

HOUSE COMMITTEE ON



# NATURAL RESOURCES

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## **H.R. 5278: “PUERTO RICO OVERSIGHT, MANAGEMENT AND ECONOMIC STABILITY ACT (PROMESA)”**

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.

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## ***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."<sup>1</sup>
- **Council for Citizens Against Government Waste:** "This legislation creates an essential mechanism to thwart a taxpayer bailout of Puerto Rico's fiscal failures."<sup>2</sup>
- **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."<sup>3</sup>
- **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..."<sup>4</sup>
- **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."<sup>5</sup>

More support can be found on our webpage at <<http://1.usa.gov/IWNZ8vZ>> 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

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<sup>1</sup> Pacific Investment Management Company. <<http://bit.ly/IzmN5ot>>.

<sup>2</sup> Council for Citizens Against Government Waste. CCAGW Supports HR 4900. <<http://1.usa.gov/IWet3x9>>.

<sup>3</sup> Securities Industry and Financial Markets Association. Congressional ASction to Address the Peurto Rico Municipal Market and Contagion. <<http://1.usa.gov/IWeeiw4>>.

<sup>4</sup> Americans for Tax Reform. *PROMESA* Contains No Bailout, No "Super Chapter 9." <<http://1.usa.gov/IT4ROog>>.

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



## 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 Government Waste.*

### 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 10<sup>th</sup> 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 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.

*"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 Pedro Pierluisi*



## 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 framework<sup>6</sup> 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 10<sup>th</sup> 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.*

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<sup>6</sup> Amey Stone, Barron's: Income Investing, <<http://on.barrons.com/lrjH44>>.





## **SECTION BY SECTION ANALYSIS OF THE BILL**

### **Sec. 1: Short Title; Table of Contents**

This section establishes the short title of the act as the “Puerto Rico Oversight, Management, and Economic Stability Act” or “PROMESA.” The bill contains seven 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; Title VI – Creditor Collective Action; and Title VII – Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms.

### **Sec. 2: Effective Date**

This section defines 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, this section 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 will be as well. 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**

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

### **Sec. 5: Definitions**

This section defines commonly used terms in the Act.

### **Sec. 6: Placement**

This section 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 to act as a buffer against claims this legislation will lead to similar laws being applied to states.

### **Sec. 7: Compliance with Federal Laws**

This section 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: Financial Oversight and Management Board**

This section 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. Furthermore, this section authorizes the creation of an Oversight Board for any other territory of the United States if such territory, by duly adopted resolution, requests an Oversight Board. In general, the Oversight Board is granted broad authority over territorial instrumentalities, and is empowered to require that instrumentalities establish fiscal plans and budgets in accordance with sections 201 and 202.

Additionally, this section provides for the appointment of seven individuals to the Oversight Board through a process that ensures that a majority of its members are effectively chosen by Republican congressional leaders on an expedited timeframe, while upholding the President's constitutional role in making appointments.

The selection process requires congressional leaders to provide lists of names to the President for appointment to the Oversight Board. The individuals comprising the lists are required to have knowledge and expertise in finance, municipal bond markets, management, law, or the organization or operation of business or government and may not be an officer, elected official, employee, or candidate for office of the territorial government prior to appointment. Once the lists are provided, the President has until September 30, 2016 to either select from the lists or appoint someone with the advice and consent of the Senate. If the President fails to appoint the full membership by that deadline, then the President must select candidates from the provided lists before December 1, 2016.

Each voting member's service on the Oversight Board is subject to a limit 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. The members are not paid for their service but shall be reimbursed reasonable and necessary expenses.

This section also outlines the authority of the Oversight Board to adopt bylaws and procedures required to conduct its business, provided 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, to veto a legislative act under section 204, or to deem an infrastructure project as a Critical Project under section 503.

In addition to the voting members appointed by the President, this section permits the Governor, or the Governor's designee to serve on the Oversight Board in an ex officio capacity without voting rights. However, the Oversight Board, upon a majority vote, may



conduct its business in an executive session of its voting members, to the exclusion of the ex officio member.

### **Sec. 102: Location of Oversight Board**

This section requires the Oversight Board to maintain offices in the territory it oversees and gives it the authority to have offices in other locations as necessary. Furthermore, Federal agencies are authorized to provide facilities and equipment for the Oversight Board to use.

