

HOUSE COMMITTEE ON



NATURAL RESOURCES

PUERTO RICO | NATURALRESOURCES.HOUSE.GOV | CHAIRMAN ROB BISHOP

PUERTO RICO OVERSIGHT, MANAGEMENT AND ECONOMIC STABILITY ACT

Puerto Rico, a territory of the United States, borders on full scale economic collapse. The Island's state-run economy is hopelessly inefficient. The government has amassed over \$118 billion in debt in the form of bonds and unfunded pension liabilities. They have failed to produce audited financial statements for two years. Today, the government is incapable of fulfilling basic services to its citizens as quality of life worsens. Puerto Rico has already defaulted on portions of its debt including millions on May 2, 2016. On July 1, the Island is likely to default on an additional \$2 billion including \$800 million of constitutionally backed general obligation debt. The Puerto Rican government recently enacted a debt payment moratorium, authorizing the Governor to unilaterally suspend payments on all debt obligations. Impending defaults will result in mass litigation paralyzing the territory's institutions, worsening current conditions and threatening the investments of American citizens on the Island and the mainland.

The *Puerto Rico Oversight, Management and Economic Stability Act* (*PROMESA*) will bring lawful order to chaos in Puerto Rico and mitigate a looming humanitarian crisis. The Act will institute fiscal and economic reforms to promote growth and ensure the Island meets its credit obligations. *PROMESA* will restore the rule of law and protect the lawful rights of the Island's investors. The underlying goal of *PROMESA* is to bring solvency to Puerto Rico, build a foundation for future growth and ensure the Island regains access to capital markets.

TABLE OF CONTENTS

PROMESA: KEY CHANGES AND PROVISIONS 3

 ENFORCEMENT OF FISCAL PLANS: 3

 OVERSIGHT BOARD ENFORCEMENT & GOVERNMENT REFORMS: 3

 OVERSIGHT BOARD ENFORCEMENT & FINANCIAL STATEMENTS: 3

 OVERSIGHT BOARD ENFORCEMENT & ECONOMIC GROWTH: 3

 PROTECTING PROPERTY RIGHTS & LAWFUL PRIORITIES: 4

 ECONOMIC GROWTH & INFRASTRUCTURE: 4

 ECONOMIC GROWTH & LABOR REFORM: 5

 ECONOMIC GROWTH & MINIMUM WAGE: 5

 ECONOMIC GROWTH & SMALL BUSINESS: 5

 ECONOMIC GROWTH – PUERTO RICO GROWTH TASKFORCE: 5

SUPPORT AND OUTSIDE COMMENTARY 6

FACT CHECK: 8

 PREVENTING A BAILOUT 8

 CHAPTER 9 FALSEHOOD 8

 NO THREAT OF CONTAGION 10

 NO STATE PRECEDENT 10

SECTION-BY-SECTION 11

 TITLE I – ESTABLISHMENT AND ORGANIZATION OF OVERSIGHT BOARD 12

 TITLE II – RESPONSIBILITIES OF OVERSIGHT BOARD 15

 TITLE III – ADJUSTMENT OF DEBTS 18

 TITLE IV – MISCELLANEOUS PROVISIONS 21

 TITLE V – PUERTO RICO INFRASTRUCTURE REVITALIZATION 23

 TITLE VI – CREDITOR COLLECTIVE ACTION 25

***PROMESA*: KEY CHANGES AND PROVISIONS**

ENFORCEMENT OF FISCAL PLANS:

PROMESA's Fiscal Plans are the cornerstone of the Act. They are the chief enforcement tool for the Oversight Board to ensure accountability in the territory and its institutions. The Oversight Board has exclusive control to ensure the Fiscal Plans are enacted and enforced, and that all necessary reforms are undertaken so the Island attains fiscal solvency and regains access to capital markets.

OVERSIGHT BOARD ENFORCEMENT & GOVERNMENT REFORMS:

The Oversight Board has the authority to enforce balanced budgets and government reform if the territory fails to do so. The new *PROMESA* includes provisions to bolster these authorities including:

- The authority to force the sale of government assets and establish efficiencies that consolidate agencies and reduce workforce.
- The reaffirmation that *PROMESA* holds supremacy over any territorial law or regulation that is inconsistent with the Act or Fiscal Plans.

OVERSIGHT BOARD ENFORCEMENT & FINANCIAL STATEMENTS:

The Oversight Board has the authority to seek audited financial statements from the government of Puerto Rico at all levels. *PROMESA* includes refinements to improve these authorities including:

- The authority to conduct hearings, request information from the territory and issue subpoenas.
- The imposition of criminal penalties for knowingly providing false and misleading information, or refusing or failing to take any action ordered by the Board.

OVERSIGHT BOARD ENFORCEMENT & ECONOMIC GROWTH:

The Oversight Board has the authority to enforce actions to promote financial stability and economic growth including:

- The authority to prevent the execution of legislative acts, executive orders, regulations, rules and contracts that undercut economic growth initiatives or violate the Act.
- The requirement that the territory score their legislation to estimate costs - an activity not currently performed by the government.



