

(S. B. 1268)

(No. 173)

(Approved December 16, 2009)

AN ACT

To amend subclauses (1), (2), and (3) of clause (J) of the Fourth Paragraph of Article 2 of Act No. 17 of September 23, 1948, as amended, known as the “Government Development Bank for Puerto Rico Act,” in order to clarify certain aspects of the accounting system to provide reimbursements to the Puerto Rico Tourism Development Fund.

STATEMENT OF MOTIVES

Among the powers conferred to the Government Development Bank for Puerto Rico (the “Bank”) is the creation of subsidiary or affiliate businesses, with the purpose of boosting the economy of Puerto Rico and assisting such Bank in the discharge of its functions, in the exercise of its powers and in achieving its institutional objectives. In keeping with these purposes, Act No. 75 of September 7, 1993, established procedures to facilitate certain legislative refunds to the Bank’s subsidiary, known as the Puerto Rico Tourism Development Fund (the “Tourism Development Fund”), in order to promote the economic development of Puerto Rico by issuing sureties and by financing tourist projects, both directly and indirectly. The Tourism Development Fund has become an important vehicle in promoting tourist investment, insofar as it has financed and issued sureties for multiple hotel complex projects that have yielded great benefits for Puerto Rico.

This amendment updates the provisions of the Bank’s Enabling Act on the matter of the Tourism Development Fund, so as to recognize that financing for tourist projects by the Tourism Development Fund is provided by means of

sureties from the Tourism Development Fund, loans to third parties or the acquisition of loan participations, among others. The provisions on the matter of the annual certification that the Executive Director of the Tourism Development Fund is to submit to the Director of the Office of Management and Budget to show the various kinds of financing structured by the Tourism Development Fund and the effect of such financing on the finances of the Tourism Development Fund, are hereby clarified.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.—[The Spanish texts of] subclauses (1), (2), and (3) of clause (J) of the Fourth Paragraph of Article 2 of Act No. 17 of September 23, 1948, as amended, are hereby amended to read as follows:

“Artículo 2.—Carta Constitucional del Banco:

La Carta Constitucional de ‘el Banco’ será la siguiente:

Primero: ...

Cuarto: El Banco tendrá, además, las siguientes facultades:

(A) ...

(J) (1) ...

(a) ...

(b) la subsidiaria conocida con el nombre de Fondo para el Desarrollo del Turismo de Puerto Rico (el ‘Fondo del Desarrollo del Turismo’), la cual tendrá una Junta de Directores compuesta por el Presidente del Banco Gubernamental de Fomento para Puerto Rico, el Director Ejecutivo de la Compañía de Turismo, el Secretario de Hacienda y dos miembros a seleccionarse por la Junta de Directores del Banco de entre sus miembros.

(2) La Junta de Directores del Banco tendrá la facultad para proveer los fondos necesarios para capitalizar el Fondo de Desarrollo de Turismo; disponiéndose, sin embargo, que cualquier solicitud para capitalizar el Fondo del Desarrollo de Turismo, en exceso de los cincuenta millones de dólares (\$50,000,000) de capitalización inicial, deberá ser sometido por el Director Ejecutivo del Fondo del Desarrollo de Turismo a la consideración y aprobación del:

- (a) Director de la Oficina de Gerencia y Presupuesto;
- (b) el Secretario de Hacienda;
- (c) el Presidente del Banco Gubernamental de Fomento para Puerto Rico; y
- (d) el Director Ejecutivo de la Compañía de Turismo de Puerto Rico.

El incremento en la capitalización del Fondo del Desarrollo de Turismo aprobado deberá ser notificado por el Director Ejecutivo del Fondo del Desarrollo de Turismo a la Asamblea Legislativa.

(3) Anualmente, el Director Ejecutivo del Fondo del Desarrollo de Turismo le certificará al Director de la Oficina de Gerencia y Presupuesto el Desembolso Neto, si alguno, que debe reemborsársele al Fondo del Desarrollo del Turismo. El 'Desembolso Neto' significa la cantidad, si alguna, por la cual los desembolsos (excluyendo desembolsos para adquirir inversiones) del Fondo del Desarrollo de Turismo durante un año calendario (incluyendo la Pérdida Realizada de dicho año) sobrepasan los ingresos cobrados por el Fondo del Desarrollo de Turismo durante dicho año calendario. Los desembolsos hechos por el Fondo del Desarrollo de Turismo para (i) préstamos a terceros, (ii) la adquisición de participaciones en

