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”¹⁰⁹ Congress has enacted various statutes to address specific matters concerning the island’s *political status*—a term of art referring to the political relationship between the federal government and a territorial government. In particular, Congress recognized island authority over matters of internal governance in 1950 through the Federal Relations Act (FRA) and when it approved the island’s Constitution in 1952.¹¹⁰

Puerto Rico’s Fiscal Challenges

The Puerto Rico government has been facing serious liquidity challenges despite several measures taken by the island’s government to reduce spending, increase revenues, and restructure its obligations.¹¹¹ Those liquidity challenges are the result of long-standing problems of stagnant economic growth, persistent structural budgetary imbalances, and governance problems, among other contributing factors.

Structure of Puerto Rico’s Government and Debt

Puerto Rico’s public sector is composed of a Commonwealth government, some 50 public corporations (described in more detail below), and municipal governments, among other instrumentalities. In general, the Puerto Rico Office of Management and Budget oversees agencies of the Commonwealth, but not public corporations or municipalities. Debt issuances or guarantees backed by the full faith and credit of the Commonwealth government are often called general obligation (GO) debt. The Commonwealth government has also issued non-GO debt.¹¹²

Role of Public Corporations

Public corporations play a prominent role in the economy and public sector of Puerto Rico. H.R. 5278 includes provisions that would allow, in certain cases, separate oversight of public

¹⁰⁵ For additional discussion, see CRS Report R42765, *Puerto Rico’s Political Status and the 2012 Plebiscite: Background and Key Questions*, by R. Sam Garrett; and CRS In Focus IF10241, *Puerto Rico: Political Status and Background*, by R. Sam Garrett. This paragraph was written by R. Sam Garrett.

¹⁰⁶ Treaty of Paris, Art. II; 30 Stat. 1754-1755.

¹⁰⁷ The other four inhabited territories are American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands.

¹⁰⁸ For background discussion of the Territory Clause, see CRS, *The Constitution of the United States of America: Analysis and Interpretation*, available on the CRS website under the Quick Link “Constitution Annotated.”

¹⁰⁹ U.S. Const., Art. IV, §3, cl. 2.

¹¹⁰ See 64 Stat. 319 (popularly known as “P.L. 600” (P.L. 81-600)); and 66 Stat. 327 respectively.

¹¹¹ For details, see CRS Report R44095, *Puerto Rico’s Current Fiscal Challenges*, by D. Andrew Austin.

¹¹² For further information, a congressional distribution memorandum on Puerto Rico’s public sector debt is available upon request from D. Andrew Austin.

corporations and other instrumentalities of the Puerto Rico government.¹¹³ Public corporations in Puerto Rico serve a broad variety of purposes and activities, including public infrastructure, banking, real estate, insurance, industrial development, health care, transportation, electric power, broadcasting, education, arts, and tourism, among others.¹¹⁴ Some public corporations resemble public authorities of state governments, although in some cases, have responsibilities more akin to public agencies.¹¹⁵ Puerto Rico's electric power utility, as described in the next section, has been negotiating with its creditors since the summer of 2014.

Current Negotiations with Creditors

H.R. 5278, as noted above, allows for separate voluntary agreements between public corporations and their creditors, subject to certain conditions.¹¹⁶ The Puerto Rico Electric Power Authority (PREPA) entered into a restructuring and forbearance agreement in August 2014 with major creditors,¹¹⁷ prompted by the need to maintain sufficient financing for fuel purchases.¹¹⁸ PREPA and a large proportion of its creditors have signed a Restructuring Support Agreement (RSA) that would create a surcharge on electricity consumers' bills. The Energy Commission of Puerto Rico approved the PREPA revitalization surcharge on June 21, 2016.¹¹⁹ Proceeds of the surcharge would be used to help fund debt service payments for new bonds that would be exchanged with existing PREPA debt. The proposed bond exchange would allow PREPA to lower its debt service costs and would extend the maturity of its debt.

A proposal to use a similar strategy for Puerto Rico's water and sewer public corporation (Puerto Rico Aqueduct and Sewer Authority; PRASA) has passed both the Puerto Rico House of Representatives and Senate, which have agreed to conference to resolve differences.¹²⁰ The Puerto Rico government and the Government Development Bank have put forth two bond exchange proposals.¹²¹

¹¹³ §101(d)(1)(E) authorizes the Oversight Board to designate a "covered territorial instrumentality" that would be subject to an Instrumentality Fiscal Plan separate from the Territory Fiscal Plan. §101(d)(2) allows the Oversight Board to exclude a territorial instrumentality from requirements of the act.

