

(House Bill 1425)

17th Legislative 2nd. Ordinary
Assembly Session
Act No. 116-2013
(Approved October 10, 2013)

AN ACT

To amend Sections 2, 3, 4 y 5 of Act No. 91 of May 13, 2006, as amended, known as the “Dedicated Sales Tax Fund Act,” in order to increase the amount of revenues from the sales and use tax to be deposited into the Dedicated Sales Tax Fund and to authorize Puerto Rico Sales Tax Financing Corporation to use the proceeds of any bond issue whose repayment is backed by such revenues to pay or finance the operational expenses of the Commonwealth of Puerto Rico for the fiscal years 2013-2014 and 2014-2015, to pay all or part of the financings granted or to be granted to the Commonwealth of Puerto Rico by the Government Development Bank for Puerto Rico or other financial institutions up to June 30, 2014, to pay all or part of financings evidenced by bonds or notes of the Commonwealth of Puerto Rico that have a variable interest rate and the obligations incurred under any type of financing or surety agreement or interest rate swap agreement executed with respect to such variable bonds or notes, to pay all or part of any debt payable from future general obligation bond issues of the Commonwealth of Puerto Rico, as well as all or part of any debt with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing on June 30, 2013, and to generate funds for the Fiscal Reconstruction Fund created by Act 45-2013 or to pay, finance or refinance, directly or indirectly, in whole or in part the debt authorized under Act 45-2013, and pay, finance or refinance the bonds or the bond anticipation notes issued by the Commonwealth of Puerto Rico as authorized by Acts 242-2011 and 47-2013 or cover the cost of necessary public improvements that could be funded by the bonds authorized by Acts 242-2011 and 47-2013; and for other purposes.

STAMENT OF MOTIVES

Since the start of this Administration, the Legislative Assembly has taken affirmative steps to address the most important challenges affecting Puerto Rico’s credit. Among these challenges is the General Fund’s structural deficit of approximately \$2,400 million, which was initially addressed in a decisive manner by the approval of a responsible budget for fiscal year 2013-2014, which reduced the structural deficit by approximately sixty three percent. However, the Commonwealth of Puerto Rico has more than \$2,100 million in obligations to be refinanced through the issuance of long-term debt. Approximately sixty percent of this debt was approved and incurred by the last administration to construct projects and to balance the budget

of fiscal 2012-2013. Temporarily, such debt has been finance by the Government Development Bank for Puerto Rico (“GDB”) and by private banking institutions, and it is necessary to refinance this debt through the issuance of long-term debt in the capital markets in order to pay off our private loans and provide the necessary liquidity to GDB.

Since its inception in 2006, the bonds issued by the Puerto Rico Sales Tax Financing Corporation (“COFINA”) have been the most cost-effective financing source for the Commonwealth of Puerto Rico because their payment is backed by the revenues from the sales and use tax, a stable and reliable source of income and therefore enjoy a higher credit rating than the general obligation bonds of the Commonwealth of Puerto Rico.

In order to finance the deficits incurred in the past three years, among other purposes, it is necessary to expand the capacity of COFINA to issue bonds and provide the necessary mechanisms to get the best cost efficient financing for the Commonwealth of Puerto Rico. This Act hereby amends Act 91-2006, as amended, known as the “Dedicated Sales Tax Fund Act,” so as to increase the amount of moneys from the sales and use tax to be deposited into the Dedicated Sales Tax Fund, created by Act 91-2006. This will allow COFINA to issue new bonds backed by all COFINA revenues including the increased revenues assigned to COFINA. In addition, Act 91 is amended in order to allow to the proceeds of such bonds to be used for: (i) to pay or finance the operational expenses of the Government of the Commonwealth of Puerto Rico for the fiscal years 2013-2014 and 2014-2015, (ii) to pay all or part of the financings granted or to be granted to the Commonwealth of Puerto Rico up to June 30, 2014 by the Government Development Bank for Puerto Rico or other financial institutions (iii) to pay all or part of financings evidenced by bonds or notes of the Commonwealth of Puerto Rico that have a variable interest rate and the obligations incurred under any type of financing or surety agreement or interest rate swap agreement executed with respect to such variable bonds or notes, (iv) to pay all or part of any debt with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing on June 30, 2013, (v) to generate funds for the Fiscal Reconstruction Fund created by Act 45-2013 or to pay, finance or refinance, directly or indirectly, in whole or in part the debt authorized under Act 45-2013, and (vi) pay, finance or refinance the bonds or the bond anticipation notes issued by the Commonwealth of Puerto Rico as authorized by Acts 242-2011 and 47-2013 or cover the cost of necessary public improvements that could be funded by the bonds authorized by Acts 242-2011 and 47-2013, respectively.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2 of Act 91-2006, as amended, is amended to read as follows:

“Section 2.- Creation of the Public Corporation

(a) ...

