

(H. B. 1642)

(No. 18)

(Approved May 22, 2009)

AN ACT

To amend Sections 2, 3, 4, and 5 of Act No. 91 of May 13, 2006, as amended, known as the “Dedicated Sales Tax Fund Act,” in order to make various technical amendments; to provide for the limits in the amount of bonds that COFINA may issue; to provide for the use of the subsidy to be received by COFINA under the Federal Program known as the “Build America Bonds”; authorize the issue of notes in advance of bond issues; and to provide for the creation and perfection of a lien on the revenues of the Sales and Use Tax that are deposited in the Dedicated Sales Tax Fund in favor of the bondholders.

STATEMENT OF MOTIVES

The bonds issued by the Puerto Rico Dedicated Sales Tax Fund Corporation, “COFINA,” (Spanish acronym) are the most cost-effective financing source of the Government of Puerto Rico today, since the payment thereof is backed by the collections of the Sales and Use Tax, a consistent and reliable source of revenues. These bonds enjoy a credit rating higher than that of the general obligation bonds of the Commonwealth of Puerto Rico. The Government of Puerto Rico Economic and Fiscal Reconstruction Plan includes a financing program that relies mainly on the issue of COFINA bonds.

In order to assure the success of the financing program contemplated in the Government of Puerto Rico Economic and Fiscal Reconstruction Plan, the Organic Act of COFINA, Act No. 91 of May 13, 2006, as amended, “Act No. 91,” is hereby amended to (i) correct some errors in the numeric

reference of Act No. 91, as it was recently amended; (ii) clarify the provisions that limit the amount of bonds that COFINA may issue to: (a) include as a source of repayment of their bonds those subsidies to be received by COFINA under the Federal Build America Bonds Program; and (b) exclude from the debt service that portion of the principal and interests for which payment COFINA has set aside sufficient funds; (iii) clarify that COFINA may issue notes in advance of the bond issue; and (iv) provide that the revenues from the Sales and Use Tax covered into the Dedicated Sales Tax Fund be encumbered in favor of COFINA bondholders.

Section 2(c) of Act No. 91 provides that the service of the debt of COFINA for each fiscal year cannot exceed the amount of the Fixed Income allocated for said fiscal year. It is foreseen that under the Federal Build America Bonds Program, COFINA could qualify to receive subsidies from the Federal Government for the payment of interest on its bonds. One of the amendments is directed to clarifying that said subsidy shall be treated as an additional income for COFINA, which shall be added to the Fixed Income for purposes of calculating the limit of the debt that COFINA can incur. Furthermore, it is the intention of this Legislature to amend Section 3 to provide that the subsidy to be received by COFINA under the Federal Build America Bonds Program shall be deposited in the FIA and that said funds shall not constitute available resources of the Commonwealth of Puerto Rico for any purposes, including for the purposes of Section 2 and Section 8 of Article VI of the Constitution.

It is further anticipated that through the refinancing or capitalization of interest mechanism, COFINA could set aside in a special deposit, funds for the future payment of its debt service. One of the amendments is directed to clarifying that the debt service whose payment is set aside in a

special deposit shall not be taken into account for purposes of calculating the limit of the debt which COFINA may incur.

In order to increase the liquidity of COFINA, an amendment is included granting express authorization for the issue of notes in advance of the issue of bonds and clarifying that said notes do not affect the debt limit of COFINA, since those notes shall be paid in full with the proceeds of future bond issues.

Finally, an amendment is included which provides for creating and perfecting a lien on the revenues of COFINA in favor of its bondholders, which is directed to strengthening the COFINA Financing Program, by offering greater protection to the bondholders. This provision is identical to the provisions on liens in favor of bondholders incorporated to the organic acts of other public corporations.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 2 of Act No. 91 of May 13, 2006, is hereby amended to read as follows:

“(a) ...

(b)...

(c) The source of repayment of COFINA bonds shall be the portion of the tax deposited in the Dedicated Sales Tax Fund pursuant to the provisions of Section 3(a) of this Act and any subsidy that COFINA may receive under the Federal Program known as ‘Build America Bonds.’ The Board of Directors of COFINA shall not authorize any COFINA bond issue, unless the Chair or a COFINA officer designated by the Chair certifies that the principal of and interest on the COFINA bonds he/she intends to authorize, plus the principal of and interest on all outstanding COFINA bonds (except those bonds to be paid with the proceeds of the new bonds or

those payments of principal or interest for which sufficient funds have been set aside to cover the payment thereof,) payable each fiscal year (beginning with the current fiscal year) is equal to or lesser than the Fixed Income appropriated to COFINA, corresponding to said fiscal year, plus any subsidy expected to be received by COFINA during said fiscal year under the Federal Build America Bonds Program.”

