

COMMONWEALTH OF PUERTO RICO

16<sup>th</sup> Legislature

2<sup>nd</sup> Regular  
Session

**SENATE OF PUERTO RICO**

**S. B. 1198**

October 7, 2009

Introduced by Mr. *Rivera Schatz*

*Referred to the Committees on Federal Affairs and Agriculture*

**AN ACT**

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:**

1        **Article 1.-Title**

2        This Act may be cited as "Puerto Rico Pest Control Compact Act of 2009".

3        **Article 2.- Definitions**

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

5        a) "State" means a state, territory or possession of the United States, the District of  
6        Columbia, and the Commonwealth of Puerto Rico.

7        b) "Requesting State" means a state which invokes the procedures of the Compact to  
8        secure the undertaking or intensification of measures to control or eradicate one or  
9        more pests within one or more other states.

- 1 c) “Responding State” means a state requested to undertake or intensify the measures  
2 referred in section (b) of this Article.
- 3 d) “Pest” means any invertebrate animal, pathogen, parasitic plant or similar or allied  
4 organism which can cause disease or damage in any crops, trees, shrubs, grasses,  
5 or other plants of substantial value.
- 6 e) “Insurance Fund” means the Pest Control Insurance Fund established pursuant to  
7 this Compact.
- 8 f) “Governing Board” means the administrators of this Compact representing all of  
9 the party states when such administrators are acting as a body in pursuance of  
10 authority vested in them by this Compact.
- 11 g) “Executive Committee” means the committee established pursuant to Article 5 of  
12 this Compact.

13 **Article 3.- Insurance Fund**

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

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

- 24 a) The Insurance Fund shall be administered by a Governing Board and Executive  
25 Committee as hereinafter provided. The actions of the Governing Board and the

1 Executive Committee pursuant to this Compact shall be deemed the actions of the  
2 Insurance Fund.

3 b) Each member of the Governing Board is entitled to one vote on the Board. Action  
4 by the Governing Board is not binding unless taken in a meeting at which a  
5 majority of the total number of votes on the Governing Board is cast in favor of the  
6 action. Governing Board Action shall be taken only at a meeting at which a  
7 majority of the members are present.

8 c) The Insurance Fund shall have a seal that may be employed as an official symbol  
9 and may be affixed to documents and used as the Governing Board may provide.

10 d) The Governing Board shall elect annually, from among its members, a chairperson,  
11 a vice chairperson, a secretary and a treasurer. The Chairperson may not succeed  
12 himself or herself. The Governing Board may appoint an Executive Director and  
13 fix the duties of the executive director and compensation, if any. The Executive  
14 Director shall serve at the pleasure of the Governing Board. The Governing Board  
15 shall provide for the bonding of any officers and employees of the Insurance Fund  
16 as it finds appropriate.

17 e) Irrespective of the civil service, personnel or other merit system laws of any party  
18 states, the executive director, or if there is no executive director, the chairperson,  
19 pursuant to procedures as the bylaws may provide, shall appoint, remove or  
20 discharge such personnel as necessary for the performance of the functions of the  
21 Insurance Fund and shall fix the duties and compensation of such personnel. The  
22 Governing Board shall provide personnel policies and programs of the Insurance  
23 Fund.

- 1 f) The Insurance Fund may borrow, accept or contract for the services of personnel  
2 from any state or any other governmental agency, any person, firm, association, or  
3 corporation.
- 4 g) The Insurance Fund may accept for any of its purposes and functions under this  
5 Compact, any donations, grants of money, equipment, supplies, materials, services,  
6 or otherwise, from any state of the United States, any other governmental agency,  
7 from any person, firm, association, or corporation, and may receive, use and  
8 dispose of the same. Any donation, gift, or grant accepted by the Governing Board  
9 pursuant to this paragraph or services borrowed pursuant to section (f) shall be  
10 reported in the annual report of the Insurance Fund. The report must include the  
11 nature, amount and conditions, if any, of the donation, gift grant, or services  
12 borrowed and the identity of the donor or lender.
- 13 h) The Governing Board shall adopt bylaws for the operations of the Insurance Fund  
14 and may amend or rescind the bylaws. The Insurance Fund shall publish its bylaws  
15 in convenient form and shall file a copy thereof and a copy of any amendment with  
16 the appropriate agency or officer in each of the party states.
- 17 i) The Insurance Fund shall submit to the Governor and the Legislature of each party  
18 state an annual report which covers its activities for the preceding year. The  
19 Insurance Fund may submit such additional reports as it deems desirable.
- 20 j) In addition to the powers and duties specifically authorized and imposed, the  
21 Insurance Fund may do such other things as necessary and incidental to the conduct  
22 of its affairs pursuant to this Compact.

