

(H. B. 545)
(Conference)

(No. 62-2014)

(Approved June 11, 2014)

AN ACT

To create the “Micro, Small-, and Medium-sized Business Promotion Act,” in order to create the Puerto Rico Micro, Small-, and Medium-sized Business Promotion Board; add Sections 8.15 and 8.16 to Act No. 161-2009, as amended, known as the “Puerto Rico Permit Process Reform Act,” in order to establish a fast-track process for issuing use permits to individuals or micro, small-, and medium-sized businesses for the establishment and operation of certain business; amend Section 2.16 of Act No. 161-2009, *supra*, to require certain projects to submit a regional economic impact analysis; amend Sections 2, 6, and 7 of Act No. 129-2005, as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserves Act,” in order to increase to twenty percent (20%) the procurement reserve of the Government of the Commonwealth of Puerto Rico; create the “Preferential Rent Program”; amend Section 12B of Act No. 74 of June 21, 1956, as amended, better known as the “Puerto Rico Employment Security Act,” to establish a sixty percent (60%) reserve for small-, and medium-sized businesses at the time the Government of the Commonwealth of Puerto Rico grants such subsidies to the private sector; and for other purposes.

STATEMENT OF MOTIVES

In every economic development model, the small- and medium-sized businesses sector plays a leading role in the creation of jobs and the attainment of wealth in the Island. The importance of this business sector is not a local phenomenon; many countries, such as Mexico, the United States, and Spain, strongly believe that, as part of a sustainable economic model, the State must and has to provide specific tools to address the needs of this sector. For example, in the United States, (small- and medium-sized businesses “SMBs”) create two (2) out of

every three (3) jobs in the Nation¹. Given the importance of this sector, the United States have launched initiatives and specific strategies aimed at helping SMBs to face the global economic crisis that hits small- and medium-sized businesses harder.

For such purposes, the United States Government has promulgated aggressive legislation during this administration to facilitate SMBs access to lending and new strategies to export their products, provide them with free or low-cost access to counseling, as well as to ensure the availability of better tools to eliminate regulatory barriers and reduce operating costs. It is worth mentioning that the Federal Government also has a strong policy which reserves government procurement for small- and medium-sized businesses. Thus, full transparency and accountability have been established with regard to the rate of government procurement transactions in the small- and medium-sized businesses sector.

In Puerto Rico, this sector is constantly facing the challenges posed by high operating costs, lack of access to lending and new technologies, and its inability to innovate. Moreover, excessive regulations or administrative procedures, some of which have been imposed by law, are yet another challenge faced by this sector.

Year after year, small- and medium-sized businesses have witnessed how the “Government of the Commonwealth of Puerto Rico Procurement Reserves Act” and the laws that provide for prompt payment are disregarded. This is an important matter, because the government apparatus has full control and authority over the procurement reserves for SMBs; it only needs to truly commit to abide by said public policy.

The high cost of energy is another factor that has greatly affected small- and medium-sized businesses in the Island, driving this sector to the verge of closing down or filing for bankruptcy. From 2009-2012, small- and medium-sized

¹ Barack Obama, May 12, 2011, “Presidential Proclamation-Small Business Week.”

businesses suffered a 26% and a 19% increase in their electricity bills for the 2009-2010 and the 2010-2011 periods, respectively. In addition, during the 2009-2012 period nearly twelve thousand (12,000) businesses with nine (9) or less employees closed down.

It is essential for any country aspiring to achieve an adequate economic development to begin by reinforcing the small- and medium-sized businesses and entrepreneurs sector. We need to rebuild their trust so that they may venture while resting assured that the government will not leave them behind.

To address the different needs of this sector, it is imperative to provide it with immediate tools to facilitate its operations in the Island. Thus, this Act provides different measures, to wit, simplifying the legal framework to obtain permits to begin operations; reinforcing the government policy regarding procurement reserved for SMBs; incentivizing the insertion of professionals and new entrepreneurs in the business world; and giving priority to SMBs in the Government's appropriation of discretionary funds to subsidize the payroll of new or existing employees, among others.

In order to improve the economic situation of the Island, the public policy of the Government of the Commonwealth of Puerto Rico must be aimed at making SMBs the driving force of our economy and, to such purposes, consider all the benefits that the government may grant to further economic activity in the Island, giving priority to this sector.

