

(S. B. 258)

**(No. 183)**

(Approved December 27, 2001)

**AN ACT**

To create the “Puerto Rico Conservation Easement Act;” establish its applicable provisions; establish tax incentives to the owners of properties constituting a conservation easement, under certain conditions; and for other purposes.

**STATEMENT OF MOTIVES**

Section 19 of Article VI of the Constitution of Puerto Rico provides that the public policy of the Commonwealth of Puerto Rico shall be the most effective conservation of its natural resources, as well the preservation and maintenance of buildings and places of historic or artistic worth.

Regardless of this public policy, there are many environmental problems and the loss of cultural patrimony and agricultural lands suffered by the Island in the difficult task of harmonizing economic growth with conservation efforts. The unmeasured urban sprawl, soil erosion, disappearing historic structures, removal of archeological material, deforestation, pollution of bodies of water, vanishing mangroves and reefs, and the destruction of habitats of flora and fauna, are only some of these problems. The Government, on its own, cannot solve the increasing deterioration of the areas of natural, cultural and agricultural worth of Puerto Rico. It is necessary to identify new tools to integrate the private sector to the effort of protecting and maintaining areas of natural, cultural and agricultural worth.

The juridical figure of the conservation easement can contribute to the efforts to rescue areas of natural, cultural or agricultural worth. This juridical figure, of proven success in jurisdictions such as the United States and Costa Rica, establishes a mechanism through which a property owner may reach an agreement, with a government agency or a non-profit organization, to a conservation easement on an area of natural or cultural worth with the intention in order to protecting it to perpetuity. This mechanism was welcomed in many states of the United States, which proceeded to create various state conservation easement measures. Said legislation created interpretation problems in the courts due to lack of uniformity. In order to solve this problem, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981, which was subsequently adopted by over twenty states. This mechanism helps to preserve properties to perpetuity without the burdening the Government with the having cost of acquisition. The conservation easement mechanism could be very useful to support the policies of sustainable development and ecotourism for Puerto Rico.

In order to increase the efficiency and effectiveness of this Act, a tax incentive is herein created to produce the donation of conservation easement. This incentive consists of a tax deduction for the person who donates the conservation easement to a government entity or non-profit organization devoted to the protection of the environment. The tax incentive for these donations is created through an amendment to the Internal Revenue Code.

A conservation easement can be established for such diverse purposes as protecting the natural, agricultural, forestry or scenic, and open-space attributes of real property; protecting natural resources, maintaining and enhancing the quality of air or water; or preserving the historic, architectural

or archeological or cultural worth of real property. It may support the implementation of a permit for the development of land that requires the conservation of an area of natural or cultural worth; it may be a mechanism through which a proprietor is encouraged to grant a conservation easement voluntarily in exchange for a tax incentive; it may be part of a mutually-beneficial agreement, between an agency or non-profit organization and the proprietor, to carry out works that protect or preserve land with natural, cultural or agricultural worth; or may, among others, be a mechanism through which a proprietor voluntarily decides to establish a restriction on his/her property to protect its natural or cultural worth to perpetuity.

The final purpose of this measure is to achieve the collaboration between the private sector, non-profit organizations and the Government to enable the conservation of areas of natural and cultural worth by the establishing conservation easements.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Title

This Act shall be known as the “Puerto Rico Conservation Easement Act.”

Section 2.- Power to Establish Conservation Easements

The power to establish conservation easements as personal or real easements on rustic or urban lots to achieve the purposes of this Act, is hereby recognized.

Section 3.- Public Policy

It is hereby declared as the public policy of the Commonwealth of Puerto Rico to propitiate the establishing of conservation easements in order to protect areas of natural, cultural or agricultural worth.

#### Section 4.- Definitions

For purposes of this Act, the following terms shall have the meaning stated below:

- (1) “Conservation easement” – means a lien imposed on real property in benefit of a person or a lot, which imposes obligations, rights and limitations on the land and its owner for the purpose of protecting and preserving areas of natural value or a property of cultural or agricultural value.
- (2) “Conservation easement owner” – A person who owns a conservation easement.
- (3) “Commonwealth of Puerto Rico” – Includes agencies, instrumentalities, departments, offices, dependencies, municipalities and public corporations of the Commonwealth of Puerto Rico.
- (4) “Non-profit organization” – any private non-profit entity, association, trust, organization or institution, constituted as such pursuant to the laws of the Puerto Rico, among whose main functions or purposes are the protection and preservation of areas of natural worth, or of real property with cultural or agricultural value. Furthermore, said non-profit organization must be recognized as such by the Secretary of the Department of the Treasury and any donations made thereto shall be deductible pursuant to Section 1023 (o) and 1023 (aa)(2)(M) of the Puerto Rico Internal Revenue Code of 1994, as amended.
- (5) “Area of Natural Value” – Non Urbanized open area- in its natural state, in a forested area, of scenic worth or adapted solely

for agricultural use, of which its protection and preservation is important.

