



GOBIERNO DE PUERTO RICO

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21 de enero de 2010

Hon. Thomas Rivera Schatz
Presidente
Senado de Puerto Rico
San Juan, Puerto Rico

Estimado señor Presidente:

Me place informarle que el día 20 de enero de 2010, el Gobernador, Hon. Luis G. Fortuño aprobó y firmó el P. del S. 1198, aprobado en la Decimosexta Asamblea Legislativa en su Segunda Sesión Ordinaria, titulada:

LEY: "To establish the "Puerto Rico Pest Control Compact Act of 2009."

Cordialmente,

A handwritten signature in black ink, appearing to read "Miguel Hernández Vivoni".

Lcdó. Miguel Hernández Vivoni
Asesor del Gobernador
Oficina de Asuntos Legislativos

(S. B. 1198)

**AN ACT NUM.10
JANUARY 20TH, 2010**

To establish the “Puerto Rico Pest Control Compact Act of 2009.”

STATEMENT OF MOTIVES

The Compact is an organization of states that have joined together to bridge the economic and jurisdictional gap between state and federal governments, to adequately address the realities of dynamic pest infestations or outbreaks for which no other appropriate federal or state control mechanism exists.

Puerto Rico joined the Interstate Pest Control Compact (IPCC) in 1994, upon payment by the Department of Agriculture of Puerto Rico of an appropriation (assessment) of \$7,560. This is a one-time assessment, unless the balance of the Insurance Fund falls under \$750,000.00. Apparently, it was not made clear back in 1994 that Puerto Rico needed to pass enabling legislation. Since a compact is a legal agreement or contract between the party states, it is necessary to pass identical legislation that provides them with the same authority and obligations to manage plant pest infestations that may stretch beyond their borders. The IPCC amended its bylaws in 2004, to require that all party states which had not passed enabling legislation, do so within six years (by September 2010) or waive their right to vote as a member of the IPCC.

In the absence of the higher degree of cooperation possible under this Compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

The migratory character of pest infestations makes it necessary for states, both adjacent to and distant from one another, to complement each other’s activities when faced with conditions of infestation and re-infestation.

While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests, not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states, makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs, of benefit to them in other states and to which they may contribute, in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Article 1.-Title

This Act may be cited as “Puerto Rico Pest Control Compact Act of 2009”.

Article 2.- Definitions

As used in this Compact, unless the context clearly requires a different construction:

- a) “State” means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- b) “Requesting State” means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.
- c) “Responding State” means a state requested to undertake or intensify the measures referred in Section (b) of this Article.
- d) “Pest” means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.
- e) “Insurance Fund” means the Pest Control Insurance Fund established pursuant to this Compact.
- f) “Governing Board” means the administrators of this Compact representing all of the party states, when such administrators are acting as a body in pursuance of authority vested in them by this Compact.
- g) “Executive Committee” means the committee established pursuant to Article 5 of this Compact.

Article 3.- Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing, other than normal pest control operations, which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article 4.-Pest Control Insurance Fund, Internal Operations and Management

- a) The Insurance Fund shall be administered by a Governing Board and Executive Committee, as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

- b) Each member of the Governing Board is entitled to one vote on the Board. Action by the Governing Board is not binding, unless taken in a meeting at which a majority of the total number of votes on the Governing Board is cast in favor of the action. Governing Board Action shall be taken only at a meeting at which a majority of the members are present.
- c) The Insurance Fund shall have a seal that may be employed as an official symbol and may be affixed to documents and used as the Governing Board may provide.
- d) The Governing Board shall elect annually, from among its members, a chairperson, a vice chairperson, a secretary and a treasurer. The Chairperson may not succeed himself or herself. The Governing Board may appoint an Executive Director and fix the duties of the Executive Director and compensation, if any. The Executive Director shall serve at the pleasure of the Governing Board. The Governing Board shall provide for the bonding of any officers and employees of the Insurance Fund, as it finds appropriate.
- e) Irrespective of the civil service, personnel or other merit system laws of any party states, the Executive Director, or if there is no executive director, the chairperson, pursuant to procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as necessary for the performance of the functions of the Insurance Fund, and shall fix the duties and compensation of such personnel. The Governing Board shall provide personnel policies and programs of the Insurance Fund.
- f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state or any other governmental agency, any person, firm, association, or corporation.
- g) The Insurance Fund may accept, for any of its purposes and functions under this Compact, any donations, grants of money, equipment, supplies, materials, services, or otherwise, from any state of the United States, any other governmental agency, from any person, firm, association, or corporation, and may receive, use and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to Section (f) shall be reported in the annual report of the Insurance Fund. The report must include the nature, amount and conditions, if any, of the donation, gift grant, or services borrowed and the identity of the donor or lender.
- h) The Governing Board shall adopt bylaws for the operations of the Insurance Fund and may amend or rescind the bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy, thereof and a copy of any amendment with the appropriate agency or officer in each of the party states.
- i) The Insurance Fund shall submit to the Governor and the Legislature of each party state an annual report which covers its activities for the preceding year. The Insurance Fund may submit such additional reports as it deems desirable.
- j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article 5.- Compact and Insurance Fund Administration

