

(S. B. 440)

(No. 25)

(Approved July 19, 2005)

### **AN ACT**

To amend Sections 1, 2, 3, subsections (3), (4) and (6) of Section 4, and Section 5 and Section 7; to add new Sections 7, 8, and 9; and renumber Section 7 as Section 10 of Act No. 223 of August 21, 2004, known as the “Our Puerto Rican Music Act,” in order to clarify the definition of protected music, establish the term “autochthonous traditional music,” establish exceptions and conditions; and to appropriate funds, among other purposes.

### **STATEMENT OF MOTIVES**

The main purpose of Act No. 223 of August 21, 2004 is to guarantee reasonable and proportional participation of the exponents of autochthonous traditional Puerto Rican music in events conducted and sponsored by the Government of Puerto Rico, its Agencies, Corporations, and Municipalities, which contribute the sum of ten thousand (10,000) or more dollars from public funds.

The abovementioned statute confers onto the Institute of Puerto Rican Culture the administration and implementation of the abovementioned Act. However, the Executive Director of the IPRC herself has recognized before the news media of the Island that she has been unable to comply with Act No. 223 of August 21, 2004, due to faulty wording in the bill and to the lack of appropriations of funds that allow the Institute of Puerto Rican Culture to contract the necessary personnel entrusted to achieve the tasks assigned in the law.

Meanwhile, exponents of autochthonous and traditional Puerto Rican genres such as the Puerto Rican folk music and its variants, the Puerto Rican *Danza*, *Bomba* and *Plena* face a difficult situation due to their lack of presence in the most important stages in which interpreters of the different musical manifestations are frequently and prominently presented on the Island.

Likewise, the limited broadcast of our autochthonous Puerto Rican music in through the media of the Island makes it necessary to guarantee its cultivation and development by establishing a clear policy that promotes the creation of new and greater employment and performing opportunities for the interpreters of these genres.

The Legislature of Puerto Rico deems it imperative to ensure full compliance with our laws and to support the study, cultivation, development and broadcasting of our autochthonous traditional Puerto Rican music such as Puerto Rican folk music and its variants, Puerto Rican *Danza*, Puerto Rican *Bomba* and Puerto Rican *Plena*.

This action of the Honorable Legislature is of vital importance so that new generations, which constitute the future of Puerto Rico, may be able to recognize and enjoy their cultural heritage and have available an educational alternative for their personal enrichment.

For the purpose and with the determination to contribute to the continuance of our customs and traditions, the Legislature of the Government of Puerto Rico supports the efforts of citizens to rescue and preserve their musical legacy through Puerto Rican folk music and its variants, Puerto Rican *Danza*, Puerto Rican *Bomba* and Puerto Rican *Plena*.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- Section 1 of Act No. 223 of August 21, 2004, is hereby amended to read as follows:

“Section 1.- Title

This Act shall be known and may be cited as the ‘Our Autochthonous Traditional Puerto Rican Music Act.’”

Section 2.- Section 2 of Act No. 223 of August 21, 2004 is hereby amended to read as follows:

“Section 2.- At every patron saint’s feast day celebration, artistic festival or other musical event in which a variety of musical genres are performed and for which the Executive Branch or any public corporation or municipality contributes the total cost of the activity or ten thousand (10,000) dollars or more, the corresponding government dependency shall and be bound to secure the fair and reasonable participation of the various exponents of our autochthonous traditional Puerto Rican music. In order to determine whether said obligation has been complied with, a strictly quantitative analysis of the total budget used or the contribution made for contracting artists and musicians by the agency, the public corporation or the municipality, and in accordance thereof the budgetary portion or the amount devoted to contracting artists or musicians interpreters of autochthonous traditional Puerto Rican music shall be examined.”

Section 3.- Section 3 of Act No. 223 of August 21, 2004, is hereby amended to read as follows:

“Section 3.- Definitions

- (1) Autochthonous Traditional Puerto Rican Music: To comply with the purposes of this Act, the following musical genres shall be considered as ‘Autochthonous Traditional Puerto Rican

Music,' Puerto Rican Folk Music and its variants, Puerto Rican *Danza*, Puerto Rican *Bomba* and Puerto Rican *Plena*, as well as their historically recognized dance steps. According to this definition, the Institute of Puerto Rican Culture shall certify as interpreters of autochthonous traditional Puerto Rican music, pursuant to the regulations it shall adopt for the proper implementation of this Act, the various artists and interpreters of this type of music whose musical repertoire to be used in their performances consists of the above said musical genres seventy-five percent by (75%) or more.

