

(H.B. 1266)
(Conference)

(No. 39)

(Approved August 1, 2005)

AN ACT

To authorize the Secretary of the Treasury and the Executive Director of the Public Buildings Authority of Puerto Rico to execute qualified interest rate exchange agreements in representation of the Commonwealth and the Public Buildings Authority, respectively, subject to the limitations established in this Act; establish the duties and obligations of the Commonwealth and the Public Buildings Authority under said agreements; authorize the pledging of collateral under said agreements; establish the method for computing the amount of the interest payable on the obligations in circulation of the Commonwealth of Puerto Rico and the obligations of the Public Buildings Authority guaranteed by the Commonwealth for the purpose of complying with the constitutional limitation of the public debt and the method for computing the interest rate of the obligations that accrue variable interest rates for the purpose of complying with the limitation of the maximum interest rate that the Commonwealth of Puerto Rico is able to pay; pledge the good faith, the credit and the power to levy taxes of the Commonwealth of Puerto Rico under said qualified interest rate exchange agreements and their guarantees in the case of the Public Buildings Authority; relinquish the sovereign immunity of the Commonwealth of Puerto Rico under any qualified interest rate exchange agreements and their guarantees in the case of the Public Buildings Authority; and for other purposes.

STATEMENT OF MOTIVES

Those entities that issue variable interest rate obligations typically execute interest rate exchange agreements to handle the risk of an increase in their annual debt service as a result of increases in the interest rates. Under

said agreements, the entity that issues the variable interest rate obligation agrees to pay the other party periodic payments that are calculated on the basis of a fixed interest rate in exchange for receiving from the other party periodic payments that are calculated on the basis of a variable rate equal or similar to the rate that the issuing entity is bound to pay under its obligations. Therefore, and for all practical purposes, the entity that issued the obligation manages to substitute its obligation of paying a variable interest rate for the obligation of paying a fixed interest rate, thus managing to fix its debt service cost.

From time to time, depending on the conditions of the capital markets, the Commonwealth of Puerto Rico issues variable interest rate bonds. However, so far the Commonwealth of Puerto Rico has not been able to take advantage in all cases of the mechanism that involves interest rate exchange agreements to handle the fluctuations in the interest rates since there is no general legislation that expressly authorizes the Commonwealth of Puerto Rico to enter into this type of agreement.

Those entities that issue obligations, be they variable or fixed interest rate obligations, may also choose to enter into another modality of the interest rate exchange agreement. This modality, known as basis swap agreement, allows an entity to receive economic benefits that equal a reduction in the interest rate or the debt service of those outstanding bonds. Under this modality, the issuing entity makes payments based on the variable interest index of bonds exempted from paying taxes. In exchange, the issuing entity receives a variable payment (that represents the present value of the annual payments) based on an interest rate index which is not exempted from the payment of taxes, as for example a rate based on the

London Inter-bank Offered Rate, better known as LIBOR, and also receives a fixed annual payment or payment made.

This Act executes the Secretary of the Treasury the tools needed to allow the Commonwealth of Puerto Rico to mitigate the risks related to fluctuations in the interest rates concerning the variable interest rate obligations it has issued. Furthermore, this Act also gives the Secretary of the Treasury the authority needed to obtain the benefits provided by entering into basis exchange agreements, also known as basis swap agreements. In consonance with this purpose, the Secretary of the Treasury, in representation of the Commonwealth of Puerto Rico, is authorized to negotiate and execute qualified interest rate exchange agreements with banks, investment banks, securities issuing banks or other financial institutions that enjoy a high credit rating and to modify their terms when in the best interests of the Commonwealth of Puerto Rico. These exchange agreements shall not be executed for any purpose other than that authorized by this Act. Thus, this initiative prohibits exchange agreements from being used for financial speculation and also demands that the actions of the Secretary be consistent with the Rate Risk Management Policy Statement adopted by the Government Development Bank for Puerto Rico (BGF, Spanish acronym).

This measure requires that the Secretary of the Treasury consult with the BGF before executing any agreement under this Act. This requirement concerning the evaluation and prior recommendation of the BGF serves as a control regarding the discretion executed to the Secretary of the Treasury and responds to the desirability of making use of the experience and special expertise of the BGF.