- a) In each party state there shall be a Compact Administrator, who shall be selected and serve in such manner as the laws of the state may provide.

The Administrator shall:

1. Assist in the coordination of activities pursuant to the Compact in the state; and
 2. Represent that state on the Governing Board of the Insurance Fund.
- b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the Governing Board of the Insurance Fund, by not more than three representatives. Any representative or representatives of the United States shall be appointed and serve in such manner as may be provided by federal law, but may not vote on the Governing Board or the Executive Committee.
- c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairperson, the Executive Committee, or a majority of the membership of the Governing Board.
- d) At its meetings, the Governing Board shall pass upon applications for assistance from the Insurance Fund and shall authorize disbursements from the fund. When the Governing Board is not in session, the Executive Committee shall act as agent of the Governing Board, and have full authority to act for it in passing upon applications.
- e) The Executive Committee shall be composed of the chairperson of the Governing Board and four additional members of the Governing Board chosen by it, so that one member shall represent each of four geographic groupings of party states. The Governing Board shall make such geographic groupings, if there is representation of the United States on the Governing Board, one representative may meet with the Executive Committee. The chair of the Governing Board shall be the chairperson of the Executive Committee. Action of the Executive Committee is not binding unless taken at a meeting at which at least four members are present and vote in favor of the action. Necessary expenses of each of the five members of the Executive Committee incurred in attending Committee meetings, when not held at the same time and place as a meeting of the Governing Board, shall be charged against the Insurance Fund.

Article 6.- Assistance and Reimbursement

- a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, all pests within its boundaries. The performance of these functions includes:
1. The maintenance of pest control and eradication activities of interstate significance at a level that would be reasonable for its own protection in the absence of this Compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to not less an extent that would have been done in the absence of this Compact.
- b) If a party state is threatened by a pest not present within its borders but present within another party state, or if a party state undertakes activities to control or eradicate a pest and finds that such activities are or would be impracticable or substantially more difficult, because of the failure of another party state to cope with an actual or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for measures to eradicate or control the infestation by other party states at a level sufficient to prevent, or reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization any responding state shall take or increase any warranted eradication or control measures. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in providing the protection requested.
- c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit in writing:
1. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.
 2. Evidence that the pest for which eradication or control assistance is requested, constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
 3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program and the expenditures, made or budgeted for the eradication, control, or prevention of introduction of the pest.
 4. Proof that the expenditures being made or budgeted, as detailed in clause 3, do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in clause 3 constitutes a normal level of pest control activity.
 5. A declaration as to whether, to the best knowledge of the requesting states knowledge and belief, the conditions that require the invoking of the Compact can be abated by a program undertaken with the aid of moneys from the Insurance Fund within one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period.
 6. Any other information that the Governing Board requires consistent with this Compact.
- d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to any other officers and agencies designated by the laws of the party states. The requesting state and any other party state are entitled to be represented and present evidence and argument at such meeting.

