

(S. B. 655)

(No. 173-2014)

(Approved October 13, 2014)

AN ACT

To create the “Puerto Rico Creative Industries Promotion Act”; set forth the public policy of the Commonwealth of Puerto Rico to stimulate and promote creative industries; establish the duties of the Trade and Export Company with regard to creative industries; create the Puerto Rico Creative Industries Advisory Council and establish the duties thereof; appropriate one million dollars (\$1,000,000) to the Trade and Export Company; add a new subsection (ff) to Section 5.01 of Act No. 83-1991, as amended, known as the “Municipal Property Tax Act of 1991”; amend paragraph (v) of subsection (k) of Section 3, and paragraphs (i) and (ii) of subsection (a) of Section 5 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services”; establish eligibility under Act No. 62-2014, known as the “Micro, Small-, and Medium-sized Business Promotion Act”; and establish eligibility under Act No. 120-2014, known as the “SMBs Job Creation and Retention Incentive Act”; extend benefits to creative industries; and for other related purposes.

STATEMENT OF MOTIVES

The People of Puerto Rico are currently facing serious economic challenges. The second decade of the 21st century has been particularly marked by the collapse of the Island’s economic structure, coupled with an unprecedented crisis in public finances. Economists agree that the economy of Puerto Rico entered a recession in 2006 from which it has not recovered yet. In the words of economist Gustavo Vélez:

The first decade of the new century and millennium was not good for Puerto Rico. For the first time since the beginning of the industrialization project in the mid-20th century, economy has experienced a structural stagnation. Economists have called this

period the *lost decade*, given the economic and social setbacks caused by the severe recession that we have been experiencing since 2006.

Ten years in the history of a country is a long time and, if we take into account the momentous economic and technological changes that took place during the first decade of the millennium, the effects thereof over time could be even more serious.

While Puerto Rico slumbered, other economies progressed. Not-so-distant countries, such as Brazil, Panama, Colombia, Chile, and the Dominican Republic, among others, were able to grow and further their economic agendas. Apart from Haiti, all the economies of this hemisphere adapted their productive structures to the new challenges posed by a more complex and competitive global economy.

The net effect is that Puerto Rico has lost its competitive edge within this hemisphere and, in order to regain lost ground, we must work hard and make the right decisions to overtake our competitors. After setting an example for other countries to follow, our economy has now lost global relevance. Gustavo Vélez, “La próxima década,” *El Nuevo Día*, April 22, 2012.

The current crisis requires bold and innovative measures to reinvent the economic structure of our Island. As Florida stated,

History shows that enduring social change occurs not during economic boom times, like the 1920s or 1990s, but in periods of crisis and questioning such as the 1930s—and today. The task before us is to build new forms of social cohesion appropriate to the new Creative Age—the old forms don’t work, because they no longer fit the people we’ve become [...]. Richard Florida, *The Rise of the Creative Class*:

Revisited. New York: Basic Books, xxiv, [prologue of the original edition] (2012).

One of the alternatives for the Island to come out of this situation and permanent recession is to take advantage of the sources of creativity and innovation within our people as well as of our existing natural resources, and maximize their use. Florida further stated that “the essential task before us is to unleash the creative energies, talent, and potential of everyone—to build a society that acknowledges and nurtures the creativity of each and every human being. Creativity is truly a limitless resource; it is something we all share.” *See*, Florida, *supra*, xi, [prologue of the original edition.]

Creative industries are a burgeoning market of vast productivity within the economies of different countries, and even cities. The *creative industries* concept is relatively new and its meaning may vary depending on the policy-making of the countries or cities that wish to incentivize such industries. Pursuant to the British model implemented in 1997, and upon the creation of the Creative Industries Task Force, “*creative industries* are defined as those requiring creativity, skill, and talent, with potential for wealth and job creation” United Nations Conference on Trade and Development, *Creative Economy Report 2010*, p.6 (http://unctad.org/en/docs/ditctab20103_en.pdf). Furthermore, the United Nations Conference on Trade and Development (UNCTAD) defined creative industries as “any economic activity producing symbolic products with a heavy reliance on intellectual property and for as wide a market as possible” (2010, p.7). According to a more detailed definition offered by UNCTAD, creative industries:

a. Are the cycles of creation, production, and distribution of goods and services that use creativity and intellectual capital as primary inputs;

b. Constitute a set of knowledge-based activities, focused on but not limited to arts, potentially generating revenues from trade and intellectual property rights;

c. Comprise tangible products and intangible intellectual or artistic services with creative content, economic value, and market objectives;

d. Stand at the crossroads of the artisan, services, and industrial sectors; and

e. Constitute a new dynamic sector in world trade. *See*, Creative Economy Report 2010, *supra*, p. 7-8.

