

## ***“Port of the Americas Authority Act”***

Act No. 171 of August 11, 2002, as amended

(Contains amendments incorporated by:  
Act No. 166 of June 28, 2004)

To create the Port of the Americas Authority; to establish its purposes, faculties, and powers; to amend subsections (b) and (d) of Section 1.03, add subsections (y), (z), and (aa) to Section 1.03, and amend Sections 1.05, 1.06, and 1.07 of Section 1, and to amend Sections 2.01 and 2.02 of Section 2 of Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968”; to exempt the Port of the Americas Authority from the provisions of Sections 3 and 5 of Act No. 406 of April 23, 1946, as amended; to exempt the Authority and the port operator from the provisions of Act No. 109 of June 28, 1962, as amended, known as the “Puerto Rico Public Service Act”; to exempt the Authority from the provisions of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act;” to exempt the Authority from the provisions of Act. No. 5 of October 14, 1975, as amended, known as the “Puerto Rico Public Service Personnel Act;” to exempt the proceedings pursuant to Section 11 of this Act from the provisions of Act. No. 170 of August 12, 1998, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act,” except for the provisions of Chapter IV of such Act regarding judicial review; and for other purposes.

### STATEMENT OF MOTIVES

In the globalized economy of the 21st century, 88% of transoceanic commerce is transported in post-panamax sized container ships (which cannot navigate through the Panama Canal because of their size), the ideal transport for transatlantic and transpacific routes. These vessels, due to the economies of scale necessary for their cost-effective operation, have been integrated into intermodal and feeder systems capable of transferring containers many times, whether to ships of greater or lesser capacity or by land transportation systems, before reaching their final destination. These complex transportation systems may cause the products from one particular country or another to be more or less competitive in international markets, depending, among other factors, on the efficiency of the operation of their shipping ports and the time it takes their products to travel through these complex systems in order to reach the market.

Puerto Rico enjoys a favorable geographical location within international commerce maritime routes, which routes could benefit from a new and efficient transshipment port for post-panamax ships and their associated feeder systems. These routes include commercial

traffic routes between (i) Europe and the Caribbean or eastern South America, (ii) the eastern United States and the Caribbean or eastern South America, (iii) Asia, via the Suez Canal, and the Caribbean or South America, (iv) Central America and the Gulf of Mexico and eastern South America, and (v) Asia, via the Pacific and intermodal land, and the Caribbean or eastern South America.

It is anticipated that the San Juan port, the port with the largest volume of traffic in Puerto Rico, will reach its maximum capacity between the years 2007 and 2010. For this reason, the Government Development Bank for Puerto Rico commissioned the preparation of studies to determine the physical, economic, and commercial feasibility of the establishment of a transshipment port in Puerto Rico. These studies favorably recommended the development of a transshipment port in the southern region of Puerto Rico, between Ponce and Guayanilla, since these are the most attractive and viable locations for post-panamax ships due to (i) their natural protection against the pounding of waves, currents, and winds, (ii) their deep bays and accesses, (iii) their large expanse of available or under-utilized lands, which would be available for value added industrial activities connected to the transshipment operations, (iv) the availability of infrastructure (water, electric power, and telecommunications), and (v) the availability of a workforce.

The Government of the Commonwealth of Puerto Rico, taking into account the existence of the economic opportunity for the development of a transshipment port in Puerto Rico, the favorable geographical location which allows for the establishment of a viable port, the need to increase our port capacity and efficiency, and the possibility of greater economic growth for Puerto Rico, has decided to establish a transshipment port in the southern region of Puerto Rico, which has been named the Port of the Americas.

Following the model used for 93% of the 100 largest container ports in the world, the Government of the Commonwealth of Puerto Rico intends to contract with one or more private companies to design, develop, build, finance, operate, and maintain the Port of the Americas.

Due to the complexity of a project of this magnitude, and the need to have a government entity with the faculty to enter into the legal commitments necessary to carry out said project, the Legislature believes it advisable to create a new government body devoted exclusively to making this project a reality.

In this regard, a public corporation is hereby created with the name of the Port of the Americas Authority (“APA”). The APA will be responsible for selecting the developer and operator of the Port of the Americas, negotiating the terms and conditions of the contract with said developer and operator, coordinating and supervising the design, development, construction, financing, operation, maintenance, and administration of the Port of the Americas, and regulating the activities that will take place at said port. The APA will have all the powers typically conferred on public corporations, including the power to issue bonds and to acquire properties through eminent domain and certain powers and faculties particular to the activities of the Port of the Americas.

In order to expedite a project of such magnitude and complexity and to make it feasible, Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” is hereby amended to transfer to the APA the faculty to regulate, and the control over, the navigation and maritime traffic in the navigable waters adjacent to the Port of the Americas and the operations of said port. Similarly, in order to grant exclusive

jurisdiction to the APA over the port’s operations, we believe it is convenient and necessary to exempt said operations from the provisions of Sections 3 and 5 of Act No. 406 of April 23, 1946, as amended, and to exempt the Authority and the port’s operator from the provisions of Act No. 109 of June 28, 1962, as amended, known as the “Puerto Rico Public Service Act.”

The proceedings initiated by the Infrastructure Financing Authority and the Port of the Americas Coordination Committee will be continued by the APA once the Board determines, through resolution, that the APA is prepared to continue with such proceedings.

*Be it enacted by the Legislature of Puerto Rico :*

**Section 1. — Short Title.** — (23 L.P.R.A. § 2901 note)

This Act shall be known as the “Port of the Americas Authority Act.”

**Section 1-A. — Name.** — (23 L.P.R.A. § 2901 note)

The facilities to be constructed as part of the transshipment port of the southern area of Puerto Rico shall be known as the ‘Rafael “Churumba” Cordero Santiago Port of the Americas.’

**Section 2. — Definitions.** — (23 L.P.R.A. § 2901)

The following terms shall have the meaning stated below, except where the context clearly indicates otherwise, and the words used in the singular shall include the plural, and vice versa.

(a) *Federal Agency.* — The United States of America, its President, any of the departments of the Executive Branch of the government of the United States of America, or any corporation, agency, or instrumentality created or which may be created, designated, or established by the United States of America.

(b) *Navigable Waters of the Port of the Americas.* — The navigable waters of the Commonwealth of Puerto Rico adjacent to the Port of the Americas whose control and dominion by the Authority is necessary or convenient for the efficient operation of the Port. The Board of Directors of the Port of the Americas Authority, upon consultation with the Ports Authority, shall determine the scope of the geographic area that will comprise the navigable waters of the Port of the Americas.

(c) *Authority.* — The Port of the Americas Authority, created by this Act.

(d) *Bonds.* — The bonds, temporary bonds, refunding bonds, provisional bonds, notes, promissory notes, receipts, certificates, or other evidence of debt of the Authority issued pursuant to the provisions of this Act.

(e) *Executive Director.* — The Executive Director of the Port of the Americas Authority.

(f) *Emergency.* — Any situation which requires immediate action because the life or health of one or more persons is at risk, because there is a risk of damage to or loss of public property, or because there is a risk of suspending or adversely affecting the public service.

(g) *Contracted Entity*. — The private or public natural or juridical person or a consortium thereof, selected by the Authority to design, develop, build, operate, or maintain the Port of the Americas.

(h) *Board or Board of Directors*. — The Board of Directors of the Authority, and should the same be abolished, the board or entity that succeeds the same in the discharge of its duties.

(i) *Dock*. — All useful facilities on land for docking ships or for loading or unloading persons or things at the Port of the Americas.

(j) *Person*. — Any natural person or legal entity, including, but not limited to, any government agency or instrumentality or any public or private individual, firm, partnership, stock company, association, or corporation organized or existing under the laws of the Commonwealth of Puerto Rico, the United States of America or any of its states, or of any foreign country, any federal agency, or any combination of the above.

(k) *Property*. — Any property, whether real or personal, tangible or intangible.

