

(H. B. 4052)

(No. 261)

(Approved August 13, 2008)

AN ACT

To amend subsections (f), (m), (o), (q) and (v) and to add a new subsection (dd) to Section 2; amend subsection (i) of Section 2; amend subsections (a) and (b) of Section 3; amend subsections (a) and (b) and clause (3) of subsection (c) of Section 4; amend subsections (a), (b) and add two new subsections (c) and (d) to Section 5; amend subsections (a), (b), (c) and (d) of Section 7; amend subsections (a), (b) and (c) of Section 9; amend subsections (a) and (c) and repeal clause (4) of subsection (b) of Section 10; amend subsections (b) and (d) of Section 11; amend subsections (a) and (d) of Section 12; amend clauses (1) and (2) of subsection (b) of Section 13; amend Section 14 and amend Section 15 of Act No. 140 of October 4, 2001, as amended, known as the “Tax Credits for Investment in New Construction and Rehabilitation of Rental Housing for Low or Moderate Income Families Act,” with the purpose of providing that the cost of acquisition of structures to be rehabilitated be considered “eligible investment” such as the same is allowed in the federal credit program.

STATEMENT OF MOTIVES

A study conducted by the Department of Housing in January 2007, reveals that during the coming years Puerto Rico shall experience a growing demand for affordable housing units for rent of ~ 7,000 units annually and an offer of ~ 3,000 units annually, indicating a deficit of ~ 4,000 units. In the light of this reality is that this measure is proposed. Act No. 140 of October 4, 2001, known as the “Tax Credits for Investment in New Construction and Rehabilitation of Rental Housing for Low or Moderate Income Families Act,” pursues three core purposes. In the first place, it

responds to the growing demand for affordable housing of the aforementioned public policy, especially for senior citizens and for single parents. In the second place, it promotes the development of housing projects in urban centers, areas which have been abandoned in the past few decades. Lastly, it intends to be an instrument to generate greater economic activity through the promotion of the construction industry.

Pursuant to Act No. 140, *supra*, as a general rule, all owners of a housing project for rent to low income families may qualify for a tax credit of fifty cents (\$0.50) for each dollar (\$1.00) of eligible investment used in the new construction or substantial rehabilitation of housing units for rent to low or moderate income families. Through this Act, Act No. 140, *supra*, is amended in order to provide that the cost of acquisition of structures to be rehabilitated be considered “eligible investment” such as the same is allowed in the federal credit program. The Executive Director of the Housing Financing Authority (AFV, Spanish acronym) is in turn empowered to grant, in coordination with the Secretary of the Treasury, the credit certification required.

Act No. 140, *supra*, empowered the Housing Financing Authority (AFV, Spanish acronym) to administer and implement, upon consultation with the Secretary of the Treasury, the Investment in New Construction or Rehabilitation of Housing for Rent to Low or Moderate Income Families Tax Credit Program. This program enables the owner of a project for rent to low or moderate income families to benefit from specific tax credits that may be sold to recover the capital of the financing invested in a project. The amount of the credit is fifty cents (\$0.50) for each dollar (\$1.00) of eligible investment used in the new construction or substantial rehabilitation of

housing units for rent. The Act establishes a fixed annual maximum amount of \$15 million for these purposes.

At present, we face the unfortunate reality that none of these programs has been used to its maximum potential, especially the Investment in New Construction or Rehabilitation of Housing for Rent to Low or Moderate Income Families Tax Credit Program created by Act No. 140, *supra*. Since the creation of the Commonwealth Program in 2001 to the present, only a total of 2 million dollars in credits have been used from the 90 million that were cumulatively available for the development of housings.

Similarly, in the Federal Program, no federal credits with a value of ~ 21.7 were allocated in 2005, and an additional sum of ~ \$22.3 million was returned by the project owners; in 2006, no federal credits with a value of ~\$16.5 million were allocated and an additional sum of ~\$14.2 million was returned by project owners. This money is not lost; it is stored for a period of 1 – 2 years for future use.

The main reason for this underutilization is that none of the two programs, by themselves, is enough to carry out a feasible affording housing rent project in Puerto Rico.

