

Conservation Easements

Law No. 183 of December 27, 2001 Puerto Rico Conservation Easement Law and its amendments

History of the Conservation Easements Act of Puerto Rico

Act No.	bill	date	subject
183	S.B. 258	12/27/2001	To create the Conservation Easements Act of Puerto Rico; to establish its applicable provisions; to provide, under certain conditions, tax credits for landowners who establish conservation easements on their properties, among other purposes.
138	S.B. 1961	06/04/2004	To add clauses (7), (8), (9), (10) and (11) to Article 4, amend clause (2) of Article 8, add a new Article 17, and assign new numbering to Articles 17, 18, 19, 20, 21, 22 and 23 in Act No. 183 of December 27, 2001, also known as the "Puerto Rico Conservation Easements Act", with the purpose of granting tax credits for the valued amount of a conservation easement donation.
238	H.R. 4450	08/04/2008	To amend sub-section (a) of Article 14 and paragraph 2 of sub-section (e) of Article 17 of Act No. 183 of December 27, 2001, as amended, and to add paragraph (58) to sub-section (b) of Section 1022 of Act No. 120 of October 31, 1994, as amended, also known as the "Puerto Rico Internal Revenue Code" of 1994, in order to strengthen the perpetual nature of conservation easements and to clarify the exemption of tax benefits granted under Act No. 183 of December 27, 2001, as amended.
127	S.B. 2183	12/07/2011	To include the Conservation Trust of Puerto Rico in the list of entities qualified to evaluate conservation easements projects, along with the DNER; to eliminate municipalities as recipients of conservation easements; to impose additional requirements on appraisals to prevent speculation over property values.

(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 approval 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 2nd Session of the 14th 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.

(S.B. 1961)
(Conference)
(Reconsidered)

ACT NO. 138
JUNE 4, 2004

To add clauses (7), (8), (9), (10) and (11) to Article 4, amend clause (2) of Article 8, add a new Article 17, and assign new numbering to Articles 17, 18, 19, 20, 21, 22 and 23 in Act No. 183 of December 27, 2001, otherwise known as the "Puerto Rico Conservation Easements Law", with the purpose of granting tax credits for the value amount of a conservation easement donation.

STATEMENT OF MOTIVES

The Puerto Rico Conservation Easements Law, Act No. 183 of December 27, 2001, was created to achieve collaboration between the private sector, non-profit organizations and the Government, in order to foster the conservation of areas of natural, cultural or agricultural value by establishing conservation easements.

The Statement of Motives of Act No.183 provides that a conservation easement may be established for diverse purposes, including to preserve the natural, agricultural, forest or scenic attributes of a property, or to preserve its condition as an open space; to protect watersheds; maintain or improve air or water quality; or preserve properties with cultural value due to their historic, architectural or archaeological qualities. It can support the implementation of a permit for land development that demands the conservation of an area of natural, cultural or agricultural value; it can serve as a mechanism to motivate a property owner 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 landowner, in order to carry out projects that protect or preserve land with natural, cultural or agricultural value; or it can serve as 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 foster the establishment of conservation easements. Through this incentive, a tax credit is granted to the natural or juridical person who donates the conservation easement or the eligible land to a government entity or a non-profit organization engaged in environmental conservation.

The tax credit mechanism has been previously used in an effective manner under Act No.225 of December 1, 1995, as amended, known as the "Puerto Rico Agricultural Tax Incentives Act", in Act No.190 of August 12, 1995, known as the "Tax Incentives for Communications, Theatre and Fine Arts Act", in Act No.78 of September 10, 1993, as amended, known as the "Puerto Rico Tourist Development Act of 1993", in Article 21 of Act No.70 of June 23, 1978, as amended, pertaining to Tax Credits for Investment in Facilities for the Disposal and/or Treatment of Solid Waste, in Act No.98 of August 10, 2001, known as the "Tax Credits for Investment in Housing Infrastructure Act", and in Act No.140 of October 4, 2001, known as the "Tax Credits for Investment in the Construction or Rehabilitation of Rental Dwellings for Low- or Moderate-Income Families Act".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1 - Clauses (7), (8), (9), (10) and (11) are added to Article 4 of Act No. 183 of December 27, 2001, so that it reads as follows:

"Article 4.-Definitions

For the purposes hereof, the terms included hereafter shall be defined as follows:

(1) ...

(2) ...