(l) *Port of the Americas or Port*. — The navigable waters of the Port of the Americas and its port zone, maritime-land zone, lands submerged under port waters, and adjacent lands included in the geographic area within which the activities of the transshipment port located in the southern region of Puerto Rico are conducted, including piers, berths, wharves, jetties, breakwaters, dikes, docks, railroad connections, sidings, or other buildings, structures, facilities, or improvements used for navigation, the accommodation of ships and their cargo, the storage of cargo and containers, the handling of cargo and containers, the transfer activities, and any other activity incidental to the foregoing. The Board of Directors of the Port of the Americas Authority shall determine the scope of the geographic area that will comprise the Port of the Americas.

(m) *Rate*. — Any fee, rent, charge, or quota fixed by the Authority or the port’s operator for services rendered or for the use of the facilities under its control.

(n) *Bondholder*. — Any person who is the bearer of any outstanding bond, recorded in his name or not recorded, or the owner, according to the registry, of any outstanding bond which as of that date is recorded in the name of a person other than the bearer.

(o) *Maritime-Land Zone*. — Shall mean the portions of the coasts of Puerto Rico touched by the sea during its ebb and flow, where tides are noticeable, and the portions of the coasts touched by the largest waves during a storm where tides are not noticeable, including the lands gained from the sea, accretions, and the river banks up to the place where they are navigable or the tides are noticeable.

(p) *Port Zone*. — That part of the maritime-land zone and other lands adjacent to the Port that are delimited by the Board as the Port’s port zone.

**Section 3. — Creation.** — (23 L.P.R.A. § 2902)

A public corporation and government instrumentality of the Commonwealth of Puerto Rico is hereby created, which will constitute a politically independent corporate body with the name of the Port of the Americas Authority.

**Section 4. — Board of Directors. — (23 L.P.R.A. § 2903)**

(a) The Authority shall be governed by a Board of Directors constituted by the Secretary of Transportation and Public Works, the Secretary of Economic Development and Commerce, the Executive Director of the Puerto Rico Industrial Development Company, the Mayor of every Municipality where the Port’s facilities are located, and five (5) private citizens appointed by the Governor with the advice and consent of the Senate for a four (4)-year term until their successors are appointed. The initial appointments of the private citizens shall be made under the following terms: one member for one (1) year; one member for two (2) years; one member for three (3) years; and two (2) members for four (4) years. Any vacancy in the Board of a position held by a private citizen occurring prior to the expiration of the term for said position shall be covered by a new appointment for the unfulfilled term. Any person who has direct or indirect economic interests in any private enterprise engaged in the maritime business may not be appointed as member of the Board. The Chairperson of the Board shall be selected by the Governor. The Board shall select from among its members a vice chairperson, who will substitute the Chairperson in his or her absence, as well as a secretary.

(b) A majority of the members of the Board shall constitute a quorum for all purposes, and the agreements shall be made by a majority of those present. Unless the Authority’s regulations so prohibit or restrict, any action necessary or allowed during any meeting of the Board or any Board committee shall be authorized without the need for a meeting, provided that all the members of the Board or Board committee, as the case may be, give their written consent to such action. In such event, the written document shall be included in the minutes of the Board or Board committee, as the case may be. Unless the Authority’s regulations provide otherwise, the members of the Board or of any Board committee may participate in any meeting of the Board or any Board committee, respectively, through telephone conference, or other communications medium whereby all of the persons participating in the meeting may listen in simultaneously. The participation of any member of the Board or any Board committee in the manner described above shall constitute attendance at said meeting.

(c) Board members who are officials of the Government of the Commonwealth of Puerto Rico, including the Mayors, shall not receive any compensation for their services. The remaining members shall be entitled to receive per diem compensation for each day of session they attend, and to be reimbursed for expenses incurred while exercising duties commissioned by the Board or its Chairperson. Per diems shall be equal to those established for members of the Legislature. Board members shall also be entitled to reimbursement for those travel expenses necessarily incurred while performing their official duties in accordance with the applicable regulations of the Department of the Treasury.

(d) The Board, its Executive Director, and the officers, agents, or employees of the Authority shall not be held civilly liable for any action or omission in the discharge of their duties, except to the extent they engage in any conduct which constitutes a crime or gross negligence.

(e) The Board shall have, without it being construed as a limitation, the following duties and faculties:

- i. To establish the general policy of the Authority in order to comply with the objectives of this Act;
- ii. To authorize the Authority’s work plan and annual budget;

- iii. To appoint the Authority’s Executive Director, to establish his or her duties and powers in accordance with the provisions of this Act, and to fix his or her compensation;
- iv. To adopt and approve rules and regulations to govern its internal functions, as well as those that may be necessary to exercise the faculties and powers conferred under this Act;
- v. To require of the Executive Director or any other officer or employee of the Authority those reports and statistical data that are deemed necessary;
- vi. To ratify and validate the efforts or acts, expenses, and obligations incurred by the Executive Director in the exercise of the faculty granted in case a state of emergency has been decreed;
- vii. To delegate in any Board committee or in the Executive Director any of the powers and faculties granted to the Board under this Act; and
- viii. To take all those actions deemed convenient or necessary to carry out the purposes of the Authority pursuant to the provisions of this Act.

**Section 5. — Executive Director; Authorities, Duties and Functions. — (23 L.P.R.A. § 2904)**

The Authority shall operate under the direction of an Executive Director, who shall be appointed by the Board and hold office at the volition of the Board. Without it being understood as a limitation, his or her duties shall be the following:

- (a) to be the chief executive officer of the Authority;
- (b) to draft and submit to the Board the Authority’s work plan and annual budget;
- (c) to supervise, monitor and audit the Contracted Entity’s compliance with its obligations under its contract with the Authority;
- (d) to authorize and supervise any other contract that may be necessary for the Authority’s operation, subject to the standards established by the Board;
- (e) to attend all meetings of the Board, but shall not be entitled to vote;
- (f) to establish, organize, direct, and supervise the Authority’s administrative structure;
- (g) to establish the functional levels of the Authority’s operations, including the faculty to recruit and contract any of the officers and employees under his or her supervision, subject to the standards established by the Board;
- (h) to direct the drafting of the Authority’s short and long-term plans regarding the contracting and development of personnel, operations, administrative controls, marketing strategies, and all other functions necessary to ensure the Authority’s success in the effective and efficient fulfillment of its objectives;
- (i) to promulgate states of emergency through administrative order stating the events that caused the emergency and the measures to be taken to arrange for and provide the necessary resources immediately. Any state of emergency thus promulgated must be notified to the Board as soon as possible and not later than twenty-four hours after the occurrence of the events that led to the state of emergency. When the Governor of Puerto Rico decrees an emergency on the same date and for the same reasons, the Executive Director shall be relieved from issuing the order thereon, but not from notifying the Board of the measures taken as provided herein; and
- (j) to perform all those other functions assigned to him or her by the Board.