- (6) “Property of Cultural Value” – Property that includes important historical, architectural or archeological features or characteristics.

#### Section 5.- Non Application of the Provisions of Article 467

Personal easements constituted under this Act shall not be subject to the limitations imposed by Article 467 of the Puerto Rico Civil Code.

All easements constituted pursuant to this Act shall not be deemed as inofficious donations for the effects of Article 467 of the Civil Code.

Section 6.- Donations and Transfers to the Commonwealth of Puerto Rico.

Donations granted pursuant to this Act shall be deemed onerous with regard to the tax benefits it provides in its sections.

In the case of the extinction or dissolution of the non-profit entity which was originally granted easement rights, the sole fact of the extinction or dissolution of the easement holder shall constitute an *ipso iure* transfer to the Commonwealth of Puerto Rico and it shall thus be stated in every conservation easement deed and the corresponding registration in the Property Registry.

#### Section 7.- Purposes of the Conservation Easement

The conservation easement may be constituted for the following purposes, among others:

- (1) Preserve the natural, agricultural, forest or scenic attributes of a property or open-space conditions.
- (2) Protect hydrographic basins;
- (3) Maintain or enhance the quality of air or water; or

- (4) Preserve properties with a cultural value;
- (5) Preserve properties with agricultural value.

Section 8.- Persons that may Eligible to Become Easement Holders.

The following shall be deemed persons eligible to become easement holders:

- (1) The Commonwealth of Puerto Rico; or
- (2) A non-profit organization among whose main purposes or functions include the protection or conservation of an area of natural value, or of a real property with a cultural value. It shall be a *bonafide* organization and must have been in operation for at least, five (5) years from its foundation.

Section 9.- Rights and Obligations of the Owner of a Burdened Real Property.

The owner of a burdened property with a conservation easement shall have the rights and obligations establish in the public deed. Such rights and obligations may limit the development or use of a real property, even to include the prohibition of the economic exploitation thereof.

The owner of a burdened real property shall not deteriorate the easement created and shall always have the obligation of diligently supervising its subsistence.

Section 10.- Rights and Obligations of the Holder.

The conservation easement holder shall have the rights and obligations established in the public deed and shall have the obligation of diligently supervising his/her compliance with its provisions.

Section 11.- Organization

The Conservation Easement shall be organized in a public deed with pertinent registration in the Property Registry.

The registration or release of the conservation easement shall be exempted from the payment of taxes.

#### Section 12.- Duration

The Conservation Easement shall be constituted to perpetuity. However, when a conservation easement is constituted for a term pursuant to the provisions of the Civil Code, legal of the owner the title shall not be entitled to the tax benefits herein provided, and the donation shall not be deemed ineffective for the purposes of Article 747 of the Civil Code of Puerto Rico.

#### Section 13.- Judicial Actions and Redress of Grievances.

In the event that the responsibilities contained in the deed that constitutes the conservation easement are not met owner of the easement, the Commonwealth of Puerto Rico and any natural or juridical person who shows an interest in the conservation of the natural resources of Puerto Rico, may file a civil action to requires its compliance.

If any party fails to comply with its responsibilities and by thus damages the conservation easement, the owner of the easement, the Commonwealth of Puerto Rico and any natural or juridical person who shows an interest in the conservation of the natural resources of Puerto Rico shall be entitled to claim that the land involved be restored to its original state at the expense of the non-complying party. In the event that it is impossible to restore the land to its original state, the non-complying party shall be liable to pay a sum of money that could be up to three times the value of the easement to the owner of record.

The owner of record, the Commonwealth of Puerto Rico and any natural or juridical person, that show an interest in protecting the natural resources of Puerto Rico, may claim the payment or compensation from the

non-complying party for any expense incurred when assuming or exacting the obligations provided in the public deed.

Section 14.- Extinguished of Conservation Easement and of the Tax Benefits.

A- The Conservation Easement is extinguished:

- (1) Through the redemption agreed upon between the owner of the land and the holder of the easement; or
- (2) When the lots are in such state that it would be impossible to enjoy the easement.

B- Tax benefits granted in this Act shall cease upon the extinction of the easement or after it is so modified that, even though it is not extinguished, such modification impedes the achievement of the objectives of this Act.

