(H. B. 3660)

(No. 56)

(Approved July 5, 2007)

AN ACT

To add a new Section 2, amend and renumber Section 2 as Section 3, renumber Section 3 as Section 4, amend and renumber Section 4 as Section 5, renumber Section 5 as Section 6, add a new Section 7, renumber Sections 6 and 7 as Sections 8 and 9, respectively, of Act 91 of May 13, 2006, as amended, also known as The Dedicated Sales Tax Fund Act, for the purpose of creating the Puerto Rico Sales Tax Financing Corporation as an independent corporation attached to Government Development Bank for Puerto Rico, with the power to issue bonds and use other financing mechanism to pay or refinance the extra-constitutional debt of the Commonwealth of Puerto Rico; to transfer the Dedicated Sales Tax Fund to such Corporation and clarify the scope of the protection enjoyed by the holders of the bonds issued by COFINA.

STATEMENT OF MOTIVES

Act No. 91 of May 13, 2006 created the Dedicated Sales Tax Fund[*] for the purpose of depositing in the same a portion of the revenues generated by the sales and use tax (IVU, Spanish acronym), authorized by Act No. 117 of July 4, 2006, also known as the "Taxpayers Justice Act of 2006," and of using these revenues to pay the extraconstitutional debt of the government of the Commonwealth of Puerto Rico outstanding as of June 30, 2006.

Act No. 91 was recently amended by Act No. 291 of December 26, 2006, for the purpose of establishing the financial structure necessary to pay or refinance the extraconstitutional debt. Said amendment authorized the

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[*] The English name of this Fund, formerly known as the Urgent Interest Fund, is established in Section 3 of this Act.

creation, by means of a resolution of the Board of Directors of the Government Development Bank for Puerto Rico (GDB), of the Puerto Rico Sales Tax Financing Corporation (COFINA, Spanish acronym) as a subsidiary of GDB, for the purpose of enabling this Corporation to issue the bonds that would be used to pay or refinance all or part of the extraconstitutional debt. The source of repayment of these bonds would be a portion of the SUT that is deposited in the Dedicated Sales Tax Fund, which was transferred to COFINA pursuant to said amendment. COFINA was never created by GDB.

If COFINA had been created as a subsidiary of GDB, there would have been adverse financial results for GDB due to the consolidation of the financial statements of COFINA and GDB as required by the accounting standards. Therefore, it is necessary to amend Act No. 91 so that COFINA is created by law as an independent corporation attached to GDB, rather than as one of its subsidiaries. COFINA may only use its powers to achieve the purposes for which it was created.

It is the intention of this Legislature to increase the amount of funds that are deposited in the Dedicated Sales Tax Fund pursuant to the provisions of Act No. 91 so that they be used to pay the extraconstitutional debt, that they be owned by COFINA until such time as the extraconstitutional debt outstanding as of June 30, 2006 has been paid, and that such funds shall not constitute available resources of the Commonwealth of Puerto Rico for any purpose, including for purposes of Section 8 of Article VI of the Constitution.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

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

“Section 2.- Creation of the Public Corporation

A public corporation and instrumentality of the Commonwealth of Puerto Rico, is hereby created, which constitutes a corporate and political entity independent and separate from the Commonwealth of Puerto Rico to be known as the *Corporación del Fondo de Interés Apremiante de Puerto Rico (“COFINA”)*, whose name in English shall be Puerto Rico Sales Tax Financing Corporation (“PRSTFC”). COFINA is created for the purpose of issuing bonds and utilizing other financing mechanisms 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, using as a source of repayment the portion of the tax deposited in the Dedicated Sales Tax Fund pursuant to the provisions of Section 3(a) of this Act. Notwithstanding the provisions of Section 4, COFINA may use any necessary amount from the moneys received from the collections indicated in Sections 3(a) and 5(e) or the proceeds from the sale of the bonds issued pursuant to the provisions of this Act, 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. COFINA shall be attached to the Government Development Bank for Puerto Rico, hereinafter “GDB.” The Board of Directors of COFINA shall be the Board of Directors of the GDB. COFINA shall have the same powers, rights and faculties granted to the GDB pursuant to the provisions of its Constitutional Charter, which powers shall only be exercised to carry out the purposes for which COFINA was created, but it shall not have the power to act as fiscal agent of the government. The revenues, operations and properties of the COFINA shall enjoy the same tax exemption enjoyed by the GDB and the bonds, notes and other obligations of COFINA and the income derived therefrom shall enjoy the same tax exemption enjoyed by the bonds, notes and other obligations of the GDB."

