

(H. B. 2997)

**(No. 84-2016)**

(Approved July 22, 2016)

## **AN ACT**

To amend Section 2 and repeal Section 6 of Act No. 18-2014, better known as the “Municipal Administration Fund Act”; to provide that a portion of the sales and use tax shall be deposited directly into the Municipal Administration Fund, replace the references to the Government Development Bank for Puerto Rico for references to the Puerto Rico Fiscal Agency and Financial Advisory Authority and eliminate the Government Development Bank for Puerto Rico’s capacity to make advances payable from the funds deposited in the Municipal Administration Fund; amend Section 3 of Act No. 91-2006, as amended, and Section 3 of Act No. 116-2013, as amended, in order to provide that the denominator for determining the amount to be deposited in the Dedicated Sales Tax Fund shall be 5.5%; amend Sections 2, 3, and 4, add Section 5(d) and renumber Section 5(d) as Section 5(e) and repeal Section 13 of Act No. 19-2014, as amended, to provide for the composition of the Board of Directors of the Municipal Finance Corporation, dispose of the funds deposited in the Municipal Finance Corporation, and eliminate the Government Development Bank for Puerto Rico’s obligation to make advances in relation to said funds; amend Sections 4050.07, 4050.08, and 4050.09 of Act No. 1-2011, as amended, to provide that the accounts shall be under the custody of such institutions designated by the Municipal Finance Corporation and eliminate the references to the sales and use tax; and for other purposes.

### **STATEMENT OF MOTIVES**

Act No. 19-2014, as amended, created a public corporation within the Government Development Bank for Puerto Rico (hereinafter, “GDB” or the “Bank”), known as the “Municipal Finance Corporation” (“COFIM,” Spanish acronym), with authority to issue bonds and use other financing mechanisms to pay or refinance, directly or indirectly, in whole or in part, the obligations of the municipalities that are payable from or backed by the municipal sales and use tax.

Furthermore, Act No. 18-2014, as amended, adjusted the state sales and use tax (“SUT”) to six (6.0) percent while reduced the municipal sales and use tax to one (1.0) percent, beginning on February 1, 2014. The foregoing was deemed necessary to maintain our investment grade rating as well to enhance our credibility in the investment markets. The reduction of zero point five (0.5) percent made to the municipal SUT notwithstanding, in order for the municipalities to continue receiving the economic benefit from the revenues attributable to said zero point five (0.5) percent, a special fund denominated as the “Municipal Administration Fund” (“MAF”) was created under the custody of the GDB for the benefit of, and assigned to, the municipalities.

According to their design, MAF and COFIM depended greatly on the GDB to attain their purposes and not interfere with the cash flow of the municipalities. In view of the GDB’s precarious financial situation, it is necessary to amend Act No. 18-2014, as amended; Act No. 91-2006, as amended; Act No. 116-2013, as amended; Act 19-2014, as amended; and Act No. 1-2011, as amended, in order to safeguard the finances of the municipalities that are supported by the Funds that we intend to safeguard herein.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 2 of Act No. 18-2014, as amended, is hereby amended to read as follows:

“Section 2.- Creation of the Fund.-

(a) A Special Fund, to be known as the ‘Municipal Administration Fund’ (‘MAF’), is hereby created to be administered by and under the custody of one or more private financial institutions designated, from time to time, by the Board of Directors of the Municipal Finance Corporation (hereinafter, ‘COFIM’). Any references in this Act to the Government Development Bank for Puerto Rico including the defined term ‘GDB,’ shall be deemed to be replaced with references

to the Puerto Rico Fiscal Agency and Financial Advisory Authority (‘Fiscal Authority’). MAF may consist of one or more bank accounts held in trust created before July 1, 2016 by the GDB and after said date by the Municipal Finance Corporation. Except for the transitory period between February 1, 2014 and June 30, 2014, said special fund shall be funded with from the first revenues attributable to the 0.5% of the state sales and use tax imposed by Section 4020.01 and 4020.02 of Subtitle D of Act No. 1-2011, as amended. The amount to be deposited every fiscal year in said special fund shall be the product of the amount of the state sales and use tax collected during the current fiscal year multiplied by a fraction whose numerator shall be zero point five percent (0.5%) and whose denominator shall be the rate of such tax during said fiscal year (the ‘Required Annual Deposit’). Deposits to this special fund shall be made monthly by the financial institution acting as custodian of the revenues from the sales and use tax imposed by the Commonwealth of Puerto Rico (‘ELA’).

(b) ...

(c) Notwithstanding any provision to the contrary in this Act, neither the Fiscal Authority nor the Government Development Bank for Puerto Rico shall be authorized to make advances payable from funds deposited or to be deposited in MAF; provided, that any advance made prior to the approval of this Act shall be paid as provided in this Act.”

Section 2.- Section 6 of Act No. 18-2014, as amended, is hereby repealed.

Section 3.- Section 3 of Act No. 91-2006, as amended, is hereby amended to read as follows:

“Section 3.- Creation of the Special Fund

...