This legislation is the first step toward strengthening this sector and promoting the establishment of new small- and medium-sized businesses. It is also the first, of many other initiatives that shall be developed to lay the groundwork for strengthening SMBs.

With regard to the permit issuance subject, this legislation seeks to ensure that the economic activity generated by SMBs is not halted due to matters related to the government's permit issuance process, which, on occasion, may be bureaucratic and excessive. This legislative piece proposes to amend the "Puerto Rico Permit Process Reform Act" to issue conditional or temporary permits to conduct any activity that, on its face, does not pose risks to health, the environment, or safety. This amendment seeks to enable a considerable number of small- and medium-sized businesses that shall operate a business with a previously issued use permit, to begin operations immediately, and to allow interested small- and medium-sized businesses to begin operating in an unoccupied property that has no use permit, but whose use is consistent with the qualification of the site.

Moreover, aware of the urgency of reintroducing responsible policies that allow the government to carry out a careful planning, this measure requires that regional economic impact analysis shall be conducted prior to granting or denying permits for large-scale projects. This shall be consistent with the prevailing practice of other jurisdictions. See, the Informed Growth Act, 30-A M.R.S.A. § 4365, *et seq.*; Op. Me. Att'y Gen. 2009-04, 2009 WL 1305482 (Me. A.G. Apr. 30, 2009); Vt. Stat. Ann. Tit. 10, § 6086; *In re Wal-Mart Stores, Inc.*, 702 A.2d 397 (Vt. 1997). See also, *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 987, 1012 (E.D. Cal. 2006) ("There is no constitutional right to do business in a retailer's optimally profitable store configuration, if the resulting operation burdens environmental, traffic-pattern, economic-viability, and land-use-planning interests of the host municipality.").

This analysis is an essential tool to properly evaluate the impact of large-scale retail and/or wholesale projects. It shall contain objective evaluation criteria to determine whether this kind of project should be approved, based on the criteria established for every economic and planning policy.

This evaluation and information tool becomes more relevant in Puerto Rico, due to the Island's space limitations for developing large-scale projects. This evaluation tool shall consist of conducting a comprehensive evaluation of the proposed project to make a well-informed determination with respect to the approval thereof.

Likewise, this legislative piece provides small- and medium-sized businesses with the opportunity to use unoccupied government properties where they may establish their business under a preferential rent program.

It should be noted that, as recent as August 10, 2012, the Industrial Development Company (PRIDCO) reported to the mainstream media of the Island that it has an inventory of one thousand six hundred (1,600) properties, thirty percent (30%) of which is unoccupied. Furthermore, there is consensus that such unoccupied properties could be leased to small- and medium-sized businesses under favorable financial terms.

Lastly, this Act sets forth a preferential policy for the government subsidies granted under Act No. 74 of June 21, 1956, as amended, better known as the "Puerto Rico Employment Security Act," which provides for the granting of incentives and for the payment thereof to businesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- This Act shall be known as the "Micro, Small-, and Medium-sized Business Promotion Act."

Section 2.- Definitions.-

1. Leasing – the use by means of rental of unoccupied property of the Government of the Commonwealth of Puerto Rico.

2. Puerto Rico Micro, Small-, and Medium-sized Business Promotion Board – a permanent board composed of the Secretary of the Department of Labor and Human Resources (DLHR), the Executive Director of the Puerto Rico Trade

and Export Company (PRTEC), the Chair of the Planning Board, three (3) small- and medium-sized entrepreneurs (representing said sector), and the Executive Director of the Permit Management Office (OGPe, Spanish acronym).

3. Regional Economic Impact Analysis – an analysis required to every project proposing a large-scale retail and/or wholesale establishment with sixty-five thousand (65,000) square feet or more of sales area and storage space. Or to any establishment devoted to the retail sale of mixed merchandise with fifteen thousand (15,000) square feet or more of sales area and storage space.

4. Microbusiness – a business or enterprise whose annual gross income is less than five hundred thousand dollars (\$500,000) and has seven (7) employees or less.

5. Small-sized Business – a business or enterprise whose annual gross income is less than three million dollars (\$3,000,000) and has twenty-five (25) employees or less.

6. Medium-sized Business – a business or enterprise whose annual gross income is less than ten million dollars (\$10,000,000) and has fifty (50) employees or less.

