

(S. B. 857)
(Conference)

(No. 24-2014)

(Approved February 13, 2014)

AN ACT

To add Sections 4, 5, and 6 to Act No. 164-2001, as amended, in order to require various government entities to execute advances and repayment agreements and restructure and refinance their debt with the Government Development Bank for Puerto Rico, and authorize the necessary budget appropriations to honor the payment of the principal, interest, and other related payments; amend Section 8 of Act No. 164-2001, as amended, in order to postpone the suspension of the prohibition therein until June 30th, 2014 and establish a \$100 million maximum limit for the loans to be granted by the Government Development Bank as an exception to the prohibition set forth in said Section; amend Section 11 of Act No. 164-2001, as amended, to establish a penalty for granting financing in contravention with the provisions of Section 12; add Section 12 to Act No. 164-2001, as amended, in order to require government entities to have a source of repayment approved by their governing body and/or the Legislative Assembly prior to obtaining any loan from the Government Development Bank for Puerto Rico, subject to certain exceptions; renumber Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of Act No. 164-2001, as amended, as Sections 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17; amend Section 1 of Act No. 12 of May 9, 1975, as amended, in order to increase the maximum amount of the principal of notes and other obligations of the Government Development Bank for Puerto Rico that may be guaranteed by the Commonwealth of Puerto Rico; and amend Section 1 of Act No. 6 of May 24, 1960, as amended, to empower the Government Development Bank for Puerto Rico to require the agencies, instrumentalities and other departments of the Commonwealth of Puerto Rico to maintain their funds in deposit accounts and other instruments issued by the Government Development Bank for Puerto Rico.

STATEMENT OF MOTIVES

The liquidity and financial stability of the Government Development Bank for Puerto Rico (hereinafter the “GDB” or “Bank”) is critical to ensure the effective operations of the Bank as the financing source of the government and facilitator of the economic development of the Island. The purpose of this

legislative piece is to strengthen the Bank's liquidity and ensure its financial stability through various measures. From time to time, the GDB grants interim financing to public corporations and other government entities to defray operating expenses and capital improvements. Act No. 164-2001 bans the GDB from granting loans when the source of repayment thereof is contingent on future legislative appropriations that have yet to be approved, subject to certain exceptions. Act No. 164-2001 has successfully achieved financial discipline and established more stringent standards for the granting of loans chargeable to the General Fund. However, despite this and other protections provided under Act No. 164-2001, the liquidity and financial stability of the Bank continues to be affected by the practice of granting loans to public corporations whose source of repayment is contingent on future increases in rates, taxes or other charges for services that have yet to be approved. For example, the practice employed in past years of making up the operating deficit of the Highways and Transportation Authority ("HTA") through advances from the GDB, which amounted to \$2.113 billion as of June 30th, 2013, when no source of repayment for such loans had been approved by the appropriate authorities. Said practice not only compromises the Bank's capital but also compels future administrations, such as the present one, to increase rates, levy taxes or other charges to pay off debts incurred by previous administrations. Considering the structural deficit of the General Fund and the need to strengthen the financial status of the Bank, it is of utmost importance to limit the capacity of the GDB to grant loans to government entities without an actual, valid, and reliable source of repayment.

As a result of the practice of granting loans with no source of repayment, many financing granted by the GDB currently lack defined sources of repayment. Just as it was implemented in Act No. 164-2001, this Legislative Assembly believes that an actual mechanism and source of repayment shall be established for

the loans and other obligations that are currently in the GDB's loan portfolio and lack one. For such reason, this Legislative Assembly deems it convenient to allow the GDB, in conjunction with the Office of Management and Budget ("OMB") to identify loans with an aggregate limit of up to \$500,000,000; require the government entities involved to restructure and refinance obligations with no source of repayment, as necessary; and establish that, for a thirty (30)- year term, the amounts needed to amortize the principal of, pay the interest on and other costs related to, these loans or other obligations shall be appropriated every year in the General Budget of the Commonwealth of Puerto Rico. These budget appropriations shall begin in Fiscal Year 2016-2017.