In view of the fact that these interest rate exchange agreements are a necessary means for protecting the Commonwealth of Puerto Rico against interest rate fluctuations and for obtaining the aforementioned benefits in relation to the outstanding bonds, it is imperative that the banks, investment banks, securities issuing banks or other financial institutions with which the Commonwealth of Puerto Rico wishes to agreement, be guaranteed that the latter shall meet its obligations. For such a purpose the obligations of the Commonwealth of Puerto Rico under these agreements are supported by the good faith, the credit and the power to levy taxes of the Commonwealth of Puerto Rico. This Act also permits that the interest rate exchange agreements be guaranteed by some designated collateral, be it property or a source or sources of income or revenues of the Commonwealth of Puerto Rico. Through this Act, the Commonwealth of Puerto Rico relinquishes its sovereign immunity regarding any civil cause that may arise under a qualified interest rate exchange agreement, thus allowing the banks, investment banks, securities issuing banks or other financial institutions with which the Commonwealth of Puerto Rico agreements, to assert their rights under said agreements.

Given the close relationship between such interest rate exchange agreements and the subjacent debt obligations under which they are executed, this Act provides that pledging collateral under said interest rate exchange agreements have the same scope and be equal to the subjacent obligations. The terms and amount of the principal of the interest rate exchange agreements are likewise limited so as not to exceed the terms and amounts of the principal of the subjacent obligations.

Section 2 of Article VI of the Constitution of the Commonwealth of Puerto Rico limits the amount of the public debt the Commonwealth of

Puerto Rico may incur, while Act No. 14 of April 17, 1972, as amended, limits the maximum interest rate the Commonwealth of Puerto Rico is able to pay on its obligations. This Act establishes the methods to be used to calculate the service of the debt and to apply the limit on the maximum interest rate payable in the case of the obligations of the Commonwealth of Puerto Rico that are issued with a variable interest rate, in relation to which the Commonwealth of Puerto Rico has an interest rate exchange agreement in effect and in the case of basis swap agreements.

A similar situation occurs with the bonds of the Public Buildings Authority of Puerto Rico (the “Authority”), that even though they are issued by a public corporation they benefit from having the payment of the principal and interest guaranteed by the Commonwealth. The same opportunities described in the above paragraphs may be obtained by the Authority since they provide the latter with the same flexibility. In order to achieve those objectives this Act gives the Authority and its Executive Director the power to execute interest rate exchange agreements under premises similar to those that apply to said agreements with the Commonwealth, taking into consideration their guarantee. As in the case of those agreements with the Commonwealth, the authorization given to the Authority and its Executive Director is limited to certain transactions as contemplated in detail in this Act.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Article 1.-Short Title.

This Act shall be known as the “Commonwealth of Puerto Rico and the Public Buildings Authority Qualified Interest Rate Exchange Agreements Act of 2006.”

Definitions.

The following terms shall have the meaning expressed below and the words used in the singular shall include the plural and vice-versa:

- (a) **Independent Financial Advisor.** Means any person or entity experienced in financial matters and in the risks of the qualified interest rate exchange agreements, contracted by the Secretary of the Treasury or the Government Development Bank for Puerto Rico on behalf of the Secretary of the Treasury to advise the Commonwealth regarding qualified interest rate exchange agreements. Neither the independent financial advisor nor any of its affiliates or agents may be the other party under a qualified interest rate exchange agreements in relation to which said independent financial advisor is advising the Commonwealth.
- (b) **Authority.** Means the Public Buildings Authority of Puerto Rico created through Act No. 56 of June 19, 1958, as amended.
- (c) **Qualified Interest Rate Exchange Agreement.** Means a agreement, including the confirmation of a transaction conducted under an original agreement, executed by the Secretary of the Treasury according to and in compliance with the requirements of this Act, which, in the judgment of the Secretary of the Treasury, is designed to control the risks or costs of the Commonwealth related to interest rates fluctuations, investments, changes in price levels or credit risks of the Commonwealth, including but not limited to financial exchange agreements, interest rate limits, coverage agreements that provide interest rates bases and ceilings, corridors,

maximum and minimum interest rate limits agreements, deferred delivery agreements, flotation agreements, interest rates option agreements, basis swaps agreements and other similar agreements which in the judgment of the Secretary of the Treasury shall assist the Commonwealth in managing said risks or costs.

- (d) **Qualified Interest Rate Exchange Agreement of the Authority.** Means a agreement, including the confirmation of a transaction conducted under an original agreement, executed by the Authority according to and in compliance with the requirements of this Act, which, in the judgment of the Executive Director, is designed to control the risks or costs of the Authority related to interest rates fluctuations, investments, changes in price levels or credit risks of the Authority, or to obtain other economic benefits equal to reductions in the interest rates or the service of the debt of outstanding bonds, including but not limited to financial exchange agreements, interest rate limits, coverage agreements that provide interest rates bases and ceilings, corridors, maximum and minimum interest rate limits agreements, deferred delivery agreements, flotation agreements, interest rates option agreements, basis swaps agreements and other similar agreements which in the judgment of the Executive Director shall assist the Authority in managing said risks or costs.
- (e) **Executive Director.** Means the Executive Director of the Authority.
- (f) **Commonwealth.** Means the Commonwealth of Puerto Rico.

