

(H. B. 3163)
(Conference)

(No. 291)

(Approved December 26, 2006)

AN ACT

To amend Sections 2, 3, 4, and 5 of Act No. 91 of May 13, 2006, entitled “Urgent Interest Fund Act,” in order to establish the annual fixed amount of revenues originating from the sales and use tax that shall be covered directly into said Fund; to establish the financial structure to pay or refinance the extraconstitutional debt through the issue of bonds and other debentures payable and secured by pledging a fixed amount from the first revenues generated by the sales and use tax deposited into the Urgent Interest Fund; to empower the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Government Development Bank for Puerto Rico to carry out the duties and responsibilities imposed by this Act; to authorize the creation of a subsidiary of the Government Development bank for Puerto Rico, to be called the “Puerto Rico Urgent Interest Fund Corporation,” with the power to issue bonds or use other mechanisms to pay or refinance the extraconstitutional debt; and for other purposes relative to the purposes of this Act.

STATEMENT OF MOTIVES

Act No. 91 of May 13, 2006, created the Urgent Interest Fund, with the purpose of having covered into the same a portion of the revenues generated by the sales and use tax authorized under Act No. 117 of July 4, 2006, called the “Taxpayers Justice Act of 2006.” Said portion is to be used to pay the extraconstitutional debt of the government of the Commonwealth, including the sums advanced by the Government Development Bank for Puerto Rico.

The present Act sets forth the public policy of assigning priority to the payment of the extraconstitutional debt by guaranteeing that the initial revenues proceeding from the sales and use tax shall be covered into the Urgent Interest Fund. Likewise, this Act authorizes the creation of a financial structure which is necessary for the payment of the aforementioned debt and adds repayment sureties for bondholder repayment guarantees similar to those existing in State jurisdictions.

Furthermore, this Act strengthens the Urgent Interest Fund by providing the option of replenishing the same by means of fixed revenue or the existing source, whichever is greater. This Act also establishes as the base for the fixed revenue, the amount of one hundred and seventy (170) million dollars as of Fiscal Year 2007-08, which amount shall be annually increased by four percent (4%). Moreover, this Act provides for fiscal mechanisms to cover a possible insufficiency in the collection of the sales and use tax, if the revenue generated thereby were to be less than the fixed revenue established herein. These repayment guarantees shall allow for additional bond issues to be exclusively used for the payment of the extraconstitutional debt.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

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

“Section 2.—Creation.—

A special fund is hereby created, denominated the Urgent Interest Fund, hereinafter the ‘UIA,’ to be administered by the Government Development Bank for Puerto Rico, hereinafter the ‘GDB,’ and the Secretary of the Treasury of the Commonwealth of Puerto Rico, hereinafter the ‘Secretary.’ In consideration of the commitment to pay all or part of the

extraconstitutional debt in existence as of June 30, 2006, the 'UIA' is hereby transferred and shall be the property of the Puerto Rico Urgent Interest Fund Corporation, hereinafter the 'UIFC,' a subsidiary of the Government Development Bank for Puerto Rico created for the purpose of issuing bonds or using other financing mechanisms to pay or refinance the extraconstitutional debt of the Commonwealth of Puerto Rico in existence as of June 30, 2006.

The 'UIF' shall be replenished each year by the following sources, the proceeds of which shall be directly covered into the 'UIF' upon receipt and shall not be covered into the Treasury of Puerto Rico and shall neither constitute available resources of the Commonwealth of Puerto Rico nor be available for the use of the Secretary:

(a) The first moneys collected on account of the sales and use tax, hereinafter the 'Tax,' approved under the 'Taxpayers Justice Act of 2006,' Act No. 117 of July 4, 2006, corresponding to the Commonwealth of Puerto Rico, up to the following amount: (i) proceeds of the amounts in 'Tax' collected during said fiscal year, multiplied by a fraction of which the numerator shall be one percent (1%) and the denominator shall be the tax rate of said tax, being said fraction one percent (1%) of the 'Tax,' or (ii) the applicable Fixed Revenue, whichever is greater.

(b) The moneys collected on account of the Tax which surpass the annual estimate of moneys to be collected on account of said tax in the Budget Resolution for said fiscal year, after the amounts collected identified in the above clause (a) have been applied.

