

(H. B. 1433)  
(Conference)

**(No. 184)**

(Approved December 12, 2007)

## **AN ACT**

To amend Sections 3, 4, 5, 6, 7, 8, 9, 11, 14, and 15 and create a new Section 11(a) in Act No. 14 of January 8, 2004, as amended, known as the “Puerto Rican Industry Investment Act,” for the purpose of modifying the declaration of public policy set forth in said Act; to add duties and responsibilities in the formulation of specifications; to grant more powers in the supervision of its enforcement; to adopt other related standards; to impose penalties for noncompliance therewith; and for other purposes.

## **STATEMENT OF MOTIVES**

The government in Puerto Rico is one of the main agents of the economic activity in the procurement processes conducted by the agencies, government dependencies, public instrumentalities, municipalities and public corporations and subsidiaries for the acquisition of different goods and services.

As a part of said processes, the government represents an important part of the market on which local industry depends to provide its products and services. Therefore, many official Commonwealth pronouncements have been made in recognition of the importance of a firm support for the benefit of the local industry in the procurement processes conducted by the Commonwealth itself.

An example thereof is what is called the preference procurement policy of the government of Puerto Rico, in which the parameters of investment are described, which are defined in percentages of preference in favor of manufacturing, distribution, assembly and packaging, or services that are currently contained in

Act No. 14 of January 8, 2004, as amended, known as the “Puerto Rican Industry Investment Act,” which declares as the public policy of the government the granting of preferential treatment to the products of our local industries in the procurement or acquisition of goods and services conducted by the different government entities, including the municipalities.

This public policy, however, has established a statutory mandate for the procurement processes of the government that have not yet been faithfully applied.

On occasion, the design of the specifications that exclude local industry providers, whether due to lack of knowledge by the procurement officers or due to discrepancies among government agencies’ rules and regulations, causing the erosion of the principles and norms that give sense and form to the aforementioned preference procurement policy set forth in said Act.

For such purposes, the Legislature amends Act No. 14 of January 8, 2004, as amended through this Act, in order to strengthen the enforcement of compliance with the preference procurement public policy set forth in the aforementioned Act.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.– Section 3 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 3.– Declaration of Public Policy

It shall be the public policy of the Commonwealth of Puerto Rico to support the growth, development and strengthening of the Puerto Rican industry, through all available and feasible mechanisms within the constitutional, governmental and economic parameters available, in order to achieve maximum creation of jobs for the Island. This Act shall have the following objectives:

- (a) To guarantee ...
- (b) ...

- (c) ...
- (d) To ensure that the government procurement processes of goods and services have the sufficient and necessary flexibility, purity and competitiveness for the local industry to have real participation, being the beneficiary of the preference set forth in this Act.
- (e) To clearly define that uniformity in the regulations and requirements of the Law shall be established in all procurement processes by the government agencies, dependencies and municipalities in a manner that is consistent with the government preference procurement policy of goods and services as herein established.”

Section 2.– Subsections (a), (d), (e), (f), (i), (j), and (k) of Section 4 of Act No. 14 of January 8, 2004, as amended, are hereby amended to read as follows:

“Section 4.– Definitions

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

- (a) ‘Government of Puerto Rico’ or ‘Government’ means the Commonwealth of Puerto Rico, its departments, agencies, instrumentalities, dependencies, municipalities, public corporations and their subsidiaries.
- (b) ...
- (c) ...
- (d) ‘Product of Puerto Rico’ is that article extracted from or produced in Puerto Rico, after an operation that, in the opinion of the Board, deserves to be treated as a manufacturing process, due to its nature and complexity, directed toward the substantial transformation of

raw materials into a completed final product, whose transformation can be carried out through the subcontracting of all or part of the manufacturing process in Puerto Rico, taking into consideration the private investment in machinery and equipment, the technology involved, the capabilities of intellectual skills, the packaging, the direct and indirect jobs generated, location, magnitude and that the added value in Puerto Rico is not less than thirty-five (35) percent, and any other benefit that the operation represents for the welfare of Puerto Rico. Furthermore, 'products of Puerto Rico' shall be those articles produced by enterprises that maintain an average employment in Puerto Rico of one thousand (1,000) persons or more, with products manufactured by said enterprise or affiliates of the same, that manufacture in Puerto Rico in sufficient quantities, one or more essential components, the final product of which, in the opinion of the Board, deserves to be considered as a 'product of Puerto Rico.' The term 'product of Puerto Rico' also includes all those products that are obtained through the practice of agriculture and the raising of cattle in all its branches in Puerto Rico, and all products derived from any of the said activities, whether just harvested or otherwise processed or conserved.