This measure bans the GDB from granting loans to government entities based on the expectation of future increase in rates, taxes, or other charges that have yet to be approved, or based on the future bond issues the feasibility of which shall be contingent on such increases, since such loans lack a guaranteed source of repayment. Notwithstanding said ban, certain exceptions are hereby established for emergency cases, in accordance with a determination of the Board of Directors of the Bank.

Furthermore, in order to contribute to the Bank's financial stability and flexibility so that it may continue carrying out one its main duties of providing interim financing to the Central Government and public corporations in accordance with the limitations set forth in this Act, Act No. 12 of May 9, 1975, as amended, is hereby amended to increase to \$2,000,00,000 the amount of principal backed by the guarantee of the Commonwealth of Puerto Rico for the payment of the principal of, and interest on, notes or other obligations, for money taken on loan, issued by the GDB from time to time for any of its authorized purposes and the maturity of which does not exceed thirty (30) years after their date or dates of issue.

Lastly, in seeking to contribute to the Bank's financial stability and enable it to continue carrying out its main duty of providing liquidity and financial stability to the Government of the Commonwealth of Puerto Rico and its agencies, the GDB is hereby authorized to require all government agencies of the Commonwealth of Puerto Rico to maintain their funds deposited and invested in deposit accounts and other instruments issued by the GDB, subject to the rules and exceptions established by the Bank and other exceptions established herein. However, by virtue of the principle of Municipal Autonomy and the practical operation of municipalities, municipalities are hereby excluded from the applicability of said provision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A new Section 4 is hereby added to Act No. 164-2001, as amended, to read as follows:

“Section 4.- Every department, agency, instrumentality and public corporation of the Commonwealth of Puerto Rico, and their successors (hereinafter denominated as “government entities”) are hereby require to negotiate and execute with the Government Development Bank for Puerto Rico, agreements, notes or financial contracts as are necessary to establish, recognize, and execute, restructure and/or refinance any advances, repayment agreements, obligations, and/or loans of said government entities with the Government Development Bank for Puerto Rico. Said new agreements, notes, or financial contracts shall be effective on July 1st, 2016. If necessary, said advances, agreements, obligations and loans may be restructured or refinanced more than once. Furthermore, these government entities are hereby authorized to pay or include as part of the principal of their advances, agreements, obligations and/or loans, any expenses related to said restructuring and/or refinancing, including, but not limited to expenses incurred by such government entity or the Government Development Bank for Puerto Rico in

carrying out said restructuring and/or refinancing, or in disposing of said obligations and loans, the expenses related to any bond issue in connection with the trading of such bonds and placement of such loans, including the bonds of the Puerto Rico Public Finance Corporation, the amounts that must be deposited in the reserve accounts to be established to ensure the repayment of any such bonds, premiums for any financial guarantee, surety bond, or letter of credit obtained and the interest accrued as of the date of approval of this Act. Restructured or refinanced obligations shall provide that, in addition to the payment of the principal and interest, these government entities shall be required to make: the necessary payments under interest rate swaps in connection with the bonds of the Puerto Rico Public Finance Corporation; payments for termination or breach of interest rate swaps or investment agreements in connection with said bonds; payment required for deposit in any reserve account for the benefit of such bonds; payment of redemption premiums of such bonds; payment to any trustee of such bonds; payment to any letter of credit provider or liquidity facility for the benefit of all or part of such bonds; and any other payment to be made under the terms of said bonds or bond trust indenture agreement.”

Section 2.- A new Section 5 is hereby added to Act No. 164-2001, as amended, to read as follows:

“Section 5.- Advances, agreements, obligations, and/or loans that may be entered into or executed, restructured, and/or refinanced under the provisions of Section 4 of this Act, and the estimated amounts thereof as of December 31st, 2013, including interest accrued pending payment as of said date, shall be those advances, agreements, obligations, and/or loans agreed by the Government Development Bank for Puerto Rico and the Office of Management and Budget up to an aggregate limit of five hundred million dollars (\$500,000,000) of the principal, interest, and any other payment allowed under Section 4.”