PROTECTING PROPERTY RIGHTS & LAWFUL PRIORITIES:

The new *PROMESA* includes additional language and provisions to further clarify the relative lawful priorities and lawful liens as provided for in the Puerto Rican Constitution and other laws, and to promote voluntary negotiations and further protect property rights.

- Any adjustment of debts must "respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements of a covered territory... in effect prior to the date of enactment of this Act" and must be "in the best interest of the creditors."
- Provisions to reiterate the promotion of voluntary restructuring agreements and explicitly honor voluntary agreements that are already in place.
- New language to prohibit inter-debtor transfers, thereby disallowing the Governor from executing any budgetary adjustment between the enactment of this Act and the appointment of the Oversight Board.
- *PROMESA* creates a firewall between the constitutionally protected creditor hierarchy and pensions in the development of Fiscal Plans.
- The Act includes a stay on litigation intended to create an environment for consensual negotiations with creditors - not to encourage otherwise avoidable defaults. This will also allow the Oversight Board to begin the process of obtaining audited financial statements from the Government.
- To ensure property rights are protected, a court may provide relief from the stay in order to prevent irreparable damage. Further, to the extent the Oversight Board deems it is feasible, Puerto Rico and its instrumentalities are required to make scheduled interest payments during any stay.

ECONOMIC GROWTH & INFRASTRUCTURE:

PROMESA provides for accelerated processes for the review and permitting of infrastructure projects designated as "Critical Projects."

- Puerto Rico, if measured as its own country, is currently ranked 135 out of 189 countries in the world in efficiencies for obtaining a construction permit. Title V significantly expedites the permitting process for infrastructure projects to address this weakness.



- This title also encourages expedited federal reviews - to the extent there is a federal nexus.
- In the new *PROMESA*, additional language has been added to allow Puerto Rican residents to submit comments on energy infrastructure projects.

ECONOMIC GROWTH & LABOR REFORM:

- *PROMESA* prevents the U.S. Department of Labor's proposed 113% increase in the individual salary threshold to qualify as exempt from federal overtime pay requirements from impacting Puerto Rico.

ECONOMIC GROWTH & MINIMUM WAGE:

- *PROMESA* grants the Governor the authority to designate a time period no greater than five years during which employers may pay employees who are initially employed after the date of enactment of *PROMESA* a wage that is less than the national minimum wage. The provision will raise the maximum age of applicability from 20 to 25.

ECONOMIC GROWTH & SMALL BUSINESS:

- The new *PROMESA* requires the Government Accountability Office to conduct a report on the application and utilization of contracting activities of the Small Business Administration related to the HUB Zone program.

ECONOMIC GROWTH - PUERTO RICO GROWTH TASKFORCE:

- The new *PROMESA* establishes a bipartisan, bicameral Congressional Task Force to provide a report no later than December 31, 2016 regarding impediments in current Federal law and programs to economic growth in Puerto Rico, recommended changes to Federal law and programs that would spur sustainable, long-term growth, and additional information as deemed necessary.

SUPPORT AND OUTSIDE COMMENTARY

Since the release of the Committee's earliest version of *PROMESA*, groups around the country and on the Island have supported the *PROMESA* framework including:

- **Pacific Investment Management Company:** "*PROMESA* represents a responsible framework for managing the unavoidable restructuring of Puerto Rico's debt and other liabilities."¹
- **Council for Citizens Against Government Waste:** "This legislation creates an essential mechanism to thwart a taxpayer bailout of Puerto Rico's fiscal failures."²
- **Securities Industry and Financial Markets Association:** *PROMESA* "will create a comprehensive solution to aid Puerto Rico's economic recovery, improve the island's financial position, and prevent Puerto Rico's situation from leading to higher permanent borrowing costs for other municipal issuers."³
- **Americans for Tax Reform:** *PROMESA* "creates a strong oversight board to manage Puerto Rico's fiscal crisis. The Oversight Board is clearly the better outcome..."⁴
- **Associated General Contractors of America - Puerto Rico Chapter:** "*PROMESA* will undoubtedly provide Puerto Rico with the necessary structure and immediate credibility to quickly address the most fundamental budgeting, cost-control, and efficiency and transparency requirements of a fair and equitable government."⁵

More support can be found on our webpage at <http://1.usa.gov/1WNZ8vZ> from organizations including:

- National Association of Home Builders - Puerto Rico Chapter
- Jubilee USA Network
- National Association of Counties, National League of Cities, U.S. Conference of Mayors, Government Finance Officers Association, International City/County Management Association
- National Review
- Janney Fixed Income Strategy
- Tea Party Forward

¹ Pacific Investment Management Company. <http://bit.ly/1ZmN5ot>.

² Council for Citizens Against Government Waste. CCAGW Supports HR 4900. <http://1.usa.gov/1Wet3x9>.

³ Securities Industry and Financial Markets Association. Congressional ASction to Address the Peurto Rico Municipal Market and Contagion. <http://1.usa.gov/1Weeiw4>.