The *creative industries* concept emerged in 2001 in John Howkins' book entitled *The Creative Economy: How People Make Money and Ideas*. In its introduction, Howkins (2001) states that, "creativity is not necessarily an economic activity but may become so when it produces an idea with economic implications or a tradeable product" (p. x).

As mentioned in a relevant report from the United Nations on creative industries:

In 2008, the eruption of the world financial and economic crisis provoked a drop in global demand and a contraction of 12 per cent in international trade. However, world exports of creative goods and services continued to grow, reaching \$592 billion in 2008 — more than double their 2002 level, indicating an annual growth rate of 14 percent over six consecutive years. This is a confirmation that the creative industries hold great potential for developing countries that seek to diversify their economies and leapfrog into one of the most dynamic sectors of the world economy. United Nations Conference on Trade and Development, *Creative Economy Report 2010*, p.6 (http://unctad.org/en/docs/ditctab20103_en.pdf), p.254.

According to UNCTAD, “the notion of *creative entrepreneurs* is also gaining ground to characterize successful and talented, entrepreneurial people who are able to transform ideas into creative products or services for society.” *See*, Creative Economy Report 2010, *supra*, 38. These entrepreneurs become agents of change that not only contribute to the economic impact, but also to the innovation, social cohesion, and urban regeneration. Because of the nature of creative industries, most of the economic activity is generated by small businesses, thus, it is necessary to establish the mechanisms that allow for their optimum development.

Creative industries may and should be incentivized by the Government. However, the global trend is that cities, and even sectors within those cities, are the ones that play a key role in fostering creative economy. According to Florida (2012), “cities are the key economic and social organizing units of the Creative Age.” (p. 393-394). This gave birth to *creative cities*, to wit: London, Berlin, Toronto, Vancouver, Cincinnati, and Tampa Bay in Florida, among others.

For all of the foregoing, creative industries shall be promoted in Puerto Rico both by the Government of the Commonwealth of Puerto Rico and by its municipalities. The main objective of this Act is to develop an island-wide creative industries ecosystem among the public and private sectors, the academia, and the communities, putting greater emphasis on efforts aimed at the strategic sectors of our municipalities.

This Legislative Assembly deems it necessary to set forth the public policy on the promotion of creative industries as key elements in the creation of wealth and jobs in Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.

This Act shall be known as the “Puerto Rico Creative Industries Promotion Act.”

Section 2.- Declaration of Public Policy.

It shall be the public policy of the Commonwealth of Puerto Rico to stimulate and foster existing and potential creative industries. The Commonwealth of Puerto Rico, its agencies, instrumentalities, public corporations, and municipalities, separately and in conjunction with the business community, the civil society, and the Academia shall be required to take the appropriate measures to promote and incentivize creative industries as a key element for creating jobs and wealth.

Section 3.- Definitions.

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

(a) Creativity.- The ability to bring into existence a new artistic object or form, a new solution to a problem, a new method or device, the creation of a work of art or a new combination of existing elements.

(b) Creative Industries.- For purposes of this Act, Creative Industries shall be those business with potential for creating jobs and wealth, mainly through the export of creative goods and services in the following sectors: design (graphic, industrial, fashion, and interior design); arts (music, visual arts, performing arts, and publishing); media (application, videogames, online media, digital, and multimedia content development); creative services (architecture and creative education).

(c) Creative Teams.- Networks and partnerships established between creative business and industries to stimulate common activities, networking, or to achieve economies of scale.

Section 4.- Primary Responsibility.

The Trade and Export Company shall be primarily responsible for implementing the public policy of the Commonwealth of Puerto Rico on creative industries, as provided in this Act.

Section 5.- Powers and Duties of the Trade and Export Company.

The Trade and Export Company shall have the following powers and duties:

- a. To formulate policy on the promotion and development of creative industries in Puerto Rico;
- b. To create programs to support and foster creative industries, separately or in conjunction with other agencies and departments of the Commonwealth of Puerto Rico, the municipalities, and public corporations;
- c. To hold seminars and conduct research on creative industries;
- d. To disseminate information about the economic, social, and cultural impact of intellectual property rights on creative industries within the jurisdiction of the Commonwealth of Puerto Rico;
- e. To design tools that provide assistance to creative individuals and teams in selling their products in local and global markets;
- f. To collaborate with public and private funding partners in promoting creative industry-related activities so as to implement and promote technical collaboration projects in coordination with other relevant entities;
- g. To promote networking between creative individuals and teams involved in creative industries.

h. To work in conjunction with the Puerto Rico Creative Industries Advisory Council to further the public policy set forth in this Act;

i. To carry out tasks as are necessary to help promote creative industries in Puerto Rico.

