

Unofficial translation

Act No. 183, as amended by Act No. 138

**STATEMENT OF MOTIVES
Act No. 183, December 27, 2001**

Section 19 of Article VI of the Puerto Rico Constitution provides that the most efficacious conservation of its natural resources, as well as the conservation and maintenance of buildings and sites of historic or artistic value will be the public policy of the Commonwealth.

In spite of this public policy, many are the environmental problems and loss of cultural patrimony and agricultural lands that confront the Island's difficult task of harmonizing economic growth with conservation. Widespread urban development, soil erosion, disappearance of historic structures, removal of archeological material, deforestation, pollution of bodies of water, disappearance of mangroves and reefs, and destruction of habitats of flora and fauna are only some of these problems. The Government, by itself, cannot solve the growing deterioration of Puerto Rico's areas of natural, cultural and agriculture value. We must identify new tools for integrating the private sector in the effort to protect and preserve areas of natural, cultural and agricultural value.

The juridical figure of the conservation easement can contribute in the effort to rescue areas of natural, cultural or agricultural value. This juridical figure, of proven success in jurisdictions such as the United States and Costa Rica, establishes a mechanism by which the owner of a property may come to an agreement with a Government agency or a non-profit organization [to create] a conservation easement on an area of natural or cultural value with the intent of protecting it in perpetuity. This mechanism was welcomed in many states of the United States, and they proceeded to create various state laws regarding conservation easements. That legislation created problems of interpretation in the courts, due to lack of uniformity. In order to resolve this problem, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Act on Conservation Easements in 1981, which was subsequently adopted by more than twenty states. This mechanism helps to preserve properties in perpetuity without

the heavy cost of acquisition by the Government. The conservation easement mechanism may well be useful for Puerto Rico in supporting policies of sustainable development and ecotourism.

In order to increase the efficacy and utility of this act a tax incentive is created so that donations of conservation easements can be produced. The incentive consists of a tax deduction for the person who donates the easement to a government entity or to a non-profit organization dedicated to environmental conservation. The tax incentive for these donations is created by means of an amendment to the Internal Revenue Code.

A conservation easement can be established for purposes as diverse as preserving a natural, agricultural, forest or scenic aspect of a property or its condition as open space; protecting hydrographic watersheds; maintaining or improving air or water quality; or preserving properties with cultural value of an historic, architectonic or archeological character. It may endorse the implementation of a permit for developing land that requires the preservation of an area of natural or cultural value; it may be a mechanism by which a property-owner is motivated to voluntarily grant a conservation easement in exchange for a tax incentive; it may be part of a mutually beneficial agreement between a non-profit agency or organization and a property-owner to carry out works that will protect or preserve land of natural, cultural or agricultural value; and among others, it may be a mechanism by which a property-owner voluntarily decides to establish a restriction on his property in order to preserve its natural or cultural value in perpetuity.

The final purpose of this measure is to achieve the collaboration between the private sector, non-profit organizations and the Government in order to enable the conservation of areas of natural or cultural value through the establishment of conservation easements.

STATEMENT OF MOTIVES
Act No. 138, June 4, 2004

The Puerto Rico Conservation Easement Act, Act No. 183, 27 December 2001, was created to achieve collaboration between the private sector, non-profit organizations and the

Government, in order to promote the conservation of areas of natural, cultural or agricultural value by means of establishing conservation easements.

The Statement of Motives of Act No.183 provides that a conservation easement may be established for purposes as diverse as preserving the natural, agricultural, forest or scenic attribute of a property, or for preserving its condition as open space; for protecting hydrographic basins; maintaining or improving air or water quality; or preserving properties with cultural value of an historic, architectural or archaeological character. It can endorse the implementation of a permit for developing lands that demand the conservation of an area of natural, cultural or agricultural value; it can be a mechanisms by which a property owner is motivated to voluntarily grant a conservation easement in exchange for a tax incentive; it can be part of a mutually beneficial agreement between a non-profit agency or organization and a land-owner, in order to carry out works that protect or conserve land with natural, cultural or agricultural value; or it can be a mechanism by which a property owner voluntarily establishes a restriction on his property in order to preserve its natural, cultural or agricultural value in perpetuity.