⁴ Americans for Tax Reform. *PROMESA* Contains No Bailout, No "Super Chapter 9." <http://1.usa.gov/1T4RQog>.

⁵ Associated General Contractors of America - Puerto Rico Chapter. Puerto Rice Oversight, Management and Economic Stability Act ("*PROMESA*"). <http://1.usa.gov/1WcRtbJ>.





FACT CHECK:

PREVENTING A BAILOUT

- No taxpayer money is used to pay Puerto Rico's debt or otherwise bailout the territory under *PROMESA*.
- The bill promotes economic and regulatory reforms so the territory can grow its economy and meet its debt obligations.
- Puerto Rico is a territory, not a state. The federal government is the sovereign for all territories and as such it carries a solemn responsibility to help Puerto Rico resolve its fiscal problems. This responsibility must be exercised at no cost to the taxpayers.

"This legislation creates an essential mechanism to thwart a taxpayer bailout of Puerto Rico's fiscal failures." - Council for Citizens Against

CHAPTER 9 FALSEHOOD

- Claims that *PROMESA* is "Chapter 9" for Puerto Rico are misleading and false.
- Chapter 9 of the U.S. Bankruptcy Code governs adjustments of debts for municipalities of sovereign states with 10th Amendment protections. Puerto Rico does not enjoy this sovereign status.
- Under Chapter 9, the locality (debtor) retains plenary and exclusive control over its finances and proposing a debt adjustment plan. Under *PROMESA*, the Oversight Board will ensure Puerto Rico remedies its finances. The Board will play a key role to ensure fairness to creditors and debts in any debt adjustment plan.
- Take Detroit as an example. The application of Chapter 9 bankruptcy to the municipality enabled the city to avoid correcting its fiscal mismanagement practices. It ultimately led to the abuse of creditors' rights. Today, Detroit cannot access capital markets unless the State of Michigan guarantees the city's debt.
- Under *PROMESA*, pursuant to the Territorial Clause in the U.S. Constitution, only the Oversight Board would be able to propose a plan of adjustment for creditor vote and judicial approval.
- The Oversight Board, which has a mandate "to provide a method to achieve fiscal responsibility and access to capital markets," is in control of the debt restructuring process. Further, any

"This is not Super Chapter 9. Why Not? Because there is a federal oversight board acting as a gatekeeper here, making sure there is no abuse..." - Resident Commissioner



proposed plan for adjustment by the Board must be in the “best interest of the creditors.”

- *PROMESA* ensures that Puerto Rico is unable to repudiate its debts. Instead it institutes fiscal and economic reforms to guarantee the island regains access to capital markets.



NO THREAT OF CONTAGION

- *PROMESA* prevents any contagion in state municipal bond markets as it is solely limited to territories of the U.S. that have an Oversight Board passed by Congress, signed into law and implemented.
- *PROMESA* provides a rational, comprehensive and territory-specific legal framework⁶ to address Puerto Rico's economic and fiscal crisis.

"In our view, PROMESA represents a responsible framework for managing the unavoidable restructuring of Puerto Rico's debt and other liabilities. We expect no contagion to the broader municipal market from PROMESA." - Pacific Investment Management Co.

NO STATE PRECEDENT

- *PROMESA*'s territory-specific provisions are designed so that states could never use this Act as a precedent.
- It specifically positions the debt restructuring portion under the territories and insular affairs title of the U.S. Code. This expressly precludes states from ever accessing the provisions contained within *PROMESA*.
- Any application to the States would be ruled illegal based on the 10th Amendment that defines our dual sovereign form of government.
- If a state wanted to use the Act as a precedent, they would need to revoke their status as a state, become a U.S. territory and petition the U.S. government for an Oversight Board to be eligible.

[T]he bill is a territory-specific law and would not set a precedent for even the most fiscally stressed mainland states." John Miller, Managing Director, Nuveen Asset Management.

⁶ Amey Stone. Barron's: Income Investing. <<http://on.barrons.com/lryjH44>>.



SECTION-BY-SECTION

Sec. 1: Short Title; Table of Contents

Establishes the short title of the act as the "Puerto Rico Oversight, Management, and Economic Stability Act" or "PROMESA." The bill contains six titles: Title I - "Establishment and Organization of Oversight Board"; Title II - "Responsibilities of Oversight Board"; Title III - "Adjustment of Debts"; Title IV - "Miscellaneous Provisions"; Title V - "Puerto Rico Infrastructure Revitalization"; and Title VI - "Creditor Collective Action"

Sec. 2: Effective Date

States the effective date of the act as the date of enactment, provides Title III only applies to cases commenced under it on or after the date of enactment, and ensures Titles III and VI apply to all debts, claims and liens, regardless of creation date.

Sec. 3: Severability

If any provision of PROMESA is found invalid, the severability clause permits the remainder of the Act to be unaffected by such invalidation, but expressly ties Titles I and II with Title III, such that if one title is found invalid, the other two titles fall. Accordingly, debt restructuring under Title III will be unavailable to Puerto Rico if the Oversight Board (including the manner in which appointments to the Oversight Board are made) is determined by a court to be invalid.