- (e) 'Product Assembled in Puerto Rico' means an article that, without constituting a product of Puerto Rico, a part of its composition has been manufactured or made in Puerto Rico and has been submitted to a process of assembly with a significant number of components that, in the judgment of the Board, and due to its nature, complexity, investment, technology involved, whose added value

in Puerto Rico is less than 35%, but more than 10%, its location and with ten (10) direct jobs generated in Puerto Rico, merits consideration as a product assembled in Puerto Rico.

- (f) 'Product Packaged in Puerto Rico' means that article that has been subject to a process in Puerto Rico of introducing a product in bulk, or unpackaged products into adequate containers, for their final distribution to clients, without taking any significant action that alters the product, which process would require the maintenance of an industrial unit, machinery and appropriate equipment in Puerto Rico for the placing in containers or packaging of the final product.
- (g) ...
- (h) ...
- (i) 'Substantial operations in Puerto Rico' means those operations that are carried out by an enterprise in Puerto Rico which, in the Board's judgment, and on the basis of its nature, complexity, investment, and number of jobs generated in Puerto Rico, represent a substantial contribution to the economy of the Island. For the purpose of determining if an enterprise has substantial operations in Puerto Rico, the operations carried out in Puerto Rico by people related to said enterprise, as such term is defined in Section 1231(a)(3) of the 'Puerto Rico Internal Revenue Code of 1994,' Act No. 120 of October 30, 1994, as amended, shall be taken into account.
- (j) 'Research and development operations in Puerto Rico' means those operations carried out by an enterprise in Puerto Rico with the purpose of discovering, perfecting, developing or improving

industrial or computer products or procedures which, in the Board's judgment, based on their nature, complexity, investment and technology involved, deserve the granting of incentives through the concession of the investment parameter granted to articles manufactured in Puerto Rico under this Act. Every activity that qualifies for the credit granted under Section 41 of the 'United States Internal Revenue Code,' and that is performed in Puerto Rico shall constitute a research and development operation in Puerto Rico. For the purpose of determining if an enterprise conducts research and development operations in Puerto Rico, operations of this type carried out in Puerto Rico by people related to said enterprise, as such term is defined in Section 1231(a)(3) of the 'Puerto Rico Internal Revenue Code of 1994,' Act No. 120 of October 30, 1994, as amended, shall be taken into account.

(k) 'Agent established in Puerto Rico' means those operations or activities conducted by a natural or juridical person in Puerto Rico related to the distribution and sale of articles, including a considerable amount of inventory, administrative offices, and warehouse(s), but not limited to services, storage, promotion, repair of products with and without warranty, and any other activity for the welfare or benefit of Puerto Rico, provided that an average is maintained of not less than ten (10) persons directly employed in said activities during any years for which any preference is claimed under this Act.

(l) ...

(m) ...

(n) ...”

Section 3.— Section 5 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 5.— Puerto Rican Industry Investment Board

To expedite the execution of the aforementioned public policy, the Puerto Rican Industry Investment Board is hereby created, attached to the Puerto Rico Industrial Development Company. It shall be composed of the Executive Director of the Industrial Development Company, who shall be its Chairperson, the General Services Administrator, the Secretary of Agriculture, the Cooperative Development Administrator, and the main economic advisor of the Governor, or their designated representatives, one (1) member designated by the Governor of Puerto Rico, and one additional member designated by agreement by the Presiding Officers of both Legislative Chambers, who have experience in local industry. The latter shall serve for a staggered term of two (2), three (3) and four (4) years. Should a vacancy arise, the member designated by the Governor to replace him/her shall serve for the remainder of the term of the member who ceased his/her functions and it shall be done in the same manner with the substitute in the case a vacancy arising because of the member appointed by the Legislature, who shall be responsible for appointing a substitute for the term of the member designated by the Legislature who produced the vacancy. The Board shall meet at least once a month, and the members who are not Government employees or officers shall be entitled to charge a per diem of one hundred (100) dollars for each day that they attend a meeting, pursuant to the applicable law and regulations. Four (4) members of the Board shall constitute quorum, and the decisions shall be made by majority vote of those present. In those instances in which the members of the public sector who are part of the Board appoint representatives to participate in the meetings of the Board, these shall have official authority to make decisions,

shall act promptly as members of said directing entity, and shall only represent the regular members in not more than one third (1/3) of the total of meetings held by the Board.