Section 3.- A new Section 6 is hereby added to Act No. 164-2001, as amended, to read as follows:

“The Commonwealth of Puerto Rico shall honor, by means of budget appropriations made by the Legislative Assembly in the operating budgets of every fiscal year for the next thirty (30) years, beginning in Fiscal Year 2016-2017, the payment of the principal, interest, and any other payment allowed under Section 4 related to advances, agreements, obligations and/or loans stated in Section 5 of this Act, as these are restructured and/or refinanced in accordance with the provisions of this Act. For such purposes, the necessary amount to meet the payment of the principal of, interest on, and any other payment related thereto shall be appropriated in the operating budgets of the Commonwealth of Puerto Rico, annually submitted to the Legislative Assembly by the Governor of the Commonwealth of Puerto Rico beginning with the budget of fiscal year 2016-2017. Said budget appropriation shall be made during the necessary period to pay off the same, but such period shall not exceed thirty (30) years.”

Section 4.- Section 8 of Act No. 164-2001, as amended, is hereby amended to read as follows:

“Section 8.- After the effective date of this Act, the Government Development Bank for Puerto Rico or any subsidiary thereof is hereby banned from granting loans to any government entity other than a Bank’s subsidiary, whose source of repayment, as determined by the Board of Directors of the Government Development Bank for Puerto Rico or the Board of Directors of any of the Bank’s subsidiaries, as applicable, are future General Fund budget appropriations, without the Legislative Assembly’s approval of such appropriations. Notwithstanding said prohibition, the Government Development Bank for Puerto Rico and the subsidiaries thereof may, from time to time, lend and collectively hold in their portfolios up to one hundred million dollars

(\$100,000,000) in one or more loans whose source of repayment are future General Fund budget appropriations, without these having been approved by the Legislative Assembly, provided that the Bank obtains a written authorization of the Governor and the Director of the Office of Management and Budget. Budget appropriation bills for the repayment of such loans shall be submitted for the Legislative Assembly's consideration in the legislative session following the granting of the loan. Once the budget appropriation is approved, the amount of such loan shall be included in the one hundred million-dollar (\$100,000,000) limit of the total amount of loans lacking an approved source of repayment that, from time to time, the Bank and the subsidiaries thereof may collectively hold in their portfolios. Notwithstanding the prohibition in the first sentence of this Section and the one hundred million-dollar (\$100,000,000) limit provided in the third sentence of this Section, the Government Development Bank is hereby authorized, in any case, to grant loans to any government entity that is unable to honor the payment of the principal of or interest on its obligations to bondholders or financial entities, other than the Government Development Bank, and to grant any type of loan to the Secretary of the Treasury, pursuant to Act No. 1 of June 26, 1987, as amended, and Act No. 183 of July 23, 1974, as amended, and any other legislation approved to authorize the Secretary of the Department of the Treasury to borrow for similar purposes.”

Section 5.- Section 11 of Act No. 164-2001, as amended, is hereby amended to read as follows:

“Section 11.- Any person who grants financing payable from the General Fund of the Commonwealth of Puerto Rico without the authorization established herein or who grants financing that is inconsistent with the provisions of Section 12 of this Act shall be personally liable and shall commit a violation of this Act.

To such effect, said person shall be guilty of a felony entailing penalties of up to three (3) years of imprisonment.”

Section 6.- A new Section 12 is hereby added to Act No. 164-2001, as amended, to read as follows:

“Section 12.- After the effective date of this Act, the Government Development Bank for Puerto Rico or any subsidiary thereof is hereby banned from granting loans to any government entity other than a Bank’s subsidiary, whose source of repayment, as determined by the Board of Directors of the Government Development Bank for Puerto Rico or the Board of Directors of any of the Bank’s subsidiaries, as applicable, is contingent on future increases in rates, or surcharges, or other increases in the cost of services rendered, or other source of income of said government entity, or on future bond issues whose feasibility, in the judgment of the Board of Directors of the Government Development Bank, is contingent on future increases in rates, changes or other source of income of such government entity, without having duly approved, in each one of the aforementioned situations, such increase or source of repayment, in accordance with its Organic Act, including the approval of the Board of Directors or governing body of the government entity, or of the Legislative Assembly of Puerto Rico, in the event said approval authorizing such increase or source of payment is required. However, the Bank may grant emergency loans in the event essential public services may be affected, as determined by the Board of Directors of the Government Development Bank for Puerto Rico. A government entity may obtain an emergency loan for up to an aggregate limit that shall not exceed ten percent (10%) of its total average gross income in the last two fiscal years preceding the date on which the loan was requested, up to an aggregate limit for emergency loans granted to a government entity of fifty million dollars (\$50,000,000). The amount of each emergency loan granted by the Bank to a government entity shall be

included in the aggregate limit of the total amount of emergency loans granted to said government entity once it repays such loans or a duly authorized source of repayment or source of income is approved therefor.