For purposes of Section 2(a), there shall be no Fixed Revenue for Fiscal Year 2006-2007. The applicable Fixed Revenue as of Fiscal Year 2007-2008 shall be one hundred seventy million (170,000,000) dollars. The

Fixed Revenue applicable to subsequent years shall be the Fixed Revenue applicable to the preceding fiscal year plus four percent (4%) or the percentage increase in the budget approved with that of the preceding year if greater than four percent (4%). For example, the Fixed Revenue applicable to Fiscal Year 2008-2009 shall be one hundred seventy-six million, eight hundred thousand (176,800,000) dollars, which is equal to the sum of the Fixed Revenue Applicable to Fiscal Year 2007-2008 plus four percent (4%) or the percentage increase in the budget approved with that of the preceding year if greater than four percent (4%) of said Fixed Revenue. The Fixed Revenue for any fiscal year shall proceed from the portion corresponding to the Commonwealth of Puerto Rico of the first moneys collected on account of the ‘Tax.’”

Section 2.—Subsections (a) and (b) are hereby amended and subsections (c) and (d) added to Section 3 of Act No. 91 of May 13, 2006, to read as follows:

“Section 3.—Use.—

(a) The moneys originating from the collections indicated in Section 2(a) shall be directly deposited into the Urgent Interest Fund and shall be used exclusively for the following purposes:

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

(2) To pay or refinance the extraconstitutional debt in existence as of June 30, 2006.

(b) The moneys originating from the collections indicated in Section 2(b) shall be directly deposited into the Urgent Interest Fund and shall be used exclusively for the following purposes:

(1) To cover the costs of early retirement plans of the Retirement Systems of the Employees of the Commonwealth.

(2) To service the debt in existence as of June 30, 2006, with the Teachers' Retirement System and the Retirement System of the Employees of the Commonwealth and the Judiciary, in said order of preference.

(c) The moneys collected indicated in Section 2(a) and deposited in the 'UIF' shall be used by the 'UIFC' through financing or refinancing mechanisms, for the exclusive purpose of directly or indirectly paying or refinancing the extraconstitutional debt of the Commonwealth of Puerto Rico in existence as of June 30, 2006, including amounts owed to the 'GDB' and obligations assumed under any kind of financing contract, surety or interest rate swap contract executed in relation to bonds issued to finance or refinance said debt. The 'UIFC' is hereby authorized to pledge or otherwise encumber all or part of said collected moneys solely for the payment of the payment of the principal, interest and redemption premium of said bonds and other obligations of said instrumentality incurred in relation to said bonds to pay or finance the extraconstitutional debt of the Commonwealth of Puerto Rico and for the payment of obligations assumed under any kind of financing contract, surety or interest rate swap contract executed in relation to said bonds.

(d) 'UIFC' bonds and other obligations shall not constitute an obligation or debt of the Commonwealth of Puerto Rico or of its other instrumentalities. Furthermore, neither the Commonwealth of Puerto Rico nor its other instrumentalities shall be responsible for the payment of such bonds or obligations, which shall not enjoy neither the full faith and credit nor the power of the Government to levy taxes."

Section 3.—Section 4 of Act No. 91 of May 13, 2006, is hereby amended to read as follows:

“Section 4.—Deposits and Disbursements.—

(a) During Fiscal Year 2006-2007, a biweekly (every 2 weeks) deposit shall be made into the ‘UIF’ in the amount established under Section 2(a)(i), as the moneys collected on account of the ‘Tax’ are received. During each subsequent fiscal year, the first moneys collected on account of the Tax, up to the amount of the Fixed Revenue, shall be covered upon receipt into the ‘UIF’ or into any other special fund (including a fund under the control of the trustee designated in the trust agreement whereby the bonds were issued or other obligations to pay or finance the extraconstitutional debt were assumed) designated by the ‘UIFC.’ In the event the moneys collected on account of the ‘Tax’ amount to less than the Fixed Revenue, the Secretary is hereby empowered to cover such deficiency with any available funds and is authorized, further, as a special measure to manage the cash flow when there is no other option, to take a loan with the ‘GDB’ to cover such a deficiency, and the Director of the Office of Management and Budget shall include in the recommended budget for the fiscal year in course or for the following fiscal year, the appropriations needed to cover such deficiencies.

(b) Every month, during each fiscal year, the Secretary shall determine whether one percent (1%) of the Tax collected for the fiscal year in course is greater than the Fixed Revenue applicable to said fiscal year. Once the Secretary determines whether one percent (1) of the ‘Tax’ collected for said fiscal year surpasses the Fixed Revenue applicable to said fiscal year, all moneys collected on account of the ‘Tax’ which are received after said determination is made, up to an amount equal to the amount of one

percent (1%) of the Tax in excess of the Fixed Revenue, shall be deposited into the 'UIF.' Furthermore, on or before October 1 of each fiscal year, the Secretary shall determine whether one percent (1%) of the Tax collected for the preceding fiscal year is greater than the Fixed Revenue applicable to said preceding fiscal year. The moneys collected on account of the 'Tax' which represent the amount by which one percent (1%) of the 'Tax' collected corresponding to the preceding fiscal year exceeds the Fixed Revenue applicable to said fiscal year, shall belong to the 'UIF.'

