

(H. B. 1425)

(No. 116-2013)

(Approved October 10, 2013)

AN ACT

To amend Sections 2, 3, 4, and 5 of Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act,” in order to increase the amount of sales and use tax revenues deposited in the Dedicated Sales Tax Fund and authorize the Puerto Rico Sales Tax Financing Corporation to use the proceeds from any bond issue whose repayment is backed by such proceeds to cover the operating expenses of the Commonwealth of Puerto Rico for fiscal years 2013-2014 and 2014-2015; to pay all or part of the financing granted or to be granted to the Commonwealth of Puerto Rico by the Government Development Bank for Puerto Rico or other financial institutions on or before June 30, 2014; to pay all or part of the financing backed by bonds and notes of the Commonwealth of Puerto Rico with variable interests and obligations incurred under any type of financing, guarantee, or interest rate swap agreement entered into with respect to such variable-interest bonds or notes; to pay all or part of any debt of the Commonwealth of Puerto Rico with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing as of June 30, 2013; to nourish the Fiscal Reconstruction Fund created under Act No. 45-2013, or to pay, finance, or refinance, directly or indirectly, all or part of the debt authorized under Act No. 45-2013; to pay, finance, or refinance any bonds, loans, bond anticipation notes issued by the Commonwealth of Puerto Rico under Act No. 242-2011, and Act No. 47-2013, or to cover the cost of necessary public improvements that may be financed by bonds authorized under Act No. 242-2011, and Act No. 47-2013; and for other purposes.

STATEMENT OF MOTIVES

Since the beginning Administration, the Legislative Assembly has taken affirmative actions to address the most serious issues that were affecting the credit of Puerto Rico. One of these issues was a General Fund structural deficit of nearly two billion two hundred million dollars (\$2,200,000,000), which we began

to effectively address with the approval of a responsible budget for fiscal year 2013-2014 that reduced such structural deficit by approximately sixty-three percent (63%). However, the Commonwealth of Puerto Rico is still carrying more than two billion one hundred million dollars (\$2,100,000,000) in financing which will be refinanced through a long-term bond issue. Nearly sixty percent (60%) of this debt was approved and incurred by the preceding Administration to carry out construction works and balance the budget for fiscal year 2012-2013. Such debt has been temporarily financed by the Government Development Bank for Puerto Rico (“GDB”), as well as private banks. For such reason, it is necessary to refinance such debt through a long-term bond issue in the stock markets in order to pay off all of our private loans and provide the GDB with the necessary liquidity.

Bonds issued by the Puerto Rico Sales Tax Financing Corporation (“COFINA,” Spanish acronym) have been the most cost-effective source of financing for the Commonwealth of Puerto Rico, since the creation of such corporation in 2006. Given that such bonds are backed by the revenues of the sales and use tax, which is an ongoing and reliable source of income, their credit rating is higher than that of general obligation bonds of the Commonwealth of Puerto Rico.

For the purpose of financing the deficits incurred these past three years, among other purposes, it is necessary to broaden COFINA’s ability to issue bonds and provide the necessary mechanisms to obtain the most cost-effective financing for the Commonwealth. This Act amends Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act,” to increase the portion of the sales and use tax that is deposited in the Dedicated Sales Tax Fund (FIA, Spanish acronym) created under Act No. 91-2006. This amendment shall allow COFINA to issue new bonds backed by all of its income, including COFINA’s income increase. Furthermore, Act No. 91-2006 is hereby amended so that the proceeds of such

bond issue may be used (i) to pay or finance the operating expenses of the Commonwealth of Puerto Rico for fiscal years 2013-2014 and 2014-2015; (ii) to pay all or part of the financing granted or to be granted to the Commonwealth of Puerto Rico by the Government Development Bank for Puerto Rico or other financial institutions, including but not limited to financing payable from future issues of general obligation bonds of the Commonwealth of Puerto Rico and bond anticipation notes of the Commonwealth of Puerto Rico; (iii) to pay all or part of the financing backed by bonds and notes of the Commonwealth of Puerto Rico whose interests are variable and obligations incurred under any type of financing, guarantee, or interest rate swap agreements entered into with respect to such variable-interest bonds or notes; (iv) to pay all or part of any debt of the Commonwealth of Puerto Rico with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing as of June 30, 2013; (v) to nourish the Fiscal Reconstruction Fund created under Act No. 45-2013 or to pay, finance, or refinance, directly or indirectly, all or part of the debt authorized under Act No. 45-2013; and (vi) to pay, finance, or refinance any bonds, loans, bond anticipation notes issued by the Commonwealth of Puerto Rico under Act No. 242-2011, and Act No. 47-2013, or to cover the cost of necessary public improvements that may be financed by bonds authorized under Act No. 242-2011, and Act No. 47-2013, respectively.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

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

“Section 2.- Creation of the Public Corporation.-

(a) ...