(7) 'Donor' - Refers to the natural or juridical person(s) who is(are) owner(s) of a property that is either considered eligible or where a conservation easement has been constituted by means of a Deed of Donation, pursuant to the provisions hereof, and that is hereby entitled to the corresponding tax benefits.

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

(9) 'Change in Control' - Refers to the sale, lien, surrender, merger, exchange, barter, or any other transference of an

amount equal to 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 together, whether in a single or multiple transactions with this purpose, or otherwise resulting in the holding or control of ten (10) percent or more of the stocks, interest or participations in the capital of the aforementioned corporation, partnership or entity by any person or group of persons acting together.

(10) 'Eligible Conservation Easement' - Refers to a conservation easement constituted in perpetuity after December 31, 2003, through a Deed of Donation, and that satisfies the requirements established by Article 16 hereof in order to receive the tax benefits described herein.

(11) 'Eligible Land' - Refers to the land on which an eligible conservation easement may be established, and whose title is transferred by means of a Deed of Donation to any person who, pursuant to Article 8 hereof, may be considered titleholder of the conservation easement."

Article 2. - Clause (2) of Article 8 of Act No. 183 of December 27, 2001, is amended to read as follows:

"Article 8. - Persons who may be titleholder of a conservation easement

The following persons shall be deemed qualified to be titleholders of an easement:

(1)...

(2) a non-profit organization whose main duties or purposes include the protection or conservation of an area or property of natural or cultural value. This organization shall be bona fide and shall have been established at least ten (10) years ago."

Article 3. - A new Article 17 is added, and the numbering on Articles 17, 18, 19, 20, 21, 22 and 23 of Act No. 183 of December 27, 2001, are reassigned as Articles 18, 19, 20, 21, 22, 23 and 24, respectively, to read as follows:

"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 eligible conservation easement or land's value, as estimated on the date of the donation, to be received in two (2) installments: the first half of the aforementioned credit shall be granted in the year in which the easement is established or the donation occurs, and the remaining balance shall be granted in the following year. Any eligible conservation easement established 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 the aforementioned return, shall qualify for the tax credit established herein in the tax year for which the aforementioned return is filed, provided that it meets all requirements stated herein.

It must be clearly stated that any natural or juridical person who 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 established in clause (a) of this Article. The aforementioned person may not receive joint benefits from both tax credits. Accordingly, any property that meets the necessary requirements may be used to generate the credit granted for establishing the conservation easement or 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 and the basic alternate tax. The credit shall be available for use once the requirements set forth by Articles 11, 12 and 16 hereof have been met, and the Secretary of the Treasury certifies the availability of the credit, as provided in sub-section (g) of this Article 17.

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

(d) Maximum Credit Amount. - The maximum amount of the credit shall be equal to fifty percent (50%) of the value of the conservation easement or 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 proportions determined by them. The donors will be responsible for notifying the Secretary of the Treasury of the credit distribution on or before the date established by the Puerto Rico Internal Revenue Code of 1994 for filing the income tax return for the first year in which the credit may be received, including any extension granted by the Secretary of the Treasury for the filing thereof. The distribution will be irrevocable and obligatory for all donors.

(e) Base Adjustment and Credit Recovery. -

(1) The tax base of the donor(s), as determined by Subtitle A of the Puerto Rico Internal Revenue Code of 1994, in regards to the property eligible for donation or object of the conservation easement, as applicable, will be reduced by the amount received as a credit, but shall 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 recovery of the granted credits in the event that the obligations contained in the Deed of Constitution of the conservation easement or the donation of eligible land, whichever applies, are not fulfilled, but only in those cases in which restoring the property to its original condition is impossible, as established by Article 13 hereof, and said non-compliance occurs within the term of ten (10) years upon the establishment of the conservation easement. 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 said easement is agreed upon by the owner(s) and the titleholder of the easement within the term of ten (10) years after the conservation easement is constituted, as set forth in clause (1) of sub-section (A) of Article 14 hereof. The invalidated credit will be owed as income taxes, to be paid in two (2) installments, beginning on the first taxable year following the date on which any of the aforementioned non-compliances occurs.

(3) The person who acquires a credit from the owner of the encumbered property or the donor of eligible land, whether by transfer, sale or any other form of assignment, does not become the owner or donor of said property for purposes regarding the recovery set forth in sub-section (e) of this Article. Nevertheless, the transferred credit shall keep its original characteristics for the purposes established by the provisions of sub-section (a) of this Article, which limit the amount taken to no more than half the credit generated during the first taxable year in which the person is entitled to take the aforementioned credit.