(2) Fair and Reasonable Participation: The participation of the exponents or interpreters of autochthonous traditional Puerto Rican music shall be fair and reasonable to the degree to which their inclusion is in proportion and in balance, in comparative terms, with other types of musical genres included in the programming of the activity in question and which is subject to the provisions of this Act. This is not to be interpreted to mean that the inclusion of other musical genres is similar or equal to that of the autochthonous traditional Puerto Rican music. It shall rather mean that the inclusion of autochthonous traditional Puerto Rican music is fair and reasonable if it is ascertained that, at least:

a) thirty (30) percent of the total funds appropriated is used to contract interpreters of autochthonous traditional Puerto Rican music, as defined in this Act. This shall be done when the activity is directly conducted by the government entity itself or when the services of an

independent promoter or producer are contracted to carry out the activity in question.

b) it is also provided that when the government entity sponsors a musical activity carried out by an external entity, thirty (30) percent of the appropriation must be used to contract interpreters of autochthonous traditional Puerto Rican music, as defined in this Act.

c) ....”

Section 4.- Subsections (3), (4), and (6) of Section 4 of Act No. 223 of August 21, 2004, are hereby amended to read as follows:

“Section 4.- Obligations of the Executive Branch and Public Corporations

(1) ...

(2) ...

(3) At the same time, it is hereby provided that the government dependencies must submit a detailed report to the Institute of Puerto Rican Culture about each and every activity or event subject to the provisions of this Act. Said report shall include, without it being understood as a limitation, an accurate breakdown of the total budget appropriated to defray the cost for contracting artists and an account of the budgetary portion allotted for contracting artists certified under the definition of autochthonous traditional Puerto Rican music adopted under the provisions of this Act. Said information shall be certified by the heads or directors of the public dependencies as being the official information that appears in the records of the entity. Said report shall be submitted

to the Institute of Puerto Rican Culture within a period of not less than ten (10) days prior to the applicable event or activity.

(4) It shall be understood that before the event or activity subject to the provisions of this Act is held and prior to the distribution or disbursement of public funds for the matters set forth in this Act, the agency, instrumentality, public corporation or municipality must take steps to obtain from the Institute of Puerto Rican Culture a certificate of compliance with this Act, accrediting that the contribution or budget used considers and includes the fair and reasonable inclusion of autochthonous traditional Puerto Rican music, as defined in Section 3, subsections (2)(a), (2)(b), and (2)(c) of this Act. The Institute shall establish the procedures and standards needed to speedily and expeditiously process and grant, should it so merit, the certificate of compliance with the provisions of this Act.

(5) ...

(6) It shall be understood that every promoter or producer of musical events paid for or sponsored by these government entities, must submit to the public entity that provides the funds, a detailed report showing compliance with this Act and providing evidence that the corresponding percentage was reserved for autochthonous traditional Puerto Rican music.”

(7)

Section 5.- Section 5 of Act No. 223 of August 21, 2004 is hereby amended to read as follows:

“Section 5.-Obligations and Powers of the Institute of Puerto Rican Culture

The Institute of Puerto Rican Culture shall be in charge of the administration or implementation of this Act and shall prescribe, through regulations, the standards and procedures, dictate the orders and take the measures it may deem necessary for the implementation of the same.

In the discharge of such a task, the Institute shall have the obligation of investigating any complaint filed that claims that the provisions of this Act have been violated. Accordingly, it shall investigate the allegations in the complaint and take the steps needed to objectively and reliably determine if any of the provisions of this Act were in fact violated and take the pertinent administrative and legal actions to require compliance with this Act, including, but not being limited to referring any irregularity detected to the Office of the Comptroller of Puerto Rico, the Office of Government Ethics and the Department of Justice. If any violations of the provisions of this Act or its regulations are found, the Institute of Puerto Rican Culture shall impose to the government agency or instrumentality, public corporation or municipality in question, a fine equal to two (2) times the sum of money that was supposed to be used to contract exponents of autochthonous traditional Puerto Rican music. The exact amount of the fine herein provided shall be determined by multiplying by two (2) the amount of money that was not covered by the violator for the contracting of exponents of autochthonous traditional Puerto Rican music. The moneys collected on account of these fines shall be covered into the funds of the Institute of Puerto Rican Culture, which shall open an account separate from other revenues, so that these are used solely and exclusively for the Music Program of the referred institution.

Likewise, the IPRC may impose the following penalties to the promoters or producers who fail to comply with the requirements of this Act,

as follows: for the first violation, the penalty shall be a fine of one thousand (1,000) dollars; for the second violation, the penalty shall be a fine of one thousand five hundred (1,500) dollars; for the third violation, the penalty shall consist of a notice for the Department of the Treasury to suspend their license as Producer for a year; and for the fourth violation, the penalty shall consist of a notice to the Department of the Treasury to permanently suspend their Producer license.

The income generated by these penalties shall have the same use as those applicable to government entities.