Sec. 4: Supremacy

Provides that the provisions of PROMESA control if any territorial, or state law or regulation is inconsistent with the Act.

Sec. 5: Definitions

Sets forth the definitions of commonly used terms in the Act.

Sec. 6: Placement

Instructs the Office of the Law Revision Counsel to place PROMESA as a new chapter under Title 48 (Territories and Insular Possession) of the United States Code.

Sec. 7: Compliance with Federal Laws

Requires territories to continue compliance with all other Federal laws or requirements protecting health, safety, and the environment, as well as those territorial laws implementing Federally-authorized and delegated programs.

TITLE I – ESTABLISHMENT AND ORGANIZATION OF OVERSIGHT BOARD

Sec. 101: Territory Financial Oversight and Management Board

Establishes a Financial Oversight and Management Board (Oversight Board) within the Puerto Rico government pursuant to Article IV of the U.S. Constitution, which grants Congress plenary authority and responsibility over the territories, and provides for the establishment of such an Oversight Board for any other territory of the United States if such territory, by duly adopted resolution, requests an Oversight Board. Furthermore, the Oversight Board has broad authority over territorial instrumentalities, and is empowered to require that instrumentalities establish fiscal plans and budgets in accordance with sections 201 and 202.

Appointment of the Oversight Board:

The President "shall" appoint the seven members, of whom:

- one "should" be from a list of three names with a residence or business in Puerto Rico provided by the Speaker;
- one "should" be from a list of three additional names provided by the Speaker;
- two "should" be from a list of four names provided by the Senate Majority Leader;
- one "should" be from a list of three names provided by the Senate Minority Leader;
- one "should" be from a list of three names provided by the House Minority Leader; and
- one at-large pick by the President.

Before any lists are provided to the President, he must provide to the leaders of both Chambers who his selection is. Once the lists are provided, the President may reject members on the lists if they fail to meet the qualifications as provided in subsection (f) – in such an instance, the submitter of the list may supplement the list with additional names. If the President refuses to select a name from any list, such selection is required to be with the advice and consent of the Senate.

However, should the President fail to select from a list and fail to appoint a member with the advice and consent of the Senate by September 30, 2016, then the President is required to ("shall") appoint a member from the respective list he had not appointed from. Such appointment must occur by December 1, 2016.

Permits the Governor, or the Governor's designee to serve on the Oversight Board in an *ex officio* capacity.

Limits each member's service on the Oversight Board to a term of three (3) years, but allows for the reappointment of members. Vacancies must be filled in the manner by which the original member was appointed.

Requires each to have knowledge and expertise in finance, municipal bond markets, management, law, or the organization or operation of business or government. No Member of the Oversight Board may be an officer, elected official, employee, or candidate for office of the territorial government prior to appointment. Oversight Board Members shall not be paid for their service but shall be reimbursed reasonable and necessary expenses.

Provides for the Oversight Board to adopt bylaws and appropriate procedures to conduct its business, including that at an affirmative vote of a majority of Oversight Board's fully appointed members (i.e., at least four (4) affirmative votes out of seven (7)) shall be required to approve a Fiscal Plan under section 201, to approve a Budget under Section 202, or to veto a legislative act under Section 204.

Provides that the Oversight Board, upon a majority vote, may conduct its business in an executive session of its voting members, to the exclusion of the non-voting member.

Sec. 102: Location of Oversight Board

Requires the Oversight Board to maintain offices in the territory it oversees and the authority to have offices in other locations as it sees fit. Furthermore, it authorizes federal agencies to provide facilities and equipment for the Oversight Board to use.

Sec. 103: Executive Director and Staff of Oversight Board

Enables the Oversight Board to hire an executive director, revitalization coordinator, and staff as the Oversight Board deems necessary. Salary for staff is at the discretion of the Oversight Board, provided that no staff may be paid more than the executive director. Additionally, the Oversight Board is allowed to have employees from the territorial or Federal government on detail.

Sec. 104: Powers of Oversight Board

Sets forth the powers of the Oversight Board. Powers relating to the routine day-to-day operation of the Oversight Board include: holding hearings and sessions (subsection a); obtaining official data from the territorial and Federal government, as well as creditors (subsections c and d); accepting gifts (subsection e); entering into contracts

(subsection g); and accepting support services from the General Services Administration (subsection n).

Powers relating to achieving fiscal stability and creditworthiness of a territory include: issuing subpoenas (subsection f); certifying voluntary agreements between creditors and debtors, and the protection of preexisting voluntary restructuring agreements (subsection i); filing a petition to restructure or to submit or modify a plan of adjustment on behalf of a debtor (subsection j); seeking judicial enforcement of its authority to carry out the purposes of the act (subsection k); imposing appropriate penalties for violations of valid orders of the Oversight Board (subsection l); ensuring prompt and efficient payment of taxes through electronic reporting, payment, and auditing technologies; and ensuring the prompt enforcement of applicable territorial law prohibiting public sector employees from participating in a strike or lockout (subsection h).