(d) ...

(e) ...

(f) ...

(g) COFINA may issue notes in advance of bonds, ‘notes,’ and said notes: (i) may be issued in a maximum amount which shall not exceed such amount that, as determined by the Board of Directors of COFINA, may be used to repay the proceeds of the bond issue authorized under Section 2(b) of this Act and allowed under Section 2(c) of this Act; (ii) shall not be subject to the limitation of Section 2(c) of this Act, unless the documents authorizing COFINA bonds provide otherwise nor be considered in the calculation of outstanding bonds required by said Section; (iii) shall not be taken into account for purposes of the first sentence of Section 5(d) of this Act; and (iv) may be repaid from the proceeds of the bonds issued under this Act and any of its available funds.”

Section 2.—Section 3 of Act No. 91 of May 13, 2006, as amended, is hereby amended to read as follows:

“Section 3.—Creation of the Special Fund.—

A special fund is hereby created, to be known as the *Fondo de Interés Apremiante* (hereinafter, ‘FIA’), whose name in English shall be Dedicated Sales Tax Fund, to be administered by the GDB. The FIA and all the funds deposited therein on the effective date of this Act and all the future funds

that must be deposited in the FIA pursuant to the provisions of this Act are hereby transferred to, and shall be the property of COFINA. This transfer is made in exchange for, and in consideration of COFINA's commitment to pay, or establish mechanisms to pay, all or part of the extraconstitutional debt outstanding as of June 30, 2006, and the interest payable thereon, and for the other purposes established in Section 2(b) of this Act, with the net proceeds of the bond issues or funds and resources available to COFINA.

The FIA shall be funded each fiscal year from the following sources, the proceeds of which shall be directly deposited in the FIA at the time of receipt and shall not be deposited in the Treasury of Puerto Rico, nor shall these constitute resources available to the Commonwealth of Puerto Rico, nor shall these be available for use by the Secretary of the Treasury of the Commonwealth of Puerto Rico (hereinafter, the 'Secretary'):

(a) The first revenues of the sales and use tax (hereinafter, 'Tax') approved by the 'Taxpayers Justice Act of 2006,' Act No. 117 of July 4, 2006, corresponding to the Commonwealth of Puerto Rico up to the amount of:

(i) the proceeds of the amount of the Tax collected during such fiscal year, multiplied by a fraction whose numerator shall be two point seventy-five percent (2.75%) and whose denominator shall be the rate of such tax, such fraction being hereinafter denominated 'two point seventy-five percent (2.75%) of the Tax,' or (ii) the applicable Fixed Income, whichever is greater.

(b) Any subsidy received by COFINA under the Federal Program known as 'Build America Bonds.'

For purposes of Section 3(a) of this Act, there shall be no Fixed Income for Fiscal Year 2006-2007. The Fixed Income for each fiscal year

shall be equal to the sum of the Original Fixed Income and the Additional Fixed Income. The Original Fixed Income for Fiscal Year 2007-2008 shall be one hundred eighty-five million (185,000,000) dollars. The Original Fixed Income for each subsequent fiscal year shall be equal to the Original Fixed Income for the prior fiscal year plus four percent (4%), up to a maximum of one billion, eight hundred and fifty million (1,850,000,000) dollars. The Additional Fixed Income for fiscal years 2006-2007, 2007-2008, and 2008-2009 shall be equal to zero (0) dollars. The Additional Fixed Income for fiscal year 2009-2010 shall be equal to three hundred and fifty million, one hundred sixty-eight thousand (350,168,000) dollars. The Additional Fixed Income for each subsequent fiscal year shall be equal to the Additional Fixed Income for the prior fiscal year plus four percent (4%), up to the fiscal year in which the sum of Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred and fifty million (1,850,000,000) dollars, 'Peak Year'. The Additional Fixed Income for each fiscal year following the Peak Year shall be reduced to the amount necessary for the sum of the Original Fixed Income and the Additional Fixed Income to equal one billion, eight hundred and fifty million (1,850,000,000) dollars. The Fixed Income for any fiscal year shall be funded from the first revenues of the Commonwealth of Puerto Rico's portion of the Tax."

Section 3.—Section 4 of Act No. 91 of May 13, 2006, as amended, is hereby amended to read as follows:

“Section 4.— Use.—

(a) ...

