

(H. B. 37)

**(No. 62)**

(Approved August 10, 2009)

## **AN ACT**

To create the “Puerto Rico Agricultural Biotechnology Enterprises Promotion and Development Act”; to set forth as public policy in the Commonwealth of Puerto Rico the promotion of the establishment and development of enterprises geared toward agricultural biotechnology; to define its purposes and scope, and to delegate the implementation thereof to the Department of Agriculture and the Department of Economic Development and Commerce; and for other related purposes.

### **STATEMENT OF MOTIVES**

All the places around the world that have achieved a successful socio-economic development allot a significant portion of their resources to the development of innovations that meet the demands of modern society. The fermentation process perfected by Egyptians, the selection and classification of animal species, and cross-pollination, coupled with the progress achieved through inventions in the fields of mechanics and chemistry, have been some of the tools employed in agricultural revolutions. The use of new technology has reduced food production costs and the amount of land and effort needed therefor when compared to former practices.

Nowadays, agricultural biotechnology provides new tools for the latest agricultural revolution; therefore, genetically modified USDA-approved varieties of crops, such as: canola, corn, cotton, papaya, potatoes, tomatoes, soy, and zucchini, among others, are available in the market. These plants have been

modified to resist diseases, tolerate herbicides, and ripen slowly. It was estimated that, by 2004, forty-six percent (46%) of the total corn grown, eighty-six percent (86%) of soy, and seventy-six percent (76%) of cotton in the United States shall originate from genetically modified varieties.

One report by the United States Department of Agriculture (USDA), entitled “Agricultural Biotechnology an Economic Perspective”<sup>1</sup>, and another by the Department of State of the United States, entitled “Agricultural Biotechnology,”<sup>2</sup> stated the opportunities offered by agricultural biotechnology in increasing crop production, reducing production costs, improving food quality and safety, and protecting the environment. These reports officially introduced the economic, scientific, and social aspects influencing the future of biotechnology development in the American Nation.

At present, absent a clear public policy as to the establishment and development of this agricultural sector has caused that both the expansion of existing companies and the establishment of new enterprises, not only local but national or even foreign, be not as expeditious as we would expect. The complexity of the permit granting process in Puerto Rico and the imposition of requirements, in addition to those set forth by the USDA regarding the “Animal Plant and Health Inspection Service, Plant Protection Quarantine” (APHIS, PPQ), for domestic exports to the United States has resulted in incredible delays. A part of the Department of Agriculture of Puerto Rico creates unnecessary bureaucracy, which discourages investments. In addition to the foregoing, the high costs of services and utilities, and the delays in the execution of contracts for the use of agricultural lands belonging to the Land Authority, prevent local entrepreneurs

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<sup>1</sup> USDA, ERS., 1998, Magriet F. Caswell, *et. al.*, Agricultural Biotechnology, An Economic Perspective. Report Number 687.

<sup>2</sup> U.S. Department of State., 2003, Ann M. Veneman., Agricultural Biotechnology, An Electronic Journal of the U.S. Department of State. 8, No. 3.

with the potential to break into the agricultural biotechnology field from excelling, and further prevent the Island from being attractive to foreign capital investments. The fact that there is no portfolio on the wide array of available incentives for local and foreign investors to consider the Island as a business destination in fields such as agricultural biotechnology research, innovation, and development proves that there is still a long way to go.

Unquestionably, Puerto Rico needs a public policy that is at par with the present conditions and needs of the Industry at a national and global level, and that facilitates its performance in order to promote the Island as a competitive location for this kind of enterprise. For such reasons, it is necessary to establish favorable conditions for Puerto Rico to become a truly competitive option and increase operations related to this agricultural field. This Act sets forth the necessary conditions and promulgates an *avant-garde* public policy in order for Puerto Rico to become a mecca of the development and establishment of agriculture's knowledge industry.

It is necessary for the Department of Agriculture and the Department of Economic Development and Commerce of Puerto Rico to establish an integrated plan to successfully implement the public policy set forth in this Act.

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

Section 1.- Title

This Act shall be known as the "Puerto Rico Agricultural Biotechnology Enterprises Promotion and Development Act."

Section 2.- Public Policy

It is hereby set forth as public policy of the Commonwealth of Puerto Rico to promote high-technology agriculture, as well as to devise a plan to promote, develop, and establish companies oriented toward agricultural biotechnology.

Specifically, the Department of Agriculture, in close collaboration with the Department of Economic Development and Commerce, shall establish collaborative mechanisms to offer the best opportunities and conditions for companies engaged in agricultural biotechnology to be established and developed in Puerto Rico, and be treated according to the business expectation these companies represent for our economy.