- (g) Guarantee. Shall have the meaning given in Section 2 of Article 4 of this Act.
- (h) Obligations. Means bonds, notes, notes in anticipation of bonds, commercial paper or other evidence of debt (including financial lease agreements or financial installment agreements) with fixed or variable rates of interest, issued, executed or unconditionally guaranteed by the Commonwealth or by the Authority, as the case may be.
- (i) Secretary of the Treasury or Secretary. Means the Secretary of the Department of the Treasury acting on behalf and in representation of the Commonwealth.

Article 3.-Qualified Interest Rate Exchange Agreements for the Commonwealth of Puerto Rico

Section 1.-Authorization to execute Qualified Interest Rate Exchange Agreements.

- (a) The Secretary of the Treasury is hereby authorized to negotiate and execute with any bank, investment bank or securities issuing bank or other financial institution, provided they have (directly or through guarantees) a high credit classification (of not less than investment grade), one or more qualified interest rate exchange agreements which the Secretary may determine to be for the best interests of the Commonwealth in relation to any other obligation of the Commonwealth, or otherwise, in relation to the management of the risks or costs of the Commonwealth related to the fluctuations in the interest rates, investments, changes in the level of prices or the credit risks of any obligation, or in relation to obtaining economic benefits

equal to a reduction in the interest rates or in the service of the debt of the outstanding bonds so as to generate credit for the Commonwealth of up to one hundred and sixty million dollars (\$160,000,000) under the terms and conditions which the Secretary of the Treasury determines to be in the best interests of the Commonwealth.

- (b) The Secretary of the Treasury may, from time to time, execute, modify, amend, sell or terminate one or more qualified interest rate exchange agreements as the Secretary may determine to be necessary or desirable in relation to issuing, incurring, sustaining, refinancing or guaranteeing obligations. This authorization also includes the power to modify or revoke any Qualified Interest Rate Exchange Agreement previously executed by the Secretary of the Treasury and the power to execute a Qualified Interest Rate Exchange Agreement that would modify the method for computing the payment of the interest rate under any Qualified Interest Rate Exchange Agreement previously executed to another method for computing the rate of interest or that revokes, in its totality or in part, the effect of a prior Qualified Interest Rate Exchange Agreement regarding the risk or costs of the interest rates of the Commonwealth. A Qualified Interest Rate Exchange Agreement executed by the Secretary of the Treasury may contain any clause, including clauses in relation to the payments, the terms, the cancellation payments, the guarantees and noncompliance and remedies, and may be executed with

any other part as described in paragraph (a) of this Section that the Secretary may determine to be necessary or desirable.

- (c) The Secretary of the Treasury shall not execute any qualified interest rate exchange agreements for anything other than for the main purpose of attending to the risks or costs related to the fluctuations in the interest rates, investments, changes in the level of prices or the credit risks of any obligation, or in relation to obtaining economic benefits equal to reductions in the interest rates or in the service of the debt of the outstanding bonds. A Qualified Interest Rate Exchange Agreement may provide that the payments of the Commonwealth under said agreement be based on a method of computing the fixed or variable interest rate. The Secretary of the Treasury may not perform functions as a broker or assume any other similar role regarding qualified interest rate exchange agreements nor shall he/she enter into such agreements for the purpose of financial speculation. A Qualified Interest Rate Exchange Agreement may be executed in relation to specific obligations of the Commonwealth, which may consist of multiple series or issues of obligations as specified by the Secretary of the Treasury. A Qualified Interest Rate Exchange Agreement may be executed previously to, concurrently with or subsequently to the issue of or to the date of incurring in the obligations of the Commonwealth with which said agreement is related. Every Qualified Interest Rate Exchange Agreement may be executed for a nominal amount of up to, but without exceeding, the amount of the principal (or its equivalent) of the obligations

with which said Qualified Interest Rate Exchange Agreement is related. The term of a Qualified Interest Rate Exchange Agreement may be as long as or less than the term of the obligations with which said Qualified Interest Rate Exchange Agreement is related.

- (d) In relation to the execution of a qualified interest rate exchange agreement, the Secretary of the Treasury may execute credit quality improvement agreements or credit guarantees reinforcement agreements to guarantee the obligations of the Commonwealth under said Qualified Interest Rate Exchange Agreement under any terms for payment, security, noncompliance, remedy or other terms and conditions the Secretary of the Treasury may determine, including the execution of agreements under which he/she commits him/herself to deliver collateral, be it at the time in which the Qualified Interest Rate Exchange Agreement is executed or in the future under the conditions stipulated in the qualified interest rate exchange agreement.