(f) Credit Assignment. -

(1) After the Secretary of the Treasury has certified the availability of the credit set forth in sub-section (g) of this Article, the credit provided herein may be ceded, sold or otherwise transferred by the donor(s), whether in part or in full, to any other person. Once so transferred, the credit may no longer be ceded, sold or otherwise transferred. For the purposes of this clause, a change of control of the person who holds a credit granted hereunder will not constitute a credit transfer, nor will the transfer of goods from a deceased party to his hereditary descendant or the transfer by legacy or inheritance. The aforementioned exceptions to the rule of transfer must be reported to the Secretary of the Treasury within thirty (30) days upon carrying them out.

(2) The tax base of the donor(s), as determined by Subtitle A of the Puerto Rico Internal Revenue Code of 1994, in the property subject to the conservation easement or the eligible land, whichever the case, 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) who has/have granted, sold or transferred part or all of the credit, as well as the party acquiring said credit, shall notify the Secretary of the Treasury of the assignment, sale or transfer by means of a statement that shall be included with the income tax return for the year in which the credit assignment is made. The statement shall include: (i) the name, address and social security number of the assignor, (ii) the name, address and social security number of the assignee, (iii) the total amount of credit approved by the Secretary of the Treasury, (iv) the total amount of the assigner's credit, (v) the amount of credit taken and/or granted by the assigner, (vi) the amount of credit transferred, (vii) the date of the transfer and taxable year in which the transferred credit may be taken, according to the provisions in subsection (a) of this Article, and (viii) consideration given in exchange for 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 a maximum amount equal to the amount of the granted credit.

(5) The validity of the granted, sold or otherwise transferred credit shall not be affected in the event that the conditions 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 it will not be deemed income for the credit buyer.

(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 under this Law will be conditioned to the donor(s) presenting the Secretary of the Treasury with negative debt certificates from the Department of the Treasury and the Municipal Revenues Collection Center (CRIM, by its acronym in Spanish). The donor(s) shall 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 has received a duly filed request, pursuant hereto, the terms established in this Article will go into effect. The Secretary of the Treasury shall evaluate the request for compliance with applicable tax laws and any other law under the Secretary's jurisdiction.

(h) The certification granted under sub-section (g) shall be conditioned by the donor's/donors' compliance with the requirements established by the Secretary of the Treasury under regulation. Said regulation shall establish the standards and

criteria for requiring the donor(s) to produce the following:

- (1) A copy of the Deed of Donation under which the conservation easement is constituted or the eligible land is donated;
- (2) Negative debt certifications from the Department of the Treasury and the Municipal Revenues Collection Center, and
- (3) The appraisal of the conservation easement or the eligible land, as 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 during any fiscal year of the Commonwealth of Puerto Rico for distribution under the scope of this Law will be fifteen million (15,000,000) dollars, provided that Secretary of the Treasury may, during any specific fiscal year, authorize an increase in the aforementioned amount when the interests of the Commonwealth so merit. If, during a particular fiscal year, the Secretary of the Treasury does not grant credits equivalent to the total amount allowed, he may use or carry over the remainder of non-granted credits from a particular fiscal year to a following fiscal year.

(j) Any person who voluntarily makes or tries to make, whether on his own or on another's behalf, any false or fraudulent representation related to any request or certification of credits hereunder, shall be considered guilty of a felony and, upon conviction, shall be fined an amount not to exceed ten thousand dollars (\$10,000) or imprisoned for a term not to exceed five (5) years, or both penalties, plus legal expenses, at the Court's discretion."

Article 4. - This Law shall go into effect beginning on January 1, 2004, and the tax credits established herein shall be available for the tax years beginning after December 31, 2003.

(H.R. 4450)

Act No. 238
of August 9, 2008

To amend sub-section (a) of Article 14 and paragraph 2 of sub-section (e) of Article 17 of Act No. 183 of December 27, 2001, as amended, and to add paragraph (58) to sub-section (b) of Section 1022 of Act No. 120 of October 31, 1994, as amended, also known as the "Puerto Rico Internal Revenue Code" of 1994, in order to strengthen the perpetual nature of conservation easements and to clarify the exempt nature of tax benefits granted under Act No. 183 of December 27, 2001, as amended.

STATEMENT OF MOTIVES

The Puerto Rico Conservation Easements Law ("Law"), Act No. 183 of December 27, 2001, as amended, was created to achieve collaboration between the private sector, non-profit organizations and the Government in order to foster the conservation of areas of natural or cultural value, by means of establishing conservation easements in perpetuity.