The purpose of this legislation is to create a tax incentive in addition to the one created by virtue of Act No.183 in order to promote the establishment of conservation easements. This incentive consists of granting a tax credit to the natural or juridical person who donates the conservation easement or the eligible land to a government entity or to a non-profit organization engaged in environmental conservation.

The tax credit mechanism has previously been utilized effectively under Act No.225, 1 December 1995, as amended, known as "Puerto Rico Agricultural Tax Incentives Act"; Act No.190, 12 August 1995, known as "Tax Incentives for Communications, Theatre and Fine Arts"; Act No.78, 10 September 1993, as amended, known as "Puerto Rico Tourist Development Act of 1993"; Article 21 of Act No.70, 23 June 1978, as amended, related to Tax Credits for Investment in Facilities for the Disposal and/or Treatment of Solid Waste; in Act No.98, 10 August 2001, known as "Tax Credits Act for Investment in Housing Infrastructure"; and Act

No.140, 4 October 2001, known as "Tax Credit Act for Investment in the Construction or Rehabilitation of Rental Dwellings for Low- or Moderate-Income Families.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1.- Title

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

Article 2.- Power to establish conservation easements

The power to establish conservation easements as personal or praedial easements on rural or urban property is hereby recognized for achieving the purposes hereof.

Article 3.- Public Policy

Promoting the constitution of conservation easements is hereby declared to be public policy of the Commonwealth of Puerto Rico, for the purpose of preserving areas of natural, cultural or agricultural value.

Article 4.- Definitions

For the purposes hereof, the following terms will have the indicated meaning:

- (1) "conservation easement" - Means a lien imposed on real estate in benefit of a person or a property, which imposes obligations, rights and conditions on the real estate and its owner for the purpose of protecting or preserving an area of natural value or a property with cultural or agricultural value.
- (2) "easement owner" - Person who is the owner of the conservation easement.
- (3) "Commonwealth of Puerto Rico" - Includes the agencies, instrumentalities, departments, offices, dependencies, municipalities and public corporations of the Commonwealth of Puerto Rico.
- (4) "non-profit organization" - Every non-profit entity, association, trust, organization or private institution constituted as such pursuant to the laws of Puerto Rico, among whose principal functions or purposes is the protection or conservation of an area of natural value or a property of cultural or agricultural value. In addition, said non-

profit organization must be recognized as such by the Secretary of the Treasury Department and the donations made thereto must 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" - Open area that is not urbanized -- in its natural state, in a forest area, of scenic value or adapted for totally agricultural use, and whose protection and conservation is important.

(6) "property of cultural value" - Property that includes important historic, architectonic or archeological features or attributes.

(7) 'Donor' - Means the natural or juridical person(s), owner(s) of a property that constitutes an eligible piece of land, or on which a conservation easement has been constituted by means of a donation deed, pursuant to the provisions hereof and that is entitled to the corresponding tax benefits.

(8) 'Puerto Rico Internal Revenue Code of 1994' - Means the Puerto Rico Internal Revenue Code of 1994, created pursuant to the provisions of Act No. 120, 31 October 1994, as amended.

(9) 'Change in control' - Means the sale, lien, assignment, merger, conversion, exchange, or other transfer of ten (10) percent or more of the stocks, interest or participations in the capital of the corporation, partnership or entity to a single person or group of persons acting in concert, whether it be a single transaction or various transactions for that purpose, or that results in the holding or control of ten (10) percent or more of the stocks, interest or participations in the capital of said corporation, partnership or entity by any person or group of persons acting in concert.

(10) 'Eligible conservation easement' - Means a conservation easement in perpetuity constituted after 31 December 2003 by means of a donation deed and that

satisfies the requirements of Article 16 hereof in order to receive the tax benefits described herein.

(11) 'Eligible Land' - Means land on which an eligible conservation easement can be established, and whose title is transferred by means of a donation deed to any of the persons who, pursuant to Article 8 hereof, can be title-holder of the conservation easement."

Article 5.- Non-applicability of the provisions of Article 467..