### **Sec. 103: Executive Director and Staff of Oversight Board**

This section enables the Oversight Board to hire an executive director, revitalization coordinator, and staff as 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**

This section sets forth the powers of the Oversight Board. Powers relating to the routine day-to-day operation of the Oversight Board which includes: holding hearings and sessions; obtaining official data from the territorial and Federal government, as well as creditors; accepting gifts; entering into contracts; and accepting support services from the General Services.

Furthermore, the section establishes powers relating to achieving fiscal stability and creditworthiness of a territory which includes: issuing subpoenas; certifying voluntary agreements between creditors and debtors, protecting preexisting voluntary restructuring agreements; filing a petition to restructure or to submit or modify a plan of adjustment on behalf of a debtor; seeking judicial enforcement of its authority to carry out the purposes of the act; imposing appropriate penalties for violations of valid orders of the Oversight Board; 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.

The Committee recognizes the failure of an amendment to execute properly at markup, which has caused subparagraph (i)(3) to not operate as intended. The goal of this provision is to ensure preexisting, voluntary deals negotiated between creditors and debtors stay intact upon passage of PROMESA. However, this provision should not be used to justify last minute, haphazard deals seeking to avoid Oversight Board scrutiny. As such, any clarifications made to this subparagraph will provide a date certain by which voluntary negotiations must have been completed.

### **Sec. 105: Exemption from Liability for Claims**

This section 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 or out of the Oversight Board's issuance of a subpoena (Sec. 104(f)(2)), any action arising out of this Act is required 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 the District of 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**

This section 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**

This section prevents the territorial government or legislature from exercising any control over the Oversight Board, or from enacting, implementing, or enforcing any legislation, 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**

This section 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**

This section establishes the method for developing Fiscal Plans for territorial governments and instrumentalities that provide the appropriate elected officials with the autonomy to develop such Fiscal Plans with guidance from the Oversight Board. To initiate the process, the Oversight Board determines a schedule by which the Governor must provide an approvable and certifiable Fiscal Plan. If the Governor fails to draft an acceptable Fiscal Plan as determined by the Oversight Board by the deadlines set forth in the schedule, then the Oversight Board will develop and adopt the Fiscal Plan, which shall be deemed approved by the Governor.

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 prevent unlawful inter-debtor transfers of funds.

The Committee acknowledges the concern as to the ambiguity of the language regarding the funding of public pension systems. To clarify, 201(b)(1)(C) tasks the Oversight Board with ensuring fiscal plans “provide adequate funding for public pension systems.” This language should not be interpreted to reprioritize pension liabilities ahead of the lawful priorities or liens of bondholders as established under the territory’s constitution, laws, or other agreements. While this language seeks to provide an adequate level of funding for pension systems, it does not allow for pensions to be unduly favored over other indebtedness in a restructuring.

### **Sec. 202: Approval of Budgets**

This section outlines the process for developing annual budgets. Similar to the development of Fiscal Plans, the Oversight Board will establish a schedule 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**

This section requires the Governor to submit a report at the end of each fiscal quarter 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 inconsistency and provide an opportunity for the Governor to correct the inconsistency. If the Governor fails to correct such inconsistency 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**

This section imposes a requirement that the Legislature of a territorial government 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 “take such actions as it considers necessary,” Including preventing enforcement of such laws.

Furthermore, this section 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. The Oversight Board also 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, and requires such contracts and executive actions to promote market competition.

This section prohibits the enactment of new laws authorizing budgetary transfers between instrumentalities during the timeframe between the enactment of PROMESA and the appointment of the Oversight Board’s full membership. If any transfers of funds or assets during that period occur, such transfers of funds or assets are subject to review and reversal by the Oversight Board. Any transfer or reprogramming of funds that occurs after that time period will be subject to Oversight Board approval if such transfer or reprogramming of funds would require legislative approval.

### **Sec. 205: Recommendations on Financial Stability and Management Responsibility**

This section 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. Additionally, the Oversight Board may make recommendations concerning the establishment of alternatives to pay for pensions, and the privatization and commercialization of entities within 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**

This section establishes the requirements an entity must achieve in order to obtain a certification to enter into Title III. The Oversight Board, in its sole discretion, must certify by an affirmative vote of at least five of the seven members 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 has 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.

### **Sec. 207: Oversight Board Authority Related to Debt Issuance**

This section prohibits the territorial government from issuing debt without prior approval from the Oversight Board.

### **Sec. 208: Required Reports**

This section 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 should occur, the precise use of funds by the Oversight Board, and any other activities the Oversight Board deems necessary.

