(H. B. 598)

(No. 1)

(Approved January 14, 2009)

AN ACT

To amend Sections 2, 3, 4, and 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 the Puerto Rico Sales Tax Financing Corporation to use the proceeds of any bond issue whose repayment is backed by such revenues to cover operating expenses of the Commonwealth of Puerto Rico for Fiscal Years 2008-2009, 2009-2010, and 2010-2011, which shall be included into the annual budget of the Government of Puerto Rico, to pay the debts of the Secretary of the Treasury with the Government Development Bank for Puerto Rico, to pay any extraconstitutional debt and outstanding accounts payable of the Commonwealth of Puerto Rico, to authorize and replenish a special fund in the Government Development Bank for Puerto Rico geared toward stimulating the economy of Puerto Rico and to replenish the Emergency Fund of the Commonwealth of Puerto Rico; and for other purposes.

STATEMENT OF MOTIVES

The Commonwealth of Puerto Rico is undergoing one of the worst fiscal crises in its history, with a budgetary deficit for fiscal year 2008-2009 estimated to total around $ 3.2 billion. Under the present revenue and expense structure, the next three fiscal years would also experience budgetary deficits of approximately $ 3 billion a year. These deficits represent almost forty percent (40%) of recurrent revenues. This situation is the aftermath of eight years during which the Executive Branch failed to take the necessary measures to establish a balanced budget. In view of the seriousness of the situation, the Governor signed an executive order declaring a state of fiscal emergency on January 8, 2009.

Due to the magnitude of the budgetary deficit for fiscal year 2008-2009 and the projected deficits for the subsequent three fiscal years, and in order to prevent Government operations from been adversely affected, it is necessary to resort to financing mechanisms so as to raise more resources that shall enable the Government to (i) defray and/or finance its operating expenses; (ii) meet obligations assumed by the Secretary of the Treasury with the Government Development Bank for Puerto Rico ("GDB"), including debts with no repayment sources or which are payable from budget appropriations, so as to prevent the GDB financial condition from deteriorating, since its financial solidity is crucial for the credit of Puerto Rico; (iii) pay in full the million-dollar sums owed by the Government to its goods and services providers, so as to boost the economy of Puerto Rico; (iv) establish an economic stimulus fund with the purpose of engaging in loans or investments geared toward rebuilding the economy of Puerto Rico; and (v) replenish the Emergency Fund of the Commonwealth of Puerto Rico. Any financing mechanism would be implemented jointly with a series of executive, legislative and administrative measures aimed at cutting back on expenses, restoring fiscal controls, increasing revenues, and preventing agencies, instrumentalities, departments, and entities of the Commonwealth of Puerto Rico from spending beyond their budgetary allotments and the revenues available, all of which aims to render recurrent expenses equal to or lesser than recurrent revenues by fiscal year 2011-2012. Once these measures have been implemented on a short, a medium, and a long-term basis, and a budgetary balance is stricken between recurrent expenses and recurrent revenues, it shall no longer be necessary to resort to financing mechanisms in order to cover the recurrent expenses of the Government and its instrumentalities.

The most cost-effective financing source are the bonds issued by the Puerto Rico Sales Tax Financing Corporation (COFINA, Spanish acronym), since the payment thereof is backed by revenues from the sales and use tax—a consistent and reliable revenue source—these enjoy a credit rating which is higher than that of the general obligation bonds of the Commonwealth of Puerto Rico.

In order to accomplish the foregoing objectives, this Act hereby amends Act No. 91 of May 13, 2006, as amended ("Act No. 91"), 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 No. 91. This shall enable COFINA to make new bond issues backed by the increase in the revenues appropriated to COFINA. Furthermore, Act No. 91 is amended so as to allow the proceeds from said bonds to be used also to: (i) pay the debt of the Secretary of the Treasury with the GDB for the amount of $ 1 billion, used to finance the budgetary deficit of fiscal year 2008-2009, (ii) pay financings granted to the Secretary of the Treasury until December 31, 2008, by the GDB, payable from future general obligation bond issues of the Commonwealth of Puerto Rico, (iii) pay accounts payable to providers and the entire debt that the Secretary of the Treasury has with the GDB, (iv) 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, (v) 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, (vi) generate funds to replenish the Puerto Rico Economic Stimulus Fund, established under Section 5 of this Act, and (vii) replenish 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.

When increasing the amount of moneys from the sales and use tax to be deposited into the Dedicated Sales Tax Fund under the amendment made by this Act, the Legislature is aware of the fact that the resources of the Commonwealth of Puerto Rico that are available after such an increase for the payment of the existing public debt surpass the margin established under Article VI, Section 2 of the Constitution of the Commonwealth of Puerto Rico. With the purpose of safeguarding the revenues of the General Fund to be available for servicing the public debt of the Commonwealth of Puerto Rico, a limitation is hereby imposed on the increase in the Fixed Income encumbered for the payment of COFINA bonds and on the amount of such bonds that may be issued.

This Legislature intends for the prohibition provided under Section 5 of Act No. 103 of May 25, 2006, known as the "Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006," not to apply to the COFINA bond issues authorized by this Act.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

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

"Section 2.—Creation of the Public Corporation.—

(a) 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,' Spanish acronym), whose name in English shall be Puerto Rico Sales Tax Financing Corporation.

(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 $ 1 billion, used to finance the budgetary deficit of fiscal year 2008-2009, (iii) to pay all or part of the financings granted to the Secretary of the Treasury until December 31, 2008, by the Government Development Bank for Puerto Rico, payable from future general obligation bond issues of the Commonwealth of Puerto Rico, as well as any debt with no repayment source or which is payable from budget appropriations of the Commonwealth of Puerto Rico, existing on December 31, 2008, (iv) to pay all or part of the accounts payable to providers 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 into the annual budget of the Government of Puerto Rico, (vii) to generate funds to replenish the Puerto Rico Economic Stimulus Fund established under Section 6 of this Act, and (viii) to replenish 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.