### Section 3.- Definitions

a) Secretary of Agriculture – means the Secretary of the Department of Agriculture of the Commonwealth of Puerto Rico.

b) Secretary of Economic Development – means the Secretary of the Department of Economic Development and Commerce of the Commonwealth of Puerto Rico.

c) School of Agricultural Sciences – means the School of Agricultural Sciences of the University of Puerto Rico, Mayagüez Campus.

d) Authority – means the Puerto Rico Land Authority.

e) Agricultural Biotechnology – the use of living organisms to solve problems and develop useful products. It may include traditional plant or animal breeding methods, or bioprocesses, such as fermentation. It can also include the application of cell or molecular biology, to address the needs of human beings using techniques such as, monoclonal antibodies, somatic propagation (tissue culture), biosensors, and genetic engineering, as well as any other technique that may arise.

f) PRIDCO – means the Puerto Rico Industrial Development Company.

Section 4.- Strategic Plan for Biotechnology Promotion and Development in Puerto Rico.-

(a) Agricultural Biotechnology Development Interagency Coordination Committee.

The Secretaries of the Department of Economic Development and the Department of Agriculture, together with the Executive Director of PRIDCO, and the Dean of the School of Agricultural Sciences, shall establish a task force, within a term not to exceed sixty (60) days as of the approval of this Act, to gather, evaluate, and develop the purposes of this Act. This Committee shall also study and analyze the aspects related to agricultural biotechnology in order to make recommendations to the concerning agencies and to the Legislative Assembly regarding the implementation of policies that support the safe and adequate use of science and technology. To such effect, the Committee shall serve as an advisory group on the balance between the necessary regulation and development so as to enable the promotion of safe agricultural biotechnology-based products that may be used in Puerto Rico and exported to the rest of the world.

(b) Offers and Attractions Catalog for Agricultural Biotechnology Companies in Puerto Rico

The Committee established in the preceding paragraph shall collect data that could be useful in the decision-making process of biotechnology project investors by convincing them to choose Puerto Rico to establish their operations. This data shall include, without being limited to: history, climate; soil cadastres and agricultural land inventory; academic offerings; human capital profile, both skilled and professional, suitable for agricultural biotechnology; legal provisions in matters of intellectual property, taxes, finances, and incentives in general; environmental, plant, and animal health regulations; and infrastructure available by region.

The information collected shall serve as a work tool to prepare a promotional package that PRIDCO shall use to promote Puerto Rico as an ideal destination for the establishment of this type of commercial activities. Likewise,

this information shall be used by the Department of Economic Development and the Department of Agriculture to establish an implementation program to address the needs of local entrepreneurs that want to develop this type of activity.

(c) Implementation Program

Those enterprises that wish to avail themselves of the incentive benefits set forth herein must comply with the requirements established in the approval and endorsement regulation issued by the Secretary of Agriculture and PRIDCO for these incentives. These government agencies shall have the ministerial duty of providing advice in matters pertaining to permits and assistance in the process of operations establishment or expansion within a term of not more than one (1) year as of the time the applicant complies with the requirements clearly pre-established by the corresponding agencies; thus, these agencies shall be responsible for reimbursing such enterprises for costs related to noncompliance with this subsection, provided that there is no *force majeure* (Act of God) that justifies it. PRIDCO and the Department of Agriculture shall coordinate the approval of the different government incentives to avoid duplication of benefits and/or incentives and to ensure compliance with the corresponding legal regulation without preventing the agricultural biotechnology enterprise from receiving such benefits. Both agencies shall advise applicants on the different incentives available in the laws within their jurisdiction. The use of these incentives shall include, without being limited to, financing and investment fund matching programs for the development of infrastructure, agricultural and laboratory facilities, machinery, sophisticated equipment, and permits, among others. It shall be the duty of the biotechnology enterprises that wish to avail themselves of the incentives, to comply with any and all of the requirements established in the different laws in effect so as to receive the incentives for the establishment or expansion of operations in the Island.

The incentives may be granted as a tax credit or by facilitating the patent granting process (PRIDCO) without hindering the provisions of this subsection. Such incentives shall apply to companies that:

1. Develop and market transgenic plant species that produce pharmaceuticals or nutraceuticals from tropical crops well adapted to grow in Puerto Rico.

2. Perfect high efficiency processes in the design, development, and mass production of new transgenic plants.

3. Develop and use transgenic plants in manufacturing process and as catalytic agents in environmental cleaning processes.