Section 15.- Exception

None of the provisions of this Act shall be construed to limit the establishing of conservation trusts among private parties.

Section 16.- Tax Benefits by Gross Income Deductions

A conservation easement that result from a gift shall receive tax benefits through deductions of gross income if it meets one of the following requirements:

- (1) The property is included within the inventory of the Natural Patrimony Program of the Department of Natural and Environmental Resources, or has been certified by the Secretary of said Agency as a property of important natural worth.
- (2) The property is classified as highly productive agricultural land by the Department of Agriculture.

- (3) The property is included within the inventory of real property of cultural value of the Institute of Puerto Rican Culture.
- (4) The real property has been designated by a municipality as land of historic worth, of high agricultural productivity or of natural value.
- (5) The real property is deemed as important for the conservation of the environment, by a *bonafide* non-profit organization engaged in the protection of the environment and that has been certified as such by the Secretary of the Treasury.

Section 17.- Amendments to the Puerto Rico Internal Revenue Code.

Clause (vi) is hereby added to (M) of clause (2) subsection (aa) of Section 1023 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994”, to read as follows:

“Section 1023.- Gross Income Deductions

(a).....

(aa) Fixed Deduction or Itemized Deductions Option.

(1).....

(2) Itemized Deductions.—For the purposes of this subclause, the taxpayer may claim the following items as itemized deductions, in lieu of the optional fixed deduction:

(A).....

(M) Non-profit and Other Contributions.—In the case of an individual, the amount of the contributions or gifts paid during the taxable year to, or for the use of the organizations listed below, that exceed three (3) percent of the adjusted gross income, or thirty-three (33) percent of the amount of contributions or gifts paid during the taxable year to or for the use of the organizations listed below, whichever is higher:

(i).....

(vi) An agency of the Government of Puerto Rico or non-profit organization when it receives a conservation easement, by donation, subject to the requirements set forth in the Conservation Easements Act and any other Act that substitutes it or complements it. The total sum or value of the donation shall reflect its real and cash value using any of the methods and recognized factors in property appraisal or valuation matters.”

Section 18.- The last paragraph of Subclause (M) of clause (2) subsection (aa) of Section 1023 of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” to read as follows:

“The deduction allowed under this clause shall not exceed fifteen (15) percent the adjusted gross income of the taxpayer, except that an additional deduction of up to fifteen (15) percent of the adjusted gross income, shall be allowed for gifts donated to accredited educational institutions of university level established in Puerto Rico, or to the José Jaime Pierluisi Foundation, or to the Puerto Rican Fund for the Financing of Cultural Endeavors. An additional deduction shall also be admitted, of up to fifteen (15) percent of the taxpayer’s adjusted gross income, for conservation easement donations to agencies of the Government of Puerto Rico or non-profit organizations, subject to the requirements established in the Conservation Easement Act. The amount of non-profit contributions in excess of the limit allowed by this clause may be carried over, and pursuant to regulations issued by the Secretary, to the following five (5) taxable years, subject to the limits provided herein. The unlimited deduction for contributions and gifts that exceed ninety (90) percent of the net income, shall be governed by subsection (aa)(2)(N).”

#### Section 19.- Property Taxes

For the purpose of property tax payments to the Municipal Revenue Collection Center, the property burdened by a conservation easement shall be appraised in such way that reflects it shows the limit in value, if any, imposed by said easement.

The holder of the easement shall be exempted from the payment of property taxes for the value of the conservation easement value.

The Commonwealth of Puerto Rico shall compensate the municipalities for the loss of income resulting from the exemption.

#### Section 20.- Rules to Receive Tax Benefits.

The Department of the Treasury and the Municipal Revenue Collections Center are hereby directed to establish, within six (6) months after the effective date of this Act, the rules to receive the tax benefits established in this Act.

#### Section 21.- Interpretation

In case of any doubts, the construction of the easement shall favor a higher ecologic, historic, cultural, or agricultural preservation for the purposes instated in Section 6.

#### Section 22.- Severability Clause

If a Court declares any of provision of this Act to be null, ineffective or unconstitutional, said finding shall not affect its remaining provisions.

#### Section 23.- Effectiveness

This Act shall take effect immediately after its approval.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following Act No. 183 (S.B. 258) of the 2<sup>nd</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to create the “Puerto Rico Conservation Easement Act;” establish its applicable provisions; establish tax incentives to the owners of properties constituting a conservation easement, under certain conditions; and for other purposes,

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

In San Juan, Puerto Rico, today 11th of February of 2005.

Luis Fusté-Lacourt  
Director