- e) Upon the submission as required by Section (c) and any other information that the requesting state may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time and in any place to receive and consider an application. All determinations of the Governing Board or Executive Committee, in relation to an application, and the reasons for the determination shall be recorded and subscribed to show the votes of the individual members.
- f) A requesting state that is dissatisfied with a determination of the Executive Committee shall, upon notice in writing submitted within twenty days after the determination, be given a review of the determination at the next meeting of the Governing Board. Determinations of the Executive Committee are reviewable only by the Governing Board at a regular meeting, or at a special meeting authorized by the Governing Board.
- g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the Insurance Fund, when such state incurs expenditures because of such measures or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt procedures for submission and payment of claims.
- h) Before authorizing the expenditure of moneys from the Insurance Fund, the Governing Board shall determine the extent and nature of any timely assistance or participation that may be available from the federal government and shall request assistance and participation from the appropriate federal agencies.
- i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article 7.- Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it regarding its functions. Any advisory or technical committee may meet with, and participate in its deliberations, upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations concerning an application for assistance from the Insurance Fund being considered by the Board or Committee. However, a participant in a meeting of the Governing Board or Executive Committee held pursuant to Article 6(d) is entitled to know, at the time of the meeting, the substance of such information and recommendations that are made prior to or as part of the meeting or if made after the meeting, not later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article 8.- Relations with Nonparty Jurisdictions

- a) A party state may apply for assistance from the Insurance Fund regarding a pest in a nonparty state. The application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Section.

- b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article 6(d), a nonparty state is entitled to appear, participate, and receive information only to the extent as the Governing Board or Executive Committee provides. A nonparty may not review any determination made by the Executive Committee.
- c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states, as a whole justify the expenditures. The Governing Board or Executive Committee may set any conditions that it deems appropriate regarding the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into any agreements with nonparty states and other jurisdictions or entities as it deems necessary or appropriate to protect the interests of the Insurance Fund, with respect to expenditures and activities outside of party states.

Article 9.- Finance

- a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for the period required by the laws of that party state for a presentation to the party state's legislature.
- b) Each budget shall contain specific recommendations of the amount or amounts to be appropriated by each party state. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products, the Insurance Fund may employ any sources of information which present the most equitable and accurate comparisons among the party states. Each budget and request for appropriations shall indicate the source used to obtain information concerning the value of products.
- c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated, respectively, as the "operating account" and the "claims account." The operating account shall consist only of assets necessary to administer the Insurance Fund during the next ensuing 2-year period. The claims account shall contain all moneys not included in the operating account and may not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of 3 years. When the claims account reaches its maximum limit or will reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a *pro rata* basis to keep the claims account within the maximum limit. Any moneys in the claims account because of conditional donations, grants, or gifts shall be included in calculations made pursuant to this Article only to the extent that such moneys are available to meet demands arising out of the claims.
- d) The Insurance Fund may not pledge the credit of any party state. The Insurance Fund may meet any of its obligations with moneys available to it under Article 4(g) if the Governing Board takes specific action to set aside such moneys before incurring any obligation to be met in whole or in part in such a manner. Except where the Insurance

Fund uses moneys available to it under Article 4(g), the Insurance Fund may not incur any obligation before the allotment of moneys by the party states adequate to meet the obligation.

- e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited annually by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by authorized officers of the party states and any persons authorized by the Insurance Fund.

Article 10.- Entry Into Force and Withdrawal

- a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective for any other state upon its enactment by that state.
- b) Any party state may withdraw from this Compact by enacting a statute repealing the Compact, but a withdrawal does not take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. A withdrawal does not affect any liability already incurred by or chargeable to a party state before the time of its withdrawal.

Article 11.- Construction and Severability

This Compact shall be liberally construed so as to effectuate its purposes. The provisions of this Compact are severable and if any phrase, clause, sentence, or provision is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected. If this Compact is held contrary to the Constitution of any state participating herein, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect, as to the state affected as to all severable matters.

The Pest Control Compact is hereby enacted into Law and entered into with all other jurisdictions, legally joining in the form substantially as follows:

1. Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.
2. Pursuant to Article 4(h) of the Compact, copies of bylaws and amendments shall be filed with the Secretary of the Department of Agriculture of Puerto Rico.
3. The Compact administrator for this state shall be the Secretary of Agriculture.
4. Within the meaning of Article 6(b) or 8(a), a request or application for assistance from the Insurance Fund may be made by Secretary of the Department of Agriculture of Puerto Rico.

5. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account, in the State Treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.
6. As used in this Compact, with reference to this state, the term “executive head” shall mean the Governor.

Article 12.- Separability

If any article, part or sentence of this Act is declared unconstitutional, the remainder of this Act shall remain in effect.

Article 13.-Effectiveness

This Act shall take effect immediately after its approval.

Article 14.-Translation

This bill shall be translated to the Spanish language, once it has been enacted into Law.