¹¹⁴ For one listing of public corporations, see Commonwealth of Puerto Rico, *Budget Proposal for 2013-2014*, Consolidated Budget by Agency for FY2011-FY2014 (Estado Libre Asociado de Puerto Rico, *Presupuesto Recomendado 2013-2014*, Presupuesto Consolidado por Agencia), <http://www2.pr.gov/presupuestos/Presupuesto2013-2014/Tablas%20Estadísticas/04.pdf>.

¹¹⁵ The Government Development Bank and the University of Puerto Rico, while considered public corporations for some purposes, are usually considered as part of the Commonwealth government in financial reports.

¹¹⁶ §104(i)(1) allows the Oversight Board to approve voluntary debt negotiations between territorial instrumentalities and debtholders. Voluntary debt agreements consummated before enactment, according to §104(i)(2), will be deemed to comply with the act's requirements.

¹¹⁷ Government Development Bank, Forbearance Agreement: Executive Version, August 14, 2014, <http://www.gdbpr.com/documents/BondholderForbearanceAgreementEXECUTED.pdf>.

¹¹⁸ Mary Williams Walsh, "Puerto Rico Power Supplier Saved From Cash Squeeze," *New York Times*, August 14, 2014. Reuters, "Puerto Rico Power Authority Weighs Financing Options as Bank Deadline Nears," July 30, 2014, <http://www.reuters.com/article/2014/07/30/usa-puertorico-prepa-idUSL2N0Q52GQ20140730>.

¹¹⁹ Energy Commission of Puerto Rico, Restructuring Order CEPR-AP-2016-0001, June 21, 2016, <http://energia.pr.gov/wp-content/uploads/2016/06/21-junio-2016-Restructuring-Order-English-1.pdf>.

¹²⁰ Rebecca Banuchi, "Senado condiciona aprobación de proyecto de revitalización de la AAA (Senate Conditions its Approval of PRASA's Revitalization Project)," *El Nuevo Día*, March 31, 2016, <http://www.elnuevodia.com/noticias/locales/nota/senadocondicionaaprobaciondeproyectederevitalizaciodelaaaa-2181120/>. The measure is Proyecto de la Cámara 2786, "Ley para la Revitalización de la Autoridad de Acueductos y Alcantarillados de Puerto Rico (Act for the Revitalization of the Puerto Rico Aqueduct and Sewer Authority)."

¹²¹ An overview of the latest proposal, released on April 11, 2016, is available here: <http://www.gdb-pur.com/> (continued...)

Various creditor groups have also made proposals to restructure categories of Puerto Rico's debt.¹²² The Puerto Rican government, along with the Government Development Bank (GDB) and other fiscal advisors, have engaged in a series of negotiations with different creditors and bond insurers. Proposals of the island government, according to documents released on June 21, 2016, were not accepted.¹²³

H.R. 5278 includes provisions to allow for a carve-out for voluntary agreements reached between public corporations and bondholders that satisfy certain conditions.¹²⁴

Why Now?

The government of Puerto Rico faces debt service payments that may be beyond its current capacity to pay. In August 2015, Puerto Rico defaulted on debt service payments for "moral obligation" bonds issued by the Public Finance Corporation, a subsidiary of the island's GDB, the island government's fiscal agent. Missed debt service payments for bonds with stronger investor protections could lead to serious legal and financial consequences. On May 1, 2016, Governor García Padilla issued an order to declare a moratorium on certain debt payments by the Government Development Bank (GDB), the government's fiscal agent, which was due to make a debt service payment of \$423 million on May 2, 2016.¹²⁵

Whether the Commonwealth government can make a larger debt service payment on July 1, 2016, is doubtful. The ratings agency Standard & Poors indicated that it believed a government default was "virtually certain."¹²⁶

The proposed FY2017 budget, submitted on May 23, 2016, comes "at the hour of choice between paying money to the creditors and providing services to our people," according to Governor García Padilla.¹²⁷ Proposed payments for debt service in FY2017 are well below amounts due.¹²⁸ A federal district judge on March 28, 2016, held that the government of Puerto Rico "is insolvent and no longer able to pay its debts as they become due."¹²⁹ A local banking regulator, the Puerto

(...continued)

documents/WorkingGroupforPuertoRicoRestructuringCounterproposal.pdf.

¹²² For a summary of proposals, see Joanisabel González, "Bonistas Dispuestos a Negociar (Bondholders Ready to Negotiate)," *El Nuevo Día*, April 9, 2016, <http://www.elnuevodia.com/negocios/finanzas/nota/bonistasdispuestosanegociar-2184880/>.

¹²³ For details of those proposals, see GDB, "Public Disclosure Release," June 21, 2016, <http://www.bgfpr.com/documents/PressReleaseGDB-FAFAA-06-21-16-Final.pdf>.

¹²⁴ § 101(d) allows for separate fiscal plans for territorial instrumentalities at the discretion of the Oversight Board.