7. Expansion – to add square footage or to establish new locations.

8. Establishments Devoted to the Sale of Mixed Merchandise – businesses devoted to the sale of taxable and non taxable items, as defined under Act No. 1-2011, better known as the “Internal Revenue Code for a New Puerto Rico of 2011,” and the Sales and Use Tax (IVU, Spanish acronym) regulations of the Department of the Treasury.

Section 3.- Public Policy.-

Micro, small-, and medium-sized businesses are the backbone of Puerto Rico’s economy. Given their capacity and potential to generate well-paid jobs, global economies bet on providing this sector with countless incentives.

According to data obtained from the Economic Census conducted by the United States Census Bureau, thirteen thousand one hundred twenty-seven (13,127) small- and medium-sized businesses were operating in Puerto Rico in 1992. Ten (10) years later, the number of small- and medium-sized businesses dropped to ten thousand seven hundred thirteen (10,713), which represents a 23% reduction in the number of commercial establishments.

Today, the atmosphere and the environment for doing business for micro, small, and medium-sized businesses have become even more challenging; consequently, many entrepreneurs have found themselves at a crossroads where they must choose to close down or file for bankruptcy.

Recognizing this sector's capacity to generate well-paid jobs, it is hereby provided that small- and medium-sized businesses shall be the cornerstone of the Island's economic development plan. Thus, the Government of the Commonwealth of Puerto Rico is strongly committed to, firstly, make micro, small-, and medium-sized businesses a priority by providing them with incentives to create jobs or to maintain existing ones, as well as with any assistance available for entrepreneurs to help them defray operating expenses.

Section 4.- The Puerto Rico Micro, Small-, and Medium-sized Business Promotion Board is hereby created on a permanent basis. Said Board shall have the powers and duties and be constituted as provided in this Act.

(a) Composition and Organization of the Board.-

The Board shall be composed of the following government officials and individuals:

a. The Executive Director of the Puerto Rico Trade and Export Company (PRTEC);

b. The Secretary of the Department of Labor and Human Resources (DLHR);

- c. The Chair of the Planning Board;
- d. The Executive Director of the Permit Management Office (OGPe, Spanish acronym);
- e. One micro-business entrepreneur who is a member of a *bona fide* group or association and has not less than ten (10) years of experience in microbusiness-related matters;
- f. One small-sized business entrepreneur who is a member of a *bona fide* group or association and has not less than ten (10) years of experience in SMBs-related matters;
- g. One medium-sized business entrepreneur who is a member of a *bona fide* group or association and has not less than ten (10) years of experience in SMBs-related matters;

The Governor of Puerto Rico shall appoint one (1) representative of the micro, small-, and medium-sized business sector to the Board; the Speaker of the House of Representatives of Puerto Rico shall appoint one (1) representative of the micro, small-, and medium-sized business sector to the Board; and the President of the Senate shall appoint one (1) representative of the micro, small-, and medium-sized business sector to the Board.

Entrepreneurs appointed to the Board by virtue of this Act shall hold office for the following terms: one (1) member for five (5) years, one (1) member for four (4) years, and one (1) member for three (3) years. Their successors shall be appointed for a five (5)-year term. Upon the expiration of their term of office, board members may continue to carry out their duties until their successors are appointed and take office. Such terms shall begin to run as of the expiration date of the preceding term.

The Board shall be attached to the Puerto Rico Trade and Export Company and chaired by its Executive Director or his/her representative. If a Board member delegates his/her representation, such delegation shall be made within thirty (30) days after the approval of this Act. In any case, the Board shall be fully constituted within the aforementioned term.