This Law provides that a conservation easement may be established for diverse purposes, including to preserve the natural, agricultural, forest or scenic attributes of a property, or to preserve its condition as an open space; to protect watersheds; to maintain or improve air or water quality; or to preserve properties with cultural value due to their historic, architectural, or archaeological qualities. One of the most important aspects of a conservation easement is that it grants protection in perpetuity to those lands that possess the aforementioned qualities. However, the Law allows for the conservation easement to extinguish by redemption upon agreement between the landowner and the easement's titleholder.

The purpose of this legislation is to strengthen the perpetual nature of the conservation easement by eliminating the mechanism of redemption as a means to extinguish the conservation easement. Furthermore, it also establishes that the tax credits shall be subject to recovery if the perpetuity requirement is not met. This measure also clarifies the exemption of tax credits granted under this Law, as they do not represent gross income under the provisions of the Puerto Rico Internal Revenue Code of 1994, as amended.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1 - Sub-section (a) of Article 14 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"Article 14. - Extinction

(a) The conservation easement is extinguished when the property reaches a state that prevents it from being enjoyed.

(b)..."

Article 2. - Paragraph 2 of sub-section (e) of Article 17 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"(e) Base Adjustment and Credit Recovery - ...

(2) The owner(s) of the property encumbered by a conservation easement or the donor(s) of eligible land, will be subject to the recovery of the granted credits if the obligations contained in the Deed of Constitution or Donation are not fulfilled, but only when returning the property to its original state has been rendered impossible, pursuant to the provisions in Article 13 hereof.

Furthermore, 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 in the event of noncompliance with the perpetuity requirement, pursuant to the provisions in Article 12 hereof.

The invalidated credit will be regarded as underpayment of income taxes for the year in which any of the aforementioned non-compliances occur, and shall be paid, along with interests, late fees and applicable penalties, in two (2) installments, beginning on the first taxable year in which the noncompliance occurred, with the second installment due the next taxable year.

(3)..."

Article 3. - Paragraph (58) is hereby added to sub-section (b) of Section 1022 of Act No. 120 of October 31, 1994, as

amended, to read as follows:

"1022. Gross Income

(a) ...

(b) Exclusions of Gross Income. - The following items shall not be included as gross income and shall be tax exempt under this Subtitle:

(58) Conservation Easements Tax Benefits. - Tax benefits received under Act No. 183 of December 27, 2001, as amended."

Article 7. - This Law shall become effective immediately upon its approval.

(S.B. 2183)

Law No. 127

Approved on: July 12, 2011

ACT

To amend clauses (5) and (6) of Article 4; clause (2) of Article 8; clause (b) of Article 14; Article 16; clause (2) up to sub-section (g) and sub-section (h) of Article 17, and Article 19 of Act No. 183 of December 27, 2001, as amended, otherwise known as the "Puerto Rico Conservation Easements Law", in order to strengthen the nature of the legal mechanism represented by the conservation easement and to impose additional controls on the granting of tax credits hereunder.

STATEMENT OF MOTIVES

The Puerto Rico Conservation Easements Law, Act No. 183 of December 27, 2001, as amended, was created to achieve collaboration between the private sector, non-profit organizations and the Government of Puerto Rico, in order to foster the conservation of areas of natural or cultural value, by means of establishing conservation easements in perpetuity.

The aforementioned Act provides that a conservation easement may be established for diverse purposes, including to preserve the natural, agricultural, forest or scenic attributes of a property, or to preserve its condition as an open space; to protect watersheds; to maintain or improve air or water quality; or to preserve properties with cultural value due to their historic, architectural, or archaeological qualities.

The purpose of this legislation is to strengthen the nature of the legal mechanism represented by the conservation easement, and to impose additional controls on the granting of tax credits under Act No. 183, supra.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1 - Clauses (5) and (6) of Article 4 of Act No. 183 of December 27, 2001, as amended, are hereby amended to read as follows:

"Article 4.-Definitions

For the purposes of this Chapter, the terms included hereafter shall be defined as follows:

...

(5) "Area of Natural Value" - Open area in its natural state, not developed, within a forest area, of scenic or ecological value, or totally adapted for agricultural use, and whose protection and conservation is important.

(6) "Property of Cultural Value" - Property or land that includes important historic, architectural or archeological features or attributes.

..."

Article 2. - Clause (2) of Article 8 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"Article 8. - Persons who may be titleholder of a conservation easement

The following persons shall be deemed qualified to be titleholders of an easement:

(1)...

