

(H. B. 2115)

(No. 172-2014)

(Approved October 7, 2014)

AN ACT

To amend Sections 3 and 4 of Act No. 1 of June 26, 1987, as amended, in order to clarify the revenues of the General Fund to be deposited in the “Special Tax and Revenue Anticipation Notes Redemption Fund,” empower the Secretary of the Treasury to establish a lien on such revenues and separate the Special Fund with a third-party trustee; authorize the Secretary of the Treasury to include the terms and conditions deemed necessary and convenient for the sale of such notes; and for other related purposes.

STATEMENT OF MOTIVES

For the first time in our constitutional history, despite all the measures taken by the government to address the finances of the Island, the credit of the Commonwealth of Puerto Rico has been compromised due to the downgrade of the Commonwealth’s general obligation bonds to speculative grade by the major credit rating agencies. The loss of investment grade ratings of the public debt jeopardizes the fiscal and economic health of the people of Puerto Rico, unduly compromising the credit rating of the Island. Our economy has been severely damaged and adversely affected by such downgrading, thus resulting in the devaluation of outstanding bonds, losses in the investment portfolios of institutional and individual bondholders in the island, the difficulty in tapping into municipal bond markets to finance public works, and the contraction of economic activity in Puerto Rico, which has caused a marked reduction in the revenues of the Government, and, consequently, in the State’s capacity to fulfill the needs of the Island.

In view of the foregoing, by virtue of the police power and pursuant to Sections 18 and 19 of Article II, and Sections 7 and 8 of Article VI of our Constitution, Act No. 66-2014 was approved to declare a serious economic and fiscal emergency in Puerto Rico and provide the tools for the State to have sufficient liquidity to be able to meet payroll of public employees and cover the costs of essential services offered to the people. This was achieved through the implementation of measures to cut back on spending and provide fiscal stability to achieve the economic recovery of Puerto Rico, without resorting to the dismissal of career public employees or affecting critical functions of government agencies that provide security, education, healthcare or other social work services; and most importantly safeguarding the constitutional mandate for the payment of interest and amortization of the public debt.

Every fiscal year, the Commonwealth of Puerto Rico (the Commonwealth) issues tax and revenue anticipation notes (TRANs) to manage the cash flow of the General Fund. These standard issues are used to finance, throughout the year, the General Fund appropriations for the current fiscal year in anticipation of the receipt of taxes and revenues to be collected in cash during that fiscal year, according to the budget estimates of the General Fund. This financing is necessary given that a large portion of the income budgeted for the General Fund is usually received in the last quarter of the fiscal year.

TRANs issues are fundamental for the budgetary and fiscal health of the Commonwealth and the proceeds of these transactions are used to provide essential services to the people in connection with the security, healthcare, and wellbeing of millions of Puerto Ricans. Generally, TRANs are issued during the first quarter of each fiscal year and are repaid during the last quarter.

This Legislative Assembly deems it necessary to amend Act No. 1 of June 26, 1987, as amended, to provide the Secretary of the Treasury with additional powers in relation to the issue of TRANs and thereby ensure that any issue of TRANs is carried out in the most efficient and cost-effective manner possible, consistently with the best interests of the people of Puerto Rico. In order to achieve said objective, this amendment, among other purposes, seeks to clarify the General Fund revenues that shall be deposited in the “Special Tax and Revenue Anticipation Notes Redemption Fund” (hereinafter the “Special Fund”) and empower the Secretary of the Treasury to establish a lien on said revenues. Such amendment also authorizes the Secretary of the Treasury to separate the Special Fund and maintain it with a trustee for the benefit of the holders of the TRANs. Consistent with Act No. 34-2014, this amendment also authorizes the Secretary of the Treasury, only during fiscal year 2014-2015, to establish terms and conditions as he/she may deem convenient and necessary for the sale of the notes, including clauses regarding the selection of forums and the applicability of the law, specifically with regard to legal proceedings related to TRANs.

The amendments introduced in this Act protect statutes such as Act No. 91-2006, which established the Puerto Rico Sales Tax Financing Corporation (COFINA); Act No. 30-2013, which modified the amount of money covered into the Special Deposit in the name and for the benefit of the Puerto Rico Highways and Transportation Authority on account of certain collections under Act No. 22-2000; Act No. 31-2013, which provided that all of the proceeds from the excise tax on crude oil, and partially finished and finished oil by-products and any other hydrocarbon mixture as well as twenty million dollars (\$20,000,000) of the revenues from the excise tax on cigarettes collected every fiscal year shall be allocated to the Highways and Transportation Authority; Act No. 157-2014, which established a financing mechanism whereby the portion of the Sales and Use Tax

revenues allocated for developing improvement projects in the Convention Center District shall be increased in a staggered manner, among others. These laws allocate for specific purposes a portion of the revenues from taxes, fines or other excise taxes. Defining the uses of Special Tax and Revenue Anticipation Notes Redemption Fund ensures that the objectives of the laws currently in effect, as well as those of any future laws providing for similar purposes, are not affected by the TRANs.

In view of the current fiscal and credit reality of the Government, the Legislative Assembly deems it necessary and urgent to render certain aspects related to the financing of TRANs more flexible during the 2014-2015 period, so that the State may efficiently use this important tool to fulfill its responsibility to the people.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 3 of Act No. 1 of June 26, 1987, as amended, is hereby amended to read as follows:

“Section 3.- Note Purchase and Financing Agreements.

The Secretary of the Treasury is hereby authorized to negotiate and execute with any bank, investment firm or other financial institution, pursuant to the resolution or resolutions adopted by the same Secretary and approved by the Governor, such contracts, purchase agreements or other financing agreements as may be required for the sale of notes, under such terms and conditions as the Secretary of the Treasury, with the advice and recommendations of the Government Development Bank for Puerto Rico as fiscal agent, may determine to be most convenient, in the best interests of the Commonwealth of Puerto Rico.