Personal easements constituted within the scope hereof will not be subject to the limitations imposed by Article 467 of the Puerto Rico Civil Code.

All easements constituted within the scope hereof will not be deemed inofficious with regard to the effects of Article 747 of the Civil Code.

Article 6.- Donations and transfers to the Commonwealth of Puerto Rico.

Donations granted within the scope hereof will be deemed onerous in consideration of the tax benefits that the law sets forth in its articles.

In the event of the extinction or dissolution of the tax-free entity to which the easement right was originally conferred the mere fact of the extinction or dissolution of the easement owner of record will constitute an *ipso jure* to the Commonwealth of Puerto Rico, and same will be set forth in every conservation easement constitutive deed and the corresponding registration in the Property Register.

Article 7.- Purposes of the Conservation Easement

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

- (1) to preserve the natural, agricultural, forest or scenic attribute of a property or its condition as open space;
- (2) to protect hydrographic watersheds;
- (3) to maintain or improve air or water quality;

(4) to conserve properties with cultural value; or

(5) to preserve properties with agricultural value.

Article 8.- Persons who may be titleholder of an easement

Persons qualified to be a titleholder of an easement are deemed as follows:

(1) The Commonwealth of Puerto Rico; or

(2) a non-profit organization among whose principal functions or purposes is the protection or conservation of an area of natural value or a property of cultural value. This organization will be bona fide and at least ten (10) years will have passed since its establishment.

Article 9.- Rights and obligations of the owner of the encumbered property

The owner of the property encumbered with a conservation easement will have the rights and obligations established in the public deed. Such rights and obligations may limit the development or the use of real property, even including the prohibition on carrying out the economic exploitation thereof.

The owner of the encumbered property may not diminish the constituted easement and will always be obliged to supervise its existence diligently.

Article 10.- Rights and obligations of the easement's titleholder

The titleholder of the conservation easement will have the rights and obligations established in the public deed and will be obligated to diligently supervise compliance with its provisions.

Article 11.- Constitution

The conservation easement must be constituted by means of a public deed with the consequent registration in the Property Registry.

The registration or liberation of the conservation easement will be exempt from the payment of fees.

Article 12.- Duration

The conservation easement will be constituted in perpetuity. Nevertheless, when a conservation easement is constituted for a term within the scope of the provisions of the Civil Code, the titular donor of the domain will not be entitled to the tax benefits set forth herein and the donation will not be deemed inofficious with regard to the effect of Article 747 of the Puerto Rico Civil Code.

Article 13.- Judicial actions and compensation of damages

In the event that the title-holder of the easement does not comply with the obligations contained in the constituent deed of the easement, the Commonwealth of Puerto Rico and any natural or juridical person that demonstrates an interest in the preservation of the natural resources of Puerto Rico may file a civil action to require compliance.

If a party does not comply with its obligations and thus causes damages to a conservation easement, the title-holder of the easement, the Commonwealth of Puerto Rico and any natural or juridical person who demonstrates an interest in the conservation of Puerto Rico's natural resources, will be entitled to claim that the affected real estate be returned to its original condition at the expenses of the non-complying party. In those cases where it is impossible to return the real estate to its original condition, the non-complying party will be responsible for compensating the title-holder of the easement with a monetary sum that may amount to three times the value of the easement.

The easement title-holder, the Commonwealth of Puerto Rico and any natural or juridical person who demonstrates an interest in the conservation of Puerto Rico's natural resources may claim payment or compensation from the non-complying party for any expense incurred in assuming or requiring the obligations set forth in the public deed.

Article 14.- Extinction of a Conservation Easement and tax benefits

A.- The conservation easement is extinguished:

- (1) by the redemption agreed upon between the owner of the property and the easement title-holder; or
- (2) when the property reaches such a state that it is impossible to return it to an enjoyable status.

B.- The tax benefits that this act grants will cease as soon as the easement is extinguished or modified in such a way that, even if not extinguished, its modification impedes achieving the objectives hereof.

Article 15.- Saving Clause

Nothing set forth herein will be interpreted as a limitation on the constitution of conservation easements between private persons.

