

(S. B. 2535)

(No. 171)

(Approved August 6, 2008)

AN ACT

To amend Sections 3, 4, 5, 6, 7, and 9 of Act No. 98 of 2001, as amended, known as the “Tax Credits for Special Investment in Housing Infrastructure Act,” in order to add the definitions of Combine and Infrastructure of Regional or Municipal Impact; to amend the definitions of Housing Development and Petitioner; to add a new tax credit for special investment in housing infrastructure of regional or municipal impact; to establish the manner of computing the credit and the availability and the effects of the transfer thereof; to establish the requirements to apply for credit for special investment in housing infrastructure of regional or municipal impact and allow for the transfer of the credit from a Combine to its members; and for other purposes.

STATEMENT OF MOTIVES

Act No. 98 of 2001, known as the “Tax Credits for Special Investments in Housing Infrastructure Act,” has resulted in a successful partnership program between the public and the private sectors which fosters the creation of housing and, at the same time, enables the construction of special infrastructure essential for community life, such as aqueducts, electric power stations, highways, and others. This Act grants a tax credit for special investments made by developers, as required by a government agency, in order to defray public infrastructure that benefits their housing development or the general public.

Entire regions of our Island are at risk of falling behind socially and financially due to their lack of the adequate infrastructure, as well as the lack of funds being appropriated for the construction of such infrastructure to the

government agencies responsible for providing the same. Certain special infrastructures are essential to make the development of housing and commercial spaces feasible in vast areas or regions of the Island, since the lack of infrastructure has indeed brought the progress of these residents to a halt, thus eroding their quality of life. In these cases, in the absence of the proper infrastructure able to sustain the growth of the population, a special infrastructure project becomes essential for several housing developments. Due to their complexity and magnitude, the development of these kinds of infrastructure requires multimillion-dollar investments in terms of capital for their design, development, and construction. Therefore, the construction and financing of a special infrastructure of regional impact requires an effective mechanism that allows for the merging of the financial resources of several housing developers and the public sector.

Such Act does not contemplate the grouping of several housing developers into a Combine or Consortium for the construction of an infrastructure project of regional impact. Since the Act did not consider the grouping of several developers into a Combine, its benefits are not extended to Combines of housing developers in order for them to be able, jointly and by mutual agreement, to finance and build infrastructure located outside of their respective housing developments. The Act in effect did not foresee the different development and construction stages of several housing developments in a region, each one of them with different timetables for construction and delivery of the housing. This prevents their benefits from being used effectively so as to make large housing infrastructure projects feasible for several developers within a region, even when such housing infrastructure projects of regional impact have been completed and made

available to the Commonwealth of Puerto Rico, which inures to the short- and long-term benefit of the region and the People of Puerto Rico.

For the purpose of making the development of infrastructure of regional impact feasible for the private sector, a tax credit is hereby granted to Combines constituted by housing developers, for the special investment in infrastructure of regional impact to be transferred to the Commonwealth of Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1. – A new subsection (f) is hereby added; former subsection (f) is renamed as (g) and amended; former subsection (g) is renamed as (h); former subsection (h) is renamed as (i) and amended; former subsection (i) is renamed as (j); former subsection (j) is renamed as (k); former subsection (k) is renamed as (l); former subsection (l) is renamed as (m); former subsection (m) is renamed as (n); former subsection (n) is renamed as (o); former subsection (o) is renamed as (p); former subsection (q) is renamed as (r); former subsection (r) is renamed as (s); former subsection (s) is renamed as (t); a new subsection (u) is hereby added; former subsection (t) is renamed as (v); former subsection (u) is renamed as (w) and amended; former subsection (v) is renamed as (x); former subsection (w) is renamed as (y); former subsection (x) is renamed as (z) and amended; former subsection (y) is renamed as (aa) and amended; former subsection (z) is renamed as (bb); former subsection (aa) is renamed as (cc); former subsection (bb) is renamed as (dd); former subsection (cc) is renamed as (ee); and former subsection (dd) is renamed as (ff) of Section 3 of Act No. 98 of 2001, as amended, to read as follows:

“Section 3. – Definitions. –

For the purposes of this Act, the following terms and phrases shall have the meaning stated below, unless otherwise construable from the context in which they are used:

(a) ‘Agency ...’

(f) ‘Combine’ – the juridical entity constituted by not less than two (2) Developers to whom an agency has required as a condition prior to the endorsement of the design and construction of their respective housing developments, the financing and construction of an Infrastructure of Regional or Municipal Impact, when they sign a contract with the corresponding agency for the development and construction of an Infrastructure of Regional or Municipal Impact to be transferred to the Commonwealth of Puerto Rico or to the agency.

(g) ‘Recommendation of Approval’ - is the written concession issued pursuant to the provisions of this Act, whereby the Secretary of Housing notifies his/her approval of an application for a Credit for Investment in Housing Infrastructure or Infrastructure of Regional or Municipal Impact and the conditions imposed thereupon. This Credit for Special Investment in Housing Infrastructure or Infrastructure of Regional Impact shall be available as provided in Section 4(d) of this Act.