The Commonwealth Program provides a 50% credit of the Eligible Investment, while the Federal Program provides a ~65% and 75% credit of the Eligible Investment. This means that the project owner must identify sources for additional funds of 25% and 50% of the project cost. Since the rents are restricted by regulations for a period from 10 to 30 years at a low level and the projects have substantial operating expenses (maintenance, administration, security, utilities) the financing that the projects can defray is very limited, an average ~10% of the cost of the project. This creates a financing gap of ~15% up to ~40 % of the projects. The projects that are

actually developed are because (i) they are located in municipalities such as San Juan and Bayamón, which have relatively high rents; or (ii) they receive appropriations from other federal subsidy programs such as the HOME Investment Partnership Program. Thus, the challenge for us is not execution, but rather of structure financing given the reality of development costs in the present day Puerto Rico.

This Act shall then enable the use of the Commonwealth program to fill this financing gap with the funds that proceed from the federal program. This use and the combination of credits of both programs shall have a monumental impact in the development of housings and in the economic development of Puerto Rico, which shall directly benefit our low and moderate income families. It shall do so not only by promoting the feasibility of the construction of more rental housings, but also by creating incentives for the industry through the obtaining of capital for construction.

In addition to amending the provisions of Section 3, which expressly prohibit the combination of both programs, the amount of credit per dollar for Eligible Investment of fifty cents (\$0.50) per dollar (\$1.00) shall be maintained for the projects that use only the Commonwealth Program; however, flexibility shall be granted to the Housing Financing Authority (AFV, Spanish acronym) to allocate commonwealth credits when these are combined with federal credits. This follows the previously stated logic of using the Commonwealth Program to fill the gap in financing, and by not establishing a fixed amount of maximum credit in the combination of credits, the Authority shall be enabled to really cover the financing needed for the development of rental housing projects up to ninety percent (90%), thus promoting the maximum use of federal and commonwealth credits. Any surplus of capital of the project owner upon the combination of both

Programs may be reduced by adjusting the amount of credit of the Federal Program.

On its part, the combination of commonwealth and federal credits would allow for the development of rental housing projects with mixed rents for low and moderate income families, thus making it possible for more families to be benefited and have access to a rental housing and which would guarantee a better quality of life through the optimum maintenance of the projects.

This Act provides that the eligible investment shall include the cost of acquisition of structures to be rehabilitated, as allowed in the federal credits program. In cases of substantial rehabilitation, the acquisition of structures constitutes the main cost of the project. The State receives an obvious benefit from the acquisition itself, since the structure is subject to the rent control regime under the Federal Program, regardless of the improvements that must be made and those that are required to be made by the project owners.

The occupancy requirement is also amended for it to become a rent requirement, since occupancy is a malleable concept, difficult to be verified and of less control by part of the owner. It is established that the initial rental or occupancy requirement of one hundred and eighty (180) days may be extended for an additional period of one hundred and twenty (120) days, since the circumstances of the market in many of the municipalities of the Island require more time for the absorption of the project. Finally, it is clarified that in the case an initial occupancy or rental of 100% is not achieved, but rather one exceeding 75%, the credit to be granted shall be prorated according to the occupancy or rental achieved.

In this same manner, this Act addresses the situation of the commonwealth credit balances not used in a fiscal year, since it is not allowed that the same be transferred to the following fiscal year, as is done with the federal credits. Thus, if there should be any remainder, both programs would have the opportunity to transfer their credits to the following fiscal year, thus promoting the maximum use thereof. Furthermore, it would allow the Housing Financing Authority (AFV, Spanish acronym) to educate the industry and promote the optimum use of these incentives.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsections (f), (i), (m), (o), (q), and (v) and to add a new subsection (dd) to Section 2 of Act No. 140 of October 4, 2001, to read as follows:

“Section 2. – Definitions. –

For the purposes of this Act, the terms and phrases defined herein shall have the meanings stated below, unless otherwise construed from the text itself. The terms and phrases used in the singular form shall include the plural, and vice versa.

(a) ...

(f) “Credit Certification”. - means the written concession issued pursuant to the provisions of this Act, by means of which the Executive Director certifies that the Credit is available to be claimed by the owner, and the terms and conditions imposed therein. The owner or acquirer of the credit must submit a copy of the Credit Certification along with the filing of the Income Tax Return, in order to claim the Credit.

(g) ...