Article 16.- Tax benefits by reason of gross income deductions

A conservation easement that resulted from a donation will receive tax benefits by reason of gross income deductions if it satisfies 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 value.
- (2) The property is classified as land of high agricultural productivity by the Department of Agriculture.
- (3) The property is included within the inventory of real estate with cultural value of the Institute of Puerto Rican Culture.
- (4) The property has been designated by a municipality as having historic value, high agricultural productivity or natural value.
- (5) The property is deemed as important for the preservation of the environment by a bona fide non-profit entity that is dedicated to the defense of the environment and has been certified as such by the Secretary of the Treasury.

Article 17.- Tax credit.

(a) Any natural or juridical person that establishes an eligible conservation easement or donates eligible land pursuant to the provisions hereof, may opt for a tax credit equal to fifty percent (50%) of the value of the eligible conservation easement or the eligible land on the date of the donation, to be taken in two (2) installments: the first half of said credit in the year in which the establishment of the conservation easement or the donation of the eligible land occurs, and the balance of said credit, in the following year. Every establishment of an eligible conservation easement or donation of eligible land made prior to the date for filing the income tax return, as provided by the Puerto Rico Internal Revenue Code of 1994, including any extension granted by the Secretary of the Treasury for filing same, will qualify for the tax credit established herein in the tax year for which the aforementioned return is filed, provided that same complies with all the requirements of this Article.

It must be clearly established that any natural or juridical person that establishes an eligible conservation easement or donates eligible land pursuant to the provisions hereof, may opt for the tax deductions under sub-clause (vi), clause (M), paragraph (2), sub-section (aa) of Section 1023 of the Puerto Rico Internal Revenue Code of 1994, as established by Articles 18 and 19 hereof or by the tax credit that is established in clause (a) of this Article. Said person may not benefit jointly from both tax benefits. In similar fashion, a property that complies with the necessary requirements may be utilized to generate the credit for constituting the conservation easement or the credit for donating eligible land, but not both.

(b) Use and availability of the credit. - The credit may be used against any tax determined under Subtitle A of the Puerto Rico Internal Revenue Code of 1994, including the minimum alternate tax. The credit will be available for use once the requirements set forth by Articles 11, 12 and 16 hereof are satisfied and the Secretary of the Treasury certifies the availability of the credit, as set forth in sub-section (g) of this Article 17.

(c) Carry-forward of the credit. - Any credit not utilized in a taxable year may be carried over to each of the subsequent ten (10) taxable years.

(d) Maximum amount of the credit. - The maximum amount of the credit will be fifty percent (50%) of the value of the conservation easement or the eligible land as of the date of the donation. When there is more than one donor, the amount of the credit will be distributed among the donors in the proportions determined by them. The donors will notify the Secretary of the Treasury regarding the distribution of the credit on or before the date set forth in the Puerto Rico Internal Revenue Code of 1994 for filing the income tax return for the first year in which a person is entitled to take the credit, including any extension granted by the Secretary of the Treasury for the filing thereof. The distribution will be irrevocable and obligatory for donors.

(e) Adjustment of the base and recovery of the credit.-

- (1) The tax base of the donor(s), determined pursuant to Subtitle A of the Puerto Rico Internal Revenue Code of 1994, with regard to the property, the object of which is the conservation easement or the eligible land, as applicable, will be reduced by the amount taken as a credit, but will never be reduced to less than zero.
- (2) The owner(s) of the property encumbered by a conservation easement or the donor(s) in the case of eligible land, will be subject to the recovery of the granted credits in the event that the obligations contained in the constituent deed of the conservation easement or the donation of eligible land, as the case may be, are not fulfilled, but only in those cases where it is impossible to return the real estate to its original condition, pursuant to the provisions in Article 13 hereof, and said non-compliance occurs within the term of ten (10) years after the conservation easement was constituted. In addition, the owner(s) of a property encumbered by a conservation easement will be subject to the recovery of the credits granted by the constitution of an eligible conservation easement when the redemption of the easement is agreed upon by the owner(s) and the title-holder of the easement, as set forth in clause (1)

of sub-section (A) of Article 14 hereof, within the term of ten (10) years after the conservation easement is constituted.