23 **Article 5.- Compact and Insurance Fund Administration**

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

1 The administrator shall:

2 1. Assist in the coordination of activities pursuant to the compact in the state; and

3 2. Represent that state on the Governing Board of the Insurance Fund.

4 b) If the laws of the United States specifically so provide, or if administrative  
5 provision is made therefore within the federal government, the United States may  
6 be represented on the Governing Board of the Insurance Fund by not more than  
7 three representatives. Any representative or representatives of the United States  
8 shall be appointed and serve in such manner as may be provided by federal law, but  
9 may not vote on the Governing Board or the Executive Committee.

10 c) The Governing Board shall meet at least once each year for the purpose of  
11 determining policies and procedures in the administration of the Insurance Fund  
12 and, consistent with the provisions of the Compact, supervising and giving  
13 direction to the expenditure of moneys from the Insurance Fund. Additional  
14 meetings of the Governing Board shall be held on call of the chairperson, the  
15 Executive Committee, or a majority of the membership of the Governing Board.

16 d) At its meetings, the Governing Board shall pass upon applications for assistance  
17 from the Insurance Fund and shall authorize disbursements from the fund. When  
18 the Governing Board is not in session, the Executive Committee shall act as agent  
19 of the Governing Board, and have full authority to act for it in passing upon  
20 applications.

21 e) The Executive Committee shall be composed of the chairperson of the Governing  
22 Board and four additional members of the Governing Board chosen by it so that one  
23 member shall represent each of four geographic groupings of party states. The  
24 Governing Board shall make such geographic groupings. If there is representation  
25 of the United States on the Governing Board, one representative may meet with the

1 Executive Committee. The chair of the Governing Board shall be the chairperson of  
2 the Executive Committee. Action of the Executive Committee is not binding unless  
3 taken at a meeting at which at least four members are present and vote in favor of  
4 the action. Necessary expenses of each of the five members of the Executive  
5 Committee incurred in attending Committee meetings, when not held at the same  
6 time and place as a meeting of the Governing Board, shall be charged against the  
7 Insurance Fund.

8 **Article 6.- Assistance and Reimbursement**

9 a) Each party state pledges to each other party state that it will employ its best efforts  
10 to eradicate, or control within the strictest practicable limits, all pests within its  
11 boundaries. The performance of these functions includes:

12 1. The maintenance of pest control and eradication activities of interstate  
13 significance at a level that would be reasonable for its own protection in the  
14 absence of this Compact.

15 2. The meeting of emergency outbreaks or infestations of interstate  
16 significance to not less an extent that would have been done in the absence  
17 of this Compact.

18 b) If a party state is threatened by a pest not present within its borders but present  
19 within another party state, or if a party state undertakes activities to control or  
20 eradicate a pest and finds that such activities are or would be impracticable or  
21 substantially more difficult because of the failure of another party state to cope with  
22 an actual or threatened infestation, that state may request the Governing Board to  
23 authorize expenditures from the Insurance Fund for measures to eradicate or control  
24 the infestation by other party states at a level sufficient to prevent, or reduce to the  
25 greatest practicable extent, infestation or reinfestation of the requesting state. Upon

1 such authorization any responding state shall take or increase any warranted  
2 eradication or control measures. A responding state shall use moneys available  
3 from the Insurance Fund expeditiously and efficiently to assist in providing the  
4 protection requested.

5 c) In order to apply for expenditures from the Insurance Fund, a requesting state shall  
6 submit in writing:

7 1. A detailed statement of the circumstances which occasion the request for the  
8 invoking of the Compact.

9 2. Evidence that the pest for which eradication or control assistance is  
10 requested constitutes a danger to an agricultural or forest crop, product, tree,  
11 shrub, grass, or other plant having a substantial value to the requesting state.

12 3. A statement of the extent of the present and projected program of the  
13 requesting state and its subdivisions, including full information as to the  
14 legal authority for the conduct of such program and the expenditures made  
15 or budgeted for the eradication, control, or prevention of introduction of the  
16 pest.