- (i) “Credit”. - means the Eligible Investment tax credit for new construction or substantial rehabilitation of rental housing units to be rented to low or moderate income families, granted by the Authority with the endorsement of the Department of the Treasury, by means of a credit certification issued under this Act.
- (j) ...
- (m) “Low or Moderate Income Family”. - means any family or person who does not own a dwelling and whose annual income does not exceed that which is established for low or moderate income families by the affordable housing programs of the Government of the United States of America or the Commonwealth of Puerto Rico as established by the Secretary of Housing pursuant to the applicable regulations.
...
- (o) “Eligible Investment”.- Means the sum of money invested to carry out a new construction project of housing units or the substantial rehabilitation of existing structures, in an abandoned state or serious deterioration, to be destined for rental housing units for low or moderate income families.
- (p) The Authority shall determine through Regulations which items of the construction or substantial rehabilitation budget shall qualify for the credits and which sources from private funds shall qualify as Eligible Investments. For the purposes of this Act, Eligible Investments shall not be deemed to be:
 - (i) the money used for the acquisition of land;

- (ii) the money that has been invested before the effective date of this Act; and
- (iii) the money that has been invested prior to a pre-application conference with the officials designated by the Authority to discuss the merits of the housing project.

The Executive Director of the Authority may dispense including as Eligible Investments funds that have been invested prior to holding the pre-application conference if, in his/her discretion, the best interests of the Commonwealth of Puerto Rico so justify it.

...

- (q) “New Construction”.- means any housing project that has not been previously occupied and whose construction begins after the date of approval of this Act.

...

- (v) “Maximum Rent”. - means the maximum rental rate for which an Owner can rent those housing units covered under the provisions of this Act, as established from time to time by the Executive Director through regulations to such effects. To determine the maximum rental rate, criteria that are similar to those provided in the Low Income Housing Tax Credit Program, set forth in the United States Internal Revenue Code § 42, may be used, provided, further, that the Executive Director shall take into consideration factors such as:
 - (i) the type and size of the housing unit;
 - (ii) the location of the housing project; and

- (iii) the amount that will be needed for the owner to cover the administration and maintenance expenses of the housing units and receive a reasonable yield on his/her capital investment.

...

- (dd) “Acquirer.”- means every buyer or assignee of a credit who has acquired the same pursuant to a transaction where there has been onerous cause signed by the owner.”

Section 2.- Subsections (a) and (b) of Section 3 of Act No. 140 of October 4, 2001, are hereby amended to read as follows:

“Section 3.- Credit for Investment in Construction or Rehabilitation of Rental Housing for Low or Moderate Income Families. –

- (a) General rule - Subject to the provisions of this Act and the regulations promulgated thereunder and with the exception of the provisions of subsection (b) of this Section, every owner of a rental housing project may qualify for a tax credit of fifty cents (\$.50) for each dollar (\$1.00) of Eligible Investment used in the new construction or substantial rehabilitation of housing units to be rented to low or moderate income families.
- (b) Other Tax Benefits - This credit shall not apply nor be available to any owner whose housing project receives or has received any other tax benefit under other laws or regulations of the Commonwealth of Puerto Rico that may use, or has used them against the investment in new construction or substantial rehabilitation of rental housing units for low or moderate income families requested under this Act, with the exception of Act No. 47 of June 26, 1987, as amended, known as the “Public

and Private Sector Co-Partnership for the New Housing Operation Act.” The tax credits granted under this Act may be combined with any other tax benefit pursuant to the laws and regulations of programs of the Government of the United States of America, including the Low Income Housing Tax Credit Program under Section 42 of the United States Internal Revenue Code.

In the case of a project for which tax benefits are received under the Low Income Housing Tax Credit Program, provided in Section 42 of the United States Internal Revenue Code, the amount of tax credit for every dollar of Eligible Investment shall be that which is necessary to cover the project financing gap, up to a maximum of ninety percent (90%) of the total eligible cost.

The Executive Director shall specify, through regulations, the terms under which the provisions of this Act may be combined with the provisions of other tax benefit programs for low or moderate income housing.

Section 3.- Subsections (a) and (b) and clause (3) of subsection (c) of Section 4 of Act No. 140 of October 4, 2001, are hereby amended to read as follows:

“Section 4.- Credit Availability and Carry-over. -

(a) General Rule. - Credit shall be available to be used by the owner against any tax obligation imposed by Subtitle A of the Internal Revenue Code of 1994, on the date that the Executive Director issues

the Credit Certification. The owner shall have to keep the housing units of the project for which he/she received the tax credit pursuant to this Act rented to low or moderate income families for at least ten (10) consecutive years.