Section 2.- Section 2 is hereby amended and renumbered as Section 3 of Act No. 91 of May 13, 2006, as 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" (Spanish acronym), whose name in English shall be Dedicated Sales Tax Fund, to be administered by GDB for Puerto Rico and the Secretary of the Treasury of the Commonwealth of Puerto Rico, hereinafter the 'Secretary.' 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 law 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, with the net proceeds of the bond issues or FIAs and resources available to COFINA.

The FIA shall be funded each fiscal year from the following sources, the product 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 it constitute resources available to the Commonwealth of Puerto Rico, nor shall it be available for use by 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 product of the amount of the Tax collected during such fiscal year multiplied by a fraction whose numerator shall be one percent (1%) and whose denominator shall be the rate of such tax, such fraction being hereinafter denominated "the one percent (1%) of the Tax," or (ii) the applicable Fixed Income, whichever is greater.

(b) The revenues generated by the Tax that exceed the annual estimate of revenues to be generated by such Tax in the Budget Resolution for such fiscal year after having deposited the revenues identified in clause (a) above.

For purposes of Section 3(a), there shall be no Fixed Income for Fiscal Year 2006-2007. The Fixed Income applicable in Fiscal Year 2007-2008 shall be one hundred eighty-five million (185,000,000) dollars. The Fixed Income applicable to subsequent fiscal years shall be the Fixed Income applicable to the prior fiscal year plus four percent (4%). As example, the Fixed Income applicable to Fiscal Year 2008-2009 shall be equal to one hundred ninety-two million four hundred thousand (192,400,000) dollars, which is equal to the Fixed Income applicable to fiscal year 2007-2008 plus four percent (4%). 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 3 is hereby amended and renumbered as Section 4 of Act No. 91 of May 13, 2006, as amended, to read as follows:

"Section 4. – Use

(a) The moneys originating from the revenues indicated in Section 3(a) shall be deposited directly in the Dedicated Sales Tax Fund and shall be used exclusively for the following purposes:

(1) Pay the advances to be made by GDB pursuant to the Act to Impose the Supertax of 2006.

(2) Pay or refinance the extraconstitutional debt outstanding as of June 30, 2006.

(b) The moneys derived from the revenues indicated in Section 3(b) shall be deposited directly in the Dedicated Sales Tax Fund and shall be used exclusively for the following purposes:

(1) To absorb the costs of the early retirement plans of the Commonwealth Employees Retirement System.

(2) To amortize the debt outstanding as of June 30, 2006 with the Teachers Retirement System and the Commonwealth of Puerto Rico Employees' Retirement System and the Judiciary, and in such preferential order.

(c) The revenues identified 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 or refinancing, directly or indirectly, the extraconstitutional debt of the Commonwealth of Puerto Rico outstanding as of June 30, 2006, including amounts owed to GDB and the obligations incurred under any type of financing or guaranty 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 pay or finance the extraconstitutional debt of the

Commonwealth of Puerto Rico and the payment of obligations incurred under any type of financing or guaranty agreement or interest rate swap agreement executed with respect to such bonds.

(d) The bonds and other obligations of COFINA shall not constitute a debt or obligation of the Commonwealth of Puerto Rico nor of its other instrumentalities. Neither the Commonwealth of Puerto Rico nor its other public instrumentalities shall be responsible for the payment of such bonds or other obligations, for which the full faith, credit and taxing power of the Commonwealth of Puerto Rico shall not be pledged."

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

"Section 5. – Deposits and Disbursements

(a) During Fiscal Year 2006-2007, the amount established in Section 3(a)(i) shall be deposited biweekly (2 weeks) in the FIA as they are received from the collections of the Tax. During each subsequent fiscal year, the first revenues of the Tax, up to the amount of the Fixed Income, shall be deposited the moment they are received in FIA or in any other special fund (including a fund controlled by a trustee designated in the trust agreement under which bonds were issued or other obligations were incurred for the payment or financing of the extraconstitutional debt) designated by COFINA. In case the revenues from the Tax are less than the Fixed Income, the Secretary shall be authorized to cover such shortfall from any available funds and is also authorized, as a special cash flow management mechanism when no other alternative is available, to borrow from GDB to cover such shortfall and the Director of the Office of Management and Budget shall include in the recommended budget for the current fiscal year or the next fiscal year, the appropriations necessary to cover such shortfall.

(b) Each month during each fiscal year, the Secretary shall determine if the one percent (1%) 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 one percent (1%) of the Tax for such fiscal year exceeds the Fixed Income applicable for such fiscal year, all revenues of the Tax received after such determination, up to an amount equal to the excess of such one percent (1%) 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 one percent (1%) of the Tax for the prior fiscal year is greater than the Fixed Income applicable to such prior fiscal year. The revenues of the Tax that represent the excess amount of the one percent (1%) 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 disbursements to be made to cover the purposes described in Section 4(b) shall be distributed by means of a Joint Resolution approved by the Legislature. Any amount that remains unused for the purposes established pursuant to such Joint Resolution shall revert to the Dedicated Sales Tax Fund;

provided, further that any amount of the moneys budgeted for the payment of debt service payable from the General Fund shall be kept separate from the moneys to be used for the payment of the extraconstitutional debt proceeding from the Dedicated Sales Tax Fund.