Two additional reporting requirements on the Oversight Board are: 1) an examination of tax abatement agreements in place between the territorial government and private corporations; and 2) quarterly assessments on the amount of cash flow available for the payment of debt service on all notes, bonds, debentures, credit agreements, or other instruments for money borrowed.

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### **Sec. 209: Termination of Oversight Board**

This section establishes the 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 consecutive years, the territorial government has developed its Budgets in accordance with modified accrual accounting standards; and (3) the territorial government has achieved balanced budgets during those four consecutive years.

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

This section 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. Additionally, this section subjects any claim to which the United States is found to be liable to the appropriation process.

Finally, this section further insulates the Federal government from any expenditure by expressly prohibiting the authorization of Federal funds for the payment of any liability of the territorial government.



## **Sec. 211: Analysis of Pensions**

This section requires the Oversight Board to analyze pensions of the territorial government if the Oversight Board determines that the pension system is underfunded. Such an analysis includes 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**

This section authorizes the Oversight Board to intervene in any litigation filed against the territorial government.

## **TITLE III – ADJUSTMENT OF DEBTS**

### **Sec. 301: Applicability of Other Laws; Definitions**

This section 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.

Furthermore, this section provides applicable definitions for Title III, and requires the Oversight Board to determine whether creditors within an entity are “substantially similar” based on whether the claims are secured and whether such claims have priority over other claims.

### **Sec. 302: Who May be a Debtor**

This section limits access to Title III by allowing only entities that are subject to an Oversight Board and have received the appropriate certification pursuant to section 206(b) to be considered a debtor.

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

This section 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 a territory and its instrumentalities. Several exceptions are provided within this section prohibiting the application of any territory law prescribing a method of composition or moratorium on the indebtedness of the territory or its instrumentalities to a non-consenting creditor. Furthermore, this section preempts the governor from issuing any unlawful executive orders that 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**

This section exclusively authorizes the Oversight Board to initiate a proceeding for debt restructuring of an entity. Furthermore, the section 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**

This section 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**

This section 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.

This section further 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**

This section outlines the process for determining venue. Generally, venue for 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 the District of 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.

If the Oversight Board so determines, venue for the case will be in the district court for the jurisdiction in which the Oversight Board maintains an office that is located outside the territory. In the case of Puerto Rico, venue will probably be in the District of Columbia.

### **Sec. 308: Selection of Presiding Judge**

This section 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**

This section allows a district court to abstain in the interest of justice from hearing a particular proceeding arising in or related to a case under Title III.

### **Sec. 310: Applicable Rules of Procedure**

This section applies the Federal Rules of Bankruptcy Procedure to a case brought under Title III.

### **Sec. 311: Leases**

This section 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**

This section 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**

This section 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**

This section outlines the conditions necessary to having a plan confirmed by a court. Under this section, the court shall confirm a plan if: 1) the plan complies with the referenced statutes in section 301; 2) the plan complies with Title III; 3) the debtor is not prohibited by law from undertaking any of the actions of the plan; 4) unless otherwise agreed to, the holders of claims specified in 11 U.S.C. 507(a)(2) will receive cash equal to the allowed amount of such claim; 5) 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; 6) the plan is in the best interest of the creditors and is feasible, which must include a consideration as to 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 7) the plan is consistent with the Fiscal Plan as established under Title II of PROMESA.

By incorporating consistency with the Fiscal Plan into the requirements of confirmation of a plan of adjustment, the Committee has ensured lawful priorities and liens, as provided for by the territory's constitution, laws, and agreements, will be respected in any debt restructuring that occurs.

### **Sec. 315: Role and Capacity of Oversight Board**

This section 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**

This section permits the court to authorize the debtor's reasonable payment of professionals, such as 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**

This section authorizes the Court to permit payment to professionals while the Title III case is ongoing.

## **TITLE IV - MISCELLANEOUS PROVISIONS**

### **Sec. 401: Rules of Construction**

This section 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**

This section maintains the right for Puerto Rico to conduct a plebiscite to determine its future political status.

### **Sec. 403: First Minimum Wage in Puerto Rico**

This section grants the Governor, subject to approval by the Oversight Board, the authority to designate a time period no greater than four 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**

This section exempts Puerto Rico from the regulations introduced 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. Government Accountability Office (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.

This section states that it is the sense of Congress for the Census Bureau to include Puerto Rico and the other territories in data collection efforts.