All actions of the Secretary of the Treasury under the provisions of this Act may only be carried out after consulting the Government Development Bank for Puerto Rico and, should the Secretary so determine, an independent financial advisor. Said actions must be consistent with the Interest Rate Risk Management Policy Statement adopted by the Government Development Bank for Puerto Rico, and in the judgment of the Secretary of the Treasury, shall serve the best interests of the Commonwealth.

Section 2.-Duties of the Commonwealth under a Qualified Interest Rate Exchange Agreement; use of collateral.

The duty of the Commonwealth of making the required payments and complying with its obligations under a Qualified Interest Rate Exchange Agreement constitutes a continuous contractual obligation of the Commonwealth collectable according to the laws of the Commonwealth applicable to compliance with the contractual obligations of the Commonwealth. The Secretary of the Treasury may expressly limit (in any of said agreements) the obligations of the Commonwealth under a Qualified Interest Rate Exchange Agreement to a designated property, to a designated source of income or to designated sources of income or collections of the Commonwealth. If the Commonwealth executes a Qualified Interest Rate Exchange Agreement in relation to the obligations secured by a type of designated guarantee then, subject to the terms of a resolution, trust agreement, installment agreement, financial lease agreement or purchase or a similar instrument under which the obligations have been issued or incurred, the Commonwealth may pledge, mortgage or execute a guarantee on the income of the public service enterprise, program, collections, property or similar agreement that secures the obligations to guarantee payment of and compliance with its obligations under the qualified interest rate exchange agreement. Any pledge of assets, income or collections to guarantee the obligations of the Commonwealth under a Qualified Interest Rate Exchange Agreement must become effective in the same manner and within the same scope as the pledge of those assets, income or collections that guarantee the obligations to which the Qualified Interest Rate Exchange Agreement is

related and it shall not be necessary to file any instrument to perfect or in any other manner make effective said pledge.

The Secretary of the Treasury is also authorized to pledge collateral acceptable as security under a Qualified Interest Rate Exchange Agreement under the terms and conditions determined by the Secretary of the Treasury.

Section 3.-Treatment of variable rate obligations and Qualified Interest Rate Exchange Agreements for the purpose of computing the constitutional limit of the public debt.

The following provisions shall apply to the computation of the amount of the interest payable on any fiscal year on the direct obligations of the Commonwealth on account of the amounts borrowed directly by the Commonwealth and evidenced by bonds or notes for the payment of which the good faith, credit and the power to impose taxes of the Commonwealth have been pledged according to Article VI of the Constitution of Puerto Rico:

- (a) Computation of the amount of the interest payable on any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate for the duration of said obligations or portion thereof, in relation to which there is in effect a Qualified Interest Rate Exchange Agreement that provides for the payment of a fixed rate by the Commonwealth, shall be based, subject to the provisions of subsection (d) of this Section, only on the fixed rate payable by the Commonwealth under said agreement, should said computation be made at the time said obligations are issued or after they have been issued.

- (b) Computation of the amount of the interest payable on any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a fixed rate for the duration of said obligations or portion thereof, in relation to which there is in effect a Qualified Interest Rate Exchange Agreement that provides for the payment of a non-fixed rate by the Commonwealth, shall be based, subject to the provisions of subsection (e) of this Section; and in the case of basis exchange agreements, subject to the provisions of subsection (f) only on the fixed rate payable by the Commonwealth on said obligations or portion thereof, should said computation be made at the time said obligations are issued or after they have been issued.
- (c) Computation of the amount of the interest payable on any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate for the term of said obligations or portion thereof, in relation to which no Qualified Interest Rate Exchange Agreement that provides for the payment of a fixed rate by the Commonwealth is in effect, shall be based on the maximum payable rate as established in Act No. 14 of April 17, 1972, as amended, and if it were less than the rate established in said Act, as established in the resolution or agreement authorizing said obligations, should said computation be made at the time said obligations are issued or after they have been issued.
- (d) Computation of the amount of the interest payable on any fiscal year in relation to those obligations, or any portion thereof, that

provide for the payment of interest at a non-fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement that provides for the payment of a fixed rate by the Commonwealth is in effect, but for which, on any fiscal year, the amount of the interest payable under said obligations or portion thereof for said fiscal years exceeds the amount received from the other party by the Commonwealth under said agreement, said amount in excess shall be deemed to be, for purposes of clause (ii) of Section 2 of Article VI of the Constitution of Puerto Rico, as payment on account of the interest made by the Commonwealth on bonds and notes guaranteed by the Commonwealth under said clause (ii).