The invalidated credit will be owed as income taxes to be paid in two (2) installments, commencing with the first taxable year following the date on which any of the aforementioned non-compliances occurs.

- (3) The person who, by transfer, sale or any other form of assignment, acquires a credit from the owner of the encumbered property or the donor of eligible land, does not become the owner or donor of said property, as the case may be, for the purpose of the recovery set forth in sub-section (e) of this Article. Nevertheless, the ceded credit will maintain its original characteristics for the purpose of the limitation established by the provisions of sub-section (a) of this Article, to the effect that more than half the credit generated may not be taken during the first taxable year in which the person is entitled to take the aforementioned credit.

(f) Assignment of the credit,-

- (1) After the certification of the Secretary of the Treasury regarding the availability of the credit set forth in this Article in sub-section (g), the credit provided herein may be ceded, sold or otherwise transferred by the donor(s) , in full or partially, to any other person. Once so transferred, the credit may not be ceded, sold or transferred in any other manner. For the purposes of this clause, a change of control of the person who possesses a credit granted hereunder will not constitute a credit transfer. Neither will the transfer of goods of a decedent to his hereditary descendant or the transfer by legacy or inheritance constitute a transfer of the credit. The above exceptions to the rule of transfer must be reported to the Secretary of the Treasury within thirty (30) days following their having been carried out.

- (2) As determined pursuant to Subtitle A of the Puerto Rico Internal Revenue Code of 1994, the tax base of the donor(s) in the property subject to the conservation easement or the eligible land, as the case may be, will be reduced by the value of the credit granted, sold or otherwise transferred, but it will never be reduced to less than zero.
- (3) The donor(s) that have granted, sold or transferred part or all of the credit, and also the acquirer of said credit, will notify the Secretary of the Treasury of the assignment, sale or transfer by means of a statement to this effect that will be included with the income tax return for the year in which the credit assignment is made. The statement will contain: (i) the name, address and social security number of the assignor, (ii) the name, address and social security number of the assignee, (iii) total amount of credit approved by the Secretary of the Treasury, (iv) total amount of the credit of the assignor, (v) amount of credit taken and/or granted by the assignor, (vi) amount of credit ceded, (vii) date of the cession and taxable year in which the ceded credit may be taken, pursuant to the provisions of subsection (a) of this Article, and (viii) consideration given to change of the credit.
- (4) The money or the value of the property received in exchange for the credit will be tax exempt under the Puerto Rico Internal Revenue Code of 1994 up to an amount that is equal to the amount of the granted credit.
- (5) The validity of the credit that has been granted, sold or transferred will not be affected in the event that the provisions of recovery, as set forth herein, are applied.
- (6) When the tax credit granted hereby is ceded, sold or transferred, the difference between the credit amount and the amount paid for same will not be deemed income for the credit purchaser.

(g) Any donor interested in obtaining a credit must request a certification hereunder from the Secretary of the Treasury, by means of the proper filing of a request. The approval of a certification hereunder will be conditioned to the fact that the donor(s) present to the Secretary of the Treasury negative debt certificates from the Department of the Treasury and the Municipal Tax Collection Center (MTCC). The donor(s) will submit to the Secretary of the Treasury any document and/or additional permit that the Secretary may require by regulation.

(1) Once the Secretary of the Treasury receives a duly filed request, pursuant hereto, the terms established in this Article will commence to be considered. The Secretary of the Treasury will evaluate the request for compliance with applicable tax laws and any other law that may be under the Secretary's jurisdiction.

(h) The certification granted under sub-section (g) will be conditioned on the donor's/ donors' having complied with the requirements established by regulation by the Secretary of the Treasury. Said regulation will establish the standards and criteria for requiring the donor(s) to produce the following:

(1) copy of the donation deed by which the conservation easement is constituted or the eligible land donated;

(2) negative certifications of debt from the Treasury Department and from M.T.C.C.;

and

(3) the appraisal of the conservation easement or the eligible land carried out by one or more professional appraisers duly licensed in Puerto Rico.