(c) The disbursements to be made to cover the purposes described in Section 3(b) shall be distributed through a Joint Resolution approved by the Legislature. Any amount not used for the purposes established through said Resolution shall revert to the Urgent Interest Fund; provided, further, that any amount of the moneys budgeted for servicing the debt that are payable to the General Fund, shall be kept separate from the moneys originating from the Urgent Interest Fund and to be used for the payment of the extraconstitutional debt.

Any savings resulting from refinancing the constitutional debt may be transferred by the GDB to the Urgent Interest Fund to be used as additional resources in 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 assumes commitment to any person, firm or corporation, or to any agency of the United States of America or of any state or of the Commonwealth of Puerto Rico which underwrites or acquires UIFC bonds, not to limit nor restrict the rights or powers hereby conferred under this Act until said bonds, of whichever date, together with the interest thereon, are totally paid and withdrawn.

(e) In the event that the amount of the moneys collected on account of the Tax that are assigned to said instrumentality pursuant to Section 3(c) does not suffice at any time to pay the principal and interest or to make any other payment relative to the obligations on moneys taken on loan or bonds issued by said instrumentality for whose payment the proceeds of said 'Tax' have been pledged and the reserve funds, if any, of said instrumentality established for payment of the requirements of the debt are applied to cover the deficiency in the amounts as needed to meet such payments, the amounts of such a reserve fund used to cover the deficiency shall be reimbursed to said instrumentality from the first proceeds received in the next fiscal year or subsequent fiscal years by the Commonwealth of Puerto Rico originating from any remainder amounts of the 'Tax,' after making the deposits established under Section 2(a). In the event that the moneys collected on account of the Tax do not suffice to cover said reimbursement, the Secretary is hereby empowered to cover such a deficiency with any available funds and is further authorized, as a special measure for the management of cash flow when there is no other option, to take a loan with the 'GDB' to cover such a deficiency, and the Director of the Office of Management and Budget shall include in the budget recommended for the fiscal year in course or for the next fiscal year, the appropriations needed to cover said deficiencies.

(f) The proceeds of the remainder amounts of the Tax that are to be used under the provisions of Section 4(e) to reimburse any fund of the reserve established for servicing the debt, shall not be covered into the General Fund of the Government of the Commonwealth of Puerto Rico upon collection, but they shall be rather covered into the 'UIF' for the benefit of the instrumentality and shall be used to reimburse said reserve fund for paying the requirements of the debt."

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

“Section 5.—Additional Provisions.—

The Legislature hereby commits to approving an expenses budget for Fiscal Year 2006-2007 that will allow the Government to keep public servants in regular employment at their jobs and that will ensure the nonimpairment of the continuity in the direct services provided to citizens. This shall include the approval of legislation that shall provide additional recurring funds for an amount estimated to be not less than three hundred million (300,000,000) dollars and not more than four hundred million (400,000,000) dollars in addition to the revenues of the Commonwealth under the current tax system, in order to tend to the structural budget deficit.

Periodically, the Legislature shall evaluate the effectiveness of the collections generated under the tax measures referred to in the above paragraph; provided, that once the structural budget deficit has been remedied, the use of said additional recurring funds for a purpose other than tending to the structural budget deficit, shall be transferred in its entirety to the two retirement systems, in proportion to the number of their participants.

Likewise, the Government shall generate annual savings in an amount of not less than three hundred fifty million (350,000,000) dollars during the next three (3) years.”

Section 5.—A new Section 6 is hereby added and Section 6 is renamed as Section 7 in Act No. 91 of May 13, 2006, to read as follows:

“Section 6.—Severability.—

If any provision of this Act or the application thereof should be found to be invalid, such a ruling shall not affect the remaining provisions nor the application of this Act which may stand in effect without the provisions thus

found to be invalid, and for this purpose, the provisions of this Act are severable.

Section 7.—Effectiveness.—

...”

Section 6.—If any provision of this Act or the application thereof should be found to be invalid, such a ruling shall not affect the remaining provisions nor the application of this Act which may stand in effect without the provisions thus found to be invalid, and for this purpose, 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. 291 (H.B. 3163) (Conference) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Sections 2, 3, 4, and 5 of Act No. 91 of May 13, 2006, entitled “Urgent Interest Fund Act,” in order to establish the annual fixed amount of revenues originating from the sales and use tax that shall be covered directly into said Fund; to establish the financial structure to pay or refinance the extraconstitutional debt through the issue of bonds and other debentures payable and secured by pledging a fixed amount from the first revenues generated by the sales and use tax deposited into the Urgent Interest Fund; etc,

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

In San Juan, Puerto Rico, today 18th of June of 2007.

Francisco J. Domenech
Director