- (e) Computation of the amount of the interest payable on any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement is in effect that is not a basis swaps agreement that provides for the payment of a non-fixed rate by the Commonwealth, but for which, on any fiscal year, the amount of the interest payable under said obligations or portion thereof exceeds the amount received by the other party by the Commonwealth under said agreement, said amount in excess shall be deemed to be, for purposes of clause (ii) of Section 2 of Article VI of the Constitution of Puerto Rico, as payment on account of the interest made by the

Commonwealth on bonds and notes guaranteed by the Commonwealth under said clause (ii).

- (f) In the case of a qualified basis swaps agreement in relation to which, on any fiscal year, the amount paid to the other party by the Commonwealth exceeds the amount received from the other party by the Commonwealth under said agreement (deemed to be the amount received by the Commonwealth of the annual fixed payment or the amount of the annual amortization of any payment received at the beginning of the agreement (equal to the present value of the annual fixed payments), as it may apply), said amount in excess shall be deemed to be, for purposes of clause (ii) of Section 2 of Article VI of the Constitution of Puerto Rico, as payment on account of the interest made by the Commonwealth on bonds and notes guaranteed by the Commonwealth under said clause (ii).
- (g) In the case of a qualified basis swaps agreement, the amount paid to the other party by the Commonwealth as payment for terminating the agreement shall constitute neither interest nor principal nor shall it be deemed as a component of the service of the debt of the Commonwealth for purpose of Section 2 of Article VI of the Constitution of Puerto Rico.

Section 4.-Use of the fixed rate that is effective for complying with the limit of the interest rate in spite of the actual rate (or yield) of the variable rate obligations at any time.

- (a) In order to comply with the limitation of the interest rate established in Act No. 14 of April 17, 1972, as amended, the effective rate of interest corresponding to the obligations, or any

portion thereof, of the Commonwealth, that provide for the payment of interest at a non-fixed rate for the term of said obligations or portions thereof, in relation to which a Qualified Interest Rate Exchange Agreement is in effect that provides for the payment of a fixed rate by the Commonwealth, shall be the interest rate specified in said agreement.

- (b) In order to comply with the limitation of the interest rate established in Act No. 14 of April 17, 1972, as amended, the effective rate of interest corresponding to the obligations, or any portion thereof, of the Commonwealth, that provide for the payment of interest at a fixed rate for the term of said obligations or portions thereof, in relation to which a Qualified Interest Rate Exchange Agreement is in effect that provides for the payment of a non-fixed rate by the Commonwealth, shall be computed according to the rules indicated in said Act No. 14.

Section 5.-Pledge of the good faith, the credit and the power to levy taxes of the Commonwealth for the payments required under Qualified Interest Rate Exchange Agreements.

Unless the Secretary of the Treasury expressly limits the obligations of the Commonwealth under a Qualified Interest Rate Exchange Agreement pursuant to the provisions of Section 2 of Article 2 of this Act, the good faith, the credit and the power to levy taxes of the Commonwealth are hereby pledged for the payment of the programmed periodic payments and any payment for the termination thereof or any other payment payable under any Qualified Interest Rate Exchange Agreement executed under the provisions of this Act.

Subject to the provisions of Section 2 of Article 3 of this Act, the Secretary of the Treasury is hereby authorized and directed to indicate in each of said qualified interest rate exchange agreements, that the good faith, the credit and the power to levy taxes of the Commonwealth are hereby pledged for the payment of the amounts payable by the Commonwealth under said agreement.

Section 6.-Causes for civil action against the Commonwealth based on Interest Rate Exchange Agreements.

The Commonwealth may be sued before the Court of First Instance of Puerto Rico in civil causes for acts that arise from any qualified interest rate exchange agreements, without the application of the limitations established in Section 2(c) of Act No. 104 of June 29, 1955, as amended.

Section 7.-Additional method.

This Act provides an alternate and additional method for fulfilling its provisions and supplements the powers conferred through other laws. This Act does not repeal any of the existing powers of the Commonwealth.

Article 4.-Qualified interest rate exchange agreements of the Authority.

Section 1.-Authorization to execute Qualified Interest Rate Exchange Agreements of the Authority.

- (a) The Executive Director is authorized to negotiate and execute, with any bank, investment bank, securities issuing bank or any other financial institution provided it has (directly or through securities) a high credit rating (of not less than investment grade), one or more qualified interest rate exchange agreements of the Authority that the Executive Director determines to be in the best interests of the Authority in relation to any obligation

of the Authority or, otherwise, in relation to the management of the risks or costs of the Authority related to interest rate fluctuations, investments, changes in price levels or credit risks of any obligation, or in relation to obtaining economic benefits equal to a reduction in the interest rates or in the service of the debt of the outstanding bonds so as to generate a profit for the Authority of at least sixty million dollars (\$60,000,000), under the terms and conditions the Executive Director may determine to be for the best interests of the Authority.