**Section 6. — Purpose, Faculties, and Powers of the Authority. — (23 L.P.R.A. § 2905)**

The Authority is hereby created with the purpose of promoting, developing, improving, possessing, operating, and administering all the facilities of the Port of the Americas, and regulating the Port’s activities. In order to achieve this purpose, the Authority is granted, and will have and may exercise, all the rights and powers as are necessary or convenient to carry out such purposes, including, but without limiting the generality of the foregoing, the following:

- (a) to have perpetual existence as a corporation;
- (b) to adopt, alter, and use a corporate seal of which judicial notice shall be taken;
- (c) to formulate, adopt, amend, and revoke statutes for the administration of its corporate affairs and those standards, rules and regulations that may be necessary or pertinent to exercise and perform its functions, powers and duties;
- (d) to have complete dominion over all its properties;
- (e) to determine the nature of and need for all its expenses, and the manner in which the same shall be incurred, authorized and paid without taking into consideration any legal provisions which regulate the expenditure of public funds, and such determination shall be final and binding for all the officials of the Commonwealth of Puerto Rico, but it must adopt rules for the use and disbursement of its funds and it shall be subject to audits conducted by the Office of the Comptroller of Puerto Rico;
- (f) to sue and be sued under its own name, to file complaints and defend itself in all courts of justice and administrative bodies, and to participate in commercial arbitration proceedings;
- (g) to negotiate and execute with any person, including any federal or state government agency, any type of contract, including, but without being limited to, administrative concession contracts pursuant to the provisions of this Act, and lease, sublease, and surface rights contracts, as well as all those instruments and agreements necessary or convenient to exercise the powers and functions conferred to the Authority by this Act;
- (h) to draft and contract for the drafting of plans, projects, and cost budgets for, among others, the design, construction, reconstruction, extension, improvement, expansion, repair, operation, maintenance, or financing of any of the Port’s facilities, including the modification of such plans, projects, and budgets;
- (i) to design, construct, reconstruct, expand, repair, maintain, finance, or operate any facility that the Authority deems necessary or convenient to carry out its purposes or to contract third parties to carry out any of the above;
- (j) to acquire any property through any legal means, including, without limitation, purchase agreements; eminent domain proceedings, filed directly by the Authority on its own behalf, subject to the provisions of Section 9, subsection (d), or filed by the Commonwealth of Puerto Rico by request of the Authority, as provided in Section 9, subsection (b); or by mandate, bequest, or donation; and to possess, preserve, use, and exploit any property as deemed necessary or convenient to achieve the Authority’s purposes;
- (k) to exchange, sell, lease, pledge, and otherwise dispose of any property of the Authority when deemed appropriate, necessary, incidental, or convenient in connection with its activities;
- (l) to determine, fix, alter, impose, and charge rates, fees, royalties, rents, and any other type of fee or compensation for the use of the Authority’s facilities or services and for the articles

sold, loaned, or supplied by the Authority, and to grant to the entity or entities with which it contracts for the operation of the Port under Section 11 of this Act, the faculty to determine, alter, impose, and charge rates, fees, royalties, rents, and any other fee or compensation for the use of the Port’s facilities or for the services which said entity renders under the conditions and criteria established in the operating contract with the Authority;

(m) to be in charge of the enforcement and administration at the Port of the Americas of the provisions of Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” for which purpose it shall have, as to the administration and supervision of the Port of the Americas, all those powers which said Act grants to the Puerto Rico Ports Authority. The Authority’s powers shall include, without it being construed as a limitation, the power to:

- i. control and regulate the navigation and maritime traffic in the Port’s navigable waters, including the inspection of ships and the movement of ships and cargo at the docks and in the port zone and impose the Port’s access fees it deems pertinent;
- ii. control, administer, and regulate the use of the Port of the Americas facilities, except the public lands and buildings reserved by the United States for public purposes and the docks, buildings, or structures belonging to a municipality, unless the faculty to administer such facilities has been transferred from the municipality to the Authority;
- iii. investigate, take oaths, receive testimonies, hold hearings, and issue citations requiring the appearance of witnesses and the presentation of documentary or other evidence which it deems necessary to comply with the purposes of this Act and to determine by rules or regulations the procedure relative to such investigations, hearings, and citations, as well as the delegation of faculties; and
- iv. impose reasonable administrative fines, which shall not be of less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for violations of its rules and regulations.

(b) The Authority may delegate to the entity with which it contracts for the operations of the Port under Section 11 of this Act, the faculties described in Articles 2.01 and 2.02 of Section 2, Articles 5.01 and 5.05 of Section 5, and Article 6.02 of Section 6 of Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” so that said entity may administer the activities of the Port of the Americas;

(c) to appoint and remove officers, agents, and employees and to grant them the powers, impose on them the duties, and fix, change, and pay them the compensation determined by the Authority;

(d) to borrow money and issue bonds of the Authority in order to provide funds to pay the cost of acquiring or building any property of the Authority or to carry out any of its corporate purposes, or to refinance, pay, or redeem any of its outstanding bonds or obligations, and it may guarantee the payment of its bonds and the bonds of any of its subsidiaries, and of any and all of its obligations or the obligations of any of its subsidiaries by means of assignment, pledge, mortgage or any other lien on any or all of its contracts, revenues, income, or properties;

(e) to accept donations from any person, and to use the product of any such donations for any corporate purpose; provided that all donors, whether natural persons or legal entities, must be duly identified with their name, physical and mailing address, and social security number, and employer social security number in the case of corporations. Cash donations in excess of

fifty dollars (\$50.00) shall not be accepted, and the source of all donations in excess of ten thousand dollars (\$10,000.00) must be identified;

(f) to create, by resolution, those subsidiary corporations the Board deems convenient to carry out the purposes of this Act and to transfer, lend or donate funds or any of its properties to such subsidiary corporations or guarantee any of its obligations; provided, that, such subsidiary corporations created by resolution shall be public corporations wholly owned by the Authority and have those faculties and duties conferred on the Authority under the provisions of this Act which, in turn, have been assigned to said subsidiary corporations by the Board; provided, further, that the Board shall appoint the members of the Board of Directors of any such subsidiary corporations;

(g) to acquire, hold, and dispose of stocks, partnership interests, member rights, contracts, bonds, or other securities or interests issued by private corporations or partnerships, and to exercise any and all powers or rights in connection therewith;

(h) to procure insurance against losses in the amounts and with the insurers it deems desirable, which insurance may include, without it being construed as a limitation, civil liability insurance for directors, officers, agents, and employees;

(i) to exercise such other corporate powers, not inconsistent herewith, as are conferred upon private corporations by the laws of Puerto Rico and to exercise all its powers within and without Puerto Rico to the same extent as natural persons might or could do; and

(j) to take any action or measure necessary or convenient to enforce the powers conferred by this Act or by any other law of the Legislature of Puerto Rico or of the United States Congress.

**Section 7.—Officers and Employees.—**(23 L.P.R.A. § 2906)

(a) The Authority’s personnel is hereby exempted from the provisions of Act Number 5 of October 14, 1975, as amended, known as the “Puerto Rico Public Service Personnel Act.” All appointments, severances, promotions, transfers, lay-offs, replacements, suspensions, leaves, and changes in classification, remuneration, or title of the officers and employees of the Authority shall be executed and allowed pursuant to the standards and regulations prescribed by the Board, which must conform to the principles of merit established in the Puerto Rico Public Service Personnel Act.

(b) The Authority’s Executive Director and the officers and employees shall be entitled to reimbursement for all necessary travel expenses, or to the corresponding per diems, which may be authorized or approved in accordance with the regulations adopted by the Board for the Authority.

(c) Persons who have a direct or indirect financial interest in any private company engaged in the maritime or port operation business may not hold office as an officer, employee, or agent of the Authority.

**Section 8. — Monies and Accounts of the Authority. —** (23 L.P.R.A. § 2907)

(a) All monies of the Authority shall be deposited with the Government Development Bank for Puerto Rico or with depositories qualified to receive funds of the Commonwealth of Puerto Rico, but they shall be kept in a separate account or accounts in the Authority’s name.

Disbursements shall be made by the Authority in accordance with the rules and budgets approved by the Board.

(b) The Authority shall be exempt from the provisions of Act No. 230 of July 23, 1974, as amended, known as the “Puerto Rico Government Accounting Act.” The Authority, with the approval of the Secretary of the Treasury, shall establish the accounting systems required for the proper control and statistical records of all expenditures and revenues pertaining to, or administered or controlled by, the Authority. The Authority’s accounts shall be handled in such a manner so that these may be properly segregated, to the extent advisable, in connection with the various kinds of operations, projects, and activities of the Authority.

(c) Notwithstanding the foregoing, all transactions and accounts of the Authority shall be subject to supervision by the Office of the Comptroller of Puerto Rico.