...

(a) ...

(i) The proceeds of the amount of the tax collected during such fiscal year, multiplied by a fraction whose numerator shall be two point seventy-five percent (2.75%) and whose denominator shall be five point five percent (5.5%), such fraction being hereinafter denominated as ‘the two point seventy-five percent (2.75%) of the Tax,’ or

(ii) ...

(b) ...

...”

Section 4.- Section 3 of Act No. 116-2013, as amended, is hereby amended to read as follows:

“Section 3.- Creation of the Special Fund

...

...

(a) ...

(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 five point five percent (5.5%), such fraction being hereinafter denominated as ‘the three point fifty percent (3.50%) of the Tax,’ or

(ii) ...

(b) ...

...”

Section 5.- Section 2 of Act No. 19-2014, as amended, is hereby amended to read as follows:

“Section 2.- Creation of the Public Corporation.

(a) ...

(b) ...

(c) ...

(d) ...

(e) COFIM shall be attached to the Government Development Bank for Puerto Rico (hereinafter, the 'GDB'), which shall assume COFIM's operating expenses. If the GDB is unable to assume COFIM's operating expenses, the same shall be payable from the funds deposited in COFIM.

(f) The Board of Directors of COFIM shall be composed of seven (7) members, one (1) of whom shall be the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority ('Fiscal Authority') or the public official designated as his representative; one (1) shall be the President of the GDB or the public official designated as his representative; one (1) shall be the Commissioner of Municipal Affairs; three (3) shall be mayors, two (2) of whom shall belong to the political party controlling the highest number of municipalities, to be elected by a majority of the mayors of said political party, and one (1) mayor who belongs to the political party that controls the second highest number of municipalities, to be elected by a majority of the mayors of said political party; and one (1) member, who shall represent the public interest recommended by the mayors of the majority and minority political parties and ratified by the Governor. The Executive Director of the Fiscal Authority, the President of the GDB, the Commissioner of Municipal Affairs, and the three (3) mayors shall be *ex-officio* members of the Board of Directors of COFIM during their term of office. However, in the case of mayors, said term of office shall not exceed two (2) consecutive terms. The public official designated as representative of the President of the GDB shall have, during the period of such designation the powers, duties, and responsibilities of the latter as a member of the Board of Directors of COFIM. The representative of the public interest shall continue to discharge his duties until the Governor who appointed him is in office, unless there is just cause for the removal of the representative of the

public interest before the expiration of said term. All members of the Board of Directors of COFIM shall hold office until their successors are appointed and take office.

...

...

The Executive Director of the Fiscal Authority shall be the Chair of the Board of Directors of COFIM and act as its chief executive officer. The Board of Directors of COFIM shall appoint one Secretary and any other officials it may deem pertinent, none of whom have to be a member thereof. By the affirmative vote of a majority of all its members, the Board of Directors of COFIM may adopt, amend, alter, and repeal regulations that are not [sic] inconsistent with this Act or any other law, to manage its affairs and businesses, appoint Board Member committees, and establish the powers of such committees, and the title, qualifications, terms, compensation, appointment, separation, and obligations of officials and employees. Provided, however, that such regulations may not be altered, amended, or repealed unless the proposed alterations, amendments, or repeals have been notified in writing to all members of the Board of Directors within at least one week before holding the meeting in which such issue shall be considered.

...”

Section 6.- Section 3 of Act No. 19-2014, as amended, is hereby amended to read as follows:

“Section 3.- COFIM’s Redemption Fund.

...

(a) ...

(b) ...

In both cases, if there are any outstanding advances made by the GDB in accordance with Section 12 of this Act before distributing the Municipal Transfer to the general fund of each municipality, COFIM shall first reimburse such outstanding advances to the GDB and then distribute the balance of the Municipal Transfer to the general funds of the municipalities, as appropriate; provided that, as of July 1, 2016, neither the GDB nor the Fiscal Authority shall be authorized to make advances payable from the Municipal Transfer; provided, further, that any outstanding advance made by the GDB prior to July 1, 2016, shall be paid as provided in this Act.”

Section 7.- Section 4 of Act No. 19-2014, as amended, is hereby amended to read as follows:

“Section 4.-Uses.

(a) ...

(b) In addition to the distributions made in accordance with Section 3(b) of this Act, the amounts deposited in COFIM’s Redemption Fund in excess of the amounts necessary to pay the principal of and interests on COFIM bonds per municipality, meet obligations incurred under bond issue documents, or to make any other payment in relation to any other obligation incurred by COFIM, including payments under interest rate swap agreements in connection with money taken on loan or bonds issued by COFIM for the payment of which ‘COFIM’s Deposit’ has been pledged, the excess per municipality shall be deposited in and distributed to the general fund of each municipality or the Municipal Redemption Fund thereof established in Section 4050.08 of Act No. 1-2011, but excluding from such distribution the municipalities that avail themselves of the option provided in Section 4 of the Municipal Administration Fund Act, which shall not be entitled to a share of such excess. Notwithstanding the foregoing, if there are outstanding advances made by the GDB to a municipality, in accordance with Section 12 of this Act, before

distributing the excess to the general fund of such municipality, COFIM shall reimburse the GDB said outstanding advances first, and then, distribute the balance to the general fund of the municipality, as appropriate; provided that, as of July 1, 2016, neither the GDB nor the Fiscal Authority shall be authorized to make advances payable from the Municipal Transfer; provided, further, that any outstanding advance made by the GDB prior to July 1, 2016, shall be paid as provided in this Act.