The Institute may require agencies or entities subject to this Act, to provide records, payrolls, documents or any other pertinent evidence that may serve to show the proportion of the budget or the amount used by the entity for contracting artists or musicians and the participation of the exponents or interpreters of autochthonous traditional Puerto Rican music in said budget.

It may likewise receive related information from private persons or entities and may also hold hearings, inspect documents and establish procedures that, in its judgment, are needed to better fulfill its functions.

It is provided that it shall be the obligation of the Institute of Puerto Rican Culture to establish a register that would include all reports required pursuant to Section 4 of this Act, so as to enable the implementation of said provision and function as an instrument accessible to the public interested in inquiring into the compliance with the mandate of this Act. The Institute shall also enter in said register the data and description of those groups or individuals certified as exponents or interpreters of the autochthonous traditional Puerto Rican music.

At the same time it is provided that the Institute must establish a speedy and trustworthy procedure to certify the groups or individuals who meet the criteria that define the nature of autochthonous traditional Puerto Rican music pursuant to the provisions of this Act. In so doing, the Institute shall make sure that the groups or individuals so certified rigorously and strictly meet the cultural, musical and artistic criteria established pursuant to this Act.

The Institute is furthermore directed to provide the heads and personnel of the applicable dependencies or entities with the necessary technical advice and to collaborate with them so they may be able to work under conditions that are favorable for achieving compliance with this Act. In that regard, the Institute should provide these entities with a clear and intelligible definition of autochthonous traditional Puerto Rican music, a detailed and succinct breakdown of the genres included within said definition, a current register of the groups or individuals certified under the aforementioned definition and any other assistance that would contribute to comply with the provisions of this Act.

In compliance with this obligation, the Institute is hereby empowered to obtain or contract the necessary technical personnel to faithfully meet the demands of the present provision and to require that the persons or entities with the expertise and knowledge on such matters provide the advice and collaboration needed to faithfully fulfill the requirements of this Act.”

Section 6.- A new Section 7 is hereby added to Act No. 223 of August 21, 2004, to read as follows:

“Section 7.- Entities Exempted From Compliance With This Act.

Without it being construed as a limitation, the following entities shall be exempted from compliance with this Act:

- (1) The Casals Festival,
- (2) The Puerto Rico Symphony Orchestra
- (3) The Puerto Rico Conservatory of Music
- (4) Free Schools of Music

The Institute of Puerto Rican Culture may, through regulations, extend and/or increase the number of entities excluded from this Act, provided that the same are well-known organizations created for promoting and making known certain specific musical genres, which due to necessity, pertinence and practicality shall be continuously fostered individually, provided that the budgetary contribution of the sponsoring government body does not cause, in any way, the elimination and/or reduction of the budget usually allotted for other events to which this Act applies, and/or hinders the creation of new events to which this Act would apply.”

Section 7.- A new Section 8 is hereby added to Act No. 223 of August 21, 2004, to read as follows:

“Section 8.- Budgetary Appropriation

The Institute of Puerto Rican Culture is hereby appropriated, from unencumbered funds of the General Treasury, the sum of one hundred sixty thousand (160,000) dollars for Fiscal Year 2004-2005, to be used exclusively to defray expenses relative to the implementation of the present Act. In subsequent fiscal years, an equal amount of funds shall be appropriated annually as part of the operating expenses of the Institute of Puerto Rican Culture to be used exclusively for processes relative to the implementation of this Act.”

Section 8.- A new Section 9 is hereby added to Act No. 223 of August 21, 2004, to read as follows:

“Section 9.- Severability

Should any part, subsection, sentence, or section of this Act be found to be unconstitutional by a competent Court, the judgment thus issued shall be limited to the part, subsection, section, or sentence thus found, and shall not affect nor invalidate the remaining provisions of this Act.”

Section 9.- Section 7 is hereby amended and renumbered as Section 10 of Act No. 223 of August 21, 2004, to read as follows:

“Section 10.- This Act shall take effect immediately after its approval; however, any regulations approved thereunder shall take effect thirty (30) days after its approval by the Secretary of State, pursuant to Section 2.11 of Act No. 170 of August 12, 1988, known as the ‘Uniform Administrative Procedures Act.’”

Section 10.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 25 (S.B. 440) of the 1<sup>st</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Sections 1, 2, 3, subsections (3), (4) and (6) of Section 4, and Section 5 and Section 7; to add new Sections 7, 8, and 9; and renumber Section 7 as Section 10 of Act No. 223 of August 21, 2004, known as the “Our Puerto Rican Music Act,” in order to clarify the definition of protected music, establish the term “autochthonous traditional music,” establish exceptions and conditions; and to appropriate funds, among other purposes,

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

In San Juan, Puerto Rico, today 27<sup>th</sup> of November of 2006.

Francisco J. Domenech  
Director