**Section 9. — Statement of Public Utility; Acquisition of Properties through Eminent Domain. — (23 L.P.R.A. § 2908)**

(a) All real or personal properties and all rights or interests thereon which the Authority deems necessary to acquire to achieve its purposes are hereby declared to be of public utility. Such properties may be expropriated without the prior statement of public utility provided in the eminent domain proceeding. The eminent domain process may be filed directly by the Authority on its own behalf or filed at the Authority’s request following the procedure described in subsection (b) of this Section when the Board deems it convenient. An eminent domain proceeding initiated pursuant to the provisions of this Act shall be processed in the manner provided by this Act and in accordance with the provisions of the laws of the Commonwealth of Puerto Rico regarding eminent domain.

(b) At the Authority’s request, the Commonwealth of Puerto Rico shall be authorized to purchase, whether by agreement or by exercising the power of eminent domain, or by any other legal means, any property or interest thereon which the Board deems necessary or convenient for the Authority’s purposes. The Authority may place in advance at the disposal of the Commonwealth of Puerto Rico those funds that may be needed to pay for said property, and once the same is acquired, it may reimburse to the Commonwealth of Puerto Rico any sum paid which was not previously delivered. In making such reimbursement to the Commonwealth of Puerto Rico, the title to said property so acquired shall be passed on to the Authority. The Secretary of Transportation and Public Works, with the approval of the Governor, may make the arrangements he or she deems appropriate for the exploitation and control of such property by the Authority during the period before said title is passed on to the Authority. In those cases in which the property has been acquired with funds of the Commonwealth of Puerto Rico and the Authority does not have the monies to reimburse all of said funds to the Commonwealth of Puerto Rico, the Governor, if deemed necessary and convenient, may provide that the title to the assets and/or rights so acquired must be recorded directly in favor of the Authority to expedite compliance with the ends and purposes for which it was created. The Governor may so request from the court at any time within the eminent domain procedure, and the Court shall so order. Provided, that, as part of said transfer, a settlement agreement shall be executed between the Authority and the Commonwealth of Puerto Rico whereby the Authority agrees to repay the value of such expropriation or any other legal means used to acquire ownership of the property. In those

cases, as well as in cases of acquisition by the Commonwealth of Puerto Rico in favor of the Authority after advance payment by the Authority to the Commonwealth of Puerto Rico, the Registrar of the Property shall proceed to record, preferentially and expeditiously, the title to the assets or rights in question in favor of the Authority, upon presentation for registration of the pertinent documentation. The faculty hereby conferred shall not limit or restrict in any manner whatsoever the Authority’s power to acquire properties through purchase or through eminent domain proceedings filed directly by the Authority on its own behalf. The title to any property of the Commonwealth of Puerto Rico which is considered necessary or convenient for the Authority’s purposes may be transferred to the Authority by the officer in charge or in custody of said property, through terms and conditions that shall be set by the Governor.

(c) The provisions of this Section 9 shall not limit the provisions of Section 11(d)(ii).

(d) The Authority shall not have the power to acquire through eminent domain the properties of the Municipality of Ponce at the Ponce Port.

**Section 10. — Transfer of Assets by Municipalities. — (23 L.P.R.A. § 2909)**

Notwithstanding any legal provisions to the contrary, including the Autonomous Municipalities Act of the Commonwealth of Puerto Rico, all the municipalities and political subdivisions of Puerto Rico are hereby authorized to assign and transfer or lease to the Authority, at the Authority’s request, any property or interest thereon (including assets already devoted to public use), as well as any concession or franchise which the Authority deems necessary or convenient to achieve its purposes. The municipalities where the Port will be located shall be under the obligation of negotiating in good faith with the Authority the terms under which it will lease or grant a sub-concession on any property, facility, concession, franchise, or right belonging to a municipality which is necessary or convenient for the development and operation of the Port. None of the provisions of this Section shall be construed as limiting the powers of the Authority to acquire such properties or rights.

**Section 11.—Design, Development, Operation, and Maintenance Contracts.—(23 L.P.R.A. § 2910)**

(a) The Authority, through administrative concession contracts, lease contracts, or any other type of contract, may contract with one or several persons to carry out the various phases or combinations thereof for the design, development, construction, financing, operation, and maintenance of the Port of the Americas, subject to the conditions and following the procedures detailed in this Section 11. Private funds may be used to defray the costs of any or all such phases.

(b) The Authority is hereby conferred the capacity to grant administrative concession contracts for the design, development, construction, financing, operation, and maintenance of the Port of the Americas to the person or persons selected by the Authority under the provisions of this Section 11, the execution of which shall be subject to the approval of the Governor or of the executive official to whom such duty has been delegated, under terms and conditions that comply with the requirements of this Act.

(c) To carry out the design, development, construction, financing, operation, and maintenance of the Port of the Americas, the Authority may use, among other modalities, design/build, design/build/operate, design/build/transfer/operate, and design/build/operate/transfer contracts, as well as turnkey contracts, long-term lease contracts, administrative concession contracts, and other types of contracts that separate or combine the design, development, construction, financing, operation and maintenance phases. Such contracts shall be awarded through a request for proposal and negotiation process as established in this Section 11, and the procedures described in Section 12 shall not be applicable thereto.

(d) General Terms and Conditions Applicable to the Development of the Port.

i. The contract with the entity or entities that will build the Port’s facilities shall provide that once the construction of such facilities is completed or, at the Board’s option, once the term of the contract for the operations of such facilities has expired, ownership thereof shall be transferred to the municipality where such facilities were built, the Authority, or the Commonwealth of Puerto Rico, as determined by the Board in accordance with the law, and, if applicable, pursuant to the obligations of the lease contract with the Municipality of Ponce.

ii. The lands and other properties or rights necessary for the construction of the facilities of the Port of the Americas may be acquired or leased on a long-term basis by the Authority or the Commonwealth of Puerto Rico. In case of acquisition, the Contracted Entity may acquire, subject to the standards established therefor by the Authority, such necessary lands, properties, or rights directly from their owners, through purchase or lease, in which case such property or lease rights shall be transferred immediately to the Authority or to the Commonwealth of Puerto Rico. The cost of acquisition may be financed by said entity. Should the acquisition through eminent domain be necessary, the Contracted Entity may be required to advance any amounts needed for the acquisition of the lands, properties, or rights in question to the Authority or to the Commonwealth of Puerto Rico. In case of a voluntary purchase as well as in cases of acquisition through eminent domain, the costs of acquisition shall include the cost to relocate the persons affected pursuant to applicable law, and any other expenses incidental to the acquisition of the right in question.

iii. Upon conclusion of the project’s construction phase, the person awarded the operating phase contract shall be responsible for maintaining the Port of the Americas and its annexed facilities in the conditions for operation and use specified in the contract.

iv. The activities related to the design, construction, operation, administration, and maintenance of the facilities of the Port of the Americas shall be considered, for all legal purposes, eligible activities covered under the provisions of Subchapter K of Chapter 3 of Subtitle A of the Puerto Rico Internal Revenue Code of 1994.

v. The Authority may negotiate and execute with the person or persons awarded any contract for the development or construction of the Port those finance contracts or any other type of contract or instrument necessary or convenient in order to finance the development and construction of the Port’s facilities through the issuance of bonds of the Authority.