Sec. 105: Exemption from Liability of Claims

Exempts members and employees of the Oversight Board from liability resulting from actions taken while carrying out the provisions of PROMESA.

Sec. 106: Treatment of Actions Arising from Act

Except for an action arising out of Title III (Adjustment of Debts) or out of the Oversight Board's issuance of a subpoena (Sec. 104(e)(2)), requires any action arising out of this Act to be brought in the United States district court for the covered territory. For a territory that lacks a district court, such action must be brought in the United States District Court for Hawaii.

Therefore, in the case of Puerto Rico, any non-Title III or non-subpoena related action must be brought in the U.S. District Court for Puerto Rico. Appeals shall be handled in the applicable U.S. Court of Appeals (in the case of Puerto Rico, it is the First Circuit).

Sec. 107: Budget and Funding for Operation of Oversight Board

Requires the Oversight Board to submit an annual budget to the President and Committees of Jurisdiction within the House of Representatives and Senate, and requires the territorial government to provide a funding source for the operations of the Oversight Board.

Sec. 108: Autonomy of the Oversight Board

Prevents the territorial government or legislature from exercising any control over the Oversight Board, or from enacting, implementing, or enforcing any statute, resolution, policy, or rule that would impair



the purposes of the Act. Furthermore, the Oversight Board is explicitly permitted to hire outside counsel for representation.

Sec. 109: Ethics

Subjects all members and staff of the Oversight Board to Federal conflict of interest and financial disclosure requirements.

TITLE II - RESPONSIBILITIES OF OVERSIGHT BOARD

Sec. 201: Approval of Fiscal Plans

Establishes the method for developing Fiscal Plans for territorial governments and instrumentalities. Deadlines will be established by the Oversight Board by which the Governor must provide an approvable and certifiable Fiscal Plan. If the Governor fails to draft an acceptable Fiscal Plan, in the Oversight Board's sole discretion, , the Oversight Board shall develop and adopt its own Fiscal Plan and require the Governor to accept such Fiscal Plan.

Each Fiscal Plan serves as the cornerstone for the structural reforms the Oversight Board deems necessary to ensure the territory, or instrumentality, will be on a path towards "fiscal responsibility and access to capital markets." These documents incorporate requirements including any recommendation made by the Oversight Board pursuant to section 205, the elimination of structural deficits, as well as the improvement of fiscal governance, accountability, and internal controls. Importantly, Fiscal Plans ensure the protection of the lawful priorities and liens as guaranteed by the territorial constitution and applicable laws, and prevents unlawful inter-debtor transfers of funds.

Sec. 202: Approval of Budgets

Outlines the process for developing annual budgets. Similar to the development of Fiscal Plans, the Oversight Board will establish deadlines the Governor and Legislature must meet for the development of territory and territorial instrumentality budgets. All budgets developed under this section must be developed in accordance with the appropriate Fiscal Plan. If the Governor and Legislature fail to develop certifiable budgets within the established deadline, then the Oversight Board is required to develop the budget for the territory or territorial instrumentality for that fiscal year.

Sec. 203: Effect of Finding of Noncompliance with Budget

Requires the Governor, at the end of each fiscal quarter, to submit a report to the Oversight Board describing the actual revenues, expenditures, and cash flow of the government for the previous

quarter, as well as any other information the Oversight Board may request. If the revenues, expenditures, or cash flow is not in accordance with the certified budget, then the Oversight Board will alert the Governor of the variance and provide an opportunity to correct. If the Governor fails to correct such variance within an established timeframe, then the Oversight Board shall make appropriate reductions in non-debt expenditures within the Budget of the territorial government or territorial instrumentality to ensure the quarterly budget aligns with the certified budget.

Sec. 204: Review of Activities to Ensure Compliance with Fiscal Plan

Requires the Legislature of a territorial government to provide a cost estimate with each duly enacted law, as well as a certification by the Legislature that such law is consistent with the Fiscal Plan. If the law is significantly inconsistent with the Fiscal Plan, or does not have a cost estimate associated with it, then the Oversight Board is granted the authority to prevent enforcement of such law, or "take such actions as it considers necessary."

Mandates the Oversight Board to work with the territorial government to promote compliance of transparency in contracting by maintaining a registry of all contracts executed. Furthermore, the Oversight Board has the authority to establish policies requiring precursory review by the Oversight Board of contracts, executive orders, rules, and regulations before such items could be executed.

No new laws authorizing budgetary transfers between instrumentalities will be permitted between the enactment of PROMESA, and the appointment of the Oversight Board's full membership. If any transfers during that period occur, such transfers of funds or assets may be subject to review and reversal by the Oversight Board.

Any reprogramming of funds that require legislative approval must be first sent to the Oversight Board to determine whether such reprogramming will be inconsistent with the Fiscal Plan.