(h) ‘Internal Revenue Code of 1994’ ...

(i) ‘Credit’ or ‘Credit for Special Investment in Housing Infrastructure’ or ‘Credit for Investment in Infrastructure of Regional Impact.’

(j) ‘Department of the Treasury’ ...

(k) ‘Department of Natural and Environmental Resources’ ...

(l) ‘Department of Housing’ ...

(m) 'Department of Transportation and Public Works' ...

(n) 'Department of Labor' ...

(o) 'Developer' ...

(p) 'Impact Fee' ...

(q) 'Middle-Class Family or Person' ...

(r) 'Low- or Moderate-Income family or person' ...

(s) 'State Insurance Fund' ...

(t) 'Infrastructure' ...

(u) 'Infrastructure of Regional and Municipal Impact' - consists of those capital works, improvements, and substantial public interest facilities that the Secretary of Housing approves and which are previously required by an agency to various Developers or to a Combine as a condition for the endorsement of Housing Developments of each, provided that: 1) said Infrastructure provides a capacity exceeding the needs of each of the Housing Developments of the Combine members for at least seventy percent (70%), as certified by the agency concerned; 2) in the judgment of the Secretary of Housing and the director of the agency, the construction of the Infrastructure entails a special investment of a substantial amount which shall be taken into consideration, bearing in mind the number of residents to benefit directly or indirectly; and 3) in the judgment of the Secretary of Housing, it significantly promotes the development of housing in a specific geographical area, municipality or region of the Island.

(v) 'Majority proprietary interest' ...

(w) 'Investment' - is the amount of money furnished by a Developer and/or a Combine or the Developers who constitute the same, for an infrastructure project for a housing development or for an infrastructure project of regional or municipal impact, which may arise from financing, or

contribution of the petitioner's own funds, or from any other source that the Department of Housing considers acceptable and in accord with the public policy established by this Act.

(x) 'Planning Board' ...

(y) 'Person' ...

(z) 'Petitioner' - is the Developer of a housing development or a Combine that has presented an application for a Credit for Special Investment in Housing Infrastructure or a Credit for Investment in Infrastructure of Regional or Municipal Impact under this Act.

(aa) 'Housing Development' - is an urban development plan for housing submitted by a developer, for which he/she has obtained the corresponding endorsements, approvals, and permits from the agencies concerned...

(bb) 'Secretary of the Treasury' ...

(cc) 'Secretary of Housing' ...

(dd) 'Middle-Class Housing' ...

(ee) 'Affordable Housing' ...

(ff) 'Ordinary Housing' ..."

Section 2. – Subsection (a) is hereby amended; a clause (i) is added to subsection (a); a clause (i) is added to subsection (b); a clause (v) is added to subsection (d); and clause (i) of subsection (f) is amended in Section 4 of Act No. 98 of 2001, as amended, to read as follows:

“Section 4. – Credit for Investment in Infrastructure. –

(a) General rule – Subject to the provisions of this Act, every petitioner may qualify for a Credit for Investment in Housing Infrastructure or Infrastructure of Regional or Municipal Impact by the investment made in the construction of infrastructure.

For purposes of computing the Credit provided under this Act, only the Special Investment in Housing Infrastructure or Infrastructure of Regional or Municipal Impact approved by the designated officials of the Department of Housing and the Department of the Treasury shall be taken into consideration, once the merits of the application for Credit for Investment in Housing Infrastructure or in Infrastructure of Regional or Municipal Impact (Pre-application Conference) are analyzed.

The Secretary of Housing, after consultation with the Secretary of the Treasury, shall have the discretion, when warranted by the best interests of the Commonwealth of Puerto Rico, to grant the credits provided in this Act with regard to special investments in infrastructure in developments begun between the first of January of 2001, and the date on which the regulations referred to in Section 7 of this Act become effective. The Secretary of Housing, after consultation with the Secretary of the Treasury, shall have the discretion, when warranted by the best interests of the Commonwealth of Puerto Rico, to grant the credits provided in this Act with regard to special investments in infrastructure of regional or municipal impact until the date on which the regulations referred to in Section 7 of this Act, pertaining to Infrastructures of Regional Impact, become effective.

(i) A tax credit shall be granted to a Combine upon the approval of the agency and of the Secretary of Housing in an amount equal to one hundred percent (100%) of the investment made, for the design, development and construction of the Infrastructure of Regional or Municipal Impact to be transferred to the Commonwealth of Puerto Rico.

(b) Computation of Credit. –

...

(i) A Combine previously approved by the agency and the Secretary of Housing shall be entitled to receive a tax credit equal to one hundred percent (100%) of the total investment (direct and indirect costs) incurred to make and complete the design, development and construction of the Infrastructure of Regional Impact.

(c) ...

(d) Availability of Credit; Term to Construct Infrastructure. –

...