17 4. Proof that the expenditures being made or budgeted as detailed in clause 3  
18 do not constitute a reduction of the effort for the control or eradication of  
19 the pest concerned or, if there is a reduction, the reasons why the level of  
20 program detailed in clause 3 constitutes a normal level of pest control  
21 activity.

22 5. A declaration as to whether, to the best of the requesting states knowledge  
23 and belief, the conditions that require the invoking of the Compact can be  
24 abated by a program undertaken with the aid of moneys from the Insurance

1 Fund within one year or less, or whether the request is for an installment in  
2 a program which is likely to continue for a longer period.

3 6. Any other information that the Governing Board requires consistent with  
4 this Compact.

5 d) The Governing Board or Executive Committee shall give due notice of any meeting  
6 at which an application for assistance from the Insurance Fund is to be considered.  
7 Such notice shall be given to the Compact administrator of each party state and to  
8 any other officers and agencies designated by the laws of the party states. The  
9 requesting state and any other party state are entitled to be represented and present  
10 evidence and argument at such meeting.

11 e) Upon the submission as required by section (c) and any other information that the  
12 requesting state may have or acquire, and upon determining that an expenditure of  
13 funds is within the purposes of this Compact and justified, the Governing Board or  
14 Executive Committee shall authorize support of the program. The Governing Board  
15 or Executive Committee may meet at any time and in any place to receive and  
16 consider an application. All determinations of the Governing Board or Executive  
17 Committee, in relation to an application, and the reasons for the determination shall  
18 be recorded and subscribed to show the votes of the individual members.

19 f) A requesting state that is dissatisfied with a determination of the Executive  
20 Committee shall, upon notice in writing submitted within twenty days after the  
21 determination, be given a review of the determination at the next meeting of the  
22 Governing Board. Determinations of the Executive Committee are reviewable only  
23 by the Governing Board at a regular meeting, or at a special meeting authorized by  
24 the Governing Board.

- 1 g) Responding states required to undertake or increase measures pursuant to this  
2 Compact may receive moneys from the Insurance Fund, when such state incurs  
3 expenditures because of such measures or as reimbursement for expenses incurred  
4 and chargeable to the Insurance Fund. The Governing Board shall adopt procedures  
5 for submission and payment of claims.
- 6 h) Before authorizing the expenditure of moneys from the Insurance Fund, the  
7 Governing Board shall determine the extent and nature of any timely assistance or  
8 participation that may be available from the federal government and shall request  
9 assistance and participation from the appropriate federal agencies.
- 10 i) The Insurance Fund may negotiate and execute a memorandum of understanding or  
11 other appropriate instrument defining the extent and degree of assistance or  
12 participation between and among the Insurance Fund, cooperating federal agencies,  
13 states, and any other entities concerned.

14 **Article 7.- Advisory and Technical Committees**

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

1       **Article 8.- Relations with Nonparty Jurisdictions**

- 2       a) A party state may apply for assistance from the Insurance Fund regarding a pest in  
3             a nonparty state. The application shall be considered and disposed of by the  
4             Governing Board or Executive Committee in the same manner as an application  
5             with respect to a pest within a party state, except as provided in this section.
- 6       b) At or in connection with any meeting of the Governing Board or Executive  
7             Committee held pursuant to Article 6(d), a nonparty state is entitled to appear,  
8             participate, and receive information only to the extent as the Governing Board or  
9             Executive Committee provides. A nonparty may not review any determination  
10            made by the Executive Committee.
- 11       c) The Governing Board or Executive Committee shall authorize expenditures from  
12            the Insurance Fund to be made in a nonparty state only after determining that the  
13            conditions in such state and the value of such expenditures to the party states as a  
14            whole justify the expenditures. The Governing Board or Executive Committee  
15            may set any conditions that it deems appropriate regarding the expenditure of  
16            moneys from the Insurance Fund in a nonparty state and may enter into any  
17            agreements with nonparty states and other jurisdictions or entities as it deems  
18            necessary or appropriate to protect the interests of the Insurance Fund with respect  
19            to expenditures and activities outside of party states.