(b) COFINA is created for the purpose of issuing bonds and utilizing other financing mechanisms for the following ends: (i) to pay or refinance, directly or indirectly, all or part of the extraconstitutional debt of the Commonwealth of Puerto Rico outstanding as of June 30, 2006, and the accrued interest thereon; (ii) to pay all or part of the debt of the Secretary of the Treasury with the Government Development Bank for Puerto Rico in the amount of one (1) billion dollars, used to finance the budget deficit of fiscal year 2008-2009; (3) to pay all or part of (A) the financing granted or to be granted to the Commonwealth of Puerto Rico until June 30, 2014, by the Government Development Bank for Puerto Rico or other financial institutions, payable from future general obligation bond issues of the Commonwealth of Puerto Rico, including but not limited to bond anticipation notes issued by the Commonwealth of Puerto Rico; (B) financing backed by bonds and notes of the Commonwealth of Puerto Rico with variable interests and obligations incurred under any type of financing, guarantee, or interest rate swap agreements entered into with respect to such variable-interest bonds or notes; and (C) any debt of the Commonwealth of Puerto Rico with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing as of June 30, 2013; (iv) to pay all or part of the accounts payable to suppliers of the Commonwealth of Puerto Rico; (v) to pay or finance operating expenses of the Government of the Commonwealth of Puerto Rico corresponding to fiscal years 2008-2009, 2009-2010, and 2010-2011; (vi) to pay or finance operating expenses of the Government of the Commonwealth of Puerto Rico corresponding to fiscal year 2011-2012, which shall be included in the annual budget of the Government of Puerto Rico; (vii) to pay or finance operating expenses of the Government of the Commonwealth of Puerto Rico corresponding to fiscal years 2012-2013, 2013-2014, and 2014-2015; (viii) to generate funds to nourish the Puerto Rico Economic Stimulus Fund established under Section 6 of

this Act; (ix) to nourish the Emergency Fund of the Commonwealth of Puerto Rico to meet expenses arising as a result of a catastrophic event, such as hurricanes or floods; (x) to generate funds to nourish the Economic Cooperation and Alternatives Fund for Public Employees; (xi) to nourish the Fiscal Reconstruction Fund created under Act No. 45-2013, or to pay or refinance, directly or indirectly, all or part of the debt authorized under Act No. 45-2013; and (xii) to pay, finance, or refinance any bonds, loans, bond anticipation notes issued by the Commonwealth of Puerto Rico under Act No. 242-2011 and Act No. 47-2013, or to cover the cost of necessary public improvements that may be financed by bonds authorized under Act No. 242-2011, and Act No. 47-2013.

(c) ...

(d) Notwithstanding the provisions of Section 4, COFINA may use any necessary amount from the moneys received from the revenues stated in Sections 3(a) and 5(d) or the proceeds from the sale of the bonds issued pursuant to the provisions of this Act, to pay any interest accrued on such bonds, to pay the expenses incurred in connection with the issue and sale of such bonds, including those expenses related to insurance, letters of credit or other instruments, and to defray any operating expense.

(e) ...

...”