Any savings as a result of a refinancing of the extraconstitutional debt may be transferred by GDB to the Dedicated Sales Tax Fund to be used as additional resources for the payment of the extraconstitutional debt and shall not be available for use by the Secretary for any other purpose.

(d) The Commonwealth of Puerto Rico hereby agrees and promises any person, firm or corporation or any agency of the United States of America or of any state or the Commonwealth of Puerto Rico that subscribe or acquire bonds issued by COFINA, to not limit nor restrain the rights or 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 completely paid and redeemed. No amendment to Act No. 91 of May 13, 2006, as amended, shall undermine any obligation or commitment of COFINA.

(e) In the event that the aggregate revenues of the Tax transferred to such instrumentality in conformity with Section 3(a)were to be , at any time, insufficient for the payment of principal and interest or to make any other payment related to other obligations incurred, including payments pursuant to interest rate swap agreements, in connection with borrowed moneys or bonds issued by such instrumentality for the payment of which the product of such Tax has been pledged or in case the reserve funds of such instrumentality, if any, established for the payment of the debt service requirements or such obligations are applied to cover the shortfall in the amounts necessary to make such payments, such insufficiencies and the amount of such reserve fund used to cover the shortfall shall be paid or reimbursed to such instrumentality from the first amounts received in the next fiscal year or subsequent fiscal years by the Commonwealth of Puerto Rico from any remaining portion of the Tax after making the deposits established by Section 3(a). In case the revenues from the Tax were to be insufficient to cover such payment or reimbursement, the Secretary is hereby authorized to cover such shortfall from any funds available and is further authorized, as a special cash flow management mechanism when no other alternative is available, to borrow money from GDB to cover such shortfall, and the Director of the Office of Management and Budget shall include in the recommended budget for the current fiscal year or the next fiscal year, the appropriations necessary to cover such deficiencies.

(f) The product of the remaining portion of the Tax that shall be used pursuant to the provisions of Section 5(e) to cover an insufficiency or reimburse any reserve fund established for debt service requirements, shall not be deposited in the General Fund of the Government of the Commonwealth of Puerto Rico when they are collected, but shall be deposited in the FIA for the benefit of the instrumentality and shall be used to cover such insufficiency or reimburse such reserve fund for the payment of debt service requirements."

Section 5. – Section 5 is hereby renumbered as Section 6 of Act No. 91 of May 13, 2006, as amended.

Section 6. – A new Section 7 is hereby added to Act No. 91 of May 13, 2006, as amended, to read as follows:

"Section 7. – Scope

(a) None of the provisions of this Act shall be interpreted or applied in such a manner as to undermine the power of the Legislature to impose and collect taxes as provided in Section 2 of Article VI of the Constitution of the Commonwealth of Puerto Rico.

(b) None of the provisions of this Act shall be interpreted or applied in such a manner as to undermine the rights of the holders of bonds or notes that constitute public debt of the Commonwealth of Puerto Rico pursuant to the provisions of Section 2 of Article VI of the Constitution of the Commonwealth of Puerto Rico."

Section 7. –Sections 6 and 7 are hereby renumbered as Sections 8 and 9, respectively, of Act No. 91 of May 13, 2006, as amended.

Section 8. – If any provision of this Act or the application of such provision is declared invalid, such declaration shall not affect the other provisions or the application of this Act that may have effect without the need for the provisions that were declared invalid, and to this end the provisions of this Act are severable.

Section 9. – This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 56 (H.B. 3660) of the 5th Session of the 15th Legislature of Puerto Rico:

AN ACT to add a new Section 2, amend and renumber Section 2 as Section 3, renumber Section 3 as Section 4, amend and renumber Section 4 as Section 5, renumber Section 5 as Section 6, add a new Section 7, renumber Sections 6 and 7 as Sections 8 and 9, respectively, of Act 91 of May 13, 2006, as amended, also known as The Dedicated Sales Tax Fund Act, for the purpose of creating the Puerto Rico Sales Tax Financing Corporation as an independent corporation attached to Government Development Bank for Puerto Rico, with the power to issue bonds and use other financing mechanism to pay or refinance the extra-constitutional debt of the Commonwealth of Puerto Rico; to transfer the Dedicated Sales Tax Fund to such Corporation and clarify the scope of the protection enjoyed by the holders of the bonds issued by COFINA,

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

In San Juan, Puerto Rico, today 12th of July of 2007.

Enrique A. Del Cueto, Esq.
Deputy Director