(2) a non-profit organization whose main duties or purposes include the protection or conservation of an area or property of natural or cultural value. This organization shall be bona fide and shall have been established at least ten (10) years ago. The Department of the Treasury shall establish a public registry of all non-profit organizations that meet the aforementioned requirements and that have requested to be deemed as qualified to be titleholders to conservation easements."

Article 3. - Clause (b) of Article 14 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"Article 14. - Extinction

(a)

(b) The tax benefits granted hereunder shall cease as soon as the easement is extinguished or modified in any such way that, even when not extinguished, its modification prevents achieving the objectives hereof."

Article 4. - Article 16 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"Article 16. - Tax Benefits

(a) A conservation easement that resulted from a donation will receive the tax benefits granted hereunder, when one of the following requirements is met:

(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 included within the Institute of Puerto Rican Culture's inventory of real estate with cultural value, or has been certified as culturally valuable by the aforementioned entity.

(3) The property is deemed and certified of important natural value for the conservation of the environment by the Conservation Trust of Puerto Rico.

(b) In addition to the above-stated, in order to receive the tax credits granted hereunder for a property or land where a conservation easement has been established, the Secretary of the Treasury must be provided with a copy, and all supporting documents, of the certifications granted by the above-stated entities, duly certifying compliance with the provisions established hereto.

(c) The properties or lands where a government agency demands conservation as a condition or requirement to approve a development project, even when said agency has not specified the particular area that must be preserved, will not be eligible for the tax benefits granted by this Act."

Article 5. - Sub-section (2) is hereby added to clause (g), and clause (h) is amended, in Article 17 of Act No. 183 of December 27, 2001, as amended, to read as follows:

"Article 17. -

...

(g) Any donor interested in obtaining a credit must request a certification hereunder from the Secretary of the Treasury, through the duly filing of a request. The approval of a certification under this Law shall be conditioned to the donor(s) presenting the Secretary of the Treasury with negative debt certificates from the Department of the Treasury and the Municipal Revenues Collection Center (CRIM, by its acronym in Spanish). The donor(s) shall submit to the Secretary of the Treasury any document and/or additional permit that the Secretary may require by regulation.

(1)...

(2) Once the Secretary of the Treasury has issued the above-disposed certification, he shall establish a public registry with certain non-confidential information that identifies the property or land where the conservation easement has been established.

(h) The certification granted under sub-section (g) shall be conditioned by the donor's/donors' compliance with the requirements established through regulation by the Secretary of the Treasury. Said regulation shall establish the standards and criteria to request the following from the donor(s), among other requirements and/or documents:

(1) A copy of the Deed of Donation under which the conservation easement is constituted or the eligible land is donated;

(2) Negative debt certifications from the Department of the Treasury and the Municipal Revenues Collection Center;
and

(3) An appraisal of the conservation easement or the eligible land that meets the following requirements, among others established by regulation:

(i) To be carried out by an appraiser licensed as an Authorized Professional Appraiser, and who possesses the General Certification, the "Land Trust Alliance" Certification, and certifications from the Uniform Standards of Professional

Appraisal Practice and the Rules and Regulations, up-to-date at the moment of drafting the conservation easement's appraisal report, and whose copy must be included in the report;

(ii) To be drafted in a complete appraisal format, in compliance with the Uniform Standards of Professional Appraisal Practice; and

(iii) To be accompanied by a sworn statement signed by the appraiser, certifying that he conducted the duly investigations within the principal agencies, departments or government entities, municipalities or public corporations that acquire properties or lands, with the purpose of verifying whether the property or land that is object of the conservation easement has been subjected to a purchase-sale or forced expropriation by any of said entities.

..."

Article 6. -Article 19 of Act No. 183 of December 27, 2001, as amended, is hereby amended to read as follows:

"Article 19. - Property Tax

For purposes of the payment of property taxes to the Municipal Revenue Collections Center (CRIM), the property encumbered by a conservation easement will be valued in a manner that reflects the limitation in value, if any, imposed by said easement.

The titleholder of the easement or land where the conservation easement has been established shall be exempt from payment of property taxes for the value of the conservation easement.

..."

Article 7. - This Law shall become effective immediately upon its approval.

DEPARTMENT OF THE STATE
Certifications, Regulations, Registry
of Public Notaries and Sale of Laws
I hereby certify that this is a true and exact copy of the original.
July 14, 2011

Signed: (Signature)
Eduardo Arosemena Muñoz
Auxiliary Secretary of Services