(b) COFINA is created for the purpose of issuing bonds and using other financing mechanisms for the following ends: (i) to directly or indirectly pay or refinance all or part of the outstanding extra constitutional debt of the Government of Puerto Rico as of June 30, 2006, and the interest accrued thereon, (ii) to pay all or part of the \$1 billion debt of the Secretary of the Treasury with the Government Development Bank for Puerto Rico, which was used to finance the budget deficit of fiscal year 2008-2009, (iii) to pay all or part of (A) the financings granted or to be granted to the Commonwealth of Puerto Rico by the Government Development Bank for Puerto Rico or other financial institutions up to June 30, 2014, payable from future general obligation bond issues of the Government of Puerto Rico, including but not limited to bond anticipation notes issued by the Commonwealth of Puerto Rico, (B) financings evidenced by bonds or notes of the Commonwealth of Puerto Rico that have a variable interest rate and the obligations incurred under any type of financing or surety agreement or interest rate swap agreement executed with respect to such variable bonds or notes, and (C) as well as any debt with no repayment source or which is payable from budget appropriations of the Government of Puerto Rico, existing on June 30, 2013, (iv) to pay all or part of the accounts payable to suppliers of the Government of Puerto Rico, (v) to pay or finance operating expenses of the Government 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 Puerto Rico corresponding to fiscal year 2011-2012, which shall be included in the annual budget of the Government of Puerto Rico, (vii) pay or finance the operational expenses of the Commonwealth of Puerto Rico for the fiscal years 2012-2013, 2013-2014 and 2014-2015, (viii) to generate funds for the Puerto Rico Economic Stimulus Fund established under Section 6 of this Act, and (ix) to cover funds into the Emergency Fund of the Commonwealth of Puerto Rico in order to meet expenses arising from catastrophic events, such as hurricanes or floods, (x) to generate funds for the Economic Cooperation and Public Employee Options Fund, (xi) to generate funds for the Fiscal Reconstruction Fund created by Act 45-2013 or to pay, finance or refinance, directly or indirectly, in whole or in part the debt authorized under Act 45-2013, and (xii) pay, finance or refinance the bonds or the bond anticipation notes issued by the Commonwealth of Puerto Rico as authorized by Acts 242-2011 and 47-2013 or cover the cost of necessary public improvements that could be funded by the bonds authorized by Acts 242-2011 and 47-2013.

(c) ...

(d) Notwithstanding the provisions of Section 4, COFINA may use any necessary amount from the moneys received from the revenues indicated 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 capitalized interests on such bonds, to pay the expenses incurred in connection with the issuance 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 91-2006, as amended, is 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 Interes 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 extra constitutional 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”) codified in Subchapter D of Act 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 "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 Fixed Income for Fiscal Year 2013-2014 and thereafter shall be equal to the sum of the Original Fixed Income, the Additional Fixed Income and the Supplemental 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 Supplemental Fixed Income for fiscal year 2013-2014 shall be one hundred seventy five million five hundred sixty three thousand fourteen (175,563,014) dollars. The Supplemental Fixed Income for each subsequent fiscal year shall be equal to the Supplemental Fixed Income for the prior 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 Supplemental Fixed Income equals two billion fifty-five million (2,055,000,000) dollars, 'Supplemental Peak Year'. The Supplemental Fixed Income for each fiscal year following the Supplemental Peak Year shall be reduced to the amount necessary for the sum of the Original Fixed Income, the Additional Fixed Income and the Supplemental Fixed Income to equal two billion fifty-five million

(2,055,000,000) 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 91-2006, as amended, is amended to read as follows:

"Section 4.-Uses

(a) ...

(b) ...

(c) Amounts deposited into the FIA in excess of the amounts necessary to pay the principal of and interest on COFINA bonds, to meet the obligations assumed under bond issue documents or to make any other payment relative to other obligations incurred by COFINA, including payments under interest rate swaps, 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 in order to cover any expense included in the budget approved by the Legislative Assembly for the applicable 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 91-2006, as amended, is amended to read as follows:

"Section 5.--Deposits and Disbursements.--

(a) ...

(b) Each month during each fiscal year, the Secretary shall determine if the three point fifty percent (3.50%) of the Tax for the current fiscal year is greater than the Fixed Income applicable to such fiscal year. Once the Secretary determines that the three point fifty percent (3.50%) 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 said three point fifty percent (3.50%) 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 the three

point fifty percent (3.50%) 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 the three point fifty percent (3.50%) of the Tax corresponding to the prior fiscal year over the Fixed Income applicable to such fiscal year shall be the property of the FIA.

(c) ...

..."

Section 5. - If any provision of this Act or the application thereof were held to be invalid, such holding shall not affect the remaining provisions of this Act or the application thereof that may be in effect without the provisions held invalid. To such end, the provisions of this Act shall be severable.

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

/s/Eduardo Bhatia

/s/Jaime Perelló

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President of the Senate

President of the House

Approved on October 10, 2013

/s/ Alejandro García Padilla

Governor