

Memorandum of Agreement

H.R. 870 Puerto Rico Chapter 9 Uniformity Act of 2015

Resident Commissioner Pedro R. Pierluisi, in his capacity as Puerto Rico’s representative to the federal government, has introduced legislation, H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act*, which would empower the government of Puerto Rico to authorize one or more of its government-owned corporations, if they were to become insolvent, to restructure their debts under Chapter 9 of the U.S. Bankruptcy Code, as the 50 state governments are empowered to do.

State governments themselves are not eligible to adjust their debts under Chapter 9, but a “political subdivision or public agency or instrumentality of a State”—called a “municipality” in the Code—can adjust its debts under Chapter 9. However, a provision in the Code provides that the term “State” includes Puerto Rico, “except for the purpose of defining who may be a debtor” under Chapter 9.

Thus, Congress has empowered each state government to authorize its public instrumentalities to adjust their debts under Chapter 9, but has not empowered the government of Puerto Rico to do the same for its instrumentalities. A state government may choose to authorize its public instrumentalities to file for Chapter 9 protection, or a state government may decline to do so. Under current law, the government of Puerto Rico does not even have that choice. This is paradoxical, since Puerto Rico businesses and residents are eligible to seek bankruptcy relief under all other sections of the Code.

In June 2014, the Government of Puerto Rico enacted Act 71-2014, the “Puerto Rico Public Corporation Debt Enforcement and Recovery Act,” which sought to authorize certain government-owned corporations to restructure their debts. Multiple investment firms that own bonds issued by public corporations that were subject to the provisions of Act 71 sued the Puerto Rico government in U.S. federal district court, arguing that the local law—which differs from Chapter 9 in numerous respects—violates the U.S. Constitution and the Puerto Rico Constitution.

On February 6, 2015, the U.S. District Court held that Act 71 is preempted by the U.S. Bankruptcy Code and is therefore invalid under the Supremacy Clause of the U.S. Constitution. In addition, the U.S. District Court declined to dismiss the investment firms’ claims that Act 71 violates the Contract Clause and the Takings Clause of the U.S. Constitution.

In the wake of the U.S. District Court decision, and in light of the financial problems affecting certain Puerto Rico public corporations and the absence of a trusted mechanism to protect the public interest and creditors, Congress should act swiftly to enact H.R. 870. This will help ensure that vital public services, such as the delivery of electricity, gas and clean water, are not interrupted in the short-term, that the jobs of the thousands of hard-working U.S. citizens are sustained in the long-term, and that the collective interests of creditors are protected.

If Congress does not act, government-owned corporations in Puerto Rico will be left without any legal framework—at either the federal or territory level—to adjust their debts. H.R. 870 would enable the Puerto Rico government to authorize its government-owned corporations to utilize the tried-and-true Chapter 9 procedure if it becomes necessary as a last resort, under the supervision of an impartial federal bankruptcy judge in Puerto Rico, based on legal precedent established in Chapter 9 proceedings that have taken place throughout the nation.

The Congressional Budget Office has confirmed that the bill, if enacted, would not require any additional expenditures on the part of the federal government.

Furthermore, the Government of Puerto Rico has indicated that, while it would appeal the District Court’s decision invalidating Act 71, it would also undertake all efforts to support enactment of H.R. 870.

The undersigned express their unanimous and unconditional support for H.R. 870.

[SIGNATURE PAGE TO FOLLOW]



Pedro R. Pierluisi
Member of Congress



Puerto Rico Chamber of Commerce



MIDA of Puerto Rico



Puerto Rico Manufacturers Association



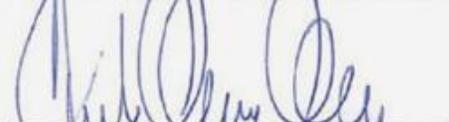
P.R. General Contractors Association



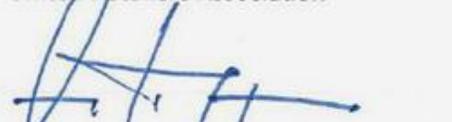
P.R. Pharmaceutical Industry Association



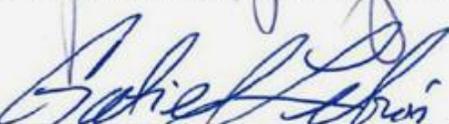
United Retailers Association



Puerto Rico Home Builders Association



P.R. Mortgage Bankers Association



Puerto Rico Restaurants Association



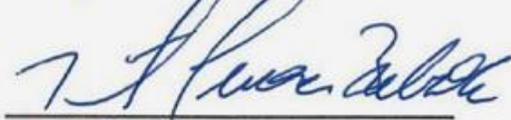
Renewable Energy Producers Association



Puerto Rico Hospitals Association



Puerto Rico Hotels and Tourism Association



P.R. Certified Public Accountants Association



P.R. Association of Financial Professionals