20       **Article 9.- Finance**

- 21       a) The Insurance Fund shall submit to the executive head or designated officer or  
22            officers of each party state a budget for the Insurance Fund for the period required  
23            by the laws of that party state for a presentation to the party state's legislature.
- 24       b) Each budget shall contain specific recommendations of the amount or amounts to  
25            be appropriated by each party state. The request for appropriations shall be

1           apportioned among the party states as follows: one-tenth of the total budget in  
2           equal shares and the remainder in proportion to the value of agricultural and forest  
3           crops and products, excluding animals and animal products, produced in each  
4           party state. In determining the value of such crops and products, the Insurance  
5           Fund may employ any sources of information which present the most equitable  
6           and accurate comparisons among the party states. Each budget and request for  
7           appropriations shall indicate the source used to obtain information concerning the  
8           value of products.

9           c) The financial assets of the Insurance Fund shall be maintained in two accounts to  
10          be designated, respectively, as the "operating account" and the "claims account."  
11          The operating account shall consist only of assets necessary to administer the  
12          Insurance Fund during the next ensuing 2-year period. The claims account shall  
13          contain all moneys not included in the operating account and may not exceed the  
14          amount reasonably estimated to be sufficient to pay all legitimate claims on the  
15          Insurance Fund for a period of 3 years. When the claims account reaches its  
16          maximum limit or will reach its maximum limit by the addition of moneys  
17          requested for appropriation by the party states, the Governing Board shall reduce  
18          its budget requests on a pro rata basis to keep the claims account within the  
19          maximum limit. Any moneys in the claims account because of conditional  
20          donations, grants, or gifts shall be included in calculations made pursuant to this  
21          article only to the extent that such moneys are available to meet demands arising  
22          out of the claims.

23          d) The Insurance Fund may not pledge the credit of any party state. The Insurance  
24          Fund may meet any of its obligations with moneys available to it under Article  
25          4(g) if the Governing Board takes specific action to set aside such moneys before

1 incurring any obligation to be met in whole or in part in such manner. Except  
2 where the Insurance Fund uses moneys available to it under Article 4(g), the  
3 Insurance Fund may not incur any obligation before the allotment of moneys by  
4 the party states adequate to meet the obligation.

5 e) The Insurance Fund shall keep accurate accounts of all receipts and  
6 disbursements. The receipts and disbursements of the Insurance Fund are subject  
7 to the audit and accounting procedures established under its bylaws. However, all  
8 receipts and disbursements of funds handled by the Insurance Fund shall be  
9 audited annually by a certified or licensed public accountant and a report of the  
10 audit shall be included in and become part of the annual report of the Insurance  
11 Fund.

12 f) The accounts of the Insurance Fund shall be open at any reasonable time for  
13 inspection by authorized officers of the party states and any persons authorized by  
14 the Insurance Fund.

15 **Article 10.- Entry Into Force and Withdrawal**

16 a) This Compact shall enter into force when enacted into law by any five or more  
17 states. Thereafter, this Compact shall become effective for any other state upon its  
18 enactment by that state.

19 b) Any party state may withdraw from this Compact by enacting a statute repealing  
20 the Compact, but a withdrawal does not take effect until two years after the  
21 executive head of the withdrawing state has given notice in writing of the  
22 withdrawal to the executive heads of all other party states. A withdrawal does not  
23 affect any liability already incurred by or chargeable to a party state before the  
24 time of its withdrawal.

25 **Article 11.- Construction and Severability**

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

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

- 12        1. Consistent with law and within available appropriations, the departments, agencies  
13            and officers of this state may cooperate with the Insurance Fund established by the  
14            Pest Control Compact.
- 15        2. Pursuant to Article 4(h) of the Compact, copies of bylaws and amendments shall  
16            be filed with the Secretary of the Department of Agriculture of Puerto Rico.
- 17        3. The Compact administrator for this state shall be the Secretary of Agriculture.
- 18        4. Within the meaning of Article 6(b) or 8(a), a request or application for assistance  
19            from the Insurance Fund may be made by Secretary of the Department of  
20            Agriculture of Puerto Rico.
- 21        5. The department, agency, or officer expending or becoming liable for an  
22            expenditure on account of a control or eradication program undertaken or  
23            intensified pursuant to the Compact shall have credited to his account, in the state  
24            treasury the amount or amounts of any payments made to this state to defray the  
25            cost of such program, or any part thereof, or as reimbursement thereof.

1           6. As used in this Compact, with reference to this state, the term “executive head”  
2           shall mean the Governor.

3           **Article 12.- Separability**

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

6           **Article 13.-Effectiveness**

7           This Act shall take effect immediately after its approval.