Section 6.- Puerto Rico Creative Industries Advisory Council.

The Puerto Rico Creative Industries Advisory Council is hereby created and shall be composed of nine (9) members: two (2) representatives from each of the sectors of the creative industries, namely, design, arts, creative media and services; and one (1) representative of the Academia, who shall be designated by the Executive Director of the trade and Export Company to serve *ad honorem* for a term of four (4) years. The Secretary of the Department of Economic Development and Commerce, the Director of the Puerto Rico Trade and Export Company, the Director of the Industrial Development Company, the Executive Director of the Puerto Rico Motion Picture Arts, Sciences and Industry Development Corporation, and the Executive Director of the Puerto Rico Science, Technology and Research Trust, and the Executive Director of the Institute of Puerto Rican Culture shall be ex officio members of the Advisory Council without voting rights.

Section 7.- Duties of the Puerto Rico Creative Industries Advisory Council.

The Advisory Council shall have the following duties:

a. To make recommendations in connection with the public policy on the promotion and development of creative industries in Puerto Rico;

b. To raise awareness of and develop a deeper understanding about creative industries and their contribution to the economy of Puerto Rico;

c. To design strategies that allow the government, the private sector, and the Academia to work together in the development and promotion of creative industries;

d. To devise short-, medium-, and long-term strategic plans for the development of the creative industries identified herein;

e. To carry out tasks as are necessary to help promoting creative industries in Puerto Rico.

Section 8.- Creative Industries Registry.

Creative individuals and teams interested in availing themselves of the benefits or incentives provided by the laws or regulations of the Commonwealth of Puerto Rico, or by ordinances issued by the municipalities of Puerto Rico, shall register in the Creative Industries Registry, to be established by the Trade and Export Company. For such purposes, the Trade and Export Company shall prescribe by regulations the process to register creative industries and to issue certifications attesting to such registration in accordance with the provisions of this Act.

Section 9.- Creative Industries Statistics.

The Puerto Rico Institute of Statistics created under Act No. 209-2003, as amended, shall draft an annual report on the social, economic, statistical, labor aspects indices, among others, as are necessary for the development of creative industries in Puerto Rico. The University of Puerto Rico shall collaborate with the Puerto Rico Institute of Statistics in the data preparation and analysis as directed by this Act. The Puerto Rico Creative Industries Advisory Council and the Puerto Rico Institute of Statistics may agree on any additional fields that may be included in said report.

Section 10.- Creative Industries and the Public and Private Education System.

In order to guarantee an ongoing supply of creative talent and to stimulate creativity and innovation among the students of the public education system of the Island, the Puerto Rico Creative Industries Advisory Council shall draft measures

to foster the connection between creativity, education, and economic development in an effort to encourage young people's creative potential. To such effects, the Puerto Rico Creative Industries Advisory Council shall join efforts with the Department of Education, the School of Plastic Arts, and the Conservatory of Music, as well as with private educational entities.

Section 11.- Annual Convention of Creative Industries.

The Trade and Export Company and the Advisory Council, in coordination with the Department of Economic Development and Commerce, and the Institute of Puerto Rican Culture shall hold a Creative Industries Annual Convention for the promotion thereof and to foster networking among creative individuals and teams in Puerto Rico and internationally.

Section 12.- International Promotion of Puerto Rico Creative Industries.

The Trade and Export Company is hereby directed to adopt strategies and assist in the promotion, at the international level, of creative industries subject to this Act and duly registered in the Creative Industries Registry created herein.

Section 13.- Appropriations to the Trade and Export Company.

The sum of one million dollars (\$1,000,000) is hereby appropriated from the "Jobs and Economic Activity Promotion Fund" created by Act No. 73-2014, under the control and custody of the Office of Management and Budget, in order to achieve the purposes of this Act. For subsequent years, the necessary funds to attain the purposes of this Act shall be earmarked in the Joint Resolution of the General Expense Budget of the Commonwealth of Puerto Rico.

Section 14.- Rulemaking Authority.

The Puerto Rico Trade and Export Company shall adopt regulations as are necessary to achieve the purposes of this Act, in accordance with Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative

Procedures Act of the Commonwealth of Puerto Rico,” within ninety (90) days after the effective date of this Act. The absence of any regulations provided for in this Act shall not prevent the application thereof.