In the event that the same are combined with federal tax credits, the restriction period for the rental rates and income limit shall be based on the applicable regulations in accordance with the allocated tax credit program.

For the purpose of calculating the income tax, the base of the housing units over which credit was received shall be reduced by the amount taken as credit, but shall never be reduced to less than zero.

(b) Availability of Credit. – Credit may be claimed and used as of the taxable year in which the Executive Director issues of the Credit Certification.

(c) Credit Certification. – Credit may be used after the Executive Director, in coordination with the Secretary of the Treasury, certifies the following:

- (1) ...
- (2) ...
- (3) That the number of housing units within the total units for which a qualification certificate was issued were duly rented by the Owner to low or moderate income families qualified as such pursuant to this Act and its regulations, within a term not greater than one hundred and eighty (180) days counting from the date the construction or substantial rehabilitation was completed. Provided, that if the number of units rented is equal to or greater than

seventy-five (75%) percent of the total units certified, such number of units shall be the basis to prorate the amount of credits included in the qualification certificate. The amount of credits computed according to the above stated shall constitute the maximum amount of credit that may be claimed by the owner or acquirer of the credit within the term provided in Section 4 (a) of this Act. If the number of rented units does not reach seventy-five (75%) percent of the total certified units, the Owner shall have failed to comply with the rent requirement set forth in Section 5 and shall not be entitled to receive any credit whatsoever under the provisions of this Act, provided that said term may be extended for a single additional period of one hundred and twenty (120) days through previous authorization to such effects from the Executive Director. The date of completion in the case of new construction shall be the date of the Use Permit. In the case of a substantial rehabilitation, the owner shall certify the completion date of the work to the Authority. The Executive Director, through regulations, shall establish the terms and requirements for this certification. The housing units must be rented for a term of not less than one hundred and eighty (180) days for each year under the renting conditions provided in this Act, and pursuant to the regulations adopted thereunder.

(d) ...”

Section 4.- Subsections (a) and (b) are hereby amended and two new subsections (c) and (d) are hereby added to Section 5 of Act No. 140 of October 4, 2001, to read as follows:

“Section 5.- Occupancy Requirement; Rental Terms and Conditions for the Housing Units. –

(a) Rental Requirement – At least seventy-five (75%) percent of the housing units in the project for which tax credits were granted pursuant to this Act shall be kept rented and occupied by low or moderate income families for a term of at least ten (10) consecutive years, counting from the date on which the Executive Director issues the credit certification. The Executive Director may require the reimbursement of the credit granted as provided in Section 14. In the case the same are combined with federal tax credits, the restriction period of the rental rates and the income limit shall be based on the regulations applicable in accordance with the allocated tax credit program. If twenty-five (25%) percent of the housing units for which credit was computed are not rented to low or moderate income families for a maximum term of one hundred and eighty (180) days, it shall not constitute noncompliance with the rental requirement. In the case of revocation, and as provided in Section 13(b), the owner shall have to reimburse all or part of the credit granted according to the year in which said noncompliance occurs, as provided in Section 14 of this Act. The owner shall file a sworn statement each year, for the term of ten (10) years mentioned above, at the Main Office of the Authority, with a copy to the Secretary of the Treasury, certifying that the housing units for which the computed credit was granted, were rented during the previous year to low or moderate income families.

In the event that the same are combined with federal tax credits, the term of the sworn statement certifying the housing units shall be based on the applicable regulations in accordance with the allocated tax credit program.

- (b) Rental terms and conditions. - The housing units on which credit is computed shall only be rented to low or moderate income families qualified as such, for a term of not less than one hundred and eighty (180) days for each year and based on the maximum rent determined by the Executive Director from time to time, as adequate for rental to low or moderate income families. The owner shall execute a written lease contract with each low or moderate income family for the housing unit rented, consigning in said contract the maximum rent applicable and those terms and conditions that the Executive Director determines by regulations.
- (c) Responsibility of future owners – For the purposes of the obligation of total or partial reimbursement of the amount of credit granted established in this Act, the only person responsible shall be the owner of the property at the time in which the noncompliance or noncompliances in question occur.
- (d) Registration Requirements – The requirements established in this Section shall be registered at the Property Registry.”