### **Sec. 405: Automatic Stay upon Enactment**

This section 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. The stay will remain in effect until the later of six months after the date of enactment or February 15, 2017. However, an extension may occur for 75 days if the Oversight Board certifies that this time is needed to complete a voluntary modification under Title VI, or for 60 days if the U.S. District Court for the District of Puerto Rico makes a similar determination.

If a party is determined to be subject to irreparable damage because of the imposition of the stay, the District Court is authorized to grant relief from the stay to such party.

The stay does not authorize the Government of Puerto Rico to stop payment on any of its liabilities. On the contrary, to the extent the Oversight Board determines it is feasible, the Government must continue to make scheduled interest payments during the stay.

The Committee views the stay as a critical component of the legislation. First, it preempts a rush to the courts by aggrieved creditors – an event that could increase the impact of and accelerate Puerto Rico’s debt crisis. Second, the stay ensures order during the initial few months of the Oversight Board’s existence, thereby allowing the Oversight Board the opportunity to establish its foundational structure and begin its monumental task of ensuring Puerto Rico regains access to capital markets.

### **Sec. 406: Purchases by Territory Governments**

This section authorizes Puerto Rico and the other territories to make purchases through the General Services Administration.

### **Sec. 407: Protection from Inter-Debtor Transfers**

This section 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**

This section 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**

This section 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 including equitable access to Federal health care programs; recommended changes to Federal law and programs that would spur sustainable, long-term growth; the economic consequences of a Puerto Rico Department of Health regulation; and additional information as deemed necessary.

### **Sec. 410: Report**

This section requires the GAO to submit a report to the House Committee on Natural Resources and Senate Committee on Energy and Natural Resources describing the conditions that led to the level of debt per capita, how the actions of the territorial government improved or impaired the territory's financial conditions, and recommendations that could be taken by Congress or the Administration to avert future indebtedness of territories and states, while respecting sovereignty and constitutional parameters.

## **TITLE V – PUERTO RICO INFRASTRUCTURE REVITALIZATION**

### **Sec. 501: Definitions**

This section provides the definitions to commonly used phrases and words throughout Title V, including a reference to the statutory authority (Act 76) within Puerto Rico on which Title V is premised.

### **Sec. 502: Position of Revitalization Coordinator**

This section establishes a Revitalization Coordinator under the Oversight Board to carry out the purposes of this title, and the process of appointing the Revitalization Coordinator. The position will expire upon the termination of the Oversight Board.

### **Sec. 503: Critical Projects**

This section 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. If the project adversely impairs Puerto Rico's established land use plans, or an approved integrated resources plan, then such project will be ineligible for Critical Project designation.

In determining whether a project should be classified as a Critical Project, the Revitalization Coordinator must consider both recommendations from the Governor and comments from Puerto Rico's residents.

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.

The Committee does not intend for projects that are not approved to be Critical Projects or that are deemed to be ineligible for Critical Project designation to be precluded from reapplying for Critical Project designation. If a project receives an adverse ruling, the Committee would encourage the project proponent to amend their proposal, and resubmit it for Critical Project designation.

### **Sec. 504: Miscellaneous Provisions**

This section 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 the Oversight Board if the Revitalization Coordinator or Puerto Rico agencies are failing to expedite the project as envisioned by this Title. Furthermore, the Section ensures Critical Projects approved prior to the termination of the Oversight Board receive continued expedited service even after the termination of the Board.

### **Sec. 505: Federal Agency Requirements**

This section 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, and expedites to the greatest extent possible the completion of any required Federal action connected to a Critical Project.

### **Sec. 506: Judicial Review**

This section 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. The District Court for the District of Puerto Rico has jurisdiction for claims brought under this title.

### **Sec. 507: Savings Clause**

This section 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**

This section establishes a voluntary process for debt restructuring by debtors and creditors in a territory or territorial instrumentality covered by this bill. The Oversight

Board is required to divide the creditors of each debtor into pools based upon criteria 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 proposal. Dissenting creditors within a pool can be ordered into the Qualifying Modification by a district court. All pools of a debtor must meet the voting threshold in order for a Qualifying Modification to be approved.

### **Sec. 602: Applicable Law**

This section provides that United States law – and not international law or other foreign jurisdictional law – shall apply to Title VI.

## **TITLE VII – THE SENSE OF CONGRESS REGARDING PERMANENT, PRO-GROWTH FISCAL REFORMS**

### **Sec. 701: Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms**

This section recognizes that any solution to Puerto Rico’s economic crisis should include lasting, pro-growth propositions, including those promoting free-flowing capital between the United States and its possessions.