(e) The qualification and selection of proponents and the negotiation of the contracts with the entity(ies) selected shall be carried out pursuant to the processes and standards established by the Board which shall be consistent with the following principles:

i. The Board shall establish by regulations the procedures and guidelines that will govern the proponent selection and the contract negotiation process, including the request for proposals process, in order to: expedite the proponent selection and evaluation process; obtain proposals from proponents qualified to carry out this project; promote competition among the proponents, if more than one; and, contingent upon the consideration of all the relevant factors as established by the Board, maximize the benefits for Puerto Rico.

ii. During the proponent selection and evaluation processes, the confidentiality of the information provided by the proponents and the information related to the proposal selection, evaluation, and adjudication process shall be governed by the criteria on confidentiality established by the Board. The information submitted by the proponents shall be public once the Board of Directors has awarded the contract, except for that information which constitutes: (1) trade secrets, (2) proprietary information, and (3) privileged or confidential information.

iii. The regulations adopted by the Board to conduct the proponent selection and negotiation process with the proponent(s) selected shall include the criteria that the Board will apply in making its decisions as to the qualification and selection of the proponents and the awarding of the contracts. The selection criteria must include, without it being construed as a limitation or that the order provided herein defines their importance, the following:

(A) the proponent’s commercial and financial reputation and its financial, technical, or professional capacity, as well as the proponent’s experience in designing, developing, operating, and maintaining port facilities. All proponents shall certify that neither they nor their officers or agents have been subject to formal accusations or convictions for acts of corruption in Puerto Rico or in any foreign country;

(B) the quality of the proponent’s proposal with respect to, among other factors, the design, engineering, and estimated construction time;

(C) the capital the proponent is willing to invest and the time needed to recover said capital;

(D) the proponent’s financing plans and said proponent’s financial capacity to carry them out;

(E) the fees the operator intends to charge, the internal rate of return used by the proponent and the projected flow of net revenues; and

(F) the terms of the contract with the Authority that the proponent is willing to accept.

iv. The Board shall approve the contract or contracts it determines, in its discretion, best meet the criteria established by the Board.

(f) Contracts with the Contracted Entity.

i. The contract with the Contracted Entity may include the design, development, construction, financing, operation, and maintenance of the Port of the Americas facilities, or at the Board’s discretion, any of these phases may be part of another separate contract with the same person or with a different person. The Executive Director of the Authority shall be responsible for negotiating the terms and conditions of the contracts referred to in

this Section. Such contracts must be approved by the Board and shall be subject to the standards established in this Section.

ii. The Board shall have the power to allow the Contracted Entity to assign, sublease, grant a sub-concession, or encumber its interests under the contract with the Authority. The Authority may determine and establish in the contract with the Contracted Entity the conditions under which the Contracted Entity may assign, sublease, grant a sub-concession, or encumber such interests.

iii. Any contract executed by the Authority that includes the operation and maintenance phases of the Port of the Americas:

(A) may be negotiated as a lease, surface right, or administrative concession, and may be recorded pursuant to the law and may, at the Board’s option, grant exclusive rights to the operator;

(B) shall have such a term as the Board of Directors deems reasonable; and

(C) may contain provisions for the Authority to grant to the operator the power to administer the Port and to determine, fix, alter, impose, and charge fees, rents, rates, and any other type of fee for the use of the Port’s facilities or for the services rendered by the operator, under those terms and conditions established in said contract that are consistent with the provisions of this Act.

iv. The Contracted Entity to whom a construction and/or operation and maintenance contract is awarded shall post, in favor of the Authority, a performance bond guaranteeing the faithful compliance with all the obligations of the contract, the amount of which shall be determined by the Board, based on the expected investment for the project or the work or stage involved.

v. The financial and contractual obligations of the Authority under the contract with the developer and operator of the Port of the Americas may be guaranteed by: (1) the Commonwealth of Puerto Rico through guarantee documents signed by the Governor; and (2) the Government Development Bank for Puerto Rico; and the Governor is hereby authorized to enter into guarantee agreements on behalf of the Commonwealth of Puerto Rico under the terms and conditions he or she shall deem reasonable, and the Government Development Bank for Puerto Rico is also authorized to enter into such guarantee agreements under the terms and conditions it deems reasonable, with the approval of its Board of Directors, and to make payments under such guarantee; provided, that, any payment made by the Bank under such guarantee shall be reimbursed through budget appropriations; and on or before December 31 of each year in which such payments are made, the Bank shall certify to the Director of the Office of Management and Budget the payments made under such guarantees and the certified amount shall be included by the Office of Management and Budget in the next annual budget of the Government of the Commonwealth of Puerto Rico.

vi. Once the original term of the contract covering the operation, administrative, and maintenance phases of the Port has expired, said contract may be extended under the terms and conditions which the Board determines to be reasonable, or the Board may conduct a new selection process for the operator of the Port following the procedures established in this Act and in the Authority’s regulations, or it may transfer the Port’s operation to the control of the Authority under the conditions established in the contract.

(g) The Contracted Entity for the Port’s operation and maintenance phases may charge the Port’s users those fees, rates, or rents established or allowed in the contract between the Contracted Entity and the Authority. The contract may authorize the operator to establish the fees, rates, or rents it deems necessary.

(h) The procedures and actions authorized by this Section 11 are hereby exempted from the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico,” except for the provisions of Chapter IV of such Act regarding judicial review.

**Section 12. — Purchase and Construction Contracts. — (23 L.P.R.A. § 2911)**

All purchases and all supplies or service contracts, except those for personal services, made by the Authority, including contracts for the construction of works, except for all those contracts with the Contracted Entity related to the construction of the Port’s facilities to which the provisions of Section 11 are applicable, shall be made through an invitation to bid posted with sufficient time prior to the date of the opening of the sealed bids, in order for the Authority to ensure proper notice and opportunity to participate; provided, that, when the estimated sum for the purchase does not exceed eighty thousand dollars (\$80,000) and when the value of the construction work does not exceed one hundred and sixty thousand dollars (\$160,000), the same may be executed without an invitation to bid. For purchases whose value ranges between five thousand dollars (\$5,000) and eighty thousand dollars (\$80,000), and when the value of the construction work ranges between fifty thousand dollars (\$50,000) and one hundred and sixty thousand dollars (\$160,000), the Authority shall request written quotes from at least three (3) suppliers.

Provided, that invitations to bid or requests for quotes shall not be necessary:

(a) when immediate delivery of the materials, supplies, and equipment, provisions of the services, or execution of construction works is required due to an emergency as said term is defined in Section 2(f) of this Act;

(b) when spare parts, accessories, equipment, or supplementary services are needed for supplies or services previously provided or contracted;

(c) when professional or expert service or work is required and the Authority deems that in the interests of sound management, such services or works should be contracted without posting such notice;

(d) when prices are not subject to competition because there is only one supplier or because said prices are regulated by law; or

(e) when the Authority has held two (2) bidding procedures identical as to their specifications, terms, and conditions within a period of time of not more than six (6) months from the opening date of the first, and such bidding procedures have not produced any bidders. In such cases, the purchase of materials, supplies, or equipment, or the procurement of such services may be conducted on the open market using normal business practices. In comparing proposals and making an adjudication, proper consideration shall be given to factors (in addition to whether the bidder has complied with the specifications) such as the lowest price; the ability of the bidder to perform works of the kind involved in the contract under consideration; the relative quality and adaptability of the materials, supplies, equipment, or service; the financial reliability of the bidder and its expertise, experience,

reputation for commercial integrity, and ability to render the services under consideration; and the delivery or execution time offered. The Authority may adopt regulations for the presentation of bids or proposals.

In the case of construction contracts and other contracts that by their nature may be awarded through this Section 12 or through Section 11, the Board shall have the discretion to make such award under the provisions of Sections 11 or 12.

**Section 13. — Bonds of the Authority. — (23 L.P.R.A. § 2912)**

(a) The Authority is hereby authorized to issue bonds from time to time for those amounts which, in the Authority’s opinion, may be necessary to provide sufficient funds for any of its purposes, including the financing of expenses incurred by the Authority or the Contracted Entity in developing, designing, and building the Port’s facilities and infrastructure.

(b) The bonds issued by the Authority may be made payable and secured by pledging or constituting another lien on all or part of the gross or net revenues of the Authority, which may include, subject to the provisions of Article VI, Section 8 of the Constitution of the Commonwealth of Puerto Rico, those funds made available to the Authority by the Commonwealth of Puerto Rico, all as provided in the trust agreement or resolution under which the bonds are issued. The bonds issued by the Authority may also be made payable and secured by pledging or constituting another lien on all or part of the revenues derived by the Authority under the clauses of a financing agreement with the Contracted Entity, whose revenues have been pledged for the payment of such bonds under said financing contract and the trust agreement under which such bonds have been issued. Pledging or constituting another lien on such revenues or funds of the Authority shall be valid and binding from the time it is effected without the need for any public or notarized document. Any revenue so encumbered, including any revenue which the Authority receives subsequently, shall be immediately subject to said lien without the need for physical delivery of the same or of any other action, and said lien shall be valid and binding, and prevail against any third party who may have any type of claim for damages, breach of contract, or any other motive against the Authority, regardless of whether or not said third party had been notified thereof. Neither the trust agreement nor the resolution, nor any collateral contract whereby the Authority’s rights on any revenue may be pledged or assigned need be presented or recorded to formalize the lien on the same against any third party.