It is further provided that the Board shall be the public entity invested with all the legal and administrative powers necessary to ensure full compliance with the provisions of this Act by all the agencies and other public entities thereunder. In this sense, it shall be understood that this Board is the government entity with authority to supervise the public entities in their full compliance with the norms of action, criteria and other provisions of this Act.”

Section 4.– Section 6 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 6.– Powers of the Board

The Board shall have the following powers, among others:

- (a) Draft a strategic plan based on the prevailing economic situation and taking into consideration the pressing need of the State to stimulate the growth of Puerto Rican industry and to create the greatest number of jobs possible. The Board shall annually present its Strategic Plan to the Governor, and a copy to the Office of the Secretary and the Office of the Clerk of each Legislative Chamber with the goals achieved and the objectives established in this plan, which shall be submitted at the closing of each fiscal year;
- (b) Draft a promotion and marketing plan of the benefits of the new law, as well as establish collaborative agreements between private organizations registered under the law, in accordance with the Investment Board;
- (c) Prepare an electronically formatted, Internet-accessible module, jointly with the General Services Administration and its Exclusive

Register of Bidders, which shall list the specifications of the models for marketing, provisions, supplies, materials, equipment and services produced, assembled or packaged in Puerto Rico, or those distributed in Puerto Rico by enterprises with operations in Puerto Rico or by agents established in Puerto Rico, that in its opinion, meet the necessary criteria for the use thereof by the Government, which shall be revised every six (6) months;

- (d) Assign investment parameters ...
- (e) Initiate investigations and recommend action ...
- (f) Approve the regulations and norms necessary for the operation and compliance with this Act, the purposes of which shall have force of law and shall be subject to the legal provisions in effect.
- (g) Produce a statistical data bank ...
- (h) Review the investment parameters to be produced by the Board, and if necessary, recommend new parameters to the Governor to be presented for the consideration of the Legislature.
- (i) Ascertain with the Regulating Board ...
- (j) Prepare and offer training, application and learning seminars on this Act, to the members of the bidding boards of the agencies, municipalities, departments, instrumentalities, public corporations and dependencies.
- (k) Apply the provisions on procedure materials for public works and buildings in accordance with Act No. 109 of July 12, 1985, as amended.
- (l) Formulate policies, circular letters, and advisory opinions that allow the officers with procurement responsibility, the heads of the different public entities and all persons who intervene in the

procurement processes of the government entities of Puerto Rico to strictly and faithfully know, understand and comply with the mandate of this Act.

- (m) Interpret, apply and enforce the provisions of this Act and the rules and regulations that establish the duties and functions of government personnel with respect to the implementation of this Act.
- (n) Assist the public entities in their function of solving controversies and clarifying information on the application of this Act.
- (o) Supervise, establish and recommend those procurement procedures applied by the different instrumentalities of the government of Puerto Rico to identify violations of this Act so that the administrative or civil measures authorized by this Act may be adopted before the bidding and reconsideration boards, after the corresponding investigations and hearings among the affected parties, which shall have adequate opportunity to be heard by an Examining Officer appointed by the Board for each specific case.
- (p) Examine and obtain a copy of all relevant proof related to any matter under its investigation or analysis.
- (q) Issue orders that are necessary and convenient to comply with the purposes of this Act, including rules of procedure for the hearings and investigations held, which shall have the nature and force of Law.
- (r) Supervise and investigate compliance with the requirements or demands of this Act by the agencies and other public entities.
- (s) Request from the government agencies or entities those reports that the Board deems necessary to determine the degree of

compliance of the same with the parameters and criteria established in this Act.