Notwithstanding the limitations set forth in the first paragraph of this Section, the Government Development Bank for Puerto Rico is hereby authorized, in any case, to grant loans to any government entity of the Commonwealth of Puerto Rico that is unable to honor the payment of principal of or interest on its obligations to bondholders or financial entities, other than the Government Development Bank for Puerto Rico.”

Section 7.- Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of Act No. 164-2001, as amended, are hereby renumbered as Sections 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17.

Section 8.- Section 1 of Act No. 12 of May 9, 1975, as amended, is hereby amended to read as follows:

“Section 1.- The Commonwealth of Puerto Rico hereby guarantees the payment of principal of and interest on notes, debentures, bonds, or other obligations for money taken on loan by the Government Development Bank for Puerto Rico and those of other government instrumentalities guaranteed by the Bank in a total amount not exceeding two billion dollars (\$2,000,000,000) of such notes, debentures, bonds, or other obligations or guarantees outstanding at any time, and to be issued, from time to time, for any of their authorized purposes, whose maturity date shall not be later than thirty (30) years from their date or dates of issue. The notes, debentures, bonds, or other obligations and guarantees covered under this Commonwealth guarantee shall be those specified by the Secretary of the Treasury and the Government Development Bank for Puerto Rico, and such notes, debentures, bonds, or other obligations or guarantees, shall bear on its face a statement of the Commonwealth’s guarantee. Beginning on September 1st, 2014,

the guarantee of the Commonwealth shall not be extended to any note, debenture, bond, or other additional obligation that after such date is guaranteed by the Government Development Bank for Puerto Rico in favor of other government instrumentalities.

The Secretary of the Treasury, with the advice of the Government Development Bank for Puerto Rico, is hereby authorized to establish, in particular cases, special terms and conditions, whereby the holder of an obligation guaranteed under this Act is entitled to make a claim under the guarantee of the Commonwealth of Puerto Rico. If the Secretary of the Treasury prescribes such special terms and conditions, the same shall be included in a guarantee executed by the Secretary of the Treasury.

Subject to the special terms and conditions, if any, negotiated by the Secretary of the Treasury in relation to the guarantee of the Commonwealth of Puerto Rico that are contained in the guarantee executed by the Secretary of the Treasury, if at any time the revenues or income and any other monies of the Bank or any public instrumentality whose notes, debentures, bonds, or other obligations are guaranteed by the Bank in accordance with this Act, that are pledged to the payment of the principal of and interest on such notes or obligations, are not sufficient to pay such principal and interest as the same become due, the Secretary of the Treasury shall withdraw from any unencumbered funds in the Treasury of Puerto Rico such sums as may be necessary to cover the deficiency in the amount required for the payment of such principal and interest, and shall direct that the sums so withdrawn be applied to such payment. The full faith and credit of the Commonwealth of Puerto Rico are hereby pledged to such payment.”

Section 9.- Section 1 of Act No. 6 of May 24, 1960, as amended, is hereby amended to read as follows:

“Section 1.- (a) As of the effective date of this Act, except as provided in subsections (c) and (d) of this Section, the Government Development Bank for Puerto Rico may require any agency, department, public corporation, instrumentality, board, commission, authority, and political subdivision of the Commonwealth of Puerto Rico (hereinafter denominated as ‘government entities’) to deposit and maintain the total or a portion of their funds in deposit accounts, certificates or other instruments issued by the Government Development Bank for Puerto Rico. Provided, that this Section shall apply to government entities with a license in effect issued by the Office of the Commissioner of Financial Institutions to the extent the implementation thereof does not adversely affects their operating income or their capacity to generate the funds needed by said government entities to carry out their financing activities, as empowered by their respective Organic Acts.