(b) The revenues indicated in Section 3(a) deposited in the FIA shall be used by COFINA, pursuant to financing or refinancing mechanisms, exclusively for the purpose of paying, financing or refinancing, directly or

indirectly, the extraconstitutional debt of the Commonwealth of Puerto Rico outstanding as of June 30, 2006, and all other debts, accounts or items mentioned in Section 2(b), including amounts owed to the GDB and the obligations incurred under any type of financing or surety agreement or interest rate swap agreement executed with respect to bonds issued to finance or refinance such debt. COFINA is hereby authorized to pledge and otherwise encumber all or part of such revenues solely for the payment of principal, interest and redemption premium of such bonds and other obligations of such instrumentality that were incurred with respect to such bonds to meet the purposes set forth in this Act and the payment of obligations incurred under any type of financing or surety agreement or interest rate swap agreement executed with respect to such bonds. Said pledge shall be valid and binding as of the time it is made without the need for a public or notarized document. The income or revenues thus encumbered, including those subsequently received by COFINA, shall be subject to said lien immediately, without the need of physically delivering the same or any other act, and said lien shall be valid and binding and shall prevail against any third party that has a claim of any kind for damages, breach of contract or any other grounds against COFINA, regardless of the fact that said third party has not been so notified. Neither the trust contract nor the resolution or any collateral contract, through which the rights of COFINA over any income or collection are pledged or assigned must be presented or registered for perfection of the lien over the same against any third party, except in the records of COFINA.

(c) ...

(c) ...”

Section 4.—Section 5 of Act No. 91 of May 13, 2006, as amended, is hereby amended to read as follows:

“Section 5.—Deposits and Disbursements.—

(a) ...

(b) Each month during each fiscal year, the Secretary shall determine if two point seventy-five percent (2.75%) of the Tax for the current fiscal year is an amount greater than the Fixed Income applicable to such fiscal year. Once the Secretary determines that two point seventy-five percent (2.75%) of the Tax for such fiscal year exceeds the Fixed Income applicable for such fiscal year, all revenues from the Tax received after such determination, up to an amount equal to the excess of such two point seventy-five percent (2.75%) of the Tax over the Fixed Income, shall be deposited in the FIA. Furthermore, on or prior to October 1 of each fiscal year, the Secretary shall determine if two point seventy-five percent (2.75%) of the Tax for the prior fiscal year is greater than the Fixed Income applicable to such prior fiscal year. The revenues from the Tax that represent the excess amount of two point seventy-five percent (2.75%) of the Tax for the prior fiscal year over the Fixed Income applicable to such fiscal year shall be the property of the FIA.

(c) The Commonwealth of Puerto Rico hereby agrees and assures any person, firm or corporation or any agency of the United States of America or of any state or the Commonwealth of Puerto Rico who underwrites or acquires bonds issued by COFINA, or who provides insurance, repayment or solvency sources for such bonds, that until such bonds, from any date, together with the interest thereon, entirely paid for and withdrawn, the Commonwealth shall not: (i) limit nor restrain the rights or powers of the corresponding officials of the Commonwealth of Puerto Rico

to levy, maintain, charge or collect taxes and other income to constitute the amounts to be deposited into the FIA pursuant to the provisions of this Act; provided, that the foregoing provisions do not limit the power of the Commonwealth of Puerto Rico, by means of a law amendment, to limit or restrain the nature or the amount of such taxes or other revenues or to substitute similar or comparable collateral by other taxes, fees, charges or other income to be deposited into the FIA if, for the following fiscal years, the revenues projected by the Secretary of the Treasury from such substitutive tax, income or collateral is equal to or greater than the service of the debt and other charges and any coverage requirement included in the COFINA bond authorizing documents; or (ii) limit or restrain the powers hereby conferred by this Act or the rights of COFINA to meet its agreements with bondholders, until such time as such bonds, regardless of their date, together with the interest accrued, shall be entirely paid for and withdrawn. No amendment to Act No. 91 of May 13, 2006, as amended, shall undermine any obligation or commitment of COFINA.

(d) ...

(e) ...”

Section 5.—If any provision of this Act or the application of such provision were to be found to be invalid, such finding shall not affect any other provisions or the application of this Act that may have effect without the need for the provisions that were found to be invalid, and to this end, the provisions of this Act are severable.

Section 6.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 18 (H.B. 1642) of the 1st Session of the 16th Legislature of Puerto Rico:

AN ACT amend Sections 2, 3, 4, and 5 of Act No. 91 of May 13, 2006, as amended, known as the “Dedicated Sales Tax Fund Act,” in order to make various technical amendments; to provide for the limits in the amount of bonds that COFINA may issue; to provide for the use of the subsidy to be received by COFINA under the Federal Program known as the “Build America Bonds”; authorize the issue of notes in advance of bond issues; and to provide for the creation and perfection of a lien on the revenues of the Sales and Use Tax that are deposited in the Dedicated Sales Tax Fund in favor of the bondholders,

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

In San Juan, Puerto Rico, today 12th of June of 2009.

Solange I. De Lahongrais
Director