(c) The resolution or resolutions authorizing the issuance of the bond or the trust agreement guaranteeing the same may contain provisions which shall be part of the contract with the holders of the bonds issued under such resolution or resolutions or under such trust agreement, with respect to: the disposition of all gross or net revenues and present and future revenues of the Authority; the guarantee and creation of a lien on the revenues and assets of the Authority; the fees and rates to be imposed and the application, use, and disposition of the amounts received through the collection of such rates and other revenue of the Authority; the creation and maintenance of redemption and reserve funds; limitations as to the purposes for which the product of such bonds or of the bonds to be issued in the future may be used; limitations as to the issuance of additional bonds; limitations as to the introduction of amendments or supplements to the resolution or resolutions or to the trust agreement; the procedure whereby the terms of any resolution authorizing bonds, or any other contract with

the bondholders may be amended or annulled; and as to the amount of the bonds whose bondholders must give their consent, as well as the manner in which such consent must be given; the type and amount of insurance the Authority must maintain on its properties, and the use and disposal of the insurance funds; the commitment not to pledge either in whole or in part the revenues of the Authority, both as to the right it may then have and as to any right that may arise in the future; the granting of rights, faculties, and privileges and the imposition of obligations and responsibilities on the trustee under any trust agreement or resolution; cases of noncompliance and the terms and conditions under which any or all of the bonds shall mature or may be declared due prior to their maturity date; and as to the terms and conditions under which such declaration and its consequences may be waived; the rights, faculties, obligations, and responsibilities which may arise in the event of noncompliance with any obligation under such resolution or resolutions or under such trust agreement; any rights, faculties, or privileges conferred on the bondholders as guarantee of the same to increase the marketability of the bonds; and other matters which are not in conflict with this Act, which may be necessary or convenient to guarantee the bonds, or which tend to render the bonds more negotiable.

(d) The bonds may: be authorized through resolution or resolutions of the Board and be issued in one or more series; bear the date or dates authorized by the Board; mature within a term or terms not to exceed fifty (50) years from their respective issue dates; earn interest at the rate or rates that do not exceed the maximum rate then allowed by law; be of the denomination or denominations authorized by the Board, and in the form of coupon or registered bonds; have the privileges of registration or conversion; be executed in the manner authorized by the Board; be payable through the means of payment and in the place or places; and be subject to the redemption terms, with or without premium; be declared due or mature on a date prior to its maturity date; provide for the replacement of mutilated, destroyed, stolen, or lost bonds; be authenticated in such a manner once the conditions are met, and contain the other terms and stipulations provided by said resolution or resolutions approved by the Board. The bonds may be sold publicly or privately, at the price or prices determined by the Authority; provided, that, convertible bonds may be exchanged for outstanding bonds of the Authority, in accordance with the terms the Board deems beneficial to the best interests of the Authority. Notwithstanding their form and text, and in the absence of an express provision in the bonds that the same is nonnegotiable, all bonds of the Authority shall be and shall be deemed to be at all times negotiable documents for all purposes.

(e) At the Authority’s discretion, any bonds issued under the provisions of this Act may be guaranteed by a trust agreement by and between the Authority and any bank or trust company described in the next paragraph, which may be a bank or trust company in or outside of the Commonwealth of Puerto Rico. Notwithstanding any legal provisions to the contrary, such trust agreement need not be constituted through public deed in order to constitute a valid trust under the laws of the Commonwealth of Puerto Rico. The trust agreement may contain all those provisions that the Authority deems reasonable and appropriate for the security of the bondholders.

(f) It shall be legal for any bank or trust company incorporated under the laws of the Commonwealth of Puerto Rico, the United States of America, or any state of the United States of America to act as depository of the product of the bonds, revenues, or other funds,

to execute those indemnity bonds or give in guarantee those securities that may be required by the Authority.

(g) The Authority’s bonds which bear the signatures of the Authority’s officers holding office on the date of the signing thereof shall be valid and shall constitute unavoidable obligations even if prior to the delivery and payment of said bonds any or all of the officers whose signatures or facsimile thereof appear on the same have ceased to hold such office at the Authority. The validity of the authorization and issuance of the bonds shall not depend on or be affected in any manner by any proceeding related to the construction, acquisition, extension, or improvement of the facilities for which the bonds are issued, or by any contract made in relation to such facilities. Any resolution authorizing bonds may provide that such bonds contain a quote indicating that they are issued in conformity with this Act, and any bond which contains such a quote, authorized by such resolution, shall be conclusively deemed to be valid and issued in accordance with the provisions of this Act.

(h) Provisional or interim bonds, receipts, or certificates may be issued while the definitive bonds are executed and delivered in the form and with the provisions provided in the resolution or resolutions authorizing such bonds.

(i) Neither the members of the Board nor the Executive Director nor any other person who executes the bonds shall be personally liable therefor.

(j) The Authority is empowered to purchase, with any funds available therefor, any outstanding bonds issued or assumed by it, at a price that shall not exceed the principal amount or the current redemption value of the same plus interest accrued thereon.

(k) The Authority is hereby authorized to issue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding and which have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to be accrued as of the date of redemption or maturity of said bonds, and if deemed advisable by the Board, for any of the purposes for which the Authority may issue bonds. The issuance of such bonds, their maturity, and other details thereof, the rights of the bondholders and the rights, duties, and obligations of the Authority with respect thereto, shall be governed by the provisions of this Act relative to the issuance of bonds insofar as such provisions may be applicable.

(l) Refunding bonds issued under this Section may be sold or exchanged for outstanding bonds issued under this Act, and, if sold, the proceeds thereof may be applied, in addition to any authorized purpose, to the purchase, redemption, or payment of such outstanding bonds and may be invested pending such application. Refunding bonds may be issued, at the Authority’s discretion, at any time on or before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby.

(m) The bonds and other obligations issued by the Authority shall not be a debt of the Commonwealth of Puerto Rico or of any of the municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any of such municipality or political subdivision shall be held liable thereon, nor shall such bonds or other obligations be payable from funds other than those of the Authority. The Authority shall not have any faculty at any time or in any manner to pledge the credit or the taxing power of the Commonwealth of Puerto Rico or of any of its political subdivisions.

(n) The bonds of the Authority shall be lawful investments, and may be accepted as security for any special or public trust fund, the investment or deposit of which shall be under the authority or control of the Commonwealth of Puerto Rico or any officer or officers thereof.

**Section 14. — Tax Exemption. — (23 L.P.R.A. § 2913)**

(a) It is hereby resolved and declared that the purposes for which the Authority is created and for which it shall exercise its powers are to promote the general welfare and to encourage commerce and prosperity, all these being public ends for the benefit of the People of Puerto Rico; and therefore, the Authority shall be exempt from the payment of any taxes, license taxes, fees, licenses, or excise taxes imposed by the Commonwealth of Puerto Rico or its municipalities on any of the properties acquired by it or under its faculty, dominion, or possession, or on its activities in the construction, exploitation, and conservation of any property; or on the revenues derived from any of its activities.

(b) The Authority shall also be exempt from the payment of any kind of fees, charges, and taxes required or which may be required by the laws for the processing of judicial proceedings, the issue of certificates by all offices and dependencies of the Commonwealth of Puerto Rico, and for the execution of public documents and their registration at any public registry of Puerto Rico.

(c) In order to expedite the procurement of funds for the Authority and thus enable it to achieve its corporate purposes, the bonds issued by the Authority under this Act, their transfer and the income derived therefrom, including any profits obtained from their sale, shall be and shall remain at all times exempt from income taxes, license taxes, or fees imposed by the Commonwealth of Puerto Rico or any of its municipalities.