préstamos y (iii) la aceleración del vencimiento de préstamos, pagarés, bonos u otro tipo de deuda garantizada o asegurada por el Fondo del Desarrollo de Turismo, no se considerarán hechos en el año en que dichos pagos se desembolsan por el Fondo del Desarrollo de Turismo, sino que se considerarán hechos en el año en que el Director Ejecutivo del Fondo del Desarrollo de Turismo determine que se realizó una pérdida en cuanto al referido préstamo, pagaré, bono o deuda (dicha determinación siendo una ‘Pérdida Realizada’). El Director de la Oficina de Gerencia y Presupuesto procederá a incluir el Desembolso Neto en el Presupuesto General de Puerto Rico para el próximo año fiscal. El certificado del Director Ejecutivo estará certificado por un auditor externo del Banco y estará basado en una evaluación de los desembolsos hechos (excluyendo desembolsos para adquirir inversiones) y los ingresos cobrados por el Fondo del Desarrollo de Turismo en cuanto al año en que se incurrió una Pérdida Realizada será concluyente. El reembolso del Desembolso Neto estará sujeto a consideración por la Asamblea Legislativa.”

Section 2.—The English texts of subclauses (1), (2), and (3) of clause (J) of the Fourth Paragraph of Article 2 of Act No. 17 of September 23, 1948, as amended, are hereby amended to read as follows:

“Article 2.—The Charter of ‘the BANK’ shall be as follows:

CHARTER

FIRST: ...

FOURTH: The Bank shall also have the following powers:

(A) ...

(J) (1) ...

(a) ...

(b) the subsidiary known under the name of Puerto Rico Tourism Development Fund ('Tourism Development Fund'), which shall have a Board of Directors composed of the President of the Government Development Bank, the Executive Director of the Puerto Rico Tourism Company, the Secretary of the Treasury and two additional members to be selected by the Board of Directors of the Bank.

(2) The Board of Directors of the Bank shall have the power to provide the funds necessary to capitalize the Tourism Development Fund, provided however, that any request to capitalize the Tourism Development Fund, in excess of fifty million dollars (\$50,000,000) of initial capitalization, shall be remitted by the Executive Director of the Tourism Development Fund to the consideration and approval of:

- (i) the Director of the Office of Management and Budget;
- (ii) the Secretary of the Treasury;
- (iii) the President of the Government Development Bank for Puerto Rico; and
- (iv) the Executive Director of the Puerto Rico Tourism Development Fund.

The approved increase in the capitalization of the Tourism Development Fund shall be notified by the Executive Director of the Tourism Development Fund to the Legislative Assembly.

(3) Each year, the Executive Director of the Tourism Development Fund shall certify to the Director of the Office of Management and Budget the Net Disbursement, if any, that shall be reimbursed to the Tourism Development Fund. 'Net Disbursement' means the amount, if any, by which

the disbursements (excluding disbursements to acquire investments) made by the Tourism Development Fund during a calendar year (including such year's Realized Loss) are in excess of the revenues collected by the Tourism Development Fund said calendar year. The disbursements made by the Tourism Development Fund for (i) loans to third parties, (ii) the acquisition of loan participations, and (iii) the acceleration of maturities of loans, notes, bonds or other type of debt guaranteed or insured by the Tourism Development Fund, shall not be deemed made in the year in which said amounts are disbursed by the Tourism Development Fund, instead shall be deemed in the year in which the Executive Director of the Tourism Development Fund determines that a loss was incurred with respect to said loan, note, bond or debt (such determination being referred to as 'Realized Loss'). The Director of the Office of Management and Budget shall proceed to include the Net Disbursement in the General Budget of Puerto Rico for the following fiscal year. The certificate issued by the Executive Director shall be certified by an external auditor of the Bank and shall be based on an evaluation of the disbursements made (excluding disbursements to acquire investments) and the revenues collected by the Tourism Development Fund, but the determinations of the Executive Director of the Tourism Development Fund regarding the year in which a Realized Loss has incurred shall be conclusive. The reimbursement of the Net Disbursement shall be subject to consideration by the Legislative Assembly.”

Section 3.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 173 (S. B. 1268)** of the **2nd Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend subclauses (1), (2), and (3) of clause (J) of the Fourth Paragraph of Article 2 of Act No. 17 of September 23, 1948, as amended, known as the “Government Development Bank for Puerto Rico Act,” in order to clarify certain aspects of the accounting system to provide reimbursements to the Puerto Rico Tourism Development Fund.

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

In San Juan, Puerto Rico, on the 29th day of June, 2011.

María del Mar Ortiz Rivera, Esq.
Director