Section 5.- Subsections (a), (b), (c) and (d) of Section 7 of Act No. 140 of October 4, 2001, are hereby amended to read as follows:

“Section 7. - Allocation, Sale or Transfer of Credit. -

- (a) Allocation, Sale or Transfer of Credit. – The credit provided under this Act may be wholly or partially allocated, sold or otherwise transferred by the owner to an acquirer only once. For the purposes of this subsection, the change of control of the owner shall not constitute a transfer of the credit provided under this Act.
- (b) Notice; Approval - An owner who has allocated, or transferred all or part of his/her credit, as well as the acquirer of the credit, shall notify the Executive Director with a copy to the Secretary of the Treasury, of the allocation, sale, or transfer of credit through a sworn statement to such effects, supported by the documents that attest to the allocation, sale or transfer. The sworn statement shall have the information that the Executive Director shall provide through the regulation promulgated to such effects. The Executive Director, once he/she verifies the validity of the allocation, sale or transfer of the credit, shall issue a certification of allocation, sale or transfer, as the case may be, which shall be included with the income tax returns of the owner and the acquirer of the credit for the year in which the allocation, sale or transfer of the credit is made. The Executive Director shall notify the Secretary of the Treasury of the certification of the allocation, sale or transfer of the credit.
- (c) Tax exemption. - The money or the worth of the real property received in exchange for the credit allocated or transferred shall be exempted from taxation under the Puerto Rico Internal Revenue Code of 1994, up to a sum equal to the amount of the

credit allocated, sold or transferred. The value of any real property received by the owner in exchange for the credit shall be determined in the manner that the Executive Director, together with the Secretary of the Treasury shall establish, which shall include an appraisal made by a duly licensed appraiser.

- (d) **Validity of Credit in Case of Revocation.** – In the event that the credit is revoked as provided in this Act, if it had been allocated, sold or transferred to an acquirer pursuant to the provisions of Section 7, its validity shall not be affected. In said cases, the owner, not the acquirer, shall be responsible for the reimbursement of the credit as provided in Section 13 of this Act.”

Section 6.- Subsections (a), (b) and (c) of Section 9 of Act No. 140 of October 4, 2001, are hereby amended to read as follows:

“Section 9. –Credit Limit per Year, Availability of Credit.

- (a) **Credit Limit per Year.-** Every taxable year, the Secretary of the Treasury shall allocate fifteen million (15,000,00) dollars as the maximum amount of credit available to be distributed pursuant to this Act, provided, that the Secretary of the Treasury shall authorize for a particular taxable year and by petition of the Executive Director, an increase in the amount herein provided when the interest of the People of Puerto Rico so justify it. This authorization shall be obtained through legislation to be introduced to such effects.
- (b) **Residual of Credits.** - If the Authority does not grant credits in any fiscal year for the total amount allowed, it may use or pass

on the residual of the credits to a following fiscal year, to a maximum of the fifty (50%) percent not granted in the previous fiscal year.

- (c) Increase or Reduction of the Owner's Credit. – In those cases in which the owner invests more than the amount previously calculated as an eligible investment and the housing project qualifies for a larger amount of credit, the Executive Director, at his/her full discretion, may grant the same, provided that the amount of additional credit granted shall be reduced from the amount of credit available in the year it is granted. The owner shall submit all the documents, evidence and information that the Executive Director deems are necessary to be able to evaluate and certify the increase in the amount of the eligible investment, and the increase in credits.”

Section 7.- Subsections (a) and (c) are hereby amended and clause (4) of subsection (b) of Section 10 of Act No. 140 of October 4, 2001, is hereby repealed, to read as follows:

“Section 10. - Application for Credit; Requirements; Rights. –

(a) Application. - Every petitioner shall file an application, under oath, in the central offices of the Authority with the documents and information that are required by the regulations that the Executive Director promulgates to such effects. The Executive Director shall remit a copy of the application for credit to the Secretary of the Treasury within thirty (30) days after it is filed.

(b) Requirements. – The Executive Director shall establish by regulations, the information and documents that must be included with the application for credit, provided, however, that the following shall

be included with the information and documents that the Executive Director must require with the application for credit:

- (1) ...
- (2) ...
- (3) ...