(b) Powers and Duties of the Board.-

The Board shall have the following powers and duties:

1. To make recommendations to the Governor and the Legislative Assembly to foster a well-balanced economic development among the different sectors that contribute to Puerto Rico's economy;

2. To encourage and facilitate intersectoral coordination with the central government and municipal governments to promote SMBs as the driving force of our economic development;

3. To draft, adopt, and amend rules and regulations to govern the internal operations and the discharge of the powers and duties of the Board;

4. To enter into agreements with the appropriate government agencies to ensure the proper implementation and oversight of the provisions of this Act;

5. To establish, at its discretion, advisory groups to provide the Board with expert advice on matters related to micro, small-, and medium-sized businesses; provided, that the Board shall have the technical support of the principal advisor to the Governor in such matters;

6. To ensure the proper implementation and observance of the terms and requirements set forth in this Act and in any legislation promoting incentives and measures to support SMBs. In the event of noncompliance by any government body, the Board shall be required to notify such noncompliance to the

Governor and the Legislative Assembly within a term that shall not exceed thirty (30) days after learning about the same;

7. To require documents as are necessary from the appropriate government bodies to ascertain compliance with this Act and any legislation promoting incentives and measures to support SMBs;

8. To provide for its internal organization to achieve the purposes of this Act;

9. To hold periodical meetings, at least four (4) times every year, as appropriate to achieve the purposes of this Act;

10. To file on or before April 30th of each year with the Governor and the Legislative Assembly of the Commonwealth of Puerto Rico a report of the SMBs as a component of the local economy with the data of the preceding calendar year ending on December 31st, including, but not limited to:

a) an analysis on executive summary format of the SMB's profile;

b) the number of SMBs that availed themselves of the benefits of this Act;

c) the number of SMBs that closed down;

d) economic indicators related to SMBs;

e) any recommendations to carry out intersectoral coordination initiatives to continue promoting SMBs in Puerto Rico;

f) an analysis of the SMBs' multiplying effects; and

g) any other information deemed convenient to provide the Governor and the Legislative Assembly with a profile and full analysis of the SMBs contributions to the local economy.

11. The PRTEC shall conduct a comprehensive study including the positions and recommendations of all public, private, State, or Federal agencies and entities related to SMBs to define the terms for micro, small-, and medium-sized businesses in Puerto Rico. The PRTEC shall submit a report to the Board of the results and recommendations of said study within two (2) years after the approval of this Act. Subsequently, the Board shall substitute such terms to establish the businesses in Puerto Rico that shall continue benefiting from this Act.

12. The Board shall conduct a comprehensive study including the positions and recommendations of the Puerto Rico Electric Power Authority (PREPA) and the Aqueduct and Sewer Authority (ASA) to identify viable options and recommendations to reduce high energy costs that affect the development and economic stability of SMBs in Puerto Rico. The Board shall submit a report to the Legislative Assembly and the Governor of the results and recommendations of the study within six (6) months after the approval of this Act.

Provided, that any procedure or regulation in connection therewith shall be promulgated within a term not to exceed sixty (60) days after the approval of this Act.

Section 5.- A new Section 8.15 is hereby added to Act No. 161-2009, as amended, better known as the “Puerto Rico Permit Process Reform Act,” to read as follows:

“Section 8.15.- Conditional Use Permit to Individuals or Small- and Medium-Sized Businesses for the Establishment, Expansion, and Operation of Certain Businesses or Uses Compatible with the Qualification (zoning) of the Site.-

The Permit Management Office (OGPe), Autonomous Municipalities with I to V granted Hierarchy, and Authorized Professionals may issue conditional use permits to individuals or small- and medium-sized businesses for the establishment of a new business or to expand an existing business.

All businesses and individuals with fifty (50) employees or less, that, in accordance with this Act, meet SMBs parameters shall be deemed to be individuals, micro, small-, and medium-sized businesses and may qualify to obtain such permit. This process shall allow those individuals or entities that are unable to immediately meet any of the requirements provided in this Act for the issuance of a use permit for their business, to initiate new business activities without delays.

Provided, further, that every individual who files on his/her behalf or on behalf of a corporation of individuals an application to obtain a use permit, shall receive a conditional use permit that shall enable him/her to begin operations immediately and be granted a six (6)-month period after the issue thereof to meet any requirement that he/she was unable to meet at the time of filing the application. In addition to Architects or Professional Engineers, Authorized Inspectors may certify to OGPe that fire prevention and environmental health requirements have been met for all uses. Said certifications shall be filed with OGPe at the time of applying for a Conditional Use Permit, except for retail sales stores, business offices, professional offices, medical offices, retail stores, barbershops, beauty salons, and small sales and service shops that do not involve the preparation and/or sale of food, may submit the fire prevention and environmental health certifications within a term of one hundred eighty (180) days after the issue of said conditional, immediate, or temporary use permit. Said use permit shall be issued within one (1) business day.