¹²⁵ Executive Order OE-2016-014, "Executive Order of the Governor of Puerto Rico, Hon. Alejandro J. García Padilla under Terms of Articles 201, 202, and 203 of Act 21 of 2016, Known as the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act," May 1, 2016, <http://www.fortaleza.pr.gov/content/orden-ejecutiva-moratoria-temporera-en-el-pago-de-la-deuda>.

¹²⁶ Standard & Poor's, "Puerto Rico Debt Moratorium Could Lead to Default," April 6, 2016.

¹²⁷ Press Release, P.R. Office of Management and Budget, Gobernador presenta presupuesto para el próximo año fiscal (Governor Presents Budget for the Next Fiscal Year), (May 23, 2016). Original quoted sentence is "En momentos en que ya no es posible recurrir a aumentar la deuda pública y que dependemos exclusivamente del dinero que recauda Hacienda, este presupuesto es la mejor evidencia a la hora de escoger entre pagarle a los acreedores y dar servicio a nuestra gente, escogemos por nuestra gente."

¹²⁸ See Puerto Rico Office of Management and Budget, "Presupuesto Consolidado Por Concepto de Gasto y Origen de Recurso (Consolidated Budget by Outlays and Object Class)," May 23, 2016, <http://www2.pr.gov/presupuestos/presupuesto2016-2017/Tablas%20Estadsticas/03.pdf>.

¹²⁹ *Walmart Puerto Rico Inc. v. Juan C. Zaragoza-Gomez*, Secretary of the Puerto Rico Treasury, Opinion and Order, March 28, 2016, case No. 3:15-CV-03018 (JAF), <http://www.noticel.com/uploads/gallery/documents/> (continued...)

Rico Commissioner of Financial Institutions, found that the GDB was insolvent in 2015, according to evidence collected in that case. While senior GDB officials contested some claims of the Commissioner, many considered it likely that a receiver could take control of the GDB, which could complicate financial operations of the Commonwealth.¹³⁰

In the week following the release of that federal district court order and opinion, Puerto Rico enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (PREMFRA; Act 21 of 2016), that empowered the governor of Puerto Rico to declare a fiscal state of emergency and a moratorium on certain debt service payments that would extend to January 2017.¹³¹ The act also modifies legal provisions regarding the receivership of the GDB and allows a bridge bank to be set up to assume many of the responsibilities and assets of the GDB. The act also stays legal actions against the Puerto Rico government while emergency powers are invoked.¹³² On April 9, Governor Alejandro García Padilla invoked those authorities and declared an emergency period for the GDB in order to allow it to continue its operations.¹³³

An amendment offered by Chairman Bishop and agreed to during House deliberations would empower the Oversight Board to rescind laws enacted by the Puerto Rico government from May 4, 2016, until all members of the board were appointed. The latter provision would allow the board to rescind PREMFRA and thus curtail emergency powers invoked by the Governor.¹³⁴ Two lawsuits have been filed to challenge PREMFRA in the U.S. District Court for Puerto Rico and one was filed in the Southern District Court of New York.¹³⁵ Some note that the former two cases make arguments similar to those used against the Puerto Rico Restructuring Act (discussed in following section).¹³⁶

Treasury Secretary Jacob Lew, in a June 27, 2016, letter to congressional leaders, argued that a federal judge considering such cases could order Puerto Rico to pay constitutionally prioritized debt ahead of essential governmental services such as health, education, and public safety.¹³⁷ Secretary Lew further contended that “a retroactive stay on litigation passed by Congress a few days later would not reverse such a court order.”

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d7b90a9e684c342bffb267efc4dfadca.pdf.

¹³⁰ Ibid. Also see Carlos Antonio Otero, “Pulseo con la Posible Sindicatura del BGF (Wrestling with the Possible GDB Receivership),” *El Vocero*, March 30, 2016, <http://elvocero.com/pulseo-con-la-posible-sindicatura-del-bgf/>.

¹³¹ Act 21 of 2016, <http://www.oslpr.org/2013-2016/leyes/doc/ley-21-06-Abr-2016.doc> at pp. 55-56.

¹³² Act 21 of 2016, <http://www.oslpr.org/2013-2016/leyes/doc/ley-21-06-Abr-2016.doc> at p. 56.

¹³³ Executive Order OE-2015-010, April 9, 2016. Executive orders issued by the Puerto Rico governor are available at <http://estado.pr.gov/en/executive-orders/>.