(c) ...”

Section 8.- Section 5(d) of Act No. 19-2014, as amended, is hereby renumbered as Section 5(e) and a new Section 5(d) is hereby added to read as follows:

“Section 5.- Deposits and Disbursements.

(a) ...

(b) ...

(c) ...

(d) If, at any time, ‘COFIM’s Deposit’ is greater than the amounts needed to pay the principal of and interest on COFIM’s outstanding bonds, if any, or to make any other payment related to other obligations incurred by COFIM, including payments under interest rate swap agreements in connection with money taken on loan or bonds issued by COFIM to pay that for which ‘COFIM’s Deposit’ has been pledged, such excess shall be distributed immediately in accordance with Section 3(b) of this Act.

(e) If, at any time, ‘COFIM’s Deposit’ is not sufficient to pay the principal of and interests on COFIM’s outstanding bonds, or to make any other payment with respect to other obligations incurred by COFIM, including payments under interest rate swap agreements in connection with money taken on loan or bonds issued by COFIM to pay that for which ‘COFIM’s Deposit’ has been pledged, or in the event

that COFIM's reserve funds, if any, have been established for payment of the requirements of the debt, or if said obligations are applied to cover the deficiency in the amounts, as needed, to meet such payments, the appropriations necessary to cover such deficiencies shall be included in the Commonwealth's budget recommended for the following fiscal year.”

Section 9.- Section 13 of Act No. 19-2014, as amended, is hereby repealed and Sections 13, 14, and 15 are hereby renumbered as Sections 12, 13, and 14.

Section 10.- Subsection (a) of Section 4050.07 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4050.07.- Creation of the Municipal Development Fund.

(a) Creation of the Fund.- A ‘Municipal Development Fund’ is hereby created under the custody of one or more private financial institutions designated by the Municipal Finance Corporation:

(1) For periods before July 1, 2014, the Municipal Development Fund shall be nourished from a special fund to be created by the Commonwealth of Puerto Rico; and

(2) For periods beginning on July 1, 2014, the Municipal Development Fund shall be nourished in accordance with the provisions, terms, and other conditions set forth in the Municipal Administration Fund Act.

(b) ...”

Section 11.- Subsections (a) and (b) of Section 4050.08 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4050.08.- Creation of the Municipal Redemption Fund.

(a) Creation of the Fund.- A ‘Municipal Redemption Fund’ is hereby created under the custody of one or more private financial institutions designated by the Municipal Finance Corporation:

(1) For periods before July 1, 2014, the Municipal Redemption Fund shall be nourished from a special fund to be created by the Commonwealth of Puerto Rico; and

(2) For periods beginning on July 1, 2014, the Municipal Redemption Fund shall be nourished in accordance with the provisions, terms, and other conditions set forth in the Municipal Administration Fund Act.

(b) ...

(c) ...”

Section 12.- Subsection (a) of Section 4050.09 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 4050.09.- Creation of the Municipal Improvement Fund.

(a) Creation of the Fund.- A ‘Municipal Improvement Fund’ is hereby created under the custody of one or more private financial institutions designated by the Municipal Finance Corporation:

(1) For periods before July 1, 2014, the Municipal Improvement Fund shall be nourished from a special fund to be created by the Commonwealth of Puerto Rico; and

(2) For periods beginning as of July 1, 2014, the Municipal Improvement Fund shall be nourished in accordance with the provisions, terms, and other conditions set forth in the Municipal Administration Fund Act.

The moneys available in the Municipal Improvement Fund shall be allocated to the municipalities through legislation by the Legislative Assembly of Puerto Rico to be appropriated for capital works and improvement projects in the municipalities, such as:

(1) ...”

Section 13.- Inconsistent Provisions of other Laws Superseded.

In the event that the provisions of this Act were in conflict with the provisions of any other law of the Legislative Assembly of Puerto Rico, the provisions of this Act shall prevail, unless the provisions of such other law specifically amend or repeal any or all provisions of this Act.

Section 14.- Severability Clause.

If any provision of this Act or the application thereof to any person or circumstance, were held to be unconstitutional, said holding shall be affect the remaining provisions of this Act and the application thereof.

Section 15.- Interpretation.

The provisions of this Act shall be interpreted liberally for the purpose of promoting the objectives of this Act.

Section 16.- Effectiveness.

This Act shall take effect immediately after its approval.