Section 2.- Section 3 of Act No. 91-2006, 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. 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 accrued interest 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. FIA shall be funded each fiscal year from the following sources, the proceeds of which shall be directly deposited in 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') set forth in Subtitle D of Act No. 1-2011, as amended, known as the Internal Revenue Code for a New Puerto Rico, 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 three point fifty percent (3.50%) and whose denominator shall be the rate of such tax, such fraction being hereinafter denominated 'the three point fifty percent (3.50%) 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, between Fiscal Year 2007-2008 and Fiscal Year 2012-2013, shall be equal to the sum of the Original Fixed Income and the Additional Fixed Income. The Original Fixed

Income for Fiscal Year 2013-2014 and every subsequent fiscal year shall be the sum of the Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income. The Original Fixed Income for Fiscal Year 2007-2008 shall be one hundred eighty-five million dollars (\$185,000,000). The Original Fixed Income for each subsequent fiscal year shall be equal to the Original Fixed Income for the previous fiscal year plus four percent (4%), up to a maximum of one billion, eight hundred and fifty million dollars (\$1,850,000,000). 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 dollars (\$350,168,000). The Additional Fixed Income for each subsequent fiscal year shall be equal to the Additional Fixed Income for the previous 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 dollars (\$1,850,000,000) ('Peak Year'). The Additional Fixed Income for each fiscal year following the Peak Year shall be reduced to the amount necessary so that the sum of the Original Fixed Income and the Additional Fixed Income equals one billion, eight hundred and fifty million dollars (\$1,850,000,000). The Supplementary Fixed Income for Fiscal Year 2013-2014 shall be one hundred seventy-five million, five hundred sixty-three thousand fourteen dollars (\$175,563,014). The Supplementary Fixed Income for each subsequent fiscal year shall be equal to the Supplementary Fixed Income for the previous fiscal year plus four percent (4%), up to the fiscal year in which the sum of Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income equals two billion fifty-five million dollars (\$2,055,000,000) ('Peak Supplementary Year'). The Supplementary Fixed Income for each fiscal year following the Peak Supplementary Year shall be reduced to the

amount necessary so that the sum of the Original Fixed Income, the Additional Fixed Income, and the Supplementary Fixed Income equals two billion fifty-five million dollars (\$2,055,000,000). 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. 91-2006, as amended, is hereby amended to read as follows:

“Section 4.- Use

(a) ...

(b) ...

(c) Amounts deposited into FIA in excess of the amounts necessary to pay the principal of and interest on COFINA bonds, to meet the obligations incurred under bond issue documents or to make any other payment related to other obligations incurred by COFINA, including payments under interest rate swaps agreements, in connection with money taken on loan or bonds issued by said instrumentality for the payment of which the proceeds of such Tax has been pledged, may be transferred to the General Fund of the Commonwealth of Puerto Rico to be used as determined by the Secretary of the Treasury to cover any expenses included in the budget approved by the Legislative Assembly for the current year. In order to be able to make such transfer, the same shall be authorized by the COFINA Board of Directors, upon certification of the fact that the amounts to be transferred are not necessary to meet any obligation of COFINA.

(d) ...”

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

“Section 5.- Dedicated Sales Tax Fund-- Deposits and Disbursements

(a) ...

(b) Each month during each fiscal year, the Secretary shall determine whether three point fifty percent (3.50%) 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 three point fifty percent (3.50%) of the Tax for such fiscal year exceeds the Fixed Income applicable to such fiscal year, all revenues from the Tax received after such determination, up to an amount equal to the excess of such three point fifty percent (3.50%) of the Tax over the Fixed Income, shall be deposited in FIA. Furthermore, on or before October 1 of each fiscal year, the Secretary shall determine whether the three point fifty percent (3.50%) of the Tax for the previous fiscal year is greater than the Fixed Income applicable to such previous fiscal year. The revenues from the Tax that represent the excess amount of three point fifty percent (3.50%) of the Tax for the previous fiscal year over the Fixed Income applicable to such fiscal year shall belong to FIA.

(c) ...

...”

Section 5.- If any provision of this Act or the application thereof were held to be null, such holding shall not affect the remaining provisions of this Act or the application thereof, which may continue in effect, notwithstanding the provisions held null. Therefore, 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. 116-2013 (H. B. 1425)** of the **2nd Session of the 17th Legislature** of Puerto Rico:

AN ACT to amend Sections 2, 3, 4, and 5 of Act No. 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act,” in order to increase the amount of sales and use tax revenues deposited in the Dedicated Sales Tax Fund and authorize the Puerto Rico Sales Tax Financing Corporation to use the proceeds from any bond issue whose repayment is backed by such proceeds to cover the operating expenses of the Commonwealth of Puerto Rico for fiscal years 2013-2014 and 2014-2015; etc.

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

In San Juan, Puerto Rico, on this 1st day of November, 2013.

Juan Luis Martínez Martínez
Acting Director