¹³⁴ For the text of Chairman Bishop’s amendment (H.Amdt. 1156) see U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

¹³⁵ *Brigade Leveraged Capital Structures Fund Ltd. et al. v. Government Development Bank of Puerto Rico*, case 3:16-cv-01610, complaint, filed April 4, 2016, <https://www.unitedstatescourts.org/federal/prd/125978/42-0.html>. *National Public Finance Guarantee Corporation v. García Padilla et al.*, case 3:16-cv-02101 (JAG), complaint, filed June 15, 2016, http://www.nationalpfg.com/pdf/PressRelease/MORATORIUM_ACT_COMPLAINT_351402.pdf. *Jacana Holdings et al. v. Commonwealth of Puerto Rico, et al.*, case 1:16-cv-04702, complaint, filed June 21, 2016; <http://www.noticel.com/uploads/gallery/documents/375a903a7fbfba7ddadde79cc66bfc.pdf>.

¹³⁶ John Mudd, “Puerto Rico Moratorium Law is Challenged in New York,” blog post, June 21, 2016, <https://johnmuddlaw.com/2016/06/21/the-pr-moratorium-law-is-challenged-in-new-york/>.

¹³⁷ Treasury Secretary Jacob Lew, letter to Majority Leader Mitch McConnell, June 27, 2016, <https://www.treasury.gov/connect/blog/Pages/Congress-Must-Act-Before-July-1-to-Help-Puerto-Rico.aspx>.

Supreme Court and Puerto Rico Restructuring Act

In the face of an increasingly difficult fiscal environment and severe liquidity problems of the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico government in June 2014 enacted a law (Act 71 of 2014) that would have allowed its public corporations to file for debt restructuring through Puerto Rico's legal system.¹³⁸ Act 71 set out two paths for restructuring debts of public corporations, one a consensual renegotiation with creditors, the other a judicial process.¹³⁹ In February 2015, a U.S. District Court struck down that act, an opinion upheld by the U.S. Court of Appeals for the First Circuit on July 6, 2015.¹⁴⁰ On March 22, 2016, the U.S. Supreme Court heard oral arguments for an appeal. The Supreme Court upheld the lower court's opinion on June 13, 2016, ruling that, although Puerto Rico has no access to chapter 9 of the Bankruptcy Code, a provision in that chapter¹⁴¹ preempts Puerto Rico's attempt to establish its own vehicle for restructuring the debts of its instrumentalities.¹⁴²

Alternative Approaches to Address Puerto Rico's Situation

Several elements of other proposals to address Puerto Rico's fiscal challenges are not included in H.R. 5278. Other federal responses could be considered in other legislation. In the one previous case when Congress established a control board for the District of Columbia with the enactment of the District of Columbia Financial Responsibility and Management Assistance Act (P.L. 104-8), it revisited and amended that legislation to adjust or extend federal responses.¹⁴³

The Obama Administration's framework for responding to Puerto Rico's fiscal crisis had four major elements: broad restructuring authorities, independent oversight, adequate funding of health care services, and incentives to drive economic growth.¹⁴⁴ H.R. 4900, in the view of the U.S. Treasury, addresses the two most urgent elements, restructuring of obligations and oversight, but does not include health care funding measures or provisions that directly promote economic development.¹⁴⁵ Congress could consider other measures to address Puerto Rico's fiscal crisis as part of the FY2017 appropriations process or through other legislation. The Obama

¹³⁸ English version of Act 71 of 2014 is available at <http://www.oslpr.org/download/en/2014/A-071-2014.pdf>.

¹³⁹ See CRS Legal Sidebar WSLG1289, *Fiscal Distress in Puerto Rico: Two Legislative Approaches*, by Carol A. Pettit.

¹⁴⁰ *Franklin Cal. Tax-Free Trust v. Puerto Rico*, 805 F.3d 322 (1st Cir. 2015), <http://caselaw.findlaw.com/us-1st-circuit/1707047.html>. For more information on the judicial challenge to the Recovery Act, see CRS Legal Sidebar WSLG1370, *UPDATED: First Circuit: Preemption Precludes Puerto Rico's Recovery Act*, by Carol A. Pettit, Aug. 31, 2015.

¹⁴¹ 11 U.S.C. §903.

¹⁴² *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 579 U.S. ____ (2016). http://www.supremecourt.gov/opinions/15pdf/15-233_i42j.pdf.

¹⁴³ The Chief Financial Officer, a position created by the act, is responsible for oversight and direct supervision of the financial and budgetary functions of the District government, including maintaining a coordinated financial management system; developing revenue and expenditure projections; tax collections; borrowing on behalf of the District and investing District funds; and producing the District's audited Comprehensive Annual Financial Report (CAFR).

¹⁴⁴ "Addressing Puerto Rico's Economic and Fiscal Crisis and Creating a Path to Recovery: Roadmap for Congressional Action," October 21, 2015, https://www.whitehouse.gov/sites/default/files/roadmap_for_congressional_action_puerto_rico_final.pdf.