(c) Filing Fees – Every Petitioner shall include a certified check or postal money order with the application for credit in the amount of five hundred (500) dollars drawn to the order of the Secretary of the Treasury, to cover the filing and handling costs of the application. The Executive Director may increase this amount from time to time, through regulations to such effects.”

Section 8.- A new clause one (1) is hereby added to subsection (a) and the others are renumbered as (2), (3), (4), (5), (6), and (7) and subsection (d) of Section 11 of Act No. 140 of October 4 of 2001, is hereby amended to read as follows:

“Section 11. – Evaluation of Application; Qualification Certificate; Bond; Insurance or Performance Bond. –

- (a) ...
 - (1) The need for credit in order to complete the financing of the development of the project, determined on the competence and discretion of the Authority;
 - (2) The nature and amount of the eligible investment to be used in the new construction or substantial rehabilitation of housing units for rent to low or moderate income families;
 - (3) The type and characteristics of the housing units to be developed or rehabilitated by the owner;

- (4) The location and environmental impact of the housing project proposed by the Petitioner;
 - (5) The need for housing for low and moderate income families in the proposed area;
 - (6) The characteristics of the Petitioner and experience in the development and rehabilitation of affordable housing units; and
 - (7) Those criteria that the Executive Director deems are relevant and necessary according to the purposes of this Act and the best interests of the Commonwealth of Puerto Rico.
- (b) Endorsements from other agencies ...
 - (c) Qualification Certificate ...
 - (d) Bond, Surety or Performance Bond – Every owner shall submit within thirty (30) days of the issue of the Qualification Certificate, a bond, surety or any other form of warranty that is acceptable to the Executive Director, that is sufficient to respond for any reimbursement or revocation of credit ordered under this Act or its regulations, including any applicable interest, penalties or charges. The bond, surety or performance bond, shall be issued to the order of the Department of the Treasury, in the form, amount, and under the terms and conditions that the Executive Director, in coordination with the Secretary of the Treasury, deems convenient to comply with the purposes of this Act or its regulations. Said bond, surety or performance bond shall remain in effect for the term of ten (10) years while the housing project is conditioned to the rental

requirement. The bond, surety or performance bond shall be reduced in the measure that the ten (10) years comprised in the rental requirement of the housing project in question elapse, being the same reduced in an equal proportion to the inverse of the percentages provided in the credit reimbursement table in Section 14 of this Act.

In the event that they are combined with federal tax credits, the restriction period of the rental rates, the limit of income and the reimbursement of credits shall be based on the applicable regulations pursuant to the allocated tax credit program.

(c) Credit Certification ...”

Section 9.- Subsections (a) and (d) of Section 12 of Act No. 140 of October 4, 2001, are hereby amended to read as follows:

“Section 12. – Change of Control of the Owner; Transfer of Title of the Housing Project or Transfer of Credit. –

(a) General rule – Any transfer of stock, shares, property or any majority proprietary interest that constitutes a change of control of ownership to another person, and any sale, exchange, gift, or any type of alienation or transfer of title of the housing project or the credit, shall require the prior approval of the Executive Director and the endorsement of the Secretary of the Treasury. If the change of control or transfer of title of the housing project or credit is made without prior approval, the owner shall have to reimburse the credits to the Secretary of the Treasury pursuant to Section 14 of this Act. Notwithstanding the above, the Executive Director may retroactively approve any change of control, transfer of title of the housing project,

or the credit, made without his/her approval, when, in his/her judgment, the circumstances merit said approval, taking into account the best interests of the Commonwealth of Puerto Rico and the purposes of this Act. Every duly completed application for a change of control, transfer of title of the housing project, or the credit must be approved or denied within sixty (60) days following its filing. The duly completed application for a change of control, transfer of title of the housing project, or the credit shall be considered automatically approved if the Executive Director does not make any expression on the same within sixty (60) days following its filing. The denial of an application for change of control, transfer of title of the housing project, or the credit shall be done in writing, and shall also itemize the reasons for the denial thereof.

(b) ...

(d) Transfer by Financial Institutions – The financial institution that has obtained a credit by foreclosure or other legal proceeding, for having granted or delivered the Qualification Certificate in security as part of the financing of the housing property of the owner, may assign, sell or transfer said credit to a third party as if it were the owner, as provided in Section 7 of this Act. Both the financial institution as its grantor or transferor of credit and the third assignee or third acquirer, shall be subject to and shall comply with the provisions of this Act as applicable to them.”