Sec. 205: Recommendations on Financial Stability and Management Responsibility

Establishes a process by which the Oversight Board may make recommendations to the Legislature or Governor of a territory. Such recommendations made under this section vary in scope and seek to ensure compliance with the Fiscal Plan and Budgets, as well as promote the financial stability, economic growth, management responsibility, and efficiency of service delivery of the territorial government. Upon receipt of a recommendation from the Oversight Board, the Governor or Legislature must respond with a report detailing how such



recommendations will be implemented, or why such recommendations will be ignored.

The Oversight Board may incorporate any recommendations - even those not adopted by the Legislature or Governor - into the development of Fiscal Plans.

Sec. 206: Oversight Board Duties Related to Restructuring

Prior to an entity being permitted into Title III to restructure its debts, the Oversight Board, in its sole discretion, must certify the entity has: (1) made good-faith efforts to reach a consensual restructuring with its creditors; (2) adopted procedures necessary to deliver timely audited financial statements, and delivered draft financial statements and other information sufficient for an interested person to make an informed decision; (3) the entity has a Fiscal Plan in place; and (4) no order approving a Qualifying Modification, as provided by section 601, is in place. Only if five of the Oversight Board's members certify each of these conditions has been met may the entity be permitted to enter into Title III restructuring.

Sec. 207: Oversight Board Authority Related to Debt Issuance

Prevents the territorial government from issuing debt without prior approval from the Oversight Board.

Sec. 208: Required Reports

Requires the Oversight Board to submit annual reports that describe the progress the territorial government has made in meeting the objectives of PROMESA, the assistance provided by the Oversight Board to the territorial government, recommendations to the President or Congress as to any changes in federal laws that should occur, the precise use of funds by the Oversight Board, and any other activities the Oversight Board deems necessary.

Assesses tax abatement agreements in place between the territorial government and private corporations, and ensures the territorial government is in no way hindered from negotiating such future agreements.

Sec. 209: Termination of Oversight Board

Establishes conditions that must be met before the Oversight Board is terminated. The three conditions are: (1) the territorial government has adequate access to short- and long-term credit markets at reasonable rates; (2) for four (4) consecutive years, the territorial government has developed its Budgets in accordance with modified



accrual accounting standards; (3) the territorial government has achieved balanced budgets.

Sec. 210: No full faith and credit of the United States

Explicitly prohibits the full faith and credit of the United States from being pledged for any bond issued by the covered territory while an Oversight Board is in effect. Further removes the United States from financial liability by providing that any claim to which the United States is found to be liable shall be subject to appropriations.

Sec. 211: Analysis of Pensions

Grants the Oversight Board the opportunity to analyze pensions of the territorial government, including an actuarial study of the pension liabilities, sources of funding available to cover pension debts, a review of existing benefits and the sustainability of such benefits, and a review of the pension system's legal structure and operational arrangements.

Sec. 212: Intervention in Litigation

Grants the Oversight Board the authority to intervene in any litigation filed against the territorial government.

TITLE III - ADJUSTMENT OF DEBTS

Sec. 301: Applicability of Other Laws; Definitions

Incorporates by reference a number of sections from Title 11 of the U.S. Code (Bankruptcy) to provide an administrative and procedural framework for debt adjustment under this Title. No entity is qualified to restructure its debt under this Title unless the Oversight Board determines certain conditions (as described below) have been met.

Further provides applicable definitions for Title III, and requires the Oversight Board to determine whether creditors within an entity are substantially similar as to the secured status and prioritization of such claims.

Sec. 302: Who May be a Debtor

Provides that only those entities subject to an Oversight Board and have received the appropriate certification pursuant to section 206(b), will be allowed to be considered a debtor.

Sec. 303: Reservation of Territorial Power to Control Territory and Territorial Instrumentalities

Provides that, subject to Titles I and II of this Act, nothing in this Act prohibits a covered territory from exercising its political and government control over its government and that of its instrumentalities, except that no territory law prescribing a method of composition or moratorium on the indebtedness of the territory or its instrumentalities may bind a creditor without the creditor's consent. Furthermore, the governor may not issue any unlawful executive orders that would alter, amend, or modify the rights of holders of debt, nor may an executive order divert funds from one instrumentality to another or to the territory.

Sec. 304: Petition and Proceedings Relating to Petition

Permits the Oversight Board, and only the Oversight Board, to initiate a proceeding for debt restructuring of a debtor by the filing of a petition with a District Court. Furthermore, it enables the joint filing of petitions for debtors if the debtors are affiliated, as well as providing for joint administration of affiliated debtor cases.

Sec. 305: Limitation on Jurisdiction and Powers of Court

Limits a court from interfering with the political or governmental powers of the debtor, with any of the property or revenues of the debtor, or with the debtor's enjoyment of income-producing property, unless the debtor consents to such interference or the plan of adjustment provides otherwise.

Sec. 306: Jurisdiction

Establishes original and exclusive jurisdiction for any case under Title III with the Federal district courts, and enables such court to oversee any additional claim or civil cause of action in which the party is involved for which the overseeing court has jurisdiction.

Provides for the manner in which removal, remands, transfers and appeals of relevant jurisdictional claims and cases should proceed. Generally, appeals are to be handled in the same manner that proceedings are taken to the courts of appeals from district courts.