If the individual or juridical entity fails to meet such requirements within the six (6)-month period, such permit shall be revoked. Furthermore, the Permit Management Office and Autonomous Municipalities with I to V granted Hierarchy are hereby authorized to order the closing of the business in cases involving an individual's willful contempt or disregard for final Orders issued by the Permit Management Office and Autonomous Municipalities with I to V granted

Hierarchy, the suspension of the electric power and/or water services, and the imposition of a fine that shall not exceed one thousand five hundred dollars (\$1,500.00); and any individual or entity that continues operating without the appropriate permit shall be punished by an additional one-hundred dollars (\$100) fine daily.

The fact that an individual or entity applying for a permit has an outstanding debt with any agency of the Commonwealth shall not be grounds for refusing to issue immediate, temporary, or conditional use permits. In such cases, the individual shall be required to satisfy the debt in question or show proof of having availed him/herself of a payment plan, and to meet any other requirement under this Act during the extension period.”

Section 6.- A new Section 8.16 is hereby added to Act No. 161-2009, as amended, *supra*, to read as follows:

“Section 8.16.- Criteria for the Issuance of Conditional, Immediate, or Temporary Use Permits.-

In order to obtain a conditional, immediate, or temporary use permit individuals shall complete the application for Conventional Use Permit of the Permit Management Office as provided in the Joint Permit Regulations for Construction Works and Lands and show proof of having obtained Fire Prevention and Environmental Health Certifications, which may be certified by a Professional Engineer or Architect in accordance with the Plan Certification Act, Act No. 135-1967, or issued by an authorized professional or inspector in accordance with Section 8.15 of this Act.

Upon showing proof of having both certifications and of having completed the application for Conventional Use, the Permit Management Office and/or the Autonomous Municipalities with I to V granted Hierarchy shall issue the provisional use permit within one (1) business day.

If the proposed business is to be located in a property that does not have a permit, it may also avail itself of the fast-track process provided in Section 8.15 of this Act to obtain a conditional, immediate, or temporary use permit within one (1) business day; provided, that the certifications are issued by an authorized professional and the proposed use is allowed by the qualification district of the property.”

Section 7.- Section 2.16 entitled “Studies or Research” of Act No. 161-2009, better known as the “Puerto Rico Permit Process Reform Act,” is hereby amended to read as follows:

“Section 2.16.- Studies or Research.-

(a) In General.-

The Permit Management Office may conduct any kind of studies or research concerning any matters within its scope, and to that effect, the Office may require any information as necessary, pertinent, and essential to achieve such purposes and approve such rules and regulations as necessary and reasonable. Provided, however, that such studies and research shall be conducted without prejudice to the vested rights of natural or juridical persons that have obtained site consultations and/or land development or use permits already approved for commercial projects under regulations or legislation in effect prior to the effective date of this Act.

(A) Regional Economic Impact Analysis

(1) The Permit Management Office shall require every proponent of projects to establish or develop retail and/or wholesale establishments with sixty-five thousand (65,000) square feet or more of sales area and storage space to conduct a regional economic impact analysis. Such analysis shall also be required to establishments devoted to the retail sale of mixed merchandise with fifteen thousand (15,000) square feet or more of sales area and storage space.

The regional economic impact analysis requirement shall also apply to all those projects to which duly qualified municipalities are empowered to issue the corresponding permits.

The regional economic impact analysis shall assess the net impact of the proposed projects on the economic conditions of the area under analysis to prevent any potential harm to such areas.

The regional economic impact analysis required under this Section shall apply to any proponent of new projects or those who have already started a process in the Permit Management Office to establish or develop retail and/or wholesale establishments with sixty-five thousand (65,000) square feet or more of sales area and storage space. However, the regional economic impact analysis shall not be required for projects with such square footage or more that already have obtained a duly approved site consultation and/or land development and/or use permits in accordance with regulations or legislation in effect prior to the effective date of this Act.

Likewise, the regional economic impact analysis required under this Section shall apply to every proponent of new projects or those who have already started a process in the Permit Management Office to establish or develop establishments devoted to the retail sale of mixed merchandise with fifteen thousand (15,000) square feet or more of sales area and storage space. However, the regional economic impact analysis shall not be required for projects with such square footage or more that already have obtained a duly approved site consultation and/or land development and/or use permit in accordance with regulations or legislation in effect prior to the effective date of this Act.