- (t) Evaluate the need to introduce amendments to the regulations of the Board regarding the administration and the procurement processes of the government for the purpose of adjusting them to the new developments and changes in said procurement processes in the government.
- (u) Appoint the administrative personnel attached to the Puerto Rico Industrial Development Company, with functions exclusive to the Investment Board, that is essential for conducting the functions and duties established in this Act, in accordance with the criteria that ensure the rendering of services of the highest quality. It may request employees on special assignment and resources from all the agencies, municipalities, public corporations and their subsidiaries in order to comply with this Act, and these latter shall give the greatest cooperation to the Board. This personnel shall include, without it being understood as a limitation, two (2) examining officers who shall be attorneys with the function of presiding the investigations, administrative and adjudicative procedures to be held and two (2) inspectors, who shall be in charge of adequately supervising compliance with this Act in the government entities compelled thereto under its provisions.
- (v) The Governor of Puerto Rico shall appoint an Executive Director, with advice and confirmation of the Senate, for a term of six (6) years, who shall have all the necessary executive authority to enforce compliance with the mandate of this Act, within the parameters and the public policy established by the Board.

Therefore, he/she shall have the power to participate in his/her own right in the legislative or administrative hearings, meetings of the Executive Power and actions in the Judicial Forum that are related to the provisions of this Act or its implementation or when the protection of the public interest justifies his/her participation. In this sense, the public entities shall observe full deference, respect and cooperation with the official processes of the Executive Director, as authorized by the Board.

- (w) Orient, train and advise the public entities, their respective bidding and reconsideration boards and their legal divisions so that these entities may apply in a correct and adequate manner the norms and principles contained in this Act. This shall be done through seminars, conferences, orientations, memoranda, circular letters, informative brochures or other means that allow to give orientation and to advise the government entities and the procurement personnel in the adoption of administrative measures and the proper application of this Act.
- (x) Take any other action or measure necessary and convenient in order to comply with the purposes of this Act.
- (y) Authorize regular and special judicial actions necessary to enforce the provisions of this Act and the participation of the Executive Director or administrative personnel as intervening party or public interest advisor in biddings or procurement processes, *motu proprio* or by request of a party with interest in the procedure when, in the judgment of the Board, it is necessary to ensure compliance with the provisions of this Act or when attesting evidence of the violation of any provision is received. For this

procedure, the cooperation of the Review Board of the General Services Administration of Puerto Rico shall be requested, as the entity with expertise in the procurement process of the Government of Puerto Rico. Likewise, it may authorize the participation of its personnel in judicial processes as *amicus curiae* or intervening party when necessary for the protection of the public interest and faithful compliance with the provisions of this Act.”

Section 5.— Section 7 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 7.— Preferential Policy for Puerto Rico Government Purchases

In every purchase of articles made by the Puerto Rico Government, the referred services or articles extracted, produced, assembled or packaged in Puerto Rico, or distributed by agents established in Puerto Rico, or services rendered in Puerto Rico shall be acquired, provided that said articles and services meet the specifications, terms and conditions established in the bidding notice or purchase order, and that its price, after applying the corresponding investment parameter, is the lowest or offers the conditions of quality, delivery and availability of the goods and services.

As to the purchases and contracting of services in all the agencies, dependencies, subdivisions, or instrumentalities of the Government of Puerto Rico, it is hereby provided that each of these shall reserve at least fifteen (15) percent of said purchases and contracting for services rendered in Puerto Rico or articles extracted, produced, assembled or packaged in Puerto Rico, by small or medium-size businesses or cooperative based business, as defined by Regulations.

In the discharge of said obligation, the government entities, municipalities, public corporations and subsidiaries subject to compliance with this Act shall establish an order of precedence or preference in the granting of priority and procurement preference in accordance with the applicable laws and regulations to products made in Puerto Rico, in accordance with the evaluation criteria described in the Regulations to be approved by the Board to such effect. It being understood that said priority shall be upheld even for products assembled or distributed in Puerto Rico.

In this sense, it shall be understood that said evaluation criteria, among others established by the regulations of the Investment Board, shall be taken into account by the bidding and reconsideration boards at the time of effecting their adjudication for the locally manufactured products and in second instance, the consideration of articles or products distributed, assembled and packaged by agents established in Puerto Rico, provided the cost is less and that they meet the established quality and delivery requirements. The criteria to be established by the Board shall seek that the public entities do not elude or circumvent the mandate of this Act through technicalities or specifications that do not represent essential elements of the product or service object of the purchase by the Commonwealth.”