Sec. 307: Venue

Establishes that venue for debt restructuring under this title will be the federal district court for the covered territory (or territorial instrumentality) or - for a territory that does not have a district court - the U.S. District Court for Hawaii. In effect, venue for Puerto Rico will be U.S. District Court for Puerto Rico; venue for the

U.S. Virgin Islands will be the U.S. District Court for the Virgin Islands; venue for American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam will be the U.S. District Court for Hawaii.

Allows venue to be in the U.S. District Court for the District of Columbia (or other jurisdictional confines where the Oversight Board maintains an office) if the Oversight Board determines the district court for the covered territory does not have the adequate resources to manage the debt restructuring case.

Sec. 308: Selection of Presiding Judge

Authorizes the Chief Justice of the United States to designate a district court judge to sit over the case if the debtor is a Territory, otherwise the designation is left to the chief judge of the court of appeals.

Sec. 309 Abstention

Allows a district court to abstain in the interest of justice from hearing a particular proceeding related to a case under Title III.

Sec. 310: Applicable Rules of procedure

Applies the Federal Rules of Bankruptcy Procedure to a case brought under this title.

Sec. 311: Leases

Exempts a lease to a territory from being treated as an executory contract or unexpired lease solely because the lease is subject to termination for failure of a debtor to appropriate rent.

Sec. 312: Filing of Plan of Adjustment

Permits only the Oversight Board to file a plan of adjustment, once the Oversight Board has issued a certification pursuant to section 104(j).

Sec. 313: Modification of Plan

Allows the Oversight Board to repeatedly change or modify a plan of adjustment, as submitted per section 312, before such plan is confirmed, so long as such modification meets the requirements of Title III.

Sec. 314: Confirmation

Outlines the conditions necessary to having a plan confirmed by a court. Under this section, the court shall confirm a plan if:

- the plan complies with the referenced statutes in section 301;
- the plan complies with Title III;
- the debtor is not prohibited by law from undertaking any of the actions of the plan;
- the holders of claims specified in 11 U.S.C. 507(a)(2) will receive cash equal to the allowed amount of such claim;
- the debtor has secured the necessary legislative, regulatory, or electoral approval of such plan, or such provision is expressly conditioned on the securing of such actions;
- the plan is in the best interest of the creditors and is feasible. Furthermore, the Court must consider whether available remedies under the non-bankruptcy laws and constitution of the territory would result in a greater recovery for the creditors than is provided; and
- the plan is consistent with the Fiscal Plan as established under section 201 of PROMESA;

Sec. 315: Role and Capacity of Oversight Board

Designates the Oversight Board as the representative of the debtor and authorizes the Oversight Board to take any action necessary on behalf of the debtor including the filing of a petition under section 304, the submission or modification of a plan of adjustment, or the submission of other filings as required by the court.

Sec. 316: Compensation of Professionals

Provides authority to the court to authorize the debtor’s reasonable payment of professionals, meaning attorneys, paralegals or others connected with a Title III proceeding. This ensures these professionals will receive compensation for services rendered during the Title III case.

Sec. 317: Interim Compensation

Authorizes the Court to provide such payment under section 316 on a regular basis prior to the conclusion of a Title III case.

TITLE IV – MISCELLANEOUS PROVISIONS

Sec. 401: Rules of Construction

Provides that nothing in PROMESA shall be construed as limiting the authority of Congress to exercise legislative authority over the territories, or as hindering agreements between treaties and covenants affecting the Northern Marianas Islands or American Samoa.

Sec. 402: Right of Puerto Rico to Determine its Future Political Status

Maintains that Puerto Rico may still conduct a plebiscite to determine its future political status.

Sec. 403: First Minimum Wage in Puerto Rico

Grants the Governor, subject to approval by the Oversight Board, the authority to designate a time period no greater than five years during which employers may pay employees who are initially employed after the date of enactment of PROMESA a wage that is less than the national minimum wage. Furthermore, the provision raises the maximum age of applicability of the statute for Puerto Rico from 20 to 25, but limits such age extension to the length of the Oversight Board's tenure.

Sec. 404: Application of Regulation to Puerto Rico

Exempts Puerto Rico from regulations issued by the Secretary of Labor on July 6, 2015 (80 Fed. Reg. 38515), relating to overtime rates for executive, administrative, professional, outside sales, and computer employees until such time as the U.S. GAO has completed a study regarding the economic condition of Puerto Rico, and the Secretary of Labor, upon considering such GAO study, recommends to Congress the regulation be held applicable in Puerto Rico.

States that it is the sense of Congress that the Census Bureau include Puerto Rico and the territories in data collection efforts.

Sec. 405: Automatic Stay upon Enactment

Automatically stays all litigation against Puerto Rico and its instrumentalities, as well as any other judicial, administrative or other action or proceeding to enforce or collect claims against them.