- (b) The Executive Director may, from time to time, execute, modify, amend, sell or terminate one or more qualified interest rate exchange agreements of the Authority as the Executive Director may determine to be necessary or desirable in relation to issuing, incurring, sustaining, refinancing or securing obligations. This authorization also includes the power to execute modifications to, or revoke any Qualified Interest Rate Exchange Agreement of the Authority previously executed by the Executive Director and the power to execute a Qualified Interest Rate Exchange Agreement of the Authority that modifies the means of computing the payment of the interest rate under any Qualified Interest Rate Exchange Agreement of the Authority previously executed or another means of computing the interest rate or that revokes, in total or in part, the effects of a previous Qualified Interest Rate Exchange Agreement of the Authority as to the risk or cost of the interest rates of the Authority. A Qualified Interest Rate Exchange Agreement of the Authority executed by the Executive Director

may contain any clause, including clauses in relation to the payments, terms, payments for cancellation, security, noncompliance and remedies, and may be executed with any other part as described in subsection (a) of this Section that the Executive Director may determine to be necessary or desirable.

- (c) The Executive Director shall not execute a Qualified Interest Rate Exchange Agreement of the Authority for any reason other than the main purpose of handling the risks, investments, changes in price levels or credit risks of any obligation or obtain economic benefits equal to reductions in the interest rates or in the service of the debt in relation to outstanding bonds. A Qualified Interest Rate Exchange Agreement of the Authority may provide that the payments of the Authority under said agreement be based on a method for the computation of a fixed or variable interest rate. The Executive Director shall not assume the functions of a broker or any other similar role in relation to qualified interest rate exchange agreements of the Authority, nor enter into said agreements for the purpose of financial speculation. A Qualified Interest Rate Exchange Agreement of the Authority may be executed in relation to specific obligations of the Authority which may consist of multiple series or issues of obligations as specified by the Executive Director. The Qualified Interest Rate Exchange Agreement of the Authority may be executed previously, concurrently or after the issue of or the date in which the obligations of the Authority are incurred to which said agreement is related. Each Qualified Interest Rate Exchange

Agreement of the Authority may be executed for a nominal amount for up to, but not exceeding, the amount of the principal (or its equivalent) of the obligations with which said Qualified Interest Rate Exchange Agreement of the Authority is related. The term of a Qualified Interest Rate Exchange Agreement of the Authority may be as long as or less than the term of the obligations with which said Qualified Interest Rate Exchange Agreement of the Authority is related.

- (d) In relation to the execution of a Qualified Interest Rate Exchange Agreement of the Authority, the Executive Director may execute credit quality improvement agreements or credit guarantees strengthening agreements to guarantee the obligations of the Authority under said Qualified Interest Rate Exchange Agreement of the Authority with any payment, guarantee, noncompliance, remedy and other terms and conditions the Executive Director may determine, including the execution of agreements under which the latter is committed to deliver collateral, be it at the time of executing the Qualified Interest Rate Exchange Agreement or in the future under the conditions stipulated in the Qualified Interest Rate Exchange Agreement of the Authority.

All actions of the Executive Director taken under the provisions of this Act may only be conducted after consulting with the Government Development Bank for Puerto Rico. Said actions must be consistent with the Interest Rate Risk Management Policy Statement adopted by the Government Development Bank for Puerto Rico and, that in the judgment of the Executive Director shall best serve the interests of the Authority.

Section 2.-Guarantee of the Commonwealth of Puerto Rico concerning the obligations of the Authority under a Qualified Interest Rate Exchange Agreement of the Authority.

- (a) The Commonwealth of Puerto Rico hereby guarantees the obligations of the Authority under the Qualified Interest Rate Exchange Agreement of the Authority (the “Guarantee”). These obligations under qualified interest rate exchange agreements of the Authority include the payment of the obligations, the programmed periodic payments and any payment for termination or any other payment payable under any Qualified Interest Rate Exchange Agreement of the Authority executed under the provisions of this Act. The Qualified Interest Rate Exchange Agreement of the Authority to which the Guarantee shall be applied shall be those specified by the Authority and according to the provisions of this Act. It at any time the revenues or income or any other monies of the Authority that are pledged for paying the obligations of the Authority under the qualified interest rate exchange agreements of the Authority are not sufficient for paying said obligations, the Secretary of the Treasury shall withdraw from any other funds available in the Treasury of Puerto Rico, those sums that may be necessary to cover the deficiency in the sum required for the payment of said obligations and shall order that the sums thus withdrawn be applied for such a payment and purpose.