Section 15.- A new subsection (ff) is hereby added to Section 5.01 of Act No. 83-1991, as amended, known as the “Municipal Property Tax Act of 1991,” to read as follows:

“Section 5.01.- Property Exempt from Taxation.

The following assets shall be exempted from the payment of all personal and real property taxes:

(a) ...

(ff) Real and personal property belonging to creative industries, that are used for such purposes, and registered pursuant to the provisions of the “Puerto Rico Creative Industries Promotion Act,” in cases where the Municipality chooses to issue an ordinance authorizing such exemptions, whether in whole or in part, and in the most convenient manner so as to promote the establishment and development of such industries.”

Section 16.- Paragraph (v) of subsection (k) of Section 3 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” is hereby amended to read as follows:

“Section 3.- Definitions.

For purposes of this Act, the following terms, phrases, and words shall have the meaning and scope stated below, except when it is otherwise clearly indicated, and terms used in the singular form shall also include the plural form, and vice versa:

(a) ...

(b) ...

(c) ...

...

(k) Eligible services. - Eligible services include the following services which are, in turn, considered services for export:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) Creative Industries defined by law as those business with potential for creating jobs and wealth, mainly through the export of creative goods and services in the following sectors: design (graphic, industrial, fashion, and interior design); arts (music, visual arts, performing arts, and publishing); media (application, videogames, online media, digital, and multimedia content development); creative services (architecture and creative education).”

Section 17.- Paragraphs (i) and (ii) of subsection (a) of Section 5 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” is hereby amended to read as follows:

“Section 5.- Taxes on Personal or Real Property.

(a) In General.-

(i) Except as provided in paragraph (ii) of this subsection, the personal or real property of an eligible business under the provisions of Section 3, subsection (k), paragraphs (v), (viii), (xii), and (xiii) of this Act, used in the operation of the activity covered by a decree, shall enjoy a ninety percent (90%) exemption from municipal and state taxes during the exemption period set forth in Section 8 of this Act.

(ii) The personal and real property of an eligible business described in Section 3, subsection (k), paragraphs (v), (viii), (xii), and (xiii) of this Act shall be fully exempt from personal and real property taxes during the first five (5) years counting from the date it began operations.

(b) ...”

Section 18.- Eligibility for Benefits under Act No. 62-2014, known as the “Micro, Small-, and Medium-sized Business Promotion Act.”

Creative Industries certified under this Act may avail themselves of the fast-track process for issuing use permits, government procurement reserves, preferential rent program, preferred application process to access reserves created to fund proposals submitted by micro, small-, and medium-sized businesses from the Employment and Training Opportunities Development Fund and other additional general incentives in accordance with the eligibility criteria and requirements established in Act No. 62-2014, known as the “Micro, Small-, and Medium-sized Business Promotion Act.”

Section 19.- Eligibility for Benefits under Act No. 120-2014, known as the “SMBs Job Creation and Retention Incentive Act.”

Creative industries certified under this Act may avail themselves of the benefits and incentives available under Act No. 120-2014 upon execution of an agreement between the Eligible SMBs with the Puerto Rico Trade and Export Company (PRTEC).

Section 20.- Repealing Clause.

Any laws, rules, and regulations, or parts thereof, that are inconsistent with the provisions of this Act shall be repealed or modified accordingly upon the approval of this Act.

Section 21.- Severability Clause.

If any section, subsection, part, paragraph, or clause of this Act or the application thereof to any person or circumstances were held to be unconstitutional by a Court with jurisdiction, such holding shall not impair or invalidate the remaining provisions of this Act, but rather be limited and extensive to the subsection, part, paragraph, or clause of this Act, or the application thereof, thus held to be unconstitutional.

Section 20.- Effectiveness.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 173-2014 (S. B. 655)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Puerto Rico Creative Industries Promotion Act”; set forth the public policy of the Commonwealth of Puerto Rico to stimulate and promote creative industries; establish the duties of the Trade and Export Company with regard to creative industries; create the Puerto Rico Creative Industries Advisory Council and establish the duties thereof; appropriate one million dollars (\$1,000,000) to the Trade and Export Company; add a new subsection (ff) to Section 5.01 of Act No. 83-1991, as amended, known as the “Municipal Property Tax Act of 1991”; etc.

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

In San Juan, Puerto Rico, on this 9th day of March, 2015.

Juan Luis Martínez Martínez
Acting Director