The regional economic impact analysis shall evaluate, among other things, the following:

1. The economic effects of the proposed project on existing business establishments in the region, and the economic effect of projects similar to those proposed on existing business establishments in other areas or regions.

2. Number and location of business establishments where there is an overlap with respect to the type of goods and services object of the project.

3. Supply and demand of available space for business establishments at the regional level. Potential use of unoccupied spaces or facilities.

4. Information about jobs in the region, including the projected net job creation and loss, as well as information about earned salaries and benefits.

5. Volume of sales and income of the business establishments existing in the region.

6. Municipal or State revenues to be generated by the proposed project, as well as the construction costs and operating expenses (State and municipal) it entails to be covered by the government, including those related to the costs of highways, police, firefighters, rescue, water and sewage services, or other public services such as power lines or solid waste disposal.

7. Effects of the proposed project on the environment.

8. Growth impact, which shall include an evaluation of the population growth experienced in the region in order to determine whether or not the proposed project shall affect the financial capacity of the government (current and potential) to accommodate the total growth and the growth rate resulting from the project if approved. For such purposes, foreseen government costs in connection with public health, safety, and wellbeing shall be taken into account in order to evaluate the region's capacity to accommodate the growth resulting from such project.

9. Market concentration analysis using the Herfindahl-Hirschman Index (HHI) parameters.

The required analysis shall apply notwithstanding the sixty-five thousand (65,000) square feet or more are comprised within one or more buildings; provided that they are located in the same site. Likewise, the required analysis shall apply to any expansion or renovation of an existing business or new establishment for retail sale of mixed merchandise. Such requirement shall also apply to projects of fifteen thousand (15,000) square feet or more.

(2) Role of the Planning Board (PB). The regional economic impact analysis shall be defrayed in its entirety by the proponent, and the PB, in coordination with the Permit Management Office (OGPe) and the Puerto Rico Trade and Export Company (PRTEC), shall be the entity in charge of prescribing through regulations the parameters and provisions that must be included in the analysis. The PB shall establish a certified list of professionals and/or companies authorized to conduct such analysis, from among which the proponent shall choose one to conduct the analysis. The PB shall also include in the regulations the cost limit for such analyses in accordance with the size of the proposed project and define the land area to be included in the analysis.

The recommendations and conclusions of the analysis shall be taken into account when issuing the corresponding permits to the proposed project, subject to the provisions of this Section.

(3) Role of the PRTEC:

i. To establish a system to keep the conducted analyses and related documents in its facilities; and adopt through regulations the guidelines to ensure citizen access to such documents.

(4) Role of the OGPe.- The Permit Management Office (OGPe) shall determine the selected economist and/or company's due date for submitting the analysis. Said due date shall be established in the regulations.

Regional economic impact analyses submitted to OGPe by the PB shall be reviewed by the PRTEC, for the latter to issue recommendations with respect thereto, subject to the provisions set forth herein. OGPe shall issue its determination with regard to the permits requested for the proposed project.

Based on the PRTEC's recommendations, OGPe may also require the project's proponent to mitigate any adverse impact identified in the analysis. OGPe may require the project's proponent the following mitigation measures, among others:

1. Impact fees, in the event that the projected impact on the treasury with regard to the proposed project exceeds the projected municipal and/or central government's revenues; the PB shall determine whether the payment shall be remitted to the Central Government or the Municipality, as well as the amount and frequency thereof; and

2. measures aimed at delimiting the maximum square footage and/or other aspects of the original proposed project, including some of the proposed business activities, may cause an excess supply of goods or services in the market of the area under analysis.

OGPe shall be empowered to issue, amend, or deny a permit as requested. For such purposes, it shall take into account the recommendations made by the PRTEC, any mitigation effort undertaken by the projects proponent as provided herein, and all other requirements applicable by law and regulations to permit applications filed with it.

The Legislative Assembly shall appropriate every year, as part of the budget request, special funds for the PB and OGPe to enforce the provisions set forth in this Act with regard to regional economic impact analyses.