¹⁴⁵ Testimony of Antonio Weiss, Counselor to the Treasury Secretary, in U.S. Congress, House Committee on Natural Resources, "The Puerto Rico Oversight, Management, and Economic Stability Act," hearings, 114th Cong., 2nd sess., April 13, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0417.aspx>.

Administration proposed an extension of the Earned Income Tax Credit (EITC) for Puerto Rico in its FY2017 budget plan.¹⁴⁶

Some argued that the establishment of an Oversight Board would not improve Puerto Rico's fiscal management and governance capabilities, and that a "large scale" overhaul of public financial management systems, institutions, and practices was necessary.¹⁴⁷ Treasury Secretary Lew, on the other hand, has argued that federal oversight would play a "fairly important role" in helping develop stronger financial management and governmental management capabilities.¹⁴⁸ H.R. 5278, unlike legislation that established a control board for the District of Columbia, does not create a Chief Financial Officer (CFO) position.

International responses to fiscal and economic crises of sovereign governments typically include bridge financing to address short-term liquidity needs and an agreement to undertake structural reforms to enhance long-term growth prospects. The bill introduced by Senator Hatch (S. 2381 §501) provides an authorization of appropriations of \$3 billion that with the approval of an Oversight Board could be used to enhance the "financial, fiscal, economic, and health care stability" of Puerto Rico. A rescission of funds (§501) provided by the Patient Protection and Affordable Care Act would provide an offset to those stability funds. H.R. 5278 does not provide such direct support, although the stay on litigation and debt restructuring measures could ease pressures on the Puerto Rico government's financial resources.

¹⁴⁶ Testimony of Treasury Secretary Jacob J. Lew, in U.S. Congress, House Appropriations Subcommittee on Financial Services and General Government, hearings, 114th Cong., 2nd sess., March 8, 2016; <https://www.treasury.gov/press-center/press-releases/Pages/jjl0375.aspx>.

¹⁴⁷ Eva Lloréns Vélez, "CNE's Marxuach: Financial Oversight Board Powers are Too Broad," *Caribbean Business*, April 8, 2016; <http://cb.pr/cnes-marxuach-financial-oversight-board-powers-are-too-broad/>.

¹⁴⁸ U.S. Treasury, "Secretary Lew: Congress Must Act on Puerto Rico to Avoid Bailout," press release, April 22, 2016; <https://www.treasury.gov/press-center/press-releases/Pages/jl0440.aspx>.

Appendix B. Sections of Title 11, U.S. Code Referenced in H.R. 5278 Section 301¹⁴⁹

This appendix lists headings and provides a general description of the Bankruptcy Code sections made applicable to Title III of PROMESA. As a general matter, the Bankruptcy Code, in chapters 1, 3, and 5, establishes general procedures that are applicable to the operative chapters. Chapters 9 and 11 are operative chapters. Chapter 9 provides the mechanism for adjustment of municipal debts. Chapter 11 provides the mechanism for business reorganizations (although in rare instances, individuals may file under chapter 11). Generally, such adjustment or reorganization is effectuated through a “plan” proposed by the debtor, voted on by creditors, and confirmed by the court.

§101 (except as otherwise provided in Section 301 of PROMESA)—Definitions.

§102—Rules of construction. Provides nine rules of construction to be used in determining the meaning of individual sections of the Bankruptcy Code.

§104—Adjustment of dollar amounts. Provides timing for recommendations of adjustments to dollar amounts found in various code sections by the Judicial Conference of the United States.

§105—Power of the court. Outlines both the powers of the court as well as the limitations of the court’s power in carrying out the provisions of Title 11.

§106—Waiver of sovereign immunity. Limits the extent to which a government unit can assert sovereign immunity.

§107—Public access to papers. In general, papers filed in a bankruptcy case are public records. Exceptions may be made to protect some interests of an entity or to protect a person with respect to scandalous or defamatory matter or to protect an individual from information being revealed that might lead to identity theft or other unlawful injury.

§108—Extension of time. Establishes criteria in which a period of time established outside of a bankruptcy case for various actions may be extended to allow the trustee to take the relevant action.

§112—Prohibition on disclosure of name of minor children. Debtor may not be required to provide the name of a minor child in the public record, but may be required to disclose the name of a minor child in a nonpublic record.

§333—Appointment of a patient care ombudsman. Debtors in chapters 7, 9, or 11 who are health care businesses generally must have an ombudsman appointed no later than 30 days after the case begins to monitor the quality of patient care and represent the patients’ interests.

§344—Self-incrimination; immunity. Immunity may be granted under 18 U.S.C. part V to those required to testify or otherwise provide information in a bankruptcy case.

§347(b)—Unclaimed property. Property that remains unclaimed after the time allowed in a case in chapter 9, 11, or 12 may become the property of either the debtor or the entity that acquired the debtor’s assets.