Section 6.— Section 8 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 8.— Classification of Products and Services

The Preference Board shall classify the services rendered in Puerto Rico, as well as the articles extracted, produced, assembled or packaged in Puerto Rico, or distributed in Puerto Rico by enterprises with substantial operations in Puerto Rico, or by agents established in Puerto Rico, taking into consideration, when designating the corresponding investment parameter, among other

factors, the added value in Puerto Rico, the number of jobs, the local payroll, the research and development operations in Puerto Rico and the country of origin of the materials used in the case of the purchase of products. Provided, that the Board shall assign and may establish conditions on the corresponding investment parameter within the following items:

- (1) Articles distributed by agents established in Puerto Rico, up to two percent (2%).
- (2) Articles packaged in Puerto Rico, up to three percent (3%). In the case of Vieques and Culebra, up to nine percent (9%).
- (3) Articles assembled in Puerto Rico, up to four percent (4%). In the case of Vieques and Culebra, up to twelve percent (12%).
- (4) Articles that constitute Products of Puerto Rico, up to ten percent (10%). In the case of Vieques and Culebra, up to thirty percent (30%).
- (5) Services rendered by small, medium or cooperative-based enterprises established in Puerto Rico, up to two percent (2%).

It is further provided, that the Board shall have discretion to grant an additional five percent (5%) in special cases of Articles and Products, and for agricultural products, products of local manufacturing, professional and non-professional services, through the parameters to be established by regulations.

Nevertheless, with respect to the maximum limits established in subsections (1) through (4) above, in the case of articles produced, assembled, or manufactured in the Municipalities of Vieques and Culebra, the following maximum limits shall be assigned:

- (a) For articles packaged in Vieques and Culebra, up to nine (9) percent;

- (b) For articles assembled in Vieques and Culebra, up to twelve (12) percent;
- (c) For articles produced or manufactured in Vieques and Culebra, up to thirty (30) percent.

Said Board shall also maintain a list of said articles, duly classified, consigning their class, origin, trademark, form, dimensions, properties, samples, catalogs and any other information it deems convenient to expedite their selection in the purchases of the Government.

Provided that in all Government subdivisions, the delegate purchaser or the procurement manager shall be obliged to supply monthly information to the Board with respect to the bids and purchases conducted under this Act.

Provided that the Board may increase the preference margin up to an additional two percent (2%) for products that may be subject to a preference margin pursuant to the provisions of this Section when the owner of the product is able to produce incontrovertible proof before the Board attesting that he/she has an inventory of the product and the annual sales volume that generate a substantial economic activity which creates direct and indirect employment induced in Puerto Rico that justify the granting of that additional percent.

It shall be understood that before granting or renewing the corresponding preference margin of each product of Puerto Rico, the Board shall require from the manufacturer a sworn document that includes a list and itemization of the machinery to be used to manufacture the product, the quality control manual of the product subject to the preference margin, a detailed and complete description of the organization, facilities and structures used for the manufacturing, and incontrovertible proof of the billing, contracting and payment receipts for the acquisition of raw materials or for the services

rendered for the maintenance of the machinery used in the manufacturing of the product.

Furthermore, it shall be the duty of all manufacturers or entrepreneurs that manufacture or assemble a product subject to the preference margin pursuant to this Act to remit to the Board evidence that when a part of the manufacturing or assembly of their product is subcontracted to another enterprise or person, it is conducted with enterprises or individuals that form a part of the Exclusive Register of Bidders and that they comply with their tax responsibilities with the Department of the Treasury.”

Section 7.– Section 9 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 9.– Responsibility of Agencies

Secretaries of Department, heads of agencies and instrumentality chiefs and the mayors, shall over see that the professional and technical personnel in charge of the drafting of specifications of articles to be purchased by the Government, and of the acquisition of goods and services, perform their work taking into consideration the availability of goods and services provided by enterprises that operate in Puerto Rico and that when establishing the bidding specifications, terms, conditions and general instructions, they do not eliminate said articles and services from the bidding for the purpose of avoiding any advantage for any specific bidder. Every purchase made under the provisions of this Act shall be subject to strict supervision and follow-up pursuant to the provisions of this Section to ensure the most faithful compliance with the representations, terms and conditions for the purchase.