Section 8.- Section 2 entitled “Statement of Public Policy” of Act No. 129-2005 , as amended, known as the “Government of the Commonwealth of Puerto Rico Procurement Reserves Act,” is hereby amended to read as follows:

“Section 2.- Statement of Public Policy.-

It shall be the public policy of the Commonwealth of Puerto Rico to establish a Reserve Program which shall require the Government of the Commonwealth of Puerto Rico and its instrumentalities to set aside twenty percent (20%) of their total budget item for procurement to be awarded to micro, small- and medium-sized businesses. And the creation of a reserve consisting of setting aside three percent (3%) of the budget item for procurement of departments, agencies, instrumentalities, offices, municipalities, and public corporations of the Commonwealth of Puerto Rico to make payments to eligible micro, small-, and medium-sized businesses.

Section 3.- Definitions.

...
...”

Section 9.- Subsections (1) and (2) are hereby amended and subsections (8) and (9) are hereby added to Section 6 of Act No. 129-2005, as amended, to read as follows:

“Section 6.- Reserves Program.

1. A new item shall be created to which twenty percent (20%) of the procurement budget item of each agency shall be allocated. The requirements to comply with said twenty percent (20%) shall be established through regulations.

2. Every agency shall set aside at least twenty percent (20%) of their total budget item for procurement to be awarded to micro, small-, and medium-sized businesses.

3. ...

4. ...

5. ...

6. ...

7. ...

8. The departments, agencies, instrumentalities, entities, municipalities, and public corporations of the Commonwealth of Puerto Rico shall create a reserve consisting of setting aside three percent (3%) of the budget item for procurement of each entity in order to make payments to eligible micro, small-, and medium-sized businesses.

9. The agencies, government entities, and municipalities subject to this Act shall remit the payment or contract sum to eligible small-, and medium-sized businesses within thirty (30) calendar days.”

Section 10.- Subsection (3) is hereby amended, and a new subsection (5) is hereby added to Section 7 of Act No. 129-2005, *supra*, to read as follows:

“Section 7.- Planning, Reports, and Review.

1. ...

2. ...

3. Agencies shall report the budget item for procurement and the amount corresponding to the twenty percent (20%) set aside for the Reserves Program. Furthermore, the General Services Administration, together with the Trade and Export Company, shall certify compliance by every government agency with this Section, and shall begin an information and effective oversight process for compliance therewith.

4. ...

5. Penalty for Noncompliance with this Act.- The Department of the Treasury shall withhold one percent (1%) of the general budget of any department, agency, instrumentality, entity, municipality, and public corporation of the Commonwealth of Puerto Rico in the event of noncompliance with the provisions of this Act. Said noncompliance shall be certified by the Trade and Export Company. The sums collected shall be transferred to the Department of Economic Development and Export [sic] to be remitted to the Trade and Export Company. With this added budget, the Trade and Export Company shall hire additional human capital and acquire the tools needed to ascertain compliance with this Act. Moreover, the Trade and Export Company shall use such resources for funding any grants, incentives, training workshops, and any other activities as are necessary to strengthen and oversee the economic development of micro, small-, and medium-sized local businesses.”

Section 11.- Preferential Rent Program.

A. New entrepreneurs who wish to establish a micro, small-, or medium-sized business may lease an eligible property from the Puerto Rico Industrial Development Company or the Trade and Export Company to establish operations and shall pay an annual rent of one dollar (\$1) during the first two (2) years of the lease. The Puerto Rico Industrial Development Company and the Trade and Export Company shall establish guidelines for leasing their properties. The lease agreement shall include all the usual terms and conditions for this type of agreement and shall comply with all the legal provisions applicable to the lease of properties of the Puerto Rico Industrial Development Company or the Trade and Export Company. The applicable rent, once the two (2)-year period ends, shall be the prevailing rent at the time the lease agreement was executed.

B. In order to be eligible to participate in this Program, the applicant shall:

- i. Be the owner of a micro, small-, or medium-sized business.
- ii. Commit him/herself to create or retain certain jobs.
- iii. Have a business plan or proposal approved by the Puerto Rico Industrial Development Company (PRIDCO) or the Trade and Export Company.
- iv. Submit a proposal to the Board.
 - a. The Board shall issue its determination within fifteen (15) business days.
 - b. The Board shall promulgate guidelines for the evaluation of the proposals submitted by participants seeking to receive this type of grant.
 - c. Benefits under the Preferential Rent Program shall take effect upon the expiration of the effective term of Act No. 1-2013, known as the “Jobs Now Act.”