(v) The tax credit for Investment in Infrastructure of Regional Impact shall be available upon completion and transfer of the Infrastructure of Regional Impact to the Commonwealth of Puerto Rico. However, in the discretion of the Secretary of Housing, when he/she deems it to be in the best interests of the Commonwealth of Puerto Rico, a partial tax credit shall be granted for the sum of the necessary costs incurred in the finished works, if the Infrastructure of Regional Impact was developed in stages and it is so certified and evidenced to the Secretary of Housing, the Secretary of the Treasury, and the agency, in which case, a bond for the total amount of the partial tax credit shall be required. Notwithstanding, in the discretion of the Secretary of Housing, when he/she deems it to be in the best interests of the Commonwealth of Puerto Rico, one hundred percent (100%) of the tax credit shall be available to the Combine once it obtains the total financing needed, and the same becomes available, to complete the construction of the Housing Infrastructure of Regional Impact, and it is so evidenced to the satisfaction of the agency, the Secretary of Housing, and the Secretary of Treasury, only when a bond equal to one hundred percent (100%) of the total amount of credit is posted, which shall be in effect until the construction of the Housing Infrastructure of Regional Impact is completed,

provided that the same serves to guarantee compliance, in the discretion of the Secretary of Housing, the agency, and the Secretary of the Treasury.

...

(f) Assignment of Credit

...

...

(i) The credit provided under this Act may be assigned, sold or otherwise transferred in whole or in part by the petitioner. Once it is thus transferred, the credit may not be assigned or otherwise transferred. For purposes of this clause, a change of control of the petitioner shall not constitute a transfer of the credit provided under this Act, nor the transfer of the tax credit from a Combine to its members, or from the latter to their legatees or heirs.”

Section 3. – The first sentence of the first paragraph of Section 5 of Act No. 98 of 2001, as amended, is hereby amended to read as follows:

“Section 5. – Maximum Credits per Year. –

The Department of Housing, in coordination with the Department of the Treasury, may approve up to fifteen million dollars (\$15,000,000.00) in Credits for Special Investment in Housing Infrastructure and/or Infrastructure of Regional or Municipal Impact for each fiscal year.”

Section 4. – A third paragraph is hereby added to Section 6 of Act No. 98 of 2001, as amended, to read as follows:

“Section 6. – Availability of Infrastructure; Charges to third parties for the use of Available Infrastructure. –

...

Notwithstanding the foregoing, in the case of Infrastructure of Regional or Municipal Impact, the charge or fee to be collected for the use of said facilities, if the same are enforced in every particular case, shall be

determined by the agency together with the Secretary of the Treasury and the Secretary of Housing, through rules and regulations to such effect, and said charges or fees to be collected shall be transferred to the Secretary of the Treasury in order to be covered into the General Fund of the Commonwealth of Puerto Rico, until the proceeds resulting from the collection of those charges and fees amount to one hundred percent (100%) of the amount granted as tax credits relative to the Infrastructure of Regional or Municipal Impact. Once the tax credit amount granted to a Combine has been reached, the Department of Housing shall make use of the remaining capacity of the infrastructure pursuant to the provisions of the first and second paragraphs of this Section.”

Section 5. – The first sentence of subsection (a) is hereby amended and a new subsection (c) is added to Section 7 of Act No. 98 of 2001, as amended, to read as follows:

“Section 7. – Application for Credit; Requirements; Rights. –

(a) Application. – Every developer who is interested in obtaining a Credit for Special Investment in Housing Infrastructure or a Credit for Investment in Infrastructure of Regional or Municipal Impact pursuant to this Act, shall file an application with the Department of Housing, with a copy to the Department of the Treasury, together with the documents and information required by the regulations promulgated by the Secretary of Housing to such effect.

...

(b) ...

(c) Applications for Credit for Investment in Housing Infrastructure of Regional Impact – Combines shall comply with the requirements listed in

the provisions of Section 7(a), Section 7(b)(i) (A, B, C, D, F, G, H, I, J), and Section 7(b)(iii), (b)(iv), and (b)(v).”

Section 6. – A new clause (v) is hereby added to subsection (b) of Section 9 of Act No. 98 of 2001, as amended, to read as follows:

“Section 9. – Transfer of Credit; Change of Control of the Developer.–

(b) Exceptions. – ...

(i) ...

...

(v) The transfer of the tax credit from the Combine to its members or the legatees or heirs of the latter.”

Section 7. – Effectiveness

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 171 (S. B. 2535)** of the **7th Session of the 15th Legislature** of Puerto Rico:

AN ACT to amend Sections 3, 4, 5, 6, 7, and 9 of Act No. 98 of 2001, as amended, known as the “Tax Credits for Special Investment in Housing Infrastructure Act,” in order to add the definitions of Combine and Infrastructure of Regional or Municipal Impact; to amend the definitions of Housing Development and Petitioner; to add a new tax credit for special investment in housing infrastructure of regional or municipal impact; to establish the manner of computing the credit and the availability and the effects of the transfer thereof; to establish the requirements to apply for credit for special investment in housing infrastructure of regional or municipal impact and allow for the transfer of the credit from a Combine to its members; and for other purposes.

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

In San Juan, Puerto Rico, today 30th of October of 2009.

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Director