It shall be the duty of these heads of government entities and of the Municipalities of Puerto Rico to adopt all the regulatory, administrative and operational measures needed to ensure that unfair advantage is not granted to

any specific bidder, manufacturer or distributor in the formulation of the specifications, and that true and effective participation is granted to the bidders in the final formulation of the specifications, as well as a genuine opportunity in recommending and providing to the adjudicating body, alternatives for improvement, adjusting and correcting any limitation or deficiency of the specifications, or to avoid the exclusion of the local goods and services industry, because of unreasonable design or formulation of the specifications.

At the time of formulating the specifications, flexibility of time shall also be observed in the process of requiring environmental certifications, so as to grant a reasonable opportunity for every bidder to obtain environmental certifications for their product or service.

It is herein provided, that the agencies shall ensure that the specifications of the product or service to be acquired are formulated by independent bodies with expert knowledge and extensive experience in the design of such products or services and which do not represent a conflict of interest with any of the participating bidders or with the procurement mechanism selected by the agency.

Moreover, it is herein provided that the personnel entrusted to formulate the specifications of the procurement of services or products by the government shall comply with the following conditions and requirements as an essential condition for the validity of their official participation in the representation of the adjudicating body:

- (a) They shall have express authorization from the appointing officer to work in matters or tasks related to the formulation of specifications.
- (b) They shall be able to accredit, through documentation or accrediting information, the technical knowledge, or the specific

professional experience that enables them to design or establish the procurement specifications.

- (c) They shall be compelled to notify to their superiors of the need to hire additional advice, whether external or internal, when the nature or repercussions of the purchase or the specifications thereof are of such a complexity or specificity that it is required that the Commonwealth make the most sensible decision for the treasury in order to protect the public interest.
- (d) They shall declare under oath that their function of formulating the specifications has been conducted in an unbiased, objective manner and in accordance with the best interest of the adjudicating entity, and that under no circumstances have the specifications been designed for the benefit of the model or specific offering of a private manufacturer or of any party with personal interest, direct or indirect, in the adjudication for which the specifications have been formulated.
- (e) They shall fulfill and comply with any other functions and duties that are necessary to enforce the aforementioned provisions of this Section.”

Section 8.— Section 11 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 11.— Compliance with the Act

Any purchase made under the provisions of this Act shall be subject to strict supervision and follow-up with regard to what has been received, which shall ensure the most faithful compliance with the specifications, terms and conditions of the purchase.

The Board, subject to due process of law, may revoke or repeal the benefits of the investment parameter to any person who commits or attempts to commit, on his/her own behalf or that of any other person or persons, a violation of the provisions of this Act. It may also lower the preference percentage granted, on its own initiative or at the request of an interested party, after a hearing to such effect when the circumstances that caused the Board to grant that percentage change.

The Board, at its discretion, in compliance of due process of law, may impose fines and/or administrative sanctions on any person who commits or attempts to commit, on his/her own behalf or that of any other person, a violation of the provisions of this Act. In the case of the first infraction, the administrative fine shall not exceed five hundred (500) dollars per violation, in addition to those penalties provided by the laws or regulations that govern the agency. In case of subsequent infraction incidents, the administrative fines shall not be less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars for each violation in addition to those penalties provided by the laws or regulations that govern the agency. Administrative sanctions may include, at the discretion of the Board, the return of the benefit derived by the violator, to the affected department, agency, instrumentality, public corporation, municipality or dependency of the Government with regard to the revoked or reduced preference, to wit, the difference between the price truly paid by the Government and the price adjusted by the investment parameter. Seventy-five percent (75%) of the money collected from these fines shall be covered into the General Fund of the Commonwealth of Puerto Rico and the remaining twenty-five percent (25%) shall be used to defray the operating expenses of the Puerto Rican Industry Investment Board. Any available unused

balance remaining in the operating expenses account of the Board at the closing of the fiscal year shall be transferred to the General Fund.