The stay will remain in effect until February 15, 2017. However, it may be extended by 75 days if the Oversight Board certifies that this time is needed to complete a voluntary modification under Title VI, and another 60 days if the U.S. District Court for Puerto Rico makes a similar determination. The U.S. District Court will be able to grant relief from the stay for cause, and shall do so to prevent irreparable damage.

To the extent the Oversight Board determines it is feasible, Puerto Rico and its instrumentalities are required to make scheduled interest payments during the stay.

Sec. 406: Purchases by Territory Governments

Authorizes Puerto Rico, in addition to the other territories, to make purchases through the General Services Administration.

Sec. 407: Protection from Inter-Debtor Transfers

Grants creditors the right to sue upon the conclusion of the stay, if the government of Puerto Rico transfers property between instrumentalities during the tenure of the Oversight Board in violation of any agreement, or applicable law that a creditor has or would have a pledge of, security interest in, or lien on such property.

Sec. 408: GAO Report on Small Business Administration Programs in Puerto Rico

Requires the GAO to conduct a report on the application and utilization of contracting activities of the Small Business Administration related to the HUBZone program.

Sec. 409: Congressional Task Force on Economic Growth in Puerto Rico

Establishes a bipartisan, bicameral, Congressional Task Force comprised of eight members. Four of the members will be from the House and four will be from the Senate, split evenly between parties. The Task Force must provide a report no later than December 31, 2016 regarding: impediments in current Federal law and programs to economic growth in Puerto Rico; recommended changes to Federal law and programs that would spur sustainable, long-term growth; and additional information as deemed necessary.

TITLE V – PUERTO RICO INFRASTRUCTURE REVITALIZATION

Sec. 501: Definitions

Provides the definitions to commonly used phrases and words throughout the Title, including a reference to the statutory authority (Act 76) within Puerto Rico on which Title is premised. The term "Critical Project" is defined to mean a project identified under the provisions of this Title that will receive the expedited permitting process as envisioned by Act 76.

Sec. 502: Position of Revitalization Coordinator

Establishes a Revitalization Coordinator under the Oversight Board to carry out the purposes of this title, a position that expires upon the termination of the Oversight Board.

Outlines the process of appointing the Revitalization Coordinator by the governor, pursuant to a list of qualified nominees submitted by the Oversight Board.

Sec. 503: Critical Projects

Outlines the criteria and process for a project to be designated as a Critical Project.

To be considered as a Critical Project, a project proponent must apply to the Revitalization Coordinator and outline the impact the project will have on addressing infrastructure needs, the availability of private capital, economic benefits provided by the project, the status of the project, if it is ongoing, and additional criteria the Revitalization Coordinator may require. Furthermore, if the project is an energy project, the proponent may be required to submit additional information, such as how the project will help decrease the cost of electricity. In determining whether a project should be classified as a Critical Project, the Revitalization Coordinator must obtain recommendations from the Governor and the Puerto Rico Energy Commission if the project is an energy project. Furthermore, once a Report has been finalized, the Coordinator must allow 30 days for Puerto Rican residents to comment on the Report.

Additionally, this section outlines the process for Puerto Rico agencies to establish an expedited permitting process pursuant to Puerto Rico's Act 76-2000 (Act 76). If an agency fails to have such a process, then one will be established for them by the Revitalization Coordinator and Governor.

Finally, this section dictates that once a project is deemed a Critical Project, it gains the expedited permitting and review process of Act 76.

Sec. 504: Miscellaneous Provisions

Prohibits Puerto Rico's Legislature and Governor from hindering the Act 76 process or any expedited permitting process authorized thereunder, and allows project proponents to petition to the Oversight Board if the Revitalization Coordinator or Puerto Rico agencies are failing to expedite the project as envisioned by this Title.

Sec. 505: Federal Agency Requirements

Requires federal agencies, at the request of the Revitalization Coordinator, to designate a point of contact within the federal agency to serve as a liaison to the Revitalization Coordinator.

Expedites to the greatest extent possible the completion of any required federal action connected to a Critical Project.

Sec. 506: Judicial Review

Expedites the judicial process for any claim brought under Title V, and requires any such claim to be filed within 30 days after the date of the decision or action giving rise to such claim.

Sec. 507: Savings Clause

Provides that nothing in this Title is intended to change or alter Federal requirements or laws.

TITLE VI - CREDITOR COLLECTIVE ACTION

Sec. 601: Creditor Collective Action

Establishes a voluntary process for debt restructuring by debtors and creditors in a territory or territorial instrumentality covered by this bill. This process begins by the division of creditors into pools based on stipulations, such as whether the bonds are distinguished by governing priority or security arrangements, whether the bonds were issued with the full or good faith credit, or whether senior and subordinated bonds were issued, among other considerations. Each pool, as established by the Oversight Board in consultation with the issuer, is permitted to vote on a qualifying modification, which essentially is a plan to restructure the debt. In order for a Qualifying Modification to be binding, a two-thirds majority of the outstanding principal amount in each pool must vote to accept the deal.

Sec. 602: Applicable Law

Provides that United States law - and not international law or other foreign jurisdictional law - shall apply to Title VI.