#### Section 5.- Regulation

The Secretary of Agriculture is hereby empowered to promulgate the necessary regulation on the approval and endorsement process requirements for the establishment or expansion of agricultural biotechnology-related operations. If necessary, he/she shall amend and/or repeal such provisions as he/she deems pertinent in order to adjust the regulations and administrative rules necessary to make the efficient operation of these enterprises feasible, safeguarding the best interests of the local agriculture and of the People of Puerto Rico in general. The Department of Agriculture shall be advised by the School of Agricultural Sciences for the purposes of fully complying with the regulating duty.

The regulation shall cover areas such as:

Development of the inspection and release protocol for seeds shipments, clearly stating the grounds for retaining shipments of seeds and the documentation that must be issued as a result of the retention of the shipments in question.

The jurisdiction to regulate agricultural biotechnology-based production, except for those species of plants, seeds, and/or varieties that have undergone plant breeding subject to Controlled Substance Acts or Regulations, shall be under the exclusive jurisdiction of the Department of Agriculture.

Due to the peculiarities of our diverse and biologically vulnerable agricultural production industry and to ensure the bio-safety of our agricultural biotechnology products in international markets, the Secretary of Agriculture shall develop biological safety regulations whereby phytosanitary requirements, as well as requirements for seeds shipments and the release thereof are established.

The economic resources collected by the agencies attached to the Department of Agriculture through the enforcement of the regulations pertaining to agricultural biotechnology shall be invested by the Secretary in matters related to the public policy set forth in this Act.

The regulation or regulations to be promulgated shall be approved within six (6) months from the approval of this Act.

#### Section 6.- Provisions on Lands

The Land Authority shall maintain an inventory of lands available and with the basic necessary infrastructure in terms of paths, irrigation, and drainage that may be available to supply the demand of companies engaged in plant breeding and which could be interested in developing, establishing, and expanding operations in the Island, as well as the current rent for each of the available plots of land. Such rent may be negotiable through an agreement between the Land Authority and the Department so as to make any future project to be established in Puerto Rico feasible.

The agricultural lands in use or with the potential for activities related to agricultural biotechnology shall be identified, classified, and protected as agricultural soils with priority in the Puerto Rico Land Use Plan. This statute shall not render any special law on agricultural lands or reserves ineffective in any manner whatsoever.

#### Section 7.- Water Use for Irrigation

The Department of Agriculture, in collaboration with the Electric Power Authority and any other agency or public corporation, shall facilitate the access to the public irrigation system for agricultural purposes, ensuring continuous water supply for irrigation to agricultural biotechnology companies, together with the farmers of the zone.

The Department of Natural and Environmental Resources shall expedite the evaluation and approval process of deep well water franchises to be used in areas without access to irrigation districts, or to complement or limit the risk of a lack of water in areas with access to irrigation districts. The Department of Natural resources shall provide an expeditious mechanism to grant permits for new wells in areas where it is authorized by the corresponding regulation so as to provide reasonable deadlines to comply with the agricultural biotechnology companies expansion plans. Furthermore, it shall take the needs of agricultural biotechnology companies into account in the development of the Puerto Rico Comprehensive Plan for Water Use and their expansion plans when suggesting and regulating water use in Puerto Rico.

The Department of Agriculture shall consider the scientific advice of the United States Geological Service regarding the good use of aquifers and water supplies in Puerto Rico, as well as the “Commonwealth of Puerto Rico Body of Water Management Act.”

#### Section 8.- Manpower

The recruitment of manpower to conduct field operations in agricultural biotechnology research centers shall be considered by the government agencies of the Commonwealth of Puerto Rico as any other agricultural job subject to applicable laws, norms, and regulations.

Job positions filled for field operations in agricultural biotechnology companies shall be covered under Act No. 46 of August 5, 1989, as amended, with regards to the Wage Subsidy benefits administered by the Department of Agriculture for *bona fide* farmers.

#### Section 9.- Severability Clause

If any of the provisions of this Act were ruled unconstitutional, the remaining provisions shall remain in effect.

Section 10.- This Act shall take effect thirty (30) days after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 62 (H. B. 37)** of the **1<sup>st</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to create the “Puerto Rico Agricultural Biotechnology Enterprises Promotion and Development Act”; to set forth as public policy in the Commonwealth of Puerto Rico the promotion of the establishment and development of enterprises geared toward agricultural biotechnology; to define its purposes and scope, and to delegate the implementation thereof to the Department of Agriculture and the Department of Economic Development and Commerce; and for other related purposes.

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

In San Juan, Puerto Rico, on the 8<sup>th</sup> day of June, 2011.

María del Mar Ortiz Rivera, Esq.  
Director