It is herein provided that when it is the agency, instrumentality or government entity itself that violates the provisions of this Act, it may be subject to the administrative fine that in those purchases or bids whose amount is up to one hundred thousand (100,000) dollars shall be of not more than one thousand (1,000) dollars or ten percent (10%) of the total amount of the purchase in question, whichever is greater; or in those purchase bids not over two hundred fifty thousand (250,000) dollars, the fine shall be of not more than five thousand (5,000) dollars or eight percent (8%) of the total amount of the purchase, whichever is greater; in those purchases or bids whose amount is not greater than five hundred thousand (500,000) dollars, the fine shall not be greater than twenty-five (25,000) dollars or six percent (6%) of the total amount of the purchase, whichever is greater; and those purchases or bids whose amount surpasses five hundred thousand (500,000) dollars, the fine to be imposed shall not exceed thirty thousand (30,000) dollars or five percent (5%) of the total amount of the purchase, whichever is greater.”

Section 9.– A new Section 11-A is hereby added to Act No. 14 of January 8, 2004, as amended, to read as follows:

“Section 11-A.– Additional Provisions to Enforce Compliance with this Act

It is herein provided that, in order to achieve compliance with this Act, the Board shall have the power to request from the Court of First Instance the issuing of an injunction to prevent any violation thereof. Likewise, the Board is hereby conferred the power to resort to the Court of First Instance to request the obstruction, suspension or cessation of any official action that constitutes a violation against the provisions established by this Act. These powers may be

exerted when the Board, *motu proprio*, determines that any public entity has incurred a violation against the provisions of this Act, after having examined and evaluated documentary proof and information accrediting said violation.

In turn, it may exert these powers when at the instance of any interested natural or juridical person, or of any other government entity, an investigation has been initiated that allows the Board to arrive at the conclusion that a violation against this Act has been incurred, after having examined and verified the evidence attesting to said violation. Provided that, without prejudice to the exercise of the aforementioned powers, the Board shall create an internal or external investigations committee consisting of representatives from the Agricultural, Industrial, and Private sectors, and from the area of Services. The Board, when deemed necessary, shall designate the coordination of the investigation phase through the Legal Division of the Puerto Rico Industrial Development Company to the Executive Secretary.”

Section 10.– Section 15 of Act No. 14 of January 8, 2004, as amended, is hereby amended to read as follows:

“Section 15.– Responsibilities of the applicant

Any person who voluntarily helps or assists, or advises or instigates the drafting or presentation, or that voluntarily drafts or presents any declaration, sworn statement, claim or false or fraudulent document to the Board (whether said falsehood or fraud was committed or not, with the knowledge or consent of the person who presents said declaration, sworn statement, claim or document to the Board), with the purpose of obtaining, or preventing another person from obtaining the benefit of the investment parameters established herein regarding any product, article or service, shall be guilty of a felony and punished by a fine of not more than twenty thousand (20,000) dollars or imprisonment for a fixed term of three (3) years, at the discretion of the Court.

If there were aggravating circumstances, the fixed penalty thus established may be increased to a maximum of five (5) years; if extenuating circumstances are present, it may be reduced to a minimum of two (2) years. The Court, at its discretion, may impose both penalties, plus court costs.

...”

Section 11.— It is herein provided that the Board shall have the responsibility to adopt new regulations and to modify those existing in such a manner that the norms and rules herein provided may be adjusted and integrated into the regulations that shall govern the preference policy.

Section 12.— Separability Clause

If any Section, provision, paragraph, subsection or part of this Act were declared unconstitutional by any competent court, it shall be understood that the remaining provisions shall remain valid and in effect.

Section 13.— The necessary funds to enforce the provisions of this Act shall originate from the present operating budget of the Puerto Rico Industrial Development Company.

It is further provided that the necessary regulations shall be adopted or the present regulations shall be modified to enforce the provisions of this Act.

Section 14.— Effectiveness

This Act shall take effect three (3) months after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 184 (H.B. 1433) (Conference) of the 6<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Sections 3, 4, 5, 6, 7, 8, 9, 11, 14, and 15 and create a new Section 11(a) in Act No. 14 of January 8, 2004, as amended, known as the “Puerto Rican Industry Investment Act,” for the purpose of modifying the declaration of public policy set forth in said Act; to add duties and responsibilities in the formulation of specifications; to grant more powers in the supervision of its enforcement; to adopt other related standards; to impose penalties for noncompliance therewith; and for other purposes,

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

In San Juan, Puerto Rico, today 15<sup>th</sup> of April of 2008.

Francisco J. Domenech  
Director