(c) The source of repayment for COFINA bonds shall be the portion of the tax deposited in the Dedicated Sales Tax Fund pursuant to the provisions of Section 3(a) of this Act. The Board of Directors of COFINA shall not authorize any COFINA bond issue unless the Chair or a COFINA officer designated by the Chair certifies that the principal of and interest on the COFINA bonds he/she intends to authorize, plus the principal of and interest on all outstanding COFINA bonds (except those to be paid with the proceeds of new bonds), payable each fiscal year (beginning with the current fiscal year), is equal to or lesser than the Fixed Income appropriated to COFINA corresponding to such fiscal year.

(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 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) 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.

(f) The prohibitions of Section 5 of Act No. 103 of May 25, 2006, known as the 'Commonwealth of Puerto Rico Government Fiscal Reform Act of 2006,' shall not apply to the COFINA bond issues authorized by this Act."

Section 2.—Section 3 of Act No. 91 of May 13, 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 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 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.

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 it constitute resources available to the Commonwealth of Puerto Rico, nor shall it 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') 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 proceeds of the amount of the Tax collected during such fiscal year, multiplied by a fraction whose numerator shall be two percent (2%) and whose denominator shall be the rate of such tax, such fraction being hereinafter denominated 'the two percent (2%) of the Tax,' or (ii) the applicable Fixed Income, whichever is greater.

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 shall be equal to the sum of the Original Fixed Income and the Additional 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 two hundred million, ninety-six thousand (200,096,000) 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 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 of May 13, 2006, as amended, is hereby 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 FIA and shall be used exclusively for any of the following purposes:

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

(2) To directly or indirectly pay or refinance all or part of the extraconstitutional debt of the Commonwealth of Puerto Rico outstanding as of June 30, 2006, and the accrued interest thereon.

(3) To directly or indirectly pay the items established in Section 2(b) and the bonds issued by COFINA to meet the purposes established in said Section 2(b).

(b) 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, financing or refinancing, directly or indirectly, the extraconstitutional debt of the Commonwealth of Puerto Rico outstanding as of June 30, 2006, and all other debts, accounts or items mentioned in Section 2(b), 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 meet the purposes set forth in this Act 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.

(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. 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. Any transfers to be made shall be provided for through a Joint Resolution of the Legislature.

(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 5 of Act No. 91 of May 13, 2006, as amended, is hereby 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 the same is received from the revenues from the Tax. During each subsequent fiscal year, the first revenues from 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 to meet the purposes established in Section 2(b) of this Act) 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 two percent (2%) 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 two percent (2%) of the Tax 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 such two percent (2%) 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 two percent (2%) 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 two percent (2%) 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 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 who underwrites or acquires bonds issued by COFINA, or who provides insurance, repayment or solvency sources for such bonds, that until such bonds, from any date, together with the interest thereon, entirely paid for and withdrawn, the Commonwealth shall not limit nor restrain the rights or powers of the corresponding officials of the Commonwealth of Puerto Rico to levy, maintain, charge or collect taxes and other income to constitute the amounts to be deposited into the FIA pursuant to the provisions of this Act; provided, that the foregoing provisions do not limit the power of the Commonwealth of Puerto Rico, by means of a law amendment, to limit or hinder the nature or the amount of such taxes or other revenues or to substitute similar or comparable collateral by other taxes, fees, charges or other income to be deposited into the FIA if, for the following fiscal years, the revenues projected by the Secretary of the Treasury from such substitutive tax, income or collateral is equal to or greater than the service of the debt and other charges and any coverage requirement included in the COFINA bond authorizing documents, nor shall the Commonwealth limit or hinder the 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.

(d) In the event that the aggregate revenues from the Tax transferred to COFINA in conformity with Section 3(a)were to be, at any time, insufficient for the payment of principal of and interest on its bonds 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 proceed of such Tax has been pledged or in case the reserve funds of COFINA, 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.

(e) The proceeds of the remaining portion of the Tax that shall be used pursuant to the provisions of Section 5(d) 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.—A new Section 6 is hereby added to Act No. 91 of May 13, 2006, as amended, and current Sections 6 and 7 are hereby renumbered as Sections 7 and 8, to read as follows:

"Section 6.—Puerto Rico Economic Stimulus Fund.—The Government Development Bank for Puerto Rico is hereby authorized to establish a fund under its control and custody, under the name "Puerto Rico Economic Stimulus Fund," which shall be replenished by the proceeds of the bond issues or other financing mechanisms employed by COFINA hereby assigned. The funds deposited into the Puerto Rico Economic Stimulus Fund may only be used for the following purposes: taxpayer relief, boosting businesses and industries, training programs, assistance for displaced employees, and any other purposes as provided for through legislation.

Section 7.—Additional Provisions.—…

Section 8.—Scope.—…"

Section 6.—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 7.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 1 (H.B. 598) of the 1st Session of the 16th Legislature of Puerto Rico:

AN ACT to amend Sections 2, 3, 4, and 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 the Puerto Rico Sales Tax Financing Corporation to use the proceeds of any bond issue whose repayment is backed by such revenues to cover operating expenses of the Commonwealth of Puerto Rico for Fiscal Years 2008-2009, 2009-2010, and 2010-2011, etc,

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

In San Juan, Puerto Rico, today 21st of January of 2009.

Kevin Miguel Rivera-Medina, Esq.
Deputy Director