- (b) Unless the Executive Director expressly limits the obligations of the Authority of a Qualified Interest Rate Exchange Agreement of the Authority, pursuant to the provisions of Section 3 of Article 4 of this Act, the good faith, the credit and the power to impose taxes of the Commonwealth of Puerto Rico are pledged to make the payments described in the preceding paragraph under the Guarantee.
- (c) Subject to the provisions of Section 3 of Article 4 of this Act, the Executive Director is hereby authorized and directed to indicate in each Qualified Interest Rate Exchange Agreement of the Authority that has the benefit of the Guarantee that the good faith, the credit and the power to impose taxes of the Commonwealth are pledged to pay the amounts payable by the Commonwealth under the Guarantee.

Section 3.-Duties of the Authority under a Qualified Interest Rate Exchange Agreement; use of collateral.

The duty of the Authority to make the payments required and meet its obligations under a Qualified Interest Rate Exchange Agreement of the Authority, constitutes a continuous contractual obligation of the Authority exigible according to the laws of the Commonwealth applicable to the compliance of the contractual obligations of the Authority. The Executive Director may expressly limit (in any such agreement) the obligations of the Authority under a Qualified Interest Rate Exchange Agreement of the Authority or a designated property or a designated source of revenues, including, but not limited to, the rent payments received by the Authority as income under the lease agreements in effect. Any assets or income pledged to guarantee the obligations of the Authority under a Qualified Interest Rate

Exchange Agreement of the Authority shall take effect in the same manner and within the same scope that the pledging of those assets or income that guarantee the obligations to which said Qualified Interest Rate Exchange Agreement of the Authority is related and it shall not be necessary to file any instrument to perfect or otherwise make effective said pledge.

Furthermore, the Executive Director is hereby authorized to pledge acceptable collateral as guarantee under a Qualified Interest Rate Exchange Agreement of the Authority, under the terms and conditions the Executive Director may determine.

Section 4.-Treatment of the Guarantee for the purpose of computing the constitutional limit of the public debt.

In order to determine the amount that the Commonwealth may be obligated to pay under the Guarantee and at the same time be able to calculate the constitutional limit of the public debt under Section 2 of Article VI of the Constitution of Puerto Rico, in case the obligations under the Guarantee are included in said calculation, the following provisions are adopted.

- (a) The computation of the amount of the interest payable in any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate for the duration of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect that provides for the payment of a fixed rate by the Authority, shall be based, subject to the provisions of subsection (d) of this Section, only on the fixed rate payable by the Authority under said agreement, should said

computation be made at the time in which said obligations are issued or after they have been issued.

- (b) The computation of the amount of the interest payable in any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a fixed rate for the duration of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect that provides for the payment of a non-fixed rate by the Authority, shall be based, subject to the provisions of subsection (e) of this Section and, in the case of basis swap agreements, subject to the provisions of subsection (f) only on the fixed rate payable by the Authority in said obligations or portion thereof, should said computation be made at the time in which said obligations are issued or after they have been issued.
- (c) The computation of the amount of the interest payable in any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is not in effect that provides for the payment of a fixed rate by the Authority, shall be based on the maximum rate payable as established in Act No. 14 of April 17, 1972, as amended, and if it is less than the rate established in said Act, as established in the resolution or agreement authorizing said obligations, should said computation be made at the time in which said obligations are issued or after they have been issued.

- (d) The computation of the amount of the interest payable in any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect that provides for the payment of a fixed rate by the Authority, but for which, in any fiscal year, the amount of the interest payable under said obligations or portion thereof for said fiscal year exceeds the amount received from the other party by the Authority under said agreement, said amount in excess shall be deemed, for the purpose of clause (ii) of Section 2 of Article VI of the Constitution of Puerto Rico, as a payment on account of the interest made by the Authority on bonds and notes guaranteed by the Commonwealth under said clause (ii).
- (e) The computation of the amount of the interest payable in any fiscal year in relation to those obligations, or any portion thereof, that provide for the payment of interest at a non-fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect, that is not a basis swaps agreement, that provides for the payment of interest at a non-fixed rate by the Authority, but for which, in any fiscal year, the amount of the interest payable under said obligations or portions thereof exceeds the amount received from the other party by the Authority under said agreement, said amount in excess shall be deemed, for the purpose of clause (ii) of Section 2 of Article VI

of the Constitution of Puerto Rico, as a payment on account of the interest made by the Authority on bonds and notes guaranteed by the Commonwealth under said clause (ii).