Section 10.- Clauses (1) and (2) of subsection (b) of Section 13 of Act No. 140 of October 4 of 2001, are hereby amended to read as follows:

“Section 13. – Denial, revocation, and limitation of the benefits of this Act.

- (a) ...
- (b) Grounds and procedures for revocation; Recovery of Credit. – The Executive Director may revoke all or part of the Credit granted to the owner under this Act after allowing the owner to appear and be heard. The Executive Director may determine that said revocation shall be effective from the date the owner fails to comply, according to the following cases:
 - (1) When the owner fails to comply with the rental requirement, imposes a rental rate that is greater than allowed as a maximum rent, or for noncompliance with any of the obligations that have been imposed under this Act, the regulations promulgated thereunder, or by the terms found in his/her Qualification Certificate or the Credit Certification, as the case may be. A revocation of Credit under this clause shall bind the owner, excluding the acquirer, to reimburse the Credit received according to the year that noncompliance occurred, as established in Section 14 of this Act, provided further, that the reimbursement of the credit thus revoked, shall include any applicable interest, surcharges and penalties. This penalty shall be owed by the owner, excluding the acquirer, as taxable income for the following taxable year.
 - (2) When the benefits of this Act have been obtained by false or fraudulent representations, including but not limited to

false or fraudulent representations related to the description of the housing project, its itemization of eligible costs and investment, the description of the housing units to be or not to be used for rental to low or moderate income families, compliance with the conditions of the Qualification Certificate, the Credit Certification, this Act, its regulations, or any other fact or circumstance that, in whole or in part, have motivated the approval of the credit application. The revoking of credit under this clause shall bind the owner, excluding the acquirer, to reimburse the total amount of credit received by the owner, plus any applicable interest, surcharges, and penalties. Said amount shall be owed by the owner, excluding the acquirer, as taxable income for the following taxable year.”

Section 11.- Section 14 of Act No. 140 of October 4, 2001 is hereby amended to read as follows:

“Section 14. – Reimbursement of Credit. –

In case of noncompliance with the rental requirement, the maximum rent applicable to housing units, or any other noncompliance of any other obligations and conditions imposed by the Qualification Certificate, the Credit Certification, this Act or by the regulations promulgated thereunder, in which the Executive Director deems meritorious, the owner shall be bound to reimburse the Department of the Treasury that portion of the credit which he/she is not entitled to use according to the year that the noncompliance occurs, according to the following table:

IF NONCOMPLIANCE OCCURS DURING THE:	REFUNDABLE CREDIT
First and Second Year	100%
Third year	90%
Fourth year	80%
Fifth year	70%
Sixth year	60%
Seventh year	50%
Eighth year	40%
Ninth year	30%
Tenth year	20%

The reimbursement of the credit provided by this Section shall be owed by the owner as taxable income, provided, further, that it shall include any applicable interest, surcharges or penalties. In the event that the owner has not used any portion of the credit that he/she is bound to reimburse, said portion of the credit shall be cancelled.”

Section 12.- Section 15 of Act No. 140 of October 4, 2001, is hereby amended to read as follows:

“Section 15. – Administration by the Executive Director; Evaluation by the Department of the Treasury. –

Except when otherwise provided in this Act, the Executive Director shall be in charge of the administration of this Act, of the evaluation of applications, of the determination of Eligible Investment, of the issuing of the Qualification Certificate and the Credit Certification subject to the provided in Section 4 and Section 11 of this Act and shall exercise the powers, discharge the duties, and comply with the obligations imposed by this Act.

The duties related to income taxes established in this Act, shall be administered by the Secretary of the Treasury.”

Section 11[sic].- Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 261 (H.B. 4052) of the 7th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsections (f), (m), (o), (q) and (v) and to add a new subsection (dd) to Section 2; amend subsection (i) of Section 2; amend subsections (a) and (b) of Section 3; amend subsections (a) and (b) and clause (3) of subsection (c) of Section 4; amend subsections (a), (b) and add two new subsections (c) and (d) to Section 5; amend subsections (a), (b), (c) and (d) of Section 7; etc,

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

In San Juan, Puerto Rico, today 30th of November of 2008.

Francisco J. Domenech
Director