(b) If the Government Development Bank for Puerto Rico requires any government entity to deposit such funds, the government entity shall immediately initiate such processes and take such actions required pursuant to the regulations, organic acts, and other laws applicable thereto in order to comply with the provisions of this Section; provided, that in the event of conflict between the provisions of this Section and those of any other law applicable to such government entity, the provisions of this Section shall prevail.

(c) At the request of any government entity that is required by the Government Development Bank for Puerto Rico to transfer funds under this Section, the Government Development Bank for Puerto Rico may grant a government entity a total or partial dispensation to meet the requirements of this Section in the following cases: (i) the government entity would be subject to

burdensome penalties if it transfers all or part of its funds to the Government Development Bank for Puerto Rico; (ii) accounts that require specialized or complex services that the Government Development Bank for Puerto Rico may or shall not provide; (iii) a previously entered into contractual obligation limits the capacity of the government entity to meet the requirements of this Section; or (iv) it is impractical to transfer or maintain such funds in the Government Development Bank.

(d) Notwithstanding the provisions of this Section, no government entity shall transfer funds to the Government Development Bank for Puerto Rico if such transfer is inconsistent with the contractual limitations with respect to the bondholders of said government entity.

(e) All accounts transferred under this Section to the accounting system of the Department of the Treasury, the Puerto Rico Integrated Financial Administration System (PRIFAS), shall be accounted for. The balance of government entities whose operating expenses are defrayed in whole or in part from the General Fund shall be transferred to the account of the Secretary of the Treasury in the Government Development Bank. The balance of other entities may remain, with the authorization of the Department of the Treasury and the Office of Management and Budget, in separate accounts under the custody of the government entity, but accounted for in the central accounting system of the Department of the Treasury. The Department of the Treasury may create accounts and funds; and adopt regulations as are necessary to enforce the provisions of this subsection. A government entity may be exempted from meeting any of the requirements of this subsection, for one or more particular accounts, by means of a dispensation approved by the Government Development Bank, the Department of the Treasury, and the Office of Management and Budget.

(f) The Judicial Branch, the University of Puerto Rico, the Legislative Assembly and its dependent units, the Office of the Comptroller, the Office of the Election Comptroller, the State Election Commission, the Office of Government Ethics, the Special Independent Prosecutor's Panel, the municipalities, and all Public Service Retirement Systems are hereby excluded from the provisions of this Section.

(g) The Government Development Bank for Puerto Rico shall take any necessary administrative actions to offer competitive interest rates for its deposit accounts and other instruments, taking into account the interest rates prevailing in the market. The Bank shall take all those actions it may reasonably take to attempt minimizing the costs of any penalty that may be imposed on any government entity resulting from its compliance with the provisions of this Section.

(h) All banks and other financial institutions operating in Puerto Rico that hold the accounts of any government entity are hereby authorized to furnish to the Government Development Bank for Puerto Rico, the Office of Management and Budget, and the Department of the Treasury, upon request, any required information about said accounts. If, by virtue of any law or regulations, it is necessary to obtain the consent of the government entity to furnish the requested information, the Government Development Bank for Puerto Rico, the Department of the Treasury, and the Office of Management and Budget are hereby appointed as authorized representatives of every government entity of Puerto Rico, for purposes of requesting such information.

(i) The Government Development Bank for Puerto Rico is hereby authorized to provide the Department of the Treasury and the Office of Management and Budget with any information required by them in connection with the transfer of accounts, funds, or balances of government entities.

(j) The Government Development Bank for Puerto Rico is hereby authorized to adopt regulations as are appropriate and necessary to implement the provisions of this Section.”

Section 10.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 24-2014 (S. B. 857)** of the **3rd Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to add Sections 4, 5, and 6 to Act No. 164-2001, as amended, in order to require various government entities to execute advances and repayment agreements and restructure and refinance their debt with the Government Development Bank for Puerto Rico, and authorize the necessary budget appropriations to honor the payment of the principal, interest, and other related payments; amend Section 8 of Act No. 164-2001, as amended, in order to postpone the suspension of the prohibition therein until June 30th, 2014 and establish a \$100 million maximum limit for the loans to be granted by the Government Development Bank as an exception to the prohibition set forth in said Section; etc.

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

In San Juan, Puerto Rico, on this 28th day of August, 2014.

Juan Luis Martínez Martínez
Acting Director