For purposes of the notes issued during fiscal year 2014-2015, exclusively, the Secretary of the Treasury is further authorized to include in the resolution or resolutions and in any contracts, purchase agreements, or other financing agreements related to the notes authorized under this Act, up to a maximum of one billion two hundred million dollars (\$1,200,00,000), such terms and conditions as he/she may deem necessary and convenient for the sale of such notes, including to consent on behalf of the Commonwealth of Puerto Rico, with the written consent of the Secretary of Justice, to: (i) have the notes and any contract, note purchase agreement or other financing agreement subject to the laws of New York; (ii) be subject to the jurisdiction of any state or federal court located in the Borough of Manhattan, New York City, New York, in the event that a lawsuit may arise in connection with such notes or any agreement related thereto; and (iii) waive the Commonwealth's sovereign immunity from any lawsuit or other legal proceeding related thereto. Notwithstanding the foregoing, the Commonwealth of Puerto Rico may not waive its sovereign immunity with respect to any attachment or execution of government property located in the Commonwealth of Puerto Rico, except with regard to the monies deposited in the 'Special Tax and Revenue Anticipation Notes Redemption Fund' referred to in Section 4 of this Act. Any waiver of its sovereign immunity with respect to the notes issued under the provisions of this Act or any agreement related thereto shall be expressly limited to legal proceedings related to such notes or any agreement related thereto, and, in no case, shall such waiver constitute: (i) a general waiver of the Commonwealth of Puerto Rico of its sovereign immunity, or (ii) a waiver of its sovereign immunity with respect to legal proceedings not related to the notes issued in accordance with the provisions of this Act or any agreement related thereto."

Section 2.- Section 4 of Act No. 1 of June 26, 1987, as amended, is hereby amended to read as follows:

“Section 4.- Payment of Tax and Revenue Anticipation Notes.

(a) The Secretary of the Treasury shall specify in the resolution authorizing the issue of the notes the specific taxes or revenues in anticipation of which the notes are issued. All taxes and revenues thus specified and received after the issue of the notes and before the close of the fiscal year in which the notes were issued, except those taxes required to be deposited in the fund known as the ‘Special Fund for the Amortization and Redemption of General Obligations Evidenced by Bonds and Notes’ and those taxes and revenues that have been assigned pursuant to existing legislation or that may be assigned under any future legislation that does not affect or include, or result in the reduction of, any of the taxes and revenues pledged for the repayment of any note issue under this Act and outstanding on the date such future legislation is enacted, shall be paid to and deposited in a special fund known as the ‘Special Tax and Revenue Anticipation Notes Redemption Fund’ (hereinafter the ‘Special Fund’) on the dates specified in the authorizing resolution, until the amount so deposited in said fund is sufficient to cover the amounts required to be paid as provided in the authorizing resolution or, if such resolution does not provide otherwise, to pay the principal and redemption premium, if any, and the interest and any other obligation thereon, as they become due.

(b) All taxes and revenues as received by the Secretary on behalf of the Commonwealth of Puerto Rico, which are required to be deposited in the Special Fund in accordance to the provisions of this Act, including, but not limited to, all monies so deposited in the Special Fund, are irrevocably pledged in favor of the holders of such notes and, subject to the provisions of the authorizing resolution, devoted to the payment of the principal and redemption premium, if any, as well as

the interest and any other obligations thereon until all obligations on the notes are paid in full. Such irrevocable pledge shall be valid and binding from the time the pledge is made and all taxes and revenues so pledged and received by the Secretary shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of the irrevocable pledge shall be valid and binding against all parties to any kind of claim, whether extra-contractual, contractual, or otherwise against the Commonwealth, whether or not such parties are notified. The irrevocable pledge created pursuant to this Section shall be automatically perfected without the need for a public, recorded or notarized document or any other act and is intended to be and shall be a statutory lien. This pledge of taxes and revenues is subject to the application of such taxes and revenues in accordance with the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico.

(c) The Special Fund shall be a separate fund. The Secretary of the Treasury is hereby authorized to have the Special Fund held by a third party for the exclusive benefit of the holders of the notes issued in accordance with this Act, including a trustee acting in accordance with the terms of a trust established for such purposes.

(d) All the monies in the Special Fund that do not exceed the amount required for such purpose shall be used to pay the principal and redemption premium, if any, and the interest on the notes or any note issued to renew said notes, and shall not be used for any other purpose. The full faith, credit and taxing power of the Commonwealth of Puerto Rico are not pledge for the payment of notes issued under the provisions of this Act, and said notes shall only be payable from the funds required to be deposited in the Special Fund provided for in this Section.”

Section 3.- If any provision of this Act, or the application thereof, were held to be null, such holding shall not affect, impair or invalidate the remaining provisions of this Act, or the application thereof, which may be in effect without the provisions held to be invalid. The effect of such holding shall be limited to the Section or part thereof held to be null. Thus, the provisions of this Act are severable.

Section 4.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 172-2014 (H. B. 2115)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 3 and 4 of Act No. 1 of June 26, 1987, as amended, in order to clarify the revenues of the General Fund to be deposited in the "Special Tax and Revenue Anticipation Notes Redemption Fund," empower the Secretary of the Treasury to establish a lien on such revenues and separate the Special Fund with a third-party trustee; authorize the Secretary of the Treasury to include the terms and conditions deemed necessary and convenient for the sale of such notes; and for other related purposes.

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

In San Juan, Puerto Rico, on this 10th day of October, 2014.

Juan Luis Martínez Martínez
Acting Director