(i) Maximum amount of credits per year. - The maximum amount of tax credits available in any fiscal year of the Commonwealth of Puerto Rico for distribution under the scope hereof will be fifteen million (15,000,000) dollars; provided that, for a specific fiscal year the Secretary of the Treasury may authorize an increase in the aforementioned amount when the interests of the Commonwealth so merit. If, in a

particular fiscal year, the Secretary of the Treasury does not grant credits equivalent to the total permitted amount, he may utilize or pass the remainder of non-granted credits from a particular fiscal year to a following fiscal year.

Any person who voluntarily makes or tries to make, on his own or in the name of another person, any false or fraudulent representation related to any request for or certification of credits hereunder, will be deemed guilty of a felony and upon conviction, will be sanctioned with a fine not exceeding ten thousand dollars (\$10,000) or imprisonment not to exceed five (5) years, or both penalties, plus legal expenses, at the discretion of the court.

Article 18.- Amendments to the Puerto Rico Internal Revenue Code

Sub-clause (vi) is hereby added to clause (M), paragraph (2), sub-section (aa) of Section 1023 of Act No. 120, 31 October 1994, as amended, known as "Puerto Rico Internal Revenue Code of 1994", to read as follows:

(a)

(aa) Option of Fixed Deduction or Detailed Deductions

(1)

(2) Detailed deductions.- For the purposes of this clause, the taxpayer may claim the following items as detailed deductions, instead of the optional fixed deduction:

(A)

(M) Donations for Charitable Purposes or Other Contributions.- In the case of an individual, the amount of the contributions or donations paid during the taxable year to, or for use of organizations listed below, that exceeds three (3) percent of the adjusted gross income or thirty-three (33) percent of the total contributions or donations paid during the taxable year to, or for the use of the organizations listed below, whichever is greater.

(i)

(vi) An agency of the Government of Puerto Rico or a non-profit organization, when it receives a conservation easement by donation subject to the requirements established in the Conservation Easement Act, and any other act that replaces or complements it. The amount or value of the donation will reflect its real, effective value, utilizing any of the methods and factors recognized in matters of property valuation or assessment."

Article 19.- The last clause of clause (M), paragraph (2), sub-section (aa) of Section 1023 of Act No. 120, 31 October 1994, as amended, known as "Puerto Rico Internal Revenue Code of 1994", is hereby amended to read as follows:

"The deduction admitted hereunder will not exceed fifteen (15) percent of the gross adjusted income of the taxpayer, except that an additional deduction will be admitted of up to fifteen (15) percent of the adjusted gross income of the taxpayer for donations paid 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 Financing Cultural Endeavors. An additional deduction will also be admitted, up to fifteen (15) percent of the adjusted gross income of the taxpayer, for donations of conservation easements to agencies of the Government of Puerto Rico or tax-exempt organizations, subject to the requirements established in the Conservation Easement Act. The total of the contributions for charitable purposes in excess of the limit permitted by this paragraph may be carried forward, and pursuant to regulations promulgated by the Secretary, for the five (5) following taxable years, subject to the aforementioned limits. The unlimited deduction for contributions or donations that exceed ninety (90) percent of net income will be governed by subsection (aa)(2)(N)."

Article 20.- Property Tax

For purposes of the payment of the property tax to the Municipal Income Collections Center, the property encumbered by a conservation easement will be valued in such a way as to reflect the limitation in value, if any, imposed by said easement.

The owner of the easement will be exonerated from the payment of the property tax for the value of the conservation easement.

The Commonwealth of Puerto Rico will compensate municipalities for the loss of income resulting from the exoneration.

Article 21.- Standards for taking advantage of the tax benefits

The Department of the Treasury and the Municipal Income Collections Center are hereby ordered to establish standards for taking advantage of the tax benefits established herein within the term of six (6) months following the effective date hereof.

Article 22.- Interpretation

In case of doubts, the interpretation of the easement must favor the greatest ecological, historic, cultural or agricultural preservation, as set forth in Article 6.

Article 23.- Separability clause

In the event that a court declares any provision hereof to be null, ineffective or unconstitutional, said determination will not affect the remaining provisions hereof.

Article 24.- Effective date.

This Act will become effective on 1 January 2004 and the tax credits hereby established will be available for taxable years commencing after 31 December 2003.