- (f) In the case of a basis swap agreement, in relation to which, in any fiscal year, the amount paid to the other party by the Authority exceeds the amount received from the other party by the Authority under said agreement (considering as the amount received by the Authority the annual fixed payment or the portion of the annual amortization of any payment received at the beginning of the agreement, as it may apply), said amount in excess shall be deemed, for the purpose of clause (ii) of Section 2 of Article VI of the Constitution of Puerto Rico, as a payment on account of the interest made by the Authority on bonds and notes guaranteed by the Commonwealth under said clause (ii).
- (g) For the purpose of the calculation of the constitutional limit of the public debt under Section 2 of Article VI of the Constitution of Puerto Rico, any amount payable or to be paid by the Commonwealth under the Guarantee with respect to any payment for the termination of a Qualified Interest Rate Exchange Agreement of the Authority shall neither constitute the principal, nor the interest, nor shall it be deemed to be a component of the service of the debt of the Authority or of the Commonwealth.

Section 5.-Use of the effective fixed rate to comply with the limit of the interest rate in spite of the actual rate (or yield) of the obligations of the

Authority or Agreements or Qualified Interest Rate Exchange Agreements of the Authority at any time.

- (a) For the purpose of complying with the limitation of the interest rate established in Act No. 14 of April 17, 1972, as amended, the effective interest rate corresponding to the obligations of the Authority or any portion thereof that provide for the payment of interest at a non-fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect which provides for the payment of a fixed rate by the Authority, shall be the fixed interest rate specified in said agreement.
- (b) For the purpose of complying with the limitation of the interest rate established in Act No. 14 of April 17, 1972, as amended, the effective interest rate corresponding to the obligations of the Authority or any portion thereof that provide for the payment of interest at a fixed rate for the term of said obligations or portion thereof, in relation to which a Qualified Interest Rate Exchange Agreement of the Authority is in effect which provides for the payment of a non-fixed rate by the Authority, shall be computed according to the rules indicated in said Act No. 14.

Section 6.-Causes of civil action against the Commonwealth based on the Guarantee and the Qualified Interest Rate Exchange Agreements of the Authority.

The Commonwealth may be sued before the Court of First Instance of Puerto Rico in civil causes for acts that arise from the Guarantee and from any Qualified Interest Rate Exchange Agreement of the Authority that refers

to the Guarantee, without the application of the limitations established in Section 2(c) of Act No. 104 of June 29, 1955, as amended.

Section 7.-Additional method.

This Act provides an alternate and additional method for fulfilling its provisions and supplements the powers conferred through other laws. This Act does not repeal any of the existing powers of the Executive Director, of the Authority or of the Commonwealth.

Article 5.-Exception.

Should any provision of this Act or the application thereof were to be declared invalid, said declaration shall not affect the remaining provisions nor the application of this Act that may have effect without the need of the provisions that had been declared invalid and to those ends the provisions of this Act are separable.

Article 6.-Liberal interpretation.

This Act, being necessary for the prosperity and the wellbeing of the Commonwealth and its people shall be interpreted liberally in order to achieve its purposes.

The powers and faculties conferred by this Act to the Secretary of the Treasury shall be interpreted liberally so as to enable the implementation of the purposes of this Act.

Article 7.-Jurisdiction and competence.

The civil causes authorized in Section 6 of Article 3 and in Section 6 of Article 4 of this Act, as well as any controversy on its implementation that requires the interpretation of any of its provisions, shall originally be of the competence of the Court of First Instance, San Juan Superior Part. The Court of First Instance shall expeditiously adjudicate those cases to which this Article refers and give preference to the same in its calendar. Any party

affected by a final decision issued by the Court of First Instance regarding those cases referred to in this Article, may file a motion for appeal before the Supreme Court of Puerto Rico within the twenty (20) days following notice thereof. The interlocutory determinations of the Court of First Instance shall not be the object of revisions through a recourse independent from the motion for appeal herein authorized, except for determinations of the Court of First Instance that include an opinion on the constitutional validity of any part of this Act, whose determinations shall be prone to revision by the Supreme Court of Puerto Rico just as if it were a final decision issued by the Court of First Instance.

Article 8.-English text to prevail.

It is hereby declared that the official text of this Act is its version in the English language and if in the interpretation and application of this Act any conflict should arise between the Spanish text and the English text of the same, the latter shall prevail over the former.

Article 9.-Effectiveness.

This Act shall take effect immediately after its approval but shall be in force once House Joint Resolution Number 445 finally becomes law, which provides for the General Budget for fiscal year 2005-2006.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 39 (H.B. 1266) (Conference) of the 1st Session of the 15th Legislature of Puerto Rico:

AN ACT to authorize the Secretary of the Treasury and the Executive Director of the Public Buildings Authority of Puerto Rico to execute qualified interest rate exchange agreements in representation of the Commonwealth and the Public Buildings Authority, respectively, subject to the limitations established in this Act; establish the duties and obligations of the Commonwealth and the Public Buildings Authority under said agreements; authorize the pledging of collateral under said agreements; etc.,

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

In San Juan, Puerto Rico, today 10th of May of 2006.

Francisco J. Domenech
Director