¹⁴⁹ This appendix was authored by Carol A. Pettit, Legislative Attorney, 7-9496, cpettit@crs.loc.gov.

§349—Effect of dismissal. Generally, dismissal of a case does not bar later discharge of debts that would have been dischargeable in the case dismissed. Dismissal also generally allows reversion to the status quo as it existed prior to the commencement of the case.

§350(b)—Closing and reopening cases. A closed case may be reopened to administer assets or accord relief to the debtor as well as for other causes.

§351—Disposal of patient records. Provides the procedure for disposing of records if the trustee in a case under chapter 7, 9, or 11 does not have enough funds to provide appropriate storage of the records under applicable federal or state law.

§361—Adequate protection. Outlines the ways in which adequate protection can be provided when it is required by Sections 362, 363, or 364 of the Bankruptcy Code.

§362—Automatic stay. Generally prevents various collection actions against a debtor after a petition has been filed under the Bankruptcy Code.

§364(c)—Obtaining credit. When a debtor has not been able to acquire unsecured credit, allows the court, after notice and hearing, to authorize the debtor to acquire credit or incur debt having priority over certain administrative expenses or secured by a lien.

§364(d)—Obtaining credit. When a debtor has not been able to acquire unsecured credit, allows the court, after notice and hearing, to authorize the debtor to acquire credit or incur debt secured by a senior or equal lien on property already subject to a lien when the existing lienholder's interest has adequate protection.

§364(e)—Obtaining credit. Reversal or modification of an authorization to obtain credit or incur debt generally does not affect the validity of relevant debt incurred or priority or lien granted to an entity that extended the credit in good faith.

§364(f)—Obtaining credit. With some exceptions, a security does not apply to the offer or sale under this section of a security that is not an equity security.

§365—Executory contracts and unexpired leases. Generally, subject to some limitations, a trustee may assume or reject any executory contract or unexpired lease of the debtor.

§366—Utility service. Subject to certain limitations, a utility may not alter, refuse, or discontinue service based solely on the filing of a bankruptcy petition or an amount owed by the debtor for services provided before the order of relief.

§501—Filing of proofs of claims or interests. Outlines who may file a proof of claim or proof of interest.

§502—Allowance of claims or interests. Generally, if not objected to by a party in interest, a claim or interest is deemed accepted. Outlines the procedures when there is an objection to a proof of claim or interest.

§503—Allowance of administrative expenses. Outlines the types of expenses that are considered administrative expenses.

§504—Sharing of compensation. Outlines the situations in which compensation or reimbursement can and cannot be shared with others.

§506—Determination of secured status. Generally, a secured debt is limited to the current value of the asset that secured that debt. If the amount of the debt exceeds the value of the property subject to a lien, an amount over that value is considered an unsecured debt.

§507(a)(2)—Priorities. Administrative expenses are in the second position of priority, coming after domestic support obligations. For most practical purposes, that means that administrative expenses have the highest priority in non-individual bankruptcies.

§509—Claims of codebtors. Outlines when a codebtor is and is not subrogated (when one is subrogated to the rights of another, one takes the place of the other) to the rights of a creditor.

§510—Subordination. Provides that a subordination agreement is enforceable in a bankruptcy case to the same extent as it would be enforceable under nonbankruptcy law, and outlines the circumstances in which a claim may be subordinated to other claims or interests.

§524(a)(1)—Effect of discharge. A discharge voids any judgment to the extent that the judgment is a determination of the personal liability of the debtor if the debt was discharged under Sections 727, 944, 1141, 1228, or 1328 of the Bankruptcy Code.

§524(a)(2)—Effect of discharge. A discharge acts as an injunction against attempts to recover a relevant debt of the debtor.

§544—Trustee as lien creditor and as successor to certain creditors and purchasers. Effective at the beginning of the case, the trustee has the rights of certain creditors and bona fide purchasers, even if those creditors or purchasers are hypothetical. At the same time, the trustee also has the powers of an actual creditor holding an unsecured claim.

§545—Statutory liens. Conditions under which the trustee may avoid (in bankruptcy, “to avoid” means to make legally void) the fixing of a statutory lien on the debtor’s property.

§546—Limitation on avoiding powers. Conditions under which the trustee’s powers of avoidance are limited.

§547—Preferences. Defines transfers that are considered preferences and which can be avoided by the trustee.

§548—Fraudulent transfers and obligations. Defines transfers and obligations that are considered fraudulent and which can be avoided by the trustee.

§549(a)—Postpetition transactions. In certain cases, a trustee may avoid a transfer that occurred after the commencement of the case.

§549(c)—Postpetition transactions. Despite subsection (a), a trustee may not avoid a transfer of an interest in real property to a good faith purchaser for present fair equivalent value with no knowledge of the commencement of the bankruptcy case except in certain circumstances.

§549(d)—Postpetition transactions. Time limit for commencing a postpetition transaction.

§550—Liability of transferee of avoided transfer. Defines situations in which the trustee has the ability to recover avoided transfers from the transferee.

§551—Automatic preservation of avoided transfer. Transfers avoided under relevant sections of the Bankruptcy Code and liens void under Section 506(d) generally are reserved for the benefit of the bankruptcy estate.

§552—Postpetition effect of security interest. Generally, property acquired after a case begins is not subject to any lien resulting from a security agreement entered into before the case began.

§553—Setoff. Allows a creditor to offset all or a portion of a claim with all or a portion of a debt owed by creditor to debtor; for example, a bank can offset all or part of a loan owed to it by retaining as its own up to an equivalent amount held in accounts in the bank that are owned by the debtor.

§555—Contractual right to liquidate, terminate, or accelerate a securities contract. Without authorization by the Securities and Exchange Commission (SEC), the contractual right to liquidate, terminate, or accelerate a securities contract cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§556—Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract. The contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§557—Expedited determination of interests in, and abandonment or other disposition of grain assets. Applies only to cases in which the debtor owns or operates a grain storage facility and only regarding grain and its proceeds. Allows the court to expedite procedures for determining interests in and disposition of grain and its proceeds.

§559—Contractual right to liquidate, terminate, or accelerate a repurchase agreement. Exercise of a contractual right belonging to a repo participant or financial participant to cause the liquidation, termination, or acceleration of a repurchase agreement due to a condition in Section 365(e)(1) cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§560—Contractual right to liquidate, terminate, or accelerate a swap agreement. Exercise of a contractual right belonging to a swap participant or financial participant to cause the liquidation, termination, or acceleration of one or more swap agreements due to a condition in Section 365(e)(1) cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§561—Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15. Similar to Sections 559 and 560 but applicable to proceedings under chapter 15 (ancillary and cross-border cases) and extending to security contracts, commodity contracts, forward contracts, and master netting agreements as well as repurchase and swap agreements.

§562—Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements. If a trustee rejects or a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates one of these contracts or agreements, the date used to determine damages is the earlier of the date of rejection or the date(s) of liquidation, termination, or acceleration.

§902 (except as otherwise provided in Section 301 of PROMESA)—Definitions in this chapter.

§922—Automatic stay of enforcement of claims against the debtor. For chapter 9 debtors, this expands the parameters of the stay provided under Section 362.

§923—Notice. For chapter 9 cases, provision for notice of commencement of a case, order for relief, or a notice of dismissal.

§924—List of creditors. The debtor must file a list of creditors.

§925—Effect of list of claims. Any claim on the list filed under Section 924 is deemed to have a proof of claim filed under Section 501 unless the claim is listed as disputed, contingent, or unliquidated.

§926—Avoiding powers. If a debtor refuses to exercise avoidance powers available under certain sections of the Bankruptcy Code, the court may appoint a trustee to exercise those powers.

§927—Limitation on recourse. A holder of a claim that is payable only from special revenues does not have recourse (the ability to collect) based on that claim under Section 1111(b).

§928—Post petition effect of security interest. Special revenues received after the commencement of a case are subject to the lien from any security agreement entered into before the case began, except that such revenues generally may be subject to necessary operating expenses of the project or system through which the special revenues are derived.

§942—Modification of plan. The debtor in chapter 9 may modify the plan at any time prior to confirmation of the plan so long as the modification does not cause the plan to fail to meet the requirements of a chapter 9 plan.

§944—Effect of confirmation. Confirmation of a chapter 9 plan binds both debtor and creditor to the provisions of the plan. The debtor's debts are generally discharged.

§945—Continuing jurisdiction and closing of the case. The court shall close the chapter 9 case when administration of the case has been complete, except that the court may retain jurisdiction over the case so long as is necessary to implement the plan successfully.

§946—Effect of exchange of securities before the date of the filing of the petition. Whether an exchange of securities, under the plan for a claim covered by the plan, occurred before or after the filing of the bankruptcy petition does not limit or impair the effectiveness of the plan.

§1102—Creditors' and equity security holders' committees. The U.S. trustee shall appoint a committee of creditors with unsecured claims and may appoint additional committees as deemed appropriate by the U.S. trustee.

§1103—Powers and duties of committees. A committee may, with the court's approval, select and employ attorneys, accountants, or other agents to represent the committee or perform services for it.

§1109—Right to be heard. A party in interest, including the SEC, may raise, appear, and be heard on any issue in a case. However, the SEC may not appeal from any judgment, order, or decree entered in the case.

§1111(b)—Claims and interests. With certain exceptions, a claim secured by a lien on property of the bankruptcy estate shall be allowed or disallowed under Section 502 even if the holder of the claim did not have recourse against the debtor as a result of the claim.

§1122—Classification of claims or interests. Generally, a plan may place a claim or interest in a particular class only if it is substantially similar to other claims or interests in that class. However, for administrative convenience, the court may allow a plan to designate a separate class of claims that includes only all unsecured claims that are less than a specified dollar amount.

§1123(a)(1)—Contents of plan. A plan shall designate classes of claims and classes of interests.

§1123(a)(2)—A plan shall specify any class of claims or interests that is not impaired by the plan.

§1123(a)(3)—A plan shall specify the treatment of any class of claims or interests that is impaired by the plan.

§1123(a)(4)—A plan shall provide the same treatment for each claim or interest in a particular class, unless the holder of a claim or interest agrees to less favorable treatment for that claim or interest.

§1123(a)(5)—A plan shall provide adequate means for the plan's implementation.

§1123(b)—Outlines things a plan may do but is not required to do.

§1123(d)—If a plan proposes to cure a default, the amount needed to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

§1124—Impairment of claims or interests.—Defines when a class of claims or interests is impaired (generally, when the plan alters the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest subject to certain exceptions).

§1125—Postpetition disclosure and solicitation.—The court must approve a disclosure statement to be presented to holders of claims or interests before they may be solicited to accept or reject a plan unless such solicitation takes place before the petition is filed. However, in a small business case, the court may determine that the plan provides adequate information and that a separate disclosure statement is not required.

§1126(a)—Acceptance of plan.—The holder of a claim or interest may accept or reject a plan.

§1126(b)—The holder of a claim or interest who accepted or rejected the plan before the case began is included in the calculation in subsection 1126(c) if the acceptance or rejection came after solicitation of same that was in compliance with an applicable nonbankruptcy law, rule, or regulation regarding the adequacy of disclosure in connection with such solicitation or, in the absence of such law, etc., the solicitation came after disclosure of adequate information as defined in subsection 1125(a).

§1126(c)—A class of claims has accepted a plan if the plan has been accepted by creditors holding at least two-thirds of the amount of claims in the class and more than one-half of the number of claims in the class. Any entity designated in subsection (e) shall not be included in the calculations.

§1126(e)—The court may designate any entity whose acceptance or rejection of the plan was not in good faith or was not solicited or procured in good faith.

§1126(f)—Unimpaired classes of claims or interests are deemed to have accepted the plan.

§1126(g)—A class is deemed not to have accepted the plan if the plan provides that the holders of claims or interests are not entitled to any property under the plan.

§1127(d)—Modification of plan.—A proponent of a plan may modify it at any time prior to confirmation. The plan may also be modified after confirmation but before substantial consummation of the plan so long as it meets the requirements of Section 1122.

§1128—Confirmation hearing.—After notice, the court shall hold a confirmation hearing. A party in interest may object to the confirmation of the plan.

§1129(a)(2)—Confirmation of plan. The court shall confirm a plan only if the proponent of the plan complies with the applicable provisions of the Bankruptcy Code, and

§1129(a)(3)—the plan has been proposed in good faith and not by any means forbidden by law, and

§1129(a)(6)—any government regulatory commission with jurisdiction over the rates of the debtor after confirmation has approved any rate change provided for in the plan or the rate change is expressly conditioned on such approval, and

§1129(a)(8)—each class of claims or interests has either accepted the plan or is not impaired by it, and

§1129(a)(10)—if a class of claims is impaired under the plan, at least one class of impaired claims has accepted the plan.

§1129(b)(1)—“Cramdown.” If all applicable requirements in subsection (a) are met other than paragraph (8), the court shall confirm the plan so long as the plan does not discriminate unfairly, and is fair and equitable, with respect to each class that is impaired under the plan and has not accepted the plan.

§1129(b)(2)(A)—The conditions under which a plan will be considered fair and equitable with respect to a class of secured claims.

§1129(b)(2)(B)—The conditions under which a plan will be considered fair and equitable with respect to a class of unsecured claims.

§1142(b)—Implementation of plan. The court may direct the debtor and any other necessary party to execute, deliver, or join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, as well as to perform any other act needed to consummate the plan, including satisfaction of any lien.

§1143—Distribution. To participate in distribution under the plan, any entity must complete any required presentment or surrender of a security or performance of any other required act within five years after the date of the entry of the order of confirmation.

§1144—Revocation of an order of confirmation. If so requested by a party in interest before 180 days after the entry of the order of confirmation, the court may revoke such order if, and only if, the order was obtained by fraud.

§1145—Exemption from securities laws. Makes many transfers, sales, etc., of various securities connected directly or indirectly with the debtor exempt from security laws.

§1146(a)—Special tax provisions. Transfers or similar transactions under a confirmed plan will not be subject to a stamp tax or any similar tax.

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