Section 12.- Subsection (c) of Section 12B of Act No. 74 of June 21, 1956, as amended, better known as the “Puerto Rico Employment Security Act,” is hereby amended to read as follows:

“Section 12B.- Employment and Training Opportunities Development Fund.

Section (a) Establishment of the Fund ...

...

Section (b) Deposit and Disbursement ...

...

Section (c) Use of the Fund

Given the nature and origin of the funds, their use and allocation shall be consistent with the statutory provisions of the Federal Unemployment Tax Act. The moneys of the Fund shall be used for the creation of an employment and training opportunities program in the public and private sectors, as provided by the

Secretary through regulations. The program thus established shall include elderly persons, as said term is defined in Act No. 203-2004, and shall provide for their training and re-training. Said moneys may also be used to keep existing jobs, extend the term thereof, and modify compensation as a provisional remedy in situations that may involve potential job loss, when warranted in the Secretary's judgment.

...

The Secretary may also use said funds to subsidize the purchase and maintenance of equipment, machinery, air, land or sea transportation vehicles, tools, and instruments needed for the creation or permanence of jobs.

...

For the aforementioned purposes, the Secretary is hereby authorized to establish and approve such regulations he/she deems necessary, without being subject to the provisions of Act No. 170 of August 12, 1988, as amended, *supra*, better known as the "Uniform Administrative Procedures Act." The regulations promulgated shall provide for the granting of incentives to employers in industry, trade, banking, and others who offer employment and training to the elderly. The Secretary shall request assistance and collaboration from the Office for Elderly Affairs when adopting regulations with respect to the elderly.

...

In order to benefit from this fund, the participant shall register in an Employment Service Office of Puerto Rico.

...

The Secretary shall establish fiscal and evaluating mechanisms for the effective administration and use of the Fund established herein and shall promulgate the necessary regulations in order to grant incentives to employers in

industry, trade, banking, and others who offer employment and training to elderly persons.

Provided, further, that when said funds are used to benefit the private sector, a reserve equal to sixty percent (60%) of the funds allocated to the private sector shall be created to fund proposals submitted by micro, small-, and medium-sized businesses as provided by the Secretary through regulations. For purposes of this Section, micro, small-, and medium-sized businesses shall have the meaning established by the Puerto Rico Trade and Export Company.

For the aforementioned purposes, the Secretary is hereby authorized to establish and approve any regulations he/she may deem necessary, without being subject to the provisions of Act No. 170 of August 12, 1988, as amended, *supra*, for the effective granting of said funds to small- and medium-sized businesses.”

Section 13.- The Board shall promulgate rules to implement the provisions of this Act. The agencies concerned, to wit, the Trade and Export Company (PRTEC), the Department of Labor and Human Resources (DLHR), the Planning Board, and the Permit Management Office (OGPe) shall adopt and promulgate regulations as appropriate within a term that shall not exceed sixty (60) days to implement the provisions of this Act as well as the rules adopted by the Board.

Section 14.- If any clause, paragraph, subparagraph, article, provision, Section or part of this Act were held to be unconstitutional or null, such holding shall not affect or invalidate the remaining provisions of this Act. The effect of such holding shall be limited only to the clause, paragraph, subparagraph, article, provision, Section, or part held to be unconstitutional or null.

Section 15.- This Act shall take effect immediately after its approval, except for Section 11, Preferential Rent Program, which shall take effect upon the expiration of the effective term of Act No. 1-2013, known as the “Jobs Now Act.”

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 62-2014 (H. B. 545) (Conference)** of the **3rd Regular Session of the 17th Legislative Assembly of Puerto Rico:**

AN ACT to create the “Micro, Small-, and Medium-sized Business Promotion Act,” in order to create the Puerto Rico Micro, Small-, and Medium-sized Business Promotion Board; add Sections 8.15 and 8.16 to Act No. 161-2009, as amended, known as the “Puerto Rico Permit Process Reform Act,” in order to establish a fast-track process for issuing use permits to individuals or micro, small-, and medium-sized businesses for the establishment and operation of certain business; etc.

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

In San Juan, Puerto Rico, on this 11th day of August, 2014.

Juan Luis Martínez Martínez
Acting Director