**Section 15. — Agreements of the Government of the Commonwealth of Puerto Rico. — (23 L.P.R.A. § 2914)**

The Government of the Commonwealth of Puerto Rico hereby agrees and convenes with any person who subscribes or acquires bonds of the Authority not to limit or restrict the rights or powers hereby conferred on the Authority, until such bonds, of whichever date, together with the interest thereon, are totally satisfied and withdrawn. The Government of the Commonwealth of Puerto Rico further agrees and convenes with any federal agency that, in the event that any federal agency builds, extends, improves, or expands, or contributes with any funds for the construction, extension, improvement, or expansion of any property of the Authority, not to alter or limit the rights or powers of the Authority in any manner which may be incompatible with the continuous conservation and exploitation of such property, or the extension, improvement, or expansion thereof, or which may be incompatible with the proper execution of any agreements between the Authority and such federal agency; and the Authority shall continue to have and may exercise all rights and powers conferred hereby for as long as may be necessary or convenient to achieve the purposes of this Act and the purpose of any federal agency in building, extending, improving, or expanding, or contributing with funds for the construction, extension, improvement, or expansion of such property or part thereof.

**Section 16. — Right to Appoint a Trustee for Default in Payment. — (23 L.P.R.A. § 2915)**

(a) In the event that the Authority defaults on the payment of principal or interest on any of its bonds, after such payment or payments become due, whether for lack of payment of the principal and interest or of interest only when the bonds mature or when their redemption is announced, and such lack of payment persists for a period of thirty (30) days, or in the event that the Authority or its officers, agents, or employees violate any agreement with the bondholders, any bondholder or bondholders (subject to any contractual limitation as to any specific percentage of such holders), or their trustee, shall have the right to request from any court with jurisdiction in Puerto Rico and through the proper judicial proceeding, the appointment of a trustee for the properties or parts thereof, whose income or revenues are committed for the payment of the outstanding bonds, whether or not all the bonds have been declared due and payable, and whether or not such holder or trustee requests or has requested that any other right be enforced or that any other remedy be exercised in connection with such bonds. The court, in accordance with such request, may designate a trustee for such properties; but if the request is made by the holders of twenty-five percent (25%) or more in principal amount of the bonds then outstanding or by any trustee of bondholders for such principal amount, the court shall be required to appoint a trustee for such properties.

(b) The trustee thus appointed may immediately proceed on its own or through its agents and attorneys to enter and take possession of such properties, and may totally exclude the Authority, its officers, agents, and employees, and all persons subject to the authority of the aforementioned from such properties; and the trustee shall have, possess, use, exploit, administer, and regulate the same; and on behalf of the Authority or otherwise, as the trustee deems best, the trustee shall exercise all rights and powers of the Authority with respect to such properties just as the Authority itself would. Said trustee shall conserve, restore, insure, and maintain insured such properties and shall make the necessary or appropriate repairs that it deems pertinent from time to time, and shall establish, impose, maintain, and collect the rates, fees, rents, and other charges in relation to such properties which said trustee deems necessary, appropriate, and reasonable, and shall collect and receive all income and revenues and deposit the same in a separate account and apply such income and revenues thus collected and received in the manner ordered by the court.

(c) When all amounts owed on the bonds, including interest thereon, and on any other promissory notes, bonds, or other obligations and interest thereon, which constitute a lien, obligation or encumbrance on the revenues from such properties in accordance with any of the terms of any contract or agreement with the bondholders, has been paid or deposited as specified therein, and all violations as a consequence of which a trustee may be appointed have been rectified and corrected, the Court, at its discretion, after notice and public hearing as the Court deems proper and reasonable, may order the trustee to transfer possession of such properties to the Authority; and in subsequent cases of violations the bondholders shall have the same right to obtain the appointment of a trustee, as previously provided.

(d) Said trustee, in compliance with the powers hereby conferred thereto, shall act under the direction and inspection of the Court, shall always be subject to its orders and decrees, and may be removed by the Court. None of the provisions contained herein shall limit or restrict the jurisdiction of the Court to issue those other additional decrees or orders which it deems

necessary or appropriate for the exercise, by the trustee, of any of the functions specifically indicated in this Act.

(e) Notwithstanding any provision to the contrary contained in this Section, said trustee shall not have the power to sell, transfer, mortgage, or otherwise dispose of the properties of the Authority, but that the powers of said trustee shall be limited to the exploitation and conservation of said properties, and to the collection and application of the income and revenues thereof, and the Court shall not have jurisdiction to issue any order or decree requiring or allowing such trustee to sell, mortgage, or otherwise dispose of any property.

**Section 17. — Bondholder Remedies.** — (23 L.P.R.A. § 2916)

(a) Any bondholder or its trustee, subject to any contractual limitations binding on the holders of any bond issue or their trustees, including, but not limited to, the restriction of a specific portion or percentage of such holders to exercise any recourse, shall have, on behalf and in equal protection of all the bondholders in like condition, the right and the power to:

- (1) through mandamus or other complaint, action, or proceeding in law or in equity, enforce its rights against the Authority and its Board, its officers, agents, and employees, so that they perform and carry out their duties and obligations under this Act as well as its agreements and contracts with the bondholders;
- (2) through an action or complaint in equity, demand that the Board and the Authority be liable as if they were the trustees of an express trust;
- (3) through an action or complaint in equity, prohibit any acts or anything that may be illegal or that violates the rights of the bondholders; and
- (4) file lawsuits on any controversy that may arise in relation to the bonds.

(b) No recourse granted by this Act to any bondholder or trustee thereof has as its objective to exclude any other recourse, but that each of such recourses is cumulative and additional to all others and may be exercised without exhausting and without considering any other recourse conferred by this Act or by any other law. If any bondholder or trustee thereof fails to challenge any fault or violation of duties or of a contract, such action shall not protect or affect any subsequent fault or breach of duties or of a contract, nor shall it impair any right or recourse thereon. No delay or omission on the part of any bondholder or trustee thereof, in exercising any right or power it may have in the case of any violation, shall impair such right or power, nor shall it be deemed as a waiver of such fault or as acceptance thereof. All substantive rights and all recourses conferred to the bondholders may be enforced or exercised from time to time and as frequently as deemed convenient. In the event that any lawsuit, action, or proceeding to enforce any right or exercise any recourse were to be filed or initiated and later interrupted or abandoned or decided against the bondholder or any trustee thereof, then, and in each of such cases the Authority and such bondholder or trustee thereof shall be restored to their previous status, rights, and recourses as if there had been no such lawsuit, action, or proceeding.

**Section 18. — Reports.** — (23 L.P.R.A. § 2917)

The Authority shall submit to the Legislature and to the Governor, not later than 90 days following receipt of its audited financial statement for the preceding fiscal year, (1) its

audited financial statement, and (2) a full report on the Authority’s business during the preceding fiscal year and of the status and progress of all its activities since the creation of the Authority or since the date of the last of these reports.

**Section 19. — Initial Appropriation of Funds. —** (23 L.P.R.A. § 2918)

The sum of three million, seven hundred thousand dollars (\$3,700,000) is hereby appropriated to the Authority from unencumbered funds in the General Fund, to pay for the operating expenses during the first year.

**Section 20. — Distribution of Funds to the General Fund. —** (23 L.P.R.A. § 2919)

The Board of Directors of the Authority may distribute to the General Fund from time to time, those net revenues of the Authority which in the judgment of the Board are not needed to cover its operating and maintenance expenses, or the principal and interest on its obligations, or the reserves for paying its obligations, or needed for the payment of the conservation and maintenance costs of the Port and its facilities or any construction fund to carry out future improvements at the Port.

**Section 21. —** Subsections (b) and (d) are hereby amended and subsections (y), (z), and (aa) added to Section 1.03, and Sections 1.05, 1.06, and 1.07 of Section 1 amended in Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” to read as follows:

“Section 1.—General Provisions.—

...

Section 1.03.—Definitions.—

(a) ...

(b) Authority.—Means the Puerto Rico Ports Authority created by Act No. 125 of May 7, 1942, except that in all matters concerning the Port of the Americas, the word Authority shall mean the Port of the Americas Authority.

(c) ...

(d) Administrator.—Means the Executive Director of the Ports Authority, as set forth in the provisions of Act No. 125 of May 7, 1942, except that in all matters concerning the Port of the Americas, the word ‘Administrator’ shall mean the Executive Director of the Port of the Americas Authority.

...

(y) Navigable Waters of the Port of the Americas.—Shall mean the navigable waters of Puerto Rico adjacent to the Port of the Americas whose control by the Authority is necessary or convenient for the efficient operation of the Port of the Americas. The Board of Directors of the Port of the Americas Authority, upon consultation with the Ports Authority, shall determine the scope of the geographic area that will comprise the navigable waters of the Port of the Americas.

(z) Contracted Entity.—Shall mean the private or public natural person or legal entity, or consortium thereof, selected by the Authority to develop, operate, or maintain the Port of the Americas.

(aa) Port of the Americas —Shall mean the navigable waters of the Port of the Americas and its port zone, maritime-land zone, lands submerged under port waters, and adjacent lands included in the geographic area within which the activities of the transshipment port located in the southern region of Puerto Rico are conducted, including piers, berths, wharves, jetties, breakwaters, dikes, docks, railroad connections, sidings, or other buildings, structures, facilities, or improvements used for navigation, the accommodation of ships and their cargo, the storage of cargo and containers, the handling of cargo and containers, the transfer activities, and any other activity incidental to the foregoing. The Board of Directors of the Port of the Americas Authority shall determine the scope of the geographic area that will comprise the Port of the Americas.

**Section 1.05.—Administration.—**

The Authority shall be in charge of the execution and administration of this Act, and all sums collected under its provisions shall be covered into the funds of the Authority, except that in all matters concerning the Port of the Americas, the Port of the Americas Authority shall be in charge of the execution and administration of this Act and shall receive the sums collected in connection with the administration of the Port of the Americas.

**Article 1.06.—Exercise of Powers.—**

The Authority, the Administrator, and the Director shall exercise, pursuant to the provisions of Act No. 125 of May 7, 1942, all powers and functions hereby conferred on the Authority, except that in all matters concerning the Port of the Americas, the Port of the Americas Authority and its Executive Director shall be in charge of exercising the powers and functions hereby conferred on the Port of the Americas Authority.

**Section 1.07.—Delegation of Powers.—**

The Administrator and the Director may delegate and assign to officers and employees of the Authority the powers and functions conferred hereby to each and to the Authority, respectively, except when this Act expressly provides otherwise. In the case of the Port of the Americas, notwithstanding which sections of this Act expressly provide otherwise, the Board of Directors of the Port of the Americas Authority may delegate and assign the faculties conferred thereto by this Act to other government entities of the Commonwealth of Puerto Rico or to officers and employees of the Port of the Americas Authority or of other government entities of the Commonwealth of Puerto Rico, and the Board of Directors of the Port of the Americas Authority may delegate to the Contracted Entity the powers described in Articles 2.01 and 2.02 of Section 2, Sections 5.01 and 5.05 of Section 5, and Section 6.02 of Section 6 of this Act.”

**Section 22.** — Sections 2.01 and 2.02 of Section 2 of Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” are hereby amended to read as follows:

“Section 2.—General Powers of the Authority.—

Section 2.01.—The Authority shall have control of the navigation and the marine trade in the navigable waters of Puerto Rico and in its harbors and docks, as provided in this chapter, except in the navigable waters and the harbors and docks of the Port of the Americas, where the Port of the Americas Authority or the Contracted Entity, through delegation by the latter, shall have the control thereof.

Section 2.02.—There are hereby placed under the control and administration of the Authority, to be administered in benefit of the People of Puerto Rico in the interest of navigation and commerce, the harbors and their waters, the navigable waters in and around Puerto Rico, the public property docks, the lands submerged under the harbors and under every dock and such waters, the terrestrial-maritime zone comprised within every port zone and the latter, and all buildings and structures built therein which are the property or which are under the dominion of Puerto Rico, except docks, buildings or structures property of any of its municipalities; the public lands and buildings reserved by the United States for public purposes; and the navigable waters, the port, the docks, the lands submerged under the port, and the lands and buildings of the Port of the Americas, which will be under the control and administration of the Port of the Americas Authority.”

**Section 23. — Exemption from the Requirements of Act No. 406 of April 23, 1946. —**  
(23 L.P.R.A. § 2920)

The Authority is hereby exempted from Sections 3 and 5 of Act No. 406 of April 23, 1946, as amended.

**Section 24. — Exemption from Requirements of the Puerto Rico Public Service Act. —**  
(23 L.P.R.A. § 2921)

The Authority and the Contracted Entity are hereby exempted from Act No. 109 of June 28, 1962, as amended, known as the “Puerto Rico Public Service Act.”

**Section 25. — Provisions in Conflict Rendered Ineffective. —** (23 L.P.R.A. § 2922)

In the cases in which the provisions of this Act are in conflict with the provisions of any other law of the Legislature of Puerto Rico, the provisions of this Act shall prevail unless the provisions of such other law specifically amend or repeal any or all of the provisions of this Act. Furthermore, unless strictly provided otherwise, no other law subsequently approved to regulate the administration of the Government of the Commonwealth of Puerto Rico, or any parts, offices, bureaus, departments, commissions, dependencies, municipalities, branches, agents, officers, or employees thereof shall be construed to be applicable to the Authority, but the affairs and businesses of the Authority shall be administered as provided in this Act.

**Section 26. — Standards for Construction of this Chapter. —** (23 L.P.R.A. § 2923)

The powers and faculties conferred to the Authority by this Act shall be construed liberally in order to achieve the purposes of this Act.

**Section 27. — Severability Clause. —** (23 L.P.R.A. § 2901 note)

Should any provision of this Act or the application of such provision to any person or under any circumstance be found unconstitutional, the remainder of this Act and its application shall not be affected by such finding of unconstitutionality.

**Section 28. — Temporary Provisions. —** (23 L.P.R.A. § 2901 note)

(a) All efforts concerning the Port carried out prior to the approval of this Act by the Puerto Rico Infrastructure Financing Authority and the Port of the Americas Coordinating Committee of Puerto Rico are hereby approved, including all matters pertinent to the conceptualization of the project and the initial phases involving invitations to and qualification of proponents and requests for proposals. Said approval does not constitute a validation of any actions of the mentioned above carried out prior to the approval of this Act when such actions are contrary to the law, which may be subject to the corresponding sanctions.

(b) The Puerto Rico Infrastructure Financing Authority is hereby authorized to continue with the efforts that are necessary or convenient to develop the Port of the Americas, under the provisions of this Act, until the Port of the Americas Authority determines, through the mechanism described in subsection (c), that it is willing to continue with such efforts.

(c) The Authority shall resume the procedures initiated by the Puerto Rico Infrastructure Financing Authority and the Port of the Americas Coordinating Committee of Puerto Rico, at the stage in which they are, once the Board determines through resolution that the Authority is operationally capable of assuming such procedures.

(d) Notwithstanding the provisions of Section 21 of this Act, the Puerto Rico Ports Authority shall temporarily retain the execution and administration of the provisions of Act No. 151 of June 28, 1968, as amended, known as the “Dock and Harbor Act of Puerto Rico of 1968,” over the Port of the Americas, until the Board of the Port of the Americas Authority, through resolution for such purposes, decides to assume the powers under said Act which are conferred hereunder. The Board of Directors of the Port of the Americas may take gradual assumption of the execution and administration of said Act, as deemed convenient.

**Section 29. — Effectiveness. —**

This Act shall take effect immediately after its approval.

**Note. This document was